

## Sexual Assault, Sex Discrimination and Sexual Harassment Policy

Approved by: Chief People Officer

Content Manager Number: PROJ24/406

Approval date: 01 March 2024

### Section 1. TAFE NSW Commitment

1. TAFE NSW ('TAFE') is committed to a safe, inclusive, and respectful environment that is free from sexual assault, sex discrimination and sexual harassment (including sex-based harassment).
2. TAFE does not tolerate sexual assault, sex discrimination or sexual harassment under any circumstances. TAFE has a legal obligation to eliminate this conduct, as far as possible. To achieve this objective, TAFE is committed to:
  - a. Providing workers with a safe working environment.
  - b. Preventing sexual assault, sex discrimination and sexual harassment by raising awareness and promoting respectful behaviour, including consent awareness campaigns, and providing information about support services.
  - c. Educating students and staff on the types of behaviours that are prohibited so that everyone understands their rights and responsibilities.
  - d. Creating a culture which supports our students and staff to disclose and report sexual assault and sexual harassment by having safe, supportive, and fair procedures to report and investigate complaints.
  - e. Providing simple and accessible avenues to disclose and report sexual assault and sexual harassment.
  - f. Applying a person-centred trauma informed approach when responding to sexual assault and sexual harassment incidents and providing support mechanisms to all staff and students involved in a complaint of sexual assault, sex discrimination or sexual harassment.
  - g. Taking appropriate action against staff and students who have breached this policy.
  - h. Regularly reviewing prevention measures and the systems for responding to incidents of sexual assault, sex discrimination and sexual harassment.

### Section 2. Audience

1. This policy applies to all staff, students and contractors providing goods or services to TAFE must comply with this Policy.
2. Where this Policy refers to 'students', this means all individuals enrolled in TAFE courses including as students, apprentices or trainees in schools, colleges, workplaces, or programs conducted by TAFE.

### Section 3. Principles

1. Responses to sexual assault, sex discrimination or sexual harassment will follow a 'trauma informed' approach. A trauma informed approach aims to respond to sexual assault, sex discrimination and sexual harassment in a way that focuses on the impact of trauma, empowers, and offers choice to those who experience sexual assault, sex discrimination or sexual harassment and prioritises the physical, psychological, and emotional safety of all parties involved.
2. This Policy applies to incidents of sexual assault, sex discrimination and sexual harassment:
  - on TAFE campuses or other places where study, work or work-related learning is undertaken as part of a TAFE activity (e.g. placements);
  - in virtual spaces (e.g. online forums or platforms) arranged or facilitated by TAFE; and
  - where staff or students are representing or affiliated with TAFE.

### Section 4. Policy requirements

All complaints of sexual assault, sex discrimination and sexual harassment will be taken seriously, treated with respect, and dealt with confidentially.

#### 4.1 Where and how sexual assault, sex discrimination and sexual harassment may occur

1. Sexual assault is a criminal offence which may be referred to the police for investigation.
2. Sex discrimination and sexual harassment of students by TAFE staff is unlawful, as is sex discrimination or sexual harassment of staff by students. It is also unlawful for a TAFE staff member to discriminate or harass another staff member on the basis of sex.
3. Sex discrimination and sexual harassment and related conduct that creates a hostile workplace environment on the ground of sex may have underlying drivers, such as gender inequality.
4. Sexual assault, sex discrimination or sexual harassment can also affect someone who is exposed to it or witnesses it, even when they were not the target of the assault, discrimination, or harassment.

#### 4.2 Who can experience sexual assault, sex discrimination and sexual harassment?

1. TAFE recognises that while anyone may be subject to sexual assault, sex discrimination or sexual harassment, the experiences and needs of certain groups of people may differ. These may include:
  - a. children and young people
  - b. those with a disability
  - c. those who identify as Aboriginal and Torres Strait Islander
  - d. those from the LGBTIQ+ community
  - e. those who are gender diverse
  - f. those from culturally and linguistically diverse backgrounds.
2. TAFE will provide appropriate support and assistance to meet the needs of those who experience sexual assault, sex discrimination or sexual harassment.

