

Discrimination, Bullying and Harassment Complaints against Employees Procedure



1 Purpose

To support the rights of both Students and Employees to achieve their full potential free from Workplace Bullying and Harassment, Discrimination, Harassment, Victimization and Vilification, through a robust set of responsibilities and Procedures associated with resolving Complaints of this nature made against University Employees.

2 Scope

This Procedure applies to:

- all Discrimination, Bullying and Harassment concerns and Complaints raised against Employees (including honorary, visiting and adjunct appointments) by any individuals involved in University related activities, including Students.

Exclusions:

- Discrimination, Bullying or Harassment concerns or Complaints raised against members of University Council will be managed in accordance with the Policy on Complaints Involving Council Members and pursuant Procedure.
- Discrimination, Bullying or Harassment concerns or Complaints raised against a Student (including those made by an Employee) will be managed in accordance with the Harassment and Discrimination Complaint Resolution for Students Policy and Procedure.

3 Procedure Overview

This Procedure outlines responsibilities of the University, Supervisors and Employees in managing and responding to concerns and Complaints related to Discrimination, Bullying and Harassment made against Employees, and outlines the Complaint resolution stages to be followed in resolving such issues.

4 Procedures

4.1 Responsibilities

4.1.1 University

To support the Complaint resolution process, the University will:

- maintain a pool of designated Harassment and Diversity Contact Officers and ensure they are adequately trained
- provide training and professional development opportunities for Employees and Supervisors and education and awareness programs for Students in relation to Discrimination, Bullying and Harassment Complaint processes in the University
- ensure Supervisors and Employees have access to training on their rights and responsibilities in relation to Complaints, including mandatory induction and compliance training
- provide accessible Information in relevant policies, Procedures, schedules and websites regarding access to internal and external avenues of support for individuals in relation to Discrimination, Bullying and Harassment concerns
- nominate external Mediators and Investigators to the Director of Integrity and Professional Conduct or Executive Director (Human Resources) for inclusion on the approved list of external Mediators and Investigators
- securely archive all documentation pertaining to Complaints according to the University Policy and Procedure on record keeping and storage
- maintain a confidential data base of Complaints
- provide regular statistical reports to the Social Justice Committee, Director of Integrity and Professional Conduct and the Vice-Chancellor
- brief the Vice-Chancellor on issues arising from the reports.

Depending on the scope and nature of the Complaint, Human Resources, Student Services or other University work area (as relevant to the nature of the Complaint) will manage the Complaint resolution process in consultation with the individuals concerned.

4.1.2 Supervisors

All Supervisors have an obligation and a responsibility to take all reasonable steps to ensure that no form of Discrimination, Bullying or Harassment takes place in the University environment, whether this is between Supervisors and Employees, between Employees or between Employees and Students.

This includes ensuring that a culture of unacceptable behaviour is addressed immediately. Individuals should be given clear guidance about what is acceptable, and what is not

acceptable, behaviour in the University environment.

Supervisors have a duty to ensure that they are aware of their responsibilities in the prevention and resolution of Complaints of Discrimination, Bullying or Harassment and to ensure that these Complaints are dealt with in a supportive environment without Victimisation or intimidation of any individual connected with a Complaint during or subsequent to resolution.

It is the primary responsibility of Supervisors to take all reasonable steps to prevent and resolve Complaints raised in their area/s of responsibility. Supervisors need to recognise the early signs of disharmony and to take early, sensitive and positive steps to prevent and resolve Complaints. Supervisors should not wait until an individual makes a Complaint before taking action, and if a Complaint is made, it is a Supervisor's responsibility to assist the individual to resolve the issue.

To support the Complaint resolution process, it is the responsibility of a Supervisor to:

- inform individuals of the actions they can take if they feel they are being harassed, bullied or discriminated against
- inform individuals who are the subject of Discrimination, Bullying or Harassment concerns of their rights and provide them with the relevant Complaint resolution process
- inform individuals that Discrimination, Bullying, Harassment, Victimisation and Vilification may, where substantiated, result in the commencement of disciplinary Procedures
- inform individuals of designated Harassment and Diversity Contact Officers and their availability, and additionally for Students, inform them of the support available from the Student Guild
- address any Complaint process through consultation with the impacted individual or individuals
- ensure that individuals who make a Complaint are not victimised for doing so
- ensure that the policies and Procedures in relation to the making of a Complaint or resolution are followed
- ensure that the matter is handled confidentially and privately
- ensure that individuals are sufficiently informed prior to an Investigation, whilst protecting confidentiality
- ensure that the environment is supportive of individuals on the completion of any Investigation
- ensure that an individual not be made to feel that they should take certain action, or no action, because of their involvement or interactions with other individuals.

