

A13 – ANTI-DISCRIMINATION, BULLYING AND HARASSMENT POLICY AND PROCEDURE



1 PURPOSE

BBI – The Australian Institute for Theological Education has a legal and moral responsibility to ensure that the Institute is a safe and just environment and that students and staff are not subject to discrimination, bullying and harassment in the workplace.

This policy rescinds *B4 Bullying and harassment policy*

The Institute is committed to upholding state and federal laws concerning discrimination, bullying, harassment, sexual assault and sexual harassment, vilification and victimisation, and eliminating conduct that does not conform with these laws and the Institute's principles of responsible and respectful behaviour.

2 BACKGROUND

2.1 *State and Federal Laws*: The following state/federal laws underpin this policy:

- [Antidiscrimination Act NSW](#) 1977 No 48
- [Fair Work Act](#) 2009
- [Crimes Act](#) 1900 NSW
- [Age Discrimination Act](#) 2004
- [Racial Discrimination Act](#) 1975
- [Sex Discrimination Act](#) 1984
- [Disability Discrimination Act](#) 1992
- [Australian Human Rights Commission Act](#) 1986

2.2 *HESF Standards*: The [Higher Education Standards Framework \(Threshold Standards\) 2015](#) Section 2.3 *Wellbeing and Safety* states:

1. *All students are advised of the actions they can take, the staff they may contact and the support services that are accessible if their personal circumstances are having an adverse effect on their education.*
2. *Timely, accurate advice on access to personal support services is available, including for access to emergency services, health services, counselling, legal advice, advocacy, and accommodation and welfare services.*
3. *The nature and extent of support services that are available for students are informed by the needs of student cohorts, including mental health, disability and wellbeing needs.*
4. *A safe environment is promoted and fostered, including by advising students and staff on actions they can take to enhance safety and security on campus and online.*
5. *There is a critical-incident policy together with readily accessible procedures that cover the immediate actions to be taken in the event of a critical incident and any follow up required.*¹

¹ https://www.legislation.gov.au/Details/F2015L01639/Html/Text#_Toc428368856, Accessed 26 August 2020.

2.3 Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector – TEQSA Good Practice Note

In relation to matters of Sexual Assault and Sexual Harassment (SASH) the Institute is guided by the nine principles outlined in this [TEQSA Good Practice Note](#). These principles are:

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 recognise, 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.”²

3 SCOPE

This policy and procedure apply to all students, staff, volunteers and guests of the Institute.

4 DEFINITIONS

Bullying: repeated unreasonable behaviour(s) towards an individual or a group, whether intentional or unintentional, that creates a risk to that individual’s or group’s health and safety. These behaviours may include, but are not limited to:

- abusive, insulting or offensive language, comments or conduct;
- spreading rumours about an individual or group;
- unjustified criticism undermining the value, performance, or work of an individual or group, and unjustified complaints concerning an individual or group;
- exclusion of an individual or group from study or work-related activities;
- belittling or humiliating comments;
- teasing, practical jokes, or pranks aimed at an individual or group;
- pressuring or cajoling others to act inappropriately;
- interfering with or damaging an individual’s property;
- making phone calls, sending texts, letters or e-mails that are aggressive, threatening, offensive or personally invasive;
- inappropriately threatening a student with low grades;
- setting impossible to meet deadlines or targets;
- withholding information essential for effective study or work performance; and
- minimising or failing to acknowledge an individual’s or group’s contribution.

² TEQSA. (2020) *Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector*. Guidance Note. Online: <https://www.teqsa.gov.au/sites/default/files/good-practice-note-preventing-responding-sexual-assault-sexual-harassment-v2-0-web.pdf?v=1600140035>, accessed 1 October 2020.

Community: all students, academic and professional staff, volunteers, guests, conference attendees, and staff and students of partner organisations.

Direct discrimination occurs when individual(s) or group(s) are treated differently, or less favourably than other individual(s) or group(s).