3. Students and staff members who wish to disclose or report sexual assault, sex discrimination or sexual harassment in their native language can ask TAFE for assistance with interpreter services.

#### **4.3 Sexual assault, sex discrimination and sexual harassment in unequal relationships**

1. TAFE understands that sexual assault, sex discrimination or sexual harassment can occur in unequal relationships, including between staff and students.
2. TAFE recognises that power dynamics can make people feel they cannot come forward when sexual assault, sex discrimination or sexual harassment occurs in an unequal relationship.
3. TAFE is committed to ensuring all disclosures and reports of sexual assault, sex discrimination or sexual harassment are dealt with confidentially and fairly, regardless of who is involved. Disclosures and reports of sexual assault, sex discrimination or sexual harassment can also be made anonymously if the person feels more comfortable to do so.

#### **4.4 What are the impacts of sexual assault, sex discrimination and sexual harassment?**

1. Sexual assault, sex discrimination or sexual harassment can cause physical and/or psychological harm to the person it is directed at and anyone who is exposed to or witnesses the behaviour.
2. Sexual assault, sex discrimination, sexual harassment including conduct that creates a hostile workplace environment on the ground of sex and victimisation, are unlawful and unacceptable. TAFE NSW has a legal obligation to eliminate this conduct, as far as possible.
3. A person who has experienced sexual assault, sex discrimination or sexual harassment may display a range of emotions and behaviours including shock, fear, confusion, feeling numb, feelings of guilt, responsibility, withdrawal, denial or disbelief, agitation, distress, and anger, or not express any emotion and appear calm.
4. Sexual assault, sex discrimination or sexual harassment can lead to:
  - a. feelings of isolation, social isolation, or family dislocation
  - b. loss of confidence and withdrawal
  - c. physical injuries
  - d. stress, depression, anxiety, and post-traumatic stress disorder
  - e. negative impacts on a person's job or study
  - f. suicidal thoughts.

### **Section 5. Responsibilities**

1. TAFE students must treat others with respect and comply with the requirements in this Policy and the TAFE NSW Student Guide.
2. TAFE staff must comply with the standards of behaviour and conduct outlined in the TAFE NSW Code of Conduct. TAFE staff must take appropriate measures to protect the safety of TAFE staff and students and comply with the requirements in this Policy and the TAFE NSW Code of Conduct.

## 5.2 Disclosing and reporting sexual assault, sex discrimination and/or sexual harassment

1. Formal and informal options are available to all TAFE staff and students who experience sex discrimination, sexual harassment, or assault.
2. When a TAFE staff member or student makes a disclosure of sexual assault, sex discrimination or sexual harassment, they will be:
  - a. listened to without judgment, with empathy and compassion
  - b. informed of the support services available to them, including specialist counselling and medical care, and how to access them
  - c. asked whether they are comfortable for the person receiving the disclosure to make notes of the discussion
  - d. advised of the internal and external reporting options available to them if they wish to take the matter further.
3. Experiences of sexual assault, sex discrimination or sexual harassment can be disclosed to TAFE informally by sharing information about the incident to a TAFE staff member (such as a teacher) or TAFE NSW student counsellor.
4. There are no time limits on making a disclosure of sexual assault, sex discrimination or sexual harassment to TAFE.

## 5.3 Making a complaint or formal report of sexual assault, sex discrimination and/or sexual harassment

1. All TAFE staff and students can make a formal report about sexual assault, sex discrimination or sexual harassment if:
  - a. they would like TAFE to take specific action; and
  - b. the report is about the conduct of a TAFE staff member or student.
  - c. Complaints or formal reports of sexual assault, sex discrimination and/or sexual harassment can be made by:
    - d. calling the TAFE NSW Incident Hotline 1800 316 600, or
    - e. by completing a WHS Incident Report Form, or
    - f. by speaking with a TAFE teacher, student counsellor, manager or People and Culture Business Partner.
2. Complaints or formal reports of sexual assault or sexual harassment will be dealt with in accordance with applicable TAFE policy.

