



## **SEXUAL MISCONDUCT (SEXUAL ASSAULT AND SEXUAL HARASSMENT) RESPONSE POLICY**

**Pertains To:** Residents, Staff, Guests – Burgmann College  
**Supported By:** Deputy Principal, College Dean – Burgmann College  
Staff – Burgmann College  
Pastoral Care Team – Burgmann College

### **1. Purpose**

This policy provides Burgmann College (Burgmann) with clear processes for managing critical incidents and serious matters that involve Sexual Harassment and Sexual Assault. This is to ensure that each incident is managed fairly, effectively, consistently and in a timely manner.

The secondary purpose of this policy is to inform residents and staff about specific resident and staff behaviours that are not accepted at the College.

It is important to differentiate between this policy and the process involved in the criminal/justice System. See Attachment A for the differences between each process.

### **2. Types of incidents**

#### Critical Incident

A ‘critical incident’ is a traumatic event or the imminent threat of such, which causes stress, fear and/or physical and/or emotional injury.

#### Serious Matters

A ‘serious matter’ is any occurrence which is not considered to be a critical incident under the relevant College Critical Incident and Serious Matters Policy. A serious matter has the potential to have a disruptive impact on the wellbeing of a Resident and / or the residential community.

As an affiliated residence, the College’s sexual misconduct policy is aligned with the University’s definitions for critical incidents and serious matters. An instance of sexual misconduct is a serious matter and may be a critical incident.

### **3. Definitions**

#### College-initiated process

Where the College receives information about a possible breach of the College’s community standards, it may decide to investigate the matter regardless of whether or not there has been a complaint. This is known as a College-initiated process.

#### Council Members

Council Members are members of the Burgmann College Council who volunteer their time and expertise for the good governance of the College. A Council Member is able to make a report about a resident or staff member under this policy. A resident, staff member or visitor is able to make a report about a College Council Member under this policy.



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## Disclosure

A disclosure involves the sharing of information about an incident of sexual assault or sexual harassment with another person. Disclosures can be made to anyone and are usually made to a person who is known and trusted.

## Formal Report

A formal report refers to a person making a formal statement about sexual assault or sexual harassment to a College staff member who has authority to take action. At Burgmann this person is the Principal, Deputy Principal or College Dean.

## Notifier

A notifier is a person who makes a “third party” disclosure or formal report. This person needs to be aware that the College’s response is limited without a formal report from the complainant and when there is doubt about the wishes of the complainant.

## Outside Community Member

A person who is not a College resident or a visitor may make a report about the behaviour of a College resident. In these cases, the matter may be dealt with under this policy (Sexual Harassment and Assault Policy) or under the Burgmann College Appeals and Grievance Policy, at the discretion of the Principal.

## Privacy Act

The *Privacy Act 1988 (Cth)*, permits the College to disclose personal information about someone to a party outside the College or University where, inter alia:

- a. a person consents in writing to their personal information being disclosed; or
- b. the College believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person. The Principal will decide who may be informed of this serious or imminent threat to the resident.

If a complaint leads to a criminal investigation by the Police, they are able to request access to any information collected by the College.

## Resident

A Resident of the College is a current member of the Burgmann community who is residing at the College. This is the person who signs the residential accommodation contract and lives at the College; it is not based on the person who is paying the fees.

## Revenge Porn

Revenge Porn is the revealing of sexually explicit images, videos or audios of a person or text about a person posted on the internet (or other public or private forum) without the consent of the subject of the material and aims to cause them distress or embarrassment. The distribution of revenge porn is a criminal offence.

## Sexual Assault

Sexual Assault occurs when a person engages in any sexual activity or contact with another person without the consent of that person. The accused must have known, ought to have known, or been



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indifferent to the fact that the other person was not consenting. Intoxication is not a defence to sexual assault. Sexual assault is a criminal offence.

## Sexual Consent

A person gives consent when they freely, actively, and voluntarily agree to sexual activity with another person and it is communicated by saying or doing something. Consent to participate in a sexual act is not to be presumed; every person has a right to choose not to participate in a sexual act and a consensual sexual act involves ongoing and mutual communication and decision-making by the people participating in the sexual act.

