

# Harassment and Discrimination Prevention Policy and Resolution Procedure

Last updated: 4 October 2013

Policy assigned to: Director, Human Resources

## Overview

This policy has been formulated to provide a clear statement of the University's expectations of its staff, students and affiliates in respect of conduct that may constitute unlawful harassment or discrimination. It applies to conduct on any University campus, within any Residential College and any accommodation whether owned by the University or some third party which has been established or is operated for the purpose of providing a place of residence to students of the University, and also to work or study-related activities off campus such as conferences, field trips, and clinical or other course-related placements.

The resolution procedure in this policy sets out the University's process for handling complaints of unlawful harassment or discrimination. Staff, students and affiliates are encouraged to use the resolution procedure as the preferred means of resolving problems, concerns and complaints of unlawful harassment and discrimination.

## Scope

This policy applies to all staff, students and affiliates of the University.

## References

This policy should be read and interpreted in conjunction with the:

- [Code of Conduct - Staff and Affiliates](#)
- [Code of Conduct for Students](#)
- [University of Sydney \(Delegations of Authority - Administrative Functions\) Rule 2010 \(as amended\)](#)
- [Workplace Bullying Prevention Policy and Resolution Procedure](#)
- [The University of Sydney Enterprise Agreement 2009-2012](#)
- [University of Sydney By-law 1999 \(as amended\)](#)

The following anti-discrimination laws apply to the University community:

- [Anti-Discrimination Act 1977 \(NSW\)](#)
- [Age Discrimination Act 2004 \(Cth\)](#)
- [Racial Discrimination Act 1975 \(Cth\)](#)
- [Sex Discrimination Act 1984 \(Cth\)](#)
- [Sex Discrimination Amendment \(Sexual Orientation, Gender Identity and Intersex Status\) Act 2013 \(Cth\)](#)
- [Disability Discrimination Act 1992 \(Cth\)](#)
- [Human Rights and Equal Opportunity Commission Act 1986 \(Cth\)](#)

## Policy

All staff, students and affiliates at the University have a right to work or study in an environment that is free from unlawful harassment and discrimination, and to be treated with dignity and respect, irrespective of their background, beliefs or culture.

All staff, students and affiliates have a responsibility to ensure that they do not promote or engage in unlawful harassment or discrimination.

All managers and supervisors, including academic staff in relation to their students, are actively responsible for intervening to prevent unlawful harassment and discrimination.

All staff, students and affiliates have a right to use the resolution procedure in this policy if they believe they have experienced unlawful harassment or discrimination.

A breach of this policy may result in disciplinary action. Any victimisation of or detrimental action towards any person who raises a complaint of unlawful harassment or discrimination in accordance with this policy will be treated seriously, and may result in disciplinary action. Any intentional misuse of this policy, including by knowingly making a false allegation of unlawful harassment or discrimination, will be treated seriously and may result in disciplinary action.

## Guidelines

### Definitions

**Affiliate** means a clinical title holder, an adjunct, conjoint or honorary appointee, a consultant or contractor to the University, an office holder in a University entity, a member of any University Committee and any other person appointed or engaged by the University to perform duties or functions on its behalf.

**Policy** means a University policy as introduced, altered or replaced by the University from time to time.

**Residential College** means St Andrew's College, St John's College, St Paul's College, Sancta Sophia College, Wesley College, Women's College, International House, Mandelbaum House, Sydney University Village and any other like residence established for the primary purpose of providing accommodation to Students, whether owned by the University or not.

**Staff or Staff Member** means an employee of the University, including a casual employee.

**Student** means all award and non-award students of the University of Sydney, including but not limited to fee paying students, HECS students, FEE-HELP students, audit students, Centre for Continuing Education students, Centre for English Teaching students, exchange students, Study Abroad students, Summer School students and Winter School students.

