

## WORKPLACE HARASSMENT (INCLUDING SEXUAL HARASSMENT), WORKPLACE BULLYING AND UNLAWFUL DISCRIMINATION

### 1 PURPOSE

The purpose of this policy and procedure is to provide a framework and information on how to appropriately resolve alleged cases of workplace harassment (including sexual harassment), workplace bullying, and unlawful discrimination.

Students have the right to make legitimate complaints regarding alleged inappropriate behaviour by using the student complaint process.

These procedures do not cover grievances related to issues such as classification level, workload, conditions of employment and rights contained in the University's Enterprise Agreement and TAFE Awards/Agreements. Concerns about such matters should be addressed in accordance with the grievance resolution mechanisms within the relevant industrial instruments.

Please note that throughout these procedures the following terms are used:

- **'Complainant'** – used to identify the staff member who believes that they have been subject to, or have witnessed, workplace harassment, workplace bullying, sexual harassment and/or unlawful discrimination, and
- **'Respondent'** – used to identify the staff member about whom a complaint of workplace harassment, sexual harassment, bullying and/or discrimination has been made

### 2 SCOPE

This policy applies to all members of the CQUniversity community including staff, visitors and contractors who are engaged in CQUniversity related activity either on University property or off campus

### 3 EFFECTIVE DATE 22 October 2015

### 4 LEGISLATIVE AUTHORITY

Australian Human Rights and Commission Act 1986  
Fair Work Act 2009  
Disability Discrimination Act (1992)  
Disability Standards for Education (2005)  
Equal Opportunity for Women in the Workplace Act 1999  
Racial Discrimination Act (1975)  
Age Discrimination Act 2004  
Sex Discrimination Act (1984)  
Anti-Discrimination Act (1991) Qld  
Disability Services Act (2006) Qld  
Workplace Health and Safety Act 2011 – QLD  
Work Health and Safety Act 2011 - NSW  
Occupational Health and Safety Act 2004 -Vic  
Occupational Health and Safety Act 1984 – WA  
Work Health and Safety Act 2012 - SA  
Prevention of Workplace Harassment Code of Practice (2004) Qld  
Equal Opportunity Act (1995) (Victoria)  
Equal Opportunity Act (1984) Western Australia  
Anti Discrimination Act (1997) New South Wales

## 5 POLICY STATEMENT

CQUniversity Australia is committed to providing a workplace free from workplace harassment (including sexual harassment), workplace bullying, and unlawful discrimination.

Staff have a responsibility to ensure that their actions do not negatively affect another staff member and/or student's career, health or well-being and are consistent with the University's [Code of Conduct](#). A staff member found to have harassed, bullied, unlawfully discriminated or sexually harassed another staff member or member of the CQUniversity Community or to have condoned such behaviour will be subject to disciplinary action in accordance with the provisions of the current [Central Queensland University Enterprise Agreement and other relevant policies and procedures](#).

Supervisors have a responsibility to provide a safe work environment that enables staff to carry out their work responsibilities free from harassment, bullying, unlawful discrimination and sexual harassment. Supervisors are to be fully aware of the adverse consequences of not dealing with instances of harassment, bullying, unlawful discrimination and sexual harassment as outlined above.

Supervisors are to be alert to the possibility of harassment, bullying, unlawful discrimination and sexual harassment and are to monitor key indicators such as workplace culture, high absenteeism and high staff turnover and should take appropriate action if they become aware of any incidences. This action may take the form of training, workplace information, or appropriate disciplinary response.

The University requires that all parties involved will treat all complaints confidentially and will make every attempt to resolve the issue at the lowest possible level. In the event that this may not be possible, other steps may need to be taken that can include the activation of investigation and or misconduct or serious misconduct procedures as specified in appropriate agreements or policies and procedures.

CQUniversity requires all staff to behave responsibly by complying with this policy, to not tolerate unacceptable behaviour, and to immediately report incidents to the appropriate person.

