

Monash University Procedure

Procedure Title	<u>Resolution of unacceptable behaviour</u>
Parent Policy	Conduct and Compliance Policy
Date Effective	6 December 2017
Review Date	3 years from effective date
Procedure Owner	Chief Human Resources Officer
Category	Human Resources
Version Number	4
Content Enquiries	ask.monash or phone Monash HR on 990 20400
Scope	These procedures apply to members of the University community, namely staff, students, contractors, including temporary staff, and visiting academics.
Purpose	<p>The University is committed to providing a safe and healthy environment for work and study that is free from unacceptable behaviour and where staff, students and other members of the University community are treated with dignity, courtesy and respect.</p> <p>The University expressly prohibits all forms of unacceptable behaviour. Bullying, discrimination, harassment (including sexual harassment), victimisation and vilification are unlawful and will not be tolerated.</p> <p>These procedures are intended to be applied in cases where it is alleged that an individual has been subjected to unacceptable behaviour in the course of work or academic study at the University.</p> <p>The emphasis of the resolution processes described in these procedures is on the early resolution of the actual conflict between individuals. The resolution process is intended to be non-judgemental and assumes no assignment of fault or responsibility, rather it provides the parties with a facilitated process and safe environment in which to reach a mutually agreed solution, where this is appropriate.</p> <p>The University encourages individuals to follow the three stages of this procedure and to attempt genuine resolution at each stage, prior to moving to the next. The three stages are:</p> <ol style="list-style-type: none"> 1. Direct and Informal Resolution; where individuals manage conflict and resolve concerns directly and informally. 2. Local Resolution; where individuals resolve concerns at the workplace level, with the assistance of others. 3. Formal Resolution; where an individual lodges a complaint alleging unacceptable behaviour and seeks formal resolution. <p>All concerns of unacceptable behaviour are to be treated in a sensitive, fair and timely manner in accordance with the Privacy procedure and applicable privacy laws.</p>

Monash University Procedure

	<p>The University strongly encourages the reporting of unacceptable behaviour, however it will not tolerate vexatious or frivolous complaints.</p> <p>No action should be taken against anyone for making, or helping someone to make, a genuine complaint.</p> <p>The University is committed to ensuring these procedures are understood and adhered to by providing appropriate training and education.</p>
PROCEDURE STATEMENT	

1. When not to apply this procedure

- 1.1. These procedures do not apply to the conduct of students toward other students. Students wishing to raise a concern regarding another student should refer to the [Student life and support services](#).
- 1.2. Threats to harm someone, acts of violence, assault, including sexual assault, and stalking are criminal matters and must be reported immediately to the [Safer Community Unit](#).
- 1.3. These procedures are not to be applied where an individual has experienced reasonable and legitimate comments, criticism, feedback or advice, or where the complaint of unacceptable behaviour has been previously dealt with or the substance of the complaint is presently being dealt with under some other grievance or complaint process or procedure.
- 1.4. Complaints of unacceptable behaviour against contractors should be referred to the authorised representative of the University who engaged the contractor and, where appropriate, action may be taken in accordance with the default and termination provisions of the contractor agreement.
- 1.5. The University may report or refer complaints to other organisations if appropriate or required.

2. Managing Conflict through Direct and Informal Resolution

- 2.1. The members of Monash University community come from diverse backgrounds, religions, cultures and countries. The University has an [Ethics Statement](#), which details the ethical values and principles that are expected of all staff and students as members of the Monash community. It is comprised of general principles which guide individuals in their decision-making.
- 2.2. Where conflict occurs in the course of work or academic study, individuals have a responsibility to engage in healthy and respectful debate and consideration of others' viewpoints.

