

# Sexual Misconduct Prevention and Response Policy

## Purpose

This Policy sets out the principles for preventing and responding to incidents of sexual misconduct occurring at or connected with UNSW. Sexual misconduct will be “connected with UNSW” when it occurs in circumstances described within the “Scope” below.

## Scope

This Policy applies to the following :

- all enrolled UNSW students (regardless of which campus or UNSW facility they are attending)
- all staff and affiliates of UNSW
- former students and students currently on leave, where the behaviour governed by this Policy occurred whilst they were enrolled. (When a former student reports an incident of sexual misconduct, UNSW may decline to undertake a misconduct investigation but may refer the former student to support services within the wider community)
- all UNSW owned, operated or Affiliated Accommodation providers

in respect of sexual misconduct occurring:

- on UNSW campuses or other facilities
- in virtual spaces (including online forums, communities and platforms) arranged or facilitated by UNSW
- whilst using UNSW information and communication technology (ICT) resources
- at premises in which research, study or work integrated learning is undertaken as part of a UNSW activity including but not limited to placements, internships, fieldwork or other type of practicum
- whilst staff, students or affiliates are representing UNSW (e.g. at sporting events, cultural activities, competitions, conferences), UNSW student clubs or whilst on exchange or sabbatical
- between a UNSW staff member or affiliate and a UNSW student
- in University owned, operated or Affiliated Accommodation

Where sexual misconduct is disclosed or reported as occurring outside the Scope of this Policy– for example, at a private venue or on an occasion unconnected with UNSW, the matter will not be investigated by UNSW as a potential student or staff misconduct issue but support services and referrals will be offered as appropriate.

## 1. Principles

UNSW is committed to providing a fulfilling, rewarding and safe learning, research, teaching and employment environment for all staff, affiliates and students. This commitment is underpinned by the firm view that sexual misconduct is unacceptable at UNSW. The following principles express the University's commitment to:

- preventing sexual misconduct;
- increasing awareness of the support services and other measures implemented by UNSW to respond to incidents of sexual misconduct at or connected with UNSW;
- preventing sexual misconduct, and
- responding appropriately and effectively to disclosures and reports of sexual misconduct.

A disclosure of sexual misconduct occurs when a person affected tells another person. A report of sexual misconduct means a report made by a person affected (or someone on their behalf) in the Sexual Misconduct Reporting Portal (the Portal) as per section 1.4.

### 1.1. Sexual Misconduct is Unacceptable

Sexual misconduct is unacceptable at UNSW. Sexual misconduct will always involve conduct which is contrary to UNSW Codes of Conduct because it will always involve a failure to behave in a respectful or lawful manner. Students, staff or affiliates who experience sexual misconduct are encouraged to seek help and bring reports of sexual misconduct connected to UNSW to the attention of the University.

Sexual misconduct includes sexual harassment or sexual assault, sexual touching, sexual acts, conduct involving child abuse material, making or distributing sexually explicit photos or videos without consent, or certain other behaviours of a sexual nature.

Sexual misconduct can involve behaviour by a person of any sex or gender. It can occur between strangers or those who know each other well, including those involved in a consensual intimate relationship.

### 1.2. UNSW Seeks to Prevent Sexual Misconduct and Support the Welfare of Staff and Students

UNSW will continue to develop and implement a range of prevention strategies that are intended to address the risks to the UNSW community of experiencing sexual misconduct, including for those that may be particularly vulnerable to such risks. UNSW recognises that it is impossible to completely eliminate the risk of incidents of sexual misconduct in any community. But when such incidents are reported, UNSW's primary concern will be with the welfare of those who are impacted, whether they are staff, affiliates or students.

### 1.3. UNSW will Effectively and Appropriately Respond to Sexual Misconduct

UNSW seeks to provide effective and appropriate responses to incidents of sexual misconduct disclosed or reported to it and has developed the following resources and processes to enable this:

#### 1.3.1. The Sexual Misconduct Risk and Review Group

The Sexual Misconduct Risk and Review Group examines and makes recommendations to continually improve UNSW services, processes and outcomes for reporters, bystanders and the UNSW Community in preventing and responding to reports of sexual misconduct. The Group meets monthly, and more urgently if required.



The Group, chaired by the Director, Conduct and Integrity Office, reports to the Deputy Vice-Chancellor Equity Diversity and Inclusion and Chair of the EDI Board, and comprises representatives from Conduct & Integrity Office, Division of EDI, Gendered Violence Research Network, Employee Relations, Legal Office and others co-opted as required.

