

## HARASSMENT AND DISCRIMINATION RESOLUTION PROCEDURES

<b>Section</b>	People & Organisational Development
<b>Contact</b>	People & Organisational Development
<b>Last Review</b>	February 2018
<b>Next Review</b>	February 2020
<b>Approval</b>	SLT 14/11/294
<b>Effective date</b>	February 2018

### **Purpose:**

The purpose of these procedures is to provide guidance to staff and managers in dealing with harassment, raising issues and resolving them and making formal complaints. The procedures outline a range of options.

Harassment in this procedures document includes discrimination, sexual harassment, personal harassment, abuse of supervisory/managerial authority and bullying.

Please see the [‘Harassment and Discrimination at Work Policy’](#) for definitions of what constitutes harassment.

### **Procedures:**

#### ***Dealing with harassment when it first occurs:***

Early intervention when an issue or concern is raised is the best option for long term resolution.

Staff who believe they have experienced some form of harassment, or who have witnessed harassment against another member of staff should act promptly.

Staff are encouraged to respond assertively to behaviour that they consider harassment, if this is possible or practicable. This may mean talking to the person to let them know that their behaviour is unwelcome or inappropriate and asking them to stop it. It may include writing the person a ‘private and confidential’ letter outlining the behaviour which is unwelcome and asking them to stop it. It is recognised this may not be possible or practical in many situations.

Where the member of staff is unable to resolve the situation themselves, it may be appropriate to take the matter up with their immediate manager or, if the matter involves that person, their manager’s manager.

Any manager who is approached about a potential case of harassment or receives a complaint should act immediately and seek advice and support if necessary.

#### ***Steps that may be taken to resolve the issue informally:***

The manager may suggest the member of staff find a person to support them in the process of resolving the issue. This could be a friend, a family member, a trade union representative or associate.

The Employee Assistance Programme is available to Staff. The University has engaged EAP Services to provide professional and confidential support to staff in instances of harassment. EAP Services will provide immediate advice, discuss various options available and assist them in attempts to remedy the situation.

Where the parties agree, the manager may convene a meeting between the parties to resolve the matter informally.

It may also be appropriate to seek assistance from a mediator to facilitate a resolution to the matter. Mediation can bring the matters out in a safe yet confidential environment and assist the parties to understand the nature and impact of harassing behaviours. It can also assist and facilitate the on-going working relationship between parties. If the complainant is satisfied with the outcome, the matter will be deemed to be resolved. Mediation may not be appropriate in all situations and should be carefully weighed up by all parties.

To find out more about mediation procedures and processes you can contact:

- Labour Department Mediation Services
- Massey University Disputes Advisor
- Massey University Mediation Service

### **Formal Complaint:**

The member of staff may choose to make a formal complaint along with any further explanation as appropriate about the incident that has taken place. A formal complaint does not need to be in any special form but must be in writing and outline the events, when and how they occurred and the impact of any situation on the employee concerned, any action the complainant may have taken to stop the behaviour, and an indication of the desired outcome the complainant is seeking.

The complaint is to be lodged with the appropriate manager or with the Assistant Vice-Chancellor People and Organisational Development. Any manager who receives a complaint must deal with it promptly ,

If the complaint has sufficient substance, the manager should commission an investigation. Where it appears that there has been an incident of misconduct or serious misconduct (and possibly a criminal offence to be referred to appropriate external authorities), an employment investigation will be undertaken in accordance with the staff member's employment agreement and the principles of natural justice.

On receipt of a formal complaint, the complainant will be informed of how the investigation will proceed and be provided with an indicative timeframe for the investigation. The complainant will be kept informed throughout the course of the investigation.

During the course of an investigation it may be necessary to gather information and interview other individuals. Content of any interviews will be documented and verified by the individual supplying the information for the purposes of being included in the investigation and the investigation report.

Where a formal complaint is submitted for investigation, the complaint together with any supplementary information obtained during the course of the investigation will, in line with the principles of natural justice, be given to the member of staff who is the subject of the complaint, to answer.

At any time during this process the complainant can seek to have the matter referred to mediation in an effort to resolve it without going further or withdraw the complaint. If mediation is unsuccessful then a decision would have to be made as to whether or not to continue with the investigation.

