

DEALING WITH HARASSMENT

Practice & Procedures Manual

DEALING WITH HARASSMENT IN THE EDUCATIONAL INSTITUTION

TEMPLATE SYSTEMS AND PROCEDURES MANUAL

EXPLANATORY NOTE

The following is designed to be a guide "skeleton" Practice and Procedures Manual, including a Policy Statement. Each section is to be laid out on separate pages for flexibility, in order that amendments and variations may be made to suit each education institution's particular requirements. The order of the sections may be varied; accordingly the index is only loosely arranged.

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1. EXPLANATORY BRIEF

Sexual harassment in an education institution has less to do with sexual behaviour than discriminatory activity and innuendo.

Just as discrimination against an individual based on age, race, physical or intellectual impairment or whether a person is male or female has been the subject of State and Federal legislation, so has discrimination through "sexual harassment".

Sexual harassment is a form of discrimination which both the Federal and State Governments have decided is of sufficient concern to require specific legislation to encourage persons or institutions in charge of people, including students and employees, to take positive steps to raise awareness of sexual harassment. Education institutions are encouraged to take positive steps to:-

- (i) raise awareness amongst personnel in the education institution about sexual harassment, that it is a form of discrimination and that action may be taken as a result of complaints relating to it;
- (ii) establish a policy visible to all students, staff members, local carers, homestay families and management, committing the education institution to discourage sexual harassment and deal with it in a manner which takes into account the legislative requirements and which provides a positive outcome for victims;
- (iii) appoint Contact Persons to liaise with staff and students and the education institution over sexual harassment claims;
- (iv) ensure that effective procedures, including disciplinary action, are available where necessary, after proper determination of a sexual

harassment complaint by a person or Panel who shall mediate the complaint; and

(v) ensure that the rights of all individuals are impartially, professionally and confidentially maintained.

What is "Sexual Harassment?"

It may be summarised as conduct which is an unlawful act of a sexual nature aimed at a person or persons in the education institution or in local carer's and homestay family accommodation, and

(i) is unwelcome;

(ii) occurs in circumstances in which a reasonable person would anticipate that the harassed person would be offended, humiliated or intimidated; and

(iii) the harassed person is disadvantaged or has reasonable grounds to believe they will be disadvantaged in the educational institution or local carer or homestay family's accommodation by rejection of the conduct.

An education institution will be deemed to be liable for acts of harassment unless the education institution takes reasonable steps to ensure that members of management, staff members, students, local carers and homestay families are able to teach, learn and live in a non-discriminatory and harassment-free environment.

It is important that all management, staff and students, local carers and homestay families are educated about their own responsibilities and those of the education institution and that they abide by the

institution's policies relating to sexual harassment in order that a non-discriminatory and harassment-free environment is established and maintained.

2. POLICY

The[insert educational institution's name] fully supports the rights and opportunities of all people to seek, obtain and hold positions at this institution and also enjoy all forms of accommodation arranged by the institution, without sexual harassment or other discrimination.

Sexual harassment is a form of sexual discrimination. It is unlawful behaviour contrary to the Sex Discrimination Act (1984) (Commonwealth) and the Equal Opportunity Act (WA) (1984). It is also improper and inappropriate behaviour which lowers morale and interferes with work and personal effectiveness.

It is this institution's policy to make every effort to provide a non-discriminatory, harassment- and intimidation-free learning environment.

Sexual harassment within or relating to the educational institution will not be tolerated. We are all required to take all reasonable measures to ensure that conduct of a nature which is likely to be, or is taken as, sexual harassment does not occur. Sexual harassment is not related to mutual attraction between individuals. It means unwelcome sexual advances, unwelcome sexual requests or any other unwelcome conduct of a sexual nature. Persons who conduct themselves

this way will be subject to appropriate disciplinary action including dismissal (of staff) and suspension or expulsion (of students) for serious offences.

