

GUIDELINES

FOR UNIVERSITY RESPONSES TO
SEXUAL ASSAULT AND SEXUAL HARASSMENT

**RESPECT.
NOW.
ALWAYS.**



**UNIVERSITIES
AUSTRALIA**

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INTRODUCTION

At every Australian university, sexual assault and sexual harassment are unacceptable. University leaders, students, staff and communities are united in their resolve to prevent these behaviours. Some of the groups of people most likely to experience sexual harassment or sexual assault in the wider community¹ are the same groups that attend universities in large numbers, particularly women aged between 18 and 34. As a result, Australia's universities have embarked on a program of work – building on many years of earlier effort and advocacy from students – to take further action across university communities to eliminate this conduct.

In February 2016, Universities Australia (UA) launched the *Respect. Now. Always.* initiative. A global first, this initiative brought together Australia's 39 universities to work collectively to prevent sexual assault and sexual harassment – and to share best practice on how to improve support for students affected. As part of this comprehensive program of work by Australian universities, UA agreed to develop a set of guidelines to further assist universities to respond with care and compassion to disclosures or reports of sexual assault or sexual harassment.

Understanding of, and responses to, sexual assault and sexual harassment – or any form of violence against women – need to evolve from a purely legal approach to one that prioritises the needs of the person who experiences the violence. By doing so, universities can better ensure the safety and wellbeing of the person who experiences the violence while also acknowledging the social context in which it occurs.

All of Australia's universities have policies and procedures in place to guide their responses to student reports of sexual assault and sexual harassment. However, the national survey funded by universities under the *Respect. Now. Always.* initiative and conducted by the Australian Human Rights Commission demonstrated that more needs to be done not only to encourage students to report incidents to their institutions, but to support them through the reporting process. In addition to improving support for those affected by sexual assault and sexual harassment, universities recognise more work needs to be done to prevent sexual violence from occurring. Policies and procedures regarding sexual assault and sexual harassment should sit within a broader, whole-of-institution commitment to addressing gender inequality, which sets the necessary social context in which violence against women occurs.²

The safety and wellbeing of students and staff who disclose or report sexual assault or sexual harassment needs to be the priority of universities and at the centre of the university response.

Universities recognise that each case of sexual harassment or sexual assault is unique, and therefore there is no 'one size fits all' approach to responding to these behaviours. However, it's important to acknowledge that sexual harassment can escalate to sexual assault. What should be common to every university response is the prioritising of the safety and wellbeing of the person who discloses or formally reports an experience of sexual assault or sexual harassment.

Universities Australia thanks the following stakeholders consulted as part of the preparation of this document: Rape and Domestic Violence Services Australia, victim advocate groups, student leadership organisations, Dr Lisa Warren of Code Black Threat Management, Professor Margaret Otlowski, the Society of University Lawyers, Rose Alwyn, Professor Andrea Durbach and university student services staff.

UA also thanks Sparke Helmore Lawyers for their advice and work on these guidelines.

¹ ABS 2017, *Personal Safety, Australia, 2016, 4906.0*, Commonwealth of Australia.

² Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth 2015, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Our Watch, Melbourne.

KEY POINTS

These guidelines state that putting the needs of the person who has experienced sexual assault or sexual harassment at the centre means that universities should:

- be guided by the principles of compassion, providing support and assistance, protecting confidentiality and privacy, cultural competency and natural justice;
- consider creating a standalone policy to address sexual assault and sexual harassment;
- ensure the majority of staff with student-facing roles have the skills to respond to disclosures and reports of sexual assault and sexual harassment with compassion and care;
- consider providing a specialist-trained single point of contact for students making reports to ensure processes are compassionate, consistent and robust;
- minimise the number of times a student needs to recount a traumatic experience;
- streamline arrangements for academic special consideration;
- consider a data collection mechanism that captures de-identified disclosures and formal reports;
- consult with stakeholders, including students, in the development of any relevant policy;
- offer multiple ways to make a formal report, including through online reporting tools and safety apps;
- clearly communicate the university's formal reporting process and misconduct procedures, including timeframes;
- communicate to students the option to report the incident to police, and respect their decision;
- offer an interpreter for students who prefer to provide information in their native language; and
- engage with colleges and residential halls — including those that are managed independently of the university — to ensure consistency in responses, reporting and investigation approaches.

