

Discriminatory and Sexual Harassment Complaint Procedure

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Purpose

This Procedure aims to assist the University to meet its obligations to provide a learning and working environment that is free from discriminatory and sexual harassment. It aims to provide a clear process to enable breaches of the University's [Equal Opportunity and Valuing Diversity Guidelines](#) to be dealt with fairly and expeditiously.

Scope

This Procedure applies to all students and prospective students, staff and prospective staff, and other individuals associated with the University, in all situations or activities related to their roles at the University. Such situations

and activities may extend beyond University campuses and day-to-day activities eg field trips, conferences, events and functions, student senate/club/volunteer activities, University on- and off-campus residences.

This Procedure should be used where there is a complaint of discriminatory or sexual harassment in any University situation or activity.

This Procedure does not apply to overseas students not residing or present in Australia, who are subject to the relevant legislative processes in their country.

Legislative Context

- Commonwealth [Racial Discrimination Act 1975](#)
- Commonwealth [Sex Discrimination Act 1984](#)
- Commonwealth [Australian Human Rights Commission Act 1986](#)
- Commonwealth [Disability Discrimination Act 1992](#)
- Commonwealth [Disability Standards for Education 2005](#)
- Commonwealth [Racial Hatred Act 1995](#)
- Commonwealth [Age Discrimination Act 2004](#)
- Commonwealth [Fair Work Act 2009](#)
- Victorian [Equal Opportunity Act 2010](#)
- Victorian [Racial and Religious Tolerance Act 2001](#)

Definitions

Term	Definition
Attribute:	<p>Are the following (actual or assumed) personal characteristics on the basis of which discrimination is prohibited under Commonwealth and Victorian legislation:</p> <ul style="list-style-type: none"> • Disability (further defined below) • Sex (sex designated at birth: female, male, intersex) • Gender identity (identification by a person as female, male, something other, or in between; with or without regard to sex designated at birth) • Intersex status (people born with physical, hormonal or genetic features that are neither wholly female nor wholly male, or a combination of female and male) • Sexual orientation (the nature of a person's basic sexual attraction to other people eg being heterosexual, homosexual, gay, lesbian, bisexual) • Lawful sexual activity (includes adult consenting sexual relationships or using legal sexual services) • Pregnancy (being, or planning to become, pregnant) • Marital status (being or not being married or single, having or not having a domestic partner) • Parental status (being or not being a parent, which includes step-parent, adoptive parent, foster parent and guardian) • Carer status (being or not being a person upon whom someone else relies substantially for their ongoing care)

	<ul style="list-style-type: none"> • Breastfeeding (breastfeeding infants or expressing milk) • Race (colour, descent or ancestry, nationality or national origin, ethnicity or ethnic origin, and language spoken at home) • Religious belief or activity (holding or not holding a lawful religious belief or view; participating or not participating in a lawful religious activity) • Political belief or activity (holding or not holding a lawful political belief or view; participating or not participating in a lawful political activity) • Industrial activity (includes being or not being a member of an association of employees/participating or not participating in lawful activities organised by an industrial association) • Employment activity (making an enquiry or expressing a concern as an individual about their own employment entitlements) • Age (a person's age) • Physical features (a person's weight, height or other bodily characteristic, and may include body piercing, body hair or tattoos) • Personal association (being a friend, relative, associate or companion with an attribute listed above)
Disability:	<p>Refers to:</p> <ul style="list-style-type: none"> • a partial or total loss of a bodily or mental function (which can be permanent or temporary, visible or invisible) • a total or partial loss of a part of the body • the presence in the body of organisms causing or capable of causing disease or illness (eg hepatitis or HIV/AIDS) • the malfunction, malformation or disfigurement of part of the body • mental or psychological disease or disorder • A disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or • A disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour <p>Included is a disability (as defined above) that presently exists, previously existed but no longer exists, may exist in the future (including because of a genetic predisposition to that disability), is imputed to a person, and behaviour that is a symptom or manifestation of a disability.</p>
Discrimination:	<p>Refers to unfavourable treatment based on the actual or assumed attributes as defined above. In determining whether or not a person discriminates, the person's motive is irrelevant. Discrimination includes Direct and Indirect Discrimination.</p>
Discriminatory Harassment	<p>Is a form of discrimination and refers to a wide range of deliberate and unintentional behaviours, based on an attribute as listed above, which are unwelcome and uninvited and which are reasonably likely, in all the circumstances, to humiliate, intimidate or offend. It includes behaviour which may be written, printed, verbal, non-verbal or physical (including transmission or display of inappropriate electronic communications, use of social media).</p>

