

Anti-Discrimination and Freedom from Bullying and Harassment - Governing Policy

1. Purpose of policy

1.1 The University recognises the right of all staff, visitors and other members of the University community to a university environment free from bullying, discrimination and harassment and is committed to providing safe and inclusive campus communities.

1.2 The University has zero tolerance for bullying, discrimination and harassment and expects that all staff will behave professionally, with respect for others in accordance with the Code of Conduct and relevant legislation.

2. Policy scope and application

2.1 This policy applies to all staff, contractors and visitors in circumstances where they are performing work, duties or functions for the University, as well as related activities such as work-related functions, travel, conferences and any circumstances where they are attending as a University staff member either on campus, in transit to/from campus, off campus and online.

2.2 For the purposes of this policy, staff means current employees and people representing the University, including visiting, honorary and adjunct academics, members of University Council, external members of University committees, and individuals acting in a voluntary capacity.

2.3 For information related to expected standards of student interactions and behaviours refer to the Sexual Assault, Sexual Harassment and Respectful Relationships (Students) – Governing Policy and the Sexual Assault, Sexual Harassment and Respectful Relationships (Students) – Procedures.

APPROVAL AUTHORITY

Council

RESPONSIBLE EXECUTIVE MEMBER

Vice-Chancellor and President

DESIGNATED OFFICER

Director, People and Culture

FIRST APPROVED

26 November 2002

LAST AMENDED

31 March 2023

REVIEW DATE

31 March 2028

STATUS

Active

3. Definitions

Please refer to the University's Glossary of Terms for policies and procedures. Terms and definitions identified below are specific to this policy and are critical to its effectiveness:

Bullying is repeated and unreasonable behaviour, whether intentional or unintentional, directed towards an individual or a group that creates a risk to health and safety.

Bullying also includes work-related bullying, which is defined in the *Work Health and Safety Act 2011* (Qld) as repeated, and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety. Work-related bullying is not a simple abuse of power from supervisors to subordinate employees: for example, staff or students can bully their supervisors, and bullying can occur between members of an ostensibly equal group.

It is possible for a person to be bullied, harassed and discriminated against at the same time.

Detailed below are examples of behaviours, whether intentional or unintentional, that may be regarded as bullying or work-related bullying if they are repeated, unreasonable and create a risk to health and safety. This is not an exhaustive list – however, it does outline some of the more common types of behaviours. Examples include:

- Abusive, insulting or offensive language or comments
- Unjustified criticism or complaints
- Deliberately excluding someone from workplace or work and/or study-related activities
- Withholding information that is vital for effective work or study performance
- Setting unreasonable timelines or constantly changing deadlines

- Setting tasks that are unreasonably below or beyond a person's skill level
- Denying access to information, supervision, consultation or resources to the detriment of a worker or student
- Spreading misinformation or malicious rumours
- Changing work arrangements to deliberately inconvenience a particular worker or workers.

Bullying, including work-related bullying, does not include reasonable management action that is carried out in a reasonable manner. Bullying, including work-related bullying, can be carried out in a variety of ways including through email and text messaging or social media channels.

Discrimination, as defined in the *Anti-Discrimination Act 1991* (Qld), means to treat or to propose to treat, an individual less favourably because of an attribute listed in that Act, or to impose unreasonable terms or conditions for which individuals with a particular attribute are unable to comply. Attributes include:

- sex;
- relationship status;
- pregnancy;
- parental status;
- breastfeeding;
- age;
- race;
- impairment;
- religious belief or activity;
- political belief or activity;
- trade union activity;
- lawful sexual activity;
- gender identity;
- sexuality;
- family responsibilities;
- association with, or relation to, a person identified on the basis of any of these attributes.

