

Student Sexual Harassment and Sexual Assault Policy and Procedures

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1. Purpose

This policy refers to sexual assault and sexual harassment (SASH) experienced by students. Sexual harassment and sexual assault are unacceptable. This Policy aims to foster a safe and healthy learning and working environment that is free from sexual harassment and sexual assault.

This Policy defines and gives examples of behaviours and misconduct that constitute sexual harassment and sexual assault, affirms the Institute's intolerance of sexual harassment and sexual assault, confirms its commitment to confidentiality and respect for privacy for victims of sexual harassment and sexual assault and outlines its processes for dealing with cases of sexual harassment and sexual assault.

2. Scope

Although this policy refers to sexual assault and sexual harassment experienced by students, its scope extends to all students, staff, and contractors at HELI.

This policy covers all HELI locations, including campuses and the online environment. Coverage applies to all HELI events, functions, staff activities, student activities, and all external locations that staff and students may attend which may be related to their study or work purposes. It should be noted that while there are limits on any sanction the Institute can impose in relation to allegations made against persons not connected with the Institute, the full range of support services is available in such cases.

Coverage also applies to all communications, whether face-to-face, by phone, email, or any other form of technology.

This document should be read in conjunction with other related policies (see Related Documents).

3. Principles

The following principles and practices form the foundation for this Policy:

Safety and Wellbeing

The safety and well-being of students, staff, contractors, and visitors are of paramount importance to the Institute. The priority of the Institute will be the safety and well-being of the person disclosing or formally reporting sexual assault or sexual harassment.

Compassion and Support

The Institute's response to a person who has experienced sexual harassment and or sexual assault is one of compassion, empathy, and support.

Confidentiality and Privacy

The Institute will treat any disclosure or formal reporting of Sexual Harassment or Sexual Assault with the utmost confidentiality and with respect to the privacy of the student or staff member and the alleged perpetrator.

Inclusivity

This Policy applies to all students, staff, contractors, and visitors, including those who identify as intergender, transgender and gender diverse, LGBTIQ, Aboriginal and Torres Strait Islander, with a disability, culturally and linguistically diverse, and international.

HELI recognises that students from other countries may have cultural and language proficiency impediments to disclosing or reporting sexual harassment and sexual assault. This matter is addressed at all International student orientation sessions, information sessions, and contact staff training.

Equity

HELI is committed to ensuring the equitable and open implementation of this Policy in accordance with HELI's *Equity and Diversity Policy*.

4. Policy

The Institute is committed to ensuring a safe learning and working environment that is free from sexual harassment and sexual assault and where all members of the Institute community are treated with dignity, courtesy, and respect.

Sexual harassment and sexual assault are prohibited, unacceptable, constitute serious misconduct and will not be tolerated under any circumstances at the Institute. In some cases, sexual harassment and sexual assault are criminal activities and police will be involved. Action will be taken against any person who breaches this policy.

All members of the Institute community have the right and the responsibility to maintain a learning and working environment free from sexual harassment and sexual assault and the policy applies to all members of the Institute community including staff, students, and contractors in attendance at the Institute or at a Institute event, function or activity and through any form of relevant contact or communication. The Policy applies whether the sexual harassment or sexual assault is initiated in person, by telephone, or through electronic technologies such as mobile phone cameras, social networking websites, emails, SMS/MMS communications, through another person, agent, or any other means.

The Institute will:

- provide support for the victim or complainant of sexual harassment and sexual assault
- protect the health and well-being of the complainant by ensuring any acts of victimisation or retaliation are investigated and dealt with in a timely manner
- treat any formal complaint or disclosure with sensitivity, confidentiality and in accordance with the *Privacy Policy*
- handle complaints fairly and equitably and in accordance with *Equity and Diversity Policy*

The [Sexual Harassment and Sexual Assault information page](#) on the website under Student Support Services. The Institute will implement training and awareness-raising strategies to ensure that all staff and students know their rights and responsibilities.

