



# Sexual Misconduct Prevention and Response Policy

## Purpose

The purpose of this Policy is to set out Kaplan's Australia Group ("Kaplan") commitment to preventing sexual misconduct, the responsibilities of staff and students and Kaplan's sanctions against behaviour that constitutes sexual harassment.

This policy sets out the principles for preventing and responding to incidents of sexual misconduct occurring at or connected with Kaplan.

## Scope

This policy applies to:

- all students enrolled with Kaplan, regardless of the mode of study or the campus they are attending,
- all staff of Kaplan,
- all accommodation providers (where applicable),
- persons contractually bound to comply with this policy,

in respect of sexual misconduct occurring:

- on Kaplan campuses or other facilities, including live-in accommodation and homestay arrangements,
- in virtual spaces such as online forums, platforms and communities arranged or facilitated by Kaplan,
- whilst using Kaplan information and communication technology resources,
- at premises where work integrated learning is undertaken as part of a Kaplan activity, including but not limited to internships, work placements, fieldwork or other type of practicum,
- whilst students, staff or contractors are representing Kaplan, including but not limited to excursions, exhibitions, competitions, sports events, client meetings, social gatherings and cultural activities,
- between a Kaplan staff member or contractor and a student enrolled with Kaplan,
- in Kaplan contracted accommodation.

## Outside Scope

At times, sexual misconduct may be disclosed or reported as occurring outside the scope of this Policy (i.e. at a third party site, a private venue, event or occasion not connected with or facilitated by Kaplan), in which case the matter will not be investigated by Kaplan as a potential student or staff misconduct issue but support services and referrals may be offered as appropriate (Student Counsellors and Lifeworks Assistance and Wellbeing Program).



## Definitions

**Kaplan Australia Group** means Kaplan Australia Holdings Pty Ltd ACN 117 261 980 (KAH), a related body corporate (as defined in section 50 of the *Corporations Act 2001 (Cth)*) of KAH or any entity that directly or indirectly controls or is controlled by, or is under common control with, KAH (where 'control' has the meaning given in **section 50AA** of the *Corporations Act 2001 (Cth)* and 'controlled' has a corresponding meaning).

**Report of sexual misconduct** is when a report is made by a person affected or someone on their behalf.

**Disclosure of sexual misconduct** occurs when a person affected tells another person.

**Sexual assault** is any unwanted sexual behaviour that makes a person feel uncomfortable, threatened or scared. It covers:

- Rape: forced, unwanted sex or sexual acts.
- Child sexual abuse: using power over a child or young person to involve them in sexual activity.
- Indecent assault: indecent behaviour before, during or after an assault.

**Sexual harassment** 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:

- Comments about a person's private life or the way they look;
- Sexually suggestive behaviour, such as leering or staring;
- Physical contact of a sexual nature such as brushing up against someone, touching, fondling or hugging;
- Sexually suggestive comments or jokes;
- Displaying sexually offensive material;
- Accessing pornographic websites at work or the Kaplan network;
- Continued requests for dates that have been previously denied Requests for sex;
- Sexually explicit emails, text messages or posts on social networking sites,
- making or distributing sexually explicit photos or videos;
- Unwelcome sexual advances;
- Making or distributing sexually explicit photos or videos;
- Acts of indecency; and
- Sexual assault.

There is more guidance about what may amount to sexual harassment available on the Australian Human Rights Commission website at: <https://www.humanrights.gov.au/our-work/sex-discrimination>.

**Consent** is having the capacity to give free agreement and giving clear and unambiguous agreement, expressed outwardly through mutually understandable words or actions, 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 to constitute 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:

- The person submits to the act because of force or fear of force, whether to that person or someone else;
- The person submits to the act because of the fear of harm of any type, whether to that person or someone else or an animal;
- The person submits to the act because the person is unlawfully detained;
- The person is asleep or unconscious;
- The person is so affected by alcohol or another drug as to be incapable of consenting to the act;
- The person is incapable of understanding the sexual nature of the act;
- The person is mistaken about the sexual nature of the act;
- The person is mistaken about the identity of any other person involved in the act;
- The person does not say or do anything to indicate consent to the act;
- Having initially given consent to the act, the person later withdraws consent to the act taking place or continuing.