Unlawful workplace discrimination, as defined in the *Fair Work Act 2009* (Cth), occurs when an employer takes adverse action against a person who is an employee or prospective employee because of the person's race, colour, sex, sexual orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Discrimination can be either direct or indirect. Direct discrimination takes place when an individual is disadvantaged or treated less favourably than another person. Indirect discrimination happens when a practice or policy appears to be fair because it treats everyone the same way but actually disadvantages people from a particular group.

For the avoidance of doubt, discrimination includes antisemitism, which is defined by the International Holocaust Remembrance Alliance (IHRA) as "a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities".

Harassment is any form of behaviour that is unwelcome, unsolicited, unreciprocated and usually (but not always) repeated. It is behaviour that is likely to offend, humiliate or intimidate. Harassment can be based on any of the attributes listed under the definition of discrimination and for example can include sexual, disability, racial, sexuality or gender-based harassment. Examples include:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails or text messages
- displaying racially offensive or pornographic posters or screen savers
- making derogatory comments or taunts about someone's race
- asking intrusive questions about someone's personal life, including his or her sex life.

Human rights are those rights defined in the *Human Rights Act 2019* (Qld), based on human rights that are recognised in international covenants including the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In particular, section 15 of the Act protects the right to recognition and equality before the law, which entitles every person to be effectively protected against discrimination.

Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

Reasonable management action means management action taken to direct and control the way work is carried out. It is expected that staff will at times have to discuss inadequacies of performance with other staff and may have to instruct them in more effective ways of

performing their duties. These acts do not constitute work-related bullying. Similarly, providing guidance, conducting performance counselling, commencing unsatisfactory performance procedures or misconduct procedures does not in itself constitute work-related bullying. It is appropriate and expected that both managers and supervisors will offer constructive and legitimate advice and comment as part of their role in a way that does not demean or humiliate. Examples of reasonable management action include:

- setting reasonable performance goals, standards and deadlines
- rostering and allocating working hours in accordance with the UniSC Enterprise Agreement
- implementing organisational change or restructuring
- deciding not to select a staff member for promotion or appointment where a reasonable process is followed
- informing a staff member about unsatisfactory work performance in an honest, fair and

constructive way

- informing a staff member about unreasonable behaviour in an objective and confidential way
- taking disciplinary action, including suspension or terminating employment.

Sexual harassment is a form of harassment and means conduct of a sexual nature that is unwelcome and is done either with the intention of offending, humiliating or intimidating the target person or in circumstances where a reasonable person would have anticipated the possibility that the target person would be offended, humiliated, or intimidated. It can be a single incident or a persistent pattern and can range from subtle behaviour to explicit demands for sexual activity or assault. Sexual harassment includes uninvited physical intimacy such as touching in a sexual way, uninvited sexual propositions, and remarks with sexual connotations and is not limited to the following examples: • unwelcome physical touching; • sexual or suggestive comments, jokes or innuendo; • unwelcome requests for sex; • intrusive questions about a person's private life or body; • the display of sexually explicit material such as posters or pictures; • unwanted invitations to go out on dates; • staring or leering; • sex based insults or taunts; and

- sexually offensive communications, including telephone calls, letters, faxes, email and computer screen savers.

Sexual harassment is unlawful under the *Anti-Discrimination Act 1991* (Qld) and the *Sex Discrimination Act 1984* (Cth) and can be a valid reason for dismissal under the *Fair Work Act 2009* (Cth). University Community means all staff, students, consultants, contractors, volunteers, and external appointees of Council, boards and committees of the University.

Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Victimisation means treating someone unfairly because they have made, or intend to make, a complaint. This also includes those who have supported another person in making a complaint.

Vilification is a public act which is capable of inciting hatred, serious content for, or severe ridicule of a person or group of persons on the grounds of race, religion, sexuality or gender identity. Examples of vilification are racist or antireligious artworks or expressions painted on buildings; and calling out or broadcasting racist, homophobic, or transphobic remarks and inviting others to do the same. Vilification is unlawful under the *Anti-Discrimination Act 1991* (Qld)

As outlined in the *Anti-Discrimination Act 1991* (Qld) there are some exceptions which ensure the right of freedom of speech is not unduly restricted, including, but not limited to, a public act done reasonably and in good faith for purposes in the public interest, including discussion and debate or for academic, artistic, scientific, or research purposes.

