

UNIVERSITY COLLEGE

THE UNIVERSITY
OF MELBOURNE



FAIR TREATMENT POLICY

Discrimination, sexual harassment and bullying policy and procedures

University College (along with all the other residential colleges and halls of the University of Melbourne) adheres to this policy.

Adopted in principle by the Heads of Residential Colleges and Halls on 13 April 2010, after consultation with their respective governing bodies. Reviewed by Heads and adopted, with amendments, on 11 October 2011. Further reviewed by Heads and Fair Treatment coordinators and adopted, with amendments, on February 12th 2013 and 10 November 2015.

THE RESIDENTIAL COLLEGES AND HALLS OF THE UNIVERSITY OF MELBOURNE

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Preamble

In Australia, sexual harassment is unlawful. It is prohibited under the Sex Discrimination Act. The Act prohibits sexual harassment in a number of areas of public life, including employment, education, the provision of goods and services and accommodation. You can view the Act here - <https://www.comlaw.gov.au/Series/C2004A02868>.

The Residential Colleges of the University of Melbourne seek to assist their members in achieving the highest standards in their personal lives, in their studies and in the professions they will enter; standards based on genuine compassion and respect for others.

In the case of sexual assault, each of the Melbourne Colleges is committed to working with the complainant to ensure that her or his physical safety and pastoral wellbeing are properly cared for. In assisting the complainant, a College will work to ensure that the principles of natural justice are maintained for the complainant and the accused. It will work to ensure a safe and well-supported environment in which the complainant may seek redress. It will assist the complainant to engage as appropriate with the University, the Police, medical, and external counselling services.

1. Overview

1.1 General Introduction

The Residential Colleges and Halls of Residence of the University of Melbourne (“the Colleges”) are committed to the principle of equity in education, employment, community living and welfare for current and prospective students and staff of the Colleges, and will continue to develop equal opportunity and equity practices and programs compatible with their overall goals and responsibilities. The Colleges are equally committed to providing a safe environment that is free from risks to health and safety.

These commitments are consistent with the principles of justice and the pursuit of excellence, and conform to the spirit and intent of equal opportunity, anti-discrimination and occupational health and safety legislation.

The Colleges operate in a local, national and international context in which some groups do not enjoy human rights equally with others. The Colleges have specific legal obligations to create an educational and employment environment that is free from unlawful discrimination, sexual harassment and bullying.

The Colleges aim to ensure that their structures and practices are free from any unlawful discrimination (both direct and indirect). However, anti-discrimination law recognizes that treating people equally does not necessarily mean treating people exactly the same.

Accordingly, there may be circumstances (e.g. in relation to certain equity groups) where a College will adopt policies or take special measures that lawfully discriminate between groups of individuals. Special measures are temporary measures for the benefit of a particular group to enable them to enjoy their human rights equally with others. An example of a special measures program within a College is the provision of specialist services to assist all Indigenous students. In relation to special measures, the Colleges aim to develop programs, policies and resources in education and

employment which redress, where appropriate, the effects of past discriminatory practices within the community, including the Colleges' communities, and to take positive steps to overcome inequality of opportunity.

Where necessary, the Colleges must make reasonable adjustments to requirements, conditions or practices for individuals with relevant attributes so that they may enjoy equal opportunity.

This Policy specifically addresses the following:

- Discrimination and Discriminatory Harassment;
- Sexual Harassment;
- Bullying

1.2 Aims

The Colleges aim to:

- Ensure that there is no unlawful discrimination, sexual harassment, discriminatory harassment, bullying, or victimisation of students or staff;
- Inform the College communities on the general goals and philosophy of equal opportunity together with the rationale for policies and practices which are adopted;
- Provide the College communities with information about the Colleges' condemnation of unlawful discrimination, sexual harassment, discriminatory harassment, bullying and victimisation;
- Ensure that all Colleges' policies, procedures, official documentation and publications accord with equal opportunity and occupational health and safety principles and are amended as necessary to accord with these principles;
- Support and assist all College Heads, senior academic and administrative staff, tutors and student leaders to exercise their leadership and authority to ensure a supportive, flexible, safe and diverse work, living and study environment;
- Establish and maintain clear processes within the Colleges to deal with complaints concerning matters covered by this Policy;
- Recruit, train, indemnify, support and advise specialist Advisers and Conciliators;
- Provide advice and support to students and staff in relation to complaints on matters covered by this Policy.
- Align this Policy as closely as possible to the Discrimination, Sexual Harassment and Bullying Policy and Procedures of the University of Melbourne while making sure that the particular needs and structures of the Colleges as primarily residential communities are taken into account.

1.3 Scope

This Policy applies to students, staff, volunteers and contractors engaged in activities reasonably connected with one or more of the Colleges. Such activities may extend beyond College premises to activities organized by a College and approved by its senior staff.

Notwithstanding any other provisions, this Policy does not apply to International House and Medley Hall, being Halls of Residence to which the relevant Policies and Procedures of the University of Melbourne apply. Nor does it apply to Trinity College which has its own Policy and Procedures.

