

Sexual Harm Prevention and Response Policy

Section 1 - Background and Purpose

- (1) La Trobe University (the University) is committed to providing a safe, inclusive and respectful learning, working and living environment, as far as is reasonably practicable. As part of this commitment, the University uses the umbrella term Sexual Harm to encompass the sexual behaviours outlined in Section 5.
- (2) This Policy sets out the University's commitment to limit the risk and incidents of Sexual Harm at the University or in connection with University activities.
- (3) This Policy also sets out the University's response to reports of Sexual Harm perpetrated by or against students, staff and third parties (eg volunteers, contractors) connected to the University.
- (4) Where programs are supported by the [Department of Foreign Affairs and Trade \(DFAT\)](#), both offshore and onshore, specific requirements also apply under the DFAT Preventing Sexual Exploitation, Abuse and Harassment Policy (DFAT Policy) which are included in this Policy and the DFAT Procedure.

Section 2 - Scope

- (5) This Policy applies to all students, staff, volunteers, contractors, Council members and visitors of the University.
- (6) This Policy covers sexual harm that occurs, or is alleged to have occurred:
- On a University campus, facility or on another property controlled by the University, including student accommodation;
 - In connection with any University course or activity or as part of deployment on any University business or as a representative of the University, whether on or off campus, including but not limited to work integrated learning, student exchange and study tours; placements; field research; University student clubs; study-related camps; conferences; or business meetings;
 - On virtual environments connected with the University course or activity including, but not limited to, email, intranet systems, social media, online forums; or
 - Where the affected party is a University student or staff member and there is a connection between the circumstances of the harm and the University.
- (7) Where sexual harm is disclosed or reported as occurring outside the scope of this Policy, the University will provide support services and referrals, as appropriate, but will not formally respond to the report.
- (8) If a formal report is made about someone that is external to the University, there are limits on sanctions a University can impose on that person.
- (9) Where programs are supported by DFAT, this Policy applies at all times when such persons are working for, travelling or representing the University, both during and outside normal working hours and the scope extends to:

- a. All governing body members, students, staff, volunteers, representatives, and contractors; and
- b. All partner organisations or people acting for or on behalf of the University.

Section 3 - Policy

Part A - Sexual Harm

(10) Sexual harm is an umbrella term which encompasses sexual assault, sexual harassment, sexual exploitation/abuse, and any other in appropriate conduct of a sexual nature. These concepts are further defined in Section 5.

(11) Sexual harm is not tolerated at the University and is never acceptable. Sexual harm constitutes misconduct and is considered a matter of Occupational Health and Safety. Sexual harm is unlawful and may constitute criminal conduct.

(12) The University expects all students, staff, volunteers, contractors, Council members and visitors of the University to:

- a. behave in ways that are safe, respectful and inclusive; and
- b. not engage in sexual harm towards others; and
- c. speak up when they see or know of sexual harm at the University or seek advice on what they should do.

(13) In addition to the above, Managers and Senior Leadership are expected to:

- a. monitor the University environment and risk factors to ensure appropriate standards of conduct are observed;
- b. ensure that bystanders are supported to act if Sexual Harm is witnessed;
- c. identify, address and educate about behaviour that enables or condones sexual harm, including tolerance for everyday sexism.

Part B - Principles Governing the University's Response to Sexual Harm

(14) The University will take all reasonable steps to prevent sexual harm, and to promote the rights of the people and communities with whom it works.