## 5.4 Anonymous disclosure or reporting of sexual assault, sex discrimination and/or sexual harassment

1. TAFE staff and students have the option to make disclosures or reports of sexual assault, sex discrimination and/or sexual harassment anonymously.

2. While TAFE respects the decision of any staff member or student to disclose or report sexual assault, sex discrimination and/or sexual harassment anonymously, in some circumstances this may limit TAFE's ability to address and take action in relation to the matter.

### **5.5 Reporting to the police or another external agency**

1. Any student or staff member who has been sexually assaulted or sexually harassed is encouraged to report the incident to the police.
2. For more information, please see the TAFE Staff Guide on How to disclose or report sexual assault, sex discrimination or sexual harassment connected to TAFE NSW or the TAFE Student Guide on How to disclose or report sexual assault, sex discrimination or sexual harassment connected to TAFE NSW.
3. Students and staff members can choose to report sex discrimination to Anti-Discrimination NSW or to the Australian Human Rights Commission.
4. TAFE will respect a student or staff member's choice as to whether or not they report the matter to the police or another external agency. Support and assistance will be provided to the student or staff member regardless of their decision.

### **5.6 Mandatory reporting**

1. In some circumstances, TAFE is required by law to report incidents of sexual assault to the police or other government agencies. This will be explained to the student or staff member at the time the disclosure or report is made.

### **5.7 Breaches of the policy**

1. Disciplinary action will be taken against any TAFE staff member or student who is knowingly involved in a breach of this Policy.
2. If a TAFE student is in breach of this Policy, action under the Student Conduct and Discipline Policy may occur.
3. If a TAFE staff member is in breach of this Policy, action under the Guidelines for the Management of Conduct and Performance – NSW TAFE Commission Staff, may occur.
4. Breaches of this Policy may amount to criminal offences or offences against state or federal laws which may result in other actions being taken by relevant authorities.

### **5.8 Interim measures**

1. The safety and wellbeing of a student or staff member who discloses or reports sexual assault, sex discrimination or sexual harassment is paramount.
2. TAFE may implement interim measures to reduce the risk of potential harm to a staff member or student following the disclosure or report of sexual assault, sex discrimination or sexual harassment.
3. If the matter has been reported to police, interim measures may involve consultation with the police.

## 5.9 Prevention

1. TAFE recognises that raising awareness and promoting respectful behaviour is key to preventing sexual assault, sex discrimination and sexual harassment. TAFE is committed to ensuring students and staff know their rights and responsibilities and encourages students and staff to disclose and report breaches of this Policy.
2. The ways in which TAFE works towards preventing sexual assault, sex discrimination and sexual harassment in the TAFE community include:
  - a. identifying and managing risks of occurrence, including by applying TAFE's Work Health & Safety Risk Management Procedure
  - b. raising staff and student awareness of this Policy and the relevant procedures
  - c. consent awareness campaigns
  - d. ensuring information about support services is widely available
  - e. regular reviews of the systems and processes in place for responding to incidents of sexual assault, sex discrimination and sexual harassment; and
  - f. taking appropriate action against staff and students who are found to have engaged in behaviour in breach of this Policy.
3. Measures to monitor, respond to and prevent sexual assault, sex discrimination and sexual harassment at TAFE will be set out in a Prevention and Response Plan reviewed annually.

## Section 6. Monitoring

The use, effectiveness and efficiency of this policy is reviewed annually based on the effectiveness of TAFE's prevention and response activities and will be reported to TAFE NSW's governance committees to identify enhancements to TAFE's approach.

## Section 7. Support

A range of support from TAFE NSW is available for staff and/or or students who are impacted, either directly or indirectly, by sexual assault, sex discrimination or sexual harassment.

There are a number of external organisations and agencies which can also provide immediate and ongoing support. For more information, please see the TAFE Staff Guide on How to disclose or report sexual assault, sex discrimination or sexual harassment connected to TAFE NSW or the TAFE Student Guide on How to disclose or report sexual assault, sex discrimination or sexual harassment connected to TAFE NSW.

