



LINCOLN COLLEGE
SEXUAL MISCONDUCT POLICY

Contents

Lincoln College Policy on Sexual Misconduct	3
Support and who to call	3
Reporting Procedures – what are my options?	3
Anonymous report	4
Informal request for support.....	4
Formal report	4
Coordinating with the Universities	5
Criminal reporting	5
What if I don't want to make a formal report or police report?	5
What if I want to make a report on behalf of somebody else?	6
Standards of evidence	6
Definitions	7
Reporting Party	7
Responding Party	7
Support Person.....	7
Informed Consent	7
Consent to sexual activity.....	7
Reckless indifference to consent.....	8
Sexual Assault.....	9
Indecent Assault	9
Sexual Harassment	9

Lincoln College Policy on Sexual Misconduct

Lincoln College encourages residents to report sexual assault and indecent assault of any kind. Lincoln College takes the position that a person making a report of sexual assault will be assumed to be telling the truth in the first instance.

Where a report of sexual assault is made by a member of Lincoln College, Lincoln residents and staff are encouraged to use the attached “**Guidelines for Responding to an Allegation of Sexual Assault**” to guide their response.

If you or someone you know has been sexually assaulted, we are here to provide support, referral and information to assist you. There are a number of options available to you, ranging from anonymous report through to informal provision of support, formal complaint and full-scale criminal reporting to police (see “**Reporting Procedures – what are my options?**” below). It is important that the situation is not ignored. There is no time limit on being able to report a sexual assault, but you are encouraged to make a report or complaint as early as possible so that you can be supported and provided with good advice about the reporting options available to you. The College recognises that sexual assault is traumatic, and you may not wish to progress a report immediately.

Support and who to call

If you have been sexually assaulted, or you have had a concerning sexual experience that you wish to discuss, even if you are not sure whether it falls under the definition of sexual assault, the College encourages you to talk to someone about the incident – what happened and how it is affecting you. You might prefer to talk to a friend first or bring someone along to support you when you talk to College staff. The following staff have received training in responding to disclosures of sexual assault:

- Residential Advisors
- Academic Tutors
- Dean of Students
- Head of College

When you make a report of sexual assault, the College’s primary aim is that you be supported through the process of recovery in the way that feels right to you. Therefore, if you make a disclosure to College staff, we will listen to you, believe you, support you, give you information about your options, and take steps to help protect your mental and physical health, and your confidentiality. We will help you clarify what happened, including key facts such as dates, times and places. Feelings such as discomfort or intimidation are also facts, as are effects on study and on other aspects of your life at College and your general wellbeing.

Reporting Procedures – what are my options?

Instances of sexual assault reported to the College will be handled in a sensitive, discreet and fair manner, on the assumption that the Reporting Party is making a truthful report. Counselling support services will be offered throughout this process, not matter what kind of report the Reporting Party wishes to make.

Reporting options range from an anonymous report, to an informal request for support, a formal complaint, or a criminal report to the Police. There is more detail around each of these types of report below. No matter what kind of report you choose to make, the College will allow you, as the Reporting Party, to decide what happens with the information you disclose.

Anonymous report

Although the College encourages you to disclose full detail about the incident and the Responding Party, so that the College can investigate thoroughly and take appropriate action, you may make an anonymous report without identifying yourself, or the Responding Party, or both, if you wish. Under these circumstances, the College may not be able to take any further action, but where possible will continue to support you and provide counselling or referrals to external service providers as appropriate.

Informal request for support

You may if you choose, disclose details about the assault, but request that no action is taken. Under these circumstances it is recommended that you speak with the Dean or Head of College. Your confidentiality will be respected, and support and assistance provided.

Note that many students who initially report under these circumstances go on to make a formal report in time, on a timeline which feels right for them.

Formal report

You may disclose details of an assault and ask that an investigation take place. Under these circumstances, you will still receive support and assistance throughout the process, and can expect that the College will respond to your report promptly and in a way which cares for your safety, health and wellbeing.

