GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

These Guidelines have been developed with and are endorsed by the South Eastern Centre Against Sexual Assault and Family Violence [SECASA]

1. Purpose of these Guidelines

1.1 These Guidelines have been developed for use by all Monash University campuses within Australia. Offshore international campuses may consider these Guidelines and develop similar Guidelines for their particular use taking into account the legislative and cultural requirements of the country in which they are located.

1.2 The purpose of these guidelines (Guidelines) is to guide the University in its support, referral, investigation and risk mitigation role when responding to an allegation of a sexual offence that has a connection with the University’s students, staff [including people who hold Honorary and Adjunct positions], precincts or with activities conducted by or on behalf of the University (including where the activity is about to take place or has taken place).

1.3 Allegations of sexual offences are complex, serious and sensitive matters that have far reaching implications for everyone involved. They require careful consideration by the University in regard to the appropriate steps to be taken. Each instance requires a tailored response, including consideration of any urgent time constraints.

2. Meaning of sexual offence, sexual assault and consent

2.1 Sexual offence (under these Guidelines) refers to all forms of sexual activity prohibited by law, including the Crimes Act 1958 (Vic). A sexual offence will include but is not limited to all forms of rape, incest, child sexual abuse, sexual assault, assault with intent to commit a sexual offence, threat to commit a sexual assault, and other sexual offences that do not involve touching.

2.2 The South Eastern Centre Against Sexual Assault and Family Violence (SECASA) considers that sexual assault is any behaviour of a sexual nature that makes someone feel uncomfortable, frightened, intimidated or threatened. It is sexual behaviour that someone has not agreed to, or to which that person is not capable of giving consent, where another person uses physical or emotional force against them; it can include anything from sexual harassment through to life threatening rape.

2.3 Consent (under these Guidelines) refers to consent as defined by the criminal law. Generally, consent is the voluntary agreement freely given by a person with the cognitive capacity to do so, to engage in the act or acts in question and to continue to engage in the act or acts. No consent is obtainable where the person is:

(a) Physically forced or pressured into the act;
(b) Fearful of harm;
(c) Being held against their will;
(d) Under the age of 16;
(e) Unconscious or asleep;
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

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(f) So affected by drugs or alcohol that they are incapable of providing or withdrawing consent; and/or

(g) Incapable of understanding the sexual nature of the act.

2.4 Consent can be withdrawn at any time during the act(s) in question.

2.5 Consent only applies to each specific act and must be obtained in each instance.

3. Application of these Guidelines

3.1 The University is committed to responding to all reports of sexual offences made to the University. These may arise through interactions between students, staff and students, staff members, or a student and a University associate or a member of the public with some connection to the University.

3.2 Reports / disclosures may be of recent or historical events and may necessitate differing responses from the University.

3.3 If the reported sexual offence does not have the requisite connection to the University, it will not be possible for the University to take particular investigative action. However information in these Guidelines, including the support and services available, may still be of assistance to a person impacted by the offence.

3.4 These Guidelines are intended to ensure appropriate management and reporting of allegations of sexual offences. The investigation and determination of a sexual offence under the criminal justice system is beyond the University’s capacity or jurisdiction. The University, through resources such as the Safer Community Unit (SCU), will make appropriate referrals to external agencies who will provide individual support or investigation of offences (such as Police).

4. Role of the Safer Community Unit (SCU)

4.1 The SCU is the University’s centralised point of contact for those within the University community seeking support or other action as a result of any form of inappropriate behaviour including sexual offences. These guidelines relate to the management of sexual offences by SCU.

4.2 The SCU’s objective in receiving and responding to a report of a sexual offence is to:

(a) minimise further trauma or distress for the complainant;

(b) provide or facilitate support and assistance to the complainant, from both University resources (e.g. counselling) and external agencies (e.g. SECASA, or Police);

(c) determine and manage ongoing or foreseeable risk to the University community. This includes staff and students regardless of whether they are the complainant, alleged perpetrator, witness, other person impacted by an allegations of a sexual offence or the University community at large;
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

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(d) look at any preventative action that can be taken to lessen the risk of occurrence of a similar sexual offence; and

(e) where the complainant consents, referral of the matter to the appropriate area within the University for investigation of a possible breach of the University’s regulations, policies, procedures and/or codes of conduct. Where the alleged perpetrator is a student, the referral will be to the Responsible Officer for General Misconduct; where the alleged perpetrator is a staff member, the referral will be to Workplace Relations.

4.3 The SCU will coordinate the University’s front line response to allegations of a sexual offence in collaboration with appropriate stakeholders, which may include the Deputy General Counsel, Executive Director Campus Community Division, Faculty staff, Monash Workplace Relations, Counselling staff, Monash Residential Services, Responsible Officer for General Misconduct, and Monash Security. This may also include communicating with other external stakeholders such as Police.

