

UQ College (UQC)

## Policy and Procedure

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<b>Title:</b>	Sexual Misconduct Prevention and Response
<b>Custodian:</b>	CEO
<b>Reviewer:</b>	Senior Manager Corporate Services
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<b>Audience:</b>	All UQ College Staff
<b>Associated Policies:</b>	GM2.1.01 Staff Code of Conduct SR1.2.01 Student Integrity and Misconduct UQ Sexual Misconduct Prevention and Response
<b>Legislation</b>	<a href="#">Fair Work Act 2009 (Cth)</a> <a href="#">Work Health and Safety Act 2011 (Qld)</a> <a href="#">Public Interest Disclosure Act 2020 (Qld)</a>
<b>Version:</b>	2.0

## Purpose and Scope

### Purpose

UQ College (UQC or the College) is committed to promoting and fostering an environment that is safe, respectful and free from all forms of sexual misconduct.

This Sexual Misconduct Prevention and Response Policy outlines the principles and key requirements governing UQC's approach to preventing, addressing and responding to sexual misconduct, which is unwelcome behaviour of a sexual nature without consent. It includes behaviour that could amount to a sexual offence and/or sexual harassment.

UQC is committed to providing support to all members of the UQC Community who have experienced, witnessed or otherwise been exposed to sexual misconduct.

- i. This Policy and the Procedures do not govern disciplinary processes in relation to UQC staff who are alleged to have engaged in sexual misconduct. Those processes are governed by the UQC Disciplinary Framework.
- ii. This Policy and the Procedures do not govern disciplinary processes in relation to UQC students who are alleged to have engaged in sexual misconduct. Those processes are governed by the University of Queensland (UQ) Disciplinary Framework.

This Policy and the related Procedures deal with UQC's prevention of and response to sexual misconduct outside the Disciplinary Framework.

### Scope

This Policy applies to all members of the UQC Community, including all students and staff, whether or not those staff are covered by the Educational Services (Post-Secondary Education) Award 2020, or the UQ Enterprise Award 2018-2021.

Together with the Procedures, this guides our intent to promote and foster an environment where members of our community are supported to make disclosures and seek assistance through a Trauma-Informed approach.

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## 1. Definitions<sup>1</sup>

**Sexual Misconduct** – is a broad term encompassing any unwelcome behaviour of a sexual nature without consent. It includes conduct that could amount to a sexual offence and/or sexual harassment.

‘Sexual Misconduct’ as defined in this Policy may amount to general misconduct for the purposes of the UQC Student Integrity and Misconduct Policy, or ‘misconduct’ or ‘serious misconduct’ under the UQC Staff Code of Conduct.

**Sexual Harassment** – happens if a person:

- a. subjects another person to an unsolicited act of physical intimacy; or
- b. makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
- c. makes a remark with sexual connotations relating to the other person; or
- d. engages in any other unwelcome conduct of a sexual nature in relation to the other person;

and the person engaging in the conduct described in (a), (b), (c) or (d) does so –

- e. with the intention of offending, humiliating or intimidating the other person; or
- f. in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

**Examples of sexual harassment include (but are not limited to):**

*Examples for paragraph (a)*

- physical contact such as patting, pinching or touching in a sexual way;
- unnecessary familiarity such as deliberately brushing against a person;

*Examples for paragraph (b)*

- sexual propositions;

*Examples for paragraph (c)*

- unwelcome and uncalled for remarks or insinuations about a person's sex or private life;
- suggestive comments about a person's appearance or body;

*Examples for paragraph (d)*

- offensive telephone calls;
- unwanted sexual attention using internet, social networking sites or mobile phones;
- indecent exposure;
- a publication such as sexually offensive emails or graphics;
- sexually offensive screensavers or posters.

Just because someone does not object to inappropriate behaviour at the time, it does not mean that they consent to the behaviour.

A single incident is enough to constitute sexual harassment – it does not have to be repeated.

<sup>1</sup> For further definitions refer Appendix A of this Policy.

## 2. Key Requirements

The following principles reflect UQC's commitment to preventing all forms of sexual misconduct, supporting members of the UQC community who are affected by sexual misconduct, and responding appropriately and sensitively when sexual misconduct occurs.

