Sexual Misconduct Policy

Section 1 - Purpose

Emergency Contacts and Support Services

(1) Emergency contact and support service information is provided in Schedule 1 of the Sexual Misconduct Procedure.

Policy and Procedures

(2) This Policy should be read in conjunction with the University of Canberra (University) Sexual Misconduct Procedure (Procedure).

Section 2 - Scope

(3) This Policy and the Procedure apply to any Complaints of Sexual Misconduct and Procedures which:

a. occurred on University Premises or within a University Digital Environment;
b. occurred at any University program, activity, or event, whether in Canberra, interstate or abroad; or
c. involved parties who were acting in their capacity as a representative of the University at the time of the incident.

(4) This Policy and the Procedure apply to Complaints of historical Sexual Misconduct within the scope of above clause 3 and the University will manage such Complaints in accordance with the principles of this Policy. The University's ability to investigate or act in relation to historical events may be limited.

(5) Without limiting the application of this Policy, Sexual Misconduct impacting anyone under the age of 18 will be dealt with through the University's Child Safety and Wellbeing Policy and the Crimes Act 1900 (ACT).

Outside of Scope

(6) The University cannot investigate Complaints of Sexual Misconduct:

a. made against persons who are not part of the University Community; or
b. where the alleged Sexual Misconduct occurred outside of the scope of this Policy and the Procedure, as defined in clause 3 of this Policy.

(7) Nothing in clause 6 prevents the University from taking action under any applicable Legal Instrument, if the University decides that such action is appropriate.

Section 3 - Principles

(8) The University is committed to:

a. engendering a safe, respectful and inclusive community, free from all forms of Sexual Assault, Sexual

Harassment and other forms of Sexual Misconduct;

b. providing appropriate mechanisms for making Complaints of all forms of Sexual Misconduct;
c. responding to all Complaints of Sexual Misconduct in a fair, timely and reasonable manner in accordance with this Policy and the Procedure;
d. providing support to any member of the University Community (including Complainants and Respondents) impacted by incidents of Sexual Misconduct that have been Reported or Disclosed to the University;
e. creating an environment where all members of the University Community feel able to speak up and Report or Disclose instances of unacceptable behaviour within that community;
f. educating and empowering Staff and Students to stand up for the University's values and standards of behaviour, and to challenge harmful and unacceptable behaviours;
g. continuous improvement of the University's prevention and response measures to Sexual Misconduct;
h. supporting and promoting a culture of respectful relationships for the prevention of Sexual Misconduct;
i. promoting information about Sexual Misconduct to Staff and Students in an accessible manner; and
j. regularly undertaking risk assessments of University operations as they relate to Sexual Misconduct to identify and implement appropriate measures to continue to mitigate identified risks.

(9) All forms of Sexual Misconduct, including Sexual Assault and Sexual Harassment (as defined in this Policy and the Procedure), are unacceptable and will not be tolerated by the University under any circumstances.

(10) The health, safety, and wellbeing of all members of the University Community is of the utmost importance and remains a paramount concern throughout any Sexual Misconduct investigation.

(11) The University supports the rights of members of the University Community to report instances of Sexual Misconduct to police.

(12) All members of the University Community are expected to take responsibility for their actions and behaviour and contribute to a safe, inclusive and respectful environment.

(13) Any member of the University Community who becomes aware of conduct which may constitute Sexual Misconduct within the scope of this Policy, or the Procedure is strongly encouraged to promptly notify the conduct to the University. Please note that any adult in the Australian Capital Territory who reasonable believes that a child has been sexually abused must report it to police.

(14) As a public authority, under the Human Rights Act 2004 (ACT), the University is committed to upholding the human rights of all persons.

Prohibited Conduct

(15) Members of the University Community must not engage in:

a. any form of Sexual Misconduct;
b. Victimising Conduct;
c. conduct which supports, promotes or encourages Sexual Misconduct; or
d. Vexatious Complaints.

