



Preventing and responding to sexual harassment and sexual assault – a proactive health and safety duty

Universities need to continue building student confidence while enabling their organisational leaders to make risk-based decisions that prevent and respond to sexual assault and sexual harassment.

Deloitte's team of health and safety experts and higher education industry leaders assist universities to understand the risk of sexual assault and sexual harassment in their environment. We are able to develop risk-based processes, programs, and training to enable prevention and response to manage the risk to staff, students, and others.

The Australian Human Rights Commission's National Report on Sexual Assault and Sexual Harassment at Australian Universities (the AHRC report) was released on 1 August 2017. The AHRC report aimed to gain greater insight into the nature, prevalence, and reporting of sexual assault and sexual harassment at Australian universities. Each of Australia's 39 universities, through their peak body Universities Australia (UA), committed to this work and other programs (e.g. the Respect. Now. Always. campaign) in an attempt to understand and mitigate the risk of sexual assault and sexual harassment.

The issue of prevalence was largely unknown as the way in which data is captured across the industry can be very different due to the various means by which alleged victims can make a complaint. However, we do know that there is an increasing trend in sexual assaults and sexual harassment more generally. The Australian Bureau of Statistics' Recorded Crime – Victims publication, released in July 2016, found reports of sexual assault had reached a six-year high, after a 3% rise in 2015 and the "highest number of sexual assault reports we've seen in six years". Nationally, over four in five sexual assault victims were female, and females aged between 15 and 19 years were seven times more likely to have been a victim of sexual assault compared to the overall population¹.

The AHRC report found 26% of the 30,930 respondents to the survey question relating to sexual harassment prevalence had been sexually harassed at university in 2016. 1.6% of the 28,281 respondents to the survey question relating to sexual assaults prevalence had been sexually assaulted in 2015 or 2016.

The Commissioner's foreword to the report highlighted three conclusions:

- Sexual assault and sexual harassment are far too prevalent in university settings, as they are in the broader community
- There is significant underreporting of sexual assault and sexual harassment to the university

- Universities need to do more to prevent such abuse from occurring in the first place, to build a culture of respect, and to respond appropriately by supporting victims of abuse and sanctioning perpetrators.

We believe the work completed to date is a bold move forward. Effort is now needed to ensure universities have simple and practical processes and systems that enable a culture of 'active care' to prevent and appropriately respond to issues of sexual assault and sexual harassment.

It is a legislative imperative

Anyone contemplating a university education is entitled to expect that they will be able to study in an environment that is safe and promotes their wellbeing. This is also an important issue for those who work in universities.

While the AHRC report acknowledges that sexual assault and sexual harassment are prohibited under both the anti-discrimination and criminal laws, there are also proactive duties under the various state-based Work Health and Safety (WHS) Acts and Regulations that apply.

Section 19(1) of the *Work Health and Safety Act 2011 (NSW)* (WHS Act) provides that "a Person Conducting a Business or Undertaking (PCBU, e.g. a university, a university college) must ensure, so far as is reasonably practicable, the health and safety of:

- a. Workers engaged or caused to be engaged by the person, and
- b. Workers whose activities in carrying out work are influenced or directed by the person

While the workers are at work in the business or undertaking".

The WHS Act goes further to require a PCBU "to ensure, so far as is reasonably practicable, that the health and safety of **other persons** is not put at risk from work carried out as part of the conduct of the business or undertaking" (s.19(2)).

As such, universities have an obligation to provide working and learning environments that are, as far as is reasonably practicable, without risk to safety or health.

Linking to the Hunting Ground Project – an industry commitment

The Hunting Ground is a documentary detailing the personal stories of students who have reported sexual assaults on American university campuses, and the apparent systematic failure of a number of the respective universities to appropriately respond to these reported incidents.

In Australia, the *Hunting Ground Australia Project*² is using the documentary as a tool to engage the Australian university sector and broader Australian community in a discussion about sexual assault and sexual harassment at universities, with the goal of a unified campaign across the tertiary education sector to prevent and respond to the issue of sexual violence. Whilst there are notable differences between the two university environments, the documentary has increased awareness of the issue of sexual assaults and presented ideas and solutions for improvements in tackling this issue.

Through the Universities Australia *Respect.Now.Always.* initiative³, which was launched in February 2016, Australian universities have made a strong commitment to working together across the sector to prevent sexual assault and harassment. The *Respect.Now.Always.* campaign was launched by Universities Australia to ensure “that our students and staff are safe from sexual assault and sexual harassment” through the coordination of all Australian universities to:

- Seek comprehensive data on sexual misconduct in Australian universities as it has been broadly recognised that the understanding as to the prevalence of sexual violence on Australian universities is largely unknown
- Review and update policies and procedures to prevent sexual misconduct
- Share best practice models for reporting incidents and supporting students who disclose sexual assault or harassment.

It's time for improvement – and we can help

While the issue of prevalence has been largely tackled through the work conducted by the AHRC, we know from our work that universities can improve how they deal with issues of sexual assault and sexual harassment. Our independent research into how universities have defined sexual assault and sexual harassment indicates vast inconsistencies and approaches across the sector.

Recommendation 4 of the AHRC's report suggested that each university should commission an independent, expert-led review of existing university policies and response pathways in relation to sexual assault and harassment. We can assist universities by examining their current operations to enable proactive, simple and, risk-based processes and systems to be implemented. These processes and systems aim at providing support to students, staff, and others, whilst providing organisational leaders with confidence and risk-based information to make informed decisions on how to act.

When undertaking this work, we aim to answer 6 key questions:

1. Has the University identified and assessed the risk of sexual assault and sexual harassment on campus so as to enable the design and implementation of mitigating controls?
2. What processes have been designed and implemented for the prevention of sexual assault and sexual harassment?

3. Are there processes that enable a timely and effective response to, and reporting of, sexual assault and sexual harassment on campus?
4. What mechanisms have been established to ensure that universities and other entities consult, cooperate and coordinate its activities so that the risk of sexual assault and sexual harassment is managed? For example, universities working with the independent colleges
5. Have University management, staff, and students been trained in the identification of behaviour that might be interpreted as sexual misconduct, sexual misconduct prevention and response strategies and reporting processes?
6. What governance mechanisms (including measuring, monitoring and reporting) have been established to provide executive oversight to the risk of sexual misconduct on campus and the controls in place to minimise the risk?

While these are important questions, the agreed management action needs to be rolled into an organisational-wide strategy, endorsed by the university's most senior leaders to demonstrate commitment and focus to students and staff.

At Deloitte, our WHS experts and higher education industry leaders have completed detailed projects assessing university approaches to preventing and responding to issues of sexual assault and sexual harassment. So we can help.

Deloitte thanks and acknowledges those who have shared their experiences as part of this important piece of work. We are committed to assisting the higher education sector where we can to reduce the risk of sexual assault and sexual harassment.

¹ Australian Bureau of Statistics (ABS), Reports of sexual assault reach six-year high, Media Release, 13 July 2016, [http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0-2015-Media%20Release-Reports%20of%20sexual%20assault%20reach%20six-year%20high%20\(Media%20Release\)-19](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0-2015-Media%20Release-Reports%20of%20sexual%20assault%20reach%20six-year%20high%20(Media%20Release)-19)

² <http://www.thehuntinggroundaustralia.com.au/>

³ https://www.universitiesaustralia.edu.au/uni-participation-quality/students/Student-safety#.V_nqN02a2Uk

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