
Review into harassment and sexual harassment at AUT

by Kate Davenport QC

January 2021

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Acknowledgements

I want to thank all the AUT staff and students who came to see us and told us their stories, and the thought and care that people put into the many submissions we received.

I thank the staff at AUT who gave me and my team the records and information we requested.

I thank my team (Carmel Walsh, Adele Isaacs, Aidan Cameron, and Trudy Butterworth) who have worked so hard on this review. I could not have done it without them.

I thank Bronwyn McGee who spent hours researching comparable policies and information for me.

I hope that this report will enable AUT to recognise areas for change and to remedy some problems and work towards a positive future for this University.

Part A: Overview of Report

Overview

In July 2020 I was commissioned by Auckland University of Technology (**AUT**) to undertake a review of its processes, policies, and procedures in relation to harassment and sexual harassment following a series of articles in the media in May 2020.

In this report I have used the following definitions of harassment, sexual harassment, and bullying:

Harassment. The distinction between bullying, harassment, and sexual harassment has been debated by several researchers with many viewing bullying and harassment as merely different words to describe the same phenomenon. In this review (because of the terms of reference) the term harassment includes bullying. AUT's policy on harassment provides a definition of the words bullying and harassment which is helpful. The majority of those we saw complained about **bullying** behaviour.

Bullying. There is no legislative definition of bullying. Workplace bullying definitions vary greatly in the literature, however there were several core elements identified:

- Bullying behaviour must be negative and unwanted by the victim.
- The bullying must be repeated and regular, one off instances of bullying will not generally suffice.
- The bullying must take place over a (prolonged) period of time.
- Bullying involves a misuse of power.
- Intent of the perpetrator is not needed.

Sexual Harassment. Both the Employment Relations Act 2000 (ERA) and the Human Rights Act 1993 (HRA) contain definitions of sexual harassment, which are largely consistent with one another. I have used those definitions.

The trigger which eventually led to the commission of this report was a disagreement about the resolution of a complaint made to AUT by Australian National University (**ANU**) in August 2019. This ANU complaint was made on behalf of a staff member, Dr C. ANU complained about the sexual harassment of Dr C by Dr B, a senior professor at AUT. Dr B admitted the complaint and this admission (together with an apology) was conveyed to ANU. However, AUT and ANU could not reach agreement on whether the investigation was thus completed. Despite efforts by both parties the investigation stalled. Dr C went to the media in the first quarter of 2020.

Another senior leader (Dr D) was also identified in the media as having behaved inappropriately towards staff.

Both staff members have resigned from AUT. In response to all these issues the Vice-Chancellor (**VC**) and AUT Council commissioned me to undertake a review to examine AUT's policies and practices, standards and systems relating to harassment and sexual harassment. I was also asked to consider any other related matter I considered relevant.

We interviewed and read submissions from 403 people. 390 were interviewed and the rest provided us with written submissions.

I found that while there have been incidents of sexual harassment in the past at AUT there was no evidence of current sexual harassment at AUT. Most of what was reported to us was historical and I did not conclude that AUT had a current problem with sexual harassment. We did however hear from 273 people who said they had been the subject of bullying or witnessed it. There was a deep sense of unhappiness about this bullying.

My team and I were not in a position to determine whether all the complaints/concerns were factually based or not but the fact that many staff expressed these views means that AUT should re-examine, consider and address the issue of bullying.

As a result of our meetings, research and document review I find that AUT's dispute/complaints process to resolve harassment and sexual harassment issues is inadequate, its policies and processes on harassment could be improved and that AUT did not sufficiently investigate Dr C's complaint. Those we saw said (inter alia) that AUT has a culture of not resolving issues, and a complaints procedure that was ineffective because it did not permit the resolution of complaints/concerns other than by facilitated discussion or, alternatively by making a formal complaint procedure with the need to engage lawyers and to prove the allegations made.

Many felt isolated and that support was lacking from within AUT for the resolution of workplace issues. I heard a raft of concerns about the culture of AUT. People told me of bullying, lack of consultation, unresolved conflict, and a lack of faith in the complaints process. Bullying was the single issue most frequently complained about. It is unfortunate to observe that while academics are said to be the "critic and conscience of society"¹ some apply this to their dealings with their colleagues and are rude and badly behaved. This behaviour has a significant negative affect on those who receive it and on the happiness of many staff. AUT would be a happier place if all staff could treat others as they wish to be treated.

AUT has had notice of the issue of bullying as it was raised in staff engagement surveys and the annual reports from the Respect in Action coordinator for at least four years before this review. All these reports identified concerns with harassment/bullying. AUT it took action to address these issues but I did not see significant outward evidence of this response and the staff we saw appeared unaware of these measures. More work is needed to address the issues and to communicate changes to be made.

I have read and considered material on policies on harassment and sexual harassment from New Zealand universities, Australian, UK, Canadian and USA universities and compared AUT's processes and procedures to these. I have consulted with Dame Margaret Brimble and Joy Liddicoat.

AUT's policies and procedures on harassment are adequate but lack detail and need to be more accessible, more simply set out and have timelines for resolution. I also suggest another form of complaint resolution to bridge the gap between low level resolution and serious complaints/concerns. I recommend that AUT improve its training programmes to emphasise leadership and to train staff on difficult

¹ Education Act 1989 s. 162(4)(a)(v)

conversations, bullying and other skills on managing people effectively. I have also recommended that the training needs to be ongoing and staff's learning needs should be refreshed annually. AUT should also consider training on reflective behaviour and unconscious bias to help people identify their own weaknesses and strengths as leaders.

Nonetheless, it is important to recognise that most people who met with us expressed a high degree of satisfaction with large elements of their work at AUT and believe that it is an exciting and innovative place to work. My team and I met with and were inspired by the passion felt by so many staff for their students, their research and AUT as an institution. They were inspirational. It is a young university in its 20th year. AUT's leaders now need to take the lead in developing an innovative and responsive culture of openness, respect, inclusiveness, and communication. AUT does not have this culture at present through all areas of the University. I do not believe that harassment issues are unique to AUT and many overseas universities have experienced and addressed similar concerns. However, AUT now has an opportunity to effect a cultural change which will be a model for other universities.

To effect the cultural change which AUT needs, AUT will need to transform its culture with a combination of leadership, conscious modelling of respectful courteous and open behaviour, training, change in policies, and supporting and initiating constant communication with staff.

I conclude with the words of the General Manger of AUT Student Association. In 2018 he said, *"We have all bullied and been bullied – it's about building communication, understanding and challenging students and staff to open their minds"*. These words remain true for all at AUT. I hope they will take the steps I suggest and work towards achieving these goals.

Nga mihi
Kia ora koutou katoa

A handwritten signature in blue ink that reads "Kate Davenport". The signature is written in a cursive, flowing style.

KG Davenport QC
Auckland

26 January 2021

Findings of Fact

1. AUT does not have an ongoing problem with sexual harassment. Historically about 8 individuals have been identified as having harassed female staff, but these individuals are no longer employed at AUT. AUT has one ongoing case where sexual harassment is alleged but this is before the Employment Court and subject to confidentiality orders. AUT should remain vigilant to ensure that any further allegations are dealt with promptly.
2. I also find that best practice at universities now includes requiring all students to undertake comprehensive consent training to assist in minimising sexual harassment and consent issues between students. I recommend a change in AUT's policy to make this training compulsory for all students. It is currently offered as a voluntary online module.
3. AUT has no standalone sexual harassment policy and should develop one to assist with its prevention policy.
4. AUT does have an ongoing issue with bullying within its staff which should be addressed. I found minimal evidence of bullying of students.
5. While AUT's policies are adequate they could be improved and streamlined to ensure easier and more transparent access to the processes and policies. To ensure best practice AUT's policies should be redrafted and include reference to a new Code of Conduct, merge the policy and process documents and add reference to bystander involvement and outline behaviour which is contrary to the policy.
6. AUT has not always followed up with the staff that have complained of bullying and harassment to ensure that the issue that they complained of has been appropriately addressed and, if at all possible, resolved.
7. However, while the recommendations I make will assist with the improvement of the policies; AUT's real issue is not with the policies and procedures but the application of the policies and the efficacy of the complaints resolution process and the behaviour of some staff.
8. The complaints process used to resolve issues of harassment is not working for some individuals as staff are either choosing not to use the processes or the processes themselves are either too informal (the Respect in Action policy) or too formal – the formal complaint and investigation process. AUT needs a further pathway aimed at complaints which are not suitable for a facilitated conversation or the formal investigation process.
9. AUT needs to respond in a more timely manner to the issues that staff raise in the staff engagement survey and in the report from the Respect in Action coordinator and communicate the leaderships' response to the issues and concerns raised promptly, and then continue to communicate the changes that have/will be made.
10. A number of staff at AUT do not seem to appreciate the negative impact that their behaviour has on those that they work with. This behaviour has in some areas gone unchecked leading to great unhappiness for their colleagues and a negative impact on the University.

11. AUT therefore needs to bring about a cultural change where inappropriate behaviour is always called out, and where respect, appropriate behaviour and kindness to others are paramount. There should be consequences for bad behaviour and AUT's Code of Conduct should be redrafted to be more detailed and to reflect the behaviours which are inappropriate.
12. The training that AUT managers and leaders receive has been variable to date and until recently not compulsory for all managerial staff. To bring about a change in culture all management staff need to receive training in leadership (for the management staff); and all staff need training in appropriate behaviour, how to call out bad behaviour, self-reflection and unconscious bias training, and how to have difficult conversations.
13. The information that I have received and the evidence given to us has led to my conclusion that the investigations that AUT carried out into the conduct of Dr's B and D were limited and failed to take into account known previous issues of troublesome behaviour by these staff members. This led to AUT declining to investigate previous conduct when requested to do so by ANU for Dr B and to investigate a staff member's complaint for Dr D.
14. AUT should invest in further formal training for all staff and managers on behavioural issues and should engage with staff concerns at the earliest possible time. AUT needs to resource People and Culture to invest in early reporting apps and programmes to assist with identifying areas of concern within the University at an early date. AUT needs to ensure better record keeping of staff complaints to ensure that in the future inappropriate conduct can be recorded.
15. Other issues were raised with us which sit outside the scope of this review including issues with its engagement and response to its Māori and Pasifika staff, and gender issues. I recommend AUT consider these concerns more fully.

Recommendations

Following on from my report and my findings of fact I make the following recommendations:

17. I recommend that AUT (through the Vice-Chancellor (**VC**)) should identify areas where it can acknowledge its failings and where the complaint process has not worked and acknowledge the shortcomings in these areas to the whole University. **Recommendation 1**
18. I recommend that AUT should inform Dr C and ANU of my recommendations. **Recommendation 2**
19. I recommend that the VC report to AUT Council and then to the University as a whole on progress in achieving all the recommendations in this report 6 months after this report and 6 monthly for the next 12 months and annually thereafter. **Recommendation 3**

Policies/Procedures/Processes

20. I recommend that AUT review and redraft its policies and procedures to address the following. **Recommendation 4:**
 - The existing Code of Conduct must be redrafted into a comprehensive, (more detailed) code and included as part of every employment contract with the University (as permitted by law). In this way there can be no doubt as to the behaviours expected of every employee and which behaviours are not acceptable;
 - The Code of Conduct should specify that breaches of the Code will have consequences which can involve a requirement for training or a disciplinary sanction;
 - Whilst I have found that AUT does not have a current issue with sexual harassment I consider it should, nonetheless, establish a separate and stand-alone policy for sexual harassment which also includes information on the help available to victims which is external to the University (such as Helpline numbers);
 - I recommend that the policies on harassment and sexual harassment state explicitly that harassment and sexual harassment of any nature will not be tolerated, any complaint will be treated seriously and that there are significant consequences for such inappropriate behaviour. The policies should reference the Code of Conduct. These statements must be included in the policies for harassment and sexual harassment and in the Code of Conduct;
 - I recommend that the harassment and sexual harassment policies must set out the interim measures which seek to neutrally protect the complainant until the complaint can be dealt with and which treat the accused fairly, in line with natural justice;
 - I recommend that the policy and procedure documents for harassment should be merged to show clear pathways for resolution for those alleging harassment and options for dealing with harassment. The pathway can be chosen by the individual complaining;
 - I recommend that the policies must provide guidance on the timeframe for the resolution of complaints with an emphasis on timely resolutions;

