



## **HARASSMENT POLICY**

**Policy Code: PM5**

**Version: 3**

**Approved by: Board**

**Approval Date: 30 July 2024**

**Decision No.: B.02.2024.09**

## Contents

1.	INTRODUCTION.....	3
2.	PURPOSE.....	3
3.	ABBREVIATIONS AND DEFINITIONS.....	4
4.	SCOPE AND APPLICABILITY.....	8
5.	LEGISLATIVE FRAMEWORK.....	8
6.	PARTIES RESPONSIBLE FOR IMPLEMENTATION OF THIS POLICY.....	9
7.	CONFIDENTIALITY.....	9
8.	CRIMINAL AND CIVIL CHARGES.....	9
9.	OFFENCES.....	10
10.	SEXUAL HARASSMENT.....	10
10.1.	Behaviour constituting sexual harassment.....	10
11.	EMPLOYEE ASSISTANCE PROGRAMME.....	12
12.	ROMANTIC OR SEXUAL RELATIONSHIPS.....	12
13.	REVIEW OF THIS POLICY.....	13
14.	PROCEDURE: BULLYING, HARASSMENT, SEXUAL HARASSMENT, RAPE, INTIMIDATION AND EXPLOITATION.....	14
15.	VERSION CONTROL.....	16

## 1. INTRODUCTION

The Da Vinci Institute is an accredited private higher distance education provider offering qualifications on NQF levels five to ten, which are registered on the Higher Education Qualifications Sub-Framework (HEQSF). This policy forms part of the institutional Integrated Quality Management System and details the principles for ensuring that programme offerings adhere to academic standards and empower students to contribute to the transformation of their communities, society and the economy of the future. This approach is underpinned by the Business- and Community-based Action Learning discourse on the co-creation and distribution of relevant knowledge.

The Da Vinci Institute believes that:

- All staff and students have the right to be treated with dignity.
- Staff and students are required to respect one another's integrity, dignity, privacy and their right to equity.
- Bullying, harassment, sexual harassment, rape, intimidation and exploitation will not be permitted or condoned under any circumstances and the purpose of this policy is to adopt a zero-tolerance approach towards these behaviours.
- Persons who have been subjected to bullying, harassment, sexual harassment, rape, intimidation and exploitation have a right to lodge a grievance, and to expect that the Institute will take appropriate action.
- Allegations will be dealt with seriously, expeditiously, sensitively and confidentially.

## 2. PURPOSE

The purpose of this policy is to prevent, eliminate and manage bullying, harassment, sexual harassment and rape within The Da Vinci Institute. It is consistent with the Constitution of the Republic of South Africa, which entrenches fundamental human rights as well as the Employment Equity Act, 55 of 1998, that prescribes that the working environment should be free of discriminatory practices, including sexual and other forms of harassment.

The Institute commits itself to the timeous handling of cases of alleged bullying, harassment, sexual harassment, rape, intimidation and exploitation and to ensure that fair procedures and appropriate action is taken to minimise and deal with these matters as soon as allegations are brought to its attention.

The organisation views bullying, harassment, sexual harassment, rape, intimidation and exploitation in any form extremely seriously and disciplinary action, including summary dismissal, may be the outcome.

In turn however, false and malicious claims that cannot be substantiated will also be viewed in a serious light, and disciplinary action including possible dismissal may be the outcome.

Bullying, harassment, sexual harassment, rape, intimidation and exploitation may be committed against both male or female persons by persons of the same or opposite sex without regard to sexual orientation.

### 3. ABBREVIATIONS AND DEFINITIONS

DV	The Da Vinci Institute for Technology Management (Pty) Ltd
----	--

Term	Definition
Accused	The person alleged to have committed an act of harassment, sexual harassment and/or rape and "Respondent" bears the similar meaning.
Bullying	Any abuse of real or perceived power that targets individuals or groups of people unfairly. This includes actions like physical attacks, purposeful alienation, spreading false rumours, verbal abuse and various forms of emotional mistreatment, as well as including any form of cyber-bullying.
Complainant	Either the person who is, or was, subject to alleged act(s) of bullying harassment, sexual harassment and/or rape, namely the survivor, or a person who lodges a complaint under this Policy on behalf of a survivor.
Counsellor	A person appointed by DV to provide psychological and psychosocial services.
Harassment	Defined, in terms of the Protection Against Harassment Act, Act 17 of 2011, as a behaviour characterised by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situation. It causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:  a) Following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, studies or happens to be.