## Section 8. Governance information

Governance	Details
Legislation, regulations, and standards	<p>This policy is governed by:</p> <ul style="list-style-type: none"> <li>- Sex Discrimination Act 1984</li> <li>- Anti-Discrimination Act 1977</li> <li>- Fair Work Act 2009</li> <li>- Government Sector Employment Act 2013</li> <li>- Work Health &amp; Safety Act 2011</li> <li>- Public Service Commissioner Direction No 1 of 2023</li> </ul>
Related procedures	<p>This policy has relevance to the following procedures:</p> <ul style="list-style-type: none"> <li>- How Do I Guide Staff – How to disclose or report sexual assault, sex discrimination or sexual harassment connected to TAFE NSW</li> <li>- How Do I Guide Students – How to disclose or report sexual assault, sex discrimination or sexual harassment connected to TAFE NSW</li> <li>- Anti-Discrimination Equal Opportunities at TAFE NSW Procedure</li> <li>- WH&amp;S Risk Management Procedure</li> <li>- Managing Unreasonable Conduct Procedure</li> <li>- Preventing and Resolving Unacceptable Workplace Behaviour</li> <li>- TAFE Staff Guide - How to disclose or report sexual assault, sex discrimination or sexual harassment connected to TAFE NSW</li> <li>- TAFE Student Guide - How to disclose or report sexual assault, sex discrimination or sexual harassment connected to TAFE NSW.</li> </ul>
Related policies	<p>This policy is to be read together with:</p> <ul style="list-style-type: none"> <li>- Code of Conduct</li> <li>- Staff Complaints Policy</li> <li>- Customer Complaints Policy</li> </ul>
Accountable Officer	Chief People Officer
Responsible Officer	Director Workforce Alignment or Director Workplace Relations
Content Manager number	PROJ24/406
Next review date	01/03/2027

## Section 9. Definitions

Word	Meaning
Sex-based assault, sexual assault	<p>The term 'sex-based assault' is used to describe a range of sexual offences, from showing indecent images to another person, to kissing or touching them, as well as penetration of the person's body with a body part or object.</p> <p>Sex-based assault is grouped into different types of offences:</p> <ol style="list-style-type: none"> <li>1. Sexual acts: doing an act of a sexual nature with or towards another person without their consent, or making another person do an unwanted act of a sexual nature. This includes: <ol style="list-style-type: none"> <li>a. a person showing another person their genitals ('flashing')</li> <li>b. a person sending another person an unwanted still or moving image of their own or someone else's genitals</li> <li>c. making a person show another person their breasts, bottom, or genitals</li> <li>d. masturbating in front of another person</li> <li>e. pretending to masturbate in front of another person.</li> </ol> </li> <li>2. Sexual touching: kissing or touching a person's body in a sexual manner, without their consent. This includes unwanted touching of a person's breast, bottom, or genitals over the top of or under clothing that does not penetrate in any way.</li> <li>3. Sexual assault: sexual intercourse (any form of penetration of the vagina, anus or mouth with another person's body part or object) without consent.</li> <li>4. Aggravated Sex-based assault: sexual intercourse without consent in circumstances of aggravation, for example if: <ol style="list-style-type: none"> <li>a. they physically hurt or threaten to hurt the person</li> <li>b. the victim-survivor is under 16 years of age</li> <li>c. they use a weapon during the sex-based assault</li> <li>d. other people are present and/or involved in the sex-based assault</li> <li>e. the victim-survivor has a severe disability</li> <li>f. the abuser is an authority figure like a teacher, carer, or religious leader.</li> </ol> </li> <li>5. Consent: Sexual consent is when a person freely and voluntarily agrees to have sex or engage in any kind of sexual activity. A person cannot consent if they lack the capacity to understand what is taking place because of a cognitive disability, or because they are under 16. A person also cannot consent if they are: <ol style="list-style-type: none"> <li>g. asleep or unconscious</li> <li>h. significantly affected by drugs or alcohol</li> <li>i. intimidated, coerced, or threatened</li> <li>j. held against their will</li> <li>k. tricked or under a mistaken belief about the identity of the other person</li> </ol> </li> </ol>