5. Interactions with University regulations, policies and procedures

5.1 These Guidelines should be read in conjunction with and subject to:

(a) Monash University statute and regulations, as applicable;

(b) Student general misconduct policy;

(c) Student general misconduct procedure;

(d) Resolution of unacceptable behaviour procedure; and

(e) any other policies, procedures and guidelines of the University where relevant and applicable.

5.2 These Guidelines do not take precedence over University regulations, and published University policies and procedures, that set out the University's internal management of complaints as well as what amounts to misconduct and unacceptable behaviour.

6. Interactions with professional standards and mandatory reporting obligations

6.1 These Guidelines do not supersede or take precedence over:

(a) professional standards regarding confidentiality between clients and medical practitioners, nurses and psychologists; or

(b) mandatory reporting requirements prescribed by child safety legislation or criminal laws; or

(c) legal obligations applicable to the University and the ability of the University to take appropriate action in managing risks that impact the University regarding sexual offences; or
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

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7. Guiding principles

7.1 The University will treat the complainant according to the following principles:

(a) To be treated with respect and dignity regardless of gender, cultural background, age, sexual orientation, income, physical and cognitive abilities, sexual, medical or mental health history.

(b) To provide assistance to minimise trauma or distress arising from the reported incident, promote recovery and empowerment.

(c) To be accompanied by a support person while receiving services from the University under these Guidelines.

(d) To be protected (as far as reasonably practicable in the circumstances) from offence, trauma, intimidation or any other risks to wellbeing that may arise as a result of the person making an allegation of sexual offence under these Guidelines.

(e) To be informed of their options concerning reporting; and the services and support available to them, such as counselling.

(f) To respect the choice made by an adult complainant to report or not to report an allegation of sexual offence to Police.

(g) To respect the choice made by an adult complainant to request the University either to investigate an alleged sexual offence, or to take no action. The University will, to the extent possible, respect the choice of the individual, however this must be balanced against the obligation of the University to protect the wellbeing and safety of the University community and for it to comply with its legal obligations.

7.2 When an alleged perpetrator of a sexual offence is a University student or staff member, the University will treat the person in accordance with the following principles:

(a) To be treated with respect and dignity regardless of gender, cultural background, age, sexual orientation, income, physical and cognitive abilities, sexual, medical or mental health history.

(b) To be provided assistance to minimise trauma or distress arising from the reported incident.

(c) To be afforded an investigation and determination of the allegation of sexual offence in accordance with University regulations, policies and procedures. The ability of the University to investigate and manage allegations may however be impacted by external or criminal investigations.

(d) Where the sexual offence is being investigated by the Police, determined by the criminal justice system, or by the University as a report of general misconduct, the alleged perpetrator...
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

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should be given access to their education with or without necessary or appropriate conditions as determined by the University.

(e) To be given access to support services.

7.3 These principles do not restrict the ability of the University to take other action. This may include but is not limited to the removal of a person from University owned or occupied land or other property to protect the health and safety of any person or to prevent misconduct or criminal conduct.

8. Reporting matters to the Police and impact on general misconduct matters

8.1 The University will respect a complainant’s decision NOT to make a report to the Police. However, the University will:

(a) Consider advising the Police of relevant non-identifiable information if the University has information that indicates non-reporting to the Police may place members of the University or general community at serious and imminent risk. Wherever possible the University will refrain from providing personal information of the complainant.

(b) Make a report to Police or other regulatory body when mandatory reporting is required.

8.2 The University may assist a complainant to report the incident to Police, however the University cannot make a report on behalf of the complainant other than as detailed above in 8.1.

8.3 The University cannot determine whether a criminal act has been committed. However the University may seek to determine whether, on the balance of probabilities, a student has engaged in an act of general misconduct under the Monash University (Council) Regulations.

8.4 If the University determines that there has been an act of general misconduct, penalties may be applied in accordance with University regulations, policies, and associated procedures.

8.5 Any action or investigation by the University into reports of general misconduct will be conducted in a way that avoids, to the extent possible, interference or perceived interference with current, pending or future Police investigations and/or court proceedings. The University may, at its discretion, determine that its investigation of these matters should be suspended until the conclusion of external processes, such as a police investigation or court proceeding.

9. Initial response and referrals

9.1 The initial response by Safer Community Unit (SCU) to a report of an alleged sexual offence is tailored to the time of the offence and the time of reporting as follows:

(a) Active (i.e. immediate and/or ongoing risk) or recent (within last couple of hours)

(b) Occurred within 72 hours, but not active, complainant no longer in danger
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

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9.2 The initial response may include:

(a) Providing assistance to the student, staff member or any other person involved to ensure the complainant’s safety and wellbeing and ameliorate any immediate and/or ongoing risk.