SCOPE OF THESE GUIDELINES

These guidelines may be used to guide university responses to disclosures and formal reports of sexual assault and sexual harassment where the person making a disclosure or report and/or the person about whom a report is made is a student.

Where a student discloses or formally reports that they have been sexually assaulted or sexually harassed by a university staff member, the student should be informed of the need for any formal report to be handled under that university's enterprise or collective agreement or through other appropriate mechanisms. They should also be advised that a formal report can be made to the police where there is an allegation of criminal conduct.

Universities recognise the complexities when a student who discloses or formally reports an incident is also a staff member of the university (for example, a postgraduate student working as a sessional academic). In these cases, we recommend that the staff member who receives the formal report notify their university's Human Resources unit to identify the best path forward.

The guidelines are not intended for use in relation to staff-to-staff allegations of sexual assault or sexual harassment, although many of the principles throughout the guidelines may be useful in such circumstances.

Universities, as autonomous organisations, will decide how they will use these guidelines. Each university is encouraged to adopt the guidelines outlined below in ways that best suit their own structure and practice. These guidelines are not intended to replace institutional approaches to dealing with these unacceptable behaviours, but rather provide advice.

THE CONTEXT

Universities have a range of legal and regulatory obligations to proactively promote and foster a safe environment for their staff and students, both on campus and online. Universities must comply with work health and safety legislation and anti-discrimination legislation; comply with the Higher Education Standards Framework; observe privacy principles; and fulfil their duties under common and contract law.

When handling student complaints, universities consider the Complaint Handling at Universities: Australasian best practice guidelines 2016, developed by the Commonwealth, ACT and Overseas Students Ombudsmen. Universities also take account of guidance provided by the Tertiary Education Quality Standards Agency, including its guidance notes on Wellbeing and Safety and Grievance and Complaint Handling. The Guidance Note on Wellbeing and Safety advises universities that in addition to taking prompt action when incidents occur, they should take pre-emptive action to minimise sexual assault and sexual harassment, including through evidence-based violence prevention programs and campaigns.

PRINCIPLES TO GUIDE POLICY RESPONSES

COMPASSION

Sexual assault and sexual harassment can affect social, interpersonal, psychological, physical and financial aspects of a person's life. They may experience none, some or many symptoms at different times. There are no tell-tale signs or a single way a person who has experienced sexual assault or sexual harassment might look, act or feel.

The first response a person receives when they share their experience of sexual assault or sexual harassment is key to their recovery. This response should validate the person's experiences and feelings by being compassionate, empathic and supportive. When a student discloses or makes a formal report to someone at their university, it may be the first time they have told anyone about their experience. If the response is one that validates them through compassion and support, it may encourage the student to identify their needs more clearly and seek additional support and determine whether they want to make a formal report.

Anyone in a university may be a 'first responder' to a disclosure or formal report of sexual assault or sexual harassment. Given sexual assault and sexual harassment can have devastating, and complex, effects on a person's wellbeing, relevant university staff need the requisite skills to respond respectfully and meaningfully to a student making a disclosure or formal report. The majority of university staff with a student-facing role should have these skills; ideally, all student-facing staff, and student leaders. Contract security staff, who may often be the first point of contact for students and staff who have experienced sexual violence on campus, should also have these skills. Universities should speak with relevant violence prevention and response agencies about how university staff can acquire these skills.

SUPPORT AND ASSISTANCE

The first consideration when a student discloses or formally reports their experience of sexual assault or sexual harassment is their safety and wellbeing. The university should commit to provide support and assistance to the student, which includes, but is not limited to:

- access to information about appropriate emergency health, counselling, security and accommodation providers;
- assistance to ensure understanding of the available options, including reporting to police and making a formal report to the university;
- information about and assistance with navigating the university's formal report and misconduct investigation processes;
- information about, and support navigating, the university's special consideration process if the student wishes to apply;
- referral to internal and external support services; and
- regular and timely communication about the process and its resolution.

University responses need to be designed to avoid causing further harm or any penalty to the reporting student, including minimising the number of times they need to recount their experience and not imposing significant changes to their routine.

