

## Sexual Assault Procedure

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### 1. PURPOSE

This procedure outlines how JMC Academy will manage incidences of Sexual Assault and should be read in conjunction with the, Discrimination, Bullying, Harassment and Sexual Misconduct Policy.

JMC Academy is committed to the rights of all staff and students to work, to study and to socialise in an environment based on respect and inclusivity. Sexual Assault will not be tolerated under any circumstances and is a criminal offence.

### 2. SCOPE

This procedure applies to all staff members, teaching faculty and students while engaged in JMC Academy activities on or off campus and extends to wherever that activity takes place.

### 3. DEFINITIONS

#### **Sexual Misconduct**

Sexual Misconduct refers to sexual harassment or sexual assault and includes behaviour that could amount to a sexual offence and/or sexual harassment.

#### **Sexual Harassment and Sexual Assault**

Sexual harassment is when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person or engages in any other unwelcome conduct of a sexual nature with another person. Sexual assault can be a violent, unexpected, traumatic and sometimes life-threatening event or series of events. Sexual assault is ANY unwanted sexual act or behaviour which is threatening, violent, forced or coercive and to which a person has not given consent or was not able to give consent. A person's consent to engage in a sexual activity of any kind cannot be assumed; consent given under duress is not consent, and consent can be withdrawn at any point if it had previously been given.

#### **Consent**

Consent is an agreement freely and voluntarily given by someone with the cognitive capacity to do so. A person is not regarded as having freely agreed to or consented to a sexual act just because they did not protest, physically resist or sustain an injury.

Consent is not freely and voluntarily given if a person is:

- Intimidated, coerced or threatened,
- Forced,
- Asleep or unconscious,
- Significantly intoxicated or affected by drugs,
- Unlawfully detained or held against their will,
- There is abuse of power or a position of trust,
- In fear of bodily harm,
- Under a mistaken belief that the offender was their sexual partner.

#### **Legal Obligations**

Under the Racial Discrimination Act 1975, the Sex Discrimination Act 1984 and the Disability Discrimination Act 1992 vicarious liability is also attached to JMC Pty Limited as the employer. This means JMC Pty Limited can be penalised for not taking all reasonable practical steps to prevent a staff

member from doing an unlawful act, as described by the legislation and therefore breaching their duty of care.

### **Criminal Proceedings**

Some forms of harassment may be criminal offences. Grabbing or striking may constitute assault. Actual or attempted assault, including indecent assault, is a criminal offence. Sending obscene items through the mail or an electronic device and making nuisance phone calls can also be criminal offences.

Should such an incident or incidents be reported, then JMC Academy management will contact the police for advice and assistance on the appropriate action to take.

For definitions not listed here please refer to *JMC Academy Glossary*.

## **4. PROCEDURE**

### **4.1 SEXUAL ASSAULT – AN INTEGRATED RESPONSE**

- Sexual Assault is a serious incident of Sexual Misconduct and constitutes a criminal offence.
- Allegations of Sexual Assault must be dealt with immediately. If the student, staff member or any other member of the JMC Academy community is sexually assaulted and has not accessed the nearest hospital emergency department or Police station, they should contact 1800 Respect (24-hour sexual assault and domestic violence support) on 1800 737 732.
- If overseas, trip supervisors should contact the local authorities in that country as well as inform the Director of International Services who may assist with any required consular support and other services.
- JMC Academy's key focus is the safety, wellbeing and needs of the person who has been subjected to sexual assault. Therefore, wherever possible the wishes of the person subjected to the sexual assault will be respected with strict confidentiality.
- Under circumstances where a person has been assaulted in a remote or overseas location, so as to ensure their safety and wellbeing it may be required to arrange for a return to their home or for alternative accommodation. This should be co-ordinated by the Campus Manager or Director of International Services.
- Any member of the JMC Academy community may be a First Responder. A First Responder is a person who is confided in by another person who has experienced or is currently experiencing an incident of sexual assault. First Responders need to listen with compassion, respect privacy and confidentiality and encourage the person to seek support .
- Any member of the JMC Academy community may be a Bystander. A Bystander includes a person who observes someone sexually assaulting another person and should call 000 in any emergency situation. A Bystander can intervene at the time, if they are able to do so, and it is safe to do so. Bystanders should let the person subjected to the offence know that they've noticed and let them know they will do what they can to help.

