

## Sexual Misconduct Policy

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### Purpose:

Tocal College is committed to maintaining a safe and healthy working and learning environment free from sexual misconduct.

This Sexual Misconduct policy applies to all staff, students, contractors and volunteers at Tocal College and is aligned to the principles of Respectful Relationships.

Sexual Misconduct will not be tolerated under any circumstances and action will be taken against any person who breaches this policy.

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### Policy Statement:

As an education institution and an employer, Tocal College will take all reasonable steps to eliminate sexual misconduct of or by staff, students, contractors and volunteers.

Tocal College aims to:

- Always promote appropriate standards of conduct.
- Create a working and learning environment where staff, students, contractors and volunteers are treated with dignity, courtesy and respect.

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### Definitions:

#### **1. Sexual Misconduct**

(1) The term sexual misconduct is used in this policy to cover a range of unacceptable sexual and physical behaviours, which are criminal offences.

Note: Sexual misconduct can be experienced by people of all ages, genders and sexualities, within or outside a relationship. Sexual misconduct is an abuse of power and is never the fault of the person who does not consent to the sexual behaviour.

(2) For the purposes of this policy, sexual misconduct means any sexual act that a person does not consent to.

(3) For the purposes of this policy, a person will be considered to have engaged in sexual misconduct towards another person if:

(a) the other person did not consent to the first person's actions; and

(b) the first person:

(i) knew that the other person did not consent.

(ii) was reckless as to whether the other person consented.

(iii) should reasonably have known, having regard to all the circumstances, that the other person did not consent.

## **2. Sexual Harassment**

Sexual harassment is unlawful behaviour under the Commonwealth Sex Discrimination Act 1984 and the NSW Anti- Discrimination Act 1977.

Sexual harassment is any unwanted or uninvited sexual behaviour that is offensive, embarrassing, intimidating or humiliating and has nothing to do with mutual attraction or friendship.

Sexual harassment can take many different forms – it can be obvious or indirect, physical or verbal and includes behaviour that creates a sexually hostile or intimidating environment.

Sexual harassment can occur between men and women, women and other women and men and other men.

Some forms of sexual harassment also constitute a criminal offence.

### **Examples of Sexual harassment:**

- Offensive messages through technologies such as mobile phones, cameras, social networking sites, emails or SMS / MMS communications.
- Uninvited touching, kissing or embracing.
- Improper or indecent jokes or comments in the workplace or classroom.
- Making promises or threats in return for sexual favours.
- Repeated requests for dates or meetings, especially after prior refusal.
- Sex based insults, taunts, teasing or name calling.
- Staring or leering at a person or parts of their body.
- Unwelcome physical contact such as massaging a person without invitation or deliberately brushing up against them.
- Repeated requests for sex.
- Sexually explicit conversations.
- Touching or fiddling with a person's clothing e.g., lifting up skirts or flicking bra straps.
- Offensive phone calls or letters.

### **What Sexual Harassment does not include:**

- Sexual harassment is not behaviour which is based on respect, mutual attraction, friendship;
- It is not sexual harassment if the interaction is consensual, welcome and reciprocated.
- Behaviour can become sexual harassment if the behaviour changes from being based on mutual attraction, friendship or respect to unwelcomed and non- consensual.

## **3. Sexual Assault**

Sexual Assault is a serious crime.

Sexual assault is a legal term used to describe a range of sexual offences including but not limited to: rape, indecent assault, incest and sexual molestation.

Sexual Assault occurs when a person is forced, coerced or tricked into sexual acts against their will and without their consent. It also includes when a child or young person under the age of 18 is exposed to sexual activities.

Sexual assault is an offence and involves any sexual contact that does not involve the knowing consent of each person. It includes but is not limited to:

- Any form of sexual penetration by a body part or object without consent.

- Any intentional or knowing touching or fondling by either person, directly or through clothing of the sex organs, buttocks, or breasts of the other person for the purpose of sexual gratification or arousal of either person without consent.
- Being forced or coerced by someone to watch or participate in pornography.
- Having sex with someone who is asleep or severely affected by alcohol and / or other drugs.

