BULLYING, HARASSMENT AND DISCRIMINATION PREVENTION POLICY 2015

The Vice-Principal (Operations) as delegate of the Senate of the University of Sydney, adopts the following policy.

Dated: 10 December 2015

Last amended:

Position: Vice-Principal (Operations)

CONTENTS

1 Name of policy 1
2 Commencement 1
3 Policy is binding 1
4 Statement of intent 2
5 Application 2
6 Definitions 3
7 What is bullying 6
8 What is not bullying 7
9 What is unlawful direct discrimination 8
10 What is unlawful indirect discrimination 8
11 What is unlawful harassment 9
12 What is unlawful sexual harassment 9
13 What is not unlawful harassment or discrimination 9
14 Application of other laws and policies 10
15 Entitlements and responsibilities 10
16 Training 11
17 Breach of policy 11
18 Procedures 12
19 Rescissions and replacements 12

1 Name of policy

This is the Bullying, Harassment and Discrimination Prevention Policy 2015.

2 Commencement

This policy commences on 1 January 2016.

3 Policy is binding

Except to the extent that a contrary intention is expressed, this policy binds the University and all staff, students, workers and affiliates.

4 Statement of intent

This policy affirms the University's commitment to:

(a) provide a safe and healthy workplace and learning environment that is free from bullying and unlawful harassment and discrimination; and

(b) provide workers with information and training in relation to bullying, unlawful harassment and discrimination.

5 Application

(1) This policy applies to the University and any staff member, worker, affiliate or student in relation to University related conduct:

(a) between staff members;

(b) between affiliates;

(c) between staff members and affiliates;

(d) by staff or affiliates towards students;

(e) between students;

(f) by students towards staff or affiliates;

(g) in respect of bullying, between workers, between workers and affiliates, by workers towards students, between students and by students towards workers; and

(h) in respect of unlawful discrimination and harassment, by staff and affiliates towards members of the public.

(2) For the avoidance of doubt:

(a) the obligations of staff and affiliates under this policy are in addition to obligations set out in the *Code of Conduct – Staff and Affiliates*;

(b) the obligations of students under this policy are in addition to the obligations set out in the *Code of Conduct for Students*; and

(c) the obligations of workers under this policy are in addition to, and to be read in conjunction with, the responsibilities of workers for work health and safety (as provided in the *Work Health and Safety Policy 2012* and the *Work Health and Safety Procedures 2012*) and the responsibility to work within the parameters as set out in the University's Safety Management System and Safety Management Standards.

6 Definitions

affiliate has the meaning given in the *Code of Conduct – Staff and Affiliates*

At the date of this policy this is:

> Clinical title holders; adjunct, conjoint and honorary appointees; consultants and contractors to the University; holders of offices in University entities; members of Boards of University Foundations; members of University Committees; and any other persons appointed or engaged by the University to perform duties or functions on its behalf.

Agreement means the *University of Sydney Enterprise Agreement 2013-2017* or any successor or replacement Agreement.

Case Management Group means the specialist staff within Human Resources who assist managers to resolve workplace issues in accordance with the Agreement (where applicable) and University policies and procedures.

characteristic means a feature or quality that identifies a particular person or group of people, that is protected by applicable legislation. For the purpose of this policy these characteristics include:

- race, colour, religious belief, ethnic or ethno-religious background, descent or nationality;
- sex;
- pregnancy, child birth and breastfeeding;
- marital, relationship or domestic status;
- carers' responsibilities;
- transgender (transsexual and intersex) status, gender identity;
- homosexuality (actual or presumed), sexual orientation;
- disability, which includes physical, intellectual, psychiatric or psychological, learning or cognitive disabilities, and any virus or bacteria that can cause disease, such as HIV. It also includes any disability a person had in the past, has now, or may have in the future;
- age

complainant means the person who made the complaint, or in the case of complaints made on behalf of another person, the person who is alleged to have been the subject of bullying, harassment or discrimination.

