

### **Policy Redesign Project**

*All policies and procedures are being reviewed as part of this project. This document is pending review, but remains in effect until the review is carried out.*

## **Sexual Harassment Policy and Grievance Procedures**

<b>Establishment:</b>	Council, October 1984
<b>Last Amended:</b>	VP (SFR), 27 April 2011
<b>Nature of Amendment:</b>	Amendments to remove references to conciliators/conciliation and to change terminology
<b>Date Last Reviewed:</b>	December 2007
<b>Responsible Officer:</b>	Director, Human Resources

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### **Sexual Harassment Policy Statement**

The University is committed to creating a work and study environment which is free of sexual harassment for all members of the University community. The University regards sexual harassment as a serious breach of the Equal Opportunity Policy. It accepts its responsibilities under federal and state equal opportunity laws and will take all reasonable steps to ensure that no staff member or student subjects another person to or is subjected to sexual harassment whilst in the course of any university activity.

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## Part 1 - Scope And Definitions

### 1. Scope

Flinders University has established this Sexual Harassment Policy to comply with the requirements of state and federal legislation and University policies and regulations.

This Policy applies to staff and students engaged in activities reasonably connected with their role at the University, including field trips, field work and social activities related to the University. Such activities may extend beyond the University campus.

This Policy does not automatically cover members of the University community undertaking work placements in other organisations. In the event that sexual harassment occurs under these circumstances the University will act as far as possible to protect the complainant, and will work jointly with the other organisation to investigate the complaint and take such precautions as are possible to prevent further incidents.

Sexual harassment in this context addresses matters which have a connection with the University in the course of University business, including but not necessarily limited to:

- sexual harassment of students by University staff;
- sexual harassment of students by other students;
- sexual harassment of University staff by students;
- sexual harassment of University staff by other University staff;
- sexual harassment of people applying to become students or University staff by current staff or students;
- sexual harassment of former staff or students by current staff or students; and
- sexual harassment of members of the public arising from contact with staff or students in the course of University business

The University has established a network of Equal Opportunity Contact Officers who will provide information and assistance in the resolution of complaints of sexual harassment.

### Legislation

Definitions and procedures used in this Policy are taken from the following documents:

- S. A. Equal Opportunity Act, 1984
- Commonwealth Sex Discrimination Act, 1984
- The Flinders University Enterprise Agreement
- Statute 6.4: Student Conduct

### 2. Definition of Sexual Harassment

Sexual Harassment is prohibited under both federal and state legislation and is described in the Acts as an unacceptable form of social behaviour. Full definitions from these Acts may be found in Appendix 1.

In brief, sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature. Sexual harassment is defined by law from the perspective of the person feeling harassed and it occurs if the behaviour makes a person feel offended, humiliated or intimidated and it is reasonable in all the circumstances that the person feeling harassed would feel that way.

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## Examples of sexual harassment

Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material, or other behaviour which creates a hostile working environment.

The Australian Human Rights Commission has listed the following examples of sexual harassment:

- staring, leering or unwelcome touching;
- suggestive comments or jokes;
- sending sexually explicit emails or text messages;
- repeated unwanted requests to go out on dates;
- intrusive questions about a person's private life;
- requests for sex;
- displaying posters, magazines or screen savers of a sexual nature.

Some of these actions are also defined as criminal acts.

## Conduct at Flinders University

For the purpose of this Policy sexual harassment may include conduct which:

- proposes an implicit or explicit condition that a person's academic evaluation or employment will be dependent on some sexual response; or
- proposes an implicit or explicit condition that decisions which bear on a person's grades in academic evaluation or employment conditions will be dependent on some sexual response; or
- has the purpose or effect of interfering with an individual's academic or work performance; or
- creates an intimidating, hostile or offensive learning, academic or working environment.

Sexual harassment is NOT behaviour which is based on mutual attraction, friendship and respect.

## 3. Vicarious Liability

Legislation provides that the University can be found vicariously liable for sexual harassment inflicted on others by its employees or agents.

