

# Sexual Misconduct –Policy

## (as adopted from the UQ Sexual Misconduct – Policy)

Should you have experienced sexual misconduct at St Leo's College, the College wants you to know that it will support you in bringing your allegation to the attention of the College's administrative team.

St Leo's has zero tolerance of sexual misconduct. It prides itself on being a welcoming, inclusive and safe place and wants Residents, Guests and Staff alike to feel valued and respected as they set about their business at St Leo's.

St Leo's will immediately investigate any allegation you bring to its attention and if you wish, support you in your elevating your complaint to the attention of statutory agencies.

### 1.0 Purpose and Scope

The University of Queensland (UQ or the University) is committed to promoting and fostering a University environment that is safe, respectful and free from all forms of Sexual Misconduct. Subject to what follows, this Sexual Misconduct Prevention and Response Policy (**Policy**) outlines the principles and key requirements governing UQ's approach to preventing, addressing and responding to Sexual Misconduct, which is unwelcome behaviour of a sexual nature without Consent. It includes behaviour that could amount to a Sexual Offence and/or Sexual Harassment. This Policy is to be read in conjunction with the Sexual Misconduct Prevention and Response for Students Procedure and the Sexual Misconduct Prevention and Response for Staff Procedure (**Procedures**).

UQ is committed to providing Support to all members of the UQ Community who have experienced, witnessed or otherwise been exposed to Sexual Misconduct. This Policy applies to all members of the UQ Community, including all students and staff, whether or not those staff are covered by the Enterprise Agreement. Together with the Procedures, this guides our intent to promote and foster an environment where members of our community are supported to make disclosures and seek assistance through a Trauma-Informed approach.

This Policy and the Procedures do not govern disciplinary processes in relation to staff or students who are alleged to have engaged in Sexual Misconduct. Those processes are governed by the University's Disciplinary Framework. This Policy and the Procedures deal with UQ's prevention of and response to Sexual Misconduct outside the Disciplinary Framework.

### 2.0 Principles and Key Requirements

The following principles reflect UQ's commitment to preventing all forms of Sexual Misconduct, supporting members of the UQ Community who are affected by Sexual Misconduct, and responding appropriately and sensitively when Sexual Misconduct occurs.

1. UQ prohibits all forms of Sexual Misconduct, and requires all members of the UQ Community to comply with this prohibition.
2. UQ acknowledges that education and awareness are important aspects of prevention and is committed to educating the UQ Community to assist in the prevention of Sexual Misconduct in the UQ Community.
3. All members of the UQ Community are required to take all reasonable steps to maintain a safe and respectful environment at or related to UQ.
4. Members of the UQ Community, particularly supervisors and managers, will be made aware of the responsibility they have in responding appropriately when they receive information regarding Sexual Misconduct, particularly taking account of Trauma-Informed approaches.

5. Procedures supporting this Policy are to be Trauma-Informed.
6. UQ acknowledges that Sexual Misconduct may include conduct which would also amount to a Sexual Offence if proven in a court exercising criminal jurisdiction. The University does not have jurisdiction to determine criminal responsibility and does not make findings in terms of criminal responsibility, including as to whether a Sexual Offence has occurred. However, the University can and will determine whether alleged Sexual Misconduct amounts to 'general misconduct', 'misconduct' or 'serious misconduct' (as the case may be) pursuant to the Disciplinary Framework. UQ can and will take action in respect of breaches of its rules, policies and procedures pursuant to its Disciplinary Framework. UQ will cooperate with and, where provided for in the Procedures, report matters to the police or other external agencies.
7. The safety, welfare and support of the UQ Community is paramount. UQ recognises that any Sexual Misconduct is likely to have an adverse impact on members of the UQ Community, and is committed to providing Support to those affected.
8. UQ will implement options for Support and Formal Reports that are simple, accessible and available through multiple avenues.
9. UQ will bring sensitivity and timeliness when providing Support and responding to Formal Reports.
10. Confidentiality and information privacy will be upheld where possible, in accordance with legislative requirements and UQ policies and procedures.
11. UQ does not tolerate Victimisation.
12. UQ recognises that Sexual Misconduct may be experienced by all people regardless of their sexuality or gender identity.
13. A Formal Report of Sexual Misconduct may attract protections under the *Public Interest Disclosure Act 2010* (Qld) and UQ's Public Interest Disclosure Policy and Procedures.

### **3.0 Roles, Responsibilities and Accountabilities**

Human Resources, Student Affairs, Academic Services, and the Sexual Misconduct Support Unit coordinate UQ's provision of Support and carry out other matters as specified in this Policy and the Procedures.

Human Resources, Student Affairs, and Academic Services are responsible for resourcing and supporting the work of the Sexual Misconduct Support Unit, and implementing this Policy and the Procedures, including providing Support and responding to Formal Reports.

