

Sexual Assault and Sexual Harassment Policy and Procedure

1. Introduction

The Australian Performing Arts Conservatory (APAC) Sexual Assault and Sexual Harassment Policy and Procedure sets out the principles underpinning APAC's approach to preventing and responding to sexual assault and sexual harassment.

1.1. Purpose

The intent of this document is to set out APAC's commitment to limit the risks and incidents of sexual harm on campus or in connection with APAC activities. It also sets out APAC's response to reports of sexual harm perpetrated by or against students, staff and third parties (e.g. volunteers, contractors) connected to APAC.

This Policy and Procedure operates in conjunction with the following APAC policies and procedures: *Critical Incident Management; Staff Health, Safety and Wellbeing; Student Complaints and Appeals; Student Health, Safety and Wellbeing; Student Code of Conduct.*

1.2. Scope

This Policy and Procedure applies to all students, staff, volunteers, contractors, Board of Directors members, Committee members and visitors to APAC.

This Policy and Procedure covers sexual harm that occurs or is alleged to have occurred:

- on the APAC campus;
- in connection with any APAC course or activity or as part of deployment on any APAC business or as a representative of APAC, whether on or off campus, including but not limited to:
 - work integrated learning,
 - student exchange and study tours;
 - Off-site examination venues
 - placements;
 - field research;
 - student clubs;
 - study-related camps;
 - conferences; or
 - business meetings;
- on virtual environments connected with the APAC course or activity including, but not limited to:
 - email,
 - intranet systems,

- social media,
- online forums; or
- where the affected party is an APAC student or staff member and there is a connection between the circumstances of the harm and APAC.

1.3. Principles

- Sexual harm is not tolerated at APAC and is never acceptable. Sexual harm constitutes misconduct; is unlawful; and may constitute criminal conduct;
- APAC is committed to, as far as is reasonably practicable, providing a safe, inclusive and respectful environment for its higher education community;
- The wellbeing and safety of the students and staff members who experience sexual harm are the focus of prevention and response.

2. Policy Statements

2.1. Sexual Harm Response

APAC are committed to responding appropriately to every allegation of sexual harm in a fair and reasonable way, including ensuring the timely investigation of such matters in accordance with the principles of procedural fairness.

APAC will take all reasonable steps to prioritise the rights, needs and wishes of the complainant, whilst ensuring procedural fairness to all parties.

APAC will treat all allegations of sexual harm that relate to APAC students, staff and others associated with APAC seriously, whether recent or historic.

2.2. Sexual Harm Education and Training

APAC acts to prevent sexual harm through aiming to strengthen and promote a respectful higher education community culture. In particular, APAC has or aims to:

- implement evidence-based sexual harm prevention programs for staff and students;
- implement ongoing training, education and communication for staff and students on various topics including, but not limited to:
 - gender inequality,
 - gender identity
 - respectful relationships,
 - consent,
 - bystander action and
 - responding to disclosures;
- provide a range of safety and security measures on campus.

2.3. Legislative and Regulatory Compliance

Sexual harm prevention and response systems and processes will be compliant with education provider obligations under the Higher Education Standards Framework (Threshold Standards) 2021 and Standard 6 of the National Code of Practice for Providers of Education and Training to Overseas Students (2018).

2.4. Privacy, Confidentiality and Transparency

Disclosures and reports of sexual harm will be treated confidentially and in accordance with APAC's Privacy Policy and Procedure.

Disclosure and report records may be shared confidentially with appropriate officers at APAC or external authorities on a strict need to know basis; as a part of APAC's duty of care obligations; or as required by law.

De-identified data may be used by APAC for the purposes of reporting on the management of disclosures and reports of sexual harm.

If an allegation of sexual harm involves a staff member of APAC, and that allegation is substantiated following an investigation, APAC may disclose the identity of the offending staff member; the fact that the allegation was substantiated; and any subsequent action taken if there is a legitimate public or stakeholder interest (and subject to APAC's other legal obligations).

2.5. Adverse Impact on Student/s

APAC acknowledges that any allegations or incidents of sexual harm may have an adverse impact on the wellbeing of a student or student cohort and may impede their ability to complete their course. If this is the case, a student-focused response and ongoing management of the situation is required.

2.6. Complaints and Appeals

If a student enrolled at APAC is dissatisfied with any aspect of the response to their sexual harm allegation by APAC staff, they may lodge a complaint through the process outlined in the Student Complaints and Appeals Policy and Procedure.

