

| Sexual Assault and Sexual Harassment Policy and Procedure | | |
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| Policy Owner: Executive Management Group | Version #: 1.4 | Date: 17 Aug 2022 |
| Policy Developer/Reviewer: QAM | Review date: 17 Aug 2022 | |

VERSION HISTORY

| Version | Updated by | Approval Date | Details |
|---------|------------|---------------|---|
| 1.0 | EMG | 6 Nov 2019 | Document creation |
| 1.1 | EMG | 12 Mar 2020 | SASH Taskforce expanded from 5 to 6 members; added mandatory reporting of SASH incidents to TEQSA and CMBA; the response to all reported SASH incidents will now be led by a SASH Taskforce member. |
| 1.2 | EMG | 15 Jun 2020 | Expanded external support services to include the AHRC, added responsibilities for EMG and managerial staff. |
| 1.3 | EMG | 10 Aug 2020 | Added a customised grievance process, simplified the definition of sexual assault, added Section 2.4.3 Precautionary Actions, minor wording changes throughout document. |
| 1.4 | EMG | 17 Aug 2022 | Regular review. |

PURPOSE AND SCOPE

The aim of this policy is to:

- Outline a standard of behaviour expected of staff and students.
- Create a safe and respectful work and study environment.
- Outline how SITCM will respond to reports of sexual harassment or sexual assault.

This policy applies to all stakeholders at the Sydney Institute of Traditional Chinese Medicine (SITCM).

1 OVERVIEW

The Sydney Institute of Traditional Chinese Medicine (SITCM) is committed to providing a work and study environment which is safe and respectful. SITCM takes a zero-tolerance approach to sexual assault, sexual harassment and other forms of harmful misconduct.

This policy has been informed by the *Higher Education Standards Framework (Threshold Standards) 2021*, in particular Section 2.3 Wellbeing and Safety, and by the *Sex Discrimination Act 1984* (Cth), the *Anti-Discrimination Act 1977* (NSW) and the *Crimes Act 1900* (NSW).

2 POLICY

2.1 DEFINITIONS

2.1.1 DEFINITION OF SEXUAL HARASSMENT

- 1) Sexual harassment is defined under both the *Sex Discrimination Act 1984* (Cth) and the *Anti-Discrimination Act 1977* (NSW) as:
 - a. An unwelcome sexual advance or unwelcome request for sexual favours by a person to another person, or
 - b. Other unwelcome conduct of a sexual nature by a person in relation to a person,in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.
- 2) Examples of sexual harassment include but are not limited to:
 - a. Stalking, staring or leering.
 - b. Unnecessary familiarity, such as deliberately brushing up against a person or unwelcome touching.
 - c. Suggestive comments or jokes.
 - d. Insults or taunts of a sexual nature.
 - e. Making promises or threats in return for sexual favours.
 - f. Displays of sexually graphic materials including posters, cartoons or messages left on notice boards, desks, or common areas.
 - g. Sending explicit emails or text messages.
 - h. Inappropriate advances on social networking sites.
 - i. Request for sex or repeated unwanted requests to go out on dates.
 - j. Behaviour that may be considered an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.
- 3) Sexual harassment can occur in any medium, including online.
- 4) Sexual harassment is not sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.

2.1.2 DEFINITION OF SEXUAL ASSAULT

- 1) This policy classifies sexual assault as when a person intentionally carries out a physical act with another person, in circumstances where the act is sexual and the other person does not consent.
- 2) This is more serious than sexual harassment, and is a crime according to the *Crimes Act 1900* (NSW) Part 3 Division 10: Sexual Offences against Adults and Children.

