



MONASH University

Discrimination and Sexual Harassment Grievance Procedures

Equity and Diversity Centre

Student and Community Services Division

Eo@adm.monash.edu.au

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DISCRIMINATION AND SEXUAL HARASSMENT GRIEVANCE PROCEDURES

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1. POLICY, PRINCIPLES AND SCOPE OF DISCRIMINATION AND SEXUAL HARASSMENT GRIEVANCE PROCEDURES

1.1 Monash University's commitment to Equal Opportunity

- 1.1.1 Monash University's (the "University") Global Equal Opportunity Policy (<http://adm.monash.edu/sss/equity-diversity/equal-opportunity/policies/globaleopol.html>) is a statement of the University's commitment to providing an environment where students and staff are able to work effectively, without fear of discrimination and sexual harassment. The University has established the Discrimination and Sexual Harassment Grievance Procedures in recognition of its commitment to equal opportunity in education, employment and the provision of goods, services, accommodation, sport and clubs, and its obligations under Australian State and Commonwealth equal opportunity and anti-discrimination legislation.
- 1.1.2 These procedures can be used to resolve complaints of sexual harassment or of direct/indirect discrimination on the basis of one of the following attributes:
- race, colour, national or ethnic origin, nationality;
 - sex or gender, lawful sexual activity, gender identity, marital status, pregnancy or potential pregnancy, breastfeeding, status as a parent or a carer;
 - religious or political belief or activity, industrial activity;
 - age, physical features, disability (past, present or imputed), medical record;
 - personal association with a person who is identified by reference to any of the above listed attributes; or
 - on any other ground which the University Council shall after due consideration determine to be a basis of discriminatory practice.
- 1.1.3 These procedures may also be used to resolve complaints of:
- Racial or religious vilification; and
 - Victimisation as a result of having been involved in a complaint of discrimination, sexual harassment or vilification.
- In order for the claim of victimisation to be brought under these procedures the University must have jurisdiction over the parties involved and the initial complaint must have included an allegation of discrimination, sexual harassment or vilification.
- 1.2.1 The Discrimination and Sexual Harassment Grievance Procedures cover University staff who are:
- employed for any number of hours;
 - on a fixed term contract or in a continuing position;
 - in academic, general or technical/trades positions; or
 - visiting academics

The University's policy applies to University staff on all Australian and International campuses and while engaged in all work-related activities

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such as conferences. These procedures cannot be used where the respondent is an employee of another organisation.

In the event of a discrimination or sexual harassment matter arising between University staff in the course of their work and a person not employed by the University, the University, as part of its duty of care towards its staff, will liaise with the other employer to ensure that the matter is dealt with promptly using the most appropriate procedures, and will emphasise the employer's obligation to ensure protection against discrimination, sexual harassment and vilification.

1.2.2 The Discrimination and Sexual Harassment Grievance Procedures apply to all students, whether they are:

- HECS or full-fee paying;
- part-time or full-time;
- enrolled through the Community Access Program;
- on camps, conferences or field trips as part of their studies;
- residents of University-owned accommodation;
- on any University campus;
- enrolled in courses which are conducted at the University; or
- visiting students from other Universities.

The procedures cover students on all Australian and International campuses of the University and for off-campus activities that are directly related to a student's course or any activities organised by a University club or society.

Students on school, hospital, community or industrial placements are covered by the policies of the organisations with which they are placed. In the event of a discrimination or sexual harassment matter arising while on placement, the University, as part of its duty of care towards its staff and students, will liaise with the other organisation to ensure that the matter is dealt with promptly using the most appropriate procedures, and will emphasise the organisation's obligation to ensure protection against discrimination, sexual harassment and vilification.

1.3. Guiding Principles

1.3.1 The University will ensure that all members of the University community have access to the information and support needed to prevent discrimination, sexual harassment and vilification or to deal with it appropriately if it occurs.

1.3.2 The University encourages informal resolutions of discrimination, sexual harassment and vilification grievances in the first instance, as close to the source as possible, with the option of conciliating or investigating the complaint if necessary.

1.3.3 Those responsible for advising, conciliating or investigating a complaint must act fairly and impartially, they must act without bias and avoid any conflict of interest. The respondent must be given a fair opportunity to

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know the case against him or her and to be given the opportunity to make a considered response.

- 1.3.4 All staff, students and persons involved with the University grievance procedures will be treated with respect and courtesy. Enquiries and complaints will be dealt with in a sensitive, equitable, fair, and confidential manner. All attempts will be made to deal with matters expeditiously while ensuring all parties are provided with sufficient time to prepare and or respond.
- 1.3.5 It is of paramount importance and in the best interests of all parties that confidentiality is maintained during these procedures. (See 6.5 Confidentiality and Privacy for clarification).
- 1.3.6 Wherever it is appropriate, steps will be taken to ensure harmonious working relationships during and after conciliation and investigation. The University will endeavour to ensure that staff members or students using these procedures are not victimised.
- 1.3.7 The University encourages the reporting of behaviour that breaches equal opportunity policy, but will not tolerate vexatious or frivolous complaints.

