SEXUAL HARASSMENT AND SEXUAL ASSAULT POLICY AND PROCEDURES

Purpose

Lincoln Institute of Higher Education (LIHE**) acknowledges that there is a high prevalence of sexual harassment and sexual assault in higher education providers across Australia and globally, which needs to be proactively addressed in order to ensure the safety and wellbeing of staff and students.

LIHE has a "Zero Tolerance "policy towards sexual harassment and sexual assault.

This policy defines sexual harassment and sexual assault, establishes the principles on which LIHE operates, and the procedures through which LIHE aims to prevent incidents from occurring. Additionally, it details the procedures through which near misses, victim/survivors of sexual harassment and/or sexual assault can make a report, what they can expect from LIHE, and potential disciplinary measures that may be applied. The policy also notes the circumstances in which LIHE is obliged to involve outside authorities, and how records shall be kept to maintain the privacy of those involved.

Anyone affected by sexual harassment and assault is likely to experience a range of negative effects that may have an impact on their studies and work. LIHE is committed to ensuring that those affected are properly supported and provided with opportunities for them to succeed either in their studies or at work.

This *Sexual Harassment and Sexual Assault Policy and Procedures* has been developed in response to the 2017 national report on sexual assault and sexual harassment at Australian universities (see "related documents" below). It responds to the key areas of focus and improvement identified by the report. In particular, it establishes LIHE's no tolerance approach to sexual harassment and assault, and its commitment to support anyone who is a victim/survivor of sexual harassment and/or assault.

**The trading name for the Lincoln Institute of Higher Education (LIHE) is Lincoln Institute of Higher Education (LIHE).

Scope

This policy applies to all staff and students at LIHE, and in addition all visitors, contractors, representatives of LIHE, and anyone operating on the LIHE campus in some capacity.

POLICY

Principles

Legislative Compliance

This policy complies with the following national and state legislation:

- *Sex Discrimination Act 1984 (Commonwealth)*
- *Work Health and Safety Act 2011 (Commonwealth)*
- *Crimes Act 1900 (NSW)*
- *Anti-Discrimination Act 1977 (NSW)*

Definition of Consent

LIHE observes the definition of 'positive consent' to sexual activity, defined by the *Australian Institute of Family Studies* as:

"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 after and affirmed."*

https://aifs.gov.au/sites/default/files/publication-documents/rs1.pdf

Consent is having the capacity to give free agreement and giving clear and unambiguous agreement, expressed outwardly through mutually understandable words of actions, to engage in a particular activity. Consent can be withdrawn by any party at any point and must be voluntarily given. It's not valid if a person is being subjected to actions or behaviours that elicit emotional, psychological, physical, reputational, financial pressure, threat, intimidation, or fear (coercion or force). Consent to engage in one sexual activity, or past agreement to engage in a particular sexual activity, can't be presumed to constitute consent to engage in a different sexual activity or to repeat a sexual activity. Consent can't be given by a person who doesn't have the capacity to give consent, including those who are intoxicated, unwell, distressed or otherwise disadvantaged. Circumstances in which a person doesn't consent to an act include, but aren't limited to, the following:

- The person submits to the act because of force or fear of force, whether to that person or someone else
- The person submits to the act because of the fear of harm of any type, whether to that person or someone else or an animal
- The person submits to the act because the person is unlawfully detained
- The person is asleep or unconscious

- The person is so affected by alcohol or another drug as to be incapable of consenting to the act
- The person is incapable of understanding the sexual nature of the act
- The person is mistaken about the sexual nature of the act
- The person is mistaken about the identity of any other person involved in the act
- The person doesn't say or do anything to indicate consent to the act
- Having initially given consent to the act, the person later withdraws consent to the act taking place or continuing

Definition of Sexual Harassment

LIHE observes the Australian Human Rights Commission's 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."*

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

Definition of Sexual Assault

LIHE observes the definition of sexual assault in NSW law:

"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. "

http://www.victimsservices.justice.nsw.gov.au/sexualassault/Pages/sexual_assault_victims.aspx

Sexual assault is any unwanted sexual behaviour that makes a person feel uncomfortable, threatened or scared. It encompasses:

- Rape – forced, unwanted sex or sexual acts
- Child sexual abuse – using power over a child or young person to involve them in sexual activity
- Indecent assault – indecent behaviour before, during or after an assault

LIHE's Approach to Sexual Harassment and Sexual Assault

The high prevalence of sexual harassment and assault in higher education sectors can be attributed to many different factors, as explored in the recent reports released by the Australian Human Rights Commission and other relevant bodies. One key factor is cultural attitudes about sex and gender roles, and another is a lack of strong leadership on the issues.

