

THE MASTERS INSTITUTE OF CREATIVE EDUCATION

Sexual Assault and Sexual Harassment (SASH) Prevention Policy and Procedures for Students

1. Scope

This Policy applies to The Masters Institute of Creative Education (TMICE) students who wish to Report Sexual Assault or Sexual Harassment. Allegations of Sexual Assault or Sexual Harassment involving staff (excluding students) will be referred to the Chief Executive Officer who will instigate an investigation.

2. Purpose

- 2.1 TMICE promotes an environment that is free from Sexual Assault and Sexual Harassment. TMICE is committed to providing students with a safe environment which promotes the respect of each member of the student community.
- 2.2 Sexual Assault and Sexual Harassment against any student is unacceptable.
- 2.3 Any reported Sexual Assault or Sexual Harassment will be taken seriously and will be investigated.
- 2.4 In support of this commitment, TMICE will take steps to increase awareness of Sexual Assault and Sexual Harassment, provide support for survivors, investigate all reports of Sexual Assault and Sexual Harassment, and deal fairly with all parties.
- 2.5 Where investigations find that an incident of Sexual Assault or Sexual Harassment has occurred TMICE will take appropriate action.
- 2.6 This policy supports TMICE's framework for dealing with student misconduct, (Refer Student Charter and Conduct Policy).
- 2.7 Alleged misconduct by staff is managed under the TMICE Code of Conduct Policy. (Refer Code of Conduct Policy).

3. Definitions

- 3.1 **Alleged Offender** means a person against whom a complaint of Sexual Assault or Sexual Harassment is made.
- 3.2 **Complainant** means a person who makes a Disclosure or a Report.
- 3.3 **Consent** is having the capacity to give free and clear agreement, expressed outwardly through mutually understandable words or communication, agreeing to engage in a particular activity. Consent can be withdrawn by any party at any point and must be voluntarily given and is not valid if a person is being subjected to actions or behaviours that elicit emotional, psychological, physical, reputational, financial pressure, threat, intimidation, or fear (coercion or force). Consent to engage in one sexual activity, or past agreement to engage in a particular sexual activity, cannot be presumed as agreement for consent to engage in a different sexual activity or to repeat a sexual activity. Consent cannot be given by a person who does not have the capacity to give consent, including those who are intoxicated, unwell, distressed or otherwise disadvantaged. Circumstances in which a person does not consent to an act include, but are not limited to, the following:
 - a) The person submits to the act because of force or fear of force, whether to that person or someone else;
 - b) The person submits to the act because of the fear of harm of any type, whether to that person or someone else;
 - c) The person submits to the act because the person is unlawfully detained;

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- d) The person is asleep or unconscious;
- e) The person is so affected by alcohol or another drug as to be incapable of consenting to the act;
- f) The person is incapable of understanding the sexual nature of the act;
- g) The person is mistaken about the sexual nature of the act;
- h) The person is mistaken about the identity of any other person involved in the act;
- i) The person does not say or do anything to indicate consent to the act;
- j) Having initially given consent to the act, the person later withdraws consent to the act taking place or continuing;
- k) 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 the age of 16 for all Australian states, except South Australia and Tasmania where the age limit for consent is 17 years of age;
- l) Although the legal age of consent throughout Australia is either 16 or 17 years of age, legislation in New South Wales, Victoria, Western Australia, South Australia and the Northern Territory makes it an offence for a person in a supervisory role to sexually engage with a person under their special care who is aged 16 or 17 years. A person in a supervisory role providing "special care" may include: a teacher, foster parent, religious official or spiritual leader, a medical practitioner, an employer of the child or a custodial official.
- m) It is important to understand that a person might not consent to behaviour even though they were, or are, in a relationship with the alleged offender.

3.4 **External Report** means a report to the police and/or external agency.

3.5 **Procedural Fairness** is the procedural requirement to ensure that a standard of fairness is applied in the investigation and adjudication of a dispute. This involves:

- a) Fully informing a person of any allegation/s made against them;
- b) Giving them the opportunity to state their case, provide an explanation or put forward their viewpoint;
- c) Conducting a proper investigation of the allegations, ensuring that all parties are heard and that all relevant submissions are considered, with reasons given for any decision;
- d) Acting fairly, impartially and without bias; and
- e) Declaring any real or potential conflict of interest.

3.6 **Reasonable Measures** are arrangements or adjustments that may be implemented on a case-by-case basis where a Disclosure or Report has been made in order to minimise the potential for harm to any person.

