

## Sexual Misconduct Procedure - Students

1. This procedure outlines how St Mary's College may manage incidences of Sexual Misconduct by students, noting that this procedural document is for guidance and will not necessarily be followed in every detail in all cases.
2. This procedure should be read in conjunction with St Mary's College's Sexual Misconduct Policy -Students. St Mary's College is committed to the rights of all students and their visitors to study, live and socialise in a safe environment that is based on inclusivity and respect. The College will not tolerate Sexual Misconduct (sometimes referred to as 'zero tolerance').

### Options for assistance following a report of an alleged incident of Sexual Misconduct

#### Immediate Assistance

3. As part of the College's commitment to safety, the Residential Tutors, Dean, Residential and Pastoral Co-ordinator, and Principal will be appropriately trained in responding to reports of Sexual Misconduct including Sexual Assault.
4. Members of the College community who have witnessed or experienced Sexual Misconduct are strongly encouraged to seek support at the earliest opportunity. Support can be provided by any of the following people, who are trained in Mental Health First Aid, and receive training in how to respond to reports of Sexual Misconduct:
  - a) Residential Tutors
  - b) Dean
  - c) Residential and Wellbeing Co-ordinator
  - d) Principal
5. The College will:
  - a) Assist all involved in seeking psychological, medical care, and/or other relevant support services
  - b) Support any Complainant in making a report to external services such as Centre Against Sexual Assault (CASA) House and/or the police, should the Complainant wish to do so
  - c) Take steps to prevent any risk to the Complainant and the community. This may include taking actions to minimise the Complainant's contact with the Respondent, such as removing a person(s) from College.
  - d) Consult with those involved to provide a support person from the College support staff as listed above. This person will be a point of contact throughout the process and will act as an immediate and ongoing support.

6. Students are encouraged to seek independent guidance and, if they choose, lodge a Complaint with an external body such as the police. Where appropriate, and at the request of the Complainant, the College will facilitate this process. However, the College is unable to act on a Complainant's behalf in reporting any behaviour to external bodies – for example, the College cannot make a criminal complaint on behalf of a student to the police. The student must make that complaint and the College will support them if they decide to do so.
7. Community mechanisms for complaint, information and support include:
  - a) Centre Against Sexual Assault (CASA) <http://www.casa.org.au>
  - b) Victoria Police: Melbourne North Police Station (open 24 hours) 36 Wreckyn Street, North Melbourne. Phone: (03) 8379 0800
  - c) Victoria Police Crime Department, Sexual Offences & Child Abuse Investigation Team. Phone: (03) 8690 4056

#### Ongoing Assistance

8. The role of the nominated support person is to be a point of contact for questions relating to the Complaint procedure, as well as give support and information to the Complainant or Respondent on appropriate wellbeing support services. The support person is unable to provide counselling or therapeutic services but can refer the individual to additional support services.
9. The College does not provide legal advice or support for the Complainant or the Respondent. Legal advice is available to students of the University of Melbourne through the University of Melbourne Student Union Legal Aid office <https://umsu.unimelb.edu.au/support/legal/> For RMIT students, the RMIT Safer Community Program provides support and advice to members of the RMIT community – telephone (03) 9925 2396 or email: [safercommunity@rmit.edu.au](mailto:safercommunity@rmit.edu.au) For ACU students, the Melbourne campus' Safety Support Network is available – details are available at <https://www.acu.edu.au/emergency-and-safety/respect-now-always/safety-support-network>

### **Reporting policies and procedures**

#### Disclosure Process

10. St Mary's is committed to providing a safe and supportive environment in which to report occurrences of alleged Sexual Misconduct. All members of the College have the right to a safe living environment and are encouraged to report instances of Sexual Misconduct in order to ensure the values of the community are upheld and that students are kept safe.
11. Students are encouraged to notify the College of alleged Sexual Misconduct as soon as possible. There is no limitation on the time in which a current student may report an allegation of Sexual Misconduct. The College acknowledges that lodging of Complaints may be delayed. However, the College's ability to effectively investigate the Complaints and take steps in relation to the Complaints might diminish over time.
12. Initial reports of alleged Sexual Misconduct may be made verbally or in writing to any College support staff member, as listed above. These reports can be made without the name of the person who is alleged to have breached the Sexual Misconduct Policy.

The College support staff member will advise the complainant of the process for lodging a complaint.