In response to this, LIHE is committed to educating staff and students on respectful relationships, sex and consent, as well as making clear to all staff and students LIHE's no- tolerance stance on harassment and assault. Through these measures LIHE shall build a culture that actively discourages sexual harassment and assault.

LIHE takes a no tolerance approach to sexual harassment and assault by students and / or staff. Sexual harassment and assault goes against LIHE's *Staff Code of Conduct* and *Student Code of Conduct*, which students and staff agree to abide by as a condition of their employment/enrolment. Misconduct procedures, including disciplinary action, apply if the Codes of Conduct are breached.

It is mandatory to report all sexual assaults to the police and hence sexual assault cannot be investigated by LIHE and shall be referred to the police immediately.

LIHE views its role in the studies and work of students and staff as not only a source of education and employment, but also a safe space and a source of support in the face of hardship. Hence, LIHE sees its primary responsibility in this area as the support of victim/survivors of sexual harassment and assault.

Reporting Sexual Harassment and Sexual Assault

LIHE shall ensure that victims/survivors of sexual assault have full access to reporting procedures that are compassionate, timely, and fair, and designed to counter the negative affect of the incident on their studies and/or work.

LIHE encourages all victim/survivors of sexual harassment and/or assault to report incidents, including where the:

- Victim/survivor wants to file a police report
- Victim/survivor does not want to file a police report
- Incident happened on campus
- Incident happened off campus

- Incident happened in a context affiliated with LIHE, for example at a LIHE event or involving a LIHE staff member or student
- Incident has no connection to LIHE.

Students and staff members identified in reports as perpetrators of sexual harassment or assault shall be treated in line with the principles of procedural fairness. If the matter is referred to the police, LIHE shall fully cooperate with a police investigation and decision.

Provision of Support

LIHE shall adhere to the following principles when providing support to victims/survivors of sexual harassment and/or assault:

- There is no time limit on making a report. Incidents may be reported at any time as soon as they occur.
- The response to a disclosure shall be sensitive and appropriate.
- LIHE shall provide assistance in seeking medical attention, counseling, and legal advice and advocacy
- LIHE shall inform the victim/survivor of their rights and the avenues of action that are available both within and external to provider
- The disclosure shall remain confidential
- The victim/survivor shall only be asked to disclose what happened once, not required to repeat it multiple times
- LIHE shall protect the victim/survivor from reprisal that may occur as a result of their disclosure or report
- LIHE shall never require the victim/survivor to confront the alleged perpetrator or as per legal proceedings
- LIHE shall keep the victim/survivor fully informed at all stages of the process
- LIHE shall make arrangements to ensure that the victim/survivor are not required to be in the same spaces as each other for teaching and learning purposes.
- LIHE shall give the victim/survivor a free choice about involving the police, with the exception of certain situations detailed in 'reporting to external authorities' below.

Equitable Access

LIHE recognises that, due to a range of external factors, staff and students belonging to underrepresented and/or disadvantaged groups may require additional support to ensure their equivalent access to sexual harassment and assault procedures. This may include the following:

- Aboriginal and Torres Strait Islander students
- Students who are part or full-time carers
- Students with disabilities
- Students experiencing mental or physical health concerns
- Mature-age students
- Students who are single parents
- International students

- Students for whom English is a second language
- Students who identify as LGBTI

LIHE shall ensure that appropriate measures are implemented to facilitate full access for all staff and students. All support services that LIHE provides or refers victim/survivors to be fully accessible, with varying language and ability needs taken into consideration.

PROCEDURES

Safe Environment

All signs and/or decorations at LIHE will use respectful language and imagery. Codes of Conduct, policies and procedures shall be gender neutral. The Student and Staff Codes of Conduct, in particular, shall require all staff and students to show respect for all.

For further information refer to the *Equity and Diversity Policy and Procedures.*

LIHE shall ensure the physical comfort and safety of students and staff through a range of measures, including:

- CCTV shall be in use at all entrance points.
- Campus security shall be available during business hours.
- All spaces shall be well-lit at all hours.
- At LIHE social events where LIHE is responsible for catering, alcohol shall not be provided.

Ongoing Education on Sexual Harassment and Assault

Education initiatives shall include:

- During Orientation week, LIHE shall engage an external expert provider of educative programs designed to prevent sexual harassment and assault
- Educational materials shall be available on the LIHE website and student and staff portals
- All new students shall undertake an online learning module about consent and respectful relationships through the learning management system
- Staff members shall receive training on induction and through ongoing professional development activities, specifically regarding:
    - How to respond to disclosures of sexual harassment and/or assault
    - Where to refer someone who discloses an incident of sexual harassment and/or assault.
- LIHE shall implement campus-wide education initiatives such as the *Respect. Now. Always.* campaign.

