

Sexual Assault, Sexual Harassment, Discrimination & Bullying Policy

Policy and Procedure

Policy and Procedure	1
SECTION 1 – INTRODUCTION.....	2
PURPOSE.....	2
SCOPE	2
SECTION 2 – POLICY	3
PRINCIPLES	3
OVERVIEW	3
DEFINITIONS	4
LIABILITY	5
VICTIMISATION.....	6
CONFIDENTIALITY	6
SECTION 3 – PROCEDURE	6
ROLES AND RESPONSIBILITIES OF ACHW STAFF MEMBERS	6
RELATED SCENTIA POLICIES AND PROCEDURES	8
RELATED LEGISLATION	8
SECTION 4 – REFERENCE AND SUPPORTING INFORMATION	9
DEFINITIONS.....	9
SUPPORTING DOCUMENTATION.....	9
KEY CONTACT DETAILS	9
SECTION 5 – DOCUMENT DETAILS.....	9
POLICY OWNER.....	9
CHANGE HISTORY	9



SECTION 1 – INTRODUCTION

PURPOSE

The Australasian College of Health and Wellness aims to provide a fair, equitable and productive learning environment for staff and students. This policy seeks to support the achievement of this goal by providing a transparent and consistent process for preventing and resolving issues concerning sexual assault and sexual harassment, discrimination and bullying.

SCOPE

This policy applies to all campuses and all staff and students of the Australasian College of Health and Wellness.

SECTION 2 – POLICY

PRINCIPLES

The Australasian College of Health and Wellness (ACHW) welcomes all forms of feedback from staff and students who are openly invited to offer feedback on issues relating to sexual assault and sexual harassment, discrimination, and bullying at any time. In the interests of providing high quality services the following principles apply:

- grievance and review procedures will be readily available to ensure that all stakeholders understand their rights and responsibilities;
- ACHW will respond to any grievance or appeal raised by students, staff, consultants or other stakeholders, quickly and objectively in order to reach satisfactory outcomes for all parties;
- where students raise an issue, concern or grievance, the appropriate staff member will respond to the matter immediately;
- the ACHW Grievance Procedure will be followed when a grievance or appeal is being raised in relation to sexual assault and harassment by any ACHW stakeholder;
- in the event that a grievance or appeal cannot be resolved informally, the aggrieved party will be encouraged to formally advise the Head of Academic Delivery of ACHW of their issues and expected outcomes utilising the ACHW Grievance Form;
- in the event that a grievance or appeal cannot be resolved by ACHW, the aggrieved party will be encouraged to seek assistance from the relevant external agencies as outlined in the Grievance Procedure;
- parties to the grievance resolution process will not be disadvantaged as a result of lodging the grievance, investigation of the grievance or responding to the grievance; and
- at all times, ACHW will respect the rights of all staff and students to use any avenue available to them to address their grievance and/or appeal

Both this Policy and the Grievance Policy and Procedure is communicated:

- to students via the Student Handbook; and
- to staff and students via the website, including the Policies & Procedures Handbook

OVERVIEW

ACHW's mission of educational excellence is fulfilled by access, opportunity, and collaboration in an environment of wellbeing and safety for all involved. We are committed to providing a safe, and respectful environment for staff and students, free from all forms of discrimination, bullying and sexual harassment.

ACHW recognises the rights of individuals and groups to be free from discrimination, bullying and sexual harassment on grounds such as gender, marital status, pregnancy, family responsibilities, sexuality, race, disability, political or religious belief or age.

The Commonwealth Sex Discrimination Act 1984, the Fair Work Act 2009, and the NSW Anti-Discrimination Act 1977, Racial Discrimination Act 1975 (Cth), Disability Discrimination Act 1992 (Cth), Age Discrimination Act 2004 (Cth), Australian Human Rights Commission Act 1986 (Cth) form the basis of the institution's commitment to ensure the learning and workplace locations, including online, are free from sexual assault, harassment and discrimination. The current policy update has also been informed by the publication Change the course: National report on sexual assault and sexual harassment at Australian universities, 2017. The policy covers activity both on campus and off.