Monash University Procedure

- 2.3. As far as possible, individuals should attempt to resolve concerns regarding unacceptable behaviour directly with the person they believe is responsible by:
- approaching them directly;
 - telling them the behaviour they consider to be unreasonable and unacceptable;
 - asking them to cease the behaviour; and
 - keeping a record of this action.
- 2.4. At any stage, staff may seek advice or assistance in this process from:
- a Grievance Adviser (by contacting ethical.conduct.queries@monash.edu); or
 - their [HR Business Partner](#).
- 2.5. At any stage, a student may seek advice or assistance from:
- a Grievance Adviser (by contacting ethical.conduct.queries@monash.edu); or
 - the [Safer Community Unit](#) (for serious concerns regarding sexual harassment).
- ### 3. Local Resolution
- 3.1. Where an individual does not feel comfortable raising the matter directly with the person they believe is responsible, they should raise it with their supervisor (see Definitions below). Where an individual's supervisor is the person whose behaviour is concerning them, they should raise it with the next person of seniority in the work or study unit.
- 3.2. It is the aim of the University to minimise reliance on formal processes when dealing with complaints arising from allegations of unacceptable behaviour by encouraging supervisors to work through a local resolution framework before initiating the formal process under this procedure. In this regard, supervisors and managers have a responsibility to identify, prevent and respond to conflict and to assist individuals to resolve conflict directly.
- 3.3. The University seeks to empower supervisors to effectively respond to complaints that allege inappropriate behaviour, by encouraging them to focus on the identification of the cause(s) of the complaint generating behaviour and implementing strategies to address them at the local level.
- 3.4. In particular, the University recognises that conflict occurs in every workplace and has developed the [Guide to Managing Conflict](#), which provides guidance on appropriate strategies to resolving conflict for managers and staff.
- 3.5. Supervisors who are working to resolve conflict between individuals are also encouraged to seek advice and assistance from:
- Ethical Conduct Queries, Workplace Relations; or
 - their [HR Business Partner](#).
- 3.6. The University requires all parties involved in the resolution of the complaint to work cooperatively to achieve a fair and reasonable solution at the local level.

Monash University Procedure

4. Formal Resolution

4.1. Where local resolution has not been successful, or is not appropriate due to the serious nature of an allegation, procedures for the formal resolution of incidents alleging unacceptable behaviour then comprise three stages, specifically:

- Notification
- Decision by Workplace Relations regarding further action which may include:
 - facilitated discussion; and/or
 - alternative dispute resolution; and/or
 - formal investigation; and/or
 - any other appropriate process, as determined by the Director Workplace Relations; or
 - no action if the complaint is considered to be frivolous, vexatious, misconceived or lacking in substance.
- Outcome

Notification

4.2. Where either of the parties to the conflict or their supervisor or another informed person believes that resolution at the local level is not possible and additional assistance, external to the immediate work or study unit is required, they should outline their concerns through [S.A.R.A.H](#), the University's online reporting tool for occupational health and safety (OHS) related hazards, incidents and allegations of unacceptable behaviour. The Director, OHS will promptly notify the Director, Workplace Relations.

4.3. Early notification will facilitate early intervention to assist those individuals who may require support and/or guidance on how to manage potential conflict.

4.4. Workplace Relations will acknowledge receipt of the report, and may ask the individual who submitted it for further detail, including:

- an explanation of the alleged unacceptable behaviour in full; and/or
- an explanation of the impact of the behaviour; and/or
- any steps taken to resolve the concern directly.

Decision Regarding Further Action

4.5. Workplace Relations will consider the information received and will decide and advise on the best sequence of further action. Individuals may be assisted by a support person throughout each of the following stages of the Formal Resolution Process.

Facilitated Discussion

4.6. In most cases, the next appropriate step will be for Workplace Relations to invite the parties to participate in a facilitated discussion. The goal of a facilitated discussion is for the participants to resolve the dispute themselves, by making an informed decision that is acceptable to the parties and the University.

