



**COLLEGES  
UNIVERSITY  
OF MELBOURNE**

## **FAIR TREATMENT POLICY AND PROCEDURES**

**This document should be read in relation to the University's 'Appropriate Workplace Behaviour' and 'Student Conduct' policies. Please refer to these policies at:**

<https://policy.unimelb.edu.au/MPF1324> and <https://policy.unimelb.edu.au/MPF1328>

**This document should be read in relation to the University's 'Child Safety Policy'. Please refer to this policy at:**

<https://policy.unimelb.edu.au/MPF1337>

**For College policies on Child Safety Standards please refer to individual College websites for more information.**

*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.*

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# Fair Treatment

## Policy and Procedures

### 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, so far as is reasonably practicable, 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 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.

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 take reasonable and proportionate measures to create an educational and employment environment that is free from unlawful discrimination, sexual harassment and bullying. In addition, the Colleges seek to create an educational and employment environment in which the wellbeing of all students, staff and visitors is protected. To this end, unlawful discrimination, discriminatory harassment, vilification, sexual harassment, bullying, victimisation and serious misconduct or criminal behaviour are prohibited by the Colleges. The Colleges recognise the particularly devastating impact of sexual offences and reiterate that sexual misconduct or violence in all its forms is unacceptable and will not be tolerated by the Colleges.

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

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 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:

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- Discrimination, Discriminatory Harassment, Vilification;
- Sexual Harassment;
- Bullying;
- Victimisation; and
- Serious misconduct and criminal behaviour.

## 1.2 Aims

### The Colleges aim to:

- Ensure that there is no unlawful discrimination, sexual harassment, discriminatory harassment, vilification, 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, vilification, 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 and tutors 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 Fair Treatment Contact Persons and External Advisors 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 all students, as well as employees, volunteers, contractors and other workplace participants (collectively referred to as "staff") engaged in activities reasonably connected with one or more of the Colleges. Such activities may extend beyond College premises to activities organised 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
- Health & Safety Officers
- Fair Treatment Coordinator
- Fair Treatment Contact Persons and External 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, vilification, bullying, and victimisation. A College can be liable for the behaviour of its employees and agents. The Colleges have a positive duty to take 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 their job or access education and goods and services. These legal responsibilities mean that College Heads, senior academic and administrative staff and tutors have a responsibility to:

- Monitor the working and living environment to seek 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;
- Support the right of all students or staff to have their complaint lodged, listened to and respected;
- Refer a person who has a concern about matters covered by this Policy to a Fair Treatment Contact Person or External 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 Fair Treatment Contact Persons or External Advisers, the provision of training for their College community and Fair Treatment Contact Persons 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, organising and conducting training programs, assisting the College Fair Treatment Coordinators, Fair Treatment Contact Persons, 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 Contact Persons and External Advisers:** Each College recruits, trains, indemnifies and supports suitable senior long term staff members (both academic and administrative) to become Fair Treatment Contact Persons, and if required, suitable tutors to the role of Fair Treatment Contact Persons. These Fair Treatment Contact Persons 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, staff and the wider College community, including visitors to the Colleges and prospective students.

## 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);
- Privacy and Data Protection Act 2014 (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, vilification or victimisation by staff or students against any staff member or student.

Discrimination, discriminatory harassment and vilification (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).

Unlawful discrimination, discriminatory harassment, vilification and victimisation are unacceptable in any circumstances. Complaints regarding any such alleged conduct 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 (see Appendix A for a full list of attributes).

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 or service or accommodation provider requires, or proposes to require persons to comply with a requirement or condition; and
- a person with a disability would be able to comply if the employer or service or accommodation provider made reasonable adjustments, but they 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, such as their sex or disability. 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 Vilification**

It is unlawful, under State and Federal law, to vilify a person or group of people on the basis of their religion, religious practices or race. Vilification involves engaging in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

It is not unlawful racial or religious vilification to engage in conduct that is undertaken:

- reasonably and in good faith in the course of a genuine academic, artistic or public discussion, publication or debate; or

- in private.

**Examples of vilification** include behaviour such as:

- publishing claims that a racial or religious group is involved in serious crimes without any proof;
- repeated and serious verbal or physical abuse about the race or religion of another person; or
- encouraging people to hate a racial or religious group using flyers, stickers, posters, a speech or publication, or using websites or email.

The Colleges aim to provide a supportive environment to people of all races and religions. Staff and students must not engage in racial or religious vilification.

### **2.3 Victimisation**

Section 5 below (Victimisation) applies to complaints of discrimination, discriminatory harassment or vilification.

## **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.

Sexual harassment is unacceptable in all circumstances. Complaints about sexual harassment 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.

#### **3.2.1 '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.

### **3.2.2 '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:

- Indecent assault, rape or stalking (which are also criminal offences and may be dealt with in accordance with section 6 of this Policy);
- Displaying 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;
- 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.

