

STUDENT SEXUAL MISCONDUCT POLICY 2023

The Vice-Chancellor and President as delegate of the Senate of the University of Sydney, adopts the following policy.

Dated: 13 December 2023 (commencing 1 January 2024)

Dated Amended:

Signature:

Position: Vice-Chancellor and President

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How to report

To report sexual misconduct or sexual harassment, contact the University's Safer Communities Office:

- online anytime on the University's '[Sexual Misconduct](#)' web page;
- by email at safer-communities.officer@sydney.edu.au; or
- by calling + 61 2 8627 6808 or **1800 SYD HLP (1800 793 457)** from 9am to 5pm, Monday to Friday.

Assistance and support

- Contact details for trauma-informed **emergency assistance** for students and former students who have experienced sexual misconduct or sexual harassment are set out in **Schedule 1** of the [Procedures](#).
- Contact details for trauma-informed **ongoing support and assistance** for students and former students who have experienced sexual misconduct or sexual harassment are set out in **Schedule 2** of the [Procedures](#).
- Contact details for support and assistance for students who are accused of sexual misconduct or sexual harassment are set out in **Schedule 3** of the [Procedures](#).

1 Name of Policy

This is the Student Sexual Misconduct Policy 2023.

2 Commencement

This policy commences on

3 Policy is binding

Except to the extent that a contrary intention is expressed, this policy binds the University, students, staff members, affiliates and visitors.

4 Statement of intent

- (1) The University of Sydney is committed to providing a safe, inclusive and respectful environment for all members of its community, and to responding to sexual misconduct in a trauma-informed and procedurally fair way.
- (2) The University acknowledges that inequality and power imbalance provide the underlying social conditions for personal violence, and recognises that sexual

misconduct is disproportionately experienced by women, Aboriginal and Torres Strait Islander people, people with a disability, people from the LGBTQIA+ community, including trans and gender diverse people, and people from culturally or linguistically diverse backgrounds.

- (3) This policy:
- (a) prohibits sexual misconduct and sexual harassment by members of the University community;
 - (b) protects the safety and welfare of students and former students disclosing or complaining about sexual misconduct or sexual harassment;
 - (c) sets out the meaning of sexual misconduct and sexual harassment;
 - (d) explains the difference between disclosures and complaints of sexual misconduct and sexual harassment;
 - (e) explains the difference between complaints to the University and reports to the NSW Police;
 - (f) encourages safe active bystander intervention;
 - (g) sets out the principles applicable to disclosures and complaints of sexual misconduct and sexual harassment;
 - (h) supports the University's values of inclusion and diversity, and respect and integrity; and
 - (i) supports measures taken by the University to eliminate workplace sexual harassment, unlawful sex discrimination and harassment, and victimisation.

Note: See the University's [Strategic Plan 2016-2020](#).

5 Application

- (3) This policy applies to disclosures by students and former students of sexual misconduct and sexual harassment, including:
- (a) anonymous disclosures;
 - (b) disclosures about recent or historical events; and
 - (c) disclosures about University related and non-University related conduct.
- (4) This policy applies to complaints by students and former students of University related sexual misconduct and sexual harassment including, but not limited to, conduct by:
- (a) current and former students; and
 - (b) current and former staff members or affiliates.

Note: For an explanation of the difference between disclosures and complaints of sexual misconduct and sexual harassment, see clauses 12 and 13.

Note: Current and former staff and affiliates who wish to make a disclosure or complaint of sexual misconduct or sexual harassment should refer to the [Staff Sexual Misconduct Policy 2023](#) and the [Staff Sexual Misconduct Response Procedures 2023](#).

- (3) This policy applies to disclosures and complaints by all students and former students, irrespective of gender, gender identity, intersex status, sexual orientation, race, religion, cultural background or disability.



- (4) Where relevant, this policy applies to disclosures and complaints by any person of University related sexual misconduct or sexual harassment by a current student.
- (5) For the avoidance of doubt, the rights and obligations of students under this policy are in addition to the rights and obligations set out in the *Student Charter 2020* and the *Bullying, Harassment and Discrimination Prevention Policy 2015*.

6 Definitions

In this policy:

active bystander intervention means seeing and recognising a potentially harmful situation and choosing to respond in a safe way that could prevent or stop the harm from happening or continuing.

affiliate has the meaning given in the *Staff and Affiliates Code of Conduct 2021*.

At the date of this policy, this is:

means a person appointed or engaged by the University to perform duties or functions on its behalf, including but not limited to:

- an honorary title holder engaged under the *Honorary Titles Policy 2013*;
- a consultant or contractor to the University; and
- an office holder in a University entity, a member of any University committee, board or foundation.

An affiliate is not an employee of the University.

