

RESOLUTION OF UNACCEPTABLE BEHAVIOUR & DISCRIMINATION PROCEDURE

SCOPE

This procedure applies to all staff and associates of Monash University. Staff and associates include all staff members, contractors, agents, adjuncts, official visitors and other individuals performing services/work for and on behalf of the University or who are engaged in activities reasonably connected with the University and herein collectively referred to as 'you'.

PROCEDURE STATEMENT

Monash ('us', 'our' or 'we') is committed to fostering an environment, which maintains and promotes respect and integrity in everything we do and is safe, harmonious and productive for all staff, students and visitors.

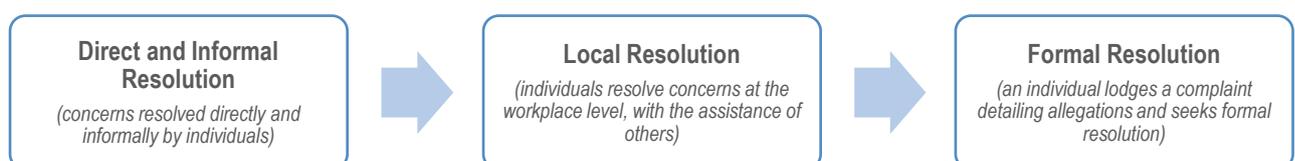
This procedure provides guidance on the resolution of grievances relating to unacceptable behaviours and discrimination, ensuring that our approach to resolution is fair, transparent, and timely and seeks to maintain positive relationships.

1. When not to apply this procedure

- 1.1 Unacceptable behaviour or inappropriate conduct by students is not acceptable and is likely to breach the [Student Discipline Guidelines](#), [Monash University \(Council\) Regulations – Part 7](#) and other University policies and procedures. Such matters will be managed under the student discipline procedures and should be reported to the Office of Student Conduct (StudentMisconduct@monash.edu).
- 1.2 Threats of harm to self or another individual, acts of violence, assault or threat to assault, including sexual assault, and stalking are matters which should be reported to the [Safer Community Unit](#).
- 1.3 Reasonable management action is any decision or action related to employment that is reasonable and includes performance feedback from a supervisor. This is lawful and not bullying, albeit this action may cause some discomfort to the person concerned.
- 1.4 Where the complaint of unacceptable behaviour or the substance of the complaint has been previously dealt with or is presently being dealt with under some other grievance or complaint process or procedure.
- 1.5 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 provisions of the contractor agreement.

2. Process for Managing Conflict

- 2.1 Early resolution provides the parties with a facilitated non-judgmental process in a safe environment to reach a mutually agreed solution. Matters resolved at this level will enable the issue to be resolved without the need for higher authority intervention and aims for a normal working relationship to be continued.
- 2.2 The University encourages individuals to follow the three stages of the resolution process and to attempt genuine resolution at each stage, prior to moving to the next.



3. Direct and informal resolution

3.1 Direct and informal resolution focuses on solving the problem rather than substantiating something inappropriate actually happened. Therefore, individuals should attempt to resolve concerns regarding unacceptable behaviour or discrimination directly with the person. In doing so, individuals should:

- tell the person which behaviour or decision they consider unreasonable and unacceptable;
- ask them to stop or to behave or decide differently; and
- keep a written record of this action.

3.2 At any stage, staff may seek advice or assistance in this process from:

- EAP – [Employee Assistance Program](#) on 1300 360 364
- a Grievance Adviser (by contacting ethical.conduct.queries@monash.edu); or
- their HR Business Partner, Monash HR.

3.3 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](#)

4. Local resolution

4.1 Where an individual does not feel comfortable raising the matter directly with the person, they should raise it with their supervisor;

4.2 If the supervisor is the subject of the grievance, or is perceived to be in some way associated with it, or the individual does not feel comfortable approaching their supervisor, then the individual may seek assistance from next person of seniority in the work or study unit or their Human Resources representative.

4.3 Supervisors and managers have a responsibility to monitor the workplace and to seek to prevent or identify and respond to conflict. and to assist individuals to resolve conflict directly. Supervisors are encouraged to work through a local resolution framework. They should focus on the identification of the cause(s) of the issue identified or the complaint, and implementing strategies to address them at the local level. The [Guide to Managing Conflict](#), provides guidance on appropriate strategies to resolving conflict for managers and staff.