Staff and students found to have engaged in such conduct may be counselled, warned, disciplined, or

dismissed/expelled.

By effectively implementing this policy, the organisation will attract and retain the best staff and students and create and maintain a positive learning and education environment for all.

DEFINITIONS

Discrimination is any practice that makes distinction between individuals or groups so as to arbitrarily advantage one and disadvantage the other. Discrimination occurs when somebody is treated less favourably on grounds such as the following attributes:

- Gender
- Imputed characteristics (stereotypes)
- Parental status
- Sexual orientation
- Gender identity
- Marital status
- Race
- Age
- Impairment (physical or intellectual)
- Religion
- Political belief or activity
- Trade union activity
- Pregnancy or breastfeeding

Discrimination may involve:

- Offensive jokes or comments about a person's racial or ethnic background, gender, sexual preference, age, disability or physical appearance
- Display of pictures, cartoons or posters that may be offensive or derogatory
- Expressing negative stereotypes for a particular group
- Judging someone on their religious beliefs rather than their work performance
- Using stereotypes or assumptions to guide decision making about someone's career
- Undermining a person's authority or work performance because you dislike one of their personal characteristics

Sexual Harassment and Victimisation

Sexual Harassment is defined as an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated, and where that reaction is reasonable in the circumstances.

Bullying: Bullying can take many forms such as emails, text messages, threats, abuse, shouting, coercion, jokes;
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and if based on personal characteristics is protected by equal opportunity law as a form of discrimination. This is unacceptable behaviour and is also against WHS law.

Sexual Harassment: ACHW complies with the Commonwealth Sex Discrimination Act 1984 which states it occurs when:

- The person makes an unwelcome or uninvited sexual advance, or an unwelcome or uninvited request for sexual favours, to the person harassed, or
- Engages in other unwelcome or uninvited conduct of a sexual nature in relation to the person harassed

In circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.

Sexual Assault is the unwanted, non-consensual sexual act in which a person is threatened, intimidated or forced to comply against their will, or where a person is unable to give consent because they are unconscious, asleep or incapacitated due to the effects of alcohol or other drugs. Some sexual harassment and assault may be offences under the criminal law. Sexual Harassment may be a single incident or repetitive behaviour.

Sexual Harassment has nothing to do with mutual attraction or friendship. Sexual interaction such as flirtation and attraction is not sexual harassment when it is invited, mutually consensual or reciprocated.

Appropriate behaviour is that which respects the rights and sensitivities of all people in the organisation's work and learning environment. We are all responsible for contributing to an environment of trust and respect as the basis of appropriate professional relationships.

Examples of behaviours that may amount to sexual harassment include:

- Unwelcome or uninvited physical touching
- Sexual or suggestive comments, jokes or innuendoes
- Unwelcome or uninvited request for sex
- Intrusive questions about a person's private life
- The display of sexually explicit material (eg posters, pictures)
- Unwanted invitations
- Staring or leering
- Sex based insults or taunts
- Offensive communications, including telephone calls, letter, faxes and email.

LIABILITY

Federal and State legislation provide that the organisation can be found vicariously liable for the sexual harassment of others by its employees or agents (students, those providing a service, visitors, adjuncts). Individuals can also be liable in terms of Personal (individuals engaging in unlawful acts of sexual harassment and victimisation) and Accessory Liability (individuals aiding/permitting individuals to commit an unlawful act) as in the Sex Discrimination Act 1984 (Commonwealth).

Consequently, the organisation will train staff and educate students to better understand their rights and responsibilities; and ensure effective measures are in place for reporting and resolution of complaints.

VICTIMISATION

This involves subjecting a person to victimisation if they have made or are connected with a complaint (Sect. 94 of the Sex Discrimination Act 1984 (Commonwealth)). Staff and students have the right to raise issues or make an inquiry or complain in a reasonable and respectful manner without being victimised. Vexacious unfounded complaints will not be tolerated.

