

# Discrimination, Bullying, Harassment, and Sexual Misconduct

Policy

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## 1. PURPOSE

The Discrimination, Bullying, Harassment, and Sexual Misconduct Policy sets out JMC Academy's commitment to actively fostering an inclusive culture that is free from discrimination, bullying and harassment of any kind, and sexual misconduct, and a framework for managing instances when it does occur.

## 2. SCOPE

The Discrimination, Bullying, Harassment, and Sexual Misconduct Policy applies to all students and to all members of the workforce engaged or appointed by JMC Academy while on campus or in JMC related off-campus activities, including managed digital environments.

For the purpose of this Policy, all JMC Academy's workforce members are referred to as 'staff'.

## 3. DEFINITIONS

**Sexual Assault** – is ANY unwanted sexual act or behaviour which is threatening, violent, forced, or coercive and to which a person has not given consent or was not able to give consent. Sexual assault can be a violent, unexpected, traumatic, and sometimes life-threatening event or series of events. A person's consent to engage in a sexual activity of any kind cannot be assumed. Consent given under duress is not consent, and consent can be withdrawn at any point if it had previously been given.

**Sexual Harassment** – is when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person or engages in any other unwelcome conduct of a sexual nature with another person.

**Sexual Misconduct** – refers to sexual harassment or sexual assault and includes behaviour that could amount to a sexual offence and/or sexual harassment. Students may report sexual misconduct or file a complaint.

**First Responder** – is a person who is confided in by another person who has experienced or is currently experiencing an incident of sexual harassment or sexual assault. First Responders need to listen with compassion, respect privacy and confidentiality and encourage the person to seek support. Any member of the JMC Academy community may be a First Responder.

**Bystander** – includes a person who observes someone sexually harassing or sexually assaulting another person and can intervene at the time, if they are able to do so, and it is safe to do so. Any member of the JMC Academy community may be a Bystander. Bystanders should let the person subjected to the offence know that they have noticed and let them know they will do what they can to help. Any member of the JMC community can be a Bystander. A bystander should call 000 in any emergency situation.

### Consent

Consent is an agreement freely and voluntarily given by someone with the cognitive capacity to do so. A person is not regarded as having freely agreed to or consented to a sexual act just because they did not protest, physically resist, or sustain an injury.

Consent is not freely and voluntarily given if a person is:

- Intimidated, coerced, or threatened,
- Forced,

- Asleep or unconscious,
- Significantly intoxicated or affected by drugs,
- Unlawfully detained or held against their will,
- There is abuse of power or a position of trust,
- In fear of bodily harm,
- Under a mistaken belief that the offender was their sexual partner.

### **Legal Obligations – Discrimination**

Under the Racial Discrimination Act 1975, the Sex Discrimination Act 1984 and the Disability Discrimination Act 1992 vicarious liability is also attached to JMC Pty Limited as the employer. This means JMC Pty Limited can be penalised for not taking all reasonable practical steps to prevent a staff member from doing an unlawful act, as described by the legislation and therefore breaching their duty of care.

### **Criminal Proceedings**

Criminal Proceedings are series of actions to bring criminal prosecution against a person with the goal to decree conviction and punishment of that person.

All definitions are located in *the JMC Academy Glossary*.

## **4. POLICY**

- 4.1. JMC Academy is committed to the rights of all staff and students to work, study and socialise in an environment based on respect and inclusivity.
- 4.2. JMC Academy expects all its staff and students to constructively contribute to a creative, safe, and diverse learning environment where discrimination, bullying, harassment, and sexual misconduct, including sexual harassment and sexual assault, will not be tolerated under any circumstances.
- 4.3. All staff and students have a responsibility to ensure that JMC Academy is a productive, safe, and equitable environment where practices that lead to, support, or condone harassment are avoided.
- 4.4. Discrimination, bullying, harassment, and sexual misconduct may adversely impact a person's health and wellbeing as well as their right to educational opportunities at JMC Academy.
- 4.5. It is against the law for anyone to harass another person or to unlawfully discriminate against another person in the workplace, either directly or indirectly, on the basis of a real or perceived difference in relation to:
  - Age,
  - Gender, gender identity, transgender experience,
  - Sexuality (including intersexuality and homosexuality), sexual orientation,
  - Mental health,
  - Religious or political belief or activity,
  - Colour, race, nationality, descent, or ancestry and ethno-religious or national origin,
  - Marital relationship or domestic status,
  - Pregnancy, childbirth, and breastfeeding,