Discrimination is defined by the *Antidiscrimination Act NSW 1977 No 48* as 'treating someone unfairly because of a characteristic [or attribute] they have, or they are assumed to have, that is protected by New South Wales law.'³ (Refer to [A Quick Guide to Australian Discrimination Laws](#)) These characteristics include, but are not limited to:

- physical disability or impairment, including aid of an assistance animal;
- physical disfigurement, disorder, disease or illness;
- presumed disability;
- physical, emotional, mental, intellectual or psychiatric impairment;
- access to premises;
- access to education;
- sex, including pregnancy or breastfeeding;
- race;
- colour;
- nationality, national extraction or ethnic origin;
- social origin;
- age;
- age specific characteristics generally imputed to a person of a specific age;
- medical record;
- marital or relationship status;
- religious belief or activity;
- political opinion, belief or activity;
- lawful sexual activity;
- homosexuality;
- gender identity;
- intersex status;
- transgender status;
- gender history;
- HIV/AIDS status;
- family responsibility or family status;
- parenthood;
- employment status;
- trade union activity;
- irrelevant criminal record;
- carer's responsibilities; and/or
- association with, or relation to, a person identified based on any of the above.

Harassment is any unwelcome, unsolicited, unnecessary and usually repeated behaviour that offends, intimidates or humiliates an individual or group. It interferes

³ Anti-Discrimination NSW. "What is Discrimination" in *Discrimination*. Online at: https://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/adb1_about-discrimination.aspx#:~:text=Discrimination%20is%20treating%20someone%20unfairly,by%20New%20South%20Wales%20law. Accessed 8 September 2020.

with an individual's right to study or work, and can be based on any of the attributes listed above under [Definitions: discrimination](#).

Indirect discrimination occurs when policies and procedures appear to treat everyone equally, however, inadvertently disadvantage one or more individuals or groups.

Procedural fairness is concerned with the procedures used by a decision-maker, rather than the actual outcome reached – it requires a fair and proper procedure to be used when making a decision.

Repeated behaviour can encompass a range of behaviours of an individual or group over time.

SASH refers to sexual assault and harassment.

Sexual assault "...is a legal term used to describe a range of sexual offences, from showing indecent images to another person, to kissing or touching them, as well as penetration of the person's body with a body part or object... ..'Sexual assault' is often called other names like: Sexual abuse, rape, indecent behaviour, indecent assault, sexual molestation, ...touching, 'feeling up', sexual harassment. The legal term for all these kinds of offences is 'sexual assault'." ⁴

Sexual harassment is any unwanted, unwelcome, or uninvited behaviour of a sexual nature which is demeaning, compromising, humiliating, intimidating, distressful or embarrassing to the recipient.

The intention of the individual or group whose conduct caused offence is of less importance than the effect it has on the recipient.

Sexual harassment can be a single occurrence, or a persistent pattern of harassment. It can range from understated or subtle behaviour to explicit demands, or criminal assault. Sexual harassment includes, but is not limited to:

- unwelcome physical contact
- belittling comments concerning an individual's gender or sexual preference;
- the display of offensive material;
- claims or requests for sexual favours;
- offensive communication, whether written, spoken, by telephone or email, or any forms of social media;
- inappropriate puns, jokes, anecdotes or comments with sexual overtones;
- inappropriate, tasteless or offensive comments concerning a person's gender or sexual preference;
- insistent unwanted invitations;
- remarks/inquiries concerning an individual's sexual conduct and/or their personal relationship;
- offensive hand/body gestures;
- uninvited stares/leers potentially causing offence, humiliation, intimidation and distress to the recipient;
- any other unwelcome contact of a sexual nature where a reasonable person

⁴ Women's Legal Service NSW. 'What is sexual assault?' in *Sexual Assault: Your Rights and the Law*, p8. Sydney: Women's Legal Service NSW. Accessed online at: <https://www.wlsnsw.org.au/wp-content/uploads/Sexual-assault-your-rights-and-the-law-web.pdf>, on 2 September 2020.

