

Name of Policy	Discrimination and Harassment Policy
Description of Policy	<p>This Policy outlines the University's commitment to preventing and dealing with discrimination and harassment.</p> <p>This policy is common across the University and should be read in conjunction with the Staff Complaint Management Policy and Procedure and Student Complaint Management Policy.</p>
Policy applies to	<input checked="" type="checkbox"/> University-wide <input type="checkbox"/> Specific (<i>outline location, campus, organisational unit etc.</i>) <hr/> <input type="checkbox"/> Staff Only <input type="checkbox"/> Students Only <input checked="" type="checkbox"/> Staff and Students
Policy Status	<input type="checkbox"/> New Policy <input checked="" type="checkbox"/> Revision of Existing Policy

Approval Authority	Vice-Chancellor and President
Governing Authority	Chief Operating Officer
Responsible Officer	Director, Human Resources

Approval Date	9 May 2016
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Date of Last Revision	25 January 2019
Effective date of Last Revision	25 January 2019
Date of Policy Review*	25 January 2022

* Unless otherwise indicated, this policy will still apply beyond the review date.

Related Legislation, Policies, Procedures, Guidelines and Local Protocols	<p>Australian Catholic University Code of Conduct for All Staff Critical Incident Management Policy Employee Assistance Program Misconduct and Serious Misconduct Policy Protected Disclosures Policy Statute 10 Student Conduct and Discipline Student Complaints Management Policy and Procedure Workplace Bullying Policy and Procedure Work Health Safety and Wellbeing Policy</p>
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1. Background Information

In line with ACU’s Mission, which expresses a fundamental value for the dignity of all human beings, this policy seeks to facilitate an inclusive, respectful and supportive working and learning environment with a clear statement of the University’s expectations in respect of conduct that may constitute discrimination and harassment (including sex-based harassment) or a breach of the University’s related policies.

2. Policy Statement

- 2.1 The University is committed to providing an environment that is free from discrimination and harassment where staff and students are treated with dignity, courtesy and respect.
- 2.2 All staff and students have a right to work and study in an environment free from discrimination and harassment.
- 2.3 The University provides procedures by which all staff and students can have a complaint of discrimination and harassment addressed in a sensitive, fair, timely and confidential manner.

3. Policy Purpose

The purpose of this policy is to articulate the University's approach to addressing unlawful discrimination and harassment within the University Community.

4. Application of Policy

This policy applies to all staff members, students, visitors, volunteers and contractors engaged or appointed by the University while on campus or engaged in University related activity.

5. What is Unlawful Discrimination?

5.1 Unlawful discrimination is defined under state and federal legislation as treating someone or a group of people less favourably than another person or group because of a particular characteristic(s) e.g. race, sex, religion specified under anti-discrimination legislation. Unlawful discrimination can be either direct or indirect.

5.2 **Direct discrimination** occurs when a person or group of persons is treated less favourably than another person or group of persons because of their background or certain personal characteristics. Direct discrimination is unlawful under federal discrimination laws if the discrimination is based on protected characteristics or grounds, listed in Section 5.6 of this policy. Some limited exemptions and exceptions may apply.

5.3 Examples of behaviours that may amount to direct discrimination include:

- Excluding someone from a job or course because of their family responsibilities; and
- A student not being invited to work on a research project because they are from a non-English speaking background and it is assumed people might have difficulty understanding them.

5.4 **Indirect discrimination** occurs when there is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people who share a particular attribute. Indirect discrimination is unlawful if the discrimination is based on protected characteristics or grounds, listed in Section 5.6 of this policy. Certain attributes protected by law, such as a person's race, sex, pregnancy. Some limited exemptions and exceptions may apply.

Indirect discrimination is not unlawful when the rule or policy is reasonable, having regard to the circumstances of the case.

5.5 Examples of behaviours that may amount to indirect discrimination include:

- Requiring all staff members to work hours that might be unfair to a person with carer's responsibilities (unless it can be shown that these hours are an essential condition).

- A student not being able to undertake a subject because they have a disability and cannot access the lecture room where classes are being undertaken.

5.6 Grounds for unlawful Discrimination and/or Harassment:

- Race
- Sex
- Pregnancy/breastfeeding
- Disability
- Impairment
- Age
- Religion
- Sexual orientation
- Industrial, political or trade union activity
- Gender identity
- National extraction or social origin
- Intersex status
- Association with a child
- Marital/relationship status
- Carer/family responsibilities

Vilification on the grounds of race, religion, sexuality or gender identity is also unlawful.

The grounds for unlawful discrimination and harassment are explained in the relevant Federal and State legislation, which is listed in section 13.

6. What is Unlawful Harassment?

- 6.1 Unlawful harassment is defined under federal and state legislation, as any form of behaviour where a person is made to feel intimidated or humiliated because of a particular characteristic(s) e.g., race, sex as specified under anti-discrimination or human rights legislation.
- 6.2 Unlawful harassment can be verbal, written or physical, and has the intent or effect of creating an intimidating, hostile or offensive work and/or educational environment.
- 6.3 Harassment can be a single incident, or repeated behaviour, and can occur even if the behaviour is not intended to offend. Silence does not mean that the behaviour is acceptable to the other person.
- 6.4 Examples of behaviours that may amount to harassment include:
 - Asking intrusive questions about someone's personal life;
 - Comments that put down or stereotype people;
 - Offensive communications including digital communications (Facebook, twitter, e-mails), written, images and telephone; and
 - Derogatory or demeaning jokes intended to offend on the basis of stereotyped characteristics.

7. What is Sexual Harassment?

- 7.1 Sexual harassment is defined under the Federal Sex Discrimination Act 1984 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.

