

## POLICY C9.3

# SEXUAL ASSAULT AND SEXUAL HARASSMENT PREVENTION AND RESPONSE (STUDENTS AND STAFF)

## 1.0 INTRODUCTION

### 1.1 Context

In the provision of their business, including higher education, vocational education and bespoke courses for industry, Scentia and its subsidiaries, the Australasian College of Health and Wellness Pty Ltd (ACHW), the Australian Institute of Management Education and Training Pty Ltd (AIM) operating as AIM Business School (ABS), and AIM VET, a Registered Training Organisation (RTO), (collectively ‘the Scentia Group’) have a range of legal and regulatory obligations to promote a safe learning and work environment, both on campus and online. The Scentia Group must comply with work health and safety legislation and anti-discrimination legislation, comply with the Higher Education Standards Framework (2021), observe privacy principles and fulfil duties under common and contract law.

The Scentia Group recognises its obligations, and the rights of individuals to feel safe and succeed in their work and studies. It has a zero-tolerance approach to sexual harassment and assault and considers this serious misconduct.

### 1.2 Purpose

This policy outlines the principles, responsibilities and an overview of its sexual harassment and assault prevention and response activities intended to create a safe and respectful environment.

It is to be read in conjunction with the Sexual Assault and Sexual Harassment Prevention and Response procedure, the Student and Staff Grievance and Complaints policies and procedures, the Health, Safety and First Aid in the Workplace policy and procedure and the Critical Incidents policy and procedure, which all contribute to the way Scentia manages sexual assault and sexual harassment and takes reasonable and proportionate measures to eliminate relevant unlawful conduct as far as possible.

This policy is also supported by the Scentia Privacy of Student Information and Records and the Privacy of Staff Information and Records policies, the Student Code of Conduct policy and the Staff Code of Conduct Policy.

This policy refers to Scentia Group’s obligations under the Sex Discrimination Act 1984 including positive duty. It should be read in conjunction with the Bullying, Harassment and Discrimination (Staff and Students) policy and procedure.

### 1.3 Scope

This policy applies to:

- all students.
- all non-academic and academic staff of Scentia whether full-time or fractional, continuing, fixed-term, or casual.
- members of Scentia, ABS and ACHW Boards.
- volunteers who contribute to Scentia’s activities or who act on behalf of Scentia.
- Scentia’s third party partners.

It applies to sexual harassment and assault incidents that occur:

- at any of Scentia’s or third-party partner premises.
- on any of its online learning platforms and online environments (for staff and students).
- during Scentia business, including when representing Scentia or during events affiliated with Scentia.

While this policy and its procedure apply to incidents of sexual assault, a more immediate response will be triggered if such an incident is reported as a critical incident. This process is outlined in the Critical Incident policy and procedure.

For the purposes of this policy, the term ‘survivor’ is used to indicate the person who reports or discloses that they have been sexually harassed or assaulted. The term ‘alleged offender’ is applied to the person alleged to have perpetrated the sexual harassment or assault. The terminology may be different in the Student Grievance and Complaints policy and procedure, the Staff Grievances policy and procedure, or the Health, Safety and First Aid in the Workplace policy and procedure.

### 1.4 SCOPE EXCEPTIONS

Harassment (excluding sexual harassment) and Sex-Based Discrimination is managed through the Bullying, Harassment and Discrimination Policy and Procedure.

## 2.0 RESPONSIBILITIES

1. Executive Leadership Team is responsible for:

- Understanding their obligations under the Sex Discrimination Act and keeping up to date with knowledge about relevant unlawful conduct.
- Fostering safe and respectful workplaces and learning environments.