Worker has the meaning as defined in the *Work Health and Safety Act 2011* (Qld).

Workplace conflict means perceived or real differences of opinion and disagreements. Workplace conflict is not generally considered to be work-related bullying as people can have differences and disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. Some people may also take offence at action taken by management, but that does not mean that the management action in itself was unreasonable. However, in some cases conflict that is not managed may escalate to the point where it becomes work-related bullying.

4. Policy statement

4.1 The University has zero tolerance for discrimination, bullying, harassment and vilification and has a legal and moral responsibility to ensure that staff, visitors and other members of the University community are not subjected to behaviours or practices of this nature.

4.2 Consistent with the Equity, Diversity and Inclusion – Governing Policy, the University will strive to eliminate discrimination, harassment, bullying and vilification in all aspects of its operations and to create an environment where all staff, visitors and other members of the University community can work and learn within a culture based on mutual respect.

5. Principles

5.1 The University is committed to fostering the right of individuals to be free from bullying, discrimination, harassment and vilification while engaged in activities undertaken as part of their employment or other association with the University.

usc.edu.au/policy

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5.2 The University will not tolerate bullying, discrimination, harassment or vilification under any circumstances and the University will take all reasonable steps to eliminate behaviours or action of, or by, staff, visitors and other members of the University community in accordance with the Staff Code of Conduct – Governing Policy and the Enterprise Agreement.

5.3 The *Work Health and Safety Act 2011* (Qld) imposes an obligation on all workers and visitors to take reasonable care of their own health and safety, and to take reasonable care that their acts or omissions do not adversely affect the health and safety of others.

5.4 The *Fair Work Act 2009* (Cth) makes workplace bullying unlawful and provides protection for workers who believe they are being bullied where workplace measures have not satisfactorily addressed the behaviour.

5.5 Bullying, discrimination, harassment and vilification may:

- (a) lead to increased absenteeism, reduced staff member productivity and motivation;
- (b) adversely affect the health and wellbeing of staff and other members of the University community;
- (c) create a distressing, intimidating, offensive or hostile work or learning environment;
- (d) result in the resignation of skilled and experienced employees;
- (e) adversely affect a person's access to and/or participation in educational opportunities provided by the University;
- (f) adversely affect a person's recruitment, level of appointment, progression and promotion opportunities;
- (g) adversely reflect on the University's reputation.

5.6 Prevention

5.6.1 The University will use educative approaches for the prevention of bullying, discrimination, harassment and vilification ensuring staff, visitors and other members of the University community know their rights and responsibilities, and to encourage the reporting of behaviour that breaches this policy.

5.6.2 The University will monitor and review reports of bullying, discrimination, harassment and vilification to identify patterns of recurring incidents and take actions to mitigate future risks.

5.6.3 Staff will participate in any training offered that assists with creating a safe and inclusive workplace and learning environment.

5.8 Reporting and Responding

5.8.1 Staff who see and recognise unreasonable behaviour or a potentially harmful situation must report this to their supervisor, relevant Cost Centre Manager, a People and Culture representative or anonymously through the University's external and independent whistleblowing service provider, Your Call.

5.8.2 Complaints of alleged bullying, discrimination, harassment or vilification by a staff member are to be reported and managed in accordance with the Resolution of Complaints (Staff) - Guidelines.

5.8.3 The principles of natural justice apply and will guide the application of this policy and associated policy documents. This means that before a decision is taken about them, respondents to a complaint have the right to:

- (a) be informed about the nature and content of the issue;
- (b) be heard; and
- (c) have an unbiased decision maker.

5.8.4 In all matters, the University will act and make decisions in a way compatible with human rights, as defined in the *Human Rights Act 2019* (Qld).

