Staff Sexual Misconduct Policy

Section 1 - Background

(1) The University is committed to ensuring that its community is safe, respectful and free from all forms of sexual misconduct. This Policy outlines the University's principles governing its approach to prevention of, responding to and reporting sexual misconduct (sexual harassment and sexual assault), which is behaviour inconsistent with the University's values, Catholic identity and mission and for which the University has zero tolerance.

(2) This Policy applies to complaints within the University and does not apply to external criminal processes.

Section 2 - Application

(3) This Policy applies to all staff members, visitors, volunteers and contractors engaged or appointed by the University while on University land or engaged in University-related activity.

Section 3 - Scope

(4) Complaints made against a staff member under this Policy are received and managed consistent with the Staff Complaints Management Policy and the Misconduct and Serious Misconduct Policy. Where the alleged complaint is made against a Member of the Executive or Senior Executive the Misconduct and Serious Misconduct Policy - Senior Management, Executive and Senior Executive Policy will apply and where relevant in the context of the Protected Disclosures Policy.

(5) The procedural requirements for managing complaints against a visitor, volunteer or contractor may vary and are undertaken consistent with the "Principles of Managing Workplace Complaints" in the Staff Complaints Management Policy.

(6) This Policy does not supersede or take precedence over:

a. any criminal investigation;
b. mandatory reporting requirements prescribed by child safety legislation or criminal laws;
c. mandatory reporting requirements prescribed by any applicable Australian legislation relating to occupational or work health and safety;
d. professional standards regarding confidentiality between clients and medical practitioners;
e. professional rules and obligations regarding privileged communications between clients and their lawyers; or
f. professional rules and obligations regarding privileged communications between clients and their counsellors.

Student Complaints

(7) This Policy does not apply to student-to-student allegations of sexual misconduct which is covered by the Student Prevention and Response to Sexual Harm or Gender-Based Violence Procedure.

(8) Where an individual is both a student and a staff member, the matter will usually be managed according to the

relevant role and circumstances at the time of the alleged incident.

Section 4 - Definitions

(9) The following words and expressions have the meanings listed below:

Term	Definition
Complainant	is a person who makes a complaint on their own behalf.
Complaint	is a formal report of sexual misconduct made to the University in accordance with this Policy.
Disclosure	is a notification that involves the sharing of information about an incidents) of Sexual Misconduct with another person without an intention to make a Formal Report or Complaint. Disclosure may also be made for the purposes of obtaining information about resources and support.
Enterprise Agreement	is the ACU Staff Enterprise Agreement 2026-2029, or as amended or replaced.
Ethical Bystander Intervention	is when a person sees and recognises a potentially harmful situation and chooses to respond in a safe way that could prevent or stop the harm from happening or continuing.
Formal Report	is when a formal account or statement about Sexual Misconduct is provided to a person or institution that has the authority to act. A formal report can arise from a Disclosure and it includes (but is not limited to) a Complaint made to the University. A Formal Report may be made to an external agency (e.g. Police, Australian Human Rights Commission or the Australian Fair Work Commission).
Mandatory Reporting (Child Safety – Abuse and Neglect)	describes the Australian States and Territories legislative requirements for selected groups of people to report suspected cases of child abuse and neglect to government authorities. However, the laws are not the same across all jurisdictions in terms of who has to report and what types of abuse and neglect have to be reported. University Officers will need to access the relevant State or Territory legislation to confirm requirements for mandatory reporting.
Mandatory Reporting (Work Health and Safety)	of a 'notifiable incident' is required to the relevant Australian State and Territory Regulator where there is a death of a person, a 'serious injury or illness', or a 'dangerous incident' arising out of the conduct of a business or undertaking at a workplace. Reporting to the Regulator and associated actions are undertaken through the Office of the Chief People Officer.
Misconduct and serious misconduct	are behaviours outlined within the Misconduct and Serious Misconduct Policy and Enterprise Agreement.
Personal information	has the meaning contained in the Privacy Policy as published or amended by the University from time-to-time.
Procedural fairness	is a principle that is applied by the University to ensure that decisions are made in accordance with rule against bias and the hearing rule (i.e. A person is given an opportunity to present their case with knowledge of any prejudicial material that may be considered by the decision maker).
Respondent	is a person whose conduct is the subject of a complaint of sexual misconduct.
University Land	refers to any properties or amenities owned, leased, occupied or within the control of the University, and / or where University activities are ordinarily undertaken with the consent (express or implied) of the owner or occupier of the land, including all University campuses and student residences / accommodation.
University related activity	means any activity that is connected to the University, including activity that: • refers or relates to the University, its activities, or its Staff members, volunteers and contractors engaged to perform University activities; • occurs on or in connection with University Land; • occurs using or is facilitated by University information technology resources or other University equipment; • occurs during or relates to the performance of duties for the University; • occurs during or in connection to any University related function or event (whether sanctioned or organised by the University or not) or when representing the University in any capacity.

