

***GUIDELINES FOR DEALING WITH
COMPLAINTS OF
SEXUAL HARASSMENT,
HARASSMENT, DISCRIMINATION,
RACIAL, AND/OR
RELIGIOUS VILIFICATION***

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1. General Information

1.1 Background

La Trobe University recognises and values the diversity of cultures, beliefs, practices, customs, physical and intellectual abilities and life experiences of its community. The University is committed to providing an environment that is safe, inclusive and free from sexual harassment, harassment, discrimination, racial and/or religious vilification. Staff and students are responsible for ensuring their own behaviour contributes to a work and learning environment free from such behaviour.

The University's policies and guidelines support the commitment to value and respect the diversity of the university community. These policies and guidelines are concomitant with University regulations, policies, codes of conduct, best practice, and Commonwealth and State legislation. They have been developed in accordance with the principles inherent in the Victorian *Charter for Human Rights and Responsibilities Act (2006)*.

The University has adopted the *Guidelines for dealing with complaints of sexual harassment, harassment, discrimination, racial and/or religious vilification* (the 'Guidelines') in order to give staff and students the opportunity to resolve issues within the institution cooperatively.

It must be noted that each complaint will be treated on a case by case basis.

It is important to note that what may be acceptable socially or in our private lives can be unacceptable in a public environment.

All people involved with these Guidelines will be treated fairly, sensitively, and consistently. Every attempt will be made to resolve a complaint expeditiously. Complaints about incidents that occurred more than 12 months ago will normally be declined.

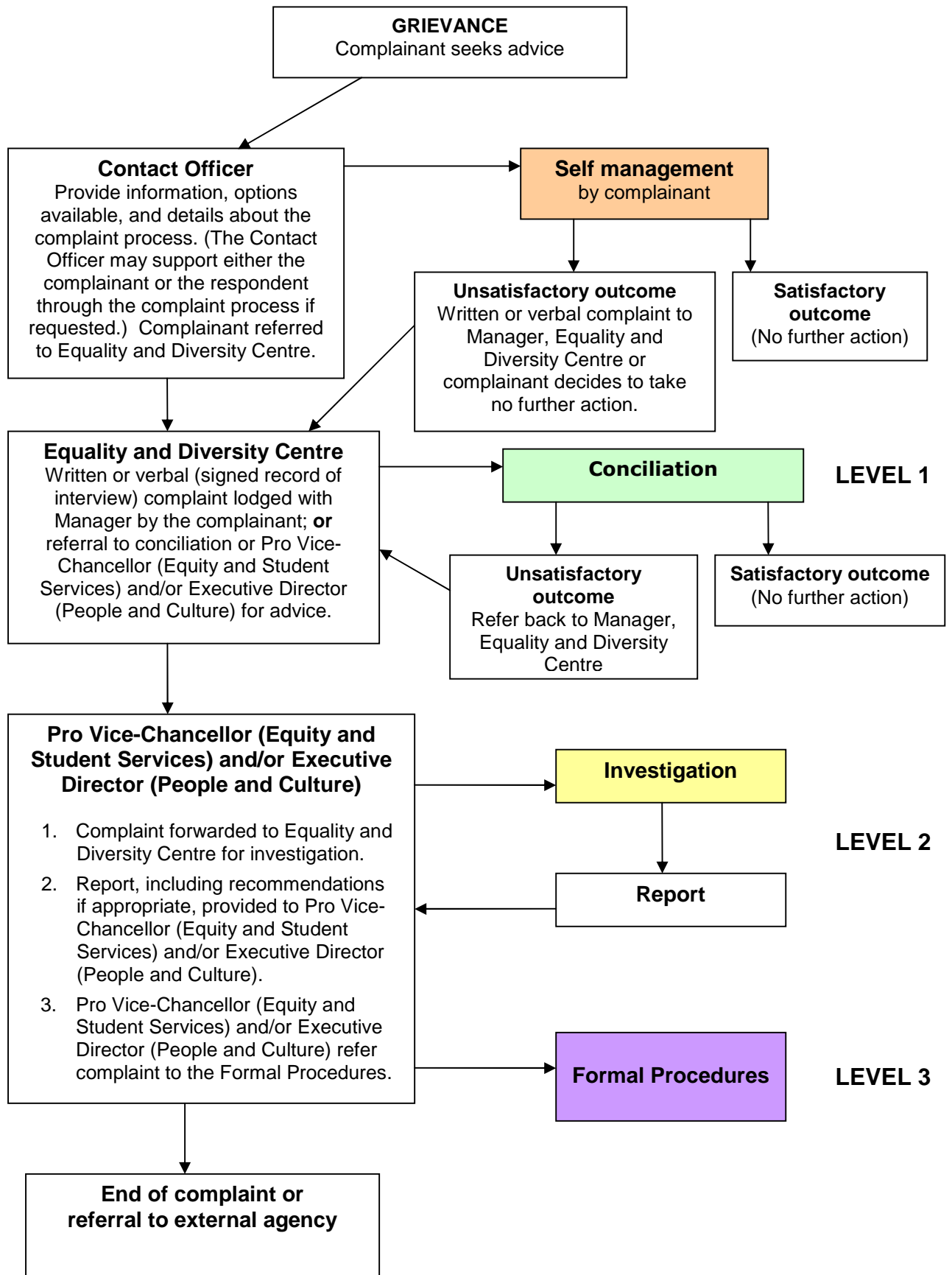
Further information about these Guidelines is available from the Equity Officer on each regional campus or the Equality and Diversity Centre, ground floor, Peribolos East, Bundoora campus: Telephone 9479 2900, Email: equality@latrobe.edu.au; website www.latrobe.edu.au/equality.

1.2 Operation of these Guidelines

- 1.2.1 The Manager, Equality and Diversity Centre, shall be responsible for the operation of the Guidelines, under the direction of the Pro Vice-Chancellor (Equity and Student Services), as the Vice-Chancellor's nominee, who shall have access to all relevant meetings and records.
- 1.2.2 The Manager, Equality and Diversity Centre shall ensure the safe keeping of relevant records.
- 1.2.3 The Manager, Equality and Diversity Centre shall consult with the Conciliators and Contact Officers and relevant senior officers as appropriate.
- 1.2.4 The Manager, Equality and Diversity Centre shall report from time to time to the Pro Vice-Chancellor (Equity and Student Services) on the operation of the Guidelines and the need for any change.

Figure 1 provides a flow chart of how these Guidelines will operate.

Figure 1: Flow Chart Complaint Procedures



1.3 Application of Guidelines

These Guidelines cover staff and students engaged in University activities, extending to official University activities outside of normal business hours, including locations beyond the University campus. The activities must be related to University business and may include field trips, conferences, sporting events, and social functions.

Other persons to whom these Guidelines shall apply are:

- Official visitors to the University;
- General public using University facilities including the libraries, bars, sporting facilities and grounds;
- Contractors and other workers employed by the University;
- Shopkeepers and their staff using University facilities;
- University accommodation staff and students.

Students undertaking placement at an external agency are governed by the policies and guidelines of the agency in which they are placed. However, the University maintains its duty of care for students whilst on placement. If an issue of sexual harassment, harassment, discrimination, or racial or religious vilification occurs, the matter should be taken to the senior manager, People and Culture or equal opportunity officer of the organisation where placed. The Head of School, student's supervisor and/or the Equality and Diversity Centre should be informed in this instance to ensure that the student is supported by the University and the situation is monitored and dealt with appropriately and promptly.

1.4 Administrative guidelines and record management

For information regarding the recording and filing of complaints please refer to Appendix 2.

1.5 Legislation

The University is subject to various Commonwealth (Cth) and State (Victorian) legislation including the following anti-discrimination legislation:

Charter of Human Rights and Responsibilities Act 2006 (Vic)
Equal Opportunity Act 1995 (Vic)
Equal Opportunity Amendment (Family Responsibilities) Act 2008
Racial and Religious Tolerance Act 2001 (Vic)
Disability Discrimination Act 1992 (Cth)
Disability Standards for Education (2005)
Sex Discrimination Act 1984 (Cth)
Racial Discrimination Act 1975(Cth)
Human Rights and Equal Opportunity Commission Act 1986 (Cth)
Age Discrimination Act 2004 (Cth)
Equal Opportunity for Women in the Workplace Act 1999 (Cth)

It should be noted that members of the University are also governed by other external legislation such as legislation regulating privacy, occupational health and safety, workplace relations and freedom of association. Complaints relating to sexual harassment, harassment, discrimination, racial and/or religious vilification may require the need to consider such legislation.

