

Sexual Harassment Procedure

Intent

This procedure outlines how the University will manage incidences of Sexual Harassment.

This procedure should be read in conjunction with the Bullying, Discrimination, Harassment and Sexual Misconduct Policy. Sexual Harassment will not be tolerated under any circumstances. The University is committed to the rights of all Students, Staff and Affiliates to work, research, study, live and socialise in an environment that is based on inclusivity and respect.

Scope

This procedure applies to all members of JCU Council, Staff, Affiliates and Students while engaged in activities undertaken as part of their study, research, work, living and socialising at or with JCU. The procedure extends to wherever that activity takes place. The scope of the policy includes but is not limited to:

- campuses;
- managed student accommodation;
- sporting and recreational clubs and facilities to the extent that they fall within the University Community;
- managed digital environments; and
- activities and situations related to University business that are not conducted on University premises, including but not limited to:
 - field trips
 - placements and internships
 - conferences
 - places of accommodation whilst travelling
 - students camps
 - inter-University events
 - parties and other social functions.

Definitions

Except as otherwise specified in this procedure, the meaning of terms used in this procedure are as per the Bullying, Discrimination, Harassment and Sexual Misconduct Policy and the University's [Policy Glossary](#)

Procedure

1. Obligations of Members of the JCU University Community

- 1.1 Sexual Harassment is a serious example of Sexual Misconduct, and is prohibited under legislation. A quick reference guide is at appendix 1.
- 1.2 Every member of the University Community, regardless of their connection with JCU, has the following obligations:
 - a) take reasonable care for their own health and safety,
 - b) take reasonable care for the health and safety of others,
 - c) comply with any reasonable instruction from JCU, and

- d) comply with all applicable JCU Policies and Procedures.
- 1.3 Any member of the University Community may be a First Responder. A First Responder is a person who is confided in by another person who has experienced or is currently experiencing an incident/s of sexual harassment. First Responders need to listen with compassion, respect privacy and confidentiality; and encourage the person to seek support (further detailed at section 3).
- 1.4 Any member of the University Community may be a Bystander. A Bystander includes a person who observes someone sexually harassing another person, (see also First Responder). A Bystander should call 000 in an emergency. A Bystander can address the person offending at the time, if they are able to do so, and it is safe to do so. Bystanders should let the person subjected to the harassment/offence know they will do what they can to help.
- 1.5 Some members of the JCU University Community have further obligations in respect of their positions or delegated authority identified in this Procedure and which is their responsibility to understand.
- 1.6 Specifically in relation to Sexual Harassment, Staff, Affiliates and Students are to:
- a) undertake mandated training for their position and/or roles as specified;
 - b) model exemplary behaviours in this regard themselves;
 - c) monitor workplace behaviours to ensure compliance with policies;
 - d) not place any inappropriate material, including sexually inappropriate material, in the work or study environment;
 - e) speak with a member of the academic staff who will raise it with the College Dean, their supervisor or manager when they observe instances of potential Sexual Harassment, even without a Report being lodged;
 - f) seek the advice of the Equity Contact Officers;
 - g) seek the advice of the Sexual Misconduct Officers if an incident of sexual harassment is identified; or
 - h) report an incident of Sexual Harassment on the Sexual Misconduct Form.

2. University Support

2.1 The University understands that if a member of Staff or Student experiences Sexual Harassment they may require counselling support in addition to having the matter resolved.

- **Student Counselling.** Students are able to seek support from the Student Equity and Wellbeing Counselling Staff. The Counselling Staff provide confidential counselling services and may also assist with a variety of issues including, managing anxiety, depression and stress that may be linked to the Sexual Harassment between the hours of 9am – 4pm.

Contact details are:

Townsville	(07) 4781 4711	studentwellbeing@jcu.edu.au
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Cairns	(07) 4232 1150	studentwellbeing@jcu.edu.au
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Student Equity and Wellbeing Staff can provide assistance, advice and referrals to specialist services and emergency walk-in appointments are available.

- **Staff Counselling.** Staff are able to seek support from the Employee Assistance Program (EAP) which provides a confidential and free counselling service available to continuing and fixed term JCU Staff and immediate family.