Note: at the date of writing this policy the publication [Sexual Assault: Your Rights and the Law](#) is in revision. These revisions will reflect changes to the "What is Sexual Assault?" section of the publication to include changes to the current law, that is, the 2018 amendments to the *Crimes Act 1900* (NSW).

would expect that this unwelcome contact would potentially cause offence, humiliation, intimidation and distress to the recipient.

Victimisation: the mistreatment of individuals or groups because they:

- have made a complaint of discrimination, bullying or harassment;
- plan to make a complaint of discrimination, bullying or harassment; or
- have provided information or evidence supporting a complaint of discrimination, bullying or harassment.

Vilification: public acts that threaten or incite violence, hatred, or serious contempt or ridicule towards an individual or group based on, but not limited to:

- race, and national or ethnic origin;
- sexual orientation;
- intersex or transgender status;
- HIV/AIDS status; and/or
- religious belief, practice or affiliation.

5 POLICY

5.1 *The academic and workplace environment* is one in which the Institute will:

- 5.1.1 create and foster a safe and respectful environment for students, academic and professional staff, volunteers and guests where each person is treated with dignity, equality and respect;
- 5.1.2 provide effective procedures for complaints;
- 5.1.3 treat all discrimination, bully and harassment complaints in a confidential, sensitive, fair, and timely manner;
- 5.1.4 guarantee protection from any vilification, victimisation or reprisals;
- 5.1.5 recommend reporting incident(s) that breach this policy and the relevant state and federal laws; and
- 5.1.6 always promote appropriate standards of conduct.

5.2 *Code of Conduct – Students and Staff*: the Institute acknowledges that discrimination, bullying and harassment may involve actions and comments that are potentially offensive to some and not to others. As a result, the Institute community is required to comply with [C12 Code of Conduct – Students and Staff](#) policy and procedure.

5.3 *Forms and locations of discrimination, bullying and harassment* include, but are not limited to:

- 5.3.1 face-to-face and online teaching, seminars and conferences;
- 5.3.2 email and written correspondence, discussion board, chat room or blog postings, assessment items, and any form of inter-personal or online interaction;
- 5.3.3 mobile or landline phone calls, including incoming and outgoing calls, SMS/MMS messages and voice messages; and/or
- 5.3.4 the workplace, Institute-related functions, retreats or study tours.

5.4 *Discrimination, bullying and harassment* may:

- cause offence, humiliation, intimidation and distress to the recipient, potentially resulting in a hostile work environment;
- negatively affect the wellbeing of staff, students and guests;
- lead to increased absence of both staff and students;
- lead to the resignation of staff, or the withdrawal of students; and
- unfavourably affect the Institute's standing in the community.

5.5 *Discrimination* is an unacceptable behaviour at the Institute. Institute students, staff or community members, found to have treated an individual or group unfairly, will be subject to disciplinary action. (Refer to the Institute's [C12 Code of Conduct – Student and Staff](#).) In addition, they may be subject to legal action under state or federal legislation.

5.6 *Lawful discrimination*: It is lawful to discriminate under particular circumstances – for example, where a unit is delivered for Indigenous students only, or where an Indigenous student representative position is advertised for an Indigenous student only – in both of these cases only Indigenous student applicants would be accepted. Other examples may be found in the applicable laws listed at the beginning of this policy and procedure.

5.7 *Bullying and harassment* are unacceptable behaviours at the Institute. Institute students, staff or community members, found to have bullied or harassed an individual or group, will be subject to disciplinary action. (Refer to the Institute's [C12 Code of Conduct – Student and Staff](#).)

