SEXUAL ASSAULT AND SEXUAL HARASSMENT PREVENTION AND RESPONSE POLICY

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SECTION A - INTRODUCTION

A.1 Purpose

This Policy details the commitment of the South Australian Institute of Business and Technology (SAIBT) and the Centre for English Language in the University of South Australia (CELUSA) to provide an outstanding student and staff experience that is founded on a safe, inclusive and respectful study and work environment.

A.2 Scope

This policy covers staff and all prospective and current students of the:

- South Australian Institute of Business and Technology (SAIBT)
- Centre for English Language in the University of South Australia (CELUSA)

A.3 Definitions

Word/Term	Definition
College	South Australian Institute of Business and Technology (SAIBT/CELUSA) University of South Australia, City East Campus, North Terrace, Adelaide SA 5000.
College Community	All staff and students who either work for, or are studying in one of the colleges or campuses either by a staff member or student of a college business unit or a third-party
Critical Incident Management Team	The team formed by the College/Campus Director to oversee the management of complaints of sexual assault and/or harassment made by: students or against students; staff or against staff; contractors or third-parties.
Complaint	A verbal or written communication from a member of the College's community who believes they have experienced sexual assault or sexual harassment, either by a staff member or student of a College business unit or a third-party. A complaint may take the form of either disclosure of an incident of sexual assault and or harassment, or a report of an incident of sexual assault and/or harassment.
Complainant	A member of the College's community who has made a complaint. A complainant may choose to disclose or report an incident of sexual assault and/or sexual harassment.
Confidentiality	The principle upheld to ensure that information provided under this policy is only disclosed to those legitimately involved in resolving the complaint, providing support to a complainant, or as required by law. Confidentiality must be maintained to: • respect the privacy of individuals; • prevent victimisation or defamation of the parties involved; and/or, • facilitate prompt resolution of the complaint.

Consent to Sexual Activity	Whilst definitions for consent to sexual activities also vary between jurisdictions, consent is essentially an agreement between people to engage in a sexual activity. Other important elements of consent are that it is mutual, freely given, informed, certain and clear, enthusiastic, reversible, specific and required throughout the activity. The free and voluntary agreement to engage in sexual activity of any kind. Consent is the act of willingly agreeing to engage in sexual activity of any kind (including for instance flirtation, ribald humour and joking) and requires that a person be able to freely choose between two options: **yes**, and **no**. **Some examples of where consent IS NOT CONSIDERED to have been given are**: • Consent has been expressed or compelled by the words or conduct of a person other than the complainant; • The complainant was incapable of consenting to the sexual activity if they were asleep, unconscious or intoxicated by alcohol or any other substance or combination of substances to the point of being incapable of giving free and voluntary consent to sexual activity; • Physical force, threats of harm, an express or implied threat to degrade, humiliate, disgrace or harass the person or some other person; or unlawful detention where used by the respondent to engage the complainant in sexual activity; • The respondent induced the complainant to engage in the activity by abusing a position of trust, power or authority; • The complainant expressed, by words or conduct, a lack of consent to engage in the sexual activity; • The complainant, having previously consented to engage in sexual activity, expresses by words or conduct, a lack of consent to continue to engage in the sexual activity; • The complainant agreed to engage in sexual activity with a person under a mistaken belief as to the identity of that person; • The complainant is mistaken about the nature of the sexual activity (for example the person may be told that activity of a sexual nature is part of the provision of health care); and/or, • The respondent was recklessly indifferent as to whether the complainant consented to sexual activity or withdrew consent to sexual activity.
Disclosure	A form of complaint occurring when a **complainant** or another person tells someone about an incident, or a suspected incident, of sexual assault and/or harassment, directed towards them, or a member of the College's community. **Disclosing is not the same as reporting** but will enable referral of the complainant to appropriate support and information about their choices and options with regard to medical, legal and counselling support. Permission should be sought from the complainant before any disclosure of the incident or further action is taken
First Responder	1. A member of the College's community who, as part of their substantive duties, may provide appropriate support and information to anyone who has been subjected to sexual assault and or sexual harassment. 2. The College recognises that students and/or staff may disclose or report to a member of the College's community who is not a designated first responder. In such instances any member of the College's community should support the complainant in accessing and