4.1.2.1 Reasonable Management Action

Supervisors have responsibilities to manage and supervise their Employees and Workplace Bullying and Harassment must not be confused with Reasonable Management Action, carried out in a reasonable manner.

Management action must be reasonable and may include, but is not limited to, undertaking performance reviews, effectively directing and controlling the way work is carried out, counselling Employees, rostering and allocating working hours and informing Employees particularly with regard to the unsatisfactory performance of duties. Such comment and advice may include critical statements and feedback, along with ongoing monitoring and review of performance.

Similarly, Employees who teach, supervise or support Students also have a responsibility to provide constructive comment on Student performance and progress.

4.1.3 Individuals

As outlined in the Code of Conduct Policy, University Members are responsible for making themselves aware of and adhering to University Policy and Procedure on all forms of Discrimination, Bullying or Harassment.

Employees and Students are encouraged to take responsibility and ownership for making Decisions on how they would like the concerns to be resolved.

Individuals can access Information, support and assistance from Supervisors, Harassment and Diversity Contact Officers, Human Resources, the Student Guild, Union representatives and Student Services to determine the resolution option that they would like to progress, inform of their rights, and provide them with the relevant Complaint resolution process. The University will consult with the individual in relation to the processes that will be taken to resolve the concerns raised.

4.2 Managing Complaints

The Complaint resolution process will be carried out in good faith and Complaints that are frivolous, vexatious, misconceived or lacking in substance will be rejected if a preliminary investigation of the facts indicates this. The University may initiate disciplinary Procedure investigations immediately in response to allegations of conduct or behaviour that may be considered misconduct. In some circumstances a Complaint under this Procedure may also be regarded as a matter that requires attention under the Public Interest Disclosure Policy.

Employees or Students wishing to lodge a Formal Complaint of Discrimination, Bullying and/or Harassment against an Employee of the University should do so in accordance with this Procedure and the Student Complaints and Appeals Management System.

Employees or Students wishing to lodge a Formal Complaint of Discrimination, Bullying and/or Harassment against a Student of the University are referred to the Discrimination and

Harassment Complaint Resolution for Students Policy.

Where an Employee or Student has raised Discrimination, Bullying and Harassment concerns but does not wish to lodge a Formal Complaint, the University has a responsibility to take these matters seriously and may be obligated to investigate these concerns further where they are considered to be of a serious nature and have the capacity to impact on an Employee or Student's health and safety, or another Employee or Student's health and safety.

Students who require assistance to make a Formal Complaint to the Vice-Chancellor or an external third party will be supported by a Student Guild Officer to do so.

A Student Guild Officer who provides this assistance may not also be part of an investigative team, or involved in initiating Disciplinary Action; or liaise directly with the Human Rights Commission Queensland or Australian Human Rights Commission if a Formal Complaint has been lodged under the Sex Discrimination Act 1984 or Anti-Discrimination Act 1991, in their role as either Harassment and Diversity Contact Officer or Student Guild Officer.

4.3 Complaint resolution processes

Employees and Students seeking to resolve issues of Discrimination, Bullying and Harassment can initially seek Information and support (not counselling) from an Harassment and Diversity Contact Officer.

Individuals are encouraged to report all instances of Discrimination, Bullying or Harassment behaviour, threats of violence and violent acts involving them through the use of these Procedures. By not addressing Discrimination, Bullying and Harassment, when and if it occurs, the problem cannot be resolved and other people may be subjected to conduct, which may be unlawful. Discrimination, Bullying and Harassment of any individual is not tolerated by the University on any level.

If a concern is with an immediate Supervisor, the Employee can ask for assistance from that Supervisor's Manager. A Student can seek assistance from the Course Coordinator, a Student Guild Officer or Student Services if the concern relates to their lecturer.