1.4 Definitions

For the definitions of terms used in this Policy, see Appendix A.

1.5 Relevant College Officers and Staff

All students and staff (including contractors and volunteers) have an obligation to abide by this Policy. In addition, there are officers and staff members of the Colleges who have specific roles in relation to the application of this Policy:

- Heads of Colleges
- Senior Academic and Administrative Staff, Tutors, Student Leaders
- Health & Safety Officers
- Fair Treatment Coordinator
- Fair Treatment Advisers (referred to in this Policy as 'Advisers')
- Fair Treatment Conciliators (referred to in this Policy as 'Conciliators')
- External Consultant to the Heads of Colleges

Each College has a legal responsibility to prevent unlawful discrimination, sexual harassment, discriminatory harassment, bullying, and victimisation, otherwise it can be liable for the behaviour of its employees. The Colleges have a positive duty to eliminate discrimination, which obliges them to take proactive, reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation. The Colleges have a duty to provide reasonable adjustments for people with disabilities to help the person with a disability to perform the job or access education and goods and services. These legal responsibilities mean that College Heads, senior academic and administrative staff, tutors and student leaders have a responsibility to:

- Monitor the working and living environment to ensure that acceptable standards of conduct are maintained at all times;
- Model appropriate behaviour themselves;
- Promote this Policy within their work area and the College community;
- Treat all complaints seriously;
- Refer a person who has a concern about matters covered by this Policy to an Adviser who can provide initial advice and clarification and inform the Fair Treatment Coordinator that they have done so;
- Take appropriate action if they observe or are informed about behaviour that may breach this Policy, by reiterating this Policy and that any behaviour in breach of this Policy is unacceptable, may result in disciplinary action being taken, and must immediately cease and not recur.

A Fair Treatment Coordinator, (a senior and experienced college staff member eg. the Deputy Head), is appointed for each College by the College Head and is accountable to the same. The Fair Treatment Coordinator facilitates the implementation of this Policy within the College by ensuring the appointment of College Advisers, the provision of training for their College community and Advisers and the implementation of the complaints procedures, and by advising the College on policies, programs, initiatives and strategies recommended to enhance legislative compliance and promote student and staff access, equity and diversity.

The External Consultant, appointed by the College Heads and accountable to the same through the Chair of the College Heads, assists the Colleges to implement the Policy by preparing educational materials, organizing and conducting training programs, assisting the College Fair Treatment Coordinators, Advisers, External Advisers and Conciliators and College Heads as required in the

handling of complaints, and by making recommendations on policies, programs initiatives and strategies to enhance legislative compliance and promote student and staff access, equity and diversity. The External Consultant will also encourage liaison and networking among Fair Treatment Coordinators and convene regular meetings to enable this to occur.

Fair Treatment Advisers: Each College recruits, trains, indemnifies and supports suitable senior long term staff members (both academic and administrative) to become Advisers, and if required, suitable students and tutors to the role of Advisers. These Advisers provide advice to staff and students and are an important part of the Complaints Procedure. In addition, external suitably qualified persons are jointly appointed by the College Heads to act as External Advisers or as Conciliators, as required.

This Policy will be available to students and staff.

1.6 References

- Age Discrimination Act 2004 (Cwlth);
- Australian Human Rights Commission 1986 (Cwlth);
- Charter of Human Rights and Responsibilities Act 2006 (Vic);
- Disability Discrimination Act 1992 (Cwlth);
- Disability Standards for Education 2005 (Cwlth);
- Equal Opportunity Act 2010 (Vic);
- Equal Opportunity for Women in the Workplace Act 1999 (Cwlth);
- Fair Work Act 2009 (Cwlth);
- Information Privacy Act 2000 (Vic);
- Occupational Health and Safety Act 2004 (Vic);
- Occupational Health and Safety Regulations 2007 (Vic);
- Racial and Religious Tolerance Act 2001 (Vic);
- Racial Discrimination Act 1975 (Cwlth);
- Sex Discrimination Act 1984 (Cwlth);

College References

See relevant individual College policies concerning conditions of employment and/or residence and codes of conduct

2. Discrimination

2.1 Overview

The Colleges aim to ensure that their structures, practices, policies and guidelines are free from unlawful discrimination, both direct and indirect. They will not tolerate unlawful discrimination, discriminatory harassment or victimisation by staff or students against any staff member or student.

Discrimination, discriminatory harassment (in relation to specific attributes only) and victimisation are prohibited under the Equal Opportunity Act and Federal legislation (including the Disability Discrimination Act, the Sex Discrimination Act, the Racial Discrimination Act and the Age Discrimination Act).

The colleges take complaints of unlawful discrimination, discriminatory harassment, and victimisation seriously. Such complaints will be dealt with in accordance with the Complaints Procedure and accompanying guidelines.

Under individual college policies dealing with student and staff behaviour, unlawful discrimination may be regarded as misconduct and may result in disciplinary action being taken.

