



# Sexual Misconduct Prevention and Response Policy and Procedure

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## Emergency contacts

If immediate assistance is required, please use these emergency contacts:

### ON campus emergency (24/7)

Ph: (+61) 434 996 183

### OFF campus emergency (24/7)

Ph: Triple Zero (000) for police, fire and ambulance.

### EXTERNAL Counselling support and advice (24/7)

Ph: 1800 RESPECT (18 00 737 737) for the National Sexual Assault & Domestic Violence Help Line.

Ph: 1800 385 578 for Full Stop Australia.

Ph: 1300 668 256 Mindfit Psychology Employee Assistance Program (EAP) for free confidential counselling available to PIA staff and families.

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## 1. PURPOSE

1.1. Polytechnic Australia (PIA) is committed to furthering a positive learning and working environment and to the prevention of incidents of sexual misconduct. This policy is intended to clearly outline the approach taken by PIA to prevent and respond to incidents of sexual misconduct occurring at the institution.

## 2. SCOPE

2.1. The scope of this Policy applies to:

- All enrolled students and current staff using the physical and/or online learning environments provided by PIA;
- All individuals who are connected to PIA staff and students in these environments, such as visitors, contractors, former students and staff, and other stakeholders.

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## 3. PRINCIPLES

- 3.1 PIA maintains zero tolerance for negative behaviours, including sexual misconduct. To achieve this, PIA is committed to:
- Implementing ongoing education and training for students and staff;
  - Providing mechanisms for individuals to report any such behaviour to PIA, including anonymous reports;
  - Promptly assessing all reports of such behaviour and where appropriate referring such reports to the appropriate authorities;
  - Applying the PIA Privacy and Personal Information Policy and the principles of procedural fairness and confidentiality to the investigation of such reports;
  - Acting on the outcomes of such investigations in a timely and sensitive manner;
  - Considering disciplinary action if a report is assessed to be vexatious or malicious.

## 4. POLICY STATEMENT

### Prevention and Education

- 4.1. PIA is committed to *preventing* sexual misconduct in its physical and online environments through ongoing education and training. This is achieved through education and prevention strategies, such as:
- Orientation programs for all students.
  - Staff induction processes.
  - Staff training in mental health, mental health first-aid and/or crisis support.

### Making a Disclosure

- 4.2. Individuals who have directly experienced sexual misconduct involving PIA staff or students have the right to decide what information they disclose. Individuals have a number of options to consider:
- Call the PIA emergency number on (+61) 434 996 183;
  - Report to the Police by calling 000;
  - Speak to 1800Respect – National Sexual Assault, Domestic Family Violence Counselling Service by calling 1800 737 732;
  - Talk to a PIA staff member who will provide an initial response and refer students to appropriate professional services;
  - Ask someone to make a report on their behalf;
  - Take no action.
- 4.3. Where a disclosure has been made to a PIA staff member, where possible PIA will respect an individual's choice to not make a report and will keep the disclosure confidential. In exceptional circumstances, where required by law or where there is a risk of significant harm to that individual's health and safety or another individual's health or safety, PIA may notify third parties, such as the police or child protection authorities.

### Access support

- 4.4. The safety and wellbeing of individuals who have been affected by sexual assault and sexual harassment are priorities of PIA. Individuals have several options of support:
- Academic Support: Special consideration and other types of support are available to assist with study.

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- Employee Assistance Program: A free service that offers confidential, professional advice is available to PIA staff and their families.
- Staff and students may prefer to seek support from counselling services outside the Institution.