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. The age limit for giving consent in New Zealand is 16 years of age.

It is important to understand that a person might not consent to behaviour even though they were, or are, in a relationship with you.

There is more information about “consent” on the Australian Law Reform Commission website at: <https://www.alrc.gov.au/publications/25.%20Sexual%20Offences/consent>.

## Policy Statement

Through this policy, Kaplan advises all staff and students that Kaplan will take a zero-tolerance approach to sexual assault, sexual harassment and other forms of sexual misconduct. Kaplan Australia will report to the relevant authorities and regulators all incidents that indicate material breaches in safety or preventative controls, including recurring incidents of sexual assault or sexual harassment.

## Principles

Kaplan is committed to providing a fulfilling, rewarding and safe learning, teaching and employment environment for all its students and staff with a firm view that sexual misconduct is unacceptable.

The following principles, as further specified below, express Kaplan’s commitment to:

- preventing sexual misconduct,



- responding appropriately and effectively to reports and disclosures of sexual misconduct, and
- increasing awareness of the support services implemented by Kaplan to respond to incidents of sexual misconduct at, or connected with Kaplan.

### **Sexual Misconduct is Unacceptable**

Sexual misconduct is not tolerated by Kaplan Australia. Sexual misconduct will always involve conduct which is contrary to Kaplan Codes of Conduct because it will always involve a failure to behave in a respectful manner. Students and staff who experience sexual misconduct are encouraged to seek help and bring reports of sexual misconduct connected to Kaplan to the attention of relevant Kaplan staff. It is the responsibility of all staff and students to ensure that any instances of sexual misconduct are reported and followed up. Sexual misconduct involves any unwelcome sexual behaviour that a reasonable person would expect to make someone feel uncomfortable, humiliated, offended or intimidated.

Sexual misconduct includes sexual harassment or sexual assault, indecent assault, an act of indecency, conduct involving child abuse material, making or distributing sexually explicit photos or videos, or certain other behaviours of a sexual nature which are crimes in Australia. Examples of what may constitute sexual harassment or sexual assault can be found under the Definitions section of this policy.

Sexual misconduct can involve behaviour by a person of any sex and any gender. It can occur between strangers or people who know each other well, including those involved in a consensual intimate relationship.

### **Kaplan seeks to prevent sexual misconduct and support the welfare of staff and students**

Kaplan will continue to develop and implement a range of prevention strategies that are intended to raise awareness and address the risks to the Kaplan community of experiencing sexual misconduct, including for those in the Kaplan community that may be particularly vulnerable to such risks. Kaplan recognises that it is impossible to eliminate the risk of incidents of sexual misconduct in any community. But when such incidents are reported, Kaplan's primary concern will be with the welfare of those who are impacted, whether they are staff, students, or contractors.

### **Kaplan will effectively and appropriately Respond to Sexual Misconduct**

Kaplan seeks to provide effective and appropriate responses to incidents of sexual misconduct disclosed or reported to Kaplan, and Kaplan has developed the following resources and processes to enable the appropriate response:

- **The SASH Steering Committee**, chaired by the Managing Director of Kaplan Australia, will ensure that Kaplan will, always, have an overarching framework of guiding policies and effective processes in place to ensure all incidents of sexual assault and/or sexual harassment are dealt with promptly and fairly.
- **The Sexual Assault and Sexual Harassment Working Group (SASHWG)** leads efforts to prevent and respond to sexual misconduct connected to Kaplan, including strategy development and implementation, review of policies, systems and processes. The SASHWG will also be responsible for reporting on sexual misconduct



incidents to the SASH Steering Committee. The SASHWG is a working group of the SASH Steering Committee.

