

ALC Sexual Harassment Policy and Procedure

Description

Australian Lutheran College (ALC) has guidelines regarding sexual harassment.

Purpose

ALC has established this Sexual Harassment policy to comply with the requirements of state and federal legislation, Lutheran Church of Australia (LCA) Safe Place policy and ALC policies and procedures.

Scope

This policy applies to staff and students engaged in activities reasonably connected with their role at ALC, including field trips, field work and social activities related to ALC. Such activities may extend beyond ALC's campus.

Procedure

- Sexual harassment in this context addresses matters which have a connection with ALC in the course of ALC business, including but not necessarily limited to:
 - sexual harassment of students by ALC staff
 - sexual harassment of students by other students
 - sexual harassment of ALC staff by students
 - sexual harassment of ALC staff by other ALC staff
 - sexual harassment of people applying to become students or ALC staff by current staff or students
 - sexual harassment of former staff or students by current staff or students
 - sexual harassment of members of the public arising from contact with staff or students in the course of ALC business
- ALC has established contact officers and conciliators who will provide information and assistance in the resolution of complaints of sexual harassment.

Legislation

Definitions and procedures used in this policy are taken from the following documents:

- South Australian Equal Opportunity Act, 1984
- Commonwealth Sex Discrimination Act, 1984

Definition of sexual harassment

- Sexual harassment is prohibited under both federal and state legislation and is described in the Acts as an unacceptable form of social behaviour. Full definitions from these Acts may be found in Appendix 1.
- In brief, sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature.
- Sexual harassment is defined by law from the perspective of the recipient, and it occurs if the behaviour makes a person feel offended, humiliated or intimidated and it is reasonable in all the circumstances that the recipient would feel that way.

Examples of sexual harassment

- Sexual harassment can take many different forms—it can be obvious or indirect, physical or verbal, repeated or one-off and perpetrated by males and females against people of the same or opposite sex.
- The Australian Human Rights Commission (www.humanrights.gov.au/our-work/sex-discrimination/guides/sexual-harassment) has listed the following examples of sexual harassment:
 - staring or leering
 - unnecessary familiarity, such as deliberately brushing up against you or unwelcome touching
 - suggestive comments or jokes
 - insults or taunts of a sexual nature
 - intrusive questions or statements about your 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

Conduct at ALC

- For the purpose of this policy sexual harassment may include conduct which:
 - proposes an implicit or explicit condition that a person's academic evaluation or employment will be dependent on some sexual response; or
 - proposes an implicit or explicit condition that decisions which bear on a person's grades in academic evaluation or employment conditions will be dependent on some sexual response; or
 - has the purpose or effect of interfering with an individual's academic or work performance; or
 - creates an intimidating, hostile or offensive learning, academic or working environment.
- Sexual harassment is NOT behaviour which is based on mutual attraction, friendship and respect.

Vicarious liability

- State legislation provides that ALC can be found vicariously liable for sexual harassment inflicted on others by its employees or agents.
- As a defence against any finding of vicarious liability, ALC will fulfil its commitment to educating members of ALC's community as to the nature and effects of sexual harassment and provide the necessary resources to inform its community as to the content of this policy.
- It will provide, through professional development, information sessions and publicity of this policy, an understanding of the rights and responsibilities of the individual. This includes the development and publicity of effective measures for the resolution of complaints.
- In the event that ALC is required to pay any sum, it will be paid initially by ALC, and may seek to recover this amount.

Implementation

- The federal and state legislation requires ALC to take all reasonable steps to prevent and eliminate sexual harassment, and to protect those who complain of victimisation.

- An essential element in preventing sexual harassment involves raising awareness among members of ALC community of their rights and obligations under this policy.
- To this end the College has identified areas of responsibility and established procedures for providing information and training about these procedures.
 - The identified categories of responsibility include those of all staff and students, line managers, teachers, Contact Officers, the Human Resources Manager and Conciliators.
 - The responsibility for providing information and training rests with the Human Resources Office.

Responsibility of all staff and students

- Staff and students are responsible for ensuring that they do not subject other staff and students, or persons applying to become staff or students, to sexual harassment while involved in ALC activity.
- Staff and students are responsible for establishing a work and study environment which is free of sexual harassment.

Responsibility of line managers and education staff

- Line managers, education staff and students have a responsibility to maintain a work and study environment free of harassment by exercising appropriate leadership practices.
- Where instances of sexual harassment are identified line managers and education staff have a responsibility to take appropriate action to remedy the problem.