**Supervisor or Manager** means:

- (a) in the case of a staff member, the person nominated by the University from time to time as the staff member's supervisor;
- (b) in the case of a clinical title holder, an adjunct, conjoint or honorary appointee, the Dean of the relevant Faculty;

- (c) in the case of a consultant or contractor to the University, the University officer nominated as the relevant contact officer in relation to their engagement;
- (d) in the case of an office holder in a University Entity or a member of any University Committee, the Chair of the relevant Entity or Committee;
- (e) in the case of any other affiliate, the University officer nominated as the relevant contact officer in relation to the person's engagement;
- (f) in the case of a student, the academic staff member responsible for supervising the student's academic progress.

## What is Unlawful Harassment?

---

Unlawful harassment is any type of behaviour that:

- the other person does not want; **and**
- offends, insults, humiliates or intimidates them; **and is either**
  - sexual, *or*
  - targets them because of their race, sex, pregnancy, sexual orientation (including homosexuality, lesbianism, bisexuality and heterosexuality), gender identity, intersex status, marital or relationship status, disability, age, carers' responsibility, political belief, lack of a political belief, lack of a particular political belief (including trade union activity or lack of it, and student association activity or lack of it), religious belief, lack of a religious belief, and/or lack of a particular religious belief; **and**
- that, in the circumstances, a reasonable person should have expected would offend, insult, humiliate, or intimidate.

This includes actual, potential and perceived (imputed) race, sex, pregnancy, marital or relationship status, etc.

Some types of harassment, such as sexual harassment and other forms of physical assault and/or stalking are also illegal under criminal law. These types of harassment may result in criminal prosecution.

Other types of harassment may not be 'unlawful' under anti-discrimination legislation, but may nonetheless contravene the University's staff and student Codes of Conduct or the University's [Workplace Bullying Prevention Policy and Resolution Procedure](#).

## What is Unlawful Discrimination?

---

Unlawful discrimination is any practice that makes an unlawful distinction between individuals or groups, so as to disadvantage some people and advantage others. Discrimination may be 'direct' or 'indirect'.

### Direct Discrimination

'Direct' discrimination occurs when a person treats another person less favourably, because of the other person's race, sex, pregnancy, sexual orientation (including homosexuality, lesbianism, bisexuality and heterosexuality), gender identity, intersex status, marital or relationship status, disability, age, carers' responsibility, political belief, lack of a political belief, lack of a particular political belief (including trade union activity or lack of it, and student association activity or lack of it), religious belief, lack of a religious belief, and/or lack of a particular religious belief, than they treat or would treat a person without that characteristic in the same or similar circumstances.

This includes actual, potential and perceived (imputed) race, sex, pregnancy, marital or relationship status, etc.

*For example:*

1. A selection committee decides not to appoint a young woman on the ground that she may in the future become pregnant and want to take maternity leave. This would be 'direct' discrimination on the ground of potential pregnancy.

2. A student is not invited on to a research project because he is from a non-English-speaking background and the team leader thinks he would be difficult to understand. This could be an example of direct race discrimination.

### **Indirect Discrimination**

'Indirect' discrimination occurs when a person requires another person to comply with an unreasonable requirement or condition, with which the other person is unable to comply due to his or her race, sex, pregnancy, marital or relationship status, etc, and with which a substantially higher proportion of persons without that characteristic can or would be able to comply.

*For example:*

1. A manager requires all applicants for a position to speak and write English fluently, where fluency in written English is not required in order to carry out the essential requirements of the job.

2. A student is unable to undertake an honours year in their subject because they have a physical disability and cannot access the lecture room where coursework classes will be undertaken.

## **Procedures**

### **1. Resolution Procedure**

---

Staff, students and affiliates are encouraged to use this resolution procedure as the preferred means of resolving complaints, problems and concerns of unlawful harassment and discrimination.

