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## Sexual Harassment and Assault Policy

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### 1. Background

The 2017 Australian Human Rights Commission (AHRC) report, “Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities,” demonstrates that sexual harassment and assault in higher education contexts, reflective of sexual violence figures in the broader Australian community, are far too prevalent. The report identifies that measures implemented in response to the experience of sexual harassment and assault must protect and support victims and survivors; and that the perpetrators of sexual harassment and assault must be sanctioned through misconduct disciplinary procedures. A key recommendation of the report is that higher education providers must engage in strategies to prevent sexual harassment and assault through education and by developing a culture of safety and respect that is enacted on campus and extends into the broader community.

The TEQSA Good Practice Note “Preventing and responding to sexual assault and sexual harassment in the Australian higher education – July 2020” provides support to higher education providers to better understand, prevent, identify and respond to sexual assault and sexual harassment.

The Note is structured around nine principles for preventing and responding to sexual assault identified through consultation with the sector, best practice examples and the literature.

1. Wellbeing and safety of the students and staff members who experience sexual assault or sexual harassment are the focus of prevention and response
2. Leadership and governance ensure institution-wide action
3. Policies and procedures are comprehensive, inclusive and implemented by well-trained staff
4. A safe environment is provided for all staff and students
5. Comprehensive education and information materials are widely available and regularly updated
6. Staff and students are trained to confidently recognize, prevent and respond to sexual assault and sexual harassment
7. Support is accessible and timely for all parties involved
8. Incident reporting options and responses to reports of sexual assault and sexual harassment are fair, timely and effective
9. Ongoing innovation, evaluation and improvement of SASH prevention and response measures

# Sexual Harassment and Assault Policy

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Gateway Business College (GBC) is determined to provide a safe and secure environment for all students and staff, and a range of support services for students or staff members who experience sexual harassment and/or assault. The prevention of sexual harassment and assault, and appropriately and sensitively addressing any instances of sexual harassment and assault are thus crucial to GBC's determination to ensure the safety, respect and wellbeing of staff and students.

This policy has been developed in response to the AHRC report "Change the Course" (2017) and the *TEQSA Guidance Note* including examples from other providers and sets out a framework to address the key areas of focus and improvement identified in the literature.

## 2. Purpose

This policy establishes GBC's commitment to staff and student safety, respect and wellbeing in regard to sexual harassment and assault. GBC will not tolerate sexual harassment and assault and classes them as instances of serious misconduct. In all cases, GBC's first priority is to support victims of sexual harassment and assault, if it occurs on-campus or off-campus, and whether the perpetrator is a GBC staff member or student, or not.

This policy provides definitions of sexual harassment and assault, and procedures for building an environment in which sexual harassment and assault is prevented, and victims have access to adequate support services. The policy outlines:

- the steps taken to educate staff and students to recognize, prevent and respond to sexual harassment
- the reporting process for staff and students, including where students should report an incident and how GBC staff are expected to respond.
- GBC's internal disciplinary procedures
- the circumstances in which GBC is required to report the incident to the police
- GBC's record-keeping process and commitment to confidentiality.

This policy should be read in conjunction with the *Student Complaints and Appeals Policy*.

## 3. Scope

This policy applies to all staff and students at GBC, as well as all contractors, visitors, and stakeholders associated with GBC or operating on the GBC campus.

## 4. Definitions

**Sexual assault:** Sexual assault includes a range of behaviours, all of which are unacceptable and constitute a crime. Sexual assault occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they have withdrawn their consent.

In New South Wales the definition of sexual assault is :

# Sexual Harassment and Assault Policy

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“Sexual assault occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, or if a child or young person under 18 is exposed to sexual activities.

Sexual assault is a crime.”

**Sexual harassment:** While the definition of sexual harassment varies across Australian (and other) jurisdictions, it generally involves an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which, in the circumstances, a reasonable person, aware of those circumstances, would anticipate the possibility that the person would feel offended, humiliated, or intimidated.

The Australian Human Rights Commission definition of sexual harassment is:

“Sexual harassment is any unwanted or unwelcome sexual behaviour, which makes a person feel offended, humiliated or intimidated.”

