

Sexual Assault

Procedure

Table of Contents

1. PURPOSE	3
2. SCOPE	3
3. DEFINITIONS.....	3
4. PROCEDURE.....	3
4.1. Reports and Complaints of Sexual Assault	3
4.2. Sexual Assault – Initial Response.....	4
4.3. Managing a Report of Sexual Assault	4
4.4. Making a Complaint of Sexual Assault.....	4
4.5. Investigating a Complaint of Sexual Assault	5
4.6. False Allegations and Vexatious Reports and Complaints	5
4.7. JMC Academy Support	6
5. RELATED DOCUMENTS	6
6. RELEVANT LEGISLATION	6
7. POSITIONS RESPONSIBLE.....	6
8. APPROVAL INFORMATION.....	7
REFERENCES and ACKNOWLEDGEMENTS	7
Appendix 1 – Table 1 – Sexual Assault Procedure Flow Chart	8

1. PURPOSE

The Sexual Assault 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*.

2. SCOPE

The Sexual Assault Procedure applies to all members of the workforce and students while engaged in JMC Academy activities on or off campus and extends to wherever that activity takes place.

For the purpose of this Policy, all JMC Academy's workforce members are referred to as 'staff'.

3. DEFINITIONS

For definitions directly applicable to this Procedure refer to the *Discrimination, Bullying, Harassment, and Sexual Misconduct Policy*.

All definitions are located in the *JMC Academy Glossary*.

4. PROCEDURE

4.1. Reports and Complaints of Sexual Assault

- 4.1.1. Anyone witnessing or involved in an incident of sexual assault at JMC Academy may make a report or complaint using the *Sexual Misconduct Report Form*.
 - 4.1.1.1. A report – primary purpose of the report is to notify JMC Academy that the incident of sexual assault occurred and to ensure that the affected person, if identified, received the support they needed to continue studying and working. Making a report does not normally trigger an investigation.
 - 4.1.1.2. A complaint is made by providing all the details of the incident. The formal investigation will commence, and disciplinary actions may follow when the complaint is lodged. Criminal proceedings may also be pursued.
- 4.1.2. 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.
- 4.1.3. 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.
- 4.1.4. 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.
- 4.1.5. All reports or complaints will be recorded in a confidential Sexual Misconduct Register by the Campus Director and analysed which allows JMC Academy to identify any patterns in behaviours and to monitor progress in eliminating sexual misconduct.
- 4.1.6. If any 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.

4.2. Sexual Assault – Initial Response

- 4.2.1. 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.
- 4.2.2. 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.
- 4.2.3. 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.
- 4.2.4. 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 Director or Director of International Services.
- 4.2.5. Person who has experienced or is currently experiencing an incident of sexual assault can confide in a First Responder, who will listen with compassion and encourage the person to seek support.
- 4.2.6. An incident of sexual assault may have been observed by a Bystander, who should acknowledge the incident and intervene if they are able to and it is safe to do so or call 000 when required.

4.3. Managing a Report of Sexual Assault

- 4.3.1. Upon receipt of a report, the Campus Director will work with the First Responder or Bystander if required and/or the staff member or student. The Campus Director can provide support, including access to counsellors, if needed and will give consideration to possible measures available.
- 4.3.2. 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.
- 4.3.3. 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 Director may consider approaching the individual via the third party to see if they would consider making a report.
- 4.3.4. JMC Academy may still consider proceeding with an investigation if other sufficient evidence exists, particularly where patterns of behaviour have become evident.
- 4.3.5. Even though making a report does not necessarily trigger an investigation it does mean the Campus Director can advise the person subjected to sexual assault of their options to make a complaint.

4.4. Making a Complaint of Sexual Assault

- 4.4.1. In making a complaint, the Complainant is required to provide the Campus Director 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.
- 4.4.2. Should JMC Academy commence an investigation and an external process, such as criminal proceedings, is also being pursued, JMC Academy may decide to suspend its

investigation and advise the Complainant of its decision. Notwithstanding JMC Academy will continue to provide all necessary support.

- 4.4.3. 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.
- 4.4.4. Any complaint received by the Campus Director will be assessed to ensure that:
 - The appropriate support services have been engaged,
 - There are no immediate safety or other risks associated with the complaint,
 - Sufficient information has been provided in order to proceed,
 - Any requirement to notify an external body has been considered and met,
 - The individual has been made aware of and understands the complaint process.
- 4.4.5. Allegations of sexual assault made against staff members will be referred to the Director of Finance and Operations by the Campus Director for investigation as possible serious misconduct.
- 4.4.6. Allegations of sexual assault made through a complaint against a student will be investigated by the Campus Director under the *Student Code of Conduct and Non-Academic Misconduct Policy and Procedure*.
- 4.4.7. Where an allegation of sexual assault is made through a complaint against a Campus Director or senior executive of JMC Academy it will be referred to the Chair of the Governing Council for investigation.