1.4 Operation

- 1.4.1 The University has adopted a model of dispute resolution which recognises that in some circumstances it may be best for an individual to act to resolve the grievance by discussing it with the person concerned. If this is not appropriate, or has proved unsuccessful, a method of resolving complaints through discussion and co-operation will be made available, which aims to assist the parties to reach agreement on an acceptable outcome. In addition, a process for determining a formal complaint is provided should conciliation be inappropriate or prove to be unsatisfactory.
- 1.4.2 The grievance resolution process comprises three stages:
 - **Stage 1: Advice**
 - **Stage 2: Conciliation**
 - **Stage 3: Investigation and Determination**
- 1.4.3 Stages 1 and 2 are informal processes. They allow parties to make informed decisions and assist them in resolving the issue through negotiation. They do not involve an investigation or the weighing of evidence.
- 1.4.4 Stages 1 and 2 are also sequential. Conciliation only occurs after the person who thinks they have been discriminated against, vilified, victimised or sexually harassed has consulted an Adviser and requested them to arrange for conciliation to occur.

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When a person discovers that it has been alleged that they discriminated vilified or sexually harassed another person and wishes to request Conciliation they would do so after having consulted an Adviser.

- 1.4.5 Stage 3 is a formal procedure and will only be used when the matter cannot be resolved informally. It involves the making of a formal complaint, an investigation of the allegation of discrimination, sexual harassment, vilification or victimisation, and an outcome being imposed on the parties.
- 1.4.6 The University will maintain a structure of Discrimination and Harassment Grievance Advisers (Advisers) and Discrimination and Harassment Grievance Conciliators (Conciliators) to ensure that there is a group of trained and experienced persons to provide advice on and support for these Procedures and to offer conciliations when requested.
- 1.4.7 The right of individuals to make complaints externally under relevant state and federal legislation is not affected by any involvement under this Policy and Procedures.
- 1.4.8 Circumstances may arise which require a matter commenced under these Procedures to be dealt with under the provisions of a relevant workplace agreement or the staff or student disciplinary procedures. In such an instance the process under these procedures will cease until such time as the other proceedings are completed.
- 1.4.9 Only under exceptional circumstances may the University's Discrimination and Sexual Harassment Grievance Procedures be invoked to resolve a concern or complaint more than 12 months after the date on which the latest incident of discrimination, vilification, sexual harassment or victimisation is alleged to have taken place.

2.1 Role of Advisers

2.1.1 Any person seeking assistance from an Adviser in the first instance is referred to as the 'client'. The person with whom they are experiencing some difficulty is referred to as the 'other party'.

2.1.2 The role of the Adviser is to act fairly and impartially to provide information and support in confidence to:

- members of the University community who perceive that they may have experienced sexual harassment or discrimination or who believe an allegation of sexual harassment or discrimination may be or has been made against them;
- staff members or students who believe that they have been vilified on the basis of their race or religion or who believe that an allegation of vilification may be or has been made against them; and
- staff members or students who believe they have been victimised on account of taking action or being presumed to have taken action under these procedures.

2.1.3 The role of Adviser is to ensure that the client (who subsequently may become a first party, second party, complainant or respondent) is able to make an informed choice about further action. The same Adviser will not deal with more than one client in any particular case.

2.1.4 Assistance provided by the Adviser to the client includes:

- listening seriously and impartially to the concerns and perceptions of the client;
- explaining the University's policy on discrimination, sexual harassment and vilification and the procedures available for resolving complaints;
- exploring possible strategies by which the client might act to resolve the difficulty, for example - approaching the person with whom they have a concern; writing a confidential letter; requesting the assistance of the appropriate manager or supervisor; requesting the assistance of a conciliator; or assisting the client to make a request to the Deputy Vice-Chancellor with executive responsibility for equal opportunity (the "relevant Deputy Vice-Chancellor") for the matter to be investigated;
- providing information about rights under the relevant legislation, including the right to complain to a relevant external body;
- encouraging clients to identify and seek out the type of support that they need;
- assisting the client to formulate a written summary of their concerns for conciliation, the wording of such a document to be checked by the Director, Equity and Diversity Centre or nominee prior to being sent to the other party;
- providing appropriate support to the client until the matter is resolved, under these procedures; and
- consulting with the Director, Equity and Diversity Centre in relation to approaching a Head of Department or relevant manager to ensure

2 STAGE 1: ADVICE

good working relationships during and after the process of resolving the matter.