- I recommend that the policies must provide guidance to the individual who is the subject of the complaint in respect of their rights and the expected processes and timeframes;
 - I recommend that the harassment and sexual harassment procedures allow for anonymous complaints (without breaching natural justice if the complaint can be investigated without a person's direct evidence) and complaints which are initiated by a bystander and by the University on its own motion;
 - I recommend that the policy should refer to education on harassment and the requirement that all staff have compulsory training (and compulsory refresher courses) on harassment and sexual harassment;
 - I recommend that the harassment policy documents set out the clear consequences of harassment including warnings, mediation, suspension and dismissal;
 - I recommend that AUT should consider Auckland University's policy on harassment and Victoria University's sexual harassment policy which may provide assistance in drafting a new policy.
21. I recommend that AUT review its policies on all its employment and appointment processes and ensure that all appointments are advertised (internally and/or externally) with a reasonable time before the closing date allowed for applications to be made. **Recommendation 5**
22. I recommend that AUT should consider an efficient tool for assessing staff performance which includes conduct (or as part of it eMap assessment process) and implement facilitation of this as part of a standard annual employment review. **Recommendation 6**
23. For transparency, I recommend that AUT should consider whether its conflicts of interest policy is fit for purpose to ensure that it is observed for all staff relationships, all new employment contracts and for all research grants and contracts let within the University to ensure all conflicts are disclosed. **Recommendation 7**
24. I recommend that AUT review its recording of staff sick leave and holiday leave to ensure that this leave is properly and consistently recorded and ensures that all staff take and record leave annually. **Recommendation 8**

Complaints process

25. I recommend that a three-tiered complaints procedure be implemented which provides the following options for addressing a complaint. **Recommendation 9:**
- An informal process which may involve a direct complaint discussion with the individual, or through a manager with the opportunity of a quickly implemented mediation process with a strong emphasis on resolution and continuing employment relationship. (The current Respect in Action programme);
 - An independent body to be called Office of Complaint Resolution (**OCR**) which is empowered to investigate and consider complaints and is entirely separate from People & Culture (**P&C**);
 - A formal complaint such as the bringing of a personal grievance to be handled by P&C.
26. I recommend that the Respect in Action programme is separate from P&C but could sit within the Office of Complaint Resolution (see below). **Recommendation 10**

27. I recommend that the Respect in Action Leader or Coordinator be a fulltime role.
Recommendation 11

Office of Complaint Resolution (OCR)

28. I recommend that there should be an independent mid-tier complaints body established to process complaints when low level facilitation or mediation does not work or is rejected by the parties but where a formal complaint is not appropriate or not sought by the complainant. **Recommendation 12**
29. I recommend this be called the **Office of Complaint Resolution**, have an independent staff reporting directly to the (Deputy) Vice-Chancellor. This person (or persons) can assist with the resolution of these complaints, requesting assistance and support from P&C where necessary and if the matter cannot be resolved but is sufficiently serious to warrant further action refer the matter directly to P&C for a complaint to be taken.
Recommendation 13
30. I recommend that the OCR role be filled by a person (independent of P&C) whose primary task is to resolve issues in a way that enables staff to move forward with their jobs and lives. The OCR should produce a written result of the dispute resolution, which is available to both parties, kept at AUT and recorded on employment records. The OCR should have the power to require further training and apologies from those staff who have had a complaint upheld against them, and to refer to P&C any more serious complaints to be resolved. **Recommendation 14**
31. I recommend that the clear focus of the OCR be on providing a safe and supportive environment for the fair exploration of the complaint and have a focus on fair and effective resolution. **Recommendation 15**
32. I recommend that the OCR should:
- Be empowered to investigate and interview the parties involved;
 - Establish a panel of suitably qualified and trained AUT members and external professionals with appropriate experience and training;
 - Provide a decision and resolution including recommending the filing of a personal grievance claim or otherwise;
 - Be empowered to bring its own investigations following the receipt of complaints brought anonymously, or as a result of a high level of documented issues with early identified programmes such as the EARS or Chnnl programmes, or by a bystander (recognising the need to retain natural justice);
 - Include as part of its remit, consideration of statistical analysis and monitoring of trends which also allows it to bring its own motion investigation;
 - Provide reporting to P&C so that they can hold statistics on the complaints made and report to the whole University;
 - Be empowered to move swiftly;
 - Report to the VC and DVC on areas of concern every six months. **Recommendation 16**
33. I recommend that AUT publish data every 6 months (on an anonymised basis) about complaints and their resolution so that staff can see this new process is working.
Recommendation 17

Harassment and sexual harassment

34. I recommend that AUT recognise that sexual harassment and harassment can exist in areas of power imbalance (student/teacher/PhD supervisor/manager/junior) and can be associated with racism. I recommend that AUT set up an independent phone number (maybe via EAP) where staff who are harassed can obtain support and information. **Recommendation 18**
35. I recommend that every student is required to take a compulsory training module (which can be online) on consent and appropriate behaviour at the University at the time of their enrolment. **Recommendation 19**

To prevent bullying – a change in culture

36. I recommend that AUT should place significant emphasis on training and teaching leadership and management skills to its leaders and institute initiatives such as setting up a Leadership & Excellence programme. **Recommendation 20**
37. I recommend that AUT extend its existing values pin awards to recognise those who deliver excellent behaviour, to ensure that excellent behavior is recognised as an important part of being an AUT staff member. **Recommendation 21**
38. I recommend that AUT should create a formal mentoring and pastoral care system so that every junior academic is mentored by a more senior academic which will give them someone to discuss issues and concerns with. This need not be within their discipline. I recommend AUT do the same for professional staff. **Recommendation 22**
39. I recommend that the senior leadership team respond to these recommendations and deliver a vision/plan to the University of an inclusive, respectful, and open culture and the plan for implementing that cultural change within 6 months of this report. **Recommendation 23**

Culture and Training

40. I recommend that AUT establish a cultural change transition group (**CCTG**) or similar entity to lead the cultural change needed to address harassment and sexual harassment. **Recommendation 24**
41. I recommend that employees conduct and behavior must be identified as one of the key areas of focus for the University and an important part of all staff's eMap review. **Recommendation 25**
42. I recommend that AUT put more work into its existing efforts to foster a culture of collegiality and a team spirit amongst departments and the University and that the CCTG consider and advise the most appropriate method of achieving this. **Recommendation 26**
43. I recommend that AUT undertake an intensive period of training for **everyone** on bullying and harassment and exemplary conduct, what it means, what it looks like, what to do to when you see it and how to recognise whether your own behaviour is of concern. The training needs to be refreshed every 6 – 12 months. Given the staff numbers this training should be given first to managers and then to all staff. **Recommendation 27**
44. I recommend that all managers undertake compulsory training on people management, leadership, how to handle difficult people and have difficult conversations and whatever

other training P&C identify as complementing these skills, and annual refresher courses and additional courses on people management. The Vice-Chancellor and senior leaders should demonstrate their support for and engagement with this programme.
Recommendation 28

People & Culture (P&C)

45. I recommend that the Group Director P&C should report directly to the Vice-Chancellor and should as soon as reasonably practicable be described as Associate Vice-Chancellor – People & Culture (or such other title as is appropriate) to reflect the importance of this role to the University. **Recommendation 29**
46. I recommend that P&C should keep more detailed records and statistical data on all staff and faculties (including sick leave statistics, turnover and retention rates, promotion rates and leave taken), and provide information to the Vice-Chancellor and the OCR and the CCTG to assist in the identification of trends or growing issues of concern so that if a trend is developing in a department or school, broadly (or with one individual), this can be identified and acted upon early. **Recommendation 30**
47. I recommend that P&C should be responsible for the follow up with staff who have raised complaints dealt with at all levels of the complaint system after 3 to 6 months to check that the behaviour/issues have resolved. If not, this must be reported to the Group Director of P&C who will have responsibility for devising a plan to resolve ongoing issues. **Recommendation 31**
48. I recommend that AUT should invest in programmes such as Chnnl and EARS to get a more accurate, real time picture of staff engagement and to identify issues and people creating issues. P&C should investigate any person or groups of concern from these programmes. P&C should manage this process and refer to the Respect in Action coordinator or the OCR where required. **Recommendation 32**
49. I recommend that P&C should report (anonymously) on the nature and resolution of complaints to all AUT staff so that staff can see that complaints can be resolved. **Recommendation 33**
50. I recommend that P&C should report on the nature and resolution of complaints to the Council every 6 months and work with the CCTG. **Recommendation 34**

Outside scope but important:

Sexism

51. A small group referred to sexism at AUT and I recommend AUT consider whether this is an issue and if so, take steps to address it. **Recommendation 35**

Māori and Pasifika issues

52. I recommend that AUT should consider engaging in further hui with its Māori and Pasifika staff to recognise that they have a heavier burden placed on them to provide cultural input and additional pastoral functions and work with them to enhance their mutual desire to incorporate the principles of the Treaty of Waitangi into the teaching, enhancement and support for the tika, pona, aroha values within AUT. **Recommendation 36**

Part B: The Review

What is this review about?

53. It is about whether AUT has a culture of harassment (sexual and other forms), whether the policies, processes and procedures which deal with these issues are fit for purpose and what AUT can do (if anything) to improve these policies, processes, and procedures and ultimately AUT's culture.
54. From May 2020 the media published articles about AUT and about the behaviours of two of its professors. The media reports suggested wider issues of a problem with culture at AUT.
55. Following these media reports the Vice-Chancellor and Council wished to understand more, particularly how robust AUT's policies and processes were on bullying and harassment and other matters in the Terms of Reference.
56. They commissioned me to prepare this independent review on the following terms of reference.

Terms of Reference

57. AUT's Terms of Reference are set out below:

Purpose

The purpose is for the Auckland University of Technology (**University**) to engage an independent person (Kate Davenport QC) to conduct a review pursuant to these Terms of Reference into harassment (including without limitation sexual harassment) at the University as further defined below

Context

The Vice-Chancellor of the University, as the employer of staff at the University, has over the years introduced a suite of policies, procedures and protocols (**Policies**) for both staff and students to deal with harassment at the University.

Recent media reports and commentary have raised questions about the robustness of the University's Policies and practices in terms of addressing and/or dealing with staff/student concerns regarding bullying and harassment.

Accordingly, the Vice-Chancellor has appointed Ms Davenport to conduct an independent review and, in order to assure the fullest independence, to report directly to the University's Council on:

- a. The University's current workplace bullying and harassment Policies and practices: *including, without limitation, the University's 'Prevention of Bullying & Harassment Procedures' and 'Early Resolution Procedures';*
- b. Whether and to what extent staff/students feel able to raise complaints and speak up about harassment (including without limitation sexual harassment); and
- c. The nature of, and the way, incidents of harassment have been handled by the University.

Council has agreed to receive the report and recommendations of the review and endorsed the need for a review.

The review is to assess whether matters concerning harassment are dealt with appropriately at the University and to examine what, if any, changes may be recommended to give effect to these Policies and to best meet the University's obligations.

Scope of review

The reviewer is to:

1. Assess the University's current workplace Policies, practices, standards and systems relating to harassment against best practice models in New Zealand having regard to state sector standards and AUT's good employer and other obligations (including to provide a safe, inclusive and equitable learning environment for students) under current relevant legislation.
2. Identify whether the University's existing workplace harassment Policies, procedures and practices:
 - a. Are fit for purpose;
 - b. Are applied fairly and consistently;
 - c. Enable a 'speak up' culture amongst staff and students; and
 - d. Meet the University's good employer and other obligations.
3. Review the University's investigation and resolution mechanisms regarding harassment to assess whether they are appropriate and the way incidents of harassment and bullying have been handled by the University.
4. Identify whether the support, information and mechanisms for complainants in harassment matters are accessible, properly understood and consistently and effectively applied across the University.
5. For the avoidance of doubt, any new allegations of harassment that are raised after the review commences, will be dealt with by the University in the usual way using existing Policies and Procedures pending recommended changes in the review (if any).
6. To give advice and make recommendations in relation to the above.
7. Any other related matters that the reviewer considers appropriate.

Process of the review

1. The reviewer may interview current (and former) University staff at all levels, students and any other relevant parties who wish to provide evidence and information.
2. The privacy of the participants and complainants is of the utmost importance and the following steps will be undertaken to maintain privacy:
 - a. An independent contact email and other mechanisms to contact the reviewer that preserve confidentiality will be established.
 - b. The email and phone mailboxes will be accessible only by those undertaking the independent review.
 - c. Interviews may be audio recorded and transcribed, but at the discretion of the reviewer, only electronic copies will be retained on a secure database under the sole control of the reviewer.
 - d. Notes taken during the interviews will be private and confidential, so far as the law allows, and except as between the reviewer and the

interviewee who will receive a copy of the notes of the interview. The reviewer may use the information provided in the interview either anonymously or, with consent, using the name of the interviewee.