The institution has an obligation to intervene, where there is activity which:-

- creates an intimidating, hostile or offensive environment;
- adversely affects an individual's performance;
- adversely affects an individual's employment or scholarly prospects or promotion;
- results in withdrawal from courses or resignations or unfair dismissal;
- reflects adversely on the integrity and standing of the education institution;
- creates an intimidating, non-supportive environment.

We all have the responsibility to ensure that high standards of integrity and personal conduct are maintained.

In view of this, a sexual harassment complaint procedure has been put in place at this institution. Complaints of sexual harassment will be considered seriously and sympathetically; they will be attended to promptly and confidentially by authorised persons; and in all cases, the utmost care will be taken to investigate complaints impartially and with the recognition of the equal rights of all parties.

Please be aware that "intention" does not form a part of sexual harassment. This means that regardless of whether a person intends to

act in a sexually provocative manner, any unwelcome approach may be deemed to be sexual harassment. For example, inappropriate behaviour such as the following is covered by our policy:-

(i) physical conduct of a sexual nature, including unnecessary touching, patting or pinching or brushing up against another member of management's, staff member's, local carer's, homestay family's or student's body; assault; and coercing sexual intercourse;

(ii) verbal conduct of a sexual nature; propositions or verbal pressure for sexual activity; continued suggestions for social activity outside the education institution or after it has been made clear that the suggestions are unwelcome, offensive flirtations, suggestive remarks, innuendoes or lewd comments;

(iii) non-verbal conduct of a sexual nature; the display of pornographic or sexually suggestive pictures, offensive E-mail or computer images, objects or written materials, leering, whispering or making sexually suggestive gestures;

(iv) sex-based conduct; including conduct that denigrates or ridicules or is intimidatory or physically abusive of any member of management, staff member, local carer, homestay family or student because of his or her sex, derogatory or degrading abuse or insults which are gender-related and inappropriate comments about appearance or dress.

All of us must accept the responsibility of creating learning, work and living environments which are free from all forms of discrimination, including sexual harassment and victimisation.

3. LIABILITY

[It is intended that copies of the Federal and State Acts accompany the Practice and Procedures Manual.]

Sex Discrimination Act 1984 (Commonwealth) ("Commonwealth Act")

Sexual harassment is unlawful.

Section 28A of the Commonwealth Act provides:-

"(1) for the purposes of this Division, a person sexually harasses another person ("the person harassed") if:-

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances which a reasonable person, having regard to all circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated."

Section 25F of the Commonwealth Act makes it unlawful for a member of staff of an educational institution to sexually harass a person who is a student at the institution or a person seeking to become a student at the institution. It is unlawful under the Commonwealth Act for an adult student (adult student being defined in the Act as a person who has attained the age of 16 years) to sexually harass a person who is an adult student or a member of management, a member of staff of the institution, a local carer or a member of a homestay family.

It is generally illegal for a person to sexually harass another person; however, persons guilty of offending conduct against victims under the age of 16 years may be dealt with as criminals by sections of the Criminal Code, where appropriate.

Similarly, Section 28H of the Commonwealth Act provides that it is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, accommodation to that other person (but excludes provision of accommodation to a near relative).

A member of management of the institution, a member of staff, local carer, homestay family or student who conducts themselves in a manner which may be in contravention of the Commonwealth Act is liable to become subject to civil action and, where the case warrants it, criminal action.

Any educational institution as employer may also be liable "vicariously" for these acts.

Section 106 of the Commonwealth Act states:-

"(1) Subject to sub-section (2), where an employee or agent of a person does, in connection with the employment of the employee or with the duties of the agent as an agent:-

(a) an act that would, if it were done by the person, be unlawful under Division (1) or (2) of Part II (whether or not the act done by the employee or agent is unlawful under Division (1) or (2) of Part II); or

(b) an act that is unlawful under Division (3) of Part II;

this act applies in relation to that person as if that person had also done the act.

(2) Sub-section (1) does not apply in relation to an act of a kind referred to in paragraph (1)(a) or (b) done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in that paragraph."