Apprehended Violence Order means an ADVO (Apprehended Domestic Violence Order) or an APVO (Apprehended Personal Violence Order) made by a court.

Note: An ADVO protects a person where the parties live together. An APVO protects a person in other circumstances, including where the parties are both students.

Bystander means a person who directly sees or hears and recognises a potentially harmful situation.

CET means Centre for English Teaching

complainant means any person who makes a complaint of sexual misconduct or sexual harassment in accordance with this policy.



complaint	means: <ul style="list-style-type: none">• a complaint of sexual misconduct or sexual harassment by a student or former student who wants the University to investigate or to take specific action in response to the incident, made in accordance with clause 13; and• a complaint by any person of University related sexual misconduct or sexual harassment by a current student.
disclosure	means: <ul style="list-style-type: none">• a disclosure of sexual misconduct or sexual harassment by a student or former student who does not want the University to investigate or to take any specific action in response to the incident, made in accordance with clause 12; and• a disclosure by any person of University related sexual misconduct or sexual harassment by a current student.
fraternisation	has the meaning given in clause 22, and applies only to that clause.
LGBTQIA+	means lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual people and space for new understandings of the diverse gender and sexual identities.
non-disclosure agreement	means any agreement, or any clause in any agreement, that prohibits the parties to the agreement from disclosing confidential information.
placement provider	means an organisation that provides clinical, practicum, internship or work experience placements to students.
Residential College	means one or more of: <ul style="list-style-type: none">• Mandelbaum House;• Sancta Sophia College;• St Andrew's College;• St John's College;• St Paul's College;• Wesley College;• Women's College.
respondent	means a person whose conduct is the subject of a complaint of sexual misconduct or sexual harassment.
Safer Communities Office	means the specialist staff within the portfolio of the Deputy Vice-Chancellor (Education), who provide support and guidance to current and former students, staff and affiliates affected by sexual misconduct and sexual harassment.
sexual activity	means any activity that a reasonable person, having regard to all the circumstances, would consider to be sexual.



staff or staff member	means an employee of the University, including a casual employee.
student	means any person who is considered to be a student for the purposes of the <u>Coursework Policy 2021</u> or the <u>Continuing and Extra-Curricular Education Policy 2022</u> , and includes any of: <ul style="list-style-type: none">• award students (i.e. studying for a formal qualification);• exchange students;• study abroad students;• continuing education students;• other non-award students; and• students of the Centre for English Teaching (CET).
Student Affairs Officer	means a specialist member of staff within the Student Affairs Unit.
Student Affairs Unit	means the specialist staff within and consultants engaged by the office of the Deputy Vice-Chancellor (Education), who assist with the resolution of student complaints and reports of student misconduct in accordance with University policies and procedures.
student caseworker	means a designated employee of the Students' Representative Council (SRC) or the Sydney University Postgraduate Representative Association (SUPRA).
student club or student society	means a student association established under the terms of clause 8 of the <u>Student Associations Policy 2020</u> .
student representative organisation	has the meaning given in the <u>Student Associations Policy 2020</u> . As at the date of this policy, this is: <p>means a student association listed in subclause 7(1) of [that] policy.</p> <p>These are:</p> <ul style="list-style-type: none">• Sydney University Postgraduate Representative Association (SUPRA);• Sydney University Sport and Fitness Limited (SUSF);• University of Sydney Students' Representative Council (SRC); and• University of Sydney Union (USU).
transactional sex	has the meaning given in clause 22 and applies only to that clause.

University lands has the meaning given in the *University of Sydney (Campus Access) Rule 2009*.

As at the date of this policy, this includes:

any land or roads occupied or used in connection with the University, including the whole or any part of any building or structure and any land or roads occupied or used in connection with the whole or part of any building or structure.

University related conduct means any conduct that is connected to the University, including conduct that:

- refers or relates to the University, its activities, or its staff, affiliates or students in their status as staff, affiliates or students of the University;
- occurs on, or in connection with, University lands or other property owned by the University;
- occurs at, or in connection with, a Residential College;
- occurs at or in connection with University owned or affiliated student accommodation;
- occurs using, or is facilitated by, University ICT resources or other University equipment;
- occurs during, or relates to, the performance of duties for the University;
- occurs during, or in connection to, any University related function or event (whether sanctioned or organised by the University or not) or when representing the University in any capacity;
- occurs during, or in connection to, any event run by or affiliated with student representative organisations, student clubs or student societies (whether sanctioned or organised by the University or not);
- occurs during, or in connection to, students' clinical, practicum, internship or work experience placements; or
- occurs while a University of Sydney student is participating in an overseas exchange, study abroad or other approved program.

visitor means an academic or other guest, invitee or visitor to University lands or to a class, function or event sanctioned or organised by the University.

