

<b>OTAGO POLYTECHNIC MANAGEMENT POLICY</b>		<b>Number: MP0445.03</b>
Title:	<b>Harassment and Bullying Prevention and Management</b>	
ITPNZ Standard:	<b>4 Staff Selection, Appraisal and Development</b>	
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**Purpose** The Harassment and Bullying Prevention and Management policy is designed to minimise the risk of bullying or harassment to all people in the Otago Polytechnic community, and to provide fair and safe procedures for dealing with concerns and complaints of this nature.

**Background** Otago Polytechnic is committed to providing an environment that is enjoyable, safe and secure for all students, staff and visitors. Accordingly, Otago Polytechnic proactively prevents and manages any form of harassment and bullying.

The objectives of this policy are to:

- ensure that all people are treated with respect and dignity at all times
- define standards of behaviour that are acceptable and unacceptable
- provide procedures for both lodging and dealing with concerns/complaints of harassment or bullying

**Statutory Compliance** Employment Contracts Act 1991  
Crimes Act 1961  
Human Rights Act 1993  
Privacy Act 1993  
Harassment Act 1997  
Employment Relations Act 2000  
Health and Safety in Employment Act 1992 and Amendment Act 2002  
Protected Disclosures Act 2000

**National Guidelines**

**Policy and Procedures** Attached

**Referral Documents** MP0413 Staff Assistance Programme  
MP0444 Resolving Performance Problems (includes Code of Conduct)  
MP0460 Performance Review  
AP0508 Student Rights and Responsibilities  
AP0602 Student Discipline  
AP0603 Resolution of Student Complaints



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## 1. Policy

Otago Polytechnic is committed to providing an environment that is enjoyable, safe and secure for all students, staff and visitors. Accordingly, Otago Polytechnic proactively prevents and manages any forms of harassment and bullying.

### 1.1 Objectives

It is not the intention of this policy to prohibit mutually enjoyed humour and the development of friendships within the Polytechnic.

### 1.2 Employee and Student Behaviour

Employees and students of Otago Polytechnic are expected to behave towards all people in a manner that is respectful and fosters a harassment and bullying free environment. This means that the following types of behaviour (including but not limited to) shall not occur:

#### Harassment

- displaying sexual or sexist material
- disruptive behaviour which interferes with the rights and learning opportunities of others
- language and imagery which is offensive and/or intimidating (may be verbal, written or electronic)
- hand gestures of an offensive nature
- any threatening or acts of aggression, bullying or intimidatory behaviour
- calling others offensive nicknames
- belittling others' religious or cultural beliefs
- looking at others in such a way that they feel uncomfortable
- invading others' personal space
- touching others in a way they find unwelcome
- making racist or sexist jokes or comments
- mimicking others' accents, stutters or mannerisms
- spreading rumours
- playing ill-natured practical jokes
- venting work pressure by swearing or using abusive language
- requesting dates or sexual contact with others who find the approach unwelcome and/or where a formal imbalance of power exists, such as an employee making such requests of a student or a supervisor making such requests of a staff member he or she supervises
- threatening or implying adverse treatment if requests for sexual contact is not agreed to

#### Bullying

- verbal abuse; yelling, using profanities/foul language
- spreading malicious rumour, gossip, or innuendo
- belittling a person's opinions
- excluding, isolating or ignoring someone
- intimidating a person – using psychological, physical or emotional forms
- undermining or deliberately impeding a person's work
- overloading, or unreasonably denying, or starving a person of responsibility
- establishing impossible deadlines that will set up the individual to fail
- physically threatening abuse/aggressive body language
- making jokes that are 'obviously offensive'
- unjustifiably blocking applications for training, leave or promotion

Harassment or bullying by electronic means is prohibited. This includes viewing, writing, drawing, taking, displaying, printing or downloading objectionable material via computer, PDA and phone text or ptxt, still or video camera.



No employee or student shall harass or bully another person. Proven harassment or bullying may constitute misconduct or serious misconduct. Accordingly,

- Employees who are found to have harassed or bullied another, or behaved contrary to this policy, may be disciplined and/or dismissed from employment.
- Students who are found to have harassed or bullied another, or behaved contrary to this policy, may be reprimanded, fined, suspended or expelled from the course in which they are enrolled.

Otago Polytechnic will take every reasonable step to prevent the recurrence of harassment or bullying of its employees and students by persons outside the Polytechnic of which it becomes aware. Examples of such include harassment or bullying by a person from another organisation with which an employee or student works as part of their job or course requirements; or harassment or bullying in a work experience environment.

### 1.3 Legal Position

1.3.1 The Employment Relations Act 2000 and the Human Rights Act 1993 clearly state that Harassment is unlawful. The Health and Safety in Employment Amendment Act 2002 clearly outlines the employer responsibility to provide a safe work environment (which includes emotional and physical safety) and manage hazards and stress. If proven, Otago Polytechnic and/or the individuals involved may be liable for significant financial penalties. In addition, forms of harassment and bullying may constitute criminal acts or offence under the provisions of the Crimes Act 1961 or the Harassment Act 1997.