	talking with a trained first responder. 3. Details of first responders are available on the website.
Investigator	An individual tasked with investigating a complaint. The person appointed as an investigator will be skilled in investigation and any conflict of interest will be avoided.
Managers	Those persons whose role title includes the words Director and or Manager e.g. Director of Student Support Services or Director of Academic and Support Services, or Manager Quality, Risk and Compliance.
Procedural fairness (sometimes called 'Natural Justice')	That a process has been developed that is subject to the following principles: • all parties must be given an opportunity to present their case; • the respondent must be provided with notice and information about allegations made against them and information about their rights to advocacy; • the respondent must be given a reasonable timeframe within which to respond; • the decision maker must: ▪ act fairly and without bias; ▪ declare any conflict of interest; ▪ consider all relevant evidence; and, ▪ base any decision on evidence that supports it; • all parties must be informed of the decision relating to the complaint, and the reasons for that decision
Protected characteristics	Characteristics such as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, defined in law to protect impacted students and staff from discrimination, bullying and harassment.
Report	A form of complaint and occurs when a member of the College's community expresses the desire to formally report an incident of sexual assault and/or harassment, for the purpose of initiating an investigation.
Respondent	A member of the College's community who has been accused of sexual assault and/or harassment.
Sexual Assault	1. An inclusive term used to describe any type of unwanted sexual act inflicted upon a person that they have **not freely and voluntarily consented to, have withdrawn consent to, or occurs in circumstances where they are incapable of giving free and voluntary consent.** It is inclusive of a variety of unwanted sexual behaviours a person may be subjected to, ranging from activities such as unwanted sexualised touching through to sexual intercourse without consent. 2. Sexual assault can include sexual behaviours that involve the use of force, threats, coercion or control towards a person. 3. Sexual assault typically involves an exploitation of vulnerability, betrayal of trust and the misuse of positional power.
Sexual Harassment	An unwelcome sexual advance or request for sexual favours or conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would anticipate that reaction in the circumstances. Sexual harassment includes, but is not limited to: • any deliberate and unsolicited sexual comment, the use of overt sexual language, suggestive or physical contact that creates an uncomfortable learning/working environment for the recipient and is made by a person who knows, or ought reasonably to know, that such action is unwelcome; • a sexual advance or solicitation made by one person to another,

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	where the person making the advance or solicitation knows, or ought reasonably to know, that such action is unwelcome; • a reprisal, or threat of reprisal, for the rejection of a sexual solicitation or advance particularly where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person; • practical jokes of a sexual nature which cause awkwardness or embarrassment; • displaying and/or distributing pornographic pictures or other offensive material of a sexual nature, including audio or visual images of an individual through technological devices, equipment and service; • unwanted physical contact such as kissing, touching, patting or pinching; • unwelcome sexual remarks, sexual jokes, intrusive sexual questions, sexual innuendoes or taunting about a person's body, attire, sex, personal or social life; • sexually explicit emails or text messages; • requests for sexual favours
Staff Members	An individual employed by SAIBT-CELUSA in accord with relevant employment laws and can also include visiting academics and guest lecturers whether they are paid or unpaid.
Student	An individual enrolled in a programme of study, which can be for an award or a non- award programme, it includes students who have been granted leave of absence as well as those studying online.
Third party	A person or persons or organisations contracted to the College to provide learning and teaching services and/or support students of the College's colleges and campuses. This further extends to members of the public, volunteers or alumni.
Trauma-informed response	1. A response that demonstrates understanding and recognition of the impact of trauma, and emphasises physical, psychological and emotional safety, and the importance of empowerment and choice for those who have experienced sexual assault and/or harassment. 2. Trauma-informed responses are inclusive of transparency of processes and policies to build a climate of trust to enable disclosures. 3. Trauma-informed responses give recognition to the historical and cultural factors which contribute to the occurrence of sexual assault and/or harassment and identify opportunities for contributing to the prevention of further sexual assault and/or harassment, by changing the cultural conditions and environment under which it occurred.
Victimisation	When a person commits or threatens to commit, an act against a **complainant or respondent, or another person acting in support of a complainant or a respondent** as a result of a specific complaint or disclosure.
Wellbeing Team	A college designated team to ensure that students receive practical support to reduce the barriers that may impact on their success as a student. The initiative is focused on assisting students to connect with other students, the learning and teaching community and the college/campus support staff and structure in order to develop their levels of awareness, resilience and self-management skills and capabilities.

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A.4 Acronyms

Abbreviation	Phrase or Word
CELUSA	Centre for English Language in the University of South Australia
SAIBT	South Australian Institute of Business and Technology

SECTION B - POLICY STATEMENT

B.1 Principles

SAIBT-CELUSA values its staff and students and aims to create an environment in which all can work and study free from sexual harassment and sexual assault.

