

## Sexual Harm Procedure

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<b>Business Owner:</b>	<b>Executive Director People, Culture and Wellbeing</b>
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### 1. PURPOSE

This document outlines the framework of procedures to enable complaints of sexual harm to be addressed, supported, and resolved in a fair equitable, transparent, confidential and timely manner.

These procedures should be read in conjunction with the Sexual Harm Policy.

### 2. DEFINITION OF TERMS

The definition of terms used throughout these procedures are detailed in Appendix 1.

### 3. APPLICATION

These procedures apply to all members of the Lincoln University community, who will receive support through their preferred support pathway in a timely manner.

#### Support pathways and representation

- If the complainant is a staff member, they may access support through the Sexual Harm Response and Prevention (SHRP) Coordinator and engage a union, legal, or other representative / advocate of their choice as appropriate;
- If the respondent is a staff member, they may themselves engage a union, legal, or other representative / advocate of their choice as appropriate;
- All student complainants and respondents will be provided with support from the SHRP and representation by either the Proctor or LUSA;
- Where there is a suspected incident of sexual harm between a student and a staff member, the Proctor and the SHRP Coordinator will liaise with the relevant line manager and the Human Resources Business Partner to facilitate an appropriate course of action in accordance with the processes and timelines outlined in these procedures, the Disciplinary Policy and Procedure (staff) and the Student Discipline Regulations.

#### Role of the Sexual Health Response and Prevention Coordinator (SHRP)

The SHRP is based in the Wellbeing and International Support team and is the first point of contact on campus for any student or staff member affected by sexual harm. They will work as needed with on- and off-campus partners including, but not limited to, LUSA and other student organisations, Student Administration, Faculties, Divisions, Human Resources, the Vice Chancellor's Office, Proctors, Learning Teaching & Library, International Student Support Advisors, Accommodation Services, Student Health & Support and Campus Security, and other service units. Services are confidential.

#### 4. FRAMEWORK

The framework for these procedures is designed to acknowledge the incident, and to enable the complaint to be addressed and resolved as sensitively and effectively as possible, and to ensure that there is a:

- clear, transparent process;
- clear hierarchy of stages within the process; and
- wholly independent investigative stage in the process.

#### 5. CONFIDENTIALITY

Subject to any legal requirements, all those involved in a formal investigation have the right to have information they disclose kept confidential and are expected to maintain confidentiality.

#### 6. COMPLAINT AND INVESTIGATION PROCESS

- An individual making a complaint should do so as soon as possible after the incident occurs. There is, however, no time limit for the making of a formal complaint, although long delays may inhibit the ability of people to recall facts accurately and may limit the ability of the investigator to reach any conclusions.
- Any formal complaints under the Sexual Health Policy and Procedure must be in writing, documenting the incidence/s and including evidence wherever possible.
- The University will not act on anonymous complaints. To manage complaints in a transparent manner, the respondent must not only be aware of the allegations but also who has made them. The University understands this can make it more challenging to raise a complaint, so an advocate may bring a complaint on someone else's behalf if the complainant does not feel able to raise it themselves.
- Formal complaints will be investigated by the University as promptly as possible, in accordance with the relevant processes and authorities outlined in these Procedures, the Disciplinary Policy and Procedure, the Student Discipline Regulations, the Protected Disclosures Policy and Procedure and in accordance with the principles of natural justice.
- An individual making a formal complaint under the Sexual Harm Policy and Procedures may request to be removed from the study/supervisory or work situation while the investigation is being undertaken.
- If, as an outcome of an investigation, it is determined that an incident or incidences of sexual harm have taken place, all matters of discipline will be addressed in accordance with, and by reference to the Disciplinary Policy and Procedure (staff) and the Student Discipline Regulations, related policies and procedures as noted at the end of this document, and no other. The officers of Lincoln University will have respect for any external agencies and laws but will act in accordance with the expectations of its own regulations and policies.
- If, as an outcome of an investigation and based on clear evidence, it is determined that the complainant has intentionally made a false complaint, the staff member or student may be subject to disciplinary action under the Disciplinary Policy and Procedure (Staff) or Student Discipline Regulations.
- At all times, detailed notes will be kept of the times, location and content of meetings. With the consent of those involved, meetings may be recorded to assist in compiling accurate notes.

#### Student Complainant

- To make a complaint of sexual harm, the complainant or advocate should contact the Proctors in the first instance to request an in-person meeting. The complainant may also wish to provide their own written statement giving the circumstances of the incident.



