



TASMANIAN
CATHOLIC
education commission

POLICY (STRATEGIC) ANTI-DISCRIMINATION, HARRASSMENT AND BULLYING

RELATED DOCUMENTS

Complaints Processing Policy
Taking Care Policy

Adopted by:
St. Brigid's Catholic School, New Norfolk



ANTI-DISCRIMINATION, HARASSMENT AND BULLYING POLICY

RELATED POLICIES
Taking Care
Complaints Management

RATIONALE

Catholic education workplaces, including schools and colleges, aim to be stimulating, pleasant and productive environments. While the nature and inherent requirements of employment roles may vary within each educational community, an intrinsic aspect of every role is that all treat each other with dignity and respect.

Discrimination, harassment and bullying are actions contrary to this principle. They erode individuals' rights, lower morale and interfere with the effectiveness of work and learning environments by making them hostile, unpleasant or offensive. As well, they are against the objects of Catholic education and are unlawful.

Catholic schools have always promoted civil progress and human development without discrimination of any kind.

The Catholic School on the Threshold of the Third Millennium (1998)

Thus the purpose of this policy is to articulate the rights and responsibilities of all employers and employees in the Catholic education sector with regards to discrimination, harassment and workplace bullying, and by doing so, to continue the growth of Catholic school communities that:

- *respond to human need with compassion, fairness and justice that respects the dignity of all,*
- *create an inclusive environment that values and respects diversity, equity and subsidiarity, and*

- *build and sustain relationships based on Gospel values, that are life giving and empowering.*

Mission Statement (Catholic Education 2006)

POLICY

When addressing issues of discrimination, harassment (including sexual harassment) and bullying, all Catholic education sector authorities will consistently apply the principles and procedures contained within this policy document.

In regard to this policy the following should be noted:

1. Catholic education employers recognise their responsibility to ensure that the rights of their employees, students and volunteers are protected. These include the rights to be physically and psychologically safe and to be treated fairly and with respect. Discrimination, harassment and bullying will not be tolerated in any Catholic education workplace.
2. Catholic education employers are committed to the principle of fair and equal opportunity in employment. To achieve this aim they will provide equality of opportunity for all employees and applicants for employment. In doing so they will observe both the provisions and spirit of relevant anti-discrimination legislation. This applies to the advertising of vacancies, selection and appointment, transfers, promotion, training, compensation benefits, discipline, and termination and redundancy decisions regarding employees.
3. Everyone has the right to fulfil his or her potential within a work environment that provides for:
 - fair and equitable treatment,
 - application of the merit principle in the selection process,
 - application of fairness and equity in appointment, transfers, promotion, training, disciplinary action, termination and redundancy decisions,
 - freedom from any form of victimisation, and
 - a discrimination, harassment and bullying-free workplace.

4. This policy refers to and encompasses the following State and Commonwealth legislation which imposes anti-discrimination and equal opportunity obligations on the employer: the *Workplace Relations Act 1996*; the *Sex Discrimination Act 1984*; the *Racial Discrimination Act 1975*; the *Human Rights and Equal Opportunity Commission Act 1986*; the *Disability Discrimination Act 1992*; the *Workplace Relations Act and Regulations 2005*, the *Industrial Relations Act 1984*, and the *Anti-Discriminations Act (ADA) 1998*.

PRINCIPLES

General Principles

This policy has been formulated on the basis of the following **general** principles:

1. Discrimination and/or harassment within workplaces are to be handled in a sympathetic, straightforward, effective and fair manner.
2. Discriminatory practices that impede employee performances due to unresolved and/or unreported grievances are to be eliminated.
3. Compliance with all relevant anti-discrimination and harassment legislation must be ensured.
4. Avenues for improved interpersonal relationship and conflict resolution are to be provided where practicable.
5. Ethical and professional conduct and standards of behaviour are to be promoted.
6. Principals and senior staff members are to be appropriately supported in the performance of their human resource management functions.
7. Employees are to be provided with an avenue to discuss a grievance and explore a choice of actions where practicable.

