

Policy and Procedure

Name: **Anti Discrimination**
 Approved by: Executive Group
 Last reviewed: 10 June 2009

SECTION 1 - INTRODUCTION	2
PURPOSE	2
SCOPE	2
LEGISLATIVE CONTEXT	3
SECTION 2 - POLICY	3
PRINCIPLES	4
POLICY	4
SECTION 3 - PROCEDURE	7
PROCEDURE	7
SUPPORTING DOCUMENTATION	9
SECTION 4 - GOVERNANCE	10
RESPONSIBILITY	10
VERSION CONTROL AND CHANGE HISTORY	10
POLICY & PROCEDURE DIRECTORY REQUIREMENTS	10

SECTION 1 - INTRODUCTION

PURPOSE

Swinburne University of Technology (“the University”) has implemented policies and procedures to promote a discrimination and harassment free work environment for all staff and students to ensure that it meets its obligations under Victorian and Commonwealth legislation.

SCOPE

This policy is applicable to all current and prospective University staff and students as well as members of the public accessing goods or services of the University.

All persons covered by the scope of this policy are required to:

- Comply with this policy
- Behave appropriately
- Promote a climate of mutual respect
- Ensure there is fair treatment of all students and prospective students and to all current and prospective University staff

DEFINITIONS

Word/Term	Definition
Direct discrimination	Direct discrimination means treating or proposing to treat another person less favourably on the basis of an attribute than the person treats or would treat someone without that attribute in the same or similar circumstances.
Indirect discrimination	Indirect discrimination means imposing or proposing to impose an unreasonable requirement condition or practice that may appear to be neutral but has a disproportionately negative impact on people with particular attributes. This means a requirement, condition or practice which: <ul style="list-style-type: none">▪ a person with the attribute does not or cannot comply with;▪ a higher proportion of people without the attribute or with a different attribute, do or can comply with; and▪ is not reasonable in the circumstances.
Harassment	Harassment is any form of behaviour that is, not wanted, is not asked for and is not returned, that is likely to create a hostile or uncomfortable workplace by humiliating, intimidating or offending a person because of an attribute protected by the law.
Racial and religious vilification	Racial and religious vilification is behaviour that incites or encourages hatred, serious contempt, revulsion or severe ridicule against another person or group of people, because of their race or religion.

LEGISLATIVE CONTEXT

Name	Location
The Equal Opportunity Act 1995 (Vic)	http://www.austlii.edu.au/au/legis/vic/consol_act/ea1995250/
The Racial and Religious Tolerance Act 2001 (Vic)	http://www.austlii.edu.au/au/legis/vic/consol_act/rarta2001265/
The Human Rights and Equal Opportunity Commission Act 1986 (Cth)	http://www.austlii.edu.au/au/legis/cth/consol_act/hraeoca1986512/
The Racial Discrimination Act 1975 (Cth)	http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/
The Sex Discrimination Act 1984 (Cth)	http://www.austlii.edu.au/au/legis/cth/consol_act/sda1984209/
The Disability Discrimination Act 1992 (Cth)	http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/
The Racial Hatred Act 1995 (Cth)	http://www.austlii.edu.au/au/legis/cth/num_act/rha1995109/

The University will meet its obligations under these Acts through the implementation of this policy and associated procedures.

SECTION 2 - POLICY

PRINCIPLES

The University is committed to providing all staff and students an equitable and inclusive study and work environment free from discrimination, harassment and vilification, to ensure that they are treated fairly and able to work effectively and fully participate in all aspects of University life.

The University is responsible for ensuring that equal employment opportunities exist for all current and future employees. This applies to recruitment, interview, selection, appointment and promotion processes. Staff will be selected or promoted according to merit irrespective of personal attribute.

POLICY

1.	<p>Eliminating Discrimination, Harassment and Vilification</p> <p>The University does not condone or tolerate discrimination, harassment and vilification; such behaviour is deemed to be unacceptable and may be subject to disciplinary action in accordance with University Policies and Procedures. Allegations of discrimination, harassment and vilification will be dealt with in a prompt and confidential manner.</p>
2.	<p>Objectives of this policy</p> <ul style="list-style-type: none"> • To convey clearly to all staff and students that behaviour which constitutes discrimination or harassment will not be tolerated in any form at Swinburne University. • To encourage the University community to understand, and to have access to, the information and training needed to prevent discrimination or harassment and to address any incidents. • To ensure the University promotes fair treatment at all times. • To have procedures in place to deal with complaints of discrimination and harassment which <ul style="list-style-type: none"> - are accessible to staff and students - observe the principles of natural justice - provide support for those staff and students who report discrimination or harassment - provide clear links to staff and student disciplinary procedures to deal with identified breaches - protect against victimisation of a complainant or a person associated with a complainant • Strategies to ensure that the University’s policies and procedures are not directly or indirectly discriminatory. Under some circumstances complaints against the University regarding the actions of staff may be discharged on the basis that the University has a defence against its vicarious liability.
3.	<p>Types of prohibited behaviour</p> <p>Both direct and indirect discrimination is unlawful in the areas of education, employment provision of goods and services and accommodation. Acts of racial vilification are unlawful in</p>