	<p>Examples of potential discriminatory harassment include:</p> <ul style="list-style-type: none"> • Spreading gossip about a person, such as gossip about a person's (real or assumed) attribute • Sexist or racist language or humour or images or emails • Intrusive personal questions based on an attribute • Displays of images (eg on computers, social media, posters, or graffiti) which target attributes and give rise to offence • Negative comments, taunts, jokes or insults eg at the expense of others' attributes • Negative comments or actions about adjustments made because of a person's disability or culture or carer responsibilities
Sexual Harassment:	<p>Is where a person engages in any unwelcome conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the other person would be offended, humiliated or intimidated. Sexual harassment can occur even if the behaviour is unintentional, and a single incident can amount to sexual harassment.</p> <p>Sexual Harassment refers to a wide range of behaviours and includes behaviour which may be written, printed, verbal, non-verbal or physical (including transmission or display of inappropriate electronic communications, use of social media).</p> <p>Examples of potential sexual harassment include:</p> <ul style="list-style-type: none"> • Physical intimacy or contact • Sexual jokes, images, emails, gestures, remarks or conversations • Intrusive personal questions • Spreading gossip about a person, such as sexual gossip • Displays of sexually explicit images (eg on computers, social media, posters, or graffiti) • Requests for sexual acts or favours, or unwelcome or repeated gifts or requests for 'dates' • Indecent assault, rape or stalking (which are also criminal offences)
Victimisation:	<p>Is where a person subjects (or threatens to subject) another person to any detriment because that person has made (or might make) a complaint in relation to this Procedure or is involved (or might be involved) in the resolution of a complaint, including as a witness. Victimisation includes physical, visual, verbal and non-verbal behaviour.</p>
Principles of natural justice:	<p>Means general procedural fairness in the handling of a complaint that involves all the following elements:</p> <ul style="list-style-type: none"> • the right to a fair and unbiased hearing • notice of the potential for an adverse decision • the right to attend hearings, if required, with a friend or support person • the opportunity for all parties involved to be heard • genuine consideration by the decision-maker of any submissions made • genuine inquiry into any areas of dispute

	<ul style="list-style-type: none"> the person complained about having full knowledge of the nature and substance of the complaint the person making a complaint not determining the outcome, but may be a party to it the right to an independent, unbiased decision-maker a final decision that is based solely on the relevant evidence
Support person:	Means a non-legally trained observer who accompanies a party to a complaint during any stage of the Procedure.
Other individuals associated with the University:	Includes persons (other than staff and students) holding an honorary, visiting or adjunct appointment, and external members of the University Council, boards, committees or other University bodies, as well as those volunteers, consultants and contractors who are legally bound by the policies and procedures of the University.
Staff member:	Is any person who is an employee of the University. This includes full-time, part-time, sessional or casual staff.
Student:	Is any person enrolled as a student of the University. This includes full-time, part-time, block-mode, online or distance education students. For the purpose of this Procedure, overseas students not residing or present in Australia are excluded, as they are subject to the relevant legislative processes of their country.

What Sort of Complaints Should Be Raised Under This Procedure?

Your complaint might be about any deliberate or unintentional behaviours or actions (whether by a staff member of the University, a student of the University, or other individual associated with the University) that may humiliate, intimidate or offend, on the basis of an attribute as defined above, and which you feel is in breach of the University's [Equal Opportunity and Valuing Diversity Guidelines](#) or this Procedure.

What Can I Do If I Have a Complaint?