complaint	includes all of the ways in which any instances of bullying, harassment and discrimination might be identified, raised or reported including orally and in writing (including email). General inquiries, feedback and comments (including on social media sites) will not normally be considered a complaint, unless the relevant manager, delegate, Case Management Group or the Student Affairs Unit deem otherwise. If in doubt, the complainant should be asked to confirm whether they wish to categorise their inquiry, feedback or comment as a complaint.
delegate	**in respect of individuals covered by the Agreement:** has the meaning set out in clause 3 of the Agreement, which at the date of this policy is the holder of an office to which authority has been: • delegated by the University Senate in relation to the management of matters pertaining to staff employment, performance and/or conduct; or • delegated under a University policy or Code of Conduct, including the University's Reports of Wrongdoing Investigation Procedures and the Research Code of Conduct. **in respect of individuals not covered by the Agreement:** means the person with appropriate delegated authority under the *University of Sydney (Delegations of Authority- Administrative Functions) Rule 2010 (as amended)*, the *Delegations of Authority – Academic Functions*, or the *Supplementary Delegations of Authority – Academic Functions*.
injury management co-ordinators	means the group of rehabilitation and return to work, and workers' compensation specialist staff within Safety Health and Wellbeing Unit who assist staff and their managers in cases of ill health and work related injury.
manager	means: • **in the case of a staff member**: the person nominated by the University from time to time as the staff member's supervisor or such other person nominated by the University to act as the manager for a particular matter; • **in the case of a clinical title holder or an adjunct, conjoint or honorary appointee**: the Dean of the relevant faculty; • **in the case of a contractor to the University**: the University officer nominated as responsible for their engagement; • **in the case of an office holder in a University entity or a member of a University committee**: the Chair of the relevant entity or committee; • **in the case of any other affiliate**: the University officer nominated as responsible for their engagement.
respondent	the person who is alleged to have engaged in conduct inconsistent with this policy.

staff or staff member	means an employee of the University, including a casual employee.
student	means a person who is currently admitted to candidature in an award course of the University or who is enrolled at the University: • as a non-award student; or • as a cross-institutional student. For the purpose of commencing a complaint under the *Student Complaints Procedure 2015* only, a person who is not currently admitted to candidature or enrolled may be considered a student if: • they were admitted or enrolled in the University within the two years prior to the complaint being made; and • the respondent is a current staff member, student, affiliate or worker of the University.
Student Affairs Unit	means the specialist staff within the office of the Deputy Vice-Chancellor (Registrar) who assist with the resolution of student issues in with University policies and procedures.
University entity	means any entity established by or with the authority of the Senate.
University lands	has the meaning given in the *University of Sydney (Campus Access) Rule 2009*. As at the date of this Policy, this includes: any land or roads occupied or used in connection with the University, including the whole or any part of any building or structure and any land or roads occupied or used in connection with the whole or part of any building or structure.
University related conduct	means any conduct that is connected to the University, including conduct that: • refers or relates to the University, its activities, or its workers or affiliates or students in their status as a worker, affiliate or student of the University; • occurs on, or in connection to, University lands or other property owned by the University; • occurs at or in connection with, a college that is located within University lands or is associated with the University; • occurs using, or is facilitated by, University ICT resources or other University equipment; • occurs during, or relates to, the performance of duties for the University; • occurs during or in connection to any University related function or event (whether sanctioned or organised by the University or not) or when representing the University in any capacity.

worker means a person who carries out work in any capacity for the University including work as:

- a staff member;
- a contractor or subcontractor;
- an employee of a contractor or subcontractor;
- an employee of a labour hire company who has been assigned to work in the University or a University entity;
- an outworker;
- an apprentice or trainee;
- a student gaining work experience or performing work on a voluntary basis; or
- a volunteer.

An affiliate of the University may, in relevant circumstances, be a worker under this policy.

7 What is bullying

(1) Bullying is repeated and unreasonable behaviour directed towards a person or group of people that creates a risk to health and safety.

(a) Repeated behaviour is behaviour which occurs more than once and may involve a range of behaviours over time.