Sexual harassment is not interaction, flirtation or friendship which is mutual or consensual.”

**Alleged perpetrator:** someone who has been accused of misconduct, but has not yet been through an investigation process that follows the principles of procedural fairness.

**Higher Education Standards Framework (Threshold Standards) 2021:** the standards that represent the minimum acceptable requirements for the provision of higher education in or from Australia by higher education providers registered under the TEQSA Act 2011.

**Investigating Officer:** the designated staff member responsible for investigating a complaint or appeal.

**Student support officer:** A non-academic member of GBC staff responsible for providing students with information regarding non-academic support services. A student support officer can refer students to counsellors, general practitioners, and other health services.

**Victim/survivor:** In line with best practice, GBC uses victim/survivor to refer to those who have experienced sexual harassment or assault.

## 5. Principles

### 5.1 Compliance

This policy is designed to ensure that GBC complies with the following national and state legislation:

- Australian Tertiary Education Quality and Standards Agency Act 2011 (Cth)
- Higher Education Standards Framework (Threshold Standards) 2021
- National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code)
- Sex Discrimination Act 1984 (Cth)
- Work Health and Safety Act 2011 (Cth)
- Crimes Act 1900 (NSW)
- Anti-Discrimination Act 1977 (NSW)

## Sexual Harassment and Assault Policy

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### 5.2 GBC's commitment

GBC acknowledges that sexual harassment and assault, if and when it occurs, can have a devastating effect on the physical and/or emotional well-being of victims/survivors and is likely to have a detrimental effect on the higher education studies of victims/survivors. It is therefore the responsibility of GBC to ensure that processes are in place to respond to reports of sexual harassment and assault in a compassionate, timely, and fair manner.

GBC recognizes that a range of factors may contribute to sexual harassment and assault, including cultural attitudes about gender roles, the victim's/survivor's reluctance to report instances of sexual harassment or sexual assault, a lack of knowledge or understanding of the nature of sexual harassment and the need for strong leadership on the issue. GBC will educate students and staff, and establish a culture of safety and respect whereby sexual harassment and assault is prevented and addressed appropriately.

GBC's primary responsibility and commitment, at all times, is to support and protect victims/survivors of sexual harassment and assault. GBC encourages victims/survivors to report incidents regardless of whether they would like to involve police, as GBC will confidentially provide support services appropriate to their needs and requirements.

GBC takes disclosures of sexual harassment and assault seriously even if they occur off-campus, for example while travelling to campus, while on a GBC-affiliated trip or social event, or any context where the alleged perpetrator is a student or staff member at GBC.

If the incident or perpetrator is not connected with GBC in any way, GBC is nevertheless committed to providing students and staff with appropriate support.

GBC will not tolerate sexual harassment and assault perpetrated by a student or staff member.

Any behavior that constitutes sexual harassment and assault is in direct contravention of the GBC Code of Conduct.

Students and staff who engage in this behavior will be subject to GBC misconduct procedures and may face strong disciplinary action. Students and staff who are accused of sexual harassment or assault will be protected in line with the principles of procedural fairness.

The victim/survivor may report the matter to the police, in which case the perpetrator may face legal repercussions.

### 5.3 Supporting victims/survivors

GBC is committed to ensuring equitable access to higher education and will ensure appropriate responses to sexual harassment and assault that cater to students from groups who are under-represented in the student population, and to students who face extenuating circumstances that may affect their experience of higher education. This may include students who:

- have a disability or long-term illness
- experience difficult family circumstances
- have been unduly affected by socio-economic circumstances
- may be reluctant to report / discuss sexual harassment or sexual assault because of cultural mores
- identify as Aboriginal or Torres Strait Islander.

