Prevention and Response to Sexual Assault and Sexual Harassment Policy

The University acknowledges the potential for sexual assault, sexual harassment, and sex-based harassment to occur in educational and workplace settings. These incidents can cause significant harm to affected individuals, to the University community and to society more broadly. This policy and the Prevention and Response to Sexual Assault and Sexual Harassment Procedure are grounded in the principles of harm prevention and prioritising safety.

The University's response to disclosures and reports of sexual assault, sexual harassment and sex-based harassment is trauma-informed, meaning the University understands the impact of trauma and strives to prevent re-traumatisation. Complainants will be treated with compassion and will be invited to be active participants in the response process.

The University will also respond to disclosures and reports so as to prevent the risk of future harm for the complainant and other University community members. The University strongly encourages reporting of any incidents, to help it to better ensure the safety and wellbeing of all University community members.

> NOTE ON LANGUAGE This policy contains language and references to sexual assault, sexual harassment and sex-based harassment. If anything in this policy has affected or distressed you, you may wish to seek support.

Section 1 - Purpose

(1) All forms of sexual assault, sexual harassment and sex-based harassment are inconsistent with the values of the University of Newcastle (University).

(2) The University will not tolerate sexual assault, sexual harassment or sex-based harassment in any form. The University is committed to providing a safe environment that supports individuals in their study, work, or University endeavours.

(3) The University is committed to a zero harm and zero tolerance position on sexual assault, sexual harassment and sex-based harassment and to positively preventing and responding to allegations of sexual assault, sexual harassment and sex-based harassment.

(4) This policy should be read in conjunction with the applicable code of conduct and the Prevention and Response to Sexual Assault and Sexual Harassment Procedure and the Health Safety Management System Framework.

Section 2 - Policy Scope

(5) This policy applies to all members of the University community and persons who are not members of the University community who want to make a report of sexual assault, sexual harassment or sex-based harassment.

(6) This policy does not set out the disciplinary process for students or staff alleged to have engaged in sexual assault, sexual harassment or sex-based harassment.

Section 3 - Sexual Assault, Sexual Harassment and Sex-Based Harassment Against a Child under 18

(7) For reports of sexual assault, sexual harassment and sex-based harassment relating to children under the age of 18, this policy should be read in conjunction with the Child Safety and Wellbeing policy. Mandatory reporting obligations may apply in relation to this conduct.

Section 4 - GUIDING PRINCIPLES

(8) The following principles guide the implementation of this policy and procedures:

Zero Harm and Zero Tolerance:

(9) The University prohibits sexual assault, sexual harassment and sex-based harassment in all its forms by any person to whom this policy applies. This conduct is unlawful, and the University has a legal obligation to eliminate this conduct as far as possible. The University will not tolerate sexual assault, sexual harassment and sex-based harassment in the University community. The University's expectations apply not only to physical spaces but also online, over the phone, and when using social media.

Build Knowledge and Understanding:

(10) The University will provide information about what constitutes sexual assault, sexual harassment and sex-based harassment and foster in individuals a deeper understanding of their role in recognising, preventing, and responding to sexual assault, sexual harassment and sex-based harassment.

Focus on Prevention:

(11) The University's leadership and governance will demonstrate a commitment to taking positive action to prevent sexual assault, sexual harassment and sex-based harassment through institution wide training and resourcing.

Prioritise Safety and Wellbeing:

(12) The University will treat individuals making reports about sexual assault, sexual harassment and sex-based harassment with compassion and care and with the support of professionals. The University will also provide support to persons who receive sexual assault, sexual harassment and sex-based harassment reports.

Providing Safe and Consistent Processes:

(13) The University will take timely and appropriate action in response to reports of sexual assault, sexual harassment and sex-based harassment. The University provides an accessible reporting mechanism with guidance on how reports can be made and are managed.

Respect for Complainants:

(14) The University's actions in response to sexual assault, sexual harassment and sex-based harassment will be guided by trauma-informed care and will respect the desire of some complainants to speak about their experiences.

Respect for Intersectionality:

(15) The University recognises that certain groups within our community are more vulnerable, and people’s sex, gender identity, sexuality, position/status, ability, age, socio economic status, culture, religion, first language, as well

as a range of other unique characteristics may also affect their experience of sexual assault, sexual harassment and sex-based harassment. The University understands that each individual's unique characteristics and cultural experiences may also affect their willingness to make a disclosure or report. The University aims to respond to each complainant in a way that is culturally sensitive and responsive to their circumstances.