Responsibility of contact officers

- ALC has established contact officers to provide information and support for people on sexual harassment issues. Contact officers do not conciliate cases of sexual harassment but may assist a complainant or respondent in an informal or formal resolution of a complaint.
- Contact officers are appointed by the Principal on the advice of the Business Manager/Human Resources Manager.
- It is the responsibility of the Business Manager/Human Resources Manager to ensure that contact officers are drawn from a broad range of occupational and study areas in the College.
- Names, location and contact details of contact officers will be widely publicised to all staff and students via the Human Resources Manager, internal telephone directory and student organisations and publications.
- Any person may seek information and support on sexual harassment from a contact officer without necessarily making a complaint

Responsibility of the Human Resources Manager

- The Business Manager/Human Resources Manager has a responsibility to:
 - perform an educative role in the elimination of sexual harassment and to take action to implement this policy
 - take all reasonable steps to facilitate the conciliation and resolution of sexual harassment complaints
 - select and arrange training for contact officers and conciliators
 - develop and distribute publicity material to ALC's community
 - assist in arranging awareness-raising programmes and in the provision of training for staff and students on sexual harassment
 - maintain confidential records on sexual harassment complaints
 - monitor and evaluate the implementation of this policy

Responsibility of conciliators

- Conciliators are trained to resolve complaints by conciliation.
- Conciliators are appointed by the Principal on the advice of the Business Manager/Human Resources Manager.
- It is the responsibility of the Business Manager/Human Resources Manager to ensure that conciliators are drawn from a broad range of occupational and study areas in ALC.
- If the complainant wishes to bypass ALC conciliators and go direct to the LCA this is another option available as the ALC abides by the Safe Place policy of the LCA.
- Conciliators will be selected on the basis that they can demonstrate good negotiation skills and a well-developed understanding of the ALC sexual harassment policy.
- The Business Manager/Human Resources Manager is responsible for the selection, training and provision of regular support for conciliators in the implementation of this policy.
- Names, location and contact details of conciliators will be widely publicised to all staff and students via the Human Resources Manager, , student organisations and publications.

Provision of information and training

- The Human Resources Manager will provide regular information and training that will:
 - educate staff and students about what constitutes sexual harassment and about their responsibility not to harass other staff and students sexually
 - provide information and training to managers and supervisors on meeting their responsibilities in relation to maintaining a work and study environment that is free of sexual harassment
 - provide information and training to staff conducting teaching and learning activities on meeting their responsibilities in maintaining a study environment free from sexual harassment

Complaint procedures

- ALC is committed to taking effective action to deal with complaints of sexual harassment by:
 - ensuring that complaints are dealt with in a sensitive, timely and confidential manner
 - resolving complaints of sexual harassment within ALC by means of education, counselling and conciliation, using disciplinary action when required and as provided by this policy
 - ensuring that complaints are dealt with in accordance with principles of natural justice
 - making every effort to provide protection for all members of ALC's community against victimisation or reprisals
 - encouraging reports of behaviour which breaches the Sexual Harassment policy

Associated documentation

Staff Staff Grievances Policy and Procedures

Students Grievance resolution (non-academic) policy and procedures
Grievance resolution (non-academic) policy and procedures flowchart
Grievances policy (University of Divinity)
VET Student Handbook

Other Issues

Confidentiality

- It is essential to keep confidential all information about sexual harassment complaints during the resolution process and after the matter is concluded to ensure:
 - fair treatment and process

- protection of complainant and respondent
- minimisation of the risk of victimisation
- avoidance of defamation proceedings
- For these reasons, only those directly and legitimately involved in the resolution process should be informed about the details of a complaint and only then with the complainant's consent.
- In the event that confidentiality is breached, the matter will be investigated by the Principal who will take appropriate action.

