



MANDELBAUM HOUSE SEXUAL MISCONDUCT POLICY

1. Introduction

- 1.1 Mandelbaum House Ltd is committed to providing a safe, happy and productive living and working environment for its residents, staff, volunteers, Council members, guests, and other members of its community.
- 1.2 Sexual misconduct and sexual harassment by Mandelbaum House residents, staff, volunteers, Council members, guests, and other members of its community is prohibited, and will not be tolerated.
- 1.3 This policy applies to all complaints by current and former community members of sexual misconduct and sexual harassment by other community members, including:
 - (a) at Mandelbaum House;
 - (b) at events or activities run by or associated with Mandelbaum House, including social functions;
 - (c) at the University or in University accommodation; or
 - (d) on social media or by any other means of electronic communication.
- 1.4 Subject to clause 7.2, this policy also applies to complaints by people who are not community members, of sexual misconduct and sexual harassment by community members.
- 1.5 We encourage community members who have experienced sexual misconduct or sexual harassment to seek assistance and support from:
 - (a) Harassment and Discrimination Officer: Naomi Winton, 0412 544 854 nwinton@mandelbaum.usyd.edu.au; or
 - (b) Chief Executive Officer: Shana Kerlander, 0414 138 305 ceo@mandelbaum.usyd.edu.au.
 - (c) Chair, Mandelbaum House Council: A/Professor David Levy, 0421 932 035 david.levy@sydney.edu.au
- 1.6 In an emergency, please contact emergency services by dialling triple zero (000).
- 1.7 Residents and staff who feel unsafe or are concerned for someone else's safety on the University's campus can also contact Campus Security on 9351 3333, 24 hours a day.
- 1.8 This policy should be read in conjunction with the *Complaint Resolution Procedures*.

1.9 Residents should also be familiar with the University's [Sexual Misconduct Policy 2018](#) and [Sexual Misconduct Resolution Procedure 2018](#), which provide an alternative avenue for making a complaint of sexual misconduct or sexual harassment.

2 Definitions

2.1 In this policy:

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| active bystander intervention | means seeing and recognising a potentially harmful situation and choosing to respond in a safe and reasonable way that could prevent or stop the harm from happening or continuing. |
| Apprehended Violence Order | means an ADVO (Apprehended Domestic Violence Order) or an APVO (Apprehended Personal Violence Order) made by a court. Note: An ADVO protects a person when the parties live together. An APVO protects a person in other circumstances. |
| CEO | means the Chief Executive Officer of Mandelbaum House. |
| community member | means a resident, staff member, volunteer, Council member, guest, or other member of the Mandelbaum House community. |
| complainant | means any person who makes a complaint of sexual misconduct or sexual harassment in accordance with this policy and the <i>Complaint Resolution Procedures</i> . |
| complaint | means a complaint of sexual misconduct or sexual harassment made in accordance with clause 7 and the <i>Complaint Resolution Procedures</i> . |
| Harassment and Discrimination Officer (HDO) | means the person nominated by Mandelbaum House to receive concerns and complaints of sexual misconduct, sexual harassment, discrimination, harassment, vilification and bullying. |
| respondent | means a person whose conduct is the subject of a complaint of sexual misconduct or sexual harassment. |
| staff (member) | means continuing, fixed term and casual employees, and contractors. |
| University | means the University of Sydney. |
| University accommodation | means University owned and affiliated residential accommodation. |

3 Meaning of Sexual Misconduct

- 3.1 The term sexual misconduct is used in this policy to cover a range of unacceptable sexual and physical behaviours, which are criminal offences.
- 3.2 Sexual misconduct can be experienced by people of all ages, genders and sexualities, within or outside a relationship. Sexual misconduct is an abuse of power, and is never the fault of the person who does not consent to the sexual behaviour.
- 3.3 For the purposes of this policy, sexual misconduct means any sexual act that a person does not consent to, including:
- (a) **rape (also called sexual assault)** – the forced penetration of the vagina or anus of any person with any part of the body of another person (including their fingers), or with any object, without the first person’s consent;
 - (b) **unwanted oral sex** – insertion of the penis into the mouth of another person, or use of the tongue or lips on the vagina, penis, scrotum or anus of another person, without their consent;
 - (c) **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;
 - (d) **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:
 - (i) a person showing another person their genitals (‘flashing’);
 - (ii) a person sending another person an unwanted still or moving image of their own or someone else’s genitals;
 - (iii) making a person show another person their breasts, bottom or genitals;
 - (iv) masturbating in front of another person;
 - (v) pretending to masturbate in front of another person;
 - (e) **voyeurism** - for the purpose of obtaining sexual arousal or sexual gratification, observing a person who is:
 - (i) in a state of undress;
 - (ii) using the toilet, showering or bathing; or
 - (iii) engaged in a sexual act;without their consent; and
 - (f) **recording or distributing an intimate image** of another person without their consent, whether in person or by electronic, digital or other means, including a still or moving image of:
 - (i) a person’s breast, bottom or genitals, whether bare or covered by underwear;
 - (ii) a person in a state of undress;
 - (iii) a person using the toilet, showering or bathing;
 - (iv) a person engaged in a sexual act.
- 3.4 For the purposes of this policy, a person will be considered to have engaged in sexual misconduct towards another person if:

- (a) the other person did not consent to the first person's actions; and
- (b) the first person:
 - (i) knew that the other person did not consent;
 - (ii) was reckless as to whether the other person consented; or
 - (iii) should reasonably have known, having regard to all the circumstances, that the other person did not consent.

3.5 For the purposes of this policy, attempting or threatening to engage in any of the above conduct may also constitute sexual misconduct.

3.6 Mandelbaum House may take disciplinary action against any community member who engages in sexual misconduct, including (as relevant) expulsion, suspension, termination of employment or termination of contract.

4 Meaning of consent

4.1 For the purposes of this policy, a person consents to a sexual act if they freely and voluntarily consent to the sexual act.

4.2 For the purposes of this policy, a person is not able to freely and voluntarily consent to a sexual act when they are:

- (a) asleep or unconscious;
- (b) significantly intoxicated or affected by drugs;
- (c) intimidated, coerced or threatened, including when they are afraid of harm to themselves or to someone else;
- (d) unclear about the identity of the person performing the act;
- (e) tricked into doing something they do not want to do;
- (f) detained or held against their will;
- (g) compelled to engage in the act by social or peer pressure;
- (h) under 18 years of age and the person performing the act is a Mandelbaum House staff member; or
- (i) pressured to engage in the act by a person who is in a position of power or authority over them.

4.3 Consent to a sexual act must be clear and obvious. The fact that a person does not say 'no' to, or does not physically resist, a sexual act does not of itself mean that they consent to it.

4.4 A person is free to withdraw their consent at any time prior to or during a sexual act, for any reason.

5 Meaning of sexual harassment

5.1 Sexual harassment occurs if a person:

- (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- (b) 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 the possibility that the person harassed would be offended, humiliated or intimidated.

5.2 Sexual harassment includes:

- (a) unwelcome touching, hugging or kissing;
- (b) inappropriate staring or leering;
- (c) sexual gestures;
- (d) sexually suggestive comments or jokes;
- (e) displaying, sending or requesting sexually explicit pictures or posters of oneself or others;
- (f) drawing or writing sexually explicit pictures or words on public notice boards or white boards;
- (g) giving sexually explicit gifts;
- (h) making or distributing a sexually explicit audio recording or photo-shopped image of another person;
- (i) repeated or inappropriate invitations to go out or 'hook up';
- (j) intrusive questions about a person's private life or physical appearance;
- (k) requests or pressure for sexual intercourse, or other sexual acts;
- (l) spreading rumours about someone's sexual relationships or practices, including by publicly suggesting or implying that named individuals have been or want to be engaged in a sexual relationship or practices;
- (m) strip-o-grams or any other form of striptease, or naked display of the sexual parts of a person's body;
- (n) wolf-whistling;
- (o) rituals, traditions or initiation rites of a sexual nature; and
- (p) uninvited entry into private rooms.

5.3 Sexual harassment can occur in person, through email, text, messaging, social media posts and other forms of electronic communication, or through another person.

5.4 Acts of sexual harassment may also constitute sexual misconduct.

5.5 Mandelbaum House may take disciplinary action against any community member who sexually harasses another person, including (as relevant) expulsion, suspension, termination of employment or termination of contract.

6 Harassment and Discrimination Officer

6.1 Mandelbaum House encourages any community member who has a concern about sexual misconduct or sexual harassment to seek assistance and support from the Harassment and Discrimination Officer, Naomi Winton: 0412 544 854 nwinton@mandelbaum.usyd.edu.au.

6.2 Any resident at Mandelbaum House who is approached by a community member with a concern about sexual misconduct or sexual harassment should refer the community member to the HDO.

