

A PRELIMINARY RESPONSE TO RECOMMENDATION 9 OF THE
AUSTRALIAN HUMAN RIGHTS COMMISSION REPORT
*CHANGE THE COURSE: NATIONAL REPORT ON SEXUAL ASSAULT AND SEXUAL HARASSMENT AT
AUSTRALIAN UNIVERSITIES 2017*

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11 September 2017

1. INTRODUCTION

In response to the Australian release of a U.S. film regarding sexual misbehaviour at U.S. University campuses (<http://www.thehuntinggroundaustralia.com.au/>) and a series of allegations regarding sexual misbehaviour at Australian universities, the Australian Human Rights Commission (AHRC) was commissioned to undertake a national survey of university students to gain greater insight into the nature, prevalence and reporting of sexual assault and sexual harassment at Australian universities.

The final report (AHRC, 2017a) was publically released at 10am on 1 August 2017 and the data relevant to UNSW Sydney (AHRC, 2017b) was released at 11am on the same day. In response to the report, a best practice guideline was published by the UNSW Australian Human Rights Centre (UNSWAHC, 2017).

The AHRC final report contains Recommendation 9 which states:

“In addition to considering the implementation of the university recommendations made in this report, residential colleges and university residences should commission an independent, expert-led review of the factors which contribute to sexual assault and sexual harassment in their settings.

This review should consider:

- *appropriate responses by a college or university residence to reports of sexual assault and sexual harassment*
- *a trauma-informed and rights-based approach in a situation in which an allegation of sexual assault has been made*
- *the ways that hazing practices and college ‘traditions’ facilitate a culture which may increase the likelihood of sexual violence*
- *the role of alcohol in facilitating a culture which may increase the likelihood of sexual violence*
- *the level and nature of supervision in a twenty-four hour residential setting in which large numbers of young people are living away from home, and*
- *the level and adequacy of training required to equip residential advisors to serve as first responders or in response to matters of sexual assault and harassment.”*

The purpose of this present report is to document **present** New College policies and procedures relevant to sexual misbehaviour within its residences so that these can be reviewed independently as per the HRC Recommendation 9. This report is structured as follows. Definitions are made in Section 2. Section 3 summarises our overarching approach to dealing with relevant misbehaviour in college. Sections 4 to 6 summarise the key components of our approach. Section 7 identifies those issues raised by the AHRC and UNSWAHC that will be addressed as part of this review and recommends how these issues be addressed. Appendices A to D contain those documents that are relevant to the report.

During the review process over coming months, present policies and procedures will be updated and improved as necessary.

2. DEFINITIONS

Important to this discussion are the definitions of sexual misbehaviour which are not clearly articulated in the HRC Report.

Under the NSW Crimes Act (NSW Government 2012), two relevant types of sexual misbehaviour are defined. Section 61I defines *sexual assault* as “Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse is liable to imprisonment for 14 years” where sexual intercourse is defined in Section 61H. Section 61L defines *indecent assault* as “Any person who assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the other person, is liable to imprisonment for 5 years”. Indecency is defined by common law.

Sexual harassment is an offence against the NSW Anti-Discrimination Act (NSW Government 2016). It is defined and described in Section 22 of that Act.

Although not explicit, it appears that AHRC (2017a) uses the term sexual assault to cover the NSW legal definitions of both sexual assault and indecent assault. AHRC (2017a) refers to the relevant Commonwealth act for its definition.

3. ADDRESSING ALLEGED SEXUAL MISBEHAVIOUR AT NEW COLLEGE

The entire New College community is composed of residents at two buildings approximately opposite each other across Anzac Parade, Kensington:

1. The original New College (330 Anzac Parade)
2. New College Postgraduate Village (215A Anzac Parade).

Our approach for addressing alleged sexual misbehaviour in both communities is very similar and has three key elements:

1. Explicit zero tolerance to harassment of any kind (including sexual harassment).
2. A staff teamwork approach designed to
 - a. encourage residents to disclose misbehaviour;
 - b. effectively communicate internally regarding possible misbehaviour; and,
 - c. address misbehaviour in a timely manner.
3. A complaints process designed to ensure both procedural fairness and appropriate protections for those involved.

These three key elements are summarised in the following sections.

4. HARASSMENT POLICY

The New College harassment policy has been a guiding document for community management since its Board approval in April 2003.