## 6 PROCEDURE

### Complaint Resolution Overview

- 6.1 Proven cases of workplace harassment (including sexual harassment), workplace bullying or unlawful discrimination will result in disciplinary action being taken against the offender in accordance with the provisions of the [Central Queensland University Enterprise Agreement \(2012\)](#) and other industrial instruments as replaced or varied from time-to-time and related policies and/or procedures.
- 6.2 The complaint resolution procedures outlined below include a number of approaches or options for consideration.
- 6.3 While the preferred methodology is to resolve complaints at the lowest level possible, it is recognised that in some circumstances it may be more appropriate to commence the process at a higher level, and thus these procedures allow for a range of entry points.
- 6.4 In cases of workplace harassment (including sexual harassment), workplace bullying or unlawful discrimination, the University also recognises the right of staff to seek external advice and/or resolution to their complaint by agencies such as the Anti-Discrimination Commission Queensland, other state agencies or Fair Work Australia.
- 6.5 At any time, any individual can contact either their supervisor or the [People and Culture Directorate](#) for confidential advice and assistance regarding options, processes and potential solutions. Staff are strongly encouraged to also seek support in the form of counselling via the University's [Employee Assistance Program](#).
- 6.6 Timelines cited within these procedures may be extended by mutual agreement between the relevant parties.

## Complaint Resolution Procedures

### One-on-One Resolution

- 6.7 In the first instance, the complainant may seek to address the issue directly with the respondent, if they feel comfortable and safe to do so. While the complainant is encouraged to address the person and issue directly, they may seek clarification and assistance from their supervisor or from the [People and Culture Directorate](#) prior to meeting with the respondent.
- 6.8 When addressing a concern one-on-one with the respondent, the complainant should:
- Determine what behaviour(s) of the respondent they feel is inappropriate, identify the effect that the alleged behaviour(s) has had on them and what actions would resolve the situation for them (e.g. alleged behaviours to stop, apology given, training/counselling provided etc.).
  - Seek policy advice, support and guidance, including training and coaching on how to address the issue directly with respondent, from their supervisor, the staff of [People and Culture Directorate](#) or the University's [Employee Assistance Program](#).
  - Then raise the issue directly with the respondent. During the conversation(s) with the respondent, the complainant is encouraged to outline the behaviour that is causing them concern and the effect of that behaviour on them, and what their expectations are in respect to resolving the situation. If the respondent needs assistance in raising issues, they should seek advice from their supervisor or staff in People and Culture.
  - Diarise their conversation with the respondent and monitor any change in behaviour of the respondent they observe.
  - Set a timeframe in which to review the situation so as to ensure resolution has been successful.

### Supervisor/Manager Resolution

- 6.9 If the measures outlined at Clause 6.7 and 6.8 of these procedures are not successful in resolving the situation within ten working days of cessation of one-on-one discussions **OR** if the complainant does not wish to attempt a one-on-one discussion with the respondent, the complainant should follow the process outlined below:
- After considering matters outlined at Clause 6.7 and 6.8 of these procedures, the complainant should raise concerns of inappropriate behaviour with their supervisor. If the supervisor is the alleged respondent, then the complainant should raise their concerns with their supervisor's manager. Staff can raise concerns with their supervisor either verbally or in writing. Sufficient detail must be provided to the supervisor to allow the supervisor to form a view of the substance of the allegations.
  - Supervisors must seek assistance from People and Culture Directorate when considering potential allegations of workplace harassment (including sexual harassment), bullying and/or unlawful discrimination.
  - In the event that a supervisor believes that the complaint does not constitute workplace harassment (including sexual harassment), workplace bullying and unlawful discrimination; there is insufficient evidence; or the complainant does not wish to take any action they must discuss with the complainant and may offer:
    - referral to training on what constitutes appropriate workplace behaviours,
    - personal counselling or other assistance from the University's Employee Assistance Program,
    - any other training, support or action deemed appropriate to the situation, and
    - a commitment to further monitor the workplace.
    - In the circumstance where a complainant does not wish to take any action and the University reasonably believes that there may be workplace harassment or bullying - the University may make the decision to investigate further in order to protect not only that employee but all employees.
  - In the event that the supervisor/manager believes that the alleged behaviours may constitute workplace harassment (including sexual harassment), bullying and/or unlawful discrimination, within 5 working days will organise a discussion with the respondent (and the complainant if they are agreeable and it is safe to do so) where the following will be discussed:
    - outline the behaviours that have caused concern (citing specific examples wherever possible),

- explain why it is believed that such behaviours could constitute Workplace harassment (including sexual harassment), workplace bullying or unlawful discrimination state what resolution may be appropriate, and
- State what resolutions may be appropriate. Resolutions at this level may include, among other measures, an apology, a commitment that the inappropriate behaviours will cease and a commitment to receive counselling and/or training and agreed timeframes on agreed actions and review periods. This must be documented.

