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Academic Registrar (For Students)

Sexual Misconduct Prevention and Response Policy (MPF1359)

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1. Objective

Notes on language: This policy contains language and references to sexual misconduct including sexual assault and sexual harassment. If anything in this policy has affected or distressed you, you may wish to seek [support](#). Throughout this policy, the term sexual misconduct includes sexual harassment and sexual assault. Definitions for these and other key terms are given in section 7.

1.1. The University acknowledges that sexual misconduct occurs in our workplace and educational settings and is both under-reported and preventable. It causes harm to those individuals directly affected, to the University community, and to society broadly.

1.2. The objectives of this policy are to:

- a) make clear that sexual misconduct will not be tolerated, and has no place in our University community;
- b) commit the University to taking positive action to prevent sexual misconduct in all its forms, and to take timely and appropriate action in response to sexual misconduct;
- c) prioritise the safety and wellbeing of individuals making disclosures or complaints about sexual misconduct, while adhering to principles of procedural fairness and striving to ensure a timely, sensitive and respectful process;
- d) provide clarity regarding what constitutes sexual misconduct, including sexual harassment and sexual assault;
- e) describe how disclosures to the University can be made and complaints will be managed, protecting the rights of the participants;
- f) ensure that our actions in sexual misconduct matters are guided by trauma-informed care and concern for the safety of all in the University community, informed by our values and safety commitments, and support a safe and respectful culture of the University community;
- g) respect the right of victim-survivors to speak about their experiences, subject to legal or other obligations;
- h) confirm that the University will not compensate respondents as a default position in order to finalise or resolve sexual misconduct matters;
- i) encourage safe bystander intervention; and
- j) set out record keeping and reporting requirements for the University.

2. Scope

2.1. This policy applies to the following people within the University and its controlled entities (including those colleges and residential halls that are owned by the University and its controlled entities):

- a) officers, employees and students of the University and of its controlled entities; and
- b) individuals or organisations who are contractually obliged to comply with this policy;

in respect of any activity conducted by, on behalf of or reasonably connected with the University and its controlled entities, including: activities and operations, undertakings or arrangements; carrying out work, volunteering, study or research; and all academic, professional, enabling and other support activities, whether conducted in-person or online, on campus or off campus (**University Matters**).

2.2. People to whom this policy applies may seek support and/or advice about sexual misconduct related to University matters, however the University may be unable to investigate or take action against alleged perpetrators who are not covered by this policy.

2.3. All other individuals engaged in activities reasonably connected with the University are expected to conduct themselves in a manner consistent with this policy.

2.4. Any person, whether they are a member of the University community or not, can make a disclosure or complaint about sexual misconduct by any former or current member of the University community that is related to a University matter.

2.5. A disclosure or complaint can be made about a current incident or one that has occurred at any time in the past.

3. Authority

3.1. This policy is made under the [University of Melbourne Act 2009 \(Vic\)](#) , the [Vice-Chancellor Regulation](#) and the [Academic Board Regulation](#) and supports compliance with the:

- a) *Charter of Human Rights and Responsibilities Act 2006* (Vic)
- b) *Child Wellbeing and Safety Act 2005* (Vic)
- c) *Children, Youth and Families Act 2005* (Vic)
- d) *Crimes Act 1958* (Vic)
- e) *Education Services for Overseas Students (ESOS) Act 2000* (Cth)
- f) *Equal Opportunity Act 2010* (Vic)
- g) *Fair Work Act 2009* (Cth)
- h) *Gender Equality Act 2020* (Vic)
- i) *Higher Education Standards Framework (Threshold Standards) 2015* (Cth)
- j) *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic)
- k) *Occupational Health and Safety Act 2004* (Vic)
- l) *Protected Disclosure Act 2012* (Vic)
- m) *Sex Discrimination Act 1984* (Cth)
- n) *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)
- o) Department of Foreign Affairs and Trade Child Protection Policy and Preventing Sexual Exploitation, Abuse and Harassment Policy

4. Policy

4.1. The University will take action to eliminate and prevent sexual misconduct, recognising that:

- a) strong and accountable leadership across all areas of the University is required;
- b) a power imbalance between individuals increases the risk of sexual misconduct and may result in reluctance to report or address it;
- c) sexual misconduct can be experienced by people of all ages, genders and sexualities, within or outside a relationship. Sexual misconduct is an abuse of power, and a power imbalance between individuals increases the risk of sexual misconduct and may result in reluctance to report or address it; and
- d) sexual misconduct can cause significant harm. Responses must be trauma-informed and timely.

4.2. This policy is underpinned by the guiding principles at 4.4 which establish the basis for expected behaviour and decision-making at the University regarding sexual misconduct.

4.3. In addition to ongoing internal review, this policy will be reviewed independently at least every three years to ensure the University implements and maintains leading practice in preventing and responding to sexual misconduct.

