

# WORKPLACE HARASSMENT, WORKPLACE BULLYING AND UNLAWFUL DISCRIMINATION POLICY AND PROCEDURE



## CONTENTS

1	PURPOSE.....	1
2	SCOPE.....	1
3	POLICY STATEMENT .....	2
4	PROCEDURE .....	2
	One-on-one resolution .....	3
	Mediation/Facilitation .....	3
	Formal complaint process .....	4
	Bystander/Witness .....	4
	Repeat Offender.....	5
	False, Malicious or Vexatious Allegations.....	5
	Further information/resources .....	5
5	RESPONSIBILITIES .....	5
	Compliance, monitoring and review .....	5
	Reporting.....	5
	Records management.....	5
6	DEFINITIONS .....	5
	Terms and definitions.....	5
7	RELATED LEGISLATION AND DOCUMENTS .....	7
8	FEEDBACK.....	8
9	APPROVAL AND REVIEW DETAILS.....	8
10	APPENDIX .....	9
	Process Reference.....	9

## 1 PURPOSE

- 1.1 The purpose of this policy and procedure is to provide a framework and information for University employees to appropriately resolve alleged cases of workplace harassment (excluding sexual harassment), workplace bullying, and unlawful discrimination.
- 1.2 This policy and procedure is intended to support the [Code of Conduct](#) in building and maintaining a positive working environment built on mutual respect and consistent with the University's [values](#).

## 2 SCOPE

- 2.1 This policy and procedure applies to all CQUniversity employees, visitors and contractors who are engaged in CQUniversity related activities either on University property or off campus.
- 2.2 Students have the right to make legitimate complaints regarding alleged inappropriate behaviour by using the [student complaint process](#).
- 2.3 This policy and procedure does not cover grievances related to issues such as classification level, workload, conditions of employment and rights contained in the [Central Queensland University Enterprise Agreement 2017](#) ('Enterprise Agreement'), other than those defined under '[Bullying](#)'. Concerns about such matters should be addressed in accordance with the Enterprise Agreement's Grievance Resolution Procedures (clause 46), Dealing with Disputes (clause 5) or Handling Workload Issues (clause 17) clauses, as appropriate, within the Enterprise Agreement.

### 3 POLICY STATEMENT

- 3.1 CQUniversity Australia is committed to providing a workplace free from workplace harassment, bullying, and unlawful discrimination. Employees have a responsibility to ensure that their actions do not negatively affect another employee's career, health or wellbeing and are consistent with the University's [Code of Conduct](#). Workplace harassment, bullying, and unlawful discrimination will not be tolerated under any circumstances.
- 3.2 An employee found to have harassed, bullied, or unlawfully discriminated against another employee, 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 Enterprise Agreement (clause 27).
- 3.3 All members of the CQUniversity community have a responsibility to provide a safe work environment that enables employees to carry out their work responsibilities free from harassment, bullying and unlawful discrimination.
- 3.4 Supervisors are to be alert to the possibility of harassment, bullying, and unlawful discrimination 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. Disciplinary action can only be taken in accordance with the Enterprise Agreement.
- 3.5 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. If this is not possible, other steps may need to be taken that can include an investigation and/or misconduct or serious misconduct procedures as specified in the Enterprise Agreement (clause 27).
- 3.6 CQUniversity requires all employees to behave responsibly by complying with this policy and procedure, not tolerating unacceptable behaviour, and to immediately report incidents to the appropriate person.
- 3.7 The University also recognises the right of individuals to seek external advice and/or resolution to their complaint by agencies such as the Anti-Discrimination bodies, Unions or Individual State/Territory governing bodies.
- 3.8 Where the University deems it necessary, it may act and investigate the issue or concerns further to protect the health and safety of all employees.

### 4 PROCEDURE

- 4.1 If an employee has concerns about a behaviour, or is unsure if a behaviour constitutes harassment, bullying or unlawful discrimination, they should discuss the situation with their supervisor or representative as outlined in the definition section.
- 4.2 Reasonable management action undertaken in a reasonable way is not considered workplace bullying, harassment and/or unlawful discrimination.
- 4.3 A supervisor/manager who has concerns about, or becomes aware of, behaviour that may constitute harassment, bullying or unlawful discrimination has an obligation and a duty of care to actively intervene to prevent such conduct continuing.
- 4.4 The University will accept complaints where it is appropriate to do so, and if a complaint is not accepted, the reasons will be given for the decision.
- 4.5 Employees may be assisted at any point in this procedure by a representative as defined under the Enterprise Agreement.
- 4.6 Employees may also seek support from the University's [Employee Assistance Program](#) (EAP) for personal counselling during this time.
- 4.7 An outline of the process appears at section 10 Appendix.

