

Harassment, Bullying and Discrimination Policy

Section 1 - Purpose and Scope

(1) The University aims to create an environment free from harassment, bullying and unlawful discrimination thereby laying the foundation for a productive and positive workplace and educational setting.

(2) This policy sets down the relevant definitions, underpinning principles and the University's commitment to eliminating harassment, bullying and unlawful discrimination within the University.

Scope

(3) This policy applies to all employees, students, contractors and visitors (including workers as defined in the relevant work, health and safety legislation) and individuals who enter into particular relationships with the University such as Visiting Fellows and Adjunct Appointees. Breaches of this policy will be treated as misconduct or serious misconduct and dealt with under the relevant staff and student policies.

(4) This policy applies in any University context, including conferences, work functions, office Christmas parties and business or field trips.

Section 2 - Definitions

(5) For the purpose of this Policy, the following definitions apply:

Harassment

(6) Harassment is defined as behaviour that is directed at a person or group of people which, because of its severity and/or persistence, is likely to create a hostile or intimidating environment and detrimentally affect a person's participation in employment or education. Harassment is determined by reference to the nature and consequences of the behaviour, not the intent of the initiator, and occurs in circumstances where a reasonable person would have expected the behaviour to be offensive, humiliating or intimidating.

Sexual Harassment

(7) Sexual harassment is any unwelcome behaviour of a sexual nature, which makes a person feel offended, humiliated or intimidated. It may involve a single incident or a series of incidents. The [Commonwealth Sex Discrimination Act 1984](#) and the [NSW Anti-Discrimination Act 1977](#) declare sexual harassment to be unlawful.

(8) Sexual harassment may include:

- a. physical contact - e.g. touching, patting, pinching, kissing or embracing someone, deliberately brushing up against someone, sexual assault and rape;
- b. verbal comments - e.g. insults or taunts of a sexual nature, offensive jokes, suggestive comments about someone's appearance or body, persistently inviting someone out, intrusive questions about a person's private life, requests for sexual favours; and
- c. nonverbal actions - e.g. leers, stares, displays of sexually explicit material such as posters, magazines or screen

savers, offensive body and hand movements, sending sexually explicit emails or text messages, suggestive letters and drawings, including email, indecent exposure, stalking, and inappropriate advances on social networking sites.

(9) When identifying sexual harassment, the intent of the person whose behaviour caused offence is largely immaterial, as it is the effect of their behaviour that is relevant. If behaviour is unwelcome and is sexually oriented, and occurs where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that a person would have been offended, humiliated or intimidated by the conduct, then it is sexual harassment.

(10) Sexual harassment is not behaviour which is based on mutual attraction, friendship or respect. If the interaction is consensual, welcome and reciprocated it is not sexual harassment.

Bullying

(11) Bullying is defined as repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

(12) Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time. Unreasonable behaviour means behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

(13) Bullying can be overt or covert. Examples of behaviour that may be considered to be workplace bullying if they are repeated, unreasonable and create a risk to health and safety include:

- a. physical or verbal abuse;
- b. yelling, screaming or offensive language;
- c. unjustified criticism or complaints;
- d. intimidation;
- e. psychological harassment;
- f. deliberately excluding or isolating employees from workplace activities;
- g. withholding information that is vital for effective work performance;
- h. setting unreasonable timelines or constantly changing deadlines;
- i. setting tasks that are unreasonably below or beyond a person's skill level;
- j. denying access to information, supervision, consultation or resources such that it has a detriment to the worker;
- k. spreading misinformation or malicious rumours;
- l. changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular worker or workers;
- m. excessive scrutiny at work.

(14) Bullying does not include:

- a. a single incident of unreasonable behaviour;
- b. reasonable management action taken in a reasonable way, including:
 - i. setting reasonable performance goals, standards and deadlines;
 - ii. rostering and allocating working hours where the requirements are reasonable;
 - iii. transferring a worker for operational reasons;
 - iv. deciding not to select a worker for promotion where a reasonable process is followed and documented;
 - v. informing a worker about unsatisfactory work performance when undertaken in a reasonable manner and/or in accordance with relevant policies and procedures;

- vi. informing a worker about inappropriate behaviour in an objective and confidential way;
- vii. implementing organisational changes or restructuring; and
- viii. termination of employment;
- c. workplace conflict; and
- d. workplace violence.

Discrimination

(15) Discrimination occurs when a person is treated less favourably than another person because of certain attributes. Under federal and state laws, it is against the law to discriminate against people or to harass them, in various areas of public life because of their:

- a. race;
- b. colour;
- c. sex;
- d. sexual orientation, gender identity or intersex status;
- e. pregnancy;
- f. age;
- g. marital status;
- h. physical or mental disability;
- i. family or carers' responsibilities;
- j. religion;
- k. political opinion;
- l. national extraction; and
- m. social origin.

