

## Addressing Bullying, Harassment and Discrimination

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Major changes/additions since the last version was approved are indicated by a vertical line in the left hand margin. (or similar statement to give overview of changes made)

# 1 Policy Statement

Ara is committed to being safe, inclusive and equitable. It seeks to uphold the mana (standing) and tapu (sacred) of individuals, whānau (family) and communities connected to Ara. We promote a positive culture which celebrates differences, challenges prejudices and ensures fairness. Our staff members and students are our greatest assets, and all members of the Ara community should expect to be able to excel, to be respected and valued for their unique perspectives and contributions.

Hono |Connect, Hihiri | Inspire and Aroha | Respect are Ara's core values. In accordance with these values, Ara is committed to providing an environment in which all members of the Ara community are valued and treated with respect, and where bullying, harassment and discrimination are known to be unacceptable. Ara regards any incident of bullying, harassment and discrimination as a serious matter, has a zero-tolerance mindset about such behaviour, and will address all formal and informal complaints to ensure the preservation of a safe work and study environment.

This policy sets out the expectations placed on all members of Ara's community in relation to harassment, bullying and discrimination.

The People and Capability Division has oversight of complaints involving staff under that Policy, and the Complaints Coordinator has oversight if staff are not involved.

## 1.1 Purpose

The purpose of this policy is to:

- i Foster a positive culture for working and studying which supports a diverse, collegial scholarly community within a framework of respect for the rights of others.
- ii Promote an enabling and inclusive environment where all individuals are treated with dignity and respect, free from harassment, bullying and discrimination.
- iii Ensure that occurrences of harassment, bullying and discrimination within Ara are taken seriously and dealt with promptly and with due sensitivity.
- iv Set out the framework for raising, addressing and resolving concerns about individual or collective behaviour.

## 1.2 Scope and Application

- a This policy applies to the entire Ara community (refer definitions)

## 1.3 Formal Delegations

- a If an allegation of bullying, harassment or discrimination is made against a contractor, the Executive Director People and Capability (ED P&C) will determine the appropriate process within the spirit of this policy.

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- b For all other specified responsibilities relating to this policy refer to CPP120b People and Capability Delegations schedule.

#### 1.4 Definitions

- a **Ara community:** includes all staff (whether permanent, fixed-term, full-time or part-time, proportional or casual) honorary staff, students (whether full-time or part-time), contractors, subcontractors, consultants, official visitors or guests of Ara.
- b **Ara Leadership/Management/“Manager”:**
- **Te Kāhui Manukura:** Ara’s executive leadership team including the Chief Executive and divisional Executive Directors.
  - **Director:** a member of Ara’s senior leadership team, reporting to an Executive Director and with direct reports, working collaboratively to operationalise Ara’s strategic priorities.
  - **Head of Department:** is a department leadership role with direct reports.
  - **Line Manager:** a sectional leadership role with direct reports.
- c **Bullying:** repeated and unreasonable behaviour directed toward a person or a group of people that creates a risk to their mental or physical health, safety and wellbeing. Examples of what bullying is and what it is not, is described in [Appendix B](#).
- d **Bystander or Witness:** a person who witnesses incidents of bullying, harassment or discrimination even though they personally are not subjected to it. Any bystander who believes someone affiliated with Ara has been harassed, bullied, discriminated against or victimised is encouraged to take immediate steps to raise it with the appropriate person (see [Appendix A](#)).
- e **Complainant:** the person alleging bullying, harassment or discrimination.
- f **Cyberbullying:** is the use of electronic communication to bully, harass or frighten a person, typically by sending messages of an intimidating, embarrassing or threatening nature.
- g **Discrimination:** can occur when a person is treated less favourably than another person, in the same or similar circumstances, because of a prohibited ground such as their sex, colour, religious belief, race, marital status, ethnic or national origins, family status, ethical belief, sexual orientation, political opinion, age, employment status or disability. [See Appendix D](#).
- h **Discrimination in employment** can occur in a person’s employment where Ara, or a representative of Ara, by reason of any of the prohibited grounds of discrimination, or involvement in the activities of a union:
- refuses or omits to employ an applicant for work that they are qualified for;
  - refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
  - dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or
  - retires the employee or requires or causes the employee to retire or resign, directly or indirectly, and can be unlawful when relating to particular legislative requirements.