## One-on-one resolution

- 4.8 The University encourages one-on-one resolution as a first course of action when it is safe and appropriate to do so. Focus should be on the inappropriate conduct rather than on personalities or individuals involved in the conduct. Parties should seek to resolve issues of harassment, bullying or discrimination informally by the following means:
- directly approaching the person believed to be responsible and describe to them which behaviour(s) they considered to be unreasonable and unacceptable
  - ask them to stop and/or to behave differently, and
  - keep a record of the actions taken.
- 4.9 One-on-one resolution may be done in person, by phone or by email.
- 4.10 The employee taking action may choose to inform their supervisor that this process has commenced and provide updates regarding its progress. Informing the supervisor of a one-on-one resolution is not considered to be lodging a formal complaint.
- 4.11 If the Supervisor is informed, they have a responsibility to ensure the matter is resolved or consider if they should consult the [Workplace Relations Team](#) within People and Culture Directorate for further advice.

## Mediation/Facilitation

- 4.12 Mediation/Facilitation would generally occur if resolution is not achieved following the one-on-one resolution method, or if the complainant does not wish to attempt a one-on-one discussion with the respondent.
- 4.13 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 or with the Workplace Relations Team. Employees can raise concerns either verbally or in writing with sufficient detail to form a view of the substance of the allegations.
- 4.14 This process is managed by the supervisor/manager/Workplace Relations Team member to whom the complaint was made. They will ensure the Workplace Relations Team is notified within 48 hours of becoming aware of the complaint.
- 4.15 The Workplace Relations Team may recommend facilitation/mediation; in all cases the matter will not proceed to mediation unless all parties agree. Mediation will be conducted by an independent and neutral person who may be internal to the University or external. The Workplace Relations Team will organise the mediation within 5 days of being made aware of the matter. The mediation will occur subject to the availability of the participants, but in no case more than 15 days from when Workplace Relations were made aware of the matter.
- 4.16 Both the complainant and the respondent will be entitled to have a support person in the mediation. The mediation is to remain confidential except that a record of the event by the mediator will be provided to the Workplace Relations Team.
- 4.17 Potential outcomes of the mediation process may include, but are not limited to:
- an apology
  - an agreement between the parties on acceptable workplace behaviour
  - resetting expectations of behaviour for all parties by the supervisor or next level manager, and/or
  - undertaking recommended training programs.
- 4.18 The mediator/facilitator will make recommendations in relation to behaviour(s), Code of Conduct considerations, and where applicable, prepare a Behaviours in the Workplace Agreement for all relevant parties to commit to and follow.

- 4.19 Where either of the parties are not comfortable with a face-to-face mediation process, the Workplace Relations Team will instead facilitate a Behaviours in the Workplace Agreement for all relevant parties to commit to and follow.

### **Formal complaint process**

- 4.20 If the measures outlined in the mediation/facilitation step are unsuccessful or inappropriate in the circumstances, within ten working days of the cessation of discussions a formal complaint can be made. A formal complaint is only made by lodging a completed Complaint Form plus any available supporting evidence and information online, which will be received by the Director, People and Culture or nominee. The formal complaint must have sufficient detail to ensure the complaint is properly founded. The Director, People and Culture or nominee will carefully consider the formal complaint and may seek further information in respect to the allegation(s) prior to deciding on further action.
- 4.21 If the Director, People and Culture or nominee determines that a formal investigation is necessary, an appropriate investigator will be appointed within five working days of the Director, People and Culture or nominee receiving the complaint. The investigator will be appointed with a directive to undertake the investigation and produce the report within 20 days, or other time as agreed between the parties.
- 4.22 For the purposes of conducting an effective investigation, information that is confidential, sensitive or personal maybe gathered by the Investigator. This information could include interviews, statements, emails, telephone records, or text data messages and may form part of the investigation report. Interviews of the complainant and respondent will be undertaken and the investigator will also interview other staff who are mentioned as having direct knowledge of any of the complaints. The Investigation Report is a confidential document and the Director, People and Culture or nominee will make a decision on a case by case basis as to who is provided a copy of the report and whether the full report is released or an extract of same. Generally, the Investigation report or extract thereof will only be made available to the respondent and/or complainant (on a confidential basis) where reasonably necessary to afford natural justice to the parties.
- 4.23 The investigator will generally make a finding about the complaint(s), in which case the complainant and the respondent will be notified in writing whether the complaint(s) are substantiated or not, and the reason for the determination. This notification will be provided within 5 days of the Director, People and Culture or nominee receiving the report from the investigator.
- 4.24 If the investigation confirms the complaint(s) is considered to be workplace harassment, bullying and/or unlawful discrimination, the University will apply the misconduct or serious misconduct provisions of the Enterprise Agreement (clause 27).
- 4.25 While the investigation process is being established and undertaken, the Director, People and Culture or nominee may take steps to safeguard the health and safety of the complainant and respondent. Those steps will be limited to:
- a. directives that all communication between the parties cease, or be confined to specified matters and/or communication methods, or be overseen by a designated individual
  - b. temporary relocation of one or both staff members to limit physical interactions
  - c. approval for one or both staff members to conduct all or part of their work from home, and/or
  - d. agreement that particular activities do not need to be undertaken during the period (for example attendance at staff meetings).