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- 3.7 **Report** means the sharing of information regarding an incident of Sexual Assault or Sexual Harassment to TMICE for the purpose of accessing support which may require further action, therefore reasonable measures will be taken initiating further action such as an investigation.
- 3.8 **Sexual Assault** is any unwanted sexual behaviour that makes a person feel uncomfortable, threatened or scared; and is an inclusive term used to describe sexual behaviour to which a person does not give consent to. It can be perpetrated by a person of any gender on a person of any gender. It covers:
- a) Rape: forced, unwanted sex or sexual acts;
 - b) Child sexual abuse: using power over a child or young person to involve them in sexual activity; and
 - c) Indecent assault: indecent behaviour before, during or after an assault.
- 3.9 **Sexual Harassment** in alignment with the Sex Discrimination Act 1984; is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment is not consensual sexual interaction, flirtation or friendship and is not behaviour that is mutually agreed upon. Sexual harassment can be physical, verbal or written and it can include:
- a) Comments about a person's private life or the way they look;
 - b) Sexually suggestive behaviour, such as leering or staring;
 - c) Physical contact of a sexual nature such as brushing up against someone, touching, fondling or hugging;
 - d) Sexually suggestive comments or jokes;
 - e) Displaying sexually offensive material;
 - f) Accessing pornographic websites on campus, at work or the Institute network;
 - g) Continued requests for dates that have been previously denied, or requests for sex;
 - h) Sexually explicit emails, text messages or posts on social networking sites;
 - i) Making or distributing sexually explicit photos or videos;
 - j) Unwelcome sexual advances;
 - k) Making or distributing sexually explicit photos or videos;
 - l) Acts of indecency; and
 - m) Sexual assault.
- 3.10 **Personal Information** means information that names a person, or from which the identity of the person can be worked out.

4. Support Principles

The Sexual Assault and Sexual Harassment Prevention Policy for TMICE support principles consists of the following:

- 4.1 The safety and wellbeing of students is of the highest priority of TMICE.
- 4.2 TMICE has zero tolerance for Sexual Assault and Sexual Harassment.
- 4.3 TMICE will support all students who are parties to reports of Sexual Assault or Sexual Harassment including facilitating access to relevant counselling, medical, police or legal services.

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- 4.4 TMICE will work to promote and encourage a culture of safety and respect.
- 4.5 TMICE will respect the rights of students to privacy and confidentiality.
- 4.6 TMICE supports the right of students who have experienced Sexual Assault or Sexual Harassment to choose whether they want to make a Report to TMICE or make an External Report.
- 4.7 TMICE will treat individuals fairly, impartially, and with compassion and empathy, while adhering to the principles of Procedural Fairness in proceedings or decisions under this policy.
- 4.8 Former students who report an incident of Sexual Assault or Sexual Harassment which occurred when they were a student will be provided with information and referred to relevant support services by TMICE. Former students should be aware that TMICE may be limited in any investigative actions it can take.

5. Procedure

Disclosure of an Incident

- 5.1 If any student of TMICE has experienced sexual assault or sexual harassment, they are encouraged to disclose the matter by completing the SASH Incident Form and emailing it through to: welfare@holmes.edu.au or by speaking directly to a SASH Support Officer on their campus (Campus Directors), or Manager of Student Engagement.
- 5.2 The role of the Support Officer is to:
 - a) Be always willing to listen to any disclosure of an incident involving sexual assault or sexual harassment;
 - b) Provide appropriate support for the person making the disclosure;
 - c) Ensure the person making the disclosure is treated with compassion, empathy, understanding and respect;
 - d) Act in accordance with the Institute's Policies and Procedures;
 - e) Inform the person wishing to make a disclosure that they understand the difference between a disclosure and a formal report. The Support Officer needs to explain that the student can still access support services without making a formal report; and
 - f) Inform the person making the disclosure or formal report that their privacy will always be maintained and their own information or any other person they may report, will be dealt with by TMICE.
- 5.3 The disclosure will be dealt with in the following way:
 - a) Any data related to the incident will be de-identified of personal information to safeguard against privacy, and held and stored only for the purposes of a data collection mechanism;
 - b) The person making the disclosure has the right to review the information for factual accuracy before it is formally submitted for data collection; and

Formal Reporting of an Incident

- 5.4 Where a Formal Report is lodged, the person making this request will be advised of the Institute's threshold for determining whether to undertake a formal investigation or refer the matter to external professional services such as Police or other external professional

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services; and therefore, will request from the reporting student how they would like to see their report resolved.