#### **4. Stalking**

Stalking is a crime. It is an offence under the Crimes (Domestic and Personal violence) Act 2007.

Stalking is behaviour directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.

Stalking can involve threats or sexual innuendo aimed at inducing fear in the person being stalked.

You may be a victim of stalking if someone is:

- Repeatedly following, monitoring or spying on you.
- Repeatedly calling your home or work.
- Sending you unwanted offensive emails, letters, text messages etc.
- Interfering with or damaging your property.
- Leaving unwanted gifts for you.
- Repeatedly showing up at places you go for no legitimate reason.
- Threatening you or someone close to you.

#### **5. Sexual Exploitation**

Sexual Exploitation is the use of another person's nudity or sexual activity without consent, for the purpose of sexual gratification, financial gain, personal advantage, or any other non-legitimate purpose. Sexual exploitation includes but is not limited to:

- Observing, recording, or photographing nudity or sexual activity of one or more persons in a location where there is a reasonable expectation of privacy.
- Allowing another to observe, record, or photograph nudity or sexual activity of one or more persons, or otherwise distributing recordings, photographs, or other images of the nudity or sexual activity of one or more persons without their consent.
- Sharing of sexually explicit material of another person without consent.

#### **6. Relationship Violence**

Relationship Violence sometimes referred to as dating violence occurs between two people in a close relationship.

It is defined as a pattern of abusive or coercive behaviour used to maintain power and control over an intimate partner.

The nature of relationship or dating violence can be physical, emotional or sexual. It can take place in person, texting or online.

Examples of relationship or dating violence:

- **Physical** includes: hitting, shoving, kicking biting or throwing things;

- **Emotional** includes: threatening a partner, yelling, name calling, controlling or jealous behaviour or isolating them from friends.
- **Sexual** includes: forcing a partner to do something sexual or doing something sexual when you cannot agree (e.g., when you are drunk or under the influence of other drugs).

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### **About Consent:**

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Sexual activity without consent is sexual assault and is always a crime. Consent is informed, freely and actively given, mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity.

Consent to sexual activity must be communicated by words or actions, and there is a responsibility to take steps to find out whether the other person is consenting. Sexual consent involves ongoing and mutual communication, and a person has the right to withdraw consent at any time.

Additionally, if someone gives consent to one sexual act, it doesn't mean they've consented to other sexual acts.

Vulnerable people or those under the age of 16 are considered unable to consent in any circumstances.

Previous sexual encounters with a person is not consent for future encounters.

A person can withdraw consent at any time.

There is no consent when there is force, threats, intimidation, or duress.

A person's lack of verbal or physical resistance or manner of dress does not constitute consent.

Consent to past sexual activity with another person does not constitute consent to future sexual activity with that person.

Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person.

### **A person cannot consent to sexual activity if the person:**

- is incapacitated due to the use or influence of alcohol or drugs.
- is asleep or unconscious.
- is under the legal age to provide consent i.e., 16 years of age;
- has a disability that prevents such person from having the ability or capacity to give consent.

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### **About Retaliation:**

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Retaliation is any harmful action, or attempted action, directly or indirectly, against any person, who, in good faith, reports or discloses a violation of this policy, files a complaint, and/or otherwise participates in an investigation, or hearing under this policy.

Examples of Retaliation:

- harassment, discrimination, threats, job termination, adjustment in pay or responsibilities, or negative impact on academic progress.
- actions are considered retaliatory if they have an adverse effect on the working, academic, or living environment of a person; or if they hinder or prevent the person from effectively carrying out their responsibilities.

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**Reporting Sexual Misconduct:**

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You are encouraged to report all forms sexual misconduct to Tocal College and or NSW Police

Survivors of sexual assault or sexual harassment may find it difficult to report the assault.

