

Guidelines for Staff Handling Discrimination and Harassment Grievances

Charles Darwin University is committed to providing a safe and productive environment that is free from discrimination and harassment for all members of the University community. The University has a responsibility under Territory and Federal legislation to ensure staff and students are not subjected to behaviour that may constitute unlawful discrimination, harassment or victimisation. This responsibility extends to taking prompt and effective action to deal with any complaints of discrimination and harassment.

The following Guidelines are designed to help you deal with the discrimination and harassment grievances you may encounter as a supervisor and/or manager at CDU. They provide detailed information on your role and responsibilities under the University's Staff Grievance Process, Student Complaints Against Staff Process and the University Code of Ethics. As a supervisor or manager at CDU it is your ethical obligation to ensure that you follow the Guidelines whenever you handle a discrimination or harassment grievance.

What are my responsibilities as a supervisor/manager?

Under anti-discrimination law throughout Australia, a tertiary institution is legally liable for any incident of unlawful discrimination and harassment occurring/arising in the workplace or in relation to its legislative impact in respect of the provision of education, unless the organisation can show it has taken 'all reasonable steps' to prevent discrimination or harassment from occurring. 'All reasonable steps' include doing as much as possible to prevent discrimination and harassment from happening in the first place. It also extends to having a fair and effective process in place for dealing with any such concerns, the conduct of which is followed appropriately by those employed in positions of exercising responsibility within the organisation.

Therefore, under the University's Staff Grievance Process and the Student Complaints against staff process you have a responsibility to:

- do your best to prevent harassment and discrimination from happening in your area; and
- deal with concerns and grievances promptly, fairly, sensitively and according to CDU processes.

Meeting these responsibilities will help you reduce the likelihood of serious complaints and will also protect you and the University from liability, should any cases be subject to external review. You are not, however, expected to deal with all these matters entirely on your own. Support and Equity Services is there to provide you with advice, support and assistance.

What is a discrimination or harassment grievance?

If a student or staff member feel that they have been treated less favourably or harassed because of their race, sex, age, disability, sexuality, marital status, pregnancy or potential pregnancy, breastfeeding, status as a parent or carer, religious or political affiliation, or for any other reason outlined in the University's Policy on Equal Opportunity they may lodge a grievance under the CDU staff and student grievance and complaints processes.

The grievance may be against a single staff member at CDU or a group of people. It may concern an administrative process, or practice. In certain circumstances, grievances may also involve individuals who are not students or staff of CDU but who are involved in a University related activity.

What is Discrimination and Harassment?

There are three categories of discrimination defined in legislation. **Direct discrimination** is where someone is treated less favourably because of their sex, age, race, disability, pregnancy or any of the other grounds mentioned above. Refusing to give someone a job because of their race is an example of direct discrimination.

Discrimination, however, can also be **indirect**. This is where everyone is treated the same, but in a way that is, or is likely to, disadvantage students or staff of one sex, race, etc., and that is not reasonable. For example, a decision to insist that all students complete an examination in the same set time, may indirectly discriminate against a student with a vision impairment.

Harassment is behaviour that:

- the other person does not want and does not return,
- offends, humiliates or intimidates them and that, in the circumstances, a reasonable person should have expected would offend, humiliate or intimidate them, and
- targets them for less favourable treatment because of their (or their friends' or relatives') sex, race, disability, sexual preferences, age, pregnancy, etc.

Be aware, that harassment may occur even when there was no intention of causing distress.

Sexual harassment can include such behaviour as physical contact (patting, touching), 'leering', repeatedly asking for dates (especially after prior refusal) and asking for sexual favours. However, it may also include sexually related behaviour that makes the work or study environment uncomfortable such as displays of sexual or sexist materials, emails or pictures, sexist or sexual jokes or comments that stereotype people on the basis of their sex.

Other common types of harassment are **racial** or **homosexual** harassment, that, typically, includes behaviour such as:

- verbal racist or homophobic comments;
- derogatory name-calling;
- offensive labelling of all people who belong to the same group;
- offensive graffiti or written comments;
- distributing offensive material;
- Making threats against particular people or groups because of their race, colour or sexuality.