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- i **Employee/staff member/kaimahi:** all permanent (tenured) full-time and part-time (including proportional), fixed term (limited tenure) and casual staff employed by Ara.
- j **Environment:** means both physical environments at Ara and online platforms including the internet, Waituhi (intranet) and all forms of social media (eg Yammer, Facebook, etc).
- k **Gender based harassment:** describes a wide range of behaviour based on gender stereotypes, sexual orientation or gender identity. Such behaviour includes verbal, physical, visual or digital actions which demean, belittle or threaten a person. It does not necessarily suggest sexual interest or intent; it is often about making a person feel unwelcome, uncomfortable, inferior or vulnerable. **Examples of** what harassment is and what it is not, is described in [Appendix C](#).
- l **Harassment:** is unreasonable or unwelcome conduct that is offensive, humiliating or intimidating to any other person and is either repeated, or of such significant nature that it has a detrimental effect on the person, their performance or their work and study environment. It includes gender-based, racial, and sexual harassment. **Examples of** what harassment is and what it is not, is described in [Appendix C](#).
- m **Indirect discrimination:** occurs when there is any conduct, practice, requirement, or condition that is not apparently discriminatory but has the effect of treating a person or group of persons differently on one of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under the Human Rights Act 1993. This type of conduct, practice, condition or requirement is likely to be indirect discrimination unless Ara can establish that there is good reason for it.
- n **Members:** refers to all people in the Ara Community.
- o **Natural justice:** in this policy the concept of natural justice ensures that any allegation of bullying, harassment and discrimination is handled without bias and enables rights to fair hearings. Natural justice ensures:
  - i Those complained about have the right to be told about concern(s) regarding their job performance or behaviour that could lead to disciplinary action.
  - ii Those complained about have the right to be told that concerns have been raised, and in the case of a formal complaint, the right to know who has raised the issue(s) or concern(s) and to see the formal complaint(s).
  - iii Those complained about have a right to an opportunity to respond to allegations about their performance or behaviour before any decision regarding action on those allegations is made.
  - iv All parties involved in the processes covered by this policy have the right to be listened to, and to seek and be given advice, support and representation of their choice throughout the process. They are entitled to be heard, taken seriously and have their matter dealt with - taking into account their wellbeing and ongoing interaction with Ara.
- p **People and Capability Representative:** includes the Executive Director People & Capability (ED P&C); Employment Relations Specialist; Director Safety, Health and Wellbeing; Director People and Performance; P&C Business Partners; Health, Safety and Wellbeing Advisor.
- q **Racial harassment:** is the use of language, or visual material or physical behaviour that expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; is hurtful or offensive; and is either repeated or serious enough to have a detrimental effect on a person in one of the areas specified by the Human Rights Act 1993, e.g. the provision

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of education, accommodation and employment. Examples of what harassment is and what it is not, is describe in [Appendix C](#).

r **Respondent:** the person against whom a complaint of bullying, harassment or discrimination has been made.

s **Sexual harassment:** is unwelcome conduct of a sexual nature that could be offensive, humiliating or intimidating to any other person and is either repeated, or of such a significant nature, that it has a detrimental effect on the person, their performance, or their work and study environment. This includes a request for sexual activity of any sort that contains an implied or overt promise of preferential treatment or overt threat of detrimental treatment. It is unlawful to sexually harass another person even if there was no intention to harass the person. Examples of what harassment is and what it is not, is described in [Appendix C](#).

t **Unlawful discrimination:** can occur when one person is treated less favourably than someone else is treated, or would be treated, in the same or similar circumstances, because that person has a particular attribute, such as sex, colour, religious belief, race, marital status, ethnic or national origin, family status, ethical belief, sexual orientation, political opinion, age, employment status or disability that is specifically listed in Human Rights legislation.

Exceptions may apply, including as set out in the Human Rights Act 1993, New Zealand Bill of Rights Act 1990, Employment Relations Act 2000, or relevant case law. For example, measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of unlawful discrimination, do not constitute discrimination. [See Appendix D](#).

u **Unreasonable behaviour:** means actions that a reasonable person in the same circumstances would see as unreasonable. It includes victimising, humiliating or threatening a person.

v **Victimisation:** occurs if someone suffers detrimental treatment because they have made, or propose to make, in good faith, an allegation of harassment, or appear as a support, or a witness, or provide information about such an allegation. [See Appendix E](#).

w **Worker:** the term used s 19(1) in the Health and Safety at Work Act 2015 to describe an employee; or a contractor or subcontractor; or, an employee of a contractor or subcontractor; or an employee of a labour hire company who has been assigned to work in the business or undertaking; or an outworker (including a homeworker); or an apprentice or a trainee; or a person gaining work experience or undertaking a work trial; or a volunteer worker; or a person of a prescribed class.