- e. The review will be conducted in a manner consistent with the principles of natural justice and information protection.
- f. Ms Davenport will conduct her review (and provide her report for Council) over the next three months, with public key findings and recommendations. In order to preserve privacy rights, some information may be kept confidential to the Council.
- g. The University will meet the costs of the review, including Ms Davenport's costs (and the costs of her assistant and any other relevant professional support she may require) and any necessary disbursements including room hire (after first being approved by the Council).

Governance

- 1. The Council will receive the report of the review and in the interim has delegated a subcommittee to deal with any matters concerning the progress of the review that might require decision by the University.
- 2. Any decisions about outcomes following the review will be for the Council and/or the Vice-Chancellor (as appropriate).

Dated: 2 July 2020

Introduction

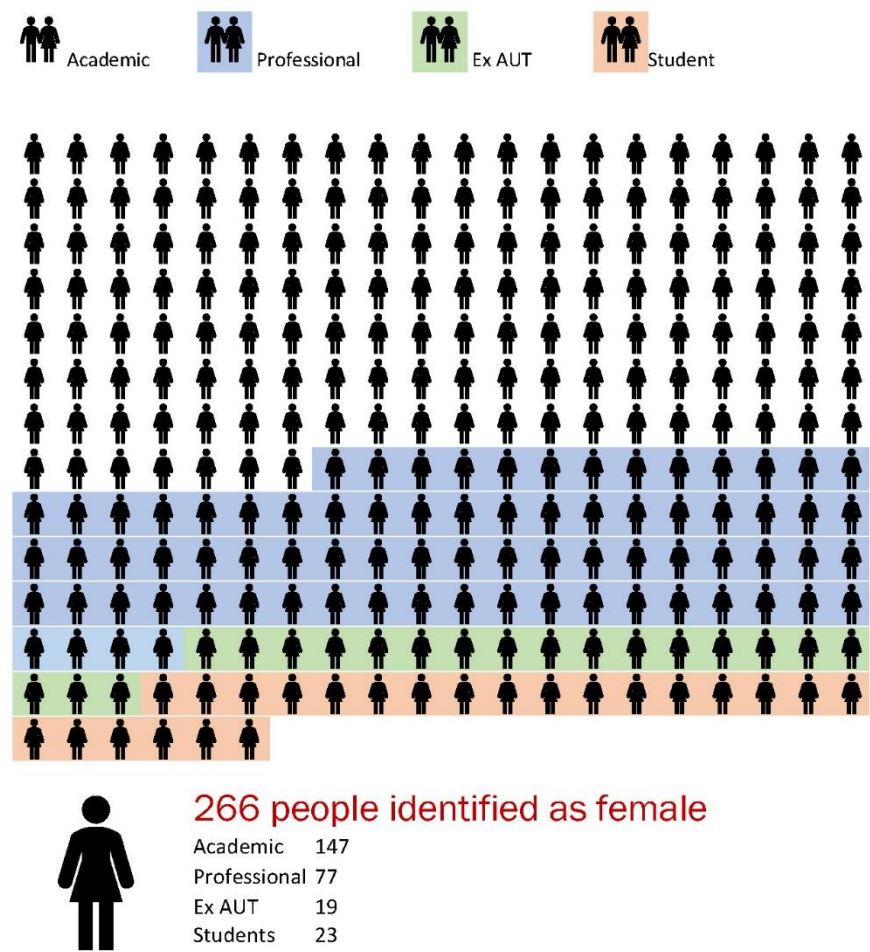
58. Auckland University of Technology (**AUT**) is the second largest university in New Zealand,¹ and is ranked in the top 1% of Universities in the world.² AUT has:
- 29,500 students,
 - five faculties,
 - 17 schools; and
 - more than 60 research centres and institutes.
59. AUT employs about 4,229 staff as at December 2020 which AUT advises equates to 2,201 FTE equivalent, about half of whom are academic staff.³ Amongst the academic staff are a total of 119 Professors and 160 Associate Professors. Although AUT has been a place of learning for 120 years,⁴ it was established as a University in 2000.⁵
60. It is governed by the Council of the Auckland University of Technology (**the Council**) in accordance with the provisions of the Education Act 1989.⁶ In New Zealand, university councils are responsible for the development and good governance of their organisations. They must balance upholding the autonomy and academic freedom of their organisation with being publicly accountable.⁷
61. University councils are expected to take a strategic and leadership role in guiding their organisations to ensure they continue to improve their performance and are responsive to change and opportunity. Effective councils provide clear strategic leadership and set and monitor the achievement of challenging targets. They have well-informed members with a good understanding of stakeholders and their institution's strengths and areas for improvement. Effective councils challenge the management team about the institution's performance as well as self-reviewing or reflecting on their own performance on a regular basis.⁸
62. Sections 180-181 of the Education Act 1989 specify the Council's functions, duties and powers. These include:
- To appoint a chief executive (a Vice-Chancellor) in accordance with the State Sector Act 1988.
 - To prepare and submit a proposed plan if the institution is seeking funding under a funding mechanism that provides for funding via plans.
 - If the institution has a plan:
 - to ensure that the institution is managed in accordance with that plan; and
 - to determine policies to implement that plan.
 - To determine, subject to the State Sector Act 1988, the policies of the institution in relation to the management of its affairs.
 - To undertake planning relating to the institution's long-term strategic direction.
 - To strive to ensure that the institution attains the highest standards of excellence in education, training and research.
 - To acknowledge the principles of the Treaty of Waitangi.

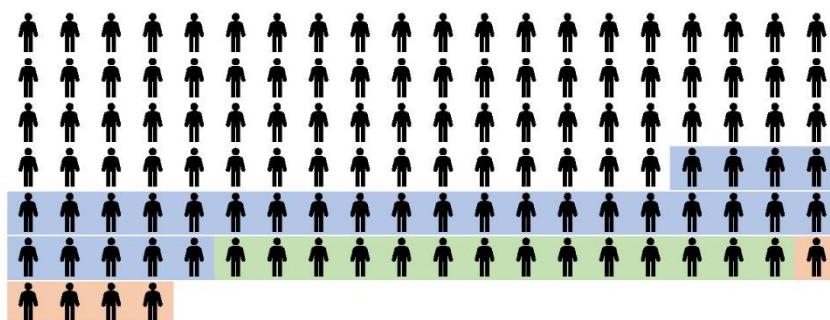
- To encourage the greatest possible participation by the communities served by the institution so as to maximise the educational potential of all members of those communities with particular emphasis on those groups in those communities that are under-represented among the students of the institution.
 - To ensure that the institution does not discriminate unfairly against any person.
 - To ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability.
 - To ensure that proper standards of integrity, conduct, and concern for:
 - the public interest; and
 - the wellbeing of students attending the institution are maintained.
63. As part of its role, the Council of AUT has developed a Discipline Statute,⁹ establishing a Discipline Committee. It has also published its policies and procedures for preventing bullying and harassment.¹⁰
64. Like all New Zealand universities, AUT is monitored by the Tertiary Education Commission (**TEC**).¹¹ One core aspect of the Commission's role is to advise universities of their conditions of funding, and report to the Minister responsible for Tertiary Education on the financial performance of the tertiary sector.¹² This is done to ensure the public can have confidence in the stability of the tertiary education sector in New Zealand and to minimise risks to the Crown. The Tertiary Education Commission requires universities to supply it with financial information twice each year. Both submissions provide a current and forward-looking view of financial performance.
65. AUT is governed by its Council and led by the Vice-Chancellor with support from his senior leadership team. AUT is divided into 5 faculties:
- Faculty of Business, Economics and Law (**BEL**);
 - Faculty of Culture and Society (**C&S**);
 - Faculty of Design and Creative Technologies (**DCT**);
 - Faculty of Health and Environmental Sciences (**HES**);
 - Te Ara Poutama - Faculty of Māori and Indigenous Development (**TAP**).¹³

What we did

- 66. Before embarking on the analysis of what AUT could improve I stress that AUT is a place where most people thrive, learn, and progress their career. I was impressed with the calibre of those we saw who were all invested in AUT and its future. Readers of this report should not lose sight of the vibrant and thriving University in assessing the areas of concern reported upon.
- 67. My team – Adele, Aidan, Carmel – and I met or received submissions from 403 members of AUT’s community. Some of these people no longer worked at AUT but most were still employed.
- 68. We interviewed approximately 371 people (individually or in small groups) and in addition we saw approximately another 19 as part of larger groups. The rest provided submissions. Most of these people contacted us through the email address (and 20 through the 0800 number).
- 69. A breakdown of those we interviewed by gender and by academic/non-academic staff is below:

Table 1: Breakdown of those interviewed by gender¹⁴/relationship to AUT





124 people identified as male



Academic	76
Professional	29
Ex AUT	14
Students	5

70. I requested interviews with all Heads of Schools, Heads of Faculties and most members of the SLT. I saw some senior people twice – once at the beginning of my investigation and then at the end. These were the Heads of Faculties. I interviewed the Vice-Chancellor (twice) and the Deputy Vice-Chancellor (**DVC**) on many occasions. I spoke to two previous Deputy Vice-Chancellors. I met Dr B and received a written submission from Dr D. I spoke to Dr C. Where possible I have indicated where the University has not agreed with my conclusions.
71. I visited all campuses except the Millennium Centre and Warkworth satellite centre. I attended meetings on campus, on Zoom and in my offices. I spoke to people from both the academic and professional staff. I attended a wānanga aronui at AUT.
72. I asked P&C and the University to provide me with emails, copies of files of previous complaints, sick leave analysis, information on policies and procedures and the Respect in Action programme.
73. I met twice with the Respect in Action Coordinator, and during my interviews I met some of the staff who act (or have acted in the past) as first contacts in this programme.
74. I spent some hours with the Group Director, P&C, who guided me through the existing systems and gave me such resources as I requested. She was very responsive to the requests of the review team. The Deputy Vice-Chancellor was also very helpful in providing me with other information I required to complete this review.
75. In response to a request I made, AUT provided an analysis of sick leave usage over the previous three years. I was told that P&C use sick leave usage statistics as a proxy of the organisation's wellbeing to identify business units with potential concern. AUT people are entitled to 10 days sick leave per annum, but it is unusual for employees to use their full quota in any one year. The analysis recorded percentages of staff (both professional and academic) who recorded more than 10 days sick leave in a given year, placing them in a "high usage" category.
76. The analysis showed that while across AUT sick leave usage generally was low (1.84% of normal paid hours), there were areas of concern which require further investigation. In particular, sick leave usage in Culture and Society and the DCT were consistently higher

than most other faculties or groups. At a school level, Language and Culture experienced regular high levels of sick leave usage. Library staff also recorded high levels, although that may have been attributable to their rostered work schedule.

77. At such an abstract level, sick leave usage/analysis is not the most appropriate tool for determining organisation wellbeing or indicators of issues.
- First, it relies on such sick leave being recorded and reported on. Te Ara Poutama, for example, recorded 0% sick leave in its professional staff in all of the last three years, and 0% in its academic staff in the last year, which seems unlikely.
 - Secondly, the material received recorded anecdotal feedback that professional staff were more likely to record sick leave than academic staff.
 - Thirdly, all that analysis can do is establish where leave has been taken – it does not record the reasons why (at any greater level of granularity).
 - Fourthly, it does not record what was reported by a number of individuals, namely that to avoid work problems, they increased the time that they worked from home.
 - Finally, workplace issues can subsist in environments where people nonetheless continue to turn up to work. In that environment, issues may go unnoticed on this measure, as they would not be apparent on the face of the data. Accordingly, the data does provide us with some information, but this cannot be the end of the analysis.
78. In all we saw about 10.8% of AUT staff (based on the actual staff numbers of 4,229) and a small percentage of students. This cannot be a precise percentage as AUT has part time workers and some people interviewed had left AUT. We took transcripts of interviews to ensure accuracy. I summarise the key messages from these interviewed in this review.
79. I researched literature from New Zealand Government and Worksafe and universities in New Zealand, Australia, England, Canada and USA to look at what they had done to create and implement policies on dealing with sexual harassment and harassment generally and reviewed AUT's policies. I accessed other universities policies from their websites.
80. The terms of reference require an analysis of the policy documents and also an understanding of what has been happening at AUT against the background of those policy documents. This understanding has come from interviews with AUT staff.

