

St Mark's College, Adelaide

SEXUAL ASSAULT POLICY

If you need help or support, contact:

1. the Head of College, Professor Don Markwell
2. the Dean, Mr Stuart Meldrum
3. the Director of Learning, Dr Rachel Buxton
4. the Chaplain, Rev'd Grant Moore
5. an external consultant – details to be advised
6. any of the external services listed at the end of this policy, including
 - National Sexual Assault, Domestic Family Violence Counselling Service 1800RESPECT (1800 737 732)
 - Yarrow Place Rape and Sexual Assault Service: 1800 817 421 (toll free in SA)
Yarrow Place provide a 24-hour crisis response service (medical and counselling services for recent sexual assault), professional counselling and the collection of forensic evidence as requested by those people who have made, or wish to make, a report to the police.
 - SA Police: 000 (emergency), 131 444 (non-emergency)

Statement of Commitment

St Mark's College will not tolerate sexual misconduct of any kind.

St Mark's College is committed to best-practice management to minimise the incidence and effects of sexual assault.

We are committed to:

- a whole-of-community approach to preventing and responding to sexual assault
- a zero-tolerance policy towards sexual assault
- providing evidence-based education and training for staff and students throughout their time at College, and
- providing trauma-informed support for survivors, internally and/or through referral to professional support services.

We recognise that sexual assault can have traumatic and devastating impacts on people experiencing or witnessing such behaviour.

Who is covered by this Policy

This Policy applies to all St Mark's College staff and students, and to visitors and invitees, on College grounds.

It also applies to everyone (College staff, students, visitors and invitees) attending and/or participating in College events and activities, whether held on or outside College grounds.

What is covered by this Policy

This Policy applies to any and all forms of **sexual assault** (see **Definitions** below) perpetrated by, experienced by or witnessed by anyone covered by this Policy.

Disclosure and Reporting

This Policy draws a distinction between **disclosing** and **reporting** (see **Definitions** below).

This Policy covers how to disclose and how to report sexual assault to the College and how the College will respond.

Disclosing and reporting to external agencies are not governed by this Policy, but this Policy is not intended to preclude or inhibit in any way any disclosing or reporting to any external agency.

Sexual assault is a crime. Sexual assault may be reported to SA Police.

Procedural Fairness

The College will treat complainants and respondents in accordance with accepted principles of procedural fairness.

It is important that complainants should not be adversely treated or affected in any way as a result of choosing to disclose or report sexual assault.

The College will respect the rights of respondents throughout any investigation and disciplinary processes. We acknowledge that respondents are entitled to the presumption of innocence, and to respond to formal complaints against them. Appropriate support and advice will be available to any member of College who has been accused of sexual harassment and/or assault. For the purposes of its own investigation and disciplinary processes, the College applies an appropriate standard of proof.

The College may not be able to pursue any formal investigation or disciplinary process where a report is made anonymously or without identifying the respondent, but the information will still be used for the purposes of the College's risk identification, assessment and prevention strategies.

Roles and Responsibilities

The College is responsible for implementing this Policy and responding to disclosures and reports of sexual assault.

Every person covered by this Policy (see **Who is covered by this Policy** above) is responsible for familiarising themselves with and adhering to this Policy.

Particular office-holders mentioned in this Policy have the particular roles and responsibilities set out in this Policy.

Definitions

College St Mark's College of 46 Pennington Terrace, North Adelaide SA

Complainant Person who personally experiences or personally witnesses sexual assault and who makes a disclosure or report.

Consent has the meaning given by law and/or as set out below (see "Consent" below)

Disclosure/Disclosing Any disclosure by a complainant to a support person of sexual assault experienced or witnessed by the complainant; any disclosure of the same by a support person to another support person.

Report/Reporting A formal report by a complainant to the College, as provided for in this Policy, of sexual assault experienced or witnessed by the complainant.

Respondent Person who has, or allegedly has, perpetrated sexual assault.

Sexual assault has the meaning given by law and/or as defined below.

Support person Any person to whom a disclosure of sexual assault is made.

What behaviours are classified as sexual assault

The College regards sexual assault as any activity of a sexual nature by a person which affects another person and to which the other person has not given informed consent, freely and voluntarily.

Sexual assault can take many different forms. It can include such behaviour as, for example:

- Touching any part of a person's body in a sexual way without their consent
- Exposing one's genitals or 'flashing'
- Watching a person when they are naked or doing sexual things
- Taking off a condom before or during sex without the other person's consent
- Posting sexual pictures of a person on the internet or sharing them via social media
- Making someone watch or be in pornography (videos or photos of sex or sexual things)
- Sexual coercion

Rape and other sexual offences, including indecent assault, are proscribed by the *Criminal Law Consolidation Act 1935* (SA); any conduct or activity that would constitute such an offence, or constitute sexual assault at common law, constitutes sexual assault for the purposes of this Policy.