### **3.3.3 '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 it may be sexual harassment 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.

## 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, so far as is reasonably practicable, with a working, living and learning environment that is safe and free from risks to health. This includes 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, so far as is reasonably practicable:

- 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.

Bullying is unacceptable in all circumstances. Complaints about bullying 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.

#### 4.2.1: Examples of bullying

- A student was subjected to behaviour by another student over a number of months, including: 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.
- 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.

#### 4.2.2 Elements of Bullying

Behaviour is considered 'repeated' if it occurs more than once. 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.

#### 4.2.3 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;
- Reasonable management action;
- Reasonable 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.

#### 4.2.4 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.

## 5. Victimisation

This section applies to victimisation in relation to complaints of unlawful discrimination, discriminatory harassment, vilification, 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 will not be tolerated by the Colleges. It is unlawful under State and Federal equal opportunity legislation and, in certain circumstances, may amount to adverse action in breach of the Fair Work Act.

**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 their 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. Serious misconduct or criminal behaviour**

### **6.1 Overview**

Serious misconduct or criminal behaviour (as defined in Appendix A) is unacceptable and will not be tolerated by the Colleges. Sexual misconduct and sexual violence in particular are viewed by the Colleges as completely unacceptable and will not be tolerated in any circumstances.

Complaints about serious misconduct or criminal behaviour will be dealt with in accordance with the Complaints Procedure, however it may be necessary to depart from the process set out in the Complaints Procedure given the seriousness of the alleged conduct. In all circumstances, ensuring that complainants are supported and that their safety and wellbeing are protected will be the first priority of the Colleges.

Under individual College policies dealing with student and staff behaviour, serious misconduct and criminal behaviour may result in disciplinary action being taken against a student or staff member.

### **6.2 Policy**

Students and staff must not engage in serious misconduct or criminal behaviour.

Examples of behaviour that might amount to serious misconduct or criminal behaviour include, but are not limited to:

- Assault or physical violence;
- Blackmail;
- Serious or repeated bullying, sexual harassment, discrimination, discriminatory harassment, vilification or victimisation;
- Use or sale of illicit drugs;
- Threats to kill or inflict serious injury;
- Sexual offences;
- Sexting;
- Stalking a person;
- Using technology to menace, harass or cause offence to a person;
- Abuse of a position of power or responsibility within a College;
- Theft, dishonesty or fraud; or
- Deliberately making false or vexatious allegations against another student or staff member.

Whether or not particular conduct amounts to serious misconduct or criminal behaviour will be a matter for the relevant College to determine in each particular case.

#### **6.2.1 Sexual offences**

In this Policy, references to sexual offences include (but are not limited to) all forms of sexual violence and unwanted sexual behaviours such as rape, rape by compelling sexual penetration, sexual assault, unwanted kissing or touching or compelling someone to engage in unwanted sexual touching, assault with intent to commit a sexual offence, threats to commit a sexual offence, sexual offences against children, child pornography offences,

obscene exposure and unlawfully capturing images of or observing another person's genital or anal region.

In certain circumstances, sexual harassment may amount to sexual assault.

Sexual assault is a criminal offence. It is unacceptable in any circumstances and will not be tolerated by the Colleges.

### **6.2.2 Consent**

Sexual offences against adults generally involve a lack of consent to the sexual conduct. Consent involves a person providing free agreement to the sexual activity. This may be indicated by words or physical conduct.

There is **no** valid consent where:

- the person indicates, either by words or conduct, that they do not wish to engage in the sexual activity;
- force is used or threatened to be used against a person to coerce them into engaging in the sexual activity;
- a person is asleep or unconscious; or
- a person is so affected by alcohol or other drugs, as to be incapable of freely agreeing to the sexual activity.

The law in Victoria sets clear age limits for when you can legally have sex. This is called the age of consent. In Victoria it is unlawful to engage in sexual activity with a child under 12 years old, even if they agree. It is also unlawful to engage in sexual activity with a child between the ages of 12 and 16, if you are more than 2 years older than them.

### **6.2.3 Unlawful Sexting**

It is a criminal offence to distribute or threaten to distribute an intimate image of another person in circumstances contrary to community standards of acceptable conduct. In particular, it is a criminal offence to engage in sexting by distributing intimate images of another person:

- under the age of 18; or
- over the age of 18 without their consent.

"Intimate images" include videos or photos of a person engaged in a sexual activity, or in a manner or context that is sexual (including photos depicting the person naked).

### **6.2.4 Using technology to threaten, menace, harass or offend**

It is a criminal offence to use a carriage service (including mobile phone, email, internet and social media):

- in a way that reasonable persons would regard as being menacing, harassing or offensive; or
- to make a threat to kill or cause serious harm if it is intended that the victim fears the threat will be carried out.