1.6 Whistleblowers protection

The *Whistleblowers Protection Act 2001* provides a procedure for dealing with allegations

of improper conduct by the University, its staff or a member of the University Council, and for the protection of individuals who make disclosures. A disclosure of improper conduct may be made to the University Ombudsman, the University's Protected Disclosure Officer and Co-ordinator, who will deal with the matter under the University's Detailed Procedures under the *Act*. These procedures can be located at <http://www.latrobe.edu.au/legalservices/other.html>

1.7 Staff to staff bullying/harassment

These Guidelines do not relate to workplace bullying/workplace harassment. Such issues are dealt with under the Victorian *Occupational Health and Safety Act (2004)*. Worksafe Victoria defines bullying as:

... repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.¹

Staff wishing to make a complaint relating to workplace bullying/workplace harassment should be referred to the Occupational Health and Safety Unit who will provide advice and/or assistance in resolving the complaint. The University's policy on workplace bullying is located at: <http://www.latrobe.edu.au/hr/ohs/ohs-manual.htm>

However, there may be instances where workplace bullying/workplace harassment may be an equal opportunity issue if the behaviour is linked to a protected personal characteristic as detailed in para 2.2. In these circumstances, the issue may be dealt with using these Guidelines.

1.8 Student to student bullying/harassment

Student to student bullying or harassment is defined by the Victorian Equal Opportunity and Human Rights Commission as:

...unreasonable and inappropriate behaviour that is intimidating, threatening and/or humiliating. It is behaviour that is repeated over time or occurs as part of a pattern of behaviour.²

Refer to "Definitions" section under 2.4 for further information about what constitutes bullying/harassment.

2. Definitions

2.1 Discrimination

The Victorian *Equal Opportunity Act 1995* prohibits discrimination (whether direct or indirect) on the basis of a number of protected personal characteristics (or 'attributes'). Discrimination can be direct or indirect and both types of discrimination are unlawful.

Direct discrimination means treating someone less favourably than someone without that attribute or someone with a different attribute in the same or similar circumstances. The attributes are set out in para 2.2. Direct discrimination includes subjecting someone to detriment, on the basis of one of the attributes whether that attribute is assumed, imputed or an actual personal attribute or on the basis of personal association with another person who has one of the protected attributes.

Example: A supervisor refuses to support a student's application to study for a PhD because she is pregnant. This is direct discrimination on the basis of pregnancy as

¹ Guidance note on the prevention of bullying and violence at work. (February 2003)

² Victorian Equal Opportunity and Human Rights Commission (2007)

www.humanrightscommission.vic.gov.au/Safe%20Schools/Teachers/Student%20Wellbeing/...

pregnancy is a protected attribute under the *Equal Opportunity Act 1995*.

Example: A member on an interview panel does not want to consider an applicant because they are an active member of the union. This is direct discrimination on the basis of political belief or activity.

It is important to note that in determining whether a person directly discriminates it is irrelevant whether or not that person is aware of the discrimination or considers the treatment to be less favourable. It is also irrelevant whether or not the attribute is the only reason for the treatment, as long as it is the substantial reason.³

Indirect discrimination occurs if a person imposes or proposes to impose an unreasonable requirement, condition or practice that someone with a protected attribute does not or cannot comply with and a higher proportion of people without that attribute or with a different attribute can comply with.⁴ The requirement, condition or policy may appear to be fair or neutral but on closer examination is not. Indirect discrimination can occur on the basis of assumed, imputed or actual personal characteristics, or on the basis of personal association with another person who has one of the following personal characteristics.⁵

Example: Discrimination on the ground of a presumed or imputed HIV/AIDS status is unlawful, a person who is a member of one of the perceived "high risk" groups, such as a gay man, can rely on this provision if discrimination occurs as a result of an assumption that he is HIV positive or has an AIDS related condition.⁶

Example: A new public building was constructed without lift access to the first floor, despite the strong likelihood of use by students/staff with disabilities.

It is important to note that in determining whether a person indirectly discriminates it is irrelevant whether or not that person is aware of the discrimination.⁷

A person's motive is also irrelevant in both direct and indirect discrimination.⁸

2.2 Protected personal attributes

<ul style="list-style-type: none">▪ Age▪ Breastfeeding▪ Gender identity▪ Impairment▪ Industrial activity▪ Employment activity▪ Lawful sexual activity▪ Marital status▪ Parental status or status as a carer▪ Physical features	<ul style="list-style-type: none">▪ Political belief or activity▪ Pregnancy▪ Race▪ Religious belief or activity▪ Sex▪ Sexual orientation▪ Personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes
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³ Section 8 *Equal Opportunity Act 1995*

⁴ Section 9 (1) *Equal Opportunity Act 1995*

⁵ Section 7 *Equal Opportunity Act 1995*

⁶ Scrutiny of Acts and Regulations Committee (Parliament of Victoria) (2003). *Discrimination in the Law: Inquiry under Section 207 of the Equal Opportunity Act 1995*: p. 6

⁷ Section 9 (3) *Equal Opportunity Act 1995*

⁸ Section 10, *Equal Opportunity Act 1995*

It is unlawful to treat anyone less favourably, or subject someone to a detriment, on the basis of the above personal characteristics in the following areas of public life:

<ul style="list-style-type: none">▪ Employment▪ Provision of goods and services▪ Accommodation▪ Education	<ul style="list-style-type: none">▪ Clubs and club members▪ Sport▪ Local government▪ Disposal of land
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2.3 Detriment or less favourable treatment

The term “detriment” includes, but is not limited to, humiliation, denigration, harassment, and less favourable treatment in the same or similar circumstances. Whether particular conduct, behaviour or treatment amounts to “detriment” will depend on the individual circumstances of the complaint. For example, “detriment” may include the denial of an opportunity, terminating someone’s employment, or offering a person less favourable terms and conditions. The term ‘less favourable’ necessarily involves a comparison.

Example: A policy that states only full-time workers will be promoted might disadvantage women, who are more likely to work part-time because of family responsibilities. If the requirement to work full-time to be promoted was not reasonable it would be indirect sex discrimination.

In determining whether or not a requirement, condition or practice is reasonable, all the relevant circumstances need to be considered including:

- the consequences of failing to comply with the requirement, condition or practice;
- the cost of alternative requirements, conditions or practices;
- the financial circumstances of the person imposing, or proposing to impose, the requirement, condition or practice.⁹

Example: The consequences of failing to comply with the above policy could be that women would never be promoted within an organisation. If there was little or no cost to the organisation for changing the policy to enable part-time workers to access promotional opportunities and the organisation was well resourced to make such a policy change, it would be hard to argue that the existing policy was reasonable.

2.4 Student bullying/harassment

Bullying and harassment can consist of offensive, humiliating, intimidating or threatening behaviour directed at an individual or group that creates a risk to health and safety.

Examples of student to student bullying/harassment may include:

- repeated verbal abuse;
- spreading malicious, unfounded rumours;
- threatening, instilling fear, persecution;
- continual exclusion from group-based student activities, study-related social activities and networks;
- oral and written statements that are derogatory or intimidating, whether made

⁹ S 9 (2) *The Equal Opportunity Act 1995*

directly to or through a third party;

- public humiliation;
- threatening or abusive telephone calls, written communications, messages on electronic mail or computer networks.

There is no specific legislation on student-to-student bullying. However, the Victorian *Equal Opportunity Act 1995* can apply in some circumstances. If the bullying/harassment occurs because of a personal attribute protected by law (refer para 2.2) and it occurs during employment, education, accommodation or the provision of goods and services, the Victorian *Equal Opportunity Act 1995* may apply.

If the bullying/harassment is not perpetrated because of a protected personal characteristic, the University's regulations in relation to student misconduct may apply.