(16) It is also against the law to treat people unfairly, or harass them, because of the age, disability, carers' responsibilities, homosexuality, marital status, race, sex or transgender of any relative, friend or colleague.

(17) Direct discrimination is where someone is treated less favourably because of their sex, age, race, disability, pregnancy or any of the other grounds covered by anti-discrimination legislation.

(18) Indirect discrimination occurs when a requirement, condition or practice that is the same for everyone has an effect or result that is, or is likely to, disadvantage students or staff because of their sex, race, disability etc. For example, a decision to insist that all students complete an examination in a set time, may indirectly discriminate against a student with a vision impairment.

Section 3 - Policy Statement

(19) Harassment or bullying of or unlawful discrimination against employees, students, contractors or visitors (including workers as defined in the relevant work health and safety legislation) by any member of the University community is unacceptable and contrary to University policy. Harassment, bullying and unlawful discrimination may:

- a. create an intimidating hostile, offensive or distressing work or study environment;
- b. adversely affect the health and performance of a person or groups of employees;
- c. lead to increased absenteeism, reduced employee productivity and motivation;
- d. result in the loss of experienced and skilled employees through resignation;
- e. adversely affect a person's admission into a program or progress within a program;

- f. adversely affect a person's recruitment, level of appointment, promotion and progression opportunities;
- g. adversely affect a person's access to and/or participation in the range of educational opportunities, support services, social and recreational facilities provided by the University;
- h. adversely reflect on the integrity and standing of the University; and/or
- i. increase the risk of the University as an employer and an educational institution to be exposed as being vicariously liable.

(20) The University expects employees, students, contractors (including workers as defined in the relevant work health and safety legislation) and visitors and individuals who enter into particular relationships with the University, such as Visiting Fellows and Adjunct Appointees, to ensure that their behaviour meets appropriate standards and contributes to a productive workplace and learning environment.

Principles, Obligations and Responsibilities

(21) The [Work Health and Safety Act 2011](#) imposes an obligation on all employees, students, contractors and visitors (including workers as defined in the relevant work health and safety legislation) to take reasonable care for their own health and safety, and to take reasonable care that their acts or omissions do not adversely affect the health and safety of others. This includes incidents of harassment, bullying and unlawful discrimination.

(22) Reports and complaints of harassment, bullying and unlawful discrimination will be treated seriously by the University and will be investigated promptly in a sensitive, thorough and confidential manner ensuring that complainants and witnesses are not victimised.

(23) The principles of natural justice apply and will guide the application of this policy and associated policies and procedures. This means that before a decision is taken about them, respondents to a complaint have the right to:

- a. be informed about the nature and content of the issue;
- b. be heard; and
- c. have an unbiased decision maker.

(24) All managers have a responsibility to:

- a. ensure the Harassment, Bullying and Discrimination Policy is adhered to; and
- b. take appropriate action in circumstances where they become aware of existing or possible harassment, bullying or unlawful discrimination.

(25) The complaint resolution process is carried out in good faith and complaints that are frivolous, vexatious, misconceived or lacking in substance will be rejected if a preliminary investigation of the facts indicates this.

Resolution Options

(26) The University encourages the resolution of issues directly and informally through a process of discussion and conciliation where possible. This may involve seeking advice from a supervisor, HR Services, the Head, Equity and Diversity or Student Equity Officer.

(27) At any stage, strategies used to resolve a complaint may include, but need not be limited to:

- a. mediation;
- b. counselling; or
- c. conciliation meetings between the parties.

(28) If the informal options do not work or are not appropriate, employees can make a formal complaint in writing under the [Complaint Policy - Staff](#).

(29) Students, contractors and visitors can make a formal complaint under the [Complaints Policy - Students and Members of the Public](#).

(30) Complaints may also be referred to an external body, such as the Anti-Discrimination Board of NSW, the Australian Human Rights Commission or the Fair Work Commission.

(31) In cases of assault or other criminal activity, the Police should be contacted.

Equity and Diversity Contacts

(32) [Equity and Diversity Contacts](#) are located on each campus as a point of contact for employees and students about equity issues including possible discrimination or harassment complaints. Equity and Diversity Contacts are volunteer employees, appointed by the Deputy Vice Chancellor (Education), who have undertaken training for their role.

(33) Equity and Diversity Contacts can:

- a. assist an employee or student to clarify a situation;
- b. identify the nature of an enquiry/complaint and provide information on the scope of University policies and procedures and the possible options available to resolve a matter; and
- c. inform the person about the key principles underpinning the University's framework and, in particular, confidentiality, natural justice and rights of all parties.

(34) The Equity and Diversity Contact role does not include advocacy.

Support

(35) Support is available to employees through the [Employee Assistance Program](#) which provides free, confidential, off-campus counselling and advice.

(36) The University's [Student Counselling Service](#) provides support for students.

Status and Details

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Enquiries Contact	HR Services