### **6.2.5 Stalking**

Stalking is a criminal offence against both Commonwealth and Victorian legislation.

Stalking involves engaging in a course of conduct with the intention of causing physical or mental harm to the victim, including self-harm, or of arousing apprehension or fear in the victim for his or her own safety or that of any other person. This might be through, amongst other things:

- following the victim;
- contacting the victim (by any means);
- publishing information on the internet;
- making threats;
- keeping the victim under surveillance;
- entering or loitering near the person's residence or place of work.

In certain circumstances, serious bullying behaviour may amount to stalking.

### **6.3 Reporting serious misconduct or criminal behaviour**

Where a staff member or student witnesses, becomes aware of or experiences serious misconduct or criminal behaviour, they are encouraged to seek advice and report the behaviour in accordance with the Complaints Procedures set out in Section 7 below.

However, due to the seriousness of alleged serious misconduct or criminal behaviour, the Colleges may depart from the procedures set out in the Complaints Procedures. In particular:

- The Colleges may take such interim actions as necessary to address concerns regarding a complainant's safety, well-being, or participation in work, study or College life. This may include requirements that an alleged respondent:
  - avoids places where a complainant will be or is required to refrain from contacting the complainant;
  - does not attend College until the matter has been investigated.Such interim measures do not mean that the Colleges have made any finding as to whether or not the alleged conduct the subject of a complaint has occurred.
- In certain circumstances, a College or staff member may have an obligation to report information to the police;
- The Colleges may instigate an investigation into allegations of serious misconduct or criminal behaviour regardless of whether a complaint has been lodged in accordance with the Complaints Procedures;
- Unless a complainant requests the matter be referred to Stage 2 (Conciliation), in the case of sexual offences in particular, the College will proceed directly to Stage 3 (Investigation and Determination). This may also occur in relation to other allegations of serious misconduct or criminal behaviour, depending on the circumstances;
- The Colleges may report allegations that potentially amount to criminal conduct to Victoria Police. Whilst the Colleges will consider and place priority on the wishes of the complainant, the Colleges retain the right to report all potentially criminal behaviour to Victoria Police;
- Information obtained by the Colleges as a result of a complaint, a conciliation or investigation may be sought by Victoria Police pursuant to their statutory powers to investigate and obtain information relating to suspected criminal behaviour.

Students and staff may make use of external supports and avenues for complaint (including through the bodies outlined in part 7.9 (Complaints to External Bodies) below) at any stage. In particular, in the case of allegations of criminal behaviour such as sexual assault, a complainant may contact Victoria Police at any stage. The Colleges will be supportive of

complainants reporting criminal behaviour to the Police and nothing in this Policy should be taken as limiting the right of a student or staff member to contact the Police.

## **6.4 Support**

Support is available for complainants subjected to serious misconduct or criminal behaviour from the Fair Treatment Coordinator, Fair Treatment Contact Persons, External Advisers or through their College counselling service. Each of the Colleges is committed to working with complainants in these circumstances to ensure that their 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.

# **7. Complaints Procedure**

## **7.1 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, vilification, sexual harassment, bullying, victimisation or serious misconduct or criminal behaviour 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 a Fair Treatment Contact Person or External 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 Fair Treatment Contact Persons or External Adviser who can provide initial advice and clarification.

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

## **7.2 Complaints Procedure: Introduction**

A student or staff member with a complaint about unlawful discrimination, discriminatory harassment, vilification, sexual harassment, bullying, victimisation and/or serious misconduct or criminal behaviour against a student or staff member, or a group of students or staff, can make a complaint to the College. Where complaints involve serious misconduct or criminal behaviour, there may be a departure from the process set out below as detailed in section 6.3 above.

The Colleges 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 Colleges 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 conduct, including the time and place of the alleged incident(s) and the names of any witness(es).

The Colleges aim 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. 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 Fair Treatment Contact Persons or External Advisers to be engaged during the Conciliation stage, or take any other reasonable action, to respond to unforeseen delays.

### **7.2.1 Procedural Fairness and Confidentiality**

**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, Fair Treatment Contact Person and those staff members 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.

### **7.2.2 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.

### **7.3 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

### **7.4 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. However, in certain circumstances it may be appropriate to skip one or more of the stages. The processes to be applied in any particular matter are reserved to the absolute discretion of the College.

If police become involved in a particular complaint, the College may adapt these procedures or wait for the outcome of the criminal investigation as appropriate in the circumstances.

### **7.5 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 Fair Treatment Contact Persons or one of the Colleges' appointed External Advisers.

**Fair Treatment Contact Persons and External Advisers can assist the complainant or the respondent by:**

- Clarifying whether the alleged behaviour may constitute unlawful discrimination, sexual harassment, discriminatory harassment, vilification, bullying, victimisation, serious misconduct or criminal behaviour;
- 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 a Fair Treatment Contact Person or External 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  
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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 Fair Treatment Contact Persons or External 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.