Section 5 - Policy Principles

(10) These principles reflect the University's commitment to preventing all forms of sexual misconduct, supporting with respect, dignity and empathy individuals who are affected by sexual misconduct, and responding appropriately and sensitively when sexual misconduct occurs. This Policy will be implemented having due regard to the principles outlined below.

a. the University has zero tolerance for sexual misconduct, and expects all staff to behave in a manner consistent with the Code of Conduct for Staff;
b. the University acknowledges that training, awareness and education are important aspects of prevention, support and reporting, and training is provided to assist in the prevention of and the dealing with sexual misconduct at ACU;
c. sexual misconduct has an adverse impact and the University is committed to appropriately supporting those affected, not just the complainant;
d. the University does not tolerate victimisation of or any reprisal action against individual/s who have acted to make a complaint of sexual misconduct or who have been involved in the complaint (including as an ethical bystander);
e. the University aims to bring sensitivity, timeliness and good management to its responses to disclosures and formal reports and to meet its legal requirements;
f. the University will treat individuals fairly, impartially, equitably and with compassion and empathy while adhering to the principles of natural justice (procedural fairness) in making decisions related to alleged incidents; and
g. any information gathered by the University in the process of reporting, investigating and determining an allegation of sexual misconduct will be undertaken in accordance with the Privacy Policy and will be kept confidential in a secure location, accessible to appropriately authorised staff and will comply with the Records and Archive Management Policy.

Section 6 - Sexual Misconduct

Sexual Harassment

(11) Sexual harassment is a form of sex discrimination that consists of any unwelcome sexual advance, an unwelcome request for sexual favours, or engaging in other unwelcome conduct of a sexual nature towards a person, in circumstances in which a reasonable person, having regard to the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. It does not include any mutual or consensual interaction, flirtation or relationship.

(12) Sexual harassment can take many different forms. Examples are: direct or indirect, physical or verbal, in-person or via electronic / social media, repeated or one-off and perpetrated by males and females against people of the same or opposite sex.

(13) Other examples of sexual harassment may include:

a. staring or leering;
b. unnecessary familiarity (e.g. deliberately brushing up against a person or unwelcome touching);
c. suggestive comments or jokes;
d. insults or taunts of a sexual nature;
e. intrusive questions or statements about a person's private life;

f. displaying posters, magazines or screen savers of a sexual nature;
g. sending sexually explicit emails or text messages:
h. inappropriate advances on social networking sites;
i. accessing sexually explicit internet sites;
j. requests for sex or repeated unwanted requests to go out on dates; or
k. behaviour that may also be an offence under criminal law, such as indecent exposure, stalking or obscene communications.

Sexual Assault

(14) Sexual Assault consists of acts occurring without the Consent of the other party or after Consent has been withdrawn, including when a person is forced, coerced or tricked into sexual acts against their will, and which may be prosecuted through the criminal justice system in various State-based jurisdictions.

(15) Sexual Assault includes (but is not limited to) the following acts committed or procured without Consent:

a. rape (forced, unwanted sex or sexual acts, including oral sex);
b. indecent assault (e.g., kissing or touching a person's body in a sexual manner);
c. acts of indecency (doing an act of a sexual nature with or towards another person, or making another person do an unwanted act of a sexual nature, e.g. 'flashing', 'sexting', or masturbating in front of another person);
d. voyeurism (observing a person to obtain sexual gratification where the first person is in a state of undress, using the toilet, showering or bathing, or engaged in a sexual act);
e. recording or distributing an intimate or sexual image of another person:
    i. unlawfully assaulting, inflicting actual or grievous bodily harm (or threatening to do so) on a person with the intent to engage in sexual intercourse with that other person or with a third person;
    ii. where the person is unconscious, asleep, incapacitated, under the influence of drugs or alcohol to the extent they are incapable of providing or withdrawing consent;
    iii. compelling a person to engage, or to continue to engage, in a sexual act.