- Championing a zero-tolerance approach to sexual harassment and role model respectful behaviour.
  - Creating a strategy to achieve substantive equality and foster positive workplace cultures through a prevention and response plan and setting gender equality recruitment targets.
  - Identifying and mitigating risks of unlawful conduct occurring through the provision of key control measures.
  - Reporting the nature and extent of incidents including actions taken to address it to the Corporate Board via the Audit and Risk Committee.
2. Executive Directors are responsible for ensuring:
- outline the standards of behaviour required of staff and students, provide evidence-based education and awareness campaigns on sexual harassment and assault as part of prevention efforts, and inform staff and students on their rights and responsibilities.
  - provide accurate and accessible information to staff and students on how to seek support and report incidents.
  - support students and staff who have disclosed sexual harassment or assault as well as supporting those about whom an allegation is made. This includes helping them make any adjustments to their study requirements or work arrangements and navigate the formal report and grievance process.
  - ensure effective measures are in place for reporting and resolution of sexual harassment and assault complaints.
3. All Team Leaders and area heads have a responsibility and duty of care to ensure a safe working and learning environment. They must ensure their staff and students are aware of their obligations under Work Health and Safety legislation, and this policy, and address inappropriate behaviour.
4. All staff involved in informal resolution and formal reporting processes must:
- treat all disclosures seriously, confidentially, and impartially.
  - ensure procedures for responding to reports are conducted in accordance with the principles of natural justice, procedural fairness and privacy.
5. All staff and students have a personal responsibility to:
- behave respectfully towards others.
  - comply with, demonstrate active commitment to, and abide by the relevant codes of conduct, this policy and procedure and others referred to, and to engage with related prevention programs.

- respond in a compassionate and supportive manner to anyone who discloses incidents of sexual harassment and assault and direct them to information on the reporting process and support available.

## 3.0 POLICY

### 3.1 Principles

Scentia is committed to:

1. Foster a culture for its staff and students that prioritises individual well-being, safety, and dignity.
2. Preventing unlawful behaviour through the provision of education to its staff and students on respectful behaviour and unlawful conduct.
3. Take an intersectional approach in addressing issues by considering factors such as race, religion, gender, sexual orientation, and disability in responding to unlawful conduct.
4. Ensure inclusive decision-making by consulting those impacted by misconduct and utilising a person-centred and trauma-informed approach to meet the needs of individuals.
5. Provide appropriate support to its staff and students who experience or witness unlawful conduct.
6. Regularly monitor and evaluate the effectiveness of measures for preventing and responding to unlawful conduct and identifying and mitigating related risks.

### 3.2 Prevention

1. Clear standards of behaviour, outlined in the Student Code of Conduct and Staff Code of Conduct, help to build a safe and respectful culture.
2. All staff and students are provided with evidence-based, trauma-informed education on consent, sexual harassment and assault to ensure they understand what this is, how to prevent it, the support available, the options available to report incidents informally and formally and how to support others.
3. All student-facing employees, managers and senior leaders are provided with targeted training and resources to prepare them to respond in a compassionate and culturally respectful way to any disclosures of sexual harassment and assault. The Executive Directors in collaboration with the Head of People and Culture regularly review and update education and training on sexual harassment and assault to ensure it remains compliant with legislative changes and reflects the latest evidence.

### 3.3 Support

1. In the event of an emergency, students and staff contact emergency services (policy, ambulance) by calling 000. Emergency information notifications are

provided in Scentia Group facilities and in other documentation, including student guides and online.

2. Students and staff can access professional counselling through the Employee Assistance Program (EAP). The Sexual Assault and Sexual Harassment Prevention and Response procedure contains further detail on how to access this program.
3. Sexual harassment and assault can affect the health and wellbeing of individuals, regardless of when and where the incident occurred. Staff and students can access support at any time, even if the incident occurred beyond the scope of this policy.
4. Information on support available for survivors of sexual harassment and assault, as well as alleged offenders, is outlined in the Sexual Assault and Sexual Harassment Prevention and Response procedure. This information is also provided during staff induction and student orientation, available on webpages, and on the human resources system for staff and the learning management system for students.
5. Staff and students, including alleged offenders of sexual harassment and assault, are entitled to have a support person with them at any time, including throughout the informal resolution and/or formal reporting process, whichever option they choose to pursue.

### **3.4 Disclosure**

1. Individuals who are a survivor of sexual harassment or sexual assault can disclose sexual harassment and assault to nominated staff who are trained to respond to disclosures and can direct the survivor to support and inform them of their options for resolution:
  - Staff should disclose to the Head of People and Culture
  - Students should disclose to the Executive Director.
2. A survivor may disclose - tell someone about - an incident of sexual harassment or assault at any time. Anyone may be a 'first responder' and they are expected to refer the survivor to support services and information on their reporting options.
3. A disclosure is different to formally or informally reporting an incident.