Specific Principles

In addition, this policy has been formulated on the basis of the following **specific** principles:

1. **Due Process:** This is based on the concept of procedural fairness. It includes an individual's right to be adequately notified of complaints, charges or proceedings involving him / her, and the opportunity to be heard at these proceedings. Due process incorporates principles of natural justice.
2. **Natural Justice:** The principles of natural justice apply at all stages of the complaint resolution process.

Key elements of natural justice covered in this policy include:

- 2.1 Employees must be given a fair opportunity to understand the case against them, have sufficient time to provide their views on the matters put to them, and to be heard.
 - 2.2 All parties to a decision should be heard, and all relevant arguments be considered before a decision is made.
 - 2.3 People should have an opportunity to respond to any adverse material that may influence a decision affecting them.
 - 2.4 People should know about decisions or judgements that affect them.
 - 2.5 Decision-makers must act fairly and without actual or perceived bias.
 - 2.6 Persons using this policy must not be victimised and have the right to take action under this policy, or via such agencies as the Anti-Discrimination Commission, if they believe victimisation has occurred.
3. **Confidentiality:** Confidentiality is to be maintained as far as practicable during resolution procedures but there may be times when disclosure of information contained in a complaint or a response to a complaint is appropriate.

- 3.1 The public interest may require that the employer releases confidential information to the appropriate outside authorities and this is permitted by law in certain circumstances. Similarly the employer must comply with binding legal requirements to release confidential information, for example in response to a subpoena or a search warrant.
- 3.2 Communication about the complaint must be limited to persons to whom disclosure is consistent with their official position and responsibilities under this policy. Only those staff with responsibility to investigate and/or resolve the matter will have access to the relevant material. However, in fairness to those persons who are the subject of harassment and/or discrimination complaints, the investigator must provide them with sufficient information and an opportunity to respond adequately to the complaint.
- 3.3 All persons participating in the investigation are required to keep their involvement confidential. However, while all attempts will be made to honour the wishes of the person who makes a complaint, in some circumstances, the seriousness of the allegations raised will mean that Principals and supervisors are under a legal obligation to ensure that the matter is investigated beyond that which the employee may originally envisage. This is to ensure that the employer fulfils its duty to maintain a discrimination, harassment and bullying-free workplace for all employees.
4. **Complaints:** Complaints may relate to minor transgressions and informal resolution may be possible, or to more serious issues where formal processes may be needed.
5. **Resolution:** Where possible, complaints should be resolved at the lowest possible organisational level by open dialogue, cooperation and/or mediation (a voluntary process), which aim to assist the parties to reach an agreement or an acceptable outcome. An individual may choose to resolve the problem by discussing it with the other party or parties concerned. This may involve the assistance of others and the school/TCEO Grievance Policy must be followed in the first instance. A process for investigation of a formal complaint is available where discussion and/or mediation is

inappropriate or has proved unsatisfactory. If serious misconduct is alleged the matter will be dealt with according to the *Taking Care* policy and procedures.

DEFINITIONS

Definitions for the following key terms used in this policy may be found in Appendix 1:

1. Equal Employment Opportunity (EEO)
2. Discrimination
 - 2.1 Direct Discrimination
 - 2.2 Indirect Discrimination
3. Harassment
4. Bullying
5. Sexual Harassment
6. Victimisation
7. Contact Person
8. Contact Officer
9. Defamation

PROCEDURES / GUIDELINES

THE COMPLAINT PROCESS

Responsibilities

The Head of Human Services, on behalf of the Executive Director Catholic Education, is responsible for ensuring that allegations of complaints under this policy are managed appropriately and for advising and assisting Principals and staff in leadership positions to resolve such issues in a respectful and lawful manner in the best interest of the organisation and the individual.

All employees, and particularly Principals and others in leadership roles, need to ensure that proper standards of conduct are maintained at all times within all Catholic education workplaces.

All employees have a responsibility to be clear that they know what these standards are, and be prepared to take steps to address inappropriate behaviour when it occurs. As with all other TCEC

policies, it is the responsibility of the Principal to bring this policy to the attention of school staff and to take measures to ensure that staff become appropriately familiar with the content, the required processes and the implications of the policy.

In effecting the processes under this policy and in order to achieve the goal of a discrimination, harassment and bullying-free workplace there will be both a sound and fair basis of information dissemination, mediation, investigation and decision-making, and an observing of the principles of *due process* and *natural justice*.

