

SEXUAL MISCONDUCT PREVENTION AND RESPONSE POLICY AND PROCEDURES

Policy Statement	<p>This policy and procedure outlines how Kent manages the prevention of sexual misconduct and provides the procedure for responses to disclosures of sexual misconduct. This policy and procedure supports:</p> <ul style="list-style-type: none"> • TEQSA, Higher Education Standards Framework, (Threshold Standards) 2021, Domain 2 Section 2.3 • Standards for Registered Training Organisations (RTOs) 2015, Standards 1, 5 & 6 • National Code Practice for Providers of Education and Training to Overseas Students 2018 • Sex Discrimination Act 1984 (Cth)
Responsibility for Implementation	Sexual Misconduct Taskforce
Compliance and Monitoring	Chief Operating Officer, Managing Director/CEO, Chief Risk and Compliance Officer, Audit and risk Management Committee, Governing Board

Purpose

To provide clear guidance to staff and students on Kent’s ‘Zero Tolerance’ towards sexual misconduct and the processes enacted by Kent as preventative measures. To provide clear guidance for staff and students to appropriately respond to disclosures and reports of sexual misconduct.

Scope

This Policy applies to the following:

- all enrolled Kent students
- all employees of Kent
- former students and students currently on leave, where the behaviour governed by this Policy occurred whilst they were enrolled. (When a former student reports an incident of sexual misconduct, Kent may decline to undertake a misconduct investigation but may refer the former student to support services within the wider community).

Applying the aforementioned list in respect of sexual misconduct occurring:

- on Kent campuses or campuses managed by third parties where Kent students are enrolled.
- in virtual spaces (including online forums, communities and platforms) arranged or facilitated by Kent
- whilst using Kent’s Information and Communication Technology (ICT) resources
- at premises in which research study or work integrated learning is undertaken as arranged by Kent
- whilst staff or students are representing Kent (e.g. at sporting events, cultural activities, competitions, conferences)

Outside of Scope:

Where sexual misconduct is disclosed or reported as occurring outside the scope of this policy– for example, at a private venue or on an occasion unconnected with Kent, the matter will not be investigated by Kent as a potential student or staff misconduct issue, however support services and referrals will be offered to Kent staff and students as appropriate.

Aim

This policy aims to:

- a) support a work and study environment free from sexual misconduct where staff and students are treated with dignity, courtesy and respect;
- b) take a 'support first' approach to allegations of sexual misconduct so that staff and students can access the advice and support services they need;
- c) encourage the reporting of behaviour which breaches this policy;
- d) explain the difference between disclosures and reports of sexual misconduct;
- e) encourage safe active bystander intervention.

Definitions

Active Bystander Intervention:

Means seeing and recognising a potentially harmful situation and choosing to respond in a safe way that could prevent or stop the harm from happening or continuing.

Consent:

A person consents when they freely and voluntarily agree to behaviour, understanding what they are doing and who they are doing it with. A person cannot consent if they are:

- asleep or unconscious;
- significantly affected by drugs or alcohol;
- intimidated, coerced or threatened;
- held against their will, or
- tricked, or under a mistaken belief, about the identity of the other person involved.

A person cannot consent if they lack the capacity to understand what is taking place because of a cognitive disability, or because they are under 16. It's important to understand that a person might not consent to behaviour even though they were, or are, in a relationship with that person.

Disclosure:

A disclosure of sexual misconduct is where a person affected tells another person about an incident that happened to them or that they have witnessed or become aware of.

Report:

A report is an official notification to Kent of sexual misconduct for the purpose of investigation made by a person affected or someone on their behalf in line with the Complaints and Appeals Policy and Procedures (Kent Website [MyKent Public Link](#)> POLICY– Complaints and Appeals Policy and Procedures – Public Login 'public@kent.edu.au' and enter Password 'AccessKent!') or the Staff Misconduct Policy & Procedures ([Kent Website MyKent Staff Link](#)> POLICY– Staff Misconduct Policy & Procedures – Staff Login Required).

Sexual assault:

Occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, or if a child or young person under 18 years of age is exposed to sexual activities.

Sexual Harassment:

Any unwanted, unwelcome or uninvited behaviour of a sexual nature which a person should expect will make the recipient feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working or study environment.