It is attached in full to this report in Appendix A.

As stated above, it articulates the college’s zero tolerance approach to harassment of any kind.

5. STAFF ROLES AND RESPONSIBILITIES IN COLLEGE DISCIPLINE

Three staff roles are critical to the management of possible misbehaviour within our residential colleges. These are as follows:

1. The Master is ultimately responsible to the Board for community management (including discipline) within the Colleges. Operationally, the Master attends meetings of other pastoral staff to monitor any emergence of ill-discipline with the community. Any serious matters (harassment, sexual misbehaviour, potential criminal behaviour, repeat offending) are referred to the Master by the Dean. The Master is the only member of staff authorised to communicate on matters of discipline with external agencies.
2. The Dean of Residents is responsible for pastoral care within the college. Any disciplinary matters within the college are referred to the Dean. The Dean is responsible for maintaining progress of any disciplinary process and keeping the Master informed.
3. The Residential Advisers (termed Senior Residents at NCV) are routinely supervised by a Senior Residential Adviser (or Deputy Dean) who liaises with the relevant Dean. The principal consideration in the appointment of RAs is that they have already shown community leadership and are respected and trusted members of the community. RAs actively participate in weekly group suppers, host group members in their flat lounges, routinely travel through group floor areas and encourage resident consultation and disclosure of any issue causing concern. RAs issue cautions for any disciplinary matter. These are a trigger for a resident to be interviewed by the Dean.

6. PROCESS FOR DEALING WITH ALLEGATIONS

Allegations of sexual misconduct can come with significantly differing levels of gravity and evidence. Allegations at our colleges have been infrequent and consequently have been dealt with on a case-by-case basis.

Our approach to dealing with such allegations mirrors guidelines developed by the NSW Ombudsman for universities for dealing with complaints (NSW Ombudsman, 2015).

Investigations are undertaken in accordance with Chapter 5 of the guidelines, with the Dean acting as the investigating officer under the supervision of the Master. In the case of a complaint against the Dean, the Master investigates and refers to the Board Chair. In the case of a complaint against the Master, the Board Chair investigates in consultation with the entire College Board.

The Master is responsible for ensuring that the investigation proceeds in a timely manner and for finalising the investigation (except in the case of alleged misconduct by the Master).

Any allegations of sexual misconduct are reported to the Board as confidential items and the Board is responsible for review and requiring the Master to address systemic issues.

Under a charter in place at UNSW (Appendix C), independent residential colleges have agreed to inform the university at the earliest possible stage of any incidents of sexual misconduct.

In any allegation, there will be two groups of parties: those impacted by the sexual misconduct; and, the alleged perpetrator(s).

Pastoral management of each party is undertaken in accord with Chapter 7 of NSW Ombudsman (2015). In a residential environment, it may be necessary to either provide alternative secure

accommodation for an alleged victim or remove an alleged perpetrator. Except in cases of clear criminal conduct, New College will be responsible for finding and providing suitable accommodation.

A notable gap in Chapter 7 of the Ombudsman guidelines is the potential need for pastoral support of both alleged victim and perpetrator. Misconduct of many types can have a significant impact on the well-being of the victim. An unfounded allegation of misconduct can have a detrimental impact on an alleged perpetrator who is innocent but already suffering some other trauma. New College carefully checks that both the alleged victim and perpetrator are adequately supported during the investigation.

Written records relevant to any investigation are kept securely in the Dean's or Master's office and electronic records remain only be accessible by the relevant Dean, the Master or the Master's EA.

The principles in dealing with any allegations of misbehaviour within our colleges are as follows:

1. The well-being of our residents is our principal operational priority.
2. Discreet treatment of all personal matters relating to residents and staff.
3. Procedural fairness when dealing with allegations.
4. Responsive action to any matter of concern.
5. Pastoral support for anyone impacted by misbehaviour in college.
6. Recognition of and compliance with relevant UNSW Policies and Procedures.

7. PRELIMINARY RESPONSE TO THE SPECIFIC CONCERNS OF RECOMMENDATION 9

The specific matters raised as requiring a formal response by the college organisation are addressed (based on our present policies and procedures) as follows.

- *appropriate responses by a college or university residence to reports of sexual assault and sexual harassment*

Our process for dealing with any allegation of sexual misconduct is summarised in Section 6.