1.3.2 The Protected Disclosures Act 2000 (see Policy MP0422 Protected Disclosure of Serious Wrongdoing (Whistleblowing)) provides protection for individuals who make a disclosure of serious wrong doing. The grounds for claims of serious wrong doing are specified in the Act and reflected in the Otago Polytechnic protected disclosures policy. The policy is not designed to replace other management policies, however the protection afforded under this Act and reflected in Otago Polytechnic policy is a feasible course of action in situations covered by the Act.

1.3.3 No material of a sexual or other discriminatory nature is to be misused or displayed in the Polytechnic unless such display is necessary for legitimate teaching or approved research purposes, eg health science, art or fashion and design teaching or in classes where such material is to be discussed so that issues relating to it, for example sexism, can be explored.

1.3.4 With regard to employees, it is the responsibility of managers and supervisors to implement this policy by modeling appropriate behaviour, monitoring the workplace and intervening in any inappropriate behaviour or potential harassment or bullying situation of which they become aware. An employee may raise an issue directly with their manager, or with their manager's manager, or should that not be a feasible course of action due to either management involvement in the issue or lack of management support, the employee may raise concerns with any senior staff member.

1.3.5 With regard to students, it is the responsibility of lecturers to implement this policy by modeling appropriate behaviour, monitoring students' behaviour and reporting any inappropriate behaviour or potential harassment or bullying situation of which they become aware to the appropriate Head of School. In halls of residence, the hall manager and wardens must intervene in any inappropriate behaviour or potential harassment or bullying situation of which they become aware.

1.3.6 Any employee or student who has a concern about the behaviour of a supervisor, manager, co-worker, fellow student or other person with whom they are obliged to work is assured that their complaint will be taken seriously, treated with an appropriate level of confidentiality and investigated quickly and fairly.



1.3.7 No person shall be victimised for raising a concern/complaint of harassment or bullying. Victimisation of any employee or student who raises a concern/complaint of harassment or bullying, or victimisation of any person who assists an employee or student who raises a concern/complaint may be serious misconduct if proven. Accordingly, employees or students who are found to have engaged in victimisation may be disciplined and may be dismissed from employment, may be reprimanded, fined, suspended or expelled from the course in which they are enrolled.

1.3.8 Section 4 contains legal definitions for Harassment, Sexual Harassment, Racial Harassment, Detriment, and definitions of Bullying.

#### 1.4 **Communication with complainant - Management Intervention and Formal Process**

Feedback on progress of an investigation may be given to the complainant. This will be subject to legal requirements for Otago Polytechnic to act as a fair and reasonable employer for all of its staff. To protect both the complainant and the alleged harasser/bully, a generic update on actions taken can be given.

Privacy and confidentiality – to allow fair process to occur, it is important that both complainant and the accused are careful with what they say to others in their departments/schools. There are significant issues around rumour and defamation. Guidance and support is given through the investigation process.

Please note that should a complaint result in disciplinary investigation procedures, then no information on this can be provided to the complainant due to employment law and contractual arrangements. The ultimate decision by the employer will be conveyed in writing to the complainant.

#### 1.5 **Savings**

Nothing in this policy affects any person's rights under the Employment Relations Act 2001 and/or the Human Rights Act 1993.

## 2. **Prevention Programme for Harassment and Bullying**

Otago Polytechnic will implement and maintain a harassment and bullying prevention programme. By this programme, Otago Polytechnic will ensure that all employees and students are aware of this policy, what constitutes harassment and bullying, and what they can do if they have an allegation/complaint.

All employees will attend a compulsory training programme on harassment and bullying prevention and the policy forms a part of the induction training for new employees. Employees with responsibility for the supervision/management of staff will attend a managers' training course which will emphasise the responsibility of supervisors and managers to monitor workplace behaviour, to intervene to prevent harassment and bullying occurring and conduct management intervention when appropriate.

Students will be informed of the Polytechnic's harassment and bullying prevention and management policy by information published in the student information, student diary and regulations and by the display of posters on notice boards and by student brochures that will be prominently displayed. A student briefing programme is available from the Harassment and Bullying Prevention Coordinator. Members of the OPSA executive and class representatives will receive annual training about harassment and bullying prevention and management.

Contractors required to work on campus will be informed of this policy via their contract for services with the Polytechnic.



### **3. Procedure for Harassment or Bullying Concerns/Complaints**

Complaints of harassment or bullying should be investigated bearing in mind the principals of natural justice.

#### **3.1 Contact People**

As concerns about harassment or bullying may be difficult to raise, Otago Polytechnic has staff and some student representatives who act as Contact People.

