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SEXUAL ASSAULT AND MISCONDUCT - POLICY

1. Purpose and Objectives

Cromwell College is committed to ensuring that the college environment is safe, respectful and free from all forms of Sexual Misconduct. This policy outlines the overarching principles governing the College and University of Queensland's approach to preventing, addressing and responding to Sexual Misconduct, which are behaviours inconsistent with the College's and University's core values. This policy is to be read in conjunction with the Sexual Assault and Sexual Misconduct – Procedure for Students.

2. Definitions, Terms

Consent- Consent is freely and voluntarily given by a person with the cognitive capacity to do so.

“Consent” is the voluntary agreement to the act or acts in question and to continue to engage in the act or acts. Voluntary agreement to engage in the activity or to continue to engage in the activity must be communicated through words or conduct.

- Consent can be withdrawn at any time during the act or acts in question.
- Consenting to a sexual activity with an individual or individuals does not mean that consent is given for another sexual activity with an individual or individuals, and consent only applies to each specific instance of sexual activity.
- Circumstances in which a person does not consent to an act or acts include:
 - a) the person is asleep or unconscious;
 - b) the person incapable of consenting, such as where they are affected by alcohol or another drug;
 - c) the person submits to the act because of: force or the fear of force; threats or intimidation; fear of harm; exercise of authority; or false or fraudulent representations about the nature or purpose of the act.
 - d) the person submits to the act because of false or fraudulent representation of identity
- No consent is obtainable from a person under the age of 16 years.

Disclosure – is the informal sharing of information regarding Sexual Assault or Sexual Misconduct to the persons or units specified in section 4.6 of the Sexual Assault and Misconduct – Procedures.

Formal Report - is providing a formal statement regarding Sexual Assault or Sexual Misconduct to the persons or units specified in section 4.7 of the Sexual Assault and Misconduct – Procedures. A formal statement regarding Sexual Misconduct given to the police or another external agency is also considered a Formal Report.



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Natural Justice – also referred to as procedural fairness, and is a principle that is applied by the College and University to ensure that decisions are made in accordance with the rule against bias and the hearing rule (where a person is given an opportunity to present their case with knowledge of any prejudicial material that may be taken into account by the decision-maker).

Sexual Assault - is any unwanted, forced, or coerced sexual act or behaviour without Consent. It covers a broad range of sexual activity including, but not limited to groping, inappropriate touching of a sexual nature, and other sexual or indecent acts.

Sexual Harassment – happens if a person:

- (a) subjects another person to an unwelcome and unsolicited act of physical intimacy; or
 - (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
 - (c) makes a remark with sexual connotations relating to the other person; or
 - (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person;
- and the person engaging in the conduct described in (a), (b), (c) or (d) does so–
- (e) with the intention of offending, humiliating or intimidating the other person; or
 - (f) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Examples of sexual harassment include (but are not limited to):

- (a) physical contact such as patting, pinching or touching in a sexual way;
- (b) unnecessary familiarity such as deliberately brushing against a person;
- (c) sexual propositions;
- (d) unwelcome and uncalled for remarks or insinuations about a person's sex or private life;
- (e) suggestive comments about a person's appearance or body;
- (f) sexually offensive phone calls;
- (g) unwanted sexual attention using internet, social networking sites and mobile phones;
- (h) indecent exposure;
- (i) a publication such as sexually offensive emails or graphics; and
- (j) sexually offensive screensavers or posters.



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Sexual harassment may also occur where, during a situation that relates to their role with the College, a member of the College Community engages in the above behavior outside of the College toward another person.

The College also treats as sexual harassment the creation of an environment that is hostile to a person in a sexual context. Some of the factors that may indicate a potentially hostile environment include the display of obscene or pornographic materials, general sexual banter, crude conversation or innuendo and jokes of a sexual nature.

Sexual harassment is unlawful when it falls within the relevant statutory definition under the *Anti-Discrimination Act 1991* (Qld) and/or the *Sex Discrimination Act 1984* (Cth).