Consent can only be given by a person of the age of consent who is in a fit state to do so. Intoxication may impair a person's ability to give consent. Consent cannot be given where there is coercion or force. Giving consent to one form of sexual activity does not mean that consent has been given to any other form of sexual activity. Consent can be revoked at any time.

## Sexual Harassment

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature in circumstances where a reasonable person would have anticipated the possibility that the person being harassed would be humiliated, intimidated or offended.

Harassment behaviours are intentional, often repetitious and can be overt or subtle and come in many forms. These forms include:

- Verbal – such as telephone calls with sexual overtones, unwelcome enquiries regarding a person's sex life, continuous rude or sexist jokes or remarks, remarks about a person's figure.
- Non-verbal – such as gestures with sexual meanings, leering, voyeurism, continuous and unwelcome flirtation, deliberately brushing up against another person.
- Visual – such as exhibiting pornographic photos, comics, objects that create a hostile environment.
- Quid pro quo – this involves sexual bribery.
- Technology Facilitated – see definition below.

## Sexual Misconduct

Sexual Misconduct is a broad term encompassing any unwelcome behaviour of a sexual nature including sexual assault, sexual harassment, an act of indecency, making or distributing sexually explicit photos or videos without consent, and any other non-consensual sexual conduct if a reasonable person would consider that conduct to be an invasion of their privacy, indecent or otherwise unacceptable conduct.

## Sexual Violence

Sexual violence is a generic term that covers both sexual assault or sexual harassment.

## Technology Facilitated Sexual Violence (TFSV)

TFSV is the use of technology to communicate sexually explicit material that is unwelcomed and likely to humiliate, denigrate or give offence to a person. This includes the misuse of online forms of communication or social media to send sexually explicit material. Some examples of this would be the use of mobile phone, Snapchat, email or the internet without the consent of the subject; the



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use of Facebook groups to promote rape-supportive attitudes; the posting of degrading, sexually based comments or audio about residents, students and university or college staff; the use of online dating sites to procure a sexual assault, the use of revenge porn.

## The Pastoral Care Team

The Pastoral Team at the College is the group of resident leaders who have responsibility for monitoring the wellbeing of the residents. This team consists of the Residential Advisors (RAs) and is led and supervised by the College Dean with the support of the Deputy Principal and Principal.

## The Residential Staff Team

The Residential Staff Team of the College relates to the staff with responsibilities in the area of Student Services, namely the Principal, Deputy Principal and the College Dean. In some cases, where there is an overlap of responsibilities it may include the Manager of Residential Services and the Business Manager.

## Victim / Survivor / Complainant

The term victim refers to someone who has recently been personally affected by sexual violence. The term survivor refers to someone who has gone through the recovery process following an experience of sexual assault or harassment. The College seeks to help any victim become a survivor, but for the purpose of this policy unless specifically required they will both be called a complainant.

## Visitor (Guests & Alumni)

A visitor is a family member or friend (non-resident) invited into the College or to a College event by a resident or staff member of the College. This visitor is required to abide by the ethos and policies of the College. The College resident or staff member who invited the visitor is responsible for their actions while they are at the College or College event and have responsibility for the consequences of any misconduct of their guest. Residents and staff members are expected to accompany their guest in public areas of the College. A visitor is able to make a report about a College resident or staff member under this policy.

## Voyeurism

The practice of gaining sexual pleasure from watching others when they are naked or engaging in sexual activity, without the consent of the people being observed.

## **4. Principles**

4.1 Burgmann College at The Australian National University is committed to providing an environment of safety, respect and dignity for all members of the College community, together with guests, contractors and the general public who may be present.

4.2 The College recognises that the impact of sexual violence can be profound and that these actions by staff, guests / visitors or residents are the antithesis of the College's values. Sexual assault is a crime that disempowers the victim and is an abuse of power.

The College's response aims to:

- Minimise the number of times a complainant needs to recount a traumatic experience.
- Empower the complainant to give them some control over the process.