Employee Assistance Program	1300 360 364	eapdirect® online
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3. Reports and Complaints to JCU

- 3.1 Any person can provide information to the University that an incident of Sexual Harassment has happened. All people, at any time, can pursue processes external to the University, including reporting to Police.
- 3.2 The University will respect an individual's decision on whether they will make a Report, and/or a Complaint. Reports and Complaints will be kept strictly confidential except in exceptional circumstances, where required by law or where there is a risk of significant harm to that individual's health and safety or another individual's health or safety. In such circumstances, the University may do one or both of the following:
 - a) resolve to elevate the Report to a Complaint in which case the individual who has Reported has the right not to participate in any subsequent Investigation provided that this action would not result in a denial of natural justice to the Respondent; and/or;
 - b) notify third parties, such as the Police or child protection authorities.
- 3.3 A Member of the University Community may have a Representative present when attending any meetings relating to Sexual Misconduct, and any Report or Complaint. If the Complainant or Respondent are unable to come onto campus, alternative methods of contact can be arranged.
- 3.4 All Reports or Complaints to JCU are recorded in the University's confidential Incident Register by the Chief of Staff. This enables JCU to identify patterns in behaviours, or in areas of the University, and to monitor progress in eliminating sexual misconduct.

4. Making a Report, and possible outcomes

- 4.1 Any person can make a Report through completing the online Sexual Misconduct Report Form. Sexual Misconduct Officers can provide support with completing the form. The Report is received by the respective Sexual Misconduct Officer – i.e., the Manager, Student Equity and Wellbeing for Students or the Manager, Equity and Diversity for Staff and Affiliates. The Chief of Staff is notified for the Incident Register.
- 4.2 It is possible to make an anonymous report using the Sexual Misconduct Report Form, and the person making the report is able to, but does not have to, identify the other person/people involved. Note that JCU actions in response to any report may be limited by the detail provided.
- 4.3 The Sexual Misconduct Officers will contact the person who has made the Report (if they are identified) to explore options. Sexual Misconduct Officers can provide support,

including facilitating access to counsellors if needed, and consideration of possible Accommodations and Precautionary Measures available.

- 4.4 Making a Report does not start an investigation, but it does mean the Sexual Misconduct Officers can advise the person subjected to sexual harassment (if they are identified) on their options to make a Complaint.
- 4.5 A Report enables the Sexual Misconduct Officers, to discuss options with the person subjected to the Sexual Harassment (if they are identified). The University recognises that persons subjected to Sexual Harassment often directly address the behaviour at the time that it happens. The University has no expectation or suggestion however, that the person who is subject to Sexual Harassment should have to address the behaviour directly with the person who is/has harassed them.
- 4.6 The University seeks to be very clear on its expectation that bystanders, particularly supervisors and managers, have a responsibility to also address person/s who act inappropriately in the workplace. Options available to a person subjected to Sexual Harassment may be speaking with an academic or College Dean, a supervisor, or next level manager, as appropriate, who will then address the offending behaviour with the other person/people involved (if identified) on their behalf.
- 4.7 Potential outcomes include:
 - the supervisor or next level manager, or College Dean resetting expectations about the offending behaviour with the other person/people;
 - the requirement for other person/people to undertake internally provided training programs;
 - an apology being made by the other person/people to the person who has been subjected to sexual harassment;
 - a complaint being made if unresolved to the person subject to the sexual harassment's satisfaction.

5. Making a Complaint

- 5.1 In making a Complaint, a person (the Complainant) provides detailed information in order that an investigation and disciplinary action or other resolution can be taken against the Respondent.
- 5.2 Making a Complaint will start an investigation (assuming the University has the authority to investigate – refer to 7.11) and will include a referral to Sexual Misconduct Officers, if not already involved, for information and support as part of the processes.
- 5.3 If the University commences an investigation and an external process (ie criminal charge) is also being pursued, the University may continue or suspend its investigation (after advising the Complainant). The University will continue to provide support, including assessments of Accommodations and Precautionary Measures in all cases.
- 5.4 Care must be taken not to dismiss a matter as trivial without due consideration and process. In resolving a Complaint, the University must ensure that principles of Natural Justice are observed.
- 5.5 Any Complaint received by the Chief of Staff will be assessed to check matters including:
 - a) that the appropriate support services of the University have been engaged;