All information shall be made fully accessible to all, with varying language and ability needs taken into consideration.

Building External Relationships

LIHE shall build relationships with external groups involved in the prevention of sexual harassment and assault.

In doing so, LIHE shall ensure that it has an open line of communication and cooperation with parties who may be able to contribute to LIHE's best practice approach to preserving the safety and wellbeing of students and staff.
LIHE shall build relationships with:

- Local police
- Local providers of medical attention, legal advice, and financial, housing, and counseling services.
- External policy and procedure auditing groups and/or consultants with expertise in sexual harassment and assault
- Benchmarking partners for sexual harassment and assault processes.

Counselling

Both staff and students shall have access to the LIHE Counsellor.

The LIHE Counsellor shall be trained in trauma-informed, best practice approaches to handling disclosures of sexual harassment and assault. This shall be identified as part of the selection criteria for the position. The Counsellor shall receive further training and professional development in the area.

The Counsellor shall be available to discuss any topic, including discussing uncertainty around whether an incident is sexual harassment and/assault, and what options are available to a victim/survivor.

The Counsellor shal be available at all times during business hours. Appointments with the Counsellor can be made anytime.

Support Prior to Disclosing an Incident

Students and staff are able to access support without disclosing an incident of sexual harassment and/or assault that has occurred.

All students and staff have access to information at all times via the website and student and staff portals. This includes the *Sexual Harassment and Assault Policy* and various educational resources on the topic.

All students, as per the *Student Support, Wellbeing & Safety Policy ,* have access to a range of support services including the LIHE Counsellor, medical, financial, accommodation, and legal advice and advocacy.

LIHE also has connections to external services and groups through which students and staff may seek support.

Disclosing an Incident

LIHE strongly encourages any staff member or student who wishes to disclose an incident of sexual harassment and/or assault to make an appointment with the Counsellor.

LIHE acknowledges that disclosures are likely to be made to staff members other than the Counsellor. Hence, all staff members at LIHE shall be trained in responding to disclosures.

They shall be trained to refer the victim/survivor to the Counsellor and provide support to ensure that they make and attend an appointment with the counsellor.

Support After Disclosing an Incident

The Counsellor shall:

- Refer the victim/survivor to the appropriate medical, financial, accommodation, and legal advice and advocacy services. They shall provide ongoing support to ensure that the victim/survivor accesses the necessary services.
- Record the details of the disclosure. This record shall be confidential and shall only be used if the victim/survivor decides to the pursue the matter in order to ensure that the victim/survivor is not asked to do multiple re-tellings of the incident of sexual harassment and/or assault.
- Ensure that the victim/survivor is completely informed and aware of LIHE's policies and procedures, their rights as a staff member or student at LIHE, and all the options that are available to them.
- Discuss with the victim/survivor whether they want to submit an official report to LIHE and provide support in submitting the report as necessary.
- In the event that the victim/survivor is a student, assist the student in submitting a written request for academic support as outlined below.

LIHE shall ensure that students affected by sexual harassment and/or assault are supported academically, through measures including:

- Granting a leave of absence
- Granting special consideration
- Granting extensions on assignments.

To be granted academic support, students shall submit a request including a written endorsement by a qualified counsellor (this may be the LIHE Counsellor).

Investigation and Disciplinary Procedures

The identity of the person who made the report shall, at all times, be kept confidential. They shall never be asked to attend a meeting with the alleged perpetrator.

When a report of sexual harassment and/or assault is received, a member of senior staff who presents no conflict of interest in the case shall be assigned to the role of 'Investigating Officer'. If no staff members are deemed appropriate, LIHE shall engage an external expert.

The Investigating Officer shall notify the alleged perpetrator of the report and shall give them 14 days' notice to attend a hearing. At the hearing, the alleged perpetrator shall be able to present their side of the story. The hearing shall have in attendance the investigating office, two other members of staff, and a support person, should the alleged perpetrator choose to bring one.

The Investigating Officer shall review all evidence and come to a conclusion within 14 days of the hearing. If the Investigating Officer finds the alleged perpetrator to be in breach of any part of the LIHE Codes of Conduct, disciplinary measures may be implemented. These include:

- Requirement to participate in an education program about consent and respectful relationships
- Permanent e-arrangement of perpetrator's timetable to prevent interaction between the people involved
- Redaction of awards and/or degrees issued to the perpetrator by LIHE
- Temporary suspension
- Demotion
- Expulsion from LIHE
- Termination of contract of employment with LIHE.