- 2.1.5 An Adviser should explain to the client that they are not providing legal advice and that the client is free to consult a lawyer.
- 2.1.6 If an Adviser believes that the offence of stalking may have been committed the Adviser will inform the Director, Equity and Diversity Centre who will determine whether these or other procedures should be followed. The client may also be referred to the Investigation Liaison Supervisor for appropriate support.

In the event that a member of staff is implicated the University Solicitor's Office will be notified. In the event that a student is implicated the Associate Dean, Teaching of the appropriate faculty will be notified.

- 2.1.7 If the complaint involves sexual assault or some other criminal offence of a sexual nature that has occurred on University property, the Adviser will inform the client that the Investigation Liaison Supervisor can assist them if they choose to report the matter to the police. The Adviser should also provide advice on contacting a sexual assault centre or relevant campus service as requested in addition to any options under these Procedures.
- 2.1.8 The Adviser will not disclose any information about the client without their consent. However, the Adviser may disclose to the Director, Equity and Diversity Centre, information about criminal acts or his/her belief that one of the parties may pose a threat to an individual or the community. The Director, Equity and Diversity Centre will then consult as necessary and take appropriate action.

2.2 Appointment of Advisers

- 2.2.1 The relevant Deputy Vice-Chancellor may, after receiving the advice of the Director, Equity and Diversity Centre, appoint a sufficient number of male and female Advisers to provide access to staff and students on all campuses.
- 2.2.2 Prior to recommending the appointment of Advisers the Director, Equity and Diversity Centre will consult widely to ensure that Advisers represent as broad a range of employment and study areas as possible and reflect the whole University community as far as practicable.
- 2.2.3 The names of Advisers will be widely publicised to staff and students on all campuses.
- 2.2.4 Advisers shall be members of staff who have been trained in interviewing techniques appropriate to alleged discrimination, sexual harassment and vilification and briefed on relevant legislation and procedures, prior to appointment.
- 2.2.5 The Director, Equity and Diversity Centre shall arrange the initial training of Advisers, provide continuing support and advice and convene regular meetings of the Advisers to discuss operation of the procedures.

2.2.6 The relevant Deputy Vice-Chancellor may, after receiving the advice of the Director, Equity and Diversity Centre, cancel the appointment of an Adviser.

2.3 Record keeping and reports

2.3.1 The University is committed to maintaining privacy of personal information. All personal information collected under the Discrimination and Sexual Harassment Grievance Procedures will be held and used in accordance with the Information Privacy Principles in the Information Privacy Act 2000 (Vic), and the Health Privacy Principles in the Health Records Act 2001 (Vic).

2.3.2 Clients should be informed that:

- Advisers will keep confidential notes on inquiries or complaints sufficient to act as a memory aid. These notes will be kept in folders clearly marked **Strictly Confidential** and stored in locked cabinets to which only Advisers have access;
- Notes should be kept in hard copy format only. Notes are the property of The University not the client or the Adviser and as such are subject to privacy legislation;
- Clients have the right to access these in accordance with the provisions of privacy laws;
- Advisers are encouraged to keep notes to a minimum stating only facts and relevant details as described by the client. Advisers should record the outcome of each interview and where appropriate have the client initial these as a correct record. The outcome could include the client's preferred choice of action (if any) at that stage and any undertaking the Adviser makes to the client. All follow up or subsequent contacts should be noted in the same way; and
- These notes will be kept securely for a period of 60 calendar days.

2.3.3 Depending on the decision by the client to proceed with the matter, the following then occurs:

- (a) If the client decides to proceed under Stages 1, 2 or 3 of the Discrimination and Sexual Harassment Grievance Procedures, Advisers retain their notes securely until their support is concluded; or
- (b) If the client decides not to proceed under the Discrimination and Sexual Harassment Grievance Procedures, or has made no clear decision, the Adviser transfers his or her notes to the Director, Equity and Diversity Centre. The notes will be stored securely in the Equity and Diversity Centre with access strictly limited to the Director, Equity and Diversity Centre or nominee and the Adviser for a period of three years; and
- (c) Advisers will provide the Director, Equity and Diversity Centre with a summary report in standard format for each case.

2.3.4 The summary report will not identify the names of the individuals involved. It should identify faculties, academic support or administrative units so that the Director, Equity and Diversity Centre can take appropriate action,

2 STAGE 1: ADVICE

but in such a way that an individual's identity could not reasonably be ascertained. It should also include the nature of the complaint, the gender and status of parties, the method of resolution arising from the Adviser contact, and any outcome.

- 2.3.5 Summary reports received by the Director, Equity and Diversity Centre are used primarily for statistical purposes to inform future preventative educational strategies.
- 2.3.6 All notes are kept by Advisers for 60 calendar days or until the matter is resolved. The notes are then transferred to the Director, Equity and Diversity Centre where they will be held securely for a minimum of three years.