Students are entitled to have a support person, or people, with them when they disclose, make a formal report or access the university's services.

In some cases, students who have experienced sexual violence (particularly sexual assault) may require special consideration for assignments and exams, particularly in terms of assignment extensions and exam deferrals. Ensuring this process is as efficient as possible can minimise further stress. Universities should also advise students that they do not need to make a formal report or complaint about their experience of sexual violence to apply for special consideration.

At the time of disclosure or making a formal report, the university staff member to whom the incident is disclosed should advise whether they have the authority to grant or support special consideration to the student. If not, the student should be provided with details of the staff member/s who can approve – or at least actively support – special consideration. These staff may be disability advisors, welfare officers or counsellors.

As a general principle, where special consideration is sought or granted universities should endeavour to protect the confidentiality and privacy of the student by limiting the circulation of any information about the nature of the special consideration as much as the circumstances allow.

CONFIDENTIALITY AND PRIVACY

The confidentiality and privacy of a student who discloses or formally reports sexual assault or sexual harassment needs to be protected. In addition, they have the right to decide if they want to make a report to the police.

However, there are circumstances in which a university's ability to maintain a student's confidentiality and privacy are limited.

Key personnel in the university may need to know information about the incident to ensure the student's safety, the safety of the broader university community and provide appropriate support to the reporting student.

Universities may also be obliged to report incidents to external agencies. There are mandatory reporting obligations imposed on individuals in certain professions (and on those who manage them) in cases of suspected abuse of children and young people (generally, up to the age of 18 years). It is beyond the scope of these guidelines to explain the content of these obligations, which differ by State and Territory, but universities need to understand these obligations where disclosures or formal reports are received concerning students under the age of 18. Universities should train all staff regarding their mandatory reporting obligations.

There may also be occasional circumstances where a university is obliged to report an incident to the police. We recommend that university staff seek advice from their general counsel on these obligations.

To help inform someone's decision as to whether to disclose, universities may consider providing examples in the relevant policy of circumstances that may trigger a report to police, such as where there have been multiple reports about the same person. These circumstances should be explained to the student at the time of disclosure.

Reporting obligations need to be communicated to the student as soon as possible.

CULTURAL COMPETENCE

For students from different cultural groups or countries, recounting their experience of sexual assault or sexual harassment can be additionally stressful when English is not their first language or where their culture does not typically encourage such disclosures. University staff should have, or have access to others who have, the knowledge and skills necessary to respond to disclosures and formal reports in a culturally competent way with students from different communities, including international students, Indigenous students and students from culturally and linguistically diverse backgrounds.

Universities should provide an interpreter for those students who would prefer to provide information in their native language. Information and guidance on how to support students to access an interpreting service should be provided to all university staff.

NATURAL JUSTICE

Universities need to observe the principles of natural justice and procedural fairness when considering any formal report about misconduct, including those regarding sexual assault or sexual harassment. These principles dictate that any assessment or investigation will be undertaken in a fair, impartial and equitable way.

Handling formal reports of sexual assault or sexual harassment can be difficult because all universities have obligations to both the person making the report and the person about whom a report is made. It's important to recognise that all parties may be affected by a formal report process.

Where the person about whom the report is made is also a person to whom the university has formal obligations, they have:

- the right to know the details of any reports about them;
- the opportunity to make representations to the university in the matter; and
- the right to be treated without bias.

To meet their obligations to the person about whom the report is made, universities should provide support and assistance to them, which may include but is not limited to:

- access to information about appropriate emergency health, counselling, security and accommodation providers;
- information about and assistance with the navigating the university's formal report process and misconduct investigation processes;
- referral to internal and external support services; and
- regular and timely communication about the process and its resolution.

Ideally, a university should assign a different support officer to the person about whom the report is made and the person making the report as not doing so can create a conflict of interest.

KEY INFORMATION A POLICY SHOULD INCLUDE

It is critical to recognise that sexual assault and sexual harassment – as forms of violence against women – are different to other types of student misconduct, such as plagiarism or damage to university property. As such, universities should consider adopting a standalone policy to address sexual assault and sexual harassment.