In addition to harassment and discrimination being unlawful, it is also against the law for anyone to victimise anyone else because they complained about harassment or supported someone else who complained.

It is, however, important to remember, that none of the above apply to reciprocal behaviour, or banter of a private nature that is not considered offensive by the parties involved.

How should these grievances be handled?

There are broad general principles you should follow:

- handle grievances **confidentially**, which means only talking about the grievance with those legitimately and directly involved in the matter or in its resolution. Make sure any notes or materials are securely stored. You should also make others aware of the need for **confidentiality** and act to prevent gossip;
- remain **impartial and avoid prejudging those involved**. **Ensure** all parties have every chance to put their story. For example, you should avoid making promises about the possible outcome before having fully considered all circumstances entailed. Remember:
- deal with all grievances **sensitively and speedily**;

- take all necessary steps to ensure that **people are not victimised** because they raised their concerns or because they were otherwise involved in the conduct of a process relating to a grievance, issue, or matter.

What do I do if I become aware of a grievance?

There are two basic stages relating to the conduct of the University's student/staff Grievance and Complaints Processes, your role at the various stages being determined by the position responsibilities you hold in the University.

Step 1 - INFORMAL

Resolution is achieved through an informal process in consultation your immediate line-manager and, if required, with guidance from Support and Equity Services staff;

Step 2 - FORMAL

Formal investigation and determination is conducted through auspices of the Vice-Chancellor.

It is hoped that most grievances can be resolved at the *informal stage*, through advice, discussion and conciliation. Step 2 will only be undertaken if the informal stage cannot resolve the situation satisfactorily for all concerned, or if the severity of the issue(s) arising from the grievance necessitates more formal resolution procedures.

However, all grievances are different and the particular circumstances of each case will influence how it is managed. These Guidelines recommend a series of basic steps to help ensure the management of all grievances is fair and consistent. For more detailed advice on a particular matter, you can call Support and Equity Services and ask to speak to the Director for a confidential discussion.

In fact, you are strongly recommended to inform Support and Equity Services staff about any discrimination or harassment grievances you are dealing with. Such reference will help ensure you are supported in acting appropriately and legally and to ensure your actions enable the University to fulfil its legislative reporting requirements.

Step 1 - If you receive a complaint in your capacity as the immediate line manager, you should:

1. As soon as practicable and normally within a *maximum of five working days* of receiving the grievance, organise an interview with the complainant to hear the details of the complaint. The complainant should be told that a support person can accompany them to this meeting.

NB – would it be useful to elaborate on the role of the 'support person'?

At this interview you should:

- listen carefully to the complainant, helping them clarify all details of the grievance allegation so that you are clear about the nature of the issues raised and what range of option(s) they perceive as possibly acceptable in resolving the problem. Remember, in all circumstances, *avoid prejudging their account of events*;
- explain how the discrimination and harassment grievance processes work, what ethical principles are involved (especially the requirement for ensuring procedural fairness and protection from victimisation), what outcomes and options may be available to them. Also inform them of any external processes that are available (see section Some Common Questions below).

2. Where the complainant seeks your advice, only, then you may need to do no more at this stage other than clarify if they require any additional support or information, such as how to access student counselling, The Employee Assistance Service (EAS) [or referral for Trade Union support.

3. If the complainant cannot settle the matter directly with the other person and subsequently indicate they want action to be taken to resolve the problem, then you would need to determine how you might best reconcile the matter.

This would involve you:

- firstly, determining whether it is appropriate for you to deal with this grievance. Consider whether you are too closely involved to be perceived as being objective, impartial and unbiased? Do you have the necessary organisational authority to handle these issues? Where you are able to assess for example, that the allegation is of such a serious nature that it involves, say, disciplinary matters, then you should determine that alternative resolution should be pursued independently of yourself and refer the complainant accordingly to the Director, Support and Equity services.