3.1.1 Names and contact details of contact people are located on posters in prominent public areas throughout the organisation and are available from the Harassment and Bullying Prevention Coordinator, OPSA executive and class representatives.

3.1.2 Employees or students concerned about harassment and bullying are encouraged to approach their supervisor/manager or Head of School in the first instance. However, if they prefer, they may approach a contact person of their choice.

##### **3.1.3 Role of Contact People**

It is the role of contact people to give information to an enquirer about harassment or bullying, to assist him or her in identifying whether the behaviour he or she is concerned about constitutes harassment or bullying, and to explain this complaints procedure and the options the enquirer has for dealing with his or her concern. Contact people will not approach an alleged harasser or bully on behalf of an enquirer.

##### **3.1.4 Confidentiality**

Any approach to a contact person is made in confidence, subject to clauses 3.1.3 and 3.4.1 of this procedure.

However, if a contact person believes anybody may be at risk of harassment or bullying should no action be taken, the contact person may approach the Harassment and Bullying Prevention Coordinator and discuss the concern. It may be that, even without the individual's consent, Otago Polytechnic will have to intervene or investigate if it appears a serious incident has taken place which puts any person at risk of harassment or bullying occurring, and/or which exposes the Polytechnic to legal risk should no action be taken.

### **3.2 Procedure for Harassment and Bullying Concerns/Complaints - for Employees**

#### **A Responsibility of Supervisors and Managers**

It is the responsibility of all supervisors/managers to:

- (a) Act on any harassment or bullying concern expressed to them immediately, with empathy and in accordance with this procedure
- (b) Ensure that any staff member using this procedure is not victimised for exercising their right to raise a concern/complaint regarding genuinely unwelcome behaviour.
- (c) Remove themselves from the investigation should there be a conflict of interest with respect to their continued participation in the investigation.

Where a supervisor or manager is embarrassed or uncertain of how to deal with a concern/complaint, they should refer the matter immediately to the Human Resources Advisor, Harassment and Bullying Prevention Coordinator or Director: Organisational Development.



## **B Parties Involved**

### **1. Student or Employee behaviour towards Employee**

Where the concern/complaint is about the behaviour of a student or any Otago Polytechnic employee – go to **C Concern/Complaint Procedures** – three options are available to the employee.

### **2. External party behaviour towards Employee**

Where the concern/complaint is about the behaviour of a person outside the Polytechnic with whom the employee is required to work - the individual should report the behaviour directly to his or her manager or to the Director: Organisational Development who shall arrange for an immediate inquiry into the facts of the allegations and, if satisfied that harassment or bullying has occurred or, where it is otherwise considered appropriate, ensure that reasonably practicable steps are taken to prevent recurrence of the behaviour complained of.

### **3. Employee behaviour towards Student or External party**

Where the concern/complaint is about the behaviour of an employee, and is made by a student or person outside the Polytechnic with whom that employee is required to have contact - the concern/complaint will be formally investigated by Management Intervention or Formal Investigation in accordance with the procedures outlined in clauses 3.2 C 2-3 of this document

## **C Concern/Complaint Procedures**

A person may choose *any one of the following three options* for dealing with a concern/complaint of harassment or bullying.

Note that choosing self-help or management intervention does not preclude a person from lodging a formal allegation/complaint should his or her efforts to informally deal with the problem be unsuccessful.

### **1. Self-help**

If the person feels immediately able to deal with the problem him or herself, or feels confident enough to do so after discussions with his or her supervisor/manager or a contact person, this is encouraged. He or she should approach the alleged harasser or bully alone or with a friend, explain the behaviour of concern, that he or she does not welcome it and ask that it stop.

Benefits of Self-help:

- it can be personally empowering for the complainant
- it gives the respondent an opportunity to correct any unwelcome behaviour without a formal allegation/complaint being made
- it is the most confidential option for both parties
- it is quick

### **2. Management Intervention**

If the person wishes, and a supervisor/manager or the Director: Organisational Development agrees it is appropriate, another person may intervene on their behalf without a formal allegation/complaint being made and investigated. Intervention may be conducted by:

- a person's supervisor or manager; or
- a respondent's supervisor or manager; or
- the Director: Organisational Development; or



- in consultation with the Director: Organisational Development, the Harassment and Bullying Prevention Coordinator or Human Resources Advisor
- the Chief Executive (only if none of the above are appropriate)

A request for management intervention should be made to:

- the person's supervisor or manager; or
- the Director: Organisational Development

The Director: Organisational Development may decide that a mediator from an external agency be engaged to conduct management intervention. Any such person must be experienced in dealing with harassment and bullying issues.