Sexual Misconduct

(16) Sexual Misconduct means a range of unacceptable behaviours including:

a. Sexual Assault;
b. Sexual Harassment;

c. Indecent Assault;
d. Acts of Indecency;
e. Voyeurism;
f. Grooming;
g. Coercive Control;
h. Sexual Exploitation
i. Transactional Sex;
j. Fraternisation;
k. Recording or distributing intimate images;
l. Technology Facilitated Sexual Violence;
m. any other Sexual Offences; and
n. any other conduct which could reasonably be considered to be inappropriate, sexualised behaviour which may cause another person to feel humiliated, fearful, abused, distressed or uncomfortable. However, it is not necessary to show that the conduct caused fear, humiliation, abuse, distress, or discomfort to amount to Sexual Misconduct.

(17) A person will be deemed to have contravened this Policy where the University has formed a reasonable belief that Sexual Misconduct was perpetrated by the Respondent and:

a. the other party did not Consent; or
b. the Respondent:
    i. knew that the other party did not Consent or withdrew their Consent;
    ii. was reckless as to whether the other person provided Consent or withdrew their Consent;
    iii. should have reasonably known that the other party was not Consenting or withdrew their Consent; or
    iv. should have reasonably known that the other person could not Consent or could not have withdrawn their Consent, having regard to the particular circumstances at the time.

(18) Sexual Misconduct may also occur where:

a. a Respondent attempts to engage in Sexual Misconduct towards another person;
b. a Respondent threatens to engage in Sexual Misconduct towards another person;
c. a Respondent abuses a power imbalance over another person to engage in Sexual Misconduct;
d. a person engages in conduct which supports, promotes or encourages Sexual Misconduct; or
e. the Respondent, or another person, engages in conduct which is prohibited by a provision of this Policy or the Procedure.

Contraventions of this Policy

(19) The University may take any disciplinary action available to it against any member of the University Community who contravenes any provision of this Policy or the Procedure.

(20) If a Complaint is made against a Student, appropriate disciplinary action may be taken, including a referral for a decision to be made under the University of Canberra (Student Conduct) Rules 2023.

(21) If a Complaint is made against a Staff member, appropriate disciplinary action may be taken, including under the employment contract, the Enterprise Agreement, relevant Policy or another Legal Instrument.

(22) If a Complaint is made against a member of the University Community who is not a student or a staff member, disciplinary action may be taken under the appropriate Legal Instrument for that person, if appropriate.

(23) The University may deny access to any and all services to a person it reasonably believes has engaged in Sexual Misconduct, including suspending or terminating their right to come onto University Premises, or attend any event or activity hosted by or on behalf of the University.

Interim Measures

(24) If appropriate, the University may take interim action against a person accused of Sexual Misconduct, including:

a. a temporary denial of any or all services; and
b. a temporary suspension from coming onto University Premises.

(25) Interim measures may be determined summarily by the Vice-Chancellor, a Deputy Vice-Chancellor or Vice-President taking into account any recommendation of the Chief People Officer if the complainant or respondent is a staff member.

(26) Interim measures must:

a. be fair and reasonable given the nature of the complaint;
b. consider health, safety and wellbeing of the parties involved and the University Community as a paramount concern;
c. be made on a case by case basis, taking into account the circumstances, risks, potential for harm and any other consideration reasonably deemed relevant by the decision maker; and
d. consider the interests of all parties who may be impacted:
    i. by the imposition of an interim measure; and
    ii. if an interim measure is not implemented.

(27) Interim measures are to remain in effect only until the matter has been fully investigated and finally resolved.

(28) Interim measures are not to be taken into consideration by a decision maker as a relevant factor in the final determination of any investigation.

Procedural Fairness

(29) The University undertakes to:

a. resolve Complaints of Sexual Misconduct fairly, discreetly and in a timely manner;
b. ensure the principles of procedural fairness are followed throughout all stages of responding to a Complaint of Sexual Misconduct; and
c. provide an opportunity for all parties to be heard and provide relevant evidence.

