

Independent Review of the University of Auckland's Student Discipline Procedures relating to complaints and incidents of harmful sexual behaviour November 2022

Purpose and scope:

The purpose of this review was to consider the adequacy of the University of Auckland's current processes relating to the processes, systems and policies relating to non-academic student discipline, and in particular harmful sexual behaviour, comparing them to best practice. Advice and recommendations for improvement for handling complaints regarding harmful sexual behaviour form part of the review.¹ Other issues and recommendations that have been brought to the attention of the reviewer are also included as contributing to the plan for creating more effective cultures of consent and respect within the University of Auckland ('the University').

Shayne Mathieson from Top Drawer Consultants was contracted to undertake this independent review.

Methodology

The methodology included:

- Twenty-two interviews, involving 33 people, with relevant staff, students, and legal counsel external to the University²
- Questionnaires were sent to 90 student groups, clubs and association considered most relevant to the reviews³. Six responded. It is recognised that the time of year the questionnaires were sent coincided with exams and end of year assessments, which would have taken priority for students' attention
- Review of relevant legislation, University Statutes, policies and other literature provided by the University⁴
- Review of the 12 submissions from staff and students in an open invitation In May 2022 to provide input into the draft Sexual Harm policy
- The nine cases of harmful sexual behaviour that have been referred to and considered by the Discipline Committee in the period 16/3/20 – 27/7/22, with names redacted have been reviewed. Letters to both parties in each of these cases was sent requesting feedback on the process and thoughts for future processes. Seven responses were received, four from complainants, one from a parent of a complainant and two from people accused of harmful sexual behaviour.⁵ The other 52 allegations around sexual behaviour that were referred to Proctors in the above time period did not go forward to the Discipline Committee, being able to be

¹ Full terms of reference are at Appendix 1)

² See Appendix 2 for full list of interviewees

³ Women's groups, Māori groups, cultural groups, Rainbow, faith-based groups and one identified as relating to disability issues

⁴ Appendix 3 Documents provided by the University

⁵ Questions at Appendix 4

addressed by the Proctor directly. Questionnaires were not sent to these complainants or respondents

- In addition to University of Auckland's disciplinary policies and procedures, the policies and procedures of 13 other universities⁶ were reviewed, from Australia, Canada and the United Kingdom. A brief overview only of the USA focus in this area was undertaken, as the requirements and exemptions under Title IX of the Education Amendments of 1972 (Chapter 38: Discrimination based on sex or blindness) have differing requirements from NZ legislation
- A literature search of research was undertaken in the area of harmful sexual behaviour within a tertiary education environment⁷
- Additional material supplied by interviewees was also considered.

Terminology

Most feedback from students and staff prefers the term 'survivor' rather than 'victim' when discussing parties in a harmful sexual behaviour allegation. As this review is focused on formal processes, this review refers to 'complainant' – the person alleging the harmful sexual behaviour, and 'the alleged perpetrator' or 'respondent' – the person responding to the allegation. Unless otherwise stated, 'parties' refers jointly to the complainant and the respondent.

One submission was critical of no mention of women in the documentation regarding the draft sexual harm policy, 'which is unacceptable given that most perpetrators of sexual harmful behaviour are men and a big percentage of victims are women'. While the submitter's point is recognised, this review has maintained gender neutral language through the report, unless an individual has personally identified their gender.

Thanks

I would like to thank and acknowledge all who have been involved in the review process. All interviewees and responders to questionnaires were very open with their responses, sharing their thoughts and experiences freely. It was noticeable that all staff, and students in formal positions within AUSA and student clubs, had a genuine desire to be as helpful and supportive as possible of students where harmful sexual behaviour had been alleged.

Context

This review is seeking to address issues that have arisen in the broad context outlined here, and to provide recommendations for the University to deal appropriately with issues relating to harmful sexual behaviour that have been disclosed to it. The review does not address individual cases or issues, although it uses the circumstances of a few to highlight issues.

⁶ Appendix 5 for list of universities

⁷ Appendix 6

The University of Auckland is required by legislation⁸ to support the health, safety and wellbeing of students. The right to study and learn in a safe, hospitable learning environment, taking account of cultural and other diverse needs of students is not only a legal requirement, but also an ethical and social expectation of both the academic community and the wider community. In underlining this, the University says in its preamble to Addressing Bullying, Harassment and Discrimination Policy and Procedures:

The University is committed to being safe, inclusive and equitable. It seeks to uphold the mana (standing) and tapu (sacred) of individuals, whānau (family) and communities connected to the University. We promote a positive culture which celebrates differences, challenges prejudice and ensures fairness. Our staff members and students are our greatest assets and all members of the University community should expect to be able to excel, to be respected and valued for their unique perspectives and contributions.

Disciplinary matters

The current Statute for Student Discipline identifies what is expected of students in terms of good government and discipline. The Discipline Committee established under the statute considers both academic and non-academic breaches of discipline. The Discipline Committee considers it has been well positioned to address issues of academic discipline within its statutes.

Process

Despite the disciplinary process being identified as an investigative one in the Discipline Committee Information Sheet, it is essentially an adversarial one, which is unlikely ever to lead to all parties being completely satisfied with the outcome. A system in this area needs to be seen as fair, timely and transparent. Feedback from participants in the process regarding non-academic disciplinary issues has indicated that few of these are currently perceived as having been achieved.

Different legal advisers to the University have slightly different interpretations of the current process, particularly where decision making lies, and jurisdiction to hear matters where the University does not have an obvious nexus to the activity complained about, which highlights the complexity surrounding this issue. Some of this confusion appears to relate to a lack of clarity over with Discipline Committee procedures currently apply.

Underreporting of sexual issues

In addition to the specific requirements of legislation and University Statutes in this area, consideration in this review and its recommendations has taken account of the wider community context of underreporting of sexual harm issues generally which has been reflected in university communities world-wide.⁹ Research also identifies that those from minority cultural and rainbow groups are even less likely to report sexual harm issues to authorities than those from majority groups.¹⁰

⁸ Education and Training Act 2020 and Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021, in force from 1 January 2022

⁹ In NZ, it is estimated to be 10% of those who have experienced sexual violence will report it to the Police.

¹⁰ Ministry of Justice

Students in the 15 – 29 age range are estimated to be twice as likely as the NZ average to experience interpersonal violence. In the sexual harm area this is estimated to be four times more likely¹¹. Combined with the general reticence in reporting, university students are overwhelmingly in the 18 - 24 age group. This potentially creates the ‘perfect storm’ around the likelihood of potentially harmful sexual behaviour occurring with a number of contributing factors, such as:

- many students being away from their home environment and no longer subject to parental guidance or discipline
- international students being in a cultural environment where there may be different standards or norms that they do not understand
- both parties where there is harmful sexual behaviour are transitioning from being a teenager in a family situation to an independent adult in a different environment, which can be potentially confusing and one for which they are not necessarily well equipped
- emerging adults exploring sexuality and sexual attraction in an environment without many restraints
- high sexualisation within the wider community
- relatively easy access to alcohol and/or drugs and therefore higher levels of cognitive impairment that may not have previously been experienced or navigated
- the adult brain is not fully developed until around age 25, which can lead to “reduced ability to process complex and conflicting information, an overreliance on immediate salient social cues, and difficulty in stopping a line of action once it has been initiated”.¹²

The age of adolescence is being revised by academics and others practising in the fields of psychology to have an endpoint into a person’s twenties.¹³ One description of this means that people in this age group ‘want to be told, but don’t want to listen’. This in part identifies some of the issues around training and communications, where some of the recommendations made by students in this area are already in place.

The year level of those complaining of harmful sexual behaviour, as well as the year level of those alleged to have perpetrated the behaviour is not currently recorded. . Analysis of this would be useful for the University for developing and targeting of its key messages, and in training around respect and consent.

Interviews with some students and responses from questionnaires identified a mistrust of University procedures by students. At the same time, there appears to be greater expectations by students on the University to take action in any negative situation a student may experience.

Location of occurrence of Harmful Sexual Behaviour

An added element within situations where a student complains about the sexually harmful actions of another student is that the behaviour complained about may have taken place outside of the University campus or accommodation, and/or not in relation to any

¹¹ Ministry of Justice

¹² Association for the Treatment of Sexual Abusers, *Addressing Campus Sexual Misconduct* May 2019

¹³ [https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(18\)30022-1/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(18)30022-1/fulltext)

requirement or sponsorship of the University (e.g. field trip, internship, student association activity, club camp). There is a question as to the responsibilities of the University in these circumstances as to whether the University has jurisdiction to discipline a student. It certainly has a requirement to provide for student safety and wellbeing, but how this is achieved through a Discipline Committee process is potentially fraught with complications.

Social and other media

Ready access to social media has created a potentially challenging environment for any organisation, or even individual, where allegations may be made anonymously, making it hard for the alleged organisation or individual to address the allegation adequately. When issues are identified within main-stream media, organisations may be limited in their ability to respond, being governed by confidentiality and privacy requirements of legislation. Two cases regarding allegations of sexual violation and rape were reported in The New Zealand Herald published 20 March 2022¹⁴, 24 March 2022¹⁵ and 26 March 2022.¹⁶ In both cases the female student complainants were told by the Proctor that the alleged perpetrator had sexual intercourse with them without their consent. In both instances the University overturned the Proctor's decision, advising that the complaints met the threshold of 'serious nature' and that under the Statute cases of a 'serious nature' are required to be heard by the Discipline Committee and that the Proctor did not have the power to resolve such cases by written reprimand. Both cases were latterly referred to the Discipline Committee.

Although a review of current non-academic student discipline procedures was planned for some time in 2022, the planning for the review was brought forward as a result of this publicity. The timing of the review itself was delayed due to the availability of the reviewer.

It is noted that subsequent to the New Zealand Herald articles, reports of harmful sexual behaviour to Proctors increased from previous reporting patterns.

Social media can also be an avenue or tool for harmful sexual behaviour, where the perpetrator can digitally stalk or harass a recipient.

Best practice

No one university appears to have the ultimate answer to addressing issues of harmful sexual behaviour within their campus. The University of Victoria, British Columbia has a long, but simple to read, outline of process, with consideration for both parties in a complaint. Universities Australia¹⁷ outlines Principles to Guide Policy Responses¹⁸ regarding sexual assault and sexual harassment. The Principles are comprehensive and clear, and

¹⁴ [Auckland University student who admitted raping student allowed to keep studying - NZ Herald](#)

¹⁵ [Sexual assault case: Man leaves Auckland University following rape admission - NZ Herald](#)

¹⁶ [University of Auckland rape allegations: Second man allowed to keep studying after sexual assault claims - NZ Herald](#)

¹⁷ <https://www.universitiesaustralia.edu.au/> identifies their role as providing expert policy advice, analysis and statistical evidence and media commentary on higher education on behalf of their 39 member universities

¹⁸ [UA-Guidelines-2.pdf \(universitiesaustralia.edu.au\)](#)

provide clarity of direction for any university seeking to promulgate policies and procedures in the area of harmful sexual behaviour.

The identified Principles come under the headings of:

- compassion
- support and assistance
- confidentiality and privacy
- cultural competence
- natural justice.

Further things to consider outlined in the document include:

- the difference between a disclosure and a formal report
- consultation with stakeholders
- reflecting the needs of the university student population
- access to the policy
- recording data
- contact points for reporting
- timeframes for reporting
- multiple methods of making a formal complaint
- reports from third parties
- reports about third parties
- information on the misconduct process
- precautionary measures
- resolution of a formal complaint
- sanctions
- criminal investigations.

Discipline Statute ('the Statute')

Adequacy for addressing non-academic misconduct

The Statute appears to have been written with academic misconduct in mind, with little thought given to non-academic misconduct, especially in the area where there may be harm to others. While the Discipline Committee process for addressing academic misconduct may be appropriate, it has not necessarily served issues relating to harmful sexual behaviour adequately, for either party to the allegations, or even the University. Academic issues are largely where the University is raising concerns regarding student behaviour of an individual where the reputation of the University is affected (for example, plagiarism; paying others to provide essays or reports for the student) whereas harmful sexual behaviour (and other harmful behaviours such as unlawful discrimination) has a complainant who is not the University, and an alleged perpetrator.

Ways of addressing allegations from one student about the behaviours of another student have ranged from:

- Proctors or members of Campus Life working with the student(s) involved; this may have involved non-contact directives on one or both parties, access to facilitation if requested, or referral to other professional support

- AUSA or other student groups providing advice or referral to other agencies, (e.g. HELP; Rape Crisis, Police)
- Residential Halls managers creating safer environments through moving one or both students involved to other accommodation, implementing non-contact directives or identifying 'no-go' zones, or facilitating a student to return home for a period of time with no financial penalties.

The final option and only option identified in the Statute is to refer the matter to DC for decision and action.

Proctors

There is no specific mention in the Statute of Proctors or their role in maintaining discipline within the University community. Clause 3(g) allows 'authorised persons' to impose penalties on students. Established practice is that the Proctor has become the 'authorised person'. Given that Proctors are a potential first port of call for complainants (other than in residential accommodation) about harmful sexual behaviour, and make decisions about what they deem appropriate to be forwarded to DC, this seems to be an odd oversight within the Statute.