- Disability (which includes physical, intellectual, psychiatric, or psychological, learning, or cognitive disabilities, and any virus or bacteria that can cause disease, such as HIV. It also includes any disability a person had in the past, has now, or may have in the future).
- 4.6. JMC Academy will take all reasonable steps to eliminate such behaviour through the use of an educative approach on the prevention of discrimination, bullying, harassment, and sexual misconduct, ensuring that all students know their rights and responsibilities in an environment that encourages people to speak out.
- 4.7. JMC Academy advocates that people speak out when they are a victim of, or a witness to, any act of discrimination, bullying, harassment, or sexual misconduct. An assertive and critical response means the victims can better appreciate they are not alone in dealing with the matter, and nor are the victimisers left with the impression that their behaviour is acceptable.
- 4.8. When there is an instance of discrimination, bullying, harassment, or sexual misconduct, JMC Academy will manage the complaint or report in a sensitive and timely manner with the health, safety, and wellbeing of those involved and the Academy community top of mind.
- 4.9. JMC Academy:
- 4.9.1. Sets standards of acceptable behaviour for JMC Academy students, contractors, visitors, and employees,
  - 4.9.2. Actively works towards sustaining a learning environment free from discrimination, bullying, harassment, and sexual misconduct,
  - 4.9.3. Assesses and accepts enrolments based on the applicant's demonstrated capacity to successfully undertake the course of their choice,
  - 4.9.4. Makes reasonable adjustments to campus facilities and curriculum to accommodate a student's specific, identified requirements for learning,
  - 4.9.5. Deals effectively with conflict arising from reported incidents of discrimination, bullying, harassment, and sexual misconduct,
  - 4.9.6. Provides academic and counselling services, as a matter of course, to support students to successfully complete their studies.
- 4.10. All JMC Academy students and employees:
- 4.10.1. Can expect to work and study in a safe and healthy environment free of discrimination, bullying, harassment, and sexual misconduct,
  - 4.10.2. Are not to misuse this policy by making vexatious (trouble-making and dishonest) accusations of discrimination, bullying, harassment, and sexual misconduct,
  - 4.10.3. Are not to engage in or promote bullying, harassing or discriminatory behaviour to others,
  - 4.10.4. Need to follow any reasonable instruction to cease any bullying, sexual misconduct, harassing or discriminating behaviour,
  - 4.10.5. Can complain or report any incident of bullying, harassing, sexual misconduct or discriminatory behaviour they are subject to, and/or witness, and can expect not to be victimised for making the report,
  - 4.10.6. Can expect their reporting, the subsequent process of investigating and resolving the matter to be treated with utmost confidentiality.

- 4.11. To prevent discrimination, bullying, harassment, and sexual misconduct JMC Academy will:
- 4.11.1. Provide and promote information regarding JMC Academy’s discrimination, bullying, harassment and sexual misconduct to staff and students through:
    - 4.11.1.1. JMC Academy website,
    - 4.11.1.2. JMC Academy Learning Management System,
    - 4.11.1.3. Easily accessible and publicly available policy and related procedures,
  - 4.11.2. Provide and promote training and opportunities for professional development regarding discrimination, bullying, harassment, and sexual misconduct to JMC Academy staff including but not limited to counsellors and academic support officers,
  - 4.11.3. Engage in projects to create and promote learning and working environments that are visibly welcoming, inclusive, and unbiased, and
  - 4.11.4. Develop, implement, and maintain effective procedures to report and then deal with reports of discrimination, bullying, harassment, and sexual misconduct.
- 4.12. The related procedures will include guidance on how to:
- 4.12.1. Report an incident of discrimination, bullying, harassment and/or sexual misconduct,
  - 4.12.2. Investigate the report,
  - 4.12.3. Decide which of the available actions to take to resolve the matter,
  - 4.12.4. Support any victims of discrimination, bullying, harassment and/or sexual misconduct through, the reporting and resolving process, and after if need be:
    - 4.12.4.1. Select an appropriate penalty from those available,
    - 4.12.4.2. Appeal against a decision made in relation to the incident—whether the victim or the victimiser,
    - 4.12.4.3. Proceed with any recommendations for change to any of JMC Academy’s policies or procedures.
- 4.13. Any student or staff member who is a victim of, or witnesses an incident of discrimination, bullying, harassment and/or sexual misconduct is advised to follow the relevant JMC Academy procedures:
- 4.13.1. For bullying, discrimination, and harassment: *Student Complaints and Appeals Policy and Procedure*.
  - 4.13.2. For Sexual Misconduct: *Sexual Harassment Procedure* and *Sexual Assault Procedure*.
- 4.14. JMC Academy follows the *Sexual Harassment Procedure and Sexual Assault Procedure* for managing incidents of sexual misconduct. JMC Academy does not expect the person who is subject to sexual harassment or sexual assault to address the behaviour directly with the person who has harassed or assaulted them. Rather, JMC Academy will address this behaviour through a manager, supervisor, academic staff, Campus Director, or other appropriate person.
- 4.15. JMC Academy accepts that it is a person’s right to claim they have, or have not, been the victim of discrimination, bullying, harassment and/or sexual misconduct and they have a right to describe their experience of unwelcome behaviour as being discrimination, bullying, harassment and/or sexual misconduct in their complaint or reporting. The following list of examples of unacceptable behaviour is indicative rather than exhaustive:
- 4.15.1. Forcing someone to do something so they can be ‘accepted’ into a group,
  - 4.15.2. Consistently undermining efforts by failing to give credit and emphasising mistakes,
  - 4.15.3. Deliberately excluding a person from work, projects and/or social engagements,
  - 4.15.4. Targeting a person, or a group of people, in an abusive manner in a creative work,

