Student Sexual Assault and Sexual Harassment Prevention and Response Policy

****In order to support students and staff and ensure their safety during the period of significant disruption caused by the COVID-19 pandemic, any meetings required under this policy should proceed using an agreed communication medium, such as videoconference or teleconference. Face to face meetings should be avoided due to the risk of coronavirus transmission****

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OVERVIEW

The University of Adelaide provides Students with a safe environment which promotes the respect of each member of the University community. Sexual Assault or Sexual Harassment against any Student or member of the University community is unacceptable. Any reported Sexual Assault or Sexual Harassment will be taken seriously, investigated and may constitute Misconduct.

The University promotes an environment that is free from Sexual Assault and Sexual Harassment. In support of that commitment, the University takes steps to increase awareness of Sexual Assault and Sexual Harassment, provides support for survivors, investigates all Reports of Sexual Assault and Sexual Harassment, and deals fairly with all parties. Where investigations find that an incident of Sexual Assault or Sexual Harassment has occurred the University will take appropriate action.

This policy supports the University's framework for dealing with Student Misconduct, which consists of the Statute Chapter 3 – of Student Misconduct (the Statute), the Student Misconduct Policy, the Student Misconduct Rules, the Student Behaviour and Conduct Procedure, and the Student Charter (together the "**Student Misconduct Framework"**). Alleged misconduct by staff or titleholders is managed under the University of Adelaide Enterprise Agreement (as amended) (staff) or the Titleholder Conferral of Honorary Roles Procedure (titleholders).

SCOPE AND APPLICATION

This policy applies to University of Adelaide Students, regardless of their location or study mode, who wish to Report Sexual Assault or Sexual Harassment by current Students, staff members or titleholders in relation to University Related Conduct.

Allegations of Sexual Assault or Sexual Harassment involving staff or titleholders (excluding Students) will be referred to Human Resources and the relevant Area Manager to be investigated and/or managed.

Past Students who report an incident of Sexual Assault or Sexual Harassment which occurred when they were a Student will be provided with information and referred to support services by the University. Past Students should be aware that the University may be limited in any investigative actions it can take.

OUTSIDE SCOPE

The University will not be in a position to investigate allegations of Sexual Assault or Sexual Harassment made against people who are not Students, staff or titleholders, or incidents not connected to University Related Conduct. The University will, however provide support and information to Students who disclose or report Sexual Assault or Sexual Harassment and will support them if they wish to report their experience to the police.

POLICY PRINCIPLES

1. The safety and wellbeing of all Students is of paramount importance and priority to the University regardless of their location or study mode.

2. The University has zero tolerance for Sexual Assault or Sexual Harassment.

3. The University supports all Students who are parties to Reports of Sexual Assault or Sexual Harassment including facilitating access to relevant counselling, medical, police or legal services.

4. The University works to promote and encourage a culture of safety and respect.

5. The University respects the rights of Students to privacy and confidentiality.

6. The University supports the right of Students who have experienced Sexual Assault or Sexual Harassment to choose whether they want to make a Report to the University or make an External Report.

7. The University treats individuals fairly, impartially, and with compassion and empathy, while adhering to the principles of Procedural Fairness in proceedings or decisions under this policy.

8. The University monitors and reviews Disclosures and Reports made under this policy to identify patterns of recurring incidents and takes actions to mitigate future risks.

PROCEDURE

This policy is to be read in conjunction with the Student Sexual Assault and Sexual Harassment Procedure.

DEFINITIONS

Alleged Offender means a person about whom a complaint of Sexual Assault or Sexual Harassment is made as part of a Report.

Complainant means a person who makes a Disclosure or a Report.

Consent[1] means freely and voluntarily agreeing to sexual activity. It also means taking responsibility for ensuring the other person is comfortable and agrees to engage in sexual activity. A person is taken not to have consented to sexual activity if:

- the person agrees because there has been force applied (this includes an express or implied threat of force to the victim or to another person) or because of a threat to denigrate, humiliate, disgrace or harass the person or another person; or
- the person was unlawfully detained at the time of the activity; or
- the activity occurred whilst the person was asleep or unconscious; or
- the activity occurred whilst the person was intoxicated to the point of being incapable of freely and voluntarily agreeing; or
- the activity occurred whilst the person was affected by a physical, mental or intellectual condition or impairment such that they were incapable of freely or voluntarily agreeing; or
- the person is unable to understand the nature of the activity; or

[1] **Consent** is defined in section 46 of the *Criminal Law Consolidation Act 1935 (SA)* ("CLCA").

- the person agrees to engage in the activity with a person under a mistaken belief as to the identity of that person; or
- the person is mistaken about the nature of the activity (for example, a person is taken not to freely and voluntarily agree to sexual activity if they agree to engage in the activity in the mistaken belief that the activity is necessary for the purposes of medical diagnosis, investigation or treatment, or for the purpose of hygiene).