4.3.1 Stages of Employee Complaint resolution

This Procedure outlines the broad stages associated with resolving Complaints associated with Discrimination, Bullying, Harassment, Victimisation and Vilification against Employees at the University.

There are separate Complaint resolution stages and processes to be followed depending upon the nature of the Complaint.

Normally in resolving Complaints of Discrimination, Bullying and Harassment the University applies a three stage process. The emphasis of this process is to seek resolution as soon as possible with resolution occurring at the lowest possible level. The three stages are as follows:

Stage 1: Initial Action

Stage 2: Further Advice and Assistance

Stage 3: Investigation.

Stage 1 and 2 are informal processes. They allow individuals to make informed Decisions and assist them in resolving the issues. They do not involve a formal Investigation or the determination of evidence. Individuals are encouraged to resolve Complaints between themselves, where possible.

The University maintains a register of Harassment and Diversity Contact Officers who are trained to provide Information and support (not counselling) for these Procedures. Harassment and Diversity Contact Officers will assist an individual to decide whether the concerns constitute, Discrimination, Bullying or Harassment, advise them of their rights and explore possible options with them.

Stage 3 is a formal Procedure and will normally only be used when the matter cannot be resolved informally. It involves the making of a written Formal Complaint after which an Investigation of the allegation of, Discrimination, Bullying or Harassment occurs and an outcome is then imposed on the parties.

Normally, all Complaints will be progressed through each of the Complaint resolution stages and processes.

However, an individual can lodge an Informal Complaint (verbally or in writing) to start the process, and at any time an Informal Complaint may progress straight to the Human Resources Department if the allegations pose an immediate risk to the health, safety or wellbeing of any University Member or involve alleged criminal activity by an Employee.

Complaints made against an Employee will be assessed on a case-by-case basis and may be referred to the Executive Director (Human Resources) at Stage 2 (Further Advice and Assistance) or Stage 3 (Investigation), depending on the nature and seriousness of the Complaint.

Where the Complaint involves offences under the Criminal Code such as sexual assault, rape, indecent exposure, stalking or obscene communication which has occurred on University property or through University resources, the individual will be informed of their right to report the matter to the police and will be provided with Information on the nearest sexual assault service.

The University takes all Complaints seriously and every effort will be made to provide support and assistance to individuals as required.

In some circumstances a Complaint under this Policy and Procedure may also be regarded as a matter that requires attention under the Public Interest Disclosure Policy and Procedure.

With the exception of Complaints that are made in accordance with the University's Public

Interest Disclosure Policy and Procedure, the University will not normally investigate anonymous Complaints unless the issues raised within the Complaint are of a serious nature and sufficient Information is provided.

4.3.1.1 Employee Workplace Bullying and Harassment complaint resolution process

The stages and processes involved in resolving Complaints of Workplace Bullying and Harassment against Employees are outlined in the Employee Workplace Bullying and Harassment Complaint Resolution Schedule.

A flowchart of the Complaint resolution Procedure for Workplace Bullying and Harassment is also available.

4.3.1.2 Employee Discrimination and Harassment Complaint resolution process (including Sexual Harassment)

The stages and processes involved in resolving Complaints of Discrimination and Harassment against Employees are outlined in the Discrimination and Harassment Complaint Resolution Schedule.

A flowchart of the Complaint resolution Procedure for Discrimination and Harassment related Complaints (including Sexual Harassment) is also available.

4.4 Frivolous and vexatious Complaints

Complaints which at any stage of an investigation are found to be unsubstantiated, misconceived, frivolous, vexatious or not lawful by reason of a provision contained in legislation, or in breach of this Procedure, the University may, by Notice in writing addressed to the Complainant, dismiss the Complaint.

Employees who deliberately make false or malicious Complaints may be subjected to Disciplinary Action. Vexatious or frivolous Complaints by Students may result in the Student's conduct being investigated, and may also result in Disciplinary Action under the Student Code of Conduct Policy.

4.5 Disciplinary Action

Where Discrimination, Bullying or Harassment is found to have occurred, this may be considered as misconduct or serious misconduct and Disciplinary Action may be commenced against the person against whom the findings were made.