The College will conduct an initial assessment, which may include taking steps to ensure a safe and non-discriminatory environment for you within the College community. The College may also employ interim protective measures as may be appropriate for the individuals involved.

Following a report of sexual assault, the College will assess whether there is a risk of further harm to any member of the community and implement reasonable Interim Protective Measures. This assessment will be undertaken by a member of staff trained in such risk assessments or referred to an external expert where advisable.

Interim Protective Measures may include:

- Moving the Responding party to an alternate room
- Making arrangements for the Reporting Party to have access to shared College facilities (e.g. the Dining Hall) at a time when the Responding Party will not be there
- Suspending the Responding Party from College until an investigation can be completed

The scope and timing of further investigation and/or action will depend on a number of other factors, including:

- Whether you want to report the matter to Police, the University, or other external agencies
- Whether you wish to make a disciplinary complaint under this Policy (i.e. a formal complaint that may lead to internal sanctions and disciplinary action) and
- Whether you request confidentiality or that the investigation not be pursued.

Both the Reporting Party and the Responding Party will be notified of applicable policies and processes, of investigation outcomes and of any further action the College proposes to take. Both parties will be offered individual counselling and support.

College sanctions and disciplinary action, if requested to be pursued by the Reporting Party, are at the discretion of the Head of College and Disciplinary Committee, considering all the information provided by both parties and all the circumstances. The Reporting Party will be advised of the sanctions that the Head of College plans to impose.

Possible sanctions to the Responding Party may include:

- Exclusion from College
- No right of re-admission to College
- Suspension from College
- Written Admonition/Formal Written Warning
- Change of Allocated Room
- Community Service
- Probation
- Counselling
- Formal apology

Coordinating with the Universities

The Broderick Report (p55) recommends that a coordinated response between the College and University should be considered where the student and perpetrator are studying on the same campus. In situations where the Reporting Party and the Responding Party attend the same University campus, Lincoln College will notify the University of the alleged assault. The College will also inform the Responding Party's University of alleged assaults in other instances, where the University has indicated that this is their preference. A Reporting Party can, however, request that a report remain confidential.

Criminal reporting

The College encourages any resident of College who has been a victim of crime to report it to the South Australian Police. College staff will support you to make a report should you wish to do so. In the case of reporting a sexual assault, residents are strongly encouraged to communicate with Yarrow Place Rape Crisis Centre about the process of making a report to Police, what to expect and how the investigation is likely to proceed.

Criminal investigation, prosecution and penalties are a matter for State authorities. As sexual and indecent assault is a criminal offence, SA Police may investigate allegations of sexual assault at their own discretion.

What if I don't want to make a formal report or police report?

The College will support you, no matter what you wish to do. As the Reporting party you maintain control of the process throughout and your wishes will be respected.

Throughout the process, we will discuss the importance of acting on reports of sexual assault to prevent further danger to the College community. In the past, students who have initially not been comfortable to disclose the name of the person who sexually assaulted them, have moved through a process of recovery to the extent that they have felt comfortable to name a perpetrator and begin a

disciplinary process against them. However, this process happens on the timeline of the Reporting Party and the College will be sure to give first priority to the needs of the individual who was assaulted.

What if I want to make a report on behalf of somebody else?

If you as a support person or bystander wish to make a report, the College encourages you to do so in writing, or in person to the Dean or Head of College, and the circumstances will be investigated as far as possible. You should also encourage those involved to seek support, and report matters as described above, but their wishes should be respected if confidentiality is requested. The College will offer support and advice to any student or staff member affected by sexual assault. Some of the steps in **“Guidelines for Responding to an Allegation of Sexual Assault”** may be useful in offering support to a friend who has been sexually assaulted, who does not wish to report the matter to College.

Standards of evidence

Formal rules of evidence are not applicable. If a resident denies responsibility for an alleged breach of the Respectful Relationships Policy, the Sexual Misconduct Policy or the Lincoln Code of Conduct, the Head of College or Discipline Committee will make a decision based on the balance of probabilities.