### **1.3.2. Sexual Misconduct First Responders**

First Responders are a diverse network of specially trained members of the UNSW community who volunteer to assist those who experience sexual misconduct. The First Responders are not qualified to provide medical or counselling advice but they are trained to provide an appropriate initial response to a disclosure of sexual misconduct. They can provide guidance about support services and appropriate contacts within UNSW. First Responders' contact details are available online at <https://www.edi.unsw.edu.au/sexual-misconduct>. A person wishing to disclose or report sexual misconduct at or connected with UNSW may contact any of the listed First Responders for initial assistance.

### **1.3.3. The Sexual Misconduct Reporting Portal**

The Portal is the central data collection point for all incidents of sexual misconduct occurring at or connected with UNSW. Data collected in the Portal is used to improve safety and security for the UNSW community. It is the responsibility of the entire UNSW community to ensure that the Portal remains a comprehensive and reliable source of information.

Any information about sexual misconduct occurring at or connected with UNSW which is received by staff or affiliates must be reported to the Portal, using one or more of the mechanisms outlined at section 1.4 below. Students are strongly encouraged to also report to the Portal sexual misconduct that they experience or become aware of. UNSW accommodation providers are expected to report to the Portal information received about sexual misconduct.

Where a report is made to the Portal on behalf of someone else, the identity of the subject of the report must not be disclosed, directly or indirectly, without their consent. If consent is not given or the person's identity is not known (for example, where an incident has been witnessed), a report to the Portal should still be made.

Anonymous reports can be made to the Portal but this may necessarily limit any response from the University.

The Portal can be found at: <https://www.edi.unsw.edu.au/sexual-misconduct>.

## **1.4. How to Respond to an Incident of Sexual Misconduct**

UNSW requires all staff or affiliates who become aware of sexual misconduct at or connected with UNSW to disclose that information in one of the ways outlined below, remembering that reports to the Portal can be anonymous. UNSW strongly encourages students to disclose sexual misconduct at or connected with UNSW which they experience or become aware of, in any of the following ways:

1. making a Portal report
2. contacting UNSW Sydney Security or UNSW Canberra AFP/Wilson Security
3. making a student complaint to the Conduct & Integrity Unit
4. lodgement of a staff complaint under the UNSW Staff Complaint Procedure
5. contacting UNSW Psychology and Wellness, UNSW Health Services or UNSW Canberra Equity & Diversity Manager or Student Counsellor
6. contacting a First Responder (see 1.3.2 above)



7. contacting the Dean, Master, Director or manager at your University or Affiliated Accommodation

Regardless of which avenue is initially adopted, all of the entities listed above will promptly submit a report to the Portal, to ensure that the integrity and accuracy of the data in the Portal is maintained. The option remains for the Portal report to be completely deidentified and anonymous, as may be requested by the affected individual.

UNSW will monitor and respond to reports of sexual misconduct submitted to the Portal and offer options for assistance where contact information is provided. Our intention is to respond to reports submitted to the Portal within 72 hours (other than in the University's annual shutdown period).

Our responses to those experiencing sexual misconduct will always be supportive of the welfare of persons involved, adhering to the principles of procedural fairness to facilitate safety and recovery. Responses to reports might include urgent relocation from University accommodation, providing referrals to medical or support services, providing options about minimising contact with the person allegedly involved, providing information about University misconduct processes (if applicable), assistance with making a Police report, providing UNSW staff members with information about the Employee Assistance Program or giving information about accessing a legal advice service, such as Arc@UNSW or Kingsford Legal Centre.

If a report to the Portal indicates that there may be an ongoing serious risk to any person, the report will be referred to UNSW Security and/or the Police.

The University is obliged to report to the Police under the *Crimes Act 1900* (NSW), information which might materially assist the apprehension of an offender or the prosecution or conviction of an offender of a serious criminal offence. The University may also initiate urgent interim measures, such as restricting a student's access to campus buildings and/or UNSW property (where there is an immediate threat to the safety of any person), to temporarily suspend a person from the University and/or specified activities and/or positions of leadership. Failure to comply with interim measures may lead to disciplinary action.

### **1.5. Person/s Disclosing Sexual Misconduct Decide What they Report**

UNSW recognises that a student, staff member or affiliate disclosing that they have experienced sexual misconduct has a right to decide what information they include in the Portal report. Our ability to respond to the report may be hampered however, if the information provided is incomplete. In all cases, UNSW will endeavour to provide support and appropriate referral services. Where relevant, UNSW will provide information to affected students about applying for special consideration (as explained in the UNSW [Assessment Implementation Procedure](#)).

### **1.6. Sexual Misconduct can be Reported at Any Time**

UNSW encourages the prompt reporting of sexual misconduct to maximise our ability to respond effectively. UNSW understands that a person within the UNSW community who is affected by sexual misconduct may choose to go directly to the Police without first contacting a First Responder or other member of staff (or submitting a report to the Portal).