The role of the Proctor is to listen, clarify details, and determine the appropriate next steps, which may involve notifying the SHRP. Depending on the nature of the complaint, the SHRP may inform the Director of Campus Life, Director of People, Culture and Wellbeing, and the Accommodation Manager that an incident has taken place, and any ongoing safety concerns. Anonymity of the complainant will be maintained at all times during these notifications except where consent has been given or safety is a primary concern. Where safety is a concern, the Proctors will meet as quickly as possible to assess the situation. The Proctors, in conjunction with the Vice Chancellor acting under clauses 24 and 25 of the Student Discipline Regulations, have the power to act with urgency to issue non-contact orders or in other ways to restrict the movement and presence on campus of any person accused of an incident of sexual harm.

2. The Proctors will commence the investigation process. Every effort will be made to expedite the process in a trauma-informed and impartial way without compromising procedural fairness for all parties. Both the complainant and respondent will be offered access to a support person during this process and be made aware of appropriate personal support resources.
3. In all cases, the University will make a decision on proceeding with an investigation within seven working days of notification of an incident, taking into consideration primarily the needs of the complainant but the safety of all others involved and the whole campus, and also any police process that may ensue.
4. If, having decided not to investigate, the University is subsequently made aware of further information to justify an investigation, it may reverse its earlier decision and investigate. In deciding whether to reverse its earlier decision, the University may have regard to the time that has passed since the incident.
5. Once the decision to proceed with an investigation is taken, the Proctors will immediately contact the respondent to the allegation. The core element of procedural fairness is that a person against whom an allegation is made must know the nature of the allegation and evidence against them, and must be given the opportunity and sufficient time to respond to the allegations and evidence.
6. Within 14 working days of the decision to proceed with an investigation, the University will consult with police and legal experts as necessary to ensure any civil process undertaken by the University does not hinder any criminal process being undertaken. Beyond the immediate need to ensure the ongoing safety of all persons involved in an incident, any known criminal process will take precedence.
7. Within 20 working days of the initial complaint, the Proctors will meet separately with the complainant and the respondent. The privacy and safety of both the complainant and respondent will be paramount, and this will be communicated to all parties (including any advocates and support staff) involved. At no point will the complainant and respondent be required to meet together without the consent of both.
  - Complainants and respondents are entitled to have a support person with them throughout the investigation and decision-making process.
  - Complainants and respondents will be advised of their rights and responsibilities and what to expect from the investigation process.
  - Details of any interim measures, such as non-contact orders or restricted movement on campus, will be clarified and reiterated.
  - The outcome that the complainant is seeking will be clarified.
  - Statements will be taken from affected parties, transcribed, signed to attest to accuracy, and given to the other party.
  - Each party will be informed that should a police process arise, the statements provided to the University's investigation process may be requested by the police.
  - The respondent will be asked to respond to the statement of the complainant. It is very important, according to the principles of natural justice, that the process is fair and that the respondent is given an opportunity to address allegations against them. The Proctors may



request further meetings with the complainant, the respondent and/or any witnesses separately before reaching a decision. The complainant and respondent will be given the opportunity to respond to or question any new evidence that may be produced, before a resolution is reached.

- In general, the complainant and the respondent will be kept informed of progress by the Proctors. Both the complainant and the respondent may contact the SHRP or Proctors to ask for clarification at any time, and all efforts will be made to respond within one-two working days wherever possible.
  - Where the complainant or the respondent reasonably believes that the investigating Proctor or other support staff involved may have a conflict of interest, they may request the Vice Chancellor to appoint an alternative investigator.
8. Within ten working days from the date of the last statement taken, the Proctors will make a decision. They may work with any other Lincoln University staff as required in making their decision. The decision will be conveyed to the complainant and respondent within five working days of the decision being made.
  9. The final decision will indicate whether or not there has been a breach of the Sexual Harm Policy and Procedure. The Proctors will provide both the complainant and the respondent with a summary of the investigation results, their decision, reasons for the decision and any applicable sanctions.
  10. Where the complainant or respondent believe the recommendation is unsatisfactory, they may make a written appeal to the Council Appeals Committee (refer to Section 12). The decision of the Council Appeals Committee is final.

### Non-Student Complainant

1. To make a complaint of sexual harm, the complainant or advocate should contact the Director of People, Culture and Wellbeing in the first instance to request an in-person meeting. The complainant may wish to provide a report in writing giving the circumstances of the incident. Where the complainant reasonably believes that the Director or other support staff involved may have a conflict of interest, they may request the Vice Chancellor to appoint an alternative investigator.

