

Dealing with Discrimination, Harassment and Bullying

Supervisor and Manager Guide

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1. About this guide

This guide is designed to provide supervisors and managers with a clear and consistent approach to the prevention and management of discrimination, harassment and bullying based on the relevant legislation and the University's policies and procedures.

Produced by:

People and Capability Directorate

2. Introduction

Discrimination, Harassment and Bullying are unlawful and are not tolerated at ACU. It is fundamental to ACU's Mission that we recognise and value the diversity of others and ensure that the workplace and learning environment are free from discrimination, harassment and bullying. ACU's Mission provides clarity about who we are as an employer and our normal expectations of each other. A safe, harmonious, respectful, inclusive work environment also contributes significantly to the University's achievement of a culture of performance excellence.

The University is empowered by Federal and State legislation to take action to ensure that the workplace is free from Discrimination, Harassment and Bullying and has developed policies and procedures based on the legislation.

Supervisors and managers, as delegated officers of the University have responsibility to ensure that the workplace is free from harassment, discrimination and bullying. Under anti-discrimination and Work Health and Safety legislation, a supervisor can be held financially responsible if they don't take action to address these issues when they become aware of them. In addition, the implementation of the anti-bullying component of the Fair Work Amendment Act 2013 means that the University as the employer, an individual staff members and supervisors, can be served with an order to stop bullying, which may become a matter of public record. In implementing these provisions, the Fair Work Commission has determined that it has the scope to consider the past behaviour of staff and/or supervisors, i.e. behaviour in the workplace which occurred before 1 January 2014. Consideration of the parties past behaviour is likely to occur when the Commission is deciding whether or not to issue an order to stop bullying behaviour.

This guide provides supervisors and managers with a framework to manage potential incidents of discrimination, harassment and bullying. Resolution of issues should, where possible occur informally at the local level in the first instance. The formal grievance process is available if matters cannot be resolved informally. The guide also provides information about early intervention strategies to prevent discrimination, harassment and bullying that supervisors and managers can use to encourage a safe, harmonious, respectful and inclusive work environment for all.

3. Definitions

What is Discrimination?

Unlawful discrimination can either be direct or indirect. Under state and federal legislation, discrimination is defined as treating someone or a group of people less favourably than another person or group because of a particular characteristic(s). It refers to process and systems in place that perpetuate unfair treatment of the individuals.

Workplace discrimination can occur in:

- recruiting and selecting staff – advertisements, questions asked of applicants (i.e. are you planning to have children within the next 2 years?)
- terms, conditions and benefits offered as part of employment and how they are applied

- who receives training and what sort of training is offered
- who is considered and selected for transfer, promotion, retrenchment or dismissal.

Direct Discrimination

Direct discrimination means someone is treated unfairly compared to someone else in the same or similar circumstances.

For example:

An employer asking a woman candidate if she has children in an interview is likely to be direct sex discrimination.

Indirect Discrimination

Indirect discrimination means a requirement (or rule) that is the same for everyone but has an effect or result that is unequal and unreasonable having regard to the circumstances.

For example:

An employer deciding not to consider an applicant for a role because of the candidate's disability/impairment, when with reasonable adjustments they could have met the inherent requirements of the role could be indirect discrimination based on the person's disability.

Other behaviour that is against the law includes:

- Victimisation of a person or group because they have made a complaint, agreed to be witness or has had a complaint made against them;
- Vilification of a person/group on the basis of a person's race, religion, gender identity or sexuality.

Unlawful Reasons include:

- | | |
|-------------------------------------|--|
| • Race; | • Marital/ relationship status; |
| • Sex/ pregnancy; | • Sexual orientation; |
| • Disability; | • Industrial, political or trade union activity; |
| • Impairment; | • Gender identity; |
| • Age; | • National extraction or social origin; |
| • Religion; | • Intersex status. |
| • Carer or Family responsibilities; | |

What is Unlawful Harassment?

Unlawful Harassment is defined under federal and state legislation, as any form of behaviour where a person is made to feel intimidated, insulted or humiliated because of a particular characteristic(s) eg, race, sex specified under anti-discrimination or human rights legislation. It can be a single unwelcome incident or a persistent pattern of unwanted behaviour. Some forms of harassment may also amount to criminal behaviour, such as when violence and vilification are involved.