- b) any safety or other risks associated with the Complaint and any investigation requirement arising from the Complaint;
 - c) where the Complaint was not made by the individual directly affected, that the individual is advised of the Complaint and is able to talk about the Complaint and the anticipated process that the University will take to consider it;
 - d) that there is sufficient information to proceed;
 - e) any requirement for the University to notify an external body, i.e., where Public Interest Disclosures or the Crime and Corruption Commission (where the Respondent is an employee); and
 - f) that where made by the individual directly affected, the individual has been made aware of and understands the complaint process and possible implications for them, before making a Complaint.
- 5.6 For the purposes of this procedure, a Staff member or Affiliate responding to a Complaint or allegation(s) of Sexual Harassment is referred to as a Staff Respondent and a Student responding to a complaint or allegation(s) of Sexual Harassment is referred to as a Student Respondent.
- 5.7 Where a Student is also employed by the University or where a Staff member or Affiliate may also be a Student, the Sexual Misconduct Officer will make an assessment as to the role the alleged Respondent was undertaking at the time of the Sexual Harassment.
- 5.8 Where an allegation of Sexual Harassment is made through a Complaint against a Staff Respondent it will be referred to the Director Human Resources for investigation as a possible misconduct or serious misconduct under the JCU Enterprise Agreement.
- 5.9 Where an allegation of Sexual Harassment is made through a Complaint against a Student Respondent it will be referred to the Director Student Services for investigation as possible misconduct under the Student Code of Conduct and Misconduct Procedures.
- 5.10 Where an allegation of Sexual Harassment is made through a Complaint against a Council Member Respondent it will be referred to the Chancellor for investigation as possible misconduct under the Council Code of Conduct.

6. Reports or Complaints made by third parties

- 6.1 Anonymous, and third party, Reports or Complaints of Sexual Harassment may also be made.
- 6.2 The University may be unable to proceed with an investigation involving anonymous or third party Reports or Complaints due to a lack of evidence from the individual who was directly subjected to the Sexual Harassment, or where proceeding would not allow for procedural fairness or Natural Justice.
- 6.3 The Chief of Staff may take other steps, including an approach via the third party to see if the individual affected would consider making a Report or Complaint.
- 6.4 Where other sufficient evidence exists, the University may decide to proceed with investigating an allegation without a Report or Complaint, particularly where patterns of behaviour have become evident.

- 6.5 If the University is unable to proceed with an investigation involving anonymous or third party allegations, the Complaint will be retained by the Chief of Staff. The Complaint will be kept strictly confidential, and access to it will be limited.

7. Investigating a Complaint

- 7.1 **Initial (preliminary) inquiry.** On receipt of a Complaint, the Director Human Resources or the Director Student Services will undertake an initial inquiry supported by the Sexual Misconduct Officers to determine whether sufficient evidence and standard of proof on the balance of probabilities exists.
- 7.2 Where an initial inquiry determines that an allegation does not meet the required standard of proof, a Complaint will be closed. The University will continue to provide support, including Accommodations to the Complainant. This decision to close an inquiry can be appealed (see section 10).
- 7.3 Where an initial inquiry determines that an allegation meets the required standard of proof the University will investigate under the relevant discipline procedure/process.
- 7.4 The Director Human Resources can determine to suspend a Staff Respondent (Precautionary Measure) during an investigation based on a risk assessment and/or on the recommendation of the Sexual Misconduct Officer. These decisions will be made in accordance with the JCU Enterprise Agreement or relevant policy for Affiliates.
- 7.5 The Director Student Services will consider if a Student Respondent should be suspended during an investigation based on a risk assessment and/or on the recommendation of the Sexual Misconduct Officer.
- 7.6 **Investigation.** All parties subject to an investigation will be afforded Natural Justice and have the right to have a support person/Representative with them.
- 7.7 The Director Human Resources or Director Student Services will investigate or cause to be investigated an allegation of Sexual Harassment against Staff and Student Respondents respectively. An internal or external investigator may be appointed. An investigator must be independent of the parties of the investigation.
- 7.8 The investigation report will be provided to the Director Human Resources for Staff Respondents for determination of Misconduct or Serious Misconduct as defined under the JCU Enterprise Agreement.
- 7.9 The Investigation report will be provided to the Director Student Services for Student Respondents for determination of Sexual Misconduct as defined in this Policy.
- 7.10 The investigation report is confidential and will not be provided to the Respondent but will be used to form the allegations as part of the disciplinary processes.
- 7.11 A University investigation will be suspended if a Complainant decides to pursue criminal proceedings. If for whatever reason the criminal process ends, the disciplinary process may recommence.