4.4 Supervisors who are working to resolve conflict between individuals are also encouraged to seek advice and assistance from:

- EAP – [managerAssist Hotline](#) on 1300 360 364
- ethical.conduct.queries@monash.edu in Workplace Relations, Monash HR;
- their HR Business Partner, Monash HR.

5. Formal resolution

5.1 Where resolution at the local level is not possible or is not appropriate due to the serious nature of an allegation, the complaint reported to Workplace Relations, Monash HR via [S.A.R.A.H](#). Complaints involving threats of harm, acts of violence or stalking should also be referred to the [Safer Community Unit](#).

5.2 Where the complaint relates to the conduct of a student, it may be reported to the Office of Student Conduct studentmisconduct@monash.edu to be dealt with according to the student disciplinary process.

5.3 All matters reported under this procedure via [S.A.R.A.H](#) are referred to the Manager, Ethical Conduct for assessment. This involves consideration of the information received to decide and advise on any further action, which may include (but is not limited to):

- facilitated discussion;
- alternative dispute resolution;
- formal investigation (either directly or following facilitated discussion or alternative dispute resolution);
- any other appropriate process, as determined by the Director Workplace Relations; or
- no action if the report is considered to be frivolous, vexatious, misconceived or lacking in substance.

Facilitated Discussions

5.4 The purpose of a facilitated discussion is to:

- identify the grievance concerns;
- clarify the outcome being sought;
- resolve the issues and reach agreement for future interactions/behaviours/decisions; and/or
- reach agreement on a proposed resolution process, which may include an agreement to mediation or a commitment to steps to resolve the concerns.

- 5.5 In the facilitated discussion, each party will be informed of the position of the other, clarifying and explaining the options available.
- 5.6 If agreement is reached, the agreement will be documented and will constitute final resolution of the matter. A breach of an agreed outcome may be grounds for management action including disciplinary action.
- 5.7 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. Parties will only be required to meet to resolve their differences when it is considered safe and appropriate to do so.
- 5.8 Failure by the complainant to attend an arranged facilitated discussion without acceptable cause may form the basis for determination that no further action is possible or practicable under these procedures, or disciplinary action where there was an unreasonable failure to attend.
- 5.9 If a mutually agreed outcome is unable to be achieved despite best endeavours, assessment will be made of any further appropriate course of action and the parties will be notified of this.

Alternative Dispute Resolution

- 5.10 In most cases, alternative dispute resolution will consist of mediation, however other forms of alternative dispute resolution may be used. Parties will be invited to participate in alternative dispute resolution where:
- it is determined that this is the most appropriate further action; or
 - both parties agree to submit the matter to alternative dispute resolution.
- 5.11 Where mediation is adopted, a mediator will be appointed to assist the parties in reaching an acceptable resolution.
- 5.12 If a mutually agreed outcome is unable to be achieved despite best endeavours, assessment will be made of any further appropriate course of action and the parties will be notified of this.

Investigations

- 5.13 Any investigation will be undertaken by Workplace Relations, Monash HR or an independent external investigator appointed by Workplace Relations.
- 5.14 The investigators will determine the process for conducting an investigation consistent with this procedure. The investigator will make findings based on evidence and may make recommendations.
- 5.15 The investigation will generally be concluded within 30 working days or such further time necessary. The parties will be notified if there is a delay.
- 5.16 Where a complaint is investigated and found to be substantiated, the possible outcomes may include, but are not limited to, a different decision, an apology, a change in work arrangements, a commitment that the unacceptable behaviour or discrimination will stop, or disciplinary action including termination of employment or exclusion from the University in serious cases.
- 5.17 The University will consider the investigation findings and determine what action to take, and notify the parties of its decision on the complaint.

6. Outcome

- 6.1 Where it is determined that no further action is to be taken, the complainant will be informed in writing of the decision and the reasons for the determination. This may include:
- insufficient detail or evidence of the complaint has been provided;
 - the complaint has already been dealt with under this process or another process;
 - the complaint is frivolous, vexatious, misconceived or lacking in substance;
 - the complaint relates to alleged conduct that occurred more than 12 months before making the complaint.

7. External assistance and advice

- 7.1 Whilst we will make every reasonable effort to resolve unacceptable behaviour and discrimination complaints internally, where these procedures have been exhausted and you remain dissatisfied with the outcome, you may proceed to seek assistance from other external bodies such as the Victorian Equal Opportunity and Human Rights Commission, Australian Human Rights Commission or WorkSafe.
- 7.2 Where a person alleges unacceptable behaviour or discrimination by a visitor or other person not employed by us, we will provide support (e.g. EAP and counselling services) and may assist you in raising the complaint with their employer or refer you to an external body such as the Victorian Equal Opportunity and Human Rights Commission, Australian Human Rights Commission or WorkSafe.