(b) Gathering information to facilitate any appropriate immediate response (security, emergency services etc.).

(c) With consent and where appropriate, referring the complainant to a Forensic Medical Officer (FMO) examination and to Centres Against Sexual Assault (CASA) and Sexual Offences and Child Abuse Investigation teams of the Victoria Police (Police).

9.3 SCU staff are to be mindful that they may be the first person the complainant speaks to about an alleged offence.

9.4 If a forensic medical examination is required, SCU staff will make a referral to SECASA or another CASA in the area where the complainant is located in Victoria or other similar sexual assault support services.

9.5 SCU staff will refer all complainants to SECASA or another CASA in the area where the victim is located for counselling and advocacy support. Complainants will be encouraged to actively seek their own advice from a CASA as to the support services that are available to them. With the agreement of the complainant, SCU staff will facilitate initial contact with and transport to a CASA.

10. Support for reporting options of the complainant

10.1 SCU staff will provide information to the complainant, verbally and/or by email, about the options available to them to report the matter to the Police. Complainants will be encouraged to seek advice and information from a CASA or the Police as to the support services that are available to them and the process if they decide to report a sexual offence to the Police. If the complainant requests, the SCU will assist them to contact the Police and provide transport for the complainant to attend a police station.

10.2 SCU staff will also provide information to the complainant, verbally and/or by email, about the option of reporting the allegation within the University to the Responsible Officer for General Misconduct. With the complainant’s consent, the SCU will prepare a report regarding the alleged sexual offence and provide this to the Responsible Officer for General Misconduct for further investigation.

11. Informing faculties and divisions on introduction of safety measures and considerations

11.1 The SCU will, with the complainant’s consent, inform the relevant University faculty and divisions of suggested action to lessen the risk of harm to the complainant. This may include providing safe places to work/study at the University for both the complainant and the alleged perpetrator.
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

These Guidelines have been developed with and are endorsed by the South Eastern Centre Against Sexual Assault and Family Violence [SECASA]

11.2 If the complainant does not give consent for information about an alleged sexual offence to be provided to the relevant areas of the University, the University still may be in a position to take steps to prevent a reoccurrence.

12. Investigation by the University

12.1 Where the complainant identifies the alleged perpetrator as a Monash student, the University will advise the complainant to report the matter to the Police and facilitate this occurring.

12.2 If the complainant declines to report the matter to Police, but requests the allegations be determined by the University, the matter will be investigated in accordance with University statutes, policy and procedures. The SCU may assist by obtaining a statement from the complainant detailing the alleged sexual offence. The complainant may be asked to sign an acknowledgement which states they understand the limitations to the University’s ability to investigate and determine such matters. This acknowledgement may also detail the complainant’s reporting options in relation to the allegations as well as their decision not to report to the Police.

12.3 Authorisation is required from the Manager of SCU after consultation with the Deputy General Counsel before any alleged student perpetrator is interviewed by SCU staff.

12.4 Where the complainant identifies the alleged perpetrator of a sexual offence as a Monash staff member, the matter will be investigated and dealt with by Workplace Relations pursuant to the Monash University Enterprise Agreement. It is not the role of SCU staff to interview alleged perpetrators who are staff members. With the authorisation of the Director of Workplace Relations, SCU will interview and take statements from staff and student complainants/witnesses to an alleged sexual offence committed by a staff member. These statements will be referred to the Director of Workplace Relations. The University will not take action that may compromise any criminal investigation.

12.5 Where the alleged perpetrator is from an organisation affiliated with the University, the University may, with the complainant’s consent, refer the matter to the affiliated or associated organisation for the organisation to investigate.

12.6 Where the alleged perpetrator is a member of public not affiliated or associated with the University in any way, the University has no basis to investigate the allegations and determine if they are substantiated. The report and referral services will still be available.

13. Concurrent investigations

13.1 Where there are concurrent reports of an allegation of a sexual offence to the University and the Police arising out of the same set of circumstances, the criminal proceeding / processes take precedence over any University misconduct proceeding.

13.2 Ordinarily formal University disciplinary action will not be able to proceed until a criminal proceeding is finalised. However, in certain exceptional circumstances, the Chief Operating Officer may determine
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

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otherwise. In all cases, the University will proceed with due care to ensure that any action taken in any University proceeding does not prejudice the criminal proceeding / process.

13.3 Deferral of a University investigation does NOT prevent the University taking other reasonable action to identify and mitigate imminent or potential risks to the University community.

13.4 SCU staff will assist criminal investigations where required, in accordance with the requirements of the law, University regulations, policies and procedures.

14. Where the complainant decides not to make a formal complaint

14.1 A complainant may identify a Monash student as the alleged perpetrator of a sexual offence, but not wish to make a report to the Police, or to report the matter as general misconduct to the University. Where this occurs, the SCU will support their decision and explain that they can change their mind at any time.