The role of the Director is to listen, clarify details, and determine the appropriate next steps, which may involve notifying the SHRP. At this stage, anonymity of the complainant will be maintained at all times except where consent has been given or safety is a primary concern. Where safety is a concern, the Director and SHRP will meet as quickly as possible to assess the situation. The Proctors, in conjunction with the Vice Chancellor, have the power to act with urgency to issue non-contact orders or in other ways to restrict the movement and presence on campus of any person accused of an incident of sexual harm.

2. The Director of People, Culture and Wellbeing, or delegate, will commence the investigation process. Every effort will be made to expedite the process in a trauma-informed and impartial way without compromising procedural fairness for all parties. Both the complainant and respondent will be offered access to a support person during this process and be made aware of appropriate personal support resources.
3. *Decision to investigate:* In all cases, the University will make a decision on proceeding with an investigation within seven working days of notification of an incident, taking into consideration primarily the needs of the complainant but the safety of all others involved and the whole campus, and also any police process that may ensue.
4. Once the decision to proceed with the investigation is taken, the Director of Human Resources, or delegate will immediately contact the respondent to the allegation. The core element of procedural fairness is that a person against whom an allegation is made must know the nature of



- the allegation and evidence against them, and must be given the opportunity and sufficient time to respond to the allegations and evidence.
5. Within 14 working days of the decision to proceed with an investigation, the University will consult with police and legal experts as necessary to ensure any civil process undertaken by the University does not hinder any criminal process being undertaken. Beyond the immediate need to ensure the ongoing safety of all persons involved in an incident, any known criminal process will take precedence.
  6. Within 20 working days of the initial complaint, the Director of People Culture and Wellbeing, or delegate will meet separately with the complainant and the respondent. The privacy of both the complainant and respondent will be paramount, and this will be communicated to all parties (including any advocates and support staff) involved. At no point will the complainant and respondent be required to meet together without the consent of both.
    - Complainants and respondents are entitled to have a support person with them throughout the investigation and decision-making process.
    - Complainants and respondents will be advised of their rights and responsibilities and what to expect from the investigation process.
    - Details of any interim measures, such as non-contact orders or restricted movement on campus, will be clarified and reiterated.
    - The outcome that the complainant is seeking will be clarified.
    - Statements will be taken from affected parties, transcribed, signed to attest to accuracy, and given to the other party.
    - Each party will be informed that should a police process arise, the statements provided to the University's investigation process may be requested by the police.
    - The respondent will be asked to respond to the statement of the complainant. It is very important, according to the principles of natural justice, that the process is fair and that the respondent is given an opportunity to address allegations against them.
    - The Director of Human Resources, or delegate may request further meetings with the complainant, the respondent and/or any witnesses separately before reaching a decision. All in-person meetings will be transcribed. The complainant and respondent will be given the opportunity to respond to or question any new evidence that may be produced, before a resolution is reached.
    - In general, the complainant and the respondent will be kept informed of progress by the Director of Human Resources, or delegate. Both the complainant and the respondent may contact the SHRP or Director of Human Resources, or delegate to ask for clarification at any time, and all efforts will be made to respond within one-two working days wherever possible.
    - Where the complainant or the respondent reasonably believes that the investigator or other support staff involved may have a conflict of interest, they may request the Vice Chancellor to appoint an alternative investigator. The Proctors will consider their concerns to determine whether or not to assign an alternative investigator.
  7. Where possible, within ten working days from the date of the last statement taken, the Director of Human Resources, or delegate will make a decision. They may work with any other Lincoln University staff as required in making their decision. The decision will be conveyed to the complainant and respondent within five working days of the decision being made.

The final decision will indicate whether or not there has been a breach of the Sexual Harm Policy and Procedure. The Director of Human Resources, or delegate will provide both the complainant and the respondent with a summary of the investigation results, their decision, reasons for the decision and any applicable sanctions

8. Where the complainant believes the resolution is unsatisfactory, they may apply to the Deputy



Vice-Chancellor who will further investigate, and communicate a recommendation to the Vice-Chancellor. The Vice-Chancellor will communicate the recommendation to the complainant in writing.

9. Where the complainant believed the recommendation is unsatisfactory, they may make a written appeal to the Secretary of the Council Appeals Committee (refer to Section 12). The decision of the Council Appeals Committee is final.