Section 5 - Commitment

Prevention and Training

(16) The University aims to prevent sexual assault, sexual harassment and sex-based harassment through regular and targeted education, training, and communication to:

a. strengthen the University's culture to be inclusive, safe, and respectful;
b. empower all University community members to report sexual assault, sexual harassment and sex-based harassment;
c. empower all University community members to respond effectively to sexual assault, sexual harassment and sex-based harassment, and behaviours which may contribute to sexual assault, sexual harassment and sex-based harassment; and
d. provide information and skills to key University community members to support them in responding to disclosures and reports in a trauma informed way.

(17) The University seeks to ensure that the steps it takes to prevent sexual assault, sexual harassment and sex-based harassment are evidence-based.

(18) The University takes a risk-based approach to preventing sexual assault, sexual harassment and sex-based harassment. This includes regularly taking steps to identify the risk of these behaviours occurring, implementing control measures to address identified risks and regularly reviewing control measures to ensure they remain effective and appropriate and making adjustments where required. Reports of sexual assault, sexual harassment and sex-based harassment play a key role in assisting the University to identify risks and trends and to help it to provide a safer environment for all University community members.

Responding and Reporting

(19) The University will make information and appropriate resources available for complainants, bystanders, and respondents.
This will include information on:

a. how to report sexual assault, sexual harassment and sex-based harassment;
b. obtaining timely and appropriate support;
c. the process of an assessment of fact; and
d. potential outcomes and actions.

(20) Any person, whether they are a member of the University community or not, can report sexual assault, sexual harassment or sex-based harassment by a former or current member of the University community that has occurred at any time.

(21) The University provides a process for complainants to report an incident involving sexual assault, sexual harassment or sex-based harassment for assessment by the University (see Prevention and Response to Sexual Assault and Sexual Harassment Procedure).

(22) Complainants of sexual assault, sexual harassment and sex-based harassment will be supported with a trauma-

informed approach. The University will support students through the process of seeking adjustment to their studies, where this is requested by the complainant. The University will support staff with seeking adjustment to work arrangements, where this is requested by the complainant.

(23) Complainants have the option of identified or anonymous contact when seeking support or procedural help with a report. This is set out in the Prevention and Response to Sexual Assault and Sexual Harassment Procedure.

(24) To the extent that a report is made about conduct by a former member of the University community or occurs off campus and is not connected with any service or function of the University, the University is limited in the action it can take to respond to the report. However, the University will provide complainants with support as set out in this policy and the Prevention and Response to Sexual Assault and Sexual Harassment Procedure.

(25) The University will not tolerate victimisation of individuals involved in reported incidents, those supporting those involved or those providing information about a report of sexual assault, sexual harassment or sex-based harassment. For staff, any such matter will be dealt with in accordance with the Code of Conduct.

(26) Notwithstanding the University's zero tolerance approach to sexual assault, sexual harassment and sex-based harassment, the University is committed to supporting the welfare of respondents. The University will also provide support to witnesses and others involved in any processes required to consider complaints of sexual assault, sexual harassment and sex-based harassment.

(27) Reports by staff or students that are not made in good faith or are knowingly false may result in disciplinary action for the complainant.

Section 6 - Misconduct Process

(28) Determinations of whether or not a respondent has engaged in sexual assault, sexual harassment or sex-based harassment, and disciplinary action are made as follows:

a. where the respondent is a student, under the Student Conduct Rule;
b. where the respondent is a staff member, under the Staff Code of Conduct, any applicable Enterprise Agreement, and /or the relevant contract of employment; or
c. where the respondent is a member of the University community who is not a student or a staff member, in accordance with any relevant contract and/or policy (and otherwise as determined by the University in the absence of any contract and/or policy).

(29) For the avoidance of doubt, if a respondent is both a student and a staff member, there may be multiple processes and disciplinary action in respect of the same alleged conduct. In these circumstances, the University will determine the most appropriate process and action to be taken.

Section 7 - Confidentiality and Record Keeping

(30) University staff receiving and assessing reports of sexual assault, sexual harassment and sex-based harassment will create and maintain appropriate and confidential records in accordance with the Records Governance Policy and the Privacy Management Plan.