UNSW recognises that the length of time between an alleged incident of sexual misconduct and the making of a report to the Portal may vary, depending upon a range of factors. Referral services will be offered where appropriate, regardless of the date of the incident being reported.



The 12-month time limit applicable to complaints under the UNSW [Student Complaint Procedure](#) and the UNSW [Staff Complaint Procedure](#) does not apply to reports of sexual misconduct. However, UNSW may in its discretion decide that its investigative and disciplinary processes will not be available where the report relates to an incident which occurred more than 12 months prior to the report. This is because the University's ability to investigate and discipline respondents effectively and fairly diminishes over time.

### **1.7. Confidentiality and Privacy of Information Submitted to the Portal**

Information stored in the Portal from which an individual's identity is apparent or can be ascertained is personal information. The collection, storage, use and disclosure of personal information is governed by the *Privacy and Personal Information Protection Act 1998 (NSW)* (the PPIP Act). The University will only permit information stored in the Portal to be accessed and used by staff who have a need to access and use the information in order to carry out actions and responsibilities described under this Policy.

Personal information will only be disclosed outside the University where:

- the disclosure is necessary to prevent a serious and imminent threat to the life or health of the individual concerned or another person; or
- the individual to whom the information relates has expressly consented to the University disclosing the information; or
- the University is lawfully authorised or required to disclose the information, for example because:
  - the information indicates evidence of a serious indictable offence;
  - of a subpoena or warrant issued to the University; or
  - a mandatory reporting requirement arises in regard to children and young persons

An individual whose personal information has been stored in the Portal is entitled, subject to limited exceptions prescribed by the PPIP Act, to ascertain if the University holds personal information about them and may request access to that information.

### **1.8. UNSW Investigative and Disciplinary Processes**

Where a report of sexual misconduct connected with UNSW is received, the University may commence an investigation in accordance with its misconduct procedures (including, in the case of alleged conduct by a staff member, an investigation under the applicable Enterprise Agreement). If the allegation is substantiated, in whole or in part, the University will impose an appropriate disciplinary outcome.

Reports of sexual misconduct which may constitute criminal conduct, such as sexual assault, will be promptly referred to the Police in accordance with the statutory obligations. When a Police investigation is commenced, UNSW may need to suspend its own investigation process until it is advised that the Police investigation or prosecution is complete or resolved. Any such temporary suspension will not limit any urgent interim measures that may be necessary, to preserve the safety and wellbeing of individuals.

UNSW investigations will be procedurally fair. This means that the person allegedly responsible for the sexual misconduct will be provided with an opportunity to understand and respond to the allegations made against them before a determination is made.



Any retaliatory or other adverse action taken or threatened against a staff member or student because of their involvement in reporting sexual misconduct will result in disciplinary action. In this context, retaliatory or other adverse action includes threatening, intimidating or harassing any person, intentionally interfering with an investigation or hindering the academic or professional progress or career of an individual.

## **Authorisation and policy information**

### **Authorisation**

Approved by the President and Vice-Chancellor on 12 July 2021, effective from 12 July 2021.

### **Accountabilities**

*Responsible Officer:* Deputy Vice-Chancellor Equity Diversity and Inclusion

*Contact Officer:* Director, Conduct & Integrity

### **Legislative Compliance**

This Policy supports the University's compliance with the following legislation:

- *Crimes Act 1900* (NSW)
- *Crimes Act, 1900* (ACT)
- *Children and Young Persons (Care and Protection) Act, 1998* (NSW)
- *Children and Young People Act, 2008* (ACT)
- *Sex Discrimination Act, 1984* (Cth)
- *Anti-Discrimination Act 1977* (NSW)

### **Supporting Documents**

Nil

### **Related Documents**

- [Student Code of Conduct](#)
- [Code of Conduct](#) (Staff)
- [Domestic Violence Support Policy](#)
- [Domestic Violence Support Procedure](#)
- [Student Misconduct Procedure](#)
- [Student Critical Incident Procedure](#)
- [Student Complaint Procedure](#)
- [Assessment Implementation Procedure](#)
- [Staff Complaint Procedure](#)
- [Student at Risk Procedure](#)
- [UNSW Enterprise Agreements](#)
- [Acceptable Use of UNSW Information and Communication Technology \(ICT\) Resources Procedure](#)
- [Equity, Diversity and Inclusion Policy](#)



- [HS307 Hazard and Incident Reporting Procedure](#)