## **7.6 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. It may not occur if it is inappropriate in the circumstances, for example in relation to certain allegations of serious misconduct or criminal behaviour.

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 a Fair Treatment Contact Person or External 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 details of the allegations. The respondent will be given the opportunity to seek advice from a Fair Treatment Contact Person or External 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 Fair Treatment Contact Person or External Adviser 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.

## **7.7 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. A Fair Treatment Contact Person or External Adviser for the complainant and a separate Fair Treatment Contact Person or External 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 details of the allegations** if they have not already been provided. If the respondent has not already done so, they will be given the opportunity to seek advice from a Fair Treatment Contact Person or External 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, vilification, sexual harassment, bullying, victimisation, serious misconduct or criminal behaviour 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.

### **7.7.1 Potential outcomes from an investigation**

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. This may include (amongst other things):

- exclusion, suspension or expulsion from the College;
- rejection of applications for employment or engagement with the College;
- non-admission or conditional admission of new members or residents to the College;
- the imposition of conditions on continued residence or membership of the College;
- termination of membership of the College or any group associated with the College; or
- termination of employment or engagement with the College.

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

### **7.7.2 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

### **7.8 False or misleading allegations**

Knowingly making a false complaint under this Policy is a serious matter and is unacceptable. 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.

### **7.9 Complaints to External Bodies**

While staff and students are encouraged to use the Colleges' Complaints Procedure, particularly in relation to minor or non-criminal complaints, the College will be supportive of staff and students bringing their complaint to a relevant external body, particularly in the case of serious matters, such as serious misconduct or criminal behaviour. Nothing in this Policy should be taken as limiting the right of a student or staff member to contact an external body or pursue their complaint through the mechanisms provided by that external body.

Staff and students may, at any time, seek advice from and/or lodge a complaint with, relevant external bodies, which may include (depending on the circumstances):

- University of Melbourne Department of Health, Counselling & Disability Services: Counselling Service, Level 2, 138 Cardigan Street, Carlton, <http://www.services.unimelb.edu.au/counsel>. Phone: (03) 8344 6927 / 8344 6928;
- Victoria Police: Melbourne North Police Station (open 24 hours), 36 Wreckyn Street, North Melbourne. Phone: (03) 8379 0800;
- Victoria Police Sexual Offences and Child Abuse Investigation Team: Phone (03) 8690 4056.
- the Victorian Equal Opportunity and Human Rights Commission: <http://www.humanrightscommission.vic.gov.au/>. Phone: 1300 292 153;
- the Australian Human Rights Commission: <https://www.humanrights.gov.au/>. Phone: (02) 9284 9600;
- the Fair Work Ombudsman: <https://www.fairwork.gov.au/>. Phone: 13 13 94; or
- WorkSafe Victoria: <http://www.worksafe.vic.gov.au/> . Phone: (03) 9641 1444 or 1800 136 089.

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 may determine to 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.

### **7.10 Complaints to other Colleges**

Where a complaint involves students or staff from different Colleges or more than one College is otherwise involved in a complaint, the Fair Treatment Coordinator from each College will confer to determine how the Complaints Procedure will proceed. Generally, the College with the greatest degree of connection to the complaint will take responsibility for managing the Complaint. This may be the College where the conduct occurred or the College of the respondent.

In some circumstances, it may be necessary for advice to be sought about the handling of the complaint, from an appropriate external arbitrator appointed by the Chair of Heads and acceptable to the Heads of both Colleges. Where appropriate, the complaint may be referred to the external arbitrator for decision. This may occur, for example, where:

- the Fair Treatment Coordinators of the Colleges cannot agree on the process for managing the complaint;
- it is not clear which College has the greatest degree of connection to the complaint; or
- the matter is so complex or there are so many Colleges or individuals involved that it would be in the interests of efficiency and natural justice for the matter to be referred.

## **8. 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.

## 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;
- intersex status;
- 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 (i.e. gender);
- 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, vilification, bullying or victimisation 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.

**Serious misconduct or criminal behaviour** means behaviour in breach of this Policy which is particularly serious or could amount to a breach of the criminal law, including (but not limited to): assault or physical violence; blackmail; serious or repeated bullying, sexual harassment, discrimination, discriminatory harassment, vilification or victimisation; use or sale of illicit drugs; threats to kill or inflict serious injury; sexual assault; sexting; stalking a person; using technology to menace, harass or cause offence to a person; abuse of a position of power or responsibility within a College; theft, dishonesty or fraud; or deliberately making false or vexatious allegations against another student or staff member.

**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, volunteer or other workplace participant 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.

**Vilification** means any form of conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of another person or class of person on the grounds of their race or religious beliefs or practices.