4.4. The guiding principles are:

- a) **Respecting victim-survivors:** Prioritising the safety and wellbeing of victim-survivors by providing a trauma-informed approach which supports, listens to, and validates the experience of victim-survivors.
- b) **Focusing on prevention:** Proactively fostering a safe, equitable and respectful University environment for all members of the University community to prevent sexual misconduct.
- c) **Implementing a respectful, safe and consistent process:** Implementing a process that is informed by our values and commitments, safe, transparent, timely and consistent for all members of the University community, assisted by accurate record-keeping and reporting to ensure the University identifies trends and responds with best practice.
- d) **Empowering accountable leadership:** Leaders are accountable to the University for the prevention of sexual misconduct and must empower all members of the University community to be informed, active bystanders who uphold and visibly champion these principles through their actions, words and decisions.
- e) **Building community knowledge and understanding:** Taking proactive steps to educate and inform the University community to support a shared understanding of what constitutes sexual misconduct and reinforcing the message that sexual misconduct will not be tolerated.
- f) **Ensuring integrity of policy and process:** Transparently reviewing, updating and communicating accessible and culturally sensitive, evidence-based policies and processes.
- g) **Supporting the right of victim-survivors to speak :** The University supports victim-survivors' right to seek support and advice during the investigation. The University and its processes will not limit or constrain victim-survivors' right to speak about their lived experience.
- h) **Enacting fair decision-making:** Enacting decisions that are based on procedural fairness and are unhindered by the status, power or influence of the parties involved, and protecting and supporting those who come forward from victimisation.
- i) **Supporting cultural sensitivity and safety:** Ensuring safety for all members of the University community by being aware of cultural differences, and by recognising and addressing cultural and linguistic barriers, including through engagement with community elders, interpreters and through other means to ensure culturally sensitive support.
- j) **Respecting intersectionality:** Understanding, respecting, and embracing the many aspects of a person's identity in preventing and responding to sexual misconduct. These may include Indigeneity, race, ethnicity, socio-economic background, migration status, age, disability, religion, sex, gender, gender identity and sexuality as well as a range of individual unique characteristics and experiences.

Support relating to disclosure and complaints of sexual misconduct

4.5. Any member of the University community is encouraged to seek assistance and support in relation to matters arising from sexual misconduct.

4.6. A disclosure means an individual telling someone about their experience of, or witnessing of, sexual misconduct. Disclosure does not trigger an investigation or action unless the person disclosing wishes to make a complaint, or in circumstances where the University has a legal duty to undertake an investigation.

4.7. A complaint means an individual making a report of sexual misconduct to the University so that the University may investigate or take specific action in response.

4.8. Students, employees and others, whether they are a member of the University community or not, may make a disclosure to the [Safer Community Program](#) which will also provide support and/or advice on matters relating to sexual misconduct. Where appropriate, Safer Communities may refer individuals to internal and external specialist agencies for wellbeing and other types of immediate or ongoing assistance and support. A list of on-campus and off-campus support services including counselling and psychological services, health services, after-hours mental health crisis support, family violence and men's behaviour change support and sexual assault crisis lines can be found on the University [website](#) .

4.9. [Campus Security](#) is available to all people accessing University campuses.

4.10. Emergency support is available to students and employees who experience sexual misconduct while travelling. Students should refer to the Responding to Student Traumatic Event Policy ([MPF1357](#))

and employees should refer to the UniTravel portal for further information.

4.11. Sexual misconduct often constitutes criminal activity. The University supports the right of current and former students, staff and affiliates who have experienced sexual misconduct or sexual harassment to decide whether or not they want to report the incident to Victoria Police, and/or equal opportunity, employment, and health and safety authorities.

Information, Reports and Record-keeping

4.12. During an investigation and disciplinary decision-making process after an investigation, investigation participants and others involved in a disclosure or complaint and its handling are expected to keep confidential all information relating to the investigation process, participants in the investigation, and submissions and materials provided in the investigation.

4.13. The Chief Human Resources Officer and Academic Registrar will provide regular reports on current matters relating to sexual misconduct to the Vice-Chancellor and the University Council.

4.14. The Academic Registrar and Chief Human Resources Officer will:

- a) keep appropriate records of all disclosures and complaints of sexual misconduct centrally and securely;
- b) keep all records and provide access to those records only in accordance with the Privacy Policy ([MPF1104](#)), any applicable laws and the University Records Retention and Disposal Authority;
- c) collect, store and use fully de-identified and anonymised information about disclosures and complaints made to the University to identify trends and to develop tailored responses to sexual misconduct in the University community; and
- d) ensure access to information relating to disclosures or complaints of sexual misconduct is restricted to University employees who have a need to access and use the information to carry out or support responsibilities under this policy.

4.15. Each year, the Vice-President, Strategy and Culture, will publish a de-identified report on the records kept in accordance with section 4.14. The reports will also include information about actions taken in response to systemic issues.

5. Procedural principles

5.1. Any individual, whether they are a member of the University community or not, can make a disclosure and/or a complaint about a current or past event of sexual misconduct by a person covered by this policy that is related to University matters, whether it concerns themselves or someone else. A disclosure and/or a complaint may be made anonymously.

5.2. The University recognises that individuals will have different preferences in terms of how and to whom they wish to make disclosures and/or complaints.