6.10 The Supervisor/Manager should keep a written record of the meeting(s), including any agreed action plans and timeframes, providing a copy to the respondent and providing them with a period of time to amend the notes if they feel they are not a true reflection of the conversation.

\*A supervisor/manager may request that a staff member from People and Culture Directorate be present at the meeting.

6.11 All parties are able to bring a support person to any meeting and access the Employee Assistance Program at any time.

### Formal Written Complaint

6.12 If the measures outlined at clause 6.9 of these procedures are not successful in resolving the situation within ten working days of the cessation of discussions with the respondent, or if the complainant and supervisor believe that steps in clauses 6.8 or 6.9 are not appropriate due to the seriousness of the allegation(s), or if the complainant wishes the matter to proceed (see clause 6.9c), the complainant should follow the process outlined below:

- (a) The complainant makes a formal written complaint to the Director, People and Culture. The written complaint must have sufficient details to establish that the complaint is properly founded.
- (b) The Director, People and Culture will carefully consider the formal complaint and may seek further relevant information in respect to the allegation(s) prior to deciding on future action.
- (c) Within ten working days of receiving a formal complaint, the Director, People and Culture may, depending on the complexity of the issue, organise for an investigation into the allegations to take place as soon as possible. This investigation will be conducted by suitably experienced personnel and may involve an external investigator.
- (d) If the investigation finds that workplace harassment, workplace bullying, sexual harassment and/or unlawful discrimination, did most likely take place, the misconduct or serious misconduct provisions of the [Central Queensland University Enterprise Agreement \(2012\) \(the EA\)](#) and other industrial instruments as replaced or varied from time-to-time and related policies and/or procedures, will be instigated which may result in disciplinary action being taken in accordance with the EA.

### Witnesses / Bystanders to Inappropriate Behaviour

6.13 If a staff member is witness to behaviour that they consider may constitute workplace harassment, workplace bullying, sexual harassment or unlawful discrimination, or they are a bystander (bystanders are individuals who observe the behaviour first hand **or are subsequently informed of the incident**) it is appropriate that they raise their concerns about such behaviour to either the relevant supervisor or with People and Culture Directorate. The observer will be required to provide sufficient details (verbally or in writing) to allow the supervisor to raise the concerns with the relevant staff members involved. Principles of natural justice and fairness must prevail.

6.14 Alternatively, a bystander to inappropriate behaviour may also support the complainant in making a complaint, or seek to raise their concerns directly with one or all of the staff members involved.

6.15 [People and Culture Directorate](#) can provide advice and assistance to observers of alleged inappropriate behaviour regarding alternatives and strategies to safely raise their concerns.

6.16 Once an allegation of alleged workplace harassment, workplace bullying, sexual harassment and/or unlawful discrimination is raised by a witness/bystander to the alleged behaviours, the complaint will be addressed in accordance with the options outlined in clause 6.8 of these procedures.

## Supervisor Responsibility

- 6.17 A supervisor who observes behaviours in the workplace, or becomes aware of behaviours through information from alleged victims or witnesses that may constitute workplace harassment, workplace bullying, sexual harassment and/or unlawful discrimination has a responsibility to take appropriate action in a timely manner. The supervisor's response to such concerns will depend upon the perceived severity of the situation, and may include:
- discussions with the parties concerned,
  - undertaking impartial fact finding,
  - arranging for facilitation or mediation by a third party,
  - seeking advice from the People and Culture Directorate,
  - referring staff members to the Employee Assistance Program and/or People and Culture Directorate,
  - provision of advice/training; provision of information and/or training (targeted or general), and/or
  - instigation of these procedures.
- 6.18 In any event, it is important that supervisors act on any suspected cases of workplace harassment, including sexual harassment, workplace bullying and unlawful discrimination quickly.

