Melbourne Business School

Equal Opportunity Policy

1 Policy commitment

Melbourne Business School ("MBS") celebrates the diversity of its community, and recognises the rights and responsibilities of all of its members. MBS is committed to the principle of equity in the education, employment and welfare of its current and prospective staff and students, and will continue to develop equal opportunity and equity practices and programs compatible with its overall goals and responsibilities. It is critical to the achievement of MBS' goals that it has a culture that respects, values and actively pursues the benefits of the diversity MBS has.

These commitments are consistent with 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.

MBS aims to:

- ensure that its staff and students are not subjected to unlawful discrimination, harassment, bullying, vilification and victimisation;
- ensure that all MBS 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 the Dean, Deputy Deans and Directors to exercise their leadership and authority to ensure a supportive, flexible, safe and diverse work and study environment;
- establish and maintain mechanisms within MBS to deal with complaints concerning matters covered by this Policy;
- inform the MBS community on the general goals and philosophy of equal opportunity together, with the rationale for policies and practices which MBS may adopt;
- provide the MBS community with information about MBS's condemnation of unlawful discrimination, harassment, and bullying;
- recruit, train, indemnify, support and advise specialist Contact Officers; and
- provide advice and support to staff and students in relation to complaints on matters covered by this Policy.

2 Policy scope

MBS is committed to providing a learning and working environment free from unlawful discrimination, harassment, bullying, victimisation and vilification. Discrimination, harassment, bullying, victimisation and vilification are unacceptable and unlawful behaviours, which MBS will not tolerate under any circumstances.

This Policy specifically addresses the following:

- unlawful discrimination;
- harassment;
- bullying;
- vilification; and
- victimisation.
MBS takes complaints about these matters seriously. MBS’s Grievance Procedure provides a process for addressing and resolving related concerns and complaints. MBS will deal with any complaints in accordance with this policy.

MBS may take disciplinary action against staff and students in accordance with its policies and procedures for any breach of this Policy which constitutes staff or student misconduct.

2.1 To whom does this policy apply?

This Policy applies to all:

- staff;
- students;
- contractors engaged in activities reasonably connected with MBS, including adjuncts, associates, consultants, facilities and hotel service providers;
- a person appointed as an ‘honorary’ or a person appointed as an academic visitor;
- other members of the MBS community (including volunteers)

This Policy applies at any of MBS’s premises (and elsewhere as set out below), regardless of whether that conduct takes place during MBS’s normal operating hours or not:

- all social activities, events and functions;
- staff attendance at conferences;
- student, alumni and client functions and events; and
- any local and international trips and events organised by MBS for staff, students or clients.

3 Who has responsibilities?

Each member of the MBS community will contribute to creating an inclusive, professional environment, where individuals are respected and the value of having a diverse community is recognised.

MBS has a responsibility to take reasonable and proportionate steps to eliminate discrimination, harassment, bullying, vilification and victimisation from happening. This involves MBS putting this Policy in place, educating its staff and students about inappropriate behaviour, implementing a Grievance Procedure, and ensuring compliance by all staff and students.

Staff and students must not discriminate against, harass, bully, vilify or victimise others. This also applies if staff or students aid, abet or encourage other persons in inappropriate behaviour. Staff and students can be held legally responsible for their own unlawful behaviour, and may also be subject to disciplinary action as a result of their behaviour.

The bodies and staff at MBS who have specific roles in relation to this Policy are:

- The Board, Dean, Deputy Deans and Directors;
- Human Resources; and
- Contact Officers.
MBS’s Senior Executives and Managers have a responsibility to:

- model appropriate behaviour themselves;
- monitor their learning environment to ensure that acceptable standards of conduct are maintained at all times;
- promote this Policy within their work area;
- ensure that this Policy is understood and implemented;
- treat all complaints about matters under this Policy seriously;
- refer a person who has a concern about matters covered by this Policy to a Contact Officer (or other appropriate contact) who can provide assistance in accordance with the Grievance Procedure;
- 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, must immediately cease and not recur, and may result in MBS taking disciplinary action;
- seriously consider a staff member’s request for flexible working arrangements under Fair Work Australia or reasonable adjustments on a timely basis, and seek further advice where necessary from HR; and
- seriously consider a student’s request for reasonable adjustments on a timely basis, and seek further advice where necessary from the Deputy Dean, Programs.

