

# POLICIES AND PROCEDURES

## Anti-Discrimination and Harassment Policy



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### Introduction

Lauriston Girls' School is committed to promoting courtesy, trust and respect and to a working environment which is free from discrimination and harassment. This organisation finds any form of discrimination and harassment unacceptable and will not tolerate it under any circumstances. Disciplinary action will be taken against any employee who breaches this policy.

Lauriston Girls' School aims to:

- Create a working environment which is free from discrimination and harassment, where all members of staff are treated with dignity, courtesy and respect;
- Implement training to ensure that all employees know their rights and responsibilities;
- Provide an effective procedure for complaints based on the principles of natural justice;
- Treat all complaints in a sensitive, fair, timely and confidential manner and not tolerate any acts of victimisation in relation to the complaints;
- Encourage the reporting of behaviours which breach this policy;
- Promote appropriate standards of conduct at all times.

### Definitions

**Discrimination** occurs when a person is discriminated against in certain places of public life because of their race, colour, descent or national or ethnic origin, as defined under the Racial Discrimination Act 1992, or because of sex, marital status, pregnancy under the Sex Discrimination Act 1994, or because of a disability as defined under the Disability Discrimination Act 1992, and some grounds under the Human Rights and Equal Opportunities Act 1986.

It should be noted that the **Equal Opportunity Act 2010 (Victoria)** came into effect on 1 August 2011. Amongst a range of new provisions, there are specific sections related to schools. It will be important for us to understand the schools' obligations under this new Act and the Charter of Human Rights and Responsibilities Act 2006. To add to the complexity there is also Federal (Australian government) parallel legislation which applies in all schools.

Fundamentally, we are obliged to create an inclusive, accepting school where students not only feel safe but can be equal participants in education. In addition, disability standards for education have been developed and there are clearly articulated responsibilities for educational providers. Progressively, Lauriston Girls School will put policies and procedures in place to meet these statutory requirements.

Under the Equal Opportunity Act 2010, discrimination on the basis of the following attributes is unlawful:

- Sex
- Marital status
- Pregnancy
- Parental status
- Breastfeeding
- Age
- Race (including colour, nationality, ethnicity and ethnic origin)
- Disability

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- Employment activity
- Carer status
- Gender activity
- Religious belief or activity
- Political belief or activity
- Industrial activity
- Lawful sexual activity
- Sexual orientation
- Association with, or relation to, a person identified on the basis of any of the above attributes.

**Discrimination on the basis of an attribute** includes direct and indirect discrimination on the basis of:

- A characteristic that a person with any of the attributes generally has; or
- A characteristic that is often imputed to a person with any of the attributes; or
- An attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or
- An attribute that a person had, even if the person did not have it at the time of the discrimination.

**Direct Discrimination** is when a person treats, or proposes to treat, a person with a protected personal characteristic unfavourably, because of that personal characteristic. Direct discrimination often happens because people make unfair assumptions about what people with certain personal characteristics can and cannot do.

**Indirect Discrimination** is also against the law and refers to situations where treating everyone the same is unfair. This occurs when an unreasonable requirement, condition or practice that purports to treat everyone the same ends up either actually, or potentially, disadvantaging someone with a personal characteristic protected by the law.

Discrimination can also become systemic when entrenched, structural and sometimes institutional patterns of behaviour or actions affect a range of people. These behaviours and actions are often part of organisational culture and are reinforced by policies or procedures. If an organisation receives a lot of complaints about the same or similar issues, it might be the result of systemic discrimination.

Whether a requirement is 'reasonable' depends on all the relevant circumstances of the case, including, for example:

- Consequences of failure to comply with the requirement; and
- The cost of the alternative requirements; and
- The financial circumstances of the person who imposes, or proposes to impose the requirement.

**Harassment** covers a wide range of behaviours of offensive nature, broadly defined as behaviour that demeans, humiliates, and intimidates a person. Harassment can be against the law when a person is treated less favourably on the basis of certain personal characteristics, such as race, sex, pregnancy, marital status, breastfeeding, age, disability, sexual orientation, gender identity or intersex status. A one-off incident can constitute harassment.