Making a disclosure

5.3. If any individual wants to make a disclosure to the University, they can do so by contacting:

- a) the University's [Safer Community Program](#) (SCP). When appropriate, SCP may refer individuals to internal and external specialist agencies for wellbeing and other types of assistance and provide advice on reporting to Victoria Police and equal opportunity, employment, and health and safety authorities. They can also provide advice on the appropriate channel for making a complaint; or
- b) Human Resources (HR) staff and/or their own line manager; or
- c) the [Inappropriate Workplace Behaviour line](#) : this line is managed by an independent service provider and can be used to disclose or complain about inappropriate behaviour – including sexual misconduct – by University employees; or
- d) the University's [anonymous register](#) : no personal information is collected through the anonymous register.

Making a complaint

5.4. Complaints by or about students or former students can be made to the [Academic Registrar](#) .

5.5. Complaints about all others, including the Vice-Chancellor, Council members, employees, emerita staff, honorary appointees, casual academic personnel who are contractors and not employees (staff), and all other individuals engaged in activities reasonably connected with the University, can be made by:

- a) employees by contacting their line manager or senior staff in their division, divisional HR staff, Workplace Relations, the [Inappropriate Workplace Behaviour Line](#) ; or
- b) students via the online complaint [form](#) ; or
- c) others via the [Inappropriate Workplace Behaviour Line](#) .

Managing disclosures

5.6. The University will take all reasonable steps to support the individual making a disclosure, recognising that the first disclosure may be the most important and how it is received may influence a decision to proceed to complaint.

5.7. The University may investigate a disclosure even when a complaint has not been made, for example, if:

- a) there appears to be a risk to the health or safety of the individual who made the disclosure or to another person or persons; or
- b) two or more individuals name the same person in separate disclosures or the University is concerned the disclosure may suggest a pattern of behaviour by the person about whom the disclosures are made; or
- c) the individual making the disclosure is under the age of 18 (child) or persons affected or involved in the disclosure are likely to include or involve a child; or
- d) the disclosure involves allegations of criminal activity including for example rape, sexual assault, physical assault, stalking and child abuse and unlawfully dealing with a child.

5.8. Prior to investigating a disclosure, the University will provide the individual who made the disclosure with:

- a) an explanation for why the matter is being investigated;
- b) information relating to support for the individual who made the disclosure;
- c) the opportunity to be involved in the investigation process if they wish to do so; and
- d) an explanation of the confidentiality provisions in this policy, including access to and retention of information collected in the investigation.

Managing complaints

5.9. In the investigation of a complaint, making findings of fact and determining any disciplinary outcome, all parties are afforded procedural fairness and natural justice.

5.10. The University will manage complaints made about employees in accordance with this policy and other relevant policies, legislation and agreements, including the Appropriate Workplace Behaviour Policy ([MPF1328](#)) .

5.11. The University will manage complaints made about students in accordance with the Student Conduct Policy ([MPF1324](#)) and the [Vice-Chancellor Regulation](#) .

5.12. A disclosure or a complaint about a Council member or the Vice-Chancellor must be referred at once to the Chancellor, and an investigation will be undertaken as directed by Council. Where an allegation is made against the Chancellor, this disclosure and/or complaint must be referred to a Deputy Chancellor and an investigation will be undertaken as directed by Council.

5.13. Where a complaint is made about a person who is not a student or employee of the University, the University will seek to pursue the matter via mechanisms available to it, for example via participation or affiliation agreements.

5.14. Where a disclosure or complaint concerns individuals within the University community who are under the age of 18, mandatory reporting requirements and the Child Safety Policy ([MPF1337](#)) apply.

5.15. The University is normally unable to investigate complaints where the respondent cannot be identified.

5.16. If a respondent is both an employee and a student, the University will determine whether the complaint should be considered under the policies and procedures applying to students, and /or those applying to employees.

5.17. Where possible, the University will identify the single most appropriate avenue for investigating a complaint. However, processes and sanctions applicable to employees and students may both apply where the alleged behaviour occurred in the respondent's role as both a student and employee.

5.18. The University will make initial contact with the complainant in relation to their complaint as soon as possible, but no later than two working days after receiving a complaint.

5.19. All complaints will be managed as expeditiously as possible.

5.20. Complainants and respondents will be kept informed of the progress of the complaint, including being advised of any delays that may arise, and will be advised of the outcome as soon as possible.

Support for those involved in a disclosure or complaint

5.21. The University is committed to supporting individuals who disclose or make a complaint about sexual misconduct and those to whom a disclosure is made. Such support may include:

- a) access to both internal and external counselling services including after-hours, urgent and immediate services, or support and referrals for longer term assistance as required and appropriate;
- b) re-crediting any leave taken as a result of the sexual misconduct;
- c) changes to work/study timetable and environment;
- d) changes to supervision or candidature arrangements for graduate researchers;
- e) providing additional or alternative academic support including special consideration;
- f) facilitating mediation to restore relationships in the workplace, where this is appropriate and can be done in a psychologically safe way;
- g) allowing time to attend support services;
- h) assistance to overcome any cultural or linguistic barriers that may exist; and
- i) any other support that the individual requests and that the University considers appropriate in the circumstances.

5.22. The University is also committed to supporting the welfare of respondents. This support may include:

- a) access to both internal and external counselling services including after-hours, urgent and immediate services, or support and referrals for longer term assistance as required and appropriate;
- b) allowing time to attend support services;
- c) assistance to overcome any cultural or linguistic barriers that may exist; and
- d) any other support that the individual requests and that the University considers appropriate in the circumstances.

