

### Overview

#### 1. Introduction

Racial discrimination is the act of treating a person unfairly because of their race, colour, nationality, descent, ethnicity or ethno-religious background. Racial harassment, a form of discrimination, is any form of unwelcome, unsolicited and unreciprocated behaviour that denigrates someone, offends them, or humiliates them on the grounds of their race, colour, nationality, descent, ethnicity or ethno-religious background. Racial vilification is generally a public act that could incite others to hate, have contempt for, or severely ridicule a person or group of people because of their race, colour, nationality, descent, ethnicity or ethno-religious background. All races, ethnic and ethno-religious groups are covered by the laws on racial discrimination, harassment and vilification.

The University of New England is committed to a policy of equal opportunity in employment and in education. It recognises that discrimination, harassment and vilification lead to an unproductive and stressful environment, and acknowledges the right of staff and students to work and study in a peaceful environment free from racial and other forms of discrimination, harassment, or vilification. Harassment of staff and/or students by any member of the University community is unacceptable and contrary to the education and employment policies of the University.

All types of racial discrimination, harassment and vilification are unlawful and the University is required by legislation to ensure that they are addressed and eliminated. It has a responsibility to ensure that employees and students are made aware of what constitutes acceptable behaviour within the University; to deal with complaints sensitively and quickly, and to inform staff and students of their options for seeking redress.

Members of the University community who believe they have been subjected to racial discrimination, harassment or vilification have the option to seek assistance from the Anti-Discrimination Board of NSW and/or the Human Rights and Equal Opportunity Commissioner who will advise them of their rights under the legislation. However, the University has adopted procedures in order to give staff and students the opportunity to resolve issues within the institution in a cooperative manner.

The policy and procedures aim to raise awareness about racial discrimination, harassment and vilification, to deal with cases of alleged racial discrimination, harassment and/or vilification promptly and objectively, and ultimately, to eliminate racial discrimination, harassment and vilification.

The workplace/educational environment may be defined as any and all areas within the University including staff offices, colleges and recreation areas. This also includes travel on official University business. If harassment should occur while a University employee is on University business, then this is seen to come under the ambit of harassment in the workplace. There may also be

incidents where harassment by an employee/student of the University of another employee/student of the University outside the University, such as harassing telephone calls, may constitute workplace harassment because it is so related.

## 2. Legislative context

The laws protecting individuals from being treated unfairly because of their race, colour, nationality, descent, ethnicity or ethno-religious background are the Federal **Racial Discrimination Act** (1975), and the **Racial Hatred Act** (1995) and the **NSW Anti-Discrimination Act** (1977). The University is required by these laws to ensure the absence of racial discrimination, harassment and vilification. It is also bound by its Sex-Based Policy and Procedures 1993, which includes statements on other forms of harassment.

## 3. Policy

The University of New England affirms the value of social and cultural diversity which is reflected in its community. The University is committed to the goal of freedom from racial discrimination, harassment and vilification in its work and learning environment and to ensuring that individuals and groups are not disadvantaged because of their race, colour, nationality, descent, ethnicity or ethno-religious background. It is the University's policy that race-based discrimination/harassment of staff and/or students by any member of the university community is unacceptable and will not be tolerated on University premises at any time.

The University, in its commitment to the goal of freedom from racial discrimination which includes direct and indirect racism, racial vilification and harassment in its structures, culture, values, curriculum, learning and working environment, will:

- protect the rights of both students and staff to achieve their full potential in an environment which acknowledges the diverse nature of the University community and encourages the affirmation of the cultural identity of individual staff and students;
- continue to develop and implement policies and programs to counteract the causes and redress the effects of racism in the employment and educational context;
- ensure that all students and staff have a knowledge and understanding of their responsibilities in the implementation of this policy; and
- monitor the implementation of this policy.

The University has a responsibility to deal with complaints sensitively and quickly, and to inform students and staff of their options for seeking redress. In doing so it must not only consider the rights of the complainant, it must also respect the rights of any person against whom complaints are made.

## 4. Policy Implementation Procedures

Essential factors in combating racial discrimination, harassment or vilification are to raise community awareness of what constitutes these behaviours, to indicate possible actions which may be taken, and the possible consequences of such actions. All managers and supervisors have a responsibility to implement this policy, and all staff and students have an obligation to act in accordance with it. Staff and students should be made aware that under legislation it is not only the harasser but the University, and possibly the supervisor who may be liable.

**4.1** The University acknowledges and accepts its obligation to raise the awareness of its staff and students about these issues through educational programs. Information on racial discrimination, harassment and vilification will be available from various outlets within the University community and will be widely distributed to staff and students.