As a defence against any finding of vicarious liability, the University will fulfil its commitment to educating members of the University community as to the nature and effects of sexual harassment and provide the necessary resources to inform its community as to the content of this Policy. It will provide through professional development, information sessions and publicity of this Policy an understanding of the rights and responsibilities of the individual. This includes the development and publicity of effective measures for the resolution of complaints.

In the event that the University is required to pay any sum, it will be paid initially by the University. The University may seek to recover this amount.

## Part 2 - Implementation

The federal and state legislation requires the University to take all reasonable steps to prevent and eliminate sexual harassment, and to protect those who complain of victimisation.

An essential element in preventing sexual harassment involves raising awareness among members of the university community of their rights and obligations under this Policy. To this end the university has

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identified areas of responsibility and established procedures for providing information and training about these procedures.

The identified categories of responsibility include those of all staff and students, supervisors, Equal Opportunity Contact Officers, Manager Equal Opportunity and Diversity and Student Equal Opportunity Advisor. The responsibility for providing information and training rests with Manager Equal Opportunity and Diversity and Student Equal Opportunity Advisor, together with the Division of Human Resources.

## **4. Responsibility of all Staff and Students**

4.1 Staff and students are responsible for ensuring that they do not subject other staff and students, or persons applying to become staff or students, to sexual harassment while involved in any University activity.

4.2 Staff and students are responsible for establishing a work and study environment which is free of sexual harassment.

## **5. Responsibility of Supervisors**

Supervisors of staff and students have a responsibility to maintain a work and study environment free of harassment by exercising appropriate leadership practices. Where instances of sexual harassment are identified supervisors have a responsibility to take appropriate action to remedy the problem.

## **6. Responsibility of Equal Opportunity Contact Officers**

The University has established a network of Equal Opportunity Contact Officers throughout the University to provide information and support for people on sexual harassment issues. Contact Officers do not conciliate cases of sexual harassment but may assist a complainant or respondent in an informal or formal resolution of a complaint.

Contact Officers are appointed by the Vice-Chancellor on the advice of the Manager Equal Opportunity and Diversity. It is the responsibility of the Manager Equal Opportunity and Diversity to ensure that Equal Opportunity Contact Officers are drawn from a broad range of occupational and study areas in the University.

Names, location and contact details of Equal Opportunity Contact Officers will be widely publicised to all staff and students via web pages, pamphlets, posters, student organisations and publications.

Any person may seek information and support on sexual harassment from an Equal Opportunity Contact Officer without necessarily making a complaint.

## **7. Responsibility of the Manager Equal Opportunity and Diversity and the Student Equal Opportunity Advisor**

The Manager Equal Opportunity and Diversity and the Student Equal Opportunity Advisor have responsibility to :

7.1 perform an educative role in the elimination of sexual harassment and to take action to implement this Policy;

7.2 take all reasonable steps to facilitate the conciliation and resolution of sexual harassment complaints;

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- 7.3 select and arrange training for Equal Opportunity Contact Officers;
  - 7.4 develop and distribute publicity material to the University community;
  - 7.5 assist in arranging awareness raising programmes and in the provision of training for staff and students on sexual harassment;
  - 7.6 maintain confidential statistical records on sexual harassment complaints;
  - 7.7 monitor and evaluate the implementation of this Policy.

## 8. Provision of Information and Training

The Manager Equal Opportunity and Diversity and the Student Equal Opportunity Advisor, together with the Division of Human Resources, will provide regular information and training that will:

- 8.1 educate staff and students about what constitutes sexual harassment and about their responsibility not to sexually harass other staff and students;
- 8.2 provide information and training to managers and supervisors on meeting their responsibilities in relation to maintaining a work and study environment that is free of sexual harassment;
- 8.3 provide information and training to staff conducting teaching and learning activities on meeting their responsibilities in maintaining a study environment free from sexual harassment.