The Institute has set up *SASH Taskforce* with representatives from all campuses to act as an advisory for leadership and governance on SASH issues within the Institute. The SASH Taskforce's primary objective is to ensure ongoing implementation and improvement of measures to understand, prevent, identify, and respond to sexual assault and sexual harassment. The *Terms of reference* of the SASH Taskforce can be found on the information page.

5. Sexual Harassment

Definition

Sexual harassment is any unwelcome sexual behaviour that is likely to offend, humiliate or intimidate. It does not relate to mutual attraction or friendship. The Sexual Discrimination Act 1984 (Cth) defines sexual harassment as when

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- 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.

Examples of sexual harassment include but are not limited to:

- unwelcome physical touching including deliberately brushing up against the other person
- uninvited kisses or embraces
- requests for sex
- staring or leering
- sexually explicit conversation
- suggestive comments or jokes
- unwanted requests to go out on dates, especially after a prior refusal
- intrusive questions about the person's private life or body
- making promises or threats in return for sexual favours
- "flashing" (exposing private parts of the body) or sexual gestures
- sex-based insults, taunts, teasing or name-calling
- touching or interfering with a person's clothing, e.g., lifting up skirts, flicking bra straps
- offensive phone calls or letters
- displaying posters, magazines, or screen savers of a sexual nature.
- stalking, sexual insults, or taunting
- emailing pornography or rude jokes
- sending sexually explicit texts
- offensive messages through new technologies such as mobile phone cameras, social networking websites, emails, or SMS/MMS communications.

When Sexual Harassment is a Criminal Offence

Sexual harassment that is also an offence under criminal law may be referred to the police; this includes matters involving:

- sexual assault
- physical molestation or assault
- indecent exposure
- stalking
- obscene communications

6. Sexual Assault

Definition

Sexual assault¹ is a legal term used to describe a range of sexual offences, from showing indecent images to another person, to kissing or touching them, as well as penetration of the person's body with a body part or object.

If someone:

- does something sexual that makes the person feel uncomfortable or
- touches the person's body when the person does not want them to, it may be a sexual assault.

'Sexual assault' is often called other names such as: sexual abuse, rape, indecent assault, sexual molestation, incest, obscene gestures, touching, voyeurism, 'feeling up', being forced to watch or participate in pornography, and child sexual abuse.

Sexual assault is a crime where the attacker uses force, abuse of power, violence, threats, or tricks to control or take advantage of the victim.

If someone does something to make the person feel that the person has been assaulted, the person can seek help from counselling services, including sexual assault services. The Institute lists several of these services and their contact details on the *Sexual Harassment and Sexual Assault information page*. This also applies when the person does not want to report to the police, or if the person has reported to the police, but they do not believe that a crime has been committed.

¹ <https://www.wlsnsw.org.au/resources/sexual-assault/what-is-sexual-assault/>

If the person is not sure whether they have been sexually assaulted or not, the person can contact a sexual assault service referred to above. There are specially trained people who can help the person understand what has happened and identify and clarify the person's options.

Some people blame victims or make victims feel that they somehow asked to be sexually assaulted because of how they looked or dressed, or where they were at the time. This is not the case. It is never a victim's fault. Sexual assault is always a crime. For more definitions and examples of sexual assault²:

7. Consent or Not

Definition

Giving your consent³ means you knowingly and freely agree to take part in sex or sexual activity. Consent must be voluntary, informed and you can change your mind at any time. Informed consent means you understand what you are giving consent to and there is nothing preventing you from indicating if you agree, decline, or change your mind to take part in sex or sexual activity.

