

Discrimination, Harassment and Workplace Bullying Policy

Purpose:

This policy establishes the role of JCUSA and duty holders, including Club/Society members to promote the right of all workers to work in an environment free from discrimination, bullying, harassment, hazing, sexual assault, sexual harassment and vilification (henceforth simply discrimination, bullying, and harassment) and to ensure that workers understand the accountabilities of JCUSA and complaint handling principles.

Principles:

JCUSA is committed to ensuring that the workers and Club/Society members are not exposed to any form of discrimination, harassment and workplace bullying as it may affect the mental and physical health of workers.

JCUSA recognises its duty to comply with all relevant legislation related to ensuring the health and safety of workers, council staff, Club/Society members and the public.

- The Discrimination, Harassment and Workplace Bullying Policy will clearly state the provision of a safe and healthy workplace and learning environment that is free from discrimination, bullying and harassment;
- Provide workers with information and training in relation to such conduct;
- This policy will be accessible to all workers and Club/Society members; and
- This policy supports the implementation of a safety management system.

Scope:

This policy applies to all members of Council, workers, Clubs and Societies members and volunteers while engaged in activities undertaken as part of their study, research and work, or other association with JCUSA.

Policy Statement:

Council takes very seriously its duty of care towards its staff and the public, and recognises its duty to comply with all relevant legislation related to ensuring the health and safety of persons, both council staff and the general community, and the protection of property.

The Policy will clearly state:

- Workers have a right to a workplace environment that is free from discrimination, bullying, and harassment;
- Discrimination can be on the basis of Direct or Indirect Discrimination;
- Under discrimination law, it is unlawful to treat a person less favourably on the basis of particular protected attributes such as a person's sex, race, disability or age;
- A one-off incident can constitute harassment;
- Workplace bullying is repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety;
- How JCUSA will manage the risks of discrimination, harassment and workplace bullying;
- Process for making a complaint;
- Consequences of breaches; and
- Merit application in processes involving workers.

Responsibilities:

The responsibility for managing health and safety ultimately rests with the person in control of the business or undertaking (PCBU), directors and management. Workers also have important responsibilities for health and safety in the workplace.

JCUSA Council has ultimate responsibility for all workers and Club/Society members to comply with approved policies, procedures, safe work procedures that:

- support and align with current legislation, regulations and codes of practice;
- are implemented and monitored; and
- are reviewed to evaluate the continuing effectiveness and currency.

Officers have a duty to exercise due diligence to ensure the PCBU complies with the WHS Act and WHS Regulations. This includes taking reasonable steps to ensure the business or undertaking has appropriate processes for discrimination, harassment and workplace bullying.

Workers and Club/Society members must:

- take reasonable care for their own health and safety;
- take reasonable care that their conduct, acts or omissions does not adversely affect the health and safety of others or property;
- comply, so far as they are reasonably able with instructions; and
- cooperate with reasonable health and safety policies or procedures that have been notified to workers.

Definitions:

