

WELLBEING AND SAFETY IN LEARNING ENVIRONMENT POLICY AND PROCEDURE

1. PURPOSE

CG Spectrum Institute (**CGSI**) is committed to providing a learning environment that is safe for study and work. Any behaviour which makes the learning environment unsafe is inappropriate and unacceptable behaviour and any students or staff members found to have committed, contributed, or condoned such behaviour may be subject to disciplinary procedures.

The policy is in accordance with the Higher Education Standards Framework 2021 (**HES**) and the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (**National Code**).

2. SCOPE

This policy and procedure applies to all current and prospective higher education students and staff of CGSI.

This document should be read in conjunction with the *Student Grievance Complaints and Appeals Policy and Procedure*, and the *Staff Grievance and Appeals Procedure*.

3. DEFINITIONS

Term	Definition
Bullying	<p>is repeated and unreasonable behaviour directed towards a person or group of people that creates a risk to health and safety:</p> <ul style="list-style-type: none"> • Repeated behaviour is behaviour which occurs more than once and may involve a range of behaviours over time. • Unreasonable behaviour is behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating, or threatening. <p>The following behaviours do not constitute bullying:</p> <ul style="list-style-type: none"> • A single incident of unreasonable behaviour. However, single, or one-off incidents of unreasonable conduct can also cause a risk to health and safety, may breach other CGSI policies, and could constitute misconduct. • Low level conflict defined as interpersonal conflict or disagreement which is not sufficient to constitute bullying. People can and will disagree with each other, however, such situations must be dealt with in a respectful manner.

	<ul style="list-style-type: none"> Reasonable direction and expectations of staff, including as part of performance management procedures.
CGSI Community	means the members of the Board of Directors, Academic Board, staff, students and as well as those who use the CGSI campus or facilities for work, study, living and socialising, or other authorised activity.
Bystander	includes a person who observes unsafe behaviour, which can include someone bullying, harassing, discriminating against, sexually harassing or sexually assaulting another person.
Complaint	<p>is a complainant's expression of dissatisfaction that their rights, existing interests and/or reasonable expectations under this policy have been adversely and unjustifiably affected because of an action, decision or omission within the control or responsibility of CGSI.</p> <p>A complaint involves providing detailed information seeking disciplinary action or other resolution against the respondent. A complaint is different to a report (which is defined below).</p>
Complainant	is a person(s) who makes a complaint about a matter that they wish CGSI to consider and for which outcome(s) or resolution(s) are explicitly or implicitly expected.
Consent	<p>means the free and voluntary agreement, by a person with the cognitive capacity to do so, to participate in an activity which may include an intimate or sexual relationship.</p> <p>Consent is not freely and voluntarily given if the person is:</p> <ul style="list-style-type: none"> Coerced; Unconscious or asleep; Under the influence of drugs or alcohol; Under threat or intimidation; In fear of bodily harm; Subjected to the exercise of authority; Under false or fraudulent representations about the nature or purpose of the act; or Under a mistaken belief that the offender was someone else (for example, their sexual partner). <p>Consent can be given and subsequently withdrawn at any point.</p>
Discrimination	is treating someone unfairly because of a characteristic they have, or they are assumed to have, that is protected by New