2.2 Policy

2.2.1. Unlawful discrimination

Students and staff must not unlawfully discriminate against other students or staff. Discrimination can be either direct or indirect and is based on a person's attribute or perceived attribute, such as a person's age, sex, sexual orientation, disability or impairment, race, political or religious belief or activity, pregnancy, or marital, carer or parental status.

Direct discrimination occurs when a person treats, or proposes to treat, someone with an attribute or who is perceived to have the attribute, less favourably than someone without that attribute, or with a different attribute, in the same or similar circumstances.

In relation to disability discrimination, direct discrimination also occurs if an employer does not make, or proposes not to make, reasonable adjustments for a disabled person and a failure to make a reasonable adjustment has the effect of, because of the disability, that person being treated less favourably than a person without the disability in the same or similar circumstances.

An example of direct discrimination:

- A staff member is not recommended for a professional development course because her manager tells her that 'it won't be much use to you because you're pregnant and will leave soon'. The manager instead offers the course to another staff member, with similar experience and qualifications, who is not pregnant. This is potentially direct discrimination on the basis of pregnancy because the staff member has been treated less favourably than someone who is not pregnant, in the same or similar circumstances.

Indirect discrimination generally occurs when a rule, practice or policy appears to be neutral, but in effect has a disproportionate impact on a particular group of people who share an attribute. It arises out of practices which are fair in form and intention but discriminatory in impact and outcome. Under the relevant legislation, indirect discrimination occurs when a person imposes (or proposes to impose) a requirement, condition or practice:

- that someone with an attribute does not or cannot comply with; and
- has or is likely to have the effect of disadvantaging the person with the attribute; and
- that is not reasonable in the relevant circumstances.

Therefore the Colleges are obliged to consider and implement adjustments to requirements, conditions or practices (that are reasonable in the relevant circumstances) in order to avoid indirect discrimination.

In relation to disability discrimination, indirect discrimination also occurs if,

- an employer requires, or proposes to require persons to comply with a requirement or condition; and
- because of the disability, the person would comply if the employer made reasonable adjustments, but the employer did not do so; and
- the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.

This provision does not apply if the requirement or condition is reasonable, having regard to the circumstances of the case.

An example of indirect discrimination:

- All staff and students are required to attend a particular special event for the college and there are consequences for not doing so. However, several are unable to do so because it is a day of great religious significance to them. While the requirement (i.e. to attend on that particular day) applies equally to all students and staff, it may have a disproportionate impact on those of a particular religion (i.e. they cannot comply with the requirement and a higher proportion of people who are not of that religion can). If the condition is not reasonable in the circumstances, it may amount to indirect discrimination against the student and staff members on the basis of religion. In determining whether a person discriminates against someone, it is irrelevant whether or not that person is aware of the discrimination, or whether or not it is intentional.

Unlawful discrimination also includes discrimination against a person because they are an associate of someone with an attribute. For example, it is discriminatory to treat someone less favourably because they are friends with a person of a particular race or religion.

2.2.2. Discriminatory Harassment

Discriminatory harassment means any conduct of a person towards another person on the basis of an attribute of that other person that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the other person. Discriminatory harassment is based on a person's attribute. Sexual harassment is dealt with separately under this Policy.

Staff and students must not discriminatorily harass other staff or students.

Discriminatory harassment can include physical, visual, verbal and non-verbal behaviour.

Examples of discriminatory harassment include behaviour such as:

- Making derogatory comments or taunts about a person's religion;
- Continually asking a person about their sexual orientation;
- Emailing or using social media to send insulting jokes to someone about a particular racial group to which that person belongs;
- Making offensive non-verbal gestures referring to a person's race.

What is acceptable to one person may not be acceptable to another and may constitute discriminatory harassment.

In determining whether a person discriminatorily harasses another it is irrelevant whether or not the first person is aware of the harassment, or whether or not it is intentional.

Discriminatory harassment includes harassing a person because they are an associate of someone with an attribute. For example, it is discriminatory harassment to tease someone because a family member of that person has a disability.

2.2.3 Victimisation

Section 5 below (Victimisation) applies to complaints of discrimination and/or discriminatory harassment.

2.2.4 References

- College Handbook/Website

3. Sexual Harassment

3.1 Overview

Students and staff at the Colleges have a right to live, work and study in an environment that is free from sexual harassment.

Sexual harassment is unlawful under the Equal Opportunity Act and the Sex Discrimination Act and is prohibited by the Colleges.

The Colleges take complaints of sexual harassment seriously. Such complaints will be dealt with in accordance with the Complaints Procedure.

Under individual college policies dealing with student and staff behaviour, sexual harassment may be regarded as misconduct and may result in disciplinary action being taken.

3.2 Policy

Students and staff must not sexually harass other students or staff.

To determine whether sexual harassment has occurred from a legal perspective, it is necessary to ask whether:

- The behaviour was unwelcome;
- The behaviour was sexual in nature; and
- A hypothetical 'reasonable person', having regard to all the circumstances, would anticipate that the harassed person would feel offended, humiliated or intimidated by the other person's behaviour.

