

# RESOLUTION OF UNACCEPTABLE BEHAVIOUR & DISCRIMINATION PROCEDURE

## SCOPE

This Procedure applies to the conduct and decisions of all staff and associates of Monash University.

## 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 (collectively referred to as 'you').

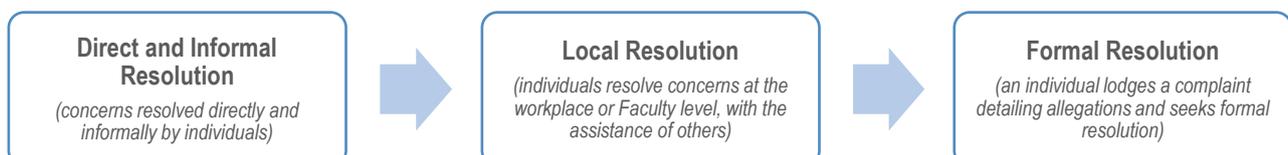
This Procedure provides guidance on the resolution of complaints relating to unacceptable behaviours and discrimination, as set out in the [Behaviours in the Workplace Procedure](#), ensuring that our approach to resolution is fair, transparent, and timely and seeks to maintain positive relationships.

### 1. When not to apply this Procedure

- 1.1 Where the complaint relates to student conduct. Unacceptable behaviour or inappropriate conduct by students is likely to breach the [Student General Conduct Policy](#), [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 Responsible Officer General Misconduct through the Safer Community Unit (<https://www.monash.edu/safer-community/problem-behaviour/reporting>).
- 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](#). Where required by law, the University may report matters to the Police or other relevant body.
- 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 or disciplinary 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.
- 1.6 Any student seeking to raise a complaint of unacceptable behaviour or inappropriate conduct by a staff member should, in the first instance, report the matter to the [Safer Community Unit](#). The Safer Community Unit will provide advice as to whether it is appropriate for the matter to be dealt with in accordance with this Procedure. In the event that the complaint is against a staff member from the Safer Community Unit, it should be directed to Workplace Relations, Monash HR, in accordance with this Procedure.

### 2. Process for managing Unacceptable Behaviour

- 2.1 The University encourages individuals to follow the three stages of resolution outlined in these procedures and to attempt genuine resolution at each stage, prior to moving to the next. The aim of each stage is to 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 Subject to the advice of Safer Community Unit, students raising concerns against a staff member are encouraged to follow the stages of resolution outlined in these procedures, if they are comfortable doing so. However, in recognition of the power imbalance between students and staff, student complaints may progress directly to Stage Three - Formal Resolution.



### 3. Stage One - Direct and informal resolution

- 3.1 Direct and informal resolution focuses on solving the problem rather than substantiating whether something inappropriate actually happened. Individuals should attempt to resolve concerns regarding unacceptable behaviour or discrimination directly with the person involved. In doing so, individuals should:
- tell the person which behaviour or decision they consider unacceptable;
  - ask them to stop, or to behave or decide differently; and
  - keep a written record of this action.

### 4. Stage Two - Local resolution

- 4.1 Where direct and informal resolution has been unsuccessful, or 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 the next person of seniority in the work or study unit or their Monash HR 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 should keep a record of any discussions held, or actions taken, in relation to the issues raised.
- 4.5 Supervisors who are working to resolve conflict between individuals are also encouraged to seek advice and assistance from:
- Employee Assistance Program– [ManagerAssist Hotline](#) on 1300 360 364
  - [ethical.conduct.queries@monash.edu](mailto:ethical.conduct.queries@monash.edu) in Workplace Relations, Monash HR;
  - their HR Business Partner, Monash HR.

### 5. Stage Three - Formal resolution

- 5.1 Where resolution at the local level at either Stage One or Stage Two has not been successful, or is not possible or appropriate due to the nature of an allegation, complaints are to be reported to Workplace Relations, Monash HR via [S.A.R.A.H](#) (for complaints from staff) or via the Safer Community Unit (for complaints from students).
- 5.2 All matters reported for Formal Resolution under this Procedure are referred to the Manager, Ethical Conduct (or delegate) for assessment of the appropriate process for dealing with the complaint. This involves consideration of the information received and, where appropriate or required, undertaking preliminary inquiries with relevant parties.
- 5.3 The Manager, Ethical Conduct (or delegate) will provide the outcome of their assessment to the Director, Workplace Relations. After taking that assessment into consideration, the Director, Workplace Relations will decide and advise on any further action, which may include (but is not limited to):
- recommending attempted resolution under Stage One or Stage Two of this Procedure to the complainant;
  - recommending facilitated discussion to the complainant;
  - initiating a formal investigation (either immediately or following facilitated discussion);
  - undertaking preliminary inquiries or further preliminary inquiries with relevant parties;
  - any other appropriate process, as determined by the Director, Workplace Relations; or
  - taking no further action under this Procedure as provided for under paragraph 6.1 below.