Consent

Consent to sexual activity means informed consent, freely and voluntarily given, to that sexual activity at that time with that person.

Consent means more than just saying yes or not being forced – it needs to be informed. "Informed consent" means there is nothing stopping the person from giving consent or understanding what they are consenting to.

Informed consent cannot happen if the person is, for example:

- intoxicated (whether by alcohol or any other substance or combination of substances) to the point of being incapable of freely and voluntarily agreeing to the activity
- asleep, passed out or unconscious, including because of drugs, alcohol or a violent assault
- tricked or otherwise under a false impression about who the other person is
- too scared to, or otherwise unable to, say no or refuse or resist.

Other things to know about consent

Consent needs to happen every time – agreement to sex at one time is not agreement to sex at any other time.

Everyone needs consent – consent cannot be assumed between people in a relationship.

Consent has to happen at every step – agreement to one sexual thing is not agreement to any other sexual thing.

Showing interest is not consent – giving someone attention, agreeing to go on a date or flirting with them is not consent.

Make sure the other person is consenting – each and every time a person engages in any sexual activity, they must always have the other person's consent.

Going ahead with sexual activity knowing that the other person does not consent is criminal. It is also criminal to proceed with sexual activity:

- being aware of the possibility that the person might not be consenting, or
- not giving any thought to whether or not the person is consenting.

Seeking Support – within the College

The College encourages anyone who has experienced or witnessed sexual assault to seek support as soon as possible, so that they can be helped and supported.

We recognise that sexual assault is traumatic and that persons affected often find it difficult to talk to someone else about what has happened.

Disclosing

Anyone who experiences or witnesses sexual assault can talk to a support person about what happened/what is happening, about how they feel and about what help and support they may need without having to make a formal report – this is called *disclosing*.

When it comes to disclosing, the most important person is the complainant. What and how much the complainant discloses is up to the complainant. The role of the support person is to listen and to offer help and support.

Anyone (a relative, friend, or other trusted person) can be a support person.

The following people at the College have received appropriate training in this area, and anyone who has experienced or witnessed sexual assault can seek help and support from these people at any time:

- Head of College
- Dean
- Director of Learning
- Chaplain
- Assistant Deans
- Residential Advisors
- Other members of the Student Leadership Team

The College's priority is the health, safety and wellbeing of the person who has experienced or witnessed sexual assault, and the most important thing is to ensure that they are safe and supported.

The College acknowledges that disclosure of sexual assault can also be traumatic for support persons. Support persons can also seek support from other support persons.

The complainant can ask the support person to keep the disclosure confidential, and that will be respected, except to the extent that the support person may need to disclose details in order to protect any person from a risk to safety, health or wellbeing.

The opportunities for the College to provide appropriate support, investigate effectively, and identify and respond to risks and incidents, may be limited if incidents are disclosed anonymously or confidentially or without all of the details. In such cases, the College will still use the *de-identified* disclosure (i.e. without disclosing the identity, or any details that may suggest the identity, of any person involved in the incident/s) for the purposes of the College's risk identification, assessment and prevention strategies. In such situations the College (as part of its commitment and obligation to provide a safe place for students and staff to live, work and study) retains a discretion to take such action as may be necessary or appropriate in the exercise of the College's duty to take reasonable care to avoid a foreseeable risk of harm to students, staff or visitors.

For the same purposes, any member of staff of the College to whom a disclosure of sexual assault is made confidentially or anonymously is required, at minimum, to provide *de-identified* notice of the disclosure to the Head of College and/or the Dean.

The College may also provide *de-identified* disclosure to the universities (The University of Adelaide, University of South Australia and/or Flinders University) as required or appropriate.

Reporting

A complainant may choose to make a formal report of sexual assault – this is called *reporting*. Reporting can happen at any time, whether or not they have previously made a disclosure.

A support person cannot make a report of sexual assault disclosed to them, because the College cannot be sure that the complainant wants that formal step to be taken. A support

person can assist a complainant to make a report, including be with the complainant when the report is made.

The Specific Points of Contact at the College for reporting are the Head of College, the Dean, and the Director of Learning.

A report can be made to the Head of College, the Dean, and the Director of Learning in person or over the phone or in writing:

- **Head of College:** Professor Don Markwell:
 - 8334 5600
 - don.markwell@stmarkscollege.com.au
- **Dean:** Mr Stuart Meldrum:
 - 8334 5608
 - stuart.meldrum@stmarkscollege.com.au
- **Director of Learning:** Dr Rachel Buxton:
 - 8334 5603
 - rachel.buxton@stmarkscollege.com.au

The College will acknowledge receipt of the report, acknowledge the complainant's experience and make clear that the complainant's safety and wellbeing is the first priority.