Discrimination	<p>Has the same meaning as contained in the Anti-Discrimination Act 1991 (Qld), Age Discrimination Act 2004 (Cth), Disability Discrimination Act 1992 (Cth), Racial Discrimination Act 1975 (Cth), Sex Discrimination Act 1984 (Cth).</p> <p>The grounds for which a complaint may be made under this policy include discrimination, and harassment based on one or more of the following characteristics:</p> <ul style="list-style-type: none"> • Sex or gender; • Relationship status, pregnancy, breastfeeding, parental status and family responsibility; • Sexuality or gender identity; • Disability or impairment; • Race, accent, colour, national or ethnic origin, nationality, ethnicity, descent or ancestry, or immigration; • Age; • Religious or political belief or activity; • Trade union activity; • Lawful sexual activity; or • Personal association with or relation to any person who is identified on the basis of any of the above attributes.
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Duty holder	Any person who owes a work health and safety duty under the WHS Act including a person conducting a business or undertaking, a designer, manufacturer, importer, supplier, installer of products or plant used at work (upstream duty holder), officer or a worker.
Merit selection	Where the best possible match is made between the qualifications, relevant experience and capabilities of the applicants and the position.
Natural Justice	<p>Natural justice, also known as procedural fairness, is concerned with the procedures used to arrive at a decision, rather than the decision reached. It requires a fair and transparent process. The Complainant and Respondent must both be afforded natural justice, which includes the Respondent being sufficiently informed of the allegation to allow for a meaningful response.</p> <p>Natural justice requires:</p> <ul style="list-style-type: none"> • The right to be heard; • The right to be treated without bias or conflict of interest; • A decision based on evidence. <p>These rules involve Complainants and Respondents having a reasonable opportunity to prepare and present a case and to have their cases considered justly.</p>
PCBU	<p>A PCBU is an umbrella concept which intends to capture all types of working arrangements or relationships.</p> <p>A PCBU includes a:</p> <ul style="list-style-type: none"> • company • unincorporated body or association • sole trader or self-employed person. <p>Individuals who are in a partnership that is conducting a business will individually and collectively be a PCBU.</p> <p>A volunteer association (defined under the WHS Act, see below) or elected members of a local authority will not be a PCBU.</p> <p>A group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.</p>
Sexual Assault	<p>Sexual assault is any unwanted or forced sexual activity without consent. It covers a broad range of sexual activity. Both women and men can be sexually assaulted. Sexual assault includes:</p> <p>Rape, which is when non-consensual penetration occurs with any body part or object. It includes oral sex.</p> <p>Indecent assault, which is when any assault of a sexual nature occurs without consent (e.g. groping, inappropriate touching) or a person is made to perform a sexual act without consent (e.g. perform a sexual act on an offender).</p>

Sexual Harassment	<p>Sexual harassment is 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. Examples of sexual harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • Displays of sexually graphic materials including posters, cartoons or messages left on noticeboards, desks or common areas; • Repeated invitations to go out after prior refusal; • Indecent exposure; • Stalking; • Offensive e-mails and text messages; • Pressuring a student to engage in sexual behaviour for some educational or employment benefit; or • Making a real or perceived threat that rejecting sexual behaviour will carry a negative consequence for the student in education, on-campus residence, or University program or activity. <p>Sexual harassment is prohibited by the Anti-Discrimination Act 1991 (Qld).</p>
Vilification	<p>Has the same meaning as contained in the Anti-Discrimination Act 1991 (Qld). Specifically, a person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group.</p>
Workplace bullying	<p>Repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.</p> <ul style="list-style-type: none"> • Repeated behaviour is behaviour which occurs more than once and may involve a range of behaviours over time; and • Unreasonable behaviour is behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.
Worker	<p>Any person who carries out work for a person conducting a business or undertaking, including work as an employee, contractor or subcontractor (or their employee), self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a 'host employer' or a volunteer.</p>

Acronyms

JCU	James Cook University
JCUSA	James Cook University Student Association
PCBU	Persons conducting a business or undertaking

Policy

JCUSA confirms that:

- All workers and Club/Society members have a right to a workplace environment that is free from discrimination, bullying, and harassment.
- Discrimination, harassment and workplace bullying can affect the mental and physical health of workers.
- All members of the JCUSA community are to be treated with dignity, courtesy and respect. Discrimination, bullying, and harassment will not be tolerated under any circumstances and JCUSA will take all reasonable steps to eliminate such conduct of or by members of Council, employees, visitors, affiliates such as Clubs/Societies and other members of the JCUSA community.
- Discrimination, bullying, and harassment in employment and education is unlawful under various human rights and equal opportunity legislation. Sexual assault in particular is a serious criminal matter. Councillors, clubs/society members and workers will be supported in their decisions around options for medical and legal action. It is recommended to reporting any instances to police, JCUSA and JCU (if relevant) and seek any medical assistance or counselling.
- JCUSA will use educative approaches for the prevention of discrimination, bullying, and harassment, to inform members of the JCUSA community of their rights and responsibilities, to encourage the reporting of behaviour, practices or publications that contravene this policy, and ensure JCUSA systems and processes are not discriminatory.

