

## **POLICY TITLE:** Responding to Sexual Assault and Harassment (Students)

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### **Purpose**

The purpose of this policy is to state the commitment of Photography Studies College (Melbourne) (the College) to an educational environment free from sexual assault, sexual harassment and harassment on the ground of sex (SASH).

The College recognises the risks that SASH can have on student's wellbeing and safety, and that every person and situation is different. The College will do everything that is reasonably possible to prevent and respond to the risks associated with SASH.

Students should also be aware of other College policies related sexual assault and harassment, including:

- Access, Equity and Anti-Discrimination
- Critical Incident
- Grievance Handling Policy and Procedure (Academic and Non-academic Matters)
- Student Conduct
- Preventing Bullying

### **Policy**

The College aims to:

1. Create an environment which is free from sexual assault and harassment;
2. Ensure students are aware of the actions they can take, the staff they may contact and the support services that are available<sup>i</sup>;
3. Handle any disclosure or complaint promptly, sensitively and appropriately<sup>ii</sup>;
4. Promote high standards of student conduct at all times; and
5. Educate students and staff of their rights and responsibilities.

Students have the right to:

- a) Study in an environment free from sexual harassment, harassment based on sex and sexual assault;
- b) Be treated with dignity, courtesy and respect.

Students have a responsibility to:

- a) Avoid any behaviour that may be harassing, harmful or threatening to others;
- b) Treat fellow students and other members of the PSC community with dignity and respect.

## Policy limitations

If a complaint or disclosure of sexual harassment, harassment based on sex or sexual assault is made about a person who does not attend or work at the College, or where an incident occurs outside official College business and grounds, some parts of this policy may not apply, and there may be limits on the sanctions the College can impose on that person. However, that should not stop any student from seeking help. Students who have been negatively affected by sexual harassment, harassment based on sex or sexual assault are encouraged to seek support from the College's student wellbeing and safety services, regardless of where, or when, an incident occurred.

## Defining sexual assault and sexual harassment

### What is Sexual Harassment?

*A person sexually harasses another person if:*

- a. the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or*
- b. engages in other unwelcome conduct of a sexual nature in relation to the person harassed*

*in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.<sup>iii</sup>*

Students need to be aware that behaviour which may be acceptable to one person, may not be acceptable to another.

Conduct of a *sexual nature* includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is verbal or in writing.

Sexual harassment can take various forms, including:

- staring or leering;
- suggestive comments or jokes;
- sharing without consent, sexually explicit pictures or memes;
- unwelcome requests for sex;
- intrusive questions about a person's private life or body;
- unnecessary familiarity, such as deliberately brushing up against a person;
- insults or taunts based on sex;
- sexually explicit emails, SMS text messages, image abuse such as posting sexual images on social media without a person's consent

Sexual harassment is not sexual conduct that is consensual or mutual.

## Harassment based on sex

A person harasses another person on the ground of sex if by reason of the sex of the person harassed; or a characteristic that appertains generally to persons of the sex of the person harassed; or a characteristic that is generally imputed to persons of the sex of the person harassed, the person engages in unwelcome conduct of a seriously demeaning nature in relation to the person harassed; and the person does so in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

The circumstances to be taken into account include, but are not limited to, the following:

- (a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- (b) the relationship between the person harassed and the person who engaged in the conduct;
- (c) any disability of the person harassed;
- (d) any power imbalance in the relationship between the person harassed and the person who engaged in the conduct;
- (e) the seriousness of the conduct;
- (f) whether the conduct has been repeated;
- (g) any other relevant circumstance.<sup>iv</sup>

## What is Sexual Assault?

Sexual assault violates personal boundaries. Sexual offences cover a wide range of sexual activity prohibited by criminal law including rape and sexual assault. Other behaviours such as voyeurism, exhibitionism, distribution of intimate images and forced involvement in pornographic media may also come within the definition of sexual offences. Terms such as 'sexual assault' are sometimes broadly used to refer to a range of behaviours that do not meet the legal definition.