If you would like to speak to an independent specialist for support in making your decision you can contact specialist sexual assault workers at Hunter New England Health

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**Active Bystander Intervention:**

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Tocal College encourages and values reasonable, safe, active bystander intervention to prevent or stop sexual misconduct and sexual harassment from occurring or continuing.

The steps involved in safe active bystander intervention are:

- noticing the situation – paying attention to what is going on nearby.
- deciding if it is a problem – investigating whether someone might need help, and checking with people around if unsure.
- accepting responsibility to take action – not assuming someone else will do something.
- making a plan to step in – indirectly or directly confronting the issue, without being aggressive or putting oneself or others in danger.

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**Total College Responsibilities:**

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Ensure that all staff, students, contractors and volunteers know their rights and responsibilities by implementing training and awareness raising strategies.

Provide an effective procedure for receiving and responding to complaints based on the principals of natural justice.

Treat all complaints in a sensitive, fair, timely and confidential manner.

Protect the health and wellbeing of complainants by ensuring any acts of victimisation or retaliation are investigated and promptly dealt with.

Encourage the reporting of behaviour which breaches the Sexual Misconduct Policy.

Comply with mandatory reporting responsibilities.

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**Getting support at college:**

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The following people are available for support on campus

**During College hours**

Deputy Principal – 0426 540 226

Student Welfare Support Officer – 0438 627 654

**After Hours**

Duty Officer – 0428 973 372

Residential Supervisor - 49398956

## Reporting to the NSW Police

You can make an informal report without the incident being investigated or make an anonymous online report.

You can make a formal report so that the matter can be subject to criminal investigation.

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## Other Support Services:

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## “IF YOU ARE IN IMMEDIATE DANGER CALL 000”

### Alternatives include:

- [Lifeline](#) – 13 11 14 (24 hours/day, 7 days/week)
- [1800RESPECT](#) – 1800 737 732 (24 hours/day, 7 days/week) – for people impacted by sexual assault, domestic and family violence and abuse.
- [NSW Health Sexual Assault Services](#) – See website link for numbers by location
- [NSW Sexual Violence Helpline](#) – 1800 424 017 or [online chat](#)
- [Blue Knot Helpline and Redress Support Service](#) – 1300 657 380 (9am-5pm, 7 days/week) – for adults impacted by childhood trauma including child sexual abuse
- [Kids Helpline](#) – 1800 55 1800. Kids Helpline provides free, confidential 24/7 online and phone counselling for young people aged 5 to 25.

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## Related Policies:

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- Bullying, Discrimination & Harassment
- Complaints & Appeals Form
- Internet & Social Media
- Student Alcohol & Drug Testing
- Student Discipline Points System

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## Total Sexual Misconduct Policy Agreement Form

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### TOCAL College agrees to:

- Do our best to keep the Tocal College community a respectful and safe space by maintaining effective sexual misconduct prevention strategies mentioned in this policy document
- Ensure all staff and volunteers have a working with children check
- Keep a copy of this signed agreement on file
- Respond appropriately to any breaches of the policy
- Welcome enquiries from students or parents / caregivers about the sexual misconduct policy content.

### As a student attending Tocal College, I agree to:

- Read the Sexual Misconduct Policy carefully
- Follow the recommendations in the policy while I am a member of the Tocal college community
- Ask a staff member if I am not sure about anything to do with this document.

We encourage you to keep this policy to refer to in the future if required.

I have read and understood my responsibilities and agree to abide by this Policy. I know that if I breach this agreement then action stated in this policy will be implemented.

.....  
Student name

.....  
Student signature

.....  
Date

Mobile Phone Number: .....

### PARENT / GUARDIAN (for students under 18) agree to:

- Read this Sexual Misconduct Policy Agreement carefully and discuss it with my son/daughter/dependent so we both have a clear understanding of their rights and responsibilities in maintaining a respectful and safe Tocal college community environment.
- Encourage my son/daughter to follow the sexual misconduct Policy instructions and strategies.
- Contact the College if there is any aspect of this policy I would like to discuss.

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Parent name

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Parent signature

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Date