

HEPP60 Sexual Assault/Harassment Policy and Procedure

PURPOSE

This policy describes the rules by which staff and students are expected to abide to ensure a safe, supportive and respectful environment during their work and study at Southern Cross Education Institute - Higher Education (SCEI-HE). The Institute is committed to ensuring a workplace and study environment free of sexual harassment, the threat of sexual assault and other offensive and illegal behaviours.

SCOPE

This policy applies to all students, staff and other stakeholders of SCEI-HE, including contractors, service providers, clients and visitors who undertake activities on the SCEI-HE premise. All staff and students must understand:

- behaviours that constitute sexual harassment,
- behaviours that constitute sexual assault,
- their responsibilities in the event of sexual assault or harassment,
- where to get support for victims of sexual assault or harassment, and
- to whom to report.

DEFINITIONS

SCEI-HE	Southern Cross Education Institute (Higher Education)
Sexual harassment	<p>The Human Rights Commission defines sexual harassment by the following criteria: Sexual harassment can take many forms, including:</p> <ul style="list-style-type: none"> • staring or leering • unnecessary familiarity, such as deliberately brushing up against you or unwelcome touching • suggestive comments or jokes • insults or taunts of a sexual nature • intrusive questions or statements about your private life • displaying posters, magazines or screensavers of a sexual nature • sending sexually explicit emails or text messages • inappropriate advances on social networking sites • accessing sexually explicit internet sites • requests for sex or repeated unwanted requests to go out on dates • behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications <p>https://www.humanrights.gov.au/our-work/sex-discrimination/guides/sexual-harassment#sh1</p>
Sexual assault	<p>The Merriam-Webster dictionary defines sexual assault as “Illegal sexual contact that usually involves force upon a person without consent or is inflicted upon a person who is incapable of giving consent.” https://www.merriam-webster.com/dictionary/sexual%20assault</p>

	<p>The definition of sexual assault, as a criminal offence, differs between Australian state and territory legislation; see <i>Legislation table: Elements of the laws surrounding sexual assault, by jurisdiction</i> https://aifs.gov.au/sites/default/files/publication-documents/rs1appendix.pdf</p> <p>Generally, sexual assault is defined as unwanted (non-consensual) sexual contact and/or penetration, according to state legislative definitions.</p>
Not sexual assault/harassment	<p>The Australian human Rights Commission stresses that sexual harassment is not behaviour that is based on mutual attraction, friendship or respect¹. If the interaction is consensual, welcomed and reciprocated it is not sexual harassment or assault.</p>

POLICY

SCEI-HE takes anti-sexual assault/harassment seriously and any reports of this nature will become the subject of a thorough investigation.

Sexual assault/harassment has no place at SCEI-HE and no teacher or student is permitted to engage in any behaviour that can be construed as either.

Sexual harassment is against the law. S 3(c) of the *Sex Discrimination Act 1984 (Cth)* identifies one of the objects of the Act is “to eliminate, so far as is possible, discrimination involving sexual harassment in the workplace, in educational institutions and in other areas of public activity”².

Sexual assault is a criminal act under Australian law; <https://www.justice.vic.gov.au/justice-system/laws-and-regulation/criminal-law/victorias-new-sexual-offence-laws-an-introduction>

As such, SCEI-HE is compelled to report any act that can be defined as sexual assault to the Victorian Police.

OBJECTIVES

SCEI-HE will:

- create a working and learning environment that is free from sexual harassment and where all members are treated with courtesy, dignity and respect
- promote appropriate standards of conduct at all times
- ensure that all students and staff are made aware of their rights and the processes and channels of communication through which they may report in the event of observing or experiencing sexual harassment
- provide an effective complaints procedure based on principles of natural justice
- treat all complaints in a serious, sensitive, fair, timely and confidential manner
- guarantee against victimisation or reprisals for reporting instances of sexual harassment

PROCEDURE

¹ <https://www.humanrights.gov.au/publications/rights-ed-tackling-sexual-harassment-resource-sheet-developing-sexual-harassment-policy>

² http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/sda1984209/s3.html

1. Reporting sexual harassment or assault –student complainant

- 1.1. Any incident of sexual assault/harassment affecting students should be reported in the first instance to Student Welfare Management or Officers.
- 1.2. The Welfare Officer will record the student’s statement and counsel the student on the appropriate course of action, according to the nature of the reported offense.
- 1.3. If the incident involves a staff member, either teaching or administrative, the matter will also be referred to the Manager of Human Resources (HR), or a delegated HR Officer.
- 1.4. Concerns and complaints of sexual assault/harassment will be managed in accordance with the HEPP10 Workplace Investigations Policy and Procedure, with a complainant and respondent being made aware of all allegations and counter-allegations under consideration and being given the opportunity to rebut information relied upon by decision makers.
- 1.5. The identity of the reporter will remain confidential and will not be released under any conditions unless it is required by law.

2. Reporting sexual harassment or assault – staff complainant

- 2.1. Any incident of sexual assault/harassment affecting staff should be reported in the first instance to the complainant’s direct line manager, who will determine if an incident has occurred. This will allow for questions to be asked and the incident to be clarified; at all times discussions will remain confidential.
- 2.2. Concerns and complaints of sexual assault/harassment will be managed in accordance with the **HEPP10 Workplace Investigations Policy and Procedure**, with a complainant and respondent being made aware of all allegations and counter-allegations under consideration and being given the opportunity to rebut information relied upon by decision makers.
- 2.3. If the incident cannot be resolved by the staff member’s direct line manager, to the complainant’s satisfaction, then the matter will be referred to the Manager of Human Resources (HR), or a delegated HR Officer.
- 2.4. The identity of the reporter will remain confidential and will not be released under any conditions unless it is required by law.