Therefore an educational institution as an employer is "vicariously" liable for the unlawful act of a staff member, unless the institution can show that it has taken reasonable steps to prevent the staff member from doing the unlawful act.

Equal Opportunity Act 1984 (Western Australia) ("WA Act")

Division 4 - Discrimination Involving Sexual Harassment in the WA Act covers sexual harassment in employment and, within educational institutions, makes it unlawful for a member of staff to sexually harass a student of an educational institution seeking admission to that institution. Sub-section (2) of Section 25 of the WA Act defines sexual harassment as:-

"An unwelcome sexual advance or an unwelcome request for sexual favours, to the person, or... other unwelcome conduct of a sexual nature in relation to the other person, and:-

(a) the other person has reasonable grounds for believing that a rejection of the advance, refusal of the request, or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student; or

(b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way connected with the other person's studies or the other person's application for admission to an educational institution as a student."

Again, there are civil (and ultimately criminal) remedies that a person may seek, not only against the harasser but also this educational institution as employer.

It is the intention of this Practice and Procedures Manual and of this institution to implement systems and procedures, which will discourage members of management, staff members, students, local carers and homestay families from activity which constitutes sexual harassment.

4. EDUCATION INSTITUTION'S RESPONSIBILITY

The WA Act also provides a defence to the vicarious liability referred to in page 7, if the educational institution establishes that all reasonable steps have been taken to prevent the member of management, staff member, student, local carer or homestay family from doing an unlawful act.

Section 160 of the WA Act says:-

"A person who causes, instructs, induces, aids or permits another person to do an act which is unlawful under this Act shall, for the purposes of the act, be taken also to have done the act."

The WA Act also makes employers "vicariously" liable for the employees' conduct pursuant to Section 161 of the WA Act.

At Section 161, where an employee or an agent of a person does an unlawful act in connection with the employee's employment, then the employer may be liable unless it took all reasonable steps to prevent that employee doing the unlawful act.

And at Section 162:-

"Where for the purposes of this Act, it is necessary to establish that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in the matter so acted on that ground."

That is, if the educational institution permits sexual harassment, it is taken to have also been involved in the sexual harassment.

It is the responsibility of the institution to ensure that a non-discriminatory and harassment free environment exists in the workplace, in accommodation arranged by the institution and in the learning environment.

The institution is required to and will implement the systems and procedures set out in this manual so that management, members of staff, students, local carers and homestay families alike are discouraged from discriminatory and harassing behaviour and to ensure that these groups

are seen to, and do, take all reasonable steps to prevent the occurrence of sexual harassment.

5. MANAGEMENT AND STAFF RESPONSIBILITY

Sexual harassment may be defined as an unwelcome sexual advance, an unwelcome request for sexual favours or any other unwelcome conduct of a sexual nature which, if rejected, could disadvantage the person at work, in any accommodation arranged by the institution or in the learning environment.

Sexual harassment may also occur when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to another person or engages in unwelcome conduct of a sexual nature in relation to another person in circumstances in which a responsible person, having regard to all the circumstances, would have anticipated that the person who is harassed would be offended, humiliated or intimidated.

Members of management, staff members, local carers, homestay families and students all have a responsibility to themselves, to each other and to visitors to the educational institution to refrain from activities which amount to sexual harassment and which are unlawful.

The institution encourages members of management, members of staff, students, local carers and homestay families to become aware of behaviour which may be construed to be harassment and unlawful and to participate in the education process adopted by the institution to prevent such behaviour from occurring.

6. AWARENESS

[This section is designed to assist members of management, members of staff, local carers, home stay families and students in becoming aware of what sexual harassment is and that the institution has educational information about it and procedures in place to deal with it.]

What is Sexual Harassment?

Sexual harassment can take many forms. The institution has provided examples of some activities which may be defined as sexual harassment.