<p><b>Related Ara Procedures</b> (indicate if attached to policy or where they can be found)</p> <ul style="list-style-type: none"> <li>• CPP117(c) Raising Problems and Complaints Procedures</li> <li>• Student complaint process flow chart</li> <li>• Staff complaint about a staff member process flow chart</li> <li>• Staff complaint about a student process flow chart</li> </ul>	<p><b>Related Ara Policies</b></p> <ul style="list-style-type: none"> <li>• <a href="#">APP301 Learner Responsibilities and Rights</a></li> <li>• <a href="#">CPP102 Disclosure and Management of Conflicts of Interest</a></li> <li>• <a href="#">CPP105 Acceptable Use and Conduct for ICT Users</a></li> <li>• <a href="#">CPP106 Intellectual Property</a></li> <li>• <a href="#">CPP116 Protected Disclosures Policy</a></li> <li>• <a href="#">CPP117 Raising Problems or Complaints</a></li> <li>• <a href="#">CPP117(a) Raising Problems or Complaints form</a></li> <li>• <a href="#">CPP122 Social Media</a></li> <li>• <a href="#">CPP208 Resolving Employee Performance or Conduct Issues</a></li> <li>• <a href="#">CPP210 Staff Involved in Outside Activities</a></li> <li>• <a href="#">CPP211 Code of Professional Practice for Staff</a></li> <li>• <a href="#">CPP214 People and Capability Management</a></li> <li>• <a href="#">CPP221 Protection of Children, Young Persons and Vulnerable Adults</a></li> <li>• <a href="#">CPP501 Health and Safety</a></li> <li>• <a href="#">APP506 Probation</a></li> <li>• <a href="#">APP512 Suspension and Refusal-Cancellation of Enrolment</a></li> </ul>
<p><b>Related Legislation or Other Documentation</b></p> <ul style="list-style-type: none"> <li>• <a href="#">New Zealand Bill of Rights Act 1990</a></li> <li>• <a href="#">Human Rights Act 1993</a></li> <li>• <a href="#">Harassment Act 1997</a></li> <li>• <a href="#">Employment Relations Act 2000</a></li> <li>• <a href="#">Health and Safety at Work Act 2015</a></li> <li>• <a href="#">Harmful Digital Communications Act 2015</a></li> <li>• <a href="#">Privacy Act 2020</a></li> <li>• <a href="#">Education and Training Act 2020 (including the Code of Practice 2021)</a></li> <li>• <a href="#">NZQA Quality Assurance Framework 2009</a></li> <li>• <a href="#">Protected Disclosures Act 2022</a></li> </ul>	<p><b>Good Practice Guidelines</b>(indicate if attached to policy or where they can be found)</p> <ul style="list-style-type: none"> <li>• <a href="#">Preventing and Responding to Bullying at Work – WorkSafe 2017</a></li> </ul>
<p><b>References or for further information</b></p> <ul style="list-style-type: none"> <li>• NZQA Quality Assurance Framework 2009</li> <li>• Ministry of Business, Innovation and Employment – <a href="http://www.mbie.govt.nz">www.mbie.govt.nz</a></li> <li>• Worksafe New Zealand – <a href="http://www.worksafe.govt.nz">www.worksafe.govt.nz</a></li> <li>• Kia Ōrite – Code of Practice: New Zealand Code of Practice for an Inclusive Tertiary Education Environment for Students with Impairments</li> </ul>	
<p><b>Notes</b></p>	

## 2 Principles

- 2.1 All members of the Ara community have a responsibility to ensure that they:
- Do not bully, harass, discriminate against or victimise any person.

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- b Discourage any form of harassment, bullying or discrimination by making it clear that such behaviour is unacceptable.
  - c Support any member of Ara that feels they have been subject to harassment, bullying or discrimination, including supporting them to follow any pathways for resolution, which may include making a formal complaint if appropriate.
  - d The Education and Training Act 2020 outlines responsibilities of Te Pūkenga to Te Tiriti o Waitangi. Those provisions include (and are not limited to) a requirement to operate employment policy that contains provisions requiring recognition of the aims and aspirations of Māori, the employment requirements of Māori, and the need for greater involvement of Māori in the education service (s9(2)(h)). This policy seeks to recognise these obligations and consider Māori tikanga in our Addressing Bullying, Harassment and Discrimination policy. We seek to consider issues raised from a cultural perspective.
  - e Uphold the mana (standing) and tapu (sacred) of individuals, whānau (family) and communities connected to Ara. We are all comprised of various parts and we bring the totality of ourselves to work or study. Whakanoa i te tapui te tāngata is the diminishing of any element that constitute the person's tapu or the totality of the person's tapu.  
  
These include: Taha wairua (spiritual dimension), Taha hinengaro (psychological dimension), Taha tinana (physical dimension), Taha whānau (family dimension).
- 2.2 In addition to the above obligations, all line Managers, Heads of Department, Directors and Te Kahui Manukura are to take steps to:
- a Ensure that the environment is free from harassment, bullying and discrimination.
  - b Ensure that all staff members reporting to them are familiar with and understand their obligations under this policy.
  - c Treat all complaints seriously and take prompt steps to resolve any complaints made under this policy.
  - d Protect and support the right of all members of the Ara community to use the supporting resolution procedure and guidelines to this policy.