1. Who Can Lodge a Complaint?

Any person who feels discriminated against, harassed or bullied, either directly or indirectly, may make a complaint. If the complaint is formal then it must be in writing. In cases of discrimination, there must be a direct relationship of cause and effect between the relevant characteristic and the action of the discrimination.

2. Options for Dealing with Complaints

Should an employee feel that he / she has a complaint under this policy then a range of possible options is indicated in the Anti-Discrimination, Harassment and Bullying Flowchart (see Appendix 4) and listed below. The options are not necessarily sequential and it may be appropriate for the complainant and / or the employing authority to change the course of action at any stage.

There is strong encouragement for matters subject to this policy to be dealt with at the local level insofar as this is both practical and appropriate.

A formal investigation may be an outcome of the lack of resolution following an informal investigation process. In the case of serious allegations the Principal or supervisor, in association with the Executive Director of Catholic Education or the Head of Human Services, may decide that the process will move directly into Stage 2 of the process.

Allegations of discrimination, harassment or bullying are serious matters and to avoid potential complaints against vexatious claims or defamation it is essential that the following be observed:

- parties to a complaint must act honestly and in good faith in using these procedures, and
- all those involved in these procedures must act within their authority and role, and abide by TCEC/TCEO/School policies and guidelines.

At any stage information or support may be sought and the following resources are available:

- Principal or POR
- The Contact Person
- The Contact Officer
- Regional Director
- TCEO HR Manager
- Union Representative
- The Anti-Discrimination Commissioner
- Employee Assistance Program Provider
- Community support services (eg. Sexual Assault Referral Centre)
- Lawyers/legal advisors.

Making a complaint can be stressful in itself and serious issues may create a good deal of further angst. It therefore should be noted that counselling services to support and help individuals concerned are available through Employee Assistance Programs (EAP – 1.3.8).

3. Stages 1-3 of the Complaint Process

The three (3) stages of the complaint process may be found in Appendix 2.

APPEAL

For details regarding both internal and external appeal processes please refer to Appendix 3.

RESPONSIBILITIES OF EMPLOYEES

Employees have a responsibility to treat others fairly and equitably in the workplace, a responsibility that contributes to an environment that is free from discrimination, harassment and bullying. They also have a responsibility to know and understand the processes for lodging a discrimination or harassment complaint.

As stated earlier in 1.1, it is the responsibility of the Principal to bring this policy to the attention of school staff and to take measures to ensure that staff become appropriately familiar with the content, the required processes and the implications of the policy.

SUPPORT PERSONNEL

Contact Persons

Contact Persons are designated in some workplaces to assist in getting advice from or taking the matter to the Contact Officer(s) within the Tasmanian Catholic Education Office.

Contact Officers

Contact Officers are available within the Tasmanian Catholic Education Office to allow employees to seek confidential advice on how to deal with or what approach to take in regard to inappropriate behaviour. Alternatively, employees may seek confidential advice from the HR Manager or the Head of Human Services.

Employees who are union members may contact the Union (IEU Tas) at any time and request their support or representation.

REFERENCES

Workplace Relations Act 1996
Sex Discrimination Act 1984
Racial Discrimination Act 1975
Human Rights and Equal Opportunity Commission Act 1986
Disability Discrimination Act 1992
Workplace Relations Act and Regulations 2005
Anti-Discrimination Act 1998

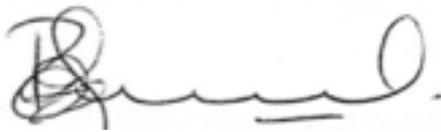
FORMS

Nil

APPENDICES

APPENDIX ONE: Definitions
APPENDIX TWO: Stages 1-3 of the Complaints Process
APPENDIX THREE: The Appeal Process
APPENDIX FOUR: Anti-Discrimination/Harassment Issues Flowchart

SIGNED:



TCEC Chairperson

DATE:

25.6.2007

Adopted by School:

SIGNED:

Principal

DATE:

Approved by:	TCEC
Issuing Group:	Human Services
Implementation Date:	March 2007
Supersedes Policy Dated:	Archdiocesan Anti-discrimination and Harassment Policy 2003
Revision Date:	2011
TCEC Contact Officer:	Head of Human Services

APPENDIX 1

DEFINITIONS

Equal Employment Opportunity (EEO) means treating each employee (or potential employee) as an individual, making no assumptions or judgements based on generalisations about his / her personal characteristics.