Records

There is no apparent record in the non-academic discipline area of anyone other than DC, Proctors or Residential Managers imposing any penalties on respondents. Campus Life is unaware if any penalties have been imposed on students for non-academic misconduct by any other staff or faculty than those mentioned above. If the extremely broad definition of 'authorised persons' remains in the revised Statute, formalising recording of such penalties or directives would create clarity and consistency across the University campus.

'Authorised persons'

Given that the Statute identifies that any 'authorised person' can forward a complaint to the DC, it is unclear that this means the issue would first go through the Proctor and then the Registrar in the event of a non-academic misconduct issue, or the academic head and then Provost in the event of an academic misconduct matter.

Students who are staff

Some students may simultaneously be staff while attending University. This adds a complexity particularly around power dynamics. Clarification within the Statute would be helpful about which policy would apply in these situations.

Discipline Statute Recommendations

1. Have separate statutes for academic and non-academic misconduct, with separate 'owners' – Provost for the former, Registrar for the latter. While the reviewer's preference is to have separate Statutes, it could be possible to retain this within a single statute, but with separate sections. The Statute needs to ensure that there is

provision for a specialist investigator to be appointed where specialised expertise would be appropriate.¹⁹

2. The Statute needs to clearly articulate the role of the University in relation to criminal acts.
3. Allow for a separate committee to hear matters relating specifically to sexual harm (or other non-academic matters); maximum 3 – 4 members, with a deliberative vote as well as casting vote accorded to the Chair in the event of a tied vote. At least one member of the Committee needs to have specific expertise in the area under consideration (whether harmful sexual behaviour, or other matters which may come before the Committee). It is recommended that this expertise could be sought from outside the University.
4. If a separate committee (or sub-committee) were to hear harmful sexual behaviour matters, consult with AUSA as to the appropriateness of student representation on that (sub)-committee.
5. That the Statute revision under consideration at the present will specify the role and mandate of Proctors. This would include confirmation that the Proctor is responsible for oversight of investigation of complaints, and ensuring students have support, both prior to any reference to DC and subsequent to any DC hearing.
6. Reconsider the definition of ‘authorised person’ to be broad only for the purposes of 3(f) of the Statute (taking action necessary to protect safety of people or property) and limit to specific positions for the imposition of penalties under 3(g) of the Statute.
7. If ‘authorised persons’ (other than specified roles) can impose penalties, ensure that there is a centralised recording system for such penalties..
8. That the Statute identify that the imposition of penalties in the non-academic misconduct areas be limited to DC, Proctors and Residential Manager.
9. Clarify who has power to refer directly to DC. The current Statute allows ‘any authorised person’ to refer; current practice is only the Registrar or Provost may do so.
10. Separate out the procedures for DC and Proctors from the Statute so that procedures can be more easily amended if necessary.
11. Provide a greater range of options for the Proctor to address matters prior to forwarding to DC, for example a compensation order, University community service (e.g. to rectify vandalism), training, compulsory counselling, reparation, compensation, low level fines to a specified maximum, apology.
12. Clarify in the Statute which policy and disciplinary process applies where there are respondent students who are also staff.
13. There is no mention of harmful sexual behaviour in Residential Rules. It references the Addressing Bullying, Harassment and Discrimination policy, but does not mention anything specifically about sexual issues. Reference to the Harmful Sexual Behaviour policy, currently in draft, needs to be included within the Residential Rules.

¹⁹ Note that The University of Newcastle Australia identifies three forms of student misconduct, (i) academic misconduct, (ii) research misconduct and (iii) non-academic misconduct which could be considered the University of Auckland in its revised Statute(s)

Current practice at University of Auckland

The process for addressing discipline in the area of harmful sexual behaviour has a number of steps, some of which are agreed upon by all parties in the process, some of which appear to have some different understandings by the parties of either the step in the process or decision-making. This is mostly in the area of what decisions need to be made and where the responsibility lies for that. In the reviewer's opinion there are three main decisions to be made:

- i) whether the behaviour alleged occurred
- ii) if it did occur then did it breach the Statute or any policy, regulation or Code of the University
- iii) if there was a breach, then what is the appropriate action to take at this point.

Some of the misunderstandings seem to be around the conflation of (i) and (ii) into one decision.

The reviewer's understanding of the process of a complaint being lodged in 2022²⁰ is:

1. In the first instance, if a complainant wishes to have the University address an issue they will typically either approach Campus Care or the Proctor's Office directly. This may be in via email, phone, in person, or via an on-line form available on the University website. The on-line form is using an Advocate Simplicity system which is a client management system specifically designed for any complaints, either academic or non-academic. The Proctor's Office can correspond with students through it.
2. If the matter is not at a threshold that would require an investigation, the matter would not normally be assigned to a Proctor. Matters not requiring an investigation may be where the name of the student complained about is not known and is unable to be identified, the nexus with the University is not able to be established, where there is clearly not enough information to proceed, where the complaint is at a very low level, or is a complaint against a staff member. In this last instance the informant is given information on how to lodge the complaint through the staff complaints system.
3. If there is not enough information to make a decision, the person completing the form will be contacted. If sufficient information is then provided, the complainant will be invited to a meeting with the Manager Student Conduct and Investigations.²¹ A discussion is held with the complainant to ensure that they know what their options are. These are:
 - a. Report informally. This means that the complainant does not wish to pursue any complaints process, but wants the information held / stored in the system;
 - b. Report the matter as a concern, but not a complaint. This is used most often where there is a low level incident reported that doesn't meet the expectations of the Code of Conduct, but isn't at a level to invoke policy or Statute. In this instance the Manager Student Conduct and Investigations²² would reach out to

²⁰ as discussed with Campus Life who with the Proctor are the first avenue within the University required to take action

²¹ Note that this position was originally one role, but has recently been divided into two roles, Manager Student Wellbeing and Care, and Manager Student Conduct and Investigations, with the latter role appointed as at 31 October 2022.

²² Previously Manager Student Conduct and Care

- the accused student, and invite them to a meeting. This would involve raising a concern about their behaviour, making them aware of the issue(s) disclosed to the Manager. The student would then have a chance to respond. The Manager would feedback to the disclosing student that they had met with the respondent, and information agreed by the respondent may be released to the complainant.
- c. Report the matter as a formal complaint. In this instance the matter will be flagged with the Proctors, and assigned to one Proctor. This is usually assigned on a basis of spreading the workload fairly amongst the Proctors, but specific expertise in a particular area may be taken into account in more sensitive areas.
 - i. Where the complainant wishes to remain anonymous, an outline of the complaint is put to the respondent by the Proctor. The information may be limited in order to retain the anonymity of the complainant. Approximately 15% of complainants in the time period covered in the review requested anonymity.
 - ii. Where a complainant is prepared to be named, the Manager would reach out to the respondent with an outline of the complaint, and invite the respondent to a meeting. The respondent is told of the support systems that are available and their right to bring a support person to the meeting. This meeting usually takes place within a couple of days after the contact with the respondent is made. Until 2022, the interview did not have a formal structure, but since March 2022 there is an interview template that was developed in collaboration with law firm, Meredith Connell.
 4. The notes of the interview are written up and sent to the respondent to review and confirm, or make adjustments as necessary. No time frame is given for the return of the interview notes, although the Manager will usually follow up within a week.
 5. Once the response is returned, and if they have not already been made aware of the matter, the Proctor is flagged with the issue. They will look at whether further investigation is needed, or whether to proceed with an investigation report. It is noted that there is nothing in the Statute to indicate that this is the role or responsibility of the Proctor.
 6. If further information is required, witnesses may be interviewed.²³ Sometimes witnesses may be interviewed prior to the respondent being interviewed.
 7. A preliminary investigation report is compiled, outlining the process and the Proctor's findings and recommendations. The report includes the original complaint, notes of interviews, screen shots and any other relevant information. The preliminary report is sent to both parties. Each student has 10 days in which to comment or provide further information. After the 10 days have elapsed, a report is finalised.
 - a. If the matter is considered to fall within the bounds of what the Proctor can address, then they will deal with it directly with the respondent, applying any relevant directives or other sanctions that they have in their role;
 - b. If the matter is considered to be serious misconduct the matter must be referred to the Discipline Committee; this is via the Registrar. Forwarding via the Registrar is current practice, (following on from the procedures in the 2007

²³ Prior to 2022, witnesses were rarely interviewed

Statute) but is not a requirement of the 2013 Statute.²⁴ It is a challenge for the Proctors to consider whether the matter goes to DC as often there is information only from the two parties to the complaint, and no other witnesses. The Proctors may not make a finding of fact. There has been no agreed definition of 'serious misconduct'; and making a determination on any matter in the absence of other evidence is challenging.

8. The Registrar, with advice from in-house counsel (and on occasion external legal counsel) decides whether:
 - a. to forward to the DC
 - b. the case can be closed at this point
 - c. further investigation is required for a case to be made with established facts. In this case the report is returned to the Proctors' office for further investigation.
9. If further enquiry is needed then this occurs, and the amended report goes back to both the complainant and respondent for comment before being forwarded to the Registrar again.
10. The Registrar forwards the investigation report to the Secretary to the DC, who informs both parties of the hearing of a proposed date.

As with any investigation, of necessity the process is rarely swift. This is to ensure that:

- the complainant has the opportunity to provide as much information as possible, and potentially to rebut any defences put up by the respondent
- natural justice²⁵ is employed for the respondent
- both complainant and respondent have up to around a week each to confirm their notes of interview
- relevant witnesses are located and interviewed
- any relevant documentation is reviewed
- a draft report is written and reviewed by both parties with 10 days in which to provide amendments or further information
- a final report is completed for consideration by the Registrar to forward to DC.

Time frame

In all, any investigation through to final report is unlikely to be completed in under five to six weeks, unless both parties to the complaint respond quickly to attendance at interviews, confirmation of notes and confirmation of the draft report. It may take considerably longer than this for a variety of reasons.

Once the investigation is complete, and forwarded to the Registrar, she may also seek in-house legal counsel advice before forwarding to the DC. On occasion she may return the

²⁴ Section 4 indicates that the DC hears cases referred to it by "Authorised Persons and Bodies", which includes the VC, the Registrar, any staff member, a Warden or member of the Students' Association

²⁵ Natural justice requires that the respondent has the right to:

- know from where the complaint emanated and what it is about;
- respond fully to the complaint;
- support through any process that will be applied;
- time to seek advice or advocacy.

report to the Proctor for further investigation, in which case the time frame may, in effect, start again. If there are difficult legal or procedural issues to resolve, a further delay may ensue.

Once a case is in a form where it can be considered by DC, the DC hearing typically takes between approximately two to four weeks to convene. Scheduling is on an ad hoc basis, with appointment to a particular hearing being based on availability of members rather than expertise in a specific area. The agenda of each meeting is prioritised on urgency of the issue(s) at hand. The DC may also seek legal advice before scheduling a case for consideration.

The possible time from lodging a complaint through to a hearing by the DC may therefore take any length of time from four to six weeks at best, through to two months or more. One complainant stated that their issue took nine months before any outcome was achieved – in their case an unsatisfactory outcome.

While recognising that the time frame allows for the rights of both parties to be protected, reports from students who went through this process indicated that they were not kept abreast of the progress of the complaint or prepared for the length of time it might take. This creates a further sense of anxiety and concern that nothing is happening to address their complaint. In the case of the respondent this can give either a false sense that the issue was not that important, or at the other end of the scale that they too are living with anxiety and concern about what could potentially be the outcome of any disciplinary process. The University of Newcastle (Australia) states that *'The University will endeavour to resolve the conduct process within twenty working days and where this is not possible, will engage in ongoing communication with the student every ten working days.'*²⁶

Another timing issue is where an international student may be involved and is attending via Zoom. It was reported that the local time for the student(s) was not considered in the timing of DC's meeting. DC administration staff do not know the location of a student when a hearing is scheduled. If the administrator is advised that the time is unsuitable this will be taken into account in scheduling a new meeting time. However, some students may not feel that they can ask for this after a date has been set. A check (preferably by phone) with the affected parties prior to scheduling a meeting could obviate the need to reschedule.

Investigations:

Prior to this review, work had already been undertaken to consider a review of the Student Discipline Statute, but which is awaiting the outcome of this review before finalising matters. Similarly, there has already been the creation of, and appointment to a separate Manager Student Conduct and Investigations position. Both these actions are useful and would have formed recommendations in this review if they had not already been undertaken. Previous investigations, up until March 2022 were not always well conducted. In part this related to a lack of clarity over the role of the Proctor in investigating allegations. The person charged with undertaking investigations was untrained in this area, and was simultaneously attempting to balance care of both parties to the issue. (This causal issue is

²⁶ <https://policies.newcastle.edu.au/document/view-current.php?id=34>

covered more fully later in this report.) The reports that were reviewed appeared in some instances to be ineffective, not covering all points required for fact finding by either the Proctor or DC. This resulted in the report being returned for further fact finding, further decisions or actions being required (for example, a non-contact directive to be extended), and a consequently a longer time frame before the issue appeared before the DC. Little guidance, training or direction was provided for the person investigating until earlier in 2022. The Manager Student Conduct and Care, as it was then named, was put in an invidious position with potentially conflicting functions being demanded of her.