What they said – my summary

81. I cannot recite the stories of 403 people, but I can give a snapshot of what they told us. Almost everyone still employed or studying at AUT expressed a love for the University as a learning institution and found much in their work or study that they enjoyed. Most of whom we saw loved AUT's approach to teaching and learning and the energy and dynamism of the University.
82. There was a broad recognition of some of the very talented individuals and well-functioning parts of the University. Those interviewed expressed an understanding that the concerns at AUT may not be unique to the institution, that not all employment gripes amount to legitimate complaints of bullying and that not all complaints were within the areas of focus of this review. Some people met with us to express their complete satisfaction with their work environment and all matters covered by the review.
83. However, by far the majority of people we interviewed reported concerns about harassment (bullying) at AUT. Of those we interviewed a total of 229 people reported that they had been bullied. This led to high levels of frustration and stress such that many considered their enjoyment of their work to be severely undermined. Some suffered health consequences and took stress or sick leave on the advice of their doctors. Some cried in the interviews or reported having cried at work. Some found those issues so overwhelming that they considered leaving. Some had left. I record that it was not part of the review to determine if everyone who complained of being harassed or sexually harassed was in fact harassed. Some complaints were more minor than others. I do know however that the distress they exhibited was real and this supports my conclusion that AUT needs to change its culture, processes and approach.
84. I want to thank the current and former staff and students of AUT who participated in the review despite many of them feeling anxious and worried about the consequences of doing so on their careers and academic progression. I hope to be able to convey the essence of their experiences at AUT.
85. Below I set out some of the themes of the interviews, again repeating that these statements are a summary of common themes not the truth of the statements. It was not my role to investigate every incident relayed to us:

A. Sexual harassment including current allegations

My conclusions:

We are satisfied that there is no widespread current culture of sexual harassment at AUT now but AUT as with other organisations, must work hard to ensure that a respectful culture is upheld and that any form of sexual harassment is called out. I observe that it seems easier for people to report sexual harassment than to report harassment. The comments below are referencing historical harassment.

Our summary of what we were told:

- My team and I heard stories from people who said that they had been sexually harassed. The stories we heard were distressing. Most spoke about staff members who had now left AUT. Women were the only complainants.

- Sexual harassment was not widespread but was reported as occurring in some relationships where there was an imbalance of power – PhD supervisors, line managers.
- We heard many stories of sexual harassment by a senior member of AUT's staff. There has been publicity about this. This person no longer works at AUT.
- We heard of a few students who were sexually assaulted by other students in their Hall of Residence which were reported to the University and disciplinary proceedings were commenced. However, there is no compulsory training on consent for all students, unlike other overseas universities.

B. Harassment, culture, and policies & procedures to deal with harassment

My conclusions:

AUT does have an issue with how to deal with bullying and with instances of poor behavior and bullying. AUT's policies seem in practice to be ignored on occasions and the resolution of complaints of bullying seem to be difficult in some parts of the University. In addition, the University needs to provide greater transparency over the "why" of decisions not just the outcome. Constant communication with staff is essential.

Our summary of what we were told, again stressing that these are comments received and not verified:

- People said (again unverified) in parts of AUT poor behaviours were apparent, be it bullying and harassment, abuse of power, conflicts of interest and personal fiefdoms.
- Bullying was a recurring theme and, in most places, not addressed. Some felt that AUT's culture enabled bullies.
- Policies existed but the problem was people did not use them.
- There was a view that senior management were aware of the behaviours which led to Dr B and Dr D's departures.
- Some people are regarded as well-known bullies with new staff being warned about them. Everyone knows but nothing is done.
- Multiple people reported that they were afraid of complaining.
- AUT management were reported to be more likely to sweep a complaint under the carpet than address it.
- Despite the existence of multiple mechanisms for challenging decisions people do not use them or are fearful of using them and thus consider that there is no remedy for their concern, eg. work allocation was considered by many to be a mechanism for bullying and control — new papers requiring greater preparation, core papers requiring onerous marking duties, allocation to different campuses requiring travel across Auckland and lectures early in the morning/last thing at night, there was a lack of consultation and transparency around much work allocation, leave and other benefits.
- Bullying was described as being present in practices such as excluding people from meetings, excluding them from initiatives, excluding them from funding opportunities, isolation within the work environment, having workloads minimised or maximised or allocated inappropriately.

- Changes are made in work environments which have huge impacts but no (or illusory) consultation is undertaken and there is no “appeal” process or reasonable complaints mechanism to address the decision or its effects. People felt powerless with this.
- People expressed fear and concern about their future employment if they raised any dissent or complaint about their workplace. There was a lack of trust that AUT would deal appropriately with complaints regarding the work environment but would instead remove them as a troublemaker.
- There is little protection for vulnerable PhD students who needed to maintain a relationship with their supervisor despite questionable behaviours from their supervisor.

C. Culture and Leadership

My conclusions:

In recent years AUT’s culture has changed or is perceived to have changed leading to greater concerns and anxiety over bullying. Leaders have responded but not sufficiently well to assuage concern of staff. A growing concern that poor behaviour is not called out or dealt with has arisen within AUT. The perceived lack of response by the University and action to the difficulties with Drs B and D is seen as evidence of supporting the validity of the concerns (as set out later). I conclude that AUT should have taken more formal steps to have dealt with this conduct and should have documented the steps to be taken to deal with this behaviour. Further, the fact that AUT does not investigate a complaint after the departure of the complainer means that AUT misses valuable opportunities to reflect on and learn from the issues raised in the complaint.

Our summary of what we were told:

- There was a perception that some managers displayed poor behaviour and were themselves guilty of bullying.
- Some managers did not appear to place great importance on conduct and/or behaviour.
- Although there were policies and procedures within the University relating to matters covered by the review, many felt those rules did not apply to those in positions of leadership and often cited the conduct of the recently departed professors.
- A number of fixed term leadership positions have been held for a long time by the same person which at a minimum lead to a failure to “refresh”.
- Inappropriate appointments were left for years and reviews were instituted of the school or faculty rather than addressing the real source of problems.
- Badly performing staff were moved to other roles and some were ‘promoted’ (as described to me) (or moved sideways) rather than the University tackling their issues.
- No universal review of all staff performance (EMap is supposed to be used for all staff). Many reported it was not done.

D. Management and leadership training

My conclusions:

Until recently AUT has placed no requirement on its academic staff that they must undertake training on their roles and responsibilities as managers. It is good to see that this has changed more needs to be done to ensure effective and targeted training continues to be delivered.

Our summary of what we were told:

- Such management training was offered but was primarily focussed on the practical side of management such as the forms to be completed for leave, etc.
- There was no compulsory training on aspects of management such as prevention and recognition of harassment, or sexual harassment, how to deal with difficult people and bystander training.
- Academics are promoted into management and leadership positions without any apparent assessment of their leadership and management skills.
- Training was limited and not compulsory even when arranged in an attempt to target or assist that manager.

E. Conflict resolution / P&C

My conclusions:

There is an overwhelming view by staff we heard from that the current disputes resolution process does not work. I have concluded that there are problems with the current system which is either too low level or too formal and an intermediate body is needed to resolve complaints.

Our summary of what we were told:

- People spoke of having no confidence that their complaints were handled fairly and efficiently. This complaint was **not** echoed by the Union members we saw.
- P&C were viewed as tools of management who were more concerned to protect AUT than resolve conflict.
- P&C were reported to have created concerns by requiring individuals make formal complaints then using their reluctance as a reason to not investigate the issues.
- AUT did not monitor and address multiple similar complaints and address or notice clear trends in behaviour leaving it to individuals to address individual complaints.
- AUT do not investigate issues if the complainer leaves AUT.
- After a complaint, there was frequently no feedback on the outcome or whether the complaint was followed up on.
- There was a view that complaining to P&C about your manager would more likely result in you being managed out of the University than action being taken about the person about whom you complained.
- Respect in Action encourages face-to-face mediation between complainants and bullies/harassers which was felt to be the least appropriate mechanism for dealing with some issues.

- People reported building up the courage to make a complaint and then afterwards they see no change because the privacy of the individual complained about is paramount to transparency of the process. The remaining team is left in the dark. There is no communication of outcomes.
- There was a lack of transparency described regarding the existing processes so that a “bad actor” is perceived to be “paid off” and everyone else is in the dark guessing about the process when this may not be the situation.
- People were described as being managed into other parts of the University when they are behaving poorly in preference to dealing with that behaviour. However, moving those who are victims of bullying is seen as a positive thing.
- There was reported to be no mechanism which operates to explore work concerns sitting between the EAP counselling/Respect in Action programme and a personal grievance.
- EAP was seen as very good and it “saved” many people.
- There did not seem to be an ability for AUT to undertake its own investigation or act on patterns of behaviour in dealing with difficult staff.
- Some staff felt that there was no independent resolution process operating fairly and transparently where work complaints can be addressed and a fair resolution sought and instead people are left pursuing personal grievances which appears only to be a process to manage out people who are difficult.
- We heard there were key people who do not like conflict and will not deal with issues and then there are those who thrive on conflict.
- The Union was seen to only help their members and seemed sometimes more concerned with their collective bargaining arrangements and maintaining goodwill with management rather than tenaciously pursuing an individuals’ issues.

F. Other issues outside the scope

The following issues are outside the Terms of Reference but I consider them important to AUT and that they should give further thought to them:

Hiring and Promotion

My conclusions:

Not all management roles have been fully advertised and some roles which are periodic appointments have been rolled over without consultation or advertising the role.

The people we saw said that they felt that:

- There is a reported lack of transparency, due process or consultation in appointment and promotion processes, particularly for senior or leadership positions.
- A number of appointments appeared to have been made by way of a shoulder tap or by way of connections within the University.
- In some cases, appointments/promotions were made in the knowledge of the poor behaviour of the individual, and sometimes in an attempt to dispose of complaints over an individual’s behaviour, ie. the person was promoted to “fix” a problem.

Sexism

A small group section referred to sexism at AUT. I suggest AUT consider whether this is the true position at AUT.

Māori and Pasifika issues

My conclusions:

Any issues of harassment experienced by Māori and Pasifika staff have been dealt with in the body of the report but a more nuanced concern was also reported. These centre around the additional demands placed on Māori and Pasifika staff and a perceived lack of communication and understanding of these demands.

AUT does not have high numbers of Māori and Pasifika staff and so we saw small numbers of these groups. The other issues that they report (around additional demands on them regarding cultural matters) are outside the Terms of Reference but it was an issue I considered important enough to report on and to encourage AUT to keep thinking about how it can incorporate the principles of the Treaty into teaching and life at AUT. I was privileged to attend a meeting (wānanga) at AUT marae where Māori staff led a discussion on the concern felt about whether aroha, pono, tika were being followed at AUT.

Term of Reference 1

Assessment of current workplace policies, practices, standards and systems relating to harassment against the best practice models in New Zealand having regard to state sector standards and AUT's good employer and other obligations under current relevant legislation

86. As an employer in the education service and as an institution, AUT is subject to obligations under s 597 of the Education and Training Act 2020 to be a good employer. Being a "good employer" means, at a general level, that AUT ought to do such things as necessary for the fair and proper treatment of employees in all aspects of their employment. These include:
- good and safe working conditions;
 - an equal opportunities programme aimed at the identification and elimination of all barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons;
 - impartial selection of suitably qualified persons for appointment;
 - recognition of the aims, aspirations, employment requirements, and need for involvement of Māori as employees of AUT;
 - opportunities for the enhancement of the abilities of individual employees;
 - recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups;
 - recognition of the employment requirements of women; and
 - recognition of the employment requirements of persons with disabilities.
87. In addition, employers like AUT (an education service) must ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest, and the well-being of students attending the place of education.¹⁵
88. There is no one recipe or template for being a good employer.¹⁶ It relies on context and the facts of each case. The requirement to be a good employer imposes obligations of trust, confidence and fair dealing.¹⁷ Employment procedures must be fair in all the circumstances and in accordance with persons' rights to natural justice.¹⁸
89. I have identified some gaps in AUT's compliance with its obligations as a good employer. As I set out in other parts of this report staff members spoke about a significant level of bullying and harassment. Staff also complained of a lack of transparency regarding promotions and applications for jobs including a failure to advertise positions (or at least legitimately advertise) as well as AUT's failure to live up to its values of tika, pono and aroha and the impact that has had on Māori staff and students. There have been issues raised with us about gender discrimination. This list of issues and concerns supports my conclusion that AUT could be doing more to resolve these issues and ensure compliance with good employer obligations including having more easily accessible harassment policies and procedures and a faster response to issues of bullying. I make recommendations about these aspects of AUT's culture later in the report.