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Harassment can include behaviour such as:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails or text messages
- displaying racially offensive or pornographic posters or screen savers
- making derogatory comments or taunts about someone's race
- asking intrusive questions about someone's personal life, including his or her sex life.

**Sexual harassment** is any unwanted or unwelcome sexual behaviour where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated. It has nothing to do with mutual attraction or consensual behaviour. It is a form of sex discrimination and recognised as both gender inequality and a type of gendered violence. It can be a symptom of gender inequality and most often – but not always – affects women. Sexual harassment can be a single incident or repeated behaviour; a suggestive comment or an offensive joke. It may happen in the office, a work party or at school. It doesn't matter what the intention is, sexual harassment is against the law.

Sexual harassment includes:

- an unwelcome sexual advance
- an unwelcome request for sexual favours
- any other unwelcome conduct of a sexual nature.

Sexual harassment can be physical, verbal or written. Examples include:

- comments about someone's private life or the way they look
- sexually suggestive behaviour, such as leering or staring
- brushing up against someone, touching, fondling or hugging
- sexually suggestive comments or jokes
- displaying offensive images or objects
- repeated requests to go out
- requests for sex
- sexually explicit emails, text messages or posts on social media
- sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences); and
- actions or comments of a sexual nature in a person's presence (even if not directed at that person).

**Sex-based harassment**, also known as harassment on the grounds of sex, occurs when a person is harassed because of their sex – being a woman or a man. It covers situations where, for example, a woman is undermined at work, treated as less authoritative or targeted with other negative behaviour because of her gender.

**Victimization** means retaliatory action, or the threat of action against a person because they made a complaint or because they took action in support of a complaint. As per the changes to the Disability Discrimination Act 1992 (Cth), Racial Discrimination Act 1975 (Cth), Age Discrimination Act 2004 (Cth) and the Australian Human Rights Commission Act 1986 (Cth) victimising conduct can form the basis of a civil action for unlawful discrimination.

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### Pre-employment

The School complies with Section 14 of the Anti-Discrimination Act 1991 which states that a person must not discriminate:

- In the arrangements made for deciding who should be offered work; or
- In deciding who should be offered work; or
- In the terms of work that is offered, including, for example, a term about when the work will end because of a person's age; or
- In failing to offer work; or
- By denying a person seeking work access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
- In developing the scope and range of such a program.

### When recruiting staff for positions, the School will:

- Provide position descriptions that are up to date and consistent with the requirements of the job;
- Provide selection criteria for available positions which include skills and experience required for the position;
- Distinguish between essential criteria, those that the person must satisfy to be able to carry out the position, and desirable criteria, those that will help in carrying out the position;
- Include formal qualifications only where these are essential for the position;
- Where appropriate, advertise positions internally and externally;
- Ensure that the information in advertisements matches the selection criteria;
- Not use stereotyped or discriminatory language or discriminatory requirements in advertisements;
- Include the name of the contact person in the advertisement and ensure he/she has information prepared for the position.

### When selecting applicants for interview, the School will:

- Prioritise the selection criteria;
- Short list on essential qualifications/skills first, then on desirable qualifications/skills;
- Predetermine to what use the information collected (curriculum vitae, interview etc) will be put and ensure no discrimination;
- Ensure strict confidentiality.

### When carrying out the interview process for positions, the School will:

- Aim to allow applicants to demonstrate what they can offer the school;
- Have questions prepared in advance;
- Ensure consistency and fairness in questioning;
- Ask all applicants whether they can fulfil the requirements of the position;

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- Not ask invasive or irrelevant questions.

### When deciding upon the successful applicant, the School will:

- Focus on the selection criteria;
- Rank applicants according to performance against the essential and the desirable qualifications/skills;
- Assess all information provided by each applicant;
- If requested, provide constructive feedback to unsuccessful applicants on their performance against the selection criteria.