Before referral to DC, the practice is that the investigation provides a sufficiency of evidence on which a finding of misconduct can be made. As much harmful sexual behaviour occurs in a private space, it is often difficult to get clear evidence either way. It is often a case of 'A said; B said'. While both the complainant and the respondent are invited to attend the DC meeting, neither party can be, nor is, compelled to attend. Therefore the threshold for referral to DC according to General Counsel's Office is 'Could a reasonable tribunal substantiate a breach of discipline on the evidence available to it?' 'Is there at least sufficient evidence for them to decide?'

Training:

One area that could potentially improve the DC and earlier processes before a case reaches it, would be to ensure training for those involved in administering the Statute or policies.

Currently there is no requirement for any training for any DC members, other than their academic discipline. In cases of harmful sexual behaviour at least, there needs to be some training around the impact of this on recipients and sensitivity in exploring the relevant information with complainants and respondents. In relation to respondents to complaints, there also needs to be training relating to creating a space that allows the respondent to be as open as possible in addressing the issues the DC wishes to raise, while maintaining principles of proper enquiry through the process. Both parties may well be in distress through any DC meeting so training around the sensitivities here as well as training around working with students with mental health issues could also be beneficial. Campus Life has identified that some of the respondents appear to have some challenges in this area, and some complainants will obviously be affected to the extent that their mental health is impacted. Campus Life has offered to provide this training, based on what is regularly offered to staff, but adapted to suit the needs of DC.

Discipline Committee membership:

The Discipline Committee comprises seven members, two of whom are students; four academic members of Senate; and one sub-professorial academic member who need not be a member of Senate. In addition to the seven members of DC being present at a hearing, the two secretariat members are also present, although not for DC deliberations. On occasion a legal adviser and/or investigating staff member may also be present. While this number may (or may not) be appropriate for academic disciplinary matters, it is considered to be top-heavy and cumbersome for non-academic matters. A three or four person committee would, in the reviewer's opinion be more appropriate for non-academic matters, and specifically for harmful sexual behaviour. This would potentially be quicker to convene, be less daunting for any student (complainant, respondent or witness) appearing before it,

and be easier to ensure that relevant training and expertise about the subject matter has been achieved. As it would be addressing non-academic matters, this could allow for professional staff to be members of the committee. Investigating or discussing anything to do with harmful sexual behaviour is never easy. Members of DC have appreciated the input of students on DC, but expressed some concern about their sitting on harmful sexual behaviour complaints. One issue is the impact on the student parties to a complaint who may be whakama or reticent about discussing or disclosing such issues in front of other students. The other issue is the potential impact on the student DC member(s) on hearing some very detailed, sensitive and distressing material.

DC members identified that having an external lawyer to crystallise and clarify matters for them was helpful. The advice needs to focus on the University's obligations, and legal interpretations, not protection of the respondent. Brookfields Lawyers is the firm currently contracted to provide this advice to DC.

The information about the DC members²⁷ on an initial University website search is limited and potentially daunting to both parties to an issue. Titles, initials and family names are the only identifiers. First names, area of academic discipline and photos could personalise this part of the site. The current list is prefaced by "Not less than four academic staff members who are members of Senate". It is suggested that this be clarified, as this sounds as if there may be even more members at any individual hearing.

Operation of DC

Both complainants and respondents identified that DC did not operate effectively for them. One instance that was cited was where the complainant stated that they were told only immediately prior to a DC meeting they had chosen to attend, that the respondent to the complaint had left the University. As such DC had no power to take the matter further in imposing a penalty on the respondent. Despite this, the complainant was still asked to repeat their allegations, when this was all covered in the investigation report. There was no explanation given to the complainant as to why this was done. This report to the reviewer indicates a lack of judgement about appropriate process by DC in this instance. If there had been a valid reason for asking the complainant to reiterate their complaint, then this, at the very least, should have been conveyed to the complainant.

The reviewer understands that since this case Discipline Committee's practice with regard to complainant participation has changed. DC has obtained legal advice on the kinds of questions that should be put to complainants about evidential disputes and it now formulates these in advance. Questions are now targeted at what the Committee needs to know to make a decision on the evidence rather than asking a complainant to give their evidence (including uncontested points) and then asking them follow-up questions about specific points.

While support and respect for a complainant is obviously a necessary part of any DC process, respondents also have the right to be treated with respect, and to have sufficient support for them through any process. While respondents are informed of their right to

²⁷ <https://www.auckland.ac.nz/en/about-us/about-the-university/the-university/governance-and-committees/committees/a-z-committees/discipline-committee.html>

support and /or advocacy at DC, it was reported that some did not understand fully the gravity of what a DC meeting entailed. When information is sent to the respondent advising them of a DC hearing, they are also provided with the guidelines or the link to the guidelines about such hearings; the seriousness may still not be apparent to them. In some instances respondents have been identified as being on the autism spectrum, with accompanying difficulty in understanding emotional signals or correctly interpreting some data, especially as it relates to them. One DC member summed up their role as being 'very conscious of the fact that we are not here to destroy lives; we are making a decision in terms of risk assessment.' A non-DC member stated in their interview 'We need to care for both parties – even if they are proven at fault, they should still be able to have a future.'

Convening DC

The primary criterion for DC composition of the Committee and when it sits appears to be availability of members, rather than any particular knowledge regarding the subject matter of the issue(s) to be heard, or consistency of timing. While lack of specific expertise may be considered by some to be helpful in that the 'reasonable lay person's viewpoint' is the deciding factor in DC decisions, in harmful sexual behaviour situations the way in which untrained DC members operate may create a further retraumatising impact for the complainant and potentially an unfair advantage or disadvantage for the respondent. With no regularity of sitting it is harder to give any person invited to appear before DC any idea at the beginning of a process when that hearing might take place.

Level of evidence required before a case is referred to DC

From information provided by Campus Life and Proctors, there have been cases that have not been referred to DC, or have taken a considerable amount of time to be referred, as the expectations of the General Counsel's Office requires very clear evidence. It appears that there is some misunderstanding around exactly what this means to the different parts of the University in this. General Counsel ('GC') is concerned to ensure that there is sufficient information for DC to make a decision in the event of neither party attending the hearing. For GC this means that any witness evidence has been gathered where this is appropriate. Where there were no witnesses, then there needs to be specificity of information provided by both complainant and respondent, in terms of action(s) that took place, time etc. While it is recognised that there does need to be clarity of information provided to DC, as part of their role is investigative, cases where there are no witnesses other than the two parties providing conflicting statements could still be referred on. If the outcome of a DC decision is to be in effect a *fait accompli*, then it needs clarification that their role is either that of finding on balance of probabilities that they are not satisfied that the alleged misconduct occurred, or that of hearing a plea in mitigation, and applying appropriate penalties. The reviewer does not consider this to be ideal. It is clearly not the current practice for DC to rubber stamp an investigation, and neither should it be.

A facilitated discussion between the Registrar, Campus Life, Proctors, the Chair of DC and DC members and Legal Counsel would be useful to specify and agree the circumstances where cases can be referred to DC. This needs to specifically agree the level of detail required where it is an 'A said, B said' situation, and the behaviour alleged falls within the harmful sexual behaviour category.

Discipline Committee Recommendations:

14. The time frame for a thorough investigation is difficult to reduce and simultaneously maintain natural justice for both parties. It is recommended therefore that harmful sexual behaviour complaints be given priority for investigation when there may be multiple other issues to be investigated.
15. That the University provide more regular communication with parties with an outline of an investigation process before it begins, and during investigation to update on progress of the complaint, whether or not it will go to DC and the next steps at this point.
16. That the University provide training for all DC members around issues relating to harmful sexual behaviour, its impacts and sensitivity regarding communication styles with parties. There needs to be an understanding of coercive control within a sexual dynamic. Understanding what a survivor-centred approach process entails for both DC and any Campus Life staff would be useful also²⁸. Key elements in such an approach include:
 - properly trained personnel (e.g. from Rape Prevention; HELP,) including recognition of trauma in wrongly focused questions.
 - the complainant's wellbeing is the first priority e.g. physical safety considerations; time frame being as short as possible; knowledge of when / if going to DC
 - complainants are given information about rights and options (e.g. access to police; ACC, counselling)
 - the rights of complainants are clearly outlined.
17. Create a more user-friendly profile page for DC member information on the University website, including that X number will be chosen to form the DC.
18. Create opportunity for paid debrief / external counselling for DC members and DC administration staff post Discipline Committee hearings in this area. This opportunity is already in existence for Proctors.
19. Consideration be given to local time where either complainant or respondent attends from a non-NZ time zone. Ensure that DC administration staff contact both parties where a DC hearing is to take place to check what time zone they will be in on the proposed date.
20. Continue with the provision of legal advice to DC.
21. Convene a facilitated discussion between the Registrar, Campus Life, Proctors, the Chair of DC and DC members and Legal Counsel to specify and agree where cases can be referred to DC.
22. Analyse the year-level data of student parties to complaints of harmful sexual behaviour, and periodically include this in reporting to Audit and Risk Committee to allow for informing future communications and training. Ensure privacy is preserved within this reporting.²⁹
23. Ensure direct verbal contact with the respondent is made prior to the DC hearing to check that they have read and understood their rights to advocacy or other support and are aware of the potential outcomes for them from a DC hearing.

²⁸ See <https://www.endvawnow.org/en/articles/1499-survivor-centred-approach.html>

²⁹ See footnote 44 for Dept of Statistics guideline on preservation of anonymity

Reviews

The Education and Training Act 2020, s.284(3) is reflected in the Statute at clause 7, allowing for a review request by the respondent of any penalty imposed by DC. Where a complainant considers that the penalty is manifestly inadequate – e.g. reprimand c/f suspension or exclusion, they currently have no avenue to appeal against this. Section 284(3) does not mention any right of a complainant to seek a review. This does not stop the University from giving a right to a complainant to seek a review of DC's decision that a complaint be held to be not substantiated, or as to the appropriateness of any penalty.

The Appeals Committee membership size or qualification is not identified in Statute.

Reviews Recommendations:

24. Specify within the Statute the makeup and size of the Appeals Committee.
25. Identify **all** rights of review (for both complainant and respondent in non-academic matters) around misconduct in the Statute (or Statutes if a separate one for non-academic or harmful sexual behaviour is created).
26. Identify whether the Appeals Committee should review every appeal about every part of the complaint process, or solely those that have been through a DC process. If the latter, then identify who has the power to review earlier decisions in the process. Reviews ideally need to be considered at the lowest appropriate level.
27. Ensure timely meeting requirements of the Appeals Committee when an appeal is lodged.
28. Maintain student involvement in appeals.

Nexus of Activity

Some issues around harmful sexual behaviour that have been brought to the attention of Campus Life or the Proctors' Office have related to behaviours or incidents that have taken place away from the University. In these instances the University needs to consider whether it has jurisdiction and/or responsibility to address the issue.

For the University's Code of Conduct, other policies, regulations and the Statute to apply, the respondent needs to be a currently enrolled student.

The location of the complained about action also needs to be considered. If the alleged behaviour took place

- i) on campus, or
- ii) in Halls of Residence, or
- iii) during University sponsored or sanctioned activity (for example field trips, student camps, University club activities)

then the Statute applies, regardless of whether the complainant is an enrolled student or not.

If the alleged behaviour took place outside of the above situations (i) – (iii), then both parties need to be currently enrolled students at the time of the alleged incident(s) for the University to consider whether it has jurisdiction or not.

Factors that the University considers here regarding jurisdiction include:

- (i) where there is potential risk for welfare and safety for other students
- (ii) where there is potential to bring the University into disrepute.

If in the opinion of the University conduct taking place outside of (i) – (iii) affects or potentially affects good government and discipline, or the safety and welfare of the complainant or others, then it may on a case-by-case basis consider the complaint. Generally this needs to directly involve conduct of the alleged perpetrator in their capacity as a student. This may not necessarily mean that any disciplinary action will be taken, but safety measures may well apply such as symmetrical non-contact directives or rehousing within University Residences.

It is noted that the large majority of issues that have come to Campus Life have related to either an existing relationship between the parties, or a single event where alcohol or other intoxicants have been a factor.

Multiple complaints about a single alleged perpetrator have been rare, other than where behaviour has been viewed by others at a single event (e.g. party) and multiple bystanders have taken the matter to Campus Life.

There is little to indicate that there are active sexual predators on campus. Repeat alleged perpetrators were identified to Campus Life as behaving in a ‘creepy’ way (e.g. using inappropriate pick-up lines) rather than being people who would sexually or physically harm others.

Nexus of Activity Recommendations:

29. Clarify in the Statute where the University has jurisdiction to address in terms of discipline under policies or the Code of Conduct apply. If ‘bringing the University into disrepute’ continues to form part of the decision-making in this area, then clarify what this means. Note: Solely because the parties happen to be students doesn’t necessarily create disrepute to the University. Failure by the University to address an issue in a timely fashion, or addressing it inappropriately may do so.
30. Outline findings DC or other members of the University cannot make – e.g. a criminal finding of sexual violation, but the University may still may take ongoing action to provide a safe environment for the complainant and respondent – e.g. non-contact directives; suspension or revocation of enrolment until the complainant has completed a course or paper; moving one or both parties to other accommodation.³⁰

Disciplinary measures

There are a range of disciplinary and other measures that can be taken by different parties in any complaint to the Proctors’ Office.