Sexual harassment involving violent and/or coercive components such as Sexual Assault, persistent following or stalking, indecent exposure, and obscene communications in any media, may be considered a criminal offence under the *Criminal Code 1899* (Qld).

Sexual Misconduct - is a broad term encompassing any unwelcome behaviour of a sexual nature that is committed without Consent or by force, intimidation, coercion, or manipulation. It includes behaviour that would amount to Sexual Assault and Sexual Harassment.

In this policy, the term 'Sexual Misconduct' includes a reference to alleged sexual misconduct.

For the avoidance of doubt, the term 'Sexual Misconduct' as defined in this policy is not equivalent to 'misconduct' for the purposes of *Student Integrity and Misconduct Policy* or the Enterprise Agreement.

Trauma-Informed - understanding, recognising and responding to the impact of trauma, and emphasising physical, psychological and emotional safety and the importance of choice for individuals who have experienced Sexual Misconduct.

College Community - means current College students, staff, other workers, volunteers, official visitors, recognised individuals and anyone else contractually bound to comply with this Policy.

Victimisation - happens if a person does an act, or threatens to do an act against an individual who has experienced Sexual Misconduct, or a person associated with such an individual because:

- they have made a Disclosure or Formal Report, or intend to make a police or other external report; or
- they, in good faith, intend to make a Disclosure or Formal Report, or intend to make a police or other external report; or
- they are, have been, or intend to be involved in a proceeding involving Sexual Misconduct.



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A reference to involvement in a proceeding includes involvement in a prosecution for an offence involving Sexual Misconduct, involvement in a University or external agency investigation, or other process to deal with Sexual Misconduct.

Adverse action taken against a person may be unlawful under the *Fair Work Act 2009* (Cth) and a person who makes a public interest disclosure under the *Public Interest Disclosure Act 2010* (Qld) is protected by that Act.

3. Policy Statement

The Sexual Assault and Sexual Misconduct – Procedures for Students will be implemented having regard to the principles outlined in 3.1 to 3.10 below. These principles reflect the College’s commitment to preventing all forms of Sexual Misconduct, supporting individuals who are impacted by Sexual Misconduct, and responding appropriately and sensitively when Sexual Misconduct occurs:

- 3.1 The College prohibits all forms of Sexual Misconduct, and requires all members of the Cromwell College Community to comply with this prohibition.
- 3.2 The College acknowledges that education and awareness are important aspects of prevention, and commits to educating students and staff to assist in the prevention of Sexual Misconduct in the College Community.
- 3.3 Members of the Cromwell College Administration are aware of the responsibility they have in responding appropriately when they are made aware of information regarding Sexual Misconduct, particularly taking account of Trauma-Informed approaches.
- 3.4 The College acknowledges that Sexual Misconduct may include criminal behaviours and may be unlawful. The College does not have jurisdiction over criminal acts, but can take action in respect of breaches of its rules, policies and procedures.
- 3.5 The safety, welfare and support of the Cromwell Community is paramount. Cromwell recognises that any Sexual Misconduct is likely to have an adverse impact on members of the College Community, and is committed to appropriately supporting those affected.
- 3.6 Procedures supporting this policy aim to be Trauma-Informed and afford Natural Justice.
- 3.7 Disclosure and Formal Reporting options are intended to be simple, accessible and available through multiple avenues.
- 3.8 The College aims to bring sensitivity, timeliness and good management to its responses to Disclosures and Formal Reports and to meet legal requirements.
- 3.9 Confidentiality and information privacy will be upheld, in accordance with legislative requirements and College policies and procedures.
- 3.10 The College will not tolerate Victimisation.



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4. Acknowledgment

Cromwell College has adopted the University of Queensland's Sexual Misconduct Policy to be in alignment with the University's philosophy and approach to Sexual Misconduct. The College acknowledges the work done by the University in the preparation of this document.