

# STAFF SEXUAL MISCONDUCT POLICY 2020

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

Dated: 25 September 2020

Last amended: 25 March 2021 (administrative amendments)

Signature:

Position: Vice-Chancellor and Principal

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## 1 Name of policy

This is the Staff Sexual Misconduct Policy 2020.

## 2 Commencement

This policy commences on 6 October 2020.

## 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

This policy:

- (a) prohibits sexual misconduct and sexual harassment by members of the University community;
- (b) protects the safety and welfare of staff and affiliates 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; and
- (h) supports the University's values of inclusion and diversity, and respect and integrity.

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

## 5 Application

- (1) This policy applies to disclosures by current and former staff and affiliates 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.

- (2) This policy applies to complaints by current and former staff and affiliates of University related sexual misconduct and sexual harassment including, but not limited to, conduct by:
- (a) current students; and
  - (b) current 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 students of the University who wish to make a disclosure or complaint of sexual misconduct or sexual harassment should refer to the [Student Sexual Misconduct Policy 2018](#) and the [Student Sexual Misconduct Response Procedures 2018](#).
- (3) This policy applies to disclosures and complaints by all current and former staff and affiliates, irrespective of gender, gender identity, intersex status, sexual orientation, race, religion, cultural background or disability.
- (4) Clauses 7, 9, 10, 11, 14, 15, 16, 17, 18, 19, 21 and 22 of this policy apply to complaints by any person of University related sexual misconduct or sexual harassment by a current staff member or affiliate.
- (5) For the avoidance of doubt, the rights and obligations of staff and affiliates under this policy are in addition to the rights and obligations set out in the [Code of Conduct - Staff and Affiliates](#) 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 [Code of Conduct – Staff and Affiliates](#).

At the date of this policy, this is:

Clinical title holders; adjunct, conjoint and honorary appointees; consultants and contractors to the University; holders of offices in University entities; members of Boards of University Foundations; members of University committees; and any other persons appointed or engaged by the University to perform duties or functions on its behalf.

**Agreement** means the [University of Sydney Enterprise Agreement 2018-2021](#) or any successor or replacement agreement.

**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 staff members or affiliates.

<b>complainant</b>	means any person who makes a complaint of sexual misconduct or sexual harassment in accordance with this policy, or with the <a href="#">Student Sexual Misconduct Policy 2018</a> .
<b>complaint</b>	means a complaint of sexual misconduct or sexual harassment by a current or former staff member or affiliate who wants the University to investigate or to take specific action in response to the incident, made in accordance with clause 13.
<b>delegate</b>	<p><b>in respect of individuals covered by the Agreement:</b> has the meaning set out in clause 3 of the Agreement, which at the date of this policy is:</p> <p style="padding-left: 40px;">the holder of an office to which authority has been:</p> <ul style="list-style-type: none"> <li>• delegated by the University Senate in relation to the management of matters pertaining to staff employment, performance and/or conduct; or</li> <li>• delegated under a University policy or Code of Conduct.</li> </ul> <p><b>in respect of individuals not covered by the Agreement:</b> means the person with appropriate delegated authority under the <a href="#">University of Sydney (Delegations of Authority) Rule 2020</a>.</p>
<b>disclosure</b>	means a disclosure of sexual misconduct or sexual harassment by a current or former staff member or affiliate 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.
<b>Employee Assistance Program</b>	means confidential psychological services for staff and affiliates, funded by the University and provided by an independent external provider.
<b>fraternisation</b>	has the meaning given in clause 7A, and applies only to that clause.
<b>Residential College</b>	<p>means one or more of:</p> <ul style="list-style-type: none"> <li>• Mandelbaum House;</li> <li>• Sancta Sophia College;</li> <li>• St Andrew's College;</li> <li>• St John's College;</li> <li>• St Paul's College;</li> <li>• Wesley College;</li> <li>• Women's College.</li> </ul>
<b>respondent</b>	means a person whose conduct is the subject of a complaint of sexual misconduct or sexual harassment.
<b>Safer Communities Office</b>	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.