The expected standards of behaviour of students at La Trobe University are covered by the Student Code of Conduct which can be located at <http://www.latrobe.edu.au/policies/>.

2.5 Authorising and assisting

"Authorising or assisting" includes requesting, instructing, inducing, encouraging another person to discriminate against, sexually harass or victimise someone.¹⁰ This is also known as "accessory" liability. Accordingly, a person must not ask, tell, induce, instruct or encourage any person to discriminate against, sexually harass or victimise another person.

Example: If everyone at work knows someone is sexually harassing a co-worker, including the manager, and the manager does nothing about it, the manager has effectively sent a message to staff that sexual harassment in the workplace will be tolerated. In fact, the manager may be liable for the conduct in this instance as 'knowing inaction' may amount to 'authorising and assisting'.

Example: An employment agency referred a young woman to employment at a doctor's office, despite previous complaints of sexual harassment against the doctor from earlier clients of the agency. The young woman was then sexually harassed by the doctor.

The Federal Court of Australia found that the agency had permitted the sexual harassment to take place. Justice Moore found that the caseworker who referred Ms Elliot to the doctor's employment did not have to actually know of the past complaints of sexual harassment, as the collective knowledge of the agency officers was sufficient.¹¹

If, as a result of a person doing any of the things specified above, a complaint may be made against the person who is doing the harassing as well as the supervisor or manager.

2.6 Sexual harassment

Sexual harassment is defined as any behaviour of a sexual nature that is **unwelcome** and occurs in circumstances where a reasonable person would anticipate that the person who was harassed would be **offended, humiliated or intimidated**. Sexual harassment can take various forms and could include any of the following:

- unwelcome touching, hugging or kissing;
- suggestive comments or jokes;

¹⁰ Division 2, Sections 98 & 99, *Equal Opportunity Act 1995*

¹¹ *Elliott v Nanda & the Commonwealth (2001) 111 FCR 240* cited in Human Rights and Equal Opportunity Commission (2004). *Sexual harassment in the workplace: A code of practice for employers*: p. 21

- unwanted invitations to go out on dates or requests for sex;
- sexually explicit emails or SMS messages;
- use of University computer systems for the retention and distribution of sexually explicit material;
- display of sexually explicit posters, screen savers or pictures (thus creating a hostile work environment);
- accessing sexually explicit internet sites;
- intrusive questions or comments about a person's private life, body or sex/gender.

Other points to note include:

- sexual harassment is **not** flirtation or actions based on mutual consent;
- hostile work environments (the 'sexually permeated' workplace) can constitute a form of sexual harassment, regardless of whether material is directed at a particular individual or not;
- sexual harassment may take the form of a one-off incident or repeated behaviours;
- some actions are criminal conduct and are not appropriately dealt with under these Guidelines.

The Equal Opportunity Act 1995 (the *Act*) makes specific provision for the prohibition of sexual harassment in educational institutions, in the provision of goods and services and of accommodation.¹²

Specifically, the *Act* prohibits sexual harassment by employees of students (including a person seeking admission), by students of other students, employees or members of the administration and by members of the administration of students or people seeking admission.¹³

The *Equal Opportunity Act 1995* also prohibits harassment in common workplaces.¹⁴ A common workplace is a place that is a workplace for both people in a complaint.¹⁵ 'Workplace' means any place where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession. It need not be a person's principal place of business or employment and the parties do not have to be employed by the same employer.¹⁶

2.7 Criminal behaviour

Some types of sexual harassment and other behaviours may be criminal offences and so may be referred to the Police. These types of behaviour include:

- physical molestation or assault;
- indecent exposure;
- sexual assault;
- stalking;
- obscene communications (telephone calls, letters, etc.);
- serious racial or religious vilification;
- victimisation

¹² Sections 91, 92 & 93 *Equal Opportunity Act 1995*

¹³ S 91 *Equal Opportunity Act 1995*

¹⁴ S 87, *Equal Opportunity Act 1995*

¹⁵ S 87(1) *Equal Opportunity Act 1995*

¹⁶ S 87(2) *Equal Opportunity Act 1995*

Although the circumstances may be of a criminal nature, it does not preclude the University from also dealing with the criminal behaviour or its impact under these Guidelines. When such conduct relates to criminal behaviour, the University may follow these Guidelines as well as other relevant University regulations and policies.

2.8 Racial and/or religious vilification

The Victorian *Racial and Religious Tolerance Act 2001* makes it unlawful to vilify another person or class of persons on the grounds of race or religion. The *Act* prohibits conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, another person or class of persons. Examples of conduct include racist email communication, wearing of racist badges or insignia and making racist speeches at a public rally.

The *Act* generally excludes private conduct except where it occurs in circumstances in which the conduct could reasonably be expected to be heard or observed by a third party. Section 11 of the *Racial and Religious Tolerance Act 2001* states that a person **does not** contravene the *Act* if the conduct was engaged in reasonably and in good faith:

- (a) in the performance, exhibition or distribution of an artistic work;
- (b) in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in for any genuine academic, artistic, religious or scientific purpose, or any purpose that is in the public interest ;
- (c) in making or publishing a fair and accurate report of any event or matter of public interest.

Example: A charismatic religious group has started providing social activities on campus. A group of students are opposed to religiously-backed or related campus activities and start posting false slogans around campus stating that the group is a covert paedophile ring. The group's leaders are offended and start receiving anonymous hate mail, and some students stop attending social activities held.

2.9 Victimisation

It is unlawful to victimise (treating less favourably) someone because they have exercised their rights under workplace anti-discrimination policies or the law because they have:

- made an inquiry about their rights under workplace policies, equal opportunity or occupational health and safety laws;
- made a complaint of discrimination, harassment or sexual harassment;
- been a witness to, or participated in, an investigation of a complaint.¹⁷

Example: An employee being ostracised by other employees because of providing information to a tribunal about inappropriate material being circulated in the workplace.

Example: An employee being denied the opportunity of a promotion after lodging a sexual harassment complaint against his/her supervisor(s).

Example: Jenny and Bill are students who are part of a team. Bill continually makes unwelcome comments of a sexual nature to Jenny and ignores Jenny's request to stop. Jenny seeks advice and makes a complaint about his behaviour to the University. As a

¹⁷ Equal Opportunity Commission Victoria: Contact Officers Resources Manual 2007

result of making the complaint, Bill vows to get “revenge” on Jenny. Bill tells other students in the team that Jenny is a troublemaker and as a consequence the students exclude Jenny from the team.

Victimisation is a very serious matter and will not be tolerated by the University. If a person reports that they believe they are being victimised, seek their permission to discuss the matter with People and Culture Division (staff) or the Equality and Diversity Centre (students) so that appropriate action can be taken to resolve the matter.

2.10 Complaint

“Complaint” means a complaint that is lodged with the University in the form of a letter, Complaint Pro-forma Form (Appendix 4), email or verbally of:

- i) direct discrimination;
- ii) indirect discrimination;
- iii) sexual harassment;
- iv) racial or religious vilification;
- v) victimisation;
- vi) authorising and assisting any of the above behaviours;
- vii) breach of freedom of association (ie, people have the right to freely associate with others and to form and join trade unions); and/or
- viii) bullying/harassment

The written complaint must be marked “Private and Confidential”. If a complaint is received verbally, the complainant will be asked to sign the record of interview.

2.11 Complainant

A complainant is the person who lodges a complaint.

2.12 Respondent

The respondent is the person against whom a complaint has been lodged.

2.13 Natural justice

The principle of natural justice will be followed in these Guidelines. The principle of natural justice concerns procedural fairness. In practice, procedural fairness means that the parties to a complaint will each have a chance to put their views forward and to be heard. They will also have a right to respond to any allegations made against them. Following procedural fairness will increase the likelihood of reaching a fair outcome. Maintaining procedural fairness protects the rights of all individuals and enhances confidence in the process. Staff charged with the responsibility of dealing with complaints under these Guidelines will do so in a sensitive, respectful and impartial manner.

2.14 Complaint declined

A complaint that is deemed to be frivolous, vexatious, lacking in substance, or misconceived will be declined. A complaint will also normally be declined if the incident occurred more than 12 months ago.