Examples are:-

- requests or demands for sexual favours including implied or overt promises of preferential treatment or threats concerning present or future academic achievement or employment status;
- abusive comments or unwelcome jokes regarding a person, a person's appearance, a person's sexual attractiveness, a person's sexual preference or a person's alleged sexual activities;
- offensive actions or gestures;
- offensive written material such as posters, calendars, magazines, photographs or other written material of a sexual nature;
- offensive objects of a sexual nature placed in the educational institution or accommodation arranged by the institution;
- unwelcome physical contact such as touching, rubbing, patting or brushing against another person's body;
- offensive E-mail or computer images.

This institution has a policy of creating awareness of acts which may constitute sexual harassment by educating members of management, members of staff, local carers, homestay families and students on procedures to avoid sexual harassment. The following educational programs and material are available:-

- (a) Sexual Harassment Brochures;
- (b) In-house seminars and meetings; and
- (c) Contact Persons available to provide information and answer specific queries.

Contact Persons also assist as liaisons for parties involved in a sexual harassment complaint.

We encourage all members of management, staff members, students, local carers and homestay families to assist in making their co-workers, fellow students, other local carers and homestay families aware of the institution's policy and the contents of this manual. This institution supports members of management, staff members, local carers and homestay families and students who actively discourage sexual harassment.

7. EDUCATION PROGRAMS

[This section is designed to inform management, staff, students, local carers and homestay families of the education programs within this institution.]

Contact Person(s)

A role of the Contact Person is to create and maintain an education program for the educational institution specifically centered on sexual harassment prevention.

If you have any queries at all, the first person to ask is the Contact Person.

Education begins with information. This institution has distributed to all current members of management, members of staff, students, local carers and homestay families and continuously distributes to all new members of those groups the following:-

- (i) the Policy Statement;
- (ii) Sexual Harassment Brochures; and
- (iii) Sexual Harassment Information Leaflets explaining the education process (where appropriate) and advising of the location of the Sexual Harassment Practice and Procedures Manual for reference.

On an ongoing basis, this institution also provides:-

- (i) in-house seminars and workshops on sexual harassment;
- (ii) education videos on sexual harassment in an educational institution and in accommodation arranged by the institution;
- (iii) written material setting out general information on making a complaint and the complaint procedure.

The Contact Person is also available to discuss complaints and consequences for the complainant and the person alleged to have acted in an unlawful manner.

8. OPTIONS FOR DEALING WITH SEXUAL HARASSMENT

[This section operates to set out, in brief, options available to members of management, members of staff, local carers, home stay families and students when they are faced with deciding whether or not to take action regarding conduct which they think may be sexual harassment.]

You have several options open to you where you find that you are subjected to behaviour which you believe to be sexual harassment:-

- go to the designated Contact Person for advice;
- go straight to the Grievance Officer and lodge a formal complaint for conciliation. The complaint would, subject to the consent of the Complainant (the person complaining), pass to the Determination Panel if the Grievance Officer were unable to resolve it. No such consent is required from alleged Harasser.
- attend the State Equal Opportunity Commission to obtain advice and/or to lodge a formal complaint.
- Contact the Police, if you think a criminal offence is threatened, or has been committed against you.

Your other options are to:-

- deal with the matter directly with the person who you believe is harassing you;
- take no action; or
- contact the Equal Opportunity Commission and lodge a formal complaint.

Complaints will be dealt with as set out in the Procedures section 10 of this manual.

All matters relating to sexual harassment must be dealt with in a manner which encourages the parties to feel as if they are being treated with consideration. There must be confidence that all issues will be dealt with seriously and competently. All of the parties involved in an issue of alleged sexual harassment must feel comfortable that they are getting a "fair deal".

To this end, this institution has appointed people within the institution who are authorised to liaise with members of management, staff members, local carers, homestay families and students and to advise on sexual harassment matters and work with the Grievance Officer in resolving sexual harassment claims.

9. CONTACT PERSONS

These persons are the Contact Persons within this institution.