- **Sexual Misconduct First Responders** are a diverse network of specially trained staff members within the Kaplan community who have been trained to assist persons who have been the victim of sexual misconduct. The First Responders are not qualified to provide medical or counselling advice, but they are trained to provide an appropriate initial response to disclosure of sexual misconduct. First Responders can provide guidance about support services and appropriate contacts within Kaplan. A list of 'First Responders' and their contact details are available on the Kaplan website. A person wishing to disclose or report sexual misconduct at, or connected with Kaplan, may contact any of the listed First Responders for assistance.

### Reporting Sexual Misconduct

Kaplan's Sexual Misconduct reporting process will ensure a central data collection point for all incidents of sexual misconduct occurring at, or connected with, Kaplan. Data collected through this process is used to improve the safety and security for the Kaplan community. *It is the responsibility of the entire Kaplan community to ensure that the data collection point remains a comprehensive and reliable source of information.*

Any information about sexual misconduct occurring at, or connected with, Kaplan which is received by staff or contractors must be reported to Kaplan or its registered education providers using the reporting mechanisms outlined in the "*Prevention of Harassment, Sexual Assault, Sexual Harassment and Bullying Policy*" or the "*Grievances, Complaints and Appeals Policy*". Students, staff and contractors are strongly advised to report instances of sexual misconduct. Kaplan's contracted entities or providers (e.g student accommodation) are also expected to report instances of sexual misconduct using the same procedures.

Where a report of sexual misconduct is made by a person on behalf of someone else, the identity of the subject of the report must not be disclosed directly or indirectly without their consent. If consent is not given or the person's identity is not known (for example, where an incident has been witnessed), a report may be made that does not identify the person concerned. The process allows for anonymous reports to be made which do not identify the people involved in the incident.

### How to Respond to an Incident of Sexual Misconduct

Kaplan requires all staff and contractors (third parties) who become aware of sexual misconduct at or connected with Kaplan to disclose that information in one of the ways outlined below, noting that reports produced can be anonymous. Kaplan strongly encourages students, staff and contractors to disclose sexual misconduct at, or connected with, Kaplan which they experience or become aware of, in any of the following ways:

1. Lodgement of a student complaint to the Student Experience Team
2. Lodgement of a staff complaint with the People and Culture Team
3. Contacting a "First Responder"
4. Contacting the appropriate management team within Kaplan
5. Contacting Kaplan Campus Security (where and if applicable)
6. Contacting the Student Counsellor
7. Contacting Kaplan's "Lifeworks" Employee Engagement and Wellbeing, available to staff and students.



Regardless of which avenue is initially adopted, all of the avenues listed above will submit a timely report to ensure that the integrity and accuracy of the data in the central data collection point is maintained.

Kaplan will monitor and respond to all reports of sexual misconduct submitted through one of the avenues listed above and provide options for assistance by providing the appropriate contact information for further support.

Kaplan's response to those experiencing sexual misconduct will always be to support the welfare of persons involved, adhere to principles of procedural fairness and facilitate safety and recovery. Responses to reports may include:

- urgent relocation from accommodation (where applicable),
- providing referrals to medical or support services,
- providing options about minimising contact with the person allegedly involved,
- providing information about Kaplan's misconduct processes (if applicable),
- assistance with making a Police report,
- providing Kaplan's students and staff members with information about "Lifeworks", the Employee Assistance Program, available also to students.
- providing information about how to access support services, such as "*The National Sexual Assault, Family and Domestic Violence Counselling Line*" (<https://au.reachout.com/articles/sexual-assault-support>).

If a report submitted indicates that there may be an ongoing serious risk to any person or a crime has been committed, the report will be referred to the Police. Under State and Federal legislation, Kaplan is obliged to report to the Police information which might materially assist in the apprehension of an offender or the prosecution/conviction of an offender engaged in a serious criminal offence. The victim/survivor of the crime will be informed about the reporting to the Police to allow them to choose if they want to remain anonymous or if they want to receive further support from Kaplan.

