

TR14 Homophobia, biphobia and transphobia

TR14.1 Introduction

The information in this Welfare and Information leaflet is provided to assist members in dealing with and preventing homophobic, biphobic and/or transphobic behaviour, and is intended as an overview rather than a comprehensive document.

The leaflet applies to both schools and TAFE.

Homophobia, biphobia and transphobia have been identified as reasons why some people who identify as, or are perceived to be, gay, lesbian, bisexual, transgender and/or intersex (GLBTI) experience bullying, harassment, violence, discrimination and/or vilification. It can be the act of someone who is not consciously or intentionally acting in this manner such as a passing comment or joke. Although it can also be the deliberate act of someone to make another person uncomfortable, intimidated, hurt or injured such as name calling or graffiti.

Harassment and discrimination on the basis of gender and sexual orientation is prohibited under the NSW Anti-Discrimination Act (1977) and Commonwealth Sex Discrimination Act (1984). Homophobic, biphobic and transphobic harassment may also be deemed as sexual harassment and should be treated as such (refer to Federation Welfare and Information leaflet *TR9 Dealing with sexual harassment*).

Homophobic, biphobic and transphobic behaviour, such as harassment, can occur between students/students, staff/students, students/staff, staff/staff, staff/community members, community members/staff. The Department of Education and Communities/TAFE (the Department) has a responsibility to ensure that such harassment does not occur in order to provide a safe environment for employees, students, visitors and community members.

TR14.2 Definitions

- *Biphobia* is the irrational fear and/or hatred of people who are, or are perceived to be bisexual.
- *Homophobia* is a word used to describe irrational fear and/or hatred towards people who are gay, lesbian or same sex attracted, and often is inclusive of people who are bisexual. It can also be extended to people who are perceived to be same sex attracted, or those who have family members or friends who are same sex attracted.
- *Transphobia* is the irrational fear and/or hatred of people who are or are perceived to be transgender.
- *Discrimination* is treating someone unfairly because they are, in this case, GLBTI, or have a relative, friend, associate or work colleague who is GLBTI.
- *Harassment* is a form of discriminatory behaviour

practised by some people against another person, whom that person finds unacceptable.

TR14.3 Examples of homophobic, biphobic and transphobic behaviours Bullying and harassment

There are many reasons for bullying, including gender and sexuality bias. Being called names such as “fag-got”, “tranny”, “dyke”; or statements such as “that’s so gay” or “this book is gay” are examples of homophobic and transphobic terms that are used to bully and harass GLBTI people, or people who are perceived to be GLBTI. Other forms of bullying and harassment include spreading rumours about another person including about their sexual orientation; belittling comments based on someone’s perceived or actual sex, sexuality or gender identity; threatening or menacing behaviour; physical assault; gestures or body movements of a sexual and/or intimidating nature.

Discrimination

Anti-discrimination laws were designed to protect people from unfair treatment because of their race, age, sex, marital or domestic status, disability, homosexuality, carer’s responsibilities, HIV or AIDS status or transgender status. This legislation generally protects people from unfair treatment when applying for a job or during employment, and in accessing the full range of opportunities provided by public education. Not being provided the same opportunities as colleagues due to an individual’s actual or perceived sexual orientation constitutes discrimination. In schools, not allowing a teacher to coach the football team because they are perceived to be gay or allocating a teacher to drama/dance curriculum because they are perceived to be gay are examples of discrimination.

Vilification

Vilification is a public act that could incite or encourage hatred, serious contempt or severe ridicule towards people because of their race, colour, nationality, descent, ethnic, ethno-religious or national origin; homosexuality; HIV or AIDS status; or transgender status. Vilification law only covers acts that are in public which could include remarks in a newspaper or publication, material on the internet including social networking sites such as Facebook and Twitter, graffiti, putting up posters or stickers, verbal abuse, making speeches or statements, making gestures or wearing badges or clothes with slogans on them.



