
Sexual Misconduct Policy & Response Procedure

Document ID: **HR-101**

Updated: 25 March 2022

1. PURPOSE

Sexual Misconduct is unlawful under State and Commonwealth laws and is strictly prohibited at Marcus Oldham College.

This Policy sets out expected standards of behaviour, and the principles for preventing and responding to Sexual Misconduct occurring at or connected with Marcus Oldham College.

With regard to **terminology**, the College acknowledges that people who experience Sexual Misconduct may refer to themselves as a complainant, victim or survivor. For simplicity, this Policy will refer to people who have experienced Sexual Misconduct as 'complainants', and persons who report (but have not personally experienced) Sexual Misconduct as 'reporters'. Persons accused of Sexual Misconduct are referred to in this Policy as "respondent/s".

"Sexual Misconduct" includes sexual harassment, sexual assault, unwanted oral sex, sexual exploitation, indecent assault, acts of indecency, criminal behaviour of a sexual nature, sexting, creating, or distributing by any means sexually explicit images or videos without consent, stealthing, stalking and drink spiking.

2. SCOPE

This Policy applies to all students of Marcus Oldham in respect of Sexual Misconduct occurring:

- on campus.
- on virtual environments (e.g. email, intranet systems, social media, online forums, communities and platforms);
- at all activities and events connected with the College.

A separate policy applies to staff.

3. PRINCIPLES

The College is committed to:

- providing a safe, fulfilling and rewarding environment for its students, residents, staff and visitors.
- preventing Sexual Misconduct generally as well as in the environment of the College; and
- responding promptly and appropriately to Sexual Misconduct if it occurs.

This commitment is underpinned by a view that:

- all people have a right to live, work, study and socialise in an environment that is free from Sexual Misconduct regardless of their sex, sexual orientation, gender identity, immigration status and citizenship status; and
- all forms of Sexual Misconduct are unacceptable.

4. SUPPORT

Students who have experienced or witnessed Sexual Misconduct are encouraged to seek support at the earliest opportunity.

Support and pastoral care is available from:

- College Wardens, Sexual Harassment Referral Officers, the Principal and the College Counsellor, who can provide guidance on the options to report Sexual Misconduct and the supports available.
- Sexual Assault and Family Violence Centre:
(03) 5222 4318 or 1800 806 292
<https://www.safvcentre.org.au/>
59-63 Spring Street, Geelong West.
- the Centre Against Sexual Assault (CASA) Crisis Line: 1800 806 292 or 9635 3600.
- 1800 RESPECT, which provides counselling on sexual assault, family and domestic violence by phone and webchat (free 24/7). For more details visit 1800respect.org.au or call 1800 737 732.
- Hospital or GP.

5. RESPONSIBILITIES

All students have a responsibility to:

- treat one another with courtesy, tolerance, respect, and professionalism.
- refrain from all forms of Sexual Misconduct.
- ensure they do not request, instruct, induce, encourage, authorise or assist other persons to engage in Sexual Misconduct.
- not engage in behaviour that causes any person to fear for their personal safety or well-being or is perceived to be threatening or intimidating.
- comply with any reasonable direction or request from College staff members where the direction or request supports safety, good order, and compliance with this Policy.
- comply with all policies, procedures, residential and contractual agreements, and Codes of Conduct with Marcus Oldham; and
- comply with all relevant State and Commonwealth laws.

6. BREACHES

All students must comply with this Policy. A breach of this Policy may lead to disciplinary action, including but not limited to:

- for current and prospective students and residents – up to withdrawal of an offer, expulsion from the College, termination of residency, restricting/prohibiting access to and association with the College (including to College or Alumni activities and events).

7. SEXUAL MISCONDUCT IS UNACCEPTABLE

Sexual Misconduct is unlawful and unacceptable at the College. Sexual Misconduct includes a failure to behave in a respectful or lawful manner in relation to sexual matters.

Sexual Misconduct can:

- involve behaviour by a person of any race, religion, sex, sexual orientation and gender identity towards another person of any race, religion, sex, sexual orientation or gender identity;
- occur between strangers or those who know each other well, including those involved in a consensual intimate relationship; and
- involve a single incident or comment, or repeated, continuous behaviour.

Behaviour that is consensual and based on mutual attraction, friendship and respect is not Sexual Misconduct.

8. COMPLAINTS PROCEDURE

8.1 Overview

This Complaints Procedure sets out the way that students can report Sexual Misconduct, and how the College will respond.

Complainants and reporters can report Sexual Misconduct by making a report to the College, or a report to an external body. At any stage of the Complaints Procedure, or when a concern cannot be addressed using this Complaints Procedure, the College may consider and implement actions as necessary to address concerns regarding individuals' safety, wellbeing, or participation in work, study or College life.

8.2 Anonymous reporting

The College intends to implement an anonymous reporting framework to enable students to make an anonymous report of Sexual Misconduct covered by this Policy.

Marcus Oldham will collate and analyse data on anonymous reports to monitor the prevalence of Sexual Misconduct in connection with the College.