2.1.3 DEFINITION OF CONSENT

- 1) This policy follows the *Crimes Act 1900* (NSW) definition of consent:
 - a. A person consents to a sexual activity if the person freely and voluntarily agrees to the sexual activity.
 - b. A person does not consent to a sexual activity if they:
 - i. Do not have the capacity to consent due to age or cognitive incapacity;
 - ii. Do not have the opportunity to consent because they are unconscious or asleep;

- iii. Consent due to threat of force or terror against themselves or another person;
- iv. Consent because they are unlawfully detained; or
- v. Consent because of a mistaken belief about the nature of the sexual activity induced by fraudulent means.
- c. A person might not be capable of consenting to a sexual activity if they:
 - i. Consent while substantially intoxicated by alcohol or any drug;
 - ii. Consent because of intimidatory or coercive conduct, or other threat, that does not involve a threat of force; or
 - iii. Consent because of the abuse of a position of authority or trust.
- d. Not offering actual physical resistance to a sexual activity is not by itself regarded as consent.

2.2 PREVENTION

2.2.1 RESPONSIBILITIES

2.2.1.1 SASH TASKFORCE

- 1) The Sexual Assault and Sexual Harassment (SASH) Taskforce is responsible for:
 - a. Monitoring the implementation of this policy.
 - b. Promoting a safe and respectful campus environment.
 - c. Providing advice, recommendations and feedback to the Executive Management Group (EMG).
 - d. Ensuring survivors of sexual assault and sexual harassment receive appropriate support from SITCM.
 - e. Reviewing the *Critical Incident Register* for sexual assault and sexual harassment cases and reporting them to the EMG.
- 2) The SASH Taskforce comprises six (6) members, no more than four of whom may be of the same gender, and includes:
 - a. The Chair.
 - b. The WHS Manager.
 - c. One (1) academic staff member.
 - d. One (1) non-academic staff members.
 - e. All Student Support Officer(s).
 - f. One (1) student member.
- 3) The SASH Taskforce holds at least one minuted meeting per semester.
- 4) The Chair of the SASH Taskforce reports on matters arising at SASH Taskforce meetings to the EMG.
- 5) The existence of the SASH Taskforce does not negate the responsibility of all EMG members to promote a safe and respectful campus environment.
- 6) Survivors of sexual assault and sexual harassment can contact the SASH Taskforce by emailing sash@sitcm.edu.au or by asking for a Student Support Officer at the reception.

2.2.1.2 EXECUTIVE MANAGEMENT GROUP

- 1) The EMG, chaired by the CEO, is responsible for:
 - a. Promoting a safe and respectful campus environment; and
 - b. Ensuring that the SASH Taskforce is fulfilling its responsibilities, including by providing all necessary support and resources.

2.2.1.3 MANAGERIAL STAFF

- 1) All advertised management positions at SITCM include as a selection criterion the ability to understand and deal with harassment and discrimination issues, in accordance with the *Staff Recruitment Policy and Procedure*.
- 2) All management staff appraisals consider whether responsibilities regarding harassment and discrimination are met, in accordance with the *Staff Appraisal and Promotion Policy and Procedure*.

2.2.2 SECURITY

- 1) CCTV cameras are present in all public areas of the SITCM Campus.
- 2) In an emergency, 000 should be called.
- 3) If anyone feels otherwise unsafe on the SITCM campus, they can:
 - a. Call building security on 0449 077 699 (Monday to Thursday).
 - b. Call building security on 0404 114 973 (Friday to Sunday).
 - c. Seek assistance from the Administration Office on Level 5.
 - d. Directly contact the SASH Taskforce Chair (Karen Soo) at sash@sitcm.edu.au.
 - e. Directly contact the WHS Manager (Damien Mathews) at whs@sitcm.edu.au.

2.2.3 EDUCATION AND TRAINING

- 1) All Student Support Officers and SASH Committee members are formally trained in providing appropriate support in cases of sexual assault and sexual harassment.

2.2.4 CAMPUS AWARENESS

- 1) To ensure SITCM staff and students are aware of the importance of campus safety and respect, the following measures will be taken:
 - a. Information on sexual assault and sexual harassment is placed around the SITCM campus.
 - b. The SITCM website contains a 'Campus Safety' page, which includes information on sexual assault and sexual harassment, an educational video about consent and a *SASH Disclosure Form*.
 - c. The learning management system Moodle includes an information factsheet on sexual assault and sexual harassment on the homepage, and an educational video about consent on every page.