(15) The University is committed to, as far as is reasonably practicable:

- a. providing students, staff, volunteers, contractors, Council members and visitors with a safe, inclusive and respectful environment;
- b. providing training and education to students and staff to promote a respectful and inclusive culture and to empower individuals within the University to address underlying disrespectful attitudes and behaviours;
- c. ensuring that leaders within the University model respectful behaviour and endeavour to improve diversity and inclusion;
- d. providing appropriate support and reporting mechanisms;
- e. responding appropriately to every allegation of sexual harm in a fair and reasonable way, including ensuring the timely investigation of such matters in accordance with the principles of procedural fairness;
- f. taking all reasonable steps to prioritise the rights, needs and wishes of the complainant, whilst ensuring procedural fairness to all parties;
- g. taking action where vexatious complaints are made, including potential disciplinary action;
- h. treating all allegations of sexual harm that relate to University students, staff and others associated with the

University seriously, whether recent or historic; and

- i. proactively assessing risk of harm and implementing appropriate risk mitigation and proactive measures, including by endeavouring to address any gender inequality and other power imbalances and by acknowledging the needs of particular groups of individuals, including but not limited to individuals with disabilities; LGBTIQ+ individuals; Aboriginal and Torres Strait Islander peoples; and individuals who are culturally and linguistically diverse.

Part C - Responding to Disclosures and Reports of Sexual Harm

(16) The procedures by which disclosures and reports of sexual harm will be managed are detailed in Section 4 below.

(17) The safety and wellbeing of the complainant, and that all parties have access to advice and appropriate support, is a key priority of the University.

Part D - Privacy, Confidentiality and Transparency

(18) Disclosures and reports of sexual harm will be treated confidentially and in accordance with the University's [Privacy - Personal Information Policy](#). This means that:

- a. resolution processes will be conducted by as few people as possible;
- b. disclosure/report records may be shared confidentially with appropriate officers of the University or external authorities on a strict need to know basis, as part of the University's duty of care obligations, or as required by law;
- c. de-identified data may be used by the University for the purposes of reporting on the management of disclosures and reports of sexual harm.
- d. once an investigation is complete, the University will not restrict the complainant's right to speak (subject to the University's other legal obligations), acknowledging that the Complainant may choose to get advice on any consequences associated with doing so.
- e. if an allegation of sexual harm involves a senior leader of the University and that allegation is substantiated following an investigation the University may disclose the identity of the individual; the fact that the allegation was substantiated; and any subsequent action taken if there is a legitimate public or stakeholder interest (and subject to the University's other legal obligations).

Part E - DFAT Policy

(19) Where programs are supported by DFAT, the following applies (in addition to the above):

- a. All University activities are to be assessed to determine the level of risk for sexual harm.
- b. It is mandatory for all program partners receiving support from DFAT funds to comply with the DFAT Policy.
- c. Staff and students participating in DFAT funded programs, and program partners, will be provided with training on preventing sexual harm and the DFAT Policy.
- d. Staff and students participating in DFAT funded programs, and program partners, will be recruited as per the [Recruitment Policy](#).
- e. Transaction sex (as defined in the DFAT Policy) is prohibited for all personnel while engaged in the delivery of DFAT business.
- f. Where any person has reasonable grounds to suspect that any persons within the scope of this Policy have engaged in Sexual Exploitation, Sexual Abuse or Sexual Harassment, the University encourages them to report their concerns immediately in accordance with this Policy and the DFAT Policy.

Section 4 - Procedures

(20) Sexual harm disclosures and reports about students, staff and other individuals to whom this Policy applies will be managed in accordance with Part F of this Procedure.

(21) Sexual harm disclosures and reports about children will be managed in accordance with the [Child Safety and Wellbeing Policy](#) which outline additional obligations of the University in relation to the protection of people under 18 years of age.

(22) Sexual harm disclosures and reports involving DFAT funded projects will be managed in accordance with the [Sexual Harm Prevention and Response Procedure - DFAT Funded Programs and Activities](#) and other overseas projects, which must be read together with the above procedures.

Part F - Sexual Harm Prevention and Management

(23) The University will adopt a Trauma-Informed approach to disclosures/reports of sexual harm to the greatest extent practicable, within the confines of its legal obligations. The complex nature of sexual harm means there may be circumstances in individual cases requiring changes to this approach to render it appropriate to the circumstances.

