

## Sexual Harassment Policy & Procedure

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# SEXUAL HARASSMENT POLICY & PROCEDURE

**POLICY OWNER: Human Resources**

## **PURPOSE:**

The purpose of this policy is to articulate the School's commitment to the elimination of sexual harassment.

St Peter's College regards sexual harassment as a serious breach.

The School supports the rights of individuals to be free from sexual harassment while engaged in activities undertaken at the School.

As an educational institution and an employer, the School will take all reasonable steps to eliminate sexual harassment of or by staff, students, or other members of the School community.

This policy aims to:

- Create a working and learning environment that is free from sexual harassment and where all members of the School community are treated with courtesy, dignity and respect.
- Promote appropriate standards of conduct at all times.
- Implement strategies to ensure that all members of the School community know their rights and responsibilities in this area.
- Encourage the reporting of prohibited behaviour.
- Provide an effective complaints procedure based on principles of natural justice.
- Treat all complaints in a serious, sensitive, fair and timely manner.
- Guarantee against victimisation or reprisals.

## **SCOPE:**

This policy and procedure will cover all staff, students, volunteers and contractors at St Peter's College.

## **ALIGNMENT TO SCHOOL STRATEGIC PLAN:**

Our Preferred Future – A Strategic Plan for St Peter's College 2015 – 2018 underpins this policy & procedure.

## **ALIGNMENT TO SCHOOL'S VISION & VALUES**

Our vision is to be a world-class school where all boys flourish. Our Core Values underpin this policy and procedure:

- Building lifelong commitment to serve others.
- Building leadership capability.
- Celebrating the uniqueness of every boy.
- Celebrating accomplishment.
- Developing emotional maturity.
- Developing lifelong learning, engagement, meaning, and purpose.
- Embracing creative potential.
- Fostering honesty, integrity, and wellbeing.'

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## REFERENCES:

- Honouring diversity.
- Valuing teamwork, collaboration, and communication.
- Unlocking individual virtues and strengths.

Education and Early Childhood Services (Registration and Standards) Act 2011

The Sex Discrimination Act 1984 (Commonwealth)

Under the Federal Sex Discrimination Act, 1984:

- *It is unlawful for a person to sexually harass:*
  - a) *An employee of the person; or*
  - b) *A person who is seeking to become an employee of the person.*
- *It is unlawful for a person to sexually harass a fellow employee or a person seeking employment with the same employer.*
- *It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace to both those persons.*
- *It is unlawful for a member of the staff of an educational institution to sexually harass:*
  - a) *A person who is a student at that institution; or*
  - b) *A person who is seeking to become a student at the institution.*
- *It is unlawful for a person who is an adult student of an educational institution to sexually harass:*
  - a) *A person who is an adult student at the institution; or*
  - b) *A member of staff of the institution.*
- *In this section 'adult student' means a student who has attained the age of 16 years.*

*The Act explicitly prohibits the following forms of sexual harassment, if it occurs in connection with the harasser being an adult student or staff member of a school:*

- *The sexual harassment of any student or prospective student by a member of staff*
- *The sexual harassment of any student or staff member by an adult student (i.e. a student who has attained the age of 16 years)*
- *The sexual harassment of students from other schools by a school staff member*
- *The sexual harassment by an adult student from the school of students or staff from other schools.*

Equal Opportunity Act (South Australia) 1984

Under the South Australian Equal Opportunity Act, 1984:

- *It is unlawful for an employer (being a natural person) to subject an employee, or a person seeking employment, to sexual harassment.*
- *It is unlawful for an employee to subject a fellow employee, or a person seeking employment with the same employer, to sexual harassment.*

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- *It is unlawful for an employee of an educational institution to subject a student, or a person applying to become a student, to sexual harassment.*
- *In accordance with Section 87 (2), (3) & (8) of the Act it is unlawful for a student of or over 16 years of age, while in attendance at a place in connection with his or her education, to subject a person who works at the educational institution at which the student is enrolled or a fellow student to sexual harassment.*

The Equal Opportunity Act 1984 (South Australia)