A complainant is free to change their mind about the report at any time, including to withdraw it. That decision will be respected and the College will still provide support, information and advice to the complainant. However, there may be situations in which the implications for the complainant, or for others actually or potentially affected, are serious. The College (as part of its commitment and obligation to provide a safe place for students and staff to live, work and study) retains a discretion to take such action as may be necessary or appropriate in the exercise of the College's duty to take reasonable care to avoid a foreseeable risk of harm to students, staff or visitors.

The complainant can make a report anonymously, or without reporting all of the details, and that will be respected, except to the extent that the Head of College, Dean, and/or Director of Learning may need to take action to protect any person from a risk to safety, health or wellbeing.

It may be important to report an incident as soon as possible, so that the College can provide appropriate support, investigate effectively, and identify and respond to safety risks. Having said that, the College recognises that reporting can be traumatic and is ultimately the decision of the complainant, and the College does not impose any time limit for reporting.

The opportunities for the College to provide appropriate support, investigate effectively, and identify and respond to risks and incidents, may be limited if:

- a report is made anonymously, confidentially or without all of the details
- significant time has passed between incident and report
- the complainant and/or the respondent is/are no longer at the College, and/or
- information is disclosed to the College by a support person in the absence of the complainant.

Where reports are made anonymously, confidentially or without all of the details, or where information is disclosed to the College by a support person in the absence of the complainant, the College will nevertheless use the *de-identified* report/information for the purposes of the College's risk identification, assessment and prevention strategies.

The College may also provide *de-identified* reports/information to the universities (The University of Adelaide, University of South Australia and/or Flinders University) as required or appropriate.

Specific process for responding to a report

Information about how to make a report to the College is set out in the section above ('Reporting').

Instances of sexual assault reported to the College will be handled sensitively, discreetly, fairly, objectively and without bias.

Counselling support services will be offered throughout the process, irrespective of whether the complainant wishes to take the matter further.

Once a report has been made to the College, the following process will be followed:

Initial assessment

The Head of College, Dean, and/or Director of Learning will promptly and fairly conduct an initial assessment, which at minimum will include taking measures necessary or appropriate to:

- protect any person from a risk to safety, health or wellbeing, and/or
- assist in the effective implementation and progress of any subsequent investigation or disciplinary process (whether to be conducted by the College or an external agency).

The initial assessment may require the College to suspend the respondent while an investigation is taking place. Such action does not in any way prejudice or imply the outcome of any investigation. In such a case, the College will ordinarily offer to arrange alternative accommodation for the respondent.

Further action

The Head of College, Dean, and/or Director of Learning will respect the wishes and choices of the complainant as to how the matter is dealt with, to the furthest extent possible. However, the College (as part of its commitment and obligation to provide a safe place for students and staff to live, work and study) retains a discretion to take such action as may be necessary or appropriate in the exercise of the College's duty to take reasonable care to avoid a foreseeable risk of harm to students, staff or visitors. This action may include referring the matter for investigation and/or action to police or other external agency.

Following on from the initial assessment, further action undertaken by the College may include initiating a formal investigation.

A formal investigation is likely to involve informing the respondent of the basis of the complaint, meeting separately with the complainant and the respondent, seeking written statements from the complainant and respondent, speaking to other relevant people on a confidential basis, and/or obtaining further relevant information.

At all times during a formal investigation both the complainant and the respondent have the right to be accompanied at meetings by another student member of the College, or a member of staff of the College. These people must maintain appropriate confidentiality.

Every effort will be made to achieve a prompt outcome to a formal investigation, the aim being to conclude the process within a period of a fortnight, if possible. Both the complainant and the respondent will be expected to co-operate with the College in achieving that result. If it is not possible to resolve the issue within this timeframe, for example for reasons of complexity or the absence of relevant parties from Adelaide, both parties will be kept informed.

In some circumstances, in the interests of the complainant and/or the respondent, it may be necessary for interim action to be taken, pending the outcome of the investigation. This may include making arrangements to limit contact between the parties concerned. Action may include suspension of the respondent for a period of time. Such action does not in any way prejudge or imply the outcome of the investigation. In such a case, the College will ordinarily offer to arrange alternative accommodation for the respondent.

The College commits to providing support and assistance (separately) to the complainant and to the respondent throughout the process, including in understanding options, by providing relevant information in a timely way, in accessing support services, and in dealing with external agencies (where applicable).

The College will assist complainants and respondents to access support services (including medical and legal services), but is not able to provide financial assistance to complainants or respondents for such services. The College cannot advocate for either party where that might compromise the impartiality, or appearance of impartiality, of the College's processes.