- *a trauma-informed and rights-based approach in a situation in which an allegation of sexual assault has been made*

Our approach is summarised in Section 6.

Trauma is addressed by providing appropriate pastoral support, which includes counselling by a suitably qualified party external to the college.

The issue of rights can be summarised as:

- Attention to the well-being of an alleged victim as our principal operational priority.
- The discreet treatment of any allegation. Specifically, information is only divulged as necessary to progress responsive action. Often, the identity of the person making the allegation will remain confidential.
- Procedural fairness.
- Adherence to any governing state or commonwealth law.

- *The ways that hazing practices and college 'traditions' facilitate a culture which may increase the likelihood of sexual violence*

Hazing is a form of harassment and is forbidden as stated in our policy (Appendix A). O'Week and other social activities are carefully scrutinised for any evidence of hazing practice.

- *The role of alcohol in facilitating a culture which may increase the likelihood of sexual violence*

Consumption of alcohol leads to poor decision making and *inherently* increases the likelihood of sexual misbehaviour.

Abuse of alcohol is discouraged by the college administration during O'Week briefings and by the rules and regulations applied by the college.

Alcohol is forbidden within New College.

Appropriate controls are applied to consumption of alcohol in NCV.

Responsible service of alcohol is a key element of risk assessment associated with any external college social activity.

All official college social events involving alcohol are monitored by two RAs or SRs.

- *the level and nature of supervision in a twenty-four hour residential setting in which large numbers of young people are living away from home, and*

RAs, SRs and Deans all reside within the college buildings. These staff monitor the college environment and are immediately accessible to any resident via mobile phone.

Out of office hours, an RA or SR is designated as being on duty to respond immediately to any need.

- *the level and adequacy of training required to equip residential advisors to serve as first responders or in response to matters of sexual assault and harassment.*

Residential advisor training takes place over three days prior to the commencement of each academic year.

Appendix B contains a copy of our residential adviser training manual including the instructor notes.

The manual contains a special section on harassment (p. 32ff) that deals with specific possible breaches of college policy. Specifically, RAs are instructed to be alert to and monitor events where harassment could occur.

Appendix D contains the college critical incident policy. Sexual assault and associated allegations are identified as specific forms of critical incident.

Any critical incidents immediately involve both Dean and Master. The critical incident process is dealt with in detail in a dedicated section of the RA training manual (p. 17ff).

8. REFERENCES

Australian Human Rights Commission 2017a *Change the course: National report on sexual assault and sexual harassment at Australian universities*, August 2017, ISBN 978-1-921449-86-4 (available at <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/change-course-national-report-sexual-assault-and-sexual>), accessed 1 August 2017)

Australian Human Rights Commission 2017b *Profile of University Respondents. UNIVERSITY: THE UNIVERSITY OF NSW*. August 2017, (available at <https://www.unsw.edu.au/sites/default/files/documents/University%20of%20NSW%20Summary%20Tables%20V2.pdf>), accessed 1 August 2017)

NSW Government 2012 *Crimes Act 1900 No 40*. 8 April 2012 (available at http://www.austlii.edu.au/au/legis/nsw/consol_act/ca190082/, accessed 1 August 2017)

NSW Government 2016 *Anti-Discrimination Act 1977* 8 December 2016 (available at http://www.austlii.edu.au/au/legis/nsw/consol_act/aa1977204/, accessed 10 August 2017)

NSW Ombudsman 2015 *Complaint handling at universities: best practice guidelines* ISBN 978-1-925061-24-6, 1 January 2015 (available at <https://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/universities/complaint-handling-at-universities-best-practice-guidelines> accessed 10 August 2017)

UNSW Australian Human Rights Centre 2017 *On Safe Ground: Strengthening Australian university responses to sexual assault and harassment. A good practice guide for Australian universities*. ISBN-10 0-7334-3757-5, (available at http://www.ahrcentre.org/sites/ahrcentre.org/files/AHR0002%20On%20Safe%20Ground_Good%20Practice%20Guide_online.pdf, accessed 3 August 2017)

APPENDIX A – New College Harassment Policy

APPENDIX B – Training Manual for New College Resident Advisers
(The manual for NCV Senior Residents is similar).

APPENDIX C – Sexual Misconduct Charter in UNSW Accommodation

APPENDIX D – Critical Incident Policy