



WENTWORTH INSTITUTE OF HIGHER EDUCATION

Document: Sexual Assault and Sexual Harassment Policy		
Approved by: Wentworth Institute of Higher Education Pty Ltd Board of Directors	Version: 2.0	Date: 02.2024

1. Purpose

Wentworth Institute of Higher Education Pty Ltd (“WIN Higher Education”) is committed to fulfilling its obligations under the Higher Education Standards Framework 2021, and National Code of Practice for Education Providers of Education and Training to Overseas Students 2018, Sex discrimination Act 1984, Fair Work Act 2009 and the Workplace Gender Equality Act 2012 to ensure a safe and healthy learning environment that is free from sexual harassment or sexual assault and where all students are treated with dignity, courtesy and respect, and where they are able to raise any concerns they may have without any fear of reprisal.

This policy has been designed to define WIN Higher Education’s approach to ensuring the safety and wellbeing of our students and staff with respect to sexual assault or sexual harassment. WIN takes a whole of institution approach to Sexual Harassment and Sexual Assault.

WIN Higher Education considers any incident of sexual harassment or sexual assault as unacceptable behaviour, prohibited and in some circumstances, criminal. Any such behaviour will be considered a direct breach the Student Code of Conduct and will be dealt with in accordance with the Student Non-Academic Misconduct Policy. It is a priority of WIN Higher Education to ensure the safety and wellbeing of any person disclosing or formally reporting sexual assault or sexual harassment.

In this regard, WIN Higher Education aims to:

- Implement training and awareness raising strategies to ensure that all students and staff know their rights and responsibilities and what action they need to take if they are a victim of or witness any incident of sexual assault, sexual harassment, gendered violence and how to report an incident;
- Provide an effective procedure for complaints based on the principles of compassion, providing support and assistance, protecting confidentiality and privacy, cultural competency and natural justice;
- Treat all complaints in a sensitive, fair, timely and confidential manner;
- Protect the health and wellbeing of complainants by ensuring any acts of victimisation or retaliation are investigated and dealt with promptly;
- Encourage the reporting of behaviour which breaches the sexual assault and sexual harassment policy; and

- Promote appropriate standards of conduct at all times.
- Report incidents to the Police, Regulatory bodies, Education, or any other relevant institution where appropriate.

2. Scope

This policy applies to:

- all employees and contractors of WIN Higher Education who are responsible for providing educational and all related services to our students. This includes:
 - at the institution's campus, including all controlled buildings, facilities, premises and equipment;
 - off-campus as part of facilitating industry visits, work placement, professional or practical work, including field trips;
 - online, over the phone, using online platforms including social media, or via distance learning, including activities using information or communication technologies associated with WIN Higher Education;
 - clubs, associations, societies that fall within the Institutions communities ; or
 - any other activities sponsored, controlled or supervised by WIN Higher Education;
 - through other modes as approved by the WIN Higher Education management; and
- all students of WIN Higher Education.

WIN Higher Education has a duty of care to ensure all of the above stakeholders and their actions comply with this policy at all times.

This policy does not apply to anyone under the age of 18. All Win Higher Education Students and staff are over 18 years of age.

3. Definitions

Behaviours that constitute sexual assault, sexual harassment, and gendered violence.

The Crimes Act 1900 Division 10 sets out behaviours and definitions that constitute sexual offences. It is also unlawful under the Sexual Discrimination Act and Fair Work Act 2009, for a person to sexually harass another person in connection to work, including the workplace.

For the purposes of Reporting and investigating sexual harm within WIN Higher Education, WIN will be informed by statutory definitions of sexual assault and sexual harassment (see above) but may also consider other activities and behaviours as sexual assault and sexual harassment. This includes but is not limited to the following definitions.

a) As defined by Division 10 of The Crimes Act 1900:

- i. Sexual intercourse without consent
- ii. Sexual touching without consent
- iii. Sexual acts (carried out in circumstances where a reasonable person would consider the act to be sexual) without consent.

b) Voyeurism or observing a person for sexual gratification without consent

c) Recording or distributing intimate material without consent, including computer generated images or videos.

d) any unwelcome behaviour of a sexual nature that makes a person feel offended, humiliated, or intimidated, and which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person would be offended, humiliated or intimidated.

Sexual harassment refers to a wide range of behaviours and includes behaviour which may be written, printed, verbal, non-verbal or physical, and also includes the transmission or display of inappropriate electronic communications or use of social media.

