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| Code and Number | E.1.7 |
| Title of Document | Student Sexual Assault and Sexual Harassment Policy |

1. POLICY STATEMENT

ACN has zero tolerance for sexual assault and sexual harassment and is committed to providing an environment for staff and students that is free from all forms of discrimination and sexual harassment.

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2. PURPOSE

The purpose of this policy and procedure is to ensure that all staff and students:

- are aware of the behaviours that may constitute sexual assault and sexual harassment;
- know where to get support for themselves or others;
- know of the options of reporting sexual assault and harassment; and
- are aware of the steps that ACN may take when responding to and investigating an incident of sexual assault or sexual harassment.

3. SCOPE

- This policy applies to disclosures by students of sexual assault and sexual harassment, including:
 - anonymous disclosures;
 - disclosures about recent or historical events; and
 - disclosures about ACN related and non-ACN related conduct.
- This policy applies to complaints by students of ACN related sexual assault and sexual harassment including, but not limited to, conduct by:
 - current students; and
 - current staff members.

4. DEFINITIONS

Active Bystander intervention: seeing and recognising a potentially harmful situation and choosing to respond in a safe way that could prevent or stop the harm from happening or continuing.

Complainant: any person who makes a complaint of sexual assault or sexual harassment in accordance with this policy and procedure.

Complaint: a complaint of sexual assault or sexual harassment made in accordance with this policy and procedure.

Disclosure: a disclosure of sexual assault or sexual harassment made in accordance with this policy and procedure.

First responder: an ACN staff member trained to provide an appropriate and supportive response to a student making a disclosure of sexual assault or sexual harassment in accordance with this policy and procedure.

Interim Measures: a temporary order, intended to be of limited duration until the time that an investigation into a complaint of sexual assault or sexual harassment can be undertaken.

Misconduct: conduct which is prohibited under this policy and other ACN regulation

Respondent: a person whose conduct is the subject of a complaint of sexual assault or sexual harassment.

Staff: all people employed by ACN including both internal staff and external contractors.

Students: all people enrolled in a course of study at ACN including award and non-award programmes of study and CPD courses.

5. Sexual assault and sexual harassment are prohibited

Students and staff must not sexually assault or sexually harass any other person.

Behaviour that is intimidating, abusive, disrespectful or threatening, including sexual assault and sexual harassment, is not acceptable and will not be tolerated.

6. Emergency and ongoing assistance and support

Students who have experienced sexual assault or sexual harassment are able to seek assistance and support from an ACN staff member.

ACN will ensure that the safety and wellbeing of the person reporting an incident of sexual assault and sexual harassment will be ACN's priority.

ACN will refer students who have experienced sexual assault or sexual harassment to confidential counselling services provided by appropriately qualified professionals.

The contact details for emergency assistance for students who have experienced sexual assault or sexual harassment are set out in appendix 1.

7. Meaning of sexual assault

Sexual Assault is a broad term describing all sexual offences against adults and children. It also describes a specific offence when a person has sexual intercourse with another person without their consent.

- **Sexual intercourse** is the penetration of the vagina or anus of any person with any part of the body of another person, or any object. It is also the insertion of the penis into the mouth of another person and cunnilingus.
- **Aggravated sexual assault** is sexual intercourse with another person without their consent in circumstances of aggravation.

Circumstances of aggravation can include the:

- offender also seriously injuring or threatening to seriously injure the victim;
 - offender being in a group of people when they commit the offence;
 - offender breaking into a home to commit the offence;
 - offender kidnapping the victim to commit the offence;
 - victim being under 16 years old;
 - victim having a serious physical disability or cognitive impairment.
- **Indecent assault** is touching (or the threat to touch) a person's body in a sexual manner without consent by another person. For example it can include unwanted touching of a person's breast, bottom or genitals.
 - **Act of Indecency** is when a person does something of a sexual nature with or towards another person or makes the person do something of a sexual nature towards them. For example, it can include the offender masturbating in front of another person.