Examples of Unlawful Harassment

- Displaying offensive or pornographic posters or screen savers;
- Asking intrusive questions about someone's personal life;
- Offensive communications including digital communications (Facebook, twitter, e-mails), written, images and telephone;
- Derogatory or demeaning jokes intended to offend based on stereotyped characteristics.

What is Sexual Harassment?

Sexual Harassment is defined under the Sex Discrimination Act as any unwelcome sexual advance, request for sexual favours or conduct of a sexual nature in relation to the person harassed in circumstances where a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

What is Bullying?

Bullying is defined as repeated and unreasonable behaviour directed towards a person or a group of people that creates a risk to health, safety and well-being.

Bullying can take place between:

- staff members;
- a student and a staff member;
- a student or staff member and another person on campus;
- students.

Examples of Bullying

- Intimidation;
- Verbal abuse or threats;
- Excluding or isolating people from a place/activities;
- Assigning impossible tasks, meaningless tasks unrelated to the job;
- Undermining responsibility;
- Withholding information essential to do a task;
- Copying emails that are critical about someone to others who do not need to know;
- Making threats or comments about job security without foundation;
- Cyber bullying.

What behaviours **do not** constitute Harassment, Discrimination and Bullying?

Workplace harassment, discrimination and bullying should not be confused with legitimate comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work performance or work-related behaviour of an individual or group.

The Fair Work Act anti-bullying legislation which came into effect from 1 January 2014 specifies what is not considered to be workplace bullying. The term reasonable management practices, used in the legislation, affirms that managers and supervisors are empowered to define work and work practices in the context of the organisation's operations, and are empowered to take action to address issues of unsatisfactory performance and behaviour with staff members. This includes:

- Requests for staff to carry out reasonable duties and instructions that meet the requirements of the University;
- Management of unsatisfactory performance and/or behaviour; and
- A direction to comply with University rules, resolutions and policies.

Providing instruction and full and frank feedback to staff members regarding their work and behaviour can be challenging, as it can elicit a range of emotional responses from the staff member if perceived negatively. However, addressing performance and behaviour issues promptly, with courtesy, respect and sensitivity is an expectation of the supervisory role, and is supported by the legislation and the University's policies and procedures.

What is important is that the request is reasonable, and is made with courtesy, dignity and respect. If not conducted in a reasonable manner, the request could be considered to be discrimination, harassment and or bullying.

4. Responsibilities

4.1 Responsibilities of the University

The University has a duty of care to ensure the health, safety and wellbeing of staff, students and visitors. This means that all reasonable steps to prevent harassment, discrimination and bullying in the workplace need to be taken. ACU is therefore required to actively implement precautionary measures such as policies, procedures and training to minimise the risk occurring.

In exercising its responsibilities in this regard, the University:

- allocates resources;
- develops, implements and advises on policies and procedures;
- holds supervisors and staff to the relevant responsibilities; and
- conducts training of supervisors and staff.

4.2 Responsibilities of Supervisors and Managers

Supervisors and managers are empowered to act to prevent and address issues that could be discrimination, harassment and bullying. This includes:

- Early intervention, which relates to actions taken to prevent discrimination, harassment and bullying and promote a harmonious and respectful workplace **(Section 5.1)**
- Informal resolution - the process for dealing with grievances at a local informal level by the supervisor or manager **(Section 5.2)**
- Formal grievances, which generally relate to serious issues where it is possible that disciplinary action, could result from the investigation. The supervisor or manager's role is to support the work area during this process. **(Section 5.3)**

4.3 Responsibilities of Staff Members

It is the responsibility of all staff members to help prevent discrimination, harassment and bullying in the workplace by:

- recognising and valuing the skills and talents of others
- respecting cultural and social differences among colleagues and students
- treat other staff and students fairly and equitably with courtesy and respect as defined in the ACU Staff Code of Conduct

As a supervisor or manager, these are the expectations you should have of the behaviour of staff members in your work area and regularly communicate and reinforce these.

5. Resolution of Issues

5.1 Early Intervention and Prevention

While all staff members have a responsibility to address issues of discrimination, harassment and bullying, supervisors and managers have a special responsibility to inform staff members when their behaviour may be in breach of policies and address any potential issues at the

earliest opportunity. The outcome of early action is a safe and harmonious workplace that potentially avoids more formal processes in the future.