### 3 Associated procedures for

## Ara Corporate Policy on: Addressing Bullying, Harassment and Discrimination

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<b>Contents:</b>	3.1	Pathways for Resolution
	3.2	Self Resolution and information resolution
	3.3	Formal Complaint
	3.4	Victimisation and vexatious complaints
	3.5	Confidentiality
	3.6	Records

### 3.1 Pathways for Resolution/Disclosure Process

There are several pathways available for resolution of complaints, ranging from anonymous reports through to formal complaints. Which pathway is appropriate will depend on the severity of the allegation(s), and the wishes of the complainant.

This section provides a brief description of each available pathway. Specific guidance and steps for those receiving a complaint, and for making a formal complaint are set out in the appendices to this Policy, and the *Student Complaint Process flowchart* or *Staff Complaint about staff Process flowchart* and *Staff Complaint about Student Process flowchart*.

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a. **Anonymous Disclosures**

An **anonymous disclosure** can be made by Students or Staff Members via the InformUs tool. InformUs can be accessed here: [\[link\]](#). InformUS is a tool where individuals can make an anonymous disclosure to Ara. The purpose of this form is to allow Ara to collect information on the nature of events that occur on campus or which involve our staff and students. Ara will use the information for two purposes – to identify trends that inform decisions for improving the safety and wellbeing of staff and students and allowing individuals to be heard by Ara without submitting a formal complaint. The InformUS webpage contains information about the process and what happens when an anonymous disclosure is submitted. [\[link to be inserted\]](#).

When an **anonymous disclosure is made**, the information provided will be made available to a limited number of specialist staff. These staff will identify what actions may be taken on the basis of the content of the report received.

With regard to an anonymous report, Ara:

- will maintain confidentiality;
- may take a range of actions including:
  - if a Staff Member is named: talk to the Staff Member and alert them to the existence of the report. Usually, no formal investigation or disciplinary process will be undertaken on the basis of an anonymous disclosure.
  - if a Student is named: talk to the Student on an informal basis. Usually, no formal investigation or disciplinary process will be undertaken on the basis of an anonymous disclosure.
  - use the reports received to implement general training and/or education sessions to prevent further incidents occurring.

Making an anonymous report or disclosure does not prevent the complainant from also taking one of the other available pathways, and/or reporting the incident to the New Zealand Police. It is at the complainant's discretion whether additional steps are taken.

b. **Informal complaint/Self Resolution**

An individual may prefer an informal approach to resolving their concern. Informal approaches could include:

- the complainant addressing their concern with the person complained about directly (or with the assistance of a support person);
- a manager, Head of Department, P&C Business Partner (or other appropriate person – [see Appendix A](#)) speaking to the person complained about on behalf of the complainant on an informal basis regarding the alleged conduct and resetting expectations if necessary; and/or
- a mediated or facilitated discussion between the complainant and the person complained about. This discussion can be facilitated by an appropriate person.

**For student please refer to CPP117 a & c.**

**For staff** this would be a manager or a P&C Business Partner.

Staff wishing to seek advice about options and/or deal with the matter informally should raise the issue with their Manager, Head of Department, P&C Business Partner and/or Union Representative.

c. **Formal complaint**

If the issue has not been resolved by informal means, or if the complainant chooses, the complainant may make a formal complaint. A complaint can be laid at any time. However, Ara encourages any individual that is going to make a formal complaint to do so as soon as they are able.

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It is important to note that formal complaints are not made anonymously. This is because the person being complained about has a right to know who has made the complaint in order to allow them to fully respond to the complaint against them. All information obtained and considered in a formal complaint will be treated as confidential and will only be disclosed in consultation with the complainant and on a 'need to know' basis. Any breach of confidentiality will be taken seriously.

**A formal complaint will initiate an investigation process:**

- In the case of students, this will be in accordance with the relevant **CPP117 Raising Problems or Complaints, CPP117a Raising Problems and Complaints form** and **CPP117c Raising Problems and Complaints procedure**.
- In the case of staff, this will be according to the procedures set out in **CPP208 Resolving Employee Performance or Conduct Issues policy** for staff. Ara may appoint either an internal or external investigator to investigate the allegations.

The outcome of an investigation process could result in disciplinary action being taken against the person complained about.

If in the circumstances it is appropriate that interim measures be put in place while a formal complaint is being investigated, such measures may include (but are not limited to):

- removing the person complained about from the Ara campus (including in the case of an employee, suspension following consultation); and/or
- prohibiting the person complained about from accessing specified parts of Ara and/or its information technology (including online services);
- supporting the complainant to seek assistance or be absent from work/studies for a period of time.

Students or Staff wishing to make a formal complaint should follow the process outline in [Appendix A – Raising a formal complaint](#). Appendix A provides an outline of the process that will follow a formal complaint.

Complaints are to be directed to one of the appropriate individuals as outlined in the supporting [Appendix A](#).

The recipient of a formal complaint will consider the issue and refer to the **relevant staff or student flowcharts and Appendix A** depending on the nature of the complaint and the statute or policy under which the complaint is being made.