Sexual misconduct:

Includes sexual harassment or sexual assault, indecent assault, an act of indecency, conduct involving child abuse material, making or distributing sexually explicit photos or videos, or certain other behaviours of a sexual nature which are crimes in New South Wales (NSW) and Victoria (VIC) or another State or Territory of Australia where Kent staff or students are based or enrolled

PROCEDURES

1.0 Zero Tolerance

Sexual misconduct is unacceptable at Kent. Kent's Governing Board being the governing body for Kent Institute Australia (Kent) and its sub-committees, Academic Board and Audit & Risk Management Committee with devolved endorsement authority, are committed to the wellbeing and safety of all Kent staff and students. This commitment is evident in Kent's Strategic Plan and underpinned by Kent's Operations Plans and Kent's Policies and Procedures.

Kent has a Sexual Misconduct Taskforce chaired by the Chief Executive Officer (CEO)/ Managing Director, to oversee the implementation of this Policy, Procedures and related investigations.

Kent enforces a **Zero Tolerance** towards sexual misconduct.

This Policy should be read in conjunction with other Kent Policies and Procedures, notably:

- **Academic Monitoring and Intervention (HEd) Policy and Procedures**
Includes an early intervention process in which students have consultations with the Student Engagement and Wellbeing Co-ordinator for non-academic related concerns or events requiring support or which affect their ability to study.
- **Access and Equity Policy**
Educates staff and students on their rights and responsibilities in fostering a learning community that does not tolerate harassment or victimisation.
- **Complaints and Appeals Policy and Procedures**
Provides formal complaint mechanisms and procedures, both internal and external, with an explanation on procedure and timeframes.
- **Critical Incident Policy and Procedures**
Provides a systematic and clear process that protects the interests and welfare of all individuals who are involved in a critical incident- inclusive of sexual assault.
- **Staff Misconduct Policy and Procedures**
Provides formal complaint and management mechanisms and processes for cases of staff misconduct.
- **Non-Academic Misconduct Policy and Procedures**
Provides students with an overview of what constitutes inappropriate Student conduct to help foster a campus community characterised by accountability, respect, fairness, and safety.
- **Student Suspension and Cancellation of Enrolment Policy and Procedures**
This policy outlines the procedure students and staff take to allow a suspension of studies in extenuating circumstances.
- **Workplace Health and Safety Policy and Procedures**
Reinforces Kent's zero tolerance with respect to sexual harassment and includes information on staff and students responsibilities.
- **Student Support Policy and Procedures**
Details all support mechanisms available to Kent students, including health, safety and wellbeing services.

2.0 Preventative Measures

Kent's Sexual Misconduct Taskforce will continue to focus attention on developing and implementing a range of prevention strategies that are intended to address the area of risks to any Kent stakeholder in the prevention of the potential for experiencing sexual misconduct. Kent recognises that it is impossible to eliminate the risk of incidents of sexual misconduct in any community. However, Kent intends to give these matters priority attention when such incidents are disclosed or reported, Kent's primary concern will be for the welfare of those who are impacted within the scope of this policy and will seek to implement strategies to prevent reoccurrence.

Kent staff and students are advised on possible actions they can take, the parties they may contact and the support services that are available and accessible if their personal circumstances are having an adverse effect on their employment or education. Kent promotes and fosters a culture of a safe environment, including advising students and staff on possible actions they can take to enhance safety and security on campus and extends to awareness of their safety when in public.

3.0 Supporting people who have experienced sexual assault or harassment

Kent provides training to staff and focus of attention is given to familiarity with Kent's Policies and Procedures. This information is intended to support and enable them to take appropriate action and refer students to the correct service or contact person if incidents are reported to them. The Student Services Unit staff provide staff professional development workshops and a Handbook for staff training purposes via access to LINK: [Kent Website MyKent Staff Link](#)>DOC – *Student Wellbeing and Support Services Handbook (Lecturers and Trainers)– Staff Login Required.*

The safety and wellbeing of the person disclosing or formally reporting sexual assault or sexual harassment is the priority of Kent. Staff and students can support a person who has disclosed an experience of sexual assault or sexual harassment by:

- a) listening without interrupting;
- b) letting them express how they feel and respecting the words they use in reference to the incident;
- c) letting the person know they believe what the person is telling them and acknowledging their distress;
- d) letting the person know that the incident was not their fault;
- e) respecting their decisions;
- f) directing them to the available support services

4.0 Active Bystander Intervention

Kent encourages and values safe active bystander intervention by members of the Kent community to prevent or stop sexual assault and sexual harassment from occurring or continuing.