14.2 Where a Monash staff member is identified as the alleged perpetrator of a sexual offence, but the complainant does not wish to report the offence to the Police or to the University as staff misconduct, the SCU will support the complainant’s decision and explain that they can change their mind at any time. The incident will be notified to the Director of Workplace Relations.

14.3 Where the complainant identifies a perpetrator as being from an organisation affiliated or associated with the University, but does not wish to report the offence to the Police or for him matter to be referred to the affiliated or associated organisation, the SCU will support the complainant’s decision and explain that they can change their mind at any time. The SCU will also consider other options to ameliorate any risk to the safety of persons affected by the activities of the alleged perpetrator at that other organisation.

14.4 Where ongoing risk to the complainant or members of the University community is identified, the incident will be reported to the Executive Director Campus Community Division.

14.5 Where the lack of further action by the University may present an ongoing risk to the broader University community, the SCU is responsible for identifying risk and implementing appropriate actions to ameliorate that risk and to provide a safe work and study environment.

14.6 The above guidelines must also be balanced against the obligation of the University to protect the wellbeing and safety of the University community and to comply with any mandatory legal reporting obligations.

15. Consideration of mandatory and other Reporting

15.1 In all cases where a child is involved, the University is mindful of the mandatory reporting obligations under section 327 of the Crimes Act 1958 (Vic), the Child Wellbeing and Safety Act 2005 (Vic) and Part 4.4 of the Children, Youth and Families Act 2005 (Vic), and those of other legislative schema such as the National Law under the Health Practitioners Regulation National Law Act 2009 (Vic).
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

These Guidelines have been developed with and are endorsed by the South Eastern Centre Against Sexual Assault and Family Violence [SECASA]

16. Protection from reprisals, retaliation or threats

16.1 The University will not tolerate conduct by a person which retaliates, engages in reprisals or threatens to retaliate against a person for:

(a) filing a complaint with the Police;
(b) making an allegation of a sexual offence;
(c) participating or co-operating in an investigation under these Guidelines; or
(d) being associated with someone who has pursued rights under these Guidelines.

16.2 Anyone engaged in such conduct may be subject to sanctions and/or discipline in accordance with the requirements of the law, University regulations, policies and procedures.

17. False, vexatious or frivolous allegations

17.1 Any person who knowingly makes a false, vexatious or frivolous allegation in connection with an allegation of a sexual offence may be subject to disciplinary action in accordance with the requirements of the law, University regulations, policies and procedures.

17.2 A false allegation includes statements that deliberately omit a material fact, as well as statements that the speaker/writer knows to be untrue.

17.3 Vexatious allegations include allegations that are without merit and intended to cause inconvenience, annoyance, harassment or financial cost to the person who is the subject of the allegations.

17.4 Frivolous allegations are allegations that have no serious purpose or value, and investigation would be out of proportion to the seriousness of the issues complained about.

18. Anonymous reports or “complaints”

18.1 For the purposes of this section anonymous means:

(a) the complainant is not known/identifiable; but
(b) the identity of an alleged perpetrator is known.

18.2 Anonymous reports or complaints referred to the SCU will be dealt with as follows:

(a) If the allegation is against a staff member, the SCU will consult with the Director of Workplace Relations.
(b) The allegation will be cross-referenced with other information to determine whether the report may be related to other matters already known to the University.
GUIDELINES FOR THE UNIVERSITY’S RESPONSE TO ALLEGATIONS OF A SEXUAL OFFENCE

These Guidelines have been developed with and are endorsed by the South Eastern Centre Against Sexual Assault and Family Violence [SECASA]

(c) The SCU will consider what, if any, reasonable action is necessary to protect the wellbeing or safety of the University community, including the alleged perpetrator.

(d) After making reasonable enquiries, the SCU will consult with the University’s Office of the General Counsel, and where necessary, refer the report to the Police.

19. Other support and assistance

19.1 In consultation with the relevant faculty/department, ongoing support may be offered to any individual involved in and impacted by an alleged sexual offence, such as support or counselling from an appropriate health practitioner, where the circumstances do not fit the criteria for CASA support, or any academic support where the alleged sexual offence adversely impacts on a student’s studies.

19.2 For all matters handled under these Guidelines, the University will consider and respect the privacy of the persons concerned (as far as legally possible). Any use or disclosure of information gathered by the University in the process of reporting, investigation, and determining an allegation of a sexual offence will be on a ‘need to know’ basis, in compliance with the University’s privacy obligations and will be kept confidential to the extent possible.

20. Documentation

20.1 Each of the steps taken under these Guidelines will be documented and securely stored as part of the University records.

These Guidelines were endorsed by the Monash University Respect Now Always Advisory Committee on 11 June 2018. Review and updates via Campus Community Division.