A vexatious complaint means having insufficient grounds for action and seeking only to

annoy the other party.¹⁸ Any person who is found to have made a vexatious or malicious complaint will not be afforded protection by this policy and Guidelines and may be subject to the University's disciplinary procedures under the University Enterprise Bargaining Agreement or University Statutes.

2.15 Defamation

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

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

It is not defamatory to make a complaint to a person who has a legitimate interest in knowing about the incident (ie, to a Contact Officer, Conciliator or Investigator) in order to seek redress under these Guidelines.

Where the duties of persons such as Contact Officers, Conciliators and Investigators, involve receiving information and documenting it for reporting to appropriate people, they are, under normal circumstances, protected from liability for defamation by the defence of "qualified privilege".

2.16 Timeliness

It is expected that complaints will be finalised in a timely manner to minimise the distress to both parties associated with incidents dealt with under these Guidelines. These Guidelines are focussed on providing a speedy resolution of complaints wherever possible with complaints being finalised within 21 days of receipt of complaint. However, there will be circumstances where the complaint may take a longer period to resolve.

2.17 Review of these guidelines

These Guidelines will be reviewed annually to ensure they are up-to-date with legislative amendments and to take account of suggestions for improvements.

¹⁸ Hughes, J. M., Mitchell, P.A., and Ramson, W.S., Ed. (1995). *The Australian Concise Oxford Dictionary* London, Oxford University Press.

3. Scope of these Guidelines

3.1 Options for self-management of an incident/s

Any staff or student of the University who believes that she/he is experiencing some form of sexual harassment, harassment or discrimination has the right to seek to resolve this matter in any of the following ways:

- self-management by informing the other party by herself/himself and requesting that the behaviour cease;
- discuss the matter with the manager/supervisor or senior member of the relevant area;
- contact the Police and/or Manager (Security) if the behaviour is of a criminal nature or if there are safety concerns;
- consult a Contact Officer;
- consult with relevant staff of the Equality and Diversity Centre;
- consult the Pro Vice-Chancellor (Equity and Student Services) or the Executive Director (People and Culture) where the matter is of a very serious nature as a formal process may need to be invoked.

3.2 Self-management

A simple and effective way to self-manage inappropriate behaviour is to address the behaviour when it occurs by advising the other party that you find their behaviour offensive, humiliating or intimidating. Thus, staff and students are encouraged to request the offending party to cease the unwelcome behaviour that they find offensive, humiliating or intimidating. Experience has shown that sexually harassing or discriminatory behaviour or vilification does not stop if it is ignored. Self-management of complaints can quickly determine 'accidental' from deliberate sexual harassment or discrimination. A self-management approach is most likely to be effective where the behaviour is caused through misunderstanding or insensitivity. Should a staff member or student wish to self manage such incidences, the following steps should be considered:

- stay calm and polite;
- focus on the behaviour, not the individual;
- describe the impact of the behaviour on your feelings;
- include a clear, simple request that the behaviour cease.

By staying calm and polite, the person is more likely to communicate more effectively. The person should also avoid making the other person feel that they are being personally attacked.

Example: "Please don't speak to me that way. You may not mean any harm by it, but when you speak to me that way I feel humiliated and upset. This is a serious request. Please do not speak to me that way again. Can we agree on that?"

Example: "I know you're being friendly, but touching me like that makes me uncomfortable. Please don't touch me again. OK?"¹⁹

There are instances where self-management of a complaint is inappropriate. These instances may include:

¹⁹ Equal Opportunity Commission Victoria: Contact Officers Resources Manual 2007

- the safety of the complainant is at risk;
- the complainant has already tried to resolve the matter without success;
- the behaviour is more about group behaviour rather than about an individual.

However, in cases where a staff member or student feels uncomfortable requesting the behaviour to cease, they should consult a Contact Officer or the Equality and Diversity Centre for advice and/or assistance.

3.3 Processes for dealing with complaints

The internal Guidelines are designed to resolve complaints of sexual harassment, harassment, discrimination, racial and/or religious vilification in an impartial and fair manner through a process of conciliation (with a Conciliator) or through investigation with the possibility of conciliation. It is expected that complaints will be finalised in a timely manner wherever possible with complaints being resolved within 21 days of receipt of complaint. However, there will be circumstances where the complaint may take a longer period to resolve but a speedy resolution will be a priority.

There are three levels that may be utilised for resolving a complaint under these Guidelines.

Level 1: Conciliation

Complaints will be referred to conciliation in circumstances where the matter is serious but it is believed that an expeditious outcome will be achieved and there is potential for resolving the matter between the parties. This level of action focuses on resolving the perceived problem rather than proving something actually happened. Participation in the conciliation process at this level is voluntary and any documentation is retained in the Equality and Diversity Centre and not placed on a student or staff file. Although a complaint is received it is important to note that this is an informal process.

Level 2: Investigation/Conciliation

Complaints may be referred to the Manager, Equality and Diversity Centre (or her/his nominee) by the Pro Vice-Chancellor (Equity and Student Services) or the Executive Director (People and Culture) for investigation. The investigation may involve interviewing both parties and may also involve interviewing witnesses or other individuals relevant to the case. A written report to the Pro Vice-Chancellor (Equity and Student Services) and/or Executive Director (People and Culture) will be provided.

Complaints that may be referred to the Equality and Diversity Centre for investigation include situations where a complaint has been made directly to the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture) but the complaint is deemed more appropriate to be dealt with under these Guidelines.

Where possible, conciliation of the complaint may also be undertaken as the aim of these Guidelines is to resolve complaints with the minimum delay.

The employment of an external investigator may be considered in certain situations where deemed appropriate after consultation with the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture).

Level 3: Formal Procedures

In cases where serious breaches of the anti-discrimination legislation may have occurred, or where the matter is unable to be conciliated, the matter will be referred to the Pro Vice-Chancellor (Equity and Student Services) and/or Executive Director (People and Culture) who will determine if formal procedures are to be instigated in accordance with University statutes, regulations and policies.

A complainant may request that the matter be dealt with under the formal process. However, the Pro Vice-Chancellor (Equity and Student Services) and/or Executive Director (People and Culture) reserve the right to advise that the complaint does not warrant formal procedures.

4. Roles and responsibilities of Contact Officer, Conciliator and Investigator

4.1 Role of Contact Officer

Contact Officers are a first point of contact for anyone within the University who has an inquiry or wishes to lodge a complaint. The names of persons who are trained Contact Officers can be found on the Equality and Diversity Centre's website (www.latrobe.edu.au/equality). Inquiries or simply sounding out a concern are encouraged. Indeed it is possible that a complaint at this early stage may be averted by early consultation with a Contact Officer and/or subsequent referral to support services. The Contact Officer will assist the person to clarify the situation and to determine a way forward. In some cases discussion about options and strategies may assist the person in dealing with the situation.

It is the role of the Contact Officer to inform the inquirer of the University's Sexual Harassment, Harassment, Discrimination, Racial and/or Religious Vilification Policy and the nature of its conciliation guidelines and any other avenues available for dealing with complaints. The University's Sexual Harassment, Harassment, Discrimination, Racial and/or Religious Vilification Policy and Guidelines and other relevant information should be given to the inquirer.

- It is not the role of the Contact Officer to determine if the complaint/issue constitutes sexual harassment, harassment, discrimination, or racial or religious vilification. The Contact Officer should provide the inquirer with the relevant information to enable the inquirer to pursue the matter.
- The Contact Officer may assist a person to complete a complaint form but it is the responsibility of the complainant to deliver the written complaint to the Manager, Equality and Diversity Centre, for appropriate action.
- The Contact Officer role does not include advocacy. The Contact Officer may support the complainant or the respondent through the process if requested. The Contact Officer can attend a meeting between the person and their manager to provide clarification about policy and procedure but will not speak on the person's behalf.
- With matters of a **criminal nature** such as stalking, assault, rape, sexual assault, the inquirer should be encouraged to refer the matter to the Police and the Manager, Security. The Equality and Diversity Centre, or the Head of Campus on the relevant campus should also be informed.