Human Resources facilitates the implementation of this Policy (including the provision of training), the implementation of the Grievance Procedure, and advises the senior leadership of the School on policies, programs, initiatives and strategies recommended to enhance legislative compliance and promote student and staff access, equity and diversity.

Contact Officers have a responsibility to provide guidance and options available under this Policy, and in accordance with the Grievance Procedure.

4 Discrimination

Discrimination is prohibited under Federal legislation and the Equal Opportunity Act. Staff and students (and any other person covered by this Policy) must not unlawfully discriminate against other staff or students.

It is unlawful to discriminate on a variety of “attributes”, including:

- age;
- breastfeeding;
- criminal record;
- employment activity;
- family or carer’s responsibilities;
- gender identity;
- impairment or disability, including behaviour that is a symptom or manifestation of a disability;
- lawful sexual activity;
- marital status;
- medical record;
- national extraction or social origin;
- parental status or status as a carer;
- physical features;
- political belief or activity;
- pregnancy or potential pregnancy;
• race or colour;
• religious belief or activity;
• sex;
• sexual orientation or preference;
• trade union/industrial activity;
• transgender; and
• personal association with a person who is identified by reference to any of the above attributes.

Discrimination can be either direct or indirect, and is based on a person's attribute or perceived attribute.

“Direct” discrimination occurs when a person treats, or proposes to treat, another person with an attribute or who is perceived to have the attribute, less favourably because of that attribute.

In relation to a person with an impairment or disability, direct discrimination can occur if MBS does not make, or proposes not to make, reasonable adjustments for that person and a failure to make a reasonable adjustment has the effect, because of the impairment or disability, of that person being treated less favourably than a person without the impairment or disability in the same or similar circumstances. (refer to clause 10.1)

“Indirect” discrimination 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 that are fair in form and intention but discriminatory in impact and outcome. Indirect discrimination occurs when a person imposes, or proposes to impose, a requirement, condition or practice that:

• a person with a particular attribute does not or cannot comply with; and
• has or is likely to have the effect of disadvantaging the person with the attribute;
• is not reasonable in the relevant circumstances.

Unlawful discrimination also includes where a person discriminates against another person because they are an associate of a person with an attribute. For example, it is discriminatory to treat a person less favourably because they are friends with a person of a particular race or religion.

5 Harassment

Generally, harassment (and particularly sexual harassment) may be a form of unlawful discrimination, and is prohibited by the Equal Opportunity Act and Federal legislation. Staff and students (and any other person covered by this Policy) must not harass other staff or students on any unlawful ground, including sex, race, disability, age, or pregnancy. Sexual harassment is dealt with separately under this Policy.

Discriminatory harassment means any behaviour by 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 generally consists of a pattern of unwelcome behaviour, but can consist of just one act where this is of a serious nature. 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 insulting jokes to a person about a particular racial group to which that person belongs; and
• 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. To determine whether a person has discriminatorily harassed another person, it is irrelevant whether or not the first person is aware of the harassment, and whether or not it is intentional.

Discriminatory harassment includes harassing a person because they are an associate of a person with an attribute. For example, it is discriminatory harassment to tease a person because a family member of that person has a disability.

6 Sexual Harassment

MBS’s staff and students have a right to work and study in an environment that is free from sexual harassment. Sexual harassment is prohibited under the Equal Opportunity Act and the Sex Discrimination Act. Staff and students (and any other person covered by this Policy) must not sexually harass others.

A person sexually harasses another person through behaviour of a sexual nature which is unwelcome, when a reasonable person, having regard to all of the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

“Sexual” behaviour means behaviour that has a sexual element or implication that is considered to be sexual in nature. It can include physical, visual, verbal and non-verbal behaviour. A single incident or comment can amount to sexual harassment and need not be continuous.

Sexual harassment can occur unintentionally. To determine whether a person has sexually harassed another person, it is irrelevant whether or not the first person is aware of the harassment, and it is also irrelevant as to whether or not it is intentional. It is also 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.

Sexual harassment does not include 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.

Examples of behaviour of a sexual nature that could constitute sexual harassment include:
• displaying pornographic or sexually explicit material (such as posters or computer screens or mobile phone devices);
• unwelcome physical contact, gestures or other non-verbal communication;
• sexually explicit emails, comments, jokes or conversations;
• sexual insults or taunting;
• asking a person for sex;
• making promises or threats in return for sexual favours;
• sexual orientation-based insults or taunts; and indecent assault, rape or stalking (which are also criminal offences).