(b) Unreasonable behaviour is behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

(2) If the criteria in subclause 7(1) are met, the following may be considered to be examples of bullying:

(a) verbal abuse or threats, including yelling, insulting or offensive language;

(b) unjustified criticism or complaints;

(c) deliberately excluding someone from activities;

(d) withholding information that is essential to perform a task properly;

(e) assigning impossible tasks, or meaningless tasks unrelated to the job or unit of study, or giving someone the majority of unpleasant tasks;

(f) spreading misinformation or rumours;

(g) denying access to information, supervision, consultation or resources to the detriment of a person;

(h) physical abuse.

(3) If the criteria in subclause 7(1) are met, the following may also be considered to be examples of workplace bullying in relation to workers:

(a) setting unreasonable timelines or constantly changing deadlines;

(b) assigning too much or too little work;

(c) making threats or comments about job security without foundation;

(d) changing work arrangements, such as rosters or leave, to deliberately inconvenience a worker;

(e) excessive scrutiny at work.

(4) The behaviours referred to in subclause 7(2) and subclause 7(3) may:

(a) occur through any form of contact or communication, including:

(i) in person;

(ii) by telephone or email;

(iii) through another person; or

(iv) by any other means

provided that, in connection to workplace bullying in relation to workers, the alleged conduct must occur at work;

(b) be directed at a single person or group of people and be carried out by one or more person;

(c) occur from managers to workers, between workers or students, or from workers or students to managers.

8 What is not bullying

(1) The following behaviours do not constitute bullying.

(a) A single incident of unreasonable behaviour. However, single or one-off incidents of unreasonable conduct can also cause a risk to health and safety and may breach other University policies and should not be ignored.

(b) Reasonable management practices.

(c) Low-level conflict as defined in subclause 8(3).

(2) Reasonable management practices include (but are not limited to):

(a) a direction to carry out reasonable duties and instructions;

(b) a direction to comply with University rules, protocols, policies and procedures;

(c) setting reasonable goals, standards and deadlines;

(d) providing reasonable comment and advice (including relevant negative comment or feedback) on the work or academic performance of an individual or group;

(e) rostering and allocating reasonable working hours;

(f) transferring a worker for operational reasons;

(g) deciding not to appoint or promote a worker for reasonable reasons;

(h) performance managing workers or instituting action against students in accordance with the University's policies and procedures;

(i) providing informal and formal feedback about behaviour and conduct in a reasonable way;

(j) implementing organisational change or restructuring; or

(k) terminating a worker's employment or instituting other disciplinary measures in accordance with the Agreement and the University's policies and procedures.

(3) Low-level conflict is interpersonal conflict or disagreement which is not sufficient to constitute bullying. People can and will disagree with each other.

(a) What differentiates low level conflict situations from bullying is whether there is a risk to health and safety and the reasonableness of the behaviour overall.

(b) Low-level conflict situations should not be ignored and should be resolved if possible in accordance with clause 6 of the *Bullying, Harassment and Discrimination Resolution Procedures 2015*.

9 What is unlawful direct discrimination

(1) Unlawful direct discrimination occurs when a person, or a group of people, is treated less favourably than another person or group because of one or more characteristics.

(2) If the criteria in subclause 9(1) are met, direct discrimination can occur in decisions such as those relating to:

(a) recruiting, selecting or promoting staff;

(b) offering particular terms, conditions or benefits as part of employment;

(c) offering and providing training, including selecting who is offered training and the kind of training offered;

(d) offering redundancy;

(e) determining dismissal;

(f) offering access to educational services.

(3) Direct discrimination can also occur if assumptions are made which result in a person or group being treated differently on the basis of one or more characteristics. The following examples of assumptions may be considered to constitute direct discrimination:

(a) that an older worker won't 'fit in' with a predominantly younger team;

(b) that a woman should not be sent on a training program because she might get pregnant soon and leave;

(c) that a person with a disability or of an older (or certain) age will not be able to use a computer or complete the requirements of a particular course;

(d) that a transgender person might make other staff or students feel uncomfortable.