## Superseded Documents

Sexual Misconduct Prevention and Response Policy, v1.1

## File Number

2018/14801

## Definitions & Acronyms

- **Affiliate** means conjoint and visiting appointees; consultants and contractors; agency staff; emeriti; members of University committees; and any other person, not being an employee, appointed or engaged by the University to perform duties or functions for the University.
- **Affiliated Accommodation** means Shalom College, New College, New College Village, Creston College, Warrane College. The Director of Operations, Division of Equity Diversity and Inclusion reserves the right to add to this list from time to time without further notice.
- **Child abuse material:** producing or possessing child abuse material (also known as child exploitation material), or making such material available to another person, is a crime under NSW and ACT law. A child is a person under the age of 16 (although the offences can apply where the person described or depicted in the material is in fact over 16, but appears to be a child).
- **Disclosure:** a disclosure of sexual misconduct is where a person affected tells another person about an incident that happened to them or that they have witnessed or become aware of.
- **EDI** means Equity Diversity and Inclusion
- **EDI Board** means Equity Diversity and Inclusion Board
- **Sexual touching and sexual act:** under NSW [and ACT law], both sexual touching and sexual acts are crimes. Sexual touching involves touching another person in a sexual way (for example, on a person's breasts or genitals), or threatening to do so, without the person's consent. A sexual act involves doing something of a sexual nature towards another person without their consent (for example, masturbating in front of another person).
- **Report:** a report of sexual misconduct is made by an affected person (or someone on their behalf ) in the Sexual Misconduct Reporting Portal (the Portal) as per section 1.4.
- **Sexual Assault:** it's important to note that within the Australian community, various terms are used to describe behaviour which involves a sexual assault. A term which is commonly used is rape. Sexual assault is a crime. Under NSW and ACT law, sexual assault means engaging in certain sexual acts (such as intercourse and oral sex) with a person without their consent, when you know they don't consent, or you don't care whether they consent.

A person consents when they freely and voluntarily agree to behaviour, understanding what they are doing and who they are doing it with. A person can't consent if they are:

- asleep or unconscious;
- significantly affected by drugs or alcohol;
- intimidated, coerced or threatened;
- held against their will, or
- tricked, or under a mistaken belief, about the identity of the other person involved.

A person cannot consent if they lack the capacity to understand what is taking place because of a cognitive disability, or because they are under 16. It's important to understand that a person might not consent to behaviour even though they were, or are, in a relationship with you.

There is more guidance about what may amount to sexual assault available on the Justice NSW website.

- **Sexually Explicit Photos or Videos:** creating or distributing sexually explicit or intimate photos or videos of a person without their consent, or threatening to do so, will be treated by UNSW as sexual misconduct. The above comments about consent also apply in this context. It's important to emphasise that just because a person is, or was, in a relationship with you, or engaged in consensual sexual activity, doesn't mean they



consent to the sharing of sexually explicit or intimate images of them. In NSW it is a crime to share or record intimate images or videos without consent. The law covers photos and videos of private body parts or a person engaging in a private act, like undressing, showering or having sex.

- **Sexual Harassment** occurs where there is an unwelcome sexual advance, or other unwelcome sexual behaviour, towards another person, in circumstances where it can reasonably be expected that the person will feel intimidated, humiliated or offended by the behaviour. The person's age, religious beliefs, race or ethnic origin might be relevant in considering their likely reaction to the behaviour. The unwelcome behaviour might involve a request for sexual contact, but there are other types of conduct which can amount to harassment.

In the context of certain activities and relationships, sexual harassment is unlawful under anti-discrimination legislation. For example, sexual harassment of students by staff of the University is unlawful, as is sexual harassment of staff by students. It is also unlawful for a staff member of the University to sexually harass another staff member. Other examples of unlawful sexual harassment are where the relevant behaviour is by a person offering accommodation or goods or services to the person harassed.

Where the unwelcome sexual behaviour consists of stalking or intimidation, that behaviour may amount to a crime. This will be the case where the stalker intends to frighten the person stalked. Stalking and intimidation need not involve actually following a person; they may occur through phone calls, texting, emailing or social media contacts.

Sexual harassment doesn't necessarily involve physical acts and may take many forms. Some unwelcome behaviour which might amount to sexual harassment includes:

- sending sexually explicit texts, emails or other social media messages;
- intrusive questions or statements about a person's private life;
- displaying posters or screen savers of a sexual nature;
- sexual jokes and comments;
- insults or taunts of a sexual nature;
- leering or staring;
- asking for sex;
- unnecessary familiarity, such as deliberately brushing up against a person

There is more guidance about what may amount to sexual harassment available on the Australian Human Rights Commission website.

- **Sexual Misconduct** includes sexual harassment or sexual assault, sexual touching, sexual acts, conduct involving child abuse material, making or distributing sexually explicit photos or videos without consent, or certain other behaviours of a sexual nature.

## Revision History

- Version 1.0 approved by the President and Vice-Chancellor on 21 June 2018 effective from 21 June 2018
- Version 1.1 approved by the President and Vice-Chancellor on 4 October 2018 effective from 4 October 2018
- Version 2.0 approved by the President and Vice-Chancellor on 12 July 2021 effective from 12 July 2021.