7 Sexual misconduct and sexual harassment are prohibited

- (1) Students, staff, affiliates and visitors must not engage in sexual misconduct towards or sexually harass any other person.
- (2) Behaviour that is intimidating, abusive, disrespectful or threatening, including sexual misconduct and sexual harassment, is not acceptable and will not be tolerated.



8 Emergency and ongoing assistance and support

- (1) Students and former students who have experienced sexual misconduct or sexual harassment are encouraged to seek assistance and support from a trusted member of the University's staff.

Note: For information on supporting students who have experienced sexual misconduct or sexual harassment, see clause 7 of the *Student Sexual Misconduct Response Procedures 2018*.

- (2) Contact details for trauma-informed emergency and ongoing assistance and support are provided in **Schedules 1 and 2** of the *Student Sexual Misconduct Response Procedures 2023* and on the University's 'Sexual Misconduct' web page.

9 Meaning of sexual misconduct

- (1) The term sexual misconduct is used in this policy to cover a range of unacceptable sexual and physical behaviours, which are in breach of clauses 7 or 22.

Note: Sexual misconduct can be experienced by people of all ages, genders and sexualities, within or outside a relationship. Sexual misconduct is an abuse of power, and is never the fault of the person who does not consent to the sexual activity.

- (2) For the purposes of this policy, sexual misconduct means a breach of clause 22 or any sexual activity that a person does not consent to, including:
 - (a) **rape (also called sexual assault)** – the penetration to any extent of the genitals or anus of any person by any part of the body of another person (including their fingers), or with any object manipulated by another person, without the first person's consent;
 - (b) **unwanted oral sex** – insertion of the penis into the mouth of another person, or use of the tongue or lips on the vagina, penis, scrotum or anus of another person, without their consent;
 - (c) **sexual touching** – kissing or touching a person's body without their consent, in circumstances where a reasonable person would consider the touching to be sexual. This includes unwanted touching of a person's breast, bottom or genitals;
 - (d) **sexual acts** – doing an act with or towards another person without their consent, or making another person do an unwanted act, in circumstances where a reasonable person would consider the act to be sexual. This includes:
 - (i) a person showing another person their genitals ('flashing');
 - (ii) a person sending another person an unwanted still or moving image of their own or someone else's genitals;
 - (iii) making a person show another person their breasts, bottom or genitals;
 - (iv) masturbating in front of another person; and
 - (v) pretending to masturbate in front of another person;



- (e) **voyeurism** - for the purpose of obtaining sexual arousal or sexual gratification, observing a person who is:
 - (i) in a state of undress;
 - (ii) using the toilet, showering or bathing; or
 - (iii) engaged in a sexual act;without their consent; and
 - (f) **recording or distributing an intimate image** of another person without their consent, whether in person or by electronic, digital or other means, including a still or moving image of:
 - (i) a person's breast, bottom or genitals, whether bare or covered by underwear;
 - (ii) a person in a state of undress;
 - (iii) a person using the toilet, showering or bathing;
 - (iv) a person engaged in a sexual act.
- (3) For the purposes of this policy, a person will be considered to have engaged in sexual misconduct towards another person if:
- (a) the other person did not consent to the sexual activity; and
 - (b) the first person:
 - (i) knew that the other person did not consent;
 - (ii) was reckless as to whether the other person consented; or
 - (iii) any belief that the first person had, or may have had, that the other person consented to the sexual activity was not reasonable in the circumstances.
- (4) Without limiting paragraph 9(3)(b)(iii), a belief that the other person consented to sexual activity is not reasonable if the first person did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consented to the sexual activity.
- (5) For the purposes of this policy, attempting or threatening to engage in any of the above conduct may also constitute sexual misconduct.
- Note:** Stalking or intimidating another person with the intention of causing them to fear physical or mental harm is also a criminal offence. See the [Crimes \(Domestic and Personal Violence\) Act 2007](#) and the [Bullying, Harassment and Discrimination Prevention Policy 2015](#).