## Making a Report

- 4.5. PIA encourages individuals to report incidents of sexual assault and sexual harassment and provides options ranging from anonymous reporting and disclosure to lodgement of formal complaints. Wellbeing and support services are available for any student or staff member who has been affected by these behaviours. Students who experience sexual assault or harassment are entitled to academic special consideration.
- 4.6. An incident of sexual assault will be considered a critical incident and will be dealt with under the Critical Incident Policy (while upholding the intent of this policy). Where a report is made to the Police any action under the Institution's policies and procedures may be suspended.
- 4.7. Reports can also be filed by individuals who have heard about, or witnessed, such an incident occurring. Such reports must not identify the people involved without their consent. The assessment of an anonymous report may lead to information being shared with the Police or other relevant authority. PIA may not be able to take any further action on an anonymous report, or on a report that does not involve PIA staff or students, but in all cases, it will use the information provided to improve its processes for monitoring and responding to such incidents.
- 4.8. The provisions of PIA's *Privacy and Personal Information Policy* apply to the management, internal and external reporting and disclosure of any personal information contained in disclosures and reports. Within PIA, information from a report may only be accessed by staff who need this information to act on it. Students and staff involved in the PIA response to an incident must keep all details about the Report confidential. Breaches of confidentiality will be dealt with under the *Student Code of Conduct and Disciplinary Procedures* or the *Staff Code of Conduct*.
- 4.9. A person who makes a formal complaint has the right to stop the process at any time.

## Making a Report to the Police

- 4.10. A person who has experienced sexual assault is encouraged to report the matter to the Police. However, PIA will respect a person's decision to not report the matter to the Police. A formal report to the police is not required to access PIA's reporting procedures.
- 4.11. There are circumstances where PIA will consider reporting the matter to Police when a student, staff member or associate does not want to report the matter to the Police. A report to the Police may be made by PIA following consideration of evidence of a clear and unacceptable risk to the organisation or general community or where multiple disclosures, reports or complaints about the same person have been made. PIA will advise the person who has disclosed the sexual harm of the decision to report the matter to the Police.
- 4.12. An investigation by PIA does not preclude a criminal investigation by an external agency. PIA's investigation may have to be delayed if the allegation is reported to the Police or another external agency either by the person making the report or by PIA if this is required under the law.
- 4.13. PIA may implement Interim Measures while a Report is under investigation. A student or staff member who is subject to Interim Measures has the right to ask for the measures to be removed or varied. Interim measures may include temporary restrictions or requirements about who a student or staff

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member may contact, how they may contact someone, or where and when they can go on campus. Interim measures are not a penalty and do not anticipate the outcome of a Police investigation. Interim measures can be put in place only if a formal report has been made.

- 4.14. If any court or tribunal makes a finding that a student or staff member of PIA has perpetrated Sexual Assault or Sexual Harassment against any person, PIA may rely on this finding as evidence in any subsequent misconduct investigation undertaken by PIA in accordance with the Student Code of Conduct and Disciplinary Procedures or the Staff Code of Conduct.

## Response to Reported Incidents of Sexual Misconduct

- 4.15. PIA will apply the principles of procedural fairness to the investigation of any reported incidences of sexual misconduct involving PIA staff or students.
- 4.16. The principles of natural justice will apply to all allegations where a formal report of sexual assault or sexual harassment is made. This means, amongst other things, that:
- An alleged perpetrator will be given notice of the allegations against them, and an opportunity to respond to the allegations;
  - The parties involved in an allegation will not be required to meet with one another to reach a resolution;
  - Decisions relating to allegations will be based on evidence provided. Such evidence may include a written or oral statement, documentary evidence, screenshot or similar;
  - Where the health, safety or wellbeing of a witness is at risk, PIA may de-identify relevant materials;
  - All parties may be accompanied to any meeting by a support person if they wish; and
  - A person may not hear or determine a misconduct allegation if they are personally involved in any aspect of the allegation if they have a prior relationship with the person being investigated for misconduct, or with the person who has made an allegation of misconduct.
- 4.17. PIA will investigate alleged sexual misconduct in accordance with the provisions of the *Student Code of Conduct and Disciplinary Procedures* or the *Staff Code of Conduct*, or both, as appropriate. If the allegation in the report is substantiated, in whole or in part on the balance of probabilities, PIA will impose an appropriate disciplinary outcome. If the allegation is found to be a *vexatious complaint*, PIA may instead impose an appropriate disciplinary outcome on the person who lodged it.
- 4.18. Following the investigation, the alleged perpetrator and the person who experienced the sexual assault or sexual harassment should be advised of the outcome of the investigation in a timely manner. In some cases, for privacy reasons, the details of the penalty or outcome cannot be provided. However, in all cases, students and staff who have experienced sexual assault or sexual harassment and alleged perpetrators should be advised that the issue has been resolved and be given as much information about the outcome as possible, especially in respect of any impacts that it may have on their ongoing safety and wellbeing. Where the investigation leads to a finding of misconduct, the alleged perpetrator should be given a clear description of the reasons for the finding, as well as an opportunity to make representations about any penalty or sanction.

