



## MEMORANDUM

<b>To</b>	Te Herenga Waka- Victoria University of Wellington
<b>From</b>	Victoria University of Wellington Students' Association (VUWSA)
<b>Date</b>	10 <sup>th</sup> October 2020
<b>Subject</b>	Sexual Harassment Response Policy and Procedures

### Sexual Harassment Response Policy and Procedures

#### 1) Education

We commend the University for taking steps to develop consent education on campus. In particular, the roll out of online modules. We also understand the Student Interest team is developing workshops on consent and by-stander intervention and we support this mahi. Compulsory education on consent for all new students could be included in this policy to ensure any student starting at this university is aware of what consent is. We suggest this policy lacks integration within the culture of our University, with many students unaware of the procedural process and support available. We would support greater promotion of the policy and procedures throughout the University.

#### 2) Rights and natural justice

At least three students who were respondents this year in informal and formal processes reported feeling as though they were assumed to be guilty from the outset and as though they had no rights. As such, VUWSA would recommend the addition of a section that clearly sets out the rights of both affected parties, including respondents. Otago University includes a section like this in its Sexual Misconduct Policy: <https://www.otago.ac.nz/administration/policies/otago711781.html> (3 A and B).

We recommend the University adds a section like this to both the Sexual Harassment Policy and Procedures.

#### 3) Timelines

VUWSA has received complaints from both respondents and complainants about the length of time it takes for complaints to be "processed." While VUWSA understands that Covid has made this year difficult, a system where it may take several months for a complaint to be dealt with is unacceptable. Additionally, we would seek clarity on the length of time for which a disclosure can be escalated to a complaint, as per clauses 6 and 7.

As such, VUWSA recommends the University introduces timeframes. We understand this would involve amending the Student Conduct Statute as well, and we would support timeframes being built into this statute. For reference, other very complicated university processes such as the

Academic Grievance Policy include a timeframe. We would add that the University itself puts timeframes on students (such as 20 days to appeal a Disciplinary finding, or 4 weeks to appeal an aegrotat) so the idea of timeframes is not unusual.

#### **4) Sexual harm compared to Sexual Harassment**

We believe the policy and procedures should be renamed to reflect the range of behaviours that can be reported to the university. We strongly prefer the term “sexual harm” or “sexually harmful behaviours” to sexual harassment. We would want to see clause 5.2 amended to separate out stalking, and sexual assault. These experiences should not be conflated in the bullet point wording.

#### **5) Tikanga Māori**

VUWSA notes that there is no Tikanga process available to students in the Sexual Harassment Policy or Procedures. While a formal misconduct process using the Student Conduct Statute has a tikanga option, we recommend consulting with Ngai Tauira about whether tikanga needs to be embedded further in the Sexual Harassment Policy and Procedures.

#### **6) VUWSA’s Advocacy Service**

We completely support the right of students to involve friends and family as supports, but we feel it is critical that they are also told of the independent advocacy service offered by VUWSA. Advocates are different to generic support people – they have a good understanding of university processes, and are able to help students understand their options within these processes.

There is no mention of the contact details for the VUWSA Advocacy Service in the Procedures. We ask that these details be included in the Procedures – this would be consistent with the Procedural requirements section of the Student Conduct Statute which clearly gives the details of how a student can access our service within the Statute (8.3.1v).

We also request that VUWSA Advocacy be added to the Appendices to the Procedures as an independent service which can support both complainants and respondents. We feel it is important that all members of the university community have access to independent support when they are going through these processes, and would also support and welcome the inclusion of the unions (TEU and PSA) in the list of supports people can access.

### **Specific parts of the policy and procedures**

#### **Comments on the informal process set out in 7. 2.1.a, b and c of the Procedures**

This part of the policy gives the Student Interest Team a great deal of discretion. There are no checks on this in the policy or procedures.

In multiple cases this year, respondents have reported being asked to a meeting with a Student Interest adviser. They are not told in advance what the meeting is about, which causes them to feel high levels of anxiety. Although they have been told they can bring a support service, but have not been told of the support offered by VUWSA. One student was told he had to have a Student Support Coordinator as a support person. This student did not feel comfortable with this and was unsure what role the SSC was playing. Students have also reported feeling (at this initial informal meeting) as though the Student Interest adviser they have dealt with has assumed they are guilty or treated them as though they are guilty. Several times the Student Interest team has told a respondent that

there has been an allegation, without giving details about what has allegedly happened, which has left respondents feeling confused and worried. This is a breach of their right to natural justice. In several instances Student Interest have also suggested that due to this (fairly undefined) allegation a student may want to consider moving out of their hall (a level 3 disciplinary process outcome). In VUWSA's view this is not a "restorative" or informal process.

These situations have left some respondents feeling over-whelmed and unsupported by the university. These students eventually found their way to the VUWSA Advocacy service, but VUWSA is unaware of how many other students may have been subject to these processes without support from VUWSA. In one case a student had 3 or 4 meetings with a staff member working for Student Interest and was only told of the VUWSA Advocacy service when he said he wished to make a complaint about the process to date.

The VUWSA Advocacy Manager has met with the Manager Student Interest about these issues. An agreement is now in place between VUWSA and Student Interest where it has been agreed that any student who is invited to an informal meeting with Student Interest about any kind of conduct issue will be told in advance of the VUWSA advocacy service, our role and contact details, and our ability to attend an informal meeting with the student. We feel that having the VUWSA Advocacy service involved means the student has immediate access to independent support by a support person who truly understands the University's processes. VUWSA would like this informal agreement reflected in the Procedures and Policy, and the advocacy contact details included prominently in the Procedures and the appendices to the Procedures.

