Workplace Bullying, Harassment, and Discrimination Policy

Section 1 - Executive Summary

(1) The University of Newcastle (University) aims to foster a workplace that is inclusive, respectful, and safe. The University recognises that workplace bullying, unlawful harassment, and unlawful discrimination, including misuse of the power imbalances between workers, undermine the principles of fairness, trust and respect detailed in the University's Staff Code of Conduct. This Policy upholds these principles and ensures the wellbeing of workers.

(2) The University does not tolerate, and is committed to preventing, all forms of workplace bullying, unlawful harassment, and unlawful discrimination.

Section 2 - Purpose

(3) The purpose of this Policy is to support and educate workers by setting out:

a. the types of behaviours that constitute 'unlawful discrimination', 'unlawful harassment' (including sexual harassment and sex-based harassment), 'workplace bullying' and other forms of unlawful or inappropriate behaviour (eg victimisation), and their meaning;
b. the obligations of all workers related to these types of behaviours and in building a workplace that is inclusive, respectful and safe; and
c. the University's approach to preventing incidents of unlawful discrimination, unlawful harassment, workplace bullying or other unlawful or inappropriate behaviour such as but not limited to victimisation.

Section 3 - Scope

(4) This Policy applies to all workers:

a. in the workplace (whether during or outside normal working hours);
b. while undertaking work activities, including interactions with students and other members of the University community and public;
c. at work-related events, including conferences and social functions (including but not limited to while undertaking work related trips such as attending conferences, undertaking research or field work); and
d. outside of work hours, if that interaction involves other members of the University community, including but not limited to where interaction is through email, text messaging, or social media.

Section 4 - Principles

(5) All workers are expected to behave professionally and courteously towards all members of the University community and not engage in any form of workplace bullying, unlawful harassment, unlawful discrimination or any

other form of unlawful or inappropriate behaviour.

(6) Workers who fail to comply with this Policy may be subject to disciplinary action including termination of employment or engagement. Determinations about disciplinary action are:

a. where the respondent is a staff member covered by the enterprise agreements - under the misconduct / serious misconduct provisions of the enterprise agreement; or
b. where the respondent is a worker who is not a staff member covered by an enterprise agreement – in accordance with any relevant contract and/or policy (and otherwise as determined by the University in the absence of any contract and/or policy process).

(7) A worker may be liable at law for their actions if they engage in workplace bullying, unlawful discrimination, unlawful harassment, or other unlawful or inappropriate behaviour. A worker may also be liable if they cause, request, instruct, induce, encourage, aid, authorise, assist or permit someone to unlawfully discriminate against, harass, or victimise another person.

Section 5 - Definitions

(8) In the context of this document the following definitions apply:

Defined Term	Meaning
Supervisor	Staff members with direct supervisory responsibility for other staff within the workplace (a supervisor may also be a member of senior staff, with duties as an officer as defined in the Work Health and Safety Act 2011, or any replacing legislation).
Worker	Any worker of the University including staff, volunteers, contractors (including agency staff), Council members and external committee members.
Workplace	A place where work is carried out for the University and includes any place where a worker goes, or is likely to be, while at work.

Section 6 - Workplace Bullying

(9) Workplace bullying is repeated unreasonable behaviour directed towards a person or group of people that creates a risk to their health and safety. Bullying in the workplace, while undertaking work activities or while attending work events is unacceptable and will not be tolerated by the University.

(10) Repeated behaviour is behaviour that is of a persistent nature and can involve a range of behaviours over time. A single incident of unreasonable behaviour is not workplace bullying (but may otherwise be considered inappropriate by the University).

(11) Unreasonable behaviour means behaviour that a reasonable person, having regard to the circumstances, would consider unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening. Unreasonable behaviour may also involve unlawful discrimination or harassment (including sexual harassment) and may also be a breach of work health and safety laws.

What are examples of bullying?

(12) Bullying behaviours that are repeated, unreasonable and create a risk to health and safety, whether intention or unintentional, include but are not limited to:

a. physical or verbal abuse towards a person or group of people;

b. yelling, screaming, or offensive language;
c. spreading rumour or innuendo about someone;
d. excluding or isolating a worker;
e. intimidation;
f. assigning meaningless tasks unrelated to the job;
g. giving workers tasks that are impossible to complete;
h. unjustified criticism or complaints;
i. deliberately excluding someone from workplace activities;
j. psychological harassment;
k. undermining work performance by deliberately withholding information that is vital for effective work performance;
l. setting tasks that are unreasonably outside or unrelated to a worker's role;
m. deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular worker; and
n. setting timelines that are very difficult to achieve.