(31) The privacy and confidentiality of all parties to a report will be respected to the extent that the University determines this is practicable and appropriate. However, disclosure of information may be required to respond and manage reports effectively, monitor or report matters, and/or to satisfy regulatory and legal obligations.

(32) The University may determine to review or investigate the circumstances of a report. In these circumstances, the

University will try to respect the privacy of the complainant, to the extent this is practicable.

Section 8 - Review

(33) The review of this policy and its associated procedure will be informed by the Sexual Misconduct Risk and Review Group chaired by the Deputy Vice-Chancellor Engagement and Equity.

Section 9 - Definitions

(34) In the context of this document and the Prevention and Response to Sexual Assault and Sexual Harassment Procedure, the following definitions apply.

(35) Bystander means someone who witnesses an incident of sexual assault, sexual harassment or sex-based harassment, or is told about an incident after it occurred.

(36) Complainant means any person who makes a disclosure or report (see the Prevention and Response to Sexual Assault and Sexual Harassment Procedure for the distinction between a disclosure and a report) of sexual assault, sexual harassment or sex-based harassment to the University. The University acknowledges that those persons who have experienced sexual assault, sexual harassment or sex-based harassment may identify as a complainant, survivor, victim, discloser, or a combination of these identities.

(37) Consent refers to free and voluntary agreement to a sexual act and is defined in the Crimes Act 1900 (NSW). Every person has a right to choose whether or not to participate in sexual activity and consent to sexual activity is not to be presumed. Rather, consensual sexual activity involves ongoing and mutual communication, decision-making, and free and voluntary agreement between the persons participating in the sexual activity. Consent involves actively taking steps to find out whether the other persons involved in a sexual activity consent to it. The fact that a person does not resist the act verbally or physically, does not of itself mean that they consent to it. A person is free to withdraw their consent at any time prior to, or during a sexual act, for any reason. A person does not consent to an act just because they consented to:

a. a different act with the same person; or
b. the same act with the same person at a different time or place; or
c. the same act with a different person; or
d. a different act with a different person.

Circumstances in which a person does not consent to an act includes circumstances in which the person:

a. submits to the act because of force, a fear of force, harm of any type or a fear of harm of any type, whether to that person or someone else or to an animal, regardless of:
    i. when the force, harm or conduct giving rise to the fear occurs; and
    ii. whether it is, or is a result of, a single incident or is part of an ongoing pattern;
b. submits to the act because of coercion or intimidation regardless of:
    i. when the coercion or intimidation occurs; and
    ii. whether it is, or is a result of, a single incident or is part of an ongoing pattern;
c. submits to the act because the person is overborne by the abuse of a relationship of authority or trust;
d. is so affected by drugs or alcohol or any other substance as to be incapable of consenting to the act, or incapable of withdrawing consent to the act;
e. is asleep or unconscious;
f. is unable to understand or is mistaken about the sexual nature of what is happening or the identity of any other

person involved;

g. submits because of force or fear of force or harm of any type (including to someone else or to an animal);
h. is unlawfully detained or held against their will;
i. is a child / under the age of 16 (in NSW);
j. is mistaken about the identity of the other person;
k. mistakenly believes that the act is for medical or hygienic purposes;
l. in acts involving animals, mistakenly believes that the act is for veterinary or agricultural purposes or scientific research purposes;
m. engages in the act because of a false or misleading representation that the person will be paid and the act occurs in the provision of commercial sexual services;
n. is not doing or saying anything to indicate consent;
o. gives consent and later withdraws consent to the act taking place or continuing;
p. engages in the act on the basis that a condom is used and another person intentionally removes, tampers with or does not use the condom; or
q. having given consent to the act, later withdraws consent to the act taking place or continuing.

(38) Enterprise Agreement means the applicable enterprise agreement, currently either the University of Newcastle Professional Staff Enterprise Agreement 2023 or the University of Newcastle Academic Staff and Teachers Enterprise Agreement 2023 and includes any replacements (if any) of those agreements.

(39) Report means a report about sexual assault, sexual harassment or sex-based harassment made in accordance with the process set out in the Prevention and Response to Sexual Assault and Sexual Harassment Procedure.

(40) Respondent means a person about whom a report of sexual assault, sexual harassment or sex-based harassment is made to the University.

