

<b>Name of Policy</b>	<b>Discrimination and Harassment Policy</b>
<b>Description of Policy</b>	<p><i>This Policy aims to promote equal opportunity for every member of the University community and to avoid unlawful discrimination and harassment.</i></p> <p><i>This policy is common across the University. It should be read in conjunction with the University's staff and student grievance management policies.</i></p>
<input type="checkbox"/> New Policy <input type="checkbox"/> Revision	
<b>Description of Revision</b>	<p><i>Delete</i></p> <p><i>Please type brief description of the deletion and specify information to be deleted</i></p>
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### Human Resources Directorate

<b>Policy and Revision Number</b>	
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## 1. Background Information

Australian Catholic University supports Christian principles of justice and equity. The University aims to foster an environment that generates considerate relationships among all members of the University community based on dignity and respect for the individual.

As an educational institution and an employer, the University aims to develop structures and practices that are free from unlawful direct and indirect discrimination and all forms of unlawful harassment. The following policy and guidelines have been developed to advise staff and students and other members of the University community of their rights and responsibilities in this matter.

This policy is not a term of any contract, including any contract of employment and may be varied by the University from time to time.

## 2. Definitions

For the purposes of this document:

**'balance of probabilities'** - means the basis for assessing the facts in determining whether discrimination or harassment took place. It contrasts with the concept of "beyond reasonable doubt" that applies in the criminal arena.

**'Discrimination and Harassment Adviser'** means a staff member who is formally assigned the role of providing a first point of contact to staff and students who may wish to clarify their options in matters relating to unlawful discrimination and harassment.

**'Head of School'** - means a person who was formally assigned to the role in accordance with the University's policy.

**'manager'** - refers to those officers who have a line management responsibility for a functional unit (eg Head of School, Manager, Campus Operations, Manager, Employee Relations & Workforce Manager or IT Manager).

**'nominated supervisor'** - means a staff member who is formally assigned the responsibility of supervising one or more staff or a group of staff.

**'unlawful discrimination'** - means the treatment of a person in a less favourable manner than another person because of an unlawful reason. The unlawful reasons within the scope of this policy are listed in Schedule 1. Direct and indirect forms of discrimination are further elaborated in paragraphs 1.4.1 and 1.4.2.

**'unlawful harassment'** - means any form of behaviour that is not wanted, not asked for and that a reasonable person would have anticipated would offend, humiliate or intimidate the other person if the behaviour happens for an unlawful reason. Examples of what may amount to unlawful harassment are set out in Part B of this policy.

**'unlawful reason for discrimination'** - means any of the characteristics or qualities listed in the body of applicable anti-discrimination legislation on the basis of which discrimination against a person is prohibited, relevantly, in employment, education, the provision of goods and services, accommodation and any other areas listed in the anti-discrimination legislation. Typically, these grounds may include sex; sexual identity; race, ethnicity or national origin; disability; religious belief or activity; political belief or activity; industrial or trade union activity; status as a parent or carer; and age.

Schedule 1 provides a summary of the current unlawful grounds of discrimination listed in applicable legislation (as at 30 June 2004). It is important to note that the grounds of unlawful discrimination may change from time to time.

**'religious member of the University'** - means any member of a Congregation whose services are subject to the terms of a Deed of Agreement between the University and the Congregation for the provision of services, and who is

consequently involved in the life of the University, and a diocesan priest whose services are provided in agreement with the local Bishop.

'**staff member**' - means a person employed by the University as an academic staff member or a general staff member.

'**student**' - means a person who is, or was at the time of the alleged discrimination or harassment, enrolled at the University (including on a deferred basis) as a candidate for any program or to pursue any unit of study or research offered at or by the University including a student of another university or other education provider who is granted temporary or ongoing rights of access to a campus or site of the University for study purposes.

### **3. Part A - University Policy on Discrimination and Harassment**

#### **3.1 Policy Purpose**

The University aims to provide an environment in which staff and students can work and study free from unlawful discrimination and unlawful harassment. By advising staff and students and other members of the University community of their rights and responsibilities, this policy aims to promote equal opportunity for every member of the University community and to avoid unlawful discrimination or harassment.