#### Facilitated Discussions

- 5.4 The purpose of a facilitated discussion is to provide the parties with a supportive, non-judgmental process in a safe environment to:
- identify the 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.
- 5.5 In the facilitated discussion, each party will be informed of the position of the other, clarifying and explaining the options available. The Facilitator will usually be a member of Workplace Relations, Monash HR. At the discretion of the Director, Workplace Relations, an external mediator may be engaged if considered necessary in the circumstances.
- 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, a facilitated discussion will not be recommended however information may be sought through separate meetings with the parties in order to reach a mutually agreed resolution outcome. 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.

### Investigations and Outcomes

- 5.10 Where it is determined that a formal investigation is required, it may be undertaken by Workplace Relations, Monash HR or an independent external investigator appointed by Workplace Relations. The Director, Workplace Relations will determine the scope of the investigation.
- 5.11 The investigator will determine the process for conducting a procedurally fair investigation, consistent with this Procedure, and will make findings based on evidence and, where requested to do so by the Director, Workplace Relations, may make recommendations.
- 5.12 The investigation will be concluded expeditiously. The parties will be advised of anticipated timeframes and notified if there is a delay.
- 5.13 The Director, Workplace Relations will consider the investigation findings and any recommendations and will determine what action to take. Where a complaint is 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.
- 5.14 The Director, Workplace Relations will notify both parties of its decision on the complaint, having regard to the University's obligations under applicable privacy laws.

## 6. Decision to take no further action

- 6.1 If, at any time, 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. The respondent will be similarly informed if they have already been notified of the complaint.

The reasons for determining to take no further action 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 has been lodged formally with an external body (eg. VCAT, Fair Work Commission, Equal Opportunity Commission etc.);
- the bullying alleged in the complaint is assessed to constitute reasonable management action;
- the complaint is frivolous, vexatious, misconceived or lacking in substance; and/or
- the complaint relates to alleged conduct that occurred more than 12 months before making the complaint.

### False, malicious and vexatious claims

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

## 7. Direct action by us

- 7.1 There are instances where the Director, Workplace Relations will determine to act on a matter without a complaint, or even if the person making a complaint does not want further action taken. This will occur if there are serious allegations of unacceptable behaviour or discrimination where it is determined that the University has a duty to act.

### Victimisation

- 7.2 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. If you are found to have victimised a person for making a complaint under this Procedure, or applicable anti-discrimination or equal opportunity laws, disciplinary action may be taken.

## 8. Advice and Support about this Procedure

8.1 At any stage, individuals may seek advice or assistance regarding this Procedure from;

Support for Students

- Safer Community Unit; or
- Student Associations (<https://www.monash.edu/get-started/orientation/student-unions>); or
- Ethical Conduct Team (by contacting [ethical.conduct.queries@monash.edu](mailto:ethical.conduct.queries@monash.edu));

Support for Staff

- Their HR Business Partner, Monash HR; or
- A Respectful Workplace Contact Officer (see below); or
- Ethical Conduct Team (by contacting [ethical.conduct.queries@monash.edu](mailto:ethical.conduct.queries@monash.edu)).

### Respectful Workplace Contact Officers

8.2 The role of the Respectful Workplace Contact Officer is to provide staff with impartial advice in confidence and to assist you to make an informed choice about actions under these procedures. Assistance provided by a Respectful Workplace Contact Officer 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.

8.3 If you would like to speak to a Respectful Workplace Contact Officer, you can contact the Ethical Conduct Team on 9902 4945 or [ethical.conduct.queries@monash.edu](mailto:ethical.conduct.queries@monash.edu).

## 9. Counselling and wellbeing support

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

9.2 Students and staff can also seek professional support for their wellbeing via the [University Counselling Service](#).

## 10. Support Person in meetings

10.1 Individuals may be assisted by a support person in meetings and all stages in this Procedure.

10.2 A staff member who is the subject of a complaint 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

10.3 A support person can be a union representative, friend, family member, a work colleague or Respectful Workplace Contact Officer. The support person should not have had any involvement in the incident being discussed. We reserve the right to refuse recognition of certain individuals as support persons in certain matters and not permit them to attend meetings from time to time.

### The role of the support person

10.4 The role of the support person is to provide professional and moral support, and be an observer in the process. The support person should not disrupt, direct or otherwise interfere with the meeting or the complaint process. The support person is not there to advocate on behalf of the person they are supporting.

10.5 Should a support person attempt to intervene, direct the process or advocate on behalf of the person they are supporting, 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.

10.6 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.

## 11. Privacy

11.1 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 complaint resolution process should only discuss the complaint with persons legitimately and directly involved in the complaint or in its resolution.

## 12. External assistance and advice

- 12.1 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, or where strict time limits apply, lodging a formal complaint under this Procedure does not preclude you from seeking assistance from other external bodies such as the Victorian Equal Opportunity and Human Rights Commission, Australian Human Rights Commission, the Fair Work Commission, Victorian Civil and Administrative Tribunal or WorkSafe.
- 12.2 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.