Where Disciplinary Action is recommended against an Employee the Executive Director (Human Resources) will advise the Vice-Chancellor. The Vice-Chancellor will determine whether or not Disciplinary Action should be commenced against the person(s) subject to the findings.

Where it is determined that Disciplinary Action should commence against an Employee, the process of Clause 33 Disciplinary Action and Clause 34 Disciplinary Action for Misconduct or Serious Misconduct of the USQ Enterprise Agreement, or the provisions of any other relevant contract of employment, will apply.

The Vice-Chancellor will provide written advice of the Decision to both the Complainant and the Respondent.

5 Delegated Responsibilities

Approver	Level of Delegation
Vice-Chancellor	Decision as to whether or not to commence disciplinary action.
Executive Director (Human Resources)	Ensure matters proceed in accordance with other relevant policies and timeframes; and to provide Procedure and process recommendations to the Vice-Chancellor.

6 References

Nil.

7 Schedules

This procedure must be read in conjunction with its subordinate schedules as provided in the table below.

8 Procedure Information

Subordinate Schedules	Discrimination and Harassment Complaint Resolution Schedule Employee Workplace Bullying and Harassment Complaint Resolution Schedule
Accountable Officer	Executive Director (Human Resources)
Responsible Officer	Executive Director (Human Resources)
Policy Type	University Procedure
Approved Date	8/8/2019
Effective Date	8/8/2019

Review Date	3/4/2022
Relevant Legislation	<u>Age Discrimination Act 2004</u> <u>Anti-Discrimination Act 1991</u> <u>Australian Human Rights Commission Act 1986</u> <u>Disability Discrimination Act 1992</u> <u>Disability Services Act 2006 (Qld)</u> <u>Equal Opportunity (Commonwealth Authorities) Act 1987</u> <u>Human Rights Act 2019</u> <u>Fair Work Act 2009</u> <u>Public Interest Disclosure Act 2010 (Qld)</u> <u>Public Sector Ethics Act 1994</u> <u>Racial Discrimination Act 1975</u> <u>Racial Hatred Act 1995</u> <u>Sex Discrimination Act 1984</u> <u>University of Southern Queensland Act 1998</u> <u>USQ Enterprise Agreement</u> <u>Work Health and Safety Act 2011 (Qld)</u> <u>Work Health and Safety Regulation 2011 (Qld)</u> <u>Workplace Gender Equality Act 2012</u>
Related Policies	<u>Code of Conduct Policy</u> <u>Employee Complaints and Grievances Policy</u> <u>Employee Equity and Diversity Policy</u> <u>Harassment and Discrimination Complaint Resolution for Students Policy and Procedure</u> <u>Media Engagement Policy</u>

	<p>Policy on Complaints Involving Council Members</p> <p>Public Interest Disclosure Policy and Procedure</p> <p>Student Code of Conduct Policy</p>
Related Procedures	<p>Disciplinary Action for Misconduct or Serious Misconduct Procedure</p> <p>Media Engagement Procedure</p> <p>Prevention of Discrimination, Bullying and Harassment Procedure</p> <p>Termination of Employment Procedure</p>
Related forms, publications and websites	<p>Feedback, Complaints and Appeals</p> <p>Harassment and Diversity Contact Officers</p> <p>Human Resources Website</p> <p>Student Equity Website</p> <p>Student Guild Website</p>
Definitions	<p>Terms defined in the Definitions Dictionary</p> <p>Bullying</p> <p>Bullying occurs where an individual or group of individuals repeatedly behaves unreasonably towards a person or group of persons (in this instance, a Student or group of Students), and that behaviour creates a risk to health and safety.</p> <p>Complainant</p> <p>A person who has made a Complaint against another person of the University community.</p> <p>Complaint</p> <p>A Complaint is an “expression of dissatisfaction made to or about the University, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required”.</p> <p>Decision</p> <p>A determination made by an Employee, contractor or other authorised delegate in the course of their duties on behalf of the University.</p>

[Discrimination](#)

Occurs when a person or a group of people are treated less favourably than another person or group because of race, colour, national or ethnic origin; gender or marital status; disability; religion or political beliefs; sexual preference; or some other central characteristic. Discrimination may occur when a person is denied the opportunity to participate freely and fully in normal day-to-day activities, for example being harassed in the workplace or being denied entry to public places and other facilities.