The steps involved in safe active bystander intervention are:

1. noticing the situation – paying attention to what is going on nearby;
2. deciding if it is a problem – investigating whether someone might need help, and checking with people around if unsure;
3. accepting responsibility to take action – not assuming someone else will do something;
4. making a plan to step in – indirectly or directly confronting the issue, without being aggressive or putting oneself or others in danger.

5.0 Disclosures and Reports of Sexual Misconduct

Kent seeks to provide effective and appropriate responses to incidents of sexual misconduct disclosed or reported. All reports within the scope of this policy will be promptly investigated by Kent's Sexual Misconduct Taskforce.

The privacy of the person filing a report and the person under investigation shall be respected at all times consistent with the obligation to conduct a fair and thorough investigation. No Complainant, Appellant or Respondent will be victimised or discriminated against in the course of the carrying out of the complaints and appeals or misconduct processes, either internal or external.

NOTE: Kent's formal investigations process is not a substitute for a criminal process. Matters of a criminal nature, such as sexual or physical assault should be reported to the relevant authority (example, NSW or VIC Police).

Allegations of Sexual Misconduct against a Kent Staff Member are handled in accordance with the Kent Staff Handbook Clause 4.0 ([Kent Website MyKent Staff Link](#)> DOC– Staff Handbook – Staff Login Required) and the Staff Misconduct Policy & Procedures ([Kent Website MyKent Staff Link](#)> POLICY– Staff Misconduct Policy & Procedures – Staff Login Required).

Staff acting with disregard to any of Kent's policies and procedures may be subject to disciplinary action, from a written warning to termination, depending on the severity of the offence and will be appropriately managed in compliance with the *Staff Misconduct Policy & Procedures*.

As per ***the Staff Misconduct Policy*** and Procedures:

- Executive Manager, Unit Manager or Supervisor will in the first instance investigate the alleged misconduct and together with the Manager Human Resources, as the independent observer, meet with the staff member to discuss the allegation of misconduct.
- However, all matters pertaining to Sexual Misconduct will however be referred to the CEO/Managing Director (also the Chair of the Sexual Misconduct Taskforce) to consider the matter, the response from the staff member, Observations, Findings, Recommendation of the investigation report from the interview panel and other relevant factors to make a decision on whether to take steps to mutually resolve the matter with the staff member or terminate the employment relationship.
- The CEO/Managing Director will provide a written response to the staff member within ten (10) days of the interview

During the process, all actions will be undertaken to maintain confidentiality. Records will be maintained on the staff member's HR file and in the Sexual Harm Register (see Section 10.0 below).

Where allegations involve stakeholders who have investigative or decision making responsibilities under this Policy, the CEO/Managing Director will decide alternative stakeholders to undertake those duties to safeguard procedural fairness.

Where allegations involve the CEO/Managing Director, the matter will be referred to the Governing Board for investigation and determination of the appropriate course of action.

Reports and allegations of Sexual Misconduct against or involving Kent Students are referred to the Manager Student Services *in the first instance*, who is the first responder trained to guide students through Kent processes and to refer to relevant support services. The Manager Student Services is a member of the Sexual Misconduct Taskforce and will refer cases to the Chair, where they are within the scope of this policy.

Students can contact the Manager Student Services on campus during office hours or by email:

Sydney Campus: Email- wellbeing.syd@kent.edu.au

Melbourne Campus: Email- wellbeing.melb@kent.edu.au

Students acting with disregard to any of Kent's policies and procedures may be subject to disciplinary action, from a written warning, suspension or termination of enrolment, depending on the severity of the offence.