- (a) The purpose of management intervention will be to facilitate a satisfactory resolution of the problem between the person and the respondent to the concern/complaint.
- (b) During the process of management intervention the objective will not be to apportion blame but, rather, to discuss what the problem is and how the parties might work together effectively in the future.
- (c) Management intervention may either be "shuttle" where the parties are not brought together, or "round table" where the parties work through the problem together with the supervisor/manager, Director: Organisational Development, Harassment and Bullying Prevention Coordinator, Human Resources Advisor or an agreed mediator. (The attendance by the complainant at a "round table" discussion must be voluntary and not made a condition of the process).
- (d) Any agreement reached between the parties or between a party and their supervisor/manager or the Director: Organisational Development during management intervention will be written down, made known to and will be monitored by the supervisors/managers of the parties concerned.
- (e) No disciplinary action will be brought against an alleged harasser or bully who participates in management intervention, and who reaches and abides by an agreement reached in management intervention under these procedures. However, if an alleged harasser or bully who has been a party to management intervention under these procedures fails to fulfill the terms of an agreement reached, such a failure may be treated as a disciplinary matter by their supervisor/manager. The original allegation which led to the intervention may also be investigated.

### 3. Formal Allegation / Complaint

A formal allegation/complaint should be lodged in cases where:

- the self-help or management intervention approach has not resolved the problem
- the complainant does not wish to use self-help or management intervention but wants to make a formal allegation/complaint
- the allegations are so serious that, if substantiated, they could result in disciplinary action being taken against the respondent. In these situations the complainant should be advised by his or her supervisor/manager or the Director: Organisational Development that a formal allegation/complaint is the most appropriate option

A formal allegation/complaint can be lodged by speaking with:

- the complainant's supervisor or manager; or
- the Director: Organisational Development





- the Chief Executive

In all cases where a formal allegation/complaint is lodged, the Director: Organisational Development will be informed and a person will be appointed to investigate the complaint.

### **Investigation of formal allegation/complaints**

Otago Polytechnic has investigators for formal allegations/complaints under this procedure. The Director: Organisational Development may decide that a person from an external agency be engaged for investigation and/or mediation. Any such person must be experienced in investigating and evaluating evidence gathered in harassment and bullying complaints.

### **Investigation**

The broad procedures are:

- An **impartial** investigator will be appointed to conduct a full investigation. In order to ensure integrity of the process all parties shall ensure professional boundaries are maintained during the investigation process.
- The investigator will interview the complainant. The complainant will be required to outline and record his or her allegations as a formal complaint. He or she may do this by writing a letter of allegation/complaint and/or by telling his or her story to the investigator.
- The investigator will interview the alleged harasser or bully, (the respondent). The respondent must be told the details of the accusation/s and must be given an adequate opportunity to respond.
- The investigator will interview any persons who may have information relevant to the allegation/complaint – any witnesses will be asked to review the record of their statement made to the investigator.
- The investigator will gather or record any physical evidence of the act/s alleged/complained of.
- The investigator will write an investigation report and within that report make recommendations as to whether:
  - the allegation/complaint has substance
  - the allegation/complaint cannot be established
  - the allegation/complaint does not have substance
  - the allegation/complaint is malicious
- The investigator will deliver the full investigation report to the Director: Organisational Development who will make a decision as to whether or not the allegation/complaint has substance and what, if any, disciplinary action is to be taken as a result of the allegation/complaint. The Director: Organisational Management will obtain a peer review of the decision from either the Deputy Chief Executive or the Director: Quality prior to confirming the decision and will ensure the respondent has been afforded the opportunity to view the report and make written or oral submissions before making a decision.
- Due to the confidential nature of the investigation, the need for impartiality and the need to protect identifiers of parties involved the report will only include relevant information.



- (i) In cases where the allegation/complaint is substantiated, the harasser or bully may be disciplined. This may include:
  - request for an apology to the complainant
  - formal warning
  - counselling on behaviour
  - compulsory attendance at counselling, therapy or training
  - transfer
  - demotion
  - dismissal
- (j) Where an allegation/complaint is substantiated, the complainant must not be transferred as part of the resolution of the complaint, unless this is what he or she freely wants to do.
- (k) If the allegation/complaint is found to have substance, compensatory measures will be considered for the complainant. In considering such compensatory measures, regard will be taken as to what assistance (if any) might reasonably be required to assist the complainant to attain the position he or she would had been in had the harassment or bullying not occurred.
- (l) Should the investigation of an allegation/complaint result in it being found to have been made maliciously, this may be considered to be serious misconduct and the complainant will be disciplined accordingly.
- (m) Either party may ask for a reconsideration of the decision within 7 working days by appeal to the Deputy Chief Executive or Chief Executive. The grounds for reconsideration are: omission of fact, error of fact or reconsideration of outcomes in light of new information.