Discrimination

The Act makes discrimination, sexual harassment and vilification in employment against the law. This applies to every aspect of work, including recruitment, terms and conditions, and termination of employment. It also applies to all categories of work, whether it be full-time, part-time, casual, voluntary etc.

Discrimination can be on the basis of Direct or Indirect Discrimination:

- Direct discrimination on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.
- Indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term:
 - with which a person with an attribute does not or is not able to comply; and
 - with which a higher proportion of people without the attribute comply or are able to comply; and
 - that is not reasonable.

Particular exemptions mean that not all forms of discrimination are against the law in all circumstances. The Act provides a range of exemptions that can be argued. However, only certain exemptions apply in relation to employment. It is also possible to apply to the Queensland Industrial Relations Commission (QIRC) for the granting of a work-related exemption.

Exemptions recognise that in some circumstances discrimination can be acceptable provided it occurs for specific reasons or purposes. Many exemptions allow the employment of people of a particular sex or race or age etc. when it is necessary for the particular job. Other exemptions allow employers to boost the employment opportunities for people from disadvantaged groups through equal opportunity policies.

Harassment

Under discrimination law, it is unlawful to treat a person less favourably on the basis of particular protected attributes such as a person's sex, race, disability or age. Treating a person less favourably can include harassing or bullying a person. The law also has specific provisions relating to sexual harassment, racial hatred and disability harassment.

Harassment can include behaviour such as:

- telling insulting jokes about particular racial groups;
- sending explicit or sexually suggestive emails or text messages;
- displaying racially offensive or pornographic posters or screen savers;
- making derogatory comments or taunts about a person's disability; or
- asking intrusive questions about someone's personal life, including his or her sex life.

A one-off incident can constitute harassment.

Workplace Bullying

Workplace bullying is repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety:

- Repeated behaviour is behaviour which occurs more than once and may involve a range of behaviours over time; and
- Unreasonable behaviour is behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Taking steps to prevent it from occurring and responding quickly if it does is the best way to deal with workplace bullying.

Bullying can take different forms including psychological, physical or even indirect—for example deliberately excluding someone from work-related activities. It can be obvious and it can be subtle, which means it's not always easy to spot.

Bullying behaviour can range from obvious verbal or physical assault to subtle psychological abuse. It can include:

- physical or verbal abuse;
- yelling, screaming or offensive language;
- excluding or isolating employees;
- psychological harassment;
- intimidation;
- assigning meaningless tasks unrelated to the job;
- giving employees impossible jobs;
- deliberately changed work rosters to inconvenience particular employees; and
- undermining work performance by deliberately withholding information vital for effective work performance.

What is not workplace bullying

Reasonable management action taken in a reasonable way is not workplace bullying.

Managers are responsible for monitoring the quality and timeliness of work and providing staff with feedback on their performance. If performance issues need to be addressed, the conversation needs to be constructive and supportive, and focus on the positives as well as the negatives. It should not be humiliating or demeaning.

Differences of opinion and disagreements are also generally not workplace bullying.

Implications of workplace bullying

Failure to take steps to manage the risk of workplace bullying can result in a breach of WHS laws.

Workplace bullying is best dealt with by taking steps to prevent it from happening and responding quickly if it does occur. The longer the bullying behaviour continues, the harder it becomes to repair working relationships and the greater the risk to health and safety.

Effects of bullying

Workplace bullying can seriously harm worker mental health with depression, psychological distress and emotional exhaustion common outcomes for bullied workers. These health outcomes may adversely impact the workplace with workers taking sick leave and being less productive (presenteeism), both of which damage productivity.

How JCUSA will manage the risks of discrimination, harassment and workplace bullying

JCUSA will minimise the risk of workplace bullying by taking a proactive approach to identify early, any unreasonable behaviour and situations likely to increase the risk of workplace bullying occurring.