6.3 The role of the HDO is to:

- (a) ensure that the community member is safe;
- (b) help the community member access any necessary health or welfare services;
- (c) help the community member clarify if the conduct could constitute sexual misconduct or sexual harassment;
- (d) explain this policy and the *Complaint Resolution Procedures*;
- (e) explain the need for confidentiality;
- (f) explore with the community member ways of resolving the issue, as set out in the *Complaint Resolution Procedures*;
- (g) discuss with the community member whether they wish to make a report to the NSW Police;
- (h) advise the community member of their right to make an external complaint to the [University](#), the [NSW Anti-Discrimination Board](#) or the [Australian Human Rights Commission](#);
- (i) alert the CEO and/or Council member(s) to any apparent need for interim measures to be taken in accordance with clause 12.

7 Complaints of sexual misconduct and sexual harassment

- 7.1 All current and former community members have a right to make a complaint of sexual misconduct or sexual harassment in accordance with this policy and the *Complaint Resolution Procedures*.
- 7.2 Any person who is not a community member has a right to make a complaint of sexual misconduct or sexual harassment against a community member, in accordance with this policy and the *Complaint Resolution Procedures*, in respect of conduct that occurred:
- (a) at Mandelbaum House; or
 - (b) at events or activities run by Mandelbaum House.
- 7.3 There is no time limit on making complaints of sexual misconduct or sexual harassment.
- 7.4 It is up to the person who has experienced sexual misconduct or sexual harassment to decide whether they want to make a complaint or not. They may choose to report the incident to Mandelbaum House, but decide that they do not want to make a complaint, because they do not want us to investigate or to take any specific action in response to the incident. A person who elects to report an incident rather than make a complaint may later decide to make a complaint to Mandelbaum House about the same incident.
- 7.5 A person cannot make a complaint of sexual misconduct or sexual harassment on behalf of another person. However, they can accompany and provide support to someone who wishes to make a complaint.
- 7.6 Complainants do not have to specify what action they would like Mandelbaum House to take in order to make a complaint. If a complainant chooses to specify what action they want Mandelbaum House to take, we may decide to take that action or some other action, as appropriate. Mandelbaum House will provide ongoing advice to the complainant on the progress of the complaint.

- 7.7 In most cases, a person wishing to make a complaint of sexual misconduct or sexual harassment will need to provide their name. Mandelbaum House cannot act on anonymous complaints of sexual misconduct or sexual harassment unless:
- (a) it is not necessary for the respondent to be aware of the identity of the complainant in order to properly respond to the complaint; or
 - (b) there is independent documentary or other evidence supporting the complaint and the allegation can be tested fairly.
- 7.8 If a community member makes a complaint of sexual misconduct or sexual harassment that occurred at, or necessarily involves, the University or University accommodation Mandelbaum House may refer the complaint to, or seek assistance from, the relevant external organisation to resolve the complaint. We will not do this without seeking the views of the complainant.
- 7.9 Community members may also (or instead of making a complaint to Mandelbaum House) elect to contact the [University](#), the [NSW Anti-Discrimination Board](#) or the [Australian Human Rights Commission](#) to make a complaint of sexual misconduct or sexual harassment.

8 Confidentiality and reports to the NSW Police

- 8.1 Wherever possible, Mandelbaum House will keep confidential all information about a complaint of sexual misconduct or sexual harassment, unless the complainant consents to the disclosure of part or all of the information for a specified purpose.
- 8.2 In some limited circumstances, Mandelbaum House may need to report an incident of sexual misconduct to the NSW Police, or to a health service or welfare provider, against a complainant's wishes, to ensure their safety or the safety of other community members, or to meet its legal obligations. We will not do this without informing the complainant.
- 8.3 A person may decide to make a complaint to Mandelbaum House, but not report the incident to the Police. Alternatively, they may decide to report sexual misconduct or sexual harassment to the Police, but not to make a complaint to Mandelbaum House.
- 8.4 Mandelbaum House supports the right of community members who have experienced sexual misconduct or sexual harassment to decide whether they want to report the incident to the NSW Police, or not. Mandelbaum House will record the community member's decision in writing, in their presence. A community member who initially decides not to report the incident to the Police may change their decision at a later time.
- 8.5 A person's decision to make a report to the Police will not necessarily prevent Mandelbaum House from investigating or taking action in response to sexual misconduct or sexual harassment. However, we may need to suspend any investigation process pending completion of the criminal process.
- 8.6 Mandelbaum House is required to report information about the commission of a 'serious indictable offence' to the Police in accordance with section 316 and 316A of the *Crimes Act 1900 (NSW)*.

Note: A 'serious indictable offence' is an offence that is punishable by imprisonment for five years or more, such as conduct referred to in this policy as rape (also called sexual assault) or sexual touching.

