

# S10 SEXUAL HARASSMENT POLICY AND PROCEDURE

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## 1 PURPOSE

BBI The Australian Institute of Theological Education (BBI-TAITE) is committed to the provision of a fair, healthy and safe workplace in which everyone is treated with dignity and respect and in which no individual or group feels offended, threatened or intimidated.

Everyone in the workplace has the right to a workplace that is safe and free from sexual harassment. Sexual harassment is a legally recognised form of sex discrimination.

Sexual harassment and sex discrimination are both unlawful under the Sex Discrimination Act and Fair Work Act. Sexual harassment in any form will not be tolerated. We recognise that sexual harassment can seriously affect workers' working lives by detracting from a productive working environment and can seriously impact on the health, confidence, morale, and performance of those affected by it, including anyone who witnesses or has knowledge of the unwanted or unacceptable behaviour.

## 2. BACKGROUND

The *Fair Work Amendment Act 2022* prohibits sexual harassment in connection with work. This prohibition applies where the sexual harassment occurred or is part of a course of conduct that commenced, **on or after 6 March 2023**.

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

- [Antidiscrimination Act NSW](#) 1977 No 48
- [Fair Work Act](#) 2009
- [Fair Work Amendment Act](#) 2022
- [Crimes Act](#) 1900 NSW
- [Sex Discrimination Act](#) 1984
- [Australian Human Rights Commission Act](#) 1986

## 3. SCOPE

This policy and procedure apply to all Directors, staff, potential staff, contractors, volunteers, clients (students) and guests of the Institute.

## 4. DEFINITIONS

**Complainant** is a person who alleges that they have been sexually harassed in connection with work.

**Respondent** is a person named in an application as having engaged in sexual harassment in connection with work.

**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'." <sup>1</sup>

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<sup>1</sup> 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.

**Sexual harassment** is any unwanted, unwelcome, or uninvited behaviour of a sexual nature that is demeaning, compromising, humiliating, intimidating, distressful or embarrassing to the recipient. A person sexually harasses another person if in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated if they:

- make an unwelcome sexual advance or an unwelcome request for sexual favours to the person harassed, and/or
- they engage in other unwelcome conduct of a sexual nature in relation to the person harassed.

The intention of the alleged harasser is not relevant. An advance, request or other conduct may be sexual in nature even if the person engaging in the conduct has no sexual interest in the person towards whom it is directed or is not aware that they are acting in a sexual way. Conduct of a sexual nature includes making a statement of a sexual nature to a person or in the presence of a person.

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 form 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, or
- any other unwelcome contact of a sexual nature where a reasonable person would expect that this unwelcome contact would potentially cause offence, humiliation, intimidation, and distress to the recipient.

**Victimisation** is the mistreatment of individuals or groups because they:

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

**Workplace** refers to:

- BBI-TAITE premises whether within or outside business hours
- any other physical location or virtual space where work-related activities take place (including conferences, online meetings, online learning platforms, phone calls, text messages, video calls, and social events), and
- transport used for business purposes.

## 5. POLICY

*Part 3-5A of The Fair Work Act 2009* “prohibits sexual harassment in connection with work. A person (the first person) must not **sexually harass** another person (the second person) who is:

- a worker in a business or undertaking, or
- seeking to become a worker in a particular business or undertaking, or
- conducting a business or undertaking,

if the harassment occurs in connection with the second person being a worker or seeking to become a worker in a particular business or undertaking, or being a person conducting a business or undertaking.

The prohibition applies where the sexual harassment occurred, or is part of a course of conduct that commenced **on or after 6 March 2023.**<sup>2</sup>

*Part 3-5A of the Fair Work Act 2009* “applies to sexual harassment ‘in connection with’ work. For example, *Part 3-5A* applies where a worker is sexually harassed by another worker or by another person when they are working (such as by a customer or client of the person’s employer or principal, a supplier of the employer or business, or a visitor to the worker’s workplace).<sup>3</sup>”

Managers and supervisors have an additional responsibility to ensure the safety and welfare of their employees including:

- modelling appropriate standards of behaviour
- building a culture of trust and respect
- taking steps to educate and make staff aware of their obligations under this policy and the law, and
- responding quickly and appropriately to any form of sexual harassment.

BBI-TAITE takes sexual harassment seriously and unacceptable behaviours 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 [AC-C12 Code of Conduct Policy and Procedure](#)).

## 6. PROCEDURES

**6.1 Prevention:** The Institute acknowledges that prevention is the best method by which sexual harassment and / or assault are stopped. In addition to this policy and procedure, all Director’s and staff are required to familiarise themselves with this policy and the Institute’s [AC-C12 Code of Conduct Policy and Procedure](#), and to conduct themselves in a manner that is respectful and considerate of others. All staff are also required to complete the Fair Work Commission’s [“Workplace Sexual Harassment”](#) module.