### 3.3 Procedure for Harassment and Bullying Concerns/Complaints - for Students

#### A Responsibility of Lecturers/Heads of School

It is the responsibility of every lecturer and Head of School to:

- (a) Act on any harassment or bullying concern expressed to them immediately, with empathy and in accordance with this concern/complaints procedure;
- (b) Ensure that any student availing him or herself of this concern/complaints' procedure is not victimised for exercising his or her right to raise a concern/complaint regarding genuinely unwelcome behaviour.

Where a lecturer or Head of School is embarrassed or uncertain of how to deal with a concern/complaint, the lecturer or Head of School should refer the matter immediately to the Group Manager, Harassment and Bullying Prevention Coordinator or Deputy Chief Executive for direction.

#### B Parties involved

##### 1. Student behaviour towards Student

Three options are available for dealing with a concern/complaint of harassment or bullying by a student against a student. The student may choose any one of these options as his or her preferred first choice. Choosing self-help or intervention does not preclude the student from lodging a formal allegation/complaint should his or efforts to informally deal with the problem be unsuccessful.



2. **External behaviour towards Student**

Where the concern/complaint is about the behaviour of a person outside the Polytechnic with whom the student is required to work

The student should report the behaviour directly to a lecturer, Head of School, Group Manager or Deputy Chief Executive. The Deputy Chief Executive or delegate shall arrange for an immediate inquiry into the facts of the allegations and, if satisfied that harassment or bullying has occurred, ensure that reasonably practicable steps are taken to prevent recurrence of the behaviour complained of. Any such steps will not be to the disadvantage of the student in his or her course of study.

3. **Employee behaviour towards Student**

All concerns/complaints from a student of harassment or bullying by an employee shall result in either a management intervention or formal complaint procedure as outlined in clause 3.2 C 2-3 of the concerns/complaints procedure for employees.

If a student has a concern about the behaviour of an employee of the Polytechnic he or she should report the concern to:

- any lecturer; or
- his or her Head of School; or
- his or her Group Manager; or
- the Harassment and Bullying Prevention Coordinator
- the Deputy Chief Executive

In all cases the Deputy Chief Executive will be informed of the concern/complaint made. The Deputy Chief Executive may interview the student and will decide whether the concern/complaint will be dealt with by management intervention or treated as a formal allegation/complaint.

Where it is decided that a concern/complaint by a student against an employee be dealt with by management intervention, intervention will be carried out by:

- the respondent's supervisor/manager; or
- the Deputy Chief Executive; or
- in consultation with the Deputy Chief Executive, the Harassment Prevention Coordinator or Human Resources Advisor

The decision as to what management intervention will be carried out by shall be made by the Deputy Chief Executive.

Where it is decided that a concern/complaint by a student against an employee is to be dealt with as a formal allegation/complaint, the procedures outlined in clauses 3.2 C.3 (a)-(j) shall be followed.

Depending on the outcome, the Deputy Chief Executive may consider compensatory measures for the complainant. In considering such compensatory measures regard will be given to what assistance (if any) might reasonably be required to assist the complainant to attain the position they would have been in had the harassment or bullying not occurred.

4. **Student behaviour towards Employee - refer to 3.2 B.1**

**C Concern/Complaint Procedures**

A person may choose *any one of the following three options* for dealing with a concern/complaint of harassment or bullying.



Note that choosing self-help or management intervention does not preclude a person from lodging a formal allegation/complaint should his or her efforts to informally deal with the problem be unsuccessful.

## 1. **Self-help**

If the student feels immediately able to deal with the problem him or herself, or feels confident enough to do so after discussions with a contact person, lecturer or Head of School, this is encouraged. He or she may approach the alleged harasser or bully alone or with a friend, explain the behaviour of concern, that she or he does not welcome it and ask that it stop.

Benefits of Self-help:

- it can be personally empowering for the student
- it gives the alleged harasser or bully an opportunity to correct any unwelcome behaviour without a formal allegation/complaint being made
- it is the most confidential option for both parties
- it is quick

## 2. **Management Intervention**

If the student wishes, he or she may request that another person intervene on the complainant's behalf without a formal allegation/complaint being made and investigated. Intervention may be conducted by:

- a Head of School; or
- a Group Manager; or
- the Deputy Chief Executive; or
- in consultation with the Deputy Chief Executive, the Harassment and Bullying Prevention Coordinator or Human Resources Advisor

A request for intervention should be made to:

- a Head of School; or
- a Group Manager; or
- the Deputy Chief Executive; or
- the Harassment and Bullying Prevention Coordinator

- a) The purpose of intervention will be to facilitate a satisfactory resolution of the problem between the student and the respondent to the concern/complaint.
- b) During the process of intervention the objective will not be to apportion blame but, rather, to discuss what the problem is and how the parties will behave towards each other in the future.
- c) Intervention may either be "shuttle" where the parties are not brought together, or "round table" where the parties work through the problem together with the Head of School, Group Manager, Deputy Chief Executive or Harassment and Bullying Prevention Coordinator. (The attendance by the student at a "round table" discussion must be voluntary and not made a condition of the process).
- d) Any agreement reached between the parties or between a party and their Head of School, Group Manager, the Deputy Chief Executive or the Harassment and Bullying Prevention Coordinator during intervention will be written down, made known to and will be monitored by the Head/s of School of the students concerned. At the direction of a Head of School, a lecturer may have a role in monitoring an agreement.