Because reports are anonymous, the College will rarely be able to take action in relation to an anonymous report. If you would like action to be taken in relation to an incident of Sexual Misconduct, you are encouraged to report the incident to the College or an external body.

8.3 Reporting to an external body

Students may seek independent guidance from and/or lodge a complaint about Sexual Misconduct with an external body at any time. College Wardens, Sexual Harassment Referral Officers, the Principal or the College Counsellor can provide you with information on the most appropriate body to lodge your complaint with.

Reports of Sexual Misconduct may be made to:

- Victoria Police; or
- Victoria Police Sexual Offences and Child Abuse Investigation Team: Phone (03) 8690 4056. This is a specialist police unit which deals exclusively with sexual offences.

If students would like more information about making a report to the police, their options, or require advocacy and support from someone external to the College, the Sexual Assault and Family Violence Centre are able to assist and can link the student in with the Sexual Offences and Child Abuse Investigation Team.

8.4 Reporting to the College

Students are encouraged to notify the College of Sexual Misconduct as soon as possible so that the College can:

- provide support and pastoral care, and
- take steps to prevent immediate or ongoing risks to the complainant and others.

Reports of Sexual Misconduct may be made verbally or in writing to the College Wardens, Sexual Harassment Referral Officers, the Principal or the College Counsellor.

There is no time limit for a complainant to report Sexual Misconduct to the College under this Policy. However, the College's ability to effectively respond to, and prevent future incidents of Sexual Misconduct may diminish over time.

8.5 Responding to Sexual Misconduct

The College aims to deal with reports and disclosures as quickly as practicable and to achieve early resolution of complaints.

The College Wardens, Sexual Harassment Referral Officers, the Principal and the College Counsellor will take steps to ensure that ongoing support is provided to the complainant (and any other affected parties), and that they are regularly informed about the College's response.

The College's response to a report will be determined by a range of factors, including but not limited to:

- whether the report is anonymous.
- the wishes of the complainant.
- whether there is a serious or ongoing risk to the health, safety or wellbeing of any person.
- whether it is possible for the College to conduct an investigation based on the information available (e.g. whether the parties will participate in the investigation); and
- whether the College has other information about the risks posed by the alleged respondent.

None of these factors are determinative.

Without limiting the options available, the College may respond to a report of Sexual Misconduct by:

- taking immediate steps to support and protect the parties, including:
 - providing referrals to medical or support services.
 - implementing safeguards to minimise the complainant's contact with the alleged respondent (such as restricting the respondent's access to the College's premises or property where there is an immediate threat to any person),

- suspending a person from the College and/or suspending a person from specified activities and/or positions of leadership.
- relocating the respondent (or the complainant on the complainant's request) from the College's accommodation.
- providing assistance to make a police report; and/or
- reporting the matter to the police where there is a serious or ongoing risk to the health, safety, or wellbeing of any person.
- conducting an investigation.
- facilitating a conciliation between the complainant and respondent, as long as both parties agree to participate; or
- taking no action where there is insufficient evidence for the College to intervene or investigate, and the complainant and/or reporter does not agree to participate in an investigation.

If the College makes a report to the police because it considers that there is a serious or ongoing risk to the health, safety or wellbeing of any person, the College will attempt to consult with the complainant to ensure that the complainant knows when and why the police will be notified and take all reasonable steps to support the complainant through that process.

8.6 Investigations

Where the College receives a report of Sexual Misconduct, it may be appropriate to conduct an investigation. An investigation involves collecting information about the allegation and making findings on whether the allegations are substantiated or unsubstantiated based on the balance of probabilities.

In general, complainants influence the progress of their complaint through the Complaints Procedure. However, in some circumstances, the seriousness of the allegations will mean that the College is under a legal obligation to investigate the allegations (e.g. to prevent serious risks to health and safety), irrespective of the wishes of the complainant. For this reason, the College may initiate an investigation or progress an investigation without the involvement of the complainant. Where appropriate, this may involve de-identifying details of the complainant.

A request for an investigation can be made in writing to the Principal. The request should include details of the incident(s) and any supporting information.

If the Principal considers that an investigation is appropriate, he may appoint an independent panel or investigator to conduct the investigation.

The investigation will be conducted in a manner that the Principal considers appropriate. If the College considers it appropriate for the safe and efficient conduct of an investigation, it may:

- direct the respondent or complainant not to carry out his or her duties or attend certain areas (including College events); and/or
- provide alternative accommodation to a respondent (or a complainant on the complainant's request).

On completion of an investigation, the College will notify the complainant and respondent of the findings and outcome of the investigation in writing.

8.7 Conciliations

A conciliation is a process where a neutral third party attempts to assist the complainant and respondent to resolve a complaint by mutual agreement.

A conciliation will only occur if both parties agree to it voluntarily. Because of the serious nature of Sexual Misconduct, a conciliation will only occur if:

- the complaint is in writing.
- the complainant is willing to be identified to the respondent.
- the complainant requests the conciliation; and
- both parties agree to the conciliation.