Prevention and Education

(24) The University acts to prevent sexual harm through aiming to strengthen and promote a respectful community culture. In particular, the University has or aims to:

- a. partner with external organisations to ensure a whole of University approach to the prevention of sexual harm, gender inequality and other forms of unacceptable and concerning behaviours;
- b. implement innovative and evidence-based sexual harm prevention programs for staff and students;
- c. implement ongoing training, education and communication for staff and students on various topics including gender inequality, respectful relationships, consent, bystander action and responding to disclosures; and any other targeted training, education and communication deemed appropriate by Health, Wellbeing and Inclusion;
- d. improve a range of safety and security measures on all campuses; and
- e. actively collaborate with other universities to share information about sector best practice.

Responding to Sexual Harm

(25) In an emergency or in circumstances of immediate danger on-campus, call:

- a. Police or Emergency Services (24 hours): 000
- b. and then Campus Security(24 hours): 03 9479 2222

(26) Guidance on how to respond appropriately when a person discloses they have experienced Sexual Harm can be found [here](#).

(27) Individuals who have experienced sexual harm are encouraged to seek information and support from Safer Community (in the case of students or third parties such as volunteers or contractors) or HR Assist and/or their manager (in the case of staff). Support and advice can also be sought from external agencies.

(28) Individuals may choose to either disclose or formally report any incident of sexual harm to Safer Community, HR Assist or the Police. This decision will determine the action the University may take:

- a. disclosing the incident is where an individual confides in someone else that they have been the victim of sexual

harm, in order to receive resources and support;

- b. formally reporting is where a student or staff member provides a formal account or statement about the sexual harm to the University. As a result, an internal investigation may commence to determine if the conduct constitutes a breach of any relevant instruments, including the [General Misconduct Statute 2009](#) (students) or [Code of Conduct](#) (staff).

(29) The University may have to investigate (with or without the Complainant's participation) to comply with its legal obligations, for example in circumstances where it considers the risk to others to be sufficiently serious.

(30) Students, staff and any third party can disclose or report any incident of sexual harm, including recent or historical incidents.

(31) In circumstances where the complainant or respondent are both a student and staff member, the process outlined in clauses (74) - (76) of the [Workplace Behaviours Policy](#) will apply.

(32) In circumstances where the respondent is not a La Trobe University student or staff member, or in the event of historical incidents, the University will provide support to the complainant but may be unable to investigate the alleged conduct. Where the respondent is a visitor to the University, the matter will be referred to relevant third parties where appropriate (for example, where a visitor is acting on behalf of an employer).

University Response to a Disclosure

(33) Where students or staff disclose sexual harm to the University, reasonable steps will be taken to:

- a. provide information about support services available to them, and the reasonable measures that may be implemented;
- b. outline the options available to help them determine any next steps they may wish to take;
- c. ask if they wish to proceed with either a formal report to the University or a report to the police or other external agency;
- d. offer assistance in any other way appropriate in the circumstances.

(34) A disclosure will generally not lead to further action by the University, unless required by law, for example the University has reason to believe there is a serious threat to someone.

(35) To determine its obligation to act, the University may consider:

- a. making reasonable enquiries (including its incident records) to determine whether there may be a current or future risk to the safety and wellbeing of other members of the University community;
- b. taking action to protect the safety and wellbeing of the University community including implementing protective measures;
- c. reporting the matter to an external organisation (such as a placement provider) where the Complainant was on University business; and
- d. making a report to the Police.

University Response to a Formal Report

(36) Individuals who have reported sexual harm to the University may choose not to name the other party when making a report. Anonymous reports can also be made to Safer Community, however the University's ability to respond to anonymous reports may be extremely limited.

(37) Individuals are not prevented from seeking relevant support from other sources throughout this process.

(38) Further action can only be taken by the University in response to a report where the respondent is a University student or staff member. Where the respondent is a visitor to the University, the matter will be referred to relevant third parties where appropriate (for example, where a visitor is acting on behalf of an employer).

(39) Where a formal report is made the University will endeavour to ensure that the respondent is afforded procedural fairness, meaning decisions are made:

- a. only after the respondent has been given an opportunity to know the allegations against them in sufficient detail to respond and has been given a reasonable opportunity to respond to those allegations; and
- b. by an unbiased decision maker who has given genuine consideration to any response provided by a Respondent.