Responding to complaints

5.23. Once a complaint is received actions may be taken to address any immediate concerns regarding any persons' health, wellbeing and safety and participation in work or study. Actions that may be taken in relation to:

- a) employees are provided in the Appropriate Workplace Behaviour Policy ([MPF1328](#)) ;
- b) students are provided in the [Vice-Chancellor Regulation](#) .

5.24. The relevant authorised person (see section 6) will make an initial assessment of a complaint to determine next steps, taking account of:

- a) the complainant's needs and wishes;
- b) any wider obligations and duties including obligations relating to occupational health and safety, duty of care and any other legal obligations;
- c) whether there is a risk to the health or safety of the individual who made the complaint or another person;
- d) whether the complaint relates to a minor under the age of 18;
- e) what investigative or other actions, if any, are available to the University;

- f) whether two or more people name the same respondent in separate complaints or the University is concerned the complaint may suggest a pattern of behaviour by the respondent;
- g) whether it is required to communicate the nature of the complaint to other authorities; or
- h) any relevant processes or sanctions that are available to the University under the terms of any contract between the individual (or their employer) and the University.

5.25. Where an investigation is required, it will be undertaken either internally or by engaging an external expert, and a Report prepared. If an investigation does not proceed, the University will advise the complainant of the decision and reasons for this immediately and ensure appropriate support is available to them.

5.26. The standard of proof applied to the University's findings of sexual misconduct is on the balance of probabilities. This means that the alleged sexual misconduct is found to be more likely to have occurred than not, based on the available evidence.

5.27. The complainant and respondent will be provided with a summary of the Report and advised of outcomes.

Transparency, Limited Confidentiality and Use of information

5.28. Notwithstanding the importance of confidentiality during an investigation, the University recognises an individual's right to speak about what they have experienced or witnessed and to seek support.

5.29. Individuals may disclose confidential information related to the investigation either during the investigation or disciplinary decision-making process after an investigation, for the purposes of:

- a) obtaining support throughout the investigation from family members and others including but not restricted to other University colleagues, close friends, legal advisers, medical practitioners, mentors, counsellors or psychologists, spiritual guides, student and union representatives, an Aboriginal or Torres Strait Islander Elder or trusted Aboriginal or Torres Strait Islander community member; or
- b) reporting or pursuing any matter with police or other government authorities, including the Victorian Equal Opportunity and Human Rights Commission, WorkSafe, the Australian Human Rights Commission or the Fair Work Commission; or
- c) for an employee, seeking consideration for "Performance Relative to Opportunity" in a confirmation/promotion submission; or
- d) for an employee, engaging in performance development discussions; or
- e) for a student, seeking "Special Consideration" as contemplated in the Assessment and Results Policy ([MPF1326](#)), or seeking to vary their enrolment status.

5.30. The University will keep information provided to it relating to a disclosure or complaint confidential during the investigation and disciplinary decision-making process after an investigation, except disclosure that the University deems necessary in order to:

- a) comply with any law, legal obligations or duties or obtain legal advice; or
- b) report a matter to police, regulatory body or external agency (see sections 5.41 – 5.48); or
- c) facilitate access to support services; or
- d) investigate a disclosure or a complaint; or
- e) respond to a request of the victim-survivor; or
- f) ensure the safety and wellbeing of staff, students and the broader University community, and to provide appropriate support to those involved in the investigation process; or
- g) support its efforts to build a respectful and accountable community that is free from sexual misconduct; or
- h) comply with mandatory reporting obligations, contractual obligations, other obligations to advise to funding agencies, professional registration bodies or other authorities, or to discharge its obligations under this or other policies.

5.31. The University will decide on a case-by-case basis how to communicate the outcomes of investigations and any disciplinary, employment or other operational decisions that are made as a result, taking a trauma-informed approach and considering victim-survivors' preferences.

5.32. The University may share information about findings of facts arising out of an investigation and any disciplinary or employment decisions that are made as a result, with potential future employers or other third parties who seek references or information about a person's conduct while an officer, employee or

student of the University or of its controlled entities.

5.33. The University does not, and nor will it, ask or require victim-survivors to sign Non-Disclosure Agreements.

5.34. On the rare occasion where the University considers that it is appropriate to reach an agreement regarding a person's exit from the [organisation to protect the victim-survivor's \(or other person's\) health and wellbeing](#) , such an agreement will not restrict a victim-survivor's right to speak about their experiences, and will not restrict the University from communicating about the case, the outcomes of any investigation, and the disciplinary, employment or other operational decisions that were made as a result.

Decisions made under this policy

5.35. Decisions relating to any sanctions that the University will impose on a respondent following a finding that sexual misconduct has occurred will:

- a) be proportionate to the nature and impact of the misconduct that has occurred;
- b) consider the University's duties of care;
- c) hold the respondent accountable for their behaviour; and
- d) be consistent with the guiding principles outlined at section 4.4 of this policy.

5.36. The process by which sanctions can be imposed on students is outlined in the [Vice-Chancellor Regulation](#) and the Student Conduct Policy ([MPF1324](#)) .

