

POL-137 Sexual Misconduct Prevention and Response Policy

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CONTENT WARNING: This policy contains language and references to sexual misconduct including sexual assault and sexual harassment. If anything in this policy affects or distresses you, you may wish to consider contacting a member of the Speak Up Group or the support services outlined in section 12.

Note about language: This Policy uses the term ‘victim-survivors’ as it outlines the School’s commitment to being centred on the needs and experiences of individuals who have experienced sexual misconduct. Where this policy concerns the processes for investigating Disclosures and Complaints of sexual misconduct, it refers to ‘Complainants’ and ‘Respondents’.

1. Objective

- a. sets out Melbourne Business School Limited’s (“MBS” or “the School”) unequivocal approach to sexual misconduct: it will not be tolerated, and has no place in our School;
- b. prioritises the safety and wellbeing of individuals making Disclosures or Complaints about sexual misconduct, while adhering to principles of procedural fairness;
- c. supports processes being culturally sensitive, and relevant to and supportive of the diversity of the School’s Community whilst also highlighting that all members of the School’s Community are expected to abide by the Key Principles contained within this policy;
- d. acknowledges that certain groups of people face a greater risk of experiencing sexual misconduct, and commits the School to provide appropriate support and resources;
- e. supports a trauma-informed approach and provides avenues for further support and assistance, including from external organisations;
- f. explains the meaning of sexual misconduct;
- g. explains the difference between Disclosures and Complaints of sexual misconduct and assists individuals to make a Disclosure or Complaint about sexual misconduct;
- h. sets out the processes for making Disclosures and Complaints of sexual misconduct;
- i. delineates roles and responsibilities in the Complaints process;
- j. encourages safe bystander intervention;
- k. supports the diversity of the School’s Community taking into consideration an individual’s personal characteristics, including race, ethnicity, socio-economic background, migration status, age, disability, religion, sex, gender, and sexuality as well as a range of individual unique characteristics and experiences; and
- l. sets out the recordkeeping and reporting requirements for the School.

2. Scope

Applies To										
Faculty	Y	Staff	Y	Student employees	Y	Students*	Y	Subsidiaries	Y	

Associates	Y	Adjuncts	Y	Volunteers	Y	Contractors	Y	Board	Y
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* MBS students undertaking an award course at MBS are also covered by University of Melbourne policies and should refer to the University of Melbourne policies. These policies are the Student Conduct Policy (MPF1324), Student Complaints and Grievances Policy (MPF1066) and Sexual Misconduct Prevention and Response Policy (MPF1359).

Individuals undertaking an MBS course through their employer are covered by their employer's policies as well as this policy.

3. Key Principles

The Key Principles inform this policy and establish the basis for expected behaviour and decision-making at the School with regards to sexual misconduct.

MBS acknowledges that sexual misconduct occurs in workplaces and educational settings and is under-reported and preventable. It causes harm both to those individuals directly affected, and potentially the School's Community more broadly.

MBS will ensure it maintains contemporary and leading practice in preventing and responding to sexual misconduct.

Where a disclosure or complaint concerns misconduct affecting individuals within the School community who are under the age of 18, **mandatory reporting** requirements apply.

3.1 Respecting Victim-Survivors

Prioritising the safety and wellbeing of victim-survivors by providing a trauma-informed approach which supports, listens to, and validates the experience of victim-survivors and respects their agency.

3.2 Focusing on prevention

The School takes proactive steps in fostering a safe, equitable and respectful environment for all members of the School. This includes such measures as:

- a. creating a safe physical and online work environment;
- b. implementing safe work systems and procedures;
- c. creating a positive and respectful workplace culture;
- d. implementing workplace policies;
- e. providing information and training; and
- f. committing to address unwanted or offensive behaviour early.

3.3 Empowering accountable leadership

Enabling and requiring strong leadership that is:

- a. accountable to the School for the prevention of sexual misconduct; and
- b. empowers all members of the School's community to be informed, active bystanders who uphold and visibly champion these principles including through their actions, words and decisions.

3.4 Building community knowledge and understanding

Taking proactive steps to educate and inform the School Community to support a shared understanding of what constitutes sexual misconduct and reinforcing the message that sexual misconduct will not be tolerated and carries consequences.

3.5 Ensuring integrity of policy and process

Ensuring we transparently review, update and communicate accessible and culturally sensitive, evidence-based policies and processes.

3.6 Enacting fair decision-making

Enacting decisions that are based on procedural fairness and are unhindered by the status, power or influence of the parties involved, and protecting and supporting those who come forward from victimisation.

3.7 Supporting cultural sensitivity and safety

Ensuring safety for all members of the School Community by being aware of cultural differences, and by aiming to address cultural and linguistic barriers through engagement with community elders, interpreters and through other means to ensure culturally sensitive support.