8. Outcomes of Complaints – Disciplinary Proceedings

- 8.1 If the Director Human Resources finds that the Bullying, Discrimination, Harassment and Student Misconduct Policy and Staff Code of Conduct has been breached, the University will commence disciplinary proceedings. Such proceedings will be undertaken in accordance with misconduct/serious misconduct prescribed for Staff in the JCU Enterprise Agreement, and relevant policy for Affiliates.

- 8.2 If the Director Student Services finds that the Bullying, Discrimination, Harassment and Sexual Misconduct Policy and Student Code of Conduct has been breached, the Director Student Services will determine the disciplinary action required in resolving the Complaint.
- 8.3 Depending upon the severity and implications of the breach, outcomes may include legal action and/or other disciplinary action (such as suspension or termination of employment of a Staff Respondent, or suspension or exclusion from the University of a Student Respondent).

9. False Allegations and/or Vexatious Complaints

- 9.1 Reports (whether oral or in writing) made in bad faith and/or including false information in the course of an investigation may lead to allegations of Misconduct/Serious Misconduct and result in disciplinary action against the person.
- 9.2 If the Complaint is found to be Vexatious, the University may take action against the Complainant under the University's misconduct procedures contained within the JCU Enterprise Agreement or in the case of a vexatious complaint made by a Student, the Student Code of Conduct and Misconduct Procedures.

10. Appealing University decisions

- 10.1 A Student Complainant who is not satisfied with a University decision regarding a complaint of Sexual Harassment should refer to the relevant appeal steps in the Student Appeal Policy and Procedures, or the relevant policy for Affiliates.
- 10.2 A Respondent who is not satisfied with a University decision regarding a complaint of Sexual Harassment should refer to the appeal process in the JCU Enterprise Agreement (sect 48.4 - 48.5), or the Student Appeal Policy and Procedures, or the relevant policy for Affiliates as applicable.

Related policy instruments

[Code of Conduct](#)

[Explanatory Statement to the Code of Conduct](#)

[Student Code of Conduct](#)

Misconduct Procedures x 3 (to be implemented)

[Higher Degree by Research Code of Practice](#)

[Bullying, Discrimination, Harassment and Sexual Misconduct Policy](#)

[Bullying, Discrimination and Harassment Complaint Procedure for Staff and Affiliates](#)

[Social Media Policy](#)

[ICT Acceptable Use Policy](#)

[Student Complaint Management Policy and Procedures](#)

[James Cook University Enterprise Agreement](#)

[Adjunct Appointment Policy](#)

[Student Appeals Policy](#)

[HSE-PRO-007 Field Trip Procedure](#)

Schedules/Appendices

1. Sexual Harassment Quick Reference Guide
2. Sexual Harassment Procedure Flow Chart – Person Subjected to Sexual Harassment
3. Sexual Harassment Procedure Flow Chart – Bystander

Related documents and legislation

Commonwealth Laws

[Age Discrimination Act 2004](#)

[Australian Human Rights and Equal Opportunity Commission Act 1986](#)

[Disability Discrimination Act 1992](#)

[Disability Standards for Education 2005](#)

[Fair Work Act 2009](#)

[Racial Discrimination Act 1975](#)

[Sex Discrimination Act 1984](#)

[Workplace Gender Equality Act 2012](#)

Queensland State Laws

[Anti-Discrimination Act 1991](#)

[Criminal Law Amendment Act 1993](#)

[Crime and Corruption Act 2001](#)

[Disability Services Act 2006](#)

[Industrial Relations Act 2016](#)

[Work Health and Safety Act 2011](#)

[Workers Compensation and Rehabilitation Act 2003](#)

Administration

Approval Details

Policy Sponsor/s	Vice Chancellor
Approval Authority	Vice Chancellor
Date for next review	05/07/2021

