

SEXUAL MISCONDUCT POLICY AND RESPONSE PROCEDURES – STAFF AND CONTRACTORS

If you need help or support, contact one of more of the following:

- Head of College, Professor Don Markwell AM
- Business Manager, Mrs Sara Ware
- Dean, Mr Stuart Meldrum
- Director of Wellbeing, Ms Sally Cassidy
- Director of Learning, Dr Katrina Stats
- Adviser and Special Projects, Dr Rachel Buxton
- Chaplain, Rev'd Canon Stephen (Steve) Daughtry
- Human Resources team at Cater Care or Service FM (for employees of either of those companies)
- the independent support person on sexual misconduct, Ms Rebecca Abbott, who may be reached at 0432 998 188, or at abbottws@bigpond.com
- any of the external services listed at the end of this Policy, including Yarrow Place Rape and Sexual Assault Service: 1800 817 421 (toll free in SA). Yarrow Place provides a 24-hour crisis response service (medical and counselling services for recent sexual assault), professional counselling and the collection of forensic medical evidence upon request.
- National Sexual Assault, Domestic Family Violence Counselling Service 1800RESPECT (1800 737 732)
- SA Police: 000 (emergency), 131 444 (non-emergency)

OVERVIEW

In line with its values, St Mark's College is committed to fostering a safe, welcoming, respectful, and inclusive environment for all members of its community, including all who live, study or work at the College. The College also has a legal obligation under the *Sex Discrimination Act 1984 (Cth)* to take reasonable and proportionate measures to eliminate certain unlawful conduct, which includes sexual misconduct, as far as possible. This legal obligation is referred to as 'positive duty'. This document gives effect to that commitment and the implementation of positive duties by prohibiting all forms of sexual misconduct (including sexual harassment and sexual assault) and explaining how the College will respond to reports of sexual misconduct from and about members of the College community.

This version of the Policy applies specifically to St Mark's College staff and contractors. It sits alongside, and is parallel to, the student-facing 'Sexual Misconduct Policy and Response Procedures' which is published in the student Handbook and on the College website.

This document has two sections:

- Section A ('Sexual Misconduct Policy – Staff and contractors') sets out the St Mark's College policy in relation to sexual misconduct.
- Section B ('Sexual Misconduct Response Procedures – Staff and contractors') sets out how individuals making reports of sexual misconduct can expect the College to respond and offer support.

There is a list of definitions and a list of external support services at the end of the document.

Contract staff should also familiarise themselves with their employer's equivalent policies and procedures.

SECTION A: SEXUAL MISCONDUCT POLICY – STAFF AND CONTRACTORS

1. Statement of commitment

All members of the St Mark's College community have the right to be treated with dignity and respect, and to work, study, live, and participate in a safe environment.

The College takes very seriously its duty of care to do all it reasonably can to provide a safe environment for all, and takes a proactive whole-of-institution approach to promoting gender equality, respect, diversity, and inclusion.

St Mark's College prohibits sexual misconduct of any kind. Sexual misconduct includes sexual harassment and sexual assault, and is further defined below.

All College community members (including the College Board, students, and staff and contractors) are responsible for demonstrating a commitment to a safe and inclusive culture that does not tolerate sexual misconduct, including by role-modelling appropriate behaviours.

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

We are committed to:

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

We recognise that sexual misconduct can have traumatic and devastating impacts on people experiencing or witnessing such behaviour. We will treat people who report sexual misconduct with compassion, care, and understanding, and with timely, accessible, inclusive, and culturally-appropriate support.

Reports of sexual misconduct involving children will be handled in accordance with the Children and Young People (Safety) Act 2017.

2. Application

This Policy (taken together with the parallel, student-facing 'Sexual Misconduct Policy and Response Procedures') is binding on all St Mark's College staff and contractors, students, visitors and guests on College grounds. It is also binding on College staff and contractors, students, visitors and guests attending and/or participating in College or College-related events and activities, whether held on or outside College grounds. In some circumstances, at the College's discretion, it may apply in other contexts also. In all cases of reports of sexual misconduct being made to the College, the College will respond with compassion and provide appropriate support.