<b>staff or staff member</b>	means an employee of the University, including a casual employee.
<b>Staff Health Support Services</b>	means the specialist staff within Human Resources, who assist staff with their work-related health needs.
<b>student</b>	<p>means any person who is considered to be a student for the purposes of the <a href="#">Coursework Policy 2014</a> or the <a href="#">Continuing and Extra-Curricular Education Policy 2017</a>, and includes any of:</p> <ul style="list-style-type: none"> <li>• award students (i.e. studying for a formal qualification);</li> <li>• exchange students;</li> <li>• study abroad students;</li> <li>• continuing education students;</li> <li>• other non-award students; and</li> <li>students of the Centre for English Teaching.</li> </ul>
<b>transactional sex</b>	has the meaning given in clause 7A and applies only to that clause.
<b>University lands</b>	<p>has the meaning given in the <a href="#">University of Sydney (Campus Access) Rule 2009</a>.</p> <p>As at the date of this policy, this includes:</p> <p style="padding-left: 40px;">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.</p>
<b>University related conduct</b>	<p>means any conduct that is connected to the University, including conduct that:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• occurs on, or in connection with, University lands or other property owned by the University;</li> <li>• occurs at, or in connection with, a Residential College;</li> <li>• occurs at or in connection with University owned or affiliated student accommodation;</li> <li>• occurs using, or is facilitated by, University ICT resources or other University equipment;</li> <li>• occurs during, or relates to, the performance of duties for the University;</li> <li>• 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;</li> </ul>



- occurs during any event run by or affiliated with student organisations, clubs or societies (whether sanctioned or organised by the University or not);
- occurs during 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.

**Workplace Relations** means the specialist staff within Human Resources, who assist with the resolution of complaints and reports of misconduct by staff and affiliates in accordance with University policies and procedures.

## **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.

### **7A Transactional sex and fraternisation are prohibited in some circumstances**

- (1) Without limiting the effect of any other policy, staff must not:

- (a) engage in transactional sex; or
- (b) engage in fraternisation;

while carrying out duties 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 has not been declared and 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.
- (3) For the purposes of subclause 7A(2)(b), a declared relationship is one that is the subject of an external interests declaration and an approved management plan under the [External Interests Policy 2010](#).

**Note:** For additional information on relationships between staff and students, see the [Code of Conduct – Staff and Affiliates](#) and subclause 15(6) of the [Higher Degree by Research Supervision Policy 2020](#).

## 8 Emergency and ongoing assistance and support

- (1) Staff and affiliates who have experienced sexual misconduct or sexual harassment are encouraged to seek assistance and support from a trusted supervisor or colleague, or from the University's Safer Communities Office, Staff Health Support Services or Employee Assistance Program, as appropriate and preferred by the staff member or affiliate.

**Note:** For information on supporting staff and affiliates who have experienced sexual misconduct or sexual harassment, see clause 7 of the [Staff Sexual Misconduct Response Procedures 2020](#).

- (2) Contact details for emergency assistance for current and former staff and affiliates who have experienced sexual misconduct or sexual harassment are set out in Schedule 1.
- (3) Contact details for ongoing support and assistance for current and former staff and affiliates who have experienced sexual misconduct or sexual harassment are set out in Schedule 2.
- (4) Contact details for support and assistance for staff and affiliates who are accused of sexual misconduct or sexual harassment are set out in Schedule 3.

## 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 7A.

**Note:** Sexual misconduct can happen to 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 behaviour.

- (2) For the purposes of this policy, sexual misconduct means a breach of clause 7A or any sexual act that a person does not consent to, including:
  - (a) **rape (also called sexual assault)** – the forced penetration of the vagina or anus of any person with any part of the body of another person (including their fingers), or with any object, 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 in a sexual manner, without their consent. This includes unwanted touching of a person's breast, bottom or genitals;