3.8 Respecting intersectionality

Understanding, respecting and embracing the many aspects of a person's identity (which may include race, ethnicity, socio-economic background, migration status, age, disability, religion, sex, gender, and sexuality) as well as a range of individual unique characteristics and experiences, in preventing and responding to sexual misconduct.

3.9 Implementing a safe and consistent process

Implementing a process that is safe, transparent and consistent for all members of the School, assisted by accurate record keeping and reporting to ensure the School identifies trends and responds with best practice.

4. Avenues for Disclosure or Complaints

The overall accountability of decisions made within this policy is the responsibility of the Speak Up group, each of whom has the relevant training and experience to deal with such matters. The Speak Up Group will ensure that anyone affected by sexual harassment or assault receives the full support of the School, and that instances of such behaviour are investigated and addressed thoroughly.

Any individual can make a Disclosure (section 5) or Complaint (section 6) about sexual misconduct (whether it concerns themselves, or someone else), including:

- anonymous Disclosures or Complaints; or
- Disclosures or Complaints about current or past events.

The School will support an individual's choice in making a Disclosure or Complaint relating to incidents of sexual misconduct.

The School recognises that individuals will have different preferences in terms of how and to whom they wish to make Disclosures or Complaints, and some may wish to disclose to family, peers or colleagues.

People to whom this policy applies may seek support and/or advice about sexual misconduct related to School matters, however the School may be unable to investigate or take action against alleged perpetrators who are not covered by this policy.

4.1. Who to contact for Disclosure or Complaints

Recommended avenues for Disclosure or Complaints relating to incidents of sexual misconduct by any person are as follows.

The MBS Speak Up Group

This Group can receive Disclosures or Complaints and, when appropriate, may refer individuals to internal and external specialist agencies for wellbeing and other types of assistance, and provide advice on reporting to Victoria Police.

These individuals can receive Disclosures or Complaints directly or via the '[Speak Up: MBS Reporting Portal](#)' and provide advice on support and about the processes to Employees. In any case they may do this through guidance provided by the Speak Up Group and within the boundaries of confidentiality.

When you lodge a complaint or alleged misconduct under our new Speak Up – MBS reporting portal, this Group will receive the information. If your complaint or grievance relates to one of the Group members, then the Dean will be advised.

The Speak Up Group consists of:

- Chief Financial Office
- People and Culture’s HR Business Partner and
- Culture and Engagement Lead
- Dean (if a complaint relates to a member of Speak Up)

How to make a Disclosure or Complaint

A Disclosure or Complaint may be made anonymously. However, the School may not be able to conduct a formal investigation into anonymous Complaints because, for example, the Respondent may need to be aware of the identity of the Complainant in order to properly respond to the Complaint or to ensure procedural fairness. Consider also that an anonymous disclosure may affect the ability to support the person making a disclosure as set out in Section 5. No personal information is collected through the anonymous register.

Initial reporting of Disclosures or Complaints can be made:

- In writing (written or electronic) addressed to the recipient or recipients, a telephone call or in person.
- By completing an online report via the [‘Speak Up: MBS Reporting Portal’](#), hosted by Your Call.
 - Reports will be directed to the Speak Up email at MBS, unless the following people who monitor the email are explicitly excluded in the report: Chief Financial Officer, the People and Culture HR Business Partner and Culture and Engagement Lead

You can make a report to Your Call:

Online: 24/7	via the ‘Speak Up: MBS Reporting Portal’
Telephone: 7am – midnight AEST, Business Days	via the Your Call hotline number 1300 790 228

Your Call enables you to:

- make your report anonymously or consent to disclose your identity;
- securely upload any relevant documentation or material that you wish to provide; and
- remain in contact with Melbourne Business School and receive updates about the handling of your report via Your Call’s online message board, which you will have access to after reporting.

Information sought may include but not be limited to specific details of the suspected Disclosure or Complaint; dates, times and details of individuals involved.

The School will initially respond to the Complainant in relation to their Complaint as soon as possible, but no later than one business day after receiving an initial report.