In a case where the facts are contested there is generally a “weight” of evidence on each side. The Head of College or Discipline Committee will place greater emphasis on evidence which, when fairly considered, produces the stronger impression and is more convincing. After considering all the available evidence, the Head of College or Discipline Committee will decide whether there is a greater weight of evidence that the resident was responsible for the breach than the resident was not.

This standard is not the same as ‘beyond reasonable doubt’ which is a more rigorous requirement demanded by the courts in criminal cases. Given this, the Head of College or Discipline Committee need not attain the degree of certainty that is required to justify a criminal conviction.

Definitions

Reporting Party

A Reporting Party is any College Member/s who makes a report concerning the behaviour of another person/s. Any individuals or groups who have witnessed or had something happen to them that they think has breached the College's Respectful Relationships Policy can make a report. This can be about the behaviour of a Lincoln College member or an outsider. This can be for an incident/s either on or outside College grounds. The College seeks to support and empower the reporting party, who is not obligated to pursue any particular course of action unless there is significant risk to the reporting party or others. Lincoln college will support any reporting party wishing to go to the Police to report criminal incident/s.

Responding Party

A Responding Party is any College Member who has had a report made concerning them. Since the College is unable to satisfactorily investigate reports made against external persons, reports made concerning external persons will result in a ban from College grounds. Lincoln College will support any reporting party wishing to go to the Police to report criminal incident/s. Security and/or the police will be called should the external person/s seek to re-enter College grounds.

Support Person

A person to whom the Reporting Party has spoken about the alleged breach of the Policy.

Informed Consent

Lincoln College Members have the right to make choices free from peer pressure and with a clear understanding of the facts and potential outcomes of that choice. This is "informed consent" and should be actively sought when interacting with others in any area of life.

College Members should understand that informed consent can only be given by those who are:

- 17+ years old
- Fully conscious and not intoxicated
- Free to act without the influence of others, especially older community members
- Aware of all the relevant facts

This includes:

1. Being given sufficient information to understand what they are agreeing to
2. Being given a free choice to opt in or out, without adverse consequences
3. Being permitted to change their mind at any time

Consent to sexual activity

Consent to sexual activity in South Australia is defined in s 46 of the Criminal Law Consolidation Act 1935 (SA) as free and voluntary agreement. Under the legislation, a person does not freely and voluntarily agree to sexual activity if:

The person agrees because there has been force applied (this includes an express or implied threat of force to the victim or to another person) or because of a threat to denigrate, humiliate, disgrace or harass the person or another person, or out of fear; or

- The person was unlawfully detained at the time of the activity; or

- The person is asleep or unconscious when the activity occurs; or
- The person is intoxicated to the point of being incapable of freely and voluntarily agreeing when the activity occurs; or
- The activity occurred whilst the person was affected by a physical, mental or intellectual condition or impairment; or
- The victim is unable to understand the nature of the activity; or
- The victim agrees to engage in the activity with a person under a mistaken belief as to the identity of that person; or
- The person is mistaken about the nature of the activity (for example, a person is taken not to freely and voluntarily agree to sexual activity if they agree to engage in the activity in the mistaken belief that the activity is necessary for the purposes of medical diagnosis, investigation or treatment, or for the purpose of hygiene).

Being under the influence of alcohol or drugs is not an invitation to sexual advances or activity. Equally, being under the influence of alcohol or drugs is not an excuse for improper or unlawful behaviour. **Each and every time you do anything sexual, ranging from touching or kissing to having sex, you must always have the other person's consent.** This means taking responsibility for ensuring the other person is consenting to the sexual activity, with you, throughout the course of the interaction. Never assume that a person is consenting because they have previously said yes, or because of their reputation, or because of the way they act or dress, or for any other reason. Consent can be withdrawn – if consent is withdrawn, then **stop**. Going ahead with sexual activity knowing that the other person does not consent is criminal. It is also criminal to proceed with sexual activity if you:

- Are aware of the possibility that the person might not be consenting; or
- Do not give any thought to whether or not the person is consenting (so-called *reckless indifference*).