Step 1 - Characterise Your Complaint

The best course of action for resolving your complaint will depend on the nature of that complaint. You should consider the nature of your complaint and the conduct that has affected you before moving ahead with the next steps in the [Discriminatory and Sexual Harassment Complaint Procedure](#). If you are unsure whether conduct is in breach of the Equal Opportunity and Valuing Diversity Guidelines or if you need assistance to characterise your complaint, you should contact the Equity and Equal Opportunity Office. In general, contact should be made with the Manager, Equity and Equal Opportunity. In the Manager's absence you should contact the Equity Officer. If the complaint is against the Manager, Equity and Equal Opportunity, you should contact the Director, People and Culture.

Students may also seek advice about the complaint and this Procedure from the Student Advisory Service.

Use common sense. If you have a genuine concern, then you should certainly talk to someone about it. You will not be blamed for speaking out or for failing to let the University know earlier.

You should be careful to make sure your understanding of the situation is not based on hearsay, gossip or rumour. Complaints against a person can be damaging, so it is important that you are as sure of your facts as possible.

Step 2 - Consider Resolving the Complaint Yourself

You may be able to resolve the situation yourself by identifying some action that may help. If your complaint is about a person's behaviour, you should consider telling the person that it is not acceptable and/or offensive or hurtful. Sometimes people behave inappropriately without realising it or considering the repercussions. Telling the person will give them a chance to stop or change what they are doing.

Step 3 - Report Your Complaint

If you are unable to, or it is inappropriate to resolve the complaint yourself, then explain the problem to the Manager, Equity and Equal Opportunity. If the complaint is against the Manager, Equity and Equal Opportunity, the Director, People and Culture will act in the place of the Manager, Equity and Equal Opportunity.

The Manager, Equity and Equal Opportunity will:

- listen empathetically to your concerns and try to relieve any initial distress you may be feeling;
- suggest and explore options for resolving your complaint and identify possible outcomes;
- support and assist you to resolve the complaint informally; and
- support you and, if you wish, accompany you if you decide to lodge a formal complaint.

However, the Manager, Equity and Equal Opportunity will not investigate or determine the outcome of complaints.

The Manager, Equity and Equal Opportunity will talk to you about your options including resolving the complaint informally or making a formal complaint, and the process involved in lodging a formal complaint. This will be done on a confidential basis. The person to whom you report your complaint, and any other person who subsequently may be made aware of your complaint, will treat as confidential the information disclosed.

In general, you will direct the progress of your complaint with no action being taken without your agreement. However, in some circumstances, the seriousness of the allegations may place the University under a policy or legal obligation to ensure that a matter is investigated beyond that which you intend or wish. In these cases the University may initiate a complaint or progress a complaint under its own volition under this Procedure and/or bring an allegation of staff or student misconduct under relevant industrial or legislative provisions.

In the case of alleged criminal offences the University encourages you to report to the Police. However we reserve the right to separately inform Police

Step 4 - Resolving Your Complaint Informally

If you have not been able to resolve your complaint yourself (Step 2), it may be possible to have it resolved informally. The Manager, Equity and Equal Opportunity can talk with you about a range of options for informal resolution. These may include the Manager, Equity and Equal Opportunity arranging a discussion between you and the other person or involving other relevant staff in the resolution process.

The aim is to come to a resolution of the complaint as quickly as possible through having you and the other person agree on a way to resolve the complaint. This process will not involve an investigation of the complaint. If, however, the complaint is not able to be resolved informally, you can lodge a formal complaint, seeking an investigation.

Step 5 - Lodge a Formal Complaint

A formal complaint may be lodged with the Manager, Equity and Equal Opportunity. The complaint will then be reported to the University's General Counsel. If the complaint is against the Manager, Equity and Equal Opportunity, the Director, People and Culture will act in the place of the Manager, Equity and Equal Opportunity.

If a complaint is lodged directly with the University's General Counsel, the General Counsel will notify the Manager, Equity and Equal Opportunity that a formal complaint has been lodged.

The General Counsel, in consultation with whoever they think fit, will decide whether it is appropriate to deal with your complaint under this Procedure. If the General Counsel considers that your complaint should be dealt with under this Procedure, the steps set out below will be followed. If the complaint is not to be dealt with under this Procedure, you and the Manager, Equity and Equal Opportunity will be notified accordingly.