Discrimination

Under the Tasmanian *Anti-Discrimination Act 1998*, two types of discrimination are recognised: *direct* and *indirect*.

1. Direct Discrimination

Direct discrimination takes place if an individual treats another person on the basis of any prescribed attribute less favourably than a person without that attribute or characteristic. An attribute can be anything from sexual orientation, race, or religion through to disability and political beliefs.

Section 16 of the Tasmanian *Anti-Discrimination Act 1998* outlines the grounds on which a person must not discriminate:

- race;
- age;
- sexual orientation;
- lawful sexual activity;
- gender;
- marital status/relationship status;
- pregnancy;
- breastfeeding;
- parental status;
- family responsibilities;
- disability;
- industrial activity;
- political belief or affiliation;

- political activity;
- religious belief or affiliation;
- religious activity;
- irrelevant criminal record;
- irrelevant medical record;
- association with a person who has, or is believed to have, any of these attributes.

Discrimination can also occur if a person is treated differently because he/she associates with a person who has, or is believed to have, any of the above attributes.

2. Indirect Discrimination

Indirect discrimination takes place if a person imposes a condition, requirement or practice which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who:

- share, or are believed to share, a prescribed attribute; or
- share, or are believed to share, any of the characteristics imputed to that attribute more so than a person who is not a member of that group.

3. Harassment

Harassment is unwelcome, uninvited, unreciprocated and usually repeated behaviour that causes another person to feel offended, humiliated, intimidated, hurt, insulted, frightened or ridiculed.

It may include:

- offensive, abusive belittling, threatening or manipulative behaviour,
- offensive physical contact or coercive behaviour which is intended to be derogatory or intimidating,
- insulting or threatening gestures,
- persistent following or stalking within or outside the workplace, and/or
- bullying.

4. Bullying

Bullying is usually repeated, unreasonable behaviour directed by one individual towards another.

Both harassment and bullying are an abuse of power as distinct from authority and should not be confused with legitimate comment and advice (including relevant negative comment and feedback) delivered in a reasonable manner from a Principal or supervisor on work performance and / or work-related behaviour. *Such appropriate and reasonable performance management (including discipline) does not constitute bullying or harassment.*

5. Sexual Harassment

Sexual harassment takes place if a person:

- subjects another person to unsolicited acts of physical contact of a sexual nature ...
- makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person ...
- makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence ...
- makes any unwelcome gesture, action or comment of a sexual nature ...
- engages in conduct of a sexual nature in relation to another person that is offensive to that person ...

... in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, insulted or ridiculed.

6. Victimisation

Victimisation takes place if a person subjects, or threatens to subject, another person or an associate of that other person to any detriment.

7. Contact Person

A Contact Person is a person designated in each workplace to assist a complainant, or a person who is responding to a claim made against them, in contacting the Contact Officer at the Tasmanian Catholic Education Office.

8. Contact Officer

The Contact Officer is a designated person within the Tasmanian Catholic Education Office who will:

- communicate to employees their rights and obligations and the appropriate grievance procedure,
- list the options available, and
- offer support to the employee.

It is not the Contact Officer's role to be a counsellor, mediator or to provide personal advice.

9. Defamation

Defamation means words either spoken or intended to be read or signs or visible representations published by which the reputation of a person is likely to be injured, a person is likely to be injured in his / her profession or trade or other persons are likely to be induced to shun, avoid, ridicule or despise that person.

APPENDIX 2

STAGES 1-3 OF THE COMPLAINTS PROCESS

STAGE 1: Dealing with the issue personally or informally

(Cf Appendix 1: Issues Flowchart Stage 1)

Should an issue arise a person may choose to work through the following process and deal with the matter personally or informally (Flowchart 1.1). This may mean that:

1. *they do nothing*: They may choose to ignore unacceptable behaviour and monitor the situation, though documenting the facts of the matter is highly recommended.
2. *they may also*:
 - 2.1 be aware that it may happen again to them and possibly to others and so take control if it reoccurs. *Taking control* may include seeking help and support from a Contact Officer or supervisor to learn empowering strategies.
 - 2.2 contact the person involved. As the complainant, the person can:
 - speak to the person or persons involved about the issue / concern;
 - write a note to them, stating what behaviour is found unacceptable and requesting clearly that the unacceptable behaviour must stop.