2.7. Monitoring, Review and Evaluation

APAC will monitor and analyse sexual harm incident data (in a form that protects the confidentiality of the individuals involved), and regularly report to the Board of Directors, including recommendations regarding risk.

APAC's approach to preventing and responding to sexual harm will be regularly reviewed, including through external expert advice, to ensure best practice is embedded.

After any sexual harm allegation or incident, there will be a thorough evaluation of the effectiveness of the APAC's response to, and management of the allegation or incident, and any deficiencies identified will be immediately rectified.

3. Procedure

3.1. Identifying Sexual Assault and Sexual Harassment

Sexual Assault

Sexual assault is unlawful and constitutes serious misconduct. Sexual assault is any unwanted or forced sexual act or behaviour that occurs without consent. Sexual assault occurs when a person indecently assaults another person or procures another person, without their consent, to commit a sexual act (Section 352, Criminal Code Act 1899 (Qld)).

Consent must be freely and voluntarily given by a person with the cognitive capacity to do so and can be revoked at any time. Consent cannot be given by an individual who is unconscious, asleep, or under the influence of drugs or alcohol.

Further, and in accordance with the Criminal Code Act 1899 (Qld), a person's consent to an act is not freely and voluntarily given if it is obtained:

- by force; or
- by threat or intimidation; or
- by fear of bodily harm; or
- by exercise of authority; or
- by false and fraudulent representations about the nature or purpose of the act; or
- by a mistaken belief induced by the accused person that the accused person was the person's sexual partner.

Sexual assault is	Sexual Assault is not
<ul style="list-style-type: none"> ▪ sexual intercourse without consent; ▪ oral sex without consent; ▪ anal sex without consent; ▪ groping and inappropriate touching of a sexual nature without consent. 	<ul style="list-style-type: none"> ▪ a consensual sexual act or behaviour.

Sexual Harassment

Sexual harassment is unlawful under the Anti-Discrimination Act 1991 (Qld) and the Sex Discrimination Act 1984 (Cth) and constitutes misconduct. Sexual harassment is a form of harassment and includes any unwelcome or unsolicited conduct of a sexual nature that is offensive, humiliating, intimidating or threatening. The behaviour does not have to be repeated for it to constitute sexual harassment.

Conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Sexual harassment occurs in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Sexual harassment is	Sexual harassment is not
<p>One-off or repeated incidences of:</p> <ul style="list-style-type: none"> ▪ unwanted physical contact such as patting, pinching, or touching in a sexual way; ▪ unnecessary familiarity such as deliberately brushing against a person; ▪ sexual propositions; ▪ unwelcome and uncalled for remarks or insinuations about a person’s sex or private life; ▪ suggestive comments about a person’s appearance or body; ▪ offensive telephone calls, texts, emails, or social media posts of a sexual nature. ▪ subjecting a person to sexually offensive screen savers or images in electronic or other form. 	<ul style="list-style-type: none"> ▪ sexual contact that has been engaged in with consent of the recipient, when the consent has not been obtained through fear, intimation, threats, or force or where there is a power imbalance in the relationship; ▪ flirting that is invited and not unwelcome; ▪ attraction or friendship that is invited and not unwelcome; ▪ conduct of a non-sexual nature such as unreasonably requesting a person to do a favour that is not sexual in nature (which may be considered harassment or bullying).

3.2. Prevention

APAC will work to prevent sexual assault and sexual harassment by:

- Clearly articulating that sexual assault and sexual harassment are not tolerated at APAC and the related expectations and responsibilities of students and staff:
 - in student orientation and staff induction programs;
 - regular information updates to students and staff;
 - information published on the website and in the Student Handbook;
 - information available through the ‘Support’ course on Moodle;
 - through workshops and other educative measures; and
 - through an accessible and clear set of policies and procedures as noted in Clause 1.1.
- APAC will, through the mechanisms described above, effectively communicate the options available for reporting sexual assault and sexual harassment and the actions that may consequently be taken by APAC.

- APAC will encourage students and staff to report incidents of sexual assault and sexual harassment, and situations in which the threat thereof is developing, making clear that the victimisation of those reporting incidents is not tolerated.
- APAC will strive to build a culture of respectful and considerate interaction within its community of students and staff.

3.3. Reporting and Disclosure

APAC encourages individuals to report incidents of sexual assault and/or sexual harassment. The incident may be reported by the victim, bystander or another person (with consent). A complaint may be reported in accordance with this policy at any time following an incident, regardless of whether or not the incident has been reported to police.