As autonomous institutions, universities decide the institutional mechanisms through which sexual assault and sexual harassment are addressed.

Regardless of the mechanism, we recommend the relevant policy:

- contain a statement from university leadership that sexual assault and sexual harassment are unacceptable;
- confirm that these behaviours constitute misconduct;
- clearly state that the safety and wellbeing of the person disclosing or formally reporting sexual assault or sexual harassment is the priority of the university;
- define sexual assault in alignment with the relevant jurisdictional criminal legislation;
- define sexual harassment in alignment with the *Sex Discrimination Act 1984* (Cth);
- explain consent as defined by relevant jurisdictional criminal legislation;
- outline the scope of the policy, for example, whether it applies to university-affiliated clubs and groups;
- clearly articulate that people who experience sexual assault can report their experience to the police;
- clearly identify the university's formal reporting process and misconduct procedures;
- clearly explain the standard of proof used in misconduct procedures;
- clearly communicate that a university's formal investigations process is not a substitute for a criminal process;
- include information on potential sanctions that may be imposed on a student should the university determine that misconduct has occurred;
- be inclusive in its language; and
- be publicly available and readily accessible.

A list of behaviours should be included in the policy, clearly stating to the university community that these behaviours are unacceptable, prohibited and in some circumstances, criminal. Technology-facilitated sexual harassment, including image-based abuse, should also be captured in the policy.

The policy should apply to activities where the university has a duty of care, which may include activities that are:

- conducted on any of the university's physical and digital campuses;
- conducted in a university facility;
- conducted as part of deployment on university business or as a representative of the university (such as field research, student placements, secondments and exchanges); and
- affiliated with the university, such as student clubs or study-related camps.

It should be made clear whether the policy applies to university students living in residential colleges or halls, or other types of student accommodation (whether on or off campus), regardless of whether that college or accommodation is managed by the university. In addition, it is important to advise students and staff that the university's policy may not apply where a formal report is made about someone that is external to the university and that – in such cases – there are limits on any sanctions a university can impose on that person.

It should be equally clear to staff and students that incidents that occur beyond official university business and beyond university grounds are relevant to the university and that universities encourage those affected to seek support from university services. Universities recognise that sexual harassment and sexual assault can affect the health and wellbeing of members of the university community, regardless of where the incident occurred. It should also be clear to staff and students whether they are able to access formal reporting and misconduct procedures, as well as support mechanisms, where the incident occurred beyond official university business or beyond university grounds.

Universities should review their policies at regular intervals.

OTHER THINGS TO CONSIDER

There are a range of things universities should consider as part of any response to sexual assault or sexual harassment.

THE DIFFERENCE BETWEEN A DISCLOSURE AND A FORMAL REPORT

University responses should acknowledge the difference between a disclosure and a formal report, and the different responses required.

A disclosure involves the sharing of information about an incident(s) of sexual assault or sexual harassment with another person. Disclosures can be made to anyone and are usually made to a person who is known and trusted. A person who discloses may not want to make a formal report and may instead be looking for information about resources and support.

Formal reporting refers to providing a formal account or statement about sexual assault or sexual harassment to a person or institution that has the authority to take action. Reporting can be an outcome of disclosure, but it is not the only possible outcome.

When a student discloses sexual assault or sexual harassment, it is important to explain the full range of options available to them, including accessing support services and making a formal report. The first responder should explain what a formal report to the university involves and ask the student whether they would like to make a formal report. The first responder needs to explain that the student can access support services without making a formal report.

If the student does want to make a formal report, they may be required to provide details of their experience to other people within the university. Students need to be advised of this so they can seek additional support and advice for this part of the process. Research has shown that having to repeat details of the sexual assault or sexual harassment can be re-traumatising and can slow recovery.

Empowering the student who is disclosing to share their expectations about what may result from their disclosure or report is an important initial step that can occur from the earliest stages of the process and help guide procedural fairness.

CONSULTATION WITH STAKEHOLDERS

Students' perspectives are crucial in the development of any relevant policy, especially those student groups that are known to experience sexual assault and harassment at higher rates than other groups. Meaningful discussion with students can facilitate greater engagement with the university's policies and processes, which in turn may encourage students to formally report incidents to their universities.

