

BULLYING, HARASSMENT AND DISCRIMINATION RESOLUTION PROCEDURES 2015

Issued by: Chief Human Resources Officer

Date: 10 December 2015

Last amended: 1 August 2018

Name: Karen Haywood

1 Purpose and application

- (1) These procedures are to give effect to the [Bullying, Harassment and Discrimination Prevention Policy 2015](#) and the [Resolution of Complaints Policy 2015](#) (“the policies”) as it relates to complaints by or about staff, workers or affiliates.
- (2) These procedures:
 - (a) provide how complaints of bullying, harassment and discrimination may be raised and how they will be assessed and resolved, where appropriate;
 - (b) set out steps to be taken to resolve bullying, harassment and discrimination complaints initiated by a staff member, worker or affiliate; and
 - (c) prescribe the manner in which the University will conduct investigations where required.
- (3) These procedures apply to the University and any staff member, worker or affiliate in relation to University related conduct.
- (4) Students who are not staff members, workers or affiliates should initiate any complaint of bullying, discrimination or harassment under the [Student Complaints Procedures 2015](#).

2 Commencement

These procedures commence on 1 January 2016.

3 Interpretation

- (1) Words and phrases used in these procedures and not otherwise defined in this document have the meaning they have in the policies.

investigator	<p>in respect of individuals who are covered by the Agreement, has the meaning provided in the Agreement, which at the date of these procedures is a person (who may, but need not be a University staff member) appointed by the University to conduct investigations in relation to matters pertaining to staff performance or conduct and applications for review of actions or decisions or disputes.</p> <p>in respect of those persons who are not covered by the Agreement, means a person appointed by the University to conduct an investigation in accordance with relevant University policy or procedure.</p>
Serious Complaints Committee	means the committee of that name established under clause 10 of the Reporting Wrongdoing Policy
support person	means a friend, colleague, union official or any other person chosen by the worker, student or affiliate to support them.

4 Resolution of complaints generally

The making, investigation or resolution of a complaint under these procedures must be in accordance with the [Resolution of Complaints Policy 2015](#).

5 Assistance

If a worker or affiliate wishes to discuss their particular circumstances before raising an issue of bullying, harassment or discrimination they may contact:

- (a) the HR Service Centre, Staff Health Support or the HR Partner for their area or unit;
- (b) Workplace Relations; or
- (c) a person nominated by the University as a “Harassment and Discrimination Support Officer” for that Faculty or Unit.

6 Informal resolution

- (1) As far as possible, parties should seek to resolve issues of bullying, harassment or discrimination informally by one or more of the following means:
 - (a) directly approaching the person they believe is responsible for the bullying, harassment or discrimination (either on their own or with another person as a support person) and:
 - (i) telling them which behaviour they consider unreasonable and unacceptable;
 - (ii) asking them to stop or to behave differently; and
 - (iii) keeping a written record of this action.

- (b) where a staff member, worker or affiliate does not feel comfortable raising the matter directly with the person they believe is responsible, by raising the matter with their own manager;
- (c) where the situation involves the staff member, worker's or affiliate's manager; by raising the matter with the next person of seniority in their area.

Note: This clause does not apply to complaints concerning alleged criminal conduct, including sexual assault or complaints about the application of University policies or procedures.

- (2) A manager who has concerns about, or becomes aware of, behaviour that may constitute bullying, harassment or discrimination, has an obligation actively to intervene to prevent such conduct continuing and may seek to resolve any concerns directly with the parties under this clause, if appropriate.
- (3) A manager who has concerns about particular behaviour and is unsure whether it may constitute bullying, harassment or discrimination should contact Workplace Relations for advice.

7 Making a complaint

- (1) If a worker or affiliate believes they have experienced or witnessed behaviour in breach of the policy, and informal resolution is inappropriate or unsuccessful, they should make a complaint in a timely manner:

- (a) to Workplace Relations; or
- (b) on the University's online incident and hazard reporting system 'Riskware'.

Note: See clauses 14 and 15 of the [Resolution of Complaints Policy 2015](#), in relation to confidentiality and disclosure of information.

- (2) If any person other than those listed in subclause 7(1) receives or otherwise becomes aware of a complaint on behalf of a staff member, worker or affiliate regarding a possible breach of the policy, they must refer the complaint to Workplace Relations.
- (3) Complaints may also be referred to Workplace Relations:
 - (a) by the Student Affairs Unit where a complaint made by a student involves allegations that a staff member or affiliate (or a worker in the case of a complaint of bullying) has engaged in conduct in breach of the policy; or
 - (b) by a person who has received a complaint from a member of the public that involves allegations that a worker or affiliate has engaged in conduct in breach of the policy; or
 - (c) where the complaint alleges that another University policy or procedure (or its application) is in breach of the policy.