10 Meaning of consent

- (1) Consensual sexual activity involves ongoing and mutual communication, decision-making and free and voluntary agreement between the people participating in the sexual activity.
- (2) For the purposes of this policy, a person consents to a sexual activity if, at the time of the sexual activity, they freely and voluntarily agree to the sexual activity.
- (3) For the purposes of this policy, a person does not consent to a sexual activity if:
 - (a) they do not say or do anything to communicate consent;
 - (b) they do not have the capacity to consent;



- (c) they are:
 - (i) asleep or unconscious;
 - (ii) so affected by alcohol or another drug as to be incapable of consenting;
 - (iii) forced, intimidated, coerced, blackmailed or threatened, including when they are afraid of harm to themselves or someone else;
 - (iv) overborne by the abuse of a relationship of authority, trust or dependence;
 - (v) mistaken about the identity of the other person;
 - (vi) mistaken about the nature of the sexual activity;
 - (vii) tricked into doing something they do not want to do;
 - (viii) detained or held against their will;
 - (ix) under 16 years of age; or
 - (x) under 18 years of age and the other person is a staff member.
- (4) A person may, by their words or conduct, withdraw their consent at any time prior to or during a sexual activity, for any reason.
- (5) Sexual activity that occurs after consent has been withdrawn occurs without consent.
- (6) The fact that a person does not say 'no' to, or does not physically resist, a sexual activity does not of itself mean that they consent to it.
- (7) A person who consents to a particular sexual activity is not, by reason only of that fact, taken to consent to any other sexual activity.

Note: A person who consents to a sexual activity using a condom is not, by reason only of that fact, taken to consent to a sexual activity without using a condom.
- (8) A person who consents to a sexual activity with a person on one occasion is not, by reason only of that fact, taken to consent to a sexual activity with:
 - (a) that person on another occasion; or
 - (b) another person on that or another occasion.

11 Meaning of sexual harassment

- (1) Sexual harassment occurs if a person:
 - (a) 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 in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Note: See also clause 12 of the [Bullying, Harassment and Discrimination Prevention Policy 2015](#).



- (2) Sexual harassment includes:
 - (a) unwelcome touching, hugging or kissing;
 - (b) inappropriate staring or leering;
 - (c) sexual gestures;
 - (d) sexually suggestive comments or jokes;
 - (e) displaying, sending or requesting sexually explicit pictures or posters;
 - (f) giving sexually explicit gifts;
 - (g) making or distributing a sexually explicit audio recording or photo-shopped image of another person;
 - (h) repeated or inappropriate invitations to go out or 'hook up';
 - (i) intrusive questions about a person's private life or physical appearance; and
 - (j) requests or pressure for sexual intercourse, or to participate in other sexual activities.
- (3) Sexual harassment can occur through email, text, messaging, social media posts and other forms of electronic communication.
- (4) Acts of sexual harassment may also constitute sexual misconduct.

12 Disclosures of sexual misconduct and sexual harassment by students and former students

- (1) Students and former students who have experienced sexual misconduct or sexual harassment have a right to decide whether they want to disclose the incident to the University, or not.
- (2) The University is committed to supporting students and former students who disclose sexual misconduct or sexual harassment.
- (3) A student or former student can make a disclosure of any incident of sexual misconduct or sexual harassment by contacting the University's Safer Communities Office.

Note: A bystander may make a disclosure but not a complaint of sexual misconduct or sexual harassment that they have witnessed. Where possible, the bystander should seek consent from the student who experienced the conduct to make the disclosure. See clause 5(6) of the Student Sexual Misconduct Response Procedures 2018.
- (4) Students and former students can elect to make disclosures anonymously through the online form on the University's 'Sexual Misconduct' web page.
- (5) Students and former students should make a disclosure (rather than a complaint) of sexual misconduct or sexual harassment if they are seeking support but do not want the University to investigate or to take any specific action in response to the incident.
- (6) Students and former students who choose to make a disclosure of sexual misconduct or sexual harassment may later decide to make a complaint to the University about the same incident. The University will provide guidance about how to make a complaint.
- (7) Subject to subclause (8), the University will treat all disclosures confidentially.

- (8) The University:
- (a) will not investigate or release information about a disclosure unless:
 - (i) there appears to be a risk to the health or safety of the student or another person or persons;
 - (ii) one or more other people name the same perpetrator in a separate incident disclosure and the University is concerned that there may be a risk to the health or safety of other persons;
 - (iii) the disclosure names a perpetrator who is employed or engaged by a Residential College, a student accommodation provider, a placement provider or a student representative organisation, student club or student society, and the University is concerned that there may be a risk to the health or safety of other persons; or
 - (iv) the disclosure is made by a bystander and an investigation can be conducted appropriately without involving the affected student or students; and
 - (b) where possible, will inform the student or former student before commencing an investigation into or releasing information about a disclosure.
- (9) The University will not investigate anonymous disclosures of sexual misconduct or sexual harassment unless:
- (a) it is not necessary for the alleged perpetrator to be aware of the identity of the affected person in order to properly respond to the allegation; or
 - (b) there is independent documentary or other evidence supporting the disclosure and the allegation can be tested fairly.
- (10) The University will otherwise use information contained in disclosures on a de-identified basis to identify trends and to develop targeted responses to sexual misconduct and sexual harassment in the University community.