## Part 3 - Complaint Procedures

The University is committed to taking effective action to deal with complaints of sexual harassment by:

- ensuring that complaints are dealt with in a sensitive, timely and confidential manner;
- resolving complaints of sexual harassment within the University, by means of education, counselling and mediation, using disciplinary action when required and as provided by this Policy;
- ensuring that complaints are dealt with in accordance with principles of natural justice;
- making every effort to provide protection for all members of the University community against victimisation or reprisals;
- encouraging reports of behaviour which breach the Sexual Harassment Policy.

Complaints about breaches of this policy may be made in accordance with the:

- i. [Student Complaints Policy](#) and [Student Complaints Procedures](#) (if the complainant is a student)
- ii. [Staff Grievances](#) provisions in the University's Enterprise Agreement and associated policy and procedures (if the complainant is an employee).

Where the complainant is a member of the University community but is not an employee or a student, they may make their complaint directly to People & Culture.

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## Part 4 - Other Issues

### 9. Confidentiality

It is essential to keep confidential all information about sexual harassment complaints during the resolution process and after the matter is concluded to ensure:

- fair treatment and process;
- protection of complainant and respondent;
- minimisation of the risk of victimisation;
- avoidance of defamation proceedings.

For these reasons, only those directly and legitimately involved in the resolution process should be informed about the details of a complaint and only then with the complainant's consent.

In the event that confidentiality is breached, the matter will be investigated by the Vice-Chancellor who will take appropriate action.

### 10. Defamation

A complaint of sexual harassment which is brought to the attention of the respondent can sometimes result in the respondent threatening to take action for defamation.

Defamation is the publication of a statement about a person which causes that person's reputation with other people to be lowered, or causes them to be shunned, avoided or brought into ridicule.

If the statement is in a permanent form (eg in writing) the alleged defamation is libel; if it is not in a permanent form (eg oral statements) the alleged defamation is slander.

It is not defamatory for an individual to confront a harasser directly (either in person or by letter) to alert them that their behaviour is unwelcome. Nor is it defamatory to make a complaint to a person who has a legitimate interest in knowing about the incident in order to seek redress under this Policy (for example to a supervisor, an Equal Opportunity Contact Officer or a counsellor).

Protection will be lost if the complaint is false, or is made in bad faith and is motivated by malice, for example made solely or largely with the intention of causing harm to the respondent.

In the University, managers, supervisors, Equal Opportunity Contact Officers, and counsellors conveying information or otherwise taking action on a complaint are able to claim the defence of qualified privilege provided that they:

- act in good faith and without malicious intent;
- act strictly in accordance with the University's Sexual Harassment Policy and Procedures;
- maintain confidentiality at all times and ensure that information about a complaint is communicated only in accordance with the University's Sexual Harassment Policy and Procedures.

### 11. Victimisation

Victimisation is any attempt to subject a person to any detriment or threat of detriment because they have:

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- made, or propose to make a sexual harassment complaint under the University's Sexual Harassment Policy and Procedures;
  - furnished, or propose to furnish, information or documents to a Conciliator or formal investigation;
  - appeared or propose to appear as a witness in a formal investigation;
  - reasonably asserted their own or another person's rights under the University's Sexual Harassment Policy and Procedures.

Victimisation is prohibited and action shall be taken, in accordance with the University's disciplinary procedures, against a person found to have victimised another.

## 12. Vexatious Complaints

Any person who is found to have made a vexatious or malicious complaint will not be afforded protection by this Policy and Procedures and will be subject to the University's disciplinary procedures as defined in the Agreement or Statute.

## 13. Implementation, Monitoring and Evaluation

The Equal Opportunity and Diversity will report annually to the Equal Opportunity and Diversity Committee on the incidence of complaints and will make appropriate recommendations for changes to the Policy.

### Glossary of Terms

#### **Agreement:** The relevant Flinders University Enterprise Agreement .

**Complainant:** a person who, individually or in conjunction with others, make(s) a complaint of sexual harassment under the Flinders University Sexual Harassment Policy.

**Respondent:** a person or organisation against whom a complaint has been made under the Flinders University Sexual Harassment Policy and Procedures.

**Mediation:** a process where an impartial third party (Mediator) assists two or more parties to settle a complaint by mutual agreement.

