

Sexual Misconduct (Prevention and Response) Policy

Section 1 - Purpose and Scope

Purpose

(1) This Policy sets out the University's commitment and approach to preventing and responding to incidences of Sexual Misconduct occurring at, or connected to, the University.

Scope

(2) This Policy applies to:

- a. All members of the University Community; and
- b. All University related conduct or activities, for example: study, research, work, living, and socialising regardless of whether the activities take place on or off campus or in an online environment.

Section 2 - Definitions

(3) For the purposes of this Policy and associated procedures, the following definitions apply:

- a. Accommodations: actions that the University can take to support a student or staff member who has reported sexual harassment or sexual assault to enable them to continue studying, working, living and socialising at the University. Accommodations will be developed on a case by case basis.
- b. Complainant: the person making a complaint.
- c. Consent: freely and voluntarily consenting to a sexual act. A person cannot give their consent when they are:
 - i. under the age of 16 years;
 - ii. asleep or unconscious;
 - iii. intoxicated or affected by drugs or alcohol;
 - iv. intimidated, coerced or threatened;
 - v. unclear about the identity of the person performing the act;
 - vi. deceived or mistaken about the nature of the activity.
- d. Disclosure: the sharing of information with a Member of the University Community concerning an incident of Sexual Misconduct.
- e. Precautionary Measures: measures or actions undertaken by the University directed at a student, staff member or affiliate, who is alleged to have committed a criminal offence or a breach of University policy. A precautionary measure is not a penalty or sanction and must be reasonable and proportionate.
- f. Respondent: the person against whom a complaint is made.
- g. University Community: the members of the University Council, the staff, the students and affiliates of the University, as well as those who use the University's campuses or facilities for work, study, living and socialising, or other authorised activity.

Section 3 - Sexual Misconduct

(4) The University considers Sexual Misconduct to include:

- a. Sexual harassment; and
- b. Sexual assault.

Sexual harassment

(5) Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature that is done either to offend, humiliate or intimidate another person, or where it is reasonable to expect the person might feel that way.

(6) Sexual harassment may include:

- a. displays of sexually graphic materials including posters, cartoons or messages left on noticeboards, desks or common areas;
- b. repeated invitations to develop a closer or intimate relationship after prior refusal;
- c. unwelcome and uncalled for remarks or insinuations about a person's sex or private life;
- d. comments of a sexually suggestive nature about a person's appearance or body;
- e. sexually suggestive or offensive phone calls, emails or text messages;
- f. unwanted sexual attention using social media;
- g. sexual propositions;
- h. indecent exposure;
- i. stalking;
- j. pressuring a student or staff member to engage in sexual behaviour for some educational or employment benefit, or
- k. making a real or perceived threat that rejecting sexual behaviour will carry a negative consequence for the student or staff member in employment, education, accommodation, or University program or activity.

(7) In some instances sexual harassment may also constitute criminal conduct and should be managed as such. Sexual harassment is unlawful when it falls within the relevant statutory definition under the [Anti-Discrimination Act 1977](#) (NSW), the [Anti-Discrimination Act 1991](#) (Qld) and/or the [Sex Discrimination Act 1984](#) (Cth).

Sexual assault

(8) Sexual assault is any unwanted or forced sexual act or behaviour without consent.

(9) Sexual assault occurs when a person:

- a. touches or makes contact with another person (and the touching or making contact is sexual in nature) without their consent – groping and any physical contact such as patting, pinching or touching in a sexual way is a form of sexual assault.
- b. forces another person against their will to commit an act of gross indecency – a sexual act that does not involve penetration, for example a person forces another person to touch their genitals.
- c. forces another person to see an act of gross indecency, for example the person masturbates in front of the other person.

(10) Rape is the most serious form of sexual assault and occurs where a person or persons force another person or persons to have sexual intercourse without their consent. Rape includes forcing someone to perform oral sex, digital

penetration, and inserting any object into the vulva, vagina or anus of another person without their consent.

Section 4 - University Commitment

(11) The University will not tolerate Sexual Misconduct by members of the University Community under any circumstances.

(12) The University aims to provide an environment where all members of the University Community are treated fairly and with dignity and respect, free from Sexual Misconduct.

(13) The University is committed to:

- a. A proactive approach to preventing Sexual Misconduct; and
- b. Responding appropriately and effectively to disclosures and reports of Sexual Misconduct.

Prevention

(14) The University aims to prevent sexual assault and harassment by:

- a. Promoting and providing access to comprehensive and inclusive education and awareness campaigns;
- b. Providing regular and targeted training for staff with research supervisory responsibilities, residential student leaders and for staff in student-facing roles and likely to receive disclosures of Sexual Misconduct;
- c. Ensuring education, training and resources meet the needs of the diverse University community and higher risk cohorts;
- d. Partnering and collaborating with external agencies;
- e. Implementing Precautionary Measures when required; and
- f. Monitoring progress in eliminating sexual assault and harassment by recording incidents and complaints of Sexual Misconduct to identify patterns in behaviours or areas of the University for further attention and action.