'Unwelcome' Behaviour

Unwelcome behaviour is behaviour that is uninvited, unwanted, and unreciprocated by the recipient/s.

Sexual harassment is not sexual interaction, flirtation, attraction or friendship that is invited, mutual, consensual or reciprocated. This is because this is not 'unwelcome' behaviour and it would not be reasonable to anticipate that this behaviour would offend, humiliate or intimidate.

Sexual harassment can occur unintentionally. A person's intention or motive is not relevant when determining whether the alleged behaviour constitutes sexual harassment.

It is not necessary for the person who has been harassed to have told the harasser that the behaviour was unwelcome for the behaviour to constitute sexual harassment.

'Sexual' Behaviour

Behaviour that has a sexual element or implication is considered to be sexual in nature. Such behaviour includes physical, visual, verbal and non-verbal behaviour. Examples of behaviour of a sexual nature that could constitute sexual harassment include:

- Displaying or forwarding pornographic or sexually explicit material (posters, screen savers etc);
- Unwelcome physical contact, gestures or other non-verbal communication;
- Sexually explicit emails, sms messages, comments, jokes or conversations;
- Sexual insults or taunting;
- Asking someone for sex;
- Making promises or threats in return for sexual favours;
- Sexual orientation-based insults or taunts;
- Indecent assault, rape or stalking (which are also criminal offences).
- Sexually explicit humour on college sporting posters;
- Nudity
- Offensive posts on Facebook, College intranet, or other social networking sites.

Behaviour need not be repeated or continuous; a single incident or comment can amount to sexual harassment.

Sexual harassment may be perpetrated or experienced by a person of any sex, gender identity or sexual orientation.

'Reasonable person test'

The 'reasonable person' test requires examination of the particular circumstances. Factors such as the relevant ages of the complainant and the respondent, the context in which the harassment occurred and the nature of the relationship between the parties may be relevant when determining what was reasonable in the circumstances.

The fact that not everybody would be offended by the behaviour does not mean that it will not amount to sexual harassment, and even if that sort of behaviour has previously been accepted within a particular work or learning environment. Behaviour that might be acceptable to the reasonable person in one set of circumstances may not be acceptable in another.

3.3 Victimization

Section 5 below (Victimization) applies to complaints of sexual harassment.

3.4 References

- Colleges' Fair Treatment Brochure

4. Bullying

4.1 Overview

In accordance with its obligations under the Occupational Health and Safety Act, the Colleges are committed to providing staff, students and visitors with a working, living and learning environment that is safe and free from risks to health, including those risks associated with bullying.

Staff members and students are required to treat students and members of staff with respect for their rights, duties and aspirations. Bullying is not an acceptable part of the Colleges' culture and impacts negatively on the humane and scholarly values inherent in the ideals of a modern university college.

The objectives of this aspect of this Policy are to:

- Prevent bullying;
- Provide a healthy and safe environment for staff and students;
- Manage all reported incidents of bullying through the Complaints Procedure; and
- Make staff and students aware of the assistance available to them in situations of bullying.

This aspect of this Policy is not intended to diminish supervisory or managerial prerogative to direct or control how work is done in the workplace other than to ensure so far as practicable, the health and safety of staff and students.

The Colleges take complaints of bullying seriously. Such complaints will be dealt with in accordance with the Complaints Procedure.

Under individual college policies dealing with student and staff behaviour, bullying may be regarded as misconduct and may result in disciplinary action being taken.

4.2 Policy

Student and Staff members must not engage in behaviours that constitute bullying towards other students or staff.

Bullying is repeated, unreasonable behaviour directed toward a student or staff member, or a group of students or staff by student/s or staff member/s, which creates a risk to health and safety.

Bullying behaviour may be obvious and direct or extremely subtle and indirect. Such behaviour includes physical, visual, verbal and non-verbal behaviour.

Examples of behaviour that could constitute bullying include:

- Physical or verbal abuse;
- Yelling, screaming or offensive language;
- Excluding or isolating a student or staff member;
- Deliberately withholding information that is vital for effective performance;
- Spreading rumours or innuendo about someone;
- Psychological harassment;
- Unjustified criticism or complaints;
- Intimidation;
- Assigning staff members meaningless tasks unrelated to their job;
- Giving staff members impossible jobs;

- Interfering with someone's personal property or equipment;
- Deliberately changing work arrangements, such as rosters and leave, to inconvenience particular staff members.

An example of direct bullying:

- A student was subjected to bullying by another student over a number of months. This student was subjected to offensive language and insults; he was teased in front of other students during tutorials and knew that this person had been spreading rumours about him in college. The behaviour this student was subjected to humiliated and intimidated him. As a result, he became stressed and anxious and found it increasingly difficult to remain resident in college.

An example of indirect bullying:

- A casual staff member was recently assigned a new supervisor. Since this time, the staff member was no longer included in team meetings and her work roster would frequently be changed without due notice or explanation. The staff member felt very distressed about the treatment she received and became anxious and scared to lose her job.