Reports of sexual misconduct will be handled:

- a) **Where the reporting party wishes to lodge a formal complaint**, in accordance with Kent's Complaints and Appeals Policy and Procedures (Kent Website [MyKent Public Link](#)> *POLICY– Complaints and Appeals Policy and Procedures- Public Login 'public@kent.edu.au' and enter Password 'AccessKent!'*).

As per the Complaints and Appeals Policy and Procedures:

- The Designated Officers for Non-Academic Complaints and Appeals (The Chief Operating Officer) will refer the case to the CEO/Managing Director who is the Chair of the Sexual Misconduct Taskforce.
- the CEO/Managing Director will convene the Sexual Misconduct Taskforce to determine the appropriate course of action.

- b) **Where the reporting party discloses or alleges Sexual Misconduct but does not wish to lodge a formal complaint:**

- The Kent Staff Member to whom the matter has been disclosed will refer the case to the CEO/Managing Director who is the Chair of the Sexual Misconduct Taskforce.
- the CEO/Managing Director will convene the Sexual Misconduct Taskforce to determine the appropriate course of action.

During the process, all actions will be undertaken to maintain confidentiality. Records will be maintained in the Sexual Harm Register (see Section 10.0 below).

6.0 Critical Incidents and Emergencies

Critical incidents are handled in accordance with Kent's *Critical Incident Policy and Procedures* (Kent Website [MyKent Public Link](#)> *POLICY– Critical Incident Policy and Procedures - Public Login 'public@kent.edu.au' and enter Password 'AccessKent!'*).

In the case of a critical Incident, the Critical Incident Policy & Procedures is enacted and the Emergency Contact List (Policy Appendix 1) is used for escalation and appropriate handling of the incident, in collaboration with the members of the Sexual Misconduct Taskforce. (The CEO/Managing Director is also the Critical Incident Team Leader).

7.0 Kent's Obligations

Kent is obliged to report to the Police information that might materially assist the apprehension of an offender or the prosecution or conviction of an offender of a serious criminal offence. Kent may also initiate urgent interim measures, such as restricting any person's access to campus buildings and/or Kent property (where there is an immediate threat to the safety of any person), suspending a person's enrolment or temporarily suspending a person from specified activities and/or positions of leadership.

Kent may need to report to the Tertiary Education and Quality Standards Agency (TEQSA) (as material changes) incidents that indicate material breaches in safety or preventative controls, including recurring incidents of sexual assault or sexual harassment.

8.0 Sexual Misconduct Taskforce

Kent's Sexual Misconduct Taskforce is responsible for:

- Investigating and responding to reports of Sexual Misconduct inclusive of Sexual Assault and Sexual Harassment (SASH), against or involving a Kent student (whether reported as a formal complaint or appeal or disclosed otherwise).
- Deciding the appropriate course of action for each case with due consideration for privacy, confidentiality and safety of parties involved.
- Staff and student training/ awareness
- Managing contact with External Support Services
- Completing reporting obligations
- Related policy and procedure implementation and reviews

Sexual Misconduct Taskforce members:

- CEO /Managing Director - (Chair)
- Chief Risk and Compliance Officer - *(Governance/Risk/Records & Internal and External Reporting)*
- Chief Operating Officer - *(Investigations / Reviews/Training/ External Support Services)*
- Manager Student Services - *(Student Support/ Escalation/ Reviews/External Support Services/Investigations/ Training/Implementation of Outcomes)*
- Executive Dean (Teaching and Learning) and/or Head of Vocational Education *(depending on the students involved - (Investigations and implementation of outcomes)*

9.0 External Services

Staff and students should access the following external services as appropriate:

National - EMERGENCY SERVICES/ REPORTING A CRIME

- Telephone by dialling triple zero (**000**)
- Attending a police station in person
- Reporting the incident anonymously through Crime Stoppers on 1800 333 000.