If a staff member, student or affiliate believes they have experienced unlawful harassment or discrimination, they are to contact the following service for assistance:

- the Staff and Student Equal Opportunity Unit  
<http://sydney.edu.au/eoo/index.shtml>

If an individual wishes to discuss their particular circumstances before raising this issue with the Staff and Student Equal Opportunity Unit they may contact:

For staff and affiliates:

- a Harassment and Discrimination Support Officer  
[http://sydney.edu.au/eoo/harass\\_discrim/support\\_officers.shtml](http://sydney.edu.au/eoo/harass_discrim/support_officers.shtml)
- the HR Advisor or Case Coordinator for his or her Faculty or Professional Service Unit portfolio  
<https://intranet.sydney.edu.au/contacts-connections/services/human-resources/contact-hr-officers.php>

For students:

- a Harassment and Discrimination Support Officer  
[http://sydney.edu.au/eoo/harass\\_discrim/support\\_officers.shtml](http://sydney.edu.au/eoo/harass_discrim/support_officers.shtml)
- Disability Services (for Students, Tel: (02) 8627 8422)  
<http://sydney.edu.au/stuserv/disability/>

- Counselling Service (for Students, Tel: (02) 8627 8433);  
[http://sydney.edu.au/current\\_students/counselling/](http://sydney.edu.au/current_students/counselling/)
- International Student Office (for International students, Tel: (02) 8627 8300)  
<http://sydney.edu.au/internationaloffice/index.shtml>

After discussion, and where appropriate, the matter will then be referred by the above services to the Staff and Student Equal Opportunity Unit for resolution of the complaint, problem or concern.

#### **A. Role of the Staff and Student Equal Opportunity Unit**

The Staff and Student Equal Opportunity Unit is responsible for:

- conducting a preliminary assessment of all unlawful harassment and discrimination complaints;
- ensuring that the parties are aware of available resources and processes that may support and assist them to resolve the complaint, problem or concern; and
- where appropriate, facilitating resolution of the complaint, problem or concern.

#### **B. Preliminary Assessment, Referral and Resolution**

The University of Sydney is committed to resolving complaints regarding unlawful harassment and discrimination quickly, sensitively, fairly, confidentially, and with a minimum of disruption while following the principles of natural justice.

After receiving notice of a complaint relating to unlawful harassment or discrimination, the Staff and Student Equal Opportunity Unit will:

- 1) obtain all relevant information from the person raising the matter, and his or her view on what action could reasonably be taken to resolve it;
- 2) refer the person raising the matter and, where appropriate, the person or people who the complaint is about, to appropriate avenues of support and advice, including professional counselling or representation;
- 3) decide whether the matter should be referred to other internal portfolios or external agencies and discuss the reasons for the referral and the relevant process with the person who raised the matter, for example:
  - a. referral to the University's Security Service and the NSW Police;
  - b. referral to misconduct or other University processes; or
  - c. if in the reasonable opinion of the Staff and Student Equal Opportunity Unit the matter does not relate to unlawful harassment or discrimination but could constitute bullying,:
    - i. for staff and affiliates, referral of the matter for handling under the [Workplace Bullying Prevention Policy and Resolution Procedure](#);
    - ii. for students, referral of the matter to the Associate Dean Students (or equivalent) for the Faculty or if this is not appropriate to the Director, Student Administration and Support and Deputy Registrar to deal with the matter considering the requirements of the Student Code of Conduct.

- 4) acknowledge receipt within 5 working days advising the complainant who is dealing with the matter and briefly outlining the steps to be taken to resolve the matter (noting the person raising the matter *does not* have to put their complaint in writing);
- 5) document actions and file documentation confidentially;
- 6) monitor developments and resolution outcomes.

### C. Confidentiality and Victimisation

The parties are required, at all stages of this resolution procedure, to maintain confidentiality in relation to the complaint. The parties must not disclose, by any form of communication, either the fact or the substance of the matter to anyone other than an advocate, representative or qualified counsellor.