5.37. Sexual misconduct constitutes serious misconduct. The process for determining an outcome of serious misconduct for employees and subsequent sanctions that can be imposed are outlined in either the [Enterprise Agreement](#) , or for Senior Managers and Executives, their contractual terms of employment, and the *Fair Work Act 2009* (Cth).

5.38. Sanctions for employees, as determined by the University, may include but are not restricted to:

- a) termination of employment with or without notice;
- b) demotion or restricting promotion;
- c) removal from positions of responsibility;
- d) requirement not to attend campus;
- e) formal or final written warnings;
- f) formal requirement to undertake educative counselling, training or development;
- g) written undertakings that inappropriate behaviour has ceased; and
- h) preventing further contact with students or employees.

Making an appeal/raising a grievance

5.39. Students can appeal a decision regarding student sexual misconduct made against them under Part 10 of the [Academic Board Regulation](#) .

5.40. Employees can raise a grievance about how the process in this policy has been followed, and the decisions subsequently made, under the Grievance and Dispute Settlement Procedure provided in section 1.38.2 of the [Enterprise Agreement](#) , or for Senior Managers and Executives under the dispute resolution provisions of their contract of employment.

Reports to the police and other external regulatory bodies

5.41. Many forms of sexual misconduct constitute criminal conduct and breach equal opportunity, employment, and workplace health and safety laws.

5.42. The University will support individuals who have experienced sexual assault in deciding whether they want to report the incident to police or other regulatory bodies. Guidance about reporting allegations to police can also be found on the Victoria Police [website](#) or by seeking legal advice.

5.43. If an individual wishes to make a report to police, they should report to the relevant authority in the place where the incident occurred. Reports relating to sexual assault that occurred:

- a) in Victoria should be reported to [Victoria Police](#) ;

- b) in an Australian state or territory outside Victoria, should be reported to the relevant State or Territory police authority;
- c) outside Australia should be reported to the relevant country's police authority.

5.44. Reports about incidents that have occurred online can be made to the [Australian CyberSecurity Centre](#), the Australian [eSafety Commissioner](#), and/or equal opportunity, employment, and health and safety authorities depending on the nature of the alleged conduct.

5.45. An individual's decision to make a report to police will not necessarily preclude the University from investigating or acting in response to sexual misconduct, but any internal University process may have to be suspended pending completion of a criminal process.

5.46. If there are delays to the University's investigation because of a report made to police, the respondent and the complainant will be notified of these delays and supported appropriately.

5.47. The University will respect and prioritise the wishes of individuals making disclosures or complaints but may need to report an incident of sexual misconduct to police against the wishes of the individual, for example to ensure their safety or the safety or wellbeing of other members of the University community, or to meet the University's legal obligations. In any such case the complainant will be informed and supported.

5.48. Sexual misconduct against a child under 18 may constitute child sexual abuse and mandatory reporting requirements and the Child Safety Policy ([MPF1337](#)) apply.

Bystander intervention

5.49. The University values and encourages reasonable and safe actions by those who witness or are told about an incident of sexual misconduct after it occurs (bystanders) to prevent or stop sexual misconduct from occurring or continuing, and to support those impacted by sexual misconduct.

5.50. The University will equip its students and employees to be active bystanders through education, training, information and support, recognising that some are personally affected by witnessing sexual misconduct.

5.51. The University encourages those who observe incidents of sexual misconduct to disclose them to the University and to make use of the support services listed in section 5.21 if they require assistance and support.

No victimisation

5.52. Members of the University community must not treat someone unfairly or harshly or otherwise subject another person to reprisal action or detrimental action as a consequence of that person:

- a) making a disclosure or a complaint of sexual misconduct;
- b) providing information about a disclosure or a complaint of sexual misconduct;
- c) supporting a person who has made a disclosure or complaint of sexual misconduct;
- d) being the subject of a complaint or disclosure of alleged sexual misconduct; or
- e) engaging in reasonable, safe bystander intervention.

5.53. If a student or employee believes they have been victimised, they can make a complaint via the mechanisms set out in sections 5.4– 5.5.

5.54. A breach of section 5.52 may result in disciplinary action for employees and students.

Responsibilities must be exercised without bias or conflict of interest

5.55. All individuals who have responsibilities for making decisions or supporting decision makers under this policy must be free from conflict of interest or bias in exercising these responsibilities, both for or against complainants or respondents generally or a specific complainant or respondent.

5.56. Individuals must disclose and document all actual, potential or perceived conflict of interests to their line manager or supervisor.