5. Disclosure of Sexual Misconduct Procedure

- 5.1 For the purposes of this policy, a Disclosure means a disclosure of sexual misconduct relating to conduct at the School ('School Conduct' outlined under Definitions) by an individual who does not, at the time of disclosure, want the School to investigate or to take any specific action in response to the incident, made in accordance with this section. It may also be the first step prior to a Complaint being made.
- 5.2 The School acknowledges that making a Disclosure of sexual misconduct may require significant strength and courage; that the first Disclosure can be the most important and that it can be critical to a decision to make a Complaint.
- 5.3 The School is committed to supporting individuals who disclose sexual misconduct and those to whom a Disclosure is made. This support may take the form of (but is not limited to):
- a. Accessing both internal and external counselling services including after-hours, urgent and immediate services, or longer-term support as appropriate.
 - b. Re-crediting any leave taken as a result of the sexual misconduct for Employees or current Students (if applicable).
 - c. Changing a work/study timetable and environment.
 - d. Facilitating mediation to restore relationships in the workplace, where this is appropriate and can be done in a psychologically safe way.
 - e. Facilitating time to attend support services or any other support that the individual requests and that the School considers appropriate in the circumstances.
- 5.4 Those who choose to make a Disclosure of sexual misconduct may also decide to make a Complaint to the School about the same incident.
- 5.5 The School may investigate a Disclosure even if a Complaint has not been made, for example, if:
- a. There appears to be a risk to the health or safety of the individual who made the Disclosure or to another person or persons.
 - b. Two or more people name the same alleged perpetrator in separate Disclosures or the School is concerned the Disclosure may suggest a pattern of behaviour by the alleged perpetrator.
 - c. The individual making the Disclosure is a minor or persons affected or involved in the

disclosure are likely to include or involve a minor.

- d. The Disclosure involves allegations of criminal activity including for example rape, sexual assault, physical assault, stalking and child abuse and unlawfully dealing with a child.

5.6 If the School decides to investigate a Disclosure, prior to commencing an investigation, the School will provide the individual who made the Disclosure with:

- a. An explanation for why the matter is being investigated.
- b. Information relating to support for the individual who made the Disclosure.
- c. An explanation of the confidentiality provisions outlined in section 7.

6. Complaint about Sexual Misconduct Procedure

6.1 A Complaint means a complaint of sexual misconduct by an individual who wants the School to investigate or to take specific action in response to the incident, about School Conduct. A Complaint can be raised to any member of the Reporting Speak Up Group (section 4.1).

6.2 In addition to making a Complaint to the Reporting Speak Up Group, Employees can contact their manager, a member of the Executive Leadership Team, or a member of the People & Culture team.

6.3 The School will manage Complaints made about Staff in accordance with this policy and other relevant policies, legislation and agreements, including the MBS Appropriate Workplace Behaviour Policy, and the MBS Grievance Procedure.

6.4 Complaints can be made about former Students, Students or former Employees of the School. In order to investigate Complaints against such individuals, the School may need to determine whether there is any appropriate action that it can take in response to a Complaint. In considering whether appropriate action can be taken, the School may consider a number of issues including:

- a. The Complainant's needs and wishes.
- b. Any wider obligations and duties including obligations relating to occupational health and safety, duty of care and any other legal obligations.
- c. Whether there is a risk to the health or safety of the individual who made the Complaint or another person.
- d. Whether the Complaint relates to a minor under the age of 18.
- e. What investigative or other actions, if any, are available to the School.
- f. Whether two or more people name the same Respondent in separate Complaints or the School is concerned the Complaint may suggest a pattern of behaviour by the Respondent.

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- g. Whether it is required to communicate the contents of the Complaint to other authorities.
 - h. Any relevant processes or sanctions that are available to the School under the terms of any contract between the individual (or their employer) and the School.

6.5 Support provided by the School to the Complainant will depend on the circumstances and may, for example, include:

- a. access to external counselling services including after hours, urgent and immediate services, or support and referrals for longer term assistance as required and appropriate;
- b. re-crediting of any leave taken as a result of the sexual misconduct;
- c. changes to work/study timetable and environment;
- d. facilitation in mediation to restore relationships in the workplace, where this is appropriate and can be done in a psychologically safe way;
- e. facilitation of time to attend support services;
- f. assistance to overcome any cultural or linguistic barriers that may exist; and
- g. provision of additional or alternative academic support including special consideration.

6.6 The School is also committed to supporting the welfare of respondents. This support may include:

- a. access to both internal and external counselling services including after-hours, urgent and immediate services, or support and referrals for longer term assistance as required and appropriate;
- b. allowing time to attend support services;
- c. assistance to overcome any cultural or linguistic barriers that may exist; and
- d. any other support that the individual requests and that the University considers appropriate in the circumstances.

6.7 The School is unable to investigate Complaints where identifying information is not provided about the Respondent.

6.8 If a Respondent is both an Employee and a Student, the School may need to, as appropriate, determine whether the Complaint should be considered under the policies and procedures applying to Students, and/or those applying to Employees. Processes and sanctions applicable to Employees and Students may both apply where the alleged behaviour occurred in the Respondent's role as both a Student and an Employee. The Complainant and Respondent will be provided with support as considered appropriate by the School regardless of the Complaint process adopted.