Sexual assault can happen to people of all ages, genders and sexualities, within or outside a relationship. Sexual assault is an abuse of power, and is never the fault of the person who does not consent to the sexual behaviour.

For the purposes of this policy, a person will be considered to have sexually assaulted another person if:

- the other person did not consent to the first person's actions; and
- the first person:
 - knew that the other person did not consent; or
 - should reasonably have known, having regard to all the circumstances, that the other person did not consent.

For the purposes of this policy, attempting or threatening to engage in any of the above conduct may also constitute sexual assault.

8. Meaning of consent to a sexual activity

A person "consents" to a sexual activity if the person freely and voluntarily agrees to the sexual activity. A person is unable to give consent when:

- asleep or unconscious
- significantly intoxicated or affected by drugs

- unable to understand what they are consenting to due to their age or intellectual capacity
- intimidated, coerced or threatened
- unlawfully detained or held against their will
- they submit due to the person being in a position of trust.
- the person is pressured to engage in the sexual act by another person, who is in a position of power or authority over them.

Students and staff must make sure that consent to a sexual activity is clear and obvious. The fact that a person does not say 'no' to, or does not physically resist, a sexual act does not of itself mean that they consent to it.

A person is free to withdraw their consent at any time prior to or during a sexual activity, for any reason.

9. Meaning of sexual harassment

Sexual Harassment: a person sexually harasses another person if:

- The person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- the person engages in other unwelcome conduct of a sexual nature in relation to another person (including making a statement of a sexual nature to, about or, in the presence of another person);

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.

ACN understands that sexual harassment includes but is not limited to:

- leering or staring
- obscene sexual communications in any media including social networking
- persistent following or stalking
- persistent unwelcome invitations, telephone calls or emails
- sending of sexually explicit emails or text messages or distributing sexually explicit material
- sexually suggestive words, gestures or sounds
- unwanted ongoing declarations of affection or approaches for affection, including gifts
- displaying, sending or requesting sexually explicit pictures or posters
- making or distributing a sexually explicit audio recording or photo-shopped image of another person;
- unwelcome behaviour or contact of a sexual nature which offends, intimidates, embarrasses or humiliates an individual;

Sexual harassment can occur through email, text, messaging, social media posts, online chats and other forms of electronic communication.

10. Options for reporting an incident of sexual assault and sexual harassment

Students who have experienced sexual assault or sexual harassment have a right to decide whether they want to report the incident(s) to ACN or not.

There are three different options of reporting an incident, and the decision about whether to do one, two or all three of the following rests with the person making the report. They may choose to:

- make a disclosure to ACN
- make a complaint to ACN
- make a police report.

11. Making a disclosure of sexual assault or sexual harassment

A disclosure of any incident of sexual assault or sexual harassment can be made to any ACN staff member (between 9am to 5pm, Monday to Friday) or by email to the Compliance Officer at report.sash@acn.edu.au.

Students can elect to make a disclosure of sexual assault or sexual harassment anonymously.

A student who chooses to make a disclosure of sexual assault or sexual harassment may later decide to make a complaint to ACN about the same incident.

ACN is committed to supporting students who disclose sexual assault or sexual harassment.

ACN will not investigate a disclosure of sexual assault or sexual harassment, except in certain limited circumstances, for example when a complaint is made in relation to the conduct of an ACN staff member or where there may be a significant risk to others.

In the event that ACN needs to investigate a disclosure, ACN may contact the person who made the disclosure to ask whether they would be prepared to make a complaint or to participate in an investigation process.

12. Making a Complaint of sexual assault or sexual harassment

A complaint of any incident of sexual assault or sexual harassment can be made to any ACN staff member (between 9am to 5pm, Monday to Friday) or by email to the Compliance Officer at report.sash@acn.edu.au.

Students who have experienced sexual assault or sexual harassment should make a complaint (rather than a disclosure) if:

- they want ACN to investigate or to take specific action; and
- the complaint is about ACN related conduct by
 - an ACN student(s); or
 - a current ACN staff member(s)

Students do not have to specify what action they want ACN to take in order to make a complaint. If students choose to specify what action they want ACN to take, ACN may decide to take that action or some other action, as appropriate.