This Policy applies to all forms of sexual misconduct, including sexual harassment and sexual assault (see definitions below), perpetrated by, experienced by, or witnessed by anyone covered by this Policy.

Contract staff are required to comply both with this Policy and with their employer's equivalent policies and procedures.

In responding compassionately to reports of sexual misconduct, the College will determine if the matter is most appropriately handled under this College Policy or under the student-facing equivalent Policy or under the policies of the contractor's employer or under some other policy or process.

Reports regarding historical incidents of sexual misconduct that involve an individual who was a student or staff member of the College at the time the incident(s) occurred will be accepted and managed by the College in accordance with this Policy and Response Procedures or the student-facing 'Sexual Misconduct Policy and Response Procedures', as far as is reasonably practicable.

3. Definition of sexual misconduct, including sexual harassment

For the purpose of this Policy, sexual misconduct means any behaviour or act of a sexual nature that a person does not consent to, including:

- i. **sexual harassment:** see definition below;

- ii. **sexual assault:** sexual activity that occurs without the consent of the other (non-assaulting) party. This includes:
 - a. **unwanted penetration:** the unwanted penetration of a person's vulva or anus by any part of the body of another person (including their fingers) or by any object;
 - b. **unwanted oral sex:** unwanted insertion of the penis into the mouth of another person, or the use of the tongue or the lips on the vulva, penis, scrotum or anus of another person;
 - c. **unwanted sexual touching:** unwanted kissing or touching a person's body in a sexual manner, including unwanted touching of a person's breast or chest, bottom or genitals;
 - d. **stealth:** taking off or tampering with a condom before or during sex without the other person's knowledge and therefore without their consent;
- iii. **other unwanted sexual acts:** doing, or making another person do, an unwanted act of a sexual nature, including flashing (showing another person one's breasts, bottom, or genitals), masturbating, pretending to masturbate, or sending an unwanted still or moving image of a person's genitals;
- iv. **voyeurism:** observing a person who is undressed, using the toilet, showering, bathing, or engaged or apparently engaged in a sexual act, without their consent;
- v. **stalking:** conduct connected to or arising from a current, past or desired sexual relationship or sexual attraction that could reasonably be expected to make a person feel frightened or apprehensive, including following another person, loitering outside their College room or in or near another relevant space, interfering with their property, sending them offensive material, and communicating with them, or communicating to others about them;
- vi. **recording or distributing an intimate image** of another person without their consent, including images of a person who is undressed, using the toilet, showering, bathing, or engaged or apparently engaged in a sexual act, or the like. Images may be still or moving, real or fabricated, and may be distributed in person, or by electronic, digital or other means.

Threatening to engage in any of the above conduct may also constitute sexual misconduct.

Sexual misconduct does not include consensual sexual activity between adults. Any person engaging in sexual activity must ensure that the other person agrees to engage in the sexual activity. See definition of consent below. However sexual activity or sexual relationships between students and staff members or contractors are not permitted by the College, even if consent has been given. Likewise, sexual activity or sexual relationships between conference guests and staff members or contractors are not permitted by the College, even if consent has been given.

Sexual harassment means an unwelcome sexual advance, an unwelcome request for sexual behaviours, or other unwelcome conduct of a sexual nature, in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

Sexual harassment is unlawful under State and Commonwealth anti-discrimination legislation.

Sexual harassment can be verbal, non-verbal, graphic or physical. It can occur through email, text, messaging, social media posts, and other forms of electronic communication.

Sexual harassment includes but is not limited to:

- i. unwelcome touching, hugging or kissing;
- ii. inappropriate staring or leering;
- iii. sexual gestures;
- iv. sexually suggestive comments or jokes;
- v. displaying, sending, or requesting sexually explicit or suggestive pictures or images;
- vi. repeated or inappropriate invitations to go out or 'hook up';
- vii. intrusive questions about a person's private life or physical appearance;
- viii. requests or pressure for sexual intercourse, or other sexual acts.