If a matter is addressed by the Proctor they may offer options to complainants to assist them to settle a matter themselves, or with assistance through a facilitated process with the

³⁰ A high-level action such as a trespass order can be initiated only by the Registrar. It is not recommended that this authority be devolved elsewhere.

respondent where this might be considered appropriate. In cases of harmful sexual behaviour this is most unlikely to be considered appropriate. On rare occasions a complainant may want to consider this if the alleged incident(s) took place within an existing consensual relationship.

The Proctor may issue a reprimand to the respondent either in writing or verbally. The other possible action a Proctor can take is to issue a directive. These are usually interim, and most commonly are non-contact and/or confidentiality and/or restricted access directives. The Proctor currently does not have the ability to apply a University community service order, require counselling (e.g. where there has been substance abuse of some kind, or apparent mental health issues identified), or require compulsory attendance at relevant training (e.g. Respect and Consent training). All of these would broaden the purview of the Proctor. By giving a greater 'menu' of outcome options, some matters may not need referral to DC. Enabling Proctors to issue penalties would be useful where the evidence provided regarding the alleged misconduct may be weak, but sufficient for the Proctor to reasonably uphold the allegations, and where the seriousness of the allegations and the severity of their impact are relatively low.

Residential Managers may apply the following penalties:

- Fine up to \$1,500
- Apply a behavioural contract to a student
- Termination of residential contract
- Removal to another residence
- Require restitution for damage
- Issue noncontact and/or restricted access directives.

DC may, as per clause 6 of the Statute:

- Issue a reprimand
- Issue a direction to record incidents of academic misconduct in the University's Register of Deliberate Academic Misconduct
- Fine up to \$5,000
- A limitation or prohibition on attendance at class or classes or the use or enjoyment of any of the University's facilities
- Suspension from attendance at the University or class for period of time
- Cancellation of enrolment
- Restitution may be required without imposing a specific penalty.

Some professions (e.g. medical, legal) require character fitness for graduates to become members of their chosen profession. A 'fitness to study' requirement could form part of the deliberations of DC.

Disciplinary Measures Recommendations:

31. Explore how to provide a clearer path to an opportunity for a facilitated/ mediated / restorative justice process where appropriate. This may allow for a swifter path to resolution of lower-level complaints where both parties are open to participation in this.

32. As a culturally diverse institution, the University needs to consider the range of culturally or faith-based appropriate ways of resolving issues between parties – e.g. hohourongo (reconciliation /peace) process for Māori students if desired and agreed to by both parties, with a focus on the future while maintaining the mana of the parties. This is not something that should be imposed, but provided, in consultation with students and relevant Pro Vice-Chancellors if it is an appropriate avenue in the given circumstances.
33. The Statute should provide for Proctors to impose further penalties.
34. A ‘fitness to study’ consideration for DC to consider be promulgated.
35. Consideration be given to whether DC should have the power to compel attendance at counselling for respondents.

Definitions

Within the University’s policy Addressing Bullying, Harassment and Discrimination, harassment is defined as

‘unreasonable or unwelcome conduct that is offensive, humiliating or intimidating to any other person and is either repeated, or of such significant nature that it has a detrimental effect on the person, their performance or their work and study environment. It includes gender-based, racial, and sexual harassment.’

Gender based harassment describes a wide range of behaviour based on gender stereotypes, sexual orientation or gender identity. Such behaviour includes verbal, physical, visual or digital actions which demean, belittle or threaten a person. It does not necessarily suggest sexual interest or intent; it is often about making a person feel unwelcome, uncomfortable, inferior or vulnerable.

Racial harassment is the use of language, or visual material or physical behaviour that expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; is hurtful or offensive; and is either repeated or serious enough to have a detrimental effect on a person in one of the areas specified by the Human Rights Act 1993, e.g. the provision of education, accommodation and employment.

Sexual harassment is unwelcome conduct of a sexual nature that could be offensive, humiliating or intimidating to any other person and is either repeated, or of such a significant nature, that it has a detrimental effect on the person, their performance or their work and study environment. This includes a request for sexual activity of any sort that contains an implied or overt promise of preferential treatment or implied or overt threat of detrimental treatment. It is unlawful to sexually harass another person even if there was no intention to harass the person.’

There were a number of thoughts put forward within the review around whether these definitions were sufficient to address harmful sexual behaviour. Some suggested that the University change the definitions to exclude the word ‘significant’, and set aside anything

sexual that is potentially criminal in nature e.g. sexual violation³¹ to be outside the policy. This is the stance that the University of Otago has taken – i.e. to exclude any complaints about sexual violation from being dealt with within the university, where only recourse for students is to go to the Police. While much harmful sexual behaviour is clearly criminal in nature (e.g. sexual violation, sexual assault) the decision to take their issue(s) to the Police must always lie with the complainant.

While the option to exclude incidents of sexual violation from University jurisdiction is apparently attractive in clarity, where the issue of sexual violation would be addressed by people with training and expertise in the area, many students who are already finding it difficult to come forward within the University process are even less likely to go to the police. The time delay with police processes is well known, and may continue beyond the time that either party to a complaint is even at University any more. The standard of proof in a criminal matter is required to be beyond reasonable doubt; the civil standard of proof required within the University process is ‘on balance of probabilities’. Minority cultural groups and rainbow groups are even less likely than the wider population to feel open to go to police, or even other authorities. This was cited to often be due to heteronormativity. Sandra Dickson in *Hohou Te Rongo, Outing Violence* identified that complainants are often concerned about *what would happen to perpetrators, in the context of homophobia, biphobia, transphobia and racism within the criminal justice system and wider society, and the ways people in Rainbow communities are pathologised, particularly Māori, Pacifica and other non-Pākehā people.*³²

Rainbow groups are likely to have higher levels of harmful sexual behaviours than the general population:

*Almost a third of participants (32%) reported someone had had sex with them against their will since they were 13. This is a much higher rate of sexual violence than for women or for men in the general population. Participants who reported this were twice as likely to have attempted suicide in the past year (18%) than participants who did not report this (9%). Almost half (47%) reported someone had attempted to have sex with them against their will, since the age of 13.*³³

While the reviewer considers that having a separate section or policy on definitions of harmful sexual behaviour could be useful, the exclusion from any coverage by the University of the highest levels of sexual violation for consideration regarding discipline is not one that the reviewer recommends. Already marginalised groups find it hard enough to seek support and advice within the University. Telling them that their only option is to go to the Police creates an even greater risk to their potential safety and wellbeing. This does not mean to say that survivors of harmful sexual behaviour should not be supported and encouraged to go to the Police where appropriate. The Police are of course one avenue for addressing the issue, but should not be seen as the only avenue available to students.

³¹ Section 128 Crimes Act 1961 defines sexual violation; s.128A outlines the circumstances in which consent has not occurred.

³² Sandra Dickson, *Hohou Te Rongo, Outing Violence*, Building Rainbow Communities Free of Partner and Sexual Violence April 2016, page 34

³³ Veale J, Byrne J, Tan K, Guy S, Yee A, Nopera T & Bentham R (2019) *Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Transgender Health Research Lab, University of Waikato: Hamilton NZ. Second printing 2 December, 2019 page v

The University of Canterbury's definition of sexual harassment is:

Sexual Harassment – any form of sexual or gender orientated attention or behaviour that is unwanted and offensive to the recipient, and would also be offensive to an ordinary reasonable person. Sexual harassment may be intentional or unintentional and is not confined by definition to any gender or sexuality.

*It is unlawful for any person to make a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.*³⁴

*It is also unlawful for any person to use language of a sexual nature (whether written or spoken), visual material of a sexual nature, or physical behaviour of a sexual nature to subject any other person to behaviour that is unwelcome or offensive to that person and is either repeated, or of such a significant nature, that it has a detrimental effect on that person's ability to engage in work or study activities.*³⁵

The first definition used by the University of Canterbury ('UC') adds a reasonable person test to the definition (see underlined section above) which moves it beyond the more subjective definitions within the Human Rights Act (section 62). UC's does not require any detrimental impact for sexual harassment to have occurred. While this may lower the threshold for a behaviour to be considered to be sexual harassment, the requirement for a 'reasonable person' test may offset this, as this does not recognise the unique characteristics of the individual complaining.

The UC definition is not recommended for the University of Auckland around sexual harassment, as it is the reviewer's opinion that staying with the definition provided by the country's legislature is appropriate. However UC's first definition of sexual harassment may be useful in the consideration of higher level harmful sexual behaviour, which could encourage more complainants to come forward.

There is strong advocacy for the use of 'survivor' as the terminology in harmful sexual behaviour cases. The University of Victoria, British Columbia uses this, but in its definitions recognises that some people may not identify with this terminology and have the right to determine how they are referred to.

Universities Australia³⁶ recommends a stand-alone policy around sexual assault and sexual harassment.

Complaint definition

The University of South Australia (and some other universities) distinguishes between 'disclosure' and 'complaint'; the former being where there is information provided to the University with no expectation of action being taken; the latter where there is a report with

³⁴ As per Human Rights Act 199, s 62(1)

³⁵ As per Human Rights Act 1993, s.62(2)

³⁶ [UA-Guidelines-2.pdf \(universitiesaustralia.edu.au\)](#) page 4

some expectation of action being taken by the university. At the University of Auckland, the practised terminology separates ‘allegation’ or ‘complaint’ from ‘case’, thus allowing for a ‘case’ being something that has already undergone an investigation and is now something that DC can address.

Proctors have been given a direction to refer only ‘serious’ cases to DC. This has been explained at times as one in which DC could reasonably determine the highest penalty (i.e. expulsion or suspension of enrolment) can be applied. At other times that cases should not be referred to DC unless there is sufficient evidence to uphold it. This requires some mind-reading by the Proctor about the future actions of a DC with changing membership and with little to no written guidance or training relating to non-academic misconduct.

Definition Recommendations:

36. Develop a stand-alone policy re sexual harassment, sexual harm and sexual assault, with a revised definition along the lines adopted by the University of Canterbury for higher levels of inappropriate sexual behaviour. In developing this policy, it is important that AUSA and Mana Whenua consultation occurs. HELP Auckland is also recommended to be consulted, particularly around procedures or guidelines attached to any policy. The submissions from earlier in the year around the Harmful Sexual Behaviours policy also need close consideration, where the University has experts in this subject matter who can provide both research and practical input.
37. In a stand-alone policy outline the situations in which consent is not given, as per the situations outlined in the Crimes Act 1961 s.128A.³⁷
38. Keep the general harassment definition within the University’s policy of Addressing Bullying Harassment and Discrimination as it is.
39. Define ‘serious cases’ within the Statute within similar parameters as Category 2 levels anticipated for academic matters; provide accompanying guidelines in relation to this with scenarios, and updated to make this a living document.
40. Ensure that complainants of harmful sexual behaviour are aware of their rights to go to the Police, and are supported to take that action in the event that this is their decision.
41. Use ‘survivor’ in University documentation as the term for those who have experienced proven harmful sexual behaviour, allowing for self-determination of the term for those impacted.

Proctors

The concept of Proctors was introduced in the University in 2013, to act as a triage function for students and staff dealing with and seeking to resolve conflict.³⁸ At page 19 of Mediation Confirmation Services the flow chart for confirmed processes for handling student disputes indicates by implication that the Proctor could be involved in ‘local resolution’. The other two options are that the complaint is withdrawn or referred to DC for investigation and deliberation, before decision and outcome. The Statute for Student

³⁷ Note that the University of South Australia has an excellent outline of ‘consent’ in its definitions (page 4, Sexual Assault and Sexual Harassment Policy)

³⁸ Page 12; Section 5. Recommendations [8] Mediation Services Confirmation – internal document provided by the University, authored by Prof John Morrow, D-VC (Academic)

Discipline came into force on 1 January 2013, the owner at that time being the D-VC (Academic), now the Provost.

Since the appointment of the first Proctors the role of triage has morphed into an expectation that the Proctor will undertake a full investigation before any matter is referred to DC. This is despite the DC specifying in its own outline of its role to have an investigative rather than adversarial process. There is no specific mandate for Proctors, and prior to end of October 2022, minimal resourcing.

When the latest tranche of Proctors was appointed (five in total)³⁹ no specific time provision was allocated to this role as Campus Life thought it would be likely to be a relatively minimal amount of time of approximately 2 – 10 hours per month. The Registrar understood that each Proctor had a 0.1 time allocation. The Proctors use varying amounts of time in their role, dependent on the issues where they are used. Some Proctors identified that their faculty leadership told them that the time that they spend in the role is not considered for academic advancement. Since the role does not have a formal time allocation to it, any undertaking in the role of Proctor may be said to fall within the 20% service to the University time allocation for academic staff, and should therefore clearly be considered for professional advancement purposes. This was the understanding that Campus Life had in the appointment letter. It is unclear to the reviewer why any faculty leadership would not see the Proctor role as University Service.