3. Investigation Process

- 3.1. An Investigation Officer will be appointed by the HR Manager to investigate and report on the matter of concern. The Investigation Manager, in the case of a student complainant, will be the Student Welfare Manager, unless otherwise negotiated in discussion with the HR Manager.
- 3.2. In all other cases, the HR Manager will appoint the most appropriate person they see fit to conduct the investigation and may be appointed from either an internal or external source. The Investigation Officer will be independent of the incident in question.
- 3.3. The HR Manager will base their appointment of the investigative officer on:
 - 3.3.1. The level of seriousness of the reported misconduct
 - 3.3.2. The impartiality of the investigator
 - 3.3.3. The skill, experience and availability of the investigator
- 3.4. If the complainant is a student, then the Academic Director and the CEO will be informed of the incident.
- 3.5. Once the Investigation Officer is appointed the following investigation process will take place in a timely manner.

4. **Preparation and information collection**

- 4.1. Review any reports made and determine the most appropriate manner of investigation
- 4.2. The Investigation Officer may seek further information from the complainant or other persons during the course of the investigation, ensuring at all times that the complainant's identity remains protected and confidential.
- 4.3. Obtain relevant background information including:
 - 4.3.1. Relevant policies and procedures
 - 4.3.2. Codes of conduct
 - 4.3.3. Relevant legislation
 - 4.3.4. Complaint documents and records
 - 4.3.5. Interviewing the relevant parties including complainant and respondent
 - 4.3.6. The Investigation Officer may liaise with external organisations such as the Police, regulatory bodies or accreditation bodies depending on the exact nature of the investigation. In the event of serious offences, the Investigation Officer must, in the first instance, report the matter to the HR Manager and the CEO, and advise that the matter is to be reported to the police to avoid any unintended consequences.

5. **Making a finding**

- 5.1. The Investigation Officer will assess all the evidence collected and consider:
 - 5.1.1. The strength and reliability of the evidence
 - 5.1.2. Impact on the complainant and SCEI-HE
 - 5.1.3. Wishes of the complainant
 - 5.1.4. Policies and procedures of SCEI-HE
 - 5.1.5. Legal and professional considerations
- 5.2. The Investigation Officer will make a finding on the facts and the evidence gathered and considered

6. **Resolution Activities**

- 6.1. The resolution activities will be appropriate to the matter under investigation. Resolution actions may include:
 - 6.1.1. Counselling
 - 6.1.2. Mediation
 - 6.1.3. Disciplinary action e.g. warning
 - 6.1.4. Dismissal from employment
 - 6.1.5. Organisation communication and training to employees on relevant policies and procedures
 - 6.1.6. Police being notified of the incident
 - 6.1.7. Legal action

7. **Reporting**

- 7.1. Upon finalising a detailed investigation, the Investigation Officer will be responsible for compiling a report outlining the following:
 - 7.1.1. the allegation
 - 7.1.2. account of relevant information received as well as information rejected as well as
 - 7.1.3. why rejected;

- 7.1.4. conclusions reached and reasons why;
- 7.1.5. recommendations arising from conclusions;
- 7.1.6. remedial action to be taken;
- 7.1.7. the report should also include any transcripts, statements and/or evidence obtained in the course of the investigation.

8. Protection of Complainant

- 8.1. SCEI (Higher Education) is committed to encouraging the reporting of unacceptable conduct and will ensure that any person making a report in good faith will not be penalised or personally disadvantaged as a result of their disclosure by:
 - 8.1.1. Dismissal;
 - 8.1.2. Demotion;
 - 8.1.3. Any form of harassment;
 - 8.1.4. Discrimination; or
 - 8.1.5. Current or future bias.
- 8.2. All parties involved will maintain the strictest confidentiality regarding the complainant and/or informants; they will treat the disclosure with objectiveness, be trustworthy and handle the matter with diplomacy and tact.

9. False sexual assault/harassment reports

- 9.1. SCEI-HE relies on the good faith and high ethical standards of its employees and stakeholders to ensure the effectiveness of this policy and procedure. Any person deemed to be making a false disclosure with the intent to deliberate, malicious harm of another person or organisation will be subject to disciplinary action in accordance with the unsatisfactory performance and workplace behaviour policy as a breach of the organisation's Code of Conduct. Serious matters which violate the law will be reported to the police.

RELATED DOCUMENTS

HEFOR14 Sexual Assault / Harassment Complaint Form

HEPP03 Student Complaints and Appeals Policy and Procedure

HEPP10 Workplace Investigations Policy and Procedure

HEPP11 Staff Complaints and Grievance Policy and Procedure

HEPP13 Fraud and Corruption Control Policy and Procedure

HEPP14 Fraud and Corruption Prevention Policy and Procedure

HEPP27 Staff Code of Conduct Policy

RightsEd: Tackling sexual harassment - Index

<https://www.humanrights.gov.au/our-work/education/publications/rightsed-tackling-sexual-harassment-index>

Change The Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities (2017)

<https://www.humanrights.gov.au/publications/executive-summary-5>

LEGISLATIVE CONTEXT

Sex Discrimination Act 1984 (Cth)

<https://www.legislation.gov.au/Details/C2014C00002>

Protected Disclosure Act 2012 (VIC)

<https://www.parliament.vic.gov.au/publications/protected-disclosure-act-2012>

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