- 4.15.5. Failing to equitably share resources, or preventing access to opportunities,
  - 4.15.6. Shouting, threatening or any form of verbal and/or physical abuse,
  - 4.15.7. Inflicting bodily harm, which includes but is not limited to physical and/or sexual assault,
  - 4.15.8. Sexually harassing someone,
  - 4.15.9. Singling out another person, or group of people, for unwanted, negative attention that causes distress, embarrassment, injury, or other substantial discomfort,
  - 4.15.10. Stalking: obsessively and repeatedly harassing or threatening a person by, for example, following them as they go about their daily business and/or following them online,
  - 4.15.11. Vandalism (of any kind) and especially that which victimises a person or group of people,
  - 4.15.12. Dismissive treatment or material expressing prejudice or stereotypical assumptions about the group to which a person may belong,
  - 4.15.13. Behaviour that may or may not be intended to hurt another person, but does cause hurt and/or offence,
  - 4.15.14. Practical jokes that make the perceived or real difference of a person the subject of the joke or prank,
  - 4.15.15. Making a nuisance of oneself by the consistent and deliberate disruption of a person, a class, a recording, or a performance.
- 4.16. Some forms of harassment may be criminal offences. Grabbing or striking may constitute assault. Actual or attempted assault, including indecent assault, is a criminal offence. Sending obscene items through the mail or an electronic device and making nuisance phone calls can also be criminal offences.
- 4.16.1. Should such an incident or incidents be reported, then JMC Academy management will contact the police for advice and assistance on the appropriate action to take.
  - 4.16.2. Sexual assault and sexual harassment are serious incidents, prohibited under legislation and constitute a criminal offence.
  - 4.16.3. JMC Academy's key focus is the safety, wellbeing, and needs of the person who has been subjected to sexual harassment or sexual assault. Wherever possible the wishes of the person subjected to any form of sexual misconduct will be respected with strict confidentiality.
- 4.17. JMC Academy does not consider the following as instances of bullying or harassment.
- 4.17.1. **Students** are not to confuse legitimate comment and advice (including relevant negative comment or feedback) from lecturers and/or assessors on academic or other related student performance with bullying or harassment. Feedback on an assessment task or other related activity is different from bullying or harassment because feedback is intended to assist students to improve the standard of their academic or other related activity.
  - 4.17.2. **JMC Academy staff** are not to confuse legitimate comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work performance or work-related behaviour of an individual or group with bullying or harassment. Feedback on work performance or work-related behaviour is different from bullying or harassment because feedback is intended to assist staff to improve work performance or the standard of their behaviour.
- 4.18. Senior members of JMC Academy are responsible for:
- 4.18.1. Ensuring their own conduct is above reproach,