JCUSA will implement control measures to manage these risks, and monitor and review the effectiveness of these measures. This include the following activities:

- Regularly consulting with workers at staff meetings to find out if bullying is occurring or if there are factors likely to increase the risk of workplace bullying.
- Setting the standard of workplace behaviour through the JCUSA Code of conduct, Club/Society Code of Conduct and this policy.
- Designing safe systems of work by clearly defining jobs and providing workers with the resources, information and training they need to carry out their work safely.
- Implementing workplace bullying reporting and response procedures.
- Developing productive and respectful workplace relationships through good management practices and effective communication.
- Providing information and training on workplace bullying policies and procedures, available support and assistance, and how to prevent and respond to workplace bullying.
- Prioritising measures that foster and protect the psychological health of employees.

Making a complaint

For workers, the General Manager is to be informed of a formal complaint and they will then sensitively facilitate timely and appropriate action through appropriate avenues.

If the General Manager is the alleged perpetrator than the President is to be informed.

The General Manager will undertake an investigation and the principles of natural justice shall apply to the handling of complaints under this policy in accordance with Policy 041 Complaint Handling policy.

Clubs/Societies: Are to also contact the General Manager in the first instance and the university via a report or complaint which is available [here](#) and the police can be contacted.

Consequences of Breach

Breaches of this Policy will be addressed through the disciplinary procedures prescribed for workers (including the JCUSA Code of Conduct, Clubs and Societies Code of Conduct and the Enterprise Agreement as amended or replaced from time to time).

Depending upon the severity and implications of the breach, sanctions may include legal action, a formal warning, and retraining, and/or other disciplinary action (such as suspension or termination of employment).

Mandatory Training

All workers will attend the Discrimination, Bullying & Harassment Prevention Course as part of their induction training.

Clubs and Societies will provide induction that covers this policy.

Merit

Employment and promotion are based upon open competition and upon the merit of the individual. The merit principle aims to ensure:

- Equal opportunity for people to compete for a position;
- That people are judged fairly and without bias, favouritism or unfair discrimination;
- The selection of the best person for the job; and
- That, when a person is assessed for a job, only those aspects that are relevant to their ability to perform in that job are considered.

Employers, managers and supervisors will treat all their job applicants and employees on the basis of their individual merit and not because of irrelevant personal characteristics.

Once people are in a job, they will be treated only on merit in relation to salaries, employment packages, training, promotion and other workplace benefits.

Related Legislation and Documents

Australian Human Rights Commission, Good Practice, Good Business, Workplace discrimination, harassment and bullying.

Commonwealth Laws

- Age Discrimination Act 2004
- Australian Human Rights and Equal Opportunity Commission Act 1986
- Disability Discrimination Act 1992
- Disability Standards for Education 2005
- Fair Work Act 2009
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Workplace Gender Equality Act 2012

Queensland State Laws

- Anti-Discrimination Act 1991
- Criminal Law Amendment Act 1993
- Disability Services Act 1992
- Industrial Relations Act 2016
- Human Rights Act 2019
- Work Health Safety Act 2011

WHS Regulation 2011

Workplace Health and Safety Queensland, Managing the Work Environment and Facilities Code of Practice 2021

Workplace Health and Safety Queensland, Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021

POL001 WHS Policy

POL020 Health and Wellbeing Policy

POL023 Induction Policy

POL034 Training and Supervision Policy

POL041 Complaint Handling Policy

POL042 Code of Conduct Policy

POL048 Clubs and Societies Policy

POL091 Clubs and Societies Disaffiliation Policy

POL098 Clubs and Societies Induction Policy

PRO003 Discrimination, Harassment and Workplace Bullying Procedure

Form 070 Complaint Form

JCU Bullying, Discrimination, Harassment, and Sexual Misconduct Policy

JCU Student Complaint Management Policy and Procedure.

JCU Bullying and Harassment Information Sheet

Administration

Note: Printed copies of this policy are uncontrolled and currency can only be assumed at the time of printing.

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