1. UQC prohibits all forms of sexual misconduct, and requires all members of the UQC community to comply with this prohibition.
2. UQC acknowledges that education and awareness are important aspects of prevention and is committed to educating the UQC community to assist in the prevention of sexual misconduct in the UQC community.
3. All members of the UQC community are required to take all reasonable steps to maintain a safe and respectful environment at or related to UQC.
4. Members of the UQC community, particularly supervisors and managers, will be made aware of the responsibility they have in responding appropriately when they receive information regarding sexual misconduct, particularly taking account of Trauma-Informed approaches.
5. Procedures supporting this Policy are to be Trauma-Informed.
6. UQC acknowledges that sexual misconduct may include conduct which would also amount to a sexual offence if proven in a court exercising criminal jurisdiction. The College does not have jurisdiction to determine criminal responsibility and does not make findings in terms of criminal responsibility, including as to whether a sexual offence has occurred. However, the College can and will determine whether alleged sexual misconduct amounts to 'general misconduct', 'misconduct' or 'serious misconduct' (as the case may be) pursuant to the Disciplinary Framework. UQC can and will take action in respect of breaches of its rules, policies and procedures pursuant to its Disciplinary Framework. UQC will cooperate with and, where provided for in the Procedures, report matters to the police or other external agencies.
7. The safety, welfare and support of the UQC community is paramount. UQC recognises that any sexual misconduct is likely to have an adverse impact on members of the UQC community, and is committed to providing support to those affected.
8. UQC will implement options for support and formal reports that are simple, accessible and available through multiple avenues.
9. UQC will ensure sensitivity and timeliness when providing support and responding to formal reports.
10. Confidentiality and information privacy will be upheld where possible, in accordance with legislative requirements and UQC policies and procedures.
11. UQC does not tolerate victimisation.
12. UQC recognises that sexual misconduct may be experienced by all people regardless of their sexuality or gender identity.
13. A formal report of sexual misconduct may attract protections under the *Public Interest Disclosure Act 2010* (Qld) and UQC's Public Interest Disclosure Policy and Procedures.

## 2. Roles, Responsibilities and Accountabilities

UQC Human Resources, and the UQ Sexual Misconduct Support Unit (UQ SMSU) coordinate UQC's provision of support and carry out other matters as specified in this Policy and the Procedures.

Whilst the College will make every effort to resolve any complaint within the organisation, any person who feels they have been harassed has the right to take the complaint directly to the Fair Work Commission. The Commission must begin to investigate the complaint within fourteen (14) days of receipt of the complaint.

## 3. Monitoring, Review and Assurance

UQC Human Resources is responsible for ensuring that this Policy and the related Procedures are reviewed routinely and in response to any concerns or issues raised by members of the UQC community. Edits and updates can be made to the Policy and Procedures to ensure their ongoing relevance, effectiveness and compliance with law.

The UQC Senior Manager Corporate Services will maintain complete and accurate records of all previous versions of the Sexual Misconduct Prevention and Response Policy and related Procedures, changes to the Policy and any communications issued about the Policy.

## 4. Recording and Reporting

### 4.1 Confidentiality and Privacy

The College is committed to ensuring complainants can discuss allegations in an environment that is non-threatening and provides complete privacy.

Complainants may also choose to discuss allegations with the UQ Sexual Misconduct Support Unit. Or may be referred to the UQ SMSU for further assistance.

1. Information relating to offers or requests for support or formal reports will be:
  - a. recorded and kept confidential by UQC, and only used by UQC to take action as described in the Policy and the Procedures, to de-identify the information for statistical reporting (as described further below) or otherwise to comply with the Policy and the Procedures or the law;
  - b. kept separate from, and not linked to, the enrolment, employment or other engagement records of the complainant, the third party reporter, or any witness; and
  - c. accessible by the person who provided the information if they wish to later use it for the purposes of making a formal report or report to the police or other external agency.
2. UQC may use de-identified data relating to offers or requests for support or formal reports for the purposes of monitoring patterns of sexual misconduct and to inform future prevention and education programs at UQC.
3. Any personal information collected by UQC under the Procedures will be handled according to the UQC Privacy Management – Policy and Procedure.
4. Staff who have a role or responsibility under the Policy and the Procedures must keep confidential information relating to offers or requests for support or formal reports, except insofar as necessary to:
  - a. take any action permitted by, or otherwise comply with, the Policy and the Procedures or the law;
  - b. make a report to the police or other external agency in accordance with the Procedures;
  - c. facilitate support from an immediate family member, or a staff or student representative, or to obtain medical or legal advice.