4.2 Role of Conciliator

A Conciliator is an impartial independent person trained and appointed by the University who works with the complainant and the respondent to reach a mutually agreed outcome. A list of trained Conciliators can be located on the Equality and Diversity Centre website (www.latrobe.edu.au/equality). The role of the Conciliator is to elicit facts and the process is based on the principles of natural justice. The process of natural justice entitles both parties to a fair hearing.

The Conciliator has no power to implement sanctions, penalise or make judgments of guilt or innocence.

A person who finds himself or herself involved in a complaint which could be interpreted as a conflict of interest, should immediately declare that interest and cease any

participation in the process. A Conciliator must refer the matter to the Manager, Equality and Diversity Centre, should a conflict of interest arise. Conciliators will not be requested to conciliate complaints involving students or staff from the areas in which he/she works.

Some examples of a mutually agreeable outcome may include an apology, clarification of a misunderstanding (if that is the case) and a commitment that the offending behaviour will cease.

The University may, at any time during these Guidelines, consult relevant external authorities or employ an external investigator/conciliator to resolve a case internally.

4.3 Role of Investigator

An Investigator is an impartial independent person trained and appointed by the University. An Investigator may be a University Conciliator who has undertaken the necessary investigator training. An Investigator will conduct an investigation of the complaint and prepare a written report on the investigation which may include making recommendations.

5. Complaint guidelines

5.1 Complaint

A verbal or written complaint must be received by the Manager, Equality and Diversity Centre before appointing a Conciliator to deal with the complaint. A Conciliator will not normally deal with a complaint made on behalf of another person.

A complainant may withdraw their complaint at any stage through the process. However, the University has a legal obligation to take reasonable steps to ensure the safety of staff and students. There may be occasions where the matters raised in the complaint require immediate attention by the University to address the offending behaviour. This may include dealing with the matter under the University's staff or student discipline procedures or other such University policies deemed appropriate in the circumstances.

5.2 Confidentiality

The University is committed to maintaining the confidentiality of any information held about a person(s).

When consulting a Contact Officer, or Conciliator, it is important that the party bringing the issue forward maintain confidentiality throughout the process. There may be occasions where other senior officers of the University may need to be consulted. This is particularly the case when serious health and safety issues of an individual(s) require the matter raised with relevant senior officers of the University for appropriate action.

However, should a Contact Officer or Conciliator need to seek advice from another member of the University, it will normally be undertaken with the permission of the parties involved.

Any documents relating to the complaint will be treated confidentially and stored in a secure cabinet in the Equality and Diversity Centre. Documentation will not be placed on a student or staff member's file unless the formal process is initiated.

In situations where the Equality and Diversity Centre has been requested to undertake an investigation by the Pro Vice-Chancellor (Equity and Student Services) or the

Executive Director (People and Culture), a report of the investigation will be forwarded to the person requesting the investigation.

These files will normally be accessible only to the Manager, Equality and Diversity Centre, Pro-Vice-Chancellor (Equity and Student Services), Executive Director (People and Culture), Vice-Chancellor and the University Solicitor.

5.3 Privacy

The University is committed to privacy protection and compliance with applicable privacy laws and standards. The University is bound by the provisions of the *Victorian Information Privacy Act 2000* and the *Health Records Act 2001* and any information recorded will be in accordance with such legislation.

5.4 Reporting on behalf of others

Generally the person making the complaint must do so themselves rather than another individual reporting it on behalf of a complainant.

If unacceptable behaviour is occurring in a particular area that needs addressing without identifying the person who has raised concerns, the Equality and Diversity Centre should be consulted. One way of addressing unacceptable behaviour in this situation is arranging for Equality and Diversity Centre staff to conduct an information session on anti-discrimination legislation. This avoids individuals being identified, raises awareness of the University's policy and procedures and may prevent the behaviour recurring.

5.5 Consulting a Contact Officer

Contact Officers provide a first point of contact for any person who believes she/he has experienced some form of sexual harassment, harassment, discrimination and/or racial or religious vilification or have any questions in relation to such matters. Contact Officers must act with confidentiality and impartially and not become involved in any activity that resembles managing a complaint or conciliation.

Contact Officers provide information on policy and guidelines including:

- the person's rights and responsibilities under relevant legislation;
- the person's option to confront the situation personally;
- the person's option to resolve the matter using these Procedures;
- the person's option to seek advice from the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission;

Contact Officers may refer the inquirer to other appropriate areas, including:

- encouraging the inquirer to approach the Manager (Security) or Police if the matter is regarded as a criminal offence or the safety of the inquirer is at risk;
- Manager, Equality and Diversity Centre
- the inquirer's manager/supervisor;
- University Counselling Service;
- Employee Assistance Program (in the case of staff);
- University Ombudsman;
- People and Culture and/or Occupational Health and Safety Unit (in an industrial relations or bullying matter);
- external professional organisations who may provide advice and support (eg Centre Against Sexual Assault (CASA) – refer website <http://www.casa.org.au/>)

It is important to note that the University will not become involved in a conciliation process if a crime has occurred. If a crime has occurred the Contact Officer should encourage the inquirer to report the matter to Police and/or Manager (Security). The matter should also be reported to the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture) as the formal process may need to be invoked.

6. Level 1: Conciliation

6.1 Role of Conciliator in working with complainant

6.1.1 It is necessary for the Conciliator to meet with the complainant to obtain full details of the complaint before a Conciliator can proceed with conciliation in relation to the alleged sexual harassment, harassment, discrimination, and/or racial or religious vilification.

6.1.2 The Conciliator should clarify with the complainant:

- (i) the outcome they are seeking;
- ii) whether they need support of any kind;
- iii) participation in a conciliation process is voluntary and either party have the right to refuse to participate in conciliation at this level of the Procedures.

6.1.3 The Conciliator shall inform the complainant that she/he conciliates on the understanding that:

- (i) the role is essentially that of an impartial independent person who will endeavour to resolve the matter (which may or may not need to involve a meeting between the parties) with the Conciliator acting as an impartial facilitator;
- (ii) the purpose of conciliation is to resolve the complaint and move forward to restore a harmonious study and/or work environment, and not to prove guilt or seek retribution;
- (iii) this is an impartial process and the Conciliator has no power to recommend or implement any disciplinary sanctions; and
- (iv) the desired result is that the parties to the dispute reach a mutually agreed outcome.

6.1.4 The Conciliator shall advise the complainant of the operation of the confidential filing system associated with informal complaints.

6.1.5 A complaint may be withdrawn at any stage of the resolution process. This must be done in writing.

6.1.6 The Conciliator will inform the complainant that a person such as a legal officer or union representative should not be involved at the Levels 1 and 2 stage of these Procedures since it is important to keep these matters both simple and confidential. However, each party may have a person attend to support them through the process. It is important to note however, that these support persons cannot participate in the process.

6.1.7 The Conciliator shall inform the complainant about her/his rights, as well as the

rights of the respondent. Both parties must be advised how the three Levels of action outlined in these Guidelines are conducted.

6.1.8 In order to prepare both parties for the conciliation process, the Conciliator should inform the complainant that the respondent has the right to:

- know the identity of the complainant;
- know the nature of the allegations; and
- be given the opportunity to respond to the allegations.

The Conciliator will address the complaint as follows:

- verbally communicate the substance of the complaint to the respondent;
- communicate the respondent's reply to the complainant;
- will meet with the parties separately; or
- communicate the above with both parties present with the Conciliator facilitating the meeting (subject to both parties agreeing for the Conciliation to be undertaken).

6.1.9 The Conciliator shall inform the complainant that where he/she does not wish to be named the Conciliator is unable to pursue the matter. The Conciliator should explain that the principles of natural justice are such that if the complainant does not wish to be identified to the respondent, the complaint cannot be conciliated and no further action can be taken.

6.1.10 In circumstances where the complainant does not wish any action taken about the complaint, the Conciliator is to obtain a signature on the relevant document to this effect.

6.1.11 The Conciliator will inform all parties that maintaining confidentiality to those directly involved is important. Both parties shall be warned of the risks of action for defamation and any further action that may be taken under the formal procedures if they fail to treat the matter confidentially.