### **4.2 JMC ACADEMY SUPPORT**

- Campus Managers provide a single point of contact at JMC Academy for a person who has been subjected to sexual assault or to any person supporting them. Campus Managers will support people to access specialist sexual assault services and to provide support with making a report or complaint to JMC as well as to follow up with Police and emergency services as necessary.
- Students are also able to seek confidential counselling services and support at JMC Academy as needed.

- JMC Academy's Safe Campus site on Plato provides a range of information and online resources for students and staff in relation to safety and wellbeing, including information on consent, sexual assault, counselling support and pathways to reporting.

#### 4.3 SEXUAL ASSAULT REPORTS AND COMPLAINTS

- Any person can provide information that an incident of sexual assault has happened and can, at any time, pursue external processes including reporting to Police.
- An individual's decision on whether they choose to make a report and/or a complaint will be respected and will be kept strictly confidential. Only in exceptional circumstances such as being required by law or where there is a risk of significant harm to themselves or another individual's health and safety will information be divulged to third parties, such as the Police.
- A support person or representative may be present when attending any meetings relating to sexual misconduct or a complaint. If either the complainant or respondent is unable to personally attend on campus, alternative methods will be considered.
- All reports or complaints will be recorded in a confidential Incident Register by the Campus Manager which enables JMC Academy to identify any patterns in behaviours and to monitor progress in eliminating sexual misconduct.
- If the incident is related to a person under the age of 18 years, JMC Academy is under obligation to notify the Police and Community Services through the Child Protection Helpline.

#### 4.4 MAKING A REPORT, AND POSSIBLE OUTCOMES

- Any person can make a report by completing the Sexual Misconduct Report Form and providing it to their Campus Manager.
- Upon receipt of the Report, the Campus Manager will work with the First Responder if required and/or the staff member or student. Campus Managers can provide support, including access to counsellors, if needed and will give consideration to possible measures available.
- While anonymous reporting can be made using the Sexual Misconduct Report Form the person making the report will have to identify others who have been involved. However, it must be noted that any response by JMC Academy may be limited by the detail provided.
- Third party reports may also be made with regards to sexual assault. Investigations, however, may be limited due to a lack of evidence from the individual who was directly subjected to the assault or where procedural fairness or natural justice is not being followed. Under such circumstances the Campus Manager may consider approaching the individual via the third party to see if they would consider making a report.
- JMC Academy may still consider proceeding with an investigation if other sufficient evidence exists, particularly where patterns of behaviour have become evident.
- Even though making a report does not start an investigation it does mean the Campus Manager can advise the person subjected to sexual assault of their options to make a complaint.

#### 4.5 MAKING A COMPLAINT

- In making a complaint, the Complainant is required to provide the Campus Manager with detailed information in order that an investigation, disciplinary action or other resolution can be properly undertaken. At this stage an investigation will formally commence.
- Should JMC Academy commence an investigation and an external process, such as criminal proceedings, is also being pursued, it may decide to suspend its investigation and advise the Complainant of its decision. Notwithstanding JMC Academy will continue to provide all necessary support.

- In resolving a complaint, JMC Academy must ensure that principles of Natural Justice are observed, and that care must be taken not to dismiss a matter as trivial without due consideration.
- Any complaint received by the Campus Manager will be assessed to ensure that:
  - a) the appropriate support services have been engaged,
  - b) there are no immediate safety or other risks associated with the complaint,
  - c) sufficient information has been provided in order to proceed,
  - d) any requirement to notify an external body has been considered and met,
  - e) the individual has been made aware of and understands the complaint process.
- Allegations of sexual assault made against staff members will be referred to the Director of Finance and Operations by the Campus Manager for investigation as possible serious misconduct.
- Allegations of sexual misconduct made through a complaint against a student will be investigated by the Campus Manager under the Student Code of Conduct and misconduct procedures.
- Where an allegation of sexual misconduct is made through a complaint against a Campus Manager or senior executive of JMC Academy it will be referred to the Chair of the Governing Council for investigation.