Bullying and harassment may be *intentional or unintentional* – in determining whether actions are intentional or unintentional, it is important to ascertain if the actions are:

- a. *unreasonable*, that is, where a reasonable person would expect that this unwelcome contact would potentially cause offence, humiliation, intimidation and distress to a recipient; and
- b. *persistent* – persistent actions may be specific actions, directed at an individual or group, varying in nature, and conducted over time; or, these may be isolated incidents and persistence is not always a factor.

5.8 *Sexual assault and/or harassment* are unacceptable behaviours and will not be tolerated at the Institute. Students, staff or community members found to have been involved in unsolicited, unwanted, unwelcome, uninvited behaviour, act, conduct or assault of a sexual nature will be subject to disciplinary action (refer to the Institute's [C12 Code of Conduct – Student and Staff](#)).

5.9 *Actions that do not constitute bullying and/or harassment*:

- 5.9.1 reasonable feedback on assessment tasks or other forms of academic work;
- 5.9.2 reasonable managerial action undertaken in the course of their daily work functions;
- 5.9.3 reasonable and everyday interaction between colleagues or classmates.

5.10 *Vilification*: certain forms of vilification are prohibited under federal and state anti-discrimination laws (refer to [Definitions: Vilification](#) above for a list of potential foundations for an act of vilification). Vilification could be carried out through:

- public displays of graffiti, posters, or stickers;
- publicly available published statements through print or electronic media or email;
- speeches given publicly, on radio or television, transcripts released in print, via email, or other electronic media; and/or
- abuse occurring in a public forum.

6 PROCEDURES

6.1 *Prevention*: The Institute acknowledges that prevention is the best method by which discrimination, bullying and harassment are stopped. We encourage all students and staff to familiarise themselves with [C12 Code of Conduct – Student and Staff](#) and to conduct themselves in a manner that is respectful and considerate of others and their property.

6.2 *Complaints*: All complaints will be treated seriously and dealt with confidentially, sympathetically, and in a timely manner (refer [Section 5.1](#) above).

6.3 *Discrimination, bullying and harassment complaints*: the procedure to be followed is:

6.3.1 *Record keeping of incidents*: The individual who is experiencing inappropriate and/or unwanted behaviour is encouraged to keep a detailed written record of all incidents in which they have experienced the behaviour(s), including:

- dates of the incidents;
- times and locations of the incidents;
- record of conversations or actions, for example, vilification, occurring in each incident; and
- any information which may be useful in the investigation of the matter.

6.3.2 *Reporting to authorised officer*:

a. *Students*: where students have been the recipient of inappropriate behaviour from another student, a staff member, a community member or a group they should report it to either:

- the Academic Dean; or
- the Director Student Services and Operations.

b. *Staff members*: where an Institute staff member has been the recipient of inappropriate behaviour from a student, another staff member, a community member or a group they should report it to either:

- the Principal/CEO; or
- the Deputy Principal.

c. *Community members*: where an Institute community member has been the recipient of inappropriate behaviour from a student, a staff member, another community member or a group they should report it to either:

- the Principal/CEO; or
- the Deputy Principal.

6.3.3 *Alternative reporting processes*

Where a complainant is not comfortable reporting under 6.3.2 above, for example, the complainant may wish to lodge a complaint about one or more of the Institute's Executive, they may report the incident(s) to either the Director Research, the Manager Financial Services, or the Registrar.

6.3.4 *Investigation*

The authorised officer who receives the report of potential misconduct will initiate an investigation into the incident to determine the circumstances, the nature and the severity of the incident. In serious cases of misconduct the authorised officer may form a committee of three, including the authorised officer, to further investigate the issues, and to determine whether the incident(s) constitute discrimination, bullying and/or harassment according to the definitions outlined above in [Section 4](#).

The committee members may be chosen from the:

- Director Student Services and Operations
- Academic Dean;
- Principal/CEO;
- Deputy Principal;
- Director Research;
- Manager Financial Services; or the
- Registrar.

The committee may choose to investigate the complaint further, interview parties to the incident where appropriate, and seek all data and perspectives in an appropriate manner.