ACN is committed to supporting students who complain about sexual assault or sexual harassment.

In most circumstances, a student wishing to make a complaint of sexual assault or sexual harassment will need to provide their name. ACN cannot act on anonymous complaints of sexual assault or sexual harassment unless:

- it is not necessary to identify the student in order to properly respond to the complaint; or
- there is independent documentary or other evidence supporting the complaint and the allegation can be tested fairly.

Students who have experienced sexual assault or sexual harassment should be aware that ACN's investigations process is not a substitute for a criminal investigation process.

13. Making a police report of sexual assault or sexual harassment

ACN will support the right of students who have experienced sexual assault or sexual harassment to decide whether they want to report the incident to the Police, or not.

A person's decision to make a report to the Police will not necessarily preclude ACN from investigating or taking action in response to sexual assault or sexual harassment.

14. Confidentiality

ACN will keep confidential all information relating to a disclosure or a complaint of sexual assault or sexual harassment unless the student consents to the disclosure of part or all of the information for a specified purpose.

In exceptional circumstances, for example when a complaint is made in relation to the conduct of an ACN staff member or where there may be a significant risk to others, ACN may be required to make a report of an incident to the police.

15. Active bystander intervention

ACN encourages and values safe active bystander intervention by staff and students to prevent or stop sexual assault and sexual harassment from occurring or continuing.

The steps involved in safe active bystander intervention are:

- noticing the situation – paying attention to what is going on nearby;
- deciding if it is a problem – investigating whether someone might need help, and checking with people around if unsure;
- accepting responsibility to take action – not assuming someone else will do something;
- making a plan to step in – indirectly or directly confronting the issue, without being aggressive or putting oneself or others in danger.

16. No victimisation

A person must not victimise or otherwise subject another person to detrimental action as a consequence of that person:

- making a disclosure or a complaint of sexual assault or sexual harassment;
- providing information about a disclosure or a complaint of sexual assault or sexual harassment;
- supporting a person who has made a disclosure or complaint of sexual assault or sexual harassment; or
- engaging in safe active bystander intervention

A breach of this clause may result in disciplinary action under [E.1.3 Student Management](#) or under [B.2.6 Disciplinary Action](#)

17. Opportunity to be heard

Complaints of sexual assault and sexual harassment will be resolved sensitively, fairly, confidentially and with a minimum of disruption, while following the principles of procedural fairness.

Complainants and respondents will have a reasonable opportunity to state or respond to a complaint orally and in writing, and to provide any documents relevant to the complaint.

Complainants and respondents may be accompanied to any meeting by a support person, if they wish.

At no time will the complainant and respondent be required to meet with or to participate in any activity with one another, unless they have both given their prior informed consent.

18. Interim measures

In order to minimise the potential for harm to any person, the relevant manager of education investigating a complaint may take interim measures against a student in response to:

- a complaint of sexual assault or sexual harassment against the student, pending:
 - resolution of the complaint;
 - investigation of the complaint;
 - the conclusion of an internal disciplinary process; or
 - criminal investigation and hearing; or

As an interim measure the relevant manager of education may:

- suspend a student / staff member from entering the College;
- restrict a student's access to particular classes;
- prohibit a student from speaking to or approaching another person (including by social media, email, letter or through a third party);

Interim measures must be:

- taken on a case-by-case basis;
- set for a fixed period of time; and
- reasonable and proportionate

Interim measures may be taken summarily, and the relevant manager of education implementing interim measures is not required to provide a hearing to the student before making a decision.

Interim measures once taken will continue to apply until they are revoked or varied by the relevant manager of education or expire in accordance with their terms.

Interim measures should not be interpreted as anticipating or revealing the outcome of any ACN or criminal investigation process.

A student who is the subject of interim measures may choose to lodge an appeal against such measures in accordance with clause 4.2 of the [E.1.13 Student Grievance Handling - Academic and Non Academic](#) policy.