Response

(15) The University's response to reports of Sexual Misconduct will be compassionate, supportive, confidential, culturally competent and follow the principle of procedural fairness.

(16) The wellbeing and needs of the person who has reported Sexual Misconduct will be at the centre of the University's response.

(17) When the University becomes aware of an allegation involving Sexual Misconduct, it will respond promptly to the person reporting the allegation by providing support, information and facilitating access to relevant counselling, medical treatment, police or legal services as appropriate.

(18) The University commits to ensuring that students and staff have access to the knowledge and skills necessary to respond to disclosures and formal reports of sexual offences in a culturally competent way thereby meeting the needs of staff and students from different communities, including international students, Aboriginal and Torres Strait Islander students and students from culturally and linguistically diverse backgrounds. This commitment also applies to other distinct groups such as individuals who identify as LGBTIQ and persons with a disability.

(19) The University's response to reports of Sexual Misconduct will follow due process and afford procedural fairness to all parties concerned.

Section 5 - Procedures

Reporting Sexual Misconduct (Internal)

Making a Disclosure

(20) The University encourages any person who has experienced, or witnessed, any Sexual Misconduct by, or toward, a member of the University Community to report the incident. A formal report to the police is not required in order to access the University's reporting procedures.

(21) A report can be anonymous, and the person reporting is able to, but does not have to, identify others involved.

(22) Staff members may make a report or complaint to:

- a. Work Health and Safety Team via the online reporting risk platform, [RiskWare](#); or
- b. their direct supervisor; or
- c. Complaints Assistance Officer, by email to complaints@scu.edu.au.

(23) Students may make a report or complaint to:

- a. Student Safety Team via the online reporting risk platform, [RiskWare](#);
- b. Complaints Assistance Officer, by email to complaints@scu.edu.au.
- c. A trusted member of staff who can refer the student to support services.

Responding to Disclosure and Reports

(24) The University will advise those who have made a report of Sexual Misconduct of the support services (both internal and external) available to them, and endeavour to ensure that safety or other risks are considered and managed appropriately, and that where agreed to, appropriate University services are engaged. The University will support individuals who have experienced sexual assault in deciding whether they want to report the incident to police.

(25) Reports and complaints will be kept strictly confidential upon request unless there are exceptional circumstances, where disclosure is required by law or where there is a risk of significant harm to that individual's health and safety or another individual's health or safety. In such circumstances, the University may do one or both of the following:

- a. resolve to elevate the report to a complaint in which case the individual who has reported has the right not to participate in any subsequent investigation provided that this action would not result in a denial of natural justice to the Respondent;
- b. notify third parties, such as the police or child protection authorities.

(26) Making a report does not start an investigation. On receipt of a report, the University will advise the reporter (if they are identified) of their options, including the option to make a complaint which will result in an investigation.

Managing and investigating complaints

(27) Making a complaint involves providing sufficient information in order that an investigation or disciplinary process or other resolution can be taken against the Respondent.

(28) The University may put appropriate Precautionary Measures or Accommodations in place at an early stage pending the outcome of an investigation to ensure a full and proper investigation can be carried out and for the

wellbeing of the person/s involved.

(29) If the University commences an investigation and an external process (a criminal charge) is also pursued, the University may determine to continue or suspend its investigation. The Complainant will be advised of any determination. The University will continue to provide support, including assessments of Accommodations and Precautionary Measures.

(30) Where an allegation of Sexual Misconduct is made against a member of staff it will be referred to the Director, Human Resources for investigation as possible misconduct or serious misconduct.

(31) Where an allegation of Sexual Misconduct is made against a student it will be referred to the Pro Vice-Chancellor (Academic Quality) for investigation as possible non-academic misconduct under the [Student Academic and Non-Academic Misconduct Rules](#).

(32) Where a student is also employed by the University or where a staff member or affiliate may also be a student, an assessment will be made as to the role the Respondent was undertaking at the time of the alleged conduct.

(33) Where an allegation of Sexual Misconduct is against a University Council Member, it will be referred to the Chancellor for investigation as possible misconduct.

(34) All records relating to Sexual Misconduct will be kept in accordance with the University's [Records Management Policy](#) and [Procedures](#) and the [Privacy Policy](#).

(35) Where a Complainant is dissatisfied with the University's response and handling of a complaint, they will be informed of their options to report their concerns to an external agency.

Section 6 - Associated documents

(36) This policy should be read in conjunction with:

- a. [Enterprise Agreement 2018](#)
- b. [Code of Conduct](#)
- c. [Complaints Policy - Staff](#)
- d. [Student Academic and Non-Academic Misconduct Rules](#)
- e. [Harassment, Bullying and Discrimination Prevention Policy](#)
- f. [Privacy Policy](#)
- g. [Work Health Safety Policy](#)
- h. [Records Management Policy](#)

Status and Details

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