Staff members and Students who consider that a crime may have been committed are advised to make a complaint to the Police.

*Note – any conflict of interest must be identified and managed in accordance with CPP102 – Conflict of Interest.*

**Where the alleged perpetrator is a member of staff**, any investigation into the complaint is to follow the appropriate policy and procedures as outlined in:

- CPP211 – Code of Professional Practice for staff
- CPP208 – Resolving Employee Performance or Conduct Issues

The outcome of an investigation process could result in disciplinary action being taken against the person complained about.



**Where the alleged perpetrator is a student**, the investigation must be conducted in accordance with the Learner Responsibilities and Rights policy (APP301 and APP301a).

Where bullying, harassment or discrimination as defined in this policy is found to be carried out by a student the penalties specified in the APP506 Probation policy and/or APP512 Suspension and Refusal-Cancellation of Enrolment policy may be applied.

*Note: staff members and students who consider that a crime may have been committed are advised to make a complaint to the Police.*

*Note: staff members and students who have concerns about harmful digital communications may also seek support and assistance from Netsafe ([www.netsafe.org.nz](http://www.netsafe.org.nz)) also, Ara policy CPP105 – Acceptable use and conduct for ICT users.*

d. **Other forms of resolution**

Complainants can seek resolution through external agencies, such as the New Zealand Police, or the Human Rights Commission.

i Reports to the Police:

- Ara supports the right of Students and Staff Members who have experienced behaviours in breach of this Policy to decide whether they want to report the incident to the Police, or not.
- A Student or Staff Member may decide to make a complaint to Ara, but not report the incident to the Police. Alternatively, a Student or Staff Member may decide to report conduct to the Police, but not to make a complaint to Ara.
- A Student or Staff Member's decision to make a report to the Police will not necessarily preclude Ara from investigating or acting in response to a complaint under this Policy. However, any internal Ara process may have to be suspended pending completion of the criminal process.
- When deciding whether to suspend an internal Ara process pending completion of a criminal process, Ara will consult the Police and the complainant and will consider:
  - the potential for the internal process to negatively impact the criminal process;
  - the potential for the criminal process to negatively impact the internal process; and
  - whether investigating or responding to the incident has the potential to impact adversely on the rights of either or both the complainant or the person complained about.

ii Reports to the Human Rights Commission

- If a complainant is dissatisfied with the outcome of a resolution process, or does not feel comfortable using them, they may raise a complaint with an external agency, such as the Human Rights Commission.

d. **Victimisation and Vexatious Complaints**

All parties must take all reasonable steps to ensure that complainants are not victimized in the process of making a complaint.

Ara also acknowledges that allegations of bullying and/or harassment and/or discrimination are serious matters and can potentially damage an individual's reputation. Intentionally false accusations that are found to be of a frivolous or vexatious nature will be viewed seriously and may result in Ara taking disciplinary action against the complainant.

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e. **Confidentiality**

- i All information relating to alleged or proven breaches of this Policy must be treated strictly in accordance with the requirements of the Privacy Act 2020.
- ii Ara will keep confidential all identifying information relating to a complaint and/or a complainant unless the complainant consents to full or partial disclosure of the information for a specified purpose.
- iii Where disclosure is appropriate and/or required, information must only be disclosed to the extent necessary on a 'need to know' basis.
- iv The obligations of confidentiality in this Policy apply to the complainant, the person complained about, and all those who become aware of the complaint as part of Ara's response. This is necessary to ensure disclosure of details does not adversely affect the investigation of any complaint or disclosure. Notwithstanding the confidentiality obligations, the complainant and the person complained about may disclose information regarding the complaint and/or the complaint process in order to obtain support and/or advice from support persons and/or representatives and/or relevant agencies.
- v There may be some instances where disclosure of information relating to a complaint may be required for Ara to properly investigate the allegation(s). In these circumstances, if consent is withheld, Ara may not be able to fairly investigate the complaint. This could result in no action being taken against the person who has been complained about.
- vi Information must not be disclosed without the complainant's consent, unless the complaint is serious and the relevant Te Kāhui Manukura member and/or Head of Department in consultation with a People and Capability representative, believes that action needs to be taken e.g. in circumstances in which Ara would not be meeting its obligations as a Person Conducting a Business or Undertaking (PCBU) or as a good employer.
- vii The obligation of confidentiality does not prevent Ara from using or disclosing any material necessary to instigate or defend any legal proceedings or make submissions in relation to any enquiry or complaint, or to refer a matter to the Police.

*Note: To the extent that disclosure of details around the complaint could adversely affect the investigation of a complaint, the complainant and the alleged perpetrator are asked to maintain confidentiality in the interests of a fair and reasonable investigative process. This is not intended to limit freedom of speech.*

f. **Records**

- i All individuals involved in any aspect of the support, complaints or discipline processes must familiarise themselves with and observe the principles of data protection as established by the Privacy Act 2020.
- ii The People and Capability department, in the case of complaints involving staff, or the Complaints Coordinator, if the complaint involves a student, are to be consulted about the correct filing and retention of all notes and documents related to complaints under this policy.