## Sexual Harassment and Assault Policy

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GBC is committed to supporting victims/survivors of sexual harassment and assault by ensuring the following:

- Incidents, on and off campus, may be reported at any time after the incident. There is no time limit on making a report
- The immediate response made to any disclosure of a sexual harassment or assault incident is appropriate
- The victim/survivor is assisted in seeking medical attention, counselling services, and legal, housing, and financial advice
- The victim/survivor is informed of their rights and potential avenues of action
- The disclosure is kept confidential and the victim/survivor is protected from any potential repercussions
- The victim/survivor is only required to disclose the incident once, and not asked to repeat it to multiple staff members.
- The victim/survivor is never asked to confront the alleged perpetrator of sexual harassment or assault
- The victim/survivor is kept fully informed at every stage of the investigation process
- Arrangements are made to ensure the victim/survivor and alleged perpetrator are not placed in the same classes or study spaces or workplace spaces.

The victim/survivor is given a free choice whether or not to involve the police. However, there are some cases in which GBC is legally required to report an incident to the police. See Procedures below for details.

### 5.4 Definitions of consent, sexual harassment, and sexual assault

#### 5.4.1 Positive Consent

GBC operates on an understanding of *positive consent*. Positive consent to sexual activity is defined by the Australian Institute of Family Studies as follows:

“Positive consent means that:

- there is a free agreement between all parties involved, with no coercion, force or intimidation of any kind; and
- an individual will actively display his/her willingness to participate and consent to sexual activity. Consequently:
  - submitting to sexual activity, or not actively saying "no", is not enough to demonstrate consent; and
  - the consent of the other party in a sexual encounter should never be assumed, and should be actively sought and affirmed.”

Australian Institute of Family Studies: <https://aifs.gov.au/sites/default/files/publication-documents/rs1.pdf>

#### 5.4.2 Sexual harassment

While the definition of sexual harassment varies across Australian (and other) jurisdictions, it generally involves an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which, in the circumstances, a reasonable person, aware of those circumstances, would anticipate the possibility that the person would feel offended, humiliated, or intimidated.

## Sexual Harassment and Assault Policy

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GBC abides by the Australian Human Rights Commission definition of sexual harassment:

*“Sexual harassment is any unwanted or unwelcome sexual behaviour, which makes a person feel offended, humiliated or intimidated.”*

Sexual harassment is not interaction, flirtation or friendship which is mutual or consensual.

Sexual harassment is a type of sex discrimination.

The Sex Discrimination Act makes it unlawful for a person to sexually harass another person in a number of areas including employment, education, the provision of goods and services and accommodation.

Sexual harassment may include:

- staring or leering
- unnecessary familiarity, such as deliberately brushing up against you or unwelcome touching
- suggestive comments or jokes
- insults or taunts of a sexual nature
- intrusive questions or statements about your private life
- displaying posters, magazines or screen savers of a sexual nature
- sending sexually explicit emails or text messages
- inappropriate advances on social networking sites
- accessing sexually explicit internet sites
- requests for sex or repeated unwanted requests to go out on dates
- behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.”

AHRC: <https://www.humanrights.gov.au/our-work/sex-discrimination/guides/sexual-harassment#sh>

### 5.4.3 Sexual assault

Sexual assault includes a range of behaviours, all of which are unacceptable and constitute a crime. Sexual assault occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they have withdrawn their consent.

GBC abides by the definition of sexual assault in the law of New South Wales, Australia:

*“Sexual assault occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, or if a child or young person under 18 is exposed to sexual activities.*

*Sexual assault is a crime.”*

Victim Services NSW:

[http://www.victimsservices.justice.nsw.gov.au/sexualassault/Pages/sexual\\_assault\\_victim.ms.aspx](http://www.victimsservices.justice.nsw.gov.au/sexualassault/Pages/sexual_assault_victim.ms.aspx)

# Sexual Harassment and Assault Policy

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## 6. Procedures

### 6.1 Responsibilities and delegations

In accordance with the *Higher Education Standards Framework (HESF) 2021*, the GBC Corporate Governance Board will ensure the ongoing development and maintenance of an institutional environment that fosters and supports the wellbeing of students and staff. To meet this accountability, the Corporate Governance Board has ensured that strong mechanisms are in place to prevent instances of sexual harassment and assault at GBC, that any instances of sexual harassment and assault that do occur are addressed appropriately, and that affected students are provided with the immediate and ongoing support they need.