19. Vexatious complaints

A student must not make a vexatious or malicious complaint of sexual assault or sexual harassment.

A complaint will be considered vexatious or malicious if the student makes it:

- knowing it to be false; and
- for the primary purpose of damaging ACN or the person against whom the complaint is made.

Making such a complaint may result in disciplinary action under clause 3.18. of the [E.1.3 Student Management](#) policy.

20. Breach of this policy

ACN may take disciplinary action against any person who is knowingly involved in a breach of this policy.

Where the person is a student, this may include disciplinary action taken under clause 3.18. of the [E.1.3 Student Management](#) policy.

Where the person is staff member, this may include disciplinary action taken under the [B.2.6 Disciplinary Action](#) policy.

21. Record Management

ACN will keep appropriate records of all disclosures and complaints of sexual assault and sexual harassment in a secure location.

Access to information relating to a disclosure or complaint of sexual assault or sexual harassment will be restricted to ACN staff who are authorised and have a need to access and use the information in order to carry out their responsibilities under this policy and procedure.

ACN will only collect, store and use de-identified information about disclosures and complaints by students to identify trends and to develop targeted responses to sexual assault and sexual harassment.

22. Education and Training

ACN will ensure that staff and students are informed of this policy and have access to the information and training needed to both prevent and respond to incidents of sexual harassment.

All staff members within the Education Division will undertake training in providing a compassionate, supportive and appropriate response to individuals making a disclosure of sexual assault or sexual harassment.

ACN students and staff will undertake mandatory online training in the areas of sexual consent, communication and relationships and bystander intervention.

PROCEDURE

This procedure sets out the process for reporting an incident of sexual assault and sexual harassment and how staff must respond in the event of a sexual assault and/or sexual harassment incident.

1. Responding to emergencies

Emergency contact information for students who have experienced sexual assault or sexual harassment is set out in appendix 1 of this policy and procedure.

2. Making a disclosure of sexual assault or sexual harassment

A student who has experienced sexual assault or sexual harassment can make a disclosure to any ACN staff member (between 9am to 5pm, Monday to Friday) or by email to the Compliance Officer at report.sash@acn.edu.au.

Where required, staff members will assist a student to make a disclosure.

Students may make a disclosure anonymously by asking a staff member to make the disclosure on their behalf, or by calling from a private number.

In the event that ACN needs to investigate a disclosure, ACN will contact the person who made the disclosure to ask whether they would be prepared to make a complaint or to participate in an investigation process.

3. Making a complaint of sexual assault and sexual harassment

A student who has experienced sexual assault or sexual harassment can make a complaint to any ACN staff member (between 9am to 5pm, Monday to Friday) or by email to the Compliance Officer at report.sash@acn.edu.au.

Where required, ACN staff members will assist a student to make complaint or may make a complaint on behalf of a student.

A student who has made a complaint of sexual assault or sexual harassment is free to withdraw it at any time. However, if ACN has already commenced misconduct proceedings against a student or staff member as a result of the complaint, those proceedings will be completed.

Students who make a complaint of sexual assault or sexual harassment must provide sufficient details of their complaint to permit ACN to conduct a preliminary assessment and investigation, as appropriate.

4. Supporting students who have experienced sexual assault or sexual harassment

In the event that a student notifies an ACN staff member of a sexual assault or sexual harassment incident the ACN staff member will:

- Advise the student of support available including internal personal and academic support and of the external support and counselling services listed on the ACN website and;
- Advise the student of their right to make a disclosure or complaint.

Students and staff, can support a student who has experienced sexual assault or sexual harassment by:

- listening without interrupting;
- letting them express how they feel and respecting the words they use in reference to the incident;
- letting the student know they believe what the student is telling them and acknowledging the student's distress;
- letting the student know that the incident was not their fault;
- respecting their decisions;
- directing them to the available support services.

5. Investigating a complaint of sexual assault or sexual harassment

Complaints made in relation to sexual assault or sexual harassment will be escalated to the relevant education manager.

