Staff Assistance, Support and Representation Policy

Section 1 - Background Information

(1) A staff member of Australian Catholic University may choose to be assisted by a support person or a staff representative throughout a range of University employment relations procedures and processes. Several provisions of the ACU Staff Enterprise Agreement 2017-2021 (the Agreement), and related University policies and provisions, state that a staff member may be either assisted by a support person and/or represented by their staff representative. This Policy includes relevant extracts of the Agreement clauses and related policies, and information regarding the roles and responsibilities of the staff member, nominated supervisor, support person and staff representative.

(2) The provisions of the Fair Work Act 2009 (Cth), include the right of a staff member to be assisted by a support person in circumstances where discussions occur which may lead to disciplinary action being taken, including the termination of employment. The case law regarding the role of a support person has been incorporated into this Policy. The University also refers to a decision of Commissioner Bissett regarding the implementation of an ACU People and Capability policy, which clarifies the role of the support person and the staff representative in providing assistance and/or representation to a staff member.

Section 2 - Policy Statement

(3) It is appropriate for a nominated supervisor to have a discussion with a staff member regarding operational matters without the staff member being accompanied by a support person or staff representative. A staff member will normally be permitted to be accompanied by a support person and/or represented by their staff representative if they are required to attend a meeting with their nominated supervisor or line manager regarding matters concerning their employment in the circumstances detailed in this Policy.

(4) A support person or staff representative cannot be a practising solicitor or barrister. A support person may be a staff member or a person who is external to the University such as a friend or family member. The meaning of the term “staff representative” is defined in the Agreement as follows:

> 1.3 (xxx) “Staff representative” means a person who is chosen by a staff member to be their chosen representative, who may be a union member or union official but who is not a practising barrister or solicitor”.

(5) A support person or staff representative may enter an ACU workplace, including for the purpose of supporting, assisting or representing a staff member, where the University has been properly notified in advance in accordance with this Policy.

(6) A support person or staff representative must:

a. maintain the confidentiality of the process in which the staff member is involved; and

b. behave in a respectful, ethical and reasonable manner towards all persons engaged in the process.

(7) A staff member who is accompanied by a support person or staff representative is responsible for communicating and reinforcing the expectation of that role to their support person or staff representative.

(8) Any person who does not comply with the standards of behaviour expected by the University may, at the absolute discretion of the University, be removed from the workplace at any time.

Section 3 - Policy Purpose

(9) The purpose of this Policy is to provide information about the circumstances where a staff member may be either assisted by a support person, and/or represented by their staff representative; including information about the roles and responsibilities of the staff member, nominated supervisor, support person, and staff representative.

Section 4 - Application of Policy

The Enterprise Agreement

(10) The provisions of the Agreement state that a staff member may be assisted by a support person, or assisted by a staff representative in the following circumstances:

a. Individual Flexibility Arrangements: “The University must ensure that … the staff member is advised that they are entitled to have a staff representative negotiate a flexibility arrangement on their behalf, providing that the arrangement does not require the consent of a third party as specified in section 203(5) of the Fair Work Act 2009 (Cth), and the staff member and their staff representative must have at least three (3) working days to consider the proposal” (sub-clause 1.8.6.1 (ii) and (iii));
b. Dispute Settlement Procedure: “Throughout these procedures, a staff member may choose to be represented by a Union or by a person of their choice, provided that person is not a practising solicitor or barrister” (Sub-clause 1.12.1.2). In accordance with sub-clause 1.12.1.3, a staff member “and/or their staff representative” “are entitled to notify and participate in the resolution of a dispute”;
c. Managing Unsatisfactory Performance: “During any meetings to discuss possible unsatisfactory performance, a staff member may choose to be assisted by a person of their choice, including a staff representative, but not a practising solicitor or barrister” (sub-clause 4.8.6);
d. Misconduct or Serious Misconduct: “Throughout the proceedings associated with misconduct or serious misconduct, a staff member may choose to be assisted by a person of their choice, provided that person is not a practising barrister or solicitor” (sub-clause 7.2.1.5);
e. Misconduct Investigation Committee: “The Committee will … conduct its own fact finding proceedings and interviews. These may occur either in the presence of the staff member and if they so choose, their chosen representative (as defined in sub-clause 1.3 (xxx)) allowing the asking of questions, presentation or challenging of evidence, and/or the provision of submission…” (sub-clause 7.2.5.5);
f. Redundancy, Redeployment or Voluntary Early Retirement: “As soon as practicable after a decision to make one or more positions redundant, the University will inform the staff members who are affected. The University will invite the affected staff member to consult regarding measures which may be taken to minimise the adverse effects of the decision… Staff members may choose to be assisted during these discussions by a staff representative” (sub-clause 7.3.5.1 and 7.3.5.2);
g. Change Management: “A staff member may choose to seek advice or assistance from a person of their choice, including a staff representative or their Union, throughout the course of discussions on such changes, provided that person is not currently a practising solicitor or barrister” (sub-clause 8.4.1.3). This clause refers to consultation and discussions which need to occur if a change management plan contains a proposal that will

have a “significant effect” (as defined) on staff, including a change to a staff member’s ordinary hours of work and/or to their regular roster.