Note: Clause 10(2) of the [Resolution of Complaints Policy 2015](#) provides that the University's complaint resolution process should commence within 10 days of a complaint being lodged

8 Preliminary assessment by Workplace Relations

- (1) Where a complaint relates to the conduct of a staff member, worker or affiliate, the workplace relations advisor, in discussion with the relevant manager or delegate (where appropriate), must:

- (a) acknowledge receipt within 5 working days and notify the person who raised the matter of the relevant next steps;
 - (b) obtain all relevant information from the person raising the matter, and their view on what action could reasonably be taken to resolve it;
 - (c) where the person raising the matter wants their identity kept confidential, discuss with the person raising the matter the way in which it will be handled;
 - (d) refer all relevant parties to appropriate avenues of support and advice (e.g. Employee Assistance Program); and
 - (e) assess how the matter is to be progressed. This assessment may involve, where appropriate:
 - (i) convening discussions with the relevant parties;
 - (ii) collating and reviewing any relevant documentary material; and
 - (iii) providing advice to the relevant delegate about whether the matter is appropriate for assisted resolution under clause 9 or referral under clause 10.
- (2) Each of the parties may bring a support person to any discussion.
- (3) Where a staff member, worker or affiliate makes a complaint of bullying against another staff member, worker or affiliate, and the complainant or the respondent does not accept:
- (a) the outcomes of the preliminary assessment; or
 - (b) the actions taken to address any bullying;
- they may refer the complaint to the Delegated Officer (Staffing) for review.
- (4) Where the complaint relates to the conduct of a student or a University policy or procedure relating primarily to student matters:
- (a) the workplace relations advisor must consult with, and refer the complaint (as it relates to the student) to the Student Affairs Unit; and
 - (b) the procedures set out in clauses 8 to 15 of the [Student Complaints Procedures 2015](#) will apply in place of the procedures set out in clauses 9 to 14 below.
- (5) Where a complaint is about the content or application of a University policy or procedure rather than the conduct of particular individual(s):
- (a) the complaint will not be considered to have an individual respondent;
 - (b) the relevant delegate will be the administrator of the policy or procedure; and
 - (c) the relevant parties in subclause 8(1)(e) may include any person who has knowledge of, or interest in, the policy or procedure.

9 Assisted resolution

- (1) Where the assessment in clause 8 determines that assisted resolution is appropriate:
 - (a) resolution may include but is not limited to:
 - (i) clarifying a misunderstanding;
 - (ii) an apology;

- (iii) facilitated discussion, including mediation or conciliation;
 - (iv) an agreed plan of action to avoid further incidents; and
 - (v) implementing awareness-raising or educational sessions about behaviour; and
- (b) the relevant delegate may determine that guidance, counselling or a warning be given to a relevant party.

10 Determination when assisted resolution is unsuccessful or inappropriate

- (1) Where assisted resolution is unsuccessful or considered inappropriate, the relevant manager or delegate, in consultation with Workplace Relations, must determine whether:
- (a) the matter should be dealt with in accordance with the applicable misconduct and serious misconduct procedures, including (where relevant) those set out in [clause 384](#) of the Agreement;
 - (b) the matter should be referred to the University's Security Service;
 - (c) the matter should be referred to the Office of General Counsel for consideration of whether the matter should be referred to the police in accordance with clause 17 of the *Resolution of Complaints Policy 2015*;
 - (d) the matter should be investigated under clause 11; or
 - (e) any other further action should be taken.
- (2) Circumstances in which a determination to take no further action may be made include where:
- (a) the person who made the complaint has provided insufficient detail or evidence of the alleged bullying, harassment or discrimination to enable the matter to be properly investigated;
 - (b) the complaint is frivolous, vexatious or malicious;
 - (c) the complaint relates to alleged conduct that occurred more than 12 months before making the complaint and no further occurrence has happened in the ensuing 12 months.
- (3) The relevant manager or delegate will write to the person who made the complaint (and, where appropriate, the respondent), setting out the reasons for the determination.

11 Investigation

- (1) For more serious complaints (as determined by the University in its absolute discretion, taking into account the complainant's views and circumstances), where assisted resolution is unsuccessful or not appropriate, an investigation may be initiated.
- (2) An investigation may only be initiated with approval from Workplace Relations.
- (3) Except where otherwise required by University rules, protocols, policies and procedures, investigators may determine their own procedures.

- (4) Investigators must make findings of fact and may make recommendations for resolving complaints, in accordance with University rules, protocols, policies and procedures.
- (5) Investigators must give the University written reasons for their findings of fact and (if relevant) their recommendations.
- (6) Where reasonable, the investigation will be concluded within 30 working days of the assessment referred to in clause 10.
- (7) Where 30 working days is not reasonable, Workplace Relations must advise the parties of the reasons for the delay, and of the projected timeframe for conclusion of the investigation.