Behaviour is considered 'repeated' if an established pattern can be identified. The requirement for the behaviour to be 'repeated' refers to the persistent nature of the behaviour and may involve a series of diverse incidents.

Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine, threaten, or intimidate another person.

Bullying can include actions of individuals or a group, and may involve using a system of work or assessment as a means of victimising, humiliating, undermining or threatening an individual or group.

The risk to health or safety created by bullying includes any risks to the psychological or physical health of the staff member or student.

Bullying can occur unintentionally. A person's intention or motive is not relevant when determining whether the alleged behaviour constitutes bullying.

Bullying is not:

Reasonable comment, advice or administrative action (including negative feedback) from an academic or administrative staff member on work, academic performance or behaviour;

- Disciplinary action;
- The implementation of organisational change;
- The allocation of work in compliance with systems;
- Conflict or differences of opinion between individuals;
- A single incident of bullying-style behaviour.

An example of reasonable management action (that would not be considered bullying):

- A staff member works in a busy college office and the work required is routine. On a regular basis, the staff member falls behind schedule with her tasks. To help develop her skills and improve her performance, her supervisor recommends the staff member attend a training course. The staff member felt humiliated and singled out, even though her supervisor assured her that she intended to assist her.

Single incidents

Under this Policy and Complaints Procedure, bullying is defined as repeated, unreasonable conduct that creates a risk to health and safety. A single incident of unreasonable behaviour that creates a risk to health and safety may have the potential to escalate into bullying and therefore should not be ignored. A student or staff member with a concern about a single incident of bullying-style behaviour may raise this issue with their supervisor, the Fair Treatment Coordinator, the College's Human Resources officer, or a Health and Safety Officer.

4.3 Victimisation

Section 5 below (Victimisation) applies to complaints of bullying.

4.4 References

- Colleges' Fair Treatment Brochure

5. Victimisation

This section applies to victimisation in relation to complaints of unlawful discrimination, discriminatory harassment, sexual harassment and bullying.

Victimisation is when a person subjects (or threatens to subject) another person to a detriment (which can include humiliation and denigration) because that other person has made a complaint or been involved in a Complaints Procedure, or because the first person thinks the other person intends to make a complaint or be involved in a Complaints Procedure.

Students and staff must not victimise other students or staff.

Victimisation can include physical, visual, verbal and non-verbal behaviour. Examples of victimisation include behaviour such as:

- Students sending rude and aggressive notes to another student and her friends because that student has complained about the behaviour of a friend of theirs
- A supervisor humiliating a staff member because that staff member gave evidence in support of a colleague in relation to a complaint against the supervisor.

A person may be found liable for victimisation even though the original allegation is not proven. For example, even if an original complaint of bullying is not substantiated, it may constitute victimisation for a manager to give a staff member a poor performance review because that staff member previously made a complaint against the manager.

A person does not have to be the subject of the complaint to have victimised another person, so long as the victimisation is because of a complaint against a person. For example, it is victimisation if a

manager refuses to provide work to a staff member who has made a complaint of sexual harassment against another staff member in the workplace.

Victimisation also includes victimising a person because another person associated with the first person has made a complaint. For example, it is victimisation for a lecturer to penalise a student because a friend of that student made a complaint of discrimination about the lecturer.

A student or staff member may raise a concern about victimisation using the Complaints Procedure.

6. Complaints Procedure

6.1 Overview

The complex nature and social intimacy of College life, and its diverse student and staff population, makes it likely that there may be instances where certain behaviours, actions or decisions may be construed as inappropriate. This Complaints Procedure aims to provide in the first instance an advisory function, whereby students and staff may seek clarification on College policy and behavioural norms and expectations. Where a student or staff member perceives that unlawful discrimination, discriminatory harassment, sexual harassment, bullying, victimization has occurred, this Complaints Procedure provides a process by which such concerns can be raised and addressed.

Any student or staff member with a concern about matters addressed by this Policy may seek advice from an Adviser. Often, individuals will initially raise the concern with a manager, supervisor, colleague, tutor, counsellor, human resources officer, health and safety representative or other staff member. Regardless of who a person contacts initially, that initial contact should immediately inform the Fair Treatment Coordinator of the contact and refer the person to a College Adviser who can provide initial advice and clarification.

As a consequence of raising a concern, if the person or the College decides that some responsive action is required under this Policy, the concern becomes a complaint to be resolved using this Complaints Procedure.

6.2 Complaints Procedure: Introduction

A student or staff member with a complaint about unlawful discrimination, discriminatory harassment, sexual harassment, bullying, and/or victimisation against a student or staff member, or a group of students or staff, can make a complaint to the College.

The College may decline to entertain a complaint that took place more than 12 months before the complaint was lodged, or if the respondent is no longer a student or staff member of a college. In doing so, the College will consider the particular circumstances of the complainant and the nature of the complaint.