If the Principal considers that a conciliation is appropriate, he will appoint an external advisor to conduct the conciliation. The role of the conciliator is not to make a formal finding, but to assist the parties to reach a mutually agreed resolution.

The respondent will be provided with details of the allegations and be provided with the opportunity to seek advice from an external advisor.

The conciliator will meet with the complainant and respondent together or separately. The conciliator will only arrange a joint meeting if the complainant is comfortable with this.

Both parties may have a support person during the conciliation, but not a legal representative or advocate.

If the conciliation does not proceed or is unsuccessful in producing a mutually agreed resolution, the external advisor will refer the parties to their external advisors to discuss further options.

8.8 Possible outcomes

The College will determine the most appropriate way to respond to a report from an investigator of a complaint. Possible outcomes if a complaint is substantiated include, but are not limited to:

- disciplinary action against the respondent (including the cessation of their engagement etc).
- official warnings.
- imposing restrictions on the respondent's participation in the Colleges' activities (including Alumni events held off campus) and contact with the complainant for any purpose associated with the College.
- restrictions on a respondent's participation in College-affiliated events.
- counselling for the complainant, respondent and/or reporters.
- terminating the respondent's residence or relocating the respondent.
- mandatory training for the respondent.
- a formal apology by the respondent and/or bystanders who took no action to stop or protest against any Sexual Misconduct observed by them on College grounds or at College events.
- seeking an undertaking from the respondent that the behaviour will cease (where the complainant simply wants the behaviour to stop and expulsion or termination is not appropriate);



- conciliation/mediation conducted by an impartial third party (where requested by the complainant and both parties agree to participate); and/or
- reports to external authorities (e.g., police where there is an immediate or ongoing risk to the health, safety or wellbeing of any person).

8.9 Withdrawing a complaint

Where a complainant chooses to withdraw his or her complaint or does not wish to participate in an investigation, the College:

- will retain the details of the complaint.
- notify the complainant of any proposed action against the alleged respondent.
- offer the complainant ongoing support; and
- confirm the above in writing to the complainant.

A complainant who has withdrawn his or her complaint may ask the College to reinstate the complaint at any time.

8.10 Confidentiality and privacy

The College aims to maintain the privacy and confidentiality of complainants and respondents. Only the Wardens, Sexual Harassment Referral Officers, the Principal, and the College Counsellor directly involved in advising on, conciliating, investigating or resolving the complaint will have access to material relating to a report of Sexual Misconduct. However, these designated people will keep the Principal informed of the status and response to the complaint.

A key principle of conciliations and investigations is maintaining a confidential process. The College may ask the parties to agree to maintain confidentiality during these processes. This is important to protect the reputation of the parties, minimise the potential for victimisation, ensure that students have the confidence to raise allegations, and ensure that witnesses have not had the chance to collaborate or influence each other's recollection, inadvertently or deliberately.

A confidentiality undertaking will not prevent:

- the complainant from discussing their experience of Sexual Misconduct with others, or making a complaint to an external body, or
- any party from seeking advice and support from a professional advisor in relation to the allegations.

8.11 Record keeping

The College will ensure that reports of Sexual Misconduct are collected and stored confidentially in line with this Policy, including:

- details of the complaint/incident.
- steps taken to respond to the complaint/incident.
- support or assistance required or provided, i.e., whether the person received counselling whether they reported to police, whether they received support from an external provider.
- the College's response to the report (including referrals to external bodies and support services); and

- any feedback provided by the complainant/respondent in relation to the process.

On request, the College will provide the complainant or reporter with information on their report of Sexual Misconduct.

8.12 False or misleading allegations

Deliberately making a false complaint under this Policy is a serious matter and is unacceptable. Where the College is satisfied, based on reasonable evidence, that a complaint is malicious, frivolous, or vexatious, the complainant or reporter may face disciplinary action. A complainant or reporter will not be sanctioned just because an investigation is inconclusive, and the allegations cannot be substantiated. Disciplinary action will only arise where there is compelling evidence that a complaint or report was false or misleading.

8.13 Victimisation

It is unlawful to victimise any person for making a report of Sexual Misconduct. Any retaliatory action taken or threatened against a student because of their involvement in a report of Sexual Misconduct can result in disciplinary action. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that intentionally interferes with an investigation or the academic or professional progress or career of an individual.

9. RELEVANT LAWS

This Policy supports compliance with the following legislation as amended:

- Sex Discrimination Act 2004 (Cth)
- Australian Human Rights Commission Act 1986 (Cth)
- Occupational Health and Safety Act 2004 (Vic)
- Occupational Health and Safety Regulations 2007 (Vic)
- Crimes Act 1958 (Vic)

Acknowledgement: This Policy and Procedure has been adapted from the University of Melbourne Colleges, Sexual Misconduct Policy, 2019.

All student concerns regarding Equal Opportunity, Sexual Harassment or Bullying on campus should be directed to the Staff Contact Officers:

David Cornish	Lecturer	03 5247 2965
Monika Reichler	Student Counsellor	0488 074 798 reichler@marcusoldham.vic.edu.au