6.9 All Complaints will be managed as expeditiously as possible and Complainants will be kept

informed during the process, including being advised of any delays that may arise. This communication will be through their allocated contact.

6.10 Under the MBS Appropriate Workplace Behaviour Policy, interim actions may be taken in relation to Employees to address any immediate concerns regarding any persons' health, wellbeing and safety and participation in work or study.

7. Obligations and Confidentiality

All individuals who have decision-making responsibilities or responsibilities to support decision makers under this policy must, in exercising these responsibilities, be free from conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. An individual must disclose to their manager, and document, all actual, potential or perceived conflict of interest.

Where a party has concerns that an individual with responsibilities under this policy has a conflicting interest or is biased, the party must determine this in consultation with the Speak Up /Group and the Dean of MBS.

7.1 MBS will keep confidential all information (Confidential Information) provided to it, relating to a Disclosure or Complaint. However, such Confidential Information may be disclosed where necessary to:

- a. Comply with any law, legal obligations or duties or obtain legal advice.
- b. Report a matter to the Police.
- c. Facilitate access to support services.
- d. Investigate a Disclosure or a Complaint.
- e. Respond to a request of the victim-survivor.
- f. Ensure the safety and wellbeing of staff, students and the broader School community, and to provide appropriate support to those involved in the investigation process.
- g. Support the School's efforts to build a respectful and accountable community that is free from sexual misconduct.
- h. Comply with mandatory reporting obligations, contractual obligations, other obligations to advise funding agencies, professional registration bodies or other authorities, or to discharge its obligations under this or other policies.

7.2 Complainants and Respondents (and others involved) may at any time disclose Confidential Information relating to Complaints and Disclosure, including circumstances leading to the Complaint or Disclosure, investigation process or investigation outcome for the purpose of:

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- a. Obtaining support from family members and others, including but not restricted to, close friends, legal advisers, medical practitioners, qualified mentors, counsellors or psychologists, student and union representatives, an Aboriginal or Torres Strait Islander Elder or trusted Aboriginal or Torres Strait Islander community member.
 - b. Reporting or pursuing any matter with the Police or other government authorities, including the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission.
 - c. For an employee, seeking consideration for confirmation/promotion; or when engaging in performance development discussions.
 - d. For a student, seeking Special Consideration or seeking to vary their enrolment status.
- 7.3 Except as set out in **Clause 5.3** above, Complainants, Respondents and others involved in a Complaint or a Disclosure, will keep confidential any information (Confidential Information) relating to a Disclosure or Complaint while the School determines whether an investigation will be undertaken and during the course of an investigation. This is to support the privacy of all involved and to provide for due process.

8. Decisions

- 8.1 The standard of proof applied to the School's findings of sexual misconduct is on the balance of probabilities. This requires satisfaction on the evidence that the alleged sexual misconduct is more likely to have occurred than not.
- 8.2 Decisions relating to any sanctions that the School will impose on a Respondent following a finding that sexual misconduct has occurred will be proportionate to the nature and impact of the misconduct that has occurred; consider the School's duty of care; hold the Respondent accountable for their behaviour; act as a deterrent and have regard to the Principles outlined at Section 3 of this policy.
- 8.3 Sexual misconduct on the part of an Employee will be treated as misconduct or serious misconduct. The process by which misconduct or serious misconduct may be determined and subsequent proportionate sanctions imposed on Employees, will accord with either the MBS Appropriate Workplace Policy and MBS Grievance Procedure and for Employees, their contractual terms of employment, and the Fair Work Act 2009 (Cth). Sanctions may include but are not restricted to:
- a. Termination of employment with or without notice.
 - b. Formal requirement to undertake counselling.
 - c. Demotion or restricting promotion.
 - d. Removal from positions of responsibility.

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- e. Transfer to an alternative position where this does not compromise the safety or wellbeing of others.
 - f. Requirement not to attend campus.
 - g. Formal or final written warnings.
 - h. Training and development.
 - i. Written undertakings that inappropriate behaviour will cease.
 - j. Preventing further contact with Students or Employees.
 - k. Removing awards or honorary titles conferred by the School.

8.4 The School will not compensate respondents as a default position in order to finalise or resolve sexual misconduct matters.

8.5 The School will decide on a case-by-case basis how to communicate the outcomes of investigations and any disciplinary, employment or other operational decisions that are made as a result, taking a trauma-informed approach and considering victim-survivors' preferences.

8.6 The School may share information about findings of facts arising out of an investigation and any disciplinary or employment decisions that are made as a result, with potential **future employers** or other third parties who seek references or information about a person's conduct while an officer, employee or student of the School.