Revision History

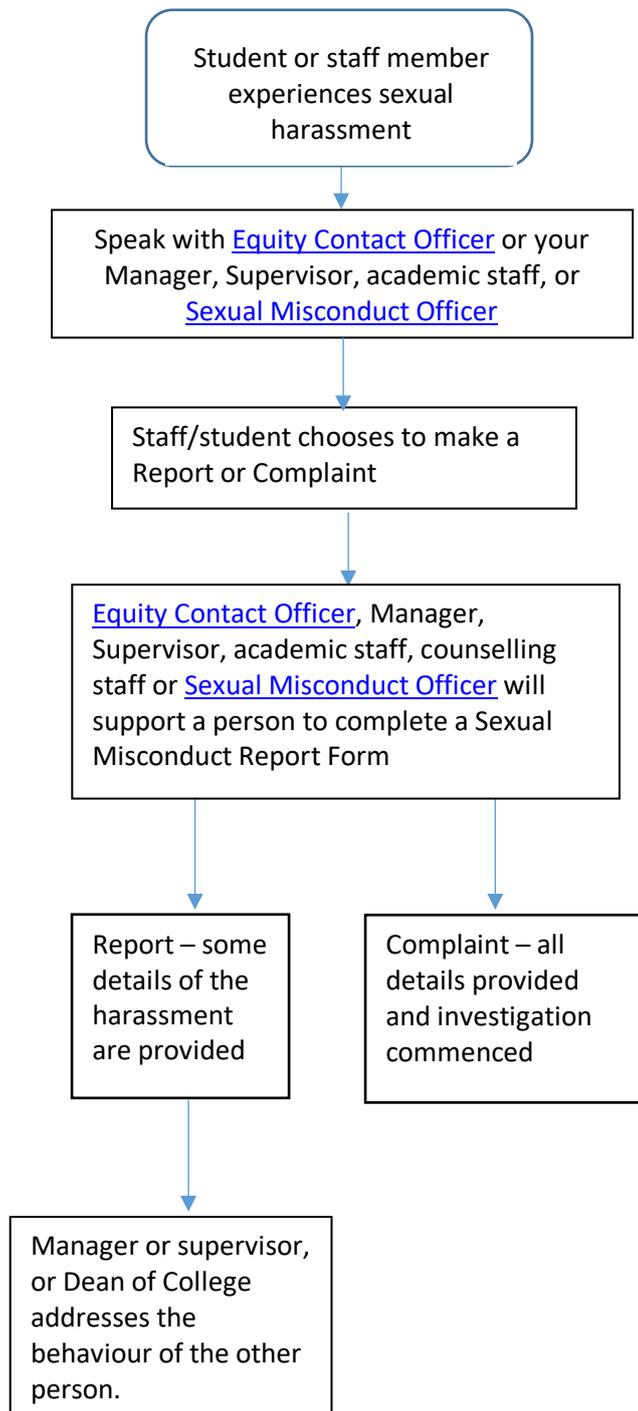
Version	Approval date	Implementation date	Details	Author
18-2	02/08/2018	03/08/2018	Minor administrative amendments	Chief of Staff
18-1	05/07/2018	09/07/2018	Procedure established	Vanessa Cannon, Chief of Staff

Keywords	sexual harassment, violence, abuse, assault, consent, disclosure, sexual misconduct
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Appendix 1 - Sexual Harassment Quick Reference