- e) If an alleged harasser or bully who has been a party to intervention under these procedures breaks an agreement made during intervention, the Head of School of the student concerned will decide whether the matter of breaking the agreement ought to be referred to the Polytechnic's Student Discipline Committee. In these circumstances a complainant will not be required to attend a hearing of the Student Discipline Committee.

### 3. Formal Allegation/Complaint

A formal allegation/complaint should be lodged in cases where:

- The self-help or intervention approach has not resolved the problem
- The student does not wish to use self-help or intervention but wants to make a formal allegation/complaint
- The allegations are so serious that, if substantiated, they could result in disciplinary action being taken against the student concerned. In these situations the complainant should be advised that a formal allegation/complaint is the most appropriate option

A formal allegation/complaint can be lodged by speaking with:

- A Head of School; or
- A Group Manager; or
- The Deputy Chief Executive; or
- The Harassment and Bullying Prevention Coordinator

In all cases where a formal allegation/complaint is lodged, the Deputy Chief Executive will be informed and, will appoint a person to investigate the allegation/complaint.

- (a) The investigator will interview the complainant. The complainant will be required to outline and record his or her allegations as a formal complaint. He or she may do this by writing a letter of allegation/complaint and/or by telling his or her story to the investigator.
- (b) The investigator will interview the alleged harasser or bully, (the respondent). The respondent must be told the details of the accusation/s and must be given an adequate opportunity to respond.
- (c) The investigator will interview any persons who may have information relevant to the allegation/complaint.
- (d) The investigator will gather or record any physical evidence of the act/s alleged/complained of.
- (e) The investigator will write an investigation report and within that report make recommendations as to whether:
- the allegation/complaint has substance
  - the allegation/complaint cannot be established
  - the allegation/complaint does not have substance
  - the allegation/complaint is malicious
- (f) The person who investigates the allegation/complaint will deliver the investigation report to the Deputy Chief Executive who will read the report and make a recommendation to the Chief Executive on the complaint. It shall be the Chief Executive who makes a final decision as to whether or not the allegation/complaint has substance and what, if any, disciplinary action is to be taken as the result of the allegation/complaint. The Chief Executive will ensure the accused person has been afforded the



opportunity to make written and oral submissions before making a decision.

- (g) In all cases where the allegation/complaint is substantiated, the harasser or bully will be disciplined. This may include:
  - request for an apology to the complainant
  - a formal reprimand
  - a fine of up to \$500
  - exclusion from the harasser's or bully's course of study
- (h) Where an allegation/complaint is substantiated, the complainant must not be transferred to a different class or course as part of the resolution of a complaint, unless this is what he or she freely wants to do.
- (i) Should the investigation of an allegation/complaint result in that allegation/complaint being found to have been made maliciously, this will be considered to be serious misconduct and the student will be referred to the Chief Executive.

### 3.4 Record Keeping and Reporting

- 3.4.1 If an employee or student approaches a contact person, the contact person must complete the form *Record of Contact under Harassment and Bullying Prevention Complaints Procedure*, noting the characteristics of the complainant and the alleged harasser or bully, the date and a brief account of the interview including what action the person raising the concern/complaint intends to take.

All such 'Records of Contact' concerning harassment or bullying complaints made to a contact person should be kept in a confidential file by the Harassment and Bullying Prevention Coordinator, with restricted access. This will assist the Polytechnic to monitor the incidence of harassment and bullying and how effectively its contact person network is operating. No information from the 'Record of Contact' form is to be entered onto the personal files of either party. Information on a 'Record of Contact' form that an individual is alleged to have perpetrated offensive behaviour will not be used so as to disadvantage that individual. However, if a pattern of alleged conduct emerges through an individual being the subject of enquiry more than once, then the Director: Organisational Development or the Deputy Chief Executive may invoke management intervention, intervention or an investigation into allegations against that individual in accordance with the employee or student complaints' procedures.

- 3.4.2 If management intervention is to occur, the person responsible for conducting that intervention must inform the Director: Organisational Development, (if the matter involves an allegation against an employee), or the Deputy Chief Executive, (if the matter involves an allegation against a student), before management intervention or other intervention is undertaken.
- 3.4.3 Persons responsible for conducting management intervention or intervention under these procedures must record any agreement reached during intervention in writing and file it with the Director: Organisational Development (if the matter involves allegations against an employee), or with the Deputy Chief Executive (if the matter involves allegations against a student).
- Any such written agreements reached as a result of management intervention or intervention will be kept by the Director: Organisational Development /Deputy Chief Executive in a confidential file with restricted access. However, if a person who has been a party to management intervention under these procedures fails to fulfill the



terms of an agreement reached, such a failure may be treated as a disciplinary matter by their supervisor/manager. In such a case it is possible that the written agreement arrived at during management intervention be entered onto the person's personal file.