Health and safety obligations

90. AUT's has obligations as a person conducting business under (PCBU) the Health & Safety Work Act 2015 to ensure, so far as is reasonably practicable, the health and safety of its workers, as well as the health and safety of other persons at the University.¹⁹ This includes, again so far as is reasonably practicable, the provision and maintenance of a work environment that is without risks to health and safety; the provision and maintenance of safe systems of work; the provision of any information, training, instruction or supervision necessary to protect all persons from risks to their health and safety arising from work carried out for AUT; and monitoring the health of workers and conditions at workplaces for the purpose of preventing injury or illness of workers arising from the conduct of AUT's business.²⁰
91. WorkSafe guidance suggests that while it is impracticable to expect elimination of bullying from workplaces, PCBU's like AUT ought to minimise the likelihood of bullying occurring in the workplace and have processes in place to effectively deal with bullying when it does occur.²¹ That includes AUT engaging with its workers when determining how AUT will minimise the likelihood of bullying.²² It is important to note that an employer's obligations are not guarantees to *"cocoon employees from stress and upset, nor is the employer a guarantor of the safety or health of the employee. Whether workplace stress is unreasonable is a matter of judgment on the facts. It may turn upon the nature of the job being performed as well as the workplace conditions. The employer's obligation will vary according to the particular circumstances"*.²³
92. I have found that AUT's policies around bullying and harassment could be improved, and do not appear to be implemented evenly across the various faculties and schools. I have also found that staff training in areas of bullying and harassment is insufficient.
93. I have also identified gaps in AUT's knowledge base about its staff's issues, including limited records in relation to bullying and harassment issues, which is synonymous with issues either (a) not being raised or (b) not being dealt with or (c) not being recorded. When I asked P&C about its health and safety records, accidents or safety incidents were recorded. P&C say that since 2017 high level monthly reporting on the number of issues raised with the Respect in Action co-ordinator and how they are handled by category eg. no action or self-management, etc have been reported to Council and the SLT.
94. An attempt by a senior woman professor to make a verbal complaint to the Head of Risk about inappropriate behaviour and reputational risk in 2018 was discussed with the VC who subsequently spoke to the professor named in the complaint but nothing was reported back to the woman professor. We now know that the actions taken did not prevent the concerns from happening again.
95. We have also heard about concerns with students and (a small number of) issues within the Halls of Residence relating to sexual assault between students. These were dealt with by the University but current best practice requires a proactive approach. It is my opinion that students who are to reside in the University Halls of Residence are potentially vulnerable to the risk of sexual harassment and that AUT should do what it can to prevent such conduct by ensuring that every student has to attend a course on consent when enrolling. This step is taken at many overseas universities to prepare students for life at university. I have recommended that AUT require all students to take a course on consent at the time of enrolling.
96. I have also assessed the policies themselves against those of other universities in New Zealand and elsewhere.

97. AUT's policies and procedures were hard to locate on the intranet. On my first search I could not locate the policies on the intranet but in response to my request P&C moved the policies to the front page of the intranet so they could easily be located. I notice that they had moved again off the front page when I last visited the intranet. I am told the link has been restored but AUT needs to retain the policies in an easy to find place.
98. Those who we saw made the following specific comments on the policies:
- They said:**
- The policies look good on paper but even if appropriate in practice, they are widely ignored.
 - Generally, there was no faith in management or P&C to implement and enforce the policies.
 - The "loop" is not closed in complaints, ie. if you complain you don't get feedback or any report on what has happened and AUT do not themselves appear to follow up on complaints
 - Complaints vanish into P&C and do not come out.
 - No-one knows at all what happens when a complaint is made.
 - Complaints process can take too long and costs too much.
 - There is no process which deals with complaints which fall between facilitated discussion and formal complaint.
 - Retribution is not protected against.
99. In order to ascertain whether AUT's policies were in line with equivalent policies from other universities I accessed other universities policies from the publicly available records. I have undertaken a literature review for further reference. I set out a summary of this review below.
100. In order to assess AUT in the context of international best practice, I have reviewed Government and University bullying and sexual harassment policies and initiatives in New Zealand, Australia, the United Kingdom, the United States of America, and in Canada. I have also reviewed the literature to ascertain key requirements for effective policies. It is clear by comparison that some universities and Governments have better bullying and sexual harassment policies than others. This was especially true for sexual harassment, where New Zealand university policies tended to be lacking.

Policies and Procedures – a review

101. AUT has only one policy which deals with sexual harassment and harassment – it is called *Preventing Bullying and Harassment Policy*. AUT should have a separate sexual harassment policy as the needs of those who have been sexually harassed are different from the needs of those who have been harassed in other ways. I look at the issue of a policy for sexual harassment below.
102. The policy has some omissions which I consider ought to be included in a best practice policy. The tables which are set out at the end of this section give a more detailed comparison. The areas of concern are:
- The policy itself outlines the University's commitment to making AUT "*a positive working and learning environment where bully and harassment are unacceptable and where all members of its community treat each other with dignity and respect (aligned with AUT's values of Tika, Pono, Aroha)*." It outlines the steps AUT takes to

reduce the risk of bullying and harassment and gives useful examples of what constitutes harassment and what may not. It does not however outline what conduct is prohibited eg. it does not say no member of AUT's community shall harass another person by taking any action which is demeaning, belittling, etc.

- The policy should begin with a clear statement to the effect that AUT is committed to eliminating and preventing and responding to bullying and harassment. This strong statement is missing in AUT's policy and present in many of the other universities' policies.
 - The policy should then reference what behaviour is unacceptable with examples and which also refers to a Code of Conduct which I have recommended that AUT consider.
 - The policy should give a statement about the consequences of breaching the policy – which will be disciplinary action and a link to how this action can be initiated.
 - The policy should give more examples of what would be seen as bullying which should include yelling or throwing things or belittling a person (or their intellect) in an email as well as in person. Victoria University's policy is entitled *Staff Conduct Policy* and it provides a detailed list of categories of behaviour which are harassment. I recommend that AUT consider this policy to see how the unwanted behaviours are described.
 - I recommend that AUT merge the policy document (as amended) with the procedure document to provide a streamlined policy and procedure statement.
 - The policy does not contain any statement about bystander involvement. I consider that it should do this and have a statement that bystanders are encouraged to call out bad behaviour and bullying at the time it occurs.
 - I found the flow diagram in the procedures document helpful, but this will need to be amended to factor in the new 3-tiered complaints process. Ideally the flow diagrams should contain time limits for resolution of each step of the resolution process.
 - I initially found it hard to locate the policy in a list of policies as I was looking for "B" (bullying) or "H" (harassment) in the alphabetical list of policies but found it under "P" (Prevention of harassment). To prevent confusion AUT should keep the policy or a link to it on the front page of the intranet.
 - The form students completed to complain was easy to locate and use.
 - The policy document should also have a list of resources for the person who is harassed – where help can be found and who to contact within the University for this help and also a list of external agencies.
103. AUT should have stand-alone policy on sexual harassment. AUT is not unique in having a combined policy but I consider it would be best practice to have a stand-alone policy. Sexual harassment increases the likelihood that the harassed will need support and counselling as well as a complaints procedure to deal with the harassment. I suggest that AUT look at Victoria Universities' policy entitled *Sexual Harassment Response Policy*. (I have **annexed** it as Appendix 1). This policy is a detailed response to sexual harassment. I suggest that AUT's new sexual harassment policy contain detailed examples of prohibited behaviours so that people understand that some behaviours are sexual harassment and where to seek support and assistance.
104. Policies and procedures need to be simple and easy to use and understand. They need to be accessible. They should state AUT's commitment to creating a safe working

environment and to preventing bullying, harassment and sexual harassment. The policies need to be accompanied by an explanation and access to a complaints procedure which is simple and accessible with both low level and more formal complaints processes available. Policies should also provide for time limits for resolution. A key feature of any modern effective policy is that it recognises the need for bystander involvements and “calling it out”.

105. Recognising that policies and procedures do not alone create a safe and inclusive working environment unless they are manifest in an institution’s culture, I have also comprehensively reviewed the literature on implementing genuine and lasting cultural change in universities. This is set out in more detail in the **attached** longer review.
106. Bystander training plays an important role in dealing with sexual harassment. Not only can a bystander provide support for the person being harassed, they can report the behaviour and be interviewed as a witness. Reference to bystanders in policies encourages people to speak out and to have courage to call out harassment (sexual and non-sexual).
107. Policies and complaints procedures, are not effective if they are not well implemented, monitored and evaluated and if the culture of workplaces does not support the development of improved policies.
108. Strong leadership and proactive role-modelling from senior staff needs to sit alongside the promotion of respectful relationships in the organisation.
109. The literature shows that the attitudes of university leadership, a university's prior response to concerns over harassment, and prior outcomes for those who reported sexual harassment and harassment also play a prominent role in reporting behaviours. Staff will not report bad behaviours if they consider that nothing will be done in response to the complaint. The literature explains that university leadership should acknowledge and apologise for past failings in the reporting of and response to complaints. I have chosen to discuss leadership as a separate issue under TOR 3 and 4 but it is an integral part of the discussion on the effectiveness of policies.
110. Training is also identified in the literature as one of the keys factors in changing the culture and developing a robust and effective harassment policy.

Comparison of Approaches to Bullying and Sexual Harassment in New Zealand and Internationally

Do New Zealand University policies meet these key requirements for effective bullying and sexual harassment policies?

111. A survey of New Zealand university websites was undertaken in order to evaluate and compare the anti-bullying and sexual harassment policies detailed in Table 2. This comparison is summarised in Table 3 below, in the context of the requirements for an effective Bullying and Sexual Harassment Policy discussed above.

Table 2: University Policy Documents

University	Policy Names	Responsible Department	Last Reviewed	Applies to
AUT	Preventing Bullying & Harassment Policy Preventing Bullying & Harassment Procedures Respect in Action Programme	The Group Director, P&C; The Group Director, Student Services and Administration	August 2018 Date for Review: March 2022	all employees, contractors, workers, students, volunteers, clients, visitors, or members of the public (where they engage with the University or others on University premises).
University of Auckland	Addressing Bullying, Harassment and Discrimination Guidelines Addressing Bullying, Harassment Procedure and Policy Staff Complaints Process Flowchart	Director, Human Resources	February 2019 – Review date: January 2021	staff, students, honorary appointees, contractors and visitors.
Canterbury University	Prevention of Harassment and Bullying Policy Staff Code of Conduct Employee Disciplinary Policy	HR Manager, Operations & Legal - Human Resources	April 2019 – All currently under review	staff and students
Lincoln University	Prevention of Bullying and Harassment Policy	Human Resources Director	July 2018 – Review date: July 2021	all members of the university community (staff, students)
Massey University	Harassment and Discrimination at Work Policy Harassment and Discrimination Resolution Procedures	People & Culture	February 2018 – Review date: February 2020 February 2020 – Review date: February 2023	applies to all University staff
University of Otago	Ethical Behaviour Policy	Director Human Resources	January 2016 – Review date: January 2021	all members of the University community
Waikato University	Bullying and Harassment Policy Staff Guidelines for Resolving Concerns and Complaints about Bullying and Harassment Staff Code of Conduct	Director of Human Resource Management	September 2016 – Review date: September 2021	all staff of the University of Waikato
Victoria University	Sexual Harassment Response Policy Staff Conduct Policy	Vice- Chancellor	December 2019 – Review date: December 2020	members of the University Community