- (d) **sexual acts** – doing an act of a sexual nature with or towards another person without their consent, or making another person do an unwanted act of a sexual nature. 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;
    - (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 first person's actions; 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) should reasonably have known, having regard to all the circumstances, that the other person did not consent.
- (4) For the purposes of this policy, 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) For the purposes of this policy, a person consents to a sexual act if they freely and voluntarily consent to the sexual act.
- (2) A person is not able to freely and voluntarily consent to a sexual act when:
  - (a) they are:
    - (i) asleep or unconscious;
    - (ii) significantly intoxicated or affected by drugs;
    - (iii) intimidated, coerced or threatened, including when they are afraid of harm to themselves or someone else;
    - (iv) unclear about the identity of the person performing the act;
    - (v) tricked into doing something they do not want to do;
    - (vi) detained or held against their will;
    - (vii) under 16 years of age; or
    - (viii) under 18 years of age and the person performing the act is a staff member of the University; or
  - (b) the person is pressured to engage in the sexual act by another person, who is in a position of power or authority over them.
- (3) Students, staff, affiliates and visitors must make sure that consent to a sexual act is clear and obvious. The fact that a person does not say 'no' to, or does not physically resist, a sexual act does not of itself mean that they consent to it.
- (4) A person is free to withdraw their consent at any time prior to or during a sexual act, for any reason.

## 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;
  - (j) requests or pressure for sexual intercourse, or other sexual acts.
- (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 current and former staff and affiliates**

- (1) Current and former staff and affiliates 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) A current or former staff member or affiliate can make a disclosure of any incident of sexual misconduct or sexual harassment to the University's Safer Communities Office:
- (a) online anytime on the University's 'Sexual Misconduct' web page;
  - (b) by email at [safer-communities.officer@sydney.edu.au](mailto:safer-communities.officer@sydney.edu.au) or
  - (c) by calling + 61 2 8627 6808 or **1800 SYD HLP (1800 793 457)** from 9am to 5pm, Monday to Friday.

**Note:** Current and former staff and affiliates who prefer to make a disclosure in person can call **1800 SYD HLP (1800 793 457)** to make an appointment.

- (3) Current and former staff and affiliates can elect to make disclosures anonymously.
- (4) The University is committed to supporting current and former staff and affiliates who disclose sexual misconduct or sexual harassment. Details of inclusive and non-discriminatory support services for current and former staff and affiliates are set out in Schedule 2.
- (5) Current and former staff and affiliates should make a disclosure (rather than a complaint) of sexual misconduct or sexual harassment if they do not want the University to investigate or to take any specific action in response to the incident.
- (6) Current and former staff and affiliates 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) The University will treat all disclosures confidentially, and:
- (a) will not investigate a disclosure unless:
    - (i) there appears to be an imminent risk to the health or safety of the staff member or affiliate, or another person; or
    - (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; and

- (b) will inform the staff member or affiliate before commencing an investigation into a disclosure.
- (8) 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 current and former staff and affiliates**

- (1) Current and former staff and affiliates 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) A current or former staff member or affiliate who has experienced sexual misconduct or sexual harassment can make a complaint to the University's Safer Communities Office:
  - (a) online anytime on the University's '[Sexual Misconduct](#)' web page;
  - (b) by email at [safer-communities.officer@sydney.edu.au](mailto:safer-communities.officer@sydney.edu.au) or
  - (c) by calling + 61 2 8627 6808 or **1800 SYD HLP (1800 793 457)** from 9am to 5pm, Monday to Friday.

**Note:** Current and former staff members and affiliates who prefer to make a complaint in person can call **1800 SYD HLP (1800 793 457)** to make an appointment.

- (3) A former staff member or affiliate who has experienced sexual misconduct or sexual harassment can make a complaint if:
  - (a) the complaint is about University related conduct; and
  - (b) the respondent is a current student, staff member or affiliate of the University.
- (4) A person cannot make a complaint of sexual misconduct or sexual harassment on behalf of a current or former staff member or affiliate.

**Note:** A counsellor or support person may assist a current or former staff member or affiliate to make a complaint. See clause 6(4) of the [Staff Sexual Misconduct Response Procedures 2020](#).