13 Complaints of sexual misconduct and sexual harassment by students and former students

- (1) Students and former students who have experienced sexual misconduct or sexual harassment have a right to decide whether they want to make a complaint to the University, or not.
- (2) The University is committed to supporting students and former students who complain about sexual misconduct or sexual harassment.
- (3) A student or former student who has experienced sexual misconduct or sexual harassment can make a complaint by contacting the University's [Safer Communities Office](#).
- (4) A person may not make a complaint of sexual misconduct or sexual harassment on behalf of a student or former student, except for Safer Communities Office staff members, Student Affairs Officers and student caseworkers, with the consent of the student.

Note: Staff members may assist a student or former student to make a complaint. See clause 6(4) of the [Student Sexual Misconduct Response Procedures 2023](#).

- (5) Students and former students who have experienced sexual misconduct or sexual harassment should make a complaint (rather than a disclosure) if they want the University to investigate or to take specific action in response to the incident, and the complaint is about University related conduct.
- (6) Students and former students do not have to specify what action they want the University to take in order to make a complaint. If students and former students choose to specify what action they want the University to take, the University will prioritise their wellbeing and needs but may decide to take that action or some other action, as appropriate.
- (7) In most circumstances, a student or former student wishing to make a complaint of sexual misconduct or sexual harassment will need to provide their name. The University will not act on anonymous complaints of sexual misconduct or sexual harassment unless:
 - (b) it is not necessary for the respondent to be aware of the identity of the complainant in order to properly respond to the complaint; or
 - (a) there is independent documentary or other evidence supporting the complaint and the allegation can be tested fairly.
- (8) The University is unable to act on complaints from complainants who decline to provide information about the respondent. In such cases, the complaint will be treated as a disclosure.
- (9) The University will:
 - (a) handle complaints by students and former students of sexual misconduct and sexual harassment in accordance with the *Student Sexual Misconduct Response Procedures 2018*, the *Staff Sexual Misconduct Response Procedures 2023* and the *Student Complaints Procedures 2015*, as appropriate; and
 - (b) inform the complainant before commencing action in accordance with the relevant procedures.
- (10) If a student or former student makes a complaint of sexual misconduct or sexual harassment by a visitor or other person over whom the University has no jurisdiction, the University:
 - (a) may issue a Termination of License Notice in accordance with the *University of Sydney (Campus Access) Rule 2009*;
 - (b) may seek assistance from another organisation, and release information about the complaint to that organisation; or
 - (c) may refer the complaint to an external agency for resolution; and
 - (a) will inform the complainant before releasing information or making such a referral; and
 - (b) will support the complainant during any external complaints process.

Note: Other organisations may include a student's home institution, or clinical, practicum, internship or work experience provider. The University may refer complaints of sexual harassment to the *NSW Anti-Discrimination Board* or the *Australian Human Rights Commission*.
- (11) If a student or former student makes a complaint of sexual misconduct or sexual harassment occurring at or in connection with a Residential College, or University owned or affiliated student accommodation, the University may liaise with or seek assistance from the Residential College or accommodation provider to resolve the complaint.

14 Confidentiality

- (1) Subject to this clause and subclauses 12(8), 13(10) and 15(8), the University will keep confidential all information relating to a disclosure or complaint of sexual misconduct or sexual harassment, unless the student or former student consents to disclosure of part or all of the information for a specified purpose.
- (2) The University may disclose information about a disclosure or complaint of sexual misconduct or sexual harassment if it is required to do so in accordance with any legal or regulatory requirement.
- (3) Where a disclosure or complaint of sexual misconduct or sexual harassment relates to an incident that is alleged to have occurred at or in connection with:
 - (a) a Residential College;
 - (b) a facility or event run by or affiliated with a student representative organisation, student club or student society; or
 - (c) a student placement;the University may disclose to the Residential College, relevant student representative organisation, student club or student society, or placement provider as necessary, information about:
 - (b) interim measures taken against a student in accordance with clause 19; and
 - (c) the outcome of an investigation conducted by or on behalf of the University in accordance with the *Student Sexual Misconduct Response Procedures 2023* or an internal disciplinary process.
- (4) Subject to this clause, complainants and respondents must keep confidential:
 - (a) the identity of the complainant, the respondent and participants in the resolution or investigation of a complaint;
 - (b) the information provided or collected during the resolution or investigation of a complaint;
 - (c) the fact that a complaint has been made;
 - (d) any interim measures taken under clause 18; and
 - (e) any report, outcome or determination of a complaint.
- (5) Complainants and respondents may disclose the information in subclause (4) in order to obtain support or advice from:
 - (a) a support person, representative or personal adviser who agrees to maintain confidentiality;
 - (b) a qualified counsellor or psychologist;
 - (c) a student caseworker or lawyer;
 - (d) the Police;
 - (e) the NSW Anti-Discrimination Board or Australian Human Rights Commission.
- (6) A complainant whose complaint has been wholly or partially substantiated:
 - (a) by a court; or
 - (b) by the University, following an investigation conducted by or on behalf of the University in accordance with an internal disciplinary process;

may disclose:

- (c) the identity of the complainant and the respondent;
 - (d) any information provided by the complainant during the investigation that relates to those parts of the complaint that were substantiated; and
 - (e) the outcome of the complaint, as it relates to those parts of the complaint that were substantiated.
- (7) Subject to the confidentiality requirements in this clause, the University will not ask complainants to sign a non-disclosure agreement.
- (8) A breach of confidentiality may result in disciplinary action including:
- (a) where the person is a student, action under the *University of Sydney (Student Discipline) Rule 2016*; or
 - (b) where the person is a CET student, action under the *Centre for English Teaching – Student Discipline Provisions 2022*.

15 Reports to the NSW Police

- (1) The University supports the right of students and former students who have experienced sexual misconduct or sexual harassment to decide whether they want to report the incident to the NSW Police, or not.

Note: Students and former students may also elect to contact the NSW Anti-Discrimination Board or the Australian Human Rights Commission to make a complaint of sexual harassment under anti-discrimination legislation.

- (2) A student or former student may decide to make a disclosure or complaint of sexual misconduct or sexual harassment to the University, but not report the incident to the Police. Alternatively, they may decide to report sexual misconduct or sexual harassment to the Police, but not to make a disclosure or complaint to the University.
- (3) A person's decision to make a report to the Police, or the possibility of a person deciding to make a report to the Police, will not necessarily preclude the University from investigating or taking action in response to sexual misconduct or sexual harassment. However, any internal University process may have to be postponed or suspended pending completion of the criminal process.
- (4) When deciding whether to postpone or suspend an internal University process pending completion of a criminal process, the University will consult the Police and the complainant and will consider:
- (a) the potential for the internal process to impede or contaminate the criminal process;
 - (b) the potential for the criminal process to impede or contaminate the internal process;
 - (c) whether investigating or responding to the incident has the potential to impact adversely on the rights of either or both the complainant or the respondent; and
 - (d) whether postponing or suspending an internal University process would present an imminent risk to the health or safety of the complainant, the respondent, or any other person.

- (5) The University may decide to commence or continue an internal University process after a criminal process is complete, and is not bound by any decision of the Police, the Office of the Director of Public Prosecutions or a court.

Note: The purpose of a University investigation is to determine whether there has been a breach of University policy, not whether a criminal offence has been committed. The standard of proof to be satisfied in University investigations of sexual misconduct and sexual harassment is 'on the balance of probabilities', which requires satisfaction on the evidence that the matter found to have occurred is more likely to have occurred than not. The University will take into account the nature and seriousness of the alleged conduct when deciding whether the standard of proof is met. The standard of proof used in criminal investigations and trials is 'beyond reasonable doubt', which is a higher evidentiary standard of proof.

- (6) The University is required to report information about the commission of a 'serious indictable offence' to the Police or other appropriate authority in accordance with sections 316 and 316A of the *Crimes Act 1900 (NSW)*.

Note: A 'serious indictable offence' is an offence that is punishable by imprisonment for five years or more, such as conduct referred to in this policy as rape (also called sexual assault) or sexual touching.

- (7) If a student or former student does not want information about an incident of sexual misconduct to be reported to the Police or another appropriate authority, the University will use its best efforts to protect the confidentiality of information relating to their disclosure or complaint, while meeting its obligations under the *Crimes Act 1900 (NSW)*.

- (8) In some limited circumstances, the University may need to report an incident of sexual misconduct to the Police or other appropriate authority against a person's wishes, to ensure their safety or the safety of other members of the University community, or to meet its legal obligations.

- (9) The University will inform the student or former student:

- (a) before reporting an incident of sexual misconduct to the Police; and
- (b) after the report, what information has been communicated to the Police.

16 Active bystander intervention

- (1) The University encourages and values reasonable safe active bystander intervention by members of the University community to prevent or stop sexual misconduct and sexual harassment from occurring or continuing, and will make training available to staff and students on this topic.

- (2) The steps involved in safe active bystander intervention are:

- (a) noticing the situation – paying attention to what is going on nearby;
- (b) deciding if it is a problem – investigating whether someone might need help, and checking with people around if unsure;
- (c) accepting responsibility to take action – not assuming someone else will do something;
- (d) making a plan to step in – indirectly or directly confronting the issue, without being aggressive or putting oneself or others in danger; and
- (e) if there is an immediate danger to anyone's safety, calling emergency services on 000 (triple zero) and/or contacting the University's Protective Services on 02 9351 3333.