6.1.12 In situations of a serious nature involving sexual harassment, harassment, discrimination and/or racial or religious vilification, (but which may not constitute a criminal offence) by an employee, student or other relevant party, a Conciliator in his/her professional opinion after meeting with the respondent, may determine that a case should not be conciliated but that the matter needs immediate attention in order to ensure the immediate safety of a party involved.

In such situations the Conciliator should refer the matter back to the Manager, Equality and Diversity Centre, and

- inform the respondent that his/her alleged behaviour should cease;
- inform the complainant of steps which may be taken; and
- document the action taken and the outcome of the matter.

The Manager, Equality and Diversity Centre shall inform the Pro Vice-Chancellor (Equity and Student Services) in relation to matters involving students or the Executive Director (People and Culture) in relation to matters involving staff, of the steps taken so far in the matter. The University will then consider the facts as presented and take appropriate action to ensure that all reasonable steps are taken to ensure the safety of the parties involved and that the offending behaviour ceases. This may include dealing with the case under the University's

staff or student discipline procedures or other such University policies deemed appropriate in the circumstances.

- 6.1.13 The Conciliator shall inform the complainant that if conciliation fails and the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture) considers that the complaint has been dealt with in accordance with proper procedures and does not require further action, they have the discretion to take no further action in the matter. The Conciliator shall notify both parties in writing of this decision.
- 6.1.14 If the respondent does not wish to participate in the conciliation process, the complainant will be advised of this and other options for dealing with the complaint (refer para 6.2.3).

6.2 Role of Conciliator working with the respondent

- 6.2.1 The Conciliator will, with the written agreement of the complainant, contact the respondent either by telephone, mail, or in person, to arrange a time to meet to discuss the matter raised in the complaint.
- 6.2.2 The following section should be explained to the respondent before revealing the identity of the complainant.

The Conciliator should immediately inform the respondent that she/he acts as a Conciliator on the understanding that:

- the Conciliator will briefly outline the details of the complaint;
- the Conciliator will explain that the objective is an agreed resolution;
- the role of the Conciliator is essentially that of an impartial independent person who will endeavour to resolve the matter (which may or may not need to involve a meeting between the parties) with the Conciliator as an impartial independent facilitator;
- the purpose of conciliation is to resolve the complaint and not to prove guilt, seek retribution or to make a finding on whether or not the alleged conduct occurred. The objective is for both parties to move forward to restore a harmonious study and/or work environment;
- the Conciliator has no power to recommend or implement any disciplinary sanctions; and
- the desired result is that there is an understanding of what has occurred, the alleged offending behaviour is not repeated and there are no reprisals or victimisation.

- 6.2.3 The Conciliator will inform the respondent of his/her rights as well as details about the relevant University policies and procedures, and the principles underlying conciliation, which include cooperation from the respondent.

If the respondent does not wish to participate in the conciliation process, the Conciliator will explain that the complainant will be contacted and advised of other options for dealing with the complaint themselves. For example, referral to the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture) or the complainant may contact the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission.

- 6.2.4 The Conciliator will provide the respondent with a copy of the University's Policy on Sexual Harassment, Harassment, Discrimination, Racial and/or Religious Vilification and any other relevant University documentation and discuss the University's policies and guidelines contained in those documents.
- 6.2.5 The Conciliator will request that the respondent sign the relevant documentation that states that the respondent has received a copy of the policy for placement on the file. This will attest that the respondent has been provided with information about the University's Policy and Guidelines for Dealing with Complaints of Sexual Harassment, Harassment, Discrimination and/or Racial or Religious Vilification.
- 6.2.6 The signed documentation shall be filed with other documentation relating to the particular case, for retention in the confidential filing system for future reference if necessary.
- 6.2.7 The Conciliator will stress the need for confidentiality and advise the respondent:
- to refrain from any attempt to communicate with the complainant about the matter in question, except through the Conciliator; and
 - that there should be no reprisals or victimisation. The Conciliator will explain that even if the respondent denies the allegations, victimisation is unacceptable behaviour.
- 6.2.8 The Conciliator will inform the respondent that it is her/his responsibility and in her/his interests to disengage from any activity which places her/him in a situation of 'power' or 'authority' over a student or staff member, until the complaint is resolved.
- 6.2.9 The Conciliator will inform the respondent that no other person such as a legal officer or union representative shall be involved at this stage as it is important to keep these matters both simple and confidential.

If the respondent wishes to call in such people, the Conciliator will advise the respondent that this may invoke formal procedures and will need to be referred onto relevant senior personnel for a decision on whether the University's formal processes should be implemented. The relevant senior personnel to be informed are as follows:

- if the respondent is a member of staff, the Executive Director (People and Culture); and
 - if the respondent is a student the Pro Vice-Chancellor (Equity and Student Services).
- 6.2.10 The Conciliator will obtain background details of the respondent's reaction to the complaint and make notes accordingly. The respondent may wish to provide a written statement, but it is not essential.
- 6.2.11 The Conciliator will inform the respondent that if conciliation fails the matter will be referred to the Manager, Equality and Diversity Centre. The Manager, Equality and Diversity Centre will consult with the Pro Vice-Chancellor (Equity and Student Services) and/or Executive Director (People and Culture) who will consider if the complaint has been dealt with in accordance with proper procedures. If it is determined that the complaint does not warrant action under the formal procedures, no further action by the University will be taken. The Conciliator shall notify both parties in writing of this decision.

6.3 Advice to both parties concerning conciliation process

- 6.3.1 Either party may request the presence or involvement of an alternative or replacement Conciliator (with the agreement of the other party).
- 6.3.2 Both the complainant and the respondent should be kept informed throughout the process.
- 6.3.3 The basic goals of the conciliation process are:
- resolution of the perceived inappropriate behaviour at the earliest stage possible, with the cooperation of all parties involved;
 - an understanding that there has been perceived inappropriate behaviour and an agreement that this alleged behaviour will not occur in future; and
 - mutual agreement on a proposal outlining acceptable behaviour.

6.4 Agreement between the parties at conciliation

- 6.4.1 The Conciliator will make a brief written summary of the matter. This should be clear and concise and reflect what all parties understand to have taken place and who was involved. It is acknowledged that agreement between the participants on one version of "what happened" may not always occur at conciliation and it is not the goal of conciliation.
- 6.4.2 There may be a written agreement made by the parties involved, including an acknowledgment that certain behaviour was inappropriate or an apology for the unintended hurt or distress that may have been caused. It is important that both parties should be prepared to restore professional working/learning relationships.
- 6.4.3 The Conciliator will again advise there should be no reprisals made against the complainant, nor retribution against the respondent, nor any actions that would lead to victimisation.
- 6.4.4 When the Conciliator is satisfied that the issue has been resolved, a letter should be sent by the Conciliator to both parties stating the resolution of the case, acknowledging their cooperation and requesting them to contact the Conciliator, or the Manager, Equality and Diversity Centre, if there are any further issues/concerns relating to the matter.
- 6.4.5 The file including confidential working notes, the complaint from the complainant, the Conciliator's confidential working notes and copy of the agreement between the parties must then be sent to the Manager, Equality and Diversity Centre marked "Confidential Working File" for filing in the confidential filing system.

Ordinarily no record will be placed on staff/student file if the matter is settled by conciliation.

6.5 Follow up

- 6.5.1 Both the complainant and the respondent shall be kept informed of negotiations throughout the process.
- 6.5.2 There shall be no appeal from an agreed conciliated outcome.
- 6.5.3 Following resolution, the Conciliator may make a further appointment with either or both parties for a progress report to ensure that the conciliated position has been followed. This follow up will occur within three months of resolution of the

matter.