The fact that not everybody would be offended by the behaviour does not mean that it will not amount to sexual harassment, and 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.
7 Bullying

MBS is committed to providing staff, students and visitors with a working and learning environment that is safe and free from risks to health, safety and wellbeing, including risks associated with bullying.

MBS’s objectives in this aspect of this Policy are to:

- prevent bullying;
- provide a healthy and safe environment for staff and students;
- manage reported incidents of bullying through MBS’s Grievance Procedure; and
- make staff and students aware of the assistance available to them in situations of bullying.

MBS requires its staff and students to treat others with respect for their rights, duties and aspirations. Bullying is not an acceptable part of MBS’s culture, and impacts negatively on the humane and scholarly values inherent in the ideals of a modern School. Staff members and students (and anyone else covered by this Policy) must not engage in behaviours that constitute bullying towards other staff or students.

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 the health and safety of staff and students so far as is practicable. Staff with managerial responsibilities, including Directors, should be mindful of any inappropriate behaviour in the workplace that might be considered bullying and take action against such behaviour accordingly.

“Bullying” is repeated, unreasonable behaviour directed toward a staff member or student, or a group of staff or students, which may:

- be considered to be unreasonable or inappropriate workplace behaviour; or
- create a risk to health and safety. The risk to health or safety created by bullying includes any risks to the psychological or physical health of the staff member or student.

“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 the 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. Bullying can occur unintentionally. A person’s intention or motive is not relevant when determining whether the alleged behaviour constitutes bullying.

Bullying behaviour may be obvious and direct, or extremely subtle and indirect, and 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 staff member or student;
- deliberately withholding information that is vital for effective performance;
- spreading rumours or innuendo about a person;
- psychological harassment;
- unjustified criticism or complaints;
- intimidation;
• assigning staff members meaningless tasks unrelated to their job;
• giving staff members impossible jobs;
• interfering with a person’s personal property or equipment; and
• deliberately changing work arrangements, such as rosters and leave, to inconvenience particular staff members.

Bullying is not:
• reasonable comment, advice or administrative action (including negative feedback) from managers or lecturers on work, academic performance or behaviour;
• disciplinary action;
• the implementation of organisational change;
• the allocation of work in compliance with systems;
• conflict or differences of opinion between individuals; or
• a single incident of bullying-style behaviour.

Although bullying is defined as repeated, unreasonable conduct that creates a risk to health and safety, a single incident may have the potential to escalate into bullying and should not be ignored. A staff member or student with a concern about a single incident of bullying-style behaviour may raise this issue in accordance with the Grievance Procedure.

8 Vilification

Vilification is prohibited under Federal legislation and the Racial and Religious Tolerance Act. Staff and students (and any other person covered by this Policy) must not vilify a person or a group of people on any ground which is prohibited.

Vilification is the use of acts or words (whether spoken or written) in public which provoke hatred, ridicule or contempt for a person or a group of people. Vilification is unlawful if it is on the grounds of race, religious belief or activity, homosexuality or HIV/AIDS.

Examples of vilification include displaying or communicating offensive material, calling people names and making offensive comments.

9 Victimisation

Victimisation is prohibited under Federal legislation and the Equal Opportunity Act. Staff and students (and any other person covered by this Policy) must not victimise others. All staff, students and other members of the MBS community have a right to raise genuine concerns without fear of victimisation.

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, for example under the Grievance Procedure or externally; or
• the first person thinks the other person intends to make a complaint under the Grievance Procedure or externally.

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.

Staff with managerial responsibilities, including Directors should be mindful of any inappropriate behaviour that might be considered victimisation and take action against such behaviour accordingly.

10 Equal opportunity in employment and education

MBS is committed to ensuring that its staff and students experience fairness, impartiality, and equal access to opportunities in employment and education at MBS.

Equal opportunity in:

- employment includes the principle of selection and promotion of staff on merit, and precludes taking into account irrelevant personal “attributes”, such as race or gender. Equity principles are a core element of the planning, recruitment, interview, selection and appointment of new staff to MBS; and
- education includes the principle of selection and assessment of students on merit, and precludes irrelevant personal attributes.