### Employment

The School complies with Section 15 of the Anti-Discrimination Act 1991 which states that a person must not discriminate:

- In any variation of the terms (i.e. conditions) of work; or
- In denying or limiting access to opportunities for promotion, transfer, training or other benefit to the employee; or
- In dismissing an employee; or
- By denying access to a guidance program, an apprenticeship program or other occupational training or retraining program; or
- In developing the scope or range of such a program; or
- By treating an employee unfavourably in any way in connection with work.

### In complying the School will ensure that:

- The employee and the appropriate Union are consulted when variations to the duty statement or conditions of work are made;
- The Agreement is followed and all staff have access to internal and external professional development activities related to their roles within the school;
- Staff are given the opportunity to apply for internal promotional positions and are provided with copies of the duty statement and selection criteria related to the position;
- Staff understand the complaint procedures, both within the school and through external organisations, available to them;
- There is consultation with the relevant Union and follow the appropriate dismissal procedure in relation to an employee.

### Disability

Disability is defined as:

- Partial or total loss of a bodily function or part of the body;
- The presence in the body of a disease-causing organism;
- Malfunction of a part of the body, including a mental or psychological disease or disorder, or learning disability;
- Malfunction or disfigurement of a part of the body, including an impairment that may exist in the future and behaviour that is a symptom or a manifestation of an impairment;

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In those cases where unjustifiable hardship would be imposed upon by Lauriston Girls' School in carrying out these adjustments and changes, the school would refer to Section 5 of the Anti-Discrimination Act 1991, and consider all relevant circumstances of the case, including the:

- Nature of the special services and facilities;
- Cost of supplying the special services or facilities and the number of people who would Benefit or be disadvantaged;
- Financial circumstances of the School;
- Disruption that supplying the special services or facilities might cause; and
- Nature of any benefit or detriment to all people concerned.

In relation to employees, when considering the ability of the School to make reasonable adjustments or changes, the School will:

- Discuss how such an adjustment might be made;
- Discuss the matter with the current employee or applicant; and
- Consult relevant sources for advice.

### Discrimination on the Grounds of Race

Racial Discrimination results when someone is treated less fairly than someone else in a similar situation because of their race, colour, descent or national or ethnic origin. Racial discrimination can also occur when a policy or rule appears to treat everyone in the same manner but has an unfair effect on more people of a particular race, colour, descent or national or ethnic origin than others.

Staff who believe that they have been discriminated against because of race, colour, descent or national or ethnic origin have access to the complaint procedures within the School or may make an external complaint.

The Racial Hatred Act 1995 allows people to complain about offensive or abusive behaviour based on racial hatred. Examples of such behaviour include:

- Placing racist posters in a public place;
- Writing racist graffiti in a public place;
- Racist abuse in a public place.

Unlawful racially offensive behaviour can include acts based on the race, colour, national or ethnic origin of a person or group of people which are likely to offend, insult, humiliate or intimidate. The behaviour must occur within sight or hearing of other people or in a place to which the general public is invited or has access.

The following are not considered unlawful if conducted reasonably and in good faith:

- An artistic work or performance;
- An academic discussion or debate;
- A fair and accurate report on matters of public interest;
- A fair comment if the comment is an expression of a persons' genuine belief.

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Lauriston Girls' School does not tolerate offensive or abusive behaviour based on racial hatred. Careful consideration will be given to course content, and the subject matter to be handled by external performance groups or speakers brought into the School.

### Discrimination on the grounds of Sex and Sexual Harassment

On 12 December 2022, the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth) came into effect. The Act makes important amendments to the Sex Discrimination Act 1984 (Cth) and the Australian Human Rights Commission Act 1986 (Cth). These changes were recommended by the Australian Human Rights Commission following its inquiry Respect@work. Both sets of changes have been made to provide better protection for workers from sexual harassment and other forms of sex discrimination, harassment, and unfair treatment in the workplace.