A person sexually assaults a person when they intentionally touch another person in a sexual manner without that person's consent and do so without a reasonable belief the person consents to the touching.<sup>v</sup>

The law states touching may be done with any part of a person's body or through anything such as clothing worn by the person doing the touching or the person touched.

The touching may be characterised as sexual due to the area of the body that is touched or used to touch the other person, or the fact that the person doing the touching seeks sexual gratification from it. Importantly, it is not a defence to the crime of sexual assault for the accused to claim they were under an honest but mistaken and reasonable belief that the touching was not sexual.

## What does Consent mean?

Consent means '*free agreement.*'<sup>vi</sup>

When it comes to sex, a person can agree to some actions or arrangements, but not others. A person cannot consent if they are:

- asleep, unconscious or significantly affected by drugs or alcohol;
- unable to understand what they are consenting to;
- pressured or coerced to have sex because of threats, force, fear, or harm to themselves or someone else.

Students need to be aware that there will be circumstances outside of the physical location of the College where the issue of consent to sexual interaction falls within the scope of this policy. For example, in social settings organised by the College such as official functions or photographic exhibitions where students, staff and service providers may interact socially. Students should be aware that their behaviour in these settings may be subject to complaints of sexual assault and harassment.

The issue of consent within private personal and intimate relationships would not usually fall within the scope of this policy, however students who have been negatively affected by sexual assault or sexual harassment are encouraged to seek support from the College's student safety and wellbeing services, regardless of where, or when, the incident occurred.

## **Procedure for disclosures and complaints**

All disclosures and complaints of sexual harassment and sexual assault will be treated sensitively and promptly by Photography Studies College (Melbourne).

In addressing complaints of sexual harassment:

- a) The College will exercise procedural fairness. Those involved in the process will not be biased or affected by conflict of interest and will act fairly and impartially.
- b) Confidentiality will be maintained wherever possible in the handling of complaints.
- c) The procedure applied will be appropriate to the nature and circumstances of the complaint

## **Disclosures**

Disclosures of sexual harassment or sexual assault may arise anywhere and at any time. The College recognises the sensitive nature of complaints or disclosures of sexual harassment or sexual assault. The safety and wellbeing of the person disclosing or formally reporting sexual assault or sexual harassment is an important priority. Anyone who experiences sexual harassment or sexual assault will be encouraged to disclose the matter.

Students may choose to disclose the matter to:

- a. Wellness and Student Support, or
- b. A member of staff whom they trust;

Wellness and Student Support is the main point of contact and primarily responsible for responding to disclosure of SASH by students. Students disclosing personal

experience of sexual assault and sexual harassment to a trusted staff member will be referred to Wellness and Student Support for information on support pathways available to them.

### **Support Pathways**

Wellness and Student Support provides information and explains the avenues available to students experiencing sexual assault and harassment including: access to emergency services, the College's complaint procedure, counselling, advocacy, health and wellbeing services.

Wellness and Student Support cannot and will not personally counsel, advise or represent a student that discloses an incident(s) of sexual assault and harassment.

If any person is in immediate danger or requires urgent medical attention, emergency services will be contacted on 000 immediately.

### **Duty of Care**

Subject to the College's general duty of care,<sup>vii</sup> the disclosure of a matter will not be treated as a complaint and will not be investigated as one unless the person consents or involves circumstances whereby it must be investigated.

### **Investigation and Resolution of Complaints**

Investigation and resolution of complaints will be addressed in accordance with the ways provided for resolution of complaints in the *Access, Equity and Anti-discrimination Policy*.

In complaints of sexual assault, it may be appropriate for the complaint to be referred to the police for investigation. Complainants will be informed of their right to contact police.

Where a complainant does not wish to contact police and the matter is not a reportable offence, the complaint may be investigated and resolved in accordance with the ways provided for resolution of complaints in the *Access, Equity and Anti-discrimination Policy* and consistent with the reporting arrangements, time lines and procedures provided in the *Grievance Handling Policy and Procedure (for Academic and Non-Academic Matters)*.

The outcomes of the investigation and the action taken to resolve the matter must be recorded and placed on the relevant student record file.