In terms of natural justice: it must be clearer in the policy and procedures what information a respondent is entitled to when they meet with Student Interest. To be told there is an allegation of a sexual nature about you without being able to know any details is not in keeping with natural justice. Students have been left wondering what exactly they have allegedly done. Without information about what an allegation actually is, a student is not in a position to decide on the appropriate response. For example, if a complainant wants a respondent to move out of their hall, the respondent needs to know what it is they have alleged to have done.

I would add that in multiple cases this year parents have become involved and asked to see minutes or notes from meetings with Student Interest. These have not been forth-coming. It needs to be clearer in the procedures what information a student is entitled to at the informal stage and if there is a good reason for this information not being in written form, why this is the case.

### **Cross-over between Employment Processes and Student Conduct processes**

VUWSA Advocacy has had a case this year where a student has been subject to a lengthy employment investigation. When this investigation was concluded the University chose to refer the matter to the Student Interest office who proceeded with a Student Conduct process. The HR process began 18<sup>th</sup> December, 2019 and officially ended on 5<sup>th</sup> May 2020. He received his letter from the disciplinary committee on 16<sup>th</sup> July 2020 and received his outcome letter on 2<sup>nd</sup> October 2020.

These two processes have meant that the student has been involved in university processes since November last year. He has been under a great deal of strain as a result.

It was also clear from this particular case that the University was under no pressure from the complainant to take the respondent through these processes.

It is fundamentally unfair to subject a student to two different processes for the same alleged offense. From a VUWSA perspective, the University must decide at the out-set of a process, which

process is more appropriate and follow that process. A student who is a staff member must be treated as either a staff member OR a student, not both.

#### **Transparency of outcomes: 9.4**

The procedures indicate that a complainant will be allowed to ask questions and seek clarification about the “effect of the outcome.” This is unclear, and needs to specify the possible outcomes of a complaint/ what the “effects of the outcome” actually means. There is an over-lap here between the Student Conduct Policy and Sexual Harassment Response Procedures. The VUWSA Advocacy Service has experience in supporting both complainants and respondents through Student Conduct processes and our understanding is that generally a complainant is only told whether or not their complaint has been upheld/ not upheld or partially upheld. If the outcomes available differ when a student makes a complaint under the Sexual Harassment Policy, then the possible outcomes need to be clearer in the Procedures.

#### **Discoverable evidence**

A fundamental issue with the formal process is that any evidence given is potentially discoverable by police. If a complainant is unhappy with an outcome of a formal process, they may very well consider going to the police. A respondent who gives any evidence in a formal process is doing so without the safe-guards built into a police process. For example, the right to a lawyer. It needs to be clear to any student giving evidence in a process such as this that the evidence could potentially be used for another purpose. This needs to be clear in the Policy and Procedures.

#### **Other issues**

One key issue that has arisen this year is the confidentiality of information relating to these processes in Halls of Residence. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED PERSONAL INFORMATION]

In two cases in particular, students have felt that the Halls of Residence have not done much to support the alleged offender. In one case, hall staff did little to limit the spread of information around the hall. VUWSA’s view is that halls need better training in how to handle initial disclosures in order to avoid highly personal information being distributed around the hall. Complainants are entitled to support, but so are respondents, and everyone needs to understand that the spread of this kind of information in a Hall is unacceptable and not in keeping with community standards. As such, we recommend further training for staff in halls, and that this be on-going training rather than one-off training at the start of the year.

#### **Historical Claims**

We would like to see the policy make clearer statements on whether historical claims can be brought, and what sort of statute of limitations would apply in these situations.

#### **Student Conduct Statute**

As the Sexual Harassment Policy and procedures are heavily reliant on the Student Conduct Statute, we would also like to make a few comments about the Student Conduct Statute as it applies to cases of Sexual Harassment.

### **The right to silence**

The right to silence is a legal principle which guarantees any individual the right to refuse to answer questions. Due to the discoverable nature of evidence given to a disciplinary committee, we feel it is important that respondents have the right to silence.

The right to silence covers a number of issues centred on the right of the accused or the defendant to refuse to comment or provide an answer when questioned, either prior to or during proceedings. This can be the right to avoid self-incrimination or the right to remain silent when questioned. The right should include the provision that adverse inferences cannot be made by the University regarding the refusal to answer questions.

### **Statute of limitations**

We believe there should be a clean slate process for General Misconduct. The reason we support this is that (in theory) an incident of General Misconduct in a student's first year, could create a barrier to them entering a professional programme later on (such as Teacher Education or Law). We do not believe the university's evidential process is sufficiently robust to justify a record of misconduct sitting on a student's record indefinitely. We recommend that after two years any record of General Misconduct should be deleted from the records kept by the Student Interest office.

### **Alternative process for cases which identify diminished capacity in both parties**

This refers to incidents which involve alcohol, especially in the halls where binge drinking is largely uncontrolled.

Two cases in particular this year highlight the need for an alternative process for those times where both parties were intoxicated and had diminished capacity. In these cases, it is impossible to tell if one individual can be held accountable for the event. If there is insufficient evidence that one party intentionally caused harm, or evidence to suggest both parties were recipients of harm due to high levels of intoxication, then a different process must be initiated.

The intention would ideally shift from assigning blame, to providing support to both parties to help them reconcile and process the experience. This is obviously a disturbing and unpleasant experience; inappropriate action could lead to further harm. This would include a shift away from using the language of 'assault' in the proceedings and focus on education and counselling.