Section 7 - Roles and Responsibilities

The University

(16) The University has a responsibility to take all reasonable steps, consistent with its duty of care, to:

a. ensure the health, safety and wellbeing of all staff members, visitors, volunteers and contractors in providing a working and learning environment that is free from and has a zero tolerance for sexual misconduct;
b. ensure that all staff members are aware of what is acceptable behaviour as outlined in the Code of Conduct for Staff;
c. ensure that staff are aware of how to lodge a complaint of sexual misconduct, and are enabled and supported in doing so;
d. inform managers / supervisors of their responsibilities under this Policy and all staff of their expected behaviours through relevant training, awareness and education.

Managers and Supervisors

(17) Managers and Supervisors have a responsibility to:

a. model behaviours consistent with the Code of Conduct for Staff;

b. undertake immediate action to deal with behaviour that may be considered sexual misconduct, even if a complaint has not been made;
c. ensure complaints of sexual misconduct are addressed promptly, fairly, sensitively and in accordance with the Staff Complaints Management Policy; and
d. advise affected staff of the Employee Assistance Program.

All Staff members

(18) All staff members have a responsibility to:

a. treat all members of the University community with dignity, courtesy and respect at all times;
b. ensure that at all times their own behaviour is consistent with the Code of Conduct for Staff;
c. complete relevant training, awareness or education as required by the University;
d. engage in good faith in the complaint management process; and
e. avoid vexatious and frivolous complaints and the vilification or victimisation of complainants or others.

Discrimination and Harassment Advisors

(19) The role of the Discrimination and Harassment Advisors is to:

a. be a point of contact for a staff member wishing to raise a concern about staff behaviour;
b. clarify with the staff member whether the alleged behaviour may constitute sexual misconduct;
c. provide information about ACU policies, procedures and processes;
d. advise the person of their rights and obligations under the University's policies and procedures and where information about the relevant legislation may be obtained;
e. advise the person of the options available to them;
f. encourage the complainant or respondent to seek support and provide referrals as appropriate; and
g. explore strategies to resolve the matter.

Ethical Bystander Intervention

(20) The University encourages and values safe ethical bystander intervention by members of the University community to prevent or stop sexual misconduct from occurring or continuing.

(21) Ethical Bystander Intervention can include:

a. being aware of situations that might include an incident of Sexual Misconduct;
b. determining whether the situation raises an issue that needs to be addressed by further investigation or offering assistance and / or checking if unsure;
c. seeking guidance from a Discrimination and Harassment Advisor (consult the Discrimination and Harassment Advisers Contact List);
d. taking responsibility for the situation through appropriate intervention;
e. taking indirect or direct action in a safe and appropriate manner to address the situation (e.g. calling the Police or ACU National Security Centre).

Section 8 - Responding to Incidents / Critical

Incidents of Sexual Misconduct

(22) Where a person is in immediate danger, risk, threat, or requires urgent medical attention, or an ethical bystander can assist, the first step should be to call emergency services on Triple 000.

(23) If the incident is on campus, after calling emergency services, please report the incident to the ACU National Security Centre on 1300 729 452 (or 8888 from an internal ACU phone) or use the Safezone App.

(24) If the incident is off-campus, follow the instructions provided by emergency services, and report the incident to the ACU National Security Centre to enable the appropriate University response.

(25) Whether on campus or off-campus, the University's initial response to an incident / critical incident is managed as a code green event in accordance with the Critical Incident Management Policy.

(26) The University understands that a staff member experiencing or observing sexual misconduct may require immediate counselling support. The Employee Assistance Program (EAP) through AccessEAP is available to staff on 1800 81 87 28 (24-hour service).

Section 9 - Making a Complaint of Sexual Misconduct

(27) The University is committed to responding appropriately and sensitively when incidents of sexual misconduct occur. The University also has a responsibility to ensure that there is a clear process for both the making of a complaint and for the process the University will use to investigate the complaint.

(28) Staff members are encouraged, in the first instance, to attempt to resolve complaints of sexual misconduct informally and at the local level. However, the University recognises given the nature of certain forms of sexual misconduct, the likely impact on the individual, and any bystanders, that it may be more appropriate for the staff member as a first step to lodge a formal complaint with People and Capability, using the online form which may be accessed at: http://www.acu.edu.au/about_acu/our_university/contact/complaints_and_feedback/complaints.

(29) Staff also have the option to make a Protected Disclosure under the Protected Disclosures Policy.

(30) The University's procedures for handling complaints are based on confidentiality, impartiality, procedural fairness, immunity from detrimental action and prompt resolution and are outlined in the Staff Complaints Management Policy.

Section 10 - No Victimisation but Procedural Fairness

(31) The University does not tolerate victimisation and will take reasonable steps to ensure that affected individuals are not victimised.

(32) A staff member must not victimise or subject another person to detrimental action as a consequence of that person:

a. making a Complaint of Sexual Misconduct;
b. providing information about a Complaint of Sexual Misconduct;
c. supporting a Staff member, visitor, volunteer or contractors who has made a Complaint of Sexual Misconduct; or

d. engaging in safe active ethical bystander intervention.

(33) Any person involved in a Complaint of Sexual Misconduct will, to the extent reasonably possible, be afforded procedural fairness in accordance with the University's regulations, policies and procedures subject to the University's legal obligations and the need to manage any actual or imminent threat or harm.

Section 11 - False, Vexatious or Frivolous Allegations

(34) A staff member who knowingly makes a false, vexatious and / or frivolous allegation in connection with an allegation of Sexual Misconduct may be subject to disciplinary action in accordance with University employment instruments, policies and procedures.

(35) A false allegation includes statements that deliberately omit a material fact, as well as statements that the speaker / writer knows to be untrue.

(36) Vexatious allegations include allegations that are without merit and intended to cause inconvenience, annoyance, or harm (including financial cost) to the person who is the subject of the allegations.

(37) Frivolous allegations are allegations that have no serious purpose or value, and investigation would be out of proportion to the seriousness of the issues complained about.

Section 12 - Confidentiality

(38) Except where the University is compelled or obliged by the operation of the law, the University will keep confidential all particulars relating to a Complaint of Sexual Misconduct, where such particulars disclose or may risk disclosing, Personal Information or Sensitive Information.

(39) All parties to a complaint of sexual misconduct must keep confidential:

a. the identity of the Complainant, the Respondent and participants in the resolution or investigation of a Complaint;
b. the information provided or collected during the resolution or investigation of a Complaint;
c. the fact that a Complaint has been made; and
d. any report, outcome or determination of a Complaint.

(40) Where relevant, a Complainant and Respondent may disclose the information (on a confidential basis) in order to obtain support or advice from:

a. their immediate family members;
b. a qualified counsellor or independent advisor;
c. their staff representative (as defined under the Staff Enterprise Agreement); and / or
d. the Australian Human Rights Commission or other State-based body charged with jurisdiction in relation to matters including Sexual Misconduct.

(41) A Complainant and Respondent may also disclose the information if required by law (e.g. if required by the police or court).

(42) A breach of confidentiality may result in disciplinary action by a staff member action under the Staff Enterprise

Agreement, the Misconduct and Serious Misconduct Policy or the Misconduct and Serious Misconduct Policy - Senior Management, Executive and Senior Executive Policy.

Section 13 - Revisions made to this Policy

(43) The revision table includes revisions up until this document was migrated into the current policy platform. Any later changes will show in the Status and Details tab.

Date	Major, Minor or Editorial	Description
29 May 2020	Editorial	Incorporate the definition of 'sexual harassment' consistent with the Sex Discrimination Act 1984 - Section 28A. 1

(44) The University may make changes to this Policy from time to time to improve the effectiveness of its operation.

(45) In line with the University's Policy Development and Review Policy and Policy Development and Review Procedure, this Policy is scheduled for review every five (5) years or sooner if the Approval Authority or Governing Authority determine a review is warranted.

Section 14 - Further Assistance

(46) Any staff member who requires assistance in understanding this Policy should first consult their nominated supervisor who is responsible for the implementation and operation of these arrangements in their work area. Should further information or advice be required, staff should visit Service Central.

Section 15 - Associated Information

(47) For related legislation, policies, procedures and guidelines and any supporting resources, please refer to the Associated Information tab.

Status and Details

Status	Current
Effective Date	19th February 2024
Review Date	30th April 2024
Approval Authority	Vice-Chancellor and President
Approval Date	19th February 2024
Expiry Date	Not Applicable
Responsible Executive	Angelle Laurence Chief People Officer
Responsible Manager	Angelle Laurence Chief People Officer
Enquiries Contact	Bernardine Lynch ER and Safety Committees and Policy Officer People and Capability