Kaplan may also initiate urgent interim measures, such as restricting a person's access to campus buildings or properties (where there is an immediate threat to the safety of any person), temporarily suspending a person from Kaplan and/or temporarily suspending a person from specified activities and/or positions of leadership. Failure to comply with interim measures may lead to disciplinary actions.

### **Person(s) disclosing sexual misconduct decide what they report**

Kaplan recognises that a student, staff member or affiliate disclosing that they have experienced sexual misconduct has a right to decide what information they report. Kaplan's ability to respond to the report may be hampered if the information provided is incomplete. In all cases Kaplan will endeavour to provide support and appropriate referral services. Kaplan will provide information to affected students about any academic implications and how to apply for special consideration.



### **Sexual Misconduct can be reported at any time**

Kaplan encourages the prompt reporting of sexual misconduct to maximise Kaplan's ability to respond effectively. Kaplan understands that a person within the Kaplan community who is affected by sexual misconduct may choose to go directly to the Police without first utilising one of the reporting methods listed above.

Kaplan recognises that the length of time between an alleged incident of sexual misconduct and the making of a report may vary, depending upon a range of factors. Referral services will be offered where appropriate, regardless of the date that the incident occurred or was reported.

The time limit applicable under the "*Grievances, Complaints and Appeals Policy*" does not apply to reports of sexual misconduct. Kaplan may, in its discretion, decide that Kaplan's investigative and disciplinary processes may not be available where the report relates to an incident which occurred more than 6/12 months prior to the report. This is because Kaplan's ability to investigate and discipline respondents effectively and fairly diminishes over time.

### **Confidentiality and Privacy of Information Submitted**

Information stored in the central data collection point from which a person's identity is apparent or can be ascertained is personal information. The collection, storage use and disclosure of personal information is governed by the *Australian Government's Privacy Act 1988* and Kaplan's "*Privacy Policy*". Kaplan will only permit information stored in the central data collection point to be accessed and used by staff who have a need to access and use the information in order to carry out the actions and responsibilities described under this Policy.

Personal information will only be disclosed outside Kaplan where:

- The disclosure is necessary to prevent a serious and imminent threat to the life or health of the individual concerned or another person;
- The individual to whom the information relates has expressly consented to Kaplan disclosing the information;
- Kaplan is lawfully authorised or required to disclose the information because:
  - the information indicates evidence of a serious indictable offence;
  - of a subpoena or warrant issued to Kaplan;
  - a mandatory reporting requirement arises in regard to children and young persons;

An individual whose personal information has been stored in the central data collection point is entitled, subject to limited exceptions prescribed by the *Privacy Act 1988* and the Kaplan "*Privacy Policy*", to ascertain if Kaplan holds personal information about them and may request access to that information.

### **Kaplan Investigative and Disciplinary Processes**

Where a report of sexual misconduct connected with Kaplan is received, Kaplan will commence an investigation in accordance with its misconduct procedures. In cases of alleged conduct by a staff member, an investigation under the applicable employment agreement will be conducted. If the allegation is substantiated, in whole or in part, Kaplan will impose an appropriate disciplinary outcome.



Reports of sexual misconduct which may constitute criminal conduct, such as sexual assault, will promptly be referred to the Police. Once a Police investigation has commenced, Kaplan may defer its own investigation process until it is advised that the Police investigation is complete or is not continuing. Any such deferral will not limit any urgent interim measures that may be necessary to preserve the safety and wellbeing of individuals.

Kaplan's investigations will be procedurally fair. This means that the person allegedly responsible for the sexual misconduct will be provided with an opportunity to understand and respond to the allegations made against them before a determination is made.

Any adverse action taken or threatened against a student, staff member or contractor because of their involvement in reporting sexual misconduct will result in disciplinary action. In this context, adverse action includes threatening, intimidating or harassing any person, intentionally interfering in an investigation and interfering with the academic or professional progress or career of an individual.