If there is no resolution:

1. *they may activate and work through the workplace grievance process* (Flowchart 1.2a, 1.2b).

This will be found in the Staff Handbook.

If there is no resolution they formally advise the Principal / supervisor (Flowchart 1.3) who will, as appropriate, facilitate an internal mediation (Flowchart 1.4).

If there is still no resolution a system-facilitated mediation will be organised (Flowchart 1.5).

In the event that resolution still has not been achieved, the Principal or supervisor, in the first instance, will contact and advise the person mentioned in the complaint about further stages of the complaints process and possible outcomes. The process outlined in the flowchart Stage 2 will be activated.

2. *they may make a formal complaint.*

It should be noted that a person may seek union advice and / or support at any time during Stage 1.

STAGE 2 Making a Formal Complaint

(Cf Appendix 1: Flowchart Stage 2)

The written complaint may be directed to:

- the Principal who will forward it to the Director: Human & Executive Services or
- the Director: Human & Executive Services directly (Flowchart 2.1a, 2.1b).

If a prima facie case is established a formal facilitated meeting between the parties will be convened (Flowchart 2.2).

If there is no resolution the matter will be deemed to be serious and the Head of Human Services may advise the activation of the *Taking Care* Protocol (Flowchart 2.3) and the process will proceed to Stage 3.

A person may seek union advice and / or support at any time during Stage 2.

STAGE 3 Allegation deemed serious in nature

(Cf Appendix 1: Flowchart Stage 3)

If the alleged discrimination, harassment or bullying is very serious in nature, the TCEC's *Taking Care* Policy may be activated concurrently with this Anti-Discrimination, Harassment and Bullying

Policy. In accordance with *Taking Care*, the Designated Officer may assume overall responsibility for managing the implementation of both policy procedures. The Designated Officer will also be responsible for discerning any appropriate disciplinary action including demotion, suspension or dismissal. Criminal matters - such as battery, assault, indecent sexual assault and rape - must be referred to the police and may warrant immediate dismissal.

1. Formal Investigation process

In the case of a formal investigation being required, a respondent to the complaint, in special circumstances such as allegations of serious misconduct, may be stood down with pay from his / her position during the course of the investigation.

Management of the process will be assumed by the Designated Officer and a formal, independent investigation conducted (Flowchart 3.1). The findings will be sent to the school / TCEO governing body for decision re further action (Flowchart 3.2)

If the allegations are sustained formal strategies to re-establish right relationships and / or to determine appropriate disciplinary action will be developed (Flowchart 3.3).

If, at the conclusion of the process, the issue remains unresolved, the complainant has the right to take the complaint to the Anti-Discrimination Commission (3.4). Indeed, the complainant retains the right to take the complaint to the Anti-Discrimination Commission at any stage during the process.

2. Process

Every endeavour will be made to resolve the matter appropriately in the shortest possible time.

The complainant and the respondent will be informed of their right to have a support person present with them at any interviews / meetings regarding the complaint. In the case of a union member this may be a union delegate or representative. The agreed outcomes of any such meetings will be written and circulated after the meeting to those who were present so that they may be verified as an accurate record of the meetings.

Once any investigation is completed the findings will be provided to the complainant.

3. If a complaint is substantiated

Once a complaint is substantiated or proven it is important that decisions are made to finalise the matter. Depending on the seriousness of the complaint, the outcomes may include a range of disciplinary measures up to and including termination of employment.

3. Resolution of sustained complaints

The possible outcomes can include one or a combination of the following:

- a written apology;
- an official warning - including a final warning (recorded on their personnel file);
- ongoing monitoring of behaviour (eg. monthly reports from their immediate supervisor);
- counselling;
- relevant training, coaching, education, mentoring;
- transfer;
- demotion;
- implementation of practices to prevent further discrimination;
- restitution for personal / property damage;
- termination of employment.