Consent can be withdrawn by any party at any point and must be voluntarily given and is not valid if a person is being subjected to actions or behaviours that elicit emotional, psychological, physical, reputational, financial pressure, threat, intimidation, or fear (coercion or force). Consent to engage in one sexual activity, or past agreement to engage in a particular sexual activity, cannot be presumed to constitute consent to engage in a different sexual activity or to repeat a sexual activity. Consent cannot be given by a person who does not have the capacity to give consent, including those who are intoxicated, unwell, distressed or otherwise disadvantaged.⁴

In the context of sexual relations and this policy '*consent*' and '*consensual*' mean that:

- No one is pressuring the person
- No one is forcing the person
- No one is threatening the person or threatening someone or something the person feels deeply about
- The person wants to have sex and has not changed their mind
- The person has the ability to stop when the person wants
- The person is awake and conscious
- The person is not overly affected by alcohol or drugs
- The person does not have a cognitive impairment that affects the ability to consent

In the context of sexual relations and this policy, factors *not involving consent*:

- *lack of capacity* to consent, e.g., a person is unconscious, affected by alcohol or drugs
- threat to or use of force, against another person, which need not involve physical violence or physical harm
- unlawful detention
- mistaken identity and mistakes as to the nature of the act
- position of authority or power, intimidation, or forceful conduct

8. Procedures

Making a formal complaint of sexual harassment and/or sexual assault

1. Students making a formal complaint of sexual harassment and/or sexual assault must be referred to the relevant support staff members to provide support and to assist them with the procedures involved in both the Institute complaint process and in referral to the police, where appropriate.

² https://www.victimsservices.justice.nsw.gov.au/sexualassault/Pages/sexual_assault_victims.aspx,
<https://www.wlsnsw.org.au/resources/sexual-assault/what-is-sexual-assault/>

³ <https://www.1800respect.org.au/violence-and-abuse/sexual-assault-and-violence/consent>

2. Formal reporting of the incident will prompt the offer of all support services available as a priority to the student involved or making the allegation with details available on the Sexual Harassment and Sexual Assault information page of the website – (Link to be provided)
3. Formal complaints of sexual harassment and sexual assault will be investigated by the Institute in accordance with the procedures stipulated in this Policy.
4. The student may report anonymously if they wish to do so. (Link to be provided)

Disclosing sexual harassment and sexual assault

1. Students may decide to disclose the incident or incidents of sexual harassment and sexual assault. Disclosure may be made to:
 - a. the counselling service provided through Student Services (link to be provided), or
 - b. to the trained and identified staff members assigned to support students who have experienced sexual harassment or sexual assault, or
 - c. a staff member
 - d. by using the Sexual Assault and Sexual Harassment Incident Report found on the Forms page of the website: – (Link to be provided)

Disclosure does not automatically constitute a formal complaint unless the student agrees to proceed and/or authorise a formal complaint. The Institute supports the right of students who have experienced sexual harassment or sexual assault to decide whether they want to report the incident to the Institute and/or to the police. Any disclosure will be handled confidentially, with advice provided concerning options available to the student in taking the matter further, including reporting to the police. In cases of disclosure to a staff member, advice to contact the Institute staff members assigned to support students who have experienced sexual harassment or sexual assault and/or the counselling service must be provided and where possible, facilitated.

2. Students may decide not to proceed with a formal complaint. In such cases, students may still utilise all Institute support services with details available on the *Sexual Harassment and Sexual Assault information page of the website*.

Referral of a case to the police does not preclude the Institute from dealing with a formal complaint using its formal complaint procedures as outlined in this policy.

