

Sexual Misconduct Procedure

Intent

This procedure outlines how the University will manage Reports and Complaints of Sexual Assault and Sexual Harassment, and should be read in conjunction with the [Bullying, Discrimination Harassment and Sexual Misconduct Policy](#).

This Policy addresses HESF Standards 2.2: Diversity and Equity, 2.3 Wellbeing and Safety, and 2.4 Grievances and Complaints.

Scope

This procedure applies to all members of the JCU Community for any incident of Sexual Assault or Sexual Harassment regardless of where (University premises or elsewhere) or when, the incident occurred.

Definitions

Except as otherwise specified in this Procedure, the meaning of terms used in this Procedure are as per the [Bullying, Discrimination, Harassment and Sexual Misconduct Policy](#) and the [University's Learning and Teaching Policy Glossary and the Human Resources Policy Glossary](#).

Procedure

1. Responding to Sexual Assault

- 1.1 Every person in the University Community should respond compassionately to any person who discloses they have experienced, or who are experiencing Sexual Assault, respect privacy and confidentiality, assist the person to seek support, and be aware of how to Report (see Appendix 1).
- 1.2 Any member of the University Community may be a Bystander. A Bystander includes a person who observes someone Sexually Assaulting another person. A Bystander should call 000 in an emergency situation. A Bystander can intervene at the time, if they are able, and it is safe to do so. Bystanders should let the person subjected to the behaviour know that they've noticed, and let them know they will do what they can to help.
- 1.3 The safety, wellbeing and needs of the person who has been subjected to Sexual Assault are at the centre of JCU's response. To the fullest extent possible the wishes of the person subjected to Sexual Assault should be respected, and strict confidentiality applies at all times. Care must be taken not to dismiss a matter as trivial.
- 1.4 Any allegation of Sexual Assault must be immediately responded to in accordance with this Procedure. The contact details for crisis and specialist Sexual Assault Services and University support are identified in the Policy, and are available on the JCUSafe App.
 - 1.4.1 If the member of the University Community is Sexually Assaulted on a field trip, placement, or any location remote to a University campus, then the State-wide Sexual Assault Helpline should be called, or if interstate, then call 1800 RESPECT (1800 737 732).
 - 1.4.2 If overseas, field trip supervisors/support Staff should contact Chubb Assistance immediately who will guide them through the relevant country's medical/police system. The Chief of Staff, as the University's Critical Incident Coordinator and Sexual Misconduct Officer, will also assist with consular support and return to Australia as necessary.
 - 1.4.3 To ensure safety and wellbeing, this may require returning the person subjected to the Sexual Assault to their home location (if remote to the campus or overseas). As a Precautionary Measure the alleged perpetrator may also be brought back to their home location. If in residential accommodation on campus, alternative accommodation may also be required. These Precautionary Measures, if required, will be coordinated through a Sexual Misconduct Officer.

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- 1.5 The University's response to Sexual Assault is integrated with specialist Sexual Assault Support Services. These community-based specialist Sexual Assault Support Services provide independent and expert support to Staff and Students of the University who are victims of Sexual Assault. The University will provide additional and complementary support services.
 - 1.6 The JCU Respect Online Module, the University's Safety and Wellbeing Website and the JCU Respectful Relationships Workshops provide information on recognising Sexual Misconduct, responding to disclosures, referral to appropriate support services and reporting to the University. Supervisors and Managers have a responsibility to address Sexual Assault immediately if they become aware of Sexual Assault, and seek the advice of a Sexual Misconduct Officer.

2. Responding to Sexual Harassment

- 2.1 The University recognises that persons subjected to Sexual Harassment often directly address the behaviour at the time that it happens. The University has no expectation or suggestion however, that the person who is subject to Sexual Harassment should have to address the behaviour directly with the person who is/has sexually harassed them.
- 2.2 Every person in the University Community should respond compassionately to any person who discloses they have experienced or are experiencing Sexual Harassment, respect privacy and confidentiality, assist the person to seek support, and be aware of how to Report (see Appendix 2).
- 2.3 Supervisors and Managers have a responsibility to address Sexual Harassment immediately if they are made aware, and seek the advice of a Sexual Misconduct Officer.

3. Sexual Misconduct Reports and Complaints to JCU

- 3.1 Any person can provide information to the University that an incident of Sexual Misconduct has happened. All people, at any time, can pursue processes external to the University, including reporting to Police.
- 3.2 There is a difference between making a Report and making a Complaint to the University. A Report lets

- 4.2 Reports may be submitted anonymously using the Sexual Misconduct Report Form, and the person making the Report is able to, but does not have to, identify the other person/people involved. The University's actions in response to any Report may be limited by the detail provided.
- 4.3 Upon receipt of a Report, a

subject to that conduct will be notified in writing of the change in Precautionary Measures at least 7 days before the Precautionary Measures are amended or removed.

possible breach of the *Bullying, Discrimination, Harassment and Sexual Misconduct Policy* constituting misconduct under the Council Code of Conduct.