4. Definition of consent

For the purposes of this Policy, consent means informed consent, freely and voluntarily given, to that sexual activity at that time with that person.

A person is free to withdraw their consent at any time prior to or during sexual activity, for any reason.

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, or otherwise unable, to say no or refuse or resist (this includes because of an actual or perceived power imbalance, for example due to position, age or seniority; because of an explicit or implied threat of force to the person or to another person; or because of an explicit or implied threat to denigrate, humiliate, disgrace or harass the person or another person).

Consent needs to be given and received every time – agreement to engage in sexual activity at one time is not agreement to engage in sexual activity at any other time. Consent cannot be assumed between people in a relationship.

Consent has to happen at every step: agreement to one sexual activity is not agreement to any other sexual activity. Consent can also be withdrawn at any stage. Showing interest is not consent – giving someone attention, agreeing to go on a date or flirting with them is not 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 other person might not be consenting, or
- not giving any thought to whether or not the other person is consenting.

Sexual activity or sexual relationships between students and staff members or contractors are not permitted by the College, even if consent has been given. Likewise, sexual activity or sexual relationships between conference guests and staff members or contractors are not permitted by the College, even if consent has been given.

5. Reports of sexual misconduct

Those affected by sexual misconduct associated with current students or staff members or contractors have the right to decide if they want to report the matter to the College or not.

Instances of sexual misconduct reported to the College will be handled discreetly and fairly, and with compassion, care, and understanding.

Reports will be treated by the College either as ‘disclosures’, where the individual making the report is not seeking that the College take direct action in response to the report; or as ‘complaints’, where the individual making the report is seeking direct action by the College. It is up to the individual to decide if they would like their report to the College to be treated as a disclosure or a complaint. The College will support them to change the status of their report at a later point should they wish to do so, and where it is reasonably practicable to do so.

Reports can be made anonymously, and will be treated by the College as disclosures.

Further information about disclosures and complaints – including how such reports will be managed, and the supports available – is set out below in ‘Section B: Sexual Misconduct Response Procedures – Staff and contractors’.

The College will make support available to students, staff member or contractors who are parties to reports of sexual misconduct, including respondents to complaints of sexual misconduct, by referring them to counselling, medical, Police, advocacy and other specialist services, as appropriate.

Reporting to external agencies, including SA Police, is not governed by this Policy, but this Policy is not intended to preclude or inhibit in any way any reporting to any external agency.

Contract staff have the option of making a report to their employer’s Human Resources team. The College can provide guidance about how to make such a report.

Students have the option of going to their university (the University of Adelaide, University of South Australia and/or Flinders University) regarding alleged sexual misconduct by another student of that university. The College can provide guidance about how to make such a report, and contact details for each university are provided at the end of this document.

6. Procedural fairness

Where there is a complaint of sexual misconduct the College will treat complainants and respondents in accordance with accepted principles of procedural fairness.

The College will respect the rights of complainants and respondents throughout any investigation and disciplinary processes. Complainants and respondents will have a reasonable opportunity to state or respond to a complaint orally and in writing, and to provide any documents or other evidence relevant to the complaint.

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 student, staff member, or contractor who has been accused of sexual misconduct.

For the purposes of its own investigation and disciplinary processes, the College applies an appropriate standard of proof.

7. Confidentiality – general

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

The College will treat disclosures and complaints as confidential, and will not disclose information contained in a report of sexual misconduct without the consent of the person who made the report unless:

- i. the disclosure is of de-identified information only;
- ii. the disclosure is necessary to address a serious risk to health or safety, or fulfil the College's duty of care;
- iii. the report involves a person under 18 years of age at the time or a vulnerable person;
- iv. the College is otherwise required to do so in order to meet its legal obligations; or
- v. the disclosure is for the purposes of managing or investigating a report of sexual misconduct.

Information may be shared between senior members (i.e., senior staff or similar) of the College on a need-to-know basis.

Where a report of sexual misconduct has been made against a contractor, the College will ordinarily inform the contractor's employer of the fact of the report.

Those involved in providing support should, where possible, seek the consent of the individual for the onward disclosure of relevant information to those with a 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.