Day-to-day responsibility for the implementation and monitoring of this policy is delegated by the Corporate Governance Board to the CEO, Dean, Human Resources, Compliance Officer and Student Support Officer.

The Compliance Officer must ensure that policies and procedures remain in line with best practice and legal and regulatory requirements. This may involve liaising with local authorities and advocacy groups.

The Dean must ensure that all measures outlined in this policy, pertaining to students and academic staff, are implemented. This includes educating students and academic staff on GBC policies, the Student Code of Conduct and support services. The Student Support Officer must ensure that all measures outlined in this policy are implemented, especially in terms of student education and the support services available to students affected by sexual harassment and assault. This will involve liaising with various positions and bodies within GBC as required.

Human Resources must ensure that all measures outlined in this policy, pertaining to GBC staff, are implemented. This will involve liaising with various positions and bodies within GBC as required.

### 6.2 Building a positive work and study environment

Through the following measures, GBC will build an environment in which the likelihood of sexual harassment and assault is reduced.

#### 6.2.1 *Ensuring that the work and study environment is comfortable and safe for all students and staff:*

- GBC will encourage respectful and responsible behavior through various means, including but not limited to:
  - All displayed material will use respectful language and imagery.
  - All GBC Codes of Conduct will be gender neutral and promote respect for all.
  - For further information refer to the *Diversity and Equity Policy*.
- GBC will promote the physical comfort, safety and wellbeing of students and staff through various means, including, but not limited to:
  - All spaces will be well-lit at all hours.
  - Campus security will be available at all hours.
  - CCTV will be in use at the front entrance.

## Sexual Harassment and Assault Policy

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- Alcohol intake will be limited at GBC social events where GBC is responsible for catering.
- Background checks will be conducted on all position candidates to ensure that GBC does not interview or appoint anyone who has been charged with sexual harassment or assault.

### 6.2.2 *Providing ongoing education on sexual harassment and assault:*

- GBC will engage an external expert provider of educative programs designed to prevent sexual harassment and assault for each Orientation week.
- The Student Handbook will contain guidance on the prevention of sexual harassment and assault, and links to appropriate initiatives, factsheets and support services.
- Students will be required to complete a learning module about consent through the learning management system.
- Ongoing education will occur through participation in initiatives such as the *Respect. Now. Always.* Campaign (Universities Australia - <https://www.universitiesaustralia.edu.au/project/respect-now-always/> )
- Promotion of a culture of *Respect. Now. Always.* will occur on campus through the display of posters, factsheets and support services.
- Educational materials will be available on the GBC website and student portal.
- During induction and professional development activities, all staff members will receive training on how to respond to disclosures of sexual harassment and assault in an appropriate manner and how to make appropriate referrals.
- On appointment, staff members will be advised of GBC's policy on sexual harassment and assault.

### 6.2.3 *Building relationships with groups concerned with sexual harassment and assault prevention:*

- GBC will reach out to local police to establish an open line of communication and cooperation.
- GBC will develop relationships with local providers of medical attention, legal advice, and financial, housing, and counselling services.
- GBC will engage external expert groups and/or consultants to audit its policies and procedures regarding sexual harassment and assault.
- GBC will benchmark sexual harassment and assault policies and procedures against industry and legal best practice.
- GBC will regularly review and update sexual harassment and assault policies and procedures to ensure they comply with the regulatory and legislative requirements.

## 6.3 Support options available to victims/survivors

### 6.3.1 *Counselling for students*

The GBC counsellor must be fully trained in best practice responses to disclosures of sexual harassment and assault. This is part of their selection criteria on recruitment and part of ongoing professional development.



## Sexual Harassment and Assault Policy

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Students are encouraged to attend an appointment with the counsellor even if they aren't sure if an incident that occurred constitutes sexual harassment or assault. The student counsellor will be open to discussing their concerns and how to proceed.

### *6.3.2 Support for students prior to disclosing an incident*

The following support services can be accessed at any point in the semester, by all students.

All students can access information, including the *Sexual Harassment and Assault Policy*, via the GBC website on various topics surrounding sexual harassment and assault. All students at GBC have access to medical, counselling, financial, housing, and legal support.