[See appendix A for more information.](#)

*Note - Notes taken at meetings will ideally be agreed by all present.*

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## APPENDIX A

### Guidelines to Assist with Addressing Bullying, Harassment and Discrimination

(to be used in conjunction with the information within this policy)

#### 1. Appropriate people/person:

Any of the below people for either students or staff members, can provide information on the Ara policies and are able to discuss options available to you on how to deal with your particular concerns.

Initiating a discussion with one of these people may help to determine whether the behaviour experienced constitutes bullying and/or harassment and/or discrimination and will help you to understand the process and develop options for resolving the concerns.

- **For STUDENTS this might be:**
  - class representative,
  - student advisor, student advocate,
  - programme leader,
  - Head of Department,
  - Complaints Coordinator
- **For STAFF this might be their:**
  - programme leader,
  - Manager
  - Head of Department,
  - P&C Business Partner, or
  - union representative.

#### Other support services:

For students: <https://www.ara.ac.nz/student-services/health-and-wellbeing/counselling/>

For staff: [https://tewaka.sharepoint.com/sites/Int\\_SaW/SitePages/OCP-EAP.aspx](https://tewaka.sharepoint.com/sites/Int_SaW/SitePages/OCP-EAP.aspx)

#### 2. Informal Resolution

- An individual may consider approaching the person or people involved to resolve the concern, by means of direct discussion or by a written communication. In many cases, telling the person concerned that their behaviour is causing distress, explaining why it is unwelcomed and asking for it to stop will be sufficient. Often, the person is not aware that their behaviour is causing distress, and they will stop immediately once told.
- When self-resolution/Direct Discussion is not possible or does not work, initiating a discussion with an appropriate person (as in 1 above,) may help to determine whether the behaviour experienced constitutes bullying and/or harassment and/or discrimination and/or victimisation and will help to understand the process, and develop options for resolving the concerns.
- An informal process can resolve the concerns through dialogue and without a formal complaint. The informal process isn't disciplinary.

#### 3. How to receive/deal with any reported incident

If it is within your responsibility to handle a complaints process, then you should follow the prescribed procedures set out below. If this is not within your area, then follow the [Staff Complaint about a Staff member Flowchart](#), [Staff Complaint about a Student Flowchart](#) or [Student Complaint Process Flowchart](#).

**Any reported incident should be dealt with using the following behaviours as a guideline:**

- treat all complaints seriously;

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- take prompt steps to resolve any complaints;
- treat all complaints with good faith;
- be non-judgmental, impartial and empathetic; and
- aim to resolve complaints in a timely manner without undue delay

#### **Steps to take following receipt of complaint:**

- ascertain the views of the complainant as to what outcome they want;
- advise on options available for resolution of complaints, e.g., self-resolution, anonymous complaint, formal complaint, report to police etc;
- advise the complainant that choosing to resolve the matter informally does not preclude them from pursuing a formal complaint if they are not satisfied with the outcome;
- respect the choice of the complainant;
- advise the complainant that confidentiality does not mean secrecy. However, information is to be disclosed only to those people who Ara believes need to know about the complaint;
- ensure the complainant knows who information will be disclosed to if any disclosure is to be made, and the purpose of that disclosure;
- show any notes taken to the complainant;
- identify and appropriately manage any conflict of interest in management of the complaint;
- advise of any information which will be presented to the alleged perpetrator;
- ensure that complainant knows that they can lodge the complaint outside of the organisation through the relevant legal framework.

*Note – where there is concern that a crime may have been committed, staff members and students are advised to make a complaint to the police.*

#### **4. Raising a formal complaint and the Procedure**

- The complainant should first try self-resolution and/or informal resolution options.
- If the issue cannot be resolved by direct discussions and/or informal means, or if the complainant chooses, the complainant may make a formal complaint.

The following steps provide an outline of what to expect during the formal complaint process. While each investigation will be unique on its facts, all complaints should be resolved in a timely manner.

- i All students should follow CPP117c Ara Student Complaints Procedure.
- ii All Ara staff members should follow the procedure below:

- The staff member advises that there is a problem and submit in writing the nature of the problem and what action they wish to be taken.
- Specific allegations should include dates, times, how the situation has impacted on them, names of any witnesses, if/how they responded.