Any member of staff to whom a report of sexual misconduct is made is required, at minimum, to provide de-identified notice of the report to the Head of College.

Any student leader to whom a report of sexual misconduct is made is required, at minimum, to provide de-identified notice of the report to the Director of Wellbeing, the Dean, or the Head of College.

In order to ensure a procedurally fair investigation can be conducted, complainants and respondents are required to treat complaints of sexual misconduct as confidential pending the outcome of any College investigation and associated disciplinary process. Except as otherwise stated in this Policy, complainants and respondents must not disclose or discuss information about the complaint or the investigation except to obtain support from a support person (such as a family member, friend, student leader (in the case of the person being supported being another student), staff member, university caseworker, qualified counsellor), a representative (such as a lawyer), or an external organisation (such as the Police, or the Office of the Commissioner for Equal Opportunity).

Obligations to maintain confidentiality extend to support persons and representatives, and any other parties involved in a complaint (including any witnesses from whom evidence may be sought as part of any investigation).

The College will inform the complainant and the respondent of the outcome of any sexual misconduct investigation on a confidential basis.

Unnecessary disclosure of information regarding any disclosure or complaint and/or processes relating to a complaint of sexual misconduct may result in disciplinary action.

8. Confidentiality – substantiated complaints

Where a complaint has been investigated by the College, or where a court has made a finding, and some or all allegations have been substantiated, certain aspects of the confidentiality obligations set out above will cease to apply. In particular:

- i. the College will no longer require the complainant to keep confidential their own identity and the identity of the respondent, any information provided by them that relates to those parts of the complaint that were proven, and the outcome of the substantiated aspects of the complaint; and
- ii. the College will no longer require the respondent to keep confidential their own identity, any information they provided the investigation that relates to those parts of the complaint that were proven, and the outcome of the substantiated aspects of the complaint. They must not disclose the identity of the complainant.

These confidentiality obligations are in addition to any other obligation individuals may have at law. Disclosure of information about complaints may expose individuals to legal risk and/or may compromise any external investigation or legal proceeding that may arise in relation to the alleged sexual misconduct.

For legal and other reasons, the College will not make a public announcement of the outcome of a sexual misconduct complaint.

The College may, under exceptional circumstances, disclose information about the outcome of a complaint of sexual misconduct in accordance with its legal obligations; to defend its legitimate legal interests; in accordance with the Sexual Misconduct Response Procedures; and in de-identified reports which cannot be used to identify any of the participants to the complaint.

The College will not ask complainants under this Policy to sign a non-disclosure agreement.

9. De-identified reports

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 reported anonymously or confidentially or without all of the details.

In such cases, the College will use the de-identified report (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 all 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 report of sexual misconduct is made confidentially or anonymously is required, at minimum, to provide de-identified notice of the report to the Head of College. Likewise, any student leader to whom a report of sexual misconduct is made is required, at minimum, to provide de-identified notice of the report to the Director of Wellbeing, the Dean, or the Head of College.

Where a report has been made against a contractor, the College will ordinarily inform the contractor's employer of the fact of the report.

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

10. Victimisation

The College is committed to protecting 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 action or the threat of such action as a consequence of making a report, providing information about a report, participating in an investigation of a report, or supporting another person who has made a report of sexual misconduct; or it is suspected that they have done or may do any of the above.

11. 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 sexual misconduct 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.

12. Disciplinary action

The College may take disciplinary action against any person who breaches this Policy. There are likely to be serious consequences, which may include exclusion from the site or the team or termination of employment or of a contract, in the case of complaints of sexual misconduct which are substantiated.

13. Readmission to the College

Readmission of a student from one year to the next (or, in the case of single-semester students, from one semester to the next) is at the absolute discretion of the Head of College. Information obtained through reports of sexual misconduct or through inquiries arising from reports may be considered in the exercise of this discretion, including in the Head of College's consideration of the impact of a student's behaviour and any risk to others.

14. Recordkeeping and reporting

The College will keep appropriate records of all disclosures and complaints of sexual misconduct in a secure location.