3.1 Definition of Conciliation

3.1.1 Conciliation is a process in which the parties to a dispute, with the assistance of a neutral third party (the Conciliator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The Conciliator may have an educative or advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The Conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, and may actively encourage the parties to reach an agreement.

3.2 Process of Conciliation

3.2.1 Where a client selects to move onto Stage 2 and requests conciliation they are now referred to as the 'first party'. The other party who is invited to attend the conciliation is now referred to as the 'second party'.

3.2.2 Where conciliation is requested, an Adviser will refer the matter to the Equity and Diversity Centre, and a Conciliator will be assigned to the process. The purpose of conciliation will be to assist the parties to reach an agreed solution to the problem, with a view to enabling them to continue to work or study in a manner satisfactory to both.

3.2.3 Once the request for conciliation has been received, the second party will be approached with an invitation to attend a confidential conciliation conference. The second party will receive information about the conciliation procedure, a list of Advisers who can be contacted for further information and support, and a written outline of the matters to be discussed at conciliation. Usually, a week's notice of a conciliation conference will be provided.

3.2.4 The calling of a conciliation conference does not imply that there is a case to answer. It is not the Conciliator's role to make a formal finding, but to assist the parties to reach a mutually agreed resolution to the problem.

3.2.5 Each party may elect to be accompanied to the conference by an Adviser, colleague or some other person of his/her choice, but not a person who is a currently practising solicitor or barrister. The role of the accompanying person is to assist the client, not to act as an advocate.

3.2.6 The Conciliator is responsible for managing the process, and should ensure that both parties:

- (a) have the opportunity at the conference to state their views on the matter and their desired outcome in the presence of the other, or separately at any stage of the process; and
- (b) are treated fairly and impartially and assisted to reach an agreed resolution without coercion.

The process may be terminated if in the Conciliator's view there can be no further progress made.

3 STAGE 2: CONCILIATION

- 3.2.7 If the parties and the Conciliator agree, the Head of Department or relevant manager or any other person may be invited to attend a conciliation conference to assist in formulating a resolution.
- 3.2.8 If agreement is reached, the parties will be asked to sign a confidential written record of the agreement at the end of the conciliation conference. The Conciliator will sign as witness to the agreement.
- 3.2.9 A Conciliator will not disclose any information about the parties without their consent. However, a Conciliator may disclose to the Director, Equity and Diversity Centre, information about criminal acts or his/her belief that one of the parties may pose a threat to an individual or the community. The Director, Equity and Diversity Centre will then consult as necessary and take appropriate action.
- 3.2.10 Without disclosing information about the parties the Conciliator will follow up with the Director, Equity and Diversity Centre so as to capture details of the method of resolution, outcome, and any ongoing monitoring required.
- 3.2.11 Evidence of anything said or done during conciliation will not be admissible in any other action taken under these or other University procedures, or any formal legal mechanisms external to the University.
- 3.2.12 If conciliation has not been successful in reaching an agreement, the parties have the option of proceeding to Stage 3.

3.3 Appointment and Training of Conciliators

- 3.3.1 A small number of Advisers will receive additional specialist training in conciliation before they can be appointed as Conciliators. An Adviser will not act as a Conciliator in any matter in which he or she was initially consulted by one of the parties.
- 3.3.2 Where appropriate, the University may appoint a suitably qualified external Conciliator.
- 3.3.3 The relevant Deputy Vice-Chancellor may, after receiving the advice of the Director, Equity and Diversity Centre, cancel the appointment of a Conciliator.

3.4 Record keeping and reports

- 3.4.1 The University is committed to maintaining privacy of personal information. All personal information collected under the Discrimination and Sexual Harassment Grievance Procedures will be held and used in accordance with the Information Privacy Principles in the Information Privacy Act 2000 (Vic), and the Health Privacy Principles in the Health Records Act 2001 (Vic).

3 STAGE 2: CONCILIATION

- 3.4.2 Conciliators will keep sufficient confidential notes as are necessary to conduct the conciliation process. If the conciliation continues over a period of time the notes should be kept locked in a secure place and destroyed at the conclusion of the process.
- 3.4.3 A secure file record will be kept by the Director, Equity and Diversity Centre of the names of the persons participating in the conciliation and the dates of any meetings.
- 3.4.4 No other records of the conciliation process will be kept unless it forms part of a written agreement. If a confidential written agreement is an outcome of conciliation, the parties may retain a copy and one is kept securely by the Director, Equity and Diversity Centre.
- 3.4.5 All records of conciliations will be kept securely by the Director, Equity and Diversity Centre for a minimum of three years.