#### 4.6 INVESTIGATING A COMPLAINT

- On receipt of a complaint, the Campus Manager will undertake an initial inquiry to determine whether sufficient evidence and standard of proof on the balance of probabilities exists.
- Where the initial inquiry determines that the allegation does not meet the required standard of proof, the matter will be closed. JMC Academy will continue to provide support to the complainant who will be advised that they can appeal the decision.
- Where the initial inquiry determines that the allegation meets the required standard of proof JMC Academy will investigate under its relevant discipline procedures.
- The Director Finance and Operations can determine to suspend a staff member during an investigation, as a precautionary measure, based on a risk assessment and/or on the recommendation of the Campus Manager.
- The Campus Manager will consider if a student should be suspended during an investigation based on a risk assessment and/or on the recommendation of a Head of Department.
- All parties subject to an investigation will be afforded Natural Justice and have the right to have a support person with them.
- An investigation will be suspended if a complainant decides to pursue criminal proceedings but may recommence if for whatever reason the criminal process ends.
- In resolving the complaint, the Campus Manager will determine the disciplinary action required if it is found that the Bullying, Discrimination, Harassment and Sexual Misconduct Policy and Student Code of Conduct has been breached. Outcomes may include legal action and/or other disciplinary action such as suspension or exclusion from JMC Academy.

#### 4.7 FALSE ALLEGATIONS AND VEXATIOUS COMPLAINTS

- Reports made in bad faith, including false information in the course of an investigation may lead to JMC Academy taking disciplinary action against that person.
- If the Complaint is found to be vexatious, JMC Academy may take action under the Student Code of Conduct and Misconduct Procedures.

#### 5. COMPLAINTS and APPEALS

To appeal against any decisions made under this procedure

- Students may access the Student Complaints and Appeals Policy and its associated procedures,
- JMC Academy staff may access the Grievance Handling Policy.

#### 6. POSITIONS RESPONSIBLE FOR IMPLEMENTING PROCEDURE

- Campus Manager
- Chief Executive Officer
- Director of Finance and Operations
- Director of Education
- Director of International Services
- Heads of Department
- Senior Management
- All Staff

#### 7. RELATED DOCUMENTS

- Discrimination, Bullying, Harassment and Sexual Misconduct Policy
- Sexual Harassment Procedure
- Student Code of Conduct
- Student Complaints and Appeals Policy
- Student Complaints and Appeals Procedure
- Diversity, Equity and Inclusion Policy
- JMC Academy Glossary
- Appendix 1 – Sexual Assault Procedure Flow Chart – Person Subjected to Sexual Assault
- Appendix 2 – Sexual Assault Procedure Flow Chart – First Responder

#### 8. RELATED LEGISLATION

This Policy supports JMC Academy's compliance with the following legislation:

- Higher Education Support Act 2003 (Cth),
- Higher Education Standards Framework (Threshold Standards) 2015,
- Age Discrimination Act 2004 (Cth),
- Australian Human Rights and Equal Opportunity Commission Act 1986 (Cth),
- Disability Discrimination Act 1992 (Cth),
- Disability Standards for Education 2005 (Cth),
- Fair Work Act 2009 (Cth),
- Racial Discrimination Act 1975 (Cth),
- Sex Discrimination Act 1984 (Cth),
- Workplace Gender Equality Act 2012 (Cth),