**4.1.1** Individuals and organisations within the University with whom people would be most likely to consult about racial discrimination, harassment and/or vilification, will be adequately equipped and informed. (These may include Equal Opportunity Advisers, managers, supervisors, deans, heads of department.) They will be supplied with information sheets issued by the University and written material from other sources to distribute to enquirers. Material listing the names of Equal Opportunity Advisers will be widely circulated.

**4.2** The incidence of racial discrimination, harassment or vilification may decline because unintentional offenders will be more conscious of how their behaviour can be perceived, and deliberate offenders will be deterred by possible consequences.

**4.3** In the event of racial discrimination, harassment or vilification, the complainant will know what can be done and will feel confident that their complaint will be treated seriously, speedily and confidentially. The complainant will be protected from any victimisation as a result of the complaint.

**4.4** Racial discrimination is often compounded by other forms of discrimination, such as, discrimination in relation to sexual preference, age, physical or mental ability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and this policy acknowledges the importance of taking other forms of discrimination into account in programs aimed at eliminating racial discrimination, harassment and/or vilification in education and employment.

## 5. Sorting out the Problem

In the first instance, it is quite appropriate for the person having experienced alleged racial discrimination, harassment and/or vilification to go to the alleged

perpetrator of the action and attempt to sort the matter out directly with that person. In some cases the person alleging racial discrimination/harassment/vilification may wish to seek the advice of an Equal Opportunity Adviser prior to contacting the alleged harasser/offender. The person alleging racial discrimination, harassment and/or vilification is not obliged to contact the alleged perpetrator.

## **6. Mechanisms for Complaint Handling**

It is expected that in most cases of complaints of racial discrimination, harassment or vilification, resolution will be reached through informal discussions/mediation and/or conciliation. It is important that at all stages of the process the complainant be advised of the range of choices available to resolve the complaint. These include the options of moving straight to the formal procedure, as well as by-passing internal procedures entirely and going straight to the Human Rights and Equal Opportunity Commission and/or the Anti-Discrimination Board of NSW.

### **6.1. The First Stage**

- As mentioned in 4.1.1, Equal Opportunity Advisers are available for confidential discussions in relation to alleged racial discrimination, harassment, and/or vilification and can provide an explanation of options available to enquirers.
- The person raising concerns may wish to discuss the matter without taking it further.
- If the complainant wishes, one option may be for the Equal Opportunity Adviser or supervisor to advise the alleged perpetrator of the concerns, and if both parties are willing, facilitate an informal discussion between the parties.
- Where appropriate, mediation can be requested.

Both the complainant and the alleged perpetrator will be directed to maintain confidentiality in the matter.

### **6.2 Complainant requests to investigate**

If informal discussion/mediation has been refused or if the outcome of such discussion/mediation has been unsatisfactory, the complainant may formally request that the Director of Equal Opportunity (Vice-Chancellor) investigate their complaint.

A complainant should submit a confidential written statement to the Director of Equal Opportunity setting out the details of the complaint. The complainant may seek assistance from a person of their choice with the preparation of the written statement. The complainant may be the person against whom the discrimination, harassment or vilification is alleged to have been directed, or an independent observer of alleged discrimination, harassment or vilification. At this point the complaint becomes a formal complaint (see 6.4).

### 6.3 Respondent requests to investigate

A person who has been accused of alleged racial harassment or racial vilification, but who denies the allegation or does not agree to participate in informal discussion/ mediation, or if such discussion/mediation was inadequate, may request that the Director of Equal Opportunity address the matter.

The person making a request to the Director of Equal Opportunity should submit a confidential written statement setting out details of the matter. He or she may seek assistance from a person of their choice with the preparation of the written statement. At this point the complaint is handled as a formal complaint and an investigation will proceed as per 6.4 to 6.6.

### 6.4 Lodging a Formal Complaint

Complaints should be lodged in writing with the Director of Equal Opportunity. The complainant may seek assistance from a person of their choice with the preparation of the written statement or the complaint may be taken down in writing by a trained member of staff (as mentioned in 4.1.1) and signed by the complainant.

The complainant will be directed to maintain confidentiality in the matter.

**6.4.1** A complaint may not be made later than 6 months after the date on which the discrimination, harassment and/or vilification is alleged to have taken place.

**6.4.2** A complaint may be made by either the complainant, or an independent observer who is concerned about a situation of possible discrimination, harassment and/or vilification of a third party.

