

Harassment, Bullying, Unlawful Discrimination and Sexual Misconduct Policy



Purpose

The purpose of the policy is to provide protection against discrimination; harassment (including sexual harassment) and bullying; vilification and victimisation; sexual misconduct (including sexual assault/violence and sexual exploitation); other wrongful, unlawful or inappropriate conduct at School of Contemporary Music.

Scope

Whole college, including, but not limited to, students, staff, volunteers and persons seeking to enrol in a course of study

Policy

The College aims to:

- provide a work and study environment that is safe and pleasant for staff and students which is free from harassment, bullying and unlawful discrimination;
- provide a work and study environment where staff and students are treated with dignity, courtesy and respect;
- provide an effective procedure for complaints;
- treat all complaints in a sensitive, fair, timely and confidential manner;
- guarantee protection from any victimisation or reprisals;
- encourage the reporting of behaviour which breaches this policy;
- promote appropriate standards of conduct at all times.

School of Contemporary Music recognises that harassment (including sexual harassment), bullying, unlawful discrimination and sexual misconduct may involve comments and behaviours that offend some people and not others. School of Contemporary Music accepts that individuals may react differently to comments and behaviour. That is why a minimum standard of behaviour is required of students, staff, and volunteers.

Engaging in harassment, bullying, unlawful discrimination or sexual misconduct in the workplace constitutes a breach of this policy and may result in disciplinary action up to and including exclusion from the student's course of study or dismissal. In some instances, this may also amount to a criminal offence or a breach of relevant legislation.

HARASSMENT, BULLYING AND UNLAWFUL DISCRIMINATION

Harassment, bullying and/or unlawful discrimination will not be tolerated in any form or under any circumstance at School of Contemporary Music, including: campus, work-related functions, study excursions, unwelcome phone calls, or following someone home from work. What constitutes bullying at work is defined by the Fair Work. Harassment and/or discrimination occurs when a person is harassed or discriminated against in the workplace and in certain areas of public life:

- because of their race, colour, descent or national or ethnic origin, as defined under the Racial Discrimination Act;
- or because of their sex, marital status, pregnancy as defined under the Sex Discrimination Act;

- or because of a disability as defined under the Disability Discrimination Act;
- or because of age as defined under the Age Discrimination Act.

School of Contemporary Music has a responsibility under Health and Safety and anti-discrimination laws to ensure the health, safety and welfare of employees and others in the workplace. Individual employees may be liable to prosecution for failure to provide a safe workplace. Harassment, bullying and/or unlawful discrimination may result in injury to staff, which may be compensable under the Safety, Rehabilitation and Compensation Act.

SEXUAL DISCRIMINATION AND SEXUAL MISCONDUCT

In line with relevant national and international legislation, School of Contemporary Music holds that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity. Discrimination on the basis of sex can include sexual discrimination, sexual harassment, sexual assault/sexual violence, and sexual exploitation. Sexual discrimination that deprives a person of the ability to participate in or benefit from School of Contemporary Music's education program or activities is prohibited.

Forms of Sexual Misconduct

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended. Sexual harassment is against the law and will not be tolerated at School of Contemporary Music. Sexual harassment may take place inside or outside the workplace. Specific examples of sexual harassment include but are not limited to:

- staring or leering;
- unnecessary familiarity, such as deliberately brushing up against a person or unwelcome touching;
- suggestive comments or jokes;
- insults or taunts of a sexual nature;
- intrusive questions or statements about a person's private life;
- displaying posters, magazines or screen savers of a sexual nature;
- sending sexually explicit emails or text messages;
- inappropriate advances on social networking sites;
- accessing sexually explicit internet sites;
- requests for sex or repeated unwanted requests to go out on dates;
- behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Specific examples of sexual exploitation include, but are not limited to:

- invasion of sexual privacy;
- prostituting another student;
- non-consensual recording, broadcasting sexual activity, including redistribution of pictures, video, or audio;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism;
- knowingly exposing another to an STD or HIV;
- exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals;

- sexually based stalking and/or bullying, including cyber-stalking and/or cyber-bullying, may also be forms of sexual exploitation.

Sexual Assault or Sexual Violence is a particular type of sexual harassment that includes non-consensual sexual contact, non-consensual sexual intercourse, rape, or other physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Non-consensual sexual intercourse is any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Specific examples of sexual assault or sexual violence includes, but is not limited to physical assaults of a sexual nature, such as:

- rape;
- sexual assault;
- sexual battery;
- domestic violence;
- dating violence;
- stalking; or
- attempts to commit these acts.

Force refers to the use of physical violence and/or imposing on someone physically to gain sexual access. Specific examples of force include, but is not limited to:

- threats,
- intimidation (implied threats); and
- coercion that overcome resistance or produce consent.

Hazing is an act likely to cause physical or psychological harm or social ostracism to any person within the School of Contemporary Music community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent. This policy also covers a person whose incapacity results from a mental or developmental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.

Indecent Exposure refers to the exposure of the private or intimate parts of the body in a lewd manner in public or in private premises when the accused may be readily observed.

Consent

Consent is knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid there must be a clear expression in words or actions that the other individual agreed to that specific sexual conduct. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. A person can withdraw consent at any time during sexual activity. A minor below the age of consent according to state law cannot consent to sexual activity.