## Appealing decisions

- 4.19. An enrolled student or current staff member who wishes to appeal the decision of PIA in a sexual misconduct matter may use the provisions of the relevant grievances and appeals policies. Other individuals who are dissatisfied with the decision made may have recourse to external agencies such as the Anti-Discrimination Board (NSW) and/or the Australian Human Rights Commission.

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## Confidentiality and Record-Keeping

- 4.20. All documentation relating to the incident of sexual assault or sexual harassment will be kept confidential and shall be disclosed only to those persons who have a right to the information by virtue of their role in the process, as required by law, or as determined by limits to confidentiality (e.g. risk of harm to person or persons).
- 4.21. Written records should contain such information as is necessary for others to gain a clear understanding of the grounds upon which a concern was determined, and the actions taken to address it.
- 4.22. PIA will capture data on de-identified disclosures and formal complaints in order to monitor incidents, recognise patterns of behaviour, monitor the effectiveness of this policy, apply continuous improvement and to prevent reoccurrences of sexual assault and sexual harassment.

## Protection from Reprisals, Retaliation, or Threats

- 4.23. Individuals must not victimise another person, or commit or threaten to commit an act of reprisal, because that person has:
- Intervened in a potentially harmful situation as an *active bystander*;
  - Asked for, or referred someone else for, support regarding sexual misconduct;
  - Reported sexual misconduct or provided information about such a report;
  - Helped someone else to report sexual misconduct;
  - Been the subject of a report of sexual misconduct.

## 5. PUBLICATION

- 5.1. This Policy is made available to:
- Currently enrolled students via the [Student Portal](#)
  - Current staff via the [Staff Portal](#)
  - Other individuals external to the PIA, including prospective students, via the website [www.pia.edu.au](http://www.pia.edu.au)

## 6. ROLES AND RESPONSIBILITIES

- 6.1. The *Chief Executive Officer* is responsible for overseeing PIA compliance with the requirements of sex discrimination legislation and for ensuring that all Board and Committee members and Senior Executives are aware of these requirements and apply them to their areas of operation. This includes contracts with external business partners, such as agents.
- 6.2. The *Chief Executive Officer* has the delegated responsibility for the implementation of the policy across PIA and for ensuring operational compliance. This includes the provision of ongoing training for staff and students.
- 6.3. *Staff* are trained to provide an appropriate initial response, including advice about available PIA support services, referrals to external support services, and the process for making a report.
- 6.4. All *staff* and *students* are responsible for understanding and complying with the provisions of this policy. Staff and students are also responsible for understanding and complying with the *Information Technology Usage Policy and Procedure* in relation to the acceptable behaviours specific to the online learning environment. It is their responsibility to maintain the confidentiality of information provided during an investigation of a complaint and to be aware that not maintaining confidentiality may expose them to misconduct proceedings and/or defamation action.

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6.5. The Quality and Risk Committee will monitor de-identified data on sexual assault and sexual harassment and make recommendations for improvement.

## 7. DEFINITIONS

**Active bystander intervention** means seeing and recognising a potentially harmful situation and choosing to respond in a safe and lawful way that could prevent or stop the harm from happening or continuing.

**Consent.** Whilst definitions for consent to sexual activities also vary between jurisdictions, consent is essentially an agreement between people to engage in a sexual activity. Other important elements of consent are that it is mutual, freely given, informed, certain and clear, enthusiastic, reversible, specific and required throughout the activity.