- (5) Current and former staff members and affiliates who have experienced sexual misconduct or sexual harassment should make a complaint (rather than a disclosure) if:
  - (a) they want the University to investigate or to take specific action; and
  - (b) the complaint is about University related conduct, including conduct by:
    - (i) students; or
    - (ii) current staff members or affiliates.
- (5) Current and former staff and affiliates do not have to specify what action they want the University to take in order to make a complaint. If staff members or affiliates choose to specify what action they want the University to take, the University may decide to take that action or some other action, as appropriate.
- (6) The University is committed to supporting current and former staff and affiliates who complain about sexual misconduct or sexual harassment. Details of inclusive

and non-discriminatory support services for current and former staff and affiliates are set out in Schedule 2.

- (7) In most circumstances, a current or former staff member or affiliate 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:
  - (a) 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
  - (b) 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 handle complaints by current and former staff members and affiliates of sexual misconduct and sexual harassment in accordance with this policy and the *Staff Sexual Misconduct Response Procedures 2020*.
- (10) If a current or former staff member or affiliate makes a complaint of sexual misconduct or sexual harassment by a former staff member or affiliate, or a visitor or other person over whom the University has no jurisdiction, the University may seek assistance from another organisation or refer the complaint to an external agency for resolution. The University will inform the current or former staff member or affiliate before making such a referral.

**Note:** The University may refer complaints of sexual harassment to the [NSW Anti-Discrimination Board](#) or the [Australian Human Rights Commission](#).

## 14 Confidentiality

- (1) Except as provided in subclause 15(7), the University will keep confidential all information relating to a disclosure or complaint of sexual misconduct or sexual harassment, unless the current or former staff member or affiliate consents to disclosure of part or all of the information for a specified purpose.
- (2) 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 19; and
  - (e) any report, outcome or determination of a complaint.
- (3) Complainants and respondents may disclose the information in subclause (2) in order to obtain support or advice from:
  - (a) their immediate family members;
  - (b) a qualified counsellor or psychologist;

- (c) their union representative or lawyer;
  - (d) the Police;
  - (e) the NSW Anti-Discrimination Board or Australian Human Rights Commission.
- (4) A breach of confidentiality may result in disciplinary action including, where the person is a staff member, action under the [Agreement](#).

## 15 Reports to the NSW Police

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

**Note:** Current and former staff and affiliates 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 current or former staff member or affiliate 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 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 suspended pending completion of the criminal process.
- (4) When deciding whether to 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; and
  - (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.

**Note:** 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.

- (5) The University is required to report information about the commission of a 'serious indictable offence' to the Police 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.

- (6) If a current or former staff member or affiliate decides not to report an incident of sexual misconduct to the Police, 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 \(NSW\)](#).
- (7) In some limited circumstances, the University may need to report an incident of sexual misconduct to the Police 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.
- (8) The University will inform the current or former staff member or affiliate before reporting an incident of sexual misconduct to the Police.

## **16 Active bystander intervention**

- (1) The University encourages and values safe and reasonable active bystander intervention by members of the University community to prevent or stop sexual misconduct and sexual harassment from occurring or continuing.
- (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.

## **17 No victimisation**

- (1) 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;
  - (a) providing information about a disclosure or a complaint of sexual misconduct or sexual harassment;
  - (b) supporting a person who has made a disclosure or complaint of sexual misconduct or sexual harassment; or
  - (c) engaging in safe active bystander intervention.
- (2) A breach of this clause may result in disciplinary action including, where the person is a staff member, action under the [Agreement](#).