University People and Capability Policies and Procedures

(11) The Workplace Bullying Policy and Procedure and the Staff Complaints Management Policy include a reference to a “staff representative” as defined in the Agreement.

Fair Work Act 2009 (Cth)

(12) Staff members who are employees of the University (not including Religious members), are covered by the employment provisions of the Fair Work Act, 2009 (Cth). The Act refers to the role of a support person or representative in the following circumstances:

> Discussions resulting in dismissal: Part 3 - 2, Division 3 – What is an Unfair Dismissal?, Section 387 of the Act states:
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> “In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, FWC must take into account:
>
> …
>
> (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal…
>
> (h) any other matters that FWC considers relevant.”

(13) Bargaining for an enterprise agreement: The Act specifies that a staff member may appoint a “bargaining representative” to represent them in bargaining for an enterprise agreement. The first formal stage for enterprise bargaining to commence is when the employer issues a Notice of Employee Representation Rights. This is required by Section 174 and 176 of the Act (see clauses (16) and (17)).

(14) The appointment of a bargaining representative must comply with the related provisions of the Act, including the requirement to notify the Chief People Officer (or nominee) in the correct form.

(15) A person, including an ACU staff member, who is appointed to be the bargaining representative of one or more eligible ACU staff members, is also required to meet the good faith bargaining provisions of the Act.

(16) Section 174 states:

> Content of notice of employee representation rights …
>
> (2) The notice must specify that the employee may appoint a bargaining representative to represent the employee:
>
> (a) in bargaining for the agreement; and
> (b) in a matter before FWC that relates to bargaining for the agreement.”
>
> …

(17) Section 176 states:

> Employee may appoint himself or herself
>
> ...
>
> (4) To avoid doubt, an employee who will be covered by the agreement may appoint, under paragraph (1)(c), himself or herself as his or her bargaining representative for the agreement.
>
> ...

(18) Note: Applications may be made for bargaining orders that require bargaining representatives to meet the good faith bargaining requirements (as per Section 229 of the Act)

Workplace Health and Safety Legislation (Health and Safety Representatives)

(19) Clause 50 of the Work Health and Safety Act 2011 (Cth) provides that a worker may ask their employer (or Person Conducting a Business or Undertaking [PCBU]) for whom they carry out work to facilitate elections for one or more Health and Safety Representatives. The request will trigger the PCBU's obligation to facilitate the determination of one or more work groups.

(20) This provision has been incorporated into relevant State and Territory Workplace Health and Safety state based legislation. For example, Division 3: Health and Safety representatives of the Work Health and Safety Act 2011 (NSW), provides that staff may request that an election be held of health and safety representatives. The powers and functions of and the procedures for the election of health and safety representatives are prescribed in the legislation. For more information, refer to the Work, Health, Safety and Wellbeing Policy.

Other Support and Assistance available to ACU Staff

(21) In addition to being assisted by a support person and/or represented by their staff representative; in accordance with clauses (10) to (20) above, staff members have access to the following additional forms of assistance:

The University's Employee Assistance Program (EAP)

(22) The University's Employee Assistance Program provider is Acacia EAP, and this organisation is a national external provider. Staff and members of their family are able to contact Acacia EAP to obtain confidential support and assistance. Staff members are entitled to have three confidential sessions with Acacia EAP and more sessions may be provided subject to assessment of the need and as may approved by the University. Acacia EAP may be contacted on the following number which is available 24 hours per day, 7 days per week: 1300 364 273.

The University's Discrimination and Harassment Advisers Network

(23) In circumstances where a staff member either makes an allegation of bullying and/or harassment against another staff member or student; or the staff member is the subject of such allegations made by another staff member or student, the staff member may contact their local Discrimination and Harassment Adviser.

(24) Advisers are staff members of the University who have received specialist training to enable them to assist and provide advice regarding the relevant University policies and procedures. There are Advisers located at each University campus. See the Discrimination and Harassment Advisers Contact List for names and contact details of the Advisoers.

Section 5 - Roles and Responsibilities

Staff member

(25) The staff member is responsible for:

a. ensuring that their nominated supervisor (or the organiser of the meeting or interview) to which they may be accompanied by a support person or staff representative, has been notified that they will be accompanied to the meeting or interview, and informed of the identity of their chosen support person or staff representative prior to the meeting or interview;
b. advising the support person/staff representative that the nominated supervisor has been notified who that the support person/staff representative will be and that the person will be entering the relevant ACU workplace to attend the meeting;
c. considering and disclosing any actual or potential conflict of interest between the chosen support person or staff representative, and the staff member and/or the University; and
d. communicating and reinforcing the expectation of the role of a support person or staff representative to their support person or staff representative.