(13) Other types of behaviour may also constitute workplace bullying. Workplace bullying can be carried out in a variety of ways, including through verbal or physical abuse, through email, text messages, internet chat rooms, instant messaging or other social media channels. In some cases, workplace bullying can continue outside of the workplace.

What is not workplace bullying?

(14) Reasonable management action carried out lawfully and in a reasonable manner (taking the particular circumstances into account) is not workplace bullying.

(15) For example, it is reasonable for the University's managers and supervisors to allocate work and to give feedback on a worker's performance even if it creates some discomfort for the worker.

(16) The following examples could be considered as reasonable management action:

a. setting realistic and achievable performance goals, standards and deadlines;
b. informing a worker about unsatisfactory work performance and implementing a performance management process;
c. fair and appropriate rostering and allocation of working hours;
d. transferring a worker to another area or role for operational reasons;
e. informing a worker about unreasonable behaviour in an objective and confidential way;
f. implementing organisational changes or restructuring; and
g. taking disciplinary action, including suspension or terminating employment where appropriate or justified in the circumstances.

(17) In addition, differences of opinion and disagreements are not workplace bullying. People can have differences or disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. Some people may also take offence at action taken by supervisors, but that does not mean that the action itself was unreasonable. Whether management action is reasonable is determined by considering the actual management action rather than a worker's perception of it.

Section 7 - Unlawful Discrimination

(18) Unlawful discrimination means treating, or proposing to treat, a person or group of people less favourably than another, or causing them disadvantage, because of a personal characteristic protected by law.

(19) There are State and Federal laws that prohibit unlawful discrimination. The Fair Work Act 2009 (Cth) also prohibits discrimination in certain circumstances.

(20) These laws make discrimination unlawful on a variety of grounds (unlawful grounds) including based on a person's:

a. sex or sex characteristics;
b. pregnancy or potential pregnancy, or if they breastfeed (or express milk);
c. marital or relationship status;
d. sexual orientation, gender identity (including transgender status) or intersex status;
e. race, colour, descent, nationality, national origin, national extraction, ethnic origin, ethno-religious origin or social origin;
f. religious belief or activity;
g. political belief or activity;
h. employment status (including employment on a part-time or casual basis);
i. industrial activity (including being a member of a union);
j. parent, family, carer responsibilities;
k. physical or mental disability or impairment;
l. age; or
m. association with a person who has, or is believed to have, any of these attributes.

(21) Discrimination can also be unlawful if it occurs because of a characteristic generally associated with one of the unlawful grounds.

How can unlawful discrimination occur?

(22) Unlawful discrimination can occur in the recruitment process, during the course of employment, or upon termination of employment. Unlawful discrimination can also occur in the provision of goods and services. Workers must not discriminate against other members of the University community including students or any other person they come into contact with in connection with their work with the University.

(23) Unlawful discrimination can be direct or indirect.

(24) Direct discrimination occurs where someone is treated less favourably because of their sex, age, race, or another unlawful ground. For example, if a staff member misses out on a promotion because they are considered too old for the job, or not hiring a woman for a job because she is pregnant, is likely to become pregnant, or the job has otherwise been done by men in the past.

(25) Indirect discrimination occurs where a condition, requirement, or practice (such as a rule or policy) is imposed or proposed, which may appear to treat everyone equally, but which has the effect of disadvantaging people because of their sex, age, race, or another unlawful ground. Indirect discrimination is unlawful where the condition, requirement, or practice is not reasonable in all the circumstances. For example, if the University had height and weight requirements for all employees that had the effect of excluding a large proportion of women and which were not reasonable.

(26) There are exceptions from anti-discrimination law which may apply in some situations including because the individual is unable to meet the inherent requirements of a particular job.

Section 8 - Unlawful Harassment

(27) Unlawful harassment is a form of unlawful discrimination.

(28) In general terms, unlawful harassment is any form of behaviour that:

a. is unwelcome (not wanted) or uninvited (not asked for);
b. is reasonably likely to humiliate, offend or intimidate the person exposed to the conduct; and
c. is based on one or more unlawful grounds (see clause 20).

(29) Unlawful harassment could be a one-off incident or a pattern of behaviour.

(30) Harassment will not be unlawful under anti-discrimination laws if it is not based on one of the unlawful grounds set out in clause 20, but it may still be workplace bullying and a breach of work health and safety laws. Workers must not harass other members of the University community or any other person they come into contact with in connection with their work.