10 What is unlawful indirect discrimination

(1) Indirect discrimination occurs when there is a rule or requirement that disadvantages one group more than another on the basis of one or more characteristics, unless it can be shown that the particular rule or requirement is reasonable in all the circumstances or is required to perform the inherent requirements of the job.

(2) If the criteria in subclause 10(1) are met, indirect discrimination can occur in decisions such as those relating to:

(a) having a particular height restriction when this is not related to the inherent requirements of the job, as a height restriction may discriminate against women and some ethnic groups;

(b) requiring an applicant to speak and write fluent English when this is not required to carry out the essential requirements of the job or course.

11 What is unlawful harassment

(1) Unlawful harassment occurs when a person, or a group of people, is intimidated, insulted or humiliated because of one or more characteristics. Unlawful harassment can arise as the result of a single incident as well as repeated incidents.

(2) If the criteria in subclause 11(1) are met, harassment can occur through behaviour such as:

(a) telling jokes about particular racial groups;

(b) sending explicit or sexually suggestive emails or texts;

(c) displaying offensive or pornographic websites or screen savers;

(d) making derogatory comments or taunts about someone's race or religion, gender or sexual preference;

(e) asking intrusive questions about someone's personal life, including their sex life;

(f) creating a hostile working environment, for example, where the display of pornographic materials or crude conversations, innuendo or offensive jokes are part of the accepted culture.

12 What is unlawful sexual harassment

Sexual harassment occurs if a person:

(a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

13 What is not unlawful harassment or discrimination

The following conduct does not constitute unlawful harassment or discrimination:

(a) a person receives reasonable comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work or academic performance of an individual or group;

(b) a person is not offered a job because, notwithstanding that reasonable adjustments have been made, they cannot meet the inherent requirements of the job;

(c) a student with a disability does not pass the requirements of a course, notwithstanding that reasonable adjustments have been made;

(d) another applicant was preferred in a recruitment and selection or promotion process where they have better demonstrated the skills and experience to meet the required criteria of the job;

(e) the University has gained an exemption, or the law otherwise permits the University, to target a job at a particular group of people to help redress disadvantages that group may have experienced in the past;

(f) the University implements specific equal employment opportunity or 'affirmative action' strategies, plans or programs designed to ensure genuine equal opportunities in the workplace, particularly in relation to groups that have been disadvantaged in the past.

14 Application of other laws and policies

(1) Incidents of physical abuse or assault may also be illegal under criminal law. They should be reported to the Campus Security Unit or police, as appropriate.

(2) Conduct constituting bullying, and a person's response to allegations of bullying, may also breach work, health and safety legislation.

(3) Where bullying, discrimination or harassment leads to a diagnosed injury or ill health, this may give rise to an entitlement under workers' compensation legislation.

15 Entitlements and responsibilities

(1) All workers, affiliates and students have:

(a) an entitlement to work or study in a safe and healthy environment free of bullying, harassment and discrimination;

(b) subject to sub-clause 15(c), an entitlement to make a complaint about any bullying, harassing or discriminatory behaviour they are subjected to, or witness, in accordance with:

(i) for workers: the *Bullying, Harassment and Discrimination Resolution Procedures 2015*;

(ii) for students: the *Students Complaints Procedures 2015*.

(c) a responsibility not knowingly to misuse this policy, including making a vexatious or malicious accusation of bullying, harassment or discrimination;

(d) a responsibility to ensure they do not promote or engage in bullying, harassment or discrimination;

(e) a responsibility to comply with any reasonable instruction given by the University regarding the prevention of bullying, discrimination and harassment including complying with this policy;

(f) a responsibility not to victimise any person who raises a complaint of bullying, harassment or discrimination in accordance with the *Bullying,*

Harassment and Discrimination Resolution Procedures 2015 or the *Students Complaints Procedures 2015*.