### 4.2 Reporting and Monitoring

1. UQC Human Resources will collate data relating to the use of the Policy and the Procedures.
2. UQC Human Resources will ensure that relevant de-identified data is recorded and promptly reported to the UQC CEO.
3. The UQC CEO will regularly report to the Chair of the UQC Board on relevant de-identified data on a six monthly basis, including but not limited to:

- a. the number and types of offers of support made and requests for support received;
- b. the number and types of formal reports made;
- c. the number and types of matters reported to the police or other external agency in accordance with subsection 2.4 of the Procedures;
- d. whether further action was taken in response to formal reports, including the number referred for consideration pursuant to the Disciplinary Framework;
- e. the number of investigations conducted;
- f. time taken to respond to requests for support and Formal Reports;
- g. any feedback provided by complainants, respondents, third party reporters and witnesses;
- h. a summary of any patterns that emerge from the monitoring conducted, including any recommendations for further improving UQC's relevant policies and procedures; and
- i. any further statistics the Chair of the UQC Board considers necessary from time to time.

All UQC records must be retained and disposed of in accordance with the UQC and University's policies and procedures about record management and storage.

## Appendix A Definitions

<b>Complainant</b>	– is a person who makes a formal report on their own behalf. It also includes a person on whose behalf a formal report is made by a third party reporter. UQC acknowledges that a person who has experienced sexual misconduct may refer to themselves as a complainant, discloser, victim or survivor.
<b>Consent</b>	<p>Consent can only be freely and voluntarily given by a person with the cognitive capacity to do so.</p> <p>Consent is the voluntary agreement to the act or acts in question and to continue to engage in the act or acts. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct.</p> <ul style="list-style-type: none"> <li>• Consent can be withdrawn at any time including during the act or acts in question for any reason.</li> <li>• consent only applies to each specific instance of sexual activity.</li> <li>• Consent cannot be given by a person under the age of 16 years.</li> </ul>
<b>Formal Report</b>	– is providing a formal statement regarding sexual misconduct to the persons or units specified in section 2.3 of the Procedures.
<b>Respondent</b>	– is a person about whom a complaint of sexual misconduct is made as part of a Formal Report.
<b>Sexual Offence</b>	– is any criminal offence of a sexual nature under the criminal law, including the <i>Criminal Code 1899</i> (Qld) and the <i>Summary Offences Act 2005</i> (Qld).
<b>Support</b>	<p>– means all reasonable steps to support members of the UQC community affected by sexual misconduct, and may include:</p> <ul style="list-style-type: none"> <li>• the provision of information about UQC's processes for managing complaints about sexual misconduct, including linking parties affected by sexual misconduct to support services;</li> <li>• counselling; and/or</li> <li>• Reasonable Measures.</li> </ul>
<b>Third Party Reporter</b>	– is a person who makes a formal report on behalf of or in relation to another person.
<b>Trauma-Informed</b>	– means understanding, recognising and responding to the impact of trauma, and emphasising physical, psychological and emotional safety and the importance of choice for persons who have experienced sexual misconduct.
<b>UQC Community</b>	– means current UQC students, staff, other workers, volunteers, official visitors, recognised individuals, suppliers of academic placements or official suppliers of academic related activity, and anyone else contractually bound to comply with this Policy. For the purposes of making a formal report, UQC Community also includes former members of the UQC Community who were members at the time of the conduct alleged to be sexual misconduct.
<b>Victimisation</b>	– happens if a person acts, or threatens to do an act against a complainant, or another person associated with the complainant, including a witness or third party



reporter, because a complainant, or another person associated with the complainant:

- has made, or intends to make a formal report to the police or other external report; or
- is, has been, or intends to be involved in a proceeding relating to sexual misconduct.

A reference to involvement in a proceeding includes involvement in a prosecution for an offence involving sexual misconduct, involvement in a UQC or UQ disciplinary process or investigation pursuant to the Disciplinary Framework or external agency investigation, or any other process to deal with sexual misconduct.

Victimisation does not include any action taken against a person for a false or malicious complaint made against another person in order to prejudice that other person.

## Document History

Version	Summary of changes	Author	Action date
2.0	Updated for transfer of business to UQC CRICOS Code	Senior Manager Corporate Services	15 December 2023