- As appropriate, supervisors/managers, lecturers/Heads of School and Group Managers shall be informed of the outcome of management intervention or intervention so that agreements can be monitored.

3.4.4 When a formal allegation/complaint has been made, full notes shall be taken at the time of all subsequent interviews, discussions and actions.

- If an allegation/complaint is investigated and substantiated, then the respondent's personal file will contain a summary of the nature of the complaint, the outcome and the penalty if any disciplinary action is taken. A full record of the information obtained during the investigation and the disciplinary interview will be kept in a separate, confidential file by the Director: Organisational Development (if the matter involves allegations against an employee), or by the Deputy Chief Executive (if the matter involves allegations against a student).
- No record of the harassment or bullying allegation/complaint will be placed on the person who is raising the allegation/complaints personal file unless it is with their permission and necessary, for example, to explain a work or course performance issue.

3.4.5 If a formal allegation/complaint results in a finding of 'can't be established' or 'no substance', all records should be kept but in a separate, confidential file with restricted access by the Director: Organisational Development (if the matter involves allegations against an employee), or by the Deputy Chief Executive (if the matter involves allegations against a student). The Polytechnic may need to show that the allegation/complaint was handled appropriately at some time in the future.

3.4.6 Annual Statistical Reporting (see Appendix 4.2.1).



## 4. Appendices

### 4.1 Definitions

- **Harassment**

Harassment is verbal, written, visual or physical conduct in relation to race, colour, ethnic or national origins, gender, age, disability, physical appearance, marital or family status, religion, ethical belief, participating or not participating in the activities of an employee union, political opinion or sexual orientation that is unwelcome or offensive to the recipient.

Harassment may be one incident of a serious nature or behaviour that is persistent to the extent that it has a detrimental effect on the recipient's employment or learning, including work/course performance, job/learning opportunities or job/course satisfaction.

- **Sexual Harassment**

Sexual harassment is defined in Section 62 of the Human Rights Act 1993 as follows:

**62(1) [Request for sexual favours unlawful]** It shall be unlawful for any person ... to make a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.

**62(2) [Unwelcome sexual behaviour]** It shall be unlawful for any person by the use of language (whether written or spoken) of a sexual nature, or of visual material of a sexual nature, or by physical behaviour of a sexual nature, to subject any other person to behaviour that:

- (a) is unwelcome or offensive to that person (whether or not that is conveyed to the first-mentioned person); and
- (b) is either repeated, or of such a significant nature, that it has a detrimental effect on that person in respect of
  - i. the making of an application for employment
  - ii. employment, which term includes unpaid work
  - iii. access to any approval, authorisation, or qualification
  - iv. vocational training, or the making of an application for vocational training
  - v. access to places, vehicles, and facilities
  - vi. access to goods and services
  - vii. access to land, housing, or other accommodation
  - viii. education

#### **Examples of Sexual Harassment**

- **Verbal behaviour:** sexual innuendo, sexual or smutty jokes, name-calling, questions about a person's private life, requests for dates or sexual activity, wolf whistles, obscene telephone calls, texts or pixts.
- **Visual and written material:** graffiti, suggestive or obscene letters, display or unwanted exposure to sexual material in the form of posters, calendars, magazines, computer games, screen savers and other computer images, photos, emails, texts, or pixts.
- **Physical behaviour:** offensive hand or body gestures, leering, inappropriately invading personal space, following a person, touching, peeping, exposure, sexual assault and rape.

*where such behaviour is unwelcome or offensive to the person experiencing it.*





- **Racial Harassment**

Racial harassment is defined in Section 63 of the Human Rights Act as follows:

**63(1)** It shall be unlawful for any person to use language (whether written or spoken), or visual material, or physical behaviour that:

- (a) expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race or ethnic or national origins of that person; and
- (b) is hurtful or offensive to that other person (whether or not that is conveyed to the first-mentioned person); and
- (c) is either repeated, or of such a significant nature, that it has a detrimental effect on that other person in respect of ...
  - i. the making of an application for employment
  - ii. employment, which term includes unpaid work
  - iii. access to any approval, authorisation, or qualification
  - iv. vocational training, or the making of an application for vocational training
  - v. access to places, vehicles, and facilities
  - vi. access to goods and services
  - vii. access to land, housing, or other accommodation
  - viii. education