6. Roles and responsibilities

<i>Role/Decision/Action</i>	<i>Responsibility</i>	<i>Conditions and limitations</i>
COMPLAINTS AGAINST EMPLOYEES ¹		
<p>Decisions about whether a case should be referred for formal investigation, addressed through alternative means (e.g. mediation), or not proceed.</p> <p>Decisions about the nomination of an Investigator.</p>	<p>Chief Human Resources Officer and Occupational, Health & Safety or delegate.</p>	<p>Decision will be in consultation with the relevant Dean or Executive and will consider all relevant material available, advice from Workplace Relations and, where required, legal advice.</p>
COMPLAINTS AGAINST VICE-CHANCELLOR OR MEMBER OF COUNCIL		
<p>Decisions whether a case should be referred for formal investigation, addressed through alternative means (e.g. mediation), or not proceed.</p> <p>Decisions about the nomination of an Investigator.</p>	<p>University Council, excluding the accused person/s</p>	<p>Decision will take account of all relevant material available.</p>
<p>DISCIPLINARY ACTION AGAINST EMPLOYEES COVERED BY THE ENTERPRISE AGREEMENT</p> <p><i>Provided as information only – process governed by the University of Melbourne Enterprise Agreement 2018 (as amended) and delegations of responsibilities may change from time to time at the absolute discretion of the University.</i></p>		
<p>Determine preliminary view on whether the findings of the investigation constitute serious misconduct (at clause 1.35.4 of the EA).</p> <p>Decisions about the nomination of an impartial Reviewer if and when an employee requests a Review (at clause 1.35.4.3 of the EA)</p>	<p>Chief Human Resources Officer and Occupational, Health & Safety or delegate.</p>	<p>Must take account of all relevant material (such as, but not limited to, the investigation report, advice from Workplace Relations and, where required legal advice).</p>

<p>Following a Review (if any); final decisions that serious misconduct has taken place and subsequent determination of proportionate disciplinary action (at clauses 1.35.5 and 1.35.6 of the EA).</p>	<p>Provost (or delegate) for serious misconduct (Academic Division) Vice-President, Strategy and Culture, or Vice-President, Administration & Finance and Chief Operating Officer² for serious misconduct (Chancellery and Chief Operating Officer portfolio).</p>	<p>Must take account of all relevant material (such as the investigation report, independent review report, Workplace Relations advice, legal advice – if any – and the like) and guided but not bound by the recommendation of the relevant Dean (or delegate) and the Executive Director, Human Resources and Occupational, Health & Safety (or delegate).</p> <p>Must take account of all relevant material (such as but not limited to, the investigation report, independent review report, Workplace Relations advice, legal advice) and guided but not bound by the recommendation of the relevant Manager (or delegate) and the Chief Human Resources Officer and Occupational, Health & Safety (or delegate).</p>
<p>DISCIPLINARY ACTION AGAINST EMPLOYEES COVERED BY COMMON LAW CONTRACTS <i>Provided as information only – process governed by the employee’s contractual terms of employment and delegations of responsibilities may change from time to time at the absolute discretion of the University.</i></p>		
<p>Decisions that serious misconduct has taken place and subsequent determination of proportionate disciplinary action (excluding members of the University Executive).</p>	<p>Vice-President (Strategy and Culture) or Vice-President (Administration & Finance) and Chief Operating Officer³</p>	<p>Must take account of all relevant material (such as but not limited to, the investigation report, independent review report, Workplace Relations advice, legal advice) and guided but not bound by the recommendation of the relevant Executive line manager (or delegate) and the Chief Human Resources Officer and Occupational, Health & Safety (or delegate).</p>
<p>Decisions that serious misconduct has taken place and subsequent determination of proportionate disciplinary action where the employee is a member of University Executive.</p>	<p>Vice-Chancellor</p>	<p>Must take account of all relevant material (such as but not limited to, the investigation report, independent review report, legal advice) and the recommendation of Executive Director, Human Resources and Occupational, Health & Safety (or delegate)</p>

Decisions that serious misconduct has taken place and subsequent determination of proportionate disciplinary action where the employee is the Vice-Chancellor or a member of University Council or its committees	University Council, excluding the accused person/s	Must take account of all relevant material (such as but not limited to, the investigation report, independent review report, legal advice) and the recommendation of Chief Human Resources Officer and Occupational, Health & Safety (or delegate)
<p>NOTE:</p> <p>¹ The Vice-Chancellor will be informed of all decisions.</p> <p>^{2,3} Where disciplinary action is to be taken against an employee of the Chancellery (Strategy and Culture) the Vice-President (Administration & Finance) and Chief Operating Officer will make the decision. Where disciplinary action is to be taken against an employee of the Chief Operating Officer Portfolio, the decision will be made by the Vice-President (Strategy and Culture). In the case of other Chancellery portfolios either of these officers may be charged with determining disciplinary action in consultation with the relevant portfolio Executive.</p>		
COMPLAINTS AND DECISIONS AGAINST STUDENTS		
Decisions relating to next step responses to allegations of student general misconduct. May involve the appointment of an external investigator with experience in sexual misconduct investigations.	Principal Adviser, Student Conduct and the Academic Registrar.	6.1. Must be in accordance with the provisions of the Student Conduct Policy (MPF1324) and the Vice-Chancellor Regulation .
In cases where suspension or expulsion is the penalty outcome for students found to have breached the behavioural expectations of the Student Conduct Policy (MPF1324). Informed of all cases under management.	Vice-Chancellor	Must take account of all relevant material (such as any investigation report, student discipline committee decisions , legal advice and any recommendation of the Academic Registrar or Dean.

7. Definitions

Academic Board Regulation means the University of Melbourne [Academic Board Regulation](#) as may be amended or replaced from time to time.

Appropriate Workplace Behaviour Policy means the Appropriate Workplace Behaviour Policy ([MPF1328](#)) as may be amended or replaced from time to time.