Consultation with existing in-house expertise (such as staff in clinical, legal and risk roles) can establish the best pathways for resources and support within the university. Similarly, such conversations can establish any gaps in expertise and the need to engage external stakeholders with specialist expertise to complement in-house expertise.

University engagement with their affiliated colleges and residential halls – including where such colleges are owned and managed independently of the university – is essential to ensure consistency between the policy responses, reports and investigation approaches of all institutions.

Consulting with clubs and societies that are affiliated with the university is another important practical step to ensure a clear understanding that the university's policies on sexual assault and sexual harassment apply to their activities.

REFLECTING THE NEEDS OF THE UNIVERSITY STUDENT POPULATION

The national survey funded under the *Respect. Now. Always.* initiative found some student cohorts experienced sexual harassment and sexual assault at higher rates than others. Consistent with evidence both in Australia and around the world, most victims of sexual assault and sexual harassment were women, and most perpetrators were men. The survey also found that students with a disability, Aboriginal and Torres Strait Islander students and students from the LGBTIQ community experienced a higher incidence of sexual assault and sexual harassment than other student cohorts.

Given the diversity of the university student population, the university's relevant policy should include acknowledgement of the experiences, needs and perspectives of distinct population groups, including, but not limited to:

- students who identify as transgender or gender diverse;
- students who identify as LGBTIQ;
- Aboriginal and Torres Strait Islander students;
- students with a disability;
- culturally and linguistically diverse students; and
- international students.

ACCESS TO THE POLICY

Best practice extends to how easily the policy, procedure and other key information can be accessed by students. This can include providing highly visible information on the university's homepage or easily-located webpages; in student common areas or lounges; through leaflets and newsletters; in club/society rooms; through course/unit outlines; information on the back of student cards; mobile phone apps and social media.

RECORDING DATA

The national survey of university students found that most students that were sexually assaulted or sexually harassed did not seek support or assistance from their university, and they did not formally report their experience to their university or police. This is a significant information gap for universities – each university can benefit from insights into the reasons for under-reporting at their institution. Universities also need a sound understanding of the nature and scale of these behaviours in their communities to target prevention and intervention programs.

Universities should consider establishing a data collection mechanism that captures both disclosures and formal reports of sexual assault and sexual harassment. Where an incident is recorded for any purpose other than responding to a formal report, all data related to the incident should be de-identified. This will help universities to identify patterns of behaviour and the effectiveness of procedures while safeguarding privacy. The person making the disclosure should be given the opportunity to review information for factual accuracy before it is formally submitted to the data collection mechanism.

A person who receives a disclosure should explain to the student that they will provide de-identified information to the university to help it better understand what is happening in its community.

CONTACT POINTS FOR REPORTING

Universities should consider appointing a single point of contact to whom all formal reports of sexual assault or sexual harassment are made. This may be a person (for example, a Deputy Vice-Chancellor) or a unit within the university (for example, a safer community unit). A single point of contact can help to ensure that response processes are co-ordinated, consistent, robust and effective; incident data is accurately captured; and enables formal reports to be handled with the strongest expertise. Reporting trends can also be monitored over time and help determine whether issues, such as case resolution times, are being effectively addressed.

Staff within this single point of contact, or who act as the single point of contact, should be trained to respond to trauma.

TIMEFRAMES FOR REPORTING

Consistent with international evidence on global under-reporting of sexual assault and sexual harassment, the national survey funded through the *Respect. Now. Always.* initiative found most incidents of sexual assault and sexual harassment were unreported to universities and police. Only two per cent of students who were sexually harassed and nine per cent of students who were sexually assaulted formally reported it to their university.³ These guidelines are designed to help address this.

There is variation across the sector regarding the timeframes within which students or staff can lodge a formal report of sexual assault or sexual harassment. Some universities specify that a formal report needs to be made within a specific timeframe, where other universities do not impose a time limit on reporting. Students who lodge a formal report of sexual assault or sexual harassment outside the university's specified timeframe should be advised that the university may be limited in any actions it can take. Where no timeframe has been specified by the university, students should be advised that a delay in reporting can affect the university's ability to take action.