6.10 In making a

9.5.2 interviewing witnesses, including the Complainant; and

9.5.3 requesting that witnesses provide certain documents or information.

9.6 Excepting clause 9.3 above, the person investigating the Complaint does not have power to compel any person to attend an interview or to produce documents or information.

9.7 The investigator will make recommendation(s) to the Director Human Resources,

- b. if the Respondent denies the alleged conduct and/or denies

- 11.6 The Director Student Services has the power to make all directions necessary and incidental to their function to determine allegations of Sexual Misconduct, including but not limited to making directions necessary to:
- 11.6.1 afford the Respondent Procedural Fairness in the disciplinary process;
 - 11.6.2 conduct or request that another person conduct further investigations; and
 - 11.6.3 issue an amended allegation letter, which must comply with the requirements set out in section 10 above.
- 12. Outcomes of Complaints ñ Disciplinary Process ñ Staff**
- 12.1 The Director Human Resources determines allegations of Sexual Misconduct made against Staff. Sexual Misconduct if proven may constitute serious misconduct.
- 12.2 The disciplinary process set out in this section must be conducted in accordance with Procedural Fairness, and the misconduct/serious misconduct clause in the Enterprise Agreement.
- 12.3 The Director Human Resources must determine, on the balance of probabilities, whether:
- 12.3.1 the conduct alleged in the allegation letter occurred; and
 - 12.3.2 if so, whether that conduct constitutes Sexual Misconduct in breach of the *Bullying, Discrimination, Harassment and Sexual Misconduct Policy*; and
 - 12.3.3 if so, whether the conduct constitutes misconduct or serious misconduct.
- 12.4 The Director Human Resources will make a recommendation regarding appropriate disciplinary action to the relevant Deputy Vice Chancellor who will determine whether or not disciplinary action will be taken, and if disciplinary action is taken, what the action is.
- 13. Appealing University decisions**
- 13.1 A Student may appeal any determination made by the Director Student Services in accordance with the University's [Student Review and Appeals Policy](#) and [Complaint and Conduct Decisions Appeal Procedure](#).
- 13.2 A Staff Member or Affiliate Respondent may, with the exception of a censure, prepare a written submission to the Vice Chancellor as to why the determination made by the relevant Deputy should not be imposed in accordance with the JCU Enterprise Agreement.
- 14. Privacy and Confidentiality**
- 14.1 Investigations and outcomes of Complaints and any disciplinary proceedings are confidential and private to the parties involved. All participants in the process set out in this Procedure, including persons contacted as part of investigation of a Complaint and the Respondent, must respect and maintain confidentiality, and confidentiality directions may be provided in writing by the Director Student Services or Director Human Resources as relevant.
- 14.2 A breach of privacy or confidentiality directions in relation to Complaints processes set out in this Procedure are considered a breach of the applicable Codes of Conduct.

Related policy instruments

[Bullying, Discrimination, Harassment and Sexual Misconduct Policy](#)

[Social Media Policy](#)
[Student Review and Appeals Policy](#)
[Student Complaints Policy](#)
[WHS-PRO-015 Field Trip Procedure](#)

Schedules/Appendices

Appendix 1: Guideline for Responding to Disclosures of Sexual Assault
Appendix 2: Guideline for Responding to Disclosures of Sexual Harassment

Other related documents

[Statement of Commitment to the Elimination of Sexual Harassment and Sexual Assault](#)
[JCU Sexual Harassment and Sexual Assault website](#)

Related documents and legislation

Commonwealth Laws

[Age Discrimination Act 2004](#)
[Australian Human Rights and Equal Opportunity Commission Act 1986](#)
[Disability Discrimination Act 1992](#)
[Disability Standards for Education 2005](#)
[Fair Work Act 2009](#)
[Racial Discrimination Act 1975](#)
[Sex Discrimination Act 1984](#)
[Workplace Gender Equality Act 2012](#)

Queensland State Laws

[Anti-Discrimination Act 1991](#)
[Criminal Code Act 1899](#)
[Criminal Law Amendment Act 1993](#)
[Crime and Corruption Act 2001](#)
[Disability Services Act 1992](#)
[Human Rights Act 2019](#)
[Industrial Relations Act 2016](#)
[Work Health and Safety Act 2011](#)
[Workers Compensation and Rehabilitation Act 2003](#)

Administration

NOTE: Printed copies of this procedure are uncontrolled, and currency can only be assured at the time of printing.

Approval Details

Policy Domain	Corporate Governance
Policy Custodian	Vice Chancellor
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Version	Approval date	Implementation date	Details	Author
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Attend to Safety

Listen and be supportive

Believe them

Maintain confidentiality

Refer to support - Connect in with the specialist Sexual Assault Services - free and confidential