4. If you think it is an appropriate matter for you to deal with and, having notified Support and Equity Services accordingly, you would then:

- inform the other person about the grievance and ascertain their side of the story. They too should be informed that they can bring a support person to any interviews. You may need some additional information, but normally you should not be interviewing other staff or students at this stage. You should, again, consult with Support and Equity Services staff upon gaining more comprehensive details of the issue raised and definitely before considering interviewing any witnesses. Such actions limit the possibility of compromising evidence arising in situations that could compromise future investigations;
- review your ideas about the best possible way of resolving the matter, taking into account the complainant's needs and the response you have now received from the other staff member;
- seek to conciliate the complaint if appropriate. That is, try to help all parties to achieve an acceptable agreement about how the grievance can be resolved through speaking to them either separately or, if appropriate, in joint meetings. (If you are not the respondent's supervisor, you may need to refer the matter to that person for conciliation, with the agreement of the complainant).

5. However, it may not be possible to resolve the grievance through conciliation. For example, there may be two very different versions of the events with no clearly evident way of making a determination. Alternatively, the respondent or complainant might refuse to agree to conciliation:

- in situations where agreement cannot be reached and there does not appear to be enough evidence presented for you to determine what occurred, your ability to take action may be limited. You would need to inform both parties accordingly and explain the implications of what might have transpired should the complaint have been proven – namely, outlining the possible consequences of the alleged behaviour. You may also need to take action to stop further conflict and/or decide to recommend training or other administrative actions in respect of the staff involved. Both parties should be reminded about the disciplinary consequences of any victimisation.
- alternatively, after conferring with all parties involved, you may decide that it is more appropriate to refer the matter elsewhere, where, for example, in circumstances requiring further investigation because of its serious nature, or the incident being a potential disciplinary matter. This may involve referring the matter to the senior manager in the area, or recommending that the complainant seeks recourse by lodging a formal complaint to the Vice-Chancellor.

6. You should undertake Step 1 above as speedily as possible with the aim of *seeking completion within a fortnight*. You should also ensure that both the complainant and respondent are kept informed about progress in the conduct of their complaint. Remember, that *confidentiality is vital throughout this process* and that people are legally protected from victimisation.

7. You should document all actions taken in attempting to resolve the grievance. These records must be stored confidentially, accompanied by any other supporting material supplied to you in connection with managing the grievance process. Upon completion of the process you should record the outcomes and forward a summary report to the Director of Support and Equity Services to ensure that the University fulfils its statutory reporting requirements.

8. At the end of the process you will need to **monitor the outcome** to ensure no further incidents of any similar offending behaviour recur, as well as mitigating any negative after-effects being experienced by the parties involved arising from their role in the grievance process.

Step 2 - If the grievance requires formal investigation and determination?

A formal investigation process is established once the complaint is referred in writing to the Vice-Chancellor. The Vice-Chancellor, after considering the matter, may refer the complaint back to the relevant manager for further action or resolution, or may initiate a formal grievance Hearing.

Your role at this stage can vary. You may be involved in the initial referral of the complaint or complainant. You may also be asked to provide information or advice as part of the investigation. If the grievance is referred to an external agency, you may be required to provide information to that external investigation. NB – are there any consent issues/processes to be noted?

In addition, you should be alert to the possibility for the need to take action to ensure a harmonious and non-discriminatory work or study environment is maintained during and after any investigation and also to prevent any victimisation from occurring.

What sorts of outcomes can complainants expect?

Some of the ways discrimination and harassment complaints may be resolved include:

- the complainant gains a better understanding of the situation by hearing the respondent's view of the incident resulting from their concerns being addressed and thereby may no longer feel aggrieved;
- the complainant receives an apology;
- the issue or behaviour being complained about is modified so that it ceases to cause the complainant any distress;
- the complainant and respondent reach a mutually acceptable resolution through conciliation;
- it is determined that there is no substance to the complaint.

It is important to remember that many complaints are resolved in these ways. Most will not involve any written records, other than your confidential notes sent to Support and Equity Services at the end of the process.

However, in situations where a conciliated agreement cannot be reached, or there is insufficient evidence to determine what occurred or, to otherwise justify pursuing the matter further, action may be limited to undertaking counselling of both parties with the aim of avoiding potential similar future conflict or inappropriate behaviour from occurring.