- 5.5 The Institute will make every effort to facilitate reasonable requests in a safe and supportive way.
- 5.6 Where a Misconduct Assessment is deemed appropriate, the appropriate steps will be taken to commence a misconduct assessment and investigation under our Institute procedure if in relation to a current Institute staff member or student; and therefore, all information will continue to be held securely.
- 5.7 Information collected from reports will also be used for internal reports to assist TMICE Campuses to identify areas or activities of risk and take measures to eliminate the incidence of sexual misconduct at TMICE Campuses. This information does not identify individuals and does not include personal information.
- 5.8 If a Disclosure is made to a Support Officer, the Support Officer will:
 - a) Assess and ensure the immediate safety and security of the person involved in an incident and/or any other members of the TMICE community;
 - b) Encourage and assist the person to contact a specialised Counselling Service;
 - c) Explain the difference between a Disclosure and a Formal Report and ensure the reporting student understands they will receive full support for either option;
 - d) Provide information about other internal support options (including academic, and/or welfare support options);
 - e) Provide information about external support and reporting options (including Police, Health and Emergency Services);
 - f) Provide information regarding the choice to make a Formal Report of Sexual Assault or Sexual Harassment;
 - g) For international students, provide information regarding the Overseas Student Ombudsman; and
 - h) Provide the person with a copy of the Sexual Assault or Sexual Harassment Policy and a copy of this Procedure document: Disclosing Sexual Assault or Sexual Harassment.
- 5.9 If a Formal Report of Sexual Assault or Sexual Harassment is made, TMICE will investigate and act in accordance with its policies and procedures and any applicable Commonwealth and State legislation and act..
- 5.10 If a person does not wish to make a Formal Report, TMICE will provide support and guidance as outlined in Sections 4.1- 4.3 of this procedure.
- 5.11 If TMICE becomes aware of an incident of Sexual Assault or Sexual Harassment that has occurred on campus, at an Institute Event, or involving an alleged perpetrator who is a member of the TMICE community, including any TMICE student placed by our Homestay provider, the Institute may instigate its own action in accordance with Sections 4.1- 4.3 of this Procedure.

6. Confidentiality

- 6.1 Any Disclosure or Formal Report of Sexual Assault or Sexual Harassment will be treated confidentially.
- 6.2 However, information Disclosed or Reported may be shared on a confidential basis with relevant Institute staff, as necessary, to ensure the safety of the person making the report

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as well as the broader TMICE community, and to ensure that coordinated support is provided.

- 6.3 There are also circumstances in which TMICE is required by law to disclose information to the police and/or other government agencies, as per 7.2 and 7.3 below.

7. External reporting

- 7.1 A person who is alleging sexual assault is given the option to report the matter directly to the police. The Institute must let the person making the Disclosure decide if they wish to report to the police and regardless of their decision, must continue to provide support and guidance as outlined in Section 1 of this Procedure.
- 7.2 If the report is about a person under the age of 16 years in Victoria or NSW, or under the age of 18 in Queensland, mandatory reporting applies, and the Support Officer must inform the Police. The Institute will let the person know immediately if this is the case. In this case the Institute may or may not participate in the police enquiry, but will continue to provide support to the student if requested.
- 7.3 The Institute is required to report information externally and/or contact emergency services if there is a threat or physical harm or danger to any person.
- 7.4 If a report is made to both the Institute and the police, the Institute may be required to suspend any internal investigation pending the outcome of the police investigation.

8. Contacts

Internal:

Emergency Contacts – 03 7002 3399

External:

If you have experienced sexual assault or sexual harassment and feel you would like to speak to someone for support or information, there are various external options:

- a) Call 1800RESPECT (Phone: 1800 737 732) or www.1800respect.org.au (can provide counselling 24-hours a day, 7 days a week)
- b) If you are feeling unsafe right now, call the Police: 000, if you have experienced sexual assault and feel you would like to make a complaint or report directly to the police.
- c) Mental health support services:
 - i. Lifeline—13 11 14, 24-hour crisis support and suicide prevention.
 - ii. Beyond Blue—1300 224 636 Mental health support.
 - iii. Suicide Call Back Service—1300 659 467