13. The University of Melbourne's anonymous reporting system is available to students and staff who wish to report inappropriate behaviour to the University; however, the College may be unable to respond to or act upon these reports as information is not usually disclosed from the University's system to St Mary's College. The University's anonymous reporting system is found here: [https://unimelb.service-now.com/public?id=anonymous\\_register](https://unimelb.service-now.com/public?id=anonymous_register)
14. In lodging a Complaint to the College, the individual is asked to provide as much information as possible about the incident including:
  - a) Specific details of the incident (what, when, where, who and any other background information) including any electronic or social media communications pertinent to the Complaint
  - b) The name of the person who is alleged to have breached the Sexual Misconduct Policy
  - c) Names of any other person(s) who might have witnessed, been affected by, or involved in the incident or have first-hand knowledge of the incident. These people may be contacted as part of determining the outcome of the Complaint.
15. The details of the Complaint must be recorded in writing either by the Complainant or a support staff member. Verbal Complaints must be made to a staff member in the presence of another member of staff whose roles in that meeting are as a witness to the Complaint and as a recorder of the details of the Complaint. The Complainant will be required to confirm that the record of details of the Complaint are accurate.
16. The College reserves the right to initiate a Complaint process itself if it becomes aware of allegations of Sexual Misconduct by a student for which the victim/s of that conduct is (are) not prepared to make a Complaint.

#### Confidentiality

17. At all times the College aims to deal with Complaints about possible breaches of the Policy in a confidential manner, to the extent that is appropriate in a given case and insofar as the maintenance of confidentiality does not conflict with other obligations and responsibilities of the College.
18. Participants in any process under the Policy will be reminded about the importance of confidentiality and will be expected to adhere to any directions they are given about maintaining and respecting confidentiality. Failure to maintain and respect confidentiality when directed to do so may itself be considered a breach of this Policy.
19. Students are to be aware of the need to maintain confidentiality and are strongly advised not to discuss such matters with other students, or with staff other than the nominated support person.
20. This expectation of confidentiality does not prevent the Complainant, Respondent or witnesses from seeking support or advice, such as from a family member, or making a complaint to an external body in relation to the allegations.
21. In cases where information about potential breaches of this policy comes to the attention of any member of staff, the staff member has a duty to inform the Dean of possible

breaches promptly and as soon as practical.

22. The College may, at its discretion, seek legal or other professional advice such as it deems necessary and in doing so may disclose details and particulars of the allegations including, at its discretion, divulging the identity of individuals involved in a confidential manner.
23. This confidentiality provision includes all matters related to receiving and investigating the Complaint, immediate actions to protect and support those involved, ensure the safety of the St Mary's College community, and application of any consequences to the Respondent, to the extent possible and consistent with other obligations and responsibilities of the College.
24. The College may report allegations of Sexual Misconduct or results of investigations into breaches of the policy, to such external institutions and organisations as it deems appropriate, such as the University of Melbourne, RMIT University, Australian Catholic University, Victoria Police, or boards and regulatory agencies of the professions.

#### Storage of records

25. Any written reports of Sexual Misconduct shall be retained confidentially in line with this Procedure. These records are maintained to protect the rights and interests of all parties, explain and justify the actions of the College and document and explain the decision-making of the College.

#### Responding to complaints of Sexual Misconduct

26. The College's processes in responding to a complaint of Sexual Misconduct may include conciliation, commissioning an investigation, or both.
27. The College's actions will take into account the willingness of the complainant to participate in an investigation or conciliation and/or the weight of evidence already available to the College.
28. The College's actions may include:
  - a) offering to facilitate a conciliation between the complainant and the respondent
  - b) in matters that have not been referred to police, conducting an investigation or commissioning investigation by an external expert
  - c) asking the respondent to leave the College while the matter is investigated.
29. The College will provide support for all parties involved.

#### Conciliation

30. The College may decide that the complaint is appropriate for a Conciliation process.
31. Factors in considering whether there will be Conciliation and the nature of the Conciliation process may include willingness of the Complainant and Respondent to participate in a Conciliation; the severity of the alleged Sexual Misconduct; the possible criminality of the alleged Sexual Misconduct; and the fitness of the Complainant and Respondent to participate in a Conciliation process.

32. If Conciliation is appropriate, and with the consent of each party, a conciliator will be appointed by the College to meet with each party to discuss and try to reach agreement regarding the Complaint, possible redress and future behaviour.
33. The outcome of Conciliation, whether successful or unsuccessful, will not preclude the possibility of a formal investigation being conducted by the College nor the reporting of this allegation to police by the Complainant.
34. The College will not mandate a Conciliation process and may choose to decline a request for Conciliation or terminate the Conciliation at a time of its choosing.

#### Outcomes of Conciliation

35. Conciliation is not a disciplinary process, and disciplinary outcomes will not necessarily result from this process. Details of an agreement will be communicated to the Dean of the College and other relevant parties.
36. Prior to a Conciliation agreement being finalised, the College will inform the parties involved if, in its opinion and irrespective of the outcome of Conciliation, there is likely to be an investigation of the allegations. Any Conciliation agreement may be recorded in writing for future reference.
37. In all cases involving allegations of Sexual Misconduct, the outcome of the Conciliation will be reported to the Dean of the College and to the Principal. The outcome will be kept confidential by the Dean and the Principal, save for any disclosures that they deem necessary and appropriate or as required by the Conciliation agreement – for example, where compliance with the terms of the agreement requires staff of the College to take certain steps. The agreed outcome of any Conciliation must be approved by the College before it is implemented.
38. Breaches of an agreement reached via Conciliation may result in additional action consistent with the Community Expectations Agreement, Sexual Misconduct Policy, or other College procedures.
39. Outcomes of the Conciliation process can include actions within the College's capacity to implement and actions over which the College has no authority. For instance, the College can prevent an individual from attending an event on College grounds but cannot prevent a person from visiting a public space in which St Mary's students or alumni have gathered.
40. The College cannot be held responsible for enforcing or implementing actions that are outside of its control or to which it has not agreed.
41. The Conciliation agreement is final unless both parties agree to a review or unless, in the opinion of the Principal, a review is warranted.