#### **a) Staff (email or deliver letter to your manager, head of department and/or P&C Business Partner)**

- iii Interim measures may be put in place following a complaint where they are considered necessary to protect one or both parties.
- iv An appropriate Ara Staff Member (or, in some cases, an external investigator) will be assigned to investigate the complaint.
- v All parties can take a support person or representative with them to any meetings or interviews that may occur during the investigation.
- vi Both the complainant and the respondent will be provided with a copy of the investigator's findings and/or report and given an opportunity to provide a response before a decision is made. Redactions may be made to the report/findings before it is provided to one or more parties if it contains information that is not relevant to the person receiving the report/findings.
- vii The investigator's findings and/or report will be provided to the relevant decision-maker.
- viii The respondent will have an opportunity to meet with the decision maker before any decision is made.

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- ix The decision maker will make a decision and communicate their decision to the complainant and the alleged perpetrator.
- x If the decision is that the alleged conduct occurred and was misconduct and/or serious misconduct, the applicable disciplinary process will be followed to determine the appropriate disciplinary action.

*Notes: In the event that the person complained about leaves Ara during the investigation period, Ara will complete its investigation based on the information available.*

**Ara reserves the right not to take action related to:**

- Anonymous or malicious complaints, complaints based on hearsay or if the complainant does not provide sufficient information or does not respond within 30 calendar days.
- Issues raised more than 30 calendar days after an alleged incident/problem occurred (if raised by a member of the general public) or more than 90 calendar days (if being raised by an Ara student).

**5. What should you do if you witness an incident which concerns you?**

You can take action if you witness bullying, harassment or discrimination at Ara. Some ways that bystanders/witnesses can take action are:

- Notice harassment when it occurs – recognise the behaviour for what it is, name it and do not ignore it.
- Talk to the person who is doing the harassment, asking him/her to stop the harassment.
- Encourage the person experiencing the bullying, harassment or discrimination to speak to one of the contacts noted in section 1 above, on the [Staff Complaint about a Staff member Flowchart](#), [Staff Complaint about a Student Flowchart](#) or [Student Complaint Process Flowchart](#) to initiate action.

**6. Privacy, Reporting and Record Keeping**

The responsible manager will provide the Complaints Coordinator with a copy of all documentation relevant to formal student and general public complaints that do not relate to staff. All records collected, generated or used as part of the resolution or determination of a complaint under these procedures will be stored confidentially in Ara's records management systems. Records will be kept in accordance with Ara's CPP114 [Information and Records Management Policy](#), the [Public Records Act 2005](#) and the [CPP109 Disclosing Personal Information about Students and Staff Policy](#).

The Complaints Coordinator will provide a bi-annual written report to the Ara Executive Board. This will include:

- Quantitative and qualitative analysis of the formal complaints received, referred, resolved and withdrawn, and of performance in complaint handling; and
- Recommendations for changes to policy and practice, including the management of complaints.

Ara will publish aggregate data relating to complaints on the Ara website. Care will be taken to ensure that no individual is identifiable based on the information made available <https://www.ara.ac.nz/about-us/complaints/>

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## APPENDIX B

**Examples of what constitutes bullying (non-exhaustive list). These are repeated, persistent behaviours:**

- continually making jokes or demeaning remarks about a person, or making more remarks about one member of a team compared to other team members
- verbal abuse, swearing or name calling
- excluding or isolating individuals
- intimidation
- deliberately ignoring or blanking someone
- assigning meaningless tasks unrelated to a person's role
- deliberately changing rosters to inconvenience particular individuals
- repeatedly demonstrating a clear bias and preferential treatment of one employee over an equally qualified other
- deliberately ignoring routine email or requests from certain individuals, or neglecting to involve a staff member in a work social event likely to be seen as a normal feature of work life
- deliberately withholding information that is vital for effective work performance
- placing demeaning comments on social networking sites
- putting hateful or derisory messages on social media eg attacks on a person's personality or appearance
- abuse of supervisory or managerial authority
- posting negative or defamatory comments on social media about a person
- frequent unwanted requests of another student for assistance with work or assignments
- subjecting one student's work or class contributions to public criticism in a demeaning or derogatory manner
- unrealistic and persistent expectations that a casual staff member or graduate teaching assistant attend unpaid meetings or provide extra support above and beyond what has been agreed in their employment arrangement

Whilst all of these behaviours are unacceptable, some will be considered more serious than others.

**Behaviours that do not constitute bullying (non-exhaustive list):**

- differences of opinion and non-aggressive conflicts
- robust intellectual debate
- evaluative critical comments in the context of assessment of students work
- constructive feedback
- warning or disciplining a member of staff in accordance with Ara's policies and procedures, including managing performance, constructive feedback and the implementation of performance improvement plans
- setting expectations and discussing performance assessments. For example, I might find my manager's behaviour to be unwelcome, but my manager may well be trying to address a performance issue and is entitled to do that
- direction of day-to-day management
- a single incident of unreasonable behaviour unless there is an established pattern
- a manager issuing written or verbal lawful and reasonable work-related instructions to a staff member and expecting them to be carried out