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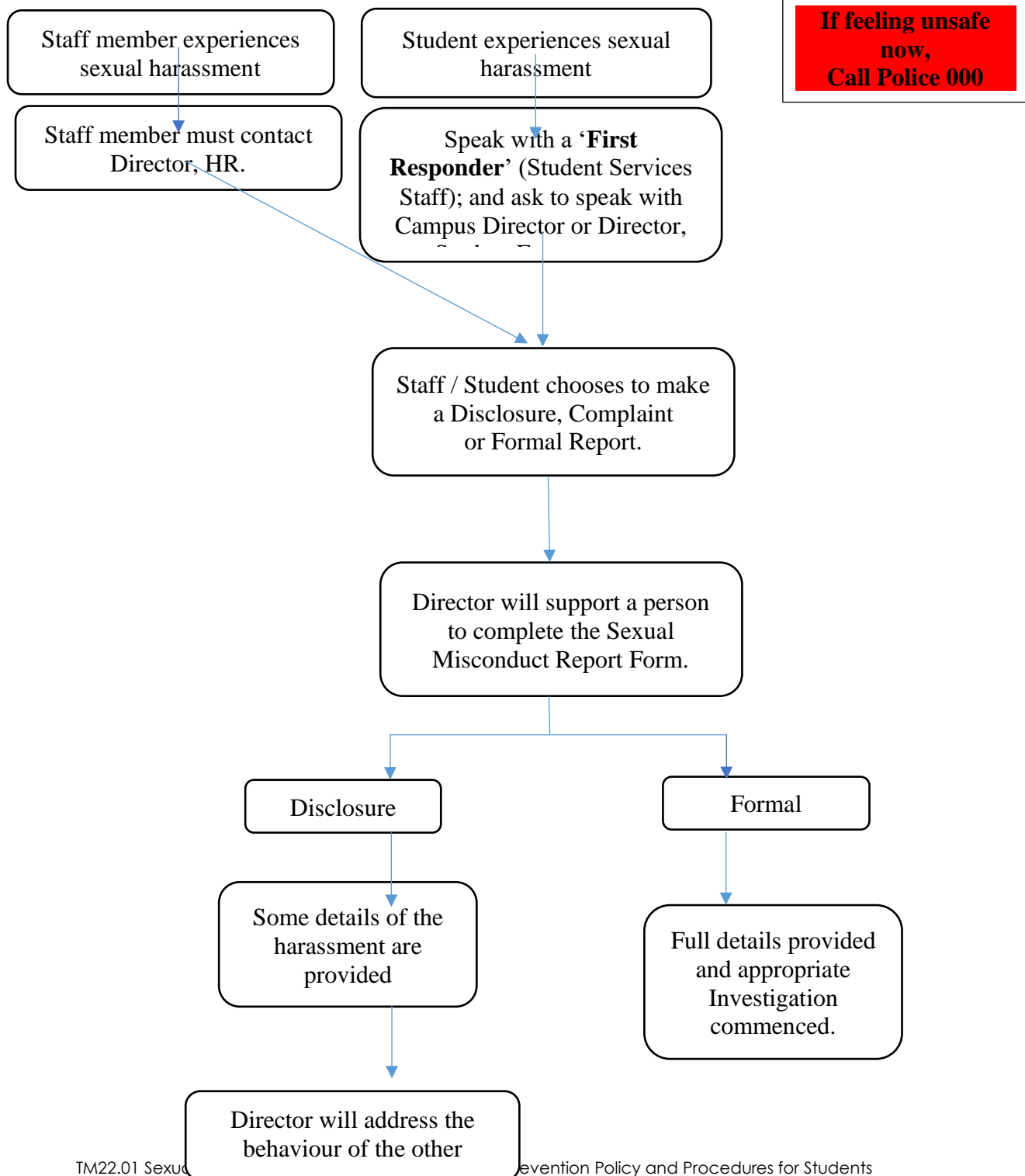
Appendix 1

<p>TMICE Campus Directors</p>	<p>In any emergency situation dial 000</p> <p>The TMICE 24/7 emergency contact numbers will reach a Campus Director. You may report any Sexual Harassment Incident or behaviour on this number and TMICE will enact the relevant Policy & Procedure for follow up.</p> <p>TMICE Emergency Numbers: 03 7002 3399</p> <p>Alternatively: You may email any Incident Reports to: hello@tmice.edu.au</p>
<p>Sexual Misconduct Officers</p>	<p>Sexual Misconduct may be reported to a Campus Director.</p> <p>If you wish to be referred to an alternative person, you can request to be contacted by the Manager of Student Engagement. They are both designated Sexual Misconduct Officers.</p> <p>First Responders are Campus Directors, Student Services Staff will assist in booking confidential appointments. Follow up by the Manager of Student Engagement is also available.</p>
<p>Student Services Staff</p>	<p>Students can seek support from the Student Services front desk team who will ensure that Students are listened to and will assist in referring immediately to the Campus Director.</p> <p>Students will be referred to the Campus Director or as an alternative for further welfare arrangements, Manager of Student Engagement.</p>

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Appendix 2

Flowchart – for person subjected to Sexual Harassment



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