They are readily accessible people appointed from staff members of this institution who have undertaken appropriate training in the management of sexual harassment in the learning environment.

This training should include appropriate attention to sexual harassment awareness and avoidance procedures.

Their role is to provide advice and guidance but not to resolve issues or complaints.

They are the first points of contact and they are the continuing liaison officers in sexual harassment disputes.

If you think you are at risk, please either telephone the Police on 9222 1111 or the Department of Family & Children's Services on 9222 2555.

The names and contact details of the Contact Persons at this institution are as follows:

Name:	Name:
Telephone:	Telephone:
Fax no:	Fax no:
E-mail:	E-mail:
Police:	Police:

The role of determining sexual harassment disputes within this institution is taken either by a Grievance Officer, or by an appointed panel consisting of 3 members, two internal persons in the institution and one impartial "outside" person. This is the Determination Panel.

Determination Panel

Responsibility for resolving sexual harassment claims within this institution has been delegated to a Grievance Officer in the first instance and, if no resolution occurs, to a Determination Panel.

The Determination Panel has the power, after fully investigating and determining the seriousness of a complaint, with the consent of the Complainant, to resolve the complaint.

The Determination Panel is more fully explained in section 16 of this manual.

Grievance Officer

The Grievance Officer fulfills a conciliation role to facilitate an agreed resolution of the complaint, if possible. If the complaint cannot be resolved in this way, then the Complainant has the option of referring it to the Determination Panel; or the Grievance Officer can refer it to the Determination Panel, with the Complainant's consent.

For more information about the complaint-handling process, see the diagram on page 20.

10. PROCEDURES - FORMAL COMPLAINTS

[This section is designed to provide an outline of the procedure adopted by the institution for a person making a complaint and for dealing with it by investigation and determination by the Determination Panel or Grievance Officer].

Where a member of management, staff member, student, local carer or homestay family has decided to take the action of making a formal complaint to the Contact Person or directly to the Grievance Officer or the Determination Panel, the following procedure should be followed:-

The Contact Person will liaise with the person who is making the complaint ("Complainant") and will determine whether the behaviour complained of should be referred to the Grievance Officer or Determination Panel, or whether it is merely a matter of personal

conflict or misunderstanding, or is a matter more properly to be dealt with by management in other circumstances;

The Complainant will be asked to document the complaint in writing, giving full and specific details. If necessary, the Contact Person may assist the Complainant to do this. The complaint is to include:-

- (i) the alleged conduct;
- (ii) the names of the parties concerned;
- (iii) dates and times;
- (iv) details of the events;
- (v) relevant details of the places where the events took place and the witnesses to the behaviour, if any; and
- (vi) such other information as may be relevant.

This shall be the "formal written complaint";

- The formal written complaint will then be lodged with the Contact Person. This must be done within five working days of the Contact Person determining that the matter is appropriate to be dealt with by either the Grievance Officer and with the consent of the Complainant, by referral to the Determination Panel;
- The Contact Person and the Complainant will then discuss the complaint further, to ensure that all matters have been covered and there has been no misunderstanding or misinterpretation;
- The Complainant will then be given the opportunity to discuss with the Contact Person how they wish the matter to be resolved. That is, what action, if any, is to be taken against the alleged Harasser if the complaint is found to be proved. In this discussion, it must be made

clear to the Complainant that whatever steps are taken against the alleged Harasser, they must be lawful and reasonable and appropriate considering the behaviour;

