



Serious Matter and Critical Incident Sexual Harassment and Assault Policy

Version: 2nd

Responsible To: Head of College & CEO – John XXIII College

Pertains To: Residents (Accommodation Agreement Holder) – John XXIII College

Supported By: Deputy Head of College – John XXIII College
Staff – John XXIII College

Collegiate Team – John XXIII College

Monitored By: Head of College & CEO – John XXIII College

Purpose

This policy provides John XXIII College (College) with clear decision-making processes for managing critical incidents and serious matters that involve Sexual Harassment and Sexual Assault. This is to ensure that each incident is managed fairly, effectively, consistently and in a timely manner.

The secondary purpose of this policy is to inform residents and staff about specific resident behaviours that are not accepted at the College.

It is important to differentiate between this policy and the process involved in the Criminal / Justice System. See attachment B for the differences between each process.

Definitions

A 'critical incident' is a traumatic event or the threat of such, which causes stress, fear and / or physical and / or emotional injury. The critical incident and serious matters policy lists many examples of critical incidents, one of which is sexual assault.

Serious Matters

A 'serious matter' is any occurrence which is not considered to be a critical incident under the relevant College Critical Incident and Serious Matters Policy. A serious matter has the potential to have a disruptive impact on the wellbeing of a Resident and / or the residential community. The Critical Incident and Serious Matters Policy lists many examples of serious matters, one of which is sexual harassment.

Sexual Harassment

Sexual harassment can be a single event or a pattern of unwelcome, non-reciprocated behaviours of a sexual nature. It can include repeated unwanted sexual advances, requests for sexual favours, sexual comments as well as unsolicited or unwelcome conduct of a sexual nature. These behaviours result in the complainant feeling humiliated, intimidated or offended. Sexual harassment is not behaviour that is based on mutual attraction, friendship and respect. Where interactions are consensual, welcomed and / or reciprocated, it is not sexual harassment.

Harassment behaviours are intentional, often repetitious and can be overt or subtle and come in many forms. These forms include:

- a. Verbal – such as telephone calls with sexual overtones, unwelcome enquiries regarding a person's sex life, continuous rude or sexist jokes or remarks, remarks about a person's figure.
- b. Non-verbal – such as gestures with sexual meanings, leering, voyeurism, continuous and unwelcome flirtation, deliberately brushing up against another person.
- c. Visual – such as exhibiting pornographic photos, comics, objects that create a hostile environment.
- d. Quid pro quo – this involves sexual bribery.
- e. Technology Facilitated – see definition below.

Revenge Porn

Revenge Porn is the revealing of sexually explicit images, videos or audios of a person or text about a person posted on the internet (or other public or private forum) without the consent of the subject of the material and aims to cause them distress or embarrassment. The distribution of revenge porn is a criminal offence.



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Technology Facilitated Sexual Violence (TFSV)

TFSV is the use of technology to communicate sexually explicit material that is unwelcomed and likely to humiliate, denigrate or give offence to a person. This includes the misuse of online forms of communication or social media to send sexually explicit material. Some examples of this would be the use of mobile phone, snapchat, email or the internet without the consent of the subject; the use of Facebook groups to promote rape-supportive attitudes; the posting of degrading, sexually based comments or audio about residents, students and university or college staff; the use of online dating sites to procure a sexual assault, the use of revenge porn.

Voyeurism

The practice of gaining sexual pleasure from watching others when they are naked or engaging in sexual activity, without the consent of the people being observed.

Sexual Assault

Sexual assault is any type of sexual contact or behaviour whereby a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they have withdrawn their consent. Examples of sexual assault are sexual activities such as forced sexual intercourse, stealing, fondling and attempted rape. Sexual assault is a criminal offence.

Sexual Consent

Consent is given when someone agrees, gives permission, or says "yes" to sexual activity with other persons. Consent is a voluntary, active agreement by an adult. Consent is always freely given by a person in a fit state to give consent and all people in a sexual situation must feel that they are able to say "yes" or "no". Consent cannot be given where there is **coercion** or **intoxication**. The absence of the word "no" does not mean consent. Similarly, phrases such as "we shouldn't" or "I am not sure" don't constitute consent. Consent can also be revoked at any moment.

Sexual Violence

Sexual violence is a generic term that covers both sexual assault or sexual harassment.

Disclosure

A disclosure involves the sharing of information about an incident of sexual assault or sexual harassment with another person. Disclosures can be made to anyone and are usually made to a person who is known and trusted.