### **4.0 Monitoring, Review and Assurance**

Human Resources, Student Affairs, and Academic Services are responsible for ensuring that this Policy and the Procedures are reviewed routinely and in response to any concerns or issues raised by members of the UQ Community. Edits and updates can be made to the Procedures to ensure their ongoing relevance, effectiveness and compliance with law.

### **5.0 Recording and Reporting**

#### **5.1 Confidentiality and Privacy**

1. Information relating to offers or requests for Support or Formal Reports will be:
  - a. recorded and kept confidential by UQ, and only used by UQ to take action as described in the Policy and the Procedures, to de-identify the information for

statistical reporting (as described further below) or otherwise to comply with the Policy and the Procedures or the law;

- b. kept separate from, and not linked to, the enrolment, employment or other engagement records of the Complainant, the Third Party Reporter, or any witness; and
  - c. accessible by the person who provided the information if they wish to later use it for the purposes of making a Formal Report or report to the police or other external agency.
2. UQ may use de-identified data relating to offers or requests for Support or Formal Reports for the purposes of monitoring patterns of Sexual Misconduct and to inform future prevention and education programs at UQ.
  3. Any personal information collected by UQ under the Procedures will be handled according to the Privacy Management – Policy and Procedure.
  4. Staff who have a role or responsibility under the Policy and the Procedures must keep confidential information relating to offers or requests for Support or Formal Reports, except insofar as necessary to:
    - a. take any action permitted by, or otherwise comply with, the Policy and the Procedures or the law;
    - b. make a report to the police or other external agency in accordance with the Procedures;
    - c. facilitate support from an immediate family member, or a staff or student representative, or to obtain medical or legal advice.

## **5.2 Reporting and Monitoring**

1. The Sexual Misconduct Support Unit will regularly report to the Chair of the Vice-Chancellor's Advisory Committee on Sexual Misconduct.
2. The Sexual Misconduct Support Unit will collate data relating to the use of the Policy and the Procedures.
3. The Sexual Misconduct Support Unit will work with Human Resources, the Integrity Unit, Academic Services Division, and Student Affairs to ensure that relevant de-identified data is recorded and reported to the Vice-Chancellor and Human Resources, Student Affairs, and Academic Services on a six monthly basis, including but not limited to:
  - a. the number and types of offers of Support made and requests for Support received;
  - b. the number and types of Formal Reports made;
  - c. the number and types of matters reported to the police or other external agency in accordance with subsection 3.4 of the Procedures;
  - d. whether further action was taken in response to Formal Reports, including the number referred for consideration pursuant to the Disciplinary Framework;
  - e. the number of investigations conducted;
  - f. time taken to respond to requests for Support and Formal Reports;

- g. any feedback provided by Complainants, Respondents, Third Party Reporters and witnesses;
- h. a summary of any patterns that emerge from the monitoring conducted, including any recommendations for further improving UQ's relevant policies and procedures; and
- i. any further statistics the Vice-Chancellor and/or Senate considers necessary from time to time.

## 6.0 Appendix

### 6.1 Definitions

**Complainant** – is a person who makes a Formal Report on their own behalf. It also includes a person on whose behalf a Formal Report is made by a Third Party Reporter. The University acknowledges that a person who has experienced sexual misconduct may refer to themselves as a complainant, discloser, victim or survivor.

**Consent** – Consent can only be freely and voluntarily given by a person with the cognitive capacity to do so.

'Consent' is the voluntary agreement to the act or acts in question and to continue to engage in the act or acts. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct.

- Consent can be withdrawn at any time including during the act or acts in question for any reason.
- Consenting to a sexual activity with an individual or individuals does not mean that consent is given for another sexual activity with an individual or individuals, and consent only applies to each specific instance of sexual activity.
- Circumstances in which a person does not consent to an act or acts include:
  - a. the person is asleep or unconscious;
  - b. the person is incapable of consenting;
  - c. the person submits to the act because of: force or the fear of force; threats or intimidation; fear of harm; exercise of authority; or false or fraudulent representations about the nature or purpose of the act; or
  - d. the person submits to the act because of false or fraudulent representation of identity.
- Consent cannot be given by a person under the age of 16 years.

**Disciplinary Framework** – is the University's disciplinary processes in relation to a Respondent (including in response to a Formal Report) as follows:

- a. where the Respondent is a student, under the Student Integrity and Misconduct - Policy and Procedure;
- b. where the Respondent is a member of staff covered by the Enterprise Agreement, under the misconduct or serious misconduct provisions of the Enterprise Agreement; or
- c. where the Respondent is a member of the UQ Community who is not a student, or a staff member to whom the Enterprise Agreement applies, in accordance with any relevant contract and/or UQ policies and procedures that apply.