**Disclosure** means the disclosure by a student or staff member of sexual assault or sexual harassment.

**Interim measures** are temporary restrictions or requirements regarding who a student or staff member can contact, or how they can make contact, or where they can go on campus and at what time(s). These restrictions are put in place to minimise the potential for harm to a student or staff member and do not anticipate the outcome of any PIA or external investigation.

**Procedural fairness** means that the investigation of complaints will:

- be based on evidence,
- provide a person who may be adversely affected by a decision an opportunity to present his or her case;
- require a decision-maker not to have an interest in the matter to be decided and not to appear to bring a prejudiced mind to the matter.

**Sexual assault** includes a range of behaviours, all of which are unacceptable and constitute a crime. Sexual assault occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they change their mind after having given their consent. Sexual assault is often called other names such as: Sexual abuse, rape, indecent behaviour, indecent assault, sexual molestation, incest, child sexual abuse, child sexual assault, touching, 'feeling up', sexual harassment.

Examples of sexual assault may include (but are not limited) to:

- Two people in a relationship start engaging in sexual activity but Person A changes their mind and asks to stop. Person B refuses to stop and forces sexual activity.
- Person A has sexual intercourse with Person B when Person B does not want to or is unable to consent.
- Person A knows Person B does not want to or cannot consent, or has no reasonable grounds to believe Person B consented.
- A teacher manipulates a student to engage in sexual acts in exchange for better marks.

**Sexual harassment.** While the definition of sexual harassment varies across Australian (and other) jurisdictions, it generally involves an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature where a reasonable person, aware of the circumstances, would anticipate the possibility that the action would cause offence, humiliation, or intimidation.

Examples of sexual harassment include:

- staring, leering or unwelcome touching
- suggestive comments or jokes



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- repeated unwanted invitations to go out on dates or requests for sex
- intrusive questions about a person's private life or body
- unnecessary familiarity, such as deliberately brushing up against a person
- emailing pornography or rude jokes
- displaying images of a sexual nature around the workplace
- communicating content of a sexual nature through social media or text messages.

**Sexual misconduct** includes incidents of **sexual harassment** and **sexual assault**.

**Vexatious complaint** means one that is made or pursued without reasonable grounds or made to harass or annoy, to cause delay or detriment, or for any other wrongful purpose.

## 8. RELATED LEGISLATION AND DOCUMENTS

### Relevant Legislation and Standards

*Sexual Discrimination Act 1984 (Cth)*

*Anti-Discrimination Act 1977 (NSW)*

*Crimes Act 1900 (NSW)*

*Higher Education Standards Framework (Threshold Standards) 2021 Domains 2 and 7*

*National Code of Practice for Providers of Education and Training to Overseas Students 2018 Standards 2,6,8,10.*

### Key Related Documents

*Critical Incident Policy and Procedure*

*Discrimination and Harassment Policy and Procedure*

*Equity, Diversity and Inclusion Framework*

*IT Usage Policy and Procedure*

*Privacy and Personal Information Policy*

*Staff Grievance Policy and Procedure*

*Staff Code of Conduct*

*Student Code of Conduct and Disciplinary Procedures*

*Student Grievances Handling Policy and Procedure*

A number of resources have been consulted in the development of this document:

*Tertiary Education Quality and Standards Agency, Good Practice Note: Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector, July 2020*

*Australian Human Rights Commission, "Change the Course" – National Report on Sexual Assault and Sexual Harassment at Australian Universities 2017*

*Universities Australia – "Respect.Now.Always."*

*Universities Australia – Guidelines for University responses to SASH*

*A variety of policy documents from other educational institutions.*

*Women's Legal Service NSW*

## 9. FEEDBACK

PIA staff and students may provide feedback about this document by emailing [policy@pia.edu.au](mailto:policy@pia.edu.au).

## 10. APPROVAL AND REVIEW DETAILS

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Administrator	CEO
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