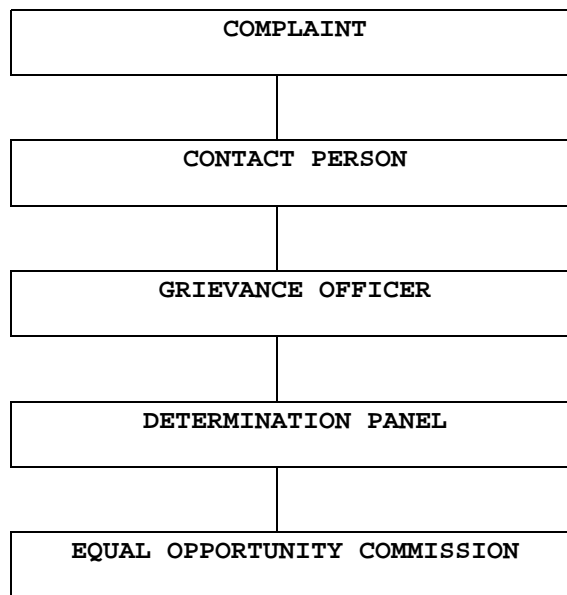
[Counseling may be offered if the education institution has this facility or wishes to offer it to the Complainant through an outside source;]

- The Contact Person shall then make every effort to contact the alleged Harasser within two working days of a formal written complaint being lodged;
- The alleged Harasser will be advised by the Contact Person of the complaint, given a copy of this Practice and Procedures Manual and will be provided by the Contact person with a copy of the formal written complaint and advised that he or she is under no legal obligation to provide a formal written response and that he or she is at liberty to obtain independent legal advice. If the alleged Harasser is willing to provide a response, he or she should do so within a further five working days of being notified;
- The Complainant and the alleged Harasser will both be advised of the requirement to maintain strict confidentiality;
- The Contact Person may wish to interview witnesses and request formal statements of events from witnesses;
- The Contact Person will then provide all information to the Grievance Officer and to the Determination Panel, and the Grievance Officer or Determination Panel will review the information. The Grievance Officer or the Determination Panel may require the Contact Person to obtain further information in appropriate circumstances;

- The Grievance Officer will attempt to resolve the matter by conciliation; if a resolution cannot be reached, then with the consent of the Complainant, she or he will refer the matter to the Determination Panel for determination;
- The Determination Panel will decide how they wish to go about the determination process and will provide all relevant parties with copies of the procedure they wish to undertake for the determination;
- The procedure at this point is to be dictated by the complaint. The Grievance Officer or Determination Panel may decide to deal with it by any combination of the following:-
 - (i) confidential interview with each party separately;
 - (ii) confidential interview of all witnesses separately;
 - (iii) interviews of all parties and witnesses separately or in any combination or number as the case may be;
 - (iv) open forum discussion controlled by the Grievance Officer, by the Determination Panel or by a Panel member;
 - (v) preparation of a report on findings after interviews and recommendations for disciplinary action where appropriate, to be dealt with by a person nominated by the Grievance Officer or the Determination Panel; and
 - (vi) formal hearing after any combination of the above, where all parties will be given an opportunity to put their case and a determination will be made, either orally, or after time for discussion and a formal report being prepared;
- Disciplinary action will be authorised by the institution's Board of Management;

- Details of the procedure and the sexual harassment incident will remain confidential and all documentation will be held by management on a restricted access basis;
- All disciplinary action will be documented and placed on the personal file of the relevant member of management, staff member, local carer, homestay family and student.

PROCEDURAL STEPS



The Complainant may at any time before, during or after the initial contact with the Contact Person or the investigation and resolution of the sexual harassment incident, make a complaint to the Equal Opportunity Commission (" the Commission"), even if an apparently satisfactory resolution has been reached through the Grievance Officer or Determination Panel. If the Complainant lodges a complaint with the Commission it is appropriate that all investigations and procedures within the Institution should be suspended, pending the outcome of the Commission's enquiry.

11. RECORD KEEPING AND STORAGE

- A 'Restricted Access File' will be made up and all documentation, notes and information will be placed on that file. The file will remain locked in a restricted cabinet and access to the file will be confined to the Contact Officer dealing with the complaint, the Grievance Officer, members of the Determination Panel, the Principal, Vice Principal, International Education Conciliator and Industrial Relations Officer where applicable.
- Any formal disciplinary action taken will be documented and placed on the personal file of the relevant member of management, staff member, student, local carer or homestay family.
- The Complainant and the alleged Harasser will only be able to view any documentation relating specifically to themselves. They will not be permitted to view information given by witnesses or other parties without the written permission of the Grievance Officer or Determination Panel.
- The Freedom of Information Act impacts on the provision of information to interested parties. The final decision on the release of information will be made by the Director of Administrative Services or the Freedom of Information Commissioner.