Retaliation

School of Contemporary Music strictly prohibits retaliation against a member of the School of Contemporary Music community who opposes the practices prohibited by this policy against sexual misconduct, who brings forth a complaint, against whom a complaint is brought, or who otherwise is a participant in a complaint resolution process. Such prohibited retaliatory conduct includes, but is not limited to:

- reducing a student's grade;
- decreasing an employee's pay; or
- downgrading a person's performance evaluation.

RIGHTS AND RESPONSIBILITIES

School of Contemporary Music is responsible for responding promptly and effectively to all reports of harassment, bullying, unlawful discrimination or sexual misconduct. The College will take immediate action to eliminate the harassment, bullying, unlawful discrimination or sexual misconduct, prevent its recurrence and address its effects. A criminal investigation into allegations of sexual harassment or sexual violence does not relieve School of Contemporary Music of its duty to resolve complaints promptly and equitably.

Victims of sexual misconduct should be aware that School of Contemporary Music administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. School of Contemporary Music will make every effort to ensure that a victim's name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reports for timely warning purposes include: Student Representative, School of Contemporary Music Workplace Health and Safety, local police and any other official with significant responsibility for student and campus activities.

Confidentiality and Privacy

If a person makes a complaint, it will be taken very seriously and will be dealt with sympathetically and in a confidential manner. Staff and student confidential and personal information will only be released with the consent of the person involved, next of kin or where it may be necessary to protect the health and wellbeing of others.

College Health and Safety

The College Health and Safety appointed is responsible for monitoring School of Contemporary Music's compliance with relevant legislation by helping to ensure that the College responds appropriately, effectively and equitably to sexual discrimination, harassment, and sexual misconduct.

The College Health and Safety will:

- provide education and training about discrimination, harassment, and sexual misconduct to the School of Contemporary Music community;
- receive and investigate reports and complaints of discrimination, harassment, and sexual misconduct in accordance with this policy;
- identify and address any patterns or systematic problems that arise during the review of such complaints;

- ensure School of Contemporary Music fulfils all legal and statistical reporting obligations; and
- annually assess the overall efforts of School of Contemporary Music's compliance to this policy.

Managers' and supervisors' role

Managers and supervisors must ensure they and their staff understand and adhere to this policy. If a person approaches them with a complaint, they should take appropriate steps to resolve it. If this is not possible or is inappropriate, then the Human Resources should be informed.

Employees' role

Each employee must adhere to this policy and should be aware that they can be held legally responsible for their unlawful acts. Employees who aid, abet or encourage other persons to harass, bully or unlawfully discriminate can also be held legally liable.

Responsible for implementation
Director (Principle)

Key stakeholders
All Staff

Procedures

Harassment, Bullying, and Unlawful Discrimination

Interim Protective Measures

In the case of sexual discrimination or sexual misconduct, the College reserves the right, at the direction, or approved delegate, to suspend or place on immediate administrative leave any member of the campus community accused of violating this policy, or to take any other interim measures the College deems appropriate, pending the outcome of an investigation and/or disciplinary proceedings. Such interim measures can include, but are not limited to, placing an employee on paid or unpaid administrative leave, removing a student from current classes, modifying course schedules, and issuing a “no contact” order, among many other remedies.

Notifying and Reporting Breaches

If a staff member or student believes that they are being harassed, bullied or unlawfully discriminated against there are a number of important steps they should take:

- tell the person that their behaviour is unacceptable and that it must stop. It is important to say these things to the harasser otherwise they may interpret silence as consent. If the victim feels too uncomfortable saying these things to the harasser, this does not mean that they don't have a valid claim.
- report the behaviour or incident to their manager, or the Human Resources; you may wish to lodge a grievance under the College's Grievance Policies:
- ❖ a staff member who believes that they have experienced sexual harassment should make a complaint under the Staff Grievance Procedures.
- ❖ a student who believes that they have experienced sexual harassment should make a complaint under the Complaint and Grievance Resolution Policy.
- if the alleged perpetrator is a manager then the report about the manager should be directed to a senior manager, and if this is not available, to the Principle.
- the complainant should keep their complaint confidential - this will avoid idle gossip and the possibility of defamation proceedings.

The complainant will not be victimised or treated unfairly for making a complaint. If the complainant is not satisfied with the way in which the College has dealt with a complaint, the complainant can seek further advice from an outside agency such as the Human Rights Commission or the Equal Opportunity Commission or other relevant government agency.

Criminal Offences

If the allegation is of a criminal offence (e.g. physical molestation or assault, indecent exposure, obscene communications (including e-mail), sexual assault, rape, stalking), a person affected may elect to report such conduct to police. When made aware of such a matter under these procedures, an authorised officer for grievances may assist the person to make a report to police.

A criminal investigation into allegations of sexual harassment or sexual violence does not relieve School of Contemporary Music of its duty to resolve complaints promptly and equitably.

If a matter is reported to police and it will interfere with the police investigation/action to continue to deal with the matter under School of Contemporary Music procedures, the College will suspend action. If there is no risk of interference with a police investigation the matter may be dealt with under the College's grievance procedures.

Policy owner: Operations

Policy category: Management: HR

Policy status: Approved

Related policies:

Code of Conduct Policy

Complaint and Grievance Resolution Policy

Staff Grievance Resolution Policy

Staff Termination Policy

Defined terms: Bullying, Consent, Force, Harrassment, Hazing, Incapacitation, Indecent Exposure, Sexual Assault, Sexual Exploitation, Sexual harassment, Sexual Violence, Unlawful Discrimination.

Last amended: 19th March 2018