Both the complainant and the respondent will be provided with a copy of any report of the investigation and given an opportunity to provide a written response before a decision is made.

At the end of the investigation a decision will be made as to whether or not the complaint is substantiated and what action should be taken in relation to the complaint or issue. This could include:

- No further action

- Disciplinary action against the person complained about
- Mediation between the parties

#### ***Personal Grievance under the Employment Relations Act 2000 (ERA):***

An employee may raise a personal grievance if they are harassed or discriminated against. This is a formal procedure under the Employment Relations Act 2000 (ERA) and may arise if an employee feels that matters remain unresolved or they feel that they have been disadvantaged or dismissed unjustifiably as a result of a complaint under these procedures.

There is a 90 day time frame for an employee to raise a personal grievance under the Employment Relations Act. Depending on the circumstances, outcomes from the above processes may include:

- Complainant feels satisfied that the problem has been resolved.
- Disciplinary action is taken against harasser. This will be applied consistently throughout the University taking into consideration the nature of the behaviour, the circumstances, previous occurrences, etc.
- Some form of behaviour modification e.g. counselling for the harasser.
- Changes to work practices and/or environment.

At the conclusion of the investigation the complainant will be notified in broad terms the outcome.

Nothing in these procedures is to be construed as restricting the recourse of any person to other avenues of dealing with cases of harassment as outlined above.

#### ***Human Rights Act***

An employee can also decide to refer a complaint of discrimination or harassment to the Human Rights Commission, under the Human Rights Act 1993.

#### ***Choice of Procedures***

An employee may determine that they would prefer to raise the matter with the Human Rights Commission. The Commission can deal with cases of alleged discrimination, sexual harassment or racial harassment. The Commission may decide to investigate the complaint under its own procedures. If an employee does raise a complaint through the Human Rights Commission they cannot also raise the complaint under the Employment Relations Act.

#### **Parties entitlements during any procedure:**

All parties (complainants, respondents, witnesses, interviewees) involved with or affected by complaints dealt with under these procedures are entitled to:

- A fair hearing;
- Be kept fully informed during the process;
- Have a representative and/or support person present at meetings
- Be provided with all information being relied on by the University
- Apply, where relevant, for a change of supervision, work duties or workplace while an investigation is proceeding;
- Counselling through the University's EAP scheme.

The University will observe the principles of natural justice and procedural fairness. They will ensure that anyone whose interests may be adversely affected by a complaint is aware of the allegations against them, including the identity of the person making the allegations, and has the opportunity to respond. The University will not act on anonymous complaints.

Complainants have the right to withdraw from the process at any stage. However, this will not necessarily halt further action where there is a risk to personal safety or property, or where there would be legal implications for the University if action does not follow.

***Protection of Parties to a complaint:***

When a member of staff has either made a complaint or is the subject of a complaint they must use all reasonable efforts to avoid action which actually or potentially causes disadvantage to or creates a hostile environment for the other person or colleagues including those who may have been interviewed.

If the member of staff is concerned about disadvantage or hostility they should raise this immediately with a manager, human resources or their union or support person.

***Investigation where no formal complaint or complaint withdrawn:***

In some circumstances, depending on the seriousness of the matter, even where a complainant has withdrawn a complaint or where a formal complaint has not been received, a manager may decide to undertake an investigation into the issue or behaviour.

This may particularly apply where the alleged behaviour is serious or on-going and may constitute misconduct requiring disciplinary action against the person responsible; or where there is a risk to personal safety; or where there are legal implications for the University if formal action is not taken.

A manager should seek assistance and advice from their HR Advisor in such circumstances.