(40) The University will address a report of sexual harm as promptly as possible, acknowledging that the University may be required to take or delay taking particular steps on the advice of Police.

Report made by, or about, a student

(41) Where the respondent is a student the Director, Health, Wellbeing & Inclusion or delegate will consider the report and decide whether the matter should be referred to the Office of Student Investigations for investigation to determine whether, on the balance of probabilities, there has been a breach of the relevant University statutes and policies.

(42) For students residing in University operated accommodation, action may also be taken under the Rules of Residence.

Report made by, or about, a staff member

(43) Where the Respondent is a staff member the Executive Director, Human Resources or delegate will consider the report and decide if an investigation will be conducted to determine whether, on the balance of probabilities, there has been a breach of the relevant University statutes, policies and/or the [La Trobe University Collective Agreement 2018](#) (Collective Agreement) or any successor agreement.

Interim Measures

(44) Upon receiving a disclosure or report of Sexual Harm, Safer Community or HR Assist will consult with the Director, Health, Wellbeing & Inclusion (students) or the Executive Director, Human Resources (staff) or their delegate to determine the need for any measures to protect the safety and wellbeing of all parties and, where relevant, protect the integrity of any investigation.

(45) Principles of procedural fairness will be afforded wherever practicable, and the complainant and respondent will be advised of any interim measures that will or have been put in place by the Director, Health, Wellbeing & Inclusion or the Executive Director, Human Resources, or their delegate.

(46) The complainant or respondent may request interim measures be put in place by writing to the Director, Health, Wellbeing & Inclusion or the Executive Director, Human Resources, or their delegate. Such requests will be considered by the Director, Health, Wellbeing & Inclusion or Executive Director, Human Resources and where reasonable and practicable will be accommodated.

(47) Interim measures are available regardless of whether an individual chooses to make a formal report to the University. The Director, Health, Wellbeing & Inclusion or Executive Director, Human Resources, or their delegate will determine whether interim measures are reasonable and should be implemented.

(48) Interim measures are not a penalty or sanction and do not indicate the University has concluded that a breach

has occurred. Neither a criminal conviction nor an investigation need be completed before interim measures are put in place.

Report made by, or about, a student

(49) Where the complainant and/or respondent is a student, interim measures may include but are not limited to:

- a. changes to class timetables;
- b. temporary remote learning arrangements;
- c. academic adjustments;
- d. no contact orders;
- e. for students residing in University operated accommodation, a temporary reassignment to another residential location on or off campus.

Report made by, or about, a staff member

(50) Where the complainant and/or respondent is a staff member, interim measures may include but are not limited to:

- a. adjustments to working arrangements;
- b. temporarily standing down a staff member;
- c. any measures listed in the Collective Agreement.

Withdrawing a Complaint

(51) A person is entitled to withdraw a complaint at any time. The matter will then be treated as a disclosure and will generally not lead to further action unless required by law, for example the University has reason to believe there is a serious threat to someone (see 'University response to a disclosure' above for more information).

Investigations and Disciplinary Proceedings

(52) The University cannot determine whether a criminal act has been committed. However, the University can determine whether the alleged conduct (even if it could also be potentially criminal in nature) has breached its policies, Statutes or the Collective Agreement.

(53) Any investigations and/or disciplinary proceedings will be conducted/overseen by the Student Conduct and Investigations or the Executive Director, Human Resources (staff) in accordance with relevant University instruments - including but not limited to the [General Misconduct Statute 2009](#) (students), the [Student Conduct Management Policy](#) (students) and any other relevant policies; and including but not limited to the [Code of Conduct](#) (staff), and/or the [Collective Agreement](#).

(54) If the University takes action under University statutes, policies and procedures, the complainant will be notified of the outcome as appropriate.

(55) Should the University determine that sexual harm has occurred, disciplinary action up to and including termination of employment/enrolment (as the case may be) may be taken against the respondent.