Fair Work Act 2009

St Peter's College Grievance Policy & Procedure

## DEFINITIONS:

### Sexual harassment

- Sexual harassment is prohibited under both federal and state legislation and is described in the Act as an unacceptable form of social behaviour. In brief, sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature.
- Sexual harassment is defined by law from the perspective of the recipient, and it occurs if the behaviour makes a person feel offended, humiliated or intimidated and it is reasonable in all the circumstances that the recipient would feel that way.
- Sexual harassment can take many forms – it can be obvious or indirect, physical or verbal, repeated or one-off and perpetrated by males or females against people of the same or opposite sex.
- The Australian Human Rights Commission ([www.humanrights.gov.au/our-work/sex-discrimination/guides/sexual-harassment](http://www.humanrights.gov.au/our-work/sex-discrimination/guides/sexual-harassment)) has listed the following examples of sexual harassment:
  - Staring and leering;
  - Unnecessary familiarity, such as deliberately brushing up against a person or unwelcome touching or kissing;
  - Suggestive comments or sexual jokes;
  - Insults or taunts of a sexual nature;
  - Intrusive questions or statements about a person's private life;
  - Displaying posters, magazines or screen savers of a sexual nature;
  - Sending sexually explicit emails or text messages;
  - Inappropriate advances on social networking sites;
  - Accessing sexually explicit internet sites;
  - Requests for sex or repeated unwanted requests to go out on dates; and
  - Behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual

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assault, stalking or obscene communications.

- Other examples of behaviour that may constitute sexual harassment include:
  - Lewd suggestions, whistling, foul language and obscene gestures;
  - Belittling comments on a person's anatomy or based on sex-role stereotypes;
  - Asking about a person's private or sex life, explicit sexual suggestions in return for 'reward'; and
  - Sexually offensive written, telephone or electronic communication.
- Sexual harassment does not have to take the form of overt sexual advances or suggestions, it may consist of abusive treatment, acts of aggression, intimidation, hostility, rudeness, name-calling, or other types of abusive conduct directed towards one gender. Such conduct can give rise to a breach of legislation.
- Sexual harassment does not refer to behaviour that is mutually acceptable to the parties involved. Sexual harassment is not behaviour that is based on mutual attraction, friendship and respect. Where the interaction is consensual, welcome or reciprocal it will not amount to sexual harassment. However, judgements about what constitutes consensual, welcome and reciprocal interaction may be influenced by the relative power of the people involved. The capacity of persons in positions of authority to influence others and affect their wellbeing is a factor that should be taken into account in the management of any sexual harassment allegation.
- Sexual harassment may be explicit or implicit. It may be a single incident or occur over a period of time. In defining and identifying sexual harassment it is the effect of the behaviour that is relevant, not the intent. It is the impact of the behaviour on the receiver that determines whether sexual harassment has occurred.
- Unwelcome sexual conduct can be identified:
  - If a complaint / protest is made at or near the time the sexual conduct occurs.
  - Even if a person delays making a complaint, as some people will attempt to personally resolve the situation, resorting to a complaint only in the event of more persistent and forceful conduct.
  - If an employee, who initially participated in sexual conduct tells another person that any further sexual conduct is unwelcome but the conduct continues to occur. For example, the past use of sexual innuendo cannot be used to show that a person should never be offended by sexual comments.
  - Even if a person does not resist the sexual advances of another person, it cannot be interpreted that sexual conduct is welcome. For example, a person may voluntarily participate in unwelcome sexual conduct fearing loss of employment if sexual advances are rejected.
- While Australian courts and tribunals vary in their views as to whether a single act can constitute sexual harassment, it is clear that in certain

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circumstances a single act, if of a sufficiently serious nature, can constitute sexual harassment. For example, a single sexual advance by a manager may constitute sexual harassment if it is linked to granting or denying job benefits. In contrast, conduct which results in a hostile or sexually permeated work environment usually requires a pattern of offensive conduct. It should be noted that one incident, if not checked, could be the start of a campaign of sexual harassment.

**Complainant** - a person who, individually or in conjunction with others, make(s) a complaint of sexual harassment under the School's Sexual Harassment Policy and Procedure.

**Respondent** – a person or organisation against whom a complaint has been made under the School's Sexual Harassment Policy and Procedure.

**Discrimination:** there are two forms of discrimination:

*Direct discrimination* – occurs when people are treated less favourably because they belong to a particular group or category of people, for example, women or men. It also includes treating someone unfairly because of a stereotype about the particular group or category of people.

*Indirect discrimination* - exists when there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect or result on particular groups. Unless this type of requirement is reasonable in all the circumstances, it is likely to be indirect discrimination.

## POLICY:

St Peter's College is committed to maintaining an environment within the School that is free from sexual harassment.

- Sexual harassment is unacceptable behaviour. It conflicts with the School's Values and denies respect for the rights of staff to fair treatment.
- Under the South Australian Equal Opportunity Act (1984) and the Commonwealth Sex Discrimination Act (1984), sexual harassment in employment is unlawful.
- Sexual harassment is a serious issue which undermines morale and can adversely affect the ability of staff and students to effectively undertake their roles within the School.