The College will collect, store, and use de-identified information about disclosures and complaints made under this Policy to identify trends and to develop targeted responses to sexual misconduct in the College community.

Access to information relating to a disclosure or complaint of sexual misconduct will be restricted to staff and Board members who have a need to access and use the information in order to carry out their responsibilities under this Policy and Response Procedures, relevant professional advisers to the College, and university or other authorities in accordance with the College's obligations.

SECTION B: SEXUAL MISCONDUCT RESPONSE PROCEDURES – STAFF AND CONTRACTORS

This Section (Sexual Misconduct Response Procedures – Staff and contractors) is to be read in tandem with Section A (Sexual Misconduct Policy – Staff and contractors). It supports and gives effect to the Policy.

The Procedures set out here apply to all disclosures and complaints of sexual misconduct made under the Sexual Misconduct Policy. They explain how such reports will be managed by the College and the supports available.

In responding compassionately to a report of sexual misconduct, the College will determine if the matter is most appropriately handled under this College policy or under the student-facing equivalent policy or under the policies of the contractor's employer or under some other policy or process,

1. Seeking support – within the College

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

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

Anyone can provide support – a relative, a friend, or other trusted person. Within College, the following people have received appropriate training in this area, and anyone who has experienced or witnessed sexual misconduct (or who is providing support to someone else) can seek help and support from these people at any time:

- Head of College
- Business Manager
- Dean
- Director of Wellbeing
- Director of Learning
- Adviser and Special Projects
- Chaplain

In addition, the College has appointed an independent external support person and consultant on sexual misconduct: Ms Rebecca Abbott, a social worker with extensive experience in crisis counselling and support for victim-survivors.

Rebecca provides an external, confidential service for any College student or staff member or contractor who has experienced sexual misconduct in any context at any time, or who is aware of it, and wishes to report it or to seek independent advice and support. Rebecca may assist you either in handling the matter within College, or in approaches to external agencies (including for counselling).

The College's priority is the health, safety and wellbeing of the person who has experienced or witnessed sexual misconduct, and the most important thing is to ensure that they are safe and supported. What and how much they disclose is up to them.

The College acknowledges that disclosure of sexual misconduct can be traumatic for those providing support. They may also seek support from others, such as those listed above, but not in such a way that inappropriately jeopardises the confidentiality of those involved.

The individual affected may ask the person who is providing them with support to keep the matter confidential, and that must be respected, except to the extent that the person providing support may need to disclose details in order to protect any person from a risk to safety, health or wellbeing, or otherwise fulfil the College's duty of care. Further information about confidentiality is provided in Section A.

In addition to the support available within the College, there are also specialist external support services available – please see the list at the end of this document.

Contract staff have the option of making a report to their employer's Human Resources team. The College can provide guidance about how to make such a report.

2. Making a report

Those affected by sexual misconduct that falls within the scope of the Policy have the right to decide if they want to report the matter to the College or not.

An individual can make a report of any incident of sexual misconduct to the Business Manager, the Director of Wellbeing, the Dean, the Director of Learning, or the Head of College, in person or over the phone or in writing:

- **Business Manager:** Mrs Sara Ware
 - 8334 5604
 - sara.ware@stmarkscollege.com.au
- **Director of Wellbeing:** Ms Sally Cassidy
 - 8334 5613
 - sally.cassidy@stmarkscollege.com.au
- **Dean:** Mr Stuart Meldrum
 - 8334 5608
 - stuart.meldrum@stmarkscollege.com.au
- **Director of Learning:** Dr Katrina Stats
 - 8334 5614
 - katrina.stats@stmarkscollege.com.au
- **Head of College:** Professor Don Markwell AM
 - 8334 5600
 - don.markwell@stmarkscollege.com.au

The College is committed to providing compassionate, discreet, and non-discriminatory support to those who report sexual misconduct.

Reports will be treated by the College either as 'disclosures', where the individual making the report is not seeking that the College take direct action in response to the report; or as 'complaints', where the individual making the complaint is seeking direct

action by the College. Further information about each of these options is provided below.