Term	Definition
	<p>b) Engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues.</p> <p>c) Sending, delivering or causing the delivery of letters, messages, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person; or it amounts to sexual harassment of the complainant or a related person.</p>
Investigator	The person appointed by DV to investigate bullying, harassment, sexual harassment, rape, intimidation and exploitation reported cases.
Rape	<p>The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 defines rape as:</p> <p>a) Any person (A) who unlawfully and intentionally commits an act of sexual penetration with a complainant (B) without the consent of B, is guilty of the offence of rape.</p> <p>b) Rape includes using any kind of objects such as fingers, pens, sex toys, etc. used to penetrate complainant without consent.</p> <p>c) Rape is not limited to sexual penetration but include the act of sexual intercourse without consent.</p>
Sexual Harassment	<p>Defined, in terms of the Protection Against Harassment Act, Act 17 of 2011, as:</p> <p>a) Unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome.</p> <p>b) Unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated.</p> <p>c) Implied or expressed promise of reward for complying with a sexually oriented request.</p> <p>d) Implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.</p>

Term	Definition
Workplace bullying	<p>Unwanted conduct, which is persistent, or a single incident, which is serious and demeans, humiliates, or creates a holistic or intimidating environment, or is aimed to induce, through submission or through actual or threatened adverse consequences. It includes any unfavourable or offensive conduct, which has the effect of creating a hostile workplace environment.</p> <p>Workplace bullying includes either physical, verbal, or psychological acts.</p> <p>Workplace bullying as a form of psychological violence and harassment may be perpetrated through repeated behaviour, of a type, which alone may be relatively minor, but which cumulatively can become a very serious form of violence and harassment.</p> <p>Workplace bullying and mobbing include the abuse of coercive power by either an individual or a group of employees/colleagues in the internal or external workplace.</p> <p>Workplace bullying includes a wide range of insulting, demeaning or intimidating behaviour that lowers the self-esteem or self-confidence of an employee including:</p> <ul style="list-style-type: none"> <li>i) Harassing, offending, professionally or socially excluding someone or negatively affecting someone's work tasks.</li> <li>ii) Physical bullying: Examples of physical bullying include physical attack, simulated violence, or gestures (such as raising a fist as if to strike or throwing objects near a person).</li> <li>iii) Tangible/material bullying: Using formal power (i.e. title, position, or supervisory control) or material leverage (i.e. financial, informational, resource or legal) as forms of intimidation, threat, harassment, and/or harm or to dominate and control the complainant.</li> <li>iv) Verbal bullying: May include threats, shaming, hostile teasing, insults, constant negative judgment and criticism, or racist, sexist, or LGBTIQ+ phobia language.</li> <li>v) Passive-aggressive or covert bullying: Examples of passive aggressive and covert bullying include negative gossip, negative joking at someone's expense, sarcasm, condescending eye contact, facial expression or gestures, mimicking to ridicule, deliberately causing embarrassment and</li> </ul>

Term	Definition
	<p data-bbox="491 271 1393 383">insecurity, invisible treatment, marginalisation, social exclusion, professional isolation, and deliberately sabotaging someone's dignity, wellbeing, happiness, success and career performance.</p> <p data-bbox="491 409 1393 483">Examples of this form of violence and harassment may include but are not limited to:</p> <ul style="list-style-type: none"> <li data-bbox="491 510 1054 539">i) Slandering or maligning an employee.</li> <li data-bbox="491 566 1393 651">ii) Deliberately withholding work-related information or supplying incorrect information.</li> <li data-bbox="491 678 1347 763">iii) Deliberately sabotaging or impeding the performance of work.</li> <li data-bbox="491 790 1302 819">iv) Ostracising, boycotting, or disregarding the employee.</li> <li data-bbox="491 846 1393 931">v) Persecution in various forms, threats, and the inspiration of fear and degradation.</li> <li data-bbox="491 958 1393 1043">vi) Deliberate insults, being hypercritical or negative response or attitude or ridicule.</li> <li data-bbox="491 1070 1326 1155">vii) Supervision or surveillance of an employee without their knowledge and with harmful intent.</li> <li data-bbox="491 1182 1393 1267">viii) Offensive administrative punitive sanctions without objective cause, explanation, or efforts to problems solving.</li> <li data-bbox="491 1294 1374 1379">ix) Intolerance of psychological, medical, disability or personal circumstances.</li> <li data-bbox="491 1406 948 1435">x) Demotion without justification.</li> <li data-bbox="491 1462 1062 1491">xi) Humiliation and demeaning conduct.</li> <li data-bbox="491 1518 1019 1547">xii) Abuse of disciplinary proceedings.</li> <li data-bbox="491 1574 1007 1603">xiii) Wrongful conduct causing harm.</li> <li data-bbox="491 1630 1078 1659">xiv) Pressure to engage in illegal activities.</li> <li data-bbox="491 1686 935 1715">xv) Recommendation to resign.</li> <li data-bbox="491 1742 1015 1771">xvi) Spreading of rumours maliciously.</li> </ul>

## **4. SCOPE AND APPLICABILITY**

This policy covers all employees of DV (including part-time and fixed term), applicants for employment, service providers, contractors, trainees, interns, and volunteers (collectively referred to as employees in this policy) as well as students and visitors of DV.