4.1 Request for Investigation and Determination

- 4.1.1 Investigation and Determination can be requested following Stages 1 and 2, or as a particular request where a party, does not consider that Stage 2 is an appropriate method of dispute resolution.
- 4.1.2 At Stage 3 the person who thinks they have been discriminated against, vilified, victimised or sexually harassed is called “the Complainant”, the person against whom the complaint is made is called “the Respondent” and the concern that has been raised is called “the complaint.”
- 4.1.3 A staff member or student who believes that he or she has been:
- (a) Subject to discrimination, sexual harassment or vilification, or
 - (b) victimised as a result of action taken or the presumption of action taken under these procedures, or
 - (c) subject to an allegation of discrimination, sexual harassment or vilification;
- may make a confidential written request for a formal investigation to the relevant Deputy Vice-Chancellor.
- 4.1.4 Before making a request to investigate a staff member or a student is required to consult an Adviser who will provide information and support and explore possible strategies for resolution, including conciliation.
- 4.1.5 A request to investigate should be addressed to the relevant Deputy Vice-Chancellor, marked 'Strictly Confidential' and provided to the Director, Equity and Diversity Centre, within twelve months of the last incident which is the subject of the complaint. In exceptional circumstances a request to investigate received by the relevant Deputy Vice-Chancellor outside the 12 month period will be considered.
- 4.1.6 The request to investigate must be supported by a written statement setting out the details of the complaint and setting out in full the allegation that is being made against the respondent. The complainant must sign and date the written statement in the presence of the Adviser, or the Director, Equity and Diversity Centre if no Adviser is involved.

4.2 Action on requests to investigate

- 4.2.1 On receipt of a written request to investigate a complaint of alleged discrimination, sexual harassment, vilification or victimisation the complaint will be forwarded to the University Solicitor's office. After considering the matter, a University Solicitor will forward the complaint to the Deputy Vice-Chancellor together with a recommendation on the appropriate method of proceeding to resolve the complaint. The Solicitor's recommendations may include:
- investigation by a panel;
 - action under alternative University disciplinary procedures for staff or students;

4 STAGE 3: INVESTIGATION AND DETERMINATION

- referral of the matter to an internal or external Conciliator;
- an alternative procedure consistent with equal opportunity principles and procedural fairness which is appropriate in the circumstances of the case; or
- any other legal course of action where appropriate, including suspension for a staff member during the process of resolving the complaint, provided such suspension is in accordance with the staff member's workplace agreement or contract of employment.

The relevant Deputy Vice-Chancellor may decline to investigate a complaint if it is deemed to be frivolous, vexatious, misconceived or lacking in substance.

4.2.2 The relevant Deputy Vice-Chancellor shall, on the advice of the University Solicitor's Office to continue to process a complaint under these procedures, immediately make available a copy of the Complainant's statement to the Respondent, who will have 20 calendar days to reply. The relevant Deputy Vice-Chancellor may grant an extension of time in special circumstances. The Respondent may seek assistance from a person of his or her choice with the preparation of the reply and will be advised of assistance available within the University.

4.2.3 The relevant Deputy Vice-Chancellor shall appoint a panel as soon as practicable which will meet within a reasonable time of the receipt of the Respondent's reply. The panel will investigate report and make recommendations on appropriate action. Both sexes must be represented on the panel, which will consist of the following members:

- (a) nominee of the relevant Deputy Vice-Chancellor (convener) who will have expertise in equal opportunity law and/or the appropriate experience to convene such a panel; and
- (b) a nominee of the relevant Deputy Vice-Chancellor or at the request of the Respondent, either
 - (i) the Chair of the Monash University Staff Implementation Committee or his or her nominee, where the Respondent is a staff member; or
 - (ii) the president of the appropriate student association, where the respondent is a student; and
- (c) a third person agreed to by the two members above.

Parties will be notified of the names of the panel members as soon as is practicable. Should either party wish to object to one of the panel members appointed under (b) or (c) above they should write to the Director, Equity and Diversity Centre outlining their concerns within 7 calendar days of receipt of this notification.

4.3 Proceedings of the Panel

4.3.1 The role of the panel is not to conciliate but to investigate, determine the facts in dispute and make recommendations about appropriate resolution.

4 STAGE 3: INVESTIGATION AND DETERMINATION

The panel will be guided in all its investigations by the principles of equal opportunity law, University policy and the principles of procedural fairness. Therefore, a respondent is entitled to:

- (a) have in writing the full particulars of any allegations and the identity of the person(s) making them, and
- (b) have sufficient time after receipt of the full particulars of any allegations to prepare a considered response.

The University will make every endeavour to provide a process for the complaint to be dealt with promptly where both parties will have a chance to speak, to question the other, and to comment on any documents tabled.

- 4.3.2 It is the role of the panel to decide on the most appropriate and effective procedures to be followed in the particular case and to provide a rationale for this decision.

An inquiry hearing may be delayed due to a panel members' prior teaching or other commitments.