8.7 If a person decides not to report an incident of sexual misconduct to the Police, Mandelbaum House will use its best efforts to protect the confidentiality of information relating to the incident, while meeting its obligations under the *Crimes Act 1900 (NSW)*. We will keep the complainant informed of progress in this regard.

8.8 Complainants and respondents must comply with the confidentiality requirements prescribed in the *Complaint Resolution Procedures*. A breach of confidentiality, including on social media, may result in disciplinary action, including (as relevant) expulsion, suspension, termination of employment or termination of contract.

9 Active bystander intervention

9.1 Mandelbaum House encourages and values reasonable safe active bystander intervention by community members to prevent or stop sexual misconduct and sexual harassment from occurring or continuing.

9.2 The steps involved in safe active bystander intervention are:

- (a) noticing the situation – paying attention to what is going on nearby;
- (b) deciding if it is a problem – investigating whether someone might need help, and checking with people around if unsure;
- (c) accepting responsibility to take action – not assuming someone else will do something;
- (d) making a plan to step in – indirectly or directly confronting the issue, without being aggressive or putting oneself or others in danger.

9.3 If the situation looks dangerous, or there is a risk to community members or others, community members should not intervene, but should call Campus Security and/or the Police.

10 No victimisation

10.1 A person must not victimise or otherwise subject another person to detrimental action as a consequence of that person:

- (a) making a complaint of sexual misconduct or sexual harassment;
- (b) providing information about a complaint of sexual misconduct or sexual harassment;
- (c) supporting a person who has made a complaint of sexual misconduct or sexual harassment; or
- (d) engaging in reasonable safe active bystander intervention.

10.2 Victimisation may result in disciplinary action, including (as relevant) expulsion, suspension, termination of employment or termination of contract.

11 Opportunity to be heard

11.1 Complaints of sexual misconduct and sexual harassment will be resolved sensitively, fairly, confidentially and with a minimum of disruption, while following the principles of procedural fairness.

- 11.2 Complainants and respondents will have a reasonable opportunity to state or respond to a complaint orally and in writing, and to provide any documents relevant to the complaint.
- 11.3 Complainants and respondents are encouraged to bring a support person to any meeting.
- 11.4 At no time will the complainant and the respondent be required to meet with or to participate in any activity with one another, unless they have both given their prior informed consent.

12 Interim measures

- 12.1 Interim measures should not be interpreted as anticipating or revealing the outcome of any internal or criminal investigation process.
- 12.2 In order to minimise the risk of harm to any person, the CEO may take interim measures against a community member in response to:
 - (a) a complaint of sexual misconduct or sexual harassment against the community member, pending:
 - (i) resolution of the complaint;
 - (ii) investigation of the complaint;
 - (iii) the conclusion of an internal disciplinary process; or
 - (iv) criminal investigation and hearing; or
 - (b) an Apprehended Violence Order, whether interim or final.
- 12.3 As an interim measure, the CEO may:
 - (a) suspend a community member from access to Mandelbaum House;
 - (b) restrict a community member's access to specified parts of Mandelbaum House; or
 - (c) prohibit a community member from speaking to or approaching another person (including by social media, email, letter or through a third party);for such period, and on such terms, as the CEO considers necessary.
- 12.4 Interim measures will be:
 - (a) taken on a case-by-case basis;
 - (b) set for a fixed period of time; and
 - (c) reasonable and proportionate;having regard to the seriousness and circumstances of the alleged conduct.
- 12.5 Interim measures may be taken summarily, and the CEO:
 - (a) is not required to provide a hearing to the community member before making a decision; and
 - (b) may inform themselves in relation to any matter in any reasonable manner that they think fit.

- 12.6 The CEO will immediately notify the community member of the imposition of interim measures, and provide written notice to the community member within 24 hours:
- (a) specifying the terms of the interim measures;
 - (b) specifying the period of the interim measures;
 - (c) summarising the reasons for the interim measures; and
 - (d) providing a copy of, or an electronic link to, this policy.
- 12.7 A community member who is the subject of interim measures may seek an internal review of those measures by application in writing to the Chair of the Council.
- 12.8 Any internal review will be:
- (a) conducted on the written material; and
 - (b) limited to a review of the term, period and reasons for taking the interim measures.
- 12.9 At the conclusion of the internal review, the Chair of the Council will provide the community member with a written statement of the outcome of the review, including reasons.
- 12.10 Interim measures once taken will continue to apply until they are revoked by the CEO or Chair of the Council, or expire in accordance with their terms.

13 Vexatious complