

Sexual Misconduct Policy

1. Purpose

UNSW College (the College) takes a zero-tolerance approach to Sexual Misconduct.

This Policy sets out the College's principles and strategies for preventing and responding to incidents of Sexual Misconduct, Sexual Assault and Sexual Harassment.

2. Scope

This Policy applies to:

- (a) All enrolled College Students including:
 - i. College Students currently on leave;
 - ii. former College Students during the period of their enrolment;
- (b) all Staff and Affiliates of the College; and
- (c) former Staff and Affiliates during the course of their engagement with the College.

This Policy applies to Sexual Misconduct occurring:

- (a) On the College campus;
- (a) in virtual spaces (including online forums, communities and platforms) arranged or facilitated by the College;
- (b) whilst using College information and communication technology (ICT) resources;
- (c) whilst representing the College (e.g. at events, activities, competitions, conferences);
- (d) whilst participating in the College Student club or society activities;
- (e) between a College Staff member or Affiliate and a College Student; and
- (f) at College events including staff engagement events held at offsite venues.

Where Sexual Misconduct is disclosed or reported as occurring outside the scope of this Policy, the matter will not be investigated by the College but support services and referrals will be offered as appropriate.

3. Policy statement

The College is committed to the safety and wellbeing of its Staff, Students, Affiliates and broader community. The College takes a zero-tolerance approach to Sexual Misconduct. Sexual Misconduct is both unlawful and constitutes a serious breach of the College [Staff Code of Conduct](#) and the [Student Code of Conduct](#).

The College strives to foster a safe learning and work environment and implements strategies to raise awareness and understanding of the behaviours that constitute Sexual Misconduct, why such behaviours are unacceptable at the College, and support services available to those impacted by incidents of Sexual Misconduct.

The College complies with relevant legislation requiring mandatory reporting of Sexual Misconduct. The College actively investigates reported incidents of Sexual Misconduct in accordance with this Policy and the [Sexual Misconduct Procedure \(Students\)](#) and [Sexual Misconduct Procedure \(Staff\)](#).

4. Policy principles

- (a) Any person disclosing or reporting an incident is treated with dignity, respect and confidentiality.
- (b) Resolution of incidents is undertaken in good faith and informed by principles of procedural fairness; reported incidents that are frivolous, vexatious, misconceived or lacking in substance will be rejected if a preliminary investigation indicates this to be the case.
- (c) Determination of precautionary actions to ensure the safety and wellbeing of Students and Staff while an investigation is ongoing, will be made without prejudice to any person the subject of a reported incident.
- (d) Student Advisors and Support Staff are trained to appropriately receive disclosures of Sexual Misconduct including making referrals to medical or counselling support services provided by trained professionals.
- (e) Ongoing monitoring, evaluation and reporting will inform process improvements.

5. Definitions and behavioural examples

5.1. Sexual Misconduct:

Sexual Misconduct covers a broad range of inappropriate and unwanted behaviours of a sexual nature and includes Sexual Harassment or Sexual Assault, sexual touching, sexual acts, conduct involving child abuse material, making or distributing sexually explicit photos or videos without consent, or certain other behaviours of a sexual nature.

5.2. Sexual Harassment:

- (a) Sexual Harassment occurs where there is an unwelcome sexual advance, or other unwelcome sexual behaviour towards another person, in circumstances where it can be reasonably expected that the person will feel intimidated, humiliated or offended by the behaviour.
- (b) Sexual Harassment does not necessarily involve physical acts and may take many forms. Some unwelcome behaviour which might amount to Sexual Harassment includes:
 - i. sending sexually explicit phone calls, texts, emails or other social media messages;
 - ii. intrusive questions or statements about a person's private life;
 - iii. displaying posters or screen savers of a sexual nature;
 - iv. sexual jokes and comments;
 - v. insults or taunts of a sexual nature;
 - vi. leering or staring;
 - vii. asking for sex;
 - viii. unnecessary familiarity, such as deliberately brushing up against a person;
 - ix. stalking or intimidation.

5.3. Sexual Assault:

- (g) Sexual Assault includes a range of behaviours, all of which are unacceptable and constitute criminal offences under the *Crimes Act 1900* (NSW).
- (a) Sexual Assault occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they have withdrawn their consent.

5.4. Sexually explicit photos or videos:

- (a) Creating or distributing sexually explicit or intimate photos or videos of a person without their consent, or threatening to do so, will be treated by the College as Sexual Misconduct.
- (b) Relationship status and/or previous engagement in consensual sexual activity, does not constitute consent for the sharing of sexually explicit or intimate images.
- (c) In New South Wales it is a crime to share or record intimate images or videos without consent, including photos and videos of private body parts or a person engaging in a private act, including undressing, showering or having sexual intercourse.

5.5. Consent to sexual activity:

- (a) A person consents when they freely and voluntarily agree to behaviour, understand what they are doing and who they are doing it with.
- (b) A person might not consent to behaviour even though they were, or are, in a relationship with the other person.
- (c) A person cannot consent if they are:
 - i. under the age of 16.
 - ii. asleep or unconscious;
 - iii. significantly affected by drugs or alcohol;
 - iv. intimidated, coerced or threatened;
 - v. held against their will;
 - vi. tricked, or under a mistaken belief, about the identity of the other person or persons involved;
 - vii. lack the capacity to understand what is taking place because of a cognitive impairment or other reasons;

6. Preventative Strategies

6.1. Education and information materials

- (a) The College provides educational information and materials to raise awareness of behaviour that constitutes Sexual Misconduct, consequences of those behaviours, the meaning of consent, incident reporting processes and support services available to all Students and Staff.
- (b) Staff contact points for 24/7 crisis support, and the Employee Assistance Program are readily accessible on the [Staff Intranet](#).

- (c) Student Support information is readily available on the [current Student website](#). All Students are provided with relevant support information at Orientation and all Under 18 Students are required to attend compulsory Consent and Healthy Relationship workshops whilst studying at the College.

6.2 Leadership and governance

- (a) A working group coordinates the ongoing implementation of Sexual Misconduct preventative measures and support services. It reviews reported incidents and makes recommendations for continuous improvement.
- (b) The working group is led by the Chief of Staff and includes representation from across the College including the Executive Director, Students, as well as representatives from the College's Student Representative Council as appropriate.
- (c) The Executive Director, Students receives Student reports of Sexual Misconduct, oversights associated investigations and ensures compliance with mandatory reporting obligations.
- (d) The Chief of Staff receives reports of Sexual Misconduct made by Staff and Affiliates, oversights associated investigations and ensures compliance with mandatory reporting obligations.
- (h) The working group reports to the Executive Team which in turn reports to the Board of Directors, on implementation progress of preventative measures, reported incidents of Sexual Misconduct, and emerging issues and risks.

7. Support Services

- (a) If Students or Staff are concerned for their immediate safety, or the safety of someone they know they should call 02 9385 6666 (campus security) for immediate help.
- (b) Counselling services are available to support Students and Staff involved in Sexual Misconduct including those reporting the incident, witnesses and alleged perpetrators.
- (c) Contact details for both internal and external support services are available on the [current Student website](#) and the [Staff Intranet](#).
- (d) Professionally trained Student Wellbeing Advisors provide confidential support and are available Monday to Friday, 9am – 5pm at the College campus.
- (e) College HR team members provide confidential support and are contactable at any time via MS Teams.
- (f) All services and interactions are conducted through a trauma-informed approach respecting the safety and wellbeing of the persons involved.

8. Reporting Incidents of Sexual Misconduct

- (a) Students are encouraged and supported to report incidents of sexual assault or harassment to professionally trained Student Wellbeing Advisors or by using the

confidential Portal located on the [Student Safety section of the Current Student website](#). The report can be anonymous.

- (b) The College will respond to reported incidents submitted via the confidential portal on the current student website in accordance with the Sexual Misconduct Procedure (Students).
- (c) Students may alternatively elect to report incidents via the [UNSW Gendered Violence Portal](#).
- (d) All reports made by Students will be responded to within 24 hours.
- (e) Staff may use the [UNSW Gendered Violence Portal](#) to report incidents of sexual misconduct or they may report directly to their Executive leader, the Chief of Staff, or an HR team member.
- (f) Where a disclosure is made to an Executive leader, HR team member or the Chief of Staff, they will on behalf of the person making the disclosure submit a report via the [UNSW Gendered Violence Portal](#).
- (g) The College will monitor and respond to reports of Sexual Misconduct submitted to the [UNSW Gendered Violence Portal](#) (including providing options for assistance if the contact information is supplied) in accordance with the Sexual Misconduct Procedure (Staff).
- (h) All reports made by Staff will be responded to within 24 hours.

9. Investigation of Reported Incidents of Sexual Misconduct

- (a) On receipt of an incident report the College may commence an investigation in accordance with its [Student Misconduct Policy](#) and associated [Procedure](#) or its Staff Code of Conduct, its Managing Unsatisfactory Performance and Conduct Procedure and its Anti-discrimination, Bullying and Harassment Procedure.
- (b) The College will take precautionary actions on an interim basis as required to ensure the well-being and/or safety of any member of the College community perceived to be at risk while investigations are ongoing.
- (c) Reports which constitute criminal conduct will be referred to the Police in accordance with legislative obligations. If a police investigation is commenced, the College may need to suspend its own investigation process until resolution of the Police investigation. Any such temporary suspension will not prevent urgent interim measures being taken to preserve the safety and wellbeing of individuals.
- (d) All College investigations will adhere to principles of procedural fairness and any person against whom an allegation is made will be provided with an opportunity to understand and respond to those allegations through the investigation process and prior to any determination being made.
- (e) All investigations will be conducted on a strictly confidential basis.
- (f) Any retaliatory behaviour including threats, harassment or intentional interference in the investigation of a report of sexual misconduct will result in appropriate, relevant disciplinary action.