(30) At no stage will the University require the Complainant and Respondent to meet, unless both parties provide prior and express consent to do so.

(31) Complainants and Respondents may be accompanied by a support person to any meeting or inquiry.

Confidentiality

(32) The University respects the confidentiality of a Complainant and will maintain discretion following receipt of a Complaint of Sexual Misconduct.

(33) The University will not refer a Complaint of Sexual Misconduct to police, or disclose information about a Complaint of Sexual Misconduct to a third party unless:

a. consent to that report is provided by the Complainant;
b. the Complainant is under 18 years of age;
c. the University is compelled to report under any legal requirement or Legal Instrument; or
d. the risk from not reporting the Sexual Misconduct presents:
    i. a serious risk to any person's life; or
    ii. a serious risk to the health and safety of any member of the University Community.

(34) A decision to report under clause 33(d) can only be made by the Vice-Chancellor, a Deputy Vice-Chancellor or a Vice-President, taking into account any recommendation of the Chief People Officer if the complainant or respondent is a staff member, where in the view of the decision maker:

a. there are compelling circumstances that such action is required; and
b. the risk of harm cannot be adequately mitigated by another action of the University.

(35) Where a decision to report is made under clause 33(d) and 34, the Complainant will be informed of this decision.

Education and Training

(36) The University commits to providing:

a. appropriate Sexual Misconduct education and training opportunities to Staff and Students; and
b. specialised Sexual Misconduct training to Staff and Students who require a high level of expertise and knowledge resultant from their role.

(37) The University may require members of the University Community to undertake training modules as part of their ongoing relationship with the University.

Section 4 - Responsibilities

Who	Responsibilities
Vice-Chancellor	• oversee the implementation of this Policy; • determine whether interim measures, as defined in clauses 24 to 28 of this Policy are required, following an assessment of the factors set out in clause 26 of this Policy; and • decide whether to refer a Complaint of Sexual Misconduct to Police or disclose information about a Complaint of Sexual Misconduct to a third party, after applying the test set out in clause 34 of this Policy.
Deputy Vice-Chancellor	• determine whether interim measures, as defined in clauses 24 to 28 of this Policy are required, following an assessment of the factors set out in paragraph clause 26 of this Policy; and • decide whether to refer a Complaint of Sexual Misconduct to Police or disclose information about a Complaint of Sexual Misconduct to a third party, after applying the test set out in clause 34 of this Policy.
Vice-President	• determine whether interim measures, as defined in clauses 24 to 28 of this Policy are required, following an assessment of the factors set out in clause 26 of this Policy; and • decide whether to refer a Complaint of Sexual Misconduct to Police or disclose information about a Complaint of Sexual Misconduct to a third party, after applying the test set out in clause 34 of this Policy.
Chief Operating Officer and Vice-President Operations	support the Vice-Chancellor to oversee the implementation of this Policy.
Chief People Officer	Provide education training, including specialised Sexual Misconduct training, for staff in accordance with clause 36 & 37 of this Policy.

Who	Responsibilities
Deans, Executive Deans, Directors and Managers	• foster an environment which promotes the Principles of this Policy and supports the implementation of this Policy within their respective teams; • when a Complaint of Sexual Misconduct is received, the Deans, Executive Deans, Directors and Managers are responsible for managing the Complaint in accordance with the Principles in this Policy and process in the Procedures.
All staff, students and other members of the University Community	• familiarise themselves with this Policy; • act in accordance with the Principles set out in this Policy; • upon becoming aware of an incident of Sexual Misconduct against a Complainant, are strongly encouraged to promptly notify the incident in accordance with clause 13 of this Policy and in accordance with the process set out in the Procedure; and • attend and engage with Sexual Misconduct training sessions as applicable.

