

### 1. INTRODUCTION

Sexual harassment is a form of sex discrimination and is unlawful under the *Federal Sex Discrimination Act 1984* and the *NSW Anti-Discrimination Act 1977*. It can involve physical, visual, verbal or non-verbal conduct of a sexual nature which is uninvited, unwelcome and not reciprocated and which makes a person feel humiliated, intimidated or offended. The University is responsible for maintaining a workplace free of discrimination and harassment, and for dealing with sexual harassment as a management and an industrial issue.

The University recognises that all forms of harassment lead to an unproductive and stressful environment for work and study and acknowledges the right of staff and students to work and study in a peaceful environment free from harassment and discrimination. All forms of harassment are unacceptable in the University context.

**Harassment is any form of behaviour which is unwelcome, unsolicited and unreciprocated, which makes the workplace unpleasant, humiliating or intimidating for the person who is the target of that behaviour.**

This policy covers sex-based harassment which is a general term covering sexual harassment, sexist harassment and harassment based on sexual preference. The Sex Discrimination Act prohibits sexual harassment, however, other forms of sex-based harassment which are not explicitly sexual in nature, would usually be forms of unlawful sex discrimination. Discrimination based on a person's sex, marital status, pregnancy or potential pregnancy, homosexuality or transgender is unlawful. The University is required to ensure that unlawful harassment/discrimination is addressed and eliminated. Sexual harassment requires particular attention from management because of its sensitive and sometimes highly personal nature. The University policy also ensures that a staff member or student who believes that he or she has been subjected to sexist harassment or harassment based on sexual preference may consult Equal Opportunity Advisers, who will deal with the matter in the same way as a complaint of sexual harassment.

The University has a responsibility to ensure that employees and students are made aware of what constitutes acceptable behaviour within the University. It also has a responsibility to prevent harassment; to deal with complaints sensitively, promptly and objectively; and to inform staff and students of their options for seeking redress.

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

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. STATEMENT OF POLICY

The University of New England is committed to a policy of equal opportunity in employment and in education. Harassment is any form of unwelcome, unsolicited and unreciprocated behaviour that denigrates someone, offends them, or humiliates them on the grounds of their race or ethno-religious background, sex, pregnancy, marital status, sexual preference, transgender, age, or disability.

The University recognises that students and staff should be able to expect to work and study in an environment free from sexual and other forms of harassment. 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. The University is committed to providing an environment which is free from all forms of harassment.

## 2.1 Sexual harassment

Sexual harassment denies equality of opportunity, undermines the morale of the persons concerned and the legitimacy of their place in the University. The University is concerned to ensure that sexual harassment does not occur and, in the event that such problems do arise, that appropriate action is taken quickly. The University commits itself to educating staff and students as to the nature and effects of sexual harassment and to providing the necessary resources to inform staff and students of the content of this policy.

Any attempt to coerce an unwilling person into any form of sexual activity, or to subject a person to repeated unwanted sexual attention, or to punish a refusal to comply, constitutes sexual harassment.

Sexual harassment is unlawful under the Sex Discrimination Act (1984) and the NSW Anti-Discrimination Act (1977).

Sexual Harassment as defined in section 28A of the Sex Discrimination Act:

“ . . . a person sexually harasses another person (the “person harassed”) if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances would have anticipated that the person harassed would be offended, humiliated or intimidated.”

### 2.1.1 The following are some general characteristics of sexual harassment:

- it often occurs at times and places where witnesses are not likely to be present;
- the effect of sexual harassment may be the **same** whether the conduct was intentional or unintentional;
- behaviour of a sexual nature that is acceptable outside the work/study place may **not** be appropriate and may constitute sexual harassment in the work context;
- what constitutes sexual harassment to one person may be acceptable and inoffensive to another. Different social or cultural backgrounds may lead people to perceive the same conduct differently; and
- sexual harassment can affect **anyone** regardless of gender or sexual preference.

Examples of harassment may include:

- comments, insinuations and questions about another person’s sexual conduct and private life;
- intimidating or demeaning sexist comments;

- teasing or taunting with sexual innuendo and/or talk about sex which causes offence;
- sexual jokes, offensive telephone calls, offensive mail or electronic messages sent by fax or email;
- displays of obscene or pornographic photos/calendars, pictures, posters or objects;
- leering, wolf whistles, catcalls, obscene gestures;
- physical contact such as patting, pinching or touching, fondling, kissing or embracing someone against their will;
- any unnecessary familiarity or unnecessary close physical proximity;
- persistent unwelcome invitations;
- actual molestation;
- sexual assault and rape (criminal offences to be reported to the police).

**2.1.2** Sexual harassment may occur:

- as a single incident or a series of incidents;
- among peers or co-workers, and in subordinate-supervisor, supervisor-subordinate, staff-staff or staff-student, student-staff, student-student situations.

**2.1.3** Sexual harassment does **not** arise in the context of mutual sexual attraction and flirtation based on choice and consent which is a private matter between the individuals concerned.

**2.1.4** Whilst personal relationships of staff and students are not the business of the University, it does have a responsibility for any sexual harassment occurring in the University environment. Behaviour which arises from discrimination against individuals constitutes harassment when it:

- implicitly or explicitly becomes a condition of a person's admission to or recruitment by the University, or selection into courses;
- implicitly or explicitly becomes a condition for decisions which bear on a person's academic evaluation or level and condition of appointment, promotion, salary or any other work conditions;
- is used, implicitly or explicitly, to control, influence or affect the career, salary, job or academic prospects or performance of a student or staff member over whom actual or perceived authority exists;
- has the purpose or effect of interfering with an individual's academic or work performance; or
- creates an intimidating, hostile or offensive learning, university residential or work environment, particularly in areas traditionally dominated by one sex.