TR14.4 The impact of homophobia, biphobia and transphobia

Homophobia, biphobia and transphobia impact on the health and wellbeing of people of diverse sex, sexuality and gender, their families and friends in many ways. Research suggests that homophobia both increases risk associated with a range of physical and mental health problems as well as risks associated with social exclusion and isolation. This, in turn, limits opportunities and abilities of people of diverse sex, sexuality and gender to form social, personal and intimate relationships (*Writing themselves in again: 6 years on: The 2nd national report on the sexual health and well-being of same sex attracted young people in Australia*). Homophobia may also impact on an individual's academic participation and performance as well as influence professional relationships.

Like other forms of harassment, the impact of homophobia, biphobia and transphobia can create an intimidating and hostile work environment. These may interfere with an individual's work performance, leading the person to feel they need to avoid certain company or situations, which can, in turn, limit their social or professional life. Ultimately, the impact of homophobia, biphobia and/or transphobia may have a serious negative effect on the person's career and life.

TR14.5 What can be done about homophobia, biphobia and transphobia Bullying, harassment and/or discrimination

Do not allow the situation to continue. Bullying, harassment and/or discrimination do not go away if they are ignored. Responses to this type of behaviour will vary initially dependant on the competence and the experience of the person/people involved in dealing with these situations. Members can contact their Federation Organiser or Communications/Welfare section (phone 1300 654 367) to discuss their options.

There are a number of general steps that should be taken to try to address the issues arising from this behaviour.

- Step 1 — Discuss the behaviour with the person concerned: In the first instance the problem may be solved by telling the person that their behaviour is inappropriate and that it must stop. It may also be useful to arrange someone else to be present to witness the discussion.
- Step 2 — Document: If the situation does not improve then dates and circumstances of the perceived bullying, harassment and/or discrimination should be documented. Records should be as factual and objective as possible. They should include as much detail as possible and note the names of any witnesses.
- Step 3 — Do not document forever: Once persistent and unwanted behaviour has been documented for a limited time (for example 1–3 months), the teacher needs to decide whether to lodge a formal complaint. Alternatively, if there was a single, major incident this

may also be the basis of a formal complaint. In this case it may be helpful if any witnesses are prepared to provide an incident statement.

- Step 4 — Consider taking action: Department policy entitled *Complaints Handling Policy* and *Complaint Handling Policy Guidelines* should be followed when making a formal complaint. A copy of these documents can be obtained via the Department's intranet or by telephoning Federation's Communications/Welfare section (1300 654 367). Refer to Federation's Welfare and Information leaflet *TR6 Responding to suggestions, complaints and allegations* for more information. In making the complaint it is important to name the behaviour as homophobic and indicate that this is a discriminatory form of behaviour in breach of legislation. The teacher may also contact their Federation Organiser or the Communications/Welfare section for advice regarding their complaint. Teachers have a right to complain. Both Federation and Department of Education and Communities/TAFE policies support this right.

Vilification

The first step in dealing with vilification is to determine whether a particular act is covered by vilification law, or whether it is inappropriate and in breach of a Departmental policy or document. To establish if a particular act is covered by vilification law there are three things to assess:

1. Did it happen publically?
2. Could it have incited or encouraged hatred, serious contempt or severe ridicule?
3. Is it an acceptable type of free speech and therefore legal?

If the answers are yes to question 1 and 2, and no to question 3 then it may be an act of vilification. To confirm this and determine available options, it is best to contact the Anti-Discrimination Board of NSW enquiry line (02) 9268 5544 or 1800 670 812, the Gay and Lesbian Rights Lobby (02) 9268 5544 or 1800 670 812, and/or Federation (02) 9217 2100 or 1300 654 369.

In relation to an act within the work environment, a formal complaint would need to be lodged with the Department in line with the DEC/TAFE policy entitled *Complaints Handling Policy* and *Complaint Handling Policy Guidelines*. Copies of these documents can be obtained via the Department's intranet or by telephoning Federation's Communications Room. Teachers making a formal complaint should also refer to Federation's Welfare and Information leaflet *TR6 Responding to suggestions, complaints and allegations*.