Where practicable, complainants should maintain and have available accurate records of the alleged unlawful discrimination, discriminatory harassment, sexual harassment, bullying, or victimisation, including the time and place of the alleged incident(s) and the names of any witness(es).

The College aims to deal with complaints as quickly as practicable and to achieve early resolution of complaints. This is in line with dispute resolution best practice principles and safeguards both the wellbeing of those involved in the complaint and the wider College community. For example, the Fair Treatment Coordinator may establish at an early juncture a timeframe for the conduct of stages of the complaints procedure, such as the expectation that the Respondent has the option of replying

within 5 working days (as per section 6.6) to the written complaint in Stage 2 – Conciliation. In doing so the Coordinator makes clear what is expected of the parties involved, as well as providing a means of monitoring progress against such a timeframe. The Coordinator may also allow for alternate Advisers to be engaged during the Conciliation stage, or take any other reasonable action, to respond to unforeseen delays.

The principles of procedural fairness apply to the complaints procedure as a whole. Primarily, this means that:

- The College will not make a decision that could adversely affect either party unless it has given that party an opportunity to present their case;
- The decision-maker will not be biased towards a party or have a separate interest in the complaint.

The College aims to maintain the confidentiality of complainants and respondents. Only the Fair Treatment Coordinator and those staff members, students or Tutors, or External Advisers or Conciliators involved in advising on, conciliating, investigating or resolving the complaint will have access to material relating to the complaint. However, the Fair Treatment Coordinator will keep the Head of College informed of all matters raised and how they are being dealt with.

In order to enable effective resolution of the complaint and to prevent gossip, rumour and interference by persons not involved in the complaint, the College will inform all complainants and respondents of the need for them also to maintain confidentiality.

College initiation of a complaint - In general, the complainant influences the progress of the complaint through the Complaints Procedure. However, in some circumstances, the seriousness of the allegations will mean that the College is under a legal obligation (e.g. to keep the work and study environments safe and without risks to the health of staff and students) to ensure that a matter is investigated beyond that which the complainant intends or wishes. For this reason, where it is appropriate in the circumstances, the College may initiate a complaint or progress a complaint without the involvement of the complainant. Where appropriate, this may involve de-identifying details of the complainant.

The College will provide the respondent with written notification of the complaint should the complaint progress to either Stage 2 (Conciliation) or Stage 3 (Investigation and Determination).

At any stage of the Complaints Procedure, or when a concern cannot be addressed using this Complaints Procedure, the College may consider and implement actions as necessary to address concerns regarding individuals' safety, well-being, or participation in work, study or college life. These actions do not imply any wrongdoing or any case to answer.

6.3 Complaints about Fair Treatment Coordinator or Head of College

Where there are complaints about the Fair Treatment Coordinator the Head of College will act as the Fair Treatment Coordinator for the purpose of these complaints procedures and assume the role and responsibilities of the Fair Treatment Coordinator.

Where there are complaints about the Head of College, the Chair of the College Council will act as Fair Treatment Coordinator for the purpose of these complaints procedures and assume the role and responsibilities of the Fair Treatment Coordinator.

The Fair Treatment Coordinator will not exercise any responsibility for dealing with complaints about their own behaviour or that of the Head of College

6.4 Stages of the Complaints Procedure

There are three stages to the complaints procedure:

- Stage 1 (Advice and Informal Resolution);
- Stage 2 (Conciliation);
- Stage 3 (Investigation and Determination).

The stages will generally, although not always, be undertaken in progression.

6.5 Stage 1 (Advice and Informal Resolution)

The aim of Stage 1 is to clarify the concern as perceived by the complainant or respondent and to facilitate informal resolution.

Individuals who have a concern should consult one of their College's appointed internal Advisers or one of the Colleges' appointed External Advisers.

Advisers can assist the complainant or the respondent by:

- Clarifying whether the alleged behaviour may constitute unlawful discrimination, sexual harassment, discriminatory harassment, bullying, or victimisation;
- Providing information about this Policy and the Complaints Procedure;
- Advising of their rights under relevant legislation;
- Advising of the options available to them, including making a complaint to an external body;
- Encouraging the person to seek the type of support that they need and provide referrals as appropriate;
- Exploring strategies to resolve the matter.

At this stage, it is preferable that individuals seek to resolve the issue themselves directly. However, if this is unsuccessful or inappropriate, after consulting an Adviser, a student or staff member who seeks informal resolution of his or her complaint in this stage of the Complaints Procedure may ask the Fair Treatment Coordinator to arrange for a suitable person (eg. supervisor or tutor) to speak to the respondent on their behalf, and privately convey the individual's concerns, reiterate the College's Policy to the respondent (without assessing the merits of the case), and, if necessary, take practical steps to ensure, as far as possible, that the behaviour that allegedly occurred ceases and cannot recur.

At this stage there is no requirement for the complainant to lodge a written complaint. It is not necessary for the respondent to be involved in Stage 1. However, the Fair Treatment Coordinator will be kept informed by the Adviser of all inquiries and their outcome.