Upon receiving a complaint of sexual assault or sexual harassment the relevant Education Manager will compile all relevant information in relation to the complaint in accordance with clause 4 of the [E.1.13 Student Grievance Handling - Academic and Non Academic](#) policy.

Where the complaint relates to the conduct of a staff member, the relevant Education Manager will refer the complaint to Human Resources for investigation.

The relevant manager will review the complaint and determine the appropriate course of action to deal with the matter. This assessment may involve, as appropriate:

- convening discussions with the relevant parties;
- implementing interim measures; and / or
- referring the complaint to the Student Management Subcommittee (SMSC) for handling.

The relevant manager will consult with the complainant and the respondent during the investigation process.

Complainants and respondents may be accompanied to any meeting by a support person, if they wish.

Sexual assault and most sexual harassment by students will constitute student misconduct.

The relevant Education Manager will not refer a complaint to SMSC without consulting the complainant.

If a complaint about a student is referred to SMSC, the relevant Education Manager will update the complainant regularly on the progress of the misconduct proceedings.

If the complaint is not referred to SMSC, ACN will not be able to take any disciplinary action against the respondent.

6. Outcome of a Complaint

The outcome of a complaint of sexual assault or sexual harassment will be determined by the findings of any investigation, the seriousness of the complaint and the wishes of the complainant.

For complaints that result in misconduct proceedings:

- clause 3.18. of the [E.1.3 Student Management](#) policy sets out the penalties from findings of student misconduct;
- the [B.2.6 Disciplinary Action](#) policy sets out the penalties from findings of staff misconduct; and
- the [E.1.13 Student Grievance Handling - Academic and Non Academic](#) policy sets out subsequent rights of appeal.

The relevant manager of education will inform complainants of the outcome of misconduct proceedings against students and staff on a confidential basis. Where possible, this information will be delivered in person, to allow the complainant to ask questions and seek clarification about the effect of the outcome.

If the complainant does not provide sufficient detail or evidence of a complaint about a student or staff member to enable the alleged conduct to be properly investigated, a finding of misconduct will not be made and ACN will be unable to take disciplinary action against the respondent.

If a finding of misconduct is not made, the relevant manager of education will determine whether the complaint is appropriate for assisted resolution. Assisted resolution may include, an apology,

mediation or conciliation, an agreed plan of action to avoid further incidents, and implementing awareness-raising or educational sessions about behaviour.

In most circumstances, mediation and conciliation will be considered inappropriate for resolving complaints of sexual assault.

7. Interim measures

If the relevant manager of education imposes interim measures against a student, they must provide a written notice to the student. The written notice must:

- specify the terms of the interim measures;
- specify the period of the interim measures;
- summarise the reasons for the interim measures; and
- provide an electronic link to this policy and procedure.

An appeal against an interim measure can be lodged in accordance with clause 4.2 of the [E.1.13 Student Grievance Handling - Academic and Non Academic](#) policy. Appeals will be considered by the Executive Director, Education (EDE).

8. Review

A review of this policy and procedure will be undertaken within one year of the date of commencement.

REFERENCES

Universities Australia (2018). Guidelines for University Responses to Sexual Assault and Sexual Harassment. Retrieved from <https://www.universitiesaustralia.edu.au/uni-participation-quality/students/Student-safety/Guidelines-for-university-responses-to-sexual-assault-and-sexual-harassment#.W4SWfegzaUk>

NSW Justice

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

APPENDICES

[Appendix 1 – Reporting Sexual Assault and Sexual Harassment Flowchart](#)

[Appendix 2 - Emergency contacts and external support services](#)

RELATED POLICIES AND PROCEDURES (List code/number and title)

[E.1.3 Student Management](#)

[B.2.6 Disciplinary Action](#)

[E.1.13 Student Grievance Handling - Academic and Non Academic](#)

[E.1.19 Critical Incident – Students](#)

RELEVANT LEGISLATION

[Sex Discrimination Act 1984](#)

[NSW Crimes Act 1990](#)

[Anti-Discrimination Act 1977 \(NSW\)](#)

[Australian Capital Territory – Discrimination Act 1991](#)