Bystander means someone who witnesses an incident of sexual misconduct or is told about an incident after it occurred.

Complaint means a complaint of sexual misconduct relating to University matters by an individual who wants the University to take specific action in response to the incident.

Complainant means any person who makes a complaint of sexual misconduct to the University.

Consent refers to free and voluntary agreement to a sexual act and is defined in the *Crimes Act 1958* (Vic) Part I (36). A person does not consent to an act just because they do not resist the act verbally or physically. A person does not consent to an act just because they consented to—

- a) a different act with the same person; or
- b) the same act with the same person at a different time or place; or
- c) the same act with a different person; or
- d) a different act with a different person.

Circumstances in which a person cannot consent to an act includes circumstances in which the person:

- a) does not say or do anything to indicate consent to the act;
- b) (submits to the act because of force, a fear of force, harm of any type or a fear of harm of any type, whether to that person or someone else or to an animal, regardless of— (i) when the force, harm or conduct giving rise to the fear occurs; and (ii) whether it is, or is a result of, a single incident or is part of an ongoing pattern);
- c) submits to the act because of coercion or intimidation— (i) regardless of when the coercion or intimidation occurs; and (ii) whether it is, or is a result of, a single incident or is part of an ongoing pattern;
- d) submits to the act because the person is overborne by the abuse of a relationship of authority or trust;
- e) is so affected by drugs or alcohol or any other substance as to be incapable of consenting to the act, or incapable of withdrawing consent to the act;
- f) is asleep or unconscious;
- g) is unable to understand or is mistaken about the sexual nature of what is happening or the identity of any other person involved;
- h) submits because of force or fear of force or harm of any type (including to someone else or to an animal);
- i) is unlawfully detained or held against their will;
- j) is a child / under the age of 18;
- k) is mistaken about the identity of the other person;
- l) mistakenly believes that the act is for medical or hygienic purposes;
- m) in acts involving animals, mistakenly believes that the act is for veterinary or agricultural purposes or scientific research purposes;
- n) engages in the act because of a false or misleading representation that the person will be paid and the act occurs in the provision of commercial sexual services;
- o) is not doing or saying anything to indicate consent;
- p) gives consent and later withdraws consent to the act taking place or continuing;
- q) engages in the act on the basis that a condom is used and another person intentionally removes, tampers with or does not use the condom; or
- r) having given consent to the act, later withdraws consent to the act taking place or continuing.

The fact that a person does not say 'no' to, or does not physically resist a sexual act, does not of itself mean that they consent to it. A person is free to withdraw their consent at any time prior to, or during a sexual act, for any reason.

Disclosure means an individual telling anyone who is part of the University about their experience or witnessing of sexual misconduct. Unlike complaint, disclosure does not trigger an investigation or action unless the University has a duty of care to do so. It may also be the first step prior to a complaint being made.

Employee means an individual employed by the University (or employed by a wholly owned subsidiary of the University) and who is a national system employee within the meaning of the *Fair Work Act 2009* (Cth).

Employee is also commonly referred to as staff member, academic staff member or professional staff member.

Enterprise Agreement means the *University of Melbourne Enterprise Agreement 2018* and in respect of the Melbourne Theatre Company *Production and Theatre Service Employees Agreement 2018-2020* and includes any replacements (if any) of those agreements.

Guiding principles are the principles outlined at section 4.4 which inform this policy and establish the basis for expected behaviour and decision-making at the University with regards to sexual misconduct.

Inappropriate Workplace Behaviour Line is the University's independent, confidential reporting service for employees and students to report inappropriate employee behaviour; unlawful discrimination; sexual harassment; harassment; sexual assault; bullying; stalking; victimisation; or vilification.

Includes and **including** means where the context permits or requires 'including but not limited to'.

Investigation participant means a person who contributes in any way to a formal impartial investigation into a sexual misconduct complaint conducted by or on behalf of the University.

Non-Disclosure Agreement means any agreement, or any clause in any agreement, that prohibits a victim-survivor from being about to speak freely about their lived experience of the matters disclosed or complained of.

Privacy Policy means the Privacy Policy (MPF1104) as may be amended or replaced from time to time.

Respondent means a person about whom a complaint is made.

Sexual assault is defined in the *Crimes Act 1958* (Vic) Part I (40) and means a person intentionally touching another person who does not consent to the touching; and the touching is sexual; and the person touching does not reasonably believe that the other person consents to the touching. Touching can be 'sexual' because of:

- a) the area of the body that is touched or used in the touching, including (but not limited to) the genital or anal region, the buttocks or the breasts;
- b) the fact that the person doing the touching seeks or gets sexual arousal or sexual gratification from the touching; or
- c) any other aspect of the touching, including the circumstances in which it is done.

Sexual harassment – as defined in the *Sex Discrimination Act 1984* (Cth) – occurs if a person:

- a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or
- b) engages in any unwelcome conduct of a sexual nature in relation to the other person,
- c) in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the other person would be offended, humiliated or intimidated.