(41) Sex-based harassment is conduct that is demeaning because of a person's sex, but not necessarily sexual in nature. Sex-based harassment can include, but is not limited to:

a. asking intrusive personal questions based on a person's sex, including about their body or anatomy;
b. making sexist, misogynistic, or misandrist remarks about a specific person;
c. making inappropriate comments and jokes to a person based on their sex; and
d. requesting a person engage in degrading conduct based on their sex.

Sex-based harassment is unacceptable at the University and is also unlawful under the Sex Discrimination Act 1984 (Cth).

(42) Sexual assault is any sexual act or touching in circumstances where the person engaging in the act or the touching does not have the consent of the other person to the act or the touching. Sexual assault is a crime under the Crimes Act 1900 (NSW). Touching can be ‘sexual’ because of:

a. the area of the body that is touched or used in the touching, including (but not limited to) the genital or anal region, the buttocks or the breasts;
b. the fact that the person doing the touching seeks or gets sexual arousal or sexual gratification from the touching; or any other aspect of the touching, including the circumstances in which it is done.

(43) Sexual harassment is defined in the Sex Discrimination Act 1984 (Cth). Unlawful sexual harassment occurs where a person:

a. makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or

b. engages in other unwelcome conduct of a sexual nature in relation to the other person, where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

A person does not need to intend to engage in sexual harassment for it to be unlawful. Intention (whether good or bad) or poor judgment from the respondent is irrelevant. It does not matter whether the person harassed objected to the behaviour at the time.

Sexual harassment could be a one-off incident or a pattern of behaviour. It can happen in person, over the phone or online (including on social media).

Unlawful sexual harassment may include, but is not limited to:

a. unwanted sexual advances or requests for sexual favours;
b. inappropriate or offensive comments, gestures, or body language with a sexual undertone;
c. displaying, sharing, or distributing sexually explicit or suggestive material, such as images, videos or messages;
d. unwanted or unwarranted physical contact;
e. unnecessary light touch gestures, e.g. an arm around someone's waist or a kiss hello;
f. offensive or inappropriate comments about someone's appearance, body, or clothing;
g. engaging in verbal or non-verbal behaviours that have a sexual connotation and cause discomfort or humiliation to the recipient;
h. repeatedly pursuing or expressing romantic or sexual interest in an individual after being informed that the interest is unwelcome;
i. sending email or text messages which contain sexual content or tone;
j. sexual jokes or innuendo;
k. using a position of power or authority to pressure or coerce someone into engaging in sexual activities; and
l. sexual assault.

It is important to understand that some of these forms of sexual harassment are also criminal behaviour and may be treated as a criminal offence. These include:

a. sexual assault;
b. physically molesting a person;
c. indecent exposure; and
d. obscene phone calls or emails, social media posts or letters.

Sexual harassment is unlawful under the Sex Discrimination Act 1984 (Cth), the Fair Work Act 2009 (Cth) and the Anti-Discrimination Act 1977 (NSW).

(44) Trauma-informed means an approach that recognises that an unsafe response can escalate and compound trauma and that is focused on maximising the safety, wellbeing and support provided to individuals who make disclosures or complaints by upholding their agency, safety, dignity and wellbeing.

(45) University community means all staff, Council members, past staff, students, former students, student organisations, alumni organisations and networks, volunteers, partners with whom the University works, campus tenants, visitors, affiliates, contractors and consultants, employees of research institutes, employees of affiliated entities, and employees of independent colleges that are associated or aligned with the University.

Status and Details

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Responsible Executive	Nathan Towney Deputy Vice-Chancellor Engagement and Equity +61 2 4055 3001
Enquiries Contact	Office of the Senior Deputy Vice-Chancellor (Academic & Global)

Glossary Terms and Definitions

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Council member" - A person who is a member of the University Council as described in Section 8B of the University of Newcastle Act, 1989.

"Risk" - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

"Campus" - means any place or premises owned or controlled by the University, but may also specifically refer to a designated operating location such as the Callaghan Campus.

"Student" - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

"Disciplinary action" - When used in relation to staff of the University, this is as defined in the applicable and current Enterprise Bargaining Agreement, or the staff member's employment contract. When used in relation to students of the University, this refers to the range of penalties that may be applied under the Student Conduct Rule.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.