Section 5 - Procedure

(38) Refer to Sexual Misconduct Procedure

Section 6 - Definitions

Term	Definition
Acts of Indecency	Means the commission of a sexual act against another person without Consent, which a reasonable person would consider to be unacceptable conduct or contrary to community standards. Examples of Acts of Indecency include but are not limited to: 1. a person shows another person their genitals or masturbates/touches their genitals in public; 2. a person makes another person look at pornographic material (sexual pictures or videos) in a magazine, on a computer, phone or on television; 3. a person sends another person's naked picture to other people or posts it online; or 4. any other sexual act that would make a reasonable person feel uncomfortable.
Affiliates	Means people given emeritus and honorary (including adjunct, professional associate and visitor) appointments in accordance with the relevant University policies and procedures.
Coercive Control	Means conduct that has or is reasonably likely to have one or more of the following effects: • making the other person dependent on, or subordinate to, the person; • isolating the other person from friends, relatives or other sources of support; • controlling, regulating or monitoring the other person's day to day activities; • depriving the other person of, or restricting the other person's, freedom of action or access to support services (including the services of health practitioners and legal practitioners); or • frightening, humiliating, degrading or punishing the other person.
Complainant	Means any person who makes a Complaint of Sexual Misconduct to the University.
Complaint	Means a complaint of Sexual Misconduct to the University however made or received, including a Report or a Disclosure.
Consent	Means the exercise of free, voluntarily choice to take part in sexual contact or activity. Consent can be given by words or clear unambiguous actions of willingness to engage in sexual contact or activity. Consent requires ongoing agreement and can be withdrawn at any time. Consent cannot be assumed because a person does not resist sexual contact, verbally or physically. For further meaning of consent for the purpose of this Policy and the Procedures, refer to clause 16, 17 & 18 of this Policy.
Disclosure	Means a disclosure of Sexual Misconduct by a person who is seeking support from the University, but who does not want the matter investigated or any other action taken and Disclose has a corresponding meaning.
Enterprise Agreement	Means the University's Enterprise Agreement as updated from time to time.

Term	Definition
Fraternisation	Means any relationship that involves or appears to involve an improper use of authority or position; preferential treatment; promised or actual reward; in return for intimate or sexual acts or public expression of intimacy.
Grooming	Means conduct, in person or by other means, with a person who is under the age of 16 (a young person) who is either inside or outside of Australia: (a) with the intention of encouraging the young person to commit or take part in, or watch someone else committing or taking part in, sexual contact or activity; or (b) making it more likely that the young person would commit or take part in, or watch someone else committing or taking part in, sexual contact or activity. This also includes conduct with a person who has a relationship with a young person with the intention of making it more likely that the young person would commit or take part in, or watch someone else committing or taking part in, sexual contact or activity.
Indecent Assault	Means the commission of an assault of an indecent nature on another person without their Consent. Examples of Indecent Assault include but are not limited to: • a person touches another person in a sexual way on their breasts, penis, vagina, or anus, including if the touching is on top of or under clothing • kissing; or • a person makes another person touch their breasts, penis, vagina or anus.
Legal Instrument	Means any applicable law, University Rules, Policy, Procedure, contract or other lawful obligation or document.
Procedures	Means the Sexual Misconduct Procedure developed pursuant to this Policy to implement this Policy.
Report	Means providing a formal account or statement about Sexual Misconduct to the University by a person who is seeking the University to undertake an investigation and take disciplinary action if necessary. Reporting is distinct from Disclosure but can be an outcome of Disclosure.
Recording and/or distributing intimate images	Means recording or distributing an intimate image of another person, in any form, without their Consent. Examples of intimate images include but are not limited to, images taken of a person: • engaged in a sexual act; • in a bathroom or toilet; or • in state of undress.
Respondent	Means the person who is the subject of a Complaint.
Sexual Assault	Means the commission of a sexual act on another person without their Consent. Sexual assault is a crime when a person uses coercion to engage in sexual intercourse. Coercion may include the use of force, abuse of power, violence, threats or tricks to control or take advantage of the victim. Examples of Sexual Assault include but are not limited to: • a person has sexual intercourse with another person where that person does not freely or willing give Consent or cannot Consent; and • that person knows the other person does not freely or willing give Consent or cannot Consent or has no reasonable grounds to believe they provided Consent.
Sexual Exploitation	Means any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes. This includes but it not limited to profiting monetarily, socially, or politically from sexual exploitation of another.