Defamation

- A complaint of sexual harassment which is brought to the attention of the respondent can sometimes result in the respondent threatening to take action for defamation.
- Defamation is the publication of a statement about a person which causes that person's reputation with other people to be lowered, or causes them to be shunned, avoided or brought into ridicule.
- If the statement is in a permanent form (eg in writing) the alleged defamation is libel; if it is not in a permanent form (eg oral statements) the alleged defamation is slander.
- It is not defamatory for an individual to confront a harasser directly (either in person or by letter) to alert them that their behaviour is unwelcome.
- Nor is it defamatory to make a complaint to a person who has a legitimate interest in knowing about the incident in order to seek redress under this policy (for example to a line manager or teaching staff member, a sexual harassment contact officer or conciliator, or a counsellor)
- Protection will be lost if the complaint is false, or is made in bad faith and is motivated by malice, for example made solely or largely with the intention of causing harm to the respondent.
- In ALC, line managers, teaching staff members, contact officers, conciliators and counsellors conveying information or otherwise taking action on a complaint are able to claim the defence of qualified privilege provided that they:
 - act in good faith and without malicious intent
 - act strictly in accordance with ALC's sexual harassment policy and procedures
 - maintain confidentiality at all times and ensure that information about a complaint is communicated only in accordance with ALC's sexual harassment policy and procedures.

Victimisation

- Victimisation is any attempt to subject a person to any detriment or threat of detriment because they have:
 - made, or propose to make, a sexual harassment complaint under the ALC's sexual harassment policy and procedures
 - furnished, or propose to furnish, information or documents to a conciliator or formal investigation
 - attended or propose to attend a conciliation conference
 - appeared or propose to appear as a witness in a formal investigation
 - reasonably asserted their own or another person's rights under the ALC's sexual harassment policy and procedures
- Victimisation is prohibited and action shall be taken, in accordance with the ALC's disciplinary procedures, against a person alleged to have victimised another.

Vexatious complaints

Any person who is found to have made a vexatious or malicious complaint will not be afforded protection by this policy and procedures and will be subject to ALC's disciplinary procedures.

Glossary of terms

Complainant: a person who, individually or in conjunction with others, make(s) a complaint of sexual harassment under ALC's sexual harassment policy.

Respondent: a person or organisation against whom a complaint has been made under ALC sexual harassment policy and procedures.

Conciliation: a process where an impartial third party (conciliator) assists two parties to settle a complaint by mutual agreement.

Discrimination: there are two forms of discrimination:

Direct discrimination occurs when people are treated less favourably because they belong to a particular group or category of people, for example, women or men. It also includes treating someone unfairly because of a stereotype about the particular group or category of people.

Indirect discrimination exists when there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect or result on particular groups. Unless this type of requirement is reasonable in all the circumstances, it is likely to be indirect discrimination.

Appendix 1: Legislation

Under the South Australian Equal Opportunity Act, 1984:

- It is unlawful for an employer (being a natural person) to subject an employee, or a person seeking employment, to sexual harassment.
- It is unlawful for an employee to subject a fellow employee, or a person seeking employment with the same employer, to sexual harassment
- It is unlawful for an employee of an educational authority to subject a student, or a person applying to become a student, to sexual harassment.
- It is unlawful for an employer to fail to take such steps as may be reasonably practicable to prevent an employee from subjecting a fellow employee, or a person seeking employment, to sexual harassment.
- It is unlawful for an educational authority to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of its employees subjects a student to sexual harassment.

Definition of sexual harassment

- A person subjects another person to sexual harassment if he or she does any of the following acts in such a manner or in such circumstances that the other person feels offended, humiliated or intimidated
 - he or she subjects the other to an unsolicited and intentional act of physical intimacy
 - he or she demands or requests (directly or by implication) sexual favours from the other;
 - he or she makes, on more than one occasion, a remark with sexual connotations relating to the other,
 - and it is reasonable in the circumstances that the other person should feel offended, humiliated and intimidated by that conduct

Under the Federal Sex Discrimination Act, 1984

- It is unlawful for a person to sexually harass
 - (a) an employee of the person; or
 - (b) a person who is seeking to become an employee of the person
- It is unlawful for a person to sexually harass a fellow employee or a person seeking employment with the same employer.
- It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace to both those persons.
- It is unlawful for a member of the staff of an educational institution to sexually harass:
 - (a) a person who is a student at the institution; or
 - (b) a person who is seeking to become a student at the institution
- It is unlawful for a person who is an adult student of an educational institution to sexually harass:
 - (a) a person who is an adult student at the institution; or
 - (b) a member of staff of the institution.
- It is unlawful for a person who is an adult student of an educational institution to sexually harass:
 - (a) a person who is an adult student at the institution; or
 - (b) a member of staff of the institution.
- In this section 'adult student' means a student who has attained the age of 16 years.

Definition of sexual harassment:

- A person sexually harasses another person if:
 - (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
 - (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed in circumstances which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated

In this section, 'conduct of a sexual nature' includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.