- 4.18.2. Ensuring staff, students and guests comply with JMC Academy's expectations regarding conduct in the organisation,
  - 4.18.3. Ensuring all students are aware of the Student Code of Conduct,
  - 4.18.4. Explaining JMC Academy's policy on discrimination, bullying, harassment, and sexual misconduct, and its implications,
  - 4.18.5. Dealing promptly with any incidents of discrimination, bullying, harassment, and sexual misconduct, if possible, before a formal report needs to be made,
  - 4.18.6. Taking action to resolve a reported incident of discrimination, bullying, harassment, and sexual misconduct,
  - 4.18.7. Promptly addressing any systemic issues that may underlie a report of discrimination, bullying, harassment, and sexual misconduct,
  - 4.18.8. Maintaining confidentiality throughout the reporting and resolving process.
- 4.19. All members of JMC's community have a fundamental responsibility for their own conduct. As well as an act of discrimination, bullying, harassment, and/or sexual misconduct being unacceptable behaviour, such actions could constitute a breach of relevant legislation that may require further legal action. There is also an expectation of co-operation with JMC Academy to the extent necessary to enable a proper duty of care to be met.

## 5. RELATED DOCUMENTS

- 5.1. JMC Academy Glossary
- 5.2. Non-Academic Misconduct Policy and Procedure
- 5.3. Student Complaints and Appeals Policy and Procedure
- 5.4. Sexual Harassment procedure
- 5.5. Sexual Assault Procedure
- 5.6. Personal Information and Privacy Policy
- 5.7. Health, Safety and Wellbeing Policy
- 5.8. Student Code of Conduct

## 6. RELEVANT LEGISLATION

- 6.1. Higher Education Support Act 2003 (Cth)
- 6.2. Higher Education Standards Framework (Threshold Standards) 2021
- 6.3. Education Services for Overseas Students (ESOS) Act 2000 (Cth)
- 6.4. National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018
- 6.5. Commonwealth
  - 6.5.1. Age Discrimination Act 2004 (Cth)
  - 6.5.2. Disability Discrimination Act 1992 (Cth)
  - 6.5.3. Fair Work Act 2009 (Cth)
  - 6.5.4. Racial Discrimination Act 1975 (Cth)
  - 6.5.5. Sex Discrimination Act 1984 (Cth)
- 6.6. Key Victorian Legislation
  - 6.6.1. Occupational Health and Safety Act 2004, and
  - 6.6.2. Occupational Health and Safety Regulations 2007
  - 6.6.3. Victorian Equal Opportunity Act 2010
- 6.7. Key New South Wales Legislation
  - 6.7.1. Work Health and Safety Act 2011
  - 6.7.2. Work Health and Safety Regulation 2011
- 6.8. Key Queensland Legislation



- 6.8.1. Work Health and Safety Act 2011
- 6.8.2. Work Health and Safety Regulation 2011
- 6.8.3. Prevention of Workplace Harassment Code of Practice 2004
- 6.8.4. Anti-discrimination Act 1991

## **7. POSITIONS RESPONSIBLE**

- 7.1. Governing Council
- 7.2. Academic Board
- 7.3. Chief Executive Officer
- 7.4. Dean
- 7.5. Director of International Services
- 7.6. Campus Directors
- 7.7. Student Services
- 7.8. JMC Academy workforce members

## 8. APPROVAL INFORMATION

Approval Authority	Governing Council
Health Check approval authority	JMC Academy CEO
Review date	01/12/2024

Version	Approved by	Approval date	Effective date	Modifications	Status
1.0	Academic Board	25/08/2017	25/08/2017	Revisited as part of policy and review procedure and as per directions from AB meeting on August 4, 2017. Updated policy to include treatment of bullying; modified language; updated legislation and positions; included reference to new Incident Report Form. Replaces Policy B3.16 Harassment Free Campus.	Superseded
2.0	N/A	N/A	07/09/2018	Update the title of the Policy and developed the content.	Superseded
2.1	Governing Council	11/10/2018	11/10/2018	Redesigned the Policy to comply with the updated format.	Superseded
2.2	JMC Academy CEO	28/10/2021	01/12/2021	Amendments as per external reviewer's recommendations to the <b>Discrimination, Bullying, Harassment, and Sexual Misconduct Policy</b> . Sections 4.11.1-4.11.3 added how JMC Academy will provide and promote information regarding discrimination, bullying, harassment, and sexual misconduct to staff and students.	Superseded
2.3	JMC Academy CEO	12/08/2022	12/08/2022	Position/s updated.	Current

## REFERENCES and ACKNOWLEDGEMENTS

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