Examples include, but are not limited to:

- Physical intimacy or contact;
- Sexual jokes, images, emails, gestures, remarks or conversations;
- Intrusive personal questions;
- Spreading gossip about a person, such as sexual gossip;
- Requests for sexual acts or favours, or unwelcome or repeated gifts or requests for 'dates';
- Displays of sexually explicit images (for example; on electronic devices, social media, posters, or graffiti); and
- Offensive messages via social media, messenger apps, emails or SMS/MMS communications.

e) Other behaviors that contribute to sexual harm, including grooming and predatory behaviours.

Referral of a case to the police does not preclude WIN Higher Education from dealing with the matter through internal processes nor does the institution's processes substitute for a criminal process.

Consent means when a person freely and voluntarily agrees to sexual advances or intercourse and that consent is ongoing. Sexual assault occurs when someone is unable to and/or does not give consent. The law states that a person is unable to give consent when they:

- Are asleep or unconscious;
- Are significantly intoxicated or affected by drugs, alcohol or other substances;
- Are unable to understand what they are consenting to due to their age, intellectual capacity or vulnerability;
- Are intimidated, coerced or threatened;
- Are unlawfully detained or held against their will; or
- They are (or perceive themselves to be) pressured to engage in sexual activities by another person, who is in a position of power or authority.

Disclosure means when a person tells somebody else about an incident of sexual harassment or sexual assault that happened to them, or that they witnessed, or that they have become aware of. A person who discloses may not want to make a formal report but may just be looking for help with support and resources. A disclosure may or may not lead to a formal report. A disclosure can be made anonymously.

Formal report means an official notification to WIN Higher Education for the purpose of investigation made by somebody affected by sexual harassment or sexual assault, or by somebody on their behalf. This may then be dealt with in accordance with the Student Non-Academic Misconduct Policy and/or the Non-Academic Grievance Handling Policy & Procedure.

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;
- Obscene communications;
- Stalking; or
- Indecent exposure.

4. Prevention

It is WIN Higher Education's priority to try and prevent sexual assault and/or sexual harassment from occurring in the first place. This involves building a culture of awareness and respect in order to minimise the chances of incidents occurring. A range of prevention strategies exist to ensure the prevention of sexual assault and sexual harassment including but not limited to:

- Orientation programs to both new and existing students on expected behaviors and potential repercussions of inappropriate behavior;
- Training of staff and students on their rights and responsibilities with regards to sexual assault and sexual harassment.
- Providing sexual harm and sexual assault awareness training and education to staff, including teaching, administration, security, IT and other staff and monitoring attendance and completion rates of training.
- Modelling and communicating WIN's expectations of respectful behavior across all functions, departments and all levels of staff and students.
- Various awareness campaigns around sexual assault and sexual harassment; and
- Monitoring incidents of sexual assault and harassment and providing de-identified reports to Board of Directors.
- Identifying sexual assault and sexual harassment risks within the Institutes Risk Register. This will include the acknowledging the gendered nature of sexual assault and sexual harassment and endeavoring to address gender inequality and other power imbalances. Acknowledging the needs of particular groups of individuals including but not limited to people with a disability, Aboriginal and Torres Strait Islanders, LGBTIQA individuals, and people who are culturally diverse.

5. Procedures

5.1 Responsibilities of staff and students

All staff and students have a responsibility to:

- Be aware of and comply with WIN Higher Education's Student Sexual Assault and Sexual Harassment Policy;
- Offer support to anyone who is being sexually harassed and advise them on where to seek assistance and support;
- Report any incidences of sexual harassment or sexual assault that they witness or of which they become aware;
- Maintain confidentiality of information provided during an investigation of a complaint lodged by the concerned person; and

- Be aware of the privacy laws and that spreading gossip or rumours may expose them to misconduct proceedings and/or defamation action.

If a staff member or student witnesses a person being sexually harassed, they can help by offering support to the person being harassed. This can be done by:

- Refusing to join in with any sexually harassing behaviour;
- Offering to act as a witness if the person being sexually harassed decides to report the incident; and
- Backing them up or supporting the person to say no to the harassment.

In addition, a first responder provides appropriate support and information to anyone who has been subjected to sexual assault or sexual harassment, and will:

- Listen to the individual's complaint without judgement and guide the individual to the right services;
- Explain what a formal report involves and ask whether they would like to make a formal report;
- Explain that they can access support services without making a formal report; and
- Respect the individual's right to choose services and whether to make a formal report to the Institute or the police.