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## APPENDIX C

**Examples of what constitutes harassment (non-exhaustive list). Harassment can take many forms including:**

- unwanted physical contact, ranging from an invasion of space to an assault
- offensive comments, including insults, jokes or gestures, open hostility, verbal or physical threats
- insulting, abusive, embarrassing or patronising behaviour or comments, humiliating, intimidating, and/or demeaning criticism
- spreading malicious rumours about an individual
- putting up pictures of a person on social media without consent
- attacks on the privacy of the individual, for example by putting personal information on social media without their consent
- persistently shouting at, insulting, threatening, disparaging or intimidating an individual
- constantly criticising an individual without providing constructive support to address any performance concerns
- persistently overloading an individual with work that s/he cannot reasonably be expected to complete
- posting offensive comments on social media, including using mobile communication devices
- isolation from normal work or study place, conversations, or social events
- organising team social events at inaccessible locations, preventing a staff member in a wheelchair from attending
- ridiculing someone's weight or body shape
- purposefully 'outing' a gay person in public without their consent
- Stalking, which is defined as a pattern of unwanted behaviour, directed at a specific person, which causes that person to change their routine or feel afraid, nervous or in danger. Examples of stalking behaviours include: repeated, unwanted phone calls, texts, messages, etc. that may or may not be threatening

**Sexual harassment may involve, for example (non-exhaustive list):**

- sexual assault
- requests for sexual favours, or sexual advances
- leering, wolf whistles, obscene gestures, jokes or innuendo
- inappropriate comments or a conversation about a person's sex life or relationships
- unwelcome comments about a person's sexual orientation or gender identity
- displays of sexually offensive material, such as emails, posters, pictures, graffiti, screen savers or text messages
- suggestive or sexual jokes, suggestive behaviour, telephone calls
- uninvited touching, hugging or kissing or other forms of physical contact
- inappropriate invasion of a person's personal space
- persistent comments or images placed on social networking sites, for example Facebook and Twitter
- persistent and unwelcome personal contact after being asked to desist
- deliberately using the wrong name or pronoun in relation to a transgender person, or persistently referring to their gender identity history
- threatening to disclose, or disclosing, a person's sexuality or gender identity to others without their permission

**Racial harassment may include, for example (non-exhaustive list):**

- making offensive remarks about a person's race
- mimicking the way a person speaks
- making jokes about a person's race
- calling people by racist names

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**Gender-based harassment may include (non-exhaustive list):**

- making demeaning or unwelcome comments based on a person's sexual orientation or gender identity
- inappropriate comments or conversation about a person's sex life or relationships
- persistently referring to the gender identity history of a transgender person
- threatening to disclose, or disclosing, a person's sexuality or gender identity to others without permission
- abusive phone calls with comments around a person's gender or sexual orientation
- stereotypical comments which could be interpreted as sexist and make people feel uncomfortable
- Stalking may be characterised by any of the following repeated and unwanted behaviours:
- repeatedly following a person
- persistently contacting, or attempting to contact, a person by any means
- monitoring a person use of the internet, email or any other form of electronic communication
- loitering in any place (whether public or private) with the intention of catching the attention of someone, who does not wish for contact
- interfering with any property in the possession of a person
- watching or spying on a person including through the use of CCTV or electronic surveillance

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## APPENDIX D

### What is unlawful discrimination?

It is unlawful to discriminate against a person based on any of the following grounds of discrimination (contained in the [Human Rights Act 1993](#))

- sex
- marital status
- ethical belief
- religious belief
- colour
- race
- ethnic or national origins
- disability
- age
- political opinion
- employment status
- family status
- sexual orientation

Discrimination can be direct or indirect discrimination. Discrimination is unlawful even if there is no intention to discriminate.

### Which activities are specifically addressed by the laws against discrimination?

Discrimination is unlawful in areas, including:

- recruitment
- terms and conditions of employment
- refusing or limiting access to opportunities for promotion, salary increases, leave or professional development
- termination of employment
- vocational services
- provision of goods and services
- education and employment

Ara has a particular commitment to ensuring a safe, inclusive and equitable environment for underrepresented groups, which include Māori as tangata whenua, Pacific peoples, people with disabilities, people with refugee backgrounds, students from low socio-economic backgrounds, lesbian, gay, bisexual, transgender, intersex (LGBTI, and including people of diverse gender identities).

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## APPENDIX E

### What are some examples of victimisation (non-exhaustive list)?

Examples of victimisation include:

- suggesting to a would-be complainant that it would be better for them (or the team) if they did not make a formal complaint
- threatening behaviour
- disciplinary action that is not otherwise warranted and would not have been taken if a complaint had not been made
- unreasonable change in duties or relocation
- exclusion or isolation
- failure to promote a person or downgrading a performance rating because they are regarded as a 'troublemaker' due to the complaint
- allocating tasks which are not usually part of a person's normal duties because they have made a complaint
- deliberately grading/marking a student's work lower than it warrants

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