**2.1.5** Forms of sexual harassment which may initially appear mild or trivial can constitute severe harassment in staff-student or employer-employee relationships where there is formal inequality of status, for example,

unequal power relationships.

## 2.2 Sexist harassment and harassment on the basis of sexual preference

**2.2.1** Sexist harassment can result from sexist behaviour which is not necessarily of a sexual nature, but which arises from discrimination against women or men on the basis of sex.

**2.2.2** Harassment on the basis of sexual preference can result from verbal or physical conduct which arises from discrimination against individuals on the basis of sexual preference or imputed sexual preference.

**2.2.3** Sexist behaviour and conduct which arises from discrimination against individuals on the basis of sexual preference constitute harassment when:

- it is unwelcome;
- it influences, either directly or indirectly, an individual's employment, academic status or academic accreditation; or
- it has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive working, university residential or academic environment.

Examples of sexist harassment may include:

- inappropriate use of sexist language, for example, 'the office girls', 'the boys in the workshop'.
- general stereotyping;
- inappropriate use of terms of endearment; and
- making assumptions about people because of their sex/gender.

The last two examples are situations which may create difficulties for people combining their work and private lives. It may be that such difficulties fall more heavily on women than men and that they can be used, in specific cases, to discriminate against individuals of either sex.

Examples of harassment on the basis of sexual preference may include:

- making assumptions about people because of their sexual preferences;
- inappropriate touching;
- offensive sexual jokes about a gay or lesbian colleague;
- name-calling.

**2.2.4** Under some circumstances, these forms of harassment may amount to unlawful discrimination under the applicable legislation.

**2.3** While the University recognises that to date it has almost invariably been women who have complained of harassment, it is an abuse that can be experienced by either sex. The procedures laid down and the requirements for people appointed to handle them

take account of this.

### 3. OTHER HARASSMENT

3.1 Harassment may also take place which is not necessarily of a sexual nature but which arises from discrimination on the basis of sex, race, colour, nationality, descent, ethnicity or ethno-religious background, disability, sexual preference, transgender, marital status or some other factor. Like sexual harassment, it:

- is unwelcome;
- may influence, directly or indirectly, an individual's employment, promotion prospects or related issues, academic status or academic accreditation; or
- may have the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive working, university residential or academic environment.

3.2 Sex-based harassment/discrimination may be compounded by other forms of harassment/discrimination and this policy acknowledges the importance of taking other forms of harassment/discrimination into account in educational programs.

### 4. POLICY IMPLEMENTATION PROCEDURES

Essential factors in combating sexual and other harassment are to raise community awareness of what constitutes harassing behaviour, to indicate possible actions which may be taken and the possible consequences of such actions. All managers and supervisors have responsibility to implement this policy, and staff and students should be made aware that under Equal Opportunity legislation it is not only the harasser but others, **such as the supervisor and/or the employer, 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 sexual harassment and other harassment 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 sexual harassment and other forms of harassment will be adequately equipped and informed. (These may include Equal Opportunity Advisers, managers, supervisors, PVC & Deans and Head of School or Cost Centre.) 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 sexual harassment and other harassment 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 sexual harassment and other harassment, 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 also feel protected from any victimisation as a result of the complaint.

### 5. SORTING OUT THE PROBLEM

In some instances, it is quite appropriate for the person having experienced alleged sex-based harassment/discrimination 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 sex-based harassment/discrimination may wish to seek the advice of an Equal Opportunity Adviser prior to contacting the alleged harasser/offender. The person alleging sex-based harassment/discrimination is not obliged to contact the alleged perpetrator.

## **6. MECHANISMS FOR COMPLAINT HANDLING**

It is expected that in most cases of complaints of sexual harassment 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 bypassing 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 sex-based harassment/discrimination 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 informal discussion/mediation has been unsatisfactory, the complainant may formally request that the Director of Equal Opportunity investigate their complaint.

A complainant should submit a confidential written statement to the Vice-Chancellor as 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 harassment/discrimination is alleged to have been directed, or an independent observer of alleged harassment/ discrimination. 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 sex-based harassment/discrimination, 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 specially trained

contact staff/students (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. It is recognised that there may be exceptional circumstances which prevent a complaint being lodged within the time frame and such a complaint may be considered if good reasons are shown.

**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 of a third party.

In the case of an independent observer lodging a complaint, at the Vice-Chancellor's request, an officer with delegated responsibility 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 sex-based harassment/discrimination, the officer with the delegated responsibility shall immediately make available, in person, a copy of the complainant's statement 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 that they must 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 sex-based harassment/discrimination, 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/or
- 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, 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. Information will be provided to both parties, 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/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, by reason of making the complaint.

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 then can 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 sex-based harassment and discrimination to

the Anti-Discrimination Board of NSW and/or the Human Rights and Equal Opportunity Commission.

## 8. CONFIDENTIALITY AND LEGAL LIABILITY

An accusation of sex-based harassment/discrimination 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 Employment Equity & Diversity (EE&D) Officer 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 Advisers and other appropriate staff, the EE&D Officer 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 & STUDENTS

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 Service staff member, or other staff or student representatives. 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 sex-based discrimination/harassment to contact their supervisor, an Equal Opportunity Adviser, EE&D Officer or Student Equity Officer 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, PVC & Dean, Head of School or Cost Centre.

#### 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*

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.

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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