MULTIPLE METHODS OF MAKING A FORMAL REPORT

Students should be offered several ways to make a formal report of sexual assault or sexual harassment. Technology has changed the way higher education is delivered, with some students spending less time, or no time, on campus. Safety apps and online reporting tools are just some of the methods by which students should be able to make a formal report; however, there should always be an option for students to make a formal report in person. At a minimum, students need to be provided with the name of a contact person or relevant safety unit, a relevant phone number and an email address through which they can make a formal report.

Regardless of the formal reporting mechanism, students should be provided with information on support services at all points of the formal reporting process.

Whichever method a student chooses to make a formal report, an acknowledgement that the report has been received and information about next steps should be given as soon as possible. Failure to acknowledge a report in a timely way can be re-traumatising for the person making the report.

REPORTS FROM THIRD PARTIES

Universities should consider how they respond to reports from third parties, such as a witness or bystander, support person, parent, friend or health service provider, and what action may and may not be taken. Those making reports as third parties are likely to have expectations about what action the university can take, so it's important for universities to advise them on what is – and what is not – possible.

Universities should also consider how they respond to anonymous reports of sexual assault or sexual harassment and the risk implications for all parties, even if an anonymous report is not sufficient to trigger a formal misconduct investigation.

³ Figures relate to students sexually harassed or sexually assaulted in a university setting in 2015 or 2016

REPORTS ABOUT THIRD PARTIES

Where a student makes a formal report about someone external to the university – for example, a supervisor on a work placement or a member of the broader community – the university may be restricted in its ability to undertake an investigation depending on its arrangements with that third party. In this situation, the student should be advised that this is the case.

Regardless of whether the university can undertake an investigation, support and assistance should be provided to the person making the report. A student may want to report the incident directly to the third-party organisation. Universities can seek to empower the student to do so where possible.

INFORMATION ON THE MISCONDUCT PROCESS

On receiving a formal report of sexual assault or sexual harassment, the university should consider several issues to determine next steps. These include but are not limited to:

- the health, safety and wellbeing of the person making the report;
- the health, safety and wellbeing of the university community;
- outcomes sought by the person making the report; and
- whether there is a legal duty to report the incident.

The reporting student should be advised of the university's threshold for determining whether to undertake a formal investigation prior to that determination being made. This threshold may include consideration of how long ago the alleged incident took place. Universities need to consider asking the reporting student how they would like to see their report resolved and make every effort to facilitate reasonable requests in a safe and supportive way.

Where the person making a report requests an outcome that is not possible, universities should advise them why it is not possible. This presents a valuable opportunity for universities to determine what might be an acceptable outcome for the reporting student.

Should the university decide to proceed with a formal investigation, it is critical that both the reporting student and the person about whom the report⁴ is made are provided with information on the nature and purpose of a university's misconduct process. Both parties should be advised that a university cannot determine whether a crime or a civil wrong has occurred; rather, it can only determine whether someone has, on the balance of probabilities, breached the university's code of conduct or other relevant policy or agreement. Universities have neither the authority nor expertise to conduct a criminal investigation: they cannot collect forensic evidence, nor can they compel witnesses to give evidence. University investigations are conducted at a lower burden of proof, being on the balance of probabilities rather than beyond reasonable doubt.

Both parties should be provided with information on potential sanctions that may be imposed should the university determine that misconduct has occurred.

Unlike a criminal law process which is in the public domain, a university disciplinary or misconduct investigation is a matter between the parties involved and the university. As a matter of natural justice, the reporting student is entitled to be kept informed of the progress of the investigation and its outcome.

The rights of the person about whom the report is made must also be respected; the reporting student should be informed that while they have a right to know the outcome of their report and discuss this with their support network, the process is confidential and should not be shared publicly, including on social media.

⁴Where the person about whom the report is made is also someone to whom the university has obligations.

PRECAUTIONARY MEASURES

When a formal report of sexual harassment or sexual assault is received, the university should consider whether urgent precautionary measures should be put in place, pending an investigation or other process. In determining these measures, universities will need to consider whether there is a risk to the safety of any person based on what has been reported (recognising that the report has not been investigated and may not be substantiated).