## **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 other, 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 relevant delegate may take interim measures against a staff member or affiliate in response to:
  - (a) a complaint of sexual misconduct or sexual harassment against the staff member or affiliate, pending:
    - (i) resolution of the complaint;
    - (ii) investigation of the complaint;
    - (iii) the conclusion of an internal disciplinary process; or
    - (iv) criminal investigation and hearing; or
  - (b) an Apprehended Violence Order, whether interim or final.
- (3) As an interim measure the delegate may:
  - (a) suspend a staff member or affiliate from entering specified parts of the University's lands;
  - (b) restrict a staff member or affiliate's access to specified University buildings, facilities or accommodation; or
  - (c) prohibit a staff member or affiliate 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 delegate 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 delegate:
  - (a) is not required to provide a hearing to the staff member or affiliate 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 delegate; or
  - (b) expire in accordance with their terms.
- (7) The delegate must notify the staff member or affiliate of the imposition of interim measures within 24 hours of doing so, and provide the information specified in the *Staff Sexual Misconduct Response Procedures 2020*.
- (8) A staff member or affiliate who is the subject of interim measures may seek an internal review of those measures by application to the Chief Human Resources Officer, in the manner specified in the *Staff Sexual Misconduct Response Procedures 2020*.
- (9) Nothing in this policy or the *Staff Sexual Misconduct Response Procedures 2020* affects the power of:
  - (a) the delegate to suspend a staff member in accordance with the [Agreement](#); or
  - (b) 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 current or former staff member or affiliate 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 staff member or affiliate 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, where the person is a staff member, action under the [Agreement](#).

## 21 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 staff member, this may include disciplinary action under the [Agreement](#).
- (3) Where the person is an affiliate, this may include the revocation of a title and any accompanying privileges under the [Honorary Titles Policy 2013](#) or the [Affiliates Policy 2015](#).
- (4) Where the person is a student, this may include disciplinary action under the [University of Sydney \(Student Discipline\) Rule 2016](#).



## 22 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; and
  - (b) subject to the confidentiality requirements specified in clause 14(1), allow reasonable access by current and former staff members and affiliates 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 current and former staff and affiliates 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 who have a need to access and use the information in order to carry out their responsibilities under this policy or the *Staff Sexual Misconduct Response Procedures 2020*.

**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.

## 23 Review

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

## NOTES

### ***Staff Sexual Misconduct Policy 2020***

Date adopted:	25 September 2020
Date commenced:	6 October 2020
Date amended:	25 March 2021
Administrator:	Chief Human Resources Officer
Review date:	6 October 2022
Rescinded documents:	Nil

Related documents: *Anti-Discrimination Act 1977 (NSW)*

*Crimes Act 1900 (NSW)*

*Privacy and Personal Protection Information Act 1988 (NSW)*

*Sex Discrimination Act 1984 (Cth)*

*State Records Act 1988 (NSW)*

*Work Health and Safety Act 2011 (NSW)*

*University of Sydney Enterprise Agreement 2018-2021*

*University of Sydney (Delegations of Authority – Administrative Functions) Rule 2016*

*University of Sydney (Delegations of Authority – Academic Functions) Rule 2016*

*University of Sydney (Student Discipline) Rule 2016*

*Bullying, Harassment and Discrimination Prevention Policy 2015*

*Code of Conduct – Staff and Affiliates*

*External Interests Policy 2010*

*Higher Degree by Research Supervision Policy 2020*

*Privacy Policy 2017*

*Recordkeeping Policy 2017*

*Resolution of Complaints Policy 2015*

*Privacy Procedures 2018*

*Staff Sexual Misconduct Response Procedures 2020*

*Student Sexual Misconduct Response Procedures 2018*

*Student Complaints Procedures 2015*

## AMENDMENT HISTORY

Provision	Amendment	Commencing
12(2)(b); 13(2)(b); Schedule 2(2) and 2(3)	Links to <a href="mailto:safer-communities.officer@sydney.edu.au">safer-communities.officer@sydney.edu.au</a> updated.	25 March 2021