## Repeat Offender

- 6.19 Where a complaint is received which involves a respondent who has, within the last two years, been found guilty or has admitted being guilty of workplace harassment, workplace bullying, sexual harassment or unlawful discrimination, the matter shall be dealt with at the 'formal written complaint' stage of these procedures, as outlined at clause 6.12 above.

## Victimisation

- 6.20 A person must not victimise or otherwise subject another person to detrimental action as a consequence of that person raising, providing information about or otherwise being involved in the resolution of a complaint of workplace harassment, workplace bullying, sexual harassment or discrimination.

## Confidentiality and Record Keeping

- 6.21 Information about a complaint of workplace harassment, workplace bullying, sexual harassment or unlawful discrimination will only be made available to those directly involved in the investigation or resolution of a case.
- 6.22 Supervisors/managers and staff from People and Culture Directorate will keep file notes on all cases of alleged workplace harassment, workplace bullying, sexual harassment and/or unlawful discrimination.
- 6.23 The Vice-Chancellor and President or nominee may examine any document at any time.

## False, Malicious or Vexatious Allegations

- 6.24 Staff who make false, malicious or vexatious allegations are in breach of the [Code of Conduct](#) and that behaviour may be viewed as misconduct or serious misconduct.

## Defamation

- 6.25 Parties involved in allegations of workplace harassment, workplace bullying, sexual harassment and /or unlawful discrimination should be aware of the principles of defamation as outlined in the definitions.

## Approach External Agencies

- 6.24 CQUniversity recognises the rights of staff to seek resolution of their concerns or to seek independent advice from external agencies such as the unions, Employee Assistance Program, Dispute Resolution Centre, Respective state Anti-Discrimination Commissions.

## Support and Assistance

- 6.25 At any stage of these procedures, staff are able to receive advice and support from their supervisor or People and Culture Directorate.

## Further Information/Resources

- 6.26 It is recommended that all parties access the following information (hard copies of which are available from the People and Culture Directorate):
- 6.27 “Prevention of Workplace Harassment Code of Practice 2004” – published by QLD Government and available at [http://www.deir.qld.gov.au/workplace/resources/pdfs/harassment\\_code2004.pdf](http://www.deir.qld.gov.au/workplace/resources/pdfs/harassment_code2004.pdf).
- 6.28 “Effectively Preventing and Responding to Sexual Harassment: A Code of Practice for Employers” – published by Federal Government and available at [http://www.hreoc.gov.au/sexualharassment/employers\\_code/index.html](http://www.hreoc.gov.au/sexualharassment/employers_code/index.html).
- 6.29 Various information booklets available from the Queensland Anti-Discrimination Commission – available at <http://www.adcq.qld.gov.au/main/information.html>.

## 7 RESPONSIBILITIES

### Staff Responsibilities:

- Be aware of legislative requirements,
- Be aware of Code of Conduct,
- Be aware of CQUniversity Policies and Procedures,
- Ensure that they do not victimise any person including students who make a legitimate complaint,
- Ensure that they do not make false, malicious or vexatious complaints, and
- Ensure that their behaviour is above reproach.

### Supervisor’s Responsibilities:

- Provide a safe work environment,
- Be aware of and manage legislative requirements,
- Be aware of and manage Code of Conduct expectations,
- Be aware of and manage CQUniversity Policies and Procedures,
- Ensure own behaviour is above reproach,
- Ensure that all reported breaches are taken seriously and acted upon appropriately,
- Ensure that reported breaches are managed in a timely manner,
- Take action to eliminate inappropriate behaviour,
- In consultation with and advice from staff in People and Culture Directorate impartially investigate/explore issues reported to them or observed by them,
- Ensure that agreed changes in behaviour are implemented and appropriately monitored, and
- Seek advice and support as needed from People and Culture Directorate.