## Guiding Procedures

Kaplan's intent is to create an environment of wellbeing and safety (specifically with regards to sexual assaults and sexual harassment incidents) across all Kaplan education providers and will encompass the following guiding procedures:

- Promote clear policies and accountable practices to support its values of safety and wellbeing, including sexual harassment and sexual assault.
- Ensure awareness of Kaplan's obligations under the Australian law;
- Create and promote avenues and contacts for support for Kaplan students, staff and contractors;
- Provide and make available specific types of personal support services such as counselling, academic progress support;
- Ensure that support services offered reflect the needs of students, staff and contractors affected;
- Promote a safe and caring environment;
- Conduct effective risk assessments and implement preventative controls for the risks identified;
- Provide advice about actions to take, staff to contact and support services that are accessible (whether directly or through another party) if a student's personal circumstances are having an adverse effect on their education;
- Conduct evidence based sexual violence, drug and alcohol abuse prevention education programs for students, staff and contractors;
- Provide an Orientation Program for students that includes information regarding sexual assault and/or sexual harassment policies, procedures and support;
- Provide a Staff Induction Program that includes a dedicated section on sexual assault and/or sexual harassment policies, procedures and support;
- Implement systems and processes to respond to incidents of sexual assault and/or sexual harassment and prevent recurrences.
- Kaplan will not discriminate, directly or indirectly, against a person reporting a sexual assault and/or sexual harassment;
- Ensure proper record management of incidents;





- Ensure at all times the privacy and confidentiality of all people involved in an incident;
- All staff, students and contractors in positions of leadership and management must, with the support of their teams and for inclusive purposes, identify opportunities and take steps for ongoing improvement;
- All the initiatives outlined in this policy will be monitored, evaluated and improved upon regularly by the SASH Working Group.

## Relevant Legislation and Policies

As a registered education provider, Kaplan Australia operates under strict laws and regulations. Policies and procedures are in place to ensure compliance with such laws.

Below, please find the most relevant legislation which apply to this policy:

Australia Federal Criminal Code Act 1995 <https://www.legislation.gov.au/Details/C2019C00152>

NSW Crimes Act 1900 No 40 <https://www.legislation.nsw.gov.au/#/view/act/1900/40/history>

VIC Crimes Act 1958

[http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/LTObject\\_Store/LTObjSt6.nsf/b1612aeaf0625227ca257619000d0882/a57e26dfdab404dcca257975000569fb/%24FILE/58-6231aa229A%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt6.nsf/b1612aeaf0625227ca257619000d0882/a57e26dfdab404dcca257975000569fb/%24FILE/58-6231aa229A%20authorised.pdf)

QLD Criminal Code Act 1899 <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1899-009>

SA Criminal Law Consolidation Act 1935

<https://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20CONSOLIDATION%20ACT%201935.aspx>

WA Criminal Code Act Compilation Act 1913

[https://www.legislation.wa.gov.au/legislation/statutes.nsf/main\\_mrttitle\\_218\\_homepage.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrttitle_218_homepage.html)

Australian Human Rights Commission Act 1986 (Cth)

<https://www.legislation.gov.au/Details/C2019C00030>

Anti-Discrimination Act 1977 <https://www.legislation.nsw.gov.au/#/view/act/1977/48>

Sex Discrimination Act 1984 (Cth) <https://www.legislation.gov.au/Details/C2018C00499>

Work Health and Safety Act 2011 (Cth) <https://www.legislation.gov.au/Details/C2017C00305>

Privacy Act 1988 (Cth) <https://www.legislation.gov.au/Details/C2019C00025>

Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act)

<https://www.legislation.gov.au/Details/C2017C00271>

Higher Education Standards Framework (Threshold Standards) 2015

<https://www.legislation.gov.au/Details/F2015L01639>

Education Services for Overseas Students Act 2000 (ESOS Act 2000)

<https://www.legislation.gov.au/Details/C2017C00292>

Education Services for Overseas Students Regulations 2001

<https://www.legislation.gov.au/Details/F2016C00681>

National Code of Practice for Providers of Education and Training to Overseas Students