Specific acts may be dealt with more quickly and effectively by raising the issue immediately with the principal/manager and implementing relevant Department policies. For example, a school student wearing a t-shirt with an offensive slogan or putting up offensive stickers could be dealt with immediately under the Department's *Student Welfare Policy* and the *Suspension and Expulsion of School Students: Procedures*.



TR14.6 Workplace response and change of culture

As well as an individual response there may be a culture of homophobia, biphobia or transphobia in the school, college or office which needs to be changed. There are a number of strategies to address this, including but not limited to:

- challenging homophobic language, remarks and behaviour as they occur
- raising the profile of the issues related to people of diverse sexualities and gender by placing posters around the workplace
- implementing professional development for staff that addresses the issues related to people of diverse sexualities and gender
- ensuring the workplace identifies and names homophobia, biphobia and transphobia in policies, specifically those that address bullying and harassment
- supporting people who are challenging homophobia or experiencing homophobia, biphobia and transphobia, and referring to other sources for support and assistance as appropriate
- promoting workplace standards of behaviour based on fairness, transparency and two way communication where employees treat each other with respect
- implementing programs and strategies throughout the curriculum that broaden respectful relationships.

The Department has a responsibility to provide information, training and resources to support building an inclusive work environment. Cultural changes are recognised as being the most difficult for organisations to address, and they do take some time and ongoing effort. Those in management or leadership roles must role model the appropriate behaviour and ways of addressing issues related to people of diverse sexualities and gender as well as driving the cultural change. The Department has a number of policies and documents that maintain there is no place for discrimination or harassment against students or staff, and/or provide the foundations for principles of inclusivity, respect, dignity and safe and appropriate behaviour. The documents should be used to foster and promote a cultural of inclusion and diversity in the workplace. These policies and documents include:

- Code of Conduct: Fairness, respect, integrity and responsibility*
- Dignity and Respect in the Workplace Charter*
- Homophobia in Schools* memorandum to principals 97/281
- Values in NSW public schools*
- Core Rules: Student discipline in NSW Government Schools*
- National Safe Schools Framework*
- Student Welfare Policy*
- Bullying: Preventing and Responding to Students Bullying in Schools Policy*

- Bias based bullying*
- Boys' and Girls' Education Strategy*
- Complaints Handling Policy*
- Complaint Handling Policy Guidelines.*

If institutional homophobia/biphobia/transphobia is an issue at a workplace, a teacher can attempt to address the issue using some of the strategies listed in this document (or others) with the principal, their supervisor or at meetings. If this fails to address the issue, documentation of instances of discrimination, bullying and/or harassment is necessary in order to then lodge a formal complaint about the systems and processes of the institution.

TR14.7 Criminal actions

Homophobia, biphobia and transphobia can sometimes result in sexual harassment or assault, both of which are prohibited by law. Preventing such incidents is the responsibility of the principal/manager.

If a teacher believes the harassment they have endured constitutes criminal actions, such as threatening behaviour or physical and/or sexual assault, the matter should be referred to the police, the principal/manager and/or the Department Legal Services on (02) 9561 8538. Refer to Federation Welfare and Information leaflet *TR3 Violence against teachers.*

In the instance of contacting the police in relation to homophobic, biphobic or transphobic incidents, Gay and Lesbian Police Liaison Officers (GLLOs) are specially trained to address gay and lesbian issues and are located throughout the state. Some people may find it more comfortable to speak with the GLLOs and they can be found by contacting (02) 9281 0000 or through a local police station.

TR14.8 Victimisation

A person who has just cause for making a complaint about sex-based harassment, homosexual or transgender discrimination, or vilification should expect to use the DEC/TAFE procedures without fear of retribution or victimisation. This includes the unfavourable treatment of a person who has brought about a complaint in good faith. Examples of unfavourable treatment are dismissal, unwanted transfer, and adverse changes in the working and learning environment, denial of promotion or deliberate isolation.