	<p>South Wales and Commonwealth law. These characteristics include:</p> <ul style="list-style-type: none"> ● Disability (includes diseases and illness); ● Sex (includes pregnancy and breastfeeding); ● Race; ● Age; ● Marital or domestic status; ● Sexual orientation; ● Gender identification status; and ● Carer’s responsibilities. <p>The following conduct does not constitute unlawful discrimination:</p> <ul style="list-style-type: none"> ● A person is not offered a job because, notwithstanding that reasonable adjustments have been made, they cannot meet the inherent requirements of the job. ● A student with a disability does not pass the requirements of a course, notwithstanding that reasonable adjustments have been made. ● The Higher Education Provider (Provider) has gained a lawful exemption, or the law otherwise permits the Provider, to target a job at a particular group of people to help redress disadvantages that group may have experienced in the past. ● The Provider lawfully implements specific equal employment opportunity, or ‘affirmative action’ strategies, plans or programs designed to ensure genuine equal opportunities in the workplace, particularly in relation to groups that have been disadvantaged in the past.
<p>Harassment</p>	<p>occurs when a person, or a group of people, is intimidated, insulted or humiliated because of one or more characteristics, or from working in a hostile or intimidating environment that makes a person feel offended, humiliated or intimidated, and where that reaction is reasonable in the circumstances. Harassment can arise as the result of a single incident as well as repeated incidents (for example, hazing). See further definition of <i>Sexual Harassment</i> below.</p>
<p>Hazing</p>	<p>is any action or situation, with or without the consent of the participants, which recklessly, intentionally, or unintentionally endangers the mental, physical, or academic health or safety of staff or students and can include the practice of rituals, challenges, and other activities as a way of initiating a person into a group including a new residential college, team, or club.</p>

Natural Justice	(also known as procedural fairness) is concerned with the rights and procedures used by a decision-maker in making a decision, rather than the substance of the decision made. It requires a fair and transparent process for complainants and respondents have a reasonable opportunity to prepare and present a case and to have their cases are considered justly.
Precautionary measures	<p>means measures or actions directed at a student or staff member who is alleged to have committed a criminal offence or a breach of discipline.</p> <p>Precautionary measures may be undertaken at an early stage pending the outcome of criminal/disciplinary proceedings. Precautionary measures may be put in place if they are necessary to ensure a full and proper investigation can be carried out (whether by the police, the Provider or an investigative body); and/or for the wellbeing of the person subjected to the alleged incident or other persons whilst the allegation is being dealt with.</p> <p>Precautionary measures include options such as reassignment of work, and suspension.</p>
Report	<p>is information provided to CGSI about an incident or suspected wrongdoing that the person making the report believes to be the case. A report can be anonymous, and the person reporting is able to, but does not have to, identify the other person/people involved.</p> <p>CGSI can provide support to a person making the report (if they have identified themselves) including accommodations and precautionary measures, and advice about making a complaint. Reports are processed and recorded on the Critical Incident Register.</p>
Representative (or Support Person)	<p>is a person to assist, accompany and support a complainant, respondent or interviewee in their participation in matters relating to this policy and supporting procedures.</p> <p>A representative may be a friend or family member a staff member, or delegate.</p>
Respondent	is a person(s) against whom a complaint is made.
Sexual Assault	is any unwanted or forced sexual act or behaviour without consent.

	<p>Sexual Assault occurs when a person:</p> <ul style="list-style-type: none"> • Touches or makes contact with another person (and the touching or making contact is sexual in nature) without their consent – groping and any physical contact such as patting, pinching or touching in a sexual way is a form of sexual assault. • Forces another person against their will to commit an act of gross indecency – a sexual act that does not involve penetration, for example a person forces another person to touch their genitals. • Forces another person to see an act of gross indecency, for example the person masturbates in front of the other person. <p>Rape is the most serious form of sexual assault and occurs where a person or persons force another person or persons to have sexual intercourse without her or his consent. Rape includes forcing someone to perform oral sex, digital penetration, and inserting any object into the vulva, vagina or anus of another person without their consent.</p>
<p>Sexual Harassment</p>	<p>is an unwelcome sexual advance, unwelcome request for sexual favours or sexual gestures, jokes or comments that are intended to offend, humiliate, or intimidate another person, or where it is reasonable to expect the person might feel that way.</p> <p>Sexual harassment may include:</p> <ul style="list-style-type: none"> • Displays of sexually graphic materials including posters, cartoons or messages left on noticeboards, desks or common areas, but does not include sexually graphic materials for educational purposes that have been approved and are intentionally used by CGSI solely as part of the curriculum; • Repeated invitations to develop a closer or intimate relationship after prior refusal; • Unwelcome and uncalled for remarks or insinuations about a person's sex or private life; • Comments of a sexually suggestive nature about a person's appearance or body; • Sexually offensive phone calls; • Offensive emails, text messages or graphics of a sexual nature; • Unwanted sexual attention using internet, social networking sites and mobile phones; • Sexually offensive screensavers or posters; • Threats online of a sexual nature; • Revenge porn;