Individuals who make reports will be provided with the opportunity to identify whether they are making a disclosure or a complaint. The College will support them to change the status of their report at a later point should they wish to do so, and where it is reasonably practicable to do so.

Reports can be made anonymously (i.e. without any member of staff of the College knowing the identity of the person making the report). Anonymous reports will be treated by the College as disclosures. The College is likely to be limited in the action it can take to support the individual where a report is made anonymously.

On receiving a report under these Procedures, the College will take appropriate steps to ensure that the individual making the report and (where that individual is not the person who experienced the reported sexual misconduct) any person affected are made aware of the supports available to them, and are assisted to access those supports as needed.

The following supports and information will be made available to any individual who makes a report of sexual misconduct to the College to which this policy is relevant:

- i. Information about the College's 'Sexual Misconduct Policy and Response Procedures – Staff and contractors' (or, if more appropriate, the student-facing equivalent), including the option for their report to be treated as a disclosure or a complaint, and information about what each of these options entails;
- ii. Assistance, if required, in making a disclosure or complaint;
- iii. Information about other support services that are available, including from the Business Manager, the Director of Wellbeing and the Chaplain, counselling and medical services, Yarrow Place, and other services such as the independent external support person, Ms Rebecca Abbott – see also the list of support services provided at the end of this document;
- iv. Information, where appropriate, about external reporting options, including making a report to SA Police, and assistance to do so where required;
- v. Information, in the case of a contractor making a report, about how to report the incident to the contractor's employer if the individual wishes, and assistance to do so where required;
- vi. Information, where appropriate, about how to report the incident to the student's university (the University of Adelaide, University of South Australia and/or Flinders University) if the individual wishes, and if the incident relates to sexual misconduct by another student of that university;
- vii. Information about how confidentiality will be managed in relation to the report (see information about confidentiality in Section A).

Referrals to counselling support services will be offered, irrespective of whether the individual wishes to take the matter further.

3. Disclosures of sexual misconduct

Disclosures are where the individual making a report of sexual misconduct is seeking support, or wants the incident reported, but is not seeking that the College take direct action in response to the report. Disclosures can be made by anyone who has experienced, witnessed, or has knowledge of sexual misconduct associated with current students or staff members.

A staff member, student leader (in the case of the person being supported being another student) or other support person may assist an individual to make a disclosure.

Disclosures can be an opportunity for an individual to talk to someone about what has happened/what is happening, how they feel, and what help and support they may need, without having to make a complaint.

The College will make support available to all College students, staff members or contractors who are parties to a disclosure of sexual misconduct, including by referring them to counselling, medical, Police, advocacy and other specialist services, as appropriate.

Individuals should make a disclosure (rather than a complaint) of sexual misconduct if they do not wish the College to take any specific action in relation to the incident – for example, they do not want the College to address the matter with the respondent in response to their report. They may later change the status of their report to a complaint if they wish to do so, and it is reasonably practicable to do so.

The College will treat all disclosures confidentially, and will ordinarily not investigate a disclosure unless:

- i. there appears to be a risk to the health or safety of the individual or another person; or
- ii. one or more other individuals name the same perpetrator in a separate incident disclosure and the College is concerned that there may be a risk to the health or safety of any person; or
- iii. the matter involves a person under 18 years of age at the time or a vulnerable person.

Under such circumstances the College will ask the individual who has made the disclosure if they would be prepared to make a complaint, or will otherwise inform them of the intention of the College to investigate.

Individuals can elect to make disclosures anonymously. However, the College is unable to provide support to individuals who choose to make their disclosure anonymously, and is likely to be limited in the action it can take. The information will still be used for the purposes of the College's risk identification, assessment and prevention strategies.

As with non-anonymous disclosures, there may also be situations in which, where a disclosure has been made anonymously, the implications for the individual(s) actually or potentially affected are serious. In all cases, the College (as part of its 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 to protect any person from a risk to safety, health, or wellbeing.

4. Complaints of sexual misconduct

Complaints are where the individual making a report of sexual misconduct under the Sexual Misconduct Policy wants the College to take direct action in response to the report.