Monash University Procedure

- 4.7. The purpose of a facilitated discussion is to:
- i. identify with each of the parties, the issues thought to be the cause of the concern;
 - ii. clarify what is being sought by either of the parties and what is required to resolve their differences; and
 - iii. strive to resolve the issues and reach agreement regarding future interaction, such as behavioural and communication protocols; or
 - iv. strive to reach agreement on an acceptable resolution process which may include an agreement to submit their complaint to mediation or a commitment to work together to resolve the issues between them.
- 4.8. In the facilitated discussion, each party will be informed of the position of the other, clarifying and explaining the options available.
- 4.9. If, at the conclusion of the facilitated discussion, the parties reach an acceptable agreement regarding their future interaction (as outlined at 4.7(iii) above) these will be documented by Workplace Relations and will constitute resolution of the matter. Any breach of an agreed outcome may constitute grounds for disciplinary action.
- 4.10. Alternatively, where the parties seek to implement one of the options developed in the facilitated discussion and referred to in paragraph 4.7(iv) above, a timetable must be agreed between them that includes reporting on their progress toward resolving the conflict to Workplace Relations.
- 4.11. In cases where there is a genuine concern for the welfare of either party, the requirement to attend the facilitated discussion may be waived and the information sought through separate meetings. However, both parties will eventually need to meet to resolve their differences, but only when it is considered safe and appropriate to do so.
- 4.12. Failure by the complainant to attend an arranged facilitated discussion without acceptable cause may form the basis for Workplace Relations to determine that no further action is possible or practicable in relation to the matter under these procedures.
- 4.13. Failure by the respondent to attend an arranged facilitated discussion may lead to disciplinary action being taken against the respondent.
- 4.14. If, within a reasonable period of time (as determined by Workplace Relations), the parties are unable to reach a mutually agreed outcome either in relation to an acceptable resolution process or despite their best endeavours, the conflict itself, Workplace Relations must:
- formally notify each party and their respective supervisor(s) that the matter has not been resolved; and
 - determine an appropriate course of action to be followed to resolve the conflict.

Monash University Procedure

Alternative Dispute Resolution

- 4.15. In most cases, alternative dispute resolution will consist of mediation, however other forms of alternative dispute resolution may be deemed more appropriate by Workplace Relations. Parties will be invited to participate in alternative dispute resolution where:
- Workplace Relations determines that it is the most appropriate further action under section 4.5; or
 - both parties in a facilitated discussion agree to submit the matter to alternative dispute resolution (as per section 4.7(iv)).
- 4.16. Where mediation is considered appropriate, Workplace Relations will appoint a competent mediator to assist the parties to reach an acceptable resolution.
- 4.17. If, within a reasonable period of time (as determined by Workplace Relations), the parties are unable to reach a mutually agreed outcome either in relation to an acceptable resolution process or despite their best endeavours, the conflict itself, Workplace Relations must:
- formally notify each party and their respective supervisor(s) that the matter has not been resolved; and
 - determine an appropriate course of action to be followed to resolve the conflict.

Investigation

- 4.18. Notwithstanding the University's commitment to supporting parties to decide on how to progress their concerns under these procedures, the University reserves the right to progress the matter directly to investigation or refer the matter to an alternate procedure or body to investigate.
- 4.19. Where preliminary inquiries conducted at any stage of the Formal Resolution process (including at notification) are concerning a complaint of bullying and Workplace Relations determines that a formal investigation of the complaint is required, that investigation will be undertaken by an independent external investigator appointed by the University. During that investigation, the University will take all reasonable practicable steps to secure the health and wellbeing of both the complainant and the respondent.

Outcome

- 4.20. There is a wide range of possible outcomes from the resolution of a complaint and the outcome will depend on the nature of the complaint and the procedure adopted. Examples include an apology, change in work arrangements or an undertaking that the unacceptable behavior/s will stop.
- 4.21. Where a complaint is found to be substantiated, disciplinary action may be taken against the person who engaged in the unacceptable behaviour. This may include termination of employment or exclusion from the University in serious cases.
- 4.22. Where Workplace Relations forms the view that no further action is to be taken, then Workplace Relations will inform both parties in writing of the reasons for that view.