Word	Meaning
<p>Sexual harassment, sex-based harassment</p>	<p>Sexual harassment or sex-based harassment is any unwelcome and uninvited behaviour of a sexual nature (whether verbal, non-verbal, physical, written, or visual) which offends, humiliates, or intimidates someone. Examples of sexual harassment or sex-based harassment include:</p> <ul style="list-style-type: none"> <li>a. sexually suggestive comments or jokes</li> <li>b. sexual innuendo</li> <li>c. sexual propositions</li> <li>d. intrusive questions or inappropriate comments about a person’s private life or physical appearance</li> <li>e. inappropriate staring or leering at a person or their body parts</li> <li>f. sexually explicit text messages, images, phone calls or emails;</li> <li>g. displays of sexually graphic material including pornography; and</li> <li>h. sex-based assault.</li> </ul> <p>Sexual harassment or sex-based harassment involves factors such as:</p> <ul style="list-style-type: none"> <li>a. the conduct is unwelcome</li> <li>b. the conduct is sexual, of a sexual nature or involves a sexual advance</li> <li>c. sexual harassment or sex-based harassment does not need to be repeated and it can be a one-off incident</li> <li>d. there only needs to be a possibility that a reasonable person in the circumstances would feel offended, humiliated, or intimidated by the behaviour</li> <li>e. just because the person does not object to the harassing behaviour at the time, does not mean they agree with the behaviour or that it is not sexual harassment or sex-based harassment.</li> </ul> <p>Anyone can be a victim of sexual harassment or sex-based harassment, regardless of their gender and the gender of the harasser. Sexual harassment or sex-based harassment is unlawful under various federal and state laws including:</p> <ul style="list-style-type: none"> <li>a. the Sex Discrimination Act 1984 (Cth)</li> <li>b. the Fair Work Act 2009 (Cth)</li> <li>c. the Anti-Discrimination Act 1977 (NSW).</li> </ul> <p>Sexual harassment or sex-based harassment is not behaviour which is based on mutual attraction, friendship, and respect. If the interaction is consensual, welcome, and reciprocated, it is not sexual harassment or sex-based harassment.</p>
<p>Sex-based harassment</p>	<p>Sex-based harassment is defined as unwelcome conduct of a seriously demeaning nature by reason of the person’s sex in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.</p>

Word	Meaning
Sex discrimination	<p>Sex discrimination in employment occurs when someone is treated less favourably than a person of the opposite sex would be treated in the same or similar circumstances. It can occur when employers or managers hold assumptions about what sort of work women are capable – or not capable – of performing.</p> <p>Examples of sex discrimination could include:</p> <ul style="list-style-type: none"> <li>- not hiring a woman because the employer thinks she won't fit into a 'traditionally' male workplace</li> <li>- not paying a woman the same salary as a man for doing the same work, or not providing the same opportunities for training, mentoring or promotion</li> <li>- allocating work tasks based on a person's sex.</li> </ul>
Conduct that creates a hostile work environment on the ground of sex and victimisation	<p>A person (the first person) will subject another person (the second person) to a workplace environment that is hostile on the ground of sex if the first person engages in conduct in a workplace where the first person or the second person (or both) work, the second person is in the workplace at the same time or after the conduct occurs, and the conduct is found to contravene a 'reasonable person' test. This test considers whether, having regard to all the circumstances, a reasonable person would have anticipated the possibility of the conduct resulting in a workplace environment being offensive, intimidating or humiliating to a person of the sex of the second person, by reason of the sex of the person or a characteristic associated with the sex of the person.</p>

## Section 10. Document history

No.	Effective	Approved by	Amendment
1	01 March 2024	Chief People Officer	Version 1 – Initial creation