#### **3.2 Legal obligations**

The University and other members of the University community (including its employees) are required to comply with anti-discrimination and equal opportunity laws in the several jurisdictions in which it operates. The University adopts as policy that if an act of discrimination or harassment is unlawful in any jurisdiction where it operates, that act of discrimination or harassment is prohibited under this policy in each of the locations in which the University operates (see Schedule 1.) This is intended to minimise the problems inherent in a multi-campus institution that extends over several jurisdictions.

#### **3.3 Scope**

This policy extends to all University staff members (during the course of their employment whether it takes place on or off campus), students, religious members of the University, and any agents, visiting academics, honorary appointees, officers, or contractors engaged or appointed by the University (and their employees, if any). All such persons are required to comply with applicable anti-discrimination law and with this policy. Breaches of the applicable anti-discrimination law or this policy may result in disciplinary action (including up to dismissal) or other appropriate penalties or sanctions. This policy also applies in the context of members of the public, particularly those seeking to enrol or applying for employment with the University.

#### **3.4 Unlawful discrimination is against University policy**

The University does not condone any form of unlawful discrimination whether it is direct or indirect, intended or unintended. Such discrimination is generally regarded as serious misconduct under the relevant applicable Industrial Award/Agreement and the Student Code of Conduct.

**3.4.1** Direct discrimination occurs if a person is treated less favourably than another in similar circumstances on the basis of an unlawful reason.

**3.4.2** Indirect discrimination occurs if there is a rule, practice, policy or other arrangement, requirement or condition, which applies equally to everyone but which is unreasonable and impacts unfairly on a person or a particular group of people because they are less able to comply with the requirement etc. The person

complaining of indirect discrimination must generally be a member of that particular group, who cannot comply with the requirement etc.

### **3.5 Exceptions**

The legislation does allow some exceptions in respect of discrimination. For example:

- (i) religious and sex discrimination based on the genuine occupational requirements of a job may be permitted;
- (ii) a person with a disability may be discriminated against if it can be demonstrated that an employer or educational institution would suffer an “unjustifiable hardship” in trying to make adjustments to accommodate the needs of the person.
- (iii) The circumstances in which exceptions may apply are set out in the relevant legislation.

### **3.6 Unlawful harassment is against the University policy**

The University does not condone unlawful harassment. Such harassment is regarded as either misconduct or serious misconduct under the Student Code of Conduct and the relevant applicable Industrial Award/Agreement.

Examples of what may constitute harassment are set out in the guidelines in Part B of this policy.

### **3.7 Criminal behaviour will be handled appropriately**

Sexual harassment and other varieties of unlawful harassment may also constitute criminal behaviour. Staff or students making allegations of a serious nature such as, but not limited to, rape, assault, sexual assault or molestation, indecent exposure, stalking and obscene telephone calls, letters and electronic transmissions may wish to make formal complaints to the appropriate authorities.

### **3.8 Prevention strategies**

In the interests of preventing incidents of unlawful discrimination and unlawful harassment, the University may institute any number of measures, including but not limited to:

- (i) encouraging and supporting managers and supervisors to develop positive environments for study and work;
- (ii) providing information to all members of the University community;
- (iii) providing education and training, electronically or otherwise (which includes dissemination of this policy and induction training); and
- (iv) if appropriate, instituting public awareness campaigns on campuses on a periodic basis.

### **3.9 The role of managers, nominated supervisors, staff members**

If issues of unlawful discrimination and unlawful harassment do arise in their areas of responsibility, managers, nominated supervisors and staff members should take all reasonable steps to deal with them promptly and to prevent a recurrence of the problem and should deal with complaints of unlawful discrimination and harassment in accordance with the University's grievance management policies.