5.2 What can you do if you are being sexually harassed?

If you think you have been, or are being, sexually harassed there are a number of things that you can do:

- Speak or write directly to the harasser - if possible and you feel able, promptly tell the offender directly or in writing that their behaviour is offensive and unacceptable and request that it stop immediately;
- Seek advice - if you feel you are not able to speak or write to the offender yourself, seek advice from the Registrar at WIN Higher Education who may refer you to a confidential counselling service or specialist help; and.
- Keep confidential records about the harassment or a diary of incidents noting:
 - what happened;
 - when and where the harassing occurred; and
 - the names of witnesses.

5.3 How to lodge a complaint

A formal complaint about an alleged incident of sexual harassment or sexual assault may be made via the Institutes website www.win.edu.au/safety-and-wellbeing or by phoning (02)8252 9982.

Advice can be sought from the Registrar at WIN Higher Education for guidance on how to proceed. The Registrar is a single point of contact to ensure the grievance is assessed in a compassionate, consistent and robust manner.

Students who have experienced sexual assault or sexual harassment may choose to lodge a complaint using WIN Higher Education's internal grievance handling procedure or/ in addition lodge a formal complaint with the:

- NSW Police;
- NSW Anti-Discrimination Board; and/or

- Australian Human Rights Commission.

WIN Higher Education is committed to supporting the student in their decision.

5.4 How do we manage the complaint?

Upon receiving a formal complaint, WIN Higher Education will act in accordance with the procedures outlined in the Sexual Assault and Harassment Policy and with reference to the *Student Non-Academic Misconduct Policy* and/or the *Non-Academic Grievance Handling Policy and Procedure*.

All complaints of sexual harassment or sexual assault will be treated seriously, investigated promptly, impartially, and confidentially.

Where the outcome of complaint investigation affirms that the claim is substantiated, WIN Higher Education will take appropriate disciplinary action against the offender(s) under the Student Non-Academic Misconduct Policy and/or other applicable relevant WIN Higher Education policy and procedure provisions.

WIN Higher Education takes seriously the health, safety and wellbeing of any student who has experienced sexual assault or sexual harassment, and we are committed to prevent any repeat behavior across the institution.

All complaints will be dealt with in accordance with the principles of natural justice, which means that:

- All parties involved are given an opportunity to present their case;
- The respondent is provided with notice and information about allegations made against them and information about their rights to advocacy;
- The respondent is given a reasonable timeframe to respond;
- The person who makes a decision acts fairly and without bias, declares any possible conflict of interest, considers all the relevant evidence and bases any decision on evidence that supports it; and
- All parties are informed of the outcome and the reasons.

Role of Sexual Assault and Harassment Committee

The Registrar in their capacity as Chair of the Sexual Assault and Harassment Committee will conduct the investigation of the report and determine any penalties.

The Committee will include the Registrar, Deputy Dean, and a minimum of 2 other staff members who are selected on a voluntary basis. The committee should endeavour to be diverse and should where possible be gender equal.

Should a conflict of interest arise, the Deputy Dean will lead the investigation and the Registrar will be excused.

The Registrar will be solely responsible for all communications with students, staff, and committee members and will report the outcomes and prepare a report for the Board at regular intervals.

6. Support services

WIN Higher Education is committed to ensuring the immediate safety, protection and wellbeing of any student who has experienced an incident of sexual assault or sexual harassment. This includes:

- Ensuring the individual has access to information regarding:
 - emergency health information;

- counselling;
- assistance with choosing whom to report the incident to (internally or externally) and the right to choose between making a disclosure versus a formal report; and
- Referral to internal and external support services; and
- Endeavouring to minimise the number of times a student is asked to recount the experience.

7. Confidentiality and privacy

WIN Higher Education ensures that information provided by any student who has lodged a formal complaint or disclosed an incident of sexual harassment or sexual assault is managed in a confidential way in accordance with the Privacy Policy. However, to ensure the safety of our students and staff, we may need to disclose information about the incident with key personnel within the institution to devise appropriate mechanisms of preventing any such incident occurring at the institution.

As part of our obligations, in certain cases, WIN Higher Education may be required to report an incident of sexual assault or sexual harassment to the police or other external bodies. We ensure that the circumstances have been explained to the student or staff member prior to making the disclosure.

8. Links to other policies and procedures

This policy should be used in conjunction with the following related policies and procedures:

- *Student Non-Academic Misconduct Policy;*
- *Non-academic Grievance Handling Policy and Procedure; and*
- *Privacy and Confidentiality Policy.*