The General Counsel, in consultation with the Manager, Equity and Equal Opportunity, will determine if interim arrangements are required for the parties during the investigation and, if needed, will negotiate these the appropriate University staff. The General Counsel and Manager, Equity and Equal Opportunity will also agree on the appropriate communication processes to be applied during the investigation.

In dealing with your complaint, the General Counsel will appoint an appropriate investigator. The investigator will set up a meeting to talk through your concerns. You may bring along a trusted support person to that meeting and any future meetings if you feel that would help you.

During your interview, the investigator will want to identify any people relevant to your complaint, discuss any evidence that exists, and may seek your views as to what you would like done to resolve your complaint expeditiously (eg an apology from the person, a written warning etc). The investigator will also explain what will happen if the complaint is found to be supported or not supported.

A formal investigation will then be conducted by the investigator. The investigator will conduct the investigation in accordance with the principles of natural justice. This means that:

- any person who is affected by the investigation will be given the opportunity to reply to the allegations and evidence made against them;
- the investigator will obtain specialist advice on matters outside their knowledge or expertise; and
- investigations will be carried out as quickly as reasonably practicable and with a degree of confidentiality consistent with the seriousness of the allegations raised.

After the investigator has completed the investigation, they will provide a report, with findings and recommended actions, to the Vice-Chancellor. If the complaint has been made against the Vice-Chancellor, the investigator will report to the Chancellor.

The Vice-Chancellor will consider recommendations in the report and adopt any recommended outcome that they consider is appropriate. The Vice-Chancellor will contact all of the parties to the complaint about the outcome of the investigation and provide details of any steps that need to be taken as result of the investigation.

The Vice-Chancellor's decision is the final step in this [Discriminatory and Sexual Harassment Complaint Procedure](#) and is not open to challenge via any other dispute resolution mechanism within the University.

Step 6 - External Review

Complaints about the administrative actions and decisions of the University can be made to the Victorian Ombudsman. Students studying in another State may make a complaint to the equivalent office in that State. Other external organisations may also be accessed, such as the Victorian Equal Opportunity and Human Rights Commission and the Australian Human Rights Commission.

What Happens to Me During the Resolution of My Complaint?

The University understands that there might be personal implications for a person who raises a complaint under this Procedure. The University is committed to minimising such implications. In addition to any support you receive from the Manager, Equity and Equal Opportunity, staff members can also access the University's Employee Assistance Program and students can speak with a student counsellor.

The University forbids any student, staff member or other individual associated with the University from acting in a way that penalises or victimises a person who raises a complaint that falls within the scope of this Procedure. Failure to abide by this element of this Procedure may result in disciplinary action under the University Student Discipline Legislation, the [University Collective Agreement](#) for Academic and General Staff or in accordance with the University's disciplinary procedures for TAFE teachers.

Am I Allowed to Tell Anyone About My Complaint?

You may feel the need to tell a trusted friend, family member or colleague about your complaint, but you should be careful and always treat the situation as confidential. If you lodge a formal complaint (Stage 5) then the importance of confidentiality in this process is paramount. If you feel you need to talk to a friend or family member about your complaint during the investigation stage, you should first discuss this with the investigator looking into your complaint.

At the initial interview and during the investigation stage, all parties involved will be warned of the consequences if there is a breach of confidentiality. These consequences include disciplinary action under the University Student Discipline Legislation, the [University Collective Agreement](#) for Academic and General Staff or in accordance with the University's disciplinary procedures for TAFE teachers.

What Happens If a Formal Complaint is Made Against Me?

If a formal complaint is made against you, you will be contacted by an investigator. You can seek support and advice from the Equity Officer. In addition to any support you receive from the Equity Officer, staff members can access the University's Employee Assistance Program and students can speak with a student counsellor.

Throughout the investigation period, you will be treated fairly and will be accorded natural justice. The same obligation of confidentiality to which the person making the complaint is subject, will also apply to you (see Section above).

Students may also seek information about this Procedure from the Student Advisory Service.

What Are the Possible Outcomes of Raising a Formal Complaint?

If your complaint proves to be well-founded, the following are possible outcomes (in relation to the person about whom you complain):

- a written apology;
- counselling;
- an official warning;
- steps such as changes in a person's employment duties, appropriate training, monitoring behaviour or implementing a revised study program;
- disciplinary action under the University Student Discipline Legislation, the [University Collective Agreement](#) for Academic and General Staff, or in accordance with the University's disciplinary procedures for TAFE teachers;

- referral to relevant regulatory bodies and authorities.