MBS operates in a local, national and international context in which some groups do not enjoy human rights equally with others. MBS has specific legal obligations to create an educational and employment environment that is free from unlawful discrimination, sexual harassment and bullying.

MBS aims to ensure that its 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 exactly the same.

Accordingly, there may be circumstances (e.g. in relation to certain equity groups) where MBS 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 MBS is the provision of specialist services to assist all Indigenous students.

10.1 Staff and students with impairments or disabilities

MBS is committed to ensuring that staff and students (including prospective staff and students) with impairment or a disability can access MBS on the same basis as students or staff members without an impairment or disability. MBS will make “reasonable adjustments” and/or “reasonable accommodations” for staff and students (including prospective staff and students) with impairment or a disability.

To the extent that a student or staff member (or prospective student or staff member) provides MBS with confidential information about their impairment or disability, MBS acknowledges that it will respect the confidentiality of that information.

There are circumstances where MBS is not required to make an adjustment for an actual or prospective staff member. MBS is not required to make an adjustment or accommodation where:

- it is not reasonable, for example because an adjustment would require a disproportionately high expenditure or disruption or due to the nature of the staff member’s role;
• if the staff member could not perform the genuine and reasonable requirements (or inherent requirements) of the employment, or participate in education, even if the adjustments were made;
• it would impose an unjustifiable hardship on MBS to do so.

MBS is not required to make an adjustment for an actual or prospective student if:
• the student could not participate in or continue to participate in or derive or continue to derive any substantial benefit from the educational program even after the adjustments are made; or
• it would impose an unjustifiable hardship on MBS to do so.

10.2 Equal employment opportunity for women and gender equality

In accordance with The Equal Opportunity for Women in the Workplace Act, 1999, (EOWW) MBS is committed to developing processes, polices and workplace programs which aim to achieve and maintain gender equality in the workplace.

A workplace program is a strategic approach to eliminating discrimination and contributing to equal opportunity for women in the workplace. MBS will be required to report on the details of these programs annually.

11 Raising and addressing issues

MBS takes any matters involving unlawful discrimination, harassment, bullying, vilification or victimisation extremely seriously. If you are a staff member with any questions about this Policy or inappropriate behaviour, please contact:
• your manager,
• Director or Dean; or
• Human Resources; or a Contact Officer.

If you are a student with any questions about this Policy or inappropriate behaviour, please contact:
• Deputy Dean, Programs
• Student Services
• a Contact Officer;

If you are not a staff member or student but have questions about this Policy or inappropriate behaviour or wish to make a complaint, please contact:
• Human Resources; or
• a Contact Officer; or
• the Dean’s office

If you wish to make a complaint, then please refer to the Grievance Procedure. Contact Officers and their roles are set out in that Procedure.

Staff and students should be aware that they are responsible for their own actions and that claims of discrimination, harassment, bullying, victimisation and vilification may be brought against them directly, and against MBS (if it is alleged that MBS somehow authorised the behaviour). Tribunals and courts may also impose personal fines on an individual who is found to have discriminated, bullied, harassed, victimised or vilified another person.
MBS may take disciplinary action against staff and students in accordance with its policies and procedures for any breach of this Policy which constitutes staff or student misconduct.

If you believe that you have been subjected to any behaviour which breaches this Policy or the Code of Conduct, then MBS will deal with any complaints in accordance with our Grievance Procedure.

12 Related documents

Please also refer to:

- the Code of Conduct;
- Grievance procedure;
- Occupational Health and safety policy

13 Changes to policy

MBS may amend or vary this Policy in its absolute discretion from time to time, but will take all reasonable steps to consult on any changes it makes.

14 General information

Approved by: Dean & Director

Responsible Policy owner: Director Human Resources

Contact area: Human Resources

Commencement date: 17 October 2011

Date approved: 13 October 2011
Appendix A – Legislation and References

The following Legislation is relevant to this Policy:

- Disability Standards for Education means the Disability Standards for Education 2005 (Cth) made pursuant to the Disability Discrimination Act 1992 (Cth);
- Equal Opportunity Act 2010 (Vic);
- Equal Opportunity for Women in the Workplace Act 1999 (Cth);
- Occupational Health and Safety Act 2004 (Vic);
- Racial and Religious Tolerance Act 2001 (Vic); and
- Sex Discrimination Act means the Sex Discrimination Act 1984 (Cth).