8.7 The School does not, nor will it, ask or require victim-survivors to sign Non-Disclosure Agreements.

8.8 On the rare occasion where the School considers that it is appropriate to reach an agreement regarding a person's exit from the organisation to protect the victim-survivor's (or other person's) health and wellbeing, such an agreement will not restrict a victim-survivor's right to speak about their experiences, and will not restrict the School from communicating about the case, the outcomes of any investigation, and the disciplinary, employment or other operational decisions that were made as a result.

9. Appeals Process

An individual who is not satisfied with an outcome based on this policy or who may have concerns about how this policy has been followed, may submit an appeal in writing to the Chief People and Culture Officer or the Dean, for their consideration and/or initiation of further action.

10. Record Keeping

10.1 The School believes that it is important to:

- a. Lead and encourage greater transparency on sexual misconduct in our community.

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- b. Recognise an individual's right to speak, and to seek support (particularly those directly involved in Complaints and Disclosures).
 - c. Safeguard the integrity of the processes relating to Disclosures and Complaints under this policy.

10.2 The School will publish annually a de-identified report on the records kept in accordance with this section. The reports will be prepared in such a way as to ensure that no specific Disclosure or Complaint of sexual misconduct can be identified. The report will also include information about actions taken in response to systemic issues.

10.3 MBS will:

- a. Keep appropriate records of all Disclosures and Complaints of sexual misconduct centrally and securely.
- b. Keep all records and provide access to those records only in accordance with the Privacy Policy, any applicable laws and the School's process for record retention and disposal.
- c. Will collect, store and use fully de-identified and anonymised information about Disclosures and Complaints made to the School to identify trends and to develop targeted responses to sexual misconduct within the School.
- d. Ensure access to information relating to Disclosures or Complaints of sexual misconduct is restricted to MBS Employees who have a need to access and use the information to carry out or support responsibilities under this Policy.

11. Reports to the Police

11.1 The School supports the right of individuals who have experienced sexual misconduct to decide whether they want to report the incident to the Police and encourages reports to be made to the Police.

11.2 An individual may decide to make a Disclosure or Complaint of sexual misconduct to the School, but not report the incident to the Police. Alternatively, they may decide to report sexual misconduct to the Police, but not to make a Disclosure or Complaint to the School.

11.3 Reports relating to sexual misconduct that occurred in Victoria should be reported to Victoria Police. Information about reporting sexual offences to Victoria Police can be found at the [Victoria Police website](#).

11.4 Reports relating to sexual misconduct that occurred in an Australian State or Territory, outside Victoria, should be reported to the relevant State or Territory police authority.

11.5 Reports relating to sexual misconduct that occurred outside Australia should be reported to the relevant country's police authority.

11.6 Reports about incidents that have occurred online can be made to the Australian CyberSecurity Centre, the Australian eSafety Commissioner, and/or equal opportunity, employment, and health and safety authorities depending on the nature of the alleged conduct.

11.7 While a person's decision to make a report to the police will not necessarily preclude the School from investigating or acting in response to sexual misconduct, any internal School process may have to be suspended pending completion of a criminal process.

11.8 If there are delays to the School's investigation because of a Complaint made to the Police, the Respondent and the Complainant will be notified of these delays.

11.9 The School will at all times respect and prioritise the wishes of those making Disclosures or Complaints. However, the School may need to report an incident of sexual misconduct to the Police against the wishes of the individual who made a Disclosure or the Complainant, for example to ensure their safety or the safety or wellbeing of other members of the School community, or to meet the School's legal obligations. In any such case, the Complainant will be informed.

11.10 Many forms of sexual harassment constitute criminal conduct and guidance about the process of reporting allegations to the Police can be found on the website of [Victoria Police](#) or by seeking legal advice.

12. Additional Support Services

Members of the School community are encouraged:

- a. To seek assistance and therapeutic support including counselling services in relation to matters arising from sexual misconduct.
- b. To contact [Victoria Police](#) in the case of suspected criminal activities. Victoria Police can provide advice on and access to a range of external services for additional support and assistance.
- c. To contact MBS's [Employee Assistance Program](#) (EAP) provided by Converge International. This 24-hour service provides confidential, personal and professional development resources to all employees and their immediate family members. For urgent assistance, they can be contacted on 1300 687 327, or on +61 3 8620 5300 for calls outside Australia.

13. Bystander Intervention

Bystander intervention is about recognising a potentially harmful situation and choosing to respond in a way that could positively influence the outcome. The School encourages and values reasonable, safe and active bystander intervention by members of the School's Community to prevent or stop sexual misconduct from occurring or continuing, and to support those impacted by sexual misconduct.

Bystanders are encouraged to contact a member of the Speak Up Group (section 4.1) or relevant support services available in section 12 above for further assistance and support if required.