### **3.5 Informal Resolution**

1. A survivor may seek to resolve the incident in either of the following informal ways:
  - a. by telling someone about the incident and seeking support, but not formally reporting the incident; or
  - b. via informal resolution - this is not a formal report; however, it involves negotiation involving both the alleged survivor and offender and the

intervention of a third party in order to address an incident or resolve an issue in a fair and equitable manner.

2. A request for informal resolution must be a direct request from the survivor. A survivor must never be encouraged or forced by another person to seek informal resolution rather than a more formal process.
3. Requests for informal resolution do not have to be in writing, however, they must be directed to:
  - their direct manager or their manager's manager (if staff); or
  - Team Leader, Student Services (if a student).

The Sexual Assault and Sexual Harassment Prevention and Response procedure outlines the process for informal resolution.

2. No individual who is a party to this process will be disadvantaged by seeking informal resolution. This includes ensuring those who are accused of incident(s) of sexual harassment or assault are treated without bias while claims are investigated. All disclosures will be treated seriously, confidentially, and impartially.

### **3.6 Formal reporting of sexual assault or sexual harassment incidents**

1. In the case of sexual assault, an immediate response can be triggered if it is reported as a critical incident. The Critical Incidents Management Group are trained to respond to incidents of sexual assault. Refer to the Critical Incident Management procedure.
2. Scentia's formal reporting process is not a substitute for a criminal process. Reporting such an incident to the police is up to the complainant. If they believe a criminal incident has taken place, they should report it to the police and they will be supported by the organisation in doing so.
3. The Scentia Group will only report the incident to the police with the consent of the survivor, except where it is required to do so by law, such as in mandatory reporting where the conduct relates to a child or young person to whom it has a duty of care, or where the survivor has been injured and emergency services are required.
4. Sexual harassment or assault that contain elements of suspicion in regards to child safety (individuals under 18 years) will be reported as required under child safety, mandatory reporting legislation.
5. While Scentia cannot determine whether a criminal act has been committed, it can assess whether the incident constitutes misconduct, if formally reported.
6. All formal reports of sexual harassment and sexual assault are handled through the following policies and procedures:
  - a. To report the behaviour: the Student Grievances and Complaints policy and procedure OR the Staff Grievances policy and procedure;

- b. To report the incident as a health and safety incident: the Health, Safety and First Aid in the Workplace policy and procedure;
  - c. To initiate immediate action in the case of a sexual assault: the Critical Incident policy and procedure.
7. The Sexual Assault and Sexual Harassment Prevention and Response procedure outlines the process in further detail.
8. No individual will be disadvantaged by formally reporting.
9. Any assessment or investigation will be undertaken in a fair, impartial and equitable way. This includes ensuring that any individual accused of an incident(s) (the respondent) is:
  - provided with details of any reports about them,
  - provided with the opportunity to make representations in the matter, and
  - is treated without bias.
11. All formal reports will be treated seriously, confidentially, and impartially.
12. All reports will be recorded as indicated in the Sexual Assault and Sexual Harassment Prevention and Response procedure.

### **3.7 Right to withdraw a disclosure or report**

1. A disclosure or report may be withdrawn by the survivor/complainant.
2. Despite a withdrawal of a disclosure or report, Scentia reserves the right to act on the original disclosure or report if it believes the safety of staff and students is potentially at stake.

### **3.8 Scentia response to a formal report**

1. All formal reports of sexual harassment and assault will be responded to in accordance with clause 3.6 of this policy and the relevant procedure.
2. Scentia will not take any action that may compromise a police investigation or incident investigation/ resolution process of a regulatory authority.

### **3.9 Interim measures**

1. Scentia reserves the right to impose interim measures during the investigation period, to reduce the potential for further harm. Interim measures do not in any way signal or anticipate the outcome of the investigation.
2. Interim measures may include:
  - a. Restricted access by the alleged offender, for example to courses, classes, or facilities;

- b. Prohibited communication by the alleged offender with the survivor, via any communication method; and/or
  - c. Any other measure deemed necessary.
3. All parties will be notified of the interim measures.
4. Breach of interim measures will be considered misconduct.