In addition to safety considerations, the university should talk with the reporting student about measures that may be taken to maximise their psychological safety by minimising their distress or anxiety. These measures might include moving one of the parties to alternative accommodation or moving to another class. Such measures may not be practical or reasonable in every case, and where a change of class is proposed, relevant university staff in that faculty or school may need to be consulted. The university needs to advise both parties that any precautionary measure of this nature that are proposed or adopted do not presume any level of guilt and are intended to offer protections for both parties while procedural fairness is respected.

If the person about whom the report is made declines to cooperate with a proposed precautionary measure of this nature, no adverse conclusions should be drawn. Both parties may want to seek legal advice before agreeing to any suggested precautionary measure.

Wherever possible, universities should seek to minimise disruptions to the reporting student to ensure they can remain in their course of study.

RESOLUTION OF A FORMAL REPORT

Depending on the nature and seriousness of a formal report, the university may consider several approaches to resolving it. Regardless of the approach taken by the university, it should reflect the needs of the person making the report and the safety of the university community.

A university's approach to undertaking a misconduct investigation is commonly outlined in the relevant policy or procedure document. Most commonly, a panel is convened to consider the alleged incident. Given the sensitivity of sexual assault and sexual harassment, the university should consider drawing on people that have expertise in specific areas, such as forensic psychology, trauma counselling, senior leadership and law.

Where the report involves students who are residents of a college or university hall, with the student's consent the university should consider engaging a senior representative from that residence to be involved in the investigation.

Both parties should be provided with a realistic timeframe for resolving the formal report.

The relevant policies, procedures, rules and appeals processes should allow for a university to determine that no further action is necessary following a formal report being made, for example if there is insufficient information to proceed with a formal investigation. The reporting student should always be advised when the university decides not to proceed with further action, and the reasons why that decision was made.

SANCTIONS

If someone is found guilty of misconduct, a sanction may be imposed by the university. These sanctions are specified in a university's policies, processes, by-laws or rules and vary from university to university. They range from receiving a caution, to suspension, exclusion or expulsion from the university.

As universities are autonomous institutions, it is the decision and responsibility of each university to determine what sanction will be imposed if a student is found guilty of misconduct.

Both parties need to be advised that person about whom the report is made has the right of appeal regarding the university's finding in a misconduct investigation. This process should align with the existing university administrative appeals process.

CRIMINAL INVESTIGATIONS

A student who either discloses or formally reports an experience of sexual assault needs to be advised of the option of reporting the incident to the police. Universities must respect the decision of the student whether to report to police.

As noted previously, the reporting student should be advised that there are fundamental differences between a criminal process and a university misconduct investigation. A university misconduct investigation seeks to determine whether misconduct has occurred, normally based on a standard of proof of balance of probabilities⁵, whereas a criminal process seeks to determine whether a crime has been committed to the standard of proof of beyond reasonable doubt.

Where a student advises the university that they have reported an incident to the police, universities should actively seek advice from the police about whether a parallel misconduct investigation would adversely affect any resulting criminal process.

A university may decide it will not pursue a misconduct investigation until the criminal investigation is complete. However, the university should consider which precautionary measures need to be put in place to ensure the reporting student's safety until the criminal process has concluded. Both parties should be advised by the university that the outcome of a criminal justice process may inform the university's response to the formal report, including an internal investigation.

Criminal justice matters typically take considerable time to resolve, and for those who have been sexually assaulted, this protracted period can be stressful. The reporting student may request that their university undertake a misconduct investigation in parallel to a criminal process. However, they should be advised that a university's misconduct investigation might adversely affect an external criminal process, and vice versa, and can also affect the rights of the person about whom a report is made to fair hearing. Universities should seek to ensure that an internal investigation does not jeopardise or compromise the criminal process.

Where the police advise a university that a parallel investigation should not take place, the university should abide by this request. An ongoing dialogue with police about such matters is strongly advisable.

If a university receives no formal advice from the police on the university proceeding with an internal misconduct investigation, the university should consider whether to pursue such an investigation, taking into account the reporting student's wishes and the safety of the university community.

⁵ The standard, or equivalent, used by a university to determine guilt in a misconduct investigation is commonly outlined in that institution's relevant policy.

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