17 No victimisation

- (1) The University is committed to protecting the safety and wellbeing of any member of its community who reports sexual misconduct.
- (2) A person must not victimise or otherwise subject another person to detrimental action as a consequence of that person:
 - (a) making a disclosure or a complaint of sexual misconduct or sexual harassment;
 - (b) providing information about a disclosure or a complaint of sexual misconduct or sexual harassment;
 - (c) supporting a person who has made a disclosure or complaint of sexual misconduct or sexual harassment; or
 - (d) engaging in reasonable safe active bystander intervention.
- (3) A breach of this clause may result in disciplinary action including:
 - (a) where the person is a student, action under the University of Sydney (Student Discipline) Rule 2016; or
 - (b) where the person is a CET student, action under the Centre for English Teaching – Student Discipline Provisions 2022.

18 Opportunity to be heard

- (1) Complaints of sexual misconduct and sexual harassment will be resolved sensitively, fairly, confidentially and with a minimum of disruption, while following the principles of procedural fairness.
- (2) Complainants and respondents will have a reasonable opportunity to state or respond to a complaint orally and in writing, and to provide any documents relevant to the complaint.
- (3) Complainants and respondents may be accompanied to any meeting by a support person, if they wish.
- (4) At no time will the complainant and respondent be required to meet with or to participate in any activity with one another, unless they have both given their prior informed consent.

19 Interim measures

- (1) Interim measures should not be interpreted as anticipating or revealing the outcome of any University or criminal investigation process.
- (2) In order to minimise the potential for harm to any person, the Registrar may take interim measures against a student in response to:
 - (a) a complaint of sexual misconduct or sexual harassment against the student, pending:
 - (i) resolution of the complaint;
 - (ii) investigation of the complaint; or
 - (iii) the conclusion of an internal disciplinary process; or



- (b) a disclosure or complaint of sexual misconduct or sexual harassment against the student, pending criminal investigation and hearing; or
 - (c) an Apprehended Violence Order, whether interim or final.
- (3) As an interim measure the Registrar may:
- (a) suspend a student from entering specified parts of the University's lands;
 - (b) restrict a student's access to particular classes;
 - (c) restrict a student's access to specified University buildings, facilities or accommodation; or
 - (d) prohibit a student from speaking to or approaching another person (including by social media, email, letter or through a third party);
- for such period, and on such terms, as the Registrar considers necessary.
- (4) Interim measures must be:
- (a) taken on a case-by-case basis;
 - (b) set for a fixed period of time; and
 - (c) reasonable and proportionate;
- having regard to the seriousness and circumstances of the alleged conduct.
- (5) Interim measures may be taken summarily, and the Registrar:
- (a) is not required to provide a hearing to the student before making a decision; and
 - (b) may inform themselves in relation to any matter in any manner that they think fit.
- (6) Interim measures once taken will continue to apply until they:
- (a) are revoked or varied by the Registrar; or
 - (b) expire in accordance with their terms.
- (7) The Registrar must notify the student of the imposition of interim measures within 24 hours of doing so, and provide the information specified in the [Student Sexual Misconduct Response Procedures 2018](#).
- (8) A student who is the subject of interim measures may seek an internal review of those measures by application to the Student Affairs Unit, in the manner specified in the [Student Sexual Misconduct Response Procedures 2018](#).
- (9) Nothing in this policy or the [Student Sexual Misconduct Response Procedures 2023](#) affects the power of:
- (a) the Registrar to suspend a student in accordance with the [University of Sydney \(Student Discipline\) Rule 2016](#);
 - (b) the Director, CET or nominee to suspend a CET student in accordance with the [Centre for English Teaching – Student Discipline Provisions 2022](#); or
 - (c) a University representative to issue a Termination of License Notice in accordance with the [University of Sydney \(Campus Access\) Rule 2009](#).

20 Vexatious complaints

- (1) A student or former student must not make a vexatious or malicious complaint of sexual misconduct or sexual harassment.
- (2) For the purposes of this policy, a complaint will be considered vexatious or malicious if the student or former student makes it:
 - (a) knowing it to be false; and
 - (b) for the primary purpose of damaging the University or the person against whom the complaint is made.
- (3) Making such a complaint may result in disciplinary action including:
 - (a) where the person is a student, action under the University of Sydney (Student Discipline) Rule 2016; or
 - (b) where the person is a CET student, action under the Centre for English Teaching – Student Discipline Provisions 2022.