The complainant's workplace situation will be monitored by the Principal, supervisor or Director TCEO over the medium term to ensure that victimisation, from the transgressor and others, has not occurred as a result of making a complaint and / or any disciplinary action. This may include interviewing the complainant at appropriate intervals following completion of the investigation.

A complainant will not be moved to another position or work location in an attempt to reduce future potential conflict, unless the complainant specifically requests or agrees to such a move and such a change will not damage the complainant's career prospects and / or further development.

4. Resolution if complaints are not sustained / findings inconclusive

If after a formal investigation specific complaints are not sustained or alternatively the findings of the investigation are inconclusive and hence the complaints are not sustained, the Designated Officer will work with all parties to restore appropriate relationships. Specifically it would be noted that no 'adverse finding' was recorded against the respondent.

However, there may be specific recommendations or advice provided to one or both parties with regards to the manner in which future positive relationships could be maintained. These recommendations could involve counselling, job coaching, performance management strategies and ongoing monitoring.

In terms of recording the outcomes of the investigation, appropriate notations would be made on the relevant personnel files clearly summarising the findings of the investigation and, in particular, highlighting that no disciplinary action was instigated with regards to the respondent, thus ensuring some protection for the future career prospects of that person.

A person may seek union advice and/or support at any time during Stage 2.

APPENDIX 3

THE APPEAL PROCESS

Internal Appeal

Should a complaint:

- remain unresolved after a reasonable time period set for investigation; and / or
- if a party believes that the investigation process was flawed; and / or
- if a party was incorrectly advised by the Contact Officer about the complaint process; and / or
- if the disciplinary action is believed to be inappropriate (too harsh or lenient) ...

... then a party may ask the chairperson of the relevant Governing Body to initiate a review of the complaint process if it can be shown that the original investigation was fundamentally flawed.

External Appeal

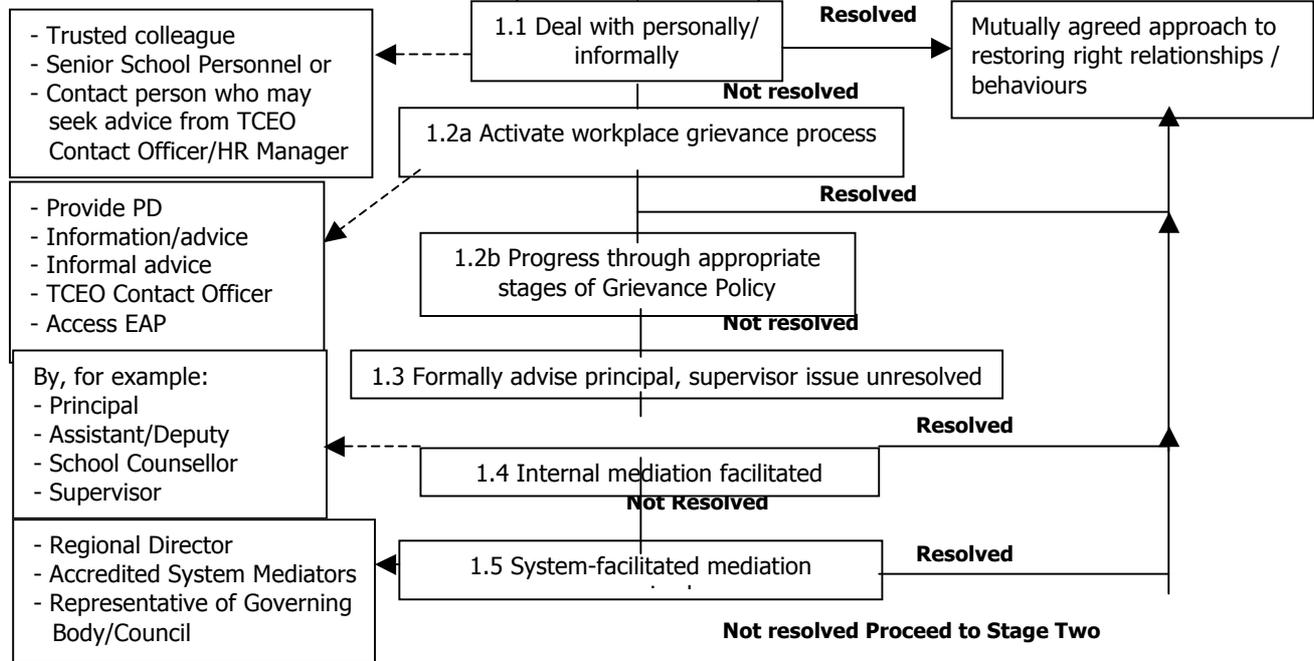
It is the automatic and immediate right of either party in a complaint to take a complaint directly to an external agency such as the Anti-Discrimination Commissioner. They may do so without appealing internally.