A staff member, student leader or other support person may assist an individual to make a complaint, including being with the complainant when the complaint is made. However, an individual cannot make a complaint of sexual misconduct on behalf of another person because the College cannot be sure that the complainant wants that formal step to be taken.

Any staff member supporting a complainant in relation to a complaint will usually be excluded from having any role in investigating or making decisions about the College's management of the complaint.

Once a complaint has been received by the College, the process as set out below will be followed.

The College's commitment to procedural fairness is set out above, in Section A.

5. Initial assessment of a complaint

The Head of College, Business Manager, Dean, and/or Director of Learning (unless acting as a support person for the complainant) 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,
- determine if the matter is most appropriately handled under this College policy or under the student-facing equivalent policy or under the policies of the contractor's employer or in some other way, and/or

- assist in the effective implementation and progress of any subsequent investigation or disciplinary process (whether to be conducted by the College or a contractor's employer or an external agency).

The initial assessment may require the College to take precautionary measures, such as suspending the respondent while an investigation is taking place, or limiting contact between the parties concerned. Such action does not in any way prejudice or imply the outcome of any investigation. In the case of suspension, the College will ordinarily offer to arrange alternative accommodation for the respondent if they reside on site.

The Director of Wellbeing will not ordinarily be involved in the assessment, investigation, or disciplinary process arising from a complaint, but will be available to provide support to all involved, as may other members of staff, such as the Chaplain.

The Head of College, Business Manager, 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, in all cases the College (as part of its 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 to protect any person from a risk to safety, health, or wellbeing. This action may include referring the matter for investigation and/or action to SA Police or other external agency.

Where a report is made to the Police or other external agency, or to a university, or to a contractor's employer, this will not necessarily prevent the College from investigating or taking action in response to a complaint of sexual misconduct under its own policies and procedures. However, in order to protect the rights of the complainant and the respondent, any internal College process may be suspended pending completion of a criminal process. The College will continue to provide support to the complainant during this process, and precautionary measures may be taken to minimise risk of harm to individuals until any internal College process is completed.

It is the policy of the College that any resident member of the College who is charged by the Police or Director of Public Prosecutions (or equivalent in any jurisdiction) with a sexual or violent criminal offence will need to go out of residence. Any resident member of the College who is charged with any offence is required to inform the Head of College and Dean of this; failure to do so will itself be considered a serious disciplinary matter.

Any member of staff or contractor who is charged by the Police or Director of Public Prosecutions (or equivalent in any jurisdiction) with a sexual or violent criminal offence is required to inform the Business Manager or Head of College of this; failure to do so will itself be considered a serious disciplinary matter. The College retains the right to take lawful action which it considers appropriate in such a case.

If an individual makes a complaint of sexual misconduct by a visitor or other person over whom the College has no jurisdiction, the College may seek assistance from another organisation or refer the complaint to an external agency for resolution.

6. Investigation of a complaint

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.

In order to ensure a procedurally fair investigation can be conducted, complainants and respondents are required to treat complaints of sexual misconduct as confidential pending the outcome of any College investigation and associated disciplinary process. Confidentiality obligations are set out in full above, in Section A.

At all times during a formal investigation both the complainant and the respondent have the right to be accompanied at meetings by a support person, who may be a student member of the College (where the person being supported is also a student member of the College), or a member of staff of the College, or contractor (where the person being supported is also a contractor). Obligations to maintain confidentiality extend to support persons and representatives, and any other parties involved in a complaint (including any witnesses who may be interviewed as part of any investigation). The College may require a support person, if any, to be identified in advance of a meeting.

At no time will the complainant and respondent be required to meet with or to participate in any activity with one other, unless they have both given their prior informed consent.

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 three weeks, if possible. Both the complainant and the respondent will ordinarily 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.

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 assistance in accessing support services, and in assistance in dealing with external agencies where applicable.

The College will assist complainants and respondents to access support services (including counselling, medical, legal, advocacy and other specialist support services, as

appropriate), 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.