Table 3: Comparison of New Zealand University Policies

	New Zealand Universities							
	AUT	Auckland	Canterbury	Lincoln	Massey	Otago	Waikato	Victoria
Is there a stand-alone easily accessible sexual harassment policy?	Not stand alone	Not stand alone	Not stand alone	Not stand alone	Not stand alone	Not stand alone	Not stand alone	Yes
Is there an easily accessible bullying and harassment policy?	Accessibility could be improved	Yes	Yes	Yes	Yes	Accessibility and title could be improved.	Yes.	Yes
Is there a strong statement communicating stance against sexual harassment?	Yes within harassment policy	Yes	Yes	Yes	Yes	No	No	No
Is there a strong statement communicating stance against harassment?	Yes	Yes	No	Yes	Yes	No	Yes	Yes
Does the policy outline the university's objectives to prevent and respond to sexual harassment?	No	Yes	Yes	Yes	Yes	Environment of safety and respect.	Yes	Yes
Does the policy outline the university's objectives to prevent and respond to harassment?	No	Yes	Yes	Yes	Yes	Environment of safety and respect.	Yes	Yes
Does the university define sexual harassment clearly?	No but it is given as an example of harassment	Yes	Yes	Yes	Yes	By reference to s 62 of the Human Rights Act 1993	By reference to Employment Relations Act 2000	Yes
Does the university define bullying and or harassment clearly?	Yes.	Yes – could be improved	Yes – could be improved	Yes	Yes – good definition	Yes – good definition	Yes	Yes
Does the policy provide relevant examples of what sexual harassment is?	Yes within the definition of harassment	Yes	Yes	No	Yes	No	No	Yes
Does the policy provide relevant examples of what harassment and/or bullying is?	Yes	Yes	No	No	Yes	No	Yes	No
Does the policy outline the consequences if the policy is breached?	No	Yes	No	Yes	Clarity could be improved	No	No	Yes
Does the policy make clear the responsibilities of management, staff and students in relation to preventing and responding to sexual and other forms of harassment?	Clarity could be improved	All individuals have same responsibility	No	Yes	Clarity could be improved	No	Yes	Yes
Is there clear information on where individuals can get help, support and advice and make a complaint?	Not on policy but on intranet. Clarity could be improved	Clarity could be improved	No	Clarity could be improved	Clarity could be improved	Clarity could be improved	Clarity could be improved	Clarity could be improved

Does the policy clearly explain the options for dealing with sexual harassment?	Not on policy but on intranet clarity could be improved	Not specific to sexual harassment	Not specific to sexual harassment	Not specific to sexual harassment	Not specific to sexual harassment	Not specific to sexual harassment	Not specific to sexual harassment	Yes
Does the policy set expectations with regards to the timeliness of responses to complaints?	Promptly	No	Timely manner	No	No	Timely	No	No
Does the policy mandate compulsory training on sexual harassment for all staff?	No	No	No	No	No	No	No	Training opportunities for staff
Does the policy mandate compulsory training on harassment for all staff?	No	No	No	No	No	No	No	Training opportunities for staff

Overview of New Zealand University Policies

112. All universities had policy documents on bullying and sexual harassment as well as codes of conduct on their websites. Some forms and policies were only accessible via a staff log in and I could not access those.
113. None of the universities surveyed had a stand-alone anti-bullying policy, all were combined with harassment and/or discrimination. Only Victoria had a stand-alone sexual harassment policy. Victoria also had separate response guidelines. Most policies contained bullying in the title (apart from Otago which was entitled *Ethical Behaviour Policy*). AUT's policy is entitled "*Preventing Bullying & Harassment Policy*" and addresses bullying and harassment but not specifically sexual harassment.
114. Policies varied in length and number. Most of the policies had review dates and seemed to be updated regularly. All policies were clearly labelled with the department responsible for administering the policies. Universities also had webpages for staff and students with further details and links for complaint forms and support organisations.
115. Massey's *Harassment and Discrimination at Work Policy* contained a zero-tolerance statement as did Auckland University's policy on their page entitled *A safe, inclusive and equitable University*.
116. The universities also had Codes of Conduct, these were general in nature and usually contained responsibilities of the University and staff. "Serious Misconduct" under the Conduct Codes included bullying, harassment, and sexual harassment.
117. Auckland was the only university who had a specialist body entitled *The Harassment Governance Group* which has oversight of all harassment matters across the University.
118. The policies all contained confidentiality clauses whereby confidentiality would be maintained with exceptions if needed. Lincoln provided that the subject of the complaint would be made aware of the identity of the complainant to maintain transparency. AUT described how the University would engage in "*ensuring an appropriate level of confidentiality*" and notes that while "*staff and students who have raised a formal complaint are entitled to know about the process of the investigation... Due to confidentiality only limited information may be provided in regard to the outcome*".
119. Auckland and AUT also provided a flowchart of available resolution options.
120. Most policies then followed a uniform conclusion by providing links to the following:

- related legislation (in particular the Employment Relations Act 2000, Health and Safety at Work Act 2015, Human Rights Act 1993, Protected Disclosures Act 2000).
- Contact details for Internal and External Support Agencies, unions, Employee Assistance Programme.
- Contact details for the Human Resources Department.

121. From this table it can be seen that AUT's harassment policy lacks features, does not have a separate stand-alone sexual harassment policy, a statement of support for bystanders, a statement that bullying/harassment is wrong or a Code of Conduct which can be referred to. There is no clear statement of where advice can be obtained on the policy and there is no reference to training.
122. I conclude therefore that AUT's policies are lacking against best practice models in New Zealand, having regard to the obligations of the University to be a good employer. I set out my recommendations.

My recommendations are:

4 – 8 Policies/Procedures/Processes

Term of Reference 2

Identify whether the University's existing workplace harassment policies, procedures and practices are fit for purpose; applied fairly and consistently; enable a 'speak up' culture amongst staff and students; and meet the University's good employer and other obligations

123. In my response to TOR 1 I have addressed the adequacy of the harassment policies. I now consider whether the policies are applied consistently? After speaking to over 400 members of the AUT community and examining the investigation of the complaints into the conduct of Dr D and Dr B I have concluded that the response to harassment depends very much upon the following factors:
- The position (ie. power) of the person being harassed.
 - The position and power of the harasser.
 - The attitude of more senior management within the department, school or faculty to dealing with the alleged harasser.
 - The fortitude of the harassed to insist upon resolution.
124. At paragraph 85 A and B I set out the specific concerns that were raised with us in relation to how AUT deals with harassment. There are a few places where a speak up culture at AUT exists but it is not uniform. From what we have heard, it does not appear to have been present in the Faculty of Health & Environmental Science (prior to the departure of Dr B). My conclusion is that in the past a great deal of harassment went unreported at AUT which means that the policies cannot be said to be applied at all. A policy can only be effective if it is applied to and by all staff. AUT does not have this culture at present and as I set out in my response to TOR 3 to achieve this AUT needs to change its culture so that a speak up culture with a focus on resolution of issues exists.
125. In order to ensure that AUT's policies are applied fairly and consistently to all employees, all managers need to be properly trained in how to deal with complaints and in difficult people and having difficult conversations and in recognising their own biases and weaknesses. In this way managers will have the tools to talk to staff and manage harassment issues effectively. AUT's aim should be to see an increase in complaints and staff speaking up while AUT rebuilds a belief in the efficacy of harassment policies.
126. AUT needs a Code of Conduct in order to benchmark bad behaviour. We have already sent a suggested template to P&C but AUT should develop this itself to reflect its own values.
127. In our interviews we heard that there is generally not a speak up culture amongst staff at AUT. Students seem to be more aware of their ability to speak up and fear repercussions less than staff. Staff are very concerned that any complaint will adversely affect their career and will not get resolved. In fact, not one person that I saw had confidence that if they complained about their manager there would be a positive resolution. Instead, all felt that their career would be at risk and the problem would not be resolved.
128. This may be because AUT has a 4% academic staff turnover indicating a very low level of desire to leave the University which in turn creates a group who do not wish to or cannot move on if issues are not dealt with. A key feature of an effective speak out culture is the

absence of any form of retribution for speaking out. AUT needs to work hard to foster both an absence of retribution for a complaint and the trust of the staff that this will be so. In the recommendations I have already discussed my proposal for an Office of Complaint Resolution to deal with staff complaints and I hope that this entity and P&C working together will be able to foster this belief in staff.

Recommendations

4	Policies/Procedures/Processes
9 – 17	Complaints Process
20 – 23	Cultural issues to prevent bullying

Terms of Reference 3 & 4

TOR 3. Review the University's investigation and resolution mechanisms regarding harassment to assess whether they are appropriate, and the way incidents of harassment and bullying have been handled by the University.

TOR 4. Identify whether the support, information and mechanisms for complainants in harassment matters are accessible, properly understood and consistently and effectively applied across the University.

129. I consider that TOR 3 and TOR 4 are very similar in the issues they raise and so have treated them as one.
130. I have set out in the answer to TOR 1 that AUT should redraft its policies to include best practice elements which are missing from the policy.
131. I requested and received a list of the last six years of complaints from AUT. There were 26 complaints files during that time and not all related to bullying or harassment. There was some documentation on these files but for the majority the only documentation was either the negotiated exit agreement with the complained about or complainer, and/or (sometimes) the initial complaint.
132. I concluded that the record keeping has been poor. This means that for most people if there has been an HR issue previously, no record exists documenting that history. There were very few files or records available to see when I understand that there have been many more complaints. I am recommending that AUT keep a record (held centrally) on **every** complaint received and how each has been resolved. I am also recommending that AUT be proactive in the resolution of complaints and do not wait for a formal complaint when they understand that there are issues to be resolved in any part of the University. I suggest that if AUT see a trend or numerous issues with one person or department to unilaterally investigate the problem.
133. AUT has two methods of resolution of complaints and concerns:
 - the low level – Respect in Action pathway which has in its armoury a facilitated conversation and mediation.
 - the more serious complaint which needs to be in writing and is sent to P&C to investigate and to either find the complaint proven or not.
134. The complaint resolution mechanism of “Respect in Action” is well known but those we interviewed generally regarded it as ineffective where the issue is between manager and staff (ie. where there is power imbalance).
135. If the matter is not suitable for a Respect in Action facilitated conversation or mediation the next step is a formal complaint. A complaint requires a written document where AUT investigates and determines if the “evidence” supports the complaint.
136. Investigation of bullying claims is often difficult because the conduct frequently occurs only between the alleged bully and bullied or is behaviour attributed by the bully to other motivation. If the evidence is ambiguous or not sufficient on a civil burden of proof (ie.

balance of probabilities) the complaint is dismissed but the problem frequently remains and can get worse. An unresolved complaint can often lead to the exit of the person complaining and the person about whom the complaint was made remaining.

137. The people who spoke to the review complained they are frequently given little feedback on the outcome of the complaint. One staff member told me she had been refused a copy of the report of the investigation of her serious sexual harassment complaint because of the privacy of the person complained about. Two others asked me to ascertain if there was a record of their complaint as they had heard nothing about it.
138. To date complaint records do not show that AUT completes its investigations by following up on recommendations made (eg. for training), nor does it help the complainant and complained about resolve the issues regardless of outcome of the complaint and especially if the complaint is not upheld. These are undoubtedly tricky situations but the University does need to try and resolve them. I have also found that there is no effective method for recording anonymous complaints (so that, for example, if a number of anonymous complaints are received against one person an inquiry can be made), for undertaking own investigations where the conduct of one person and its impact on others is recognised, and for constant checking with staff to identify problem areas or people.
139. I have identified that there is a gap in the dispute resolution process and a further form of resolution pathway is required. These issues are explored in more detail below.
140. When considering this TOR I also looked at the investigations undertaken by AUT with respect to Dr B and Dr D to determine whether the investigation mechanisms were appropriate and consistently and effectively applied. I have identified the two staff members as they were mentioned in the media and the complaint by ANU about Dr B did in many ways lead to the commissioning of this report. I have not provided the full details of the incidents that I refer to as I consider that they are peripheral to the issues at AUT but symptomatic of them. I heard many accounts of the incidents described below. I have decided not to set out the facts and details of the events as I understand them to protect the privacy of the individuals concerned. However, having heard all the information that AUT could provide me with (again in the absence of records of the events I summarise) and having spoken to those involved I am able to reach a view on the efficacy of the steps taken by AUT to address issues raised with conduct of the two professors. I have not reached any conclusion about the events themselves or the culpability or otherwise or any of the people involved. I simply set out briefly what I was told and where appropriate the conflicting evidence and my conclusions.

Dr B

141. There are two events which many interviewees have told me about which involve Dr B. The first event was in 2013 and the second in 2017. In 2013 there was an evening hospitality event where AUT had taken two tables. Dr B was reported to have behaved inappropriately. There were meetings between some of the AUT staff present at this event and an attendee at the event. An apology was given to the attendee by another staff member. The VC was informed of the incident but the VC has no recollection of that happening. However, no complaint was made, P&C were not involved, and Dr B was not made aware at the time that there had been concerns about his behaviour. This incident was raised again in 2020 when some more information was obtained about the evening. P&C became involved then, but only after the event was raised in the media.
142. The second event concerned a weekend in March 2017 where AUT staff and Dr B were guests at an awards dinner on the Saturday night, then on the Sunday Dr B was at another

function with AUT colleagues. After seeing Dr B at these events a number of people raised concerns about Dr B and whether he had a serious health issue (Dr B has seen and approved paragraphs 141 to 144). Steps were taken following this weekend by a number of his staff to ensure that Dr B took steps to address the issue. A number of people have told me that they also informed the VC of the events that they witnessed over the weekend. In particular some senior staff and the DVC at the time discussed the weekend events with the VC. The VC spoke to Dr B about the Saturday night incident. Dr B made some commitments to the VC about his health issue. However, these discussions were never recorded in writing by the VC and Dr B received no instruction to address the health issue and P&C were not involved.