## 10. ALTERNATIVE RESOLUTION PROCESS

In appropriate circumstances, a complainant may be willing to resolve the matter before an investigation is commenced or completed. A respondent could also initiate an alternative resolution process by notifying the Proctors (students) or the Director of Human Resources (non-student). The Proctors / HR Director will follow-up with the complainant and the respondent to determine their willingness to participate in an alternative resolution process. For this to be a meaningful process, all participants must engage voluntarily and remain free from reprisal. At any stage during the process, the complainant may indicate they would like the complaint to move to an investigation and decision-making process.

Examples of alternative resolution may include, but are not limited to:

- i. **Impact Statement/Letter:** the complainant may decide to communicate to the respondent that their behaviour, remarks or communications are unwelcome or make them feel uncomfortable. They may choose to communicate their concerns verbally or in writing with the assistance of the SHRP.
- ii. **Facilitation:** A complainant may request that the Proctors / HR Director facilitate a discussion between themselves and the respondent. In such circumstances, a facilitator would try to reach a resolution between the complainant and the respondent by acting as a 'go-between'. Neither party is required to attend any face-to-face meetings during this process unless they both agree to do so. This facilitated process may result in a written agreement that could include behavioural expectations, participation in educative sessions, agreement to non-contact, or an apology.
- iii. **Restorative Justice:** Restorative or transformative justice is an approach used in situations that require a deep understanding of the harm done, the needs of those affected, and the strategies for moving forward as a community and creating lasting change.

If the complainant and respondent are able to reach an alternative resolution, a written record of the resolution will be prepared by the Proctors / HR Director to be signed by both parties. The signed resolution will be kept in the Proctors' Office (students) or in the HR Department (non-student). A copy of the agreement will be provided to the complainant and the respondent, and may be provided to relevant University staff where the terms of resolution need to be implemented on campus. The Proctors / HR Director will monitor the implementation and compliance of to the agreed alternative resolution. If there is a failure to comply with the terms of the resolution, the complaint may be moved to an investigation and decision-making process.

## 11. WITHDRAWAL OF A COMPLAINT

At any time throughout the process, before a decision is made, a complainant may choose to withdraw their complaint. They should communicate this decision in writing to the Proctors / HR Director. As noted in 5 above, in some circumstances, the University may still pursue the complaint. If a complaint is withdrawn, both complainants and respondents can still seek support through the services on campus.

## 12. APPEALS

Any party to a decision made by the Proctor / Director of People, Culture and Wellbeing under the Sexual



Harm Policy and Procedure or clause 18.7 of the Student Discipline Regulations relating to serious misconduct may appeal to the Appeals Committee of the Lincoln University Council, whose decision will be final.

- An appeal must be lodged in writing, supported by such evidence as the appellant sees fit, with the Appeals Committee Secretary within ten working days of the date of such decision of the Proctor, or such longer period as may be allowed by the Council.
- The Chairperson of the Appeals Committee shall have the power to regulate the procedure of the Committee. Subject to this discretion, and where the party is a student, in the interests of natural justice, the procedures set out in clause 19-20 of the Student Discipline Regulations regarding Disciplinary Committee hearings should be adhered to.

### **13. STATISTICAL DATA**

The SHRP and the Proctors will maintain annual statistics on reported incidents of sexual harm on campus involving students and non-students and any sanctions arising from these for the purposes of community education and any legislated reporting that may be required. This data will not include any information that could identify any community member.

The data shall be retained for the period mandated by the General Disposal Authority for New Zealand Universities, a regulatory document issued by Archives New Zealand in support of the Public Records Act 2005.

### **14. ROLES AND RESPONSIBILITIES**

All members of the Lincoln University community are expected to:

- familiarise themselves with the Sexual Harm Policy and Procedure and their responsibilities contained therein
- participate in relevant education and training programmes available on campus
- respect an individual's right to confidentiality if an incident of sexual harm is disclosed to them by an affected person
- refer an affected person to the SHRP / Proctors / HR Director where the affected person can seek support and advice about reporting options
- make themselves aware of the services listed in Appendix 2 of this Procedure so that they might refer individuals looking for specific types of assistance and support;
- report to the SHRP / Proctors/ HR Director if they witness sexual harm and do not know the affected person or become aware of an incident that promotes rape culture.

The Senior Management Group of the University will:

- maintain and communicate an ongoing commitment to combat the issue of sexual harm at Lincoln University
- foster a consent culture on campus
- work in close partnership with the SHRP, Proctors and HR Director on the interpretation and application of the Sexual Harm Policy and Procedure;
- support the SHRP, Proctors, HR Director, and other staff working in the sexual harm area to access ongoing specialist training;
- provide appropriate resourcing to underpin the work, training, service delivery and professional supervision necessary to operate the service at a good level;
- ensure that training opportunities related to sexual harm and the processes for handling incidents and complaints are made available for all employees of the University.