All parties shall receive a written notification of the outcome of the investigation and the rationale behind the decision. The written notification shall have attached information about what other avenues of action are available to those involved, including internal appeals and external grievance resolution options.

Reporting of Historical Incidents

All reports of sexual harassment and/or assault shall be taken seriously. No matter when the incident occurred, LIHE shall ensure that the victim/survivor has access to the appropriate support services.

If the alleged perpetrator named in the report remains at LIHE as a student or staff member, or can be contacted by LIHE, the investigation and disciplinary procedure outlined above shall be applied.

If the alleged perpetrator cannot be reached, LIHE shall nonetheless make a record of the report. This record shall add to the data collected by LIHE to feed into review and improvement processes.

Interim Response to Report of Sexual Harassment and/or Sexual Assault

For the duration of the investigation into the report, LIHE shall ensure that the safety and comfort of the victim/survivor is protected. On receiving a report, LIHE shall implement reasonable measures to achieve this, including:

- Re-arranging the alleged perpetrator's classes to prevent interaction between the people involved
- Restricting the alleged perpetrator's access to LIHE facilities.

Reporting to External Authorities

LIHE shall give the victim/survivor a choice in whether to report the matter to the police to the greatest possible extent. The victim/survivor may decide that LIHE's internal procedures are enough to acknowledge and address what occurred.

However, there are cases in which LIHE is legally required to report an incident to the police and/or emergency services. These include the:

- Victim/survivor is in/a danger to themselves or others
- Alleged perpetrator a danger to themselves or others
- Victim/survivor or alleged perpetrator has committed, or threatens to commit, a crime

If a report to external authorities shall be made, LIHE shall ensure that the victim/survivor is fully informed of what shall be reported, why it shall be reported, and what process may be implemented following the report.

It is mandatory to report all sexual assaults to the police and hence sexual assault cannot be investigated by LIHE and has to be referred to the police immediately.

LIHE shall report critical incidents to the higher education regulatory body, and this includes incidents of sexual assault of someone under LIHE's care in any activity associated with LIHE. In a report to the regulatory body, the personal details of all people involved shall be completely confidential.

Incident Database

LIHE shall establish an incident database for recording all reported incidents of sexual harassment and/or sexual assault, and the details of the investigation and disciplinary procedure that LIHE carried out in response. This database shall allow LIHE to track the success of its anti-sexual harassment and assault initiatives.

The database shall not store any personal details of the people involved.

Policy Implementation and Monitoring

The Corporate Governance Board delegates responsibility for the day-to-day implementation of this policy to the CEO, Registrar, Human Resources Manager and Student Experience Manager.

The Corporate Governance Board shall review all periodic reports from relevant committees and staff members. Additionally, The Corporate Governance Board shall review all relevant student complaints, concerns raised by staff members, and instances of student or staff misconduct on an ongoing basis.
The Corporate Governance Board shall ensure that findings from these monitoring activities are taken into account in planning, quality assurance and improvement processes.

Compliance

All staff members and parties involved in course development and approval at LIHE are required to comply with this policy and its procedures, and with related policies and respective procedures. Non-compliance may result in disciplinary action.

File Number	LEA-GEN-COR-70052-D
Responsible Officer	Chief Executive Officer
Contact Officer	Student Experience Manager
Legislative Compliance	• *Higher Education Standards Framework (Threshold Standards) 2015* • *Tertiary Education Quality and Standards Agency Act 2011* • *Australian Tertiary Education Quality and Standards Agency Act 2011 (Commonwealth)* • *Sex Discrimination Act 1984 (Commonwealth)* • *Work Health and Safety Act 2011 (Commonwealth)* • *Crimes Act 1900 (NSW)* • *Anti-Discrimination Act 1977 (NSW*
Supporting Documents	• *Incident and Hazard Report*
Related Documents	• *Critical Incident Management Policy* • *Information for Students Policy and Procedures* • *Staff Work Health and Safety Policy & Procedures* • *Student Support, Wellbeing & Safety Policy* • *Student Counselling Policy* • *Student Grievances, Complaints and Appeals Policy*
Superseded Documents	
Effective Date	1 January 2022
Next Review	One year from the effective date

Definitions

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

Victim/survivor: Person who has been subjected to sexual harassment or assault.

Review Schedule

This policy shall be reviewed by the Corporate Governance Board annually.

Version History		
Version number:	Approved by:	Approval Date:
1.0	Corporate Governance Board	17/12/2020
1.1	Corporate Governance Board	22/02/2023