Part of the reason for a larger number of Proctors was to allow for a wider range of people that students could approach with issues. Some students have spoken in glowing terms of the Proctor that they contacted. One telling phrase from a complainant who had been through the DC process identified specifically that being able to talk to another woman was significant in putting her at ease. The current Proctor group comprises four women and one man. All the women are academics. The reviewer is unclear about the cultural background of the Proctor group, knowing only from University News⁴⁰ that Proctor Rennie Atfield-Douglas is Niuean.

Proctors also identified some uncertainty about decision-making between them and DC.

Clarification of role:

The Proctors' role includes working with the Manager Student Conduct and Investigations where a matter has been investigated. If the matter is at the lower end of the scale (the equivalent of Category 1 being considered for academic misconduct i.e. medium to low level issues that would not ordinarily be considered to be criminal or warranting major penalty) then the Proctor could address that within their own powers through applying, for example, a non-contact directive, a reprimand, a recommendation for counselling, a recommendation for and exploration of an appropriate alternative resolution process, e.g. mediation, restorative justice process, hohourongo etc.

³⁹ Note that at <https://www.auckland.ac.nz/en/about-us/about-the-university/equity-at-the-university/harassment.html> the Proctors listed are out of date

⁴⁰ <https://www.auckland.ac.nz/en/news/2020/10/01/rennie-atfield-douglas-proud-of-south-campus.html>

Note: the role of the Proctor in USA universities is to ensure academic integrity guidelines are followed during exams. In NZ, Australia, UK and Canada this role is undertaken by an invigilator. It would be useful to ensure that any students from the USA understood the different definition of Proctor in NZ compared with their home country.

Proctors Recommendations

42. Ensure ongoing support and resourcing for the Proctor role through the Manager Student Conduct and Investigations, and administrative functions of the role through Campus Life.
43. Attach time allocation to role if it is not recognised as being within their 20% 'service' allocation. Consult with the Proctors on how much time they have spent in the role since their appointment.
44. Provide relevant training for Proctors in consultation with them, Director Campus Life, the Registrar and AUSA.
45. Ensure that the time spent in the role of Proctor is considered for academic advancement in terms of service to the University.
46. Consider the diversity within the Proctor group when new appointments are made, to reflect more accurately the diversity of the student population.
47. Ensure Proctors know how to link students to appropriate cultural support if the student is not aware of it.
48. Continue the practice of appointing both academic and professional staff to the Proctor role.
49. Ensure that any students enrolling from the USA understand the different role of Proctor from their home country.

Training

At each stage of a complaint being addressed within the University community there is the availability of training for people who are 'first responders'. Although this is supposed in some instances to be compulsory (e.g. for two executive members of each club or association recognised by the University) the reality of this occurring relies on the goodwill of each club or association executive. For students who may be first responders to complaints of harmful sexual behaviour, there is face-to-face training⁴¹ with significant on-line material also available. While this material is very comprehensive, it needs regular review to ensure that students and relevant staff are kept up to date with any recommendations about working with students who may disclose harmful sexual behaviour to them.

Although some academic members of DC have specialist knowledge of law or sexual harm issues, it is 'luck of the draw' as to whether they are available to sit on such DC hearings. There no current training provided or required for members of the Discipline Committee. Proctors are required to attend the face-to-face training 'Creating Cultures of Consent and Respect', the University's harmful sexual behaviour training delivered by Rape Prevention

⁴¹ <https://www.auckland.ac.nz/en/students/student-support/personal-support/be-well/harmful-sexual-behaviours/harmful-sexual-behaviours-action-plan/prevention-and-awareness0/education-and-training.html>

Education. This same training is provided to Campus Life staff, such as Resident Managers, Coordinators and Residential Advisers, Campus Care staff and others.

There is training for student representatives organised by the Campus Life Be Well team which was highly praised by AUSA. AUSA commented however, on the difficulty of finding information on the University website about where to seek help. This was tested by the reviewer asking 7 non-University people to search for assistance, as if they had been sexually assaulted. Some search terms resulted in quick and easy access to information. Some terms such as 'I have been raped what do I do?' brought up the electronic response 'do you mean I have been raped what do I do?'

HELP Auckland is also on campus once or twice a week during the semester. This is not readily available to be found in the University search function. Entering 'HELP Auckland' found over 100 possibilities for the searcher – the first 28 of which were related to computer hardware or software issues, or how to donate a koha to the University. On page 3 of the search, **Item #29** <https://www.auckland.ac.nz/en/about-us/about-the-university/equity-at-the-university/family-violence-its-not-ok/its-ok-to-ask-for-help.html> provided information in the harmful sexual behaviour area. Any survivor of a sexual assault would likely have given up the search after the first two pages – or even the first.

Training Recommendations

50. Continue with ensuring training for all students more likely to be approached by complainants regarding harmful sexual behaviour. Consider checking who is accessing the training from club executives, so that gentle reminders can be provided in a follow up by Campus Life.
51. Extend 'Creating Cultures of Consent and Respect' training to DC members and other relevant staff who may be involved in either being a first responder, or in the more formal process of addressing complaints. Sexual, sexuality, gender and cultural issues need to form part of this training. The impact of intersectionality issues also needs to be well covered in any training.
52. Ensure all DC members are trained in the principles of natural justice.
53. Liaise with AUSA to identify which search terms would be helpful to students to more readily access the sort of information they are seeking in the event of harmful sexual behaviour. (see further discussion about this in the section on Student Perception of the University).
54. Liaise with AUSA to ensure that there is easy and varied information about access for support for students with issues, not solely on the website. Examples could be posters, notice boards in bathrooms with information on harmful sexual behaviour (what it is; where and how to get help; what to do; what not to do etc), videos, an app re support structures.

Cultural Considerations

The mediation office that provided in-house mediation or facilitated resolution is no longer offered at the University. External mediators are used on occasion. Victoria University of Wellington and AUT have alternative resolution opportunities for staff with the appointment of in effect, an Ombud role. This has not been extended to students at this stage.

There is nothing in the current DC process or the Statute that identifies that any cultural context be taken into account, or that culture be an element for consideration in the imposition of penalties, or opportunity to address an issue between the parties rather than have it go to DC. While the University is a secular institution, there will also be many students who will have a faith-based approach to their lives that can be acknowledged in any alternative resolution process.

Māori staff have identified that for students, hohourongo may be considered as a way of reaching resolution. Concepts of muru and utu are part of traditional tikanga Māori that have transformed from their previous status where muru was loosely defined as compensation to redress a transgression, although more latterly translated as a way of forgiveness. Utu traditionally had a concept of revenge, but more latterly is seen as putting right a wrong. Māori students are connecting more to their culture, so particularly for them, there is likely to be a greater demand for a process that fits their tikanga. Te Roopu Whakamana Tangata was identified as providing useful lower level interventions for situations where the application of tikanga Māori is appropriate.

Use of different styles of resolution, relevant to the culture(s) of the people involved, is something that requires greater discussion, consultation and research before any formal processes are put in place. Rushing this could potentially be deleterious. While a less formal process may obviate the need for DC, it may also be something that DC could recommend subsequent to a hearing, if both parties agreed.

Any alternative process already undertaken could be considered by DC if the matter still went to it. In some instances where a restorative justice style of process has been used, some complainants have found it offensive if the involvement by the respondent in this results in lessening the punishment, where the respondent's participation is not seen as genuine.

Cultural Consideration Recommendations:

55. That the University explore the range of opportunities there may be for facilitated outcomes or other alternative resolution options, which recognises the needs of the complainants, and ensures the upholding of the dignity and mana of both parties.
56. Ensure that Pro Vice-Chancellor Māori and Pro-Vice-Chancellor Pasifika are consulted and involved in the developer of culturally appropriate processes.
57. Ensure that AUSA and Māori student groups are consulted and involved in the development of culturally appropriate processes.
58. Allow opportunity for parties to settle matters within the cultural context most relevant to them. Both parties would need to agree to any process, other than a hearing by DC.

Student Experiences of Discipline Committee

Both complainants and respondents within the time range of issues around sexual complaints were contacted by email via Campus Life. They were asked what worked well for them in either lodging their complaint, or in having one lodged against them, what was a challenge or difficulty in the process, and what they considered would make the process fairer or more effective.

Complainants identified the following positives in making their complaint:

- Prompt response time in the first instance
- Clear Proctor directives to the respondent for safety of complainant
- Proctor recommendation for compassionate consideration in exams (although this was limited in purview)
- 'The Proctor made me feel comfortable and seemed to believe my story and made the process a lot easier. Having a woman to talk to as well made me much more at ease, as a woman myself.'
- 'I felt that all the people I spoke with genuinely had my best interest at heart. I wasn't expecting to be met with such concern and care. I felt heard, understood, and that the university was there to assist me in not only feeling like I could return to studies physically, but mentally as well. I don't think I would have had the confidence to return to university without this care.'

Complainants who responded to the questionnaire universally identified some main themes around difficulties of the process from their experiences of it, including:

- The number of times they had to tell their side of the incident(s) was retraumatising. One complainant believed that her treatment by the University in 'mishandling' her case caused her more damage than the initial incidents that she had reported. Another reported that there was not any meaningful outcome, which 'made me regret lodging the complaint ... it was extremely disheartening and seeing it happen in the news several years later breaks my heart.' This student alleged that what happened to them (sexual assault) happened to others by the same perpetrator.
- The length of time that the whole process took was longer than anticipated, with one identifying that their issue took more than 9 months from start to completion
- The alleged perpetrator's responses were not disclosed to the complainant, so there was no opportunity to rebut the respondent's defence
- The process was focused on the respondent rather than the complainant
- The lack of knowledge about the outcome of the disciplinary hearing, so that the complainant didn't know whether they would run into the respondent in class or on campus.

Other issues raised by one or two individual complainants included:

- No compassion for the survivor / complainant
- Feeling blamed for not using specific language with the perpetrator
- The University not allowing re-enrolment where the complainant left midway through a semester due to the severe impact of the alleged assaults on them combined with the poor response from the University
- 'Mishandling' of their complaints

- No witness information being sought
- The content of an informal discussion with a complainant's parent and a University staff member was disclosed to the respondent; the parent had no knowledge that their conversation would be disclosed in this way
- A complainant's issue being forwarded to DC as a 'sexual harassment' issue, which was not substantiated, with the respondent being told at much later date that had it been forward to DC as a 'harassment' issue (which the complainant had identified in the first instance) then it would be upheld. Had there been any right for the complainant to seek a review, this was done well outside the timeframe for the opportunity for the complainant to lodge any appeal.

The two respondents who replied to the request for feedback identified similar experiences to each other in that they felt that:

- There was bias in the investigation
- There was little support for them
- The DC members had little knowledge of the law or procedure, and were 'clearly biased.' 'A bunch of emotionally charged people' was one description.

Neither respondent identified any positives for them in the process. One was particularly scathing in his review of the investigation process.

It is clear that none of the parties regarding harmful sexual behaviour that went to the DC were satisfied with the process. Some of the issues identified, or recommended by students have already been addressed as of mid-2022. It is clear that the majority of the people who answered the questions put to them by the reviewer were discussing their experiences of 2020 or 2021.

Disclosure of outcomes:

Complainants were keen to have disclosure of outcomes of DC hearings. One concern voiced by a complainant was that they did not know what had been put in place, so were too scared to go to some lectures, or even to leave their accommodation in case they ran into the respondent. One of the issues around full disclosure of DC outcomes is that there are privacy issues relating to the respondent.⁴² However, the reviewer considers that it is appropriate to ensure that the complainant is made aware of the outcome, if not all the

⁴² Privacy Act 2020, Section 22. Information Privacy Principle 11: Limits on disclosure of personal information.

s.22 (1)(f) allows the disclosure of information if it is necessary to prevent or lessen a serious threat to
(ii) the life or health of the individual concerned or another individual.

s.53(b) allows an agency to refuse access to any personal information if the disclosure would involve the unwarranted disclosure of the affairs of another individual. The Human Rights Review Tribunal in *Watson v CCDHB* [2015] NZHRRT 27 at [101] concluded the term 'unwarranted' is vital to the interpretation of this section (previously s.29(1)(a) in the Privacy Act 1993). It found that the complainant in that case was entitled to see the respondent's in full other than a small portion relating to another person. It did not discuss whether the complainant was entitled to know the final decision in relation to the respondent. The reviewer would argue that knowledge of the outcome of their complaint would be warranted.

details or quantum of penalty – e.g. that the respondent has a non-contact or restricted access directive in relation to specific areas or courses on campus; or the respondent has been fined, but the amount of the fine is not disclosed. In the reviewer’s opinion this would be acceptable under the Privacy Act 2020, and this appears to be the University’s practice in more recent cases.. There may be disclosures that are not appropriate to share with the complainant, e.g. issues regarding the requirement to seek assistance regarding for mental health or substance abuse issues of the respondent, but where there is the potential for ongoing harm or potential harm to the survivor, appropriate disclosure of outcomes is warranted.

According to the information sheet provided on the University’s website⁴³ the DC meeting is an investigative rather than adversarial process. After welcoming those present, step 2 in the process is to read the allegations to the respondent student. Step 3 is the respondent either admits or denies the allegation. The respondent may make an opening statement, and the DC members may ask questions. It is not until Step 6 that any witnesses may give evidence. From feedback from some complainants, it is not until then that they are invited to provide information. Witnesses may have questions put to them by the respondent and/or their representative through the Chair of the DC meeting. According to DC members complainants rarely choose to attend the meeting in person, but have chosen to do so via Zoom.