APPENDIX 4

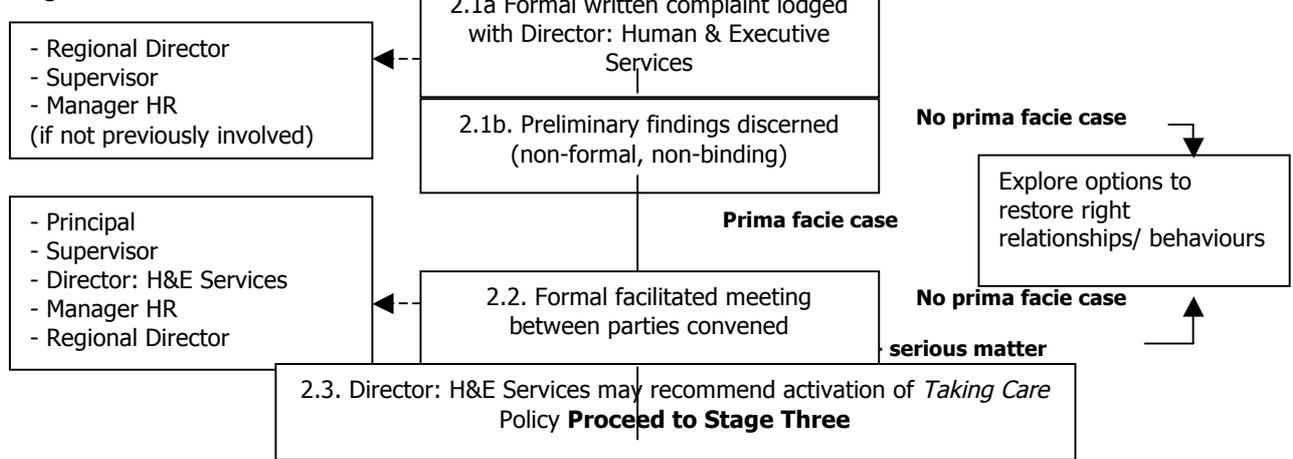
Anti-Discrimination/Harassment Issues Flowchart

Stage 1

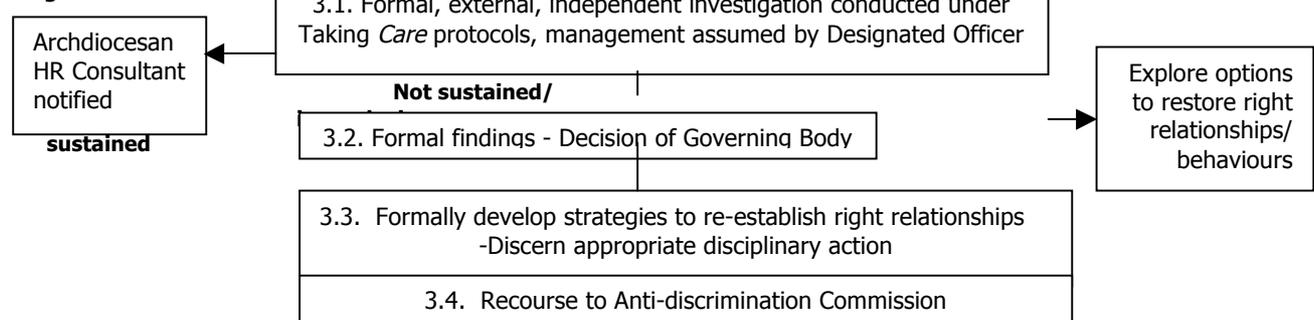
Possible assistance



Stage 2



Stage 3



Note: IEU Tas advice and/or support for members is available at all stages of the process.