14. No Victimisation

Members of the School Community must not victimise or otherwise subject another person to detrimental action as a consequence of that person:

- a. Making a Disclosure or a Complaint of sexual misconduct.
- b. Providing information about a Disclosure or a Complaint of sexual misconduct.
- c. Supporting a person who has made a Disclosure or Complaint of sexual misconduct.
- d. Being the subject of a Complaint or Disclosure of alleged sexual misconduct.
- e. Engaging in reasonable safe bystander intervention.

A breach of this section may result in disciplinary action for Employees or Students.

15. Roles and Responsibilities

Role	Responsibility
Decisions relating to employees	
Speak Up Group	<ul style="list-style-type: none"> • Informed of all cases under management. • Decisions relating to sanctions arising from misconduct or serious misconduct for all employees. <ul style="list-style-type: none"> ○ Must take account of all relevant material (such as, but not limited to, the investigation report, independent review report, legal advice and the like) and the recommendation of the Dean. • Decisions relating to an initial assessment which determines whether a case should be addressed informally, addressed through mediation (with the consent of the Complainant), addressed through the Grievance Procedure, be referred for formal investigation, be rejected if shown to be malicious, vexatious, misconceived or lacking in substance. <ul style="list-style-type: none"> ○ Decision will consider all relevant material available, advice from Workplace Relations and where required, legal advice • Determining preliminary misconduct or serious misconduct
Decisions relating to students	

Principal Adviser, Student Grievances and Complaints, authorised to act by the Academic Registrar	<ul style="list-style-type: none"> • Suspension or expulsion for Students found to have engaged in misconduct. Informed of all cases under management. <ul style="list-style-type: none"> ○ Must take account of all relevant material (such as, but not limited to, the investigation report, independent review report, legal advice and the like) and the recommendation of the Academic Registrar or Deputy Dean, Academic.
Principal Adviser, Student Grievances and Complaints, authorised to act by the Academic Registrar	<ul style="list-style-type: none"> • Decisions relating to allegations of or a Student’s general misconduct. <ul style="list-style-type: none"> ○ Must be in accordance with the provisions of the Appropriate Workplace Behaviour Policy and Grievance Procedure. • Appointment of an External Investigator with experience investigating allegations of sexual misconduct.

16. Definitions

Term	Meaning
Appropriate Workplace Behaviour Policy	means the School’s Appropriate Workplace Behaviour Policy.
Bystander	means someone who witnesses an incident of sexual misconduct or is told about an incident after it occurred.
Complaint	means a Complaint of sexual misconduct relating to School conduct by an individual who wants the School to investigate or take specific action in response to the incident, about School conduct (Section 6).
Complainant	means any person who makes a Complaint of sexual misconduct in accordance with this policy.
Confidential Information	means information provided in relation to Disclosures and Complaints that is confidential, for example not in the public domain and provided in confidence.
Consent	<p>refers to free and voluntary agreement to a sexual act). A person does not consent to an act just because they do not resist the act verbally or physically. A person does not consent to an act just because they consented to—</p> <ul style="list-style-type: none"> • a different act with the same person; or • the same act with the same person at a different time or place; or • the same act with a different person; or • a different act with a different person. <p>Circumstances in which a person cannot consent to an act includes circumstances in which the person:</p> <ol style="list-style-type: none"> a. does not say or do anything to indicate consent to the act;

	<ul style="list-style-type: none"> b. submits to the act because of force, a fear of force, harm of any type or a fear of harm of any type, whether to that person or someone else or to an animal, regardless of— c. when the force, harm or conduct giving rise to the fear occurs; and d. whether it is, or is a result of, a single incident or is part of an ongoing pattern; e. submits to the act because of coercion or intimidation— f. regardless of when the coercion or intimidation occurs; and g. whether it is, or is a result of, a single incident or is part of an ongoing pattern; h. submits to the act because the person is overborne by the abuse of a relationship of authority or trust; i. is so affected by drugs or alcohol or any other substance as to be incapable of consenting to the act, or incapable of withdrawing consent to the act; j. is asleep or unconscious; k. is unable to understand or is mistaken about the sexual nature of what is happening or the identity of any other person involved; l. submits because of force or fear of force or harm of any type (including to someone else or to an animal); m. is unlawfully detained or held against their will; n. is a child under the age of lawful consent; o. is mistaken about the identity of the other person; p. mistakenly believes that the act is for medical or hygienic purposes; q. in acts involving animals, mistakenly believes that the act is for veterinary or agricultural purposes or scientific research purposes; r. engages in the act because of a false or misleading representation that the person will be paid and the act occurs in the provision of commercial sexual services; s. is not doing or saying anything to indicate consent; t. gives consent and later withdraws consent to the act taking place or continuing; engages in the act on the basis that a condom is used and another person intentionally removes, tampers with or does not use the condom; or having given consent to the act, later withdraws consent to the act taking place or continuing.
Disclosure	means a disclosure of sexual misconduct relating to conduct at the School by an individual who does not, at the time of disclosure, want the School to investigate or take any specific action in response to the incident (Section 5).
Includes and Including	means where the context permits or requires ‘including but not limited to’.