## 9. PROCEDURE REVIEW DATE

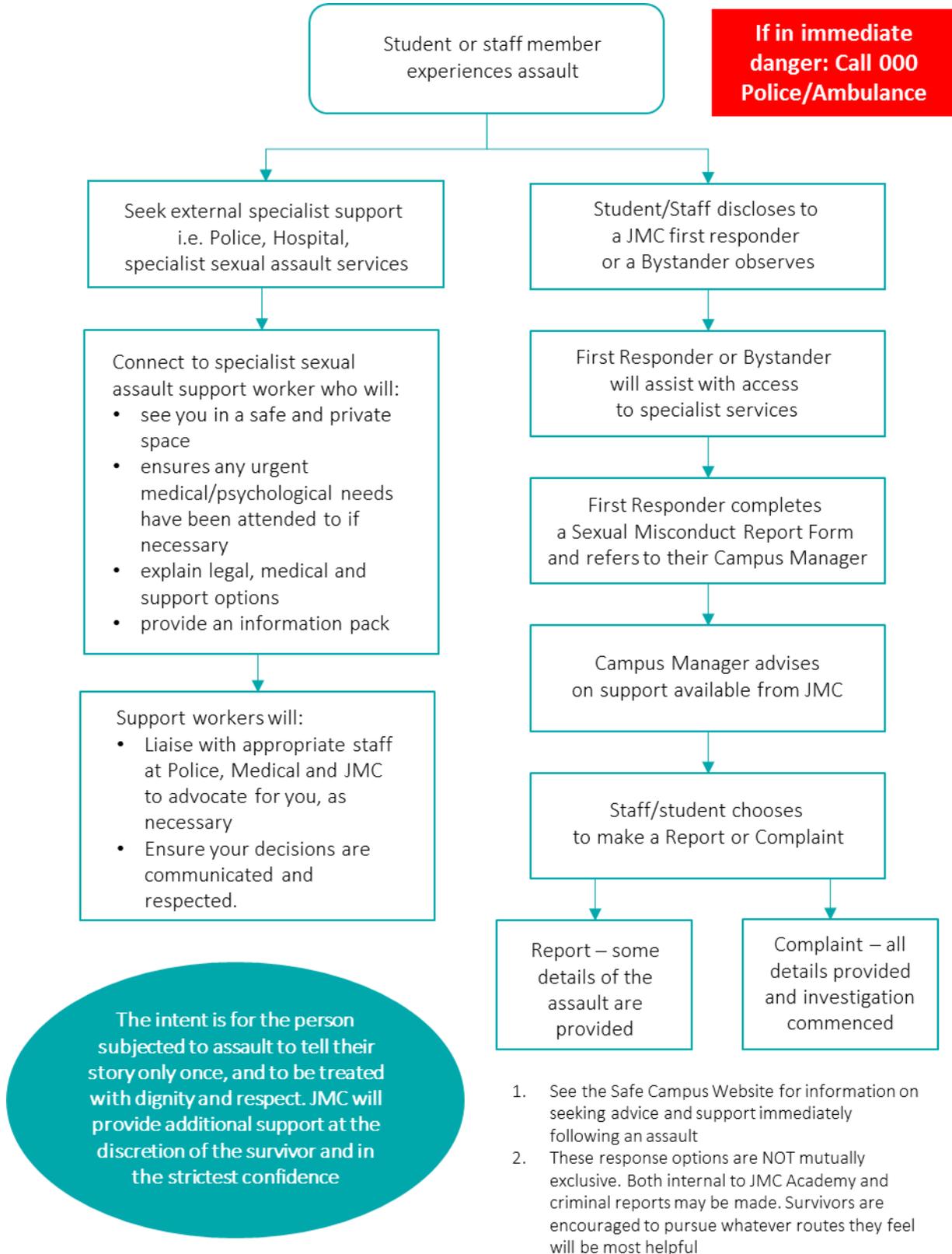
28<sup>th</sup> February, 2022

## 10. VERSION CONTROL TABLE

Title	Sexual Assault Procedure			
Maintained By	Education Team			
Approving Authority	Governing Council			
Approved Date	05/03/2019			
Version Number	Modified By	Modifications Made	Date Modified	Status
1.0	G. Markakis	Original version	10/09/2018	Approved by the Governing Council on 14/12/2018 Superseded
2.0	G. Jedlinska	Added mandatory reporting requirement	18/02/2019	Current Approved by George Markakis as a Health Check on 05/03/2019

## APPENDIX 1

### SEXUAL ASSAULT PROCEDURE FLOW CHART – PERSON SUBJECTED TO SEXUAL ASSAULT



## APPENDIX 2

### SEXUAL ASSAULT PROCEDURE FLOW CHART – FIRST RESPONDER