Even where a Responding Party was intoxicated at the time the offending occurred, he or she can be guilty of sexual assault provided intent to commit the offence can be shown.

Reckless indifference to consent

A person is guilty of sexual assault if he or she knows that the other person does not consent (or has withdrawn their consent) or is recklessly indifferent as to whether the other person has consented. Reckless indifference in the context of sexual offences means a failure on the part of the Responding Party to consider the other person's wishes, having utter disregard as to whether or not they have consented (or withdrawn consent).

Under the legislation, a person will be found to be recklessly indifferent to the fact of consent (or withdrawal of consent) if he or she:

- Is aware of the possibility that the other person might not be consenting (or has withdrawn consent) but decides to proceed regardless of that possibility; or
- Is aware of the possibility that the other person might not be consenting (or has withdrawn consent) but fails to take reasonable steps to ascertain whether the other person does in fact consent before proceeding; or
- Does not give any thought to whether or not the other person is consenting to the act (or has withdrawn consent).

Sexual Assault

Sexual assault is a serious crime. It is a violation of trust, an exploitation of vulnerability, and an abuse of power. Any sexual activity to which a person has not consented is sexual assault. It is sexual assault if a person has sexual intercourse with another person without the consent of that person, either knowing that there is no consent or being recklessly indifferent about that consent. It is sexual assault if a person continues to have sexual intercourse with another person where consent has been withdrawn. It is sexual assault if consent is not obtained, even where the person does not physically resist. It is sexual assault where a person compels another to engage in, or to continue to engage in sexual intercourse with a person other than the offender; or an act of self-penetration. Sexual assault under the law means: unwanted oral, anal or vaginal penetration, by any part of the body of another person, or any object, and includes oral sex.

Sexual assault may be a single incident or may occur over time. Sexual assault is not defined by gender; it can happen to anyone, of any gender.

Sexual assault is **never** the fault of the victim. It is important to remember that the perpetrator is always responsible for the sexual assault.

Indecent Assault

Indecent assault is touching (or the threat to touch) a person's body in a sexual manner without consent by another person. For example, indecent assault may include unwanted touching of a person's breasts, bottom or genitals.

Sexual Harassment

Sexual Harassment is any unwanted behaviour of a sexual nature that offends, humiliates or intimidates an individual or group of people, and may occur as the result of a single incident or repeated incidents.

The law in South Australia says that a person sexually harasses another, if:

- (i) *The person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or*
- (ii) *Engages in other unwelcome conduct of a sexual nature in relation to the person harassed,*

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated, or intimidated.

Sexual harassment may include:

- Displaying sexual material where it can be seen by others (online or in real life)
- Sending or requesting sexually explicit photographs by mobile or online (so-called "nudes" or "dick pics"), where this is unwanted by one party
- Unwanted sexual advances
- Unwanted requests for sexual behaviours
- So-called 'traditional' chants or sporting songs that are sexually-oriented in nature
- Hazing activities that focus on sexualised jokes, actions or activities
- Making unwanted jokes of a sexual nature
- Other unwanted behaviour of a sexual nature

Sexual harassment is against the law and may result in financial and other penalties. It is unlawful for a person to cause, instruct, induce or assist another person to act in a way that constitutes sexual harassment. This person can be penalised in the same way as the harasser. Once a complaint of sexual harassment has been made, it is unlawful to treat a person unfavourably because they have made a complaint.

Policy created February 2018

Policy updated November 2018

Authorised by Chief Executive Officer

Date to be reviewed: November 2019

With thanks to Deakin University (<https://policy.deakin.edu.au/document/view-current.php?id=225#major2>)

Thank you to Sancta Sophia College (<http://www.sanctasophiacollege.edu.au/wp-content/uploads/2015/08/Walk-In-Wisdom-2017-Code-of-Conduct-Fees-Schedule-1.pdf>)