7.2 Examples of behaviours that may amount to sexual harassment include:

- Inappropriate remarks with sexual innuendos, smutty jokes or lewd comments;
- Suggestive remarks about a person's body or appearance;
- Persistent, unwanted requests for dates;
- Offensive hand or body gestures;
- Uninvited physical contact such as patting, pinching, touching or putting an arm around another person; and
- Other acts or behaviours that may amount to an offence of sexual assault under relevant criminal legislation.

8. What is Sexual Assault?

Sexual assault is any unwanted, non-consensual sexual act in which a person is threatened, intimidated or forced to comply against their will, or where a person is unable to give consent because they are unconscious, asleep or incapacitated due to the effects of alcohol or other drugs.

Perpetrators of sexual assault might be known to the victim/survivor, or the perpetrator could be a stranger to the victim/survivor.

9. Behaviours that do not constitute Discrimination or Harassment

The following behaviours do not constitute Discrimination or Harassment:

- Reasonable management practices, including performance management and discipline processes;
- A lawful and reasonable instruction to carry out reasonable duties and instructions;
- A direction to comply with University, rules, regulations and policies; and
- A poor assessment of a staff/student's work/assessment is not discriminatory, provided the criticism is reasonable and constructive.

10. Roles and Responsibilities

10.1 The University has a responsibility to take all reasonable steps, consistent with its duty of care, to:

- Ensure the health, safety and wellbeing of staff members, students, visitors, volunteers and contractors; support a working and learning environment that is free from discrimination and harassment;
- Ensure staff members, students, visitors, volunteers and contractors are informed of this; and

- Inform managers/supervisors of their responsibilities under this policy through the implementation of training and awareness raising strategies.

10.2 Managers and Supervisors have a responsibility to:

- Make all reasonable efforts so that acceptable standards of conduct and behaviour are observed at all times within the workplace and/or classroom;
- Undertake timely, corrective action to deal with behaviour that may be offensive or intimidating, even if a complaint has not been made; and
- Ensure complaints are addressed promptly, fairly, sensitively and in accordance with the Staff Complaint Management Policy and Procedure and/or the Workplace Bullying Policy and Procedure.

10.3 All staff members, students, visitors, volunteers and contractors have a responsibility to:

- Ensure that at all times their behaviour is consistent with the expectations outlined under this policy;
- Engage in good faith in the complaint management process, to achieve resolution of the complaint;
- Ensure cooperation by remaining open to suggested options for resolution and engaging respectfully with those concerned as appropriate;
- Respect cultural and social differences among colleagues and students;
- Avoid vexatious and frivolous complaints and the vilification or victimisation of complainants; and
- Treat all members of the University community with dignity and respect.

10.4 The role of the Discrimination and Harassment Advisors (for staff and students) and Student Advocacy Service (for students) is to:

- clarify whether the alleged behaviour may constitute unlawful discrimination, unlawful harassment, sexual harassment, bullying or victimisation;
- provide information about ACU policies, procedures and processes;
- advise the person of their rights and obligations under the University's policies and procedures and where information about the relevant legislation may be obtained;
- advise the person of the options available to them;
- encourage the complainant or respondent to seek support and provide referrals as appropriate; and
- explore strategies to resolve the matter.

11. Making a complaint of Discrimination and Harassment

11.1 Staff members, students, visitors, volunteers or contractors are encouraged, in the first instance, to attempt to resolve complaints of discrimination and harassment informally and at the local level.

- 11.2 The University's procedures for handling complaints are based on confidentiality, impartiality, procedural fairness, immunity from detrimental action and prompt resolution.
- 11.3 The relevant procedures for the resolution of grievances are outlined in the [Staff Complaint Management Policy and Procedure](#) (for complaints made by staff), the [Student Complaint Management Policy](#) (for complaints made by students) and the Protected Disclosures Policy.

12. Confidentiality and Victimisation

- 12.1 The parties to a discrimination and/or harassment complaint are required, at all stages of this policy and procedure, to maintain confidentiality in relation to the concern or complaint. The parties must not disclose, by any form of communication, either the fact or the substance of the matter to anyone other than, as relevant, the staff representative (as defined in the ACU Staff Enterprise Agreement 2017 - 2021) or an Australian qualified counsellor or relevant medical practitioner.
- 12.2 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.

13. Revisions made to this Policy

Date	Major, Minor or Editorial	Description
3 April 2018	Major	Updated to ensure consistent with legislation and to provide clearer and more succinct descriptions of the behaviours that would constitute unlawful discrimination, unlawful harassment and sexual harassment.
25 January 2019	Editorial only	Updated to include reference to Australian Catholic University Staff Enterprise Agreement 2017 – 2021.

From time to time the University may make changes to this policy to improve the effectiveness of its operation.

14. Further Assistance

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](#).

Any student who requires assistance with this policy should contact the [Student Advocacy Service](#).

The following anti-discrimination laws apply to the University community:

- [Racial Discrimination Act 1975 \(Cth\)](#)
- [Sex Discrimination Act 1984 \(Cth\)](#)
- [Age Discrimination Act 2004 \(Cth\)](#)
- [Disability Discrimination Act 1992 \(Cth\)](#)
- [Human Rights and Equal Opportunity Commission Act 1986 \(Cth\)](#)
- [Sex Discrimination Amendment \(Sexual Orientation, Gender Identity and Intersex Status\) Bill 2013 \(Cth\)](#)
- [Queensland Anti-Discrimination Act 1991](#)
- [NSW Anti-Discrimination Act 1977](#)
- [ACT Anti-Discrimination legislation](#)
- [Victorian Equal Opportunity Act 2010](#)
- [South Australian Equal Opportunity Act 1984](#)