New South Wales (NSW)

- **NSW Rape Crisis Service** on **1800 424 017**, 24 hours a day;
- **1800RESPECT** on **1800 737 732** | 1800respect.org.au, 24 hours a day;
- **Royal Prince Alfred (RPA) Hospital Sexual Assault Service** on **9515 9040** (Monday to Friday) or **9515 6111** (after hours). Counselling and medical services are available for anyone who has been sexually assaulted.
- **Women's Legal Service NSW** on **1800 801 501** | wlsnsw.org.au
- **Redfern Legal Centre**, NSW International Student Legal Service on **9698 7277** | rlc.org.au
- **Specialist Lesbian, Gay, Bisexual, Transgender, Intersex and Queer service** on **1800 244 481** | iclc.org.au
- **Victims Access Line** on **1800 633 063** free call | 24 hours a day, 7 days a week

Victoria (VIC)

- **Sexual Assault Crisis Line Victoria** on **1800 806 292**, 24 hours a day;
- **1800RESPECT** on **1800 737 732** | 1800respect.org.au, 24 hours a day;
- **The Royal Women's Hospital Sexual Assault Service** on **9635 3610**, 24 hours a day. Counselling and medical services are available for women who has been sexually assaulted.
- **Women's Legal Service VIC** on **8622 0600** | womenslegal.org.au

- **Melbourne Student Centre** VIC International Student Legal Service on **1800 056 449** |studymelbourne.vic.gov.au
- **Fitzroy Legal Service** Specialist Lesbian, Gay, Bisexual, Transgender, Intersex and Queer service on **9419 3744** |fitzroy-legal.org.au
- **Victims of Crime Helpline** 1800 819 817 free call |8am-11pm, 7 days a week

10.0 Record Keeping and Reporting

To maintain confidentiality and appropriate oversight over risks pertaining to sexual harm, all cases involving Sexual Misconduct allegations against a Kent staff member or involving Kent students will be referred to the Chief Risk and Compliance Officer for recording in a confidential Sexual Harm Register.

The Sexual Harm Register will have access restricted to the Chief Risk and Compliance Officer, CE/Managing Director and Governing Board Members.

The Manager Human Resources will report to the Chief Risk and Compliance Officer any cases involving Kent staff, following determination of the case by the CEO/Managing Director.

The Chief Risk and Compliance Officer, as a member of the Sexual Misconduct Taskforce will record matters pertaining to Kent students, as considered by the Sexual Misconduct Taskforce.

The Chief Risk and Compliance Officer will report to the Kent Audit and Risk Management Committee de-identified case data on a quarterly basis, as part of the Chief Risk and Compliance Report, at each sitting of the Committee for appropriate oversight over the volume of incidents within the organisation.

Upward reporting to Governing Board will occur via the Chair of Audit and Risk Management Committee Report to Governing Board.

Document Title: Sexual Misconduct Prevention and Response Policy and Procedures	
Date Compiled: 22 nd November 2018	By: Executive Manager Student Engagement
Due Date for Review: July, 2021	Website Access Permission: Public
Date Updated: 18 th March, 2019 3 rd February, 2020 (no version control change) 12 th June, 2020 (No amendments) 6 December 2023	Reviewed By: Executive Manager Student Engagement Executive Manager Student and Campus Services Executive Manager Student and Campus Services Chief Risk and Compliance Officer
Version Control Update (Current): V1 22 nd November, 2018 V2 18 th March, 2019 V3 6 December 2023	Approved By: Governing Board Meeting Date: V1 – 5 th December, 2018 V2 – 3 rd April, 2019 Executive Chair – 3 rd February, 2020 Governing Board 6 December 2023

AMENDMENTS:

18/03/2019 – addition of Sexual Misconduct Taskforce details and update to Kent staff position and responsibilities.

03/02/2020 – addition of reference to new Student Wellbeing and Support Services Handbook (Lecturers and Trainers) available as a training tool.

12/06/2020 – 12 month review – update Kent position titles.

6/12/2023 – Streamline and align processes for complaints against staff members and those involving students. Establish more stringent escalation requirements, which elevate all Sexual Misconduct complaints and appeals to the CEO/Managing Director (Chair of the Sexual Misconduct Taskforce) and mandate convention of the Sexual Misconduct Taskforce for all matters involving students. Establish mechanisms for implementation of appropriate course of action where the reporting party does not wish to large a formal complaint or appeal. Establish confidential recording and reporting requirements for all cases involving Sexual Misconduct. Include guidelines for cases involving key decision makers to safeguard procedural fairness. Update membership of the Sexual Misconduct Taskforce, and other policies to be read in conjunction with this policy.