12. DISCIPLINE

[Discipline of members of management, staff members, students, local carers and homestay families in minor incidents may be all that is required through various forms].

Disciplinary action in incidents, which are deemed to be "minor" incidents, may take the form of:-

- written apology;

- a written warning;
- separation of members of management, staff members, students, local carers, or homestay families to different areas;
- relocation of either party to other areas.

More serious complaints may be resolved, for example, in the following manner:-

- suspension of the staff member on full pay pending an investigation;
- termination of employment [The Educational Institution should consult with the Human Resources personnel and its legal advisers prior to considering taking this step];
- cessation of use as a local carer or homestay family;
- suspension of the student from studies.

All complaints and determinations will be recorded and placed on the personal file of the relevant member of management, staff member, student, local carer and homestay family.

Equal Opportunity Commission

If the Complainant lodges a complaint with the Commission and the determination of the Commission is that the complaint is justified, it is probable that damages will be required to be paid by the Harasser and in certain circumstances by the institution as employer. Refer to Section 14 of this manual on Penalties.

13. CRIMINAL OFFENCES

Any behaviour, which is considered by the Institution to constitute a criminal offence, will be reported to the Police Department for further investigation and action or advice.

14. PENALTIES

[This section is designed to inform members of management, staff members, students, local carers and homestay families that despite the complaints procedure and resolution procedure within this Institution, a member of management, staff member, local carer, home stay family or student may still take a complaint to the Equal Opportunity Commission and obtain judgment against an alleged Harasser and in certain circumstances the Educational Institution. Although this is not something that an institution would normally wish to "advertise", it is also something that the institution cannot hide from a member of management, staff member, student, local carer or home stay family. Effectively, if this Institution's policies and procedures are sufficient, any action taken in the Commission resulting in any liability for the institution will be greatly reduced. Therefore, advising members of management, staff members, students, local carers, and homestay families of their rights and potential penalties to others, should not adversely affect the Institution.]

The Commonwealth Act and the Western Australian Act referred to in this manual provide determination processes and penalties for unlawful acts.

The Commonwealth Act sets no limit on the amount of damages that may be awarded against a Harasser.

In each instance educational institutions as employers may be vicariously liable and required to pay similar damages as the Harasser to the Complainant, unless the educational institution as employer has a defence.

15. CONFIDENTIALITY AND VICTIMISATION

Confidentiality

An essential aspect of the systems and procedures put in place by this institution to deal with sexual harassment is " confidentiality" .

Confidentiality is assured under the State and Commonwealth legislation. It is the obligation of all parties involved, including the Complainant, the alleged Harasser, all witnesses and interested parties, the Contact Person, the Grievance Officer and the Determination Panel, to maintain strict confidentiality.

Any breach of confidentiality could result in legal action.

An exception to maintaining confidentiality is where the circumstances are such that information must be released to prevent a possible danger to any person or where there is a written agreement to disclose information.

Another exception is where the Police must be informed of alleged criminal activities.

The Equal Opportunity legislation deals with breaches of confidentiality by providing penalties against them. (See section 14 of this manual on Penalties).

All parties must ensure that confidentiality is maintained at all times.

Victimisation

From the time that a Complainant goes to the Contact Person with a complaint, there is also the possible risk of the Complainant, directly or indirectly, being intimidated or "victimised" because of making a complaint. This is also dealt with in the legislation.

Victimisation is another form of discrimination and will be treated seriously by this institution, if committed by a member of management, staff member, a student or by a local carer or a member of a homestay family.