Reporting to Police

(56) A complainant may or may not wish to report the incident to the Police. This is their right.

(57) When a complainant does not want to make a formal report to the Police and the alleged perpetrator is a student or staff member, the Director, Health, Wellbeing & Inclusion or Executive Director, Human Resources may consider

reporting circumstances to the Police. In considering whether to make a report to the Police, they may consider:

- a. the wishes of the complainant;
- b. advice of University Legal Services;
- c. advice of Safer Community and other subject matter experts including relevant information about the known/observed behaviour of the alleged perpetrator related or unrelated to the matter at hand;
- d. evidence of a clear and unacceptable risk to the University or general community; and
- e. the course of action that is in the best interest of protecting the wellbeing and safety of the University or general community.

(58) A University report to the Police does not oblige the complainant to pursue Police or legal proceedings.

(59) The University will advise the complainant of a decision to make a report to the Police and will only disclose the identity of the complainant with their prior consent; where the University has reason to believe there is a serious threat to someone; or as otherwise required by law.

(60) Where a formal Police investigation is conducted, any internal University investigation may be suspended until the external investigation is completed.

Review of University Response to a Report of Sexual Harm

(61) Any decision about the outcome of a disciplinary matter will need to follow the relevant appeal or review process under the [General Misconduct Statute 2009](#), [Code of Conduct](#), [Collective Agreement](#), or any other relevant University statute or policy.

(62) A student who seeks review of the University response or handling of a report of sexual harm may lodge a formal complaint which will be handled in accordance with the [Student Complaints Management Policy](#) and managed by the University Ombudsman.

(63) A staff member who seeks review of the University response or handling of a report of sexual harm may lodge a formal grievance which will be handled in accordance with the [Grievance Resolution \(Staff\) Procedure](#).

Section 5 - Definitions

(64) For the purpose of this Procedure:

- a. Complainant: a student, staff member, volunteer, contractor, Council member or visitor of the University who makes an allegation of Sexual Harm. A Complainant may prefer different terminology including survivor, victim or affected person. It is acknowledged there may be different terms used in this context.
- b. Consent: a person providing free agreement to the sexual activity. Whether or not a person reasonably believes that another person is consenting to an act depends on the circumstances, including any steps that the person has taken to find out whether the other person consent. Circumstances where a person does not consent to sexual activity include, but are not limited to, the following:
 - i. force is used or threatened to be used against a person (or someone else) to coerce them into engaging in the sexual activity;
 - ii. the person submits to the act because of the fear of harm of any type, whether to that person or someone else or an animal;
 - iii. a person is asleep or unconscious;
 - iv. the person submits to the sexual activity because the person is unlawfully detained;
 - v. a person is so affected by alcohol or other drugs, as to be incapable of freely agreeing to the sexual