10. Privacy, Disclosure of Personal Information and Mandatory Reporting

- (a) The College is obliged to report to Police under the Crimes Act 1900 (NSW), information which might materially assist the apprehension of an offender or the prosecution or conviction of any person alleged to have committed a serious criminal offence.
- (b) The collection, storage, use and disclosure of personal information is governed by the Privacy and Personal Information Protection Act 1998 (NSW) as outlined in the College's [Privacy Policy](#).
- (c) The College will only permit information stored in the Portal to be accessed and used by Staff who have a need to access and use the information in order to carry out actions and responsibilities described in this Policy.
- (d) An individual whose personal information has been stored in the Portal is entitled, subject to limited exceptions prescribed in the Act, to ascertain if the College holds personal information about them and may request access to that information.

11. Roles, responsibilities and delegations

Role	Responsibility
Chief of Staff	<ul style="list-style-type: none"> • Chairs the Sexual Misconduct Working Group. • Receives Incident reports relating to Staff • Ensures compliance with mandatory reporting obligations for Staff reports of Sexual Misconduct.
Executive Director, Students	<ul style="list-style-type: none"> • Actively participate in the Sexual Misconduct Working Group. • Receives Incident reports relating to Students. • Ensures compliance with mandatory reporting obligations for Student reports of Sexual Misconduct.
Executive leaders	<ul style="list-style-type: none"> • Receives Incident reports relating to Staff
HR team members	<ul style="list-style-type: none"> • Receive Staff disclosures of Sexual Misconduct using a trauma informed approach. • Connect impacted Students to timely and appropriate support, including external resources and supports as required. • Maintain training with respect to trauma informed care and working with people disclosing incidents of Sexual Misconduct.
Student Advisors	<ul style="list-style-type: none"> • Receive Student disclosures of Sexual Misconduct using a trauma informed approach. • Connect impacted Students to timely and appropriate support, including external resources and supports as required. • Maintain training with respect to trauma informed care and working with people disclosing incidents of Sexual Misconduct.

Sexual Misconduct Working Group	<ul style="list-style-type: none"> • Meets regularly to monitor and review: <ul style="list-style-type: none"> ○ the workflows, processes and IT infrastructure (the Portal) related to the implementation of this Policy; ○ Opportunities to further embed preventative strategies and to create greater awareness of the <u>Sexual Misconduct Policy</u>; ○ Reported incidents of Sexual Misconduct ○ Emerging issues and risks • Reports to the Executive Team and makes recommendations for continuous improvement on the above.
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12. Definitions

Definitions and Acronyms	
Affiliates	Consultants and contractors; agency Staff; emeriti; members of College committees; and any other person, not being an employee, appointed or engaged by the College to perform duties or functions for the College.
Executive leaders	Members of the College's Executive team.
Procedural fairness	means acting fairly in administrative decision making. It relates to the fairness of the procedure by which a decision is made, and not the fairness in a substantive sense of that decision.
Sexual Assault	Sexual Assault occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they have withdrawn their consent.
Sexual Harassment	Sexual Harassment occurs where there is an unwelcome sexual advance, or other unwelcome sexual behaviour towards another person, in circumstances where it can be reasonably expected that the person will feel intimidated, humiliated or offended by the behaviour.
Sexual Misconduct	Sexual Misconduct includes Sexual Harassment or Sexual Assault, sexual touching, sexual acts, conduct involving child abuse material, making or distributing sexually explicit photos or videos without consent, or certain other behaviours of a sexual nature.
Staff	All employees of the College, including casual employees.
Student	Is a person enrolled in an approved Program of study at the College whose enrolment has not lapsed or been cancelled.
Student Wellbeing Advisors	Are members of the College's Student Wellbeing Team professionally trained to provide a trauma informed approach to receiving disclosures of Sexual Misconduct made by Students, providing counselling and referrals to support services.

Definitions and Acronyms	
Support Staff	Are members of the College's Human Resources Team professionally trained to provide a trauma informed approach to receiving disclosures of Sexual Misconduct made by Staff and Affiliates, providing counselling and referrals to support services.

13. Related Policy and Supporting Documents

Related Policy Documents and Supporting Documents	
Legislation	<ul style="list-style-type: none"> • Crimes Act 1900 (NSW) • Sex Discrimination Act 1984 (Cth) • Privacy and Personal Information Protection Act 1998 (NSW) • Crimes Act 1900 (NSW)
Policy	<ul style="list-style-type: none"> • Privacy Policy • Staff Code of Conduct • Student Code of Conduct • Student Misconduct Policy
Procedures	<ul style="list-style-type: none"> • Anti-discrimination, Bullying and Harassment Procedure • Managing Unsatisfactory Performance and Conduct Procedure • Student Misconduct Procedure • Sexual Misconduct Procedure (Staff) • Sexual Misconduct Procedure (Students)

14. Policy Governance

Sexual Misconduct Policy	
Category/Business Group	Human Resources
Published Externally (Yes/No)	Yes
Approver	Chief Executive Officer
Responsible Officer	Chief of Staff
Contact Officer	Head of HR
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Version	Approved by	Approval date	Effective date	Sections modified
1.0	Chief Executive Officer – Sarah Lightfoot	15 Sep 2024	15 Sep 2024	N/A

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