If it is found that a breach of a CDU policy or process has occurred, then individuals may be dealt with in accordance with clauses 26 and 27 of the Charles Darwin University EBA.

Disciplinary action may also be taken against:

- a complainant if they have been found to have lied or fabricated the grievance;
- any person who victimises another person because of their involvement in a grievance;
- any person involved in the resolution of the grievance who unnecessarily discloses confidential information.

Some common questions.

• What can I do if the complainant does not want me to take any action?

You will need to assess the severity of the grievance. If it is serious enough to involve proven disciplinary action, especially if it involves behaviour that may harm or threaten other staff or students, you should immediately inform the complainant that your duty of care obligations require you to confidentially discuss the matter with your manager. If the incident does not warrant that intervention, you should discuss with the complainant their apparent reluctance to take action and how best they might be able to resolve the matter themselves. You can also encourage them to give you permission to act (eg, by assuring them that they will not be victimised for raising the issue). NB – unclear what this means and how it relates to above para??

However, in most matters you should advise complainants that you cannot act directly to resolve a grievance, if they elect to remain anonymous. This is because procedural fairness requires that respondents be given details of the allegations made against them and have every opportunity to present their views of any allegations raised.

• What should I do if I suspect that there is a grievance that needs to be addressed but I have not been directly approached for help?

If you directly witness behaviour or overhear events that appear discriminatory or involve harassment, you should act immediately, ensuring all persons involved have the opportunity to explain their actions before making a final decision on the matter.

However, if you become aware of possible issues through 'gossip,' innuendo, or suspicion, you should confidentially speak to those you feel may be affected to see if there are issues you need to pursue, or if the parties involved wish to exercise their right to have the grievance investigated.

• What if I believe a complaint is frivolous, malicious or vexatious?

If, after due consideration, you have grounds for believing that a complaint is frivolous, malicious or vexatious, then you may choose not to take any action. The complainant should be informed of your decision and the reasons for it and told that they have a right to take the matter further or to contact an external organisation (see below).

You will need to justify why you have taken this view of the complaint. Complainants should also be made aware at the beginning of the grievance process, that if a complaint is found to be malicious or vexatious then appropriate disciplinary procedures will, perforce, need to be considered.

• What are the time limits for raising a discrimination or harassment grievance?

Complainants should be encouraged to raise their concerns as early as possible following the incident/s. It is expected that a complaint will normally be raised within 12 months of the date on which the last incident is alleged to have happened. However, where 'special circumstances' prevail, CDU Governance procedures do provide for such matters to be considered outside this time-frame. Complainants also need to be advised that certain external agencies have time limitations on being able to act upon complaints.

• What happens if a grievance is directed to an outside agency?

You should ensure you advise complainants that they have the right to have their discrimination and harassment grievance issues considered by an external agency, such as the NT Anti Discrimination Commission, or the Human Rights and Equal Opportunity Commission (HREOC), at any time.

In such circumstances, complainants should be strongly urged to notify Support and Equity Services staff to see if any additional assistance may be required. CDU internal compliance and resolution processes may cease where a complaint has been referred to an external agency - you should check with Support and Equity Services at the time.

Where can I obtain further information and advice?

You can contact Support and Equity Services staff for advice or information at any stage of the process. You **should always firstly discuss the circumstances surrounding the case with S & ES staff before pursuing any action in a discrimination or harassment grievance matter**. A Support and Equity Services staff member can attend interviews with complainants and respondents if requested and agreed by all parties involved.

Footnotes

1. Copies of the Staff Grievance Process and the Student Complaints against Staff Process are available at <http://www.cdu.edu.au/ses/staff-complaints.html> & <http://www.cdu.edu.au/ses/student-complaints.html>
2. The Code of Conduct can be found at http://www.cdu.edu.au/governance/documents/CodeofEthics_000.pdf
3. To gain access to the programs 'Bullying and Harassment' and 'Are We Being Fair' contact Support and Equity Services.
4. The Equity Policy Statement is available at <http://www.cdu.edu.au/pmd/eeo.html>

Please contact People Management Development for information regarding training programs relating to Equal Opportunity and Bullying in the Workplace.