[Employee](#)

A person employed by the University and whose conditions of employment are covered by the USQ Enterprise Agreement and includes persons employed on a continuing, fixed term or casual basis. Employees also include senior Employees whose conditions of employment are covered by a written agreement or contract with the University.

[Formal Complaint](#)

A Formal Complaint is a written Complaint lodged with the relevant delegate, which is dealt with through a formal process of the University. It may lead to a formal investigation of allegations.

[Harassment](#)

Occurs when a person is made to feel intimidated, insulted or humiliated because of their race, colour, national or ethnic origin; sex; disability; sexual preference; or some other characteristic specified under anti-discrimination or human rights legislation. Harassment may include behaviour, comments or images which a reasonable person would consider to be offensive, humiliating, intimidating or threatening.

[Informal Complaint](#)

A Complaint expressed either verbally or in writing to a relevant delegate, which is not dealt with through a formal process of the University. It may involve a discussion with relevant parties in order to receive information and explore options on resolving the matter. It does not involve a formal investigation or the determination of evidence.

[Manager\(s\)](#)

A University Member who is responsible for managing staffing and

physical resources of the University.

[Mediator](#)

An individual with appropriate experience and training appointed by the University to assist the Complainant and Respondent to negotiate a solution which is acceptable to both of them but not to determine what that solution will be.

[Notice](#)

A Notice from the University is a document, whether physical or electronic. A Notice may be: given by hand to the addressee or delivered to the address provided by the addressee to the University; or sent by registered or pre-paid mail to the address provided by the addressee to the University; or sent by electronic communication to the University-issued email account provided by the University to a Student during the period of Enrolment until the completion of their program; or sent by electronic communication to the email address provided to the University by an addressee not enrolled at the University. A Notice is taken to be received if: given by hand to the addressee or delivered to the address provided to the University by the addressee; or sent by registered or pre-paid mail - three University Business Days after the date of posting; or sent by electronic communication - at the time that would be the time of receipt under the Electronic Transactions Act 1999 or its succeeding legislation. A Notice that would be deemed to have been received out of business hours or on a non-University Business Day will instead be deemed received on the next University Business Day.

[Policy](#)

A high level strategic directive that establishes a principle based approach on a subject. Policy is operationalised through Procedures that give instructions and set out processes to implement a Policy.

[Procedure](#)

An operational instruction that sets out the process to operationalise a Policy.

[Respondent](#)

A member of the University community against whom a Complaint has been made.

[Sexual Harassment](#)

Sexual Harassment is any unwanted or unwelcome sexual behaviour which makes a person feel offended, humiliated or intimidated. Sexual Harassment can take many different forms. It can be obvious or indirect, physical or verbal, repeated or one-off, and perpetrated by males and females against people of the same or opposite sex. Sexual Harassment may include: staring or leering; unnecessary familiarity, such as deliberately brushing up against a person, or unwelcome touching; suggestive comments or jokes; insults or taunts of a sexual nature; intrusive questions or statements about a person's private life; displaying posters, magazines or screen-savers of a sexual nature; sending sexually explicit emails or text messages; inappropriate advances on social networking sites; accessing sexually explicit internet sites; requests for sex or repeated unwanted requests to go out on dates; behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications. Sexual Harassment is not interaction, flirtation or friendship which is mutual or consensual.

[Student](#)

A person who: has been Admitted or Enrolled in an Academic Program at the University, but has not yet graduated from the program; or has been Enrolled in a Course at the University but has not yet completed the Course.

[University](#)

The term 'University' or 'USQ' means the University of Southern Queensland.

[USQ Enterprise Agreement](#)

University of Southern Queensland Enterprise Agreement 2018-2021.

[Victimisation](#)

Any unfavourable treatment, or threats of unfavourable treatment against a person as a result of their actual or intended involvement in a complaint under the Anti-Discrimination Act 1991 or under any of these procedures. The involvement might include making a complaint, supplying information and producing documents to someone making a complaint or appearing as a witness in a proceeding under the Act. Unfavourable treatment may include adverse changes to their study or work environment, denial of access to resources, work opportunities or training, ignoring the person or lower assessment of Student work. Victimisation is an offence under the Anti-Discrimination Act 1991.