[Queensland – Anti-Discrimination Act 1991](#)

[South Australia – Equal Opportunity Act 1984](#)

[Victoria – Equal Opportunity Act 2010](#)

[Tasmania Anti-Discrimination Act 1998](#)

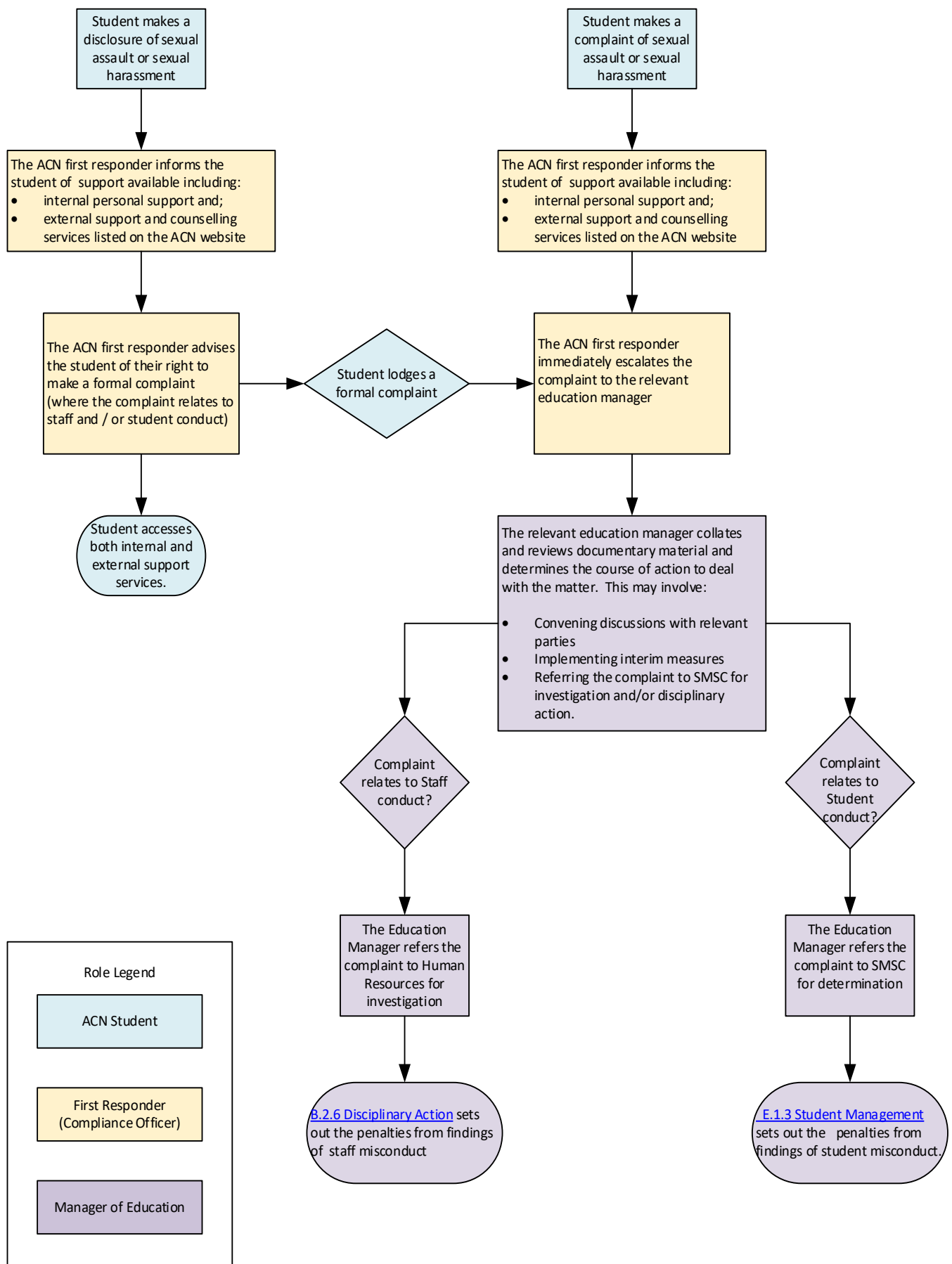
[Western Australia Equal Opportunity Act 1984](#)