2018 <https://www.legislation.gov.au/Details/F2017L01182>

Other relevant policies and procedures to be used together with the “Sexual Harassment Prevention and Response Policy”:

- Code of Conduct (Students)
- Code of Conduct (Staff) (available from People and Culture Team)
- Critical Incident Management Policy
- Diversity, Inclusion and Equity Policy
- WHS Policy
- Privacy Policy
- Prevention of Harassment, Sexual Assault, Sexual Harassment and Bullying Policy



- Electronic Media Policy
- Grievances, Complaints and Appeals Policy
- Assessment Policy/ Special Circumstances
- Reasonable Adjustments Guidelines
- Incident Reporting Procedure
- Student Orientation Program
- Staff On-boarding Program

## Resources

The resources listed below have been used in the development of this policy. It is recommended that staff and students familiarise themselves with these resources.

**Australian Human Rights Commission**, “Change the Course” – National Report on Sexual Assault and Sexual Harassment at Australian Universities 2017

[https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_2017\\_ChangeTheCourse\\_UniversityReport.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf)

**University of NSW** – On Safe Ground – Strengthening Australian university responses to sexual assault and harassment

[https://www.humanrights.unsw.edu.au/sites/default/files/inline-files/AHR0002\\_On\\_Safe\\_Ground\\_Good\\_Practice\\_Guide\\_online.pdf](https://www.humanrights.unsw.edu.au/sites/default/files/inline-files/AHR0002_On_Safe_Ground_Good_Practice_Guide_online.pdf)

**Universities Australia** – “Respect.Now.Always.”

<https://www.universitiesaustralia.edu.au/project/respect-now-always/>

Universities Australia – Guidelines for University responses to SASH

<https://www.universitiesaustralia.edu.au/wp-content/uploads/2018/10/UA-Guidelines-5.pdf>

Universities Australia – Principles for Respectful Supervisory Relationships

<https://www.universitiesaustralia.edu.au/wp-content/uploads/2018/10/Postgraduate-Principles.pdf>

Full-stop Foundation Factsheets

<https://www.fullstopfoundation.org.au/Sexual-Assault-within-University-Communities>

**Council of Australian Postgraduate Associations Incorporated (CAPA)**

Wide Support for CAPA’s Sexual Assault and Sexual Harassment Recommendations

<http://www.capa.edu.au/wide-support-capas-sexual-assault-sexual-harassment-recommendations/>

CAPA Recommendations – Sexual Assault and Sexual Harassment Survey – Universities Australia/Australian Human Rights Commission

<http://www.capa.edu.au/2017-sexual-assault-sexual-harassment-survey-universities-australia-australian-human-rights-commission/>

Media Release: CAPA calls on universities to take action on sexual assault

<http://www.capa.edu.au/media-release-capa-calls-universities-take-action-sexual-assault/>



Sexual Assault at Universities: What has been achieved 3 months on  
<http://www.capa.edu.au/sexual-assault-universities-achieved-3-months/>

### **Australian Law Reform Commission**

Sexual Offences – Consent

<https://www.alrc.gov.au/publications/25.%20Sexual%20Offences/consent>

## **Amendments**

Kaplan Australia reserves the right to amend this policy at its discretion. All changes and amendments to our policies are published on Kaplan Australia website.

## **Version Control and Accountable Officers**

It is the joint responsibility of the Implementation Officer and Responsible Officers to ensure compliance with this policy.

<b>Policy Category</b>	Corporate			
<b>Responsible Officers</b>	Executive Director People and Culture, Vice President Academic			
<b>Implementation Officers</b>	School Executive, College Director or equivalent			
<b>Review Date</b>	September 2022			
<b>Approved by:</b>		<b>Endorsed by:</b>		
Corporate Board		Academic Board		
<b>Version</b>	<b>Authored by</b>	<b>Brief Description of the changes</b>	<b>Date Approved</b>	<b>Effective Date</b>
1.0	Kaplan Australia Quality, Regulations and Standards Team.	New policy.	17.09.2019	23.09.2019