### **3.10 Post investigation**

1. Anyone found to have engaged in sexual harassment or assault, following a review, will be disciplined. They may be counselled, warned, dismissed/expelled, or be refused further services offered by Scentia.
2. If the incident cannot be addressed or resolved by Scentia, the survivor will be advised of their options for external assistance from the relevant external agencies.

### **3.11 Privacy, Confidentiality and Record Keeping**

1. The confidentiality and privacy of anyone who discloses or formally reports sexual harassment or assault must be protected. All information will be managed in accordance with Scentia's Privacy of Student/Staff information and Records policies and the privacy conditions in other relevant policies and procedures.
2. There may be cases where certain information may need to be shared with key personnel to ensure the individual's safety, the safety of others or to provide support. Scentia may also be required by law to report incidents to external agencies.
3. All parties involved in any resolution or grievance process must maintain confidentiality at all times. They should not:
  - publicly make allegations,
  - defame the alleged offender,
  - reveal the names of those making a grievance, or
  - refer to those involved

without the express permission of those concerned.

4. Records of incidents and the outcomes of the investigation, along with the relevant incident register - the Student Incident Register or the Work Health and Safety Hazard, Incident and Injury Register - will be kept in strictly confidential files for 7 years. Parties to the incident will be allowed supervised access to these records on request.
5. Management of, and access to, any records (including the Incident Register) will be restricted to the Executive Director, Head of People and Culture and CEO.



6. The Student Welfare Committee (for students) and Work Health and Safety Committee (WHS Committee) (for staff) regularly monitor deidentified disclosures and formal reports of sexual harassment and sexual assault of/by students and staff For the purpose of making recommendations to changes to processes and policies and identifying emerging risks.
7. The Sexual Assault and Sexual Harassment Prevention and Response procedure outlines the detail these reports must contain. All reports are de-identified.

### 3.12 Reporting and Monitoring

1. The Audit and Risk Committee receives data reports from the Executive Leadership Team, the SWC and WHS Committee to enable the identification and monitoring of risk including the effectiveness of control measures in place.
2. The Corporate Board receives reports from the Audit and Risk Committee on:
  - a. Incidents, outcomes of investigations and actions taken
  - b. Implementation of the prevention and support plan including compliance with positive duty.
  - c. Gender balance and diversity in recruitment.
  - d. Required changes to policies or training.

## 4.0 DEFINITIONS

- **Consent** - means to agree to something freely. It is important to understand consent because all sexual acts constitute sexual misconduct when one party does not consent. Consent is more than just saying “yes” and there are many circumstances in which a person doesn’t consent to an act. These include, but are not limited to, where the person:
  - submits to the act out of force or fear of force;
  - submits to the act out of the fear of harm of any type;
  - is asleep or unconscious;
  - is inhibited by alcohol or another drug as to be incapable of consenting to the act;
  - doesn’t say or do anything to explicitly indicate consent to the act;
  - having given consent earlier, now withdraws their consent to the act;
  - is younger than the legal age (in South Australia and Tasmania, the age of consent is 17. In all other states and territories, the age of consent is 16).
- **Disclosure** - when a victim/survivor or witness tells someone about an incident(s) of sexual harassment or assault. Disclosing is not the same as

reporting but enables the victim/survivor to be provided with support and options.