The complaint may end at Stage 1, either because it is resolved or because neither the complainant, the respondent, nor the College progress it to Stage 2 (conciliation) or Stage 3 (investigation and determination). Alternatively, the complaint may progress to Stage 2 or Stage 3 at the request of one of the parties or the College.

6.6 Stage 2 (Conciliation)

Stage 2 is about conciliation. Conciliation is a process in which a neutral third party (the conciliator) attempts to assist the parties to resolve the complaint through a mutually accepted agreement.

Conciliation only occurs if both parties agree to it voluntarily.

Conciliation usually occurs at the request of the complainant. However, the person who is the subject of a complaint is also entitled to request Conciliation, and should seek the advice of an Adviser before proceeding.

For a conciliation to occur, the complainant must be willing to be identified to the respondent. The complainant must put the complaint in writing to the Fair Treatment Coordinator, in the form of a brief summary (up to two pages) of the particular incident/s.

The respondent will be provided with a copy of the complaint. The respondent will be given the opportunity to seek advice from an Adviser and may submit a short written response (of up to two pages) to the complaint to the Fair Treatment Coordinator, within five working days. A copy of any written response will be provided to the Conciliator and complainant.

Upon referral of the request, the Fair Treatment Coordinator will review the complaint and related documentation. If conciliation is appropriate, the Fair Treatment Coordinator will invite the parties to participate. If conciliation does not proceed, the parties will be referred to their respective Advisers to discuss further options.

The conciliation process will be conducted through the complainant and the respondent meeting with the conciliator either together or separately. The role of the conciliator is not to make a formal finding but to assist the parties to reach a mutually agreed resolution.

The complainant and respondent are each entitled to have a support person during the conciliation, but not a legal representative or advocate.

The complaint may end at Stage 2, either because the complaint was resolved through conciliation or because neither the complainant, the respondent, or the College progresses the complaint to Stage 3. Alternatively, the complaint may progress to Stage 3 at the request of the complainant or the respondent or the College.

6.7 Stage 3 (Investigation and Determination)

Stage 3 is about investigating the complaint and making determinations based on the investigation.

If a complainant, respondent or the Fair Treatment Coordinator on behalf of the College, wishes to refer the complaint for an investigation, they must make a **written request for investigation** to the

Head of College (or to the Chair of the College Council in the case of a complaint about the Head of College) and include details of particular incident(s) and any supporting documentation. An Adviser for the complainant and a separate Adviser for the respondent can assist them to prepare the request.

In consultation with the College Fair Treatment Coordinator and External Consultant, the Head of College/Chair of College Council will review the complaint and related documentation and then make a decision regarding whether to proceed with an investigation. The Fair Treatment Coordinator will notify the parties as to whether an investigation will be conducted.

The respondent will be provided with a copy of the complaint if it has not already been provided. If the respondent has not already done so, they will be given the opportunity to seek advice from an Adviser and to respond to the complaint in writing within ten working days. A copy of any written response will be provided to the Fair Treatment Coordinator and to the investigator/s.

The investigation will be conducted in a manner that the Head of College or Chair of College Council considers appropriate in the circumstances. Investigations will be conducted by either a panel or an individual investigator.

Under individual college policies dealing with student and staff behaviour, discrimination, discriminatory harassment, sexual harassment, bullying or victimisation may be regarded as misconduct and may result in disciplinary action being taken. An investigation undertaken under this Policy will be considered equivalent to an investigation undertaken under the relevant college policy and no additional investigation will be required.

Potential outcomes from an investigation include the following:

- A finding that the complaint was not substantiated;
- A finding that the complaint was substantiated or substantiated in part;
- Steps to restore the complainant to the position that the complainant was in prior to the incident(s) that led to the complaint;
- Training in this Policy and related matters;
- Referral to other support services or strategies;
- Counselling;
- Further monitoring of the situation;
- Statement of regret or apology, where appropriate;
- Requirement to change processes or procedures
- Disciplinary action in accordance with relevant College policies;;

The parties will be informed of the findings and relevant outcomes of the investigation.

Process to Manage Investigation and Delivery of Outcomes

In relation to undertaking an investigation or to deliver any outcomes from an investigation, the process for delivering outcomes will be managed in accordance with each College and Hall's respective Disciplinary Policy or Code of Conduct as appropriate.

6.8 False or misleading allegations

The Colleges take complaints very seriously. For this reason, all staff and students should be aware that where a College is satisfied that a complaint is malicious, frivolous or vexatious, the complainant may face disciplinary action.

6.9 Complaints to External Bodies

While staff and students are encouraged to use the Colleges' Complaints Procedure, they have a right to seek advice from and/or lodge a complaint with external bodies including the Police, the Victorian Equal Opportunity and Human Rights Commission, the Australian Human Rights Commission, the Fair Work Ombudsman, or WorkSafe Victoria, at any time.

A college student or staff member who is also a student of the University of Melbourne is entitled to seek advice from and/or lodge a complaint under the University's relevant Policy and Procedures if their concern relates to another student of the University.