A complaint of victimisation may result in disciplinary action and termination for serious offences. Complaints may also be lodged with the Equal Opportunity Commission or under the Commonwealth legislation, with the Director of Public Prosecutions. These complaints will be dealt with in accordance with the usual procedures adopted under the legislation and the penalties referred to in the relevant Act apply.

16. DETERMINATION PANEL

[This section is to set out, in brief, who is to be included in the Panel and to establish the Panel's responsibilities. Of course, each

educational institution will have its own suggestions and requirements in relation to this Panel.]

The Determination Panel is to be made up of three people. These people will be:-

- (i) two people who have been working in the institution for at least 5 years and have undertaken training in the management of sexual harassment in the learning environment ;
- (ii) an external person, for example the International Education Conciliator from the Department of Education Services.

The role of the Determination Panel is to supervise the investigation of sexual harassment claims and determine these claims with the consent of the Complainant. No such consent is required from the alleged Harasser.

If the institution has a Grievance Officer, that person may be a member of the Determination Panel.

17. LEGISLATION

[It is proposed that copies of the relevant legislation be attached to the manual for perusal.]

Attached are:-

- (i) Sex Discrimination Act, 1984 (Commonwealth) as amended;
- (ii) Equal Opportunity Act, 1984 (Western Australia) as amended,

If you have any queries in relation to the Acts or the information set out in this Practice and Procedures Manual, please do not hesitate to ask the Contact Person.

[Further information, which may be included in this manual is:-

- (i) the contact details for the Equal Opportunity Commission;
- (ii) attachments for Contact Persons providing an outline of what is expected of them;
- (iii) further examples of disciplinary action against a Harasser;
- (iv) a check list for management of sexual harassment complaints.]

CHECKLIST FOR MANAGEMENT OF SEXUAL HARASSMENT COMPLAINTS

1. Treat all disclosures by the Complainant as serious regardless of whether or not you think that the complaint is true or significant;
2. Do not ignore any disclosure;
3. Listen intently without asking leading questions. (An example of a non-leading question would be " Can you tell me about it?")
4. Reassure the Complainant that they have done the right thing in telling you about it;
5. Explain to the Complainant that the Harasser will need to be given a copy of the allegations, for a response to be given; and that Management of the Institution will need to be advised;
6. Document all the details of the Complaint, such as the Complainant's name, age, and levels of comprehension and communication, the level of support which may be required for the Complainant to cope with the situation, the identity of the alleged Harasser, current whereabouts of the alleged Harasser, status or relationship to the

Complainant, age of the alleged Harasser, and comprehension or communication levels of the alleged Harasser,

7. Ascertain whether the alleged Harasser is aware of the allegations;

8. Develop strategies with staff to ensure that the Complainant is protected from the alleged Harasser;

9. Ensure that storage of confidential information at the Educational Institution is secure;

10. At the conclusion of any investigation, resolution of the complaint or arbitration by the Determination Panel ensure that all documentation is stored for a period of no less than 7 years under secure and confidential arrangements. This includes the retention of all documentation, even when the allegations against the alleged Harasser have not been proved.

11. As far as possible student grievances should be resolved by the institution on an individual case basis in the manner specified in this document.

12. Any hearing held before the Determination Panel should be informal with each party being permitted to represent their case clearly.

13. Each case must be considered on its merits and the Determination Panel and any recommendations should include proposals for conciliatory action that may be acceptable to both parties.

CHECKLIST FOR LODGING A COMPLAINT

Information for Complainant

1. Your complaint must be in writing.

2. You, the Complainant must sign it. Your letter of complaint must say that you consider that you have been the victim of sexual

harassment, and should also say how you have been affected by it.

3. You must explain what happened. For example, "When did the incident occur?" "Who were the people involved?"

4. You should provide any relevant documentation such as medical reports, medical certificates and statements of witnesses, if any.

5. If you decide to lodge a complaint to the Equal Opportunity Commission you should do so within twelve months of the last incident of harassment.

6. Remember, it is **your** responsibility to provide the information to support your complaint.