In the case of an independent observer lodging a complaint, an officer with delegated responsibility in the EEO/Student Equity area, at the Vice-Chancellor's request, will contact the allegedly harassed person to confirm the complaint. It will then be the decision of the allegedly harassed person whether or not they wish to take the matter further.

**6.4.3** In some instances, at the Vice-Chancellor's request, allegations will be investigated irrespective of complainant's decision as to whether or not they wish to proceed with the matter. This procedure will only occur if the Vice-Chancellor deems the matter to be extremely serious.

### 6.5 Informing the Respondent — Right of Reply

On receipt of a formal complaint of racial discrimination, harassment or racial vilification, the officer with the delegated responsibility shall immediately make available, in person, a statement of allegations to the respondent. The respondent will have a right of reply. Seven days will

normally be allowed for making the reply, but an extension of time may be granted for a definite duration in circumstances considered to be special. The respondent may seek assistance from a person of their choice with the preparation of the reply.

The respondent will be directed to maintain confidentiality in the matter.

## **6.6 Investigation of the Complaint**

If necessary, the complaint will be investigated by the officer with the delegated responsibility. The investigation will be carried out confidentially and in line with the principles of natural justice.

All parties to the investigation will be directed to maintain confidentiality in the matter.

## **6.7 Outcome of the Investigation**

The officer with delegated responsibility shall ensure that the complainant and the respondent are informed in writing of the findings of the investigation and of any action to be taken as a result. Complainants/respondents will also be reminded of their rights under equal opportunity law and informed of appeal processes within the University structure.

- 6.7.1** It is expected that in most cases of formal complaint of racial discrimination, harassment or vilification, resolution will be reached through mediation/ conciliation. Mediation/conciliation is appropriate for complaints where there is general agreement between both sides about the facts, the issue being more one of different interpretations, and where the allegation is not a very serious one.

## **6.8 Substantiated Complaints**

If a complaint against a staff member or student is found to be substantiated, the Director of Equal Opportunity may take appropriate action within the guidelines of employment award provisions and/or admission contracts.

The Director of Equal Opportunity may:

- ensure, as far as possible, the complainant is not subjected to reprisals of any kind by any person as a result of making the complaint. If allegations of reprisal are found to be substantiated, the Director of Equal Opportunity will take appropriate disciplinary action.
- advise counselling or take disciplinary action as appropriate and in line with award provisions/student disciplinary provisions; and
- repair any loss or damage pecuniary or otherwise, which may have been suffered by the complainant as a consequence of the behaviour giving rise to the complaint or the making of the complaint.

## 6.9 If the allegation cannot be proved

If the allegation cannot be proved, both complainant and respondent will be provided with information on what constitutes discrimination/harassment/vilification, and advised of the University's commitment to the provision of a work and study environment free from all forms of discrimination, harassment and vilification. Ground rules which provide an acceptable working environment will be established and both parties will be monitored.

## 6.10 Complaints not substantiated

Where the complaint is found to be not substantiated, an officer with delegated responsibility in the EEO/Student Equity area will advise the complainant and the respondent. The officer will ensure, as far as possible, that neither the complainant nor the person against whom the complaint is made, is subject to reprisals or discrimination of any kind by any person. If allegations of reprisal are found to be substantiated, the Director of Equal Opportunity will take appropriate disciplinary action.

Where the complaint is found to be one of malicious intent to make a false accusation, the complainant shall be counselled in line with award provisions/student disciplinary provisions.

## 6.11 Defamation

Complainants and those investigating a complaint are protected against defamation actions where the complaint is made in **good faith** through the **appropriate** channels.

Documents which contain information which may be defamatory must only be delivered to those who have a need to receive them. They can then be received under limited privilege. Wider distribution might be considered as publication and could give rise to defamation action.

Confidentiality is vital to the process. Lack of confidentiality can escalate a complaint and create barriers to its resolution. There is also a possibility of being sued for defamation when a complainant speaks to anyone other than the alleged harasser or those with legitimate interest in addressing the issue.

## 7. External Complaints

Whether or not students or staff members use the procedures that exist within the University, it is recognised that they may take complaints of race-based harassment and discrimination to the Anti-Discrimination Board of NSW and the Human Rights and/or Equal Opportunity Commission.

## 8. Confidentiality and Legal Liability

An accusation of racial discrimination, harassment or vilification can be potentially defamatory. This can involve a risk to those concerned in the

matter, especially if confidentiality is not observed and a person's reputation is damaged. Protection against defamation is provided in proceedings taken in connection with discrimination acts.