Formal Report

A formal report refers to a person making a formal statement about sexual assault or sexual harassment to a College staff member who has authority to take action. At the College this person is the Deputy Head of College or in their absence the Head of College.

Victim / Survivor / Complainant

The term victim refers to someone who has recently been personally affected by sexual violence. The term survivor refers to someone who has gone through the recovery process following an experience of sexual assault or harassment. The College seeks to help any victim become a survivor, but for the purpose of this policy unless specifically required they will both be called a complainant.

Informant

An informant is a person who makes a "third party" disclosure or formal report. This person needs to be aware that the College's response is limited without a formal report from the complainant and when there is doubt about the wishes of the complainant.



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Resident

A Resident of the College is current member of the College community who is residing at the College. This is the person who signs the residential Accommodation Agreement and lives at the College; it is not based on the person who is paying the fees (the Account Holder).

Visitor (Guest)

A visitor is a family member or friend (non-resident) invited into the College or to a College event by a resident of the College. This visitor is required to abide by the ethos and policies of the College. The College resident who invited the visitor is responsible for their actions while they are at the College or College event and have responsibility for the consequences of any misconduct of their guest. A visitor is able to make a report about a College resident under this policy.

Outside Community Member

A person who is not a College resident or a visitor may make a report about the behaviour of a College resident. In these cases, the matter will not be dealt with under this policy (Sexual Harassment and Assault Policy) or under the Critical Incidents and Serious Matters Policy but will be dealt with under the Resident Behaviour Policy.

The Pastoral Team

The Pastoral Team at the College is the group of student leaders who have responsibility for monitoring the wellbeing of the residents. This team consists of the Senior Residents (SRs) and is led and supervised by the Deputy Head of College (DHOC) with the assistance of the Dean of Residents (DOR) and advice from the counsellor.

The Senior Staff

The Senior Staff of the College relates to the staff with responsibilities in the area of Student Services, namely the Head of College, Deputy Head of College and the Dean of Residents. In some cases, where there is an overlap of responsibilities it may include the Operations Manager and the Business Manager.

Privacy Act

The *Privacy Act 1988 (Cth)*, permits the College to disclose personal information about someone to a party outside the College or University where, inter alia:

- a. a person consent in writing to their personal information being disclosed; or
- b. the College believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person.

The Head of College will decide who may be informed of this serious or imminent threat to the resident. As per the Resident's Accommodation Agreement, this may be the residents' parents or guardians.

If a complaint leads to a criminal investigation by the Police, they are able to request access to any information collected by the College.

Principles

1. John XXIII College strives to provide a supportive, safe, caring environment for all staff, residents and visitors, where all members of the community feel welcomed, respected and valued. The College regards the successful upholding of this policy as pivotal to its sense of community and identity.
2. The College recognises that the impact of sexual violence can be profound and that these actions by staff, guests / visitors or residents are the antithesis of the College's values.
 - a. Sexual assault is a crime that disempowers the victim and is a crime of power abuse.
 - b. The College's response should aim at;
 - i. minimising the number of times a complainant needs to recount a traumatic experience.
 - ii. empowering the complainant to give them some control over the process.



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3. All senior staff of the College and the Pastoral Team will have access to training and support in receiving a disclosure, the College's management of critical incidents and serious matters and in the College reporting process.
4.
 - a. The Deputy Head of College is responsible for the management of '*critical incidents*' and '*serious matters*', and in receiving formal reports with additional assistance being sought from other trained professionals, services and staff as appropriate.
 - b. Members of the Pastoral Team are likely to receive disclosures, but they are not responsible for the management of these situations and their role is to assist the Deputy Head of College to seek information and identify those involved in these incidents and to provide limited support to individual residents.
5. The College will at all times be guided by the principles of compassion, providing support, protecting confidentiality and privacy, supporting cultural needs and fairness. This requires the College to ensure that all parties (complainant, alleged perpetrator and witnesses) have fairness in the Colleges procedures. It will always seek to ensure the safety of all parties against victimisation and retaliation threats.
6. The College Policy and Procedures will be:
 - a. Accessible – The Policy and Procedure will be placed on the College website; a one-page summary will be made available to all residents – in both the handbook and on the College website.
 - b. Transparent – A summary of Frequently Asked Questions, facts and contact details will be provided to each resident making a disclosure to the College. The complainant and alleged perpetrator will be updated on the process at various key points.
 - c. Expeditious – The determination of the complaint will be carried out as quickly as possible.
 - d. Fair – Fairness requires all parties to be able to present their version of any incident and provide witnesses to support their case. The decision made will then take into account all the evidence and will be a reasonable decision on the basis of this evidence.
7. Support to all parties involved – complainant, alleged perpetrator, witnesses, first responders and any others affected by the disclosure will be a priority of the College.