## DEFINITIONS

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| Associates                     | For the purpose of this Procedure is any person not defined as staff, including contractors, agents, adjuncts, university visitors, and affiliates or individuals who are engaged by the university to perform services/work for and on behalf of the University or who are engaged in activities reasonably connected with the University.  |
| Bullying                       | <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 <a href="#">Behaviours in the Workplace Procedure</a> for further information on bullying.</p> |
| Complainant                    | The person that makes the complaint/allegation.  |
| Conflict                       | 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.   |
| Dean or Executive Director     | 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.   |
| Direct and informal resolution | 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.  |
| Discrimination                 | <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 <a href="#">Behaviours in the Workplace Procedure</a> for further information on discrimination.</p>  |
| Disciplinary action            | Action taken in accordance with the <a href="#">Disciplinary Action and Dismissal Procedure</a> and relevant <a href="#">Enterprise Agreement</a> (for staff) or the <a href="#">Monash University (Council) Regulations</a> (for students) or the terms of any contract as applicable.  |
| Formal resolution              | The resolution process that is initiated following an individual's submission of a report via <a href="#">S.A.R.A.H.</a>   |
| Harassment                     | 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  |

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|   | 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. Refer to the <a href="#">Behaviours in the Workplace Procedure</a> for further information on harassment.  |
| Investigator                              | The person allocated by the University to conduct an investigation and report findings into a formal resolution process.  |
| Local resolution                          | 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.  |
| Malicious                                 | Is deliberately harmful, spiteful and intending or intended to do harm.   |
| Protected attribute                       | <p>It is against the law to discriminate because of a protected attribute, which includes:</p> <ul style="list-style-type: none"> <li>- age;</li> <li>- carer and parental status;</li> <li>- disability;</li> <li>- employment activity;</li> <li>- <a href="#">gender identity</a> (which includes gender expression);</li> <li>- industrial activity;</li> <li>- Intersex status;</li> <li>- <a href="#">lawful sexual activity and sexual orientation</a>;</li> <li>- marital status;</li> <li>- physical features;</li> <li>- political belief or activity;</li> <li>- pregnancy and breastfeeding;</li> <li>- race;</li> <li>- religious belief or activity;</li> <li>- sex;</li> <li>- expunged homosexual conviction;</li> <li>- personal association with someone who has, or is assumed to have, one of these personal characteristics; or</li> <li>- Any other protected attribute under applicable anti-discrimination or equal opportunity laws, as amended from time to time.</li> </ul> <p>Refer to the <a href="#">Behaviours in the Workplace Procedure</a> 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 <a href="#">Behaviours in the Workplace Procedure</a> for further information on sexual harassment.</p>  |
| Staff                                     | Persons employed by the University, 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"> <li>• Students = the staff member responsible for administering the relevant study unit or activity;</li> <li>• Staff = the person nominated by the University as the staff member's performance supervisor; or</li> </ul> <p>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 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"> <li>• bullying;</li> </ul>  |

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|               | <ul style="list-style-type: none"> <li>• discrimination;</li> <li>• harassment (including racial and sexual harassment);</li> <li>• vilification; and</li> <li>• victimisation.</li> </ul> <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, or threatened to be 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.   |

## GOVERNANCE

|                                  |  |
|----------------------------------|--|
| Parent policy                    | <a href="#">Integrity and respect</a>  |
| Supporting schedules             | N/A  |
| Associated procedures            | <ul style="list-style-type: none"> <li>• <a href="#">Fraud and Corruption: Control</a></li> <li>• <a href="#">Fraud and Corruption: Reporting</a></li> <li>• <a href="#">Behaviours in the Workplace Procedure</a></li> </ul>  |
| Legislation mandating compliance | <p><b>Federal Legislation</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Age Discrimination Act (2004)</a></li> <li>• <a href="#">Australian Human Rights Commission Act 1986</a></li> <li>• <a href="#">Disability Discrimination Act 1992</a></li> <li>• <a href="#">Racial Discrimination Act 1975</a></li> <li>• <a href="#">Sex Discrimination Act 1984</a></li> <li>• <a href="#">Workplace Gender Equality Act 2012</a></li> </ul> <p><b>State Legislation</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Charter of Human Rights and Responsibilities Act (2006)</a></li> <li>• <a href="#">Equal Opportunity Act 2010</a></li> <li>• <a href="#">Racial and Religious Tolerance Act 2001</a></li> </ul> |
| Category                         | Operational  |
| Approval                         | Chief Operating Officer – 1 December 2020  |
| Endorsement                      | Chief Human Resources Officer - 11 October 2020  |
| Procedure owner                  | Director, Workplace Relations  |
| Date effective                   | 2 December 2020  |
| Review date                      | 2 December 2023  |
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| Content enquiries                | <a href="#">ask.monash</a> or phone Monash HR on (03) 990 20400  |