### Senior Executive Responsibilities:

- Provide a safe work environment,
- Ensure own behaviour is above reproach,
- Ensure that all reported breaches are taken seriously and acted upon appropriately,
- Ensure CQUniversity meets its legislative requirements,
- When necessary ensure that behaviours in Code of Conduct are enforced,
- Ensure CQUniversity policies, procedures and guidelines are implemented,
- On advice from People and Culture Directorate, take necessary action to eliminate inappropriate behaviour including misconduct and serious misconduct,

- Ensure that reported breaches are managed in a timely manner, and
- Ensure that recommended changes in behaviour are implemented and appropriately monitored.

### **People and Culture Directorate Responsibilities:**

- Provide systems to monitor and address issues to ensure a safe work environment,
- Provide advice on legislation and monitor university compliance,
- Provide advice/training on Code of Conduct, legislative and policy/procedures requirements,
- Continual review and implementation of CQUniversity policies/procedures including the provision of training,
- Take action to eliminate inappropriate behaviour and minimise risk to the University and employees,
- In conjunction with Senior Executive assist/organise investigations,
- Provide advice and support to staff, supervisors and Senior Executive, and
- Provide reports and recommendations to the Vice-Chancellor.

### **Records Management**

All outcomes from third party discussions such as training, conciliation or mediation outcomes, outcomes from discussions regarding denial or non-acceptance of allegations, and expected changes in behaviour required, will be put in writing to both parties with a copy sent to the People and Culture Directorate for confidential filing. All records in relation to Formal Complaints will be retained by the People and Culture Directorate for confidential filing.

## **8 DEFINITIONS**

All terminology used within this policy is consistent with definitions in the [CQUniversity Glossary](#).

**Bystander:** Bystanders are individuals who observe Workplace Harassment (including sexual Harassment) or Workplace Bullying firsthand or a subsequently informed of the incident(s). In the workplace, bystander can include a range of people. They may include co-workers, managers or supervisor.

**‘Disciplinary action’** means action by the University to discipline an employee for unsatisfactory performance, misconduct or serious misconduct and is limited to:

- (a) Reprimand or counselling
- (b) Demotion by one or more classification levels or increments
- (c) Withholding of an increment
- (d) Suspension with or without pay
- (e) Termination of employment.

Termination of employment can be used only in the event of proven unsatisfactory performance or serious misconduct.

**Defamation:** An allegation of workplace harassment, workplace bullying, sexual harassment and/or unlawful discrimination is likely to impact on the reputation of the respondent. Complainants and respondents should be advised not to discuss any matters pertaining to a complaint with anyone other than those who are directly involved in the investigation or the resolution of the problem. Discussion with outside parties may lead to potential defamation proceedings.

Defamation may be established whenever a person communicates a complaint in any way to anyone other than the respondent, unless a defence can be made. A defence to defamation is established if information was disclosed in good faith, and the person to whom it was disclosed had an interest in knowing the truth that made the disclosure reasonable. “Good faith” means not to be motivated by improper motive, not to disclose more than is necessary, and not to believe the information disclosed is untrue.

c The people involved in implementing these procedures in a given case have a reasonable interest in knowing the truth of the case, as do the relevant supervisors and senior University officers, and thus are protected by this qualified privilege defence, provided their actions do not exceed the roles prescribed in these procedures.

### **Procedural Fairness and Natural Justice:**

A simple definition for these terms is:

- the right to be heard, or put your case,
- the right for a decision to be made on the basis of evidence, and
- the right to an unbiased decision-maker.

**'Representative'**: for an employee, means an employee of the University or union representative, (other than a practicing solicitor or barrister), who at the choice of an employee, may support and/or represent that employee. 'Representative' for management i.e. a person acting on behalf of the University in an executive, management, supervisor or similar roles, means an employee of the University or a representative from the Australian Higher Education Industrial Association (AHEIA) or another person of the University's choice (other than a practicing solicitor or barrister) who may support and/or represent the University.

**Sexual Harassment:** Sexual harassment generally means any unwanted, unwelcome, or uninvited behaviour of a sexual nature and if it occurs could be reasonably expected that the behaviour(s) would make the recipient feel offended, humiliated or intimidated by the conduct. Sexual harassment is unlawful anywhere.