Student Experience Recommendations

59. Continue with the current practice of full disclosure and transparency of the responses from the alleged perpetrator to the complainant at the Proctor investigation stage (Note: this was not general practice in the past, but since March/April 2022 every piece of evidence collected in the investigation goes to the complainant. This includes responses from the respondent).
60. Ensure relevant disclosure to the complainant of DC outcomes related to the respondent, particularly those that directly impact the complainant.
61. Ensure relevant disclosure of DC outcomes to Campus Care to allow appropriate support to be put in place for parties, through relevant staff and as appropriate to the circumstances, e.g., Heads of Department, Residential Managers, Residential Advisers.
62. Provide more appropriate opportunity for complainants to participate at DC hearings if they wish; if they do choose to participate to have the opportunity to have their say prior to the respondent.
63. Keep a record of those who have had complaints made against them for consideration in either future issues or employment within the University. This recommendation was raised particularly in relation to employment of Residential Advisors. This could now form part of a good character assessment safety check which has been a requirement of the Education and Training Act (s.540A) since 1 August 2022 specifically around consideration for employment roles within residential accommodation.

⁴³ [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://cdn.auckland.ac.nz/assets/auckland/about-us/the-university/governance-and-committees/committees/DisciplineCommittee/Discipline%20Committee%20Information%20Sheet%202021.pdf](https://cdn.auckland.ac.nz/assets/auckland/about-us/the-university/governance-and-committees/committees/DisciplineCommittee/Discipline%20Committee%20Information%20Sheet%202021.pdf)

64. Provide anonymised summarised publication of DC findings and penalties, creating greater transparency, and potentially accountability. In compliance with Department of Statistics guidance in relation to preserving confidentiality, this to be done once there are 6 or more cases of the same nature that have been considered by the DC⁴⁴.

Student perception of the University

Student clubs and associations considered to be more likely to have students approaching them about harmful sexual behaviour⁴⁵ were sent questionnaires relating to their experience of this and recommendations for the future.

Responses from student groups or associations indicated:

- AUSA and one other group had students coming to them directly about harmful sexual behaviour matters as either complainant or respondent
- Most had training of executive members around harmful sexual behaviour – although one group identified a difficulty in finding executive members being prepared to go to training
- All but one indicated there were barriers for students to come forward to the University / Campus Care about harmful sexual behaviour. Barriers were identified as:
 - Lack of information, or readily accessible information
 - Students thinking that they can resolve issues themselves – without the need of making it a ‘big deal’
 - ‘Students who condemn themselves as being perhaps partly responsible’
 - ‘The university’s track record of distrusting victims and retraumatizing them with the process of reporting cases’
 - ‘The university’s offender-centric approach, often letting offenders continue to study normally while the victims suffer consequences on all facets of their wellbeing.’
 - One indicated that there was a ‘reluctance to file a formal report and [some students] would rather vent about the issue than take official action.’
 - ‘The very first barrier is mistrust. Students do not look at the university as an institution that can help them anymore. ‘
 - ‘Many students that are of a minority will never, in a million years, think of going to the university for help, and that’s because there are cultural differences that the university, I believe have not addressed. Also, around the time that the March sexual abuse case happened, it was very hard to understand and find the help the university provided on their website.’

⁴⁴ Department of Statistics identifies that fewer than 6 data points would breach their Threshold Rule 3 for maintenance of confidentiality
<https://www.google.com/search?q=%3A%2F%2Fefaidnbmnnnibpccajpcglclefindmkaj%2Fhttps%3A%2F%2Fwww.stats.govt.nz%2Fassets%2Fuploads%2Fmethods%2FApplying-confidentiality-rules-to-2018-Census-data-and-summary-of-changes-since-2013%2FApplying-confidentiality-rules-to-2018-census-data-and-summary-of-changes-since-2013.pdf>

⁴⁵ Women’s groups, Māori groups, cultural groups, Rainbow, faith-based groups and one identified as relating to disability issues.

- ‘Lack of confidence in the existing avenues of ‘justice’; feeling that not supported enough by the current system.’
- ‘The current complaints form is abysmally impersonal and does not offer any clarity on the options available for students coming forward. Not everybody is ready to file a police report so the diversity of lived experience must be reflected in the approaches the university is able to take. Ultimately the final decision rests with the survivor so best practice requires these processes to be flexible.’
- ‘The entire process of reporting and getting justice is incredibly taxing on wellbeing and time-consuming while trying to keep your academic and personal afloat, so most people are not going to attempt it if they feel that they are less likely to be believed and most likely the offender is going to get off with a simple slap on the wrist.’

Recommendations from AUSA and responding student associations are reprinted in full here to identify the main issues of concern to students:

- (a) ‘More awareness about uni support.’
- (b) ‘Send a SIMPLE information email of where to find help services and how much of it is free to every student each year. I suspect this would be more effective than even your trainings tbh⁴⁶, because it would circumvent the majority of incidents where students would bring it to other student leaders who are ill equipped to deal with the emotional state of students sharing, even though they may have already done your trainings.’
- (c) ‘Do a series of workshops on sex culture. But allow all faiths and communities to do their own seminars on how to avoid sexual harassment and abuse. Allow them to talk about what they think perpetuates it and what reduces it. Vet all their talks so that there isn’t anything blatantly problematic or extremely unclear for the audience. Support all communities within the university to contribute to the conversation. Get groups to address ways of courting one another and solutions for initiating interest in dating etc. Be very specific about what is and what isn’t being talked about. Create trigger warnings on talks before or after talk blurbs for people to be aware of what they may encounter and to avoid going in if they are unable to engage in a respectful and relatively constructive way. This way students will be very aware of how different cultures at uni think about what is ok and what isn’t. This will create a university culture within which it is much clearer to all parties what is reasonably tolerated and what isn’t. Overly sensitive and afraid students can discern many matters prior to any encounter of what may or may not be harassment. And many students will learn what is and isn’t acceptable regarding initiation, harassment and abuse.’
- (d) ‘The university must adapt a victim-centric approach to disclosures, putting the victim and their wellbeing first when dealing with the case. Along with this there also must proper accountability for past cases the university has dealt with, in a way that satisfies students.’
- (e) ‘I think the current system is clear and fair enough on the accused, as from the situation it seems they benefit more often from the process than the complainant.’

⁴⁶ ‘to be honest’ in text-speak

Along with the victim-centred approach, having counsellors/staff of colour for students of colour so that there is cultural competency and consideration, as disclosure is difficult for POC with cultural/religious strains adding to the overall societal pressures. It would also be beneficial for situations when the accused is a person of colour.'

- (f) 'Perhaps separating the informal and formal processes of reporting into two different forms. Both are recorded but the latter focuses on delivering a potentially disciplinary outcome for the offender. Former serves to offer support to the survivor without having to deal with an official investigation.'
- (g) 'The university taking accountability in their outdated system first and foremost. If the university is transparent with students about their own faults and committed to changing this system, maybe some trust will be gained.'
- (h) 'The system being handled/championed by people that are actually educated in harmful sexual behaviour spaces, being survivor-centric, understanding that these cases requires a tonne of resources. '

It is noted that some of the recommendations made by student groups already occur e.g. an email to all students about resources and support available. Some recommendations already form part of those of the review e.g. training. The recommendation around different forms for informal and formal preferences of the complainant could be useful in creating a more user-friendly interface. It is noted that template letters to the complainant and the respondent where a case is being investigated are also seen as impersonal and not well tailored to the individual receiving it. A review of how this is done would also be useful.

Reviewer Recommendations in addition to Student Recommendations:

- 65. Involve students in developing culturally appropriate lower level processes for settling issues.
- 66. Ensure access to culturally competent support for students of colour, minority cultural and other groups, rainbow students, (for both complainants and respondents).
- 67. Recognise that alternative resolution processes may not be appropriate for all situations because of the seriousness of the allegation(s) or a breakdown in relationship between the parties.
- 68. Focus on a survivor-centric approach to investigations and DC operations; note that this does not mean that the rights of the respondent are abrogated; it is to ensure that the complainant also feels supported through the process.
- 69. If the more formal process is used, keep students informed of progress with matters throughout investigation; update them on progress and expected hearing by DC or separate committee.
- 70. Continue with providing each year (during O week?) simple information about where to find help services and how much of it is free to every student.
- 71. Training around creating a better culture of consent and respect for students is underway, but needs further action to ensure it is accessed by the wider student body. Ensure that understanding the impact of alcohol and/or drug consumption on decision-making is clear. Consideration needs to be given to making this mandatory, at least for all first year students, as those most at risk of being the perpetrator of harmful sexual behaviour are unlikely to consider it an important topic.

Final Comments

There were some cogent arguments in the written submissions about the Harmful Sexual Behaviours policy draft not addressing the patriarchal societal structures that allow such behaviours to proliferate, but rather focusing on the individual aspects of harmful sexual behaviour. Submissions argued that identifying this as a systemic problem requiring systemic, deep structural change is required, rather than isolated plans or measures.

While recognising the validity of these comments, the University is obligated under legislation to provide for the welfare and safety of students, addressing issues that are brought to its attention. While structural societal change is clearly needed, the University needs to address the immediate issues that are within its powers to progress.

The University is to be commended for taking this issue seriously. Because of the very nature of the matters under discussion, there will never be the 'perfect' Statute, policy or process that meets the wishes of every party. However it can work to ensure that whatever process is followed is legally responsible, survivor-centric, applies natural justice for the parties and is culturally appropriate. The University has obviously learnt from recent experiences and is committed to working to achieve the most appropriate processes.

There is more to do in specific areas, while it works towards creating safe and inclusive environments in which all students can study safely. In particular, the University needs to ensure that:

- All people approached as either first responders or who are in formal positions to address harmful sexual behaviour are trained to operate appropriately with the parties involved
- There is a clear distinction made between academic and non-academic misconduct and the ensuing processes to be applied
- A smaller DC is created for non-academic discipline matters
- Consultation with those groups more frequently impacted by harmful sexual behaviour takes place before any policy re harmful sexual behaviour is finalised.

Summary of Recommendations

Discipline Statute Recommendations

1. Have separate statutes for academic and non-academic misconduct, with separate 'owners' Provost for the former, Registrar for the latter. While the reviewer's preference is to have separate Statutes, it could be possible to retain this within a single statute, but with separate sections. The Statute needs to ensure that there is provision for a specialist investigator to be appointed where specialised expertise would be appropriate.⁴⁷
2. The Statute needs to clearly articulate the role of the University in relation to criminal acts.
3. Allow for a separate committee to hear matters relating specifically to sexual harm (or other non-academic matters); maximum 3 – 4 members, with a deliberative vote as well as casting vote accorded to the Chair in the event of a tied vote. At least one member of the Committee needs to have specific expertise in the area under consideration (whether harmful sexual behaviour, or other matters which may come before the Committee). It is recommended that this expertise could be sought from outside the University.
4. If a separate committee (or sub-committee) were to hear harmful sexual behaviour matters, consult with AUSA as to the appropriateness of student representation on that (sub)-committee.
5. That the Statute revision under consideration at the present will specify the role and mandate of Proctors. This would include confirmation that the Proctor is responsible for oversight of investigation of complaints, and ensuring students have support, both prior to any reference to DC and subsequent to any DC hearing.
6. Reconsider the definition of 'authorised person' to be broad only for the purposes of 3(f) of the Statute (taking action necessary to protect safety of people or property) and limit to specific positions for the imposition of penalties under 3(g) of the Statute.
7. If 'authorised persons' (other than specified roles) can impose penalties, ensure that there is a centralised recording system for such penalties.
8. That the Statute identify that the imposition of penalties in the non-academic misconduct areas be limited to DC, Proctors and Residential Manager.
9. Clarify who has power to refer directly to DC. The current statute allows 'any authorised person' to refer; current practice is only the Registrar or Provost may do so.
10. Separate out the procedures for DC and Proctors from the Statute so that procedures can be more easily amended if necessary.
11. Provide a greater range of options for the Proctor to address matters prior to forwarding to DC, for example a compensation order, University community service (e.g. to rectify vandalism), training, compulsory counselling, reparation, compensation, low level fines to a specified maximum, apology.
12. Clarify in the Statute which policy and disciplinary process applies where there are respondent students who are also staff.

⁴⁷ Note that The University of Newcastle Australia identifies three forms of student misconduct, (i) academic misconduct, (ii) research misconduct and (iii) non-academic misconduct which could be considered the University of Auckland in its revised Statute(s)

13. There is no mention of harmful sexual behaviour in Residential Rules. It references the Addressing Bullying, Harassment and Discrimination policy, but does not mention anything specifically about sexual issues. Reference to the Harmful Sexual Behaviour policy, currently in draft, needs to be included within the Residential Rules.