[Northern Territory Anti-Discrimination Act 1992](#)

[Privacy Act 1988](#)

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| Responsibility for Review | Education Management Committee |
| Ratification | Executive Leadership Team |
| Date of Issue | July 2019 |
| Date Last Reviewed | |

Appendix 1 Reporting Sexual Assault and Sexual Harassment Flowchart



Appendix 2 – Emergency contacts and external support services

- (1) In an emergency, students should contact emergency services by dialling triple zero (000).
- (2) A list of external services, which can offer you support, counselling and information whether you're seeking help for yourself, a friend, relative, or colleague.

| Sexual assault counselling information | | |
|---|---|---|
| 1800 RESPECT | Toll-free 1800 737 732 | National Sexual Assault, Domestic Family Violence Counselling Service Professionals are also encouraged to use 1800RESPECT for support with secondary referrals or vicarious trauma. |
| ACT | | |
| Canberra Rape Crisis Centre (CRCC) | (02) 6247 2525 | Confidential counselling and support for women and children who have experienced any form of sexual assault recently or in the past. Crisis phone support available from 7am until 11pm, 7 days a week |
| Service Assisting Male Survivors of Sexual Assault (SAMSSA) | (02) 6247 2525 Mon-Fri, 9am – 5pm | Counselling and support to men over the age of 16 in the ACT and surrounding region, and their supporters, to recover from the effects and impacts of sexual assault or childhood sexual abuse. |
| The Nguru Program | (02) 6247 2525 | Provides culturally appropriate counselling for members of the Aboriginal and Torres Strait Islander community, who have experienced sexual assault, and their families. |
| NSW | | |
| NSW Rape Crisis Centre | 1800 424 017 | 24/7 telephone and online crisis counselling service for anyone in NSW - men and women - who has experienced or is at risk of sexual assault and their non-offending supporters. This support service is provided by Rape and Domestic Violence Services Australia. |
| North Sydney Sexual Assault Services | Business hours: 02 9462 9477 After hours: via the RNSH switch 02 9926 7111 | Forensic and counselling service for adult victims of sexual assault. |
| NT | | |

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| Sexual assault referral centres (SARC) | Darwin Phone: 8922 6472 Katherine Phone: 8973 8524 Tennant Creek Phone: 8962 4361 Alice Springs Phone: 8955 4500 | Counselling to both adults and children who may have experienced (recently or many years ago) any form of sexual assault. |
| QLD | | |
| Sexual Assault Helpline | 1800 010 120 7:30 am – 11.30pm, 7 days | The Queensland Sexual Assault Helpline offers telephone support and counselling to anyone, women, men and young people, who have been sexually assaulted or abused. |
| SA | | |
| Yarrow Place Rape and Sexual Assault Service | (08) 8226 8777 Toll-free in SA: 1800 817 421 | Yarrow Place Rape and Sexual Assault Service is an inclusive service welcoming people who have been sexually assaulted. Services are for any person 16 years and over at the time of the sexual assault. |
| TAS | | |
| Sexual Assault Support Service | 1800 697 877 This number is state-wide and will automatically direct you to your nearest support service. | Crisis counselling by phone for survivors (and family members, friends, other support people) who are distressed, anxious, or experiencing trauma symptoms as a result of recent or historical sexual violence |
| Victoria | | |
| Sexual Assault Crisis Line | 1800 806 292 | The Sexual Assault Crisis Line Victoria (SACL) is a state-wide, after-hours, confidential, telephone crisis counselling service for people who have experienced both past and recent sexual assault. |
| WA | | |
| Sexual Assault Resource centre (SARC) | (08) 6458 1828 8.30am – 11 pm, 7 days | Provides a range of free services to people affected by sexual violence. This includes people affected by a recent sexual assault, past sexual assault, current sexual abuse and past sexual abuse. |