Students may book appointments with the GBC counsellor using the following contact details: 1300 724 526

Victims/survivors can also access counselling and support external to GBC such as Abuse and Neglect Service (VAN) for crisis, medical and counselling support (1300 792 755), St John of God Burwood Hospital (02) 9715 9200 and Burwood Police Station (02) 9745 8499.

Yarrow Place - Rape and Sexual Assault Service Phone: 1800 817 421

Shine SA Sexual Healthline Phone: 1300 883 793

The Adelaide Sexual Health Centre Phone: 7117 2800

Additionally, victims/survivors can access various phone helplines:

- National University Support Line 1800 572 224
- 1800 RESPECT (National Support Line) 1800 737 7328
- NSW Rape Crisis (NSW) 1800 424 017

### *6.3.3 Counselling for Staff*

GBC must support all staff who are victims/survivors of sexual harassment or assault.

The GBC counsellor provides counselling for both staff and students.

Staff are encouraged to attend an appointment with the counsellor even if they aren't sure if an incident that occurred constitutes sexual harassment or assault. The counsellor will be open to discussing their concerns and how to proceed.

### *6.3.4 Support for staff prior to disclosing an incident*

Staff may book appointments with the staff counsellor using the following contact details: 1300 724 526

Victims/survivors can also access counselling and support external to GBC such as Abuse and Neglect Service (VAN) for crisis, medical and counselling support (1300 792 755), St John of God Burwood Hospital (02) 9715 9200 and Burwood Police Station (02) 9745 8499.

Additionally, victims/survivors can access various phone helplines:

- National University Support Line 1800 572 224

## Sexual Harassment and Assault Policy

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- 1800 RESPECT (National Support Line) 1800 737 7328
- NSW Rape Crisis (NSW) 1800 424 017

### 6.3.5 Support after disclosing an incident

Any student or staff member who seeks to disclose an incident of sexual harassment or assault is encouraged to make an appointment with the counsellor.

In anticipation that staff members and students are likely to disclose to members of staff other than the counsellor, all staff members at GBC will have first-responder training and will be equipped to respond appropriately to any disclosure of sexual harassment or assault.

Students who disclose to academic staff will be referred directly to the counsellor, who will assist them in accessing medical, financial, housing, and legal support.

Staff who disclose to Human Resources or a senior member of staff will be referred directly to the counsellor.

The counsellor will confidentially record the details of the incident. This record will be used if the student or staff member decides to pursue the matter, so that the student or staff member is not re-traumatised through multiple retellings of the incident.

The counsellor will ensure that the student or staff member is fully aware of all avenues of action available to them, and may refer them to external medical, counselling, legal, housing, and financial support services.

The counsellor will also ensure that the student or staff member is fully aware of their rights as a student or staff member at GBC.

The counsellor will discuss with the student or staff member whether they would like to submit a report to GBC. If the student or staff member so desires, the counsellor will assist them in submitting an official report ('formal complaint') to:

- For reports by students: the Student Support Officer (see *Student Complaints and Appeals Policy* for further information).
- For reports by staff: Human Resources

Students will be supported academically. As requested, they will be given:

- Time off from class
- Special consideration
- Extensions on assignments

To request these measures, students must submit a written recommendation from any qualified counsellor, which may be the GBC counsellor. The counsellor will be available to assist students in submitting this request.

Support services provided by GBC or referred to by GBC will be fully accessible to all. This includes availability in languages other than English and availability to those with disabilities.

## 6.4 GBC responses to sexual harassment and assault

### 6.4.1 Interim measures

## Sexual Harassment and Assault Policy

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While a final response is being determined, GBC will make all reasonable efforts to ensure the safety and wellbeing of the person who reported the incident. This may include:

- re-arranging alleged perpetrator's classes to prevent interaction between the people involved;
- re-arranging the workplace to prevent interaction between the people involved;
- restricting alleged perpetrator's access to GBC campus and facilities.

This will be established immediately following receipt of a formal report.