In response to the change Lauriston Girls' School now also has a positive duty to take reasonable and proportionate measures to eliminate, as far as possible:

- Discrimination on the ground of sex in a work context,
- Sexual harassment in connection with work, being an unwelcome sexual advance or unwelcome conduct of a sexual nature in relation to another person,
- Sex-based harassment in connection with work,
- Creating and/or subjecting a person to a workplace environment that is hostile on the ground of sex. A hostile work environment on the ground of sex is a workplace environment which may be offensive, intimidating or humiliating to a person by reasons of their sex or a characteristic associated with their sex, even if conduct is not directed towards a particular person
- Related acts of victimisation. Victimisation means retaliatory action, or the threat of action against a person because they made a complaint of sexual harassment or because they took action in support of a complaint

Sexual harassment is now clearly covered by work health and safety laws and organisations have a legal responsibility to identify and manage this risk, through implementing control measures and regularly reviewing their risk and mitigation measure. Sexual harassment is also explicitly included in Fair Work laws and there are also new reporting obligations for sexual harassment within the Workplace Gender Equality Agency (WGEA) reporting scheme.

Staff who believe that they have been discriminated against / harassed on the basis of sex, or those who have witnessed the discrimination/harassment, have access to complaint procedures. Sexual harassment reports will be taken seriously and treated consistently and confidentially with a prioritisation of the wellbeing of the person who has made the report. However, allegations of sexual harassment or potential criminal conduct are serious and should be considered accordingly. In some instances, a matter may need to be escalated or referred without agreement from the employee, particularly in circumstances that may:

- constitute a criminal offence;



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- constitute an occupational health and safety risk; or
- require disciplinary action.

Only relevant persons will be advised of the declaration/report and any arrangements necessary for the purpose of managing the disclosure/report.

Bystanders, including colleagues, who witness or are aware of sexual harassment, can play an important role in responding to sexual harassment in the workplace. When grounded in behaviours of integrity and respect, action taken by colleagues can positively impact on defining workplace culture.

Bystanders that are aware of sexual harassment are encouraged to:

- provide support to the colleague subjected to the sexual harassment;
- formally or informally challenge concerning behaviour; and
- report sexual harassment.

Support is available for all staff who experienced or witnessed sexual harassment.

Lauriston is committed to ensuring that our workplace is one where all employees can carry out their duties in an environment of mutual respect, fairness and safety. Sexual harassment is unlawful and will not be condoned at Lauriston Girls' School. Employees shall not engage in workplace harassment.

### Vicarious Liability

The employer may be legally responsible for discrimination or harassment which occurs in the workplace or in connection with a person's employment unless responsible steps have been taken to reduce this liability. This does not preclude persons being held liable for their behaviour.

Lauriston Girls' School may be vicariously liable for the conduct of:

- Individual employees or groups of employees;
- Members of the Executive, senior staff, Heads of Faculty, Year level Coordinators
- Contract employees.

Lauriston Girls' School has taken reasonable steps to reduce liability by:

- The preparation of the anti-discrimination and harassment policy;
- Regular staff training in relation to the content of the anti-discrimination and harassment policy;
- Establishing effective complaint procedures;

Treating all complaints of discrimination and harassment seriously, promptly investigating each complaint, and not tolerating any acts of victimisation in relation to the complaints;

- Taking appropriate action to address and resolve complaints of discrimination or harassment.



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### Compliance with Policy and Demonstrated Leadership

Lauriston Girls' School requires all employees to behave responsibly by complying with this policy, to not tolerate unacceptable behaviour of others, to maintain confidentiality when providing information in an investigation and to report any incidence of discrimination.

### Staff Members Seeking Assistance

A member of staff can contact:

- Principal.
- Deputy Principal-Learning and Innovation
- Deputy Principal-Wellbeing.
- Vice Principal-Head of Junior School.
- Vice Principal-Howqua Campus
- Director of the Lauriston Institute.
- Business Manager.
- Properties Manager.
- Union Representative.
- Union Official.