2.3 REPORTING

- 1) Cases of sexual assault or sexual harassment connected to SITCM may be reported by the survivor or a third party.
- 2) The reporting may be done anonymously, although this may limit the amount of assistance that SITCM is able to provide.
- 3) The reporting may be done formally or informally, based on the wishes of the person reporting.
- 4) The reporter can choose to report the case to:
 - a. The SASH Taskforce, via the email sash@sitcm.edu.au.
 - b. The Student Support Officer (when the reporter is a student), either face to face, by phone or by email.
 - c. Their manager (when the reporter is a staff member), either face to face, by phone or by email.
 - d. An external entity, such as the police (refer to Section 2.4.9 for further details).

2.4 RESPONSE

2.4.1 PRINCIPLES

- 1) In handling a sexual assault or sexual harassment-related incident, and regardless of whether the incident took place on or off campus, SITCM will follow the below survivor-centred principles:
 - a. Focus on the needs of the survivor.
 - b. Treat the survivor with respect and dignity.
 - c. Avoid causing any further trauma to the survivor.
 - d. Ensure the survivor is aware of all available avenues of support and respect the survivor's decision on whether to use available support.
 - e. Ensure the survivor is in control of decision making.
 - f. Offer to aid with the engagement of any external support and response services.
 - g. Respect privacy.
- 2) In handling a sexual assault or sexual harassment-related incident, SITCM will, wherever possible, follow the below principles for an alleged perpetrator who is a SITCM staff member or student:
 - a. Treat the alleged perpetrator with respect and dignity.
 - b. Minimise trauma arising from the incident.
 - c. Ensure the alleged perpetrator is aware of all available support services.
 - d. Show fairness and impartiality throughout any internal investigation process.
 - e. Respect privacy.

2.4.2 INITIAL RESPONSE

- 1) SITCM's response will be led by a Coordinator chosen from within the SASH Taskforce.
- 2) The following are examples of responses that may be appropriate for a sexual assault or sexual harassment incident, subject to the survivor's wishes and how recently the sexual assault or sexual harassment took place:
 - a. Gathering information to facilitate an appropriate response.
 - b. Calling an ambulance.
 - c. Transporting the survivor to the Eastern & Central Sydney Sexual Assault Service at the Royal Prince Alfred Hospital.
 - d. Referring the survivor to the external support services listed in Section 2.4.9.2 and offering to facilitate contact between the survivor and these services.
 - e. Referring the survivor to a suitably trained Student Support Officer.
 - f. Informing the survivor of their options under this policy, including investigation options under Section 2.4.4.

2.4.3 PRECAUTIONARY ACTIONS

- 1) When sexual assault or sexual harassment occurs, precautionary actions may be required to ensure the safety and wellbeing of the affected parties and broader community.
- 2) If necessary, measures will be taken to ensure that the alleged perpetrator and survivor do not encounter each other in class or on campus.
 - a. Insofar as possible, such measures must be designed to minimise the disruption to learning of all involved.
- 3) The alleged perpetrator may be suspended from all activity on SITCM premises and may be excluded for a period of up to ten (10) working days, not including the day on which the event occurred, while an investigation takes place.

- a. This suspension occurs if deemed necessary for the safety of the SITCM community, and is not indicative of any guilt.

2.4.4 SITCM INVESTIGATIONS

- 1) The survivor may choose for SITCM to formally investigate the incident if they are a member of the SITCM community, and the incident took place on campus and/or involved another member of the SITCM community.
- 2) Formal investigations are conducted by the SASH Taskforce Chair.
- 3) Stakeholder privacy will be respected at all times during the formal investigation process.
- 4) Where an allegation of sexual assault or sexual harassment at the conclusion of the investigation process is substantiated:
 - a. If the perpetrator is a student, the incident will be handled in accordance with *Student Non-Academic Misconduct Policy*.
 - b. If the perpetrator is a staff member, the incident will be handled in accordance with *Staff Misconduct Policy*.
- 5) If an survivor is dissatisfied with the outcome of a formal SITCM investigation, they may lodge an appeal.
- 6) An appeal is reviewed by an appeal panel, which is chaired by the CEO and includes two other senior SITCM staff members.