12 Relationship between these procedures and the Agreement

If the person who is the subject of the complaint is covered by the [Agreement](#):

- (a) the assessment referred to in clause 8 will constitute the preliminary investigations or enquires referred to in [clause 384\(a\)](#) of the Agreement;
- (b) any resolution under clause 9 will constitute a determination in accordance with [clause 384\(b\)](#) of the Agreement;
- (c) the provisions set out in these procedures constitute an alternative review or appeal procedure of the complaint for the purpose of [clause 456\(c\)](#) of the Agreement.

13 Vexatious complaints

At any stage of this procedure, if Workplace Relations, a manager, delegate or investigator believes that a person has made a vexatious, malicious or false complaint of bullying, harassment or discrimination:

- (a) Workplace Relations will make an assessment in accordance with clause 8 of these procedures; and
- (b) these procedures will also apply to the determination of whether a vexatious or malicious complaint has been made.

14 Record keeping and monitoring

- (1) Where a matter is dealt with in accordance with clause 8 or 9 of these procedures or a determination is made under sub-clause 10(1) or (2), the workplace relations advisor is responsible for documenting the process and outcome of the complaint including:
 - (a) the person who made the complaint;
 - (b) when the complaint was made;
 - (c) to whom the complaint was made;
 - (d) the nature of the issue;
 - (e) action taken to respond to the issue;
 - (f) any further action that is required – what, when and by whom; and

- (g) storing the information confidentially.
- (2) The workplace relations advisor is responsible for providing (where appropriate) the documentation referred to in clause 14 (1) or any relevant documentation relating to an investigation under clause 11 to:
 - (a) the relevant manager or delegate;
 - (b) the Student Affairs Unit;
 - (c) Safety Health and Wellbeing; or
 - (d) the relevant injury management co-ordinator.
- (3) Workplace Relations is responsible for confidentially filing all records collected, generated or used as part of the resolution or determination of a complaint under these procedures.

Note: See [University Recordkeeping Policy](#) and [Recordkeeping Manual](#).
- (4) In all cases, the relevant manager or delegate, in consultation with Workplace Relations, is responsible for:
 - (a) where appropriate, taking steps to prevent the alleged bullying, harassment and discrimination from continuing or recurring;
 - (b) where appropriate referring the matter to the Serious Complaints Committee; and
 - (c) monitoring developments and resolution outcomes, including any mediation or facilitation process which may be recommended.

15 External assistance and advice

- (1) The University will make every reasonable effort to resolve bullying, harassment and discrimination concerns and complaints internally.
- (2) However, if a person alleges bullying, harassment or discrimination by a visitor or other person over whom the University has no jurisdiction, the University may be required to refer the person raising the concern or complaint to an external complaints procedure or to another agency.
- (3) Individuals covered by this procedure may also elect to contact (if relevant) the Fair Work Commission, Australian Human Rights Commission, NSW Anti-Discrimination Board, SafeWork NSW or their union to obtain advice or assistance, or make a complaint, in relation to bullying, harassment or discrimination.

NOTES

Bullying, Harassment and Discrimination Resolution Procedures 2015

Date adopted:	10 December 2015
Date commenced:	1 January 2016
Date amended:	15 September 2017
Administrator:	Chief Human Resources Officer
Review date:	10 December 2020

Related documents:

Age Discrimination Act 2004 (Cth)

Fair Work Act 2009 (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)

Anti-Discrimination Act 1977 (NSW)

Work Health and Safety Act 2000 (NSW)

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)

[University of Sydney Enterprise Agreement](#)

Bullying, Harassment and Discrimination Prevention Policy 2015

Code of Conduct for Students Code of Conduct – Staff and Affiliates

Injury and Illness Management Policy 2015

Student Sexual Assault and Sexual Harassment Policy 2018

Resolution of Complaints Policy

Work Health and Safety Policy 2016

Injury and Illness Management Procedures 2015

Student Sexual Assault and Sexual Harassment Response Procedures 2018

AMENDMENT HISTORY

Provision	Amendment	Commencing
6 (1) (ii)	Correction of typographical error “or to behave differently” added (administrative amendment)	18 January 2016
Various	Updating hyperlinks to other documents (administrative amendment)	18 January 2016
12 (c)	Correction of reference to “this clause” replaced by “these procedures” (administrative amendment)	31 March 2016
Related documents	Administrative amendment: correcting references to internal policy documents	15 May 2017
Various	References to Case Management Group changed to Workplace Relations, references to HR Advisor changed to HR Partner and references to local resolution changed to assisted resolution throughout	22 September 2017
6(1)(c)	Note added	22 September 2017
7(3)(c)	Subclause and note added	22 September 2017
8(3)	Minor amendments	22 September 2017
8(4)	Clause added	22 September 2017
10(1)(b)	Minor amendments	22 September 2017
10(1)(c)	Subclause added	22 September 2017