A person must not victimise or otherwise subject another person to detrimental action as a consequence of that person raising, providing information about, or otherwise being involved in the resolution of a problem, concern or complaint relating to unlawful harassment or discrimination.

A breach of this confidentiality or non-victimisation requirement will be treated seriously by the University, and may result in disciplinary action. Any such breach will be referred for investigation and handling in accordance with the relevant misconduct procedure.

## 2. Review

---

A staff member who is dissatisfied with the outcome of a complaint of unlawful harassment or discrimination may utilise the "Review of Actions" process in the University of Sydney Enterprise Agreement.

Students who are dissatisfied with the outcome of a complaint of unlawful harassment or discrimination may apply for review in accordance with the [Student Grievances, Appeals and Applications for Review Policy](#).

## 3. Misconduct

---

Where, after preliminary assessment, the Staff and Student Equal Opportunity Unit forms the reasonable opinion that the alleged conduct may constitute misconduct if substantiated, the Staff and Student Equal Opportunity Unit will:

- in the case of staff, refer the matter for handling in accordance with the University of Sydney Enterprise Agreement;
- in the case of affiliates, refer the matter for handling in accordance with relevant University policy;
- in the case of students, refer the matter for handling in accordance with Chapter 8 of the *University of Sydney By-Law 1999* (as amended).

In some circumstances, including where a complaint of unlawful harassment or discrimination raises work health and safety concerns, the Staff and Student Equal Opportunity Unit may need to refer the matter to the relevant misconduct process, whether or not the complainant is in agreement.

The Staff and Student Equal Opportunity Unit may decline to refer the matter for handling in accordance with the relevant misconduct procedure where, in the reasonable opinion of the Staff and Student Equal Opportunity Unit:

- the person who raised the problem, concern or complaint, has provided insufficient detail or evidence of the alleged unlawful harassment or discrimination;
- the complaint is frivolous or vexatious;
- the complaint relates to alleged conduct that occurred more than 12 months before the complaint was made.

## 4. External Assistance and Advice

---

The University will make every reasonable effort to resolve complaints of unlawful harassment and discrimination internally.

However, if a person alleges that he or she has been unlawfully harassed or discriminated against by a visitor or other person over whom the University has no jurisdiction, the University may be required to refer the person raising the problem, concern or complaint to an external complaints procedure or to another agency.

Staff, students and affiliates may also elect to contact the NSW Anti-Discrimination Board or the Australian Human Rights Commission at any time to seek advice and assistance in resolving unlawful harassment and discrimination complaints.

Information is also available from the staff unions and student representative bodies at the University.

# Administration

---

## 1. Background

This policy replaces the University's Harassment Prevention Policy, Discrimination Prevention Policy and Harassment and Discrimination Resolution Procedure that have been in place since 2001. It was drafted by Human Resources in consultation with the Office of General Counsel and the Deputy Vice-Chancellor (Education). The student representative bodies, unions and all University staff were given the opportunity to provide feedback on this document. The policy was amended in September 2013 to align with the *Sex Discrimination Amendment Act 2013 (Cth)*.

---

## 2. Management Responsibility

Deputy Vice-Chancellor (Education) and Director, Human Resources

---

## 3. Implementation Responsibility

Deputy Vice-Chancellor (Education) and Director, Human Resources

---

## 4. Dates

Approval (version 1)	6/11/ 2000
Effect	1 /1/2001
Review	2009
Approval (version 2)	4/02/2010
Effect	4/02/2010
Approval (version 3)	4/10/2013
Effect	4/10/2013

---

## 5. Approval

Version 1	Professor Gavin Brown Vice-Chancellor and Principal
Version 2	Dr Michael Spence Vice-Chancellor and Principal
Version 3	Dr Michael Spence Vice-Chancellor and Principal

---

## 6. Signatures

### Approved by:

Name

Dr Michael Spence

Position

Vice-Chancellor and Principal

Date

4 October 2013