### **Bystander/Witness**

- 4.26 If an employee is witness or bystander to behaviour that they consider may constitute workplace harassment, workplace bullying, or discrimination, it is appropriate that they raise their concerns about such behaviour to either the relevant supervisor/manager or with the Workplace Relations Team. 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.
- 4.27 The Director, People and Culture or nominee can provide advice and assistance to observers of alleged inappropriate behaviour regarding strategies to safely raise their concerns.

## Repeat Offender

- 4.28 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, or unlawful discrimination, the matter shall be dealt with at the 'formal complaint process' stage of these procedures.

## False, Malicious or Vexatious Allegations

- 4.29 Employees who make false, malicious or vexatious allegations are in breach of the [Code of Conduct](#) and that behaviour will be viewed as misconduct or serious misconduct if found to be substantiated.

## Further information/resources

- 4.28 It is recommended that all parties access the following information:
- '[Guide for Preventing and Responding to Workplace Bullying](#)', published by Safe Work Australia, and
  - '[A quick guide to Australian discrimination laws](#)', published by Australian Human Rights Commission.

## 5 RESPONSIBILITIES

### Compliance, monitoring and review

- 5.1 The Director, People and Culture is responsible for monitoring compliance and reviewing this policy and procedure to ensure it continues to achieve its intended purpose.

### Reporting

- 5.2 People and Culture will report to the Strategic Planning and Projects Committee annually on instances of non-compliance with the [Code of Conduct](#). No additional reporting is required.

### Records management

- 5.3 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 via email to the People and Culture Directorate) [pac@cqu.edu.au](mailto:pac@cqu.edu.au) for confidential filing. All records in relation to Formal Complaints will be retained by the People and Culture Directorate for confidential filing.
- 5.4 Employees must manage records in accordance with the [Records Management Policy and Procedure](#). This includes retaining these records in a recognised University recordkeeping information system.
- 5.5 University records must be retained for the minimum periods specified in the University Sector Retention and Disposal Schedule on the [Queensland State Archives website](#).

## 6 DEFINITIONS

- 6.1 Terms not defined in this document may be in the University [glossary](#).

### Terms and definitions

**Bullying:** is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, that a reasonable person would regard as undermining the individual's right to dignity through victimising, harming, humiliating, intimidating or threatening a person or persons which therefore creates a risk to health and safety.

Reasonable management action undertaken in a reasonable way is not considered workplace bullying, harassment and/or discrimination.

Examples of behaviour 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 employee
- spreading misinformation or malicious rumours
- changing work arrangements such as rosters and leave to deliberately inconvenience a particular employee or employees.

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 if appropriate.

**Bystander:** an individual who observes the behaviour first hand or is subsequently informed of the incident. Includes a person who observes someone harassing, bullying or discriminating against another person or group.

**Complaint:** is a complaint lodged by a person(s) about inappropriate conduct or behaviour by another person(s), including discrimination, harassment, or bullying. If a Complaint Form is not received with relevant supporting evidence, the complaint will not be considered formalised.

On occasion more than one employee is aggrieved by the same or related actions that may constitute workplace bullying. If those employees choose to act as a group on this matter, such a group complaint is an acceptable form of complaint and will be dealt with as a group complaint.