9. Investigating formal complaints of sexual harassment and sexual assault

- Where the respondent is an Institute student, formal complaints of sexual harassment and sexual assault will be investigated by the CEO or Registrar who may be assisted by trained personnel where appropriate. The Registrar will inform the CEO of the Institute that a formal complaint has been made and that an investigation is being carried out.
- All investigations will be carried out based on fairness, confidentiality, and impartiality. All parties to an investigation will be afforded procedural fairness and have the right to have a support individual with them.
- The Registrar and his or her nominees will consider evidence which includes but is not restricted to:
 - The *SASH Incident Report Form* and all attachments
 - Interviews with the complainant and respondent and any witnesses
 - Other forms of evidence such as video footage
- The Registrar will prepare a report to the CEO of the Institute based on the investigation which may have recommendations concerning the validity of the allegation where appropriate.
- The CEO of the Institute will consider whether a student respondent should be suspended during an investigation and any determination of formal reprimand, suspension, or exclusion as a result of an investigation.
- Where the respondent is a member of staff or contractor, the investigation will be referred to the ECA Human Resources team: People, Engagement and Culture ECA. The CEO of the Institute will consider and determine the suspension of a member of staff or contractor respondent during an investigation or termination. These decisions will be made in accordance with the relevant employment agreement or contract. The CEO will determine the action taken by the Institute.

10. Reporting the results of an investigation

1. The CEO will consider the report and may:
 - a. Require further evidence
 - b. Proceed with disciplinary action
2. The CEO will provide the results of the investigation to the complainant and the respondent/perpetrator. (If the respondent/ perpetrator is a member of the Institute).

11. Disciplinary action under this policy

1. The Institute will take disciplinary action against any person whether student, staff, or contractor who is in breach of this policy.
2. Penalties for staff, students, and contractors found to have engaged in sexual harassment will vary depending on the nature of the harassment but may include:
 - for staff – a directed apology, formal reprimand, counselling, demotion, or dismissal
 - for students – an official reprimand, suspension, or exclusion
 - for affiliates – a formal reprimand, or termination of engagement
3. Penalties for staff, students, and contractors found to have engaged in sexual assault may include:
 - for staff – dismissal
 - for students – exclusion
 - for affiliates – termination of the engagement.

12. No victimisation

The safety and well-being of the student or staff disclosing or formally reporting sexual harassment or sexual assault are of paramount concern to the Institute. The person who has experienced sexual harassment or sexual assault will be treated with respect and not be further victimised in any way.

13. Record keeping and reporting

The Registrar's Office will keep records of all complaints of sexual harassment and sexual assault, ensuring confidentiality and privacy. A Sexual Harassment and Sexual Assault incident are reported to the CEO as required above and a formal report is prepared periodically for the CEO and the Board of Directors in accordance with the reporting schedule. When reporting cases to identify problems and develop responses, all personal information will be de-identified. Only staff that needs to access or process information will be allowed access to complaints and disclosures of sexual harassment or sexual assault.

14. Appeals

Decisions or determinations under this Policy can be appealed using *Student Grievances and Appeals Policy and Procedure*.

15. Reference and Legislation

- Sexual Discrimination Act 1984 (Cth)
- Anti-Discrimination Act, 1977 (NSW)
- Privacy Act 1988
- Crimes Act 1900 (NSW)
- Tertiary Education Quality and Standards (TEQSA) Act 2011 (Cth)
- Higher Education Standards Framework (Threshold Standards) 2021
- Education Services for Overseas Students Act 2000 (Cth)
- Education Services for Overseas Students Regulations 2001
- Australian Human Rights Commission 2017
- National Code of Practice for Providers of Education and Training to Overseas Students 2018
- Good Practice Note: Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector 2020
- Esafety.gov.au toolkit

16. Related Documents

- Equity and Diversity Policy
- Internet, Email & Social Media Guidelines
- Critical Incident Policy and Procedure
- Student Code of Conduct Policy
- Student Grievances and Appeals Policy and Procedure
- Student Welfare and Support Policy
- Work Health and Safety Policy
- Terms of Reference of the Sexual Assault and Sexual Harassment (SASH) Taskforce
- SASH Incident Report Form
- Sexual Harassment and Sexual Assault information page of the website.

17. Version Control

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Document Owner	CEO, Registrar, and SASH Taskforce
Approved by	Board of Directors

Version	Summary of changes	Approval date	Review Date
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2.0	Major updates	16 December 2022	16 December 2024

18. Appendix 1- What to do when there is a SASH incident?