There are a number of options available when an employee believes there has been an incidence of discrimination or harassment. The employee can:

- Take no action. Whilst the employee may take no action, he/she acknowledges that the employer has an overriding obligation to all staff and may choose to take action independently;
- Deal with the matter individually, after approaching one of the above individuals for advice, support and assistance;
- Deal with the matter individually, using advice, support and assistance from the above individuals. The individual will complain or object to the behaviour directly with the respondent/s involved, making it clear that the behaviour or action is unacceptable and constitutes as discrimination or harassment. This may be done in writing, or directly in person, in which case it is recommended that the complainant keep a record of the discussion;
- Contact the Director of the Lauriston Institute who will approach the respondent and detail the complaint. All parties will be given the opportunity to state their case and how they would see the situation being resolved. The Director of the Lauriston Institute will assist the parties to attempt to reach a mutually acceptable solution. Depending on the circumstances, the identity of the complainant/s will not be disclosed to the respondent unless agreed to by the complainant/s;
- Make a formal complaint where other approaches are unsuccessful, or the allegations are so serious that other approaches are inappropriate;
- Make an external complaint to the Union or another organisation. Reports of sexual harassment can be lodged with the Victorian Equal Opportunity and Human Rights Commission, the Victorian Civil and Administrative Tribunal and in some circumstances, with a union, WorkSafe Victoria, Fair Work Commission, or the Australian Human Rights Commission. In cases of sexual assault, indecent exposure, stalking, obscene communications or any other criminal conduct, employees are encouraged to make a report to the police. If the assault occurred in the workplace, Lauriston Girls' School may be required to report the matter to police. Employees are encouraged to report the incident to their direct manager or human resources, regardless of whether a report is made to the police or not.

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A formal complaint may be lodged at any time; however, it will generally be made after other approaches have proven unsuccessful. The formal complaint must be lodged with the Principal. The formal complaint must include:

- The name of the alleged person;
- Specific dates and/or times of the alleged discrimination or harassment, if possible;
- A detailed summary of the incident/s;
- A summary of actions already taken by the complainant;
- A description of any adverse health outcomes, including medical treatment sought.

### The Investigation Procedure

An investigation will be carried out in the event of a formal complaint by an employee. Should an external complaint be made the School will comply with the procedures established by the external organisation. The investigation will be carried out by the Principal and the Director of the Lauriston Institute, Business Manager or Properties Manager.

Once a complaint has been made, the investigation will begin no more than two working days of its receipt. The investigation will be completed within five working days.

Separate interviews will be carried out with the complainant, the person against whom the complaint has been made and any witnesses. These persons will be asked to provide details of the discrimination or harassment. If the behaviour does not constitute discrimination or harassment, then it will be important to determine whether the behaviour constitutes another inappropriate behaviour.

Any documentation about the complaint will remain confidential, unless the individuals concerned give consent for the information to be used during the interviews or in the instances where a matter is serious enough that it requires to be escalated or referred without agreement from the employee e.g. criminal action.

The complainant and the person against whom the complaint has been made have the right to be supported during the investigation, either by the Union representative, or colleague.

The complainant and the person against whom the complaint has been made will each receive a report on the outcome of the investigation.

A number of outcomes are possible resulting from the investigation:

- Dismissal of the complaint where information gathered during the investigation does not support the allegation. Both the complainant and the alleged person may be offered counselling as a result of the incident. Mediation may be conducted between the parties only if both parties consent.
- Finding that discrimination or harassment has taken place.

Disciplinary action may include one, or a combination of, the following:

- An apology, written or verbal, and an undertaking that the discriminatory behaviour will not occur again;
- Mediation may be conducted between the parties only if both parties consent;

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- A formal written warning given;
- Structured counselling, using either external or internal support. The purpose of the counselling will be to enable the person to recognise and change his/her behaviour.
- Dismissal as a final resort.

### Summary of Procedural Options for Complaints

Informal Options	What To Do	Expected Outcomes
Deal with the matter personally	Complain directly to the individual/s about their actions and/or behaviour	A record should be kept
Contact one of the individuals named in this policy	Provision of advice on available options	Select your preferred option
Conciliation	Contact Director of the Lauriston Institute	An appropriate outcome will be sought