2.4.5 POLICE INVESTIGATIONS

- 1) An survivor may choose to report the incident to the police, with or without assistance from SITCM.
 - a. SITCM will respect an survivor's decision to not involve the police, provided that not involving the police would not be likely to put other members of the SITCM community at risk.
- 2) If a police investigation or court proceeding relating to sexual assault or sexual harassment is underway, SITCM will liaise with the police as necessary.

2.4.6 RECORD KEEPING

- 1) Minutes or notes must be taken at all meetings that take place in response to a reported sexual assault or sexual harassment.
- 2) All incidents involving sexual assault or sexual harassment, including those reported formally and informally, are added to the *Critical Incidents Register* as per the *Critical Incident Policy and Procedures*.
 - a. In the *Critical Incidents Register*, incidents involving sexual assault or sexual harassment are clearly categorised as such.
 - b. The WHS Manager is responsible for reporting all incidents involving sexual assault or sexual harassment to the EMG, for drawing attention to patterns of recurring incidents, and for ensuring appropriate action is taken to mitigate future risk.
 - c. The content of the *Critical Incidents Register* will be used to draft an annual *Incident Report*, which is presented to the Board of Directors for review.
- 3) Sexual assault and sexual harassment matters are also included in the annual *Student and Staff Wellbeing Report*, which is presented to the EMG for review.
- 4) SITCM reports all reported incidents involving sexual assault or sexual harassment to the Tertiary Education Quality and Standards Agency and the Chinese Medicine Board of Australia.

2.4.7 CONFIDENTIALITY

- 1) SITCM recognises the importance of, wherever possible, maintaining the confidentiality of all parties when a report of sexual assault or sexual harassment is made.
- 2) In gathering information in response to a report of sexual assault or sexual harassment, SITCM will adhere to the *Privacy Policy*.

2.4.8 VEXATIOUS COMPLAINTS

- 1) If sexual assault or sexual harassment is reported to SITCM and it is established that the person reporting knew the report to be untrue at the time it was made:
 - a. If the person reporting is a student, the vexatious complaint will be handled in accordance with *Student Non-Academic Misconduct Policy*.
 - b. If the person reporting is a staff member, the vexatious complaint will be handled in accordance with *Staff Misconduct Policy*.

2.4.9 EXTERNAL SUPPORT SERVICES**2.4.9.1 SEXUAL HARASSMENT**

- 1) For support relating to sexual harassment, a survivor may send a written complaint to the Australian Human Rights Commission (AHRC) here: <https://humanrights.gov.au/complaints/make-complaint>.
 - a. There is no requirement that the survivor first attempt to resolve the complaint at SITCM.
- 2) The AHRC will investigate the complaint and generally attempt to resolve it by conciliation.

2.4.9.2 SEXUAL ASSAULT

- 1) A survivor may contact any of the following support services for sexual assault.
 - a. There is no requirement that the survivor first attempt to resolve the complaint at SITCM.

| Organisation | Number | Situation |
|---|--|--|
| Emergency Services | 000 | You are in immediate danger |
| Day Street Police Station | (02) 9265 6499 (24-hour line) | You wish to report an incident to the police but are not in immediate danger |
| 1800RESPECT | 1800 737 732 (24-hour hotline) | You have been impacted by sexual assault and seek confidential information, counselling or support |
| Eastern & Central Sydney Sexual Assault Service | (02) 9515 9040 (daytime) (02) 9515 6111 (after hours) | You have been sexually assaulted and seek confidential information, counselling or support |
| NSW Rape Crisis Centre | 1800 424 017 (24-hour hotline) | You have experienced or are at risk of sexual assault and seek crisis counselling |