143. I have formed the view from my review of all the evidence and documentation that AUT should have taken more formal steps to have recorded the University's concerns and have involved P&C. It would have been appropriate in my view for a formal employment warning to have been given to Dr B. There was a real risk to the AUT's reputation if the health issue was not addressed and inappropriate conduct reoccurred.
144. During my interviews, a number of women told me of incidents which could have been considered as sexual harassment by Dr B. However, no one made a formal complaint about Dr B's conduct at the time the incidents occurred and so AUT cannot be criticised for not addressing issues that were not brought to its attention. Dr B himself was unaware of any such complaints.

2019-2020 Dr C's complaint

145. Against this background the investigation of Dr C's complaint took place. Australian National University (**ANU**) has given its consent for the extracts from letters and emails to be used in this report.
146. On 19 August 2019 ANU complained to the Vice Chancellor and the Group Director of P&C, about the conduct of Dr B towards Dr C. They complained that Dr C had been subjected to two years of *"persistent inappropriate, sexually explicit, unprofessional behaviour by Dr B"*. ANU asked AUT to investigate and, in summary:
 - a. ensure that Dr B did not contact Dr C;
 - b. ensure that Dr B did not accept or withdraw from work that would affect Dr C's career;
 - c. fully investigate Dr B's conduct and behaviours;
 - d. take appropriate action against Dr B to ensure that his behaviour and conduct was not repeated with other female staff, students or collaborators; and
 - e. apologise to Dr C and assure her that AUT will take all possible measures to ensure that her career would not be affected.
147. AUT received the complaint and it was referred to P&C who took action. The allegations were put to Dr B who acknowledged most of them and wrote a letter of apology (sent by AUT) to Dr C. AUT confirmed that it had issued an instruction to Dr B to cease all forms of contact with Dr C. It issued this instruction on the day it received the complaint.
148. AUT asked ANU to work on an agreed form of the non-association document. However, ANU declined and asked for confirmation that there had been a full investigation into Dr B's conduct and behaviour (c and d above) and what disciplinary action AUT would take against Dr B. AUT would not supply this information. In an email dated 8 October 2019 ANU asked for an apology (from AUT) and also confirmation of what steps AUT was taking

to ensure that Dr B's conduct was not repeated. AUT declined to provide this information saying that it was a matter between Dr B and AUT. There was correspondence between the parties in September and October as discussed further below. AUT had asked ANU for further details to assist with AUT considering ANU's request for a further investigation. However, no further information was received and in the absence of this information AUT closed its investigation file. This was in October 2019.

149. In their letter of 8 October 2019, the VC of ANU says this:

"It is imperative that University campuses are safe for all staff and students. Professor B is a senior officer of AUT and a leader in his research community, and as such there is greater responsibility on him to demonstrate leadership in the prevention of harassment and discrimination. Evidence suggests his conduct towards Dr C has been bullying, intimidating and inappropriate, and if shown to be so through due process, must result in serious consequences. ANU is supportive of Dr C pursuing this as a formal complaint. Dr C has not made unreasonable requests for the resolution of this matter. I am referring this matter to you for action and investigation, and I urge that these be pursued by AUT as a matter of high priority."

150. The VC had been aware of the complaint as he was Dr B's line manager. He became more involved in the complaint in late November 2019. At this time, AUT had received a letter from the VC of ANU to the Chancellor of AUT dated 26 November 2019 which repeated ANU's concerns and requests. The Chancellor passed the letter to the VC and advised ANU of this step. The VC says he interviewed Dr B in mid-December and asked him specifically if there were any other further incidents that AUT needed to be concerned about. Dr B told him that there were not. The VC then spoke to the VC of ANU and there was a discussion between the VC's about ANU providing more information to AUT so that it could consider ANU's requests to widen the investigation. AUT also asked if it could speak to Dr C to get more information. ANU said that they could but through ANU's HR director. The VC's agreed to write to each other to provide further information. In late December 2019 the VC confirmed in writing that he had committed to think further on the issues raised by ANU's request for a wider investigation and would await ANU's further information. The VC says he also discussed with the University's legal advisor the request to widen the investigation into Dr B's conduct. He received advice on this. Nothing was heard from ANU in February or March. The VC says he hoped that the matter was resolved but that his attention and that of the University was then diverted into dealing with the first COVID lockdown.

151. In mid-April 2020 the VC says that he was surprised to receive a call from the NZ High Commissioner to Australia advising that she had been sent all the information about the complaint by ANU and had spoken to Dr C. She offered assistance in resolving the outstanding issues. AUT was told that Dr C had spoken to the media but not authorised publication. After taking legal advice the VC did not accept the High Commissioner's offer, but instead on 22 April 2020 the VC wrote again to ANU outlining the steps taken by the University in response to the complaint, that Dr B would:

- Have no future contact with (Dr C);
- Withdraw from and/or not accept a position that affects the ANU staff member;
- Not engage in any conduct that could be perceived similarly.

152. No response was received and on 25 May the media articles were first published. On 29 May the VC announced that Dr B was stepping down from his senior role at the University but remaining as a professor. As further media stories arose Dr B resigned from his employment at AUT.

Comment

153. From the evidence I have heard I understand the fact that Dr B had health issues was well known. As I have outlined above no formal steps were taken by the University to address these issues. However, the VC was himself aware of the health concerns and the other issues which stemmed from this and spoke to Dr B in 2017. Thus, when ANU complained about Dr B sexually harassing Dr C the VC at least, was aware of the earlier health issues.
154. I appreciate that AUT felt frustrated by the apparent refusal of ANU to engage in providing more information or assisting to enable AUT to hear from Dr C. ANU escalated the complaint to the Chancellor and then the High Commissioner for Australia (which the VC says was very unusual) and were plainly concerned about the wider implications of the complaint. As outlined above, the VC of ANU wrote about the need to protect the academic community from harassment.
- As set out in the letter of 22 April 2020 AUT had required Dr B to take these steps:
Have no future contact with (Dr C);
 - Withdraw from and/or not accept a position that affects the ANU staff member;
 - Not engage in any conduct that could be perceived similarly.
155. As best I can see from the records, no other steps had been taken and none were contemplated. I have considered why AUT were reluctant to consider whether to widen the investigation or to take or consider any disciplinary action against Dr B. I acknowledge that they asked ANU for more information, and that this was not forthcoming, but I consider that AUT also believed that the complaint was a personal matter between Dr B and Dr C arising out of their friendship and not one which impacted upon Dr B's work.
156. A feature was also the need to protect Dr B's reputation and not to start an investigation which in itself might damage Dr B's reputation. If AUT had viewed the complaint as one impacting on Dr B's ability to carry out his role at AUT (ie one of sexual harassment/harassment and not just a personal matter) I consider that it is likely that the investigation would have continued in October (been widened) and some disciplinary action most likely would have followed. However, this did not happen despite the further escalation by ANU described above. AUT also did not also appear to consider that known previous conduct by Dr B might be relevant to their consideration of ANU's request to widen the investigation.
157. In my view it would have been appropriate to have factored in the events of 2013, 2017, the known health concerns and the allegation by ANU that the conduct was sexual in nature and with this background have considered the complaint and ANU's request. No one can now say what conclusion AUT would have reached if they had widened their inquiry into Dr B's conduct but some of the concerns that staff have outlined to me might have been addressed. However, AUT did not do this and it is this failure that I am most critical of – the failure to take formal action. Even with the information known, the response by AUT was muted and Dr B did not even receive a disciplinary warning.

Dr D

158. At some time in the last five years or so Dr D became a practitioner of Shibari. Clearly, he could do what he wished in his own time, but it became an issue for the University when he began to share photos of his own practice of this discipline with staff and when the Tertiary Education Commission complained about this behavior to the VC. At this point the University had a problem and it needed to be resolved. This behavior was inappropriate behaviour.
159. The VC says he was clear with Dr D from the outset, once the concerns were raised with him, that Dr D was not to show any images or discuss his private Shibari practices with anyone in a work context. The VC says he told Dr D to stop this behaviour on two occasions. Dr D denies he was told this and says nothing was received in writing about this issue at any time. Dr D says he was advised to 'practice caution' when discussing his practice, but this was all. He says he complied with the request. The staff we interviewed, who worked in parts of the University where Dr D worked, did not agree. They said that he continued to show them pictures. One young woman reported that he often showed her his marks on his arms from the ropes.
160. A member of AUT staff (E) complained to the VC about Dr D's behaviour and some images of Dr D on a public website in November 2018 and March 2019. Dr D says he was aware of the gist of this complaint.
161. A senior woman professor (F) also made a verbal complaint to the Risk and Audit Manager about Dr D's presence on a Shibari website. The VC spoke to Dr D about this complaint. There was nothing recorded in writing. Dr D says he removed any photographs.
162. The University also received a written complaint from a member of Dr D's international team about his behaviour with serious allegations of misbehaviour at an international conference in May 2016. The complaint was made in 2018 during a review of the international team. After making the complaint, the staff member left AUT and the investigation stopped as P&C believed that the issues were historical and that Dr D had been spoken to by the VC. There was no written record of any discussion with Dr D at any time including when the TEC called the VC. Nonetheless when the TEC complaint was received, and when coupled with the two complaints from staff member E and the complaint from professor F, a red flag should have been raised with AUT about whether there was a continuation of Dr D's conduct. On receipt of the 2018 complaint AUT should have checked that Dr D had in fact stopped discussing his practice or asked him about his version of these events. This did not happen, and Dr D was unaware of this complaint. AUT should have completed the loop by both recording the warnings given to Dr D in writing and following up with Dr D about the issues raised in the 2018 complaint.
163. As outlined above I have therefore concluded that AUT did not properly respond to the issues raised by Dr B and Dr D's past conduct.

Investigations generally

164. AUT has provided me with its files for all its investigations over the last five years. Not all of these related to allegations of harassment. There are 26 files excluding two complaints that are linked and ongoing and before the Employment Court (now subject to suppression orders) and the files on Dr D and Dr B.
165. The files contain very little information about the investigations – usually the outcome and initial complaint and in some cases a little more correspondence. Some of these complaints have ended in the complainant leaving AUT. In these cases I could not

ascertain whether the complaint was justified or not. In some cases I saw evidence of an attempt to assist the complainant by moving him/her but in most cases the substance of the allegations was missing so I could not formulate a view on the process.

166. I also understand from P&C that there were more complaints than the 28 discussed above so the record keeping has been poor which has also hampered AUT's ability to determine if multiple complaints were being made about the same person.
167. I have therefore concluded that AUT has not been keeping proper records of its investigations.
168. AUT's failure to keep records about serious misconduct or issue written warnings to senior staff for serious misconduct is a failing by it – both to the senior staff whose careers ended and to other staff at AUT who saw the behaviours went unchecked and lost faith in the University. I have formed the view that to address these concerns AUT will need to consider a change in its culture of casual treatment then not resolving complaints of this nature.

How to implement change - Culture and Leadership

169. The literature I have read shows that a shift in the culture of the University will be essential to bring about change and should be driven by the University's leaders. Leadership is identified in the literature as being the most important thing to bring about change. If AUT's leaders do not support, model and implement behaviors which show and support the change in culture then the changes will never happen.
170. Many of AUT's leaders have shown leadership in their approach to this review. I have appreciated the work done by some of the Deans and senior leaders to map out their suggestions for cultural change. These senior people are all displaying leadership needed to navigate AUT through a time of cultural change. I know other senior leaders have also given thought to the problems AUT faces and have engaged in discussions with me over potential change.
171. Almost everyone who came to see us said that AUT has a culture of not resolving issues but they also said they find AUT a great place to work. There are places within the University where people do not thrive and where staff turnover reflects significant cultural issues. It is clear that not everyone has experienced harassment but if the 273 people we saw experienced or observed harassment then this is still far too many. It is a waste of resources (as they need more sick leave, engage less with the University and exit if possible) – it is a waste of people's talents and it is detrimental to the University's reputation and morale amongst staff.
172. The University has worked hard to develop and promote AUT's values of tika, pono and aroha. Considerable work has been done on embedding these values within the culture of the University. Staff like these values and say that at a lower level (ie. junior academic) most people reflect them in their work life. However, the staff we saw all report (even those who came to see us to praise the University) that they do not consider that some of their leaders always reflect the values.
173. A good leader is not only one who can drive the research, teaching and the money side of the faculty or school or university but also one who models good leadership traits. A failure to do this leads to cultural issues within the organisation as inappropriate behaviour appears to go unchallenged. I also reflect on the words of a senior leader who told me of the deep distress that he has witnessed from the staff at the Faculty of Health

and Environmental Sciences who have come to him with stories of unresolved issues and despair spanning over 15 years. This behaviour should not have gone unchecked. I acknowledge that it might be very hard to challenge the behaviour of those whose work is important to the University but a failure to do so has significant consequences. There is no place at the University for a person who does not value and model tika, pono and aroha.