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- 4.3 All Residential Staff of the College and the Pastoral Care Team will have access to training and support in receiving a disclosure, the College's management of critical incidents and serious matters and in the College reporting process.
- 4.3.1. The Principal and Deputy Principal are responsible for the management of 'critical incidents' and 'serious matters', and in receiving formal reports with additional assistance being sought from other trained professionals, services and staff as appropriate.
- 4.3.2 Members of the Pastoral Care Team are likely to receive disclosures, but they are not responsible for the management of these situations and their role is to assist the Residential Staff Team to seek information and identify those involved where appropriate and to provide limited support to individual residents.
- 4.4 The College will be guided by the principles of compassion, providing support, protecting confidentiality and privacy, supporting cultural needs and fairness. This requires the College to ensure that all parties (complainant, alleged perpetrator and witnesses) have fairness in the Colleges procedures. It will seek to ensure the safety of all parties against victimisation and retaliation threats.
- 4.5 The College Policy and Procedures will be:
- Accessible – The Policy and Procedure will be placed on the College website; a summary will be made available to all residents – in both the handbook and on the College website (Attachment B).
  - Transparent – The complainant and alleged perpetrator will be updated, as appropriate, on the process at various key points.
  - Expeditious – The determination of the complaint will be carried out as quickly as possible during business hours.
  - Fair – Fairness requires all parties to be able to present their version of any incident and provide witnesses to support their version of the incident. The decision made will then take into account all the information available and will be a reasonable decision on the basis of this evidence.
- 4.6 Support to all parties involved – complainant, alleged perpetrator, witnesses, first responders and any others affected by the disclosure will be a priority of the College.

## 5 Policy Statement

- 5.1 Harmonious community life in College depends on the respectful, cooperative conduct of individual residents. Burgmann College is committed to ensuring that residents, guests/visitors and staff are treated with integrity, respect, fairness and justice. It seeks to ensure that residents, visitors and staff are able to live and work in a safe environment.
- 5.2 Burgmann College emphasises individual freedom and growth on the one hand and collegiate commitment, responsibility and contribution on the other. All residents are asked to maintain a balance between enjoyment of personal freedom and respect for the freedom of others; between creative individualism and collegiate cooperation, and respecting others' privacy. That balance is central to the College's origins and is



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fundamental to its continuing progress. Furthermore, residents have the right to express and defend ideas and opinions. However, this right is restricted and does not apply to “hate or derogatory speech”, racist or sexist language. Residents and staff have the right to live, study, work and participate in all aspects of life in the College and on the ANU campus in a happy and safe environment free from the threat of sexual harassment and assault.

5.3 At the same time, all residents have responsibilities:

- Not to be involved in any behaviour associated with sexual violence or that is likely to lead to sexual violence.
- Not to be a passive bystander when others may be involved in sexual violence.
- To work with and assist the College to stamp out all issues related to sexual violence.
- To take responsibility for their actions and accept that these actions have consequences.

5.4 In this area, prevention of sexual violence is the primary objective of the College and resident leaders. This is achieved through the leadership of all members of our community to contribute to a culture that opposes sexual violence. Community members are expected to be active bystanders who challenge inappropriate behaviour by limiting activities that might lead to incidents of sexual violence and by ongoing education.

5.5 Critical and serious matters such as sexual assault and sexual harassment will not be tolerated under any circumstances. These sexual violence behaviours are expressly prohibited at Burgmann College. The College will take action against any resident, guest/visitor or staff member who is found to have breached this policy. In some circumstances, and preferably in line with the survivor’s wishes, the issue may also be passed on to the Police and/or the ANU.

5.6 All residents are able to access internal (within the College), semi-internal (within ANU) and external (medical, legal, psychological etc) options when dealing with any form of sexual violence.

5.7 The level of response required to a critical incident or serious matter will depend on the severity of the critical incident or serious matter and the level of risk to the Burgmann College community. The College’s response will be adapted, within the parameters of this policy and other relevant College policies to adjust to the characteristics of each incident to ensure that its processes are sensitive, fair, timely and run in a confidential manner. This process also seeks to:

- Provide the complainant will some level of control over the College process,
- Meet the needs of each individual involved,
- Provide fairness to all parties involved in the incident,
- Support all parties involved.