See Something Say Something Do Something

See Something Say Something Do Something applies in situations where behaviour has been observed or reported that could be the early signs of a breach of the University's discrimination, harassment or bullying policies and the Code of Conduct. This could be a staff member using aggressive tone in interactions with colleagues, something written such as an email that is unprofessional or even more subtle actions, such as excluding one person from a meeting or not providing information that is relevant to their role.

See something – When you observe behaviour that could be discrimination, harassment or bullying, you have a positive duty under the legislation to take action. Failure to take action is something that a supervisor or manager can be held accountable in external jurisdictions such as the Fair Work Commission or Anti-discrimination Tribunals.

Say Something – Arrange to have a confidential discussion with the staff member and provide feedback regarding the observation of behaviour that could be a potential breach of University policy, reinforce what the University's expectations are with regard to workplace behaviour, and explain the potential consequences of the behaviour continuing, including potentially misconduct proceedings

Do something – document the observed behaviour and your actions and monitor the staff member's behaviour after the discussion to ensure there has been a change.

In many cases early intervention will prevent the matter escalating, but if it doesn't, addressing issues with the staff member and documenting them has provided the opportunity for behaviour change, and is evidence of your efforts to promote a safe, harmonious and respectful work environment, which is the desired outcome of any action taken.

The observation or experience of behaviour that is unacceptable is all a supervisor or manager requires to start dealing with an issue. There does not need to be a complaint made for this to occur. Steps that can be taken include:

- Regularly informing staff members of their responsibilities with regard to workplace behaviour
- Ensuring that acceptable standards of conduct and behaviour are observed at all times
- Taking early corrective action to deal with behaviour that may be offensive or intimidating, even if a complaint has not been made. **See Something Say Something Do Something (refer to the next page for more information)**
- Set standards of behaviour through your actions by modelling appropriate behaviour and treating all staff with courtesy and respect.

5.2 Informal Resolution of Allegations of Discrimination, Harassment and Bullying

Section 5.4.11 of the University's Staff Complaints Management Policy states that; "Staff members should normally raise a complaint with their nominated supervisor and attempt to resolve such claims locally and informally." The prompt resolution of issues at a local level causes less disruption and distress for the individuals involved and the wider workgroup and is therefore the advisable approach in the first instance in most cases.

This checklist provides prompts for the steps that can assist in the successful resolution of matters informally at the local level.

CHECKLIST FOR SUPERVISORS AND MANAGERS - Informal Resolution of Discrimination, Harassment and Bullying

Familiarise yourself with the relevant [University policies and procedures](#) and adhere to the principles detailed below

Principles for Managing Discrimination, Harassment and Bullying Issues

- Grievances are addressed sensitively, promptly and in accordance with the principles of natural justice,
- Staff members being interviewed are offered the option of having a support person present, who does not speak or advocate for them but provides emotional support
- All reasonable steps are taken to respect the confidentiality of the people involved
- Fairness and impartiality prevail throughout the appropriate resolution process
- Staff members who raise an issue are protected from victimisation or reprisal

Arrange to meet with the complainant at the earliest opportunity to clarify the grievance.

Questions asked in the interview could include:

- Describe the incident(s) that are concerning you
- When and how often did it occur?
- Do you have any evidence that supports your complaint? e.g.: emails, phone messages, witnesses
- What would resolve the issue for you? e.g. an acknowledgement of a misunderstanding, an apology, a commitment from the other party not to repeat the behaviour

Once the allegations are clear, it is recommended that you have a conversation with your relevant local People and Capability staff member, who can provide advice to assist in managing the issue. The P&C staff member will provide ongoing support as the matter is progressed if required.

It is also important to advise your supervisor about the issue and discuss the plan for resolution. This provides you with support and ensures that he/she is informed about the issue if there is a need to escalate it in the future.

Advise the respondent of the details of the complaint made against them and ensure they are provided with an opportunity to respond to the complaint.

Questions asked could include:

- Do you recall the incident?
- What is your response to the complaint?