Monash University Procedure

5. External Advice

For additional external advice, visit:

- [Victorian Equal Opportunity and Human Rights Commission](#)
- [Australian Human Rights Commission](#)
- [Fair Work Ombudsman](#)

6. Responsibility

Grievance Advisers

6.1. Grievance Advisers are responsible for responding to members of the University community who contact them and:

- perceive that they may have experienced unacceptable behaviour; or
- have been advised that an allegation of unacceptable behaviour has been made against them.

6.2. The role of the Adviser is to provide impartial advice and to assist a person to make an informed choice about actions under these procedures. Assistance provided by Grievance Advisers includes:

- listening seriously and impartially to the concerns and perceptions of the person;
- explaining the University's Resolution of Unacceptable Behaviour Procedure, including the definitions of unacceptable behaviour;
- exploring possible strategies an individual might adopt to resolve the concern;
- where requested, accompanying an individual as a support when they speak to the other person;
- advising individuals of the various avenues of support available to them throughout the University; and
- explaining that they are not providing legal advice or advocacy.

Staff, students, contractors and visiting academics

6.3. All staff, students, contractors (including temporary staff) and visiting academics have a responsibility to ensure that they understand and comply with these procedures.

6.4. All individuals who have a concern about, or believe that they or another individual is being subjected to unacceptable behaviour, have a responsibility to attempt to resolve the matter directly with the responsible party, or where they feel this is not appropriate or reasonable, to report that behaviour through [S.A.R.A.H.](#)

Monash University Procedure

Managers and Supervisors

- 6.5. All supervisors of staff, students, contractors and visiting academics have a responsibility to:
- ensure that these procedures are widely understood and applied;
 - take all reasonable steps to ensure the work/study environment is free from all forms of unacceptable behaviour including monitoring the workplace and implementing educational strategies for all staff and students;
 - where a concern has been raised with them, seek advice and assistance from the relevant officers of the University outlined in this procedure;
 - ensure their behaviour provides a model of conduct in line with the principles of these procedures;
 - remain informed about developments in these procedures by attending relevant training and briefing sessions;
 - exercise appropriate authority if they observe, or are informed of, unacceptable behaviour in the workplace or learning environment and detect any relevant trends in behaviour.

HR Business Partners

- 6.6. HR Business Partners are responsible for providing advice and assistance to staff and supervisors in relation to unacceptable behaviour. This may include:
- supporting and assisting with the local resolution of conflicts or complaints of unacceptable behaviour;
 - seeking advice and support from Workplace Relations where appropriate;
 - explaining the University's Resolution of Unacceptable Behaviour Procedure;
 - advising individuals of the various avenues of support available to them through the University; and
 - facilitating access to a Grievance Adviser or further advice through Workplace Relations.

Workplace Relations

- 6.7. Workplace Relations is responsible for;
- providing advice and assistance to any individual raising a concern, as and when required;
 - acknowledging receipt of a complaint received through S.A.R.A.H (notification);
 - following notification, making a decision about the most appropriate steps for further action;
 - where appropriate, appointing a mediator;

Monash University Procedure

- where warranted, determining that a formal investigation is required;
- determining whether there are sufficient grounds to support disciplinary action being taken.

Responsibility for implementation	
Status	Revised
Approval Body	<p>Name: Chief Human Resources Officer</p> <p>Date: Date effective</p> <p>Author: Director, Workplace Relations</p>
Definitions	<p>Bullying: is repeated, unreasonable behaviour directed towards a staff member or student, or group of staff members or group of students, that creates a risk to health and safety. Examples of behaviour that may constitute bullying include:</p> <ul style="list-style-type: none"> • aggressive or intimidating conduct; • belittling or humiliating comments; • spreading malicious rumours; • teasing, practical jokes or 'initiation ceremonies'; • exclusion from work-related events; • unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level; • displaying offensive material; and/or • pressure to behave in an inappropriate manner. <p>Bullying may be unintentional and still be dealt with under these procedures.</p> <p>Bullying does not include any legitimate or reasonable use of performance management processes, lawfully based and fairly applied disciplinary action, allocation of work in compliance with systems, implementation of organisational change or downsizing, action taken to transfer or redeploy a staff member or a decision not to promote or reclassify the staff member.</p> <p>Conflict: for the purposes of this procedure, is a difference or disagreement regarding opinions, ideas or activity between opposing individuals or groups. Where conflict is not managed constructively it can become the catalyst that causes staff to engage in hurtful, demeaning or destructive behaviour toward another person.</p> <p>Dean or Executive Director: means the dean of the faculty or executive director of a professional services area, or their nominee in any case where the dean or director has formally nominated a person to act as their nominee for the purpose.</p> <p>Direct and Informal Resolution: is resolution of a concern directly between parties, where an individual raises a concern regarding unacceptable behaviour directly with the person they believe is responsible.</p> <p>Discrimination: is treating or proposing to treat, an individual unfavourably because they have a protected attribute. Discrimination can be direct or</p>