	<ul style="list-style-type: none"> • Sexual propositions; • Indecent exposure; • Stalking; • Pressuring a student or staff member to engage in sexual behaviour for some educational or employment benefit, or • Making a real or perceived threat that rejecting sexual behaviour will carry a negative consequence for the student in education, accommodation, or in a programme or activity of the Provider.
Sexual Misconduct	refers to instances of sexual harassment or sexual assault that CGSI is notified of, or is responding to. If proven, allegations of sexual misconduct are a breach of this policy and also of the <i>Codes of Conduct</i> that apply to both the staff and students of CGSI.
Vilification	is a public act that could incite hatred, serious contempt or ridicule towards a person or group. Vilification is against the law for certain characteristics. These characteristics include race, sexual orientation, gender identification status, or HIV/AIDS status.
Vexatious	a complaint is deemed to be vexatious if it is: <ul style="list-style-type: none"> • Dishonest or contains intentionally misleading information; • Malicious; pursued with undue persistence; • Has the intent to harass or cause delay or detriment; or • Is pursued in a manner that threatens, menaces or harasses a member of the Board of Directors, Academic Board, staff or students of CGSI.
Victimisation	means where a person is mistreated because that person has made a (or plans to make) a complaint of discrimination, or the person has provided information or evidence about a complaint of discrimination.

4. ROLES AND RESPONSIBILITIES

- 4.1. The overall responsibility for ensuring CGSI maintains a safe environment for study and work rests with the CEO. Individual responsibility for identifying and reporting unsafe behaviour rests with all staff at CGSI.
- 4.2. Every member of the CGSI community has the following obligations to:
- take reasonable care for their own health and safety;
 - take reasonable care for the health and safety of others;
 - comply with any reasonable instruction from CGSI; and

- comply with all applicable CGSI Policies and Procedures.
- 4.3. Senior staff should be alert to the possibilities of unsafe behaviour and should monitor key indicators such as:
- changes in relationships between any combination of students and staff;
 - complaints and grievances;
 - high absenteeism;
 - increased student attrition or staff turnover;
 - reductions in productivity; or
 - loss of morale.
- 4.4. Management must ensure that the correct procedure of complaint management and investigation is followed, as well as ensuring prompt referrals to the contact officers.
- 4.5. Staff members
All staff (permanent full time or part time, fixed term and casual) have a responsibility to ensure their actions do not negatively affect other staff members health, career, or general well-being. Any CGSI staff member found to have committed contributed, or condoned bullying may be subject to disciplinary action.

5. POLICY

- 5.1. CGSI's duty of care requires all staff and students to take reasonable care in order to avoid reasonably foreseeable harm that may arise. The wellbeing and safety of staff, students, volunteers and visitors is the first priority in any situation.

5.2 Unsafe Behaviour

All members of the CGSI community have obligations and responsibilities to ensure any form of unsafe behaviour does not go unnoticed.

Unsafe behaviour under this Policy is considered to include, but not exclusively, the following:

- Bullying;
- Discrimination;
- Harassment;
- Hazing;
- Sexual Assault;
- Sexual Harassment;
- Sexual Misconduct;
- Vilification; and
- Victimisation.

CGSI is committed to preventing unsafe behaviour and giving complainants and alleged perpetrators the support they need.

Any CGSI community member who is found to have committed, contributed, or condoned unsafe behaviour may be subject to disciplinary action.

Where the unsafe behaviour relates to sexual assault and/or sexual harassment the process, in addition to internal policy and procedure, is guided by the nine principles for managing sexual assault and sexual harassment as shown in Figure 1.¹

5.3. Natural Justice

CGSI adheres to the principles of natural justice to ensure procedural fairness for complainants and respondents.

CGSI will ensure:

- the right to be fully apprised of the allegation(s), including the particulars of the allegation(s);
- the right to be heard;
- the right for a decision to be reached without CGSI having a conflict of interest which would make it inappropriate for CGSI to conduct the investigation; and
- a decision is made based on evidence.

