

# Discrimination, Sexual Harassment, Victimisation and Vilification (Staff) Complaints procedure

## Section 1 - Preamble

(1) This Procedure is effective from 19 October 2018.

## Section 2 - Purpose

(2) This Procedure provides staff and associates with a fair, effective and accessible resolution process for complaints of discrimination, sexual harassment, victimisation and vilification.

## Section 3 - Scope

(3) This Procedure applies to all staff and associates of the University.

(4) This Procedure does not apply to students of the University. Students may raise any concerns with Student Complaints and Appeals. Students may make a complaint by following the University's [Student Complaints Resolution procedure](#). Allegations of student misconduct are dealt with through the [Student General Misconduct procedure](#).

(5) This Procedure may be used by the University to respond to complaints/concerns raised by students about University staff and associates. The University may redirect complaints where it appears that the complaint could be more appropriately managed under a different procedure. The University has separate processes for bullying and other inappropriate workplace behaviours, for example, the [Workplace Bullying Procedure](#).

## Section 4 - Policy

(6) This Procedure is pursuant to the [Diversity and Inclusion policy](#).

## Section 5 - Procedure

(7) If you believe you are experiencing discrimination, sexual harassment, victimisation or vilification you can:

- a. seek information and advice from a Harassment or Discrimination Contact Officer (HDCO), a manager or supervisor or Diversity and Inclusion
- b. seek to resolve the matter by directly approaching the respondent if it is appropriate and safe to do so
- c. seek informal resolution by a manager or supervisor. The manager or supervisor can attempt resolution if it is safe and appropriate to do so.
- d. seek formal resolution via investigation if informal resolution has been unsuccessful or is not appropriate, for example, due to the seriousness of the allegations. In this scenario, a request for investigation must be made in

writing to the Executive Director, Diversity and Inclusion.

(8) Complaints must be lodged within 12 months of the incident unless exceptional circumstances exist that prevented earlier reporting. Timely reporting of complaints is important in order to ensure fair treatment of all involved. Where the last occurrence of the alleged discrimination, sexual harassment, victimisation or vilification falls outside the 12 months, contact Diversity and Inclusion for advice about options.

(9) A supervisor may request an investigation where behaviours observed, or drawn to their attention by someone other than the complainant, could amount to discrimination, sexual harassment, victimisation or vilification. In these circumstances the matter will be referred to the Executive Director, Diversity and Inclusion who will determine whether an investigation or other response is appropriate.

(10) A complaint cannot be made under this process if the same facts have already been investigated under another University process, for example, through the [Workplace Bullying Procedure](#).

(11) Complainants and respondents may seek the assistance of a support person at any stage during the complaints process.

(12) The University acknowledges that complaint processes can be difficult for both complainants and respondents and strongly encourages people to seek support. Further information is available at [Employee Assistance Program \(EAP\)](#).

(13) The Executive Director, Diversity and Inclusion (or nominee) will consider any requests for interim work arrangements and may advise the relevant manager to prevent any further risk to the health and wellbeing of any person involved. Such interim arrangements may include a change in reporting line, an alternative work location or other work arrangement.

(14) Victimisation is unlawful. The University does not tolerate victimisation and will take reasonable steps to ensure that the complainant, respondent or other persons participating in the complaints resolution process are not victimised.

(15) If a person believes they are being victimised they should immediately seek advice from their supervisor, a Harassment and Discrimination Contact Officer or Diversity and Inclusion.

## **Resolution processes**

### **Informal resolution**

(16) The University encourages staff and associates to resolve complaints of discrimination, sexual harassment, victimisation and vilification as early as possible, directly and informally if it is appropriate and safe to do so.

(17) A Harassment and Discrimination Contact Officer, a manager or supervisor or Diversity and Inclusion can assist with strategies for effective informal resolution. Strategies can include directly approaching the respondent to request a change in behaviour, requesting a manager to implement policy or request a change in the respondent's behaviour or to facilitate a discussion between staff/associates.

(18) Where informal resolution has been unsuccessful, or is not appropriate, the staff member/associate or the supervisor may consult Diversity and Inclusion to assist with next steps. These may include coaching individuals on a one-to-one basis, or arranging a meeting facilitated by a supervisor where both parties can express their views and attempt, wherever possible, to repair the working relationship and work towards resolution.

(19) If the next steps fail to resolve the complaint but there is willingness to try mediation or conciliation, the supervisor can inform the Executive Director, Diversity and Inclusion (or nominee) who will appoint an impartial

mediator or conciliator to assist the parties to resolve the complaint in a separate second meeting.

(20) Any resolution or agreements will be provided in writing to both parties and stored securely in Diversity and Inclusion.