CONFIDENTIALITY

Records of grievances and their outcomes and the Grievances Register will be kept for 7 years in strictly confidential files. Parties to the grievance will be allowed supervised access to these records on request.

Management of and access to any grievance records (including the Grievances Register) will be restricted to the Head of Academic Delivery and Director of ACHW.

All parties, subject to the grievance process, shall at all times treat Grievance as confidential and shall not reveal the names of complainants making a grievance or where applicable those referred to in the grievance to any third party without the express permission of those concerned.

- each stage of the following procedure is free of charge;
- the complainant and respondent will not be victimised or discriminated against at any stage of this procedure; and
- the complainant and respondent have the right to be represented by a third person (such as a family member, friend, counsellor or other professional support person, other than a lawyer).

SECTION 3 – PROCEDURE

ROLES AND RESPONSIBILITIES OF ACHW STAFF MEMBERS

All employees must ensure that all they, facilitators, students, training delegates, customers and visitors are treated equitably and are not subject to discrimination, bullying, or sexual harassment. All complaints involving students or clients must be reported immediately to the Head of Academic Delivery or nominee. Reports about other Scentia staff should be reported to the Head of People and Culture.

All ACHW staff and consultants are expected to understand the appropriate legislation, understand and apply ACHW's Grievance & Appeals policy and procedure, and ensure students know of and use of the Grievance & Appeals policy and procedure as appropriate.

Management and employees have a responsibility and duty of care to ensure a safe working and learning environment and may be liable unless reasonable steps have been taken to prevent/eliminate assault/harassment/discrimination. Action should be taken if inappropriate behaviour is evident even without a formal complaint being made. Any employee, facilitator and student found to be discriminating against, harassing or victimising any other person, will be subject to serious disciplinary action which may include dismissal or refusal of further services offered by AIM.

Staff and students should know what action they can take and where support and advice is available to them, knowing that confidentiality will be maintained. Staff and students should follow the standards of behaviour outlined in this policy.

Staff should offer support to anyone in the organisation experiencing discrimination, bullying or sexual harassment, including providing information on how to make a complaint, and respecting the confidentiality of complaint resolution procedures.

Supervisors and managers need to make staff and students aware of their obligations under this policy and the law; to intervene appropriately and in a timely manner if they become aware of inappropriate behaviour; and to help resolve complaints informally/formally ensuring relevant parties are heard.

If an ACHW employee believes a criminal incident has taken place, the matter must be reported to the police, and the individual be supported by the organisation.

Management, employees, facilitators, students and visitors should not ignore sexual harassment or discrimination. Silence may give the impression that discrimination or sexual harassment is acceptable. Similarly, confidentiality is essential for a quick resolution of the action or behaviour and employees and Facilitators should not publicly make allegations or defame the alleged offender.

If an employee, facilitator, student or visitor believes that he or she is being subjected to sexual harassment, the individual should personally and immediately notify the Director, the Head of Academic Delivery or ACHW HR director, whichever is the most appropriate.

An investigation will be undertaken and appropriate sanctions and corrective measure will be instituted if the allegations warrant such action. Persons who commit acts of intimidation and harassment will be admonished to discontinue such conduct and will be disciplined according to the severity of the case.

Appropriate discipline may include actions up to and including termination of employment or refusal of further services offered by ACHW.

When confronted with discriminatory behaviour an individual can:

- Take no action, but it is unlikely that the offensive behaviour will stop. It may be that the person is not aware of the offence caused, but may be willing to change the behaviour if told.
- Directly approach the alleged offender, explaining what behaviour is discriminatory or offensive and request that it stop. Silence could be seen to be acceptance of behaviour in some circumstances.
- Make a complaint to any Senior Manager of ACHW. The appropriate manager will examine and resolve the complaint quickly and confidentially.
- Lodge a complaint with the Anti-Discrimination Commission.
- Complaints do not have to be in writing and all ACHW personnel will treat all complaints seriously, confidentially and impartially.
- No person will be disadvantaged in employment conditions or opportunities as a result of lodging a complaint.