## **SCHEDULE 1 – Emergency contacts**

- (1) In an emergency, staff and affiliates should contact **emergency services** by dialling triple zero (**000**).
- (2) Staff and affiliates who feel unsafe on campus or are concerned for someone else's safety can also contact **Campus Security** on **9351 3333**, 24 hours a day.
- (3) Current and former staff and affiliates who have experienced sexual misconduct can contact:
  - (a) **NSW Rape Crisis Service 1800 424 017** or [www.rape-dvservices.org.au](http://www.rape-dvservices.org.au), 24 hours a day, online counselling service available;
  - (b) **1800RESPECT 1800 737 732** National Sexual Assault, Domestic Family Violence Counselling Service or online via [www.1800respect.org.au](http://www.1800respect.org.au), 24 hours a day;
  - (c) **Lifeline 13 11 14** (online chat or video also available 7pm - midnight);
  - (d) **Mental Health Line (NSW) 1800 011 511**;
  - (e) **Suicide Callback Service 1300 659 467** (online chat or video also available 24 hours);
  - (f) **Blueknot Helpline 1300 657 380** (Available Mon-Sun, 9am-5pm AEST) or email on [helpline@blueknot.org.au](mailto:helpline@blueknot.org.au);
  - (g) **NSW Health Sexual Assault Services**  
<https://www.health.nsw.gov.au/parvan/sexualassault/Pages/health-sas-services.aspx>;
  - (h) **Royal Prince Alfred (RPA) Hospital Sexual Assault Service** on **9515 9040** (Monday to Friday) or **9515 6111** (after hours). Counselling and medical services are available for anyone who has been sexually assaulted. Campus Security can arrange transport to RPA.
  - (i) **Westmead Hospital Sexual Assault Service** on **9845 7940** (daytime) or **9845 5555** (24 hours).
  - (j) **Blacktown/Mount Druit Sexual Assault Service, Blacktown Community Health Centre** on **9881 8700** (daytime) or **9845 5555** (24 hours).

## **SCHEDULE 2 – University support for current and former staff and affiliates who have experienced sexual misconduct or sexual harassment**

- (1) A current or former staff member or affiliate who has experienced sexual misconduct or sexual harassment can make a disclosure or a complaint to the University online on the University's [‘Sexual Misconduct’ web page](#) or by calling **1800 SYD HLP (1800 793 457)** from 9am to 5pm, Monday to Friday.
- (2) Staff members and affiliates who have experienced sexual misconduct or sexual harassment have access to a range of University support services and assistance, including:
  - **Safer Communities Office** 8627 6808, 1800 SYD HLP (1800 793 457) (option 2, then option 1), [safer-communities.officer@sydney.edu.au](mailto:safer-communities.officer@sydney.edu.au)
  - **Employee Assistance Program** – Benestar on **1300 360 364**;
  - **Staff Health Support Services** on **9351 4052**, 8:30am to 5pm, Monday to Friday;
  - **security services** - contact Campus Security on **9351 3333**, 24 hours a day;
  - **health services** (for current staff and affiliates only) - contact the University Health Service on **9351 3484**, 8:30am to 5pm, Monday to Friday;
  - **staff unions** – NTEU Sydney Branch **9351 2827** or [sydney@nteu.org.au](mailto:sydney@nteu.org.au) (for NTEU members only); CPSU Sydney **1300 137 636** or [members@cpsu.org.au](mailto:members@cpsu.org.au).
- (3) Former staff members and affiliates who have experienced sexual misconduct or sexual harassment have access to a range of University support services and assistance which may include:
  - **Safer Communities Office** 8627 6808, 1800 SYD HLP (1800 793 457) (option 2, then option 1) [safer-communities.officer@sydney.edu.au](mailto:safer-communities.officer@sydney.edu.au)
  - Confidential counselling and support, which will be arranged by Staff Health Support Services. Contact **9351 4052**, 8:30am to 5pm, Monday to Friday.

### **SCHEDULE 3 – University support for staff and affiliates who have been accused of sexual misconduct or sexual harassment**

Staff and affiliates who are accused of sexual misconduct or sexual harassment have access to a range of University support services and assistance, including:

- the **Employee Assistance Program** - Benestar on **1300 360 364**;
- **Staff Health Support Services** on **9351 4052**, 8:30am to 5pm, Monday to Friday;
- **security services** - contact Campus Security on **9351 3333**, 24 hours a day;
- **health services** (for current staff and affiliates only) - contact the University Health Service on **9351 3484**, 8:30am to 5pm, Monday to Friday;
- **staff unions** – NTEU Sydney Branch **9351 2827** or [sydney@nteu.org.au](mailto:sydney@nteu.org.au) (for NTEU members only); CPSU Sydney **1300 137 636** or [members@cpsu.org.au](mailto:members@cpsu.org.au).