7. Level 2: Investigation/Conciliation

7.1 Investigation process

- 7.1.1 The Pro Vice-Chancellor (Equity and Student Services) or the Executive Director (People and Culture) may forward a complaint to the Manager, Equality and Diversity Centre (or nominee) for investigation. In some cases it may still be appropriate to resolve these complaints through conciliation. The type of matters that will be referred for investigation include complaints that have been received by the Pro Vice-Chancellor (Equity and Student Services) and/or Executive Director (People and Culture) which fall under the jurisdiction of these Guidelines.
- 7.1.2 The purpose of the investigation is to elicit the facts. The rules relating to natural justice will be followed to ensure that both parties receive a fair hearing. It is the responsibility of the Investigator/Conciliator to withdraw from the process in the event that their neutrality is compromised.
- 7.1.3 Written details of the complaint, the respondent's response and the details of any actions taken by the complainant in attempts to resolve the issue at an earlier stage will form the basis of an investigation.
- 7.1.4 The respondent has the right to know the specific allegations as detailed in the complaint and who made them.
- 7.1.5 The respondent should be allowed up to ten (10) working days to provide a written (or oral) response to the allegation(s) if requested.
- 7.1.6 Investigation where there is disagreement as to facts may require that witnesses be interviewed. Only information that is necessary for interviewing will be disclosed during interviews.
- 7.1.7 All parties involved in the investigation will be advised to keep the matter confidential.
- 7.1.8 If conciliation is appropriate, the process outlined in Level 1 of these Guidelines shall be followed.
- 7.1.9 A written report (including any recommendations) will be prepared by the Investigator/Conciliator and provided to the Manager, Equality and Diversity Centre to forward to the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture) for action as appropriate.
- 7.1.10 The employment of an external investigator and/or conciliator may be considered in certain situations where deemed appropriate after consultation with the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture).

8. Level 3: Formal procedures

Formal consideration of complaints referred to the Pro Vice-Chancellor (Equity and Student Services) and/or Executive Director (People and Culture) may occur when:

- the matter is of a very serious nature;
- any of the parties request that the complaint be referred for a decision on whether a formal process should be implemented;

- a matter has been referred to the Equality and Diversity Centre for investigation and is unable to be resolved by conciliation;
- conciliation has failed and the University decides that it is appropriate to invoke formal procedures;
- the conciliated agreement is breached.

The process will differ depending upon whether the complaint involves a member of staff or a student.

Under the formal process, the Executive Director (People and Culture) will normally handle cases where both parties are staff members. The Pro Vice-Chancellor (Equity and Student Services) will normally handle cases where both parties are students. However, in situations where the complaint involves both staff and student, then the Executive Director (People and Culture) and the Pro Vice-Chancellor (Equity and Student Services) shall be involved.

8.1 Complaint involving a member of staff

Depending upon the nature of the complaint as outlined above:

8.1.1 The Executive Director (People and Culture) will be required to conduct an independent investigation into the allegations. This may be managed by a written and/or verbal approach.

8.1.2 The Executive Director (People and Culture) may (after consultation with the Pro Vice-Chancellor (Equity and Student Services), if the complainant is not a member of staff) choose to approach the complainant for further information, or seek a reply in relation to the respondent's information. The Executive Director (People and Culture) will then decide whether:

- the complaint lacks substance and therefore the University declines to take further action in relation to the complaint;
- the complaint should be dealt with under the processes outlined in Level 1 or Level 2 (where this has not already occurred);
- it is appropriate to deal with the complaint within the context of the relevant University discipline procedures; or
- the complaint is a criminal matter which should be referred to Police and Manager, Security.

The action to be taken will be determined on a case by case basis depending on the particular circumstances of the case.

8.1.3 If the decision is made not to refer the matter any further, the Executive Director (People and Culture) will convey this decision to the Pro Vice-Chancellor (Equity and Student Services) (in a case where a student is involved) and will meet with the complainant to inform him/her of the decision and provide a letter to this effect. The respondent will also be informed of the decision in writing.

8.1.4 If the matter involves only staff, and a decision is made not to refer the matter any further, the parties will be informed of the decision in writing by the Executive Director (People and Culture).

8.1.5 If the Executive Director (People and Culture) decides to deal with the matter under the relevant University disciplinary procedures, those disciplinary

procedures will be followed. It should be explained to the complainant that the *Enterprise Bargaining Agreement* provides for potential disciplinary action against the respondent. However, it may be that part of the result of following the award disciplinary procedures will be some obligation or restriction imposed upon the respondent in relation to the complainant.

8.2 Complaint involving a student or person other than a member of staff

The process is similar to 8.1 except that:

- the Pro Vice-Chancellor (Equity and Student Services) attends to the matter and makes a recommendation to the Vice-Chancellor, if appropriate;
- student discipline procedures are applicable in the case of students (Statute 16);
- in the case of complaints against a person other than a student or staff member, the Pro Vice-Chancellor (Equity and Student Services) will consult as necessary.

8.3 Appeal process

Following the formal resolution, it is still open to both parties to pursue the matter both internally through appeal procedures to the University Ombudsman; and externally with the Victorian Equal Opportunity and Human Rights Commission or the federal Australian Human Rights Commission. However, both parties should be advised that no appeal may be brought to the University Ombudsman or any other person in the University structure, until these internal Guidelines have been followed and internal avenues exhausted.

References

Butterworths. *Concise Australian Legal Dictionary*. Melbourne: Butterworths; 1998.

Human Rights and Equal Opportunity Commission. *Sexual Harassment in the Workplace: A Code of Practice for Employers*. Sydney: HREOC; 2004.

National Alternative Dispute Resolution Advisory Council. *ADR Terminology: A Discussion Paper*. Canberra: NADRAC; 2002.

Scrutiny of Acts and Regulations Committee. *Discrimination in the Law: Inquiry under Section 207 of the Equal Opportunity Act 1995*. Melbourne; 2003.

Equal Opportunity Commission Victoria: Contact Officers Resources Manual 2007

Websites

Victorian Equal Opportunity and Human Rights Commission:
<http://www.humanrightscommission.vic.gov.au/Home.asp>

Australian Human Rights Commission
<http://www.humanrights.gov.au/>

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APPENDIX 1

La Trobe University – Support services and referral contacts

Equality and Diversity Centre, Ground floor Peribolos East, Bundoora campus

Telephone: 9479 2900; email: equality@latrobe.edu.au

Fax 9479 1246 website: www.latrobe.edu.au/equality

Equality and Diversity Coordinator	Bendigo	Telephone: 03 5444 7410
Disability Liaison/Equality Officer	Albury/Wodonga	Telephone: 02 6024 9628
Executive Director	Mildura campus	Telephone: 03 5051 4001
Executive Director	Shepparton campus	Telephone: 03 5821 8450
Counselling Service	Bundoora	Telephone: 9479 2956
Counselling Service	Bendigo	Telephone: (03) 5444 7223
Counselling Service	Albury/Wodonga	Telephone: (03) 6024 9627
University Ombudsman	Bundoora	Telephone: 9479 1897
People and Culture	Bundoora	Telephone: 9479 1365 Website: www.latrobe.edu.au/pc
Employment Relations	Bundoora	Telephone: 9479 2410
Occupational Health and Safety	Bundoora	Telephone: 9479 2101
Employee Assistance Program (Resolutions Pty Ltd)		Telephone: 9529 6600
People and Culture	Bendigo	Telephone: 03 5444 7472
International Programs Office	Bundoora	Telephone: 9479 1727/1112
International Programs Office	Bendigo	Telephone: (03) 5444 7924
Security	Bundoora	Telephone: 9479 2012
Security - EMERGENCY	Bundoora	Telephone: 9479 2222
LTU Medical Centre	Bundoora	Telephone: 9473 8885
Medical Clinic	Bendigo	Telephone (03) 5444 7770
Chaplaincy	Bundoora	Telephone: 9479 2979
Chaplaincy	Bendigo	Telephone (03) 5444 7939
Chaplaincy	Albury/Wodonga	Telephone (02) 6024 9753
Ngarn-gi Bagora Indigenous Centre	Bundoora	Telephone: 9479 3817
Jimbeyer Boondjhill Indigenous Unit	Bendigo	Telephone: (03) 5444 7812
Student Accommodation and Financial Aid	Bundoora	Telephone: 9479 2112/2053
SRC Student Advocate and Researcher	Bundoora	Telephone: 9479 1189
Bendigo Student Association	Bendigo	Telephone (03) 5444 7474
SRC Legal Service	Bundoora	Telephone: 9479 2469
Northern Centre Against Sexual Assault (NCASA)	Heidelberg	Telephone: 9476 5770
Loddon Campaspe Centre Against Sexual Assault	Bendigo	Telephone (03) 5441 0430
Centre Against Sexual Assault 24 hour free call		Telephone 1800 806 292

1. Administrative procedures and record management

All documentation in relation to the recording of Level 1 or 2 processes should have the words "**STRICTLY CONFIDENTIAL**" recorded at the beginning. Contact Officers and Investigators or Conciliators should record all approaches and contact on the prescribed forms: i.e., inquiries at first point of contact, referral and complaints as per these Guidelines. However, it is important that these notes refer to fact only and not personal impressions of the Contact Officer or Conciliator.