#### 4. Part B - Examples of Unlawful Harassment

The term 'harassment' covers a range of behaviour. Harassment can be a single unwelcome incident or a persistent pattern of unwanted behaviour. Forms of harassment thought by a perpetrator to be mild or trivial can be personally offensive and intimidating in some circumstances.

Staff and students need to be sensitive to other people's feelings and aware that in a culturally diverse society or environment they should endeavour to avoid familiarities or use of language that may be offensive or humiliating. A person's intention to offend, or not to offend, humiliate or intimidate another person is not material to an allegation of unlawful harassment being substantiated – it is the effect that matters. Such conduct may constitute unlawful discrimination if it can be shown that the person being harassed is being treated unfavourably on the basis of an unlawful reason.

Further detailed examples of what may constitute unlawful harassment are discussed below (however this list is not exhaustive).

- 4.1** Intrusive behaviour. In some circumstances, intrusive behaviour may also amount to unlawful harassment. Examples of intrusive behaviour include:
- (i) denigrating comments or insinuations, such as sexual or racist jokes; or gratuitous comments about a person's physical appearance, religious practices or sex life;
  - (ii) expressing sentiments based on stereotyped assumptions or presuppositions about group behaviour, values, culture or ability;
  - (iii) displaying or transmitting written, graphic or pictorial material that denigrates a person or group of persons for an unlawful reason; and/or
  - (iv) suggestive behaviour such as leering and gesturing; or invasion of personal space; or body contact of an inappropriate sexual nature - patting, pinching, brushing up against another person.
- 4.2** Abuse of power, position or opportunity. Other types of unlawful harassment may take the form of abuse of power, position or opportunity especially in relationships between staff and students or supervisors and employees where the formal nature of the relationship involves authority of one person over another. These include:
- (i) implicit or explicit demands for sexual activities or favours in exchange for benefits related to employment or academic progress;
  - (ii) bullying, intimidating or excluding a person on the basis of an unlawful reason, real or presumed (see the University's Bullying Statement);
  - (iii) misuse of communication devices such as post, telephone and electronic media in such way as to violate an individual's privacy or to transmit unwelcome messages that cause offence, intimidation or humiliation. This policy is consistent with the University's Computer and Internet Acceptable Use Policy.
- 4.3** Coercive relationships. Lawful relationships based on choice and consent, whether sexual or not, are a private matter. The University would not wish to intrude upon the personal relationships of staff or students. However, staff members should be particularly sensitive to the potential in such relationships for conflict of interest as outlined in the Code of Conduct for all Staff. University staff should be aware that when sexual conduct:

- (i) implicitly or explicitly becomes a condition of a person's selection into courses or admission to or recruitment by the University;
- (ii) implicitly or explicitly becomes a term or condition of appointment, promotion or other employment benefits of a person;
- (iii) has the purpose or effect of interfering with an individual's academic or work performance; and/or
- (iv) creates an intimidating, hostile or offensive learning or working environment.

That such conduct is unacceptable in any circumstances.

## **5. Part C - What you can do if you think you are being Unlawfully Discriminated Against or Harassed**

### **5.1 Complaints Procedures**

The University has grievance management policies for staff and students. Complaints of unlawful discrimination or unlawful harassment by:

- staff members should be dealt with in accordance with the grievance management policy applicable to staff members; and
- students should be dealt with in accordance with the grievance management policy that applies to students.

The procedures outlined in the grievance management policies do not in any way diminish the rights of a complainant to seek access to an external authority, established under anti-discrimination legislation.

As a practical matter, staff members and students should also be aware of the following:

- Do not ignore circumstances where you feel you are being unlawfully discriminated against or harassed, thinking it will go away. Ignoring the behaviour could be taken as tacit approval by the person causing the harassment or discrimination.
- If you feel comfortable about doing so, ask the person/s to stop, or make it clear that you find the behaviour offensive or unwelcome. Maybe the alleged discriminator/harasser is not aware that her/his behaviour is intimidating or unwelcome and will stop once they are told.
- You may speak to a Discrimination and Harassment Adviser as soon as possible after the incident or incidents have occurred. You may approach any of these people in the first instance to seek confidential guidance on discrimination or harassment matters.
- If you consider it appropriate to do so, you could raise a grievance with your manager or nominated supervisor (in the case of staff) or with the Head of School (in the case of students). Where the grievance concerns your nominated supervisor or Head of School, you may speak to the supervisor's manager (in the case of staff) or the Executive Dean of the Faculty in which you are studying (in the case of students).
- Whilst you may feel the need to tell a trusted friend or work colleague about the matter, you should be careful. Accusations of unlawful discrimination/harassment can harm the reputation of those involved and could ultimately lead to an action for defamation. Do not allow rumours to spread.
- If you require confidential counselling or other psychological support related to an experience of discrimination or harassment, you may contact the Employee

Assistance Scheme (in the case of staff) or an ACU Student Counsellor (in the case of students).

## **5.2 The University May Take Action**

The University will take whatever action it considers appropriate if there has been unlawful discrimination or harassment, which may lead to disciplinary action (which could include dismissal under the relevant industrial instrument) or action being taken against students under the Student Code of Conduct or other applicable disciplinary rules.

The University views untruthful or dishonest conduct in relation to a complaint (including vexatious complaints from a grievant) to be a very serious matter which may result in disciplinary action (which could include dismissal under the relevant industrial instrument) or action being taken against students under the Student Code of Conduct or other applicable disciplinary rules.

## **6. Policy Review**

The University may make changes to this policy and procedures from time to time to improve the effectiveness of its operation. In this regard, any staff member who wishes to make any comments about this Policy may forward their suggestions to the Director, Human Resources.

## **7. Further Assistance**

Any staff member who requires assistance in understanding this Policy should first consult their nominated supervisor who is responsible for the implementation and operation of these arrangements in their work area. Should further advice be needed, they should contact the Human Resources Consultant responsible for their campus.

## Schedule 1:

### Summary of Commonwealth, State and Territory Anti-Discrimination Legislation Showing the Grounds, Attributes or Characteristics of Unlawful Discrimination\*

GROUND	C'TH	A.C.T	N.S.W.	QLD.	VIC.
	Racial Discrimination Act 1975 Sex Discrimination Act 1984 Disability Discrimination Act 1992	Discrimination Act 1991	Anti-Discrimination Act 1977	Anti-Discrimination Act 1991	Equal Opportunity Act 1995 Racial and Religious Tolerance Act 2001
Sex (Gender)	Yes	Yes	Yes	Yes	Yes
Sexual harassment	Yes	Yes	Yes	Yes	Yes
Pregnancy	Yes (including potential pregnancy)	Yes	Yes	Yes	Yes
Breastfeeding	Yes	Yes	Yes (implied)	Yes	Yes
Marital, relationship status	Yes (marital status)	Yes (relationship status)	Yes	Yes (relationship status)	Yes
Race (including colour, descent, national or ethnic origin), racial vilification or offensive behaviour based on racial hatred	Yes	Yes	Yes (plus ethno-religious origin)	Yes	Yes (including vilification for race religious belief and religious activity)
Disability, impairment, presence of disease-causing organisms	Yes	Yes	Includes HIV/Aids vilification	Yes	Yes
Age	Yes	Yes	Yes	Yes	Yes
Lawful sexual activity, sexual orientation or homosexuality	Sexual preference (HREOC Regulations)	Yes	Includes homosexual vilification	Yes	Yes
Transgender incl. vilification / gender identity	-	Yes	Yes	Yes	Yes
Carer status / family responsibilities	Yes (in some circumstances)	Yes	Yes	Yes	Yes
Religion, religious beliefs or activities	-	Yes	-	Yes	Yes
Parental status	-	Yes	-	Yes	Yes
Industrial, political, trade union activity	Yes (HREOC Regulations)	Yes	-	Yes	Yes Political belief or activity
Profession, trade, occupation or calling	-	Yes	-	-	-
Physical features	-	-	-	-	Yes

\* This information was correct as at 1 April 2007