6.3.5 *Continued occurrences of inappropriate behaviour*

If, following investigation and action by the Institute, the inappropriate behaviour continues, the Authorised Officer may seek further disciplinary action under the Institute's *Code of Conduct – Student and Staff*, the *Student Grievance Policy – Non-Academic*, or the *Academic Complaints Policy and Procedure*.

6.3.6 *Termination*

This disciplinary action may include, but is not limited to:

- termination of candidature in the case of a student of the Institute; or
- termination of employment in the case of a staff member of the Institute.

6.3.7 *Criminal behaviour*

If the incident potentially involves criminal behaviour, physical harm, or assault the authorised officer should:

- a. recommend to the student or staff member that they contact the NSW Police to report the incident;
- b. ensure that if the complainant is unwilling to report the incident to the police and the matter is a 'reportable offence', they report the incident to the police for further investigation; *and/or*
- c. ensure that any further action to be taken by the Institute follows the procedures outlined in this policy, and a committee is formed to investigate the incident.

6.3.8 *Sexual assault and harassment*: Where a member of the Institute's community has reported that they have been sexually assaulted or

harassed (refer definitions [Sexual assault, and Sexual harassment](#)) the Authorised Officer should:

- a. encourage the complainant to:
 - i. seek immediate medical care where appropriate;
 - ii. contact the police or other relevant authority and make a formal complaint/lay formal charges against the offender.
- b. support those members of the Institute community who have been recipients of sexual assault or harassment; and
- c. recognise that the decision to report sexual assault or harassment is entirely up to the complainant.⁵

6.3.9 *Police involvement*

If the matter has been reported to the police, the Institute may choose to suspend the person accused of committing the incident(s) until outcomes from the police investigation and/or legal proceedings have been finalised.

6.3.10 *Conviction of a crime*

The Institute may choose to take disciplinary action following the conviction of the perpetrator of a crime(s). This action may include, but is not limited to, termination of candidature in the case of a student, or termination of employment in the case of a staff member of the Institute.

7 RELAXING PROVISION

To provide for exceptional circumstances, the Academic Dean may relax any provision of this procedure and report these decisions to the next meeting of the Academic Board.

8 RELATED LEGISLATION

- [Antidiscrimination Act](#) 1977 NSW No 48
- [Crimes Act](#) 1900 NSW
- [Fair Work Act](#) 2009
- [Age Discrimination Act](#) 2004
- [Racial Discrimination Act](#) 1975
- [Sex Discrimination Act](#) 1984
- [Disability Discrimination Act](#) 1992
- [Australian Human Rights Commission Act](#) 1986

⁵ Refer to 'Reporting to Police,' in "*Sexual Assault: Your Rights and the Law*," p.20.

<https://www.wlsnsw.org.au/wp-content/uploads/Sexual-assault-your-rights-and-the-law-web.pdf>

9 RELATED INSTITUTE DOCUMENTS

- [A5 Academic Complaints Policy and Procedure](#)
- [A10 Academic Integrity Policy and Procedure](#)
- [C12 Code of Conduct – Student and Staff](#)
- [S4 Student at Risk Policy and Procedures](#)
- [R2 Records Management Policy](#)
- [S1 Staff Grievance Policy and Procedure](#)
- [S6 Student Grievance Policy – Non-Academic](#)

10 NOTES

Contact Officer	Academic Dean and Director Student Services Operations
Implementation Officer/s	Academic Dean
Approval Authority /Authorities	Academic Board
Date Approved	13/03/2018
Date of Commencement	13/03/2018
Date for Review	24 months after approval
Amendment History	20/10/2020 Previous policies extensively revised to form new policy and bring into line with current state and federal laws, to add HESF standards, and TEQSA Good Practice Guidelines on Sexual Assault and Harassment.
Key Stakeholders	Academic Board Academic Board Standing Committee Academic Dean Director Student Services and Operations All staff and students