Examples of sexually harassing behaviour include:

- i. subjecting a person to any act of physical intimacy or touching;
- ii. staring or leering;
- iii. making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence, including suggestive comments or jokes;
- iv. making any gesture, action or comment of a sexual nature in a person's presence;
- v. sexually explicit pictures or posters;
- vi. unwanted invitations to go out on dates;
- vii. requests for sex;
- viii. intrusive questions about a person's private life or body;
- ix. unnecessary familiarity, such as deliberately brushing up against a person;
- x. insults or taunts based on sex;
- xi. sexually explicit physical contact; and
- xii. sexually explicit emails or SMS text messages.

Sexual misconduct in this policy includes sexual harassment and sexual assault. Some forms of sexual misconduct can occur online including through email, websites, online meetings, social media, games or other forums. Some sexual misconduct may also amount to criminal conduct under state and federal legislation, including the following :

- a) rape which is the penetration of the vagina or anus of any person with any part of the body of another person (including their fingers), or with any object, without the first person's consent;
- b) unwanted oral sex which includes insertion of the penis into the mouth of another person, or use of the tongue or lips on the vagina, penis, scrotum or anus of another person, without their consent;
- c) sexual touching which includes kissing or touching a person's body in a sexual manner, without their consent. This includes unwanted touching of a person's breast, buttocks or genitals;
- d) sexual acts which include doing an act of a sexual nature with or towards another person without their consent or making another person do an unwanted act of a sexual nature;
- e) requests for sexual intercourse, or other sexual acts;

- f) exposing genitals (including flashing) or sexual gestures;
- g) making promises or threats in return for sexual favours;
- h) sexually suggestive behaviour, such as leering or staring;
- i) unwelcome touching, hugging, kissing, fondling or brushing up against someone;
- j) smutty or sexually suggestive comments or jokes;
- k) repeated or inappropriate invitations to go out on dates or to 'hook up';
- l) following, watching or loitering nearby someone;
- m) displaying offensive images, objects or sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks, common areas or electronic devices/ computer screens;
- n) sexually explicit or indecent emails, text messages or posts on social media or via any other digital or electronic communication;
- o) making a person show another person their breasts, buttocks or genitals;
- p) masturbating or pretending to masturbate in front of another person;
- q) name-calling of a sexual nature;
- r) unwelcome physical contact including massaging a person without invitation;
- s) forcing a person to watch sexual acts/pornography;
- t) making, displaying, sending, distributing, threatening to distribute or requesting sexually explicit pictures or posters, audio recordings or photo-shopped images of another person;
- u) giving sexually explicit gifts;
- v) intrusive questions about a person's private life or physical appearance; or
- w) grooming and predatory conduct undertaken to prepare a child for sexual activity at a later time.

Student has the meaning given to it in Part 6 of the Vice-Chancellor Regulation .

Student Appeals Policy means the Student Appeals Policy (MPF1323) as may be amended or replaced from time to time.

Student Complaints and Grievances Policy means the Student Complaints and Grievances Policy (MPF1066) as may be amended or replaced from time to time.

Student Conduct Policy means the Student Conduct Policy (MPF1324) as may be amended or replaced from time to time.

Trauma-informed means an approach that recognises that an unsafe response can escalate and compound trauma and that is focused on maximising the safety, wellbeing and support provided to individuals who make disclosures or complaints by upholding their agency, safety, dignity and wellbeing.

University means the University of Melbourne.

University community means all employees, members of the University Council, past employees, students, former students, student organisations, alumni organisations and networks, volunteers, partners with whom the university works and campus tenants, Visitors, Emerita staff, employees with honorary appointments, affiliates, contractors and consultants, employees of research institutes, employees of wholly owned subsidiaries, employees with dual or joint appointments with the University and employees of independent colleges that are associated or aligned with the University.

University matters has the meaning given to it in section 2.

University Executive is the University's principal management committee. Its membership includes members of the Chancellery Executive, President of the Academic Board and Deans.

Vice-Chancellor Regulation means the University of Melbourne Vice-Chancellor Regulation as may be amended or replaced from time to time.

Victimisation has the meaning defined in the Appropriate Workplace Behaviour Policy (MPF1328) .

Visitor means a person who is appointed as a University visitor in accordance with the Honorary Appointments and University Visitors Procedure (MPF1156) and may be an academic visitor or non-academic visitor.

POLICY APPROVER

Deputy Vice-Chancellor (People and Community)

POLICY STEWARD

Chief Human Resources Officer and Occupational, Health and Safety (for employees)

Academic Registrar (for students)

REVIEW

This policy is due to be reviewed by 31 October 2023.

VERSION HISTORY

Version	Approved By	Approval Date	Effective Date	Sections Modified	
1	Vice-President, Strategy and Culture	13 October 2021	14 October 2021	New policy.	
2	Policy Officer	31 May 2022	31 May 2022	Changed Policy Approver	
3	Deputy Vice-Chancellor (People & Community)	19 December 2022	22 December 2022	Hyperlink updates. Amendment to the definition of 'Consent' and provisions concerning 'Transparency, Limited Confidentiality and Use of information'. Editorial amendments to formatting.	
4	Policy Officer	22 December 2022	22 December 2022	Editorial amendments to formatting.	
5	Deputy Vice-Chancellor (People & Community)	27 February 2023	28 February 2023	Minor amendment to 5.28.	