	any public place. Whether the person was aware that their action was unlawful and their intention is irrelevant in determining whether unlawful discrimination has occurred. For the purposes of complaint resolution their relevance will be assessed.
3.2	Prohibition of discrimination and harassment on specified grounds
	<p>Grounds of prohibited discrimination and harassment and types of prohibited behaviour are:</p> <ul style="list-style-type: none"> • Age • Breastfeeding • Carer status • Disability or impairment • Employment Activity • Gender Identity • HIV, AIDS & Hepatitis C • Industrial activity • Irrelevant Criminal Record • Lawful sexual activity • Marital status • Parental status • Physical features • Political belief or activity • Pregnancy • Race • Religious belief or activity • Same sex relationships • Sex • Sexual orientation • Social Origin • Personal association with a person who is identified by reference to a protected attribute. • And any other attributes protected by law.
3.3	Authorising and assisting
	It is also against the law to authorise or assist another person to discriminate or harass someone. That means that a person must not ask, instruct or encourage anyone person to discriminate against or harass another person.
3.4	Discrimination in employment
	<p>Discrimination in employment may include:</p> <ul style="list-style-type: none"> • advertisements • interview questions • refusing to employ someone • setting unfair terms of employment • denying access to a training program • refusing or limiting access to opportunities for promotion, transfer or other employment benefits • dismissal or other termination of employment <p>if it is based on one of the personal characteristics protected by the Equal Opportunity Act</p>
3.5	Discrimination in education

An educational authority must not discriminate against a person

- in deciding who should be admitted as a student;
- by refusing, or failing to accept, the person's application for admission as a student;
- in the terms on which the authority admits the person as a student.

An educational authority must not discriminate against a student

- by denying or limiting access to any benefit provided by the authority;
- by expelling the student;
- by subjecting the student to any other detriment.

SECTION 3 - PROCEDURE

PROCEDURE

The University takes seriously its responsibilities to handle complaints of discrimination and harassment promptly and impartially. It has delegated appropriately the handling of these complaints to managers. This system is supported by a specialist consultant and a formal investigation system. The University undertakes to train individuals involved in the resolution of complaints and to have available staff with relevant expertise to provide advice.

	Procedure steps	Responsibility
1	Avenues through Discrimination and Harassment related complaint may be lodged	
1.1	<p>Staff members who believe that they are being discriminated or harassed in contravention of this policy and the relevant Legislative Acts (as amended) may take action under the procedures defined within the Staff Grievance Policy which outlines appropriate procedures for both a Formal and Informal Resolution Process.</p> <p>The procedures defined within the Staff Grievance Policy should be read in conjunction with this policy.</p>	Director Human Resources
1.2	<p>Students who believe that they are being discriminated or harassed in contravention of this policy and the relevant Legislative Acts (as amended) may take action under the procedures defined within the General Grievance - Students Policy which outlines appropriate procedures for both a Formal and Informal Resolution Process.</p> <p>The procedures defined within the General Grievance - Students Policy should be read in conjunction with this policy.</p>	Director Student Services / Director Student Operations
1.3	<p>Incidents of discrimination and harassment may be reported to the following for action:</p> <ul style="list-style-type: none"> ○ Manager ○ Human Resources (Staff) ○ Discrimination/Harassment Advisor (Staff and Students) ○ Manger of Equity and Disability Support Services (Students) 	Person with complaint
1.4	All complaints will be treated in a confidentially, sensitive, fair and timely manner.	All Managers and Supervisors
1.5	Staff seeking counselling assistance may contact the Employee	Staff

	Assistance Program.	
1.6	Students seeking counselling assistance and support may contact the Student Counselling Service. They may also acquire advocacy and advice from the Swinburne Student Amenities Association.	Students

SUPPORTING DOCUMENTATION
Forms and Records Management

Form		
Nil		

Related Material

Name	Location	Document Type
Staff Grievance Policy	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2008/184	Website
Sexual Harassment Policy	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2008/180	Website
Code of Conduct	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2008/131	Website
General Grievance - Students Policy	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2007/28	Website
General Misconduct Policy	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2007/29	Website
Regulation 16 – Student Discipline	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2008/243	Website
Information Technology (IT) Systems Acceptable Use Policy	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2008/34	Website
Eliminating Bullying and Violence	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2008/130	
WorkSafe Victoria, Prevention of Bullying and Violence at Work Guidance Note 2003	http://www.workcover.vic.gov.au/wps/wcm/resources/file/ebd87343a012d0f/preventbullying.pdf	Website
WorkSafe Victoria, The Regulation of Workplace Bullying 2007	http://www.workcover.vic.gov.au/wps/wcm/resources/file/eb557b426cac290/Workplace%20Bullying.pdf	Website
Students with a Disability	http://policies.swinburne.edu.au/ppdonline/showdoc.aspx?recnum=POL/2008/318	Website

SECTION 4 - GOVERNANCE

RESPONSIBILITY

Policy Owner	Director Human Resources
---------------------	--------------------------

VERSION CONTROL AND CHANGE HISTORY

Version Number	Approval Date	Approved by	Amendment
4	10 June 2009	Vice Chancellor	Editorial amendments to meet the requirements to be a VET FEE-HELP provider
3	11 July 2008	Executive Group	<p>This policy has been updated in accordance with the 2007/2008 policy review project.</p> <p>The following changes have been made:</p> <ul style="list-style-type: none">* Rewording some sections to better articulate the purpose, principles and procedural context of the policy within the guidelines of the new template.* The addition of a harassment definition.* The addition of a Racial and Religious Vilification definition.* The addition of attributes protected under legislation: irrelevant criminal record, social origin and employment activity (2008).* The addition of what discrimination in employment and education includes.* Removal of the resolution procedures with staff and students being referred to the relevant resolution process.
2	15 November 2005	Executive Group	
1	10 August 1998	Council	

POLICY & PROCEDURE DIRECTORY REQUIREMENTS

CATEGORY

Human Resources

KEYWORDS

Discrimination, Harassment, Human Resources