**6.2 Sexual assault or harassment complaints:** All complaints will be treated seriously and dealt with confidentially, sympathetically, and in a timely manner. Where an Institute staff member reports they have received inappropriate behaviour from a student, another staff member, a community member, or a group, they are encouraged to report it to either the Principal/CEO, or the Director Student Services and Operations as Authorised Officers.

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<sup>2</sup> Fair Work Commission. [The prohibition on workplace sexual harassment](#). Accessed online 4 July 2023.

<sup>3</sup> [What is sexual harassment in connection with work?](#) Accessed online 4 July 2023.

- 6.3 **Authorised Officer procedure:** 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, while recognising that the decision to report sexual assault or harassment is entirely up to the complainant<sup>4</sup>
  - b. assess if the complainant is willing to report the incident to the police, if so, the Authorised Officer should support the complainant through the processes of reporting the incident to the police for further investigation
  - c. support those members of the Institute community who have been recipients of, or witnesses to, sexual assault or harassment, and/or
  - d. ensure that any further action to be taken by the Institute follows the procedures outlined in this policy and that, where appropriate, a committee is formed to investigate the incident.

- 6.4 **Investigation:** If the complainant is unwilling to report the incident to the police, the authorised officer who receives the report of potential sexual harassment or assault will investigate the incident to determine the circumstances, the nature and the severity of the incident. The authorised officer will form a committee of three, including the authorised officer, to further investigate the issues, and to determine whether the incident(s) constitutes sexual harassment or sexual assault according to the definitions outlined above in Section 3.

The committee members may be chosen from the:

- Director Student Services and Operations
- Associate Dean (Academic)
- Principal/CEO
- Associate Dean (Courses)
- 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.

- 6.5 **Duty of care:** The Institute owes a duty of care to all parties/persons who might be affected in the alleged complaint, that is, both the complainant(s) and the respondent(s) until such times as the complaint has been resolved.

The Institute will assign a different Authorised Officer than the one(s) assigned to the complainant to the respondent to ensure equitable and fair treatment as the investigation progresses.

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<sup>4</sup> 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>

- 6.6 **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 [AC-C12 Code of Conduct Policy and Procedure](#).
- 6.7 **Termination:** This disciplinary action may include, but is not limited to:
- termination of employment in the case of a staff member of the Institute, or
  - termination of engagement with the Institute in the case of a non-worker.
- 6.8 **Police involvement:** If the matter has been reported to the police, the Institute may choose to suspend the person accused of committing the sexual harassment or assault until the outcomes from the police investigation and/or legal proceedings have been finalised.
- 6.9 **Conviction of a crime:** The Institute may choose to take disciplinary action following the conviction of the respondent of a crime(s). This action may include, but is not limited to, termination of employment in the case of a staff member of the Institute, or termination of engagement with the Institute in the case of a non-worker.
- 6.10 **Alternative reporting processes:**
- a. Where a complainant is not comfortable reporting under 6.2 above, for example, they 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.
  - b. Although it is encouraged, a complainant is under no obligation to report sexual harassment or sexual assault to the Institute and may choose instead to report the incident directly to the Fair Work Commission for further investigation.

## 7. APPLYING TO THE FAIR WORK COMMISSION

- 7.1 If a complainant applies to the Fair Work Commission (the Commission) to resolve a sexual harassment dispute, they are commencing a legal process.
- 7.2 Eligible complainants for alleged sexual harassment occurring on or after 6 March 2023 can apply to the Commission with applications made within two years (2) of the last incident of sexual harassment occurring. Complainants can confirm their eligibility through the Commission's website [here](#).
- 7.3 Applications can be made using [Form F75](#) for alleged sexual harassment occurring on or after 6 March 2023. Full application instructions can be found [here](#).
- 7.4 Once an application is received, a staff member from the Commission will call the complainant to discuss the case further. A copy of the complainants form and associated documents will be given to each business named on the form and each respondent to the sexual harassment allegations.
- 7.5 The Commission will consider the application and any responses or objections before deciding on the next steps to resolve the dispute.
- 7.6 The full process for sexual harassment dispute claims can be found on the Commission's website [here](#).

## 8. RELATED LEGISLATION

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

## 9. RELATED INSTITUTE DOCUMENTS

- [AC-A5 Academic Complaints Policy and Procedure](#)
- [AC-C12 Code of Conduct Policy and Procedure](#)
- [R2 Records Management Policy](#)
- [S1 Staff Grievance Policy and Procedure](#)

## 10 NOTES

Contact Officers	Associate Dean
Implementation Officer/s	Principal/CEO and Associate Dean
Approval Authority /Authorities	Board of Directors
Date Approved	24 July 2023
Date of Commencement	24 July 2023
Date for Review	24 months after approval
Amendment History	24/07/2023: New policy created
Key Stakeholders	Board of Directors Academic Board Principal/CEO Associate Dean Director Student Services and Operations All staff and students