#### **Examples of Racial Harassment**

- **Verbal behaviour:** derogatory comments, name-calling or nick-names made on the basis of a person's race, colour or accent; "jokes" which ridicule or portray individuals of a certain race or nationality in a demeaning way.
- **Visual and written material:** racist graffiti or the use or display of racist propaganda, cartoons, posters, songs, computer games, screen savers and other computer images, photos, emails, texts, or pixts.
- **Physical behaviour:** ostracising a person because of his or her race, colour, national or ethnic origins, physical assault of a person on the grounds of his or her race:

*where such behaviour is hurtful or offensive to the person experiencing it.*

- **Detriment**

While a recipient of offensive behaviour must prove he or she has been detrimentally affected in order to be successful in a complaint of sexual or racial harassment to the Human Rights Commission/Employment Relations Authority, Otago Polytechnic may discipline an employee or student who engages in harassing behaviour where a recipient has only been offended, and not detrimentally affected by behaviour. This is because behaviour that could reasonably foreseeably lead to harassment and/or which causes offence to others, is inconsistent with Otago Polytechnic's values, undermines its efforts to prevent harassment, and may be considered misconduct or serious misconduct.

- **Bullying**

Bullying is unwelcome and unreasonable behaviour that is persistent. It creates an uncomfortable or offensive work atmosphere which is hostile for those who are target(s) of the bullying.

Oxford Dictionary 1998

Bully: (n) "A person who uses strength or influence to harm or intimidate others who are weaker"



- (v) Use superior strength or influence to intimidate (someone), typically to force them to do what one wants”

*Prevention of Bullying and Violence in the Workplace, Victorian WorkCover Authority, May 2003*

“Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

Within this definition:

‘unreasonable behaviour’ means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimize, humiliate, undermine or threaten.

‘Behaviour’ includes actions of individuals or a group, and may involve using a system of work as a means of victimizing, humiliating, undermining or threatening.

‘risk to health and safety’ includes risk to the mental or physical health of the employee. A physical attack is not considered bullying – this is assault.

## 4.2 Role of Harassment and Bullying Prevention Coordinator

Otago Polytechnic has appointed an employee to administer the harassment and bullying prevention programme. This person shall be known as the Harassment and Bullying Prevention Coordinator and, in the performance of his or her duties under this role, shall report to the Director: Organisational Development.

The Harassment and Bullying Prevention Coordinator shall:

- administer all training and briefings provided to Polytechnic employees and students under the harassment and bullying prevention programme
- co-ordinate delivery of manager, staff and student briefing sessions
- coordinate other employees who have responsibility to deliver manager, staff and student briefing sessions
- administer the production and distribution of publicity material, such as posters and brochures
- promote the harassment and bullying prevention programme within the Polytechnic
- maintain a harassment and bullying prevention training records system, recording training courses and briefings provided under the harassment and bullying prevention programme and persons attending such training/briefings
- maintain a records system recording approaches to harassment and bullying prevention and management contact people, management interventions conducted, and formal complaints made, under the employee and student complaints procedures
- coordinate the selection of suitable people to be contact people for harassment and bullying concerns
- support and advise contact people as required
- at the request of the Deputy Chief Executive, conduct intervention under the harassment complaints procedure for students
- at the request of the Director: Organisational Development, conduct intervention under the harassment and bullying complaints procedure for employees
- report in writing annually to the Director: Organisational Development on the operation of the prevention and management programme
- carry out such other duties relevant to the position as the Director: Organisational Development may require

### 4.2.1 Statistical records to be kept by Harassment and Bullying Prevention Coordinator

In addition to the ‘Record of Contact’ forms that the Harassment and Bullying Prevention Coordinator shall collect from contact people, once a year the Harassment and Bullying Prevention Coordinator shall collect from the Director: Organisational Development and the Deputy Chief Executive information relating to the previous 12 month period ie:

- details of the number of incidents of management intervention or intervention conducted under these procedures



- details as to the number of incidents of management intervention or intervention conducted that resulted in a written agreement
- details of the number of agreements reached during management intervention or intervention where the alleged harasser appears not to have kept to his or her agreement and where disciplinary action has been commenced or taken
- details of the number of formal allegations/complaints made and investigated under these procedures
- details of the findings reached in formal complaints made and investigated under these procedures
- details of any compensatory or disciplinary action taken as a result of a formal allegation/complaint being made and investigated
- non-identifying demographic data relating to the parties involved in concerns/complaints requiring management intervention, intervention or investigation

The purpose of the Harassment and Bullying Prevention Coordinator collecting this information shall be in order for him or her to report on the operation of the harassment and bullying prevention programme to Leadership Team.

For the purpose of section 3.4.5, "restricted access" means that records will only be able to be accessed under the provisions of the Privacy Act 1993 and/or by members of the Polytechnic staff who, by reason of their position, have a need to read such records. Access will be controlled by the Director: Organisational Development or the Deputy Chief Executive, as appropriate.

**Approved by Chief Executive**  
**Date: 16 March 2011**



Problem Resolution Flow Chart