- 4.3.3 Each party may elect to be assisted at the panel sessions by an Adviser, colleague, or other person (excluding a currently practising solicitor or barrister).
- 4.3.4 Each party may elect to speak for themselves or through the person assisting.
- 4.3.5 Each party may request that the panel interview witnesses and the panel may also call its own witnesses and make any inquiries it considers necessary.
- 4.3.6 After investigation the panel will first consider whether the complaint is substantiated and then consider the formulation of appropriate recommendations.
- 4.3.7 Proceedings of the panel will be held in confidence and no information about the investigation will be disclosed except to a person to whom disclosure is consistent with his or her official position and responsibilities.
- 4.3.8 Should the respondent fail to submit a written reply to the complainant's allegation or refuse/fail to appear in person before the panel, the panel may meet and make a determination on the complaint after investigating the matter and without having heard from the respondent.

4.4 Substantiated complaints - outcomes

- 4.4.1 If a complaint is found to be substantiated, the panel shall recommend that the relevant Deputy Vice-Chancellor:
- arrange counselling for the respondent; and / or
 - censure the respondent; and / or

4 STAGE 3: INVESTIGATION AND DETERMINATION

- warn the respondent that any repetition of the conduct may be regarded as serious misconduct under the University's disciplinary procedures; or
- advise the Vice-Chancellor to institute disciplinary action under the relevant workplace agreement or the staff or student disciplinary procedures, or
- that the University seek legal advice as to whether the panel's finding would constitute grounds for dismissal.

In making its recommendations, the panel may consider evidence that the Respondent has been counseled or warned as a result of previous complaints.

4.4.2 The panel may recommend that the relevant Deputy Vice-Chancellor take such action as is necessary to:

- restore the complainant to at least the same standing as at the time when the incident(s) occurred;
- repair any pecuniary loss such as legal fees, salary, medical fees, which may have been suffered by the complainant as a consequence of the behaviour giving rise to the complaint or the making of the complaint; or
- take relevant steps to prevent the complainant from being disadvantaged or subjected to reprisals of any kind by any person by reason of making the complaint.

4.4.3 The panel may make such other recommendations as it considers necessary to:

- resolve the problem;
- prevent similar problems arising in future;
- ensure the continuation or restoration of good workplace relationships or an effective learning environment.

4.5 Complaints not substantiated

4.5.1 Where the complaint is found not to be substantiated, the relevant Deputy Vice-Chancellor will so advise the complainant and the respondent, and if necessary, the relevant Deputy Vice-Chancellor will take relevant steps to prevent the complainant or the person against whom the complaint is made being subjected to reprisals or discrimination of any kind by any person by reason of the complaint having been made.

4.5.2 If the panel finds that the complaint was made in bad faith it shall so advise the relevant Deputy Vice-Chancellor who may consider taking appropriate action.

4.6 Report of the Panel

4.6.1 The panel will give reasons for its determination in a written report to the relevant Deputy Vice-Chancellor, normally within 60 calendar days of the

4 STAGE 3: INVESTIGATION AND DETERMINATION

conclusion of the investigation. A copy of the panel's report will be made available to the complainant and the respondent.

- 4.6.2 The relevant Deputy Vice-Chancellor will ensure that the complainant and the respondent are informed in writing of the findings of the investigation and of any action to be taken as a result as soon as practicable in the circumstances.

4.7 Review of Panel determination process

- 4.7.1 No appeal can be made in relation to the finding as to whether or not discrimination, sexual harassment, vilification or victimisation has occurred, or in regard to panel recommendations. The complainant or respondent may request a review by the Vice-Chancellor on the grounds that the investigation was not conducted in accordance with procedures set down in this document. If such a review were to establish that the procedures had not been followed a new panel would be formed to re-hear the complaint.
- 4.7.2 A request for review must be forwarded to the Vice-Chancellor by a party within 7 working days of that party receiving written advice of the outcome of the Stage 3: Investigation and Determination. The Vice-Chancellor must nominate an independent senior member of staff to undertake the review and report on his or her findings within 14 working days.

5.1 Staff and students

- 5.1.1 Staff and students are responsible for ensuring that their own behaviour contributes to the maintenance of a learning and work environment free from all forms of discrimination, sexual harassment, and vilification.

5.2 Managers and supervisors

- 5.2.1 University staff with supervisory or managerial responsibilities must take all reasonable steps to ensure that the work or learning environment for which they are responsible is free from discrimination, sexual harassment and vilification.