A complainant is free to change their mind about the complaint 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. In all cases, the College (as part of its 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 to protect any person from a risk to safety, health, or wellbeing.

7. Outcome of a complaint

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

College sanctions and disciplinary action are at the discretion of the Head of College, taking into account all relevant information and circumstances.

The College will inform the complainant and the respondent of the outcome of any sexual misconduct investigation on a confidential basis. Where possible both the complainant and the respondent will be informed of the outcome in person (separately), to allow them to ask questions and seek clarification about the effect of the outcome.

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

Support will continue to be made available to parties beyond the closure of the complaint, as required and appropriate.

The College's Board will act as a referral body should one of the parties wish to appeal the outcome in the event that the party wishing to appeal the outcome is a student. The Board will determine the form such a review will take (which is likely to be through a sub-committee of the Board), and inform the relevant parties and the Head of College.

Appeals to the Board are likely to succeed only if it is shown that there was a significant problem with the process applied, or a review on the merits shows that the decision was plainly wrong, or the penalty clearly disproportionate to the offence.

Outcomes of an appeal to the Board may include a reduction, maintenance, or increase of any penalties applied.

DEFINITIONS

For the purposes of this Sexual Misconduct Policy and Response Procedures – Staff and contractors:

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

complainant means a person who makes a complaint of sexual misconduct in accordance with this Policy and Response Procedures.

complaint means a report of sexual misconduct made to the College by an individual who wants the College to investigate or to take specific action in response to the incident.

consent means free, voluntary, and informed agreement to a given sexual activity at that time and with that person (see full definition in Section A, above).

contractor or contract staff means a person employed by a company or organisation which is contracted to provide service to or at the College.

disclosure means a report to the College of sexual misconduct, made by a person who is seeking support or wants the incident reported, who has not indicated that they want the College to investigate or to take specific action in response to the incident.

precautionary measures are measures taken in order to minimise the potential for harm to any person arising from a report of sexual misconduct. They are interim measures taken while a report is addressed and may include suspending a person from some or all parts of the College, or prohibiting a person from speaking with or approaching another person.

report means a disclosure or complaint of sexual misconduct made to the College.

respondent means a person whose conduct is the subject of a complaint of sexual misconduct.

sexual activity means any activity of a sexual or intimate nature.

sexual assault has the meaning given in Section A, above.

sexual harassment has the meaning given in Section A, above.

sexual misconduct has the meaning given in Section A, above.

staff or staff member means an employee of the College, including a casual employee, and for the purposes of this Policy includes contract staff (except where clearly not included).

student means a student who is resident at St Mark's College. It includes a person who was a student at St Mark's College at the time that any misconduct took place.

support person means an individual who provides emotional support, and can be called upon to attend meetings with a complainant or respondent, but may not advocate for, act or speak on behalf of the complainant or respondent.

trauma-informed means understanding, recognising, and responding to the impact of trauma, and emphasising physical, psychological, and emotional safety and the importance of choice for individuals who have experienced sexual misconduct.

SEEKING SUPPORT – OTHER SOURCES

Aside from the sources of support available at College, there are many other support services for anyone affected by sexual misconduct.

Staff at the College can help anyone affected to access these services.

Support may also be sought from the independent support person on sexual misconduct, Ms Rebecca Abbott, who may be reached at 0432 998 188, or at abbottws@bigpond.com

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

Further information is available on their website about the following areas:

- Information about a [forensic medical examination](#). 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. 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.
- [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): (08) 7322 7070

Legal Services Commission of SA: 1300 366 424

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

ACKNOWLEDGEMENTS

With thanks to University of Adelaide ‘Sexual Misconduct Policy’ and ‘Sexual Misconduct Response Procedures’, and University of Sydney ‘Student Sexual Misconduct Policy’.

POLICY REVIEW

This Policy and Response Procedures will be reviewed on an annual basis to ensure that it is compliant with best practice management and the College’s legal obligations. The Policy and Procedures may be reviewed and revised at other times also.

Policy created: January 2024

Policy authorised by: Head of College

Date to be reviewed: January/February 2025