Monash University Procedure

	<p>indirect:</p> <p>Direct discrimination can occur when a person or group is treated less favourably than another person or group in a similar situation, because of a protected attribute.</p> <p>Indirect discrimination involves imposing a requirement, condition or practice that operates to disadvantage a person with a protected attribute, and it is not reasonable.</p> <p>Discrimination may be unintentional and still be dealt with under these procedures.</p> <p>Disciplinary Action: means action taken in accordance with the Conduct and Compliance Procedure – Disciplinary Action and Dismissal (for staff) or the Monash University (Council) Regulations (for students) or the terms of any contract or letter of appointment, as applicable.</p> <p>Formal Resolution: is the resolution process that is initiated following an individual's submission of a concern via S.A.R.A.H.</p> <p>Harassment: is unwelcome conduct that might reasonably cause a person to be offended, humiliated or intimidated because they have a protected attribute. Harassment can also happen if someone is working in a 'hostile' or intimidating environment. The behaviours can be overt or subtle, verbal, non-verbal or physical.</p> <p>HR Business Partner: is a key member of the Monash HR Business Partnering community and provides strategic advice, guidance and solutions that underpin key client goals, HR strategy and organisational vision to a particular client group.</p> <p>Local Resolution: is action initiated and taken by the next senior level of management within the particular work or study unit when first alerted to the existence of the conflict, provided that the relevant supervisor is not a party to the complaint and is competent to assist the parties to resolve their differences.</p> <p>Protected Attribute: means an attribute protected under anti-discrimination legislation, including:</p> <ul style="list-style-type: none"> • a physical or mental disability, impairment, disease or injury, including work-related injury; • race, colour, descent, national identity, national origin, or ethnic or ethno-religious background; • age; • parental status or status as a carer or family responsibilities; • pregnancy or potential pregnancy and breastfeeding; • marital status or relationship status; • political belief or activity or lack of activity; • industrial activity, such as being a member of a trade union or student association, or lack of activity; • religious belief or activity; • physical features; • sex, sexual orientation, gender identity, lawful sexual activity or intersex status, including gay, lesbian, bisexual, transsexual, transgender, queer and heterosexual; • an association with someone who has, or is assumed to have, one of
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Monash University Procedure