- 5.2.2 Supervisors, managers and heads of department are expected to familiarise themselves with these procedures and are required to:

- Ensure that their behaviour provides a model of conduct in line with the principles of the policies underpinning these procedures;
- Ensure that staff and students in their area are aware of these procedures by initiating appropriate training and education, and as far as it practicable, ensure that the provisions within them are adhered to;
- Remain informed about developments in the University's Discrimination and Sexual Harassment Grievance Procedures, for example, by attending training and briefing sessions;
- Inform staff and students that unlawful discrimination, sexual harassment and vilification will not be tolerated in the workplace and learning environment;
- Take all reasonable steps to prevent discrimination, sexual harassment and vilification in the areas for which they are responsible, seeking advice from the Director, Equity and Diversity Centre as needed; and
- Exercise appropriate authority if they observe, or are informed of, unacceptable behaviour in the workplace or learning environment.

- 5.2.3 Whenever a supervisor, manager or head of department is approached by a person who thinks they have been discriminated against, sexually harassed or vilified they should refer that person to an Adviser.

- 5.2.4 Due to the nature of their position, a supervisor, manager or head of department may become aware of confidential information relating to an alleged incident of discrimination, sexual harassment or vilification. It is imperative that the Complainant herself or himself decide whether or not an incident is to be reported. The supervisor, manager or head of department must maintain strict confidentiality with regard to any specific alleged incident. It is the responsibility of the supervisor, manager or head of department to take such steps as is necessary to ensure the workplace is free from all forms of discrimination, sexual harassment and vilification and this can be done by monitoring the workplace and implementing educational strategies for all staff and students.

5.3 Director, Equity and Diversity Centre

5.3.1 The Director, Equity and Diversity Centre or nominee has a responsibility to:

- Perform an educative role in the elimination of unlawful discrimination, sexual harassment and vilification in the implementation of these procedures;
- Take all reasonable steps to conciliate and resolve complaints of unlawful discrimination, sexual harassment and vilification;
- Select and arrange training and ongoing support for Advisers and Conciliators;
- Develop and distribute publicity material to the University community;
- Arrange and deliver staff and student information programs for staff and students in conjunction with managers and supervisors;
- Liaise with relevant managers and supervisors to ensure that anyone engaged to provide a service for The University is advised of these procedures;
- Maintain confidential notes and records of discrimination, sexual harassment and vilification complaints and enquiries lodged in accordance with these procedures;
- Support and advise managers and supervisors on how to deal with behaviour in their work or educational areas that could constitute unlawful discrimination or sexual harassment;
- Inform Divisional Managers and Deans of the frequency and type of discrimination, sexual harassment and vilification occurring in their area of responsibility, without identifying individuals involved;
- Monitor and review the implementation of these procedures; and
- Report at regular intervals on the activities of the Equity and Diversity Centre to the University's Equal Opportunity Committee.

6.1 Discrimination

- 6.1.1 In general terms, discrimination is any practice which makes distinctions between individuals or groups so as to disadvantage some and to advantage others, on the basis of their status (for example sex or race) or private life (for example, religious or political conviction), or the characteristics generally attributed to persons of that status or private life.
- 6.1.2 Direct discrimination on the part of an educator, employer, provider of goods and services (including accommodation) and in the areas of sport or clubs, involves treating a person less favourably because of their status than another person of a different status would be in comparable circumstances. It is recognised that some forms of harassment may amount to unlawful discrimination.
- 6.1.3 The term indirect discrimination refers to a requirement, condition or practice which appears to be neutral but which results in a particular person or group being adversely affected. Indirect discrimination is usually unintended. In order to constitute indirect discrimination, the particular policy or practice must be unreasonable in the circumstances.
- 6.1.4 Discriminatory behaviour may also include acts in relation to a protected attribute, directed against individuals or groups which are experienced as distressing, insulting, offensive, demeaning, humiliating, vilifying or intimidating. Examples include intrusive or inappropriate questions or comments about a person's private life, unwanted written, telephone or electronic messages or communications, promises or threats relating to a person's status in the workplace or as a student, physical violence or the threat of physical violence.

6.2 Sexual Harassment

- 6.2.1 Sexual harassment sometimes occurs among peers or co-workers, and in subordinate-supervisor, supervisor-subordinate or staff-student, student-staff, student-student situations. It can also occur in the provision of goods and services (including accommodation), sport and clubs.
- 6.2.2 Sexual harassment is an unwelcome sexual advance or unwelcome request for sexual favours or other unwelcome conduct of a sexual nature, in circumstances in which a reasonable person would anticipate that the person harassed would be offended, humiliated or intimidated.
- 6.2.3 Sexual harassment might occur as a single incident or a series of incidents and may include:
- personally offensive comments;
 - sexual or smutty jokes;
 - comments or teasing about a person's alleged sexual activities or private life;
 - persistent unwelcome invitation/s, telephone calls or emails on campus or at home;
 - being followed home from campus;

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- offensive hand or body gestures;
- physical contact such as patting, pinching, touching or putting an arm around another person;
- the display of sexually-suggestive material;
- unwanted declarations of affection;
- sexual assault and rape; and
- use of University computer systems for the retention and distribution of sexually explicit material.