Breach of this policy may be dealt with under the Code of Conduct and the Disciplinary Code and, in serious cases, may be treated as gross misconduct which could result in dismissal.

Complainants have the right to lodge a complaint in accordance with the Standard Operating Procedure: bullying, harassment, sexual harassment and rape. Apart from such right, nothing precludes the complainant from enforcing his/her/their rights in terms of the Protection Against Harassment Act, which rights may include the right to a protection order and warrant of arrest; and the right to lodge a criminal complaint of crimen injuria, assault, trespass, extortion or any other offence that infringes someone's property. The Complainant may further initiate a civil claim for damages, at his/her own cost.

## **5. LEGISLATIVE FRAMEWORK**

This policy is benchmarked against and should be read in the context of the relevant legislation, guides, frameworks, and policies including, but not limited to:

5.1 Constitution of the Republic of South Africa Act 108 of 1996

5.2 Higher Education Act No. 101 of 1997

5.3 Basic Conditions of Employment Act 75 of 1997

5.4 Employment Equity Act 55 of 1998

5.5 Employment Equity Act 55 of 1998: Code Of Good Practice On The Handling Of Sexual Harassment Cases In The Workplace

5.6 Labour Relations Act 66 of 1995

5.7 Protection of Personal Information Act 4 of 2013

5.8 CHE: Distance Higher Education Programmes in a Digital Era: Good Practice Guide

5.9 CHE: Higher Education Quality Committee: Framework for Programme Accreditation

5.10 All relevant DV documents, policies and procedures

## **6. PARTIES RESPONSIBLE FOR IMPLEMENTATION OF THIS POLICY**

- 6.1 The HR Manager has overall responsibility for the effective operation of this policy.
- 6.2 The HR Manager is responsible for monitoring and reviewing the operation of this policy and making recommendations for changes to minimise risks to DV 's operations.
- 6.3 All staff and students are responsible for their own compliance with this policy and for ensuring that it is consistently applied. All staff and students should ensure that they take the time to read and understand it. Any breach of this policy should be reported to HR Manager.
- 6.4 Questions regarding the content or application of this policy should be directed to the HR Manager.

## **7. CONFIDENTIALITY**

Grievances about sexual\_harassment must be investigated and handled in a manner that ensures that the identities of the persons involved are kept as confidential as possible.

In bullying, harassment, sexual harassment and rape disciplinary inquiries all parties concerned must endeavour to ensure confidentiality as far as possible. Only appropriate members of management as well as the complainant, representative, alleged perpetrator, witnesses and interpreter if required, must be present in the disciplinary inquiry.

The Institute is required to disclose to either party or to their representatives, such information as may be reasonably necessary to enable the parties to prepare for any internal or external civil or criminal proceedings.

## **8. CRIMINAL AND CIVIL CHARGES**

The Complainant's right to initiate criminal or civil proceedings is not limited by this Policy.

The HR Manager should ascertain whether the victim or survivor has made a complaint to the South African Police Service (SAPS) and provide support where she/he/they choose to do so.

All victims or survivors will be advised of the support resources that are available to them should they wish to report or lay charges with the SAPS.

## **9. OFFENCES**

Any offences as listed herein must be handled in accordance with the provisions of the Disciplinary Code. The following constitute offences under this Policy:

- Engaging in any form of bullying, harassment, sexual harassment, rape, intimidation and exploitation.
- Intentionally making a false report of bullying, harassment, sexual harassment, rape, intimidation and exploitation.
- Engaging in any form of a retaliatory act.
- Failure on the part of a person in an oversight position to report bullying, harassment, sexual harassment, rape, intimidation and exploitation when such accusation has been brought to his or her attention by a complainant with the intention that he or she should act upon it.
- Failure by the parties involved to treat a report of bullying, harassment, sexual harassment, rape, intimidation and exploitation as confidential.
- Failure to comply with any other duty as set out in this Policy.
- Witnessing an act of bullying, harassment, sexual harassment, rape, intimidation and exploitation, and failure to report it or failure to cooperate with an investigation when it is objectively clear that the survivor of the alleged incident wants to proceed with the disciplinary or criminal enquiry.