4.5. Investigating a Complaint of Sexual Assault

- 4.5.1. On receipt of a complaint, the Campus Director will undertake an initial inquiry to determine whether sufficient evidence and standard of proof on the balance of probabilities exists.
- 4.5.2. 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.
- 4.5.3. Where the initial inquiry determines that the allegation meets the required standard of proof JMC Academy will investigate under its relevant discipline procedures.
- 4.5.4. 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 Director.
- 4.5.5. The Campus Director 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.
- 4.5.6. All parties subject to an investigation will be afforded Natural Justice and have the right to have a support person with them.
- 4.5.7. An investigation will be suspended if a complainant decides to pursue criminal proceedings but may recommence if for whatever reason the criminal process ends.
- 4.5.8. In resolving the complaint, the Campus Director will determine the disciplinary action required if it is found that the *Discrimination, Bullying, 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.

4.6. False Allegations and Vexatious Reports and Complaints

- 4.6.1. Reports or complaints made in bad faith, including false information in the course of an investigation may lead to JMC Academy taking disciplinary action against that person.

4.6.2. If the person filing a report or complaint is found to be vexatious, JMC Academy may take action under the *Student Code of Conduct* and the *Non-Academic Misconduct Policy and Procedure*.

4.7. JMC Academy Support

- 4.7.1. Students are also able to seek confidential counselling services and support at JMC Academy as needed.
- 4.7.2. JMC Academy's Safe Campus site on JMC Academy's Learning Management System 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.
- 4.7.3. Campus Directors 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 Directors 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.

5. RELATED DOCUMENTS

- 5.1. JMC Academy Glossary
- 5.2. Discrimination, Bullying, Harassment, and Sexual Misconduct Policy
- 5.3. Sexual Harassment Procedure
- 5.4. Personal Information and Privacy Policy
- 5.5. Health, Safety and Wellbeing Policy
- 5.6. Non-Academic Misconduct Policy and Procedure
- 5.7. Student Complaints and Appeals Policy and Procedure
- 5.8. Student Code of Conduct

6. RELEVANT LEGISLATION

- 6.1. Higher Education Support Act 2003 (Cth)
- 6.2. Higher Education Standards Framework (Threshold Standards) 2021
- 6.3. Age Discrimination Act 2004 (Cth)
- 6.4. Australian Human Rights and Equal Opportunity Commission Act 1986 (Cth)
- 6.5. Disability Discrimination Act 1992 (Cth)
- 6.6. Disability Standards for Education 2005 (Cth)
- 6.7. Fair Work Act 2009 (Cth)
- 6.8. Racial Discrimination Act 1975 (Cth)
- 6.9. Sex Discrimination Act 1984 (Cth)
- 6.10. Workplace Gender Equality Act 2012 (Cth)

7. POSITIONS RESPONSIBLE

- 7.1. Chief Executive Officer
- 7.2. Dean, Academic
- 7.3. Dean, Quality
- 7.4. Director of International Service
- 7.5. Director of Finance and Operations
- 7.6. Heads of Department
- 7.7. Campus Director
- 7.8. Senior Management
- 7.9. JMC Academy members of the workforce

8. APPROVAL INFORMATION

Approval Authority	Governing Council
Health Check approval authority	JMC Academy CEO
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Version	Approved by	Approval date	Effective date	Modifications	Status
1.0	Governing Council	14/12/2018	14/12/2018	Original version	Superseded
2.0	JMC Academy CEO	05/03/2019	05/03/2019	Added mandatory reporting requirement	Superseded
2.1	JMC Academy CEO	28/10/2021	01/12/2021	Amendments as per external reviewer's recommendations.	Current

REFERENCES and ACKNOWLEDGEMENTS

James Cook University. (2021). *Sexual Assault Procedure*.

https://www.jcu.edu.au/_data/assets/pdf_file/0003/680691/Sexual-Assault-Procedure.pdf/

James Cook University. (2021). *Sexual Misconduct complaint information*.

<https://www.jcu.edu.au/safety-and-wellbeing/sexual-harassment-and-sexual-assault/sexual-misconduct-complaint-information>

Appendix 1 – Table 1 – Sexual Assault Procedure Flow Chart