APAC supports individuals who have been affected by sexual assault and/or sexual harassment to manage their response on their own terms and when they feel safe and confident to do so. There are occasions however where limits to confidentiality should be observed, specifically in instances of child sexual abuse or where there is a continued or immediate threat to the safety of the individual or others.

An individual who has been the subject of sexual assault and/or sexual harassment may wish to disclose to a fellow student or staff member of their choice. The health, safety and wellbeing of the person disclosing is of the utmost priority. To be effective in their response, staff and students can follow these basic principles:

- Ensure privacy (in line with APAC Policy and Procedure).
- Listen, show empathy and respect.
- Refer and recommend specialised support.
- Acknowledge that the complainant may or may not wish to report the incident formally.
- Look after yourself.

The manner in which a person responds to a disclosure of sexual assault or sexual harassment can have a significant impact on the individual's ability to seek further assistance and recover from any trauma. Students and staff are encouraged to refer the matter to the Chief Executive Officer (CEO) if they are approached by an individual with a matter that they do not feel equipped to deal with.

APAC does not tolerate victimisation and will take reasonable steps to ensure that all individuals involved are not victimised.

Nothing in this *Sexual Assault and Sexual Harassment Policy and Procedure* limits the rights of students to report their alleged sexual assault and/or sexual harassment to the police or other external agencies. APAC will support students with their choice and cooperate with the police or external agencies accordingly.

4. Responsibilities

4.1. The Board of Directors

Ensure compliance with relevant legislation and regulatory requirements through the oversight of APAC activities and the development, monitoring and review of policies and practices and initiating prompt action where compliance is deemed to have lapsed;

Monitor and oversee the assessment and management of risks, ensuring APAC is equipped with sufficient strategies to mitigate risks that may eventuate;

Monitor and oversee formal complaints, allegations of misconduct, appeals processes for non-academic matters, breaches of academic or research integrity and critical incidents.

4.2. Chief Executive Officer (CEO)

The Chief Executive Officer is responsible for emergency procedures and the safety of APAC's higher education community.

4.3. All Staff and Students

Safety and security responsibilities will be shared by all members of APAC's higher education community who will work together to ensure a safe environment is provided for all staff and students.

5. Relevant Documents

- Anti-Discrimination Act 1991 (Qld)
- Criminal Code 1899 (Qld)
- Critical Incident Management Policy and Procedure
- Higher Education Standards Framework (Threshold Standards) 2021
- National Code of Practice for Providers of Education and Training to Overseas Students 2018
- Privacy Policy and Procedure
- Sex Discrimination Act 1984 (Cth)
- Staff Health, Safety and Wellbeing Policy and Procedure
- Student Code of Conduct
- Student Complaints and Appeals Policy and Procedure
- Student Health, Safety and Wellbeing Policy and Procedure
- TEQSA Guidance Note: Wellbeing and Safety, January 2018
- TEQSA Good Practice Note: Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector, July 2020
- The Privacy Act 1988 (Cth)

6. Definitions

- **Complainant:** A student, staff member, volunteer, contractor, Board of Directors member or visitor of APAC who makes an allegation of Sexual Harm. A Complainant may prefer different terminology including survivor, victim or affected person.
- **Disclosure:** Where an individual confides in someone else that they have been the victim of Sexual Harm.
- **Procedural Fairness:** A legal concept that is sometimes used interchangeably with natural justice. What is procedurally fair will depend on the circumstances. It generally involves:
 - the right to be told of allegations to be put to a person in sufficient detail to enable them to respond. This will not necessarily involve the person being given all information, and some confidential information and original documents may not necessarily be provided;
 - an opportunity to answer to allegations before any decision is made, including sufficient time to respond; and
 - a requirement that a decision maker is not biased and gives genuine consideration to whatever response is given by a person.
- **Sexual Assault:** Means intentionally touching another person; and the touching is sexual in nature; and the person who was touched did not Consent to the touching; and the person touching does not reasonably believe that the person Consents to the touching.
- **Sexual Harm:** Means misconduct of a sexual nature and includes:
 - Sexual assault and rape;
 - Sexual harassment;
 - Sexual exploitation;
 - Sexual abuse;
 - any conduct of a sexual nature without consent, including:
 - obscene, indecent, threatening language or behaviour (including indecent exposure);
 - observation, filming or distributing an image of a person's genital or anal region or an intimate image without Consent (e.g. revenge pornography);
 - drink spiking;
 - stalking; or
 - hazing of a sexual nature.
- **Sexual Harassment:** Refers to any unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that a person would be offended, humiliated or intimidated.

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