St Peter's College is committed to taking action to deter sexual harassment, to increase awareness that such behaviour is unacceptable and to ensure that complaints are dealt with fairly and promptly.

In an effort to deter sexual harassment, the School will inform all parties of the policy and procedure and its contents. New staff members will be issued with a copy of the policy during their induction training. Existing staff members will be made aware of the policy via the School's Information System - Keystone and staff will be asked to familiarise themselves with the policy and its contents. Contractors will be made aware of the policy via the Contractor Induction process.

Sexual harassment and victimisation is unlawful under the Sex Discrimination Act 1984 (Cth) as well as anti-discrimination legislation operating in every State and Territory. Unless the School has taken all reasonable steps to prevent a person from committing acts of sexual harassment or victimisation in

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connection with their role, the School is vicariously liable for that conduct.

In establishing appropriate standards of behaviour the School recognises:

- social or cultural backgrounds may lead people to perceive the same conduct differently
- some people may accept, as reasonable, a behaviour that other people find offensive
- sexual harassment can arise where different values and beliefs are not respected
- both men and women may be sexually harassed by a person or persons of the same or opposite gender
- appropriate behaviour is behaviour which respects the rights and sensitivities of all people in the School environment
- all individuals have a responsibility to contribute towards an environment of trust and respect which forms the basis of appropriate professional relationships.

## PROCEDURE:

The effect of sexual harassment on those people involved and on the School as a whole can range from annoyance to deep distress and can lead to an intimidating, hostile and offensive learning and work environment. This can contribute to reduced quality of learning and work, low productivity, distraction from learning and work, low morale, absenteeism, low levels of student and staff wellbeing, poor health, and high staff turnover.

Therefore it is important that any sexual harassment complaint be dealt with in a timely and effective manner in accordance with the following procedures.

### **Sexual Harassment of a staff member by another staff member.**

Under Federal legislation an employee who considers that he or she has been subject to sexual harassment from another employee may register a complaint with the employer and the employer is required to take appropriate action. This may involve disciplinary action, up to and including dismissal, being taken against the harasser.

#### Complaints Procedure

A member of staff at St Peter's College who considers that he or she has been sexually harassed by another employee, and believes the matter cannot be resolved on a one-to-one basis, is encouraged to:

- Discuss the matter with Human Resources, or
- Refer the matter directly to the Headmaster or his delegate.

Human Resources may:

- Resolve the matter informally with the complainant,
- Initiate, at the complainant's request, a mediation process between the parties (in these circumstances the contact person will keep the Headmaster or his delegate informed), and
- Advise the complainant to refer the matter on to the Headmaster or his delegate.

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The Headmaster or his delegate, on receiving a formal complaint in writing, will act in accordance with the School's Grievance Procedures.

The complaint may then be dealt with via a mediation or conciliation process with a delegated nominee acting as an intermediary between the parties with the aim of reaching an agreed solution.

If mediation or conciliation fails, the matter may then proceed to a formal investigation and will require the School to appoint an investigator. This may be someone within the School or an externally appointed investigator. The function of the investigation is not to conciliate but to investigate and determine the facts in dispute, and to make recommendations about resolution. In all actions, the investigator shall be guided by the principles of equal opportunity and of procedural fairness. Proceedings of the investigation shall be held in confidence. No information about the investigation shall be disclosed except to a person to whom disclosure is consistent with her or his official position and responsibilities. The investigator would normally interview the complainant, respondent and any witnesses.

After gathering information, the investigator will consider whether the complaint is substantiated, and then consider the formulation of appropriate recommendations.

## **Sexual Harassment of a staff member by a student**

The School will treat as a very serious disciplinary matter any incident of sexual harassment directed towards a staff member by a student.

Should a child or young person engage in inappropriate behaviour of a sexual nature, then immediate respectful steps must be taken to discourage the child or young person. The matter should be reported and documented promptly with the Headmaster or his delegate and a plan of action developed to support the child or young person and relevant staff member.

Depending on the age/developmental capacity of the child or young person and contextual information, this plan of support may involve:

- Communication with parents
- Referral to and liaison with specialist counselling
- Formalised support at School, which may include closer monitoring or supervision of the child or young person in his interactions with other children and young people
- Referral to and liaison with an appropriate agency with disability-specific expertise.