**Advice, Information and Support:**

As an employee you can access the following for personal support to discuss any issues or concerns you have, to seek advice on resolving the issues or concerns you have or to discuss how to make a complaint:

- Friend or family member
- A senior colleague
- Your manager
- A Human Resources Advisor
- A union representative [www.teu.ac.nz](http://www.teu.ac.nz) [www.epmu.org.nz](http://www.epmu.org.nz); [www.psa.org.nz](http://www.psa.org.nz); [www.tiasa.org.nz](http://www.tiasa.org.nz)
- Employee Assistance Programme (EAP) 0800 327 669
- A Health Professional
- Massey University Harassment Contact Network
- Massey University Disputes Advisor
- Massey University Mediation Service

External agencies such as the Equal Employment Opportunities Trust [www.eeotrust.org.nz](http://www.eeotrust.org.nz), or the Human Rights Commission [www.hrc.co.nz](http://www.hrc.co.nz)

As a manager, you can seek advice from the following:

- Massey University Disputes Advisor
- Massey University Mediation Service
- Human Resources Advisor

Additionally, courses are available through the development programme and managers are also referred to the Managers Handbook and Checklist for Harassment Prevention.

### **Confidentiality:**

The University is committed to maintaining confidentiality unless there are circumstances involving probable risk to the safety of any person/s, or where maintaining confidentiality would be unlawful, or when this would compromise principles of natural justice.

### **Defamation:**

Due to the possibility of defamation proceedings, all information must be kept as confidential as possible. The complainant and the alleged harasser are not to discuss any matters pertaining to a complaint with anyone other than those directly involved.

### **Audience:**

This policy applies to all University staff, including temporary or casual staff.

This policy does not apply to students. Incidents of harassment between students; or by students towards staff should be dealt with through the student harassment co-ordinators and procedures.

Where students are employed as staff, this policy covers them in their capacity as staff only.

### **Relevant Legislation:**

- Employment Relations Act 2000
- Health and Safety at Work Act 2015
- Human Rights Act 1993
- Privacy Act 1993
- State Sector Act 1988

The Employment Relations Act 2000 and the Human Rights Act 1993 codify forms of discrimination which are unlawful and which the University will not permit. The provisions contained in these Acts are drawn to the attention of all members of the University community. Copies of relevant Acts are available on line at [www.legislation.govt.nz](http://www.legislation.govt.nz).

### **Legal Compliance:**

The Employment Relations Act 2000 requires Massey University to comply with Part 9 - Personal grievances, disputes, and enforcement and Part 10 - Institutions and abide by the criteria set out in this Act.

Under Health and Safety at Work Act 2015 Massey University has a primary duty of care to ensure that as far as reasonably practicable, the health and safety of workers and of others persons is not put at risk from work carried out by Massey University (Section 36). Massey University also has a duty to eliminate risks to the health and safety so far

as is reasonably practicable, and if is not able to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable (Section 30).

The Human Rights Act 1993 prohibits Massey University from discriminating against any employee, job applicant or contractor on the grounds of sex, marital status, religious belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status or sexual orientation.

The Privacy Act 1993 requires Massey University to comply with its 12 Principles in regards to the collection of personal information, the manner in which it is collected and the storage and security of personal information. In addition, Massey University is required to provide the individual concerned with access to their personal information and the ability to request correction of information if necessary. The University must adhere to the limits on the use of personal information collected in that the University may only collect personal information for the intended purposes of selection for appointment of the individual and this information cannot be used for any other purpose. It is essential that the personal information gathered is checked before use to ensure the information is accurate, up to date, complete, relevant and not misleading. The personal information obtained shall not be kept for longer than it is required for the purposes for which the information may lawfully be used.

The State Sector Act 1988 requires Massey University to maintain appropriate standards of integrity and conduct among employees (Section 57).

#### **Related Policy, Procedures & Guidelines:**

- [Harassment at Work Policy](#)
- [Health and Safety policies/procedures](#)
- [Massey University Policy on Staff Conduct](#)
- [Use and Access to Information Technology Services Systems Policy](#)
- [Conflicts Of Commitment And Interest Policy](#)
- WorkSafe New Zealand and the Ministry of Business, Innovation and Employment Best Practice Guidelines: [Preventing and Responding to Workplace Bullying](#)

#### **Document Management Control:**

Prepared by:	Employment Relations Manager
Authorised by:	The Assistant Vice-Chancellor (People & Organisational Development)
Approved by:	SLT 14/11/294
Date issued:	20 February 2008
Last review:	February 2018
Review Date:	February 2020