For more information, including examples of behaviour that does and does not constitute sexual harassment, please refer to the resource material mentioned at clause 6.12 of these procedures.

**Workplace Harassment (Including Sexual Harassment):** Under federal and state legislation, unlawful harassment (Workplace Harassment) occurs when someone 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. It can also happen if someone is working in a 'hostile' – or intimidating – environment.

Harassment can include behaviour such as:

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

**Workplace Bullying:** According to the [Safe Work Australia Guide For Preventing and Responding to Workplace Bullying](#), workplace bullying is defined as repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

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

Some examples of behaviour, whether intentional or unintentional, that may be considered to be workplace bullying if they are repeated, unreasonable and create a risk to health and safety include but are not limited to:

- abusive, insulting or offensive language or comments,
- unjustified criticism or complaints,
- deliberately excluding someone from workplace activities,
- withholding information that is vital for effective work 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 the worker,
- spreading misinformation or malicious rumours, and
- changing work arrangements such as rosters and leave to deliberately inconvenience a particular worker or workers.

A single incident of unreasonable behaviour is not considered to be workplace bullying, however it may have the potential to escalate and should be dealt with as appropriate.

If workplace bullying behaviour involves violence, for example physical assault or the threat of physical assault, it should be reported to the police.

**Unlawful Discrimination including Racial Discrimination and Vilification:** Generally means any **practise** that treats a person less favourably or has the effect of disadvantaging the person because of an attribute (e.g. sex or race) specified by anti-discrimination legislation. Below are the acts in place for each state:

- **QLD**
  - Grounds for unlawful discrimination defined by the Queensland Anti-Discrimination Act 1991: Sex, relationship status, pregnancy, parental status, breastfeeding (goods and services only), age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality, family responsibilities, association with a person who has any of the above attributes, sexual harassment, racial and religious vilification
- **NSW**
  - Grounds for unlawful discrimination defined by the New South Wales Anti-Discrimination Act 1997: Race (including colour, descent, nationality and national or ethnic origin), sex (including pregnancy), marital or domestic status, disability (physical, intellectual, mental or psychiatric, whether past, present, future or presumed, including disease causing organisms such as HIV/AIDS), homosexuality (actual or presumed, male or female), age (including compulsory retirement), transgender, carer's responsibility
- **VIC**
  - Grounds for unlawful discrimination defined by the Victoria Equal Opportunity Act 1995: Sex, sexual orientation, gender identity, pregnancy, breastfeeding, marital status, status as a carer, age, race (including colour, nationality, ethnic or national origin), parental status, physical features, childless or a defacto spouse, lawful religious or political activity or belief, impairment (including physical impairment, mental illness, mental retardation), industrial activity, lawful sexual activity, or personal association with persons having any of the above attributes.
- **SA**
  - Grounds for unlawful discrimination defined by South Australia Equal Opportunity Act 1984: Sex, sexuality, marital status, pregnancy, race, age, physical and intellectual impairment, mental illness, association with a child, chosen gender, caring responsibilities, religious dress (in work or study) and spouse or partner's identity
- **WA**
  - Grounds for unlawful discrimination defined by Western Australia Equal Opportunity Act 1984 (WA): Sex, sexual orientation, marital status, pregnancy, race, religious or political conviction, age racial harassment, impairment, family responsibilities or family status, gender identity.

**Vilification:** Generally means a public act that incites others to hate or to severely ridicule individuals because of their race, religion, sexuality or gender identity.

Refer to the University [glossary](#) for the definition of terms used in this policy and procedure.

## 9 RELATED LEGISLATION AND DOCUMENTS

### Related Policy Document Suite

[Code of Conduct](#)  
[Equity Policy](#)  
[Disability Policy](#)  
[Use of Inclusive Language Principles and Guidelines](#)

### Related Legislation and Supporting Documents

As per section 4

[Safe Work Australia Guide For Preventing and Responding to Workplace Bullying](#)

| <b>Approval and Review</b>               | <b>Details</b>                       |
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