The sexual harassment or sexual assault of staff or students is unacceptable, against the law and contrary to the educational and employment policies of the College.

B.2 Policy

1 Overview

1.1 This Policy is to confirm SAIBT-CELUSA's commitment to taking as far as is practicable, all reasonable steps to preventing sexual harassment and sexual assault and to better managing reports of sexual assault and sexual harassment.

1.2 The Policy is designed to ensure that both students and staff experience a safe, inclusive and respectful work and study environment.

1.3 The Policy provides a structure that enables the victims of sexual assault to report incidents in a secure and supportive way and the College to respond effectively to reports of sexual assault.

2 Understanding of what constitutes Sexual Harassment

2.1 Sexual harassment is unwelcome conduct of a sexual nature towards another person which could reasonably be expected to make that other person feel offended, embarrassed, humiliated or intimidated.

2.2 A single incident is enough to be considered sexual harassment - it does not have to be repeated behaviour, but it can be repeated behaviour.

2.3 The person engaging in unwelcome behaviour does not have to intend to be sexually harassing the other person for the behaviour to be considered sexual harassment.

2.4 Sexual harassment is defined by the nature and the impact of the behaviour, not the intention behind it.

2.5 Sexual harassment may include the following behaviours:

i. Comments about a person's sex life or physical build and appearance;
ii. Comments of a sexual nature;
iii. Leering and staring;
iv. Unwanted touching such as brushing up against a person, kissing, fondling or hugging;
v. 'Flashing';
vi. Sexual gestures or imitating a sexual act;
vii. Sexual propositions or repeated unwanted requests for dates;
viii. Making promises or threats in return for sexual favours;
ix. Sexual and/or Suggestive comments or jokes;
i. Offensive telephone calls, text messages or sexually explicit

communications on social media platforms;

ii. Displays of offensive photographs, reading matter or objects;
iii. Sending jokes or graphics of a sexual nature by email, internet, fax or mobile phone;
iv. Inappropriate advances on social networking sites and/or accessing sexually explicit internet sites;
v. Unwelcome questioning about a person's private life;
vi. Sexually explicit/offensive pictures, screen savers or posters;
vii. Unwanted requests for sex;
viii. Insults or taunts of a sexual nature;
ix. Pursue or flirt with another person persistently without the other person's willing participation.
x. Flirting with someone at an inappropriate time (e.g. in a team meeting) is considered sexual harassment, even when these advances would have been welcome in a different setting. Actions such as this can harm a person's professional reputation and expose them to further harassment from others;
xi. Comment on a person's dress, sexuality or gender in a derogatory or objectifying manner or a manner that makes them uncomfortable.
xii. Stalking, sexual assault, indecent assault or rape (which are also criminal offences); and,
xiii. The most extreme form of sexual harassment is sexual assault.

2.6 Sometimes, people who harass others do not realise that their behaviour is wrong. SAIBT-CELUSA understands that this is possible, but that does not make the respondent any less responsible for their actions.

3 Understanding of what constitutes Sexual Assault

3.1 SAIBT-CELUSA's primary concern is the health, safety and wellbeing of staff and students at all times, particularly so when it comes to responding to incidents of sexual assault.

3.2 SAIBT/CELUSA recognises that in each of its operating geographies, the 'local' law and regulations will prevail in terms of what constitutes sexual assault.

3.3 SAIBT/CELUSA also recognises that that some people, inclusive of students, staff, contractors and other stakeholders, may lack awareness of what constitutes sexual assault and as a result fail to recognise it when it occurs … (for example, in the context of a relationship or where alcohol is involved).[2]

3.4 In order to ensure students, staff and other stakeholders understand what SAIBT-CELUSA recognises as sexual assault the following information is designed to assist in understanding the risks of as well as the behaviours that represent sexual assault.

3.5 SAIBT-CELUSA recognises that sexual assault is the legal term that describes a number of offences, inclusive of:

i. Sexual abuse;
ii. Rape;
iii. Indecent behaviour;
iv. Indecent assault;
v. Sexual molestation;
vi. Incest;
vii. Child sexual abuse;

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viii. Child sexual assault;
ix. Touching;

3.6 SAIBT-CELUSA has selected the following examples of behaviours that are classified as sexual assault; **but** reminds staff and students that **this list is not exhaustive** and all similar types of behaviours, may be classified as sexual assault under the law:

i. Two people in a relationship start engaging in sexual activity but Person A changes their mind and asks to stop. Person B refuses to stop and forces person A to continue sexual activity.
ii. A student taking advantage of another intoxicated student at a party by encouraging them back to their room and engaging in sexual activity when the student is unable to give consent due to being affected by alcohol.
iii. A research supervisor manipulates a student to engage in sexual acts in exchange for better marks.
iv. A staff member who has been continually making advances towards another staff member proceeds to force themselves onto that staff person while they are alone in a meeting room, attempting to kiss and touch them either through or under their clothing.