The College will inform, and keep informed, both the complainant and the respondent about applicable policies and processes, and, where appropriate, investigation outcomes, and any action the College proposes to take.

Throughout, the complainant remains free to change their mind about the report at any time, including to withdraw it; that decision will be respected and the College will still provide support, information and advice to the parties. However, as set out above, there may be some situations in which the implications for the complainant, or for others actually or potentially affected, are serious, and in which the College assesses that its duty of care is such that it may need to take some action to avoid a foreseeable risk of harm.

College sanctions and disciplinary action are at the discretion of the Head of College, taking into account all information provided by both parties and all the circumstances.

The College does not have control over external agencies' responses to any report of sexual assault made to external agencies.

Confidentiality

Information concerning disclosures or reports of assault must so far as reasonably possible be held in confidence by those to whom it is divulged.

All parties involved in a disclosure or report (including any witnesses who may be interviewed as part of any investigation, or support persons attending meetings) should maintain the confidentiality of the process. Those involved in advising complainants should, where possible, seek the consent of the individual for the onward disclosure of relevant information to those with a clear need to know. Where such consent is not forthcoming, the person entrusted with the information should make it clear that, in some circumstances, it may be necessary to disclose the information, taking account of the duty of care which may be owed to the individual and/or others.

Information may be shared between senior members (i.e. senior staff or similar) of the College on a need-to-know basis, and in such cases the senior members will, except in some circumstances, follow the guiding principle of asking for the complainant's permission to liaise with others.

Unnecessary disclosure of information regarding any disclosure or report and/or processes relating to a report of sexual assault may attract disciplinary sanction.

Victimisation

The College seeks to protect any member of the College community from victimisation, which is a form of serious misconduct which may itself result in a disciplinary process.

The College will regard as victimisation any instance where a person is subjected to detrimental treatment because they have, in good faith: made a disclosure or report of assault; or indicated an intention to make such a disclosure or report; or assisted or supported another person in bringing forward a disclosure or report; or participated in an investigation of a disclosure or report; or is suspected that they have done or may do any of the above.

Vexatious or malicious complaints

If a complainant is deemed to have known, or to have reasonably been expected to know, that a complaint was unfounded, the complaint of assault may be judged to be vexatious or malicious, and disciplinary action may be taken against them. No action will be taken if a complaint which proves to be unfounded is judged to have been made in good faith.

Seeking Support - external consultant on sexual harassment and sexual assault

In addition to sources of support within the College, the College will appoint an external consultant to whom any member of the College wishing to make a disclosure or report or seeking advice may do so, including confidentially or anonymously. The **consultant** may assist you either in handling the matter within College, or in approaches to external agencies.

The consultant is available to advise anyone who has experienced sexual harassment or assault, or anyone who is aware of it (e.g. through witnessing it), and wishes to make a disclosure or report, or seek advice.

For anyone who wishes to have such support, the external consultant provides an alternative to raising matters within College, or going to a fully external agency (such as Yarrow Place, or SA Police), if you would rather not do either of those things.

The consultant will discuss with you what, if anything, they may disclose to others (other than providing a *de-identified* notice of the disclosure to the Dean and the Head of College). They will observe strict confidentiality other than as agreed with you, or where necessary for your safety or the safety of others.

Details of our consultant will be advised separately.

Seeking Support – other sources

Aside from the many sources of support at College and the external consultant who will be appointed, there are many other support services for anyone affected by sexual assault.

Support persons at College can help anyone affected to access these services.

[Yarrow Place Rape and Sexual Assault Service](#)

[Further information is available on their website about the following areas:](#)

- [Information about a forensic medical examination](#)
[This examination is most useful within 72 hours of the rape or sexual assault. However, it can be done up to 1 week after the assault.](#)
[Making a decision about contacting police can be difficult. Yarrow Place offer a “just in case” forensic medical examination. Evidence is collected and stored safely until you make a decision within a 12-month period.](#)
- [Coping after a sexual assault](#)
- [Legal options following a sexual assault](#)
- [Medical care following a sexual assault](#)

[1800RESPECT – National Sexual Assault, Domestic Family Violence Counselling Service](#)

[University of Adelaide counselling service](#)

[University of South Australia counselling service](#)

[Flinders University counselling service](#)

[Equal Opportunity Commission \(SA\)](#)

[Legal Services Commission of SA](#)

[SA Police – Emergency assistance \(including ambulance\): phone 000; non-urgent police assistance: phone 131 444](#)

Policy Review

This policy will be reviewed on an annual basis each year, prior to publication in the student Handbook, to ensure that it is compliant with best practice management and the College's legal obligations.

This policy may be reviewed and revised at other times also.