(21) If the complaint is not resolved, and the parties are not willing to try mediation or conciliation or these are not appropriate, the Executive Director, Diversity and Inclusion (or nominee) can determine the matter be dealt with through formal resolution via investigation.

### **Formal resolution via investigation**

(22) Staff/Associates may write to the Executive Director, Diversity and Inclusion to seek formal resolution via investigation by emailing [eeo@deakin.edu.au](mailto:eeo@deakin.edu.au) with the following information:

- a. Name and contact details
- b. Details of what happened including when, where, who was involved and its impact on you
- c. Names of the respondent/s and any potential witnesses
- d. Any attempts at resolution or reasons for none
- e. How you see the complaint being resolved and
- f. Any other supporting information.

(23) As soon as possible after receipt, the Executive Director, Diversity and Inclusion (or nominee) will appoint an Diversity and Inclusion Case Co-ordinator (Diversity and Inclusion Case Co-ordinator) who will:

- a. acknowledge receipt of the complaint
- b. assess the complaint
- c. consult with the General Counsel
- d. notify Human Resources Division
- e. determine next steps
- f. inform the complainant of the next steps and
- g. inform the respondent of the next steps if the complaint is to proceed.

(24) The Executive Director, Diversity and Inclusion (or nominee) will consider all relevant information and take appropriate action. Actions include:

- a. referring the matter for investigation by an independent investigator if the Executive Director, Diversity and Inclusion (or nominee), determines that the allegations, if proven, are likely to be a breach of the [Diversity and Inclusion policy](#) or equal opportunity laws, or
- b. referring to other appropriate processes and/or
- c. no further action.

(25) The Diversity and Inclusion Case Co-ordinator will advise the complainant in writing where alternative processes are applicable or where further action is declined and any reasons for the decisions.

(26) Further action ceases where the complainant pursues the complaint in another forum.

(27) The complainant may also withdraw the complaint at any time by writing to the Executive Director, Diversity and Inclusion (or nominee) stating that they wish to withdraw the complaint.

(28) If the complaint proceeds to investigation, Diversity and Inclusion Case Co-ordinator will provide the respondent with a summary of the complainant's allegations and supporting information and give them the opportunity to provide

a written response to the Diversity and Inclusion Case Co-ordinator within 5 business days from the receipt of the summary.

(29) The Diversity and Inclusion Case Co-ordinator will provide a summary of the response to the complainant.

(30) The Diversity and Inclusion Case Co-ordinator will recommend to the Executive Director, Diversity and Inclusion (or nominee) an Investigator from the pool of available external investigators.

(31) If the respondent does not provide a response to the complainant's allegations, the Investigator will proceed on the basis of the information provided to them.

(32) The Diversity and Inclusion Case Co-ordinator will advise the complainant and respondent of the name of the Investigator and confirm next steps including possible investigation findings as per 35 (d).

(33) Subject to the specific circumstances of each case, the Investigator will:

- a. treat matters sensitively, seriously and confidentially
- b. investigate all matters in an impartial, timely and procedurally fair way
- c. disclose actual, perceived or potential conflicts of interest as soon as they become apparent
- d. identify and speak to relevant people, including any witnesses
- e. assess complaints on their merits and facts
- f. listen to each person separately
- g. record the facts surrounding the matter and
- h. obtain and consider any further relevant information.

(34) The Investigator will provide the Executive Director, Diversity and Inclusion (or nominee) with a confidential report usually within 20 working days from the Investigator's receipt of the complaint. The report will include:

- a. the investigation process
- b. the allegations investigated
- c. an outline of the relevant evidence and supporting information
- d. findings, including:
  - i. whether any, all or part of the allegations were substantiated
  - ii. whether any substantiated allegation breaches the [Diversity and Inclusion policy](#), this procedure, the [Code of Conduct](#) or other relevant policy or procedure
  - iii. whether any, all or part of the allegations should be dismissed and on what grounds
  - iv. any recommendations in relation to i-iii above and the rationale for each and
  - v. any other matters the Investigator considers relevant.

(35) The Executive Director, Diversity and Inclusion (or nominee) will consider the report and decide actions to be taken, including any recommendation to pursue disciplinary action in accordance with the [Staff Discipline policy](#).

(36) The Executive Director, Diversity and Inclusion (or nominee) will advise both parties of the decisions and provide a confidential summary of the Investigator's report to each and the relevant manager/s.

## **Responsibilities of staff**

(37) Staff have responsibilities to:

- a. treat others with respect

- b. behave in accordance with the [Diversity and Inclusion policy](#) and other relevant policies
- c. not discriminate against, sexually harass, victimise or vilify anyone or authorise or assist anyone else to discriminate against, sexually harass, victimise or vilify others, and
- d. participate in complaint processes in good faith.