8. Counselling and wellbeing support

- 8.1 All persons involved in a matter raised under these procedures are encouraged to seek professional support for their wellbeing via the [Employee Assistance Program](#) ('EAP').

9. Support Person in meetings

- 9.1 Individuals may be assisted by a support person in meetings and all stages in this procedure.
- 9.2 A staff member who is a party to a grievance has the right to have a support person present at meetings. If the staff member chooses not to have a support person the process will still continue.

Who may be a support person

- 9.3 A support person can be a union representative, friend, family member, a work colleague or grievance adviser. The support person cannot be a practicing solicitor or barrister and should not have had any involvement in the incident being discussed.

The role of the support person

- 9.4 The role of the support person is to provide professional and moral support to you. They may also act as a witness or observer to the process. The support person should not disrupt the process, direct the process or otherwise interfere with the meeting. The support person is not there to advocate on your behalf.
- 9.5 Should a support person attempt to intervene, direct the process or advocate on your behalf, they will be warned that this contravenes the role of support person. If the support person persists, the support person may be asked to leave the meeting and the meeting may be terminated and rescheduled, after providing time to nominate another support person.
- 9.6 Meetings will not be unreasonably delayed due to the unavailability of your support person. If this occurs, you will be advised to nominate another support person.

10. Privacy

- 10.1 To protect the rights and privacy of all involved, to maximise the prospect of successful resolution and to ensure a comfortable and productive environment, those involved in the grievance resolution process should only discuss the complaint with persons legitimately and directly involved in the complaint or in its resolution.

11. Direct action by us

- 11.1 There are instances where we will act on a matter without a complaint, or even if the person making a complaint does not want further action taken we will take action on the complaint. These are serious allegations of unacceptable behaviour or discrimination where we feel or are legally obligated to take action.
- 11.2 Some matters may also be considered a criminal offence and may be reported to the Police or other relevant body. For example physical molestation or assault, indecent exposure and stalking or assault or sexual assault.

Victimisation

- 11.3 It is against the law to victimise someone (i.e. subjecting them to some detriment or threaten to do so) because they have made a complaint or helped someone else to make a complaint.

False, malicious and vexatious claims

- 11.4 Reports of unacceptable behaviour or discrimination must be genuine and honest. If you are found to have made a false or vexatious complaint against another person this may lead to disciplinary action.

12. Grievance Advisers

- 12.1 The role of the Grievance Adviser is to provide impartial advice in confidence and to assist you to make an informed choice about actions under these procedures. Assistance provided by Grievance Advisers includes:
- listening seriously and impartially to your concerns and perceptions;
 - explaining this procedure, including the definitions of unacceptable behaviour and discrimination;
 - exploring possible strategies you might adopt to resolve your concern;
 - where requested, accompanying you as a support when you speak to the other person or in another process under these procedures;
 - advise individuals of the various avenues of support available; and
 - explain to you that they are not providing legal advice or advocacy.