Policy Statement

1. John XXIII College is committed to ensuring that residents, guests / visitors and staff are treated with integrity, respect, fairness and justice. It seeks to ensure that residents, visitors and staff are able to live and work in a safe environment.
2.
 - a. The residents at the College have certain rights:
 - i) The right to grow as an individual and seek to achieve their true potential while also trying to make appropriate life choices.
 - ii) The right to express and defend ideas and opinions. However, this right is restricted and does not apply to "hate or derogatory speech", racist or sexist language.
 - ii) The right to live, study, work and participate in all aspects of life in the College and on the ANU campus in a happy and safe environment free from the threat of sexual harassment and assault.
 - b. At the same time, all residents have responsibilities:
 - i) Not to be involved in any behaviour associated with sexual violence or that is likely to lead to sexual violence.
 - ii) Not to be a bystander when others may be involved in sexual violence.
 - iii) To work with and assist the College to stamp out all issues related to sexual violence.



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- iv) To take responsibility for their actions and accept that these actions have consequences.
3. The primary objective of the College and especially the student leaders in this area is prevention. This is achieved through the leadership of all parties to contribute to a culture that opposes sexual violence, by being an active bystander that challenges inappropriate behaviour and by limiting activities that might lead to incidents of sexual violence and by ongoing education.
4. Critical and serious matters such as sexual assault and sexual harassment will not be tolerated under any circumstances. These sexual violence behaviours are expressly prohibited at John XXIII College. The College will take action against any resident, guest /visitor or staff member who is found to have breached this policy and that the issue may also be passed on to other authorities to also deal with, such as the Police and the ANU.
5. All residents are able to access internal (within the College), semi internal (within ANU) and external options when dealing with any form of sexual violence.
6. The level of response required to a critical incident or serious matter will depend on the severity of the critical incident or serious matter and the level of risk to the John XXIII College Community. The College's response will be adapted, within the parameters of this policy and the Privacy Policy to adjust to the characteristics of each incident to ensure that it's processes are sensitive, fair, timely and run in a confidential manner, while also seeking to:
 - a. Provide the complainant will some level of control over the College process,
 - b. Meet the needs of each individual involved,
 - c. Provide fairness to all parties involved in the incident,
 - d. Support all parties involved.
7. When the issue of sexual violence involves an outside community member:
 - a. If the complaint is made by a resident against an outside community member, the College will support the complainant as per this policy and assist them to make a complaint to the Police or the any relevant outside organisation.
 - b. If the complaint is made by an outside community member against a resident the matter will not be dealt with under this policy.
 - i) If the matter is dealt with by the Police the role of the College will be to support the resident as they move through the Police Investigation phase.
 - ii) If the outside community member asks for the College to deal with the complaint then it will be dealt with under the Resident Behaviour Policy.

Attachment B: SUMMARY OF CONTACTS FOR SERIOUS MATTERS

It is important to differentiate between this policy and the process involved in the Criminal / Justice System.

1. There is a fundamental difference between a criminal process and the College's process in that:
 - a. the College seeks to
 - ensure people involved in issues of sexual violence receive pastoral care.
 - determine if there has been a breach of College policy and if so, if misconduct has occurred.
 - b. the Judicial system seeks to determine if there is enough evidence to support a criminal charge and then determine if a person is guilty of committing a crime.
2. Because of this difference, there is a difference in the information that is considered:
 - a. the College interviews the people involved, including anyone who may have seen what happened and it may use any available CCTV footage.
 - b. the criminal system collects all available evidence including, expert witnesses and medical evidence.



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3. When making a decision there is another difference:
 - a. the College disciplinary system uses the criteria of fairness and reasonableness to all parties.
 - b. while the justice system uses the criteria of “beyond reasonable doubt”.
4. Depending on the process followed:
 - a. The College process is an internal process between those involved and the College.
 - b. The criminal law process occurs in the public domain, especially once it reaches the courts.
5. The penalties that can be handed down differ:
 - a. The College process could see decisions which range from no action up to expulsion from the College.
 - b. The criminal law process could see penalties from acquittal up to imprisonment.