**Discrimination:** there are two forms of discrimination:

**Direct discrimination** occurs when people are treated less favourably because they belong to a particular group or category of people, for example, women or men. It also includes treating someone unfairly because of a stereotype about the particular group or category of people.

**Indirect discrimination** exists when there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect or result on particular groups. Unless this type of requirement is reasonable in all the circumstances it is likely to be indirect discrimination.

**Disciplinary Action:** action by the institution to discipline a member of staff for unsatisfactory performance, misconduct or serious misconduct and is set out in the relevant Enterprise Agreement.

**Misconduct** shall mean :

for students: As set out in Statute 6.4.

for staff: As set out in the relevant Enterprise Agreement.

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**Natural justice:** the minimum standard of fairness to be applied in the investigation and adjudication of a dispute. This is also referred to as procedural fairness. The substantive requirements of natural justice involve:

- fully informing the respondent/s of any allegation/s made against them;
- giving them the opportunity to state their case, provide an explanation or put forward a defence;
- ensuring that proper investigation of the allegations occurs, that all parties are heard and relevant submissions considered;
- not taking into account irrelevant matters;
- not involving the person who makes the allegation in determining it;
- ensuring that the decision-maker acts fairly and without bias.

**Termination of Employment:** termination of employment at the initiative of the employer institution.

## Appendix 1 - Legislation

Under the S.A. Equal Opportunity Act, 1984:

87(1) It is unlawful for a person to subject to sexual harassment –

1. a person with whom he or she works; or
2. a person who is seeking to become a fellow worker, while in attendance at a place that is a workplace of both persons or in circumstances where the person was, or ought reasonably to have been, aware that the other person was a fellow worker or seeking to become a fellow worker.

87(2) It is unlawful for a person who works for an educational authority to subject a student of the educational authority, or a person applying to become a student of the educational authority, to sexual harassment while in attendance at a place in connection with the student's education or the applicant's prospective education or in circumstances where the person was, or ought reasonably to have been, aware that the person was a student, or a person applying to become a student, of the educational authority.

87(3) It is unlawful for a student of or over 16 years of age, while in attendance at a place in connection with his or her education, to subject a person who works at the educational institution at which the student is enrolled or a fellow student to sexual harassment.

87(7) If an employee reports to his or her employer specific circumstances in which the employee was subjected, in the course of his or her employment, to sexual harassment by a person other than a fellow worker, and it is reasonable in all the circumstances to expect that further sexual harassment of the employee by the same person is likely to occur, it is unlawful for the employer to fail to take reasonable steps to prevent the further sexual harassment.

## Definition of sexual harassment:

87(9) For the purposes of this section –

1. a person sexually harasses another (the person harassed) if
2. the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
3. 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; and

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1. conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing; and
  2. a person works with another if both carry out duties or perform functions, in whatever capacity and whether for payment or not, in or in relation to the same business or organisation; and
  3. a person works for an authority if he or she carries out duties or performs functions, in whatever capacity and whether for payment or not, in or in relation to that authority; and

**workplace** means a place (including a ship, aircraft or vehicle) at which a person works or attends in connection with the person's work.

## **Under the Federal Sex Discrimination Act, 1984:**

28B(1) It is unlawful for a person to sexually harass

- (a) an employee of the person; or
- (b) a person who is seeking to become an employee of the person.

28B(2) It is unlawful for an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer.

28B(6) It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace to both those persons.

"workplace participant" means any of the following:

- a) an employer or employee
- b) a commission agent or a contract worker
- c) a partner in a partnership

28F(1) It is unlawful for a member of the staff of an educational institution to sexually harass:

- (a) a person who is a student at the institution; or
- (b) a person who is seeking to become a student at the institution.

28F(2) It is unlawful for a person who is an adult student of an educational institution to sexually harass:

- (a) a person who is an adult student at the institution; or
- (b) a member of staff of the institution.

28F(3) In this section "adult student" means a student who has attained the age of 16 years.

## **Definition of sexual harassment:**

28A(1) 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;

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

28A(2) In this section, "conduct of a sexual nature" includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.