(2) In respect of workers, managers have an additional responsibility to:

(a) treat staff members and affiliates under their supervision fairly and reasonably in compliance with the University's *Code of Conduct – Staff and Affiliates* and other policies and to lead by example;

(b) intervene actively to prevent hostile working environments or stop bullying, harassing or discriminatory behaviour where it may occur, whether or not a complaint is received; and

(c) report any such behaviour in accordance with the *Bullying, Harassment and Discrimination Resolution Procedures 2015*.

(3) In respect of workers, managers, with the support of the relevant Human Resources advisor and injury management coordinator (where appropriate), are responsible for:

(a) monitoring patterns of absenteeism, sick leave, staff turnover, grievances, injury reports and other such records to establish any regular patterns or sudden unexplained changes;

(b) recognising any changes in workplace relationships between workers and or managers.

(c) with the support of the relevant injury management co-ordinator, monitoring, and where appropriate addressing in accordance with University policies and procedure:

(i) hazard and incident reports;

(ii) workers compensation claims; and

(iii) issues raised by health and safety representatives.

(4) Managers, with the support of HR Advisors, may hold exit interviews when workers leave the University in order to receive feedback.

16 Training

The Director, Human Resources is responsible for implementing training to workers in relation to this policy.

17 Breach of policy

(1) Breach of this policy may have the following consequences.

(a) For staff or affiliates: disciplinary action, up to and including termination of employment, engagement or affiliation.

(b) For students: breach of this policy may constitute misconduct for the purposes of the *University of Sydney By-law 1999*.

(2) Other actions that may result from a breach of this policy include, but are not limited to:

(a) the complainant receiving an oral or written apology from the respondent with a commitment to cease the bullying behaviour;

(b) the parties being required to participate in some form of counselling, mediation or conciliation;

(c) the respondent undertaking training in relation to their behaviour; and

(d) drawing up a management plan to document agreed or proposed actions by the parties.

18 Procedures

(1) The Director, Human Resources is the administrator of this policy as it relates to complaints initiated by or about University staff, workers and affiliates and the Deputy Vice-Chancellor (Registrar) is the administrator this policy as it relates to complaints initiated by or about students and complaints made by applicants. Formal policy reviews are the responsibility of, and must be initiated by, both jointly.

(2) The Director, Human Resources may determine procedures relating to complaints initiated by or about University staff, workers and affiliates.

(3) The Deputy Vice-Chancellor (Registrar) may determine procedures relating to complaints initiated by or about students and complaints made by applicants.

19 Rescissions and replacements

This document replaces the following, which are rescinded as from the date of commencement of this document:

(1) *Workplace Bullying Prevention Policy 201*4, which commenced on 10 March 2014 and its associated procedures

(2) *Harassment and Discrimination Prevention Policy and Resolution Procedure*, which commenced on 1 January 2001

NOTES

Bullying, Harassment and Discrimination Prevention Policy 2015

Date adopted: 10 December 2015

Date commenced: 1 January 2016

Administrators: Director, Human Resources; Deputy Vice-Chancellor (Registrar)

Review date: 10 December 2020

Rescinded documents: *Workplace Bullying Prevention Policy 2014*

Harassment and Discrimination Prevention Policy and Resolution Procedure

Related documents:

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)

Work Health and Safety Act 2011 (NSW)

Work Health and Safety Regulation 2011 (NSW)

Guide for Preventing and Responding to Workplace Bullying (Safe Work Australia)

Dealing with Workplace Bullying – a Workers Guide (Safe Work Australia)

Injury and Illness Management Policy and Procedure 2014

University of Sydney Enterprise Agreement

Code of Conduct – Staff and Affiliates

Code of Conduct for Students

Resolution of Complaints Policy 2015

Work Health and Safety Policy 2012

Bullying, Harassment and Discrimination Resolution Procedures 2015

Bullying Prevention resources (Staff intranet)

Harassment and Discrimination and Equity Support Resources (Staff intranet)

AMENDMENT HISTORY

Provision	Amendment	Commencing