Sometimes, the inappropriate sexual behaviour of younger children towards staff can elicit a suspicion that the child in question has been sexually abused. In these situations, staff must:

- Make a mandatory notification to the Child Abuse Report Line on 131 478
- Consider the safety of other children and young people with whom the child has contact
- Develop and document a plan of action and communication with all relevant parties (including other agencies).

Some children and young people may actively seek a relationship with a staff member that would constitute an inappropriate relationship. In such circumstances, staff are advised to immediately report the information to the Headmaster or his delegate and seek assistance from a senior staff member or



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School Psychologist or pastoral care provider to actively manage the situation in a way that respects the emotional wellbeing of the child or young person and provides support to the staff member.

Examples of behaviours that should be reported and addressed are:

- Receiving gifts of an inappropriate nature or at inappropriate times (e.g. not as part of end of the year gift giving that some children and families follow)
- Flirtatious gestures and comments
- Inappropriate social invitations
- Inappropriate touching or invasions of personal space
- Inappropriate postings on any medium
- Correspondence or communications that suggests or invites an inappropriate relationship.

The staff member and the Headmaster, or his delegate, should document the incident that initially prompted the concern and the plan of action that has been established. Contact with parents is recommended unless there are reasonable grounds to believe that this will create serious risk for the child or young person.

Sexual harassment – via any medium (includes postings on websites, whether private or not) at any time or place – or assault of a staff member by a child or young person should be dealt with following normal behaviour management protocols, with the involvement parents and where appropriate, Police. Along with this response, consideration must also be given to the most appropriate counselling and support that can be provided to the child or young person and family. It is important to use these incidents as opportunities to organise meaningful interventions that address early sexual and other offending behaviours.

Detailed guidance on managing problem sexual behaviours in children and young people is available in the document *Responding to problem sexual behaviour in children and young people – Guidelines for staff in education and care settings (DECS 2010)*

## Complaints Procedure

A staff member who considers that he or she has been sexually harassed by a student, and believes the matter cannot be resolved on a one to one basis, is encouraged to:

- Refer the matter directly to the Deputy Headmaster and Head of the Senior School or Head of Junior School.  
(the staff member may wish to bring a support person to the meeting).

A support staff member, in similar circumstances, is encouraged to:

- Refer the matter to the Manager in the area of work, or
- Refer the matter directly to the Deputy Headmaster and Head of Senior School or the Head of Junior School.
- Refer the matter to Human Resources

The complaints procedure as identified above in the section relating to the sexual harassment of a staff member by another staff member will also apply in this situation.

The complainant will be informed of the disciplinary action taken against the

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student(s).

The Deputy Headmaster and Head of Senior School or the Head of Junior School will assess the need for ongoing support for the complainant.

## Who can provide support?

St Peter's College aims to provide a positive working environment where all staff are treated with respect. Human Resources staff can support staff who feel they have been subject to discrimination.

## What support can Human Resources provide?

- Provide an initial port of call if there is a workplace harassment issue staff would like to discuss.
- Listen to staff concerns whilst maintaining confidentiality.
- Help staff understand the Equal Opportunity Act and the School's policy on harassment.
- Discuss options for resolving the issue.
- Help staff resolve the issue informally or help staff decide whether to take the matter further.
- If requested, be supportive in a mediation process.

For situations relating to the sexual harassment or abuse of a student by another student please refer to Managing and Responding to allegations of sexual abuse of a student by another student Policy and Procedure (currently under development).

## CONSEQUENCES

### Consequences for breaches of this policy

St Peter's College will treat all allegations of sexual harassment seriously and impartially. The consequences for breaching this policy will depend on the seriousness of the case. Outcomes may include, but are not restricted to the following:

- Gaining a commitment from one or more persons to cease, and not to repeat, the behaviour.
- Making an apology to the affected person or persons.
- Providing mediation between the parties, if both parties agree to mediation process and to the mediator.
- Providing targeted training regarding prevention of unacceptable workplace behaviours.
- Offering support to the person making the complaint.
- Offering support to the person against whom the complaint is made.
- Referral of the matter to the South Australian Police.
- Disciplinary action, up to and including dismissal, suspension or expulsion, against the person found responsible for sexual harassment in cases of serious misconduct.
- Disciplinary action up to and including dismissal, suspension or expulsion, against the person making a complaint of sexual harassment if, after investigation, the complaint is found to have been malicious or vexatious.

Disciplinary action may be taken against anyone who victimises or retaliates

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against a person who has made a complaint.

Sexual harassment may in certain circumstances constitute a criminal offence.