3 PROCEDURES

3.1 PROCEDURE FOR HANDLING REPORTED SEXUAL ASSAULT OR SEXUAL HARASSMENT

- 1) The incident is reported to a SITCM staff member or SASH Taskforce member.
- 2) If an incident constitutes an emergency, the first staff member to receive the report will call emergency services.
- 3) The first person to receive the report will notify the Chair of the SASH Taskforce, who will then become the Coordinator.
 - a. If the Chair of the SASH Taskforce is unavailable, the first available member of the SASH Taskforce will become the Coordinator.
- 4) The Coordinator will gather information to facilitate an informed response.
- 5) If medical care may be needed or forensic evidence may be preserved, the Coordinator will inform the survivor and offer for SITCM to assist in transporting the survivor to the Eastern & Central Sydney Sexual Assault Service at the Royal Prince Alfred Hospital.
- 6) The Coordinator will inform the survivor of all support services available, including internal (a Student Support Officer) and external (see Section 2.4.9.2), and offer assistance in connecting the survivor with these services.
- 7) The Coordinator will ask the survivor if they would like SITCM to contact the police on their behalf.
- 8) The Coordinator will inform the survivor that they may request that SITCM formally investigate the case (see Section 3.2).
- 9) The Coordinator will inform the survivor of the additional support that is available from SITCM, and provide any additional support if requested.
- 10) The Coordinator will ensure the incident is recorded in the *Critical Incidents Register*.
- 11) The WHS Manager will report the incident at the next EMG meeting.

3.2 PROCEDURE FOR FORMAL INVESTIGATIONS AT SITCM

- 1) The survivor emails a *SASH Disclosure Form* to sash@sitcm.edu.au.
- 2) Receipt of the form is acknowledged in writing via email.
- 3) If necessary, the Chair of the SASH Taskforce requests further information from the survivor.
 - a. This may include one or more meetings between the Chair of the SASH Taskforce and the survivor.
 - b. The survivor has the right to be represented by a support person in every meeting.
- 4) The Chair of the SASH Taskforce requires the alleged perpetrator to attend one or more meetings to obtain the necessary information for the investigation.
 - a. The alleged perpetrator has the right to be represented by a support person in every meeting.
- 5) The Chair of the SASH Taskforce conducts the investigation and provides an evidence-based decision within 10 working days.
- 6) If the complainant is dissatisfied with the outcome of the investigation, they can lodge an internal appeal within twenty (20) working days.
 - a. The survivor emails a *SASH Disclosure Form* (with the appeal section completed) to sash@sitcm.edu.au.
 - b. Receipt of the form is acknowledged in writing via email.
 - c. An appeal panel is convened to review the decision made by the Chair of the SASH Taskforce.

- i. The appeal panel is chaired by the CEO and includes two other senior SITCM staff members.
 - d. The appeal panel provides an evidence-based decision within 15 working days.
- 7) If the survivor is dissatisfied with the outcome of their internal appeal, they can request an external appeal.
 - a. The purpose of an external appeal is to consider whether SITCM has correctly followed its policy in making the decision and attempt to reach a resolution.
 - b. SITCM and the survivor will agree on an external qualified mediator to conduct the external appeal.
 - i. Qualified mediators can be found at:
<https://www.resolution.institute/dispute-resolution/mediation>.
 - c. SITCM will provide due consideration of recommendations arising from an external appeal.
 - d. SITCM will cover the reasonable costs of mediation, and survivors will not be charged for an external appeal except where the cost arises from being accompanied or assisted by another person.

4 RELATED POLICY AND OTHER DOCUMENTATION

- 1) Higher Education Standards Framework (Threshold Standards) 2021.
- 2) Sex Discrimination Act 1984.
- 3) Anti-Discrimination Act 1977.
- 4) Crimes Act 1900.
- 5) Critical Incident Register.
- 6) Staff Recruitment Policy and Procedure.
- 7) Staff Appraisal and Promotion Policy and Procedure.
- 8) SASH Disclosure Form.
- 9) Critical Incident Policy and Procedures.
- 10) Student Non-Academic Misconduct Policy.
- 11) Staff Misconduct Policy.
- 12) Privacy Policy.