Vilification

The public incitement of hatred, serious contempt or severe ridicule of a person on the basis of the race, religion, sexuality or gender identify of a person or members of a group. It can take several forms including hate-speech, graffiti, websites and the distribution of propaganda or other forms of offensive literature. Vilification includes threatening physical harm to a person or their property or inciting others to threaten physical harm to a person or to their property. Vilification is an offence against the Anti-Discrimination Act 1991.

Workplace Bullying and Harassment

Workplace Bullying and Harassment, under the Fair Work Act 2009, occurs where an individual or group of individuals repeatedly behaves unreasonably towards an Employee or group of Employees at work, and that behaviour creates a risk to health and safety. Within this definition: Repeated Behaviour refers to the persistent nature of the behaviour and can range in behaviours over time. Unreasonable Behaviour is behaviour that a reasonable person, having regard to the circumstances, may see as unreasonable. This may include but is not limited to behaviour that is victimising, humiliating, intimidating or threatening. A Risk to Health and Safety means the possibility of danger to health and safety, and is not confined to actual danger to health and safety

Definitions that relate to this procedure only

Disciplinary Action

Means action by the University to discipline an Employee for Misconduct or Serious Misconduct and includes: formal censure or counselling; demotion by one or more classification levels or increments; withholding of an increment; suspension with or without pay; or termination of employment for Serious Misconduct only.

Facilitation

A confidential meeting between people in conflict, facilitated by a Supervisor or Human Resources representative. The meeting aims to discuss and resolve issues between individuals so that they can work out an agreement which suits them all. Supervisors and HR representatives who facilitate the meeting between parties are also obligated to counsel and advise individuals of expected behaviours in accordance with the USQ Code of Conduct Policy and other appropriate policies, and identify any development opportunities for individuals involved.

Harassment and Diversity Contact Officer

University Employee who has volunteered to provide an initial point of contact for Employees and Students who have inquiries about any form of Workplace Bullying and Harassment, Discrimination or Harassment. The Harassment and Diversity Contact Officers are appointed by the Vice-Chancellor for a term of three years. The Harassment and Diversity Contact Officer provides Information and support (not counselling) about the resolution options available to Employees and Students.

Harassment under the Disability Discrimination Act

The *Disability Discrimination Act, 1992* prohibits Harassment and Victimisation of Students and Employees with disabilities, on the basis of disability, including;

(a) The need for individual strategies and adjustments for a Student; and (b) The need to use such supports as a wheelchair, hearing aid, breathing support, an interpreter, a reader, an assistant or carer or a guide or hearing dog, or other appropriately trained animal.

The Act also prohibits Harassment and Victimisation of the associates of Students and Employees with disabilities, on the basis of disability.

Supervisor

Any person responsible for leading the activities of others. In the context of this Procedure a Supervisor includes Employees at any classification level or title who have responsibilities for leading, managing or supervising work teams and/or individual Employees.

Nominated Representative

In relation to an Employee, means a person selected by the Employee to assist or represent the Employee. The person may be an officer or Employee of the relevant Union, or any other person chosen by the Employee. In relation to the University, it means a person selected by the University to assist or represent the University. The person may be an Employee of the University, or an officer or Employee of AHEIA, or any other person selected by the University. The Nominated Representative must not be a practising barrister or solicitor and must not present a Conflict of Interest.

Reasonable Adjustments

Reasonable Adjustments are measures which an employer implements to enable the Employee with a Disability undertake the Inherent Requirements of the position or to undertake the Inherent Requirements of their training or professional development.

	<p>Reasonable Management Action</p> <p>Reasonable Management Action, carried out in a reasonable manner, is behaviour expressly excluded from Workplace Bullying and Harassment claims. The behaviour must be lawful management action; it must be reasonable for the management action to be taken; and the management action must be carried out in a manner that is reasonable, taking into consideration the circumstances. It includes action such as responding to poor performance, taking necessary Disciplinary Action and effectively directly and controlling the way work is carried out.</p> <p>Visitor</p> <p>Includes any approved person, other than contractors, consultants and professional services providers, undertaking travel related to University Business.</p>
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Record No	13/301PL