1.1 Recording and filing of complaints

1.1.1 The complainant should provide the written complaint of the alleged experience of sexual harassment, harassment, discrimination, racial and/or religious vilification. The written complaint can be provided on the pro-forma complaint form provided by the Equality and Diversity Centre. On receipt of a written complaint, the Conciliator should complete the relevant internal working documents and ensure that the date is recorded.

1.1.2 The Conciliator should keep working notes in a form which can be used in later stages of the process (if required by the Pro Vice-Chancellor (Equity and Student Services) and/or Executive Director (People and Culture)) ensuring that no prejudicial or judgmental comments are recorded by the Conciliator. At all stages of the informal process, these notes are strictly confidential and should be stored separately from any other University file or record of the relevant parties.

1.1.3 It is the responsibility of the Conciliator to ensure the safe carriage of such documents to the Manager, Equality and Diversity Centre. The working file, **marked confidential**, should contain:

- a copy of the internal working notes;
- the written complaint;
- any other written information gathered by the Conciliator considering the complaint;
- where applicable, the letter written to the respondent informing them of the allegations or the file note recording the Conciliator's conversation with the respondent;
- where applicable, any written reply from the respondent or the file note recording the Conciliator's conversation with the respondent;
- a copy of the letters to the complainant and respondent in relation to the conciliated agreement;
- where applicable, a referral note to the Executive Director (People and Culture) for staff, or the Pro Vice-Chancellor (Equity and Student Services) for students, if the matter could not be conciliated and the Conciliator decides to refer the matter; and
- where applicable, a report by the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture) which outlines what actions occurred to conciliate the matter, the outcomes and an explanation as to why no further steps should be taken and why a formal hearing should not be held.

1.1.4 The Manager, Equality and Diversity Centre, will maintain a secure and confidential database of inquiries and complaints relating to anti-discrimination legislation. It is the responsibility of the Manager, Equality and Diversity Centre,

to apprise the Pro Vice-Chancellor (Equity and Student Services) and/or Executive Director (People and Culture) of any repeated incidents involving similar behaviour by the same person(s).

It is the responsibility of the Manager, Equality and Diversity Centre, to place the documents on file under the names of each party (where appropriate) in order that it will be immediately apparent if a particular person is being involved frequently in complaints.

If there have been repeated incidents involving the same person the Manager, Equality and Diversity Centre, will monitor the situation for an appropriate period of time. The Manager, Equality and Diversity Centre, will inform the Pro Vice-Chancellor (Equity and Student Services) and/or the Executive Director (People and Culture) in cases involving staff. The Vice-Chancellor may also be advised if deemed appropriate.

1.1.5 These files will normally be accessible only to the Manager, Equality and Diversity Centre, the Pro Vice-Chancellor (Equity and Student Services), the Vice-Chancellor, Executive Director (People and Culture) or University Solicitor.

1.1.6 All documents in relation to complaints will be placed in a confidential locked filing system. This represents a record keeping system maintained by the Manager, Equality and Diversity Centre. Staff who are listed in 1.1.5 are normally the only other staff who have access to these files with the following exceptions:

(i) where the case has progressed to the formal process either under student discipline or staff industrial award procedures; and

(ii) where the documents are required to be produced by the University under legal compulsion.

1.1.7 The Manager, Equality and Diversity Centre will have a file of each case conciliated under the Level 1 or Level 2 guidelines and of such cases which have been recommended to go to the Level 3 process. After the Level 3 process, the file will be returned to the Pro Vice-Chancellor (Equity and Student Services) or Executive Director (People and Culture) where appropriate, with a copy of the recommendation(s) and action(s) determined by the Level 3 process.

1.1.8 Conciliated case files under Levels 1 and 2 will be removed and destroyed in a secured manner seven (7) years after completion of conciliation. However, if referral to a conciliated case file takes place, then the seven (7) year retention will take effect from the time of referral.

Case files under formal procedures are subject to different retention periods in accordance with standards of the Public Record Office Victoria.

2. Monitoring and evaluation

The Pro Vice-Chancellor (Equity and Student Services), in consultation with the University Committee for Equality, Diversity and Wellbeing Committee, will be responsible for monitoring and evaluating the policy and guidelines annually for complaints of sexual harassment, harassment, discrimination and racial and/or vilification.

The Pro Vice-Chancellor (Equity and Student Services) or Manager, Equality and Diversity Centre will provide a statistical report (that does not identify individuals) to the Committee for Equality, Diversity and Wellbeing. The report may contain recommendations based on the analysis of statistical data collated.

The Pro Vice-Chancellor (Equity and Student Services) or the Manager, Equality and Diversity Centre will also monitor any pattern of complaints of similar behaviour, although involving different people, in order to take pro-active steps, such as publicity and education, in an endeavour to decrease the incidence of such complaints.

1. Compliance

1.1 Role of managerial and supervisory staff

Persons outlined in Section 1.3 of these Guidelines have a responsibility to comply with the legal obligations, regulations, policies, codes of conduct etc. of the University.

Staff with supervisory or managerial responsibilities have a legal obligation to take all reasonable steps to ensure that the work and learning environment is free from all forms of sexual harassment, harassment, discrimination, racial and/or religious vilification. Failure to do so may result in the University being held vicariously liable for unlawful behaviour. Further, if the manager/supervisor is aware that discrimination or harassment is occurring and does nothing to stop it, they may also be found individually liable.

Managers and supervisors are required to familiarise themselves with these Guidelines and related policies and ensure that appropriate standards of behaviour are observed in accordance with such policies, guidelines and the various codes of conduct. Managers and supervisors should be alert to the adverse health impact that sexual harassment, discrimination, harassment and racial vilification can cause to individuals and the University generally.

Sections 102 and 103 of the *Equal Opportunity Act 1995* define the concept of vicarious liability. The University is not held vicariously liable if it can prove, on the balance of probabilities, that it took reasonable precautions to prevent an employee contravening the *Act*.

To minimise the risk to the University of contravening the *Act*, managers and supervisors have a responsibility to ensure that:

- staff and students are informed of the University's policies which relate to equal opportunity issues;
- ensure staff attend the Equity Staff Development Program;
- a professional standard of conduct is maintained at all times and behaviour which contravenes University policies is not tolerated; and
- action is taken where appropriate to resolve the matter.

Some simple steps and strategies to encourage a respectful environment include:

- value human differences;
- ensuring that behaviour provides a model of conduct in line with respect for others and the principles of the policies that underpin these Guidelines;
- informing staff and students that sexual harassment, harassment, discrimination, racial and/or religious vilification will not be tolerated in the workplace and learning environment;
- displaying educational materials such as brochures and posters;
- displaying and distributing relevant policies;
- discussion of relevant policies at meetings;
- informing someone whose conduct contravenes University policy on sexual harassment, harassment, discrimination and vilification that such conduct is unacceptable.

Whenever a Head of School, Dean, Head of Budget Area, supervisor/manager are approached by someone who thinks they have been sexually harassed, harassed, discriminated against or vilified, they should contact staff in the Equality and Diversity Centre for advice.

If a Head of School, Dean, Head of Budget Area, supervisor/manager has taken informal action on a staff member's behalf, a brief diary entry noting the incident and the action taken would suffice. Where a brief diary entry is made it is important to include facts and not personal impressions. If the complaint is subsequently formalised (either internally or externally), this can be used to demonstrate that steps were taken to deal with the matter when it was first raised.