4 Consent to Sexual Activity

4.1 **Consent is a critical factor in determining if sexual assault has occurred** i.e. did person A give permission for person B to engage in sexual activity with them? If the answer is **NO** then an assault has occurred; **NO means NO!**

4.2 Consent must be:

i. mutual i.e. both parties agree, **every single time**;
ii. freely given, but consent that is **forced by threats**, guilt or violence is **not consent**;
iii. informed i.e. both parties understand what is about to happen;
iv. certain and clear i.e. **it is a YES, not a 'may be' or 'I guess so'**;
v. enthusiastic i.e. no force or pressure involved, both parties want to engage in sexual activity;
vi. reversible i.e. **either party can say NO at any time**, even after the activity has commenced and **activity must stop immediately**;
vii. specific i.e. to a particular type of activity and time; and,
viii. **ongoing i.e. you need to say YES before and during sexual activity and, consent on one occasion does not mean YES to a next time!**

4.3 SAIBT-CELUSA recognises that in South Australia the age of consent is 17 or 18 if an older person is in a position of authority.

If there is reasonable suspicion that a person under the age of 18 may be at risk, a mandated notifier must make a report to the Child Abuse Report line (CARL). **Refer to the Child Safe Policy and the Mandatory Notification Policy.**

4.4 SAIBT-CELUSA recognises its responsibility to make each student and staff member aware of the age of consent and this policy.

4.4.1 Staff are required as part of induction to become aware of the SAIBT-CELUSA policies and procedures.

4.4.2 Students are advised of the Student Code of Conduct and the SAIBT-CELUSA policies at orientation.

5 Reporting

5.1 Reporting of sexual assault and sexual harassment

The policy provides a framework for the management of disclosures of sexual assault or sexual harassment and the pathway for reporting sexual assault or sexual harassment. For clarity, reporting means:

A report is a form of complaint and occurs when a member of the SAIBT-CELUSA community expresses the desire to report an incident of sexual assault or harassment for the purposes of initiating an investigation.

Whereas disclosure means:

A form of complaint occurring when a complainant or another person tells someone about an incident, or a suspected incident, of sexual assault or sexual harassment directed towards them, or a member of the SAIBT-CELUSA community**. Disclosing is not the same as reporting** but will enable referral of the complainant to appropriate support and information about their choices and options with regard to medical, legal and counselling support.

5.2 Reporting and disclosure options

- **Emergency**

If students or staff are in immediate danger or require urgent medical attention, the first step is to call emergency services on 000 (112 from mobile phones) or call UniSA security (if on campus) at 1800 500 911

- **Reporting or disclosing an incident**

It is up to the individual whether or not they choose to make a report of the incident and they can change their mind at any time. There are many support services available to individuals who have been subjected to sexual assault or sexual harassment and an individual can remain anonymous if they choose.

- **Reporting to SAIBT-CELUSA**

A report of sexual harassment or sexual assault may be disclosed to the Student Counsellor or the College Director & Principal, at any time following an incident, regardless of whether or not it has been reported to the police.

SAIBT-CELUSA takes all allegations of sexual assault and sexual harassment seriously and has specific responsibilities when dealing with allegations made against our students and staff.

If an individual wishes to disclose or report an incident to the College, they should contact with one of the designated First Responders who are specially trained to respond to disclosures or reports of sexual assault and sexual harassment and can advise you of your options.

Any discussions between an individual and First Responder will be kept confidential.

A report can also be made online - *Report an incident of sexual assault or sexual harassment to SAIBT-CELUSA*

- **Reporting outside of SAIBT-CELUSA**

Individual may prefer to seek support and advice from outside of SAIBT-CELUSA.

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- Yarrow Place Rape and Sexual Assault Services (24 hours/7 days a week) 08 8226 8787 (24 hours/7 days) and 1800 817 421 (country callers) https://www.wchn.sa.gov.au/our-network/yarrow-place
- Call 1800 Respect – 1800 737 732 – Confidential information, counselling and support service for individuals impacted by sexual assault, domestic or family violence and abuse (24 hours/7 days a week)

- **Reporting to the Police**

Unless an individual is under the age of 18, it is up to that individual whether they choose to report sexual assault to the police. An individual can report an incident to the police at any time by calling 000 in an emergency or 131 444 in a non-emergency.