activity; or

- vi. the person is so affected by alcohol or another drug as to be incapable of withdrawing consent to the sexual activity;
 - vii. the person is incapable of understanding the sexual nature of the activity;
 - viii. the person is mistaken about the sexual nature of the activity;
 - ix. the person is mistaken about the identity of any other person involved in the sexual activity;
 - x. the person mistakenly believes that the sexual activity is for medical or hygienic purposes;
 - xi. if the act involves an animal, the person mistakenly believes that the act is for veterinary or agricultural purposes or scientific research purposes;
 - xii. the person does not say or do anything to indicate consent to the sexual activity;
 - xiii. having given consent to the sexual activity, the person later withdraws consent to the sexual activity taking place or continuing; or
 - xiv. The law in Victoria sets clear age limits for when you can legally have sex. This is called the age of consent. In Victoria it is generally unlawful to engage in sexual activity with a child under 16 years old, even if they agree.
- c. Disclosure: where an individual confides in someone else that they have been the victim of Sexual Harm.
- d. Formal Report: an individual may choose to report the incident to an internal service such as Safer Community, Human Resources or an external agency such as the police. A report will allow the University to conduct an internal investigation.
- e. HR Assist: central point of enquiry for information, advice and support on staff matters.
- f. Procedural fairness: a legal concept that is sometimes used interchangeable with natural justice. What is procedurally fair will depend on the circumstances. It generally involves:
- i. the right to be told of allegations to be put to a person in sufficient detail to enable them to respond. This will not necessarily involve the person being given all information, and some confidential information and original documents may not necessarily be provided;
 - ii. an opportunity to answer to allegations before any decision is made, including sufficient time to respond; and
 - iii. a requirement that a decision maker is not biased and gives genuine consideration to whatever response is given by a person.
- g. Respondent: a student, staff member or visitor to the University alleged to have committed sexual harm.
- h. Safer Community: University service for students that acts as the central point of enquiry for information, advice and support in managing problematic student behaviours affecting staff or students that have, or could, cause offence, fear or trauma (physical or psychological)
- i. Sexual abuse: the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. It covers sexual offences including but not limited to: attempted rape (which includes attempts to force someone to perform oral sex); and sexual assault (which includes non-consensual kissing and touching). All sexual activity with someone under the age of consent (16 years) is considered to be sexual abuse.
- j. Sexual assault: means intentionally touching another person; and the touching is sexual in nature; and the person who was touched did not Consent to the touching; and the person touching does not reasonably believe that the person Consents to the touching.
- k. Sexual harm: means misconduct of a sexual nature and includes:
- i. Sexual assault and rape;
 - ii. Sexual harassment;
 - iii. Sexual exploitation;
 - iv. Sexual abuse;

- v. any conduct of a sexual nature without consent, including:
 - obscene, indecent, threatening language or behaviour (including indecent exposure);
 - observation, filming or distributing an image of a person's genital or anal region or an intimate image without Consent (eg revenge pornography);
 - drink spiking;
 - stalking;or
 - hazing of a sexual nature.
- l. Sexual harassment: refers to any unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that a person would be offended, humiliated or intimidated. Sexual harassment includes, but is not limited to:
 - i. verbal forms such as making comments about someone's appearance in a sexually suggestive way; unwelcome enquiries regarding a person's sex life; requests for sex or repeated unwelcome requests for dates; telephone calls with a sexual undertone; continuous rude or sexist jokes/ remarks; sexual insults or taunts; spreading sexual rumours; threats or non-consensual disclosure of a person's sexual orientation; rating peers or colleagues with respect to sexual performance; sending sexually explicit emails or text messages; offensive posts on social networking sites
 - ii. non verbal forms such as gestures with a sexual meaning; staring at someone or making obscene gestures or noises; stalking (including cyber stalking); "flashing" or exposing body parts;
 - iii. visual forms such as displaying objects or promotional material, reading materials, or other materials that are sexually demeaning or pornographic in nature.
- m. Sexual exploitation: any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes. Sexual exploitation includes includes profiting monetarily, socially, or politically from sexual exploitation of another.
- n. Staff: includes academic staff including honorary appointments (as defined in the [Honorary Appointments Policy](#)), contract staff, visiting appointments, conjoint appointments and guest lecturers; professional and technical staff (including casual and contract staff); staff of partner institutions teaching University courses.
- o. Student: any person enrolled as a student of the University. This includes full time, part time, block mode or distance education students.
- p. Trauma-Informed: the University understand persons affected by trauma need to feel safe at all times. To facilitate this throughout the process, the University will take all reasonable steps to:
 - i. Minimise potential trauma to the Complainant;
 - ii. Maximise information obtained;
 - iii. Reduce contamination of the Complainant's memory; and
 - iv. Maintain the integrity of the investigative process.
- q. Vexatious complaint: where a complaint is made in bad faith to cause harm or harass the respondent party. Vexatious complaints are a form of misconduct.
- r. Visitor: any person other than University staff and students visiting a University campus, including La Trobe College Australia staff and students.

Status and Details

Status	Current
Effective Date	7th May 2021
Review Date	15th April 2024
Approval Authority	Vice-Chancellor
Approval Date	15th April 2021
Expiry Date	Not Applicable
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