Key Principles	are a set of principles outlined at Section 3 of this policy which inform this policy and establish the basis for expected behaviour and decision-making at the School with regard to sexual misconduct.
Non-Disclosure Agreement	means any agreement, or any clause in any agreement, that prohibits a victim-survivor from being about to speak freely about their lived experience of the matters disclosed or complained of.
Respondent	means a person about whom a Disclosure or Complaint is made.
Speak Up Group	means the group of people set out in this policy under section 4.1 who will ensure that anyone affected by sexual misconduct receives the full support of the School.
Sexual assault	<p>means a person intentionally touching another person who does not consent to the touching; and the touching is sexual; and the person touching does not reasonably believe that the other person consents to the touching.</p> <p>Note that touching can be “sexual” because of:</p> <ul style="list-style-type: none"> (a) the area of the body that is touched or used in the touching, including (but not limited to) the genital or anal region, the buttocks or, in the case of a female, or a person who identifies as female, the breasts; (b) the fact that the person doing the touching seeks or gets sexual arousal or sexual gratification from the touching; or (c) any other aspect of the touching, including the circumstances in which it is done.
Sexual harassment	<p>occurs if a person:</p> <ul style="list-style-type: none"> (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours to another person; or (b) engages in any unwelcome conduct of a sexual nature in relation to the other person, <p>in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.</p>
Sexual misconduct	<p>in this policy includes sexual harassment and sexual assault. Sexual misconduct can be experienced by people of all ages, genders and sexualities, within or outside a relationship. Some forms of sexual misconduct can occur online including through social media, games or other forums. The following is a non-exhaustive list of behaviours which do or may amount to sexual misconduct and may also amount to a criminal act:</p> <ul style="list-style-type: none"> (a) rape which is the forced penetration of the vagina or anus of any person with any part of the body of another person (including their fingers), or with any object, without the first person’s consent; (b) unwanted oral sex which includes insertion of the penis into the mouth of another person, or use of the tongue or lips on the

	<p>vagina, penis, scrotum or anus of another person, without their consent;</p> <p>(c) sexual touching which includes kissing or touching a person’s body in a sexual manner, without their consent. This includes unwanted touching of a person’s breast, bottom or genitals;</p> <p>(d) sexual acts which include doing an act of a sexual nature with or towards another person without their consent or making another person do an unwanted act of a sexual nature;</p> <p>(e) requests for sexual intercourse, or other sexual acts;</p> <p>(f) exposing genitals (including flashing) or sexual gestures;</p> <p>(g) making promises or threats in return for sexual favours;</p> <p>(h) sexually suggestive behaviour, such as leering or staring;</p> <p>(i) unwelcome touching, hugging, kissing, fondling or brushing up against someone;</p> <p>(j) sexually suggestive comments or jokes;</p> <p>(k) repeated or inappropriate invitations to go out on dates or to ‘hook up’;</p> <p>(l) following, watching or loitering nearby someone;</p> <p>(m) smutty jokes or comments;</p> <p>(n) displaying offensive images, objects or sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks, common areas or electronic devices/ computer screens;</p> <p>(o) sexually explicit or indecent emails, text messages or posts on social media or via any other digital or electronic communication;</p> <p>(p) making a person show another person their breasts, bottom or genitals;</p> <p>(q) masturbating or pretending to masturbate in front of another person;</p> <p>(r) name-calling of a sexual nature;</p> <p>(s) unwelcome physical contact including massaging a person without invitation;</p> <p>(t) forcing a person to watch sexual acts/pornography;</p> <p>(u) making, displaying, sending, distributing, threatening to distribute or requesting sexually explicit pictures or posters, audio recordings or photo-shopped images of another person;</p> <p>(v) giving sexually explicit gifts;</p> <p>(w) grooming and predatory conduct undertaken to prepare a child for sexual activity at a later time or</p> <p>(x) intrusive questions about a person’s private life or physical appearance.</p>
Privacy Policy	means the School’s Privacy Policy
Student	includes:

	<ul style="list-style-type: none"> (a) a person who is enrolled in a course, a subject or a group of subjects at or offered by MBS but does not include a person enrolled with the University of Melbourne for an award course conducted by MBS; (b) a student of a higher education institution who is granted temporary or ongoing rights of access to the School premises or facilities; (c) a person who was an MBS student at the time of any alleged misconduct; (d) a person who became an MBS student after having allegedly done so by misleading or false means; (e) a person who has consented in writing to be subject to the statutes, regulations and policies of the MBS; and (f) a person who is suspended or on leave of absence from the School or who has deferred enrolment in a course, subject or group of subjects at or offered by the School or by an affiliated educational establishment which is approved as an award course, subject or group of subjects by the Board.
Trauma-informed	means an approach that recognises that an unsafe response can escalate and compound trauma and that is focused on maximising the safety, wellbeing and support provided to individuals who make Disclosures or Complaints by upholding their safety, dignity and wellbeing.
University	means the University of Melbourne.
School Community	means Employees, the MBS Board, past Employees, Students, former Students, Student organisations, alumni organisations and networks, volunteers, partners with whom the School works and campus tenants, Visitors, Emerita staff, Employees with honorary appointments, affiliates, contractors and consultants, Employees of research institutes, Employees of wholly owned subsidiaries, Employees with dual or joint appointments with the University and Employees of independent colleges that are associated or aligned with the University.
School Conduct	<p>means conduct that involves or relates to the School or its activities and may involve:</p> <ul style="list-style-type: none"> (a) its Employees or Students in their status as Employees or Students; (b) School lands or other property owned or leased by the School; (c) MBS owned or affiliated Student accommodation or other accommodation where MBS have accommodated students; (d) MBS Information and Communication Technology (ICT) resources or other MBS equipment; (e) a School related function or event (whether sanctioned or organised by the School or not) or when representing the School in any capacity;

	<p>(f) Students' clinical, practicum, internship or work experience placements;</p> <p>(g) while a Student or Employee is participating in an overseas exchange, study abroad or other approved program; or</p> <p>(h) activity off campus that causes potential or actual harm to Students, Employees, the School Community, or to institutional reputation, or where a Student or Employee's presence on campus may pose a safety risk.</p>
Victimisation	has the meaning defined in the Appropriate Workplace Behaviour Policy.
Visitor	means a person who is appointed as a School visitor and may be appointed as an academic visitor or non-academic visitor.

17. Related Policies, Legislation and Documents

This policy operates and relates to, other policies, in particular the MBS Appropriate Workplace Behaviour Policy.

This policy also supports compliance with the:

- (a) [*Charter of Human Rights and Responsibilities Act 2006 \(Vic\)*](#)
- (b) [*Child Wellbeing and Safety Act 2005 \(Vic\)*](#)
- (c) [*Children, Youth and Families Act 2005 \(Vic\)*](#)
- (d) [*Crimes Act 1958 \(Vic\)*](#)
- (e) [*Department of Foreign Affairs and Trade Child Protection Policy and Preventing Sexual Exploitation, Abuse and Harassment Policy*](#)
- (f) [*Education Services for Overseas Students \(ESOS\) Act 2000 \(Cth\)*](#)
- (g) [*Equal Opportunity Act 2010 \(Vic\)*](#)
- (h) [*Fair Work Act 2009 \(Cth\)*](#)
- (i) [*Gender Equality Act 2020 \(Vic\)*](#)
- (j) [*Higher Education Standards Framework \(Threshold Standards\) 2015 \(Cth\)*](#)
- (k) [*Independent Broad-based Anti-Corruption Commission Act 2011 \(Vic\)*](#)
- (l) [*Occupational Health and Safety Act 2004 \(Vic\)*](#)
- (m) [*Protected Disclosure Act 2012 \(Vic\)*](#)
- (n) [*Sex Discrimination Act 1984 \(Vic\)*](#)
- (o) [*Workplace Injury Rehabilitation and Compensation Act 2013 \(Vic\)*](#)

18. General Information

Responsible Policy owner
Review Date (Every 2 Years)

Chief People and Culture Officer
2/07/2027

Version History				
Version	Approved By	Approval Date	Effective Date	Sections Modified
1	Executive Leadership Team, endorsed by the Board	25/11/2021	01/12/2021	New Policy
2	<ul style="list-style-type: none">• SLT review• Rem and Nom Committee• Board	<ul style="list-style-type: none">• 14 May• 23 May 2025• 12 June 2025	09/07/2025	Edits in line with updated University policies and the implementation of the Your Call platform.

Category
<ul style="list-style-type: none"><input checked="" type="checkbox"/> Employment<input type="checkbox"/> Engagement<input type="checkbox"/> Facilities, IT and Finance<input type="checkbox"/> Governance, Management and Health & Safety<input type="checkbox"/> Research and Research Training<input type="checkbox"/> Student/Learner Management and Support<input type="checkbox"/> Teaching and Learning<input type="checkbox"/> Executive Education