## **10. SEXUAL HARASSMENT**

### **10.1. Behaviour constituting sexual harassment**

Sexual harassment includes, but is not limited to the following types of behaviour:

#### **10.1.1. Verbal behaviour of a sexual nature, such as**

- a. Unwelcome innuendoes, suggestions and hints
- b. Unwelcome sexual advances
- c. Unwelcome comments with sexual overtones
- d. Unwelcome sex related jokes or insults
- e. Unwelcome graphic comments about a person's body made in their presence or directed toward them
- f. Unwelcome and inappropriate enquiries about a person's sex life
- g. Unwelcome whistling directed at a person or group of persons
- h. Unwelcome jokes that cause awkwardness or embarrassment
- i. Comments about a person's sexual habits

- j. Verbal threats or abuse
- k. Unwelcome telephone calls with sexual overtones.

#### **10.1.2. Gestures and other non-verbal behaviour**

- a. Unwelcome gestures
- b. Indecent exposure
- c. The unwelcome display of sexually explicit/undesirable pictures and objects
- d. Persistent and unwelcome flirting.

#### **10.1.3. Visual sexual harassment**

- a. A public display of pornographic or other offensive, derogatory and/or sexually explicit pictures, photographs, cartoons, drawings, symbols and other material
- b. Showing of pornographic or sexually explicit movies or slides
- c. Indecent exposure of private parts in view of others
- d. Displaying/sourcing offensive material/jokes on PC's, mobile phones or other electronic devices and/or sending such material to others.

#### **10.1.4. Physical behaviour**

- a. All unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex
- b. Attempted or actual kissing or fondling.

#### **10.1.5. Psychological sexual behaviour**

- a. Repeated unwanted social invitations for dinner, drinks or movies
- b. Sexual favours
- c. Requiring/requesting someone to wear sexy, revealing, or suggestive clothes.

#### **10.1.6. Quid pro quo harassment**

- a. When an alleged perpetrator influences, or attempts to influence a person's employment circumstances by coercing or attempting to coerce that person to engage in sexual activities
- b. when an alleged perpetrator influences or attempts to influence the admission of a student to the Institute by coercing or attempting to coerce that person to engage in sexual activities
- c. when an alleged perpetrator influences or attempts to influence the access of a student to training, organisational or funding opportunities, or interferes in grading or evaluation, by coercing or attempting to coerce that person to engage in sexual activities.

### **10.1.7. Sexual favouritism**

Exists where a person in a position of authority rewards only those who respond to his/her sexual advances, whilst other deserving employees or students who do not submit themselves to any sexual advances are denied employment or student benefits.

### **10.1.8. Behaviour which does not constitute sexual harassment**

The following would not normally constitute sexual harassment:

- a. Occasional compliments
- b. Flirtatious banter when it is mutually acceptable
- c. Forms of greetings that are deemed acceptable per company culture and behaviour
- d. Occasional jokes or other behaviours whereby the intent is not meant to be offensive, except where the perpetrator should have known that the behaviour is regarded as unacceptable.

## **11. EMPLOYEE ASSISTANCE PROGRAMME**

A complainant or an alleged perpetrator who has been found to be innocent or unjustly accused, may apply for assistance in terms of The Da Vinci Institute for Technology Management Employee Assistance Programme for remedial assistance, including the provision of special leave or trauma counselling where such proceedings have impacted on the employee's work performance or psychological well-being.

The Da Vinci Institute will consider various options on a case-by-case basis on possible assistance for the complainant, including but not limited to working from home and counselling paid for by the company, as well as referring them to obtain legal assistance at their own cost.

## **12. ROMANTIC OR SEXUAL RELATIONSHIPS**

DV strongly discourages romantic or sexual relationships between employees, or between students and employees, even if the relationships:

- Are consensual.
- Do not involve any position of authority (such as that of a lecturer who is responsible for the supervision or evaluation of the student's work or that of a line manager who is responsible for supervising the subordinate's work).
- It is mandatory that all parties entering into such relationships declare this to the HR Department.

### **13. REVIEW OF THIS POLICY**

Regular review and amendment of this policy will be done in line with the approved institutional policies and regulatory requirements. This will take place in consultation with the relevant quality assurance structures at departmental and institutional level, under the auspices of the official custodian of this policy, namely the Human Resource Manager.

## **14. PROCEDURE: HARASSMENT**

### **PROCEDURE DESCRIPTION**

This procedure will detail the steps to follow when an accusation of bullying, harassment, sexual harassment, rape, intimidation or exploitation is received.