A criminal offence of a sexual nature can include inappropriate touching and inappropriate verbal comments concerning people in the workplace and members of the public. Sexual harassment involving physical or indecent assault, stalking, making nuisance phone calls or the sending of obscene material using mail, e-mail or the internet, may be an offence under criminal law. Allegations of this nature should be reported to the Police. The School has a responsibility to deal with allegations even when the Police are or have been involved and to determine appropriate action in the context of the workplace.

## CONFIDENTIALITY

Confidentiality in relation to sexual harassment matters must be maintained to the greatest possible extent, with communication limited to persons to whom disclosure is consistent with official position and responsibility, or with specific responsibility to assist in the resolution of the grievance.

## PROCEDURAL FAIRNESS

The principles of procedural fairness should apply for all stages of the complaints resolution process. Persons responsible or investigating and resolving complaints have a duty not to be affected by bias or conflict of interest, and must act fairly and impartially. Each party will be given the opportunity to know the case against him or her and to be heard.

Every complaint will be dealt with in a manner that is both procedurally and substantively fair. The principles of natural justice to be observed include:

- The right of each party to be heard
- The right of each party to be treated fairly
- The right of the respondent to have a witness or support person, who may be a union representative, present at any meetings
- The right of the respondent to know the allegations made against them
- The right of the respondent to respond to the allegation(s) made against them, and
- The right of both parties to a decision-maker who acts fairly and in good faith.

Complaints should be investigated promptly involving as few people as possible. Parties to a complaint shall be entitled to receive advice and support as appropriate, and to be kept informed of the progress of the complaint.

Appropriate steps should be taken to ensure harmonious working and learning relationships during and after the investigation process.

The School will continue to review the resolutions and the wellbeing of the complainant and the alleged harasser for a period, to ensure the actions taken have been effective in stopping the sexual harassment.

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## RESPONSIBILITIES:

Headmaster	<p>The School has a legal responsibility to prevent sexual harassment, otherwise it will be held liable for the behaviour of its employees, students and volunteers.</p> <p>Receive and investigate complaints referred directly to him in accordance with the procedure set out in this policy.</p> <p>Keep abreast of complaints not referred directly to him.</p>
SLT Member	<p>Receive and investigate complaints referred directly to them in accordance with the procedure set out in this policy.</p> <p>Enlist the assistance of a HR representative if required.</p>
Direct Manager	<p>If a manager causes, instructs, induces, aids or permits an employee to commit sex-based discrimination, that manager will be personally liable under the Sex Discrimination Act as if they committed the discrimination.</p> <p>Receive and investigate complaints referred directly to them in accordance with the procedure set out in his policy.</p> <p>Enlist the assistance of a HR representative if required.</p>
Staff Member	<p>Employees are responsible for:</p> <ul style="list-style-type: none"> <li>• Complying with the School's Sexual Harassment Policy;</li> <li>• Offering support to anyone being harassed; and</li> <li>• Maintaining complete confidentiality if they provide information during an investigation of a complaint.</li> </ul> <p>If unable to resolve the matter on a one-to-one basis, the staff member is encouraged to discuss the matter with an SLT member, Human Resources or the Headmaster.</p>
Students	<ul style="list-style-type: none"> <li>• Must comply with the School's Sexual Harassment Policy.</li> <li>• Be involved in a process of investigation and remediation in relation to any incident.</li> <li>• Be supported in an investigation process by relevant support people.</li> </ul>
Human Resources	<ul style="list-style-type: none"> <li>• Provide an initial port of call when there is a workplace harassment issue staff would like to discuss.</li> <li>• Listen to staff concerns whilst maintaining confidentiality.</li> <li>• Help staff understand the Equal Opportunity Act and the School's policy on harassment.</li> <li>• Discuss options for resolving the issue.</li> <li>• Help staff resolve the issue informally or help staff decide whether to take the matter further.</li> <li>• If requested, be supportive in a mediation process.</li> </ul>

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**COMMUNICATION:**

**POLICY HISTORY:**

- Raise awareness about discrimination in the workplace by collecting statistics .
- Provide advice and support to staff members and Managers in relation to sexual harassment complaints or inappropriate behaviour identified as sexual harassment.

The Director of Human Resources is responsible for promulgating this policy and procedure to all relevant staff.

This policy and procedure will be available on the School's Information System-Keystone.

HISTORY	
Date Approved	Amendments made (summary of major changes)
November 2009	Policy created
April 2013	Policy revised to include reference to School Strategic Plan, Vision & Values
April 2015	Policy revised as per recommended amendments from the Child Protection Policy Desk Audit conducted in November 2014.
August 2017	Policy reviewed and updated in line with AISSA Sexual Harassment Policy Guidelines document.