**Complainant:** is the party who makes the complaint.

**Disciplinary action:** refers to action by the University to discipline an employee for unsatisfactory performance, misconduct or serious misconduct under the processes of the Enterprise Agreement and is limited to:

- reprimand or counselling
- demotion by one or more classification levels or increments
- withholding of an increment
- suspension with or without pay
- termination of employment.

Termination of employment can only be used in the event of proven unsatisfactory performance or serious misconduct under the conditions outlined in the Enterprise Agreement (clauses 26 & 27).

**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.

**Reasonable management action:** examples includes but are not limited to:

- setting reasonable performance goals, standards and deadlines
- rostering and allocating working hours where the requirements are reasonable

- transferring a worker for operational reasons
- deciding not to select a worker for promotion where a reasonable process is followed
- informing a worker about unsatisfactory work performance in an honest, fair and constructive way
- informing a worker about inappropriate behaviour in an objective and confidential way
- differences of opinion or other disagreements
- implementing organisational changes or restructuring
- taking disciplinary action, including suspension or terminating employment, where grounds exist to do so.

Reasonable management action undertaken in a reasonable way is not considered workplace bullying, harassment and/or discrimination.

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

**Representative:** is a person chosen by an affected employee or the University to assist or represent them.

**Respondent:** is the party whom the complaint is made about.

**Unlawful Discrimination:** including racial discrimination and vilification generally means any practice 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. Clause 7 refers to legislation and relevant documents for each state/territory in Australia.

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

**Victimisation:** occurs when a person does or threatens to do something that will be detrimental to another person because they have lodged a complaint, are considering lodging a complaint, or they are or will be involved in the complaint resolution process. Victimisation usually involves retaliation or retribution.

**Vilification:** is behaviour that happens in the workplace that incites others to hate, to have serious contempt for, or to severely ridicule individuals or groups because of their race, sexuality, transsexuality, HIV/AIDS status, or other personal characteristic.

**Workplace Harassment:** under federal and state legislation, occurs when someone is made to feel intimidated, insulted or humiliated because of their race, colour, nationality 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.

## 7 RELATED LEGISLATION AND DOCUMENTS

[Age Discrimination Act 2004](#) (Cwlth)

[Anti-Discrimination Act 1977](#) (NSW)

[Anti-Discrimination Act 1991](#) (QLD)

[A Quick Guide to Australian Discrimination Laws](#)

[Australian Human Rights Commission Act 1986](#) (Cwlth)  
[Central Queensland University Enterprise Agreement 2017](#)  
[Code of Conduct](#)  
[Complaint Form](#)  
[CQUniversity Values](#)  
[Disability Discrimination Act 1992](#) (Cwlth)  
[Disability Policy](#)  
[Disability Services Act 2006](#) (QLD)  
[Disability Standards for Education \(2005\)](#)  
[Equal Opportunity Act 1984](#) (SA)  
[Equal Opportunity Act 1995](#) (VIC)  
[Equal Opportunity Act 1984](#) (WA)  
[Equity Policy](#)  
[Fair Work Act 2009](#) (Cwlth)  
[Guide for preventing and responding to workplace bullying](#)  
[Occupational Health and Safety Act 2004](#) (VIC)  
[Occupational Health and Safety Act 1984](#) (WA)  
[Public Sector Ethics Act \(1994\)](#) (QLD)  
[Racial Discrimination Act \(1975\)](#) (Cwlth)  
[Sex Discrimination Act 1984](#) (Cwlth)  
[Sexual Harassment Policy and Procedure](#)  
[Work Health and Safety Act 2011](#) (NSW)  
[Work Health and Safety Act 2011](#) (QLD)  
[Work Health and Safety Act 2012](#) (SA)  
[Workplace Gender Equality Act 2012](#) (Cwlth)

## 8 FEEDBACK

8.1 Feedback about this document can be emailed to [policy@cqu.edu.au](mailto:policy@cqu.edu.au).

## 9 APPROVAL AND REVIEW DETAILS

Approval and Review	Details
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Notes	This document was formerly known as the Workplace Harassment (Including Sexual Harassment), Workplace Bullying and Unlawful Discrimination (09/09/2015).



Process	Actions	Person Responsible	Timeframes
	If the complaint/s are substantiated the Workplace Relations Team will determine the appropriate process under the Enterprise Agreement for the respondent.		