Victimisation of either the person making the complaint or against whom the complaint is made, is prohibited; protection is provided under the NSW Industrial Relations Act 1996.

It is also against the law for anyone to victimise a person for supporting someone for being a witness in a case regarding homosexual or transgender discrimination or vilification, or for lodging a complaint to the Anti-Discrimination Board.



TR14.9 Other avenues to explore

A teacher can take her/his complaint to the NSW Anti-Discrimination Board. In the first instance the Anti-Discrimination Board will assess whether the complaint meets the criteria for discrimination or vilification. The Anti-Discrimination Board's Enquiry number is (02) 9268 5544 or 1800 670 812 or information can be accessed online or via their factsheet *Complaining to the Anti-Discrimination Board*.

If the Anti-Discrimination Board determines that this is a matter that meets the criteria for discrimination, it will write to the employer in order to seek further information to determine whether the complaint can be substantiated. It will attempt to conciliate the complaint in a manner that is satisfactory to the teacher. Should conciliation fail, the matter may proceed to the Equal Opportunity Division of the Administrative Decisions Tribunal.

TR14.10 Other agencies that may be of assistance

The Anti-Discrimination Board of NSW (Enquiries) (02) 9268 5544 or 1800 670 812

Gay and Lesbian Counselling Service (02) 8594 9596 or 1800 184 527

Gay and Lesbian Rights Lobby (02) 9571 5501

Gay and Lesbian Anti-Violence Project (02) 9206 2116 or 1800 063 060

The Gender Centre (02) 9569 2366 or 1800 069 115

TR14.11 Conclusion

Whichever pathway you decide to take, remember that as a financial member of the Federation you can seek advice or discuss possible outcomes with your Organiser or Communications/Welfare section (1300 654 367) prior to taking action.

References

- NSW Anti-Discrimination Act (1977)
- Commonwealth Sex Discrimination Act (1984)
- NSW Teachers Federation (www.nswtf.org.au)
 - *Gender, sexuality and identity policy*
 - *TR3 Violence against teachers*
 - *TR6 Responding to suggestions, complaints and allegations*
 - *TR7 Bullying*
 - *TR8 Discrimination*
 - *TR9 Dealing with Sexual Harassment*
- NSW Anti-Discrimination Board factsheets (<http://www.lawlink.nsw.gov.au/ADB>)
 - *Complaining to the Anti-Discrimination Board*
 - *Homosexual discrimination: Your Rights*
 - *Transgender discrimination: Your Rights*
 - *Vilification*

- Department of Education and Communities (<https://www.det.nsw.edu.au>)
 - *Boys' and Girls' Education Strategy*
 - *Bullying: Preventing and Responding to Student Bullying in Schools Policy*
 - *Bias based bullying*
 - *Complaints Handling Policy*
 - *Complaint Handling Policy Guidelines*
 - *Code of Conduct: Fairness, respect, integrity and responsibility*
 - *Core Rules: Student discipline in NSW Government Schools*
 - *Dignity and Respect in the Workplace Charter*
 - *Homophobia in Schools Memo 97/281*
 - *National Safe Schools Framework*
 - *Student Welfare Policy*
 - *Suspension and Expulsion of School Students — Procedures*
 - *Values in NSW public schools*
- Hiller, Lynne, Turner, Alina and Mitchell, Anne. *writing themselves in again: 6 years on: The 2nd national report on the sexual health and well-being of same sex attracted young people in Australia*, Australian Research Centre in Sex, Health and Society, Melbourne, 2005.

This leaflet sets out in summary, current service conditions, information and advice regarding relevant Department of Education and Communities (DEC) and TAFE policy documents and other legislative requirements. It is not intended to be exhaustive as changes occur from time to time. Members should also refer to the relevant DEC and TAFE documents.

Members who are given conflicting advice or who are uncertain about their entitlements can contact Federation on (02) 9217 2100 or 1300 654 369 or the Federation website (www.nswtf.org.au).

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