### **Confidentiality**

Disclosures, complaints, investigations, interviews, mediations and disciplinary proceedings in relation to sexual assault, harassment based on sex and sexual harassment, as well as documents created, provided or relied on in the course of such procedures will remain confidential to the parties directly concerned with the matter. Disclosure will only occur with the consent of the party protected by the confidentiality or otherwise as required by law.

## **Support for students who have been accused of sexual assault or sexual harassment**

Students who are accused of sexual assault or sexual harassment may seek support from Wellness and Student Support. Wellness and Student Support may provide information explanation on the range of options available for support, including access to counselling, advocacy, health and wellbeing services. Wellness and Student Support cannot and will not personally counsel, advise or represent a student that has been accused of sexual assault and harassment.

Any student who is the subject of a formal complaint of sexual assault or sexual harassment has the right to expect that:

- a) The College will exercise procedural fairness. Those involved in the process will not be biased or affected by conflict of interest and will act fairly and impartially.
- b) Confidentiality will be maintained wherever possible in the handling of complaints.
- c) The procedure applied will be appropriate to the nature and circumstances of the complaint.

## **Education**

The College will educate the PSC community on SASH rights, responsibilities and obligations. The nature of the educational material and the media will depend on the circumstances of each student cohort. However, it is expected that educational material will be included in the student induction modules and readily accessible via the College website.

The College may participate in promotional campaigns where appropriate including the use of published material such as posters and other campaign material.

## **Contacts for SASH Disclosures or Complaints**

Wellness and Student Support:  
Anat Cossen – 03 9682 3191

Sexual Assault Advisor:  
Dr Martin Fox, Southgate Medical Centre – 03 9690 1433  
(LSWC has mobile/emergency contact details)

South Melbourne Police Station:  
211 Bank Street, South Melbourne 3205  
03 9257 3800

CASA (Centre Against Sexual Assault):  
03 9635 3600 or freecall (24 hrs) 1800 806 292

## **Responsibility**

Managing Director and Leadership Group

## Definitions

See definitions under section headed:

- What is sexual harassment?
- What is sexual assault?
- What does consent mean?

## Reports to Board

Yearly reporting on performance indicators, except for instances of litigation, which must be reported to Board immediately. Regular data report on complaints received and action taken to resolve if identified as an area of high risk.

## Related Documentation

### Legislation

*Sex Discrimination Act 1984* (Cth)

*Crimes Act 1958* (Vic)

### Standards

Higher Education Standards Framework (Threshold Standards) 2021, 2.3 - Wellbeing and Safety, and 2.4 - Student Grievances and Complaints

Standards for Registered Training Organisations (RTOs) 2021, Standard 6.

Complaints and appeals are recorded, acknowledged and dealt with fairly, efficiently and effectively

### Policies

Access Equity and Anti-Discrimination

Fair Treatment and Equal Benefits and Opportunity

Grievance Handling Policy and Procedure (for Academic and Non-Academic Matters)

Preventing Bullying

Student Conduct

Student Wellbeing and Safety

Workplace Health and Safety

### Procedures Forms & Documents

MOU with Counsellor

Record of Students Referred to Counsellor

Student Grievance Reports and Register

## Publishing Details

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<sup>i</sup> *Higher Education Standards Framework (Threshold Standards) 2021 s 2.3 (1).*

<sup>ii</sup> *Higher Education Standards Framework (Threshold Standards) 2021 s 2.4.*

<sup>iii</sup> *Sex Discrimination Act 1984 (Cth) s 28A*

<sup>iv</sup> *Sex Discrimination Act 1984 (Cth) s 28AA*

<sup>v</sup> *Crimes Act 1958 (Vic) s 40*

<sup>vi</sup> *Crimes Act 1958 (Vic) s 36*

<sup>vii</sup> Photography Studies College (Melbourne) recognises its duty of care to employees, contractors, students, service providers and visitors to the College. Notwithstanding the reticence of persons subjected to sexual assault and harassment, Photography Studies College (Melbourne) reserves the right to act to address any potential incidents of unlawful sexual harassment, including by conducting an investigation, even if no complaint has been made.