## Responsibilities of supervisors

(38) Supervisors have additional responsibilities to:

- a. lead safe, inclusive and diverse learning and work environments, free from discrimination, sexual harassment, victimisation and vilification
- b. model behaviour in accordance with the [Diversity and Inclusion policy](#) and other relevant policies
- c. identify and address any behaviour that could be discriminatory, sexually harassing, victimising or vilifying in their work teams
- d. ensure staff understand their responsibilities to not discriminate against, sexually harass, victimise or vilify or authorise or assist anyone else to discriminate against, sexually harass, victimise or vilify others.

## Vexatious complaints

(39) Vexatious complaints are complaints made in bad faith; they can hurt and disrupt another person's life in such a way that their career can be damaged and may result in psychological injury. Vexatious complaints are a form of misconduct. As such, disciplinary action in accordance with the [Staff Discipline policy](#) will apply where complaints are found to be vexatious.

## Record keeping, reporting and monitoring

(40) A confidential record of any agreements, reports or other documentation related to the complaint will be retained by Diversity and Inclusion.

(41) Diversity and Inclusion will report annually to the Vice-Chancellor and the Risk and Compliance Manager on all complaints, identified trends and systemic issues as well as improvements, remedies and preventative actions.

# Section 6 - Definitions

(42) For the purpose of the Procedure:

- a. complaint: A statement that something is unsatisfactory or unacceptable.
- b. complainant: A person who makes a Complaint or on whose behalf a Complaint is made.
- c. discrimination: Unfavourable treatment of a person due to that person's protected attribute, including an attribute that a person has, has had in the past, is presumed to have, or may have in future, and includes direct and indirect discrimination.
- d. discrimination (direct): When a person treats, or proposes to treat, another person unfavourably because of that person's protected attribute.
- e. discrimination (in-direct): Is when a person imposes, or proposes to impose, a requirement, condition or practice:
  - i. that has, or is likely to have, the effect of disadvantaging a person with a protected attribute, and
  - ii. that is not reasonable.
- f. diversity: as defined in the [Diversity and Inclusion policy](#).
- g. equal opportunity: as defined in the [Diversity and Inclusion policy](#).

- h. Harassment and Discrimination Contact Officer: A person trained to provide information and support to an individual who believes they may have been subjected to or accused of unlawful conduct.
- i. inclusive practices: as defined in the [Diversity and Inclusion policy](#).
- j. protected attribute: As defined in the [Equal Opportunity Act 2010 \(Vic\)](#) and relevant Commonwealth legislation:
  - i. age or age group
  - ii. breastfeeding
  - iii. employment activity
  - iv. expunged homosexual conviction
  - v. family or carer's responsibilities; status as a parent or carer
  - vi. gender identity (including gender expression)
  - vii. disability, whether short term, long term or permanent, including behaviour that is a symptom or manifestation of a disability or a genetic predisposition to that disability
  - viii. industrial activity
  - ix. lawful sexual activity
  - x. marital or relationship status
  - xi. social origin
  - xii. parental status or status as a carer
  - xiii. physical features
  - xiv. political opinion, belief or activity
  - xv. pregnancy or potential pregnancy
  - xvi. race or colour; descent or ancestry; nationality (ie citizenship) or national origin; ethnicity or ethnic origin; national extraction or social origin
  - xvii. religious belief or activity
  - xviii. sex or intersex status
  - xix. sexual orientation
  - xx. personal association with a person who is identified by reference to any of the above attributes.
- k. respondent: A person or organisation against whom a complaint is made.
- l. sexual harassment: Behaviour that has a sexual element or implication is considered to be sexual in nature. Under the [Equal Opportunity Act 2010 \(Vic\)](#) and the [Sex Discrimination Act 1984 \(Cth\)](#), sexual harassment is when a person:
  - i. makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person, or
  - ii. engages in any other unwelcome conduct of a sexual nature in relation to another person 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.
- m. staff: Any person employed by the University, as defined in section 3 [Deakin University Act 2009](#).
- n. support person: A person chosen by the complainant or respondent who will assist them by providing support during any stage of a complaint.
- o. victimisation: as defined in the [Diversity and Inclusion policy](#).
- p. vilification: as defined in the [Diversity and Inclusion policy](#)
- q. workplace: Any place where a person attends for the purpose of carrying out any functions in relation to their employment. In the University context, this includes all work-related activities at all campuses, located and cloud, as well as off-campus if the activities are related to a staff member's employment.

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	19th October 2018
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