5.8.5 The complaint resolution process is carried out in good faith. Complaints that are vexatious will be rejected, and may be subject to a disciplinary process, and the matter may be dealt with as misconduct or serious misconduct.

5.8.6 Victimisation of any person involved in a complaint is unacceptable and such responses/retaliation by a staff member may be considered a breach of the Staff Code of Conduct – Governing Policy.

5.8.7 If bullying, discriminatory, harassing or vilifying behaviour involves criminal activity, for example sexual assault, physical assault or the threat of physical assault, it should also be reported to the police. The University will be guided by the police to ensure any internal processes do not jeopardise a criminal investigation.

5.8.8 Where an individual remains dissatisfied with the outcome of a University response, or they do not wish to report the matter internally, they may choose to refer their concern to an external body, such as the Queensland Human Rights Commission, Australian Human Rights Commission, Fair Work Commission, Queensland Ombudsman or Workplace Health and Safety Queensland.

5.9 Support

5.9.1 The University will take all reasonable steps to support persons involved in the reporting and management of alleged bullying, discrimination, harassment or vilification including the provision of relevant supportive and protective measures.

5.9.2 Staff are encouraged to utilise the University's Employee Assistance Program for confidential counselling and to seek advice from People and Culture in relation to the implementation of relevant supportive and protective measures.

6. Authorities/Responsibilities

6.1 The following authorities are delegated under this policy:

| ACTIVITY | UNIVERSITY OFFICER |
|---|---|
| Providing a workplace and learning environment which is free from bullying, discrimination, harassment and vilification. | All staff and other members of the University community |
| All managers and supervisors have a responsibility to ensure this policy is adhered to, actively engage in preventative measures, and to take appropriate action in circumstances where they become aware of existing or possible, bullying, discrimination, harassment or vilification. These actions include: <ul style="list-style-type: none">• monitoring workplace and learning environment culture to ensure it is safe and inclusive and taking reasonable management action when it falls below this standard• reporting complaints to People and Culture and assisting, as required, with the implementation of relevant supportive and protective measures for those involved• establishing, reinforcing and role-modelling high standards of acceptable behaviour, in accordance with the University's Staff Code of Conduct. | Managers and supervisors |
| Monitoring and reporting regularly to the Vice-Chancellor and President on the operation of this policy. | Director, People and Culture |

END

RELATED DOCUMENTS

- Acceptable Use of ICT Resources - Governing Policy
- Acceptable Use of ICT Resources - Procedures
- Equity, Diversity and Inclusion - Governing Policy
- Health, Safety and Wellbeing - Governing Policy
- Resolution of Complaints (Staff) - Guidelines
- Risk Management - Governing Policy
- Sexual Assault, Sexual Harassment and Respectful Relationships (Students) - Governing Policy
- Sexual Assault, Sexual Harassment and Respectful Relationships (Students) - Procedures
- Social Media - Operational Policy
- Social Media - Procedures
- Staff Code of Conduct - Governing Policy
- Student Conduct - Governing Policy
- Student Grievance Resolution - Governing Policy
- Student Grievances - Procedures

SUPERSEDED DOCUMENTS

- Discrimination and Harassment - Governing Policy
- Preventing and Responding to Workplace Bullying - Managerial Policy

RELATED LEGISLATION / STANDARDS

- Anti-Discrimination Act 1991 (Qld)
- Age Discrimination Act 2004 (Cwlth)
- Disability Discrimination Act 1992 (Cth)
- Racial Discrimination Act 1975 (Cwlth)
- Work Health & Safety Act 2011 (Qld)
- Work Health and Safety Regulations 2011 (Qld)
- Australian Human Rights Commission Act 1986 (Cwlth)
- Fair Work Act 2009 (Cth)
- Sex Discrimination Act 1984 (Cwlth)
- Human Rights Act 2019 (Qld)