#### Investigation

42. An investigation involves collecting information about the allegations and making findings on whether the allegations are substantiated or unsubstantiated on the balance of probabilities, which is the civil standard of proof. If an investigation is appropriate, an independent investigator will be appointed through the College's legal representative.
43. The manner in which the College investigates the matter will be determined by the College on a case-by- case basis. An investigation may include interviewing the Complainant, Respondent and/or other parties, viewing of CCTV footage, reviewing electronic or other communications or other methods deemed appropriate by the investigator. Use of a

particular investigator or approach to an investigation on one occasion does not constitute a precedent for using this investigator or approach in subsequent investigations.

44. Based on the findings of the investigation and other relevant information, the Dean of the College (ie the Fair Treatment Co-ordinator) will decide on the College's actions. The College will notify in writing the Complainant and Respondent of the findings of the investigation and the College's decision and intended actions.

#### Appeal Procedure

45. A Respondent or Complainant is entitled to seek review by the Principal of the decision if they believe it was arbitrary, capricious, or unreasonable, if the investigation process was seriously flawed, or if there is substantive new evidence which should be taken into account.
46. An application for review is made by the Respondent or Complainant making a written request to the Principal. Students are encouraged to lodge an application for review as soon as possible after the decision has been made by the College on its intended actions. There is no limitation on the time in which a student may lodge an application for a review, and the College acknowledges that lodging an application for review may be delayed. However, the College's ability to effectively respond to an application for review may diminish over time.
47. The request must set out the basis on which the Respondent or Complainant seeks review of the decision with sufficient particularity to enable the Principal to consider the basis of the request for review.
48. The Principal will advise the Respondent or Complainant in writing of her or his decision and findings but is not required to provide reasons.
49. The Principal may delegate their function under this section to another person, in which case any decision or direction made by the delegate shall have the same effect as if made by the Principal.
50. The Principal will make his or her decision by reference to:
  - a) The Respondent's or Complainant's request for review;
  - b) The original decision; and
  - c) any material that the original decision-maker had before them at the time of making their decision.
51. The Principal will not, unless they consider it necessary, undertake further investigation, take further evidence, hold any hearings, or request any submissions.
52. The Principal may:
  - a) Affirm the original decision;
  - b) Set aside the original decision in whole or in part; or
  - c) Modify the original decision.

#### Definitions

53. "**College**" includes the Principal, Dean, Residential & Pastoral Co-ordinator of St Mary's College, and the College Council.
54. "**Complaint**" means a written complaint about a possible breach of the Policy or a verbal

complaint made to a designated officer of the College in the presence of another member of staff of the College.

55. **“Complainant”** is the person making the allegation of a breach of the Policy and is usually the person affected by the alleged breach. In instances where a third party is filing the complaint, they are to be referred to as the **“Reporter”**.
56. **“Conciliation”** is the action of mediating between two disputing people or groups. Conciliation allows people to state their point of view, discuss the issues in dispute and settle the matter on their own terms. Parties do not have to prove or disprove the complaint.
57. **“Respondent”** is the person responding to an allegation that they have breached the Policy.
58. **“Sexual Consent”** means an agreement to participate in a sexual activity. Sexual Consent must be freely given, informed, specific, and reversible. Without consent, sexual activity is sexual assault or misconduct.
59. **“Sexual Misconduct”** is a term that encompasses conduct or behaviour of a sexual nature that occurs when there is an absence of Sexual Consent. It includes sexual harassment and sexual assault. It is sexual behaviour or conduct that makes the recipient feel uncomfortable, harassed, afraid, or unsafe.
60. **“Sexual assault”** occurs along a continuum of violent behaviour which includes: any uninvited sexual behaviour which makes the recipient feel uncomfortable, harassed or afraid; unwanted touching or remarks; sexual harassment; coerced sexual activity; and rape with physical violence and threat to life. It is sexual activity to which a person does not consent. The use of emotional or physical violence to force another person to engage in sexual activity also constitutes sexual assault.
61. **“Victimisation”** means any unfavourable treatment of a person because he or she has made a complaint, or allegation, about a breach of this Policy, whether the Complaint is written or verbal and irrespective of whether the person asked for the Complaint to be conciliated or investigated or not or where they have supported the Complainant or participated in the complaint process – for example, by providing evidence of Sexual Misconduct.