If a report specific to sexual assault or sexual harassment is referred to the police, SAIBT-CELUSA will not take any action that will compromise the police investigation complaint resolution process.

While responsibility for prosecuting criminal acts of sexual assault and sexual harassment rests with local police
i.e. where the offence occurred, SAIBT-CELUSA can and will act where there is a breach of its code of conduct, practice, policies and procedures by members of the SAIBT-CELUSA community for activities and situations related to Divisional business.

If an individual does not want to report an incident to the Police, they can still access the support of the Yarrow Place, Rape and Sexual Assault Service and the support from the SAIBT-CELUSA Student Counsellor.

The individual can change their mind and report the incident to the Police at any time.

- **Reporting sexual harassment to the Equal Opportunity Commission**

Reports of sexual harassment can be made to the Equal Opportunity Commission (EOC) of South Australia on (08) 8207 1977. Visit the EOC website for details of the definitions of sexual harassment and the process for making complaints.

- **Reporting an incident if the person is under 18 years old**

If a SAIBT-CELUSA staff member is informed that a member of the SAIBT-CELUSA community has been sexual assaulted and they are under the age of 18, the staff member has an obligation to report the incident. Link to Report Online

Refer to the Child-Safe Environment Policy and the Mandatory Notification Policy

6 Right to withdraw a complaint of sexual assault or sexual harassment

6.1 A complainant has the right to withdraw a complaint at any stage of the process.

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6.2 SAIBT-CELUSA will inform the respondent should a complaint be withdrawn at any stage of the process.

6.3 SAIBT-CELUSA may, however, continue to act on the complaint to ensure the ongoing safety of the complainant and members of the broader community.

6.4 In the event SAIBT-CELUSA does continue to act on the complaint as part of its duty of care, it will ensure that the original complainant is kept informed of any actions taken or the outcome of any investigation undertaken.

7 Responsibilities

7.1 SAIBT-CELUSA's College Director and Principal has responsibility for, and is committed to, the effective implementation of this policy.

7.2 The SAIBT Executive Group will support managers to fulfil their responsibilities and accountabilities within their area of responsibility.

7.3 All SAIBT-CELUSA employees, students, contractors and visitors have a responsibility to take reasonable care to comply with any reasonable policy, procedure or instruction.

7.4 If a disclosure is made to a SAIBT-CELUSA employee in the college environment regarding sexual harassment or sexual assault, the individual making the disclosure should be referred to a First Responder.

7.5 The Navitas SA Manager Quality, Risk and Compliance is responsible for strategic coordination and monitoring of the prevention of and response to sexual assault across the college.

8 Corporate Monitoring

8.1 Six monthly reports will be submitted to the SAIBT-CELUSA Executive Group.

9 Review

9.1 This Policy is tested and reviewed every three years by the policy owner, in line with the Quality Unit Managed Documents Policy, and any changes to the regulatory compliance requirements, legislation, regulation and guidelines.

9.2 This review process aims to ensure alignment to appropriate strategic direction and continued relevance to SAIBT-CELUSA's current and planned operations.

SECTION C - GOVERNANCE

C.1 Responsibility

Identification	Sexual Assault and Sexual Harassment Policy
Policy Owner	College Director
Approving Authority	SAIBT Executive Group
Initial Issue date	December 2022
Directory Location	College Director, Policies

C.2 Version Control

Current Version Number	1.1
Date of Effect	11/2022
Review Date	11/2025
Privilege Level	Public

C.3 Legislative and Organisational Context

Name
Children and Young People (Safety) Act 2017
Equal Opportunity Act 1984 (SA);
Australian Human Rights Commission Act 1986
Disability Discrimination Act 1992
Workplace Gender Equality Act 2012
Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019
The National Code of Practice for Providers of Education and Training to Overseas Students 2018
Fair Work Act 2009

SECTION D - PROCEDURE

D.1 Related Procedures

Critical Incident Procedure

Mandatory Notification Procedure

SAIBT-CELUSA Sexual Assault and Sexual Harassment Prevention and Response Procedure

D.2 Related Policies

Critical Incident Policy

Child Safe Environment Policy

Mandatory Notification Policy

UPA Sexual Assault Prevention and Response Policy

UPA Sexual Harassment Prevention and Response Policy