6.2.4 The definition of sexual harassment does not require intent on the part of the person being accused but is based on the subjective experience of offence, humiliation or intimidation. Additionally, lack of protest by the person experiencing the sexual harassment does not imply that the conduct was welcome.

6.2.5 Forms of sexual behaviour that may initially appear mild or trivial can constitute sexual harassment in staff/student, employer/employee, provider/receiver of goods or services, accommodation, sporting and club relationships where there is formal inequality of personal status.

6.3 Vilification

6.3.1 Vilification is any form of conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of another person or class of person on the grounds of their race or religion.

6.3.2 Such conduct can be a single event or series of events over a period, and may include the use of internet and e-mail to publish or transmit statements.

6.3.3 The following exceptions may apply when conduct can be established as reasonable and in good faith and represents genuine artistic, academic, religious or scientific endeavours.

6.3.4 In addition to discrimination and sexual harassment these procedures cover all forms of racial and religious vilification.

6.4 Victimisation

In order for complaints to be brought forward, complainants must feel secure in the knowledge that the University's procedures will be followed without fear of detriment. Victimisation includes any unfavourable treatment of a person who has been involved with a discrimination, sexual harassment or vilification complaint. It is not necessary for the initial complaint to have been made under these procedures.

Any complaint of victimisation will be treated in the same manner as a complaint of discrimination, sexual harassment or vilification.

Under the Equal Opportunity Act 1995 (Vic), victimisation may provide a ground for an external complaint against the University and the named staff members.

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6.5 Confidentiality and Privacy

There is an obligation on all parties to maintain privacy of personal information at all stages of the proceedings. Disclosure of any personal information must be limited to persons involved in the proceedings on a need to know basis.

An accusation of sexual harassment, discrimination or vilification is potentially defamatory and in order that defence of privilege is available to the University or other persons involved, it is essential that the following be observed:

- (a) a staff member or student must act honestly and in good faith in using these procedures;
- (b) a staff member or student wishing to communicate with another person about a matter coming under these procedures must do so in private or send a letter marked "personal and confidential" outlining their concern; and
- (c) all those involved in these procedures must act within their roles, and abide by University policy and guidelines.

In certain circumstances confidence can be broken if required by law, for example in response to a subpoena.

Information collected and held by Advisers, Conciliators and Investigators will be governed by privacy legislation. The University is under an obligation to keep any personal information secure, and to disclose it only for the purpose(s) for which it was collected and to which the informing party has consented.

6.6 Defamation

A complaint of discrimination, sexual harassment or vilification which is brought to the attention of the respondent can sometimes result in the respondent threatening to take action for defamation.

Defamation is the publication of a statement about a person which causes that person's reputation with other people to be lowered, or causes them to be shunned, avoided or brought into ridicule. If the statement is in a permanent form (for example, in writing) the alleged defamation is libel: if it is not in a permanent form (for example, oral statements) the alleged defamation is slander.

It is not defamatory for an individual to confront a harasser confidentially either in person or by letter to alert them that their behaviour is unwelcome. Nor is it defamatory to make a complaint to a person who has a legitimate interest in knowing about the incident in order to seek redress under this procedure (for example, to a supervisor, an Adviser, Conciliator or a counsellor).

6.7 Protection for Advisers, Conciliators and Investigating Panel

Where the duties of persons, such as Advisers, Conciliators and Investigators, involves receiving information and documenting it for reporting to appropriate people, they are under normal circumstances protected from liability for defamation by the defence of "qualified privilege".

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However, the law requires that such persons act reasonably and in good faith and disclose information only to those legitimately involved in resolving the complaint: unnecessary disclosure may incur liability for breach of confidentiality.

In addition, in so far as the law can provide, the process of conciliation is confidential so that nothing said or prepared for conciliation can be used as evidence in an investigation or legal proceeding.

6.8 Criminal behaviour

Certain acts of sexual harassment may constitute a criminal offence. Physical molestation or assault, indecent exposure, obscene communications (including e-mail), sexual assault, rape and stalking can be pursued with the police and the University will support a complainant who wishes to report a complaint. In the event that the person does not wish to go to the police the matter can be dealt with under these Procedures.

6.9 Relevant legislation

Racial Discrimination Act 1975 (Cwlth)
Sex Discrimination Act 1984 (Cwlth)
Human Rights and Equal Opportunity Commission Act 1986 (Cwlth)
Equal Opportunity for Women in the Workplace Act 1999 (Cwlth)
Disability Discrimination Act 1992 (Cwlth)
Health Records Act 2001 (Vic)
Information Privacy Act 2000 (Vic)
Equal Opportunity Act 1995 (Vic)
Racial and Religious Tolerance Act 2001 (Vic)
Monash University Statute



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