### 6.4.2 Internal disciplinary procedure

On receiving a formal report, an appropriate member of staff will be assigned to the role of 'investigating officer'. This member of staff must present no conflict of interest in the issue (see *Conflicts of Interest Policy*). If no such staff members exist, an external expert must be engaged.

GBC will seek legal advice when investigating all allegations of sexual harassment and assault.

At all stages, the identity of the person who made the report will be kept confidential. The person who made the report will never be asked to attend a hearing or meeting with the alleged perpetrator.

The investigating officer will notify the person identified as the perpetrator that a complaint has been brought against them. They will be given 14 days' notice to attend a meeting with the investigating officer and two other members of staff, one of whom will be the counsellor.

The alleged perpetrator will be given an opportunity at this meeting to explain their behaviour. They may bring one support person with them to the meeting.

If the accused person is found to be in breach of any Code of Conduct in place at GBC, GBC has the right and responsibility to bring disciplinary action against them. This may include:

- Compulsory participation in education program about sexual harassment and assault
- Permanent re-arrangement of perpetrator's timetable to protect the safety and wellbeing of the victim/survivor
- Awards or degrees issued by GBC may be redacted
- Temporary suspension
- Expulsion from GBC
- Demotion
- Termination of contract of employment with GBC.

GBC is committed to reaching a decision within 10 days of the meeting.

The decision and rationale behind the outcome decision will be communicated in writing to all parties involved, along with information about further avenues through which either party can pursue the matter if they choose to do so.

See *Student Complaints and Appeals Policy* for details on how to appeal a decision.

## Sexual Harassment and Assault Policy

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### *6.4.3 Response to reports by alumni and reports of incidents from years ago*

GBC takes all reports of sexual harassment and assault seriously, including incidents that occurred years ago. GBC will offer appropriate support to the victim/survivor, and will make a record of the incident to use in review and improvement processes.

If a formal report is made and the alleged perpetrator is still a student or staff member, or can be contacted by GBC, the internal disciplinary procedure will be applied. GBC may be unable to do so if the alleged perpetrator cannot be reached.

### *6.4.4 Reporting to external authorities*

As far as possible, GBC will give the victim/survivor a choice in whether to file a police report. Victims/survivors may decide not to take the issue any further. GBC will ensure that they understand what process to expect if they do take the matter to the police. GBC staff members will not offer legal advice or speculation as to the outcome of a police investigation.

In the following cases, GBC is legally required to report the incident to the police and/or emergency services:

- If the victim/survivor is a danger to themselves or others
- If the alleged perpetrator is a danger to themselves or others
- If the victim/survivor or alleged perpetrator commit, or threaten to commit, a crime

GBC will ensure that the victim/survivor has full knowledge of what must be reported to external authorities, why it must be reported, and what result may come of the report.

Additionally, GBC is legally required to report “critical incidents” to the higher education regulatory body. Incidents of sexual assault of someone under GBC’s care in any activity associated with GBC are considered critical incidents. The identities of all people involved will be kept fully confidential.

### *6.4.5 GBC incident database*

GBC keeps an incident database on which all incidents of sexual harassment and sexual assault on and off campus and GBC’s responses to the incidents are recorded. All entries to the incident database are de-identified (names and any identifying traits are removed).

This database is used to monitor the effectiveness of GBC’s measures to prevent and respond to sexual harassment and assault.

## 7. Records

Records associated with this policy will be maintained according to the Records Management Policy.

# Sexual Harassment and Assault Policy

## 8. Related legislation

- Tertiary Education Quality and Standards Agency (TEQSA) Act 2011
- TEQSA Higher Education Standards Framework (Threshold Standards) 2021
- Australian Qualifications Framework (AQF).
- The National Code of Practice for Providers of Education and Training to Overseas Students 2018 (the National Code 2018)
- Sex Discrimination Act 1984 (Cth)
- Work Health and Safety Act 2011 (Cth)
- Crimes Act 1900 (NSW)
- Anti-Discrimination Act 1977 (NSW)

## 9. Review

This policy will be reviewed by the Corporate Governance Board and Academic Board annually, or more frequently should the Boards deem it necessary.

## Version Control

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