DEFINITIONS

<p>Bullying</p>	<p>Repeated unreasonable behaviour by an individual towards another individual or group, which creates a risk to their health and safety.</p> <p>Bullying can be verbal, physical, social or psychological abuse. It includes offensive language, insults about physical characteristics such as their weight or height, teasing or telling jokes, hitting/hurting someone, shoving or intimidating another person, consistently excluding or isolating another person e.g. from work related activities. Bullying can be unlawful even if there is no intent to bully.</p> <p>Bullying does not include reasonable management action which is any decision or action related to employment that is reasonable and includes performance feedback and management 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>Refer to the Behaviours in the Workplace procedure for further information on bullying.</p>
<p>Complainant</p>	<p>The person that makes the complaint/allegation.</p>
<p>Conflict</p>	<p>For the purposes of this procedure, is a difference or disagreement regarding opinions, ideas or activity between 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</p>	<p>The Head of Portfolio, the Dean of the Faculty or Executive Director, or their nominee in any case where the Head of Portfolio, Dean or Executive Director has nominated a person to act as their nominee for the purpose.</p>
<p>Direct and informal resolution</p>	<p>The 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</p>	<p>The unfavourable treatment of an individual or group, because they have a legally protected attribute. This may lead to disadvantage for some and advantage for others. Discrimination is unlawful in areas such as employment, recruitment, education and the provision of services.</p> <p>Discrimination can be overt (direct) when an individual is treated unfavourably because of a protected attribute or can be less obvious (indirect) where a requirement, condition or practice is applied to everyone but it disadvantages an individual or group because of a protected attribute and this is not reasonable in the circumstances.</p> <p>Refer to the Behaviours in the Workplace procedure for further information on discrimination.</p>
<p>Disciplinary action</p>	<p>Action taken in accordance with the Disciplinary Action and Dismissal procedure and relevant Enterprise Agreement (for staff) or the Monash University (Council) Regulations (for students) or the terms of any contract as applicable.</p>
<p>Formal resolution</p>	<p>The resolution process that is initiated following an individual's submission of a report via S.A.R.A.H.</p>
<p>Harassment</p>	<p>Harassment occurs when unwelcome behaviour causes the person affected to feel intimidated, insulted or humiliated and a reasonable person would expect it would have this effect. It can occur in a single incident or a series of incidents. Harassment can be experienced by witnessing behaviour not directed to that person e.g. hearing a lewd joke. It does not need to be intended to cause hurt or harm.</p> <p>Refer to the Behaviours in the Workplace procedure for further information on harassment.</p>
<p>Investigator</p>	<p>The person allocated by the University to conduct an investigation and report findings into a formal resolution process.</p>
<p>Local resolution</p>	<p>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>Malicious</p>	<p>Is deliberately harmful, spiteful and intending or intended to do harm.</p>

Protected attribute	<p>It is against the law to discriminate because of a protected attribute, which includes:</p> <ul style="list-style-type: none"> - age; - carer and parental status; - disability; - employment activity; - gender identity (which includes gender expression); - industrial activity; - Intersex status; - lawful sexual activity and sexual orientation; - marital status; - physical features; - political belief or activity; - pregnancy and breastfeeding; - race; - religious belief or activity; - sex; - expunged homosexual conviction; or - personal association with someone who has, or is assumed to have, one of these personal characteristics. <p>Refer to the Behaviours in the Workplace procedure for further information on protected attributes.</p>
Safety and Risk Analysis Hub (S.A.R.A.H.)	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.
Sexual harassment	<p>Sexual harassment is a specific form of harassment. It is unwelcome behaviour of a sexual nature and can affect all genders. Sexual harassment can be physical, spoken, visual or written. It does not need to be intended to cause hurt or harm.</p> <p>Refer to the Behaviours in the Workplace procedure for further information on sexual harassment.</p>
Staff	Includes all University staff including joint appointments.
Student	Includes all undergraduate and post graduate students whether full time and part time students, studying on or off campus or online, 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.
Supervisor	<p>For the purposes of this procedure, a supervisor is:</p> <ul style="list-style-type: none"> • Students = the staff member responsible for administering the relevant study unit or activity; • Staff = the person nominated by the University as the staff member's performance supervisor; or • Adjunct or honorary appointee = the Dean or Executive Director.
Temporary staff	Means agency-based temporary resources engaged for short periods to meet temporary staffing requirements. During the period of their engagement they remain staff of the relevant supplier.
Unacceptable behaviour	<p>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 racial and sexual harassment); • vilification; and • victimisation. <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>
Vexatious	Causing or tending to cause annoyance, frustration or worry or to harass.
Victimisation	Any detriment caused to a person 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.

Vilification	Vilification occurs when someone incites hatred towards, serious contempt for or severely ridicules a person or group of persons on the ground of their race, religion, sexuality, gender identity, colour, nationality, descent, ethnicity, ethno-religious status, national origin, homosexuality, HIV or aids status or trans-gender status, disability, sexual orientation or lawful sexual activity.
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GOVERNANCE

Parent policy	Integrity and respect
Supporting schedules	
Associated procedures	<ul style="list-style-type: none"> • Fraud and Corruption: Control • Fraud and Corruption: Reporting
Legislation mandating compliance	<p>Federal Legislation</p> <ul style="list-style-type: none"> • Age Discrimination Act (2004) • Australian Human Rights Commission Act 1986 • Disability Discrimination Act 1992 • Racial Discrimination Act 1975 • Sex Discrimination Act 1984 • Workplace Gender Equality Act 2012 <p>State Legislation</p> <ul style="list-style-type: none"> • Charter of Human Rights and Responsibilities Act (2006) • Equal Opportunity Act 2010 • Racial and Religious Tolerance Act 2001
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Procedure owner	Director, Workplace Relations
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