Term	Definition
Sexual Harassment	Means an unwelcome sexual advance, unwelcome request for sexual favours or any other unwelcome conduct of a sexual nature, which, in the circumstances, a reasonable person would anticipate the possibility that the recipient would feel offended, humiliated or intimidated. Examples of Sexual Harassment include but are not limited to: • unwelcome touching; • staring or leering; • sexually explicit pictures or posters; • unwanted invitations to go out on dates; • requests for sex; and • intrusive questions about a person's private life.
Sexual Misconduct	Means any misconduct of a sexual nature, including the types of conduct listed in clause 16 of this Policy.
Sexual Offence	Means any behaviour which may constitute unlawful sexual behaviour in any Australian jurisdiction.
Staff	Means all persons who are employed by the University to align with the definition included within, but not restricted by the Enterprise Agreement including the Vice-Chancellor.
Student	Means a person enrolled as a student in an approved course (including undergraduate and postgraduate, coursework and research) at the University or in a course or program of study conducted by or on behalf of the University; any casual learner participating in any formal or informal teaching programs offered by the University or on behalf of the University; and, where relevant, an exchange student or non-award student.
Technology Facilitated Sexual Violence	Means using technology to engage in virtual and/or in person sexual violence. Examples of Technology Facilitated Sexual Violence include, but are not limited to: • sexual, gender and sexuality based online harassment; • image-based sexual exploitation; • using technology to coerce or blackmail another person to commit an unwanted sexual act or act of intimacy; and • cyberstalking.
Third Party Provider	Means an organisation or company that provides services to enable University courses to be provided at a campus and using staff of the Third Party Provider on the terms and conditions of an agreement with the University.
Transactional Sex	Means the payment of money, provision of employment, or supply of goods or services in return for any form of sexual acts or provision of services.
University	Means the University of Canberra (ABN 81 633 873 422) and all partner institutions.
University activity or event	Means any official event organised by the University, or any event on the University campus, including, but not limited to, events, field trips, placements, live music and overseas study.
University Community	Means all Students, Staff, Affiliates, residents, contractors, visitors, commercial tenants, and their staff members
University Digital Environment	Means any online, social media, program, or other electronic tool managed, facilitated or owned by the University.
University Premises	means any of the following: • land owned or occupied by the University, including buildings on that land and including land owned or occupied by a Third Party Provider; • facilities provided or owned by the University or a Third Party Provider; • a University Student Residence; or • land owned, occupied or identified in a Third Party Provider agreement or other agreement including an exchange program, licensing or collaboration agreement or any replacement campus agreed in writing between the University and a Third Party Provider.
University Student Residence	Means all University student accommodation, including any temporary accommodation and accommodation provided by the University during placements.
Vexatious Complaint	Means making a malicious claim of sexual misconduct against another person with the intent of harm to that person's reputation, or the reputation of the University or related party, knowing that the claims are false, or was reckless as to whether the claims are false.

Term	Definition
Victimising Conduct	Means to engage in harmful or detrimental conduct towards another person, because that person has made a Complaint about the Sexual Misconduct of another person or has supported the Complainant of a Complaint.
Voyeurism	Means observing, or seeking to observe, other people in intimate circumstances and without their Consent,. Examples of intimate circumstances include, but is not limited to, observing a person: • engaged in a sexual act; • in a bathroom or toilet; or • in state of undress.

Status and Details

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Custodian	Bill Shorten Vice-Chancellor
Responsible Manager	Lauren Polis Chief Legal Counsel
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