CHECKLIST FOR SUPERVISORS AND MANAGERS - Informal Resolution of Discrimination, Harassment and Bullying

- Do you have any evidence to support your response? e.g. emails, phone messages, witnesses
- What steps would you be prepared to take to resolve the matter? E.g. acknowledgement of misunderstanding, make an apology, a commitment not to repeat the behaviour in the future.

It is important that the respondent understands that the potential consequences if the matter is not resolved informally, which could include a formal investigation and misconduct proceedings.

Once you have spoken to both parties, assess what you have heard and any other evidence received to make an evaluation as to whether the matter can be resolved at the local level. Explore common ground between the parties that would assist them to reach a resolution. This involves:

- understanding what the common ground is - are the parties willing to reach a resolution?
- recognising what both parties want as a resolution; is it possible to achieve the desired outcomes? Is it a reasonable outcome to the complaint?
- Providing information about the formal process, so they are aware that the outcomes from a formal process may not be beneficial to the parties.

Please note: It may be advisable to speak with your supervisor, or the relevant P&C staff member before making the decision about the next steps.

Explore possible options for resolution including:

- Clarifying a misunderstanding
- An apology (where the respondent admits to the allegations)
- Mediation*
- Agreed action plan to avoid further incidents

Both parties will need to agree to the method of resolution, and once agreement has been reached the matter should be enacted promptly and documented.

**Note: Mediation should be approached with caution, as it can potentially escalate conflict between the parties. In most cases consideration of using professional mediation should be considered. The University's Employee Assistance Program (EAP) can assist with providing this service. Refer Section 6.2 of this Guide for more information about the EAP.*

Schedule a follow up meeting with both parties to check that the matter is resolved and take further action if required.

Meetings and interviews with all parties should be documented including details of who attended, action taken to respond to the issue (outcomes) and any further action required.

5.3 Managing Formal Grievances

In circumstances where a matter cannot be resolved locally and informally or is initially assessed as serious and could potentially result in disciplinary action, it is referred to the appropriate senior officer or the Chief People Officer for action. The formal grievance process

is detailed in the [Staff Complaints Management Policy](#) and the [Workplace Bullying Policy and Procedure](#).

While you may not be involved in the investigation and resolution of the formal grievance, it is your responsibility to manage the work area while the process is underway. It is important that you, as the University's representative, deal fairly and impartially with any parties involved in the complaint.

The formal grievance process can take time and can cause tension and high levels of emotion in the workplace. Where there are indications that this is the case, support should be offered to all staff members involved in the complaint, including the complainant, respondent and any witnesses. Information about the Employee Assistance Program is provided in Section 6.2 of this guide.

The importance of confidentiality in these proceedings also needs to be stressed, and any indicators that there are breaches of the University's policy on this matter should be addressed, as they can impact on the outcome of the investigation.

6. Resources

6.1 Policies and Procedures

[Discrimination and Harassment Policy](#)

[Workplace Bullying Policy and Procedure](#)

[Staff Complaints Management Policy](#)

[Code of Conduct for all Staff](#)

6.2 Support

Support can be provided by your supervisor and the relevant P&C staff member; however assistance is also available through the [Employee Assistance Program](#) (EAP).

ACU has contracted with [Acacia EAP](#) to provide free professional confidential counselling to staff members and their immediate family members. This can be particularly helpful for staff members involved in a workplace grievance issue. Staff are entitled to 3 sessions in a 12-month period, with further sessions available based on clinical advice. The EAP is a short-term intervention that provides support and assists clients with strategies to manage emotions, and re-referral where a longer-term solution is required. It is not the role of the counsellor to make a judgement about whether there is discrimination, harassment or bullying.

The EAP also provides a support service to supervisors and managers who are dealing with complex and emotional people management issues in the form of Manager Support. This is generally provided by telephone by a suitably qualified Acacia EAP consultant

Acacia EAP contact numbers is 1300 364 273.

6.3 External Resources

[National Anti-Discrimination Information Gateway](#)

Provides information about discrimination and harassment legislation and external agencies that address complaints

[Fair Work Commission](#)

Provides information about the Fair Work Commission anti-bullying legislation and complaint handling processes

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

A comprehensive guide that covers the work health and safety responsibilities of employers with regard to workplace bullying and aligns with the requirements of the Fair Work Act.