### **PROCEDURE**

Allegations of bullying, harassment, sexual harassment, rape, intimidation and exploitation need not follow the normal Grievance Procedure and will remain as confidential as possible. Any staff member who believes that he or she has been the subject thereof should report the alleged charge immediately in accordance with the procedure set out below. All information disclosed pursuant to this procedure will be held in strictest confidence and will only be disclosed on a need-to-know basis to investigate and resolve the matter.

In the case of a student who believes that he or she has been the subject of bullying, harassment, sexual harassment, rape, intimidation and exploitation, the procedure as set out in the Procedure: Code of Conduct and the Disciplinary Code must be followed.

Because the immediate supervisor or line manager may be alleged to be involved, the complainant may contact anyone from Human Resources to investigate an allegation. This investigation must be done in consultation with Human Resources or by a management assigned investigator.

The investigator would assure the complainant that the allegation details and the complainant's identity would remain as confidential as possible. The access between the parties involved will be restricted to no contact until the matter was resolved, and the accused could face immediate suspension, summary dismissal or dismissal.

The investigator and the complainant should try to agree whether the complainant wishes the matter to be resolved informally or prefers formal disciplinary action to be taken. Pressure should not however be put on the complainant to either drop or proceed with the complaint/grievance.

### **THE INFORMAL PROCEDURE**

If the complainant prefers informal action, the assigned investigator will call the accused to a private meeting, advise them of the details of the complaint lodged.

The investigator will assure the accused that their identity will remain as confidential as possible until the matter is resolved. The investigator must give the accused an opportunity to state their case; explain the outcome that the complainant requests (an informal settlement) and advise the accused of the possible consequences if proved guilty in a formal disciplinary hearing.

The investigator shall again meet with the complainant, advise him/her of the accused's response and, if the complainant is satisfied, invite both parties to meet to consider resolving and settling the matter without the need for formal disciplinary action, and agree on the best way forward. Included in the meeting should be an impact statement by both parties.

The investigator will assess what support and assistance the complainant may require after settlement, including but not limited to working from home and counselling.

The role of the investigator is that of a mediator.

On being appraised of the allegations, the investigator may of his/her own accord initiate the formal procedures.

### **THE FORMAL PROCEDURE**

If the matter is not settled, or if the complainant or accused wants a formal approach the investigator will investigate the allegation sensitively, interview witnesses, if any, and get written statements, if possible. For accusations that can lead to a criminal offence, the formal procedure should be the preferred one. If the allegations are substantial and serious, and there are reasonable prospects of proving the allegations against the accused on a balance of probability, the normal Disciplinary Procedures in respect of a formal disciplinary hearing, shall then be followed.

The above procedure may differ in two important respects:

- if the complainant wishes, the formal disciplinary hearing will take place in camera, i.e. in private, only the persons directly involved, should attend; and
- the names of the parties shall remain as confidential as possible.

The company's usual disciplinary measures apply, as well as the normal rules regarding appeals. Included in the hearing should be an impact statement by both parties.

The HR Manager to meet with the complainant to sensitise them towards the process and what they can expect.

It is a disciplinary offence to victimise or retaliate against a complainant who in good faith lodges a grievance of bullying, harassment, sexual harassment, rape, intimidation and exploitation, or to pressurise a complainant to drop a complaint of sexual harassment.

In turn it is a disciplinary offence to lay unfounded or unjustified complaints against a fellow employee or a student with the intent to cause malicious harm to them or their reputation. The legal rights of the victim are reserved and are in no way limited.

The HR Manager to meet with the complainant to assist them in preparing for testifying in the disciplinary hearing.

**PROCEDURE TO COMMUNICATE UNWANTED BEHAVIOUR**

Behaviour is considered unwanted if it creates an unfavourable or offensive environment/experience, is demeaning or threatening, and which has the effect of creating a hostile workplace environment and could affect the person's dignity, personality or integrity.

Steps in addressing unwanted behaviour:

- Talk to the other party and ask them to stop the behaviour that makes you feel uncomfortable;
- If you feel uncomfortable about being alone with the other party, ask someone that you trust to accompany you; or
- Write to the other party and tell them that the behaviour makes you uncomfortable and ask them to stop.

**15. VERSION CONTROL**

<b>Version History</b>	<b>Amendment Details</b>	<b>Approval Date</b>	<b>Approval Committee</b>
V1		01/01/2015	
V1		31/07/2017	
V1		19/03/2018	
V2		30/07/2021	
V3		30/06/2024	Board