If there is not enough evidence to support your complaint, or if the evidence gathered conflicts and that conflict cannot be reconciled, the following are possible outcomes:

- no further action;
- appropriate training for relevant persons;
- monitoring of behaviour of relevant persons;
- steps such as changes in a person's employment duties or a revised study program.

If your complaint is unfounded (ie the subject of your complaint is not proven) there may be no further action taken. If, however, your complaint was unfounded and not made in good faith, the following are possible outcomes (for you):

- a written apology by you;
- counselling;
- an official warning;
- appropriate training;
- disciplinary action under the University Student Discipline Legislation, the [University Collective Agreement](#) for Academic and General Staff, or in accordance with the University's disciplinary procedures for TAFE teachers;
- referral to relevant regulatory bodies and authorities.

Can I Raise a Complaint Anonymously?

Yes, anonymous complaints may be made to the Manager, Equity and Equal Opportunity, although you are encouraged to disclose your identity to this person who will keep your identity confidential.

However, there are significant limits on the University's ability to act on or investigate anonymous complaints. For example, if an anonymous complaint leaves out key facts or information then the University might be unable to pursue investigation without taking the risk that other people may realise a complaint has been raised and discover who has made it. There is also the inherent difficulty in resolving disputes about factual matters when the other person has not had a fair chance to debate the point with the complainant.

If your complaint does not involve conduct affecting you, you can make a complaint on the basis that your identity is disclosed to the Manager, Equity and Equal Opportunity and any person investigating your complaint, but not disclosed to the person against whom the complaint is made. The University will do what it reasonably can to preserve your anonymity in such a case (but you will appreciate that sometimes this is not always practicable if the source of the complaint is fairly obvious).

On receipt of an anonymous complaint, the Manager of Equity and Equal Opportunity will consider appropriate actions and may refer the complaint to the University's General Counsel to consider investigation.

Who Should I Talk To If I Have Any Questions About This Procedure?

You should contact the Equity and Equal Opportunity Office with questions about this Procedure. Normally the Manager, Equity and Equal Opportunity will provide information and advice. In the Manager's absence, or if the person seeking information has a complaint made against them, the Equity Officer will provide information and advice.

Responsibility

The Manager, Equity and Equal Opportunity is responsible for the implementation and review of this Procedure.

The Deputy Vice-Chancellor Academic, as nominee of the Vice-Chancellor, has overall responsibility for the implementation and review of this Procedure.

The Manager, Equity and Equal Opportunity is required to report to the Deputy Vice-Chancellor, (Academic), and the Vice-Chancellor annually on the number and types of complaints reported.

Records Management

The Manager, Equity and Equal Opportunity and the Equity Officer will keep records of each complaint, including:

- the names of all parties involved;
- a summary of the issue/s raised, including the remedy or outcome sought; and
- accurate and up-to-date file notes of any action initiated under this Procedure.

Such file notes are to be marked strictly confidential and held in a restricted area. The information contained in these notes should be kept to a minimum, stating only facts and relevant details as described by the parties, and the outcome of each stage.

In the case of informal resolution, if records are created, they are to be marked strictly confidential and held in a restricted area, and retained for 7 years.

In the case of a formal investigation, the investigator will transfer the records of all interviews conducted and all records reviewed that affect the outcome of the investigation to the General Counsel, to be retained for 15 years.

A report reflecting the outcome of a formal investigation will also be provided to the Manager, Equity and Equal Opportunity for record keeping and reporting purposes.

Supporting Documents

- [Students and Support for Students Policy](#)
- [Equal Opportunity and Valuing Diversity Guidelines](#)
- [Staff Code of Conduct](#) Procedure
- [Information Privacy Procedure](#)
- [Records Management Procedure](#)
- [University Collective Agreement](#), Academic and General Staff Employees
- [Victorian TAFE Teaching Staff Multi-Business Agreement \(MBA\) 2009](#)
- Federation University Australia (Students) Regulations 2022
 - Part 5 - Student Misconduct