21 Educational measures to prevent sexual misconduct and sexual harassment

- (1) Subject to clause 20A(2), the Deputy Vice-Chancellor (Education):
 - (a) may establish educational programs about sexual misconduct and sexual harassment; and
 - (b) stipulate the conditions on which such education must be completed.
- (2) In establishing the programs the Deputy Vice-Chancellor (Education) will consult with student organisations and the Associate Deans (Student Life) in each faculty or University school.

22 Transactional sex and fraternisation are prohibited in some circumstances

- (1) Without limiting the effect of any other policy, students must not:
 - (a) engage in transactional sex; or
 - (b) engage in fraternisation;while carrying out duties or activities directly related to the delivery of programs or research funded by the Commonwealth Department of Foreign Affairs and Trade (DFAT), including the Australia Awards Scholarship Program and the New Colombo Plan Mobility Program.
- (2) For the purposes of this clause:
 - (a) transactional sex means the exchange of money, employment, goods or services for sex, including sexual favours; and
 - (b) fraternisation means any relationship that involves, or appears to involve, partiality, preferential treatment or improper use of rank or position, including:
 - (i) voluntary sexual behaviour;
 - (ii) a close relationship involving public displays of affection or private intimacy; and

- (iii) the public expression of intimate relations.

23 Breach of this policy

- (1) The University may take disciplinary action against any person who is knowingly involved in a breach of this policy.
- (2) Where the person is a student, this may include disciplinary action under the *University of Sydney (Student Discipline) Rule 2016*.
- (3) Where the person is a CET student, this may include disciplinary action under the *Centre for English Teaching – Student Discipline Provisions 2022*.
- (4) Where the person is staff member, this may include disciplinary action under the *University of Sydney Enterprise Agreement 2018-2021* or any successor or replacement agreement.
- (5) Where the person is an affiliate, this may include the revocation of a title and any accompanying privileges under the *Honorary Titles Policy 2013*.

24 Recordkeeping and reporting

- (1) The University will:
 - (a) keep appropriate records of all disclosures and complaints of sexual misconduct and sexual harassment in a secure location;
 - (b) keep appropriate records of its communications with the Residential Colleges and University owned or affiliated student accommodation about disclosures and complaints of sexual misconduct and sexual harassment occurring at, or in connection with, them; and
 - (c) subject to the confidentiality requirements specified in clause 14(1), allow reasonable access by students and former students to information about themselves.

Note: See the *Recordkeeping Policy 2017* and the *Recordkeeping Manual*.

- (2) The University will collect, store and use de-identified information about disclosures and complaints by students and former students to identify trends and to develop targeted responses to sexual misconduct and sexual harassment in the University community.
- (3) Access to information relating to a disclosure or complaint of sexual misconduct or sexual harassment will be restricted to University staff and consultants who have a need to access and use the information in order to carry out their responsibilities under this policy or the *Student Sexual Misconduct Response Procedures 2018*.

Note: See the University's *Privacy Policy 2017* and the *Privacy Procedures 2018*.

- (4) The University will publish annually a de-identified report on the records kept in accordance with subclause (1). The report will be prepared in such a way as to ensure that no specific disclosure or complaint of sexual misconduct or sexual harassment can be identified.

25 Review

This policy will be reviewed within two years of the date of commencement.

NOTES

Student Sexual Misconduct Policy 2023

Date adopted: 13 December 2023

Date commenced: 1 January 2024

Date amended:

Administrator: Deputy Vice-Chancellor (Education)

Review date:

Rescinded documents:

Related documents: *Education Services for Overseas Students Act 2000 (Cth)*
Higher Education Support Act (Cth)
Anti-Discrimination Act 1977 (NSW)
Crimes Act 1900 (NSW)
Crimes (Domestic and Personal Violence) Act 2007 (NSW)
Privacy and Personal Protection Information Act 1988 (NSW)
State Records Act 1988 (NSW)
Sex Discrimination Act 1984 (Cth)
Work Health and Safety Act 2011 (NSW)
National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (Cth)
University of Sydney (Campus Access) Rule 2009
University of Sydney (Student Discipline) Rule 2016
Bullying, Harassment and Discrimination Prevention Policy 2015
Continuing and Extra-Curricular Education Policy 2022
Coursework Policy 2021
Higher Degree by Research Supervision Policy 2020
Honorary Titles Policy 2013
Privacy Policy 2017
Recordkeeping Policy 2017
Resolution of Complaints Policy 2015
Staff Sexual Misconduct Policy 2023



Student Associations Policy 2020

Student Charter 2020

Privacy Procedures 2018

Staff Sexual Misconduct Response Procedures 2023

Student Complaints Procedures 2015

Student Sexual Misconduct Response Procedures 2023

Centre for English Teaching – Student Discipline Provisions 2022

AMENDMENT HISTORY

Provision

Amendment

Commencing