Consent cannot be given by a person under the age of 18 years in a case where the accused is the guardian, teacher, religious leader, or in certain other positions of authority over the alleged victim.

Disclosure means the sharing of information regarding Sexual Assault or Sexual Harassment to members of University staff. Disclosures will be recorded without the identity of the Complainant or any details that may suggest the identity of any person involved in the incident/s for the purposes of the University's risk identification, assessment and prevention strategies.

External Report means a report to the police and/or external agency.

Misconduct as defined under Statute Chapter 3 – of Student Misconduct.

Procedural Fairness is the procedural requirement to ensure that a standard of fairness is applied in the investigation and adjudication of a dispute. This involves:
- fully informing a person of any allegation/s made against them;
- giving them the opportunity to state their case, provide an explanation or put forward their viewpoint;
- conducting a proper investigation of the allegations, ensuring that all parties are heard and that all relevant submissions are considered, with reasons given for any decision;
- permitting Complainants and Alleged Offenders to be accompanied to any meeting by a support person;
- acting fairly, impartially and without bias; and
- declaring any real or potential conflict of interest.

Reasonable Measures are arrangements or adjustments that may be implemented on a case-by-case basis where a Disclosure or Report has been made in order to minimise the potential for harm to any person.

Report means the sharing of information regarding an incident of Sexual Assault or Sexual Harassment to the University for the purpose of accessing support, Reasonable Measures and initiating further action such as an investigation.

Sexual Assault is an inclusive term used to describe any sexual behaviour to which a person does not give Consent to. In South Australia, the following criminal offences - reckless indifference, rape, compelled sexual manipulation, unlawful sexual intercourse (sex with people under the age of consent), indecent assault, grooming, and stalking[2] - are all forms of Sexual Assault.

Sexual Harassment[3] is any unwelcome conduct of a sexual nature, where it is reasonable to expect that the other person would be offended, afraid or humiliated. Sexual Harassment can be verbal, non-verbal, written, graphic or physical. Examples of Sexual Harassment include:
- making remarks about a person's appearance or attractiveness;
- asking a person questions about their relationship or sexual activity;
- sending emails with sexual content;
- showing a person pornographic pictures e.g. on a phone or computer;
- unnecessarily touching the person.

Student is defined in the Statute.

Trained Responders are the people who are trained to assist Students to access support and Reasonable Measures and to make Disclosures or Reports of Sexual Assault and Sexual Harassment.

[2] The following terms have the meaning ascribed to each of them in the CLCA: **reckless indifference** (section 47), **rape** (section 48), **compelled sexual manipulation** (section 48A), **unlawful sexual intercourse** (section 49), **indecent assault** (section 56), **grooming** (section 63B), and **stalking** (section 19AA).
[3] **Sexual harassment** is defined in the *Sexual Harassment (Equal Opportunity Act (SA), section 87;* and the *Sex Discrimination Act 1984 (Cth), section 28A.*

University Related Conduct means any conduct that is connected to the University, including conduct that occurs:

- during, or in connection with, any function, activity or event related to University (whether sanctioned by University or otherwise);
- when a person is representing University in any capacity;
- during, or in connection with, the performance of duties for University;
- using, or is facilitated by, University ICT resources or other equipment; or
- on, or in connection with, any property owned, leased or occupied by the University (or any entities it controls) or any lands or roads within any University campus.

RMO File No.	2018/9612
Policy Custodian	Deputy Vice-Chancellor and Vice-President (Academic)
Responsible policy officer	Executive Director, Division of Academic and Student Engagement
Endorsed by	Vice-Chancellor's Executive on 9 October 2019
Approved by	Vice-Chancellor and President on 26 November 2019
Related Documents and Policies	*Behaviour and Conduct Policy* *Child-Safe Environment Policy* *Code of Conduct* *Equal Opportunity Policy* *Harassment and Workplace Bullying Information Sheet* *Privacy Policy* *Safer Campus Community Statement of Rights* *Statutes of the University* *Student Behaviour and Conduct Procedure* *Student Charter* *Student Critical Incidents Policy* *Student Critical Incidents Procedure* *Student Misconduct Policy* *Student Misconduct Rules* *University of Adelaide Enterprise Agreement* *University Records Policy*
Related Legislation	*Children and Young People (Safety) Act 2017* *Criminal Law Consolidation Act 1935 (SA)* *Higher Education Standards Framework (Threshold Standards) 2015* *Sex Discrimination Act 1984 (Cth.)*
Superseded Policies	
Effective from	26 November 2019
Review Date	25 November 2022
Contact for queries about the policy	Manager, Student Affairs