For the avoidance of doubt, a Respondent who is both a student and a member of staff covered by the Enterprise Agreement (including, for example, a student enrolled in a higher

degree by research course who is also employed as a member of staff covered by the Enterprise Agreement) at the University may be subject to multiple disciplinary processes in relation to the same alleged conduct, pursuant to subparagraphs (a) and (b) above.

**Enterprise Agreement** – is *The University of Queensland Enterprise Agreement 2018-2021*, or as amended or replaced.

**Formal Report** – is providing a formal statement regarding Sexual Misconduct to the persons or units specified in section 3.3 of the Procedures.

**Reasonable Measures** – are arrangements or adjustments as defined in section 3.6 of the Procedures that may be implemented for a specified period of time on a case by case basis where Support has been sought or a Formal Report has been made.

**Respondent** – is a person about whom a complaint of Sexual Misconduct is made as part of a Formal Report.

**Sexual Harassment** – happens if a person:

- a. subjects another person to an unsolicited act of physical intimacy; or
- b. makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
- c. makes a remark with sexual connotations relating to the other person; or
- d. engages in any other unwelcome conduct of a sexual nature in relation to the other person;

and the person engaging in the conduct described in (a), (b), (c) or (d) does so –

- e. with the intention of offending, humiliating or intimidating the other person; or
- f. in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

**Examples of sexual harassment include (but are not limited to):**

*Examples for paragraph (a)*

- physical contact such as patting, pinching or touching in a sexual way;
- unnecessary familiarity such as deliberately brushing against a person;

*Examples for paragraph (b)*

- sexual propositions;

*Examples for paragraph (c)*

- unwelcome and uncalled for remarks or insinuations about a person's sex or private life;
- suggestive comments about a person's appearance or body;

*Examples for paragraph (d)*

- offensive telephone calls;
- unwanted sexual attention using internet, social networking sites or mobile phones;
- indecent exposure;
- a publication such as sexually offensive emails or graphics;
- sexually offensive screensavers or posters.

Just because someone does not object to inappropriate behaviour at the time, it does not mean that they Consent to the behaviour.

A single incident is enough to constitute sexual harassment – it does not have to be repeated.

**Sexual Misconduct** – is a broad term encompassing any unwelcome behaviour of a sexual nature without Consent. It includes conduct that could amount to a Sexual Offence and/or Sexual Harassment.

‘Sexual Misconduct’ as defined in this Policy may amount to ‘general misconduct’ for the purposes of the Student Integrity and Misconduct Policy and the Student Code of Conduct or ‘misconduct’ or ‘serious misconduct’ under the Enterprise Agreement.

**Sexual Offence** – is any criminal offence of a sexual nature under the criminal law, including the *Criminal Code 1899* (Qld) and the *Summary Offences Act 2005* (Qld).

**student** – means a person enrolled as a student at the University or undertaking courses or programs at the University, and includes a former student in relation to a Formal Report made by the former student concerning conduct that occurred at the time the person was a student.

**Support** – means all reasonable steps to support members of the UQ Community affected by Sexual Misconduct, which will normally be coordinated by the Sexual Misconduct Support Unit in accordance with section 3.2 of the Procedure and may include:

- the provision of information about UQ’s processes for managing complaints about Sexual Misconduct, including linking parties affected by Sexual Misconduct to support services;
- counselling; and/or
- Reasonable Measures.

**Third Party Reporter** – is a person who makes a Formal Report on behalf of or in relation to another person.

**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 persons who have experienced Sexual Misconduct.

**UQ Community** – means current UQ students, staff, other workers, volunteers, official visitors, recognised individuals, honorary position holders, adjunct academic and support position holders, suppliers of academic placements or official suppliers of academic related activity, and anyone else contractually bound to comply with this Policy. For the purposes of making a Formal Report, UQ Community also includes former members of the UQ Community who were members at the time of the conduct alleged to be Sexual Misconduct.

**Victimisation** – happens if a person does an act, or threatens to do an act against a Complainant, or another person associated with the Complainant, including a witness or Third Party Reporter, because a Complainant, or another person associated with the Complainant:

- has made a Formal Report, report to the police or other external report; or
- intends to make a Formal Report, report to the police or other external report; or
- is, has been, or intends to be involved in a proceeding relating to Sexual Misconduct.

A reference to involvement in a proceeding includes involvement in a prosecution for an offence involving Sexual Misconduct, involvement in a University disciplinary process or investigation pursuant to the Disciplinary Framework or external agency investigation, or any other process to deal with Sexual Misconduct.

Victimisation does not include any action taken against a person for a false or malicious complaint made against another person in order to prejudice that other person.