5.4. Alternative Dispute Resolution

Depending upon the gravity of a report or complaint CGSI may use Alternative Dispute Resolution (ADR) that sits outside of judicial mechanisms in resolving issues related to unsafe behaviour. Such methods may include mediation, conciliation or arbitration.

5.5. Precautionary Measures

Precautionary measures may be undertaken by CGSI at an early stage pending the outcome of criminal/disciplinary proceedings to ensure:

- a full and proper investigation can be carried out by relevant authorities; and/or
- the wellbeing of the person subjected to the alleged incident or other persons whilst the allegation is being dealt with.

Precautionary measures will be reasonable and proportionate and may include, but not limited to, reassignment of work or suspension.

5.6 Reporting

A confidential Critical Incidents Register is maintained by the CEO, with regular reports provided to CGSI's governing bodies.

¹ TEQSA Good Practice Note: Preventing and responding to sexual assault and sexual harassment on the Australian higher education sector, July 2020. <https://www.teqsa.gov.au/sexual-assault-and-sexual-harassment>

All reports and complaints of sexual misconduct and other unsafe incidents are recorded on the Critical Incidents Register to enable CGSI to identify patterns in behaviours, or high-risk activities on premises, and to monitor progress in eliminating unsafe behaviour.

5.7. Training and Development

This policy will be regularly brought to the attention of all staff members. Regularly means on induction, at the time of being appointed, and at least annually after that time.

CGSI will ensure that staff and students are provided with training opportunities to assist them in recognising, preventing, and responding to sexual assault, bullying and harassment. Material to assist with this will be available in the LMS, website and in the Staff and Student Handbooks.

6. PROCEDURE

- 6.1. If an incidence of unsafe behaviour occurs, the *Student Grievance Complaints and Appeals Policy and Procedure* or the *Staff Grievance and Appeals Policy and Procedure* shall be followed.
- 6.2. The relevant staff policy in no way limits a staff member's rights to pursue external resolution including their access to WorkCover NSW, the Fair Work Commission or any other jurisdiction (court or tribunal).
- 6.3. The Higher Education sector in Australia has become increasingly focused on measures to prevent and respond to sexual assault and sexual harassment. A number of reports and guides to best practice have been published, for example, the RESPECT.NOW.ALWAYS campaign from Universities Australia (<https://www.universitiesaustralia.edu.au/project/respect-now-always/>) with practical support available from the NSW Rape Crisis Centre - 1800 424 017 (<https://www.nswrapecrisis.com.au/>).
- 6.4. If assault, harassment or bullying is experienced, the first point of contact at CGSI for students is the Student Support Manager, and for staff the CEO.
- 6.5. Sexual assault is a crime. CGSI is committed to preventing sexual assault and harassment; giving survivors the support they need; and taking appropriate action against perpetrators.
- 6.6. Emergency contacts for the Police or Ambulance: Call 000
 - 6.6.1. Police are trained to provide assistance and advice to people who have been sexually assaulted.

6.6.2 Reporting to the police:
(https://www.victimsservices.justice.nsw.gov.au/sexualassault/Pages/sexual_assault_reporting.asp)

6.6.3. There is an option to report anonymously:
(https://www.police.nsw.gov.au/_data/assets/pdf_file/0013/224014/SARO_Form_200213.pdf)

7. RELATED POLICIES and PROCEDURES

Relevant policies and procedures are the:

- Code of Conduct
- Student Grievance, Complaints and Appeals Policy and Procedure (the non-academic grievance section)
- Staff Grievance and Complaints Policy and Procedure
- Critical Incident Policy and Procedure

Figure 1. Nine principles for managing sexual assault and sexual harassment (SASH)

Version Control

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Version : V1.1	Replaces Version: V1.0	Next Review: February 2024
V.1.0	Updating logo, formatting and minor amendments	
V1.0	Alignment with TEQSA Good Practice Note	
v0.3, v0.2 and v0.1	Developing policy and procedure	