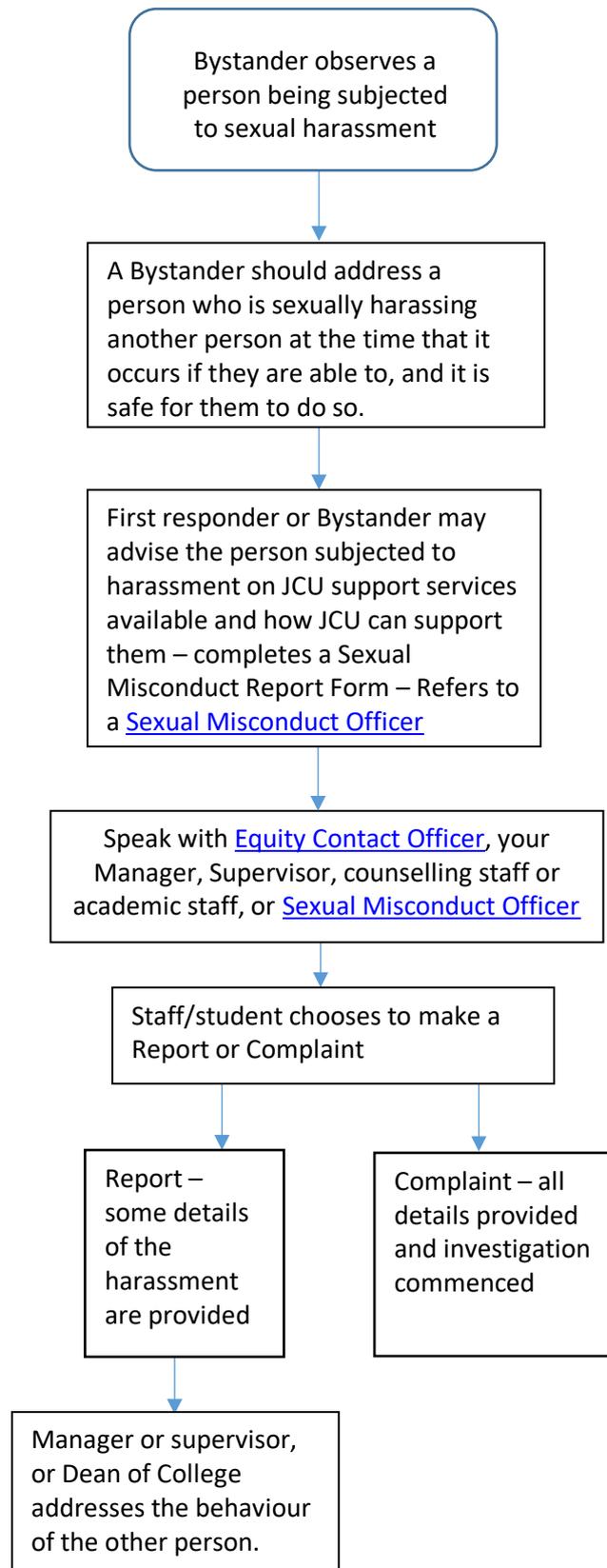
University	JCU Security	In emergency situation call 000. Available 24/7 to report any incident or behaviour, and will also follow up with Police and emergency services as necessary. 1800 675 559 Report all security incidents as early as possible to the Security Office or a Security Officer. Any emailed reports should be sent to security@jcu.edu.au (for Townsville) or cairnssecurity@jcu.edu.au (for Cairns).
	Equity Contact Officers	Can meet with staff and students about matters related to Bullying, Discrimination, Harassment and Sexual Misconduct. ECO's provide information and guidance on University policies and procedures. equity-contact-officers-list
	Sexual Misconduct Officers	Provide a single point of contact for a person who has been subject to Sexual Harassment or Sexual Assault, or to the Manager or person supporting that person. Sexual Misconduct Officers can provide support to staff and students, facilitate Accommodations and Precautionary Measures, and can provide support with making a Report, or Complaint to the University and connect with counselling support. Designated Sexual Misconduct Officers at the University are the Chief of Staff, Manager Student Equity and Wellbeing (for students), the Manager of Staff Equity and Diversity (for staff).
	Employee Assistance Program	Counselling Service: For all Staff: employee-assistance-program For Managers: employee-assistance-program/how-can-managers-use-the-eap
	Student Equity and Wellbeing Counsellors	Students can seek support from Student Equity and Wellbeing counselling staff. The Counselling staff work with the Specialist Sexual Assault Services for cases of sexual assault, but can also assist with a variety of issues including discrimination, harassment, sexual harassment, bullying, or managing anxiety, depression and stress between the hours of 9am – 4pm. Emergency appointments are available. Will advise students of what Accommodations can be made by the Sexual Misconduct Officers. Can provide information on making a Report or Complaint to JCU. Cairns: (07) 4232 1150 Townsville: (07) 4781 4711 Email: studentwellbeing@jcu.edu.au
	Residential College Staff	Principals, Deputy Principals, Managers Halls of Residence, Support Officers and Residential Assistants will apply this policy and procedure, and will work with the Sexual Misconduct Officers.
	JCUSA Student Advocates	JCUSA Student Advocate and Welfare Officers provide free information, advocacy and referral on a range of issues relating to students. Tel: 1800 330 021

Appendix 2: Flowchart Person subjected to Sexual Harassment



If feeling unsafe:
Call Campus Security
1800 675 559

Appendix 3: Flowchart Bystander to Sexual Harassment



If feeling unsafe or concerned for the safety of others:
Call Campus Security
1800 675 559