In any internal proceedings, complainants, respondents or others involved in attempting to settle the matter, may be protected against defamation. This will depend on the 'privilege' which applies to the communication of the complaint under the laws relating to defamation.

The risk of defamation proceedings can be kept to the minimum if the complaint is handled by **as few people as possible** and **confidentiality is strictly observed**.

- 8.1 The University has established appropriate procedures to ensure the persons handling the complaint act in accordance with their duties as employees or members of the University at all times. In the event of any legal action, there are defences available to the University and the individual against whom an action may be taken, provided that the procedures have been followed.
- 8.2 Confidentiality is important in order to protect both respondent and complainant from reprisals if the matter becomes known. For further details on Defamation and "Qualified Privilege" — see Attachment A.

## 9. Monitoring and Evaluation

- 9.1 Equal Opportunity Advisers and other appropriate staff will provide written confidential reports to the Equal Employment Opportunity Manager on each complaint for the purposes of monitoring. These reports will not include any identifying material but will include the status, broad area of employment or in the case of students, faculty and/or residential college, as appropriate, of the complainant and respondent, as well as the nature of the complaint and the action taken.
- 9.2 After consultation with Equal Opportunity Adviser and other appropriate staff, the Equal Employment Opportunity Manager will report annually to the Equal Opportunity Committee, the Vice-Chancellor's Committee, and University Council on the operation of the procedures with recommendations for change if appropriate.

## 10. Assistance to Staff / Student

Students and staff concerned about harassment should feel free to consult with an appropriate person with whom they feel comfortable, including but not limited to a work colleague, supervisor / manager, Human Resources Services staff member or other staff or student representative. Confidentiality guidelines, as set out above, apply.

## 11. Conclusion

The University encourages all staff and students who feel that they have been subjected to any form of racial discrimination, harassment or vilification to

contact their supervisor/s, an Equal Opportunity Adviser or a member of the EEO Unit to discuss the matter in confidence.

## ATTACHMENT A

### Defamation

The following section<sup>1</sup> is intended to provide guidance to complainants, Equal Opportunity Advisers, investigating officers and others who have a recognised genuine interest in the resolution of a complaint, eg, manager, supervisor, Dean, Head of Department.

#### **Defamation**

Defamation is an issue that often arises in harassment/discrimination complaints because of the potential damage that can be inflicted on a person's character, reputation and standing. You may find that an individual is reluctant to pursue a complaint because they have unfounded fears of being sued. Alternatively, an alleged harasser who claims to have been falsely or vexatiously accused of harassment/discrimination may indicate that they intend to commence an action for defamation.

#### *Protection of the parties*

Defamation law is concerned with protecting a person's reputation in the eyes of others. It is therefore not defamatory for an individual to confront a harasser directly (either in person or by letter) to alert them to the fact that their behaviour is unwelcome. Private communications of this nature do not damage reputation.

Nor will it be defamatory for an individual to make a complaint to a person who has a legitimate and genuine interest in knowing about the incident. As long as the complaint is made in good faith through the proper channels it is unlikely to be defamatory.

This protection will be lost if an individual makes a complaint in bad faith without genuinely believing it to be true, is motivated by ill-will or malice or indiscriminately broadcasts the allegations.

The parties to a complaint should be warned of the legal risks associated with disclosing the allegations or counter allegations to all and sundry. They should be advised to maintain confidentiality and to discuss the complaint only with those with official responsibility for dealing with it.

#### *Protection of designation personnel*

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<sup>1</sup> Adapted from *Sexual Harassment and Educational Institutions: A Guide to the Federal Sex Discrimination Act*, Human Rights and Equal Opportunity Commission, Sydney, 1996

Anyone with a recognised genuine interest in the resolution or investigation of a complaint of harassment/discrimination is protected by the defence of qualified privilege.

Statements which would ordinarily be defamatory may be made by a person in the performance of a moral, social or legal duty to another person who has a corresponding duty to receive that information. As sexual harassment and racial harassment/discrimination/vilification are unlawful, a person who is responsible for dealing with complaints can discuss the allegation where it is required for the performance of their duty.

Managers, Equal Opportunity Advisers, investigation officers and counsellors should maintain confidentiality at all times. Information concerning the complaint should only be discussed with other authorised personnel involved in the particular case. They should also take reasonable steps to deal with any gossip or rumours that may be circulating about the complaint.

## Further Information

## References

Equal Employment Opportunity (Commonwealth Authorities) Act 1987

UNE Equal Employment Opportunity/Affirmative Action Policy

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