	<p>these characteristics;</p> <ul style="list-style-type: none"> • employment activity (meaning a reasonable request for information about, or an expression of concern about, the provision of employment entitlements); • any other attribute protected under anti-discrimination laws as amended from time to time. <p>Safety And Risk Analysis Hub (S.A.R.A.H.) is the University's online hazard and incident reporting tool. It provides staff, students and contractors with a user-friendly way to report occupational health and safety (OHS) related hazards, incidents and allegations of unacceptable behaviour.</p> <p>Sexual Harassment: is unwanted, unwelcome or uninvited behaviour of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the other person would feel humiliated, intimidated or offended. It may include:</p> <ul style="list-style-type: none"> • unwanted requests for sexual favours; • offensive comments of a sexual nature; • sexual or smutty jokes; • comments, questioning or teasing about a person's alleged sexual activities or private life; • persistent unwelcome invitation/s, telephone calls or emails; • offensive hand or body gestures; • physical contact such as patting, pinching, touching or putting an arm around another person; • the display of sexually-suggestive material; • unwanted ongoing declarations of affection or approaches for affection (including gifts and being followed); • sexual assault and rape; and • use of University computer systems for the retention and distribution of sexually explicit material. <p>Sexual harassment may be unintentional and still be dealt with under these procedures.</p> <p>Sexual harassment is not behaviour which is based on mutual attraction, friendship and respect. If the behaviour is consensual, it is not sexual harassment.</p> <p>Staff: includes all University staff including joint appointments.</p> <p>Student: includes all undergraduate and post graduate students, full time and part time students, students studying on or off campus or online, whether they are currently enrolled in subjects or deferred from their studies. It does not include graduates of the University or persons who are not currently admitted as students.</p> <p>Supervisor: for the purposes of this procedure, is:</p> <ul style="list-style-type: none"> • in the case of a student, the staff member responsible for administering the relevant study unit or activity; • in the case of a staff member, the person nominated by the University as
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Monash University Procedure

	<p>the staff member's performance supervisor; or</p> <ul style="list-style-type: none"> • in the case of an adjunct or honorary appointee, the Dean or Executive Director. <p>Temporary staff: means agency-based temporary resources engaged for short periods to meet temporary staffing requirements. During the period of their engagement they remain employees of the relevant supplier. Payments to temporary staff are made through the agency on completion of time sheets.</p> <p>Unacceptable Behaviour: is behaviour in the workplace or study environment that has created or has the potential to create a risk to the health and safety of individuals covered by this procedure. Unacceptable behaviour includes, but is not limited to:</p> <ul style="list-style-type: none"> • bullying; • discrimination; • harassment (including sexual harassment); • victimisation; • vilification; and • permitting, assisting or encouraging others to bully, discriminate, harass, victimise or vilify. <p>Unacceptable behaviour may include conduct occurring outside usual working or study hours, conduct occurring during work or study related activities or social events and conduct that has a relevant or significant connection to work or study.</p> <p>Victimisation: is any detriment suffered because a person has made or been involved in the expression of a concern or making of a complaint in good faith about conduct covered by these procedures, or intends to be so involved.</p> <p>Vilification: is any form of conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of a person or group of people because of their race or religion. Such conduct can be a single event or series of events over a period. It may include the use of internet, Facebook, Twitter and e-mail to publish or transmit statements.</p> <p>Conduct may not be vilification where it can be shown to be reasonable, undertaken in good faith and it represents genuine artistic, academic, religious or scientific endeavours.</p>
Legislation Mandating Compliance	
Related Policies	<ul style="list-style-type: none"> • Fraud and Corruption Policy • Global Equal Opportunity Policy • Fraud and Corruption: Control Procedures • Fraud and Corruption: Reporting Procedures
Related Documents	<p><u>Documents</u></p> <ul style="list-style-type: none"> • Monash University (Council) Regulations • Monash University Student Discipline Guidelines <p><u>Related Legislation</u></p>

Monash University Procedure

	<ul style="list-style-type: none"> • Age Discrimination Act (2004) (Commonwealth) • Australian Human Rights Commission Act 1986 (Commonwealth) • Disability Discrimination Act 1992 (Commonwealth) • Charter of Human Rights and Responsibilities Act (2006) (Victoria) • Equal Opportunity Act 2010 (Victoria) • Occupational Health and Safety Act 2004 (Victoria) • Racial Discrimination Act 1975 (Commonwealth) • Racial and Religious Tolerance Act 2001 (Victoria) • Sex Discrimination Act 1984 (Commonwealth) • Workplace Gender Equality Act 2012 (Commonwealth)
SCHEDULE(S)	
<p>Additional mandatory requirements specific to a Faculty or Offshore location Education procedure</p> <p>This field will only be published if required.</p>	
Name of Faculty/Offshore Location	N/A
Procedure Statement	N/A