**15. RELATED POLICIES AND PROCEDURES**

[Disciplinary Policy and Procedure](#) (staff)

[Student Discipline Regulations](#)

[Prevention of Bullying and Harassment Policy](#)

[Prevention of Bullying and Harassment Discrimination Guidelines](#)





## APPENDIX 1: DEFINITIONS

**Affected person:** An individual who has been subjected to sexual harm. They are referred to as a complainant when / if they make a complaint under this Policy and Procedure.

**Complainant:** In this instance, the person making a complaint of sexual harm is referred to as the complainant.

**Consent:** The active, ongoing, informed, specific and freely given agreement in response to a request to engage in physical contact or sexual activity. Consent cannot be given by someone who is incapacitated (such as by drugs or alcohol), unconscious, or otherwise unable to understand and voluntarily give consent.

**Disclosure:** When someone chooses to inform a Lincoln University community member about an incident where they were subjected to sexual harm.

**Lincoln University community:** Students (those enrolled in full- or part-time degree programmes, diplomas, certificates or other courses), Lincoln University employees, contractors, appointees and volunteers.

**Person Accused:** A person who has been accused of committing sexual harm. They are referred to as a respondent when a complaint is made against them under this Policy and Procedure.

**Procedural fairness:** Provides parties with a fair process for resolving disputes. The process requires transparency, equal communication and fairness.

**Proctor:** The Vice-Chancellor shall appoint a Proctor or Proctors who will be responsible in the first instance for the investigation of complaints about breaches of discipline as defined in the Student Discipline Regulations and other relevant policies and procedures of Lincoln University.

**Rape culture:** A culture in which dominant ideas, social practices, media images, and societal institutions implicitly or explicitly condone sexual assault or harassment by normalizing or trivializing sexual harm and by blaming affected persons for their own abuse.

**Respondent:** When a complaint is made under this Policy and Procedure for initiating an investigation/adjudication, the person accused and whom the complaint is made against is referred to as the respondent.

**Sexual assault:** Any kind of sexual contact initiated without actively seeking and ensuring mutual consent. It includes, but is not limited to, unwanted kissing, touching of private body areas, fondling, oral or anal sex, intercourse, or other forms of penetration, or any other unwanted act of a sexual nature.

**Sexual harassment:** Ongoing persistent unwanted remarks, behaviours, or communications of a sexually oriented nature or negative behaviours or communications based on gender that promote gender-based harm, – where the person responsible for the remarks, actions, behaviours or communications knows or ought reasonably to know that these are unwelcome. Sexual harassment may consist of unwanted attention of a sexually oriented nature such as personal questions about one's sex life, persistent requests for a 'date', or unwelcome remarks about someone's hair, body shape, etc. Sexual harassment may also consist of unwelcome remarks based on gender which are not of a sexual nature but which are demeaning such as derogatory gender-based jokes or comments.



**Sexual harm:** Any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, and is committed, threatened or attempted against a person without that person's consent. This includes, but is not limited to sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, sexual exploitation, degrading sexual imagery, distribution of sexual images or video of a community member without their consent, and cyber harassment or cyber stalking of a sexual nature. It must be acknowledged that acts of sexual harm can also be acts of systematic oppression, including but not limited to sexism, racism, colonialism, ableism, homophobia, and/or transphobia.

**Sexual Harm Response and Prevention coordinator (SHRP):** The Vice-Chancellor in conjunction with the Director of People, Culture and Wellbeing shall appoint a Sexual Harm Response and Prevention coordinator who will be responsible for providing an initial safety, support, and advisory service for persons affected by sexual harm and also a follow up service linking affected persons to appropriate services for further support and investigation. The role of the SHRP is guided by the principle that the affected person will at all times be supported to make their own decisions regarding the reporting, support, and investigation services most appropriate to their needs at the time. The SHRP will follow procedures and processes outlined in the Sexual Harm Policy and Procedure policy and within the SHRP job description and any other relevant policies and procedures of Lincoln University. The SHRP will also develop education, training and prevention programmes such as Respectfully Lincoln in order to meet Lincoln University's commitment to reduce sexual harm. The services of the Sexual Harm Response and Prevention coordinator to an affected person will cease when said person is no longer needing these services or is no longer a member of the Lincoln university community.