If a student or staff member pursues a complaint with an external body the College will suspend or terminate its Complaints Procedure. In these circumstances, the College may consider and implement other actions as necessary to address concerns regarding individuals' safety, well-being, and participation in work or study.

7. Acknowledgment

The Colleges gratefully acknowledge that this Policy originated from the Discrimination, Sexual Harassment and Bullying Policy and Procedures developed and endorsed by the University of Melbourne.

If you have been discriminated against, sexually assaulted, or bullied (or know someone who has been), there are people you can talk to who can provide support.

University College Fair Treatment Contacts:

On Zhi Xiang – 0405 341 234
Molly Fredle – 0422 322 721

University College Fair Treatment Coordinator:

Juliette Barreau

External Fair Treatment Advisors:

Alikki Vernon – 0434 585 416
Susan Gribben – 0410 479 736
Kevin O'Neill – 0438 514 237
Catherine Smith – 0411 872 384
Michael Mitchell – 0447 710 062

Appendix A Definitions

In the Colleges' Discrimination, Sexual Harassment and Bullying Policy and Procedures, the following definitions apply:

Attribute means the following attributes, as defined in the Equal Opportunity Act (Vic) and relevant Federal legislation (see section 1.6 [References](#)):

- age;
- breastfeeding;
- [employment activity](#);
- [gender identity](#);
- [disability](#);
- [industrial activity](#);
- lawful sexual activity;
- marital status;
- parental status or status as a [carer](#);
- physical features;
- [political belief or activity](#);
- pregnancy;
- race;
- [religious belief or activity](#);
- sex;
- sexual orientation;
- an [expunged homosexual conviction](#);
- personal association (whether as a [relative](#) or otherwise) with a person who is identified by reference to any of the above attributes.

Bullying is repeated, unreasonable behaviour directed toward a staff member or student, or a group of students or staff by a student or staff member, that creates a risk to health and safety.

Complainant means a student or staff member who makes a complaint.

Complaint means a complaint made to a College (whether formally or informally) by a student or staff member regarding unlawful discrimination, sexual harassment, discriminatory harassment, bullying or victimization and may include a grievance of a student or staff member concerning any other unfair treatment as defined below.

Complaints Procedure means the procedure outlined in this Policy and any accompanying guidelines that are applied by a College in relation to a complaint.

Direct discrimination is one form of discrimination prohibited under the Equal Opportunity Act 2010 (Vic) and relevant Federal legislation (the other being indirect discrimination). Direct discrimination occurs when a person treats, or proposes to treat, someone with an attribute less favourably than someone without the attribute (or with a different attribute) in the same or similar circumstances.

In relation to disability discrimination, direct discrimination also occurs if an employer does not make, or proposes not to make, reasonable adjustments for a disabled person and a failure to make a reasonable adjustment has the effect of, because of the disability, that person being treated less favourably than a person without the disability in the same or similar circumstances.

Discrimination means either direct or indirect discrimination, on the basis of an attribute.

Discriminatory Harassment means any conduct of a person towards another person on the basis of an attribute of that other person, that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the other person. Discriminatory harassment is unlawful only in relation to the attributes of sex and disability.

EO Act means the Equal Opportunity Act 2010 (Vic).

Indirect discrimination is one form of discrimination prohibited under the Equal Opportunity Act 2010 (Vic) and relevant Federal legislation (the other being direct discrimination). Indirect discrimination occurs when a person imposes, or proposes to impose, a requirement, condition or practice:

- That someone with an attribute does not or cannot comply with; and
- Has or is likely to have the effect of disadvantaging the person with the attribute; and
- That is not reasonable in the relevant circumstances.

In relation to disability discrimination, indirect discrimination also occurs if:

- an employer requires, or proposes to require persons to comply with a requirement or condition; and
- because of the disability, the person would comply if the employer made reasonable adjustments, but the employer did not do so; and
- the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.

This provision does not apply if the requirement or condition is reasonable, having regard to the circumstances of the case.

OH&S Act means the Occupational Health and Safety Act 2004 (Vic).

Reasonable adjustment means any adjustment that does not impose an unjustifiable hardship on the person making the adjustment.

Respondent means a student or staff member against whom a complaint is made.

Sexual assault is any involuntary sexual act in which a person is coerced or physically forced to engage against their will, or any non-consensual sexual touching of a person. Sexual assault is a form of sexual violence, and it includes rape, groping, forced kissing, child sexual abuse, or the torture of the person in a sexual manner.

Sexual harassment, under the Equal Opportunity Act 2010 (Vic) and the Sex Discrimination Act 1984 (Cwlth), is when a person:

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

Staff or staff member means an employee, contractor or volunteer currently engaged by a College or an official college visitor but does not include conference guests.

Student means a current student of a College.

Victimisation is when a person subjects (or threatens to subject) another person to a detriment (which includes humiliation and denigration) because that other person has made a complaint or been involved in a Complaints Procedure, or because the first person thinks the other person intends to make a complaint or be involved in a Complaints Procedure.