174. Of further concern is the fact the issues I have identified have been known to the University for some time. In the Respect in Action Co-ordinator's report *Preventing Harassment Programme Report* to the Senior Leadership Team and the Council, she identified from early as 2016 issues about harassment. She set out a number of challenges for the University. She said (in 2016):

CHALLENGES

- Concerns expressed about an individual are sometimes accompanied by a **feeling that AUT leadership is reluctant to take action**. One of the roles of the Preventing Harassment Programme is to encourage the enquirer to decide what action they would like AUT to take, and to choose from the range of options available to them, beginning with consideration of the lowest level of escalation –supported self-help for Early Intervention. The programme emphasizes that other possible levels of escalation remain open to them if they should so choose.
- **Organisational dynamics** are an essential part of any exploration of complaints of workplace bullying – it is inadequate to view a complaint as only between two personalities. Consideration also needs to be given to styles of leadership, how effectively AUT cultural values are being experienced by the complainant and how workload issues are being communicated and managed.
- A **part-time Coordinator role** of 2 days per week is difficult to coordinate with staff training requests to link with meetings held on non-work days. Where possible work day flexibility is offered to accommodate requests.

175. In 2017 she repeated these Challenges in her report, ie. they remained unchanged.
176. In 2018 she identified issues relating to training and styles of leadership as key issues.
177. A recurring theme from all we spoke to was that the training AUT offered on how to deal with or prevent or recognise bullying and harassment was not compulsory for all managers and that those most in need of it did not attend courses. A glance at the Respect in Action report shows the very small numbers of those attending training on harassment and related topics. All staff need to be trained in this area – while “good” behaviour should be self-evident it is not always self-evident to those whose behaviour adversely affects others. A focus on learning and applying the learnings is vital to a transformation of AUT's culture.
178. Our recommendations are designed to assist AUT integrate these concepts into the psyche of the University. As part of the learning, I recommend an emphasis on leadership is very important.
179. In 2016 a Staff Engagement Survey for all AUT staff identified bullying as a major issue for 22 of the 1630 people who replied. However, by 2018 the number reporting bullying had risen to 316. In 2018, 1656 responses were received, (72%) of staff, and an increased number reported bullying (316) was an issue for them.

180. In response the VC prepared a Council paper dated 11 September 2018 which said:

In the 2018 Engagement Survey ‘Our values, Your views’, there was a higher indication of concerns relating to staff experience of bullying than is suggested by the present uptake and use of the Preventing Harassment Programme, raising questions as to why and what we can do better.

The Vice Chancellor has made a commitment that AUT will recognise this is an area of focus, and will support the work to make it safe to speak up, and improve the awareness and availability of the support and training we offer to prevent bullying and harassment.

In response there are a range of strategies being developed to improve the visibility of the programme.

181. In response the VC directed management training for all the senior staff as a response and that all management staff are now receiving management training and that there were other initiatives to address these concerns. He also addressed the issues when speaking to groups of AUT staff. AUT’s strategic plan also incorporated a reference to 100% of university leaders and managers having completed management training in the last three years. However, the staff we spoke to were unaware of any new programmes or any change in AUT’s approach to bullying. I conclude that these changes were not communicated well to staff and do not appear to have had any substantive impact on the identified problem.
182. Further, as a result of the 2018 survey a refreshed Respect in Action programme was released in 2018.
183. I am told a number of Facilities or Departments took action in response. An example is the focus group from the DCT Faculty who gave feedback on the survey. I have set out in full as it illustrates what I consider to be the issues.
184. The document the focus group provided is set out below:





Engagement Survey 2018 – DCT focus groups summary

Introduction

Earlier this year the University offered staff the opportunity to respond to an engagement survey. In July we received the feedback and in August and September DCT held 6 focus groups, including the leadership forum.

In total the faculty had 80 staff attending these sessions. The purpose of the sessions was to dive deeper into the responses from the survey through discussions and reflection. Overall, these sessions were productive, and we have received a large amount of feedback.

This document will give a summary of the feedback with identified themes and with suggested actions points.

Key themes and sub-themes

The below themes and sub-themes sum up what was shared in the focus group sessions and some of the key areas that needs to be addressed and considered for future actions.

Ownership of AUT's values among our leaders and staff

- We need to live them and foster them to create a positive culture – through collaboration.
- Staff want to be listened to.
- Praised for what they do.

Leadership

- Too many “managers”.
- Managers need the following training and support for:
 - o how to support and work with their staff.
 - o how to manage people/teams.
 - o how to provide feedback and immediate recognition to staff
- Staff want to be trusted by their manager and leaders.
- Staff not trusting leaders' decision making (not being involved and heard).
- Accountability needs to be part of a leader's role.
- Need to encourage collaboration in schools and across the faculty.
- Staff wants feedback from the leaders/managers (and they need to know how to)
- Be available to their staff (some have too many direct reports).
- Leaders need to show empathy, encourage their staff and show true care.
- Use transparency as a fundamental guide for processes, decision making, role and responsibilities (this is because transparency builds trust which grows connection).
- Ensure that staff are being informed about what is going on in the school, faculty and university level.
- Being role models.
- Provide support when staff are making mistakes.
- Ensure that staff aware of their team and being part of a team

For the senior team

- Decisions need to be transparent.
- Accountability by decision makers.
- Give permission to staff to challenge, influence and engage processes/decisions (without fear of retribution).
- Be more proactive.
- Be aware of rumours and disgruntled staff (and do something about it).
- Direction for the faculty need to be clearer.
- Faculty need to be more flexible.
- More transparency when making decisions.
- Communicate and explain when needing data (and don't assume that staff should know it).
- Be open and transparent about financial transactions.
- Get a better understanding of staff priority, need for meetings and what staff wants to achieve.
- Senior staff in decision making roles to be invited to school staff meetings (to listen to the voice of the schools).
- Designated funds from the faculty for all staff get-togethers.
- DCT connect is a good initiative we need more of those
- Senior team to be more visible.
- Invest in localised "together" tea-coffee making facilities because this is where meaningful support and information sharing happens.
- South Campus needs to be recognised as a valued space to work (and not being a second-choice space).
- Multiyear budget rather than an annual one.

185. This illustrates that the matters raised in this report have been known for some time. I conclude that AUT has placed less emphasis than it should have on the importance of changing the culture to ensure that harassment and sexual harassment were dealt with and in providing the tools staff need to deal with bullying, harassment and difficult conversations. AUT needs to encourage bystanders to call out bad behaviour and refute the view that "academics are different or difficult". Being an academic can require robust debate but not debate which belittles or disrespects others. Behaviour matters and has the power to transform AUT's culture.

Recommendations

1 – 3

General

9 – 17

Complaints Process

18 – 19

Harassment and Sexual Harassment

20 – 23

Cultural issues to prevent bullying

24 – 28

Culture and Training

29 – 34

P&C

Suggested template for cultural change

I hope AUT will wish to make the culture one where all can thrive. I have recommended that a CCTG be established. I suggest this table could be a template for cultural change.

Table 5: Resolving cultural issues

1	Show and support and model excellent behaviour	<ul style="list-style-type: none"> • Leadership: AUT needs to model and identify behaviours which encourage excellent communication, good behaviour and greater collegiality • AUT needs to encourage people to speak up • AUT needs a modified Code of Conduct • AUT leaders need to communicate openly about decision making and cultural change • Encourage transparency in all leaders, tell staff why a decision has been made • Encourage learning for those in management • Model the behaviour that AUT wants • Be very intolerant of bad behaviour and report on consequences
2	Effective means of harassment resolution	<ul style="list-style-type: none"> • Low level resolution from the Respect in Action programme • Continue to ensure that every person in a management role (approximately 500 people) is trained fully in how to spot bullying and harassment and what to do when a problem arises • Teach what harassment means, what to do about it, how to get help, how to call out bad behaviour and how to have difficult conversations. • Respect in Action co-ordinator's role extended from two days a week to fulltime. The University may wish to engage psychologists or other counsellors to help and support staff • Establish an Office of Complaint Resolution (OCR) • P&C should report on complaints and complaint outcomes to all at the University and invest in programmes to assist it with greater staff engagement and identification of issues
3	Review policies	<ul style="list-style-type: none"> • Create a Code of Conduct and get it distributed • Improve actual harassment policy to state what is not permitted and merge the procedure and policies • Institute a sexual harassment policy • Make a plan for cultural change and report on it to staff and keep reporting

4	Act on this	<ul style="list-style-type: none"> • Awards for great behaviour • AUT's leaders should pay consistent attention to behaviour and resolution of issues
5	Assess & Review	<ul style="list-style-type: none"> • See what works • Measure progress every 6 – 12 months • Report to staff • Do not give up • Talk, talk, talk

I wish all of those at AUT the best of luck with the changes needed. AUT is a great university with an exciting future. I look forward to hearing how well it is thriving in the future.

¹ See AUT "About" (Accessed 6 July 2020) www.aut.ac.nz.

² Times Higher Education World University Rankings 2020;

³ AUT "About" (Accessed 6 July 2020) www.aut.ac.nz

⁴ AUT was previously known as; Auckland Technical School; Seddon Memorial Technical College; Auckland Technical Institute; and Auckland Institute of Technology.

⁵ Pursuant to the Education Act 1989, s 162(2) by an Order in Council by the Governor-General may made on the written recommendation of the Minister of Education.

⁶ Education Act 1989, s 165(1)(a).

⁷ The Tertiary Education Commission *The governance of TEIs* January 2020, <tec.govt.nz/teo/working-with-teos/tei/governance/>.

⁸ The Tertiary Education Commission *The governance of TEIs* January 2020, <tec.govt.nz/teo/working-with-teos/tei/governance/>.

⁹ Pursuant to Education Act 1989, s 194, available at www.aut.ac.nz/about/auts-leadership/official-aut-publications/read-by-section-academic-calendar.

¹⁰ AUT *Preventing Bullying & Harassment Policy; Preventing Bullying & Harassment Procedures*.

¹¹ Education Act 1989, ss 159C, 159F(1)(d).

¹² Education Act 1989, s 159.

¹³ <https://www.aut.ac.nz/about/faculties-and-schools>

¹⁴ Gender means identified as being this gender

¹⁵ Education and Training Act 2020, s 597.

¹⁶ Susan Biggs, Principal Advisor Crown Entities and EEO, Human Rights Commission, The one to seven of being a "good employer", Employment Law Bulletin [2006] ELB 138

¹⁷ New Zealand Human Rights Commission *What is a 'good employer'?*, www.hrc.co.nz/resources/business/reporting-crown-entities-good-employers/what-good-employer/

¹⁸ Employment New Zealand *Fair Process* <https://www.employment.govt.nz/resolving-problems/employer-and-employee-must-dos/fair-process/>.

²⁰ Health and Safety at Work Act 2015, ss 30, 36.

²¹ Health and Safety at Work Act 2015, s 36.

²² Worksafe New Zealand "Best Practice Guidelines: Preventing and Responding to Workplace Bullying" (March 2017) Retrieved 26 July 2020 from https://worksafe.govt.nz/search/SearchForm/?Search=Best+Practice+Guidelines%3A+Preventing+and+Responding+to+Workplace&action_results=Go&Topic=&Industry=

²² Worksafe New Zealand "Best Practice Guidelines: Preventing and Responding to Workplace Bullying" (March 2017) Retrieved 26 July 2020 from https://worksafe.govt.nz/search/SearchForm/?Search=Best+Practice+Guidelines%3A+Preventing+and+Responding+to+Workplace&action_results=Go&Topic=&Industry=

²³ *Attorney-General v Gilbert* [2002] 2 NZLR 342 (CA) at [83].

Appendix 1:

Victoria University of Wellington Sexual Harassment Response Policy