- **First responder** - Anyone who receives a disclosure of incident of sexual harassment or assault.
- **Inappropriate behaviour** - behaviour that does not respect the rights and sensitivities of all people in the organisation's work and learning environment.
- **Mandatory report** - Mandatory reporting refers to the legal requirement of certain groups of people to report a reasonable belief of child physical or sexual abuse to child protection authorities.
- **Natural Justice** - a principle that provides for procedural fairness to all parties by ensuring all parties must be given an opportunity to present their case:
  - the respondent must be provided with notice and information about allegations made against them and information about their rights including to have a support person;
  - the respondent must be given a reasonable timeframe within which to respond;
  - the decision maker must declare any conflict of interest;
  - the decision maker must:
    - act fairly and without bias.
    - consider all relevant evidence.
    - base any decision on evidence that supports it.
  - All relevant parties will be informed in writing of the outcome of a formal investigation.
- **Positive Duty** - defined in the Sex Discrimination Act 1984 (Cth) as the duty to take reasonable and proportionate measures to eliminate, as far as possible, the following conduct:
  - discrimination on the ground of sex in a work context
  - sexual harassment in connection with work
  - sex-based harassment in connection with work
  - conduct that amounts to subjecting a person to a hostile workplace environment on the ground of sex.
  - related acts of victimisation.
- **Sexual assault** - under New South Wales criminal legislation, is when a person is forced, coerced, or tricked into sexual acts against their will or without their consent, or if a child or young person under 18 is exposed to sexual activities.

- **Sexual harassment** - defined in the Sex Discrimination Act 1984 (Cth) as any unwelcome sexual advance, request for sexual favours or conduct of a sexual nature in relation to the person harassed in circumstances where a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

Examples of behaviours that may amount to sexual harassment include:

- Unwelcome or uninvited physical touching.
  - Sexual or suggestive comments, jokes or innuendoes.
  - Unwelcome or uninvited request for sex.
  - Intrusive questions about a person's private life.
  - The display of sexually explicit material (e.g., posters, pictures).
  - Unwanted invitations.
  - Staring or leering.
  - Sex based insults or taunts.
  - Technology-facilitated offensive communications, including telephone calls, letter, faxes, and email including image-based abuse.
- **Unlawful conduct** - as defined by the Sex Discrimination Act 1984.

## 5.0 REFERENCES AND ASSOCIATED INFORMATION

- Critical Incident Policy and Procedure
- Bullying, Harassment and Discrimination (Staff and Students) Policy and Procedure
- Health, Safety and First Aid in the Workplace Policy and Procedure
- [Information on mandatory reporting](#)
- Privacy of Student Information and Records Policy
- Privacy of Staff Information and Records Policy
- Sexual Assault and Sexual Harassment Prevention and Response Procedure

Related Legislation:

- Sex Discrimination Act 1984 (Cth)
- Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)
- Australian Human Rights Commission Act (1986)

- TEQSA Act (2011)
- Higher Education Standards Framework (Threshold Standards) (2021) Standard 2
- Australian Privacy Principles (APPs)

## 6.0 POLICY OWNERSHIP

Policy Owner	Head of People and Culture
Status	Reviewed on December 2023
Approval Authority	Scentia Corporate Board, with endorsement by ACHW and AIM Corporate Boards
Date of Approval	13/12/2023
Effective Date	13/12/2023
Implementation Owner	Head of People and Culture
Maintenance Owner	Head of Compliance
Review Due	December 2026
Content Enquiries	Liz Douglas - Head of People and Culture Email: <a href="mailto:ldouglas@scentia.com.au">ldouglas@scentia.com.au</a>

## 7.0 AMENDMENTS

Version	Amendment Approval (Date)	Amendment Made By (Position)	Amendment Details
C9.0	24 April 2018	Chair of Academic Board / Director ACHW	Initial document review
C9.1	10 March 2020	Academic Board	
C9.2	21 October 2021	Director of Education	Separated policy and procedure. <ul style="list-style-type: none"> <li>• Removed Bullying and Harassment clauses (that do not relate to sexual harassment will be included in the Bullying and Harassment policy.</li> <li>• Expanded the scope and responsibilities.</li> <li>• Added a section and clauses on prevention and support.</li> <li>• Added a section on interim measures.</li> <li>• Created new sections to show differences between</li> </ul>

Version	Amendment Approval (Date)	Amendment Made By (Position)	Amendment Details
			<p>disclosure, informal resolution and formal reporting.</p> <ul style="list-style-type: none"> <li>• Included health and safety reporting.</li> <li>• Updated definitions and references.</li> </ul>
C9.3	13 December 2023	Corporate Board	Revision to meet requirements of the amendments to the Sex Discrimination Act 1984 on 'positive duty'.