5.8 When the issue of sexual violence involves an outside community member:



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- 5.8.1 If the complaint is made by a resident against an outside community member, the College will support the complainant as per this policy and assist them to make a complaint to the Police or the any relevant outside organisation including the ANU.
- 5.8.2 If the complaint is made by an outside community member against a resident the matter will not be dealt with under this policy.
  - If the matter is dealt with by the Police the role of the College will be to support the resident as they move through the Police Investigation phase.
  - If the outside community member asks for the College to deal with the complaint against a resident then it will be dealt with under the *Burgmann College Appeals and Grievance Policy*.

## 6 Review

This document will be reviewed as needed, with the next review date being no later than November 2024.

### ATTACHMENT A: DIFFERENCE BETWEEN THE CRIMINAL SYSTEM & COLLEGE PROCESSES

It is important to differentiate between College policies and the process involved in the criminal justice system. There is a fundamental difference between a criminal process and the College's process in that the judicial system seeks to determine if there is enough evidence to support a criminal charge and then determine if a person is guilty of committing a crime. On the other hand, College processes seek to ensure people involved in issues of sexual violence receive pastoral care, and to determine if there has been a breach of College policy and if so, if misconduct has occurred.

1. As such, there is a difference in the information that is considered:
  - a. The College interviews the people involved, including anyone who may have seen what happened and it may use any available CCTV footage.
  - b. The criminal system collects all available evidence including, expert witnesses and medical evidence.
2. A further difference is that:
  - a. The College disciplinary processes use the criteria of fairness and reasonableness to all parties,
  - b. While the justice system uses the criteria of "beyond reasonable doubt".
3. Depending on the process followed:
  - a. The College process is an internal process between those involved and the College, whereas,
  - b. The criminal law process occurs in the public domain, particularly if it reaches the courts.
4. The outcome of the processes also differ:
  - a. The College process could see decisions which range from no action up to expulsion from the College, whereas,
  - b. The criminal law process could see penalties from acquittal up to imprisonment.



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## **ATTACHMENT B: SEXUAL VIOLENCE POLICY SUMMARY**

### **Do you want to report an instance of Sexual Violence that has occurred at Burgmann College?**

Sexual violence, including sexual assault and sexual harassment, are crimes that involve the abuse and imbalance of power and control. Survivors are entitled to the opportunity to seek empowerment and regain autonomy through a process of action.

The College (and University) along with the Pastoral (RA) team are here to support survivors to regain their autonomy. The College fosters an environment in which survivors can feel empowered and safe in reporting any instances of sexual harassment or sexual assault, and ensure that the process is made as transparent and fair as possible.

#### What can you do?

You can talk to:

- A Residential Advisor, or
- The College Dean, Deputy Principal or Principal, or
- An outside organisation such as the ANU Student Safety and Wellbeing Team, ANU Counselling, the Canberra Rape Crisis Centre or the Police.

You can read information:

- Canberra Rape Crisis Centre's webpage: <http://www.crcc.org.au/resources.aspx>

#### What will your RA do?

Listen in a supportive, and non-questioning manner. RAs are trained as first responders, to listen and provide information about the options available to you. These options may include counselling, medical support, reporting it to the College and/or reporting it to the Police. The RAs are required to report incidents to the Principal, Deputy Principal or College Dean – however, these reports can be made anonymously. It is up to the survivor how much information is shared. If you meet with the College Dean, Deputy Principal or Principal, an RA (or a friend) can accompany you as a support person.

#### What will the College do?

The College process is designed to:

- Ensure your immediate safety, especially when the alleged perpetrator is also at College
- Assist you to obtain counselling, medical assistance or in reporting to the police
- Guide you to other services that can also assist you such as the Canberra Rape Crisis Centre
- Support your ongoing wellbeing and assist you when needed
- Assist you with any impact this has on your academic studies
- Assist you in lodging a report to ANU if the alleged perpetrator is another ANU student

The College strongly believes that everyone has the right to live and work in an environment free from sexual violence and harassment. Where the alleged perpetrator is also a resident of the College, the College may initiate a disciplinary action against the alleged perpetrator in the interests of community safety.

By accepting a Burgmann College Accommodation Agreement, residents accept and agree to abide by all of the terms and conditions of Burgmann College's Policies and Procedures. Residents should contact the College for further clarification if required.