Examples of Unlawful Harassment

(31) Unlawful harassment can include but is not limited to:

a. sexual and sex-based harassment (see below);
b. verbal abuse or comments that degrade or stereotype people because of their race, sexual orientation, disability, or another unlawful ground;
c. jokes based on race, sexual orientation, pregnancy, disability, or another unlawful ground;
d. mimicking someone's accent, or the habits of someone with a disability;
e. offensive gestures based on race, sexual orientation, pregnancy, disability, or another unlawful ground;
f. ignoring or isolating a person or group because of their race, sexual orientation, pregnancy, disability, or another unlawful ground; or
g. displaying or sharing racist, pornographic, or other offensive material (including electronically such as by email or on social media).

Unlawful Sexual Harassment

(32) Unlawful sexual harassment occurs where a person:

a. makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or
b. engages in other unwelcome conduct of a sexual nature in relation to the other person,
c. where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

(33) A person does not need to intend to engage in sexual harassment for it to be unlawful. Intention (whether good or bad) or poor judgment from the offender is irrelevant. It does not matter whether the person harassed objected to the behaviour at the time.

(34) Sexual harassment could be a one-off incident or a pattern of behaviour. It can happen in person, over the phone or online (including on social media).

(35) Unlawful sexual harassment may include, but is not limited to:

a. unwanted sexual advances or requests for sexual favours;
b. inappropriate or offensive comments, gestures, or body language with a sexual undertone;
c. displaying, sharing, or distributing sexually explicit or suggestive material, such as images, videos or messages;
d. unwanted or unwarranted physical contact;
e. unnecessary light touch gestures, e.g. an arm around someone's waist or a kiss hello;
f. offensive or inappropriate comments about someone's appearance, body, or clothing;
g. engaging in verbal or non-verbal behaviours that have a sexual connotation and cause discomfort or humiliation to the recipient;
h. repeatedly pursuing or expressing romantic or sexual interest in an individual after being informed that the interest is unwelcome;
i. sending email or text messages which contain sexual content or tone;
j. sexual jokes or innuendo;
k. using a position of power or authority to pressure or coerce someone into engaging in sexual activities; and
l. sexual assault.

(36) It is important to understand that some of these forms of sexual harassment are also criminal behaviour and may be treated as a criminal offence. These include:

a. sexual assault;
b. physically molesting a person;
c. indecent exposure; and
d. obscene phone calls or emails, social media posts or letters.

(37) Sexual harassment is unlawful under the Sex Discrimination Act 1984 (Cth), the Fair Work Act 2009 (Cth) and the Anti-Discrimination Act 1977 (NSW).

(38) Workers must not sexually harass other members of the University community or any other person they come into contact with in connection with their work.

Sex-Based Harassment

(39) Sex-based harassment is conduct that is demeaning because of a person's sex, but not necessarily sexual in nature.

(40) Sex-based harassment can include, but is not limited to:

a. asking intrusive personal questions based on a person's sex, including about their body or anatomy;
b. making sexist, misogynistic, or misandrist remarks about a specific person;
c. making inappropriate comments and jokes to a person based on their sex; and
d. requesting a person engage in degrading conduct based on their sex.

(41) Sex-based harassment is unacceptable at the University and is also unlawful under the Sex Discrimination Act 1984 (Cth).

What is not unlawful harassment?

(42) Mutual attraction between people is not sexual harassment. Conduct which is welcome or consensual is not unlawful, and friendships (sexual or otherwise) which develop between people who meet at work are a private concern

provided they do not adversely impact on the workplace or create a conflict of interest.

(43) Personal relationships must be disclosed if they give rise to actual, perceived or potential conflicts of interest. This may include, but is not limited to:

a. where one person has significant influence over the other's opportunities, remuneration, and progress;
b. relationships between a worker and a student who they assess;
c. where there is significant power imbalance between parties (i.e. seniority differences);
d. where the relationship is potentially disruptive to team dynamics or has potential reputational implications for the University.

(44) Workers must make full and early disclosure of these relationships in accordance with the Disclosure of Interest Policy and its associated procedure.

(45) Conduct which is welcome may not be appropriate in the workplace. If a worker is unsure whether conduct is appropriate, they should speak to their supervisor or Human Resource Services.

Section 9 - Hostile Workplace Environment

(46) Workers must not subject other people to a workplace environment that is hostile on the ground of their sex or a characteristic that is generally related to their sex or that is imputed to their sex. This relates not only to physical workplaces, but also to online workplaces.

(47) A person engages in conduct that creates a hostile workplace environment if:

a. the conduct occurs in a workplace where they or the other person or both work;
b. the other person is in the workplace at the same time as or after the conduct occurs; and
c. a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the conduct could result in the workplace environment being offensive, intimidating or humiliating to a person of the other person's sex.

(48) This type of conduct is not directed towards a particular person but results in a generally hostile environment.