Nominated supervisor or Investigator

(26) The nominated supervisor or Investigator (or the organiser of the meeting or interview on their behalf) is responsible for:

a. advising the staff member when it is appropriate for them to be accompanied by a support person or staff representative;
b. not unreasonably refusing to allow the attendance of the staff member's chosen person. Advice should be sought from People and Capability if there are concerns regarding a staff member's chosen support person or staff representative;
c. reminding the support person or the staff representative of their role including the requirement for confidentiality, and
d. depending on the nature of the meeting or interview and where appropriate, arranging for the signing of a formal Staff Assistance Support and Representation Policy - Confidentiality Agreement.

Support Person

(27) The role of a support person is to provide support and assistance to the staff member at a meeting or interview. The role of a support person is a voluntary one and if an ACU staff member is requested to undertake this role, the staff member:

a. has the right to decline, and
b. must not accept the role if they are aware of any conflict of interest concerning the issues or allegations, including if they have information that may be relevant to an investigation.

(28) In some circumstances the support person may be required to sign a formal Staff Assistance Support and Representation Policy - Confidentiality Agreement (e.g. where the meeting is related to an investigation into a complaint of alleged bullying or a grievance).

(29) A support person will conduct themselves in accordance with the requirements of this Policy. A support person does not have the role of an advocate and must not advocate for the staff member. The form of support and assistance may vary according to the circumstances of the interview, meeting or investigation.

(30) For example, at a meeting a support person may assist by:

a. providing emotional support and comfort;
b. taking notes (recording of conversations or meetings is not permissible unless the express consent of all participants is obtained);
c. asking questions regarding the policy and process being followed in order to assist the staff member to understand the process;
d. advising the staff member to seek clarification with regard to the staff member's rights and entitlements under the relevant policy;
e. suggesting a temporary pause or break of the interview to assist the staff member;assisting the staff member by seeking further advice.

(31) In circumstances where a staff member is being interviewed as part of a confidential investigation, the role of the support person is to provide emotional support and comfort and to take notes. The support person must not participate in the discussion and/or influence the responses of the staff member. An ACU staff member who acts as a support person is also bound by the University's confidentiality requirements, and a breach of confidentiality may result in disciplinary action being taken.

Staff Representative

(32) A staff member may be assisted and/or represented by a staff representative in the circumstances detailed in the Agreement and this Policy. In addition to the types of assistance which may be provided by a support person (as specified above), a staff representative may:

a. ask questions during a meeting/interview, including seeking clarification regarding a point of information or interpretation regarding the policy or process;
b. speak on behalf of the staff member to put forward any points of relevance, although this should not be seen by a staff member as a right to remain mute in such processes and not respond to the issues put to them;
c. organise a separate discussion with the University to advocate on behalf of the staff member; and/or
d. formally represent the staff member during certain specific University processes (e.g. before a Misconduct Investigation Committee or during a Change Management process).

(33) A person who is appointed to be a staff representative may speak on behalf of the staff member, including in the absence of the staff member as appropriate. The staff representative will conduct themselves in accordance with the requirements of this Policy.

(34) Other than when exercising formal "Right of Entry" provisions under the Fair Work Act 2009 (Cth), a staff representative who is a Union Official or Officer (including an Organiser and/or Industrial Officer) is required to notify the University in advance that they will be entering the workplace to support, assist or represent a staff member[1] in accordance with the normal University protocols.

[1] See also the Management of Union Activities at ACU Policy.

(35) The role of a "bargaining representative" is different to the role of a staff representative. Refer to clause (13) of this Policy for further information.

Section 6 - Revisions made to this Policy

(36) The revision table includes revisions up until this document was migrated into the current policy platform. Any later changes will show in the Status and Details tab.

Date	Major, Minor or Editorial	Description
18 October 2016	Major	Amended to clarify expectations of behaviour of support persons and staff representatives.
4 April 2019	Editorial	Updated to include reference to ACU Staff Enterprise Agreement 2017-2021 and Service Central.
21 November 2023	Editorial	Updated Human Resources to People and Capability. Updated Director HR to Chief People Officer. Updated EAP provider name and contact number.

(37) The University may make changes to this Policy from time to time to improve the effectiveness of its operation. In this regard, any staff member who wishes to make any comments about the Policy may forward their suggestions to People and Capability.

Section 7 - Further Assistance

(38) Any staff member who requires assistance in understanding this Policy should first consult their nominated supervisor who is responsible for the implementation and operation of these arrangements in their work area. Should further information or advice be required staff should visit Service Central.

Section 8 - Associated Information

(39) For related legislation, policies, procedures and guidelines and any supporting resources please refer to the Associated Information tab.

Status and Details

Status	Current
Effective Date	20th December 2023
Review Date	21st November 2024
Approval Authority	Vice-Chancellor and President
Approval Date	20th December 2023
Expiry Date	Not Applicable
Responsible Executive	Angelle Laurence Chief People Officer
Responsible Manager	Angelle Laurence Chief People Officer
Enquiries Contact	Bernardine Lynch ER and Safety Committees and Policy Officer People and Capability