ACHW's Senior Managers will:

- Fully investigate the allegation of discrimination, bullying or sexual harassment
- Recommend an appropriate resolution and maintain confidentiality for all parties
- Advise the person making the complaint that if it is found, the complaint is not substantiated, they have the right to take their case to the Anti-Discrimination Commission, if they are not satisfied
- Take appropriate corrective action against the person responsible if discrimination, bullying or sexual harassment has occurred.

ACHW Management, employees, facilitators, students and visitors to ACHW facilities are responsible to ensure this policy is adhered to at all times.

Staff and students can access support from their facilitators, Student Services team, the Director, the Head of Academic Delivery, and the Director People and Culture, external Counsellors, or relevant State or Federal

authorities.

Staff and students are entitled to a certain amount of free, professional counselling from the Scentia Employee Assistance program. This counselling is confidential and nothing discussed will be communicated back to the organisation.

Should a student wish to make a complaint the Australasian College of Health and Wellness Grievance policy should be utilised. In summary the policy uses the following steps:

- a) Informal approach managed by the Head of Academic Delivery involving the parties concerned
- b) Formal complaint managed by the Director ACHW/Chair of Academic Board
- c) If (b) is unsatisfactory, an External Review directed to the appropriate state or federal government body may be made (e.g. The Australian Human Rights Commission)
- d) If it is considered that the offence pertains to criminal law, the State Police need to be involved.

The full details of the policy are located <https://www.tachw.edu.au/policies-procedures/>. Requests can be put in writing to support@tac.edu.au. If a confidential call is required the Director can be requested by calling 1300 227 603.

RELATED SCENTIA POLICIES AND PROCEDURES

- Grievance Policy
- Workplace Health & Safety Policy
- Grievance Policy
- Privacy Policy
- Social Media Policy

RELATED LEGISLATION

ACHW/Scentia complies with the following Australian legislation:

- Sex Discrimination Act 1984 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Age Discrimination Act 2004 (Cth)
- Anti-discrimination Act 1977 (NSW) and other relevant State Acts
- Fair Work Act (2009)
- Australian Human Rights Commission Act (1986)
- TEQSA Act (2011)
- Higher Education Framework, Standard 2: Learning Environment. 2.3 Well Being and Safety
- Higher Education standards Framework (Threshold Standards) (2015); National Code 2007, Standard 8 (Complaints and Appeals)
- Australian Privacy Principles (APPs)

SECTION 4 – REFERENCE AND SUPPORTING INFORMATION

DEFINITIONS

Word/Term	Definition
Grievance	An official statement of a complaint or appeal over something believed to be wrong or unfair
Complaint	Is a formal statement made in writing that something is unsatisfactory or unacceptable.
Appeal	Is a formal application in writing to a higher authoritative figure or court to have a decision reversed
Mediation	Is the intervention of a third party in a dispute in order to resolve it in a fair and equitable manner
ACHW	The Australasian College of Health and Wellness

SUPPORTING DOCUMENTATION

Document name	Document type	Location
Grievance Form	Form	G:\Compliance\Policies & Procedures
Grievance Register	Register	G:\Compliance\Policies & Procedures

KEY CONTACT DETAILS

Director: Janene Barrett, jbarrett@scentia.com.au

Head of Academic Delivery: Candice Heskey, cheskey@scentia.com.au

Head of People and Culture: Liz Douglas, ldouglas@scentia.com.au

SECTION 5 – DOCUMENT DETAILS

POLICY OWNER

Name:	Sexual Assault, Sexual Harassment, Discrimination, and Bullying Policy
Endorsed by:	Director ACHW
Approved by:	Chair of Academic Board
Date Approved:	24.04.2018
Implementation Owner	Head of Academic Delivery
Maintenance Owner	Head of Quality Assurance
Review Date	15.01.2021

CHANGE HISTORY

Version	Approval date	Approved by	Approved by	Change
V1.0	24.04.2018	Chair of Academic Board	Director ACHW	Initial document review
V2.0		Approved by Academic Board on 10.03.2020		