(49) Conduct that may create a hostile workplace can include but is not limited to, displaying obscene or pornographic materials, sexual banter, innuendo, offensive jokes and casual sexism.

(50) Conduct creating a hostile environment on the ground of sex is unacceptable at the University and is unlawful under the Sex Discrimination Act 1984 (Cth).

Section 10 - Vilification

(51) Workers are entitled to exercise their academic freedom and freedom of speech – please see Code for the Protection of Freedom of Speech and Academic Freedom.

(52) At law, vilification occurs when an individual publicly incites hatred, contempt or severe ridicule of another person or group on the grounds of their race, sexual preference, transgender status, religion, or HIV/AIDS status. The University further recognises that an individual may publicly incite hatred, contempt or ridicule for other equity cohorts, such as neurodivergence, disability, age, chronic illness, or low socio-economic status.

(53) The University is committed to upholding principles of respect, tolerance and inclusivity, and strictly prohibits

workers from engaging in vilification or any other behaviour outlined in clause 52.

Section 11 - Victimisation

(54) Workers must not victimise a person because they made or propose to make a complaint of unlawful discrimination, unlawful harassment, or workplace bullying; or because they have provided information in relation to a complaint. Victimisation means subjecting a person to some detriment. For example, ostracising a person because that person has made a complaint that they are being harassed in the workplace.

Section 12 - Prevention and Reporting

(55) The University has a legal obligation under the Sex Discrimination Act 1984 (Cth) to eliminate sex discrimination, sexual harassment, sex-based harassment, conduct creating a hostile workplace environment on the ground of sex, and related acts of victimisation, as far as possible. This is known as a 'positive duty'.

(56) The University has taken a risk-based approach to help prevent inequality and work health and safety risks posed by the inappropriate workplace behaviour covered by this Policy. The University also recognises that these behaviours can have underlying drivers, such as gender inequality. The University is committed to ensuring equality of opportunity for people of all genders when at work.

(57) Supervisors and leaders (as supported by Human Resource Services), in accordance with the University's Risk Management Framework and the Health and Safety Management System Framework will:

a. regularly identify and assess the risk of inappropriate workplace behaviour covered by this Policy occurring, as well as the impact that it might have on the health and safety of those affected;
b. implement effective control measures to address identified risks; and
c. regularly review control measures to ensure they remain effective and appropriate and make adjustments where required.

(58) Individuals may report inappropriate conduct by workers covered by this Policy to the University using the following pathways:

a. for reports of sexual harassment and/or sexual assault – the Prevention and Response to Sexual Assault and Sexual Harassment Policy and its associated procedures;
b. for reports by workers of inappropriate conduct (not including reports of sexual harassment and/or sexual assault) - the Resolving Workplace Concerns and Grievances Procedure;
c. for complaints of inappropriate conduct by workers from students and other members of the University community – the Complaint Management Policy and its associated procedures; and
d. if the conduct amounts or may amount to a workplace hazard, incident or near miss – to the Work Health and Safety team (see the Hazards, Incidents and Injuries webpage for further information).

Section 13 - Support and Further Information

(59) Information regarding assistance available to workers who require counselling, advice and support (either internally or externally) can be found at the University's Wellbeing webpage.

(60) Workers may wish to seek assistance from an external body or authority who can provide information about options available to them. In some cases, they may be able to provide a free, confidential and potentially legally enforceable dispute resolution process. Some of these external bodies which specialise in independent resolution of

discrimination, harassment or bullying complaints include:

a. The Australian Human Rights Commission;
b. SafeWork NSW;
c. Anti-Discrimination NSW;
d. The Fair Work Ombudsman; and
e. The Fair Work Commission.

(61) The University recognises that it may be obliged to report various matters to external authorities such as SafeWork NSW, and/or the NSW Police Force or the Australian Federal Police.

Status and Details

Status	Current
Effective Date	8th April 2024
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Responsible Executive	Martin Sainsbury Chief People and Culture Officer martin.sainsbury@newcastle.edu.au
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Glossary Terms and Definitions

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Council member" - A person who is a member of the University Council as described in Section 8B of the University of Newcastle Act, 1989.

"Risk" - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

"Student" - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

"Disciplinary action" - When used in relation to staff of the University, this is as defined in the applicable and current Enterprise Bargaining Agreement, or the staff member's employment contract. When used in relation to students of the University, this refers to the range of penalties that may be applied under the Student Conduct Rule.

"Research" - As defined in the Australian Code for the Responsible Conduct of Research, or any replacing Code or document.

"Senior staff" - Deputy Vice-Chancellor, Pro Vice-Chancellor, Global Innovation Chair, Global Innovation Professorial Fellow, Head of School, Director or equivalent.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.