Discipline Committee Recommendations:

14. The time frame for a thorough investigation is difficult to reduce and simultaneously maintain natural justice for both parties. It is recommended therefore that harmful sexual behaviour complaints be given priority for investigation when there may be multiple other issues to be investigated.
15. That the University provide more regular communication with parties with an outline of an investigation process before it begins, and during investigation to update on progress of the complaint, whether or not it will go to DC and the next steps at this point.
16. That the University provide training for all DC members around issues relating to harmful sexual behaviour, its impacts and sensitivity regarding communication styles with parties. There needs to be an understanding of coercive control within a sexual dynamic. Understanding what a survivor-centred approach process entails for both DC and any Campus Life staff would be useful also⁴⁸. Key elements in such an approach include:
 - properly trained personnel (e.g. from Rape Prevention; HELP,) including recognition of trauma in wrongly focused questions.
 - the complainant's wellbeing is the first priority e.g. physical safety considerations; time frame being as short as possible; knowledge of when / if going to DC
 - complainants are given information about rights and options (e.g. access to police; ACC, counselling)
 - the rights of complainants are clearly outlined.
17. Create a more user-friendly profile page for DC member information on the University website, including that X number will be chosen to form the DC.
18. Create opportunity for paid debrief / external counselling for DC members and DC administration staff post Discipline Committee hearings in this area. This opportunity is already in existence for Proctors.
19. Consideration be given to local time where either complainant or respondent attends from a non-NZ time zone. Ensure that DC administration staff contact both parties where a DC hearing is to take place to check what time zone they will be in on the proposed date.
20. Continue with the provision of legal advice to DC.
21. Convene a facilitated discussion between the Registrar, Campus Life, Proctors, the Chair of DC and DC members and Legal Counsel to specify and agree where cases can be referred to DC.
22. Analyse the year-level data of student parties to complaints of harmful sexual behaviour, and periodically include this in reporting to Audit and Risk Committee to

⁴⁸ Se <https://www.endvawnow.org/en/articles/1499-survivor-centred-approach.html>

allow for informing future communications and training. Ensure privacy is preserved within this reporting⁴⁹

23. Ensure direct verbal contact with the respondent is made prior to the DC hearing to check that they have read and understood their rights to advocacy or other support, and are aware of the potential outcomes for them from a DC hearing.

Reviews Recommendations:

24. Specify within the Statute the makeup and size of the Appeals Committee.
25. Identify **all** rights of review (for both complainant and respondent in non-academic matters) around misconduct in the Statute (or Statutes if a separate one for non-academic or harmful sexual behaviour is created).
26. Identify whether the Appeals Committee should review every appeal about every part of the complaint process, or solely those that have been through a DC process. If the latter, then identify who has the power to review earlier decisions in the process. Reviews ideally need to be considered at the lowest appropriate level.
27. Ensure timely meeting requirements of the Appeals Committee when an appeal is lodged.
28. Maintain student involvement in appeals.

Nexus of Activity Recommendations:

29. Clarify in the Statute where the University has jurisdiction to address in terms of discipline under policies or the Code of Conduct apply. If 'bringing the University into disrepute' continues to form part of the decision-making in this area, then clarify what this means. Note: Solely because the parties happen to be students doesn't necessarily create disrepute to the University. Failure by the University to address an issue in a timely fashion, or addressing it inappropriately may do so.
30. Outline findings DC or other members of the University cannot make – e.g. a criminal finding of sexual violation, but the University may still may take ongoing action to provide a safe environment for the complainant and respondent – e.g. non-contact directives; suspension or revocation of enrolment until the complainant has completed a course or paper; moving one or both parties to other accommodation.⁵⁰

Disciplinary Measures Recommendations:

31. Explore how to provide a clearer path to an opportunity for a facilitated/ mediated/ restorative justice process where appropriate. This may allow for a swifter path to resolution of lower level complaints where both parties are open to participation in this.
32. As a culturally diverse institution, the University needs to consider the range of culturally or faith-based appropriate ways of resolving issues between parties – e.g. hohourongo (reconciliation /peace) process for Māori students if desired and agreed to by both parties, with a focus on the future while maintaining the mana of the parties. This is not something that should be imposed, but provided, in consultation with students and relevant Pro Vice-Chancellors if it is an appropriate avenue in the given circumstances.

⁴⁹ See footnote 44 for Dept of Statistics guideline on preservation of anonymity

⁵⁰ A high-level action such as a trespass order can be initiated only by the Registrar. It is not recommended that this authority be devolved elsewhere.

33. The Statute should provide for Proctors to impose further penalties.
34. A 'fitness to study' consideration for DC to consider be promulgated.
35. Consideration be given to whether DC should have the power to compel attendance at counselling for respondents.

Definition Recommendations:

36. Develop a stand-alone policy re sexual harassment, sexual harm and sexual assault, with a revised definition along the lines adopted by the University of Canterbury for higher levels of inappropriate sexual behaviour. In developing this policy, it is important that AUSA and Mana Whenua consultation occurs. HELP Auckland is also recommended to be consulted, particularly around procedures or guidelines attached to any policy. The submissions from earlier in the year around the Harmful Sexual Behaviours policy also need close consideration, where the University has experts in this subject matter who can provide both research and practical input.
37. In a stand-alone policy outline the situations in which consent is not given, as per the situations outlined in the Crimes Act 1961 s.128A.⁵¹
38. Keep the general harassment definition within the University's policy of Addressing Bullying Harassment and Discrimination as it is.
39. Define 'serious cases' within the Statute within similar parameters as Category 2 levels anticipated for academic matters; provide accompanying guidelines in relation to this with scenarios, and updated to make this a living document.
40. Ensure that complainants of harmful sexual behaviour are aware of their rights to go to the Police, and are supported to take that action in the event that this is their decision.
41. Use 'survivor' in University documentation as the term for those who have experienced proven harmful sexual behaviour, allowing for self-determination of the term for those impacted.

Proctors Recommendations

42. Ensure ongoing support and resourcing for the Proctor role through the Manager Student Conduct and Investigations, and administrative functions of the role through Campus Life.
43. Attach time allocation to role if it is not recognised as being within their 20% 'service' allocation. Consult with the Proctors on how much time they have spent in the role since their appointment.
44. Provide relevant training for Proctors in consultation with them, Director Campus Life, the Registrar and AUSA.
45. Ensure that the time spent in the role of Proctor is considered for academic advancement in terms of service to the University.
46. Consider the diversity within the Proctor group when new appointments are made, to reflect more accurately the diversity of the student population.
47. Ensure Proctors know how to link students to appropriate cultural support if the student is not aware of it.
48. Continue the practice of appointing both academic and professional staff to the Proctor role.

⁵¹ Note that the University of South Australia has an excellent outline of 'consent' in its definitions (page 4, Sexual Assault and Sexual Harassment Policy)

49. Ensure that any students enrolling from the USA understand the different role of Proctor from their home country.

Training Recommendations

50. Continue with ensuring training for all students more likely to be approached by complainants regarding harmful sexual behaviour. Consider checking who is accessing the training from club executives, so that gentle reminders can be provided in a follow up by Campus Life.
51. Extend 'Creating Cultures of Consent and Respect' training to DC members and other relevant staff who may be involved in either being a first responder, or in the more formal process of addressing complaints. Sexual, sexuality, gender and cultural issues need to form part of this training. The impact of intersectionality issues also needs to be well covered in any training.
52. Ensure all DC members are trained in the principles of natural justice.
53. Liaise with AUSA to identify which search terms would be helpful to students to more readily access the sort of information they are seeking in the event of harmful sexual behaviour. (see further discussion about this in the section on Student Perception of the University).
54. Liaise with AUSA to ensure that there is easy and varied information about access for support for students with issues, not solely on the website. Examples could be posters, notice boards in bathrooms with information on harmful sexual behaviour (what it is; where and how to get help; what to do; what not to do etc), videos, an app or support structures.

Cultural Consideration Recommendations:

55. That the University explore the range of opportunities there may be for facilitated outcomes or other alternative resolution options, which recognises the needs of the complainants, and ensures the upholding of the dignity and mana of both parties.
56. Ensure that Pro Vice-Chancellor Māori and Pro-Vice-Chancellor Pasifika are consulted and involved in the development of culturally appropriate processes.
57. Ensure that AUSA and Māori student groups are consulted and involved in the development of culturally appropriate processes.
58. Allow opportunity for parties to settle matters within the cultural context most relevant to them. Both parties would need to agree to any process, other than a hearing by DC.

Student Experience Recommendations

59. Continue with the current practice of full disclosure and transparency of the responses from the alleged perpetrator to the complainant at the Proctor investigation stage.
60. Ensure relevant disclosure to the complainant of DC outcomes related to the respondent, particularly those that directly impact the complainant.
61. Ensure relevant disclosure of DC outcomes to Campus Care to allow appropriate support to be put in place for parties, through relevant staff and as appropriate to the circumstances, e.g., Heads of Department, Residential Managers, Residential Advisers.
62. Provide more appropriate opportunity for complainants to participate at DC hearings if they wish; if they do choose to participate to have the opportunity to have their say prior to the respondent.

63. Keep a record of those who have had complaints made against them for consideration in either future issues or employment within the University. This recommendation was raised particularly in relation to employment of Residential Advisors. This could now form part of a good character assessment safety check which has been a requirement of the Education and Training Act (s.540A) since 1 August 2022 specifically around consideration for employment roles within residential accommodation.
64. Provide anonymised summarised publication of DC findings and penalties, creating greater transparency, and potentially accountability. In compliance with Department of Statistics guidance in relation to preserving confidentiality, this to be done once there are 6 or more cases of the same nature that have been considered by the DC.

Recommendations from AUSA and responding student associations

- (a) 'More awareness about uni support.'
- (b) 'Send a SIMPLE information email of where to find help services and how much of it is free to every student each year. I suspect this would be more effective than even your trainings tbh⁵², because it would circumvent the majority of incidents where students would bring it to other student leaders who are ill equipped to deal with the emotional state of students sharing, even though they may have already done your trainings.'
- (c) 'Do a series of workshops on sex culture. But allow all faiths and communities to do their own seminars on how to avoid sexual harassment and abuse. Allow them to talk about what they think perpetuates it and what reduces it. Vet all their talks so that there isn't anything blatantly problematic or extremely unclear for the audience. Support all communities within the university to contribute to the conversation. Get groups to address ways of courting one another and solutions for initiating interest in dating etc. Be very specific about what is and what isn't being talked about. Create trigger warnings on talks before or after talk blurbs for people to be aware of what they may encounter and to avoid going in if they are unable to engage in a respectful and relatively constructive way. This way students will be very aware of how different cultures at uni think about what is ok and what isn't. This will create a university culture within which it is much clearer to all parties what is reasonably tolerated and what isn't. Overly sensitive and afraid students can discern many matters prior to any encounter of what may or may not be harassment. And many students will learn what is and isn't acceptable regarding initiation, harassment and abuse.'
- (d) 'The university must adapt a victim-centric approach to disclosures, putting the victim and their wellbeing first when dealing with the case. Along with this there also must proper accountability for past cases the university has dealt with, in a way that satisfies students.'
- (e) 'I think the current system is clear and fair enough on the accused, as from the situation it seems they benefit more often from the process than the complainant. Along with the victim-centred approach, having counsellors/staff of colour for students of colour so that there is cultural competency and consideration, as disclosure is difficult for POC with cultural/religious strains adding to the overall

⁵² 'to be honest' in text-speak

societal pressures. It would also be beneficial for situations when the accused is a person of colour.’

- (f) ‘Perhaps separating the informal and formal processes of reporting into two different forms. Both are recorded but the latter focuses on delivering a potentially disciplinary outcome for the offender. Former serves to offer support to the survivor without having to deal with an official investigation.’
- (g) ‘The university taking accountability in their outdated system first and foremost. If the university is transparent with students about their own faults and committed to changing this system, maybe some trust will be gained.’
- (h) ‘The system being handled/championed by people that are actually educated in harmful sexual behaviour spaces, being survivor-centric, understanding that these cases requires a tonne of resources. ‘

Reviewer Recommendations in addition to Student Recommendations:

- 65. Involve students in developing culturally appropriate lower level processes for settling issues.
- 66. Ensure access to culturally competent support for students of colour, minority cultural and other groups, rainbow students, (for both complainants and respondents).
- 67. Recognise that alternative resolution processes may not be appropriate for all situations because of the seriousness of the allegation(s) or a breakdown in relationship between the parties.
- 68. Focus on a survivor-centric approach to investigations and DC operations; note that this does not mean that the rights of the respondent are abrogated; it is to ensure that the complainant also feels supported through the process.
- 69. If the more formal process is used, keep students informed of progress with matters throughout investigation; update them on progress and expected hearing by DC or separate committee.
- 70. Continue with providing each year (during O week?) simple information about where to find help services and how much of it is free to every student.
- 71. Training around creating a better culture of consent and respect for students is underway, but needs further action to ensure it is accessed by the wider student body. Ensure that understanding the impact of alcohol and/or drug consumption on decision-making is clear. Consideration needs to be given to making this mandatory, at least for all first year students, as those most at risk of being the perpetrator of harmful sexual behaviour are unlikely to consider it an important topic.

Shayne Mathieson
Top Drawer Consultants
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Appendices

Appendix 1 Terms of Reference

Objectives:

- To clarify the parameters and legal basis of the University's non-academic student discipline procedures; in particular where the allegation is of conduct involving harmful sexual behaviour;
- To consider the adequacy of the university's processes, systems and policies relating to non-academic student discipline, and in particular harmful sexual behaviour comparing them to best practice;
- To identify any themes and patterns regarding how previous incidents and complaints from students about sexual harassment of harm were handled, how those reporting incidents or raising complaints were treated and any barriers to reporting or making such complaints;
- To give advice and make recommendations for improvement in any way in which such complaints are handled or will be handled in the future.

Independent External reviewer Shayne Mathieson

Sponsor Vice-Chancellor

Legal Advisers University General Counsel
Brookfields

Review Process

- Consider expert advice re the legal framework for University student Discipline procedures
- Review of current policies and Procedures and supporting documents
- Review relevant literature as to best practice
- Review of previous complaint files
- Meet and interview key stakeholders
- Draft report and recommendations to be provided to the Vice-Chancellor by 321 October. *(This was extended to 30 November due to availability issues of both interviewees and the reviewer)*

Appendix 2: Interviewees

Adrienne Cleland, Deputy Vice-Chancellor of Operations and Registrar

Alofa So'oolafai, AUSA President

Anne-Marie Parsons, Associate Director, Campus Life

Brendan Mosley Director, Campus Life

Campus Life Adviser

Campus Life Manager, Student Care and Conduct (now Student Welfare and Care)

Christa Fouche, Proctor

Christina Stringer, Proctor and Discipline Committee member

Claire Paterson, Meredith Connell

David Neutze, Brookfields

Folau Tu'inukuafe, Women's Rights Officer, AUSA

Gillian Lewis, former Proctor, current Associate Dean Sustainability

Julia Tolmie, Discipline Committee

Julie Lim, Proctor

Landon Watt, Secretary to the Discipline Committee

MAPAS student recipient

Melissa Laupepe, Resident Manager, O'Rorke Hall

Michael Heard, Rainbow Support Worker

Monique Jones, Proctor

Nicola Gavey, Discipline Committee

Paul Rouse, Chair, Discipline Committee

Pro Vice-Chancellor Pasifika

Monique Jones, Proctor

Rebecca Ewart, General Counsel

Resident Advisers (4)

Tara Baker, Head of Operations, Accommodation

Te Puawai Rogers-Hall, Pro Vice-Chancellor, Māori

President, Thursdays in Black

Welfare Office, AUSA

Women's Rights Officer, AUSA

Appendix 3: Documents provided by the University

2022 Residential Agreement Copy

About the Pastoral Care Code of Practice

Addressing Bullying, Harassment and Discrimination Policy and Procedures

Accommodation Feedback Process

Code of Conduct

Code of Conduct Guidelines

Creating Cultures of Consent and Respect Student Training

Creating Cultures of Consent and Respect: An Action Plan

Draft Harmful Sexual Behaviours and Healthy Relationship Policy

Draft position description of the Manager of Student Conduct

Discipline Committee Procedures

Discipline Committee Statute for Student Discipline

Discipline Committee Referral Letters (10 in total)

Education Pastoral Care of Tertiary and International Learners Code of Practice 2021

Feedback on Guidelines for external harassment of staff

Feedback on Harmful Sexual Behaviours policy

Feedback on Personal Relationships between staff and students

Guidelines for external harassment of staff (SRIT related)

Halls of Residence Rules

Harmful Sexual Behaviours policy (draft)

Legal opinion re jurisdiction to discipline students – confidential to reviewer

Media case information – Complainant # 1

Media case information – Complainant # 2

Mediation Services Confirmation document 2013

Personal Relationships between staff and students policy

Position description of the Manager of Student Conduct and Investigations

Position description of the Proctor

Proctor Confirmation Letter

Proctors Office Complaints and Detailed Investigation Processes

Proctors Office Operations Manual (Draft)

Reports of sexual harm cases referred to DC (names redacted)

Resident Conduct Procedures

Sexual harm cases reported (summary, names redacted)

Statute for Student Discipline

Template letter for sending to respondents and complainants by Proctor

University of Auckland Pastoral Care self -review

Appendix 4: Written questions asked of Complainants and Respondents

Questions to complainants in DC cases

1. *What worked well for you about lodging your concern?*
2. *What did not work well or was difficult or a challenge in the process of lodging or following through a concern?*
3. *What would make the process more effective or more fair from your perspective?*

Questions to Respondents in DC cases:

1. *Were you treated fairly in the process of a concern being lodged against you?*
2. *What was difficult or challenging in the process that occurred in the concern being followed up?*
3. *What would make the process more effective from your perspective?*

Appendix 5: Policies reviewed from the following Universities

Australia

- Macquarie University
 - Student Sexual Misconduct Prevention and Response Policy
 - Student Sexual Misconduct Prevention and Response Procedures
- University of Melbourne
 - Sexual Misconduct Prevention and Response Policy.pdf
 - Vice-Chancellor Regulation
- University of Newcastle
 - Sexual Assault and Sexual Harassment Response Policy
- University of New South Wales (UNSW, Sydney)
 - Sexual Misconduct Prevention and Response Policy
- University of Queensland
 - Sexual Misconduct Prevention and Response - Procedures (Staff)
 - Sexual Misconduct Prevention and Response - Procedures (Students)
 - Sexual Misconduct Prevention and Response – Policy

- University of South Australia
 - Sexual Assault and Sexual Harassment Policy
 - Sexual Assault and Sexual Harassment Procedures

-

Canada

- University of Victoria, British Columbia
 - Sexual Harassment Response Policy
 - Sexual Harassment Response Procedures

United Kingdom

- University of Cambridge
 - Code of Conduct for Students in Respect of Harassment and Sexual Misconduct
 - Explanatory Notes on handling Cases of Student Harassment and Sexual Misconduct
 - Policy on the use of personal information under the Procedure for Handling Cases of Student Harassment and Sexual Misconduct
- University of Oxford
 - Harassment Policy and Procedures

New Zealand

- Victoria University of Wellington
 - Sexual Harassment Response Policy
 - Sexual Harassment Response Procedures
- University of Otago
 - Sexual Misconduct Policy
- Massey University
 - Understanding Sexual Harm and Consent
 - Sexual Harm Help and Support
- University of Canterbury
 - Harassment Policy
 - Sexual Harm

Appendix 6: Literature reviewed

- **Addressing Campus Climate (EAB)**
[EAB-SAF-Addressing-Campus-Climate-Flashpoints.pdf](#)
- **Association for the Treatment of Sexual Abusers, Addressing Campus Sexual Misconduct** May 2019
Chrome extension:
[//efaidnbmnnnibpcajpcglclefindmkaj/https://www.atsa.com/pdfs/Policy/Addressing%20Campus%20Sexual%20Misconduct%20FINAL.pdf](#)
- **The age of adolescence (The Lancet)**
[https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(18\)30022-1/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(18)30022-1/fulltext)
- **Review of international students in UK Universities**
Chrome extension:
[//efaidnbmnnnibpcajpcglclefindmkaj/https://1752group.files.wordpress.com/2022/05/redacted-ofs-international-student-experiences-call-for-evidence-response.pdf](#)
- **Universities Australia**
<https://www.universitiesaustralia.edu.au/>
- **Guidelines for University Responses to Sexual Assault and Sexual Harassment (Universities Australia)**
[UA-Guidelines-2.pdf \(universitiesaustralia.edu.au\)](#)
- **Student Conduct Rule (University of Newcastle)**
<https://policies.newcastle.edu.au/document/view-current.php?id=34>
- **Survivor-centered approach**
<https://www.endvawnow.org/en/articles/1499-survivor-centred-approach.html>
- **Sandra Dickson, Hohou Te Rongo, Outing Violence, Building Rainbow Communities Free of Partner and Sexual Violence** April 2016, page 34
- **Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa, New Zealand.** *Transgender Health Research Lab, University of Waikato: Hamilton NZ. Second printing 2 December 2019, Veale J, Byrne J, Tan K, Guy S, Yee A, Nopera T & Bentham R (2019)*
- **Discipline Committee Information Sheet**
Chrome extension:
[//efaidnbmnnnibpcajpcglclefindmkaj/https://cdn.auckland.ac.nz/assets/auckland/about-us/the-university/governance-and-committees/committees/DisciplineCommittee/Discipline%20Committee%20Information%20Sheet%202021.pdf](#)

- **Best Practices in Sexual Misconduct Policies and Procedures (Learning Courage)**
<https://learningcourage.org/resources/best-practices-in-sexual-misconduct-policies-and-procedures-2/>
 * Based in New Hampshire, USA, 2022
- **Overseeing an Institutional Response to Sexual Harm within a University Setting**
Ben Nevell and Rebecca Connaughton (Otago) – video of conference
- **International Student Experiences Call for Evidence Response**
 Chrome extension:
[//efaidnbmnnnibpcajpcglclefindmkaj/https://1752group.files.wordpress.com/2022/05/redacted-ofs-international-student-experiences-call-for-evidence-response.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://1752group.files.wordpress.com/2022/05/redacted-ofs-international-student-experiences-call-for-evidence-response.pdf)
- **Sector Guidance to Address Staff Sexual Misconduct in UK Higher Education (McAllister Olivarius)**
 Chrome-extension:
[//efaidnbmnnnibpcajpcglclefindmkaj/https://1752group.files.wordpress.com/2021/09/5ed32-the-1752-group-and-mcallister-olivarius-sector-guidance-to-address-staff-sexual-misconduct-in-uk-he.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://1752group.files.wordpress.com/2021/09/5ed32-the-1752-group-and-mcallister-olivarius-sector-guidance-to-address-staff-sexual-misconduct-in-uk-he.pdf) <https://1752group.com/sector-guidance/>
- **Various articles (Times Higher Education)**
[Search | Times Higher Education \(THE\)](#)
 Search for “Handling Student Sexual Misconduct)
- **Unsafe Spaces: Ending Sexual Abuse in Universities, Eva Tuchell & John Edmonds, Emerald Group Publishing**

https://books.google.co.nz/books?hl=en&lr=&id=ZsLEAAQBAJ&oi=fnd&pg=PP1&dq=best+practice+policies+for+handling+sexual+harm+in+universities&ots=xFKslyqws_&sig=x8gV1CGbj0u-3bSI1-SzTfGc-WA#v=onepage&q=best%20practice%20policies%20for%20handling%20sexual%20harm%20in%20universities&f=false
- **New Zealand Crime and Victims Survey Report (Ministry of Justice)**
 Chrome-extension:
[//efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-Y2-core-report-v1.1-for-release.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-Y2-core-report-v1.1-for-release.pdf)
- **Respect. Now. Always (Universities Australia)**
[Respect. Now. Always. – Universities Australia](#)
- **2021 National Student Safety Survey (National Student Safety Survey)**
[NSSS | 2021 National Student Safety Survey](#) (Australia)

- **Campus Sexual Assault: Suggested Policies and Procedures** ([American Association of University Professors](https://www.aaup.org/report/campus-sexual-assault-suggested-policies-and-procedures))
<https://www.aaup.org/report/campus-sexual-assault-suggested-policies-and-procedures>
- **Checklist for Campus Sexual Misconduct Policies: White House Task Force 2014**
https://www.adobe.com/uk/acrobat/online/pdf-to-word.html?x_api_client_id=chrome_extension_viewer&x_api_client_location=pdf-to-word&mv=other&mv2=chrome_extension_viewer&trackingid=YKHWGCS5

Appendix 7: Questionnaire to students groups

Questionnaire sent to student groups - women's groups, cultural groups, faith based groups, rainbow and disability groups.

Section A: Re complainants

1. Has your group had any instances of people approaching you regarding what to do about harmful sexual behaviour **happening to them**?

2. If the answer is 'no', please move to Section B

If the answer is 'yes' could you please estimate **approximately** how many people have contacted your group in this year (2022)? _____

3. Did your group know where to direct people if they wanted to take further action regarding their issue, or needed support? _____
4. Do you know why they came to you and not to Campus Life? _____

If yes, what was that/those reason(s)? (*tick as many as may apply*)

- Didn't know where else to go
- Could not find relevant information on the University website
- Had tried to go to Campus Life and did not receive the response they expected
- Did not trust the University to be able to address the issue
- Didn't feel comfortable talking to staff
- Other reason(s) – *please add what the reason was*

Section B: Re people accused of sexual harm

5. Has your group had any instances of people approaching you regarding what to do in the event of being **accused** of harmful sexual behaviour? _____

6. If the answer is 'no', please move to Section C

If the answer is 'yes' could you please estimate **approximately** how many people have contacted your group this year (2022)? _____

7. Did your group know where to direct people to if they needed support or further information? _____

8. Do you know why they came to you and not to Campus Life?

If the answer is 'yes' please identify the reason(s) that was.

Section C: Re: training of student group

9. Has your group executive had any training around the issue of harmful sexual behaviour? _____

If 'yes' who provided that training? _____

10. When did the training take place? _____

11. Was the training useful in helping to direct anyone coming to you to the correct avenue to address it?

Section D: General comments

12. Are there any barriers to people reporting complaints of harmful sexual behaviour to the University? _____ -

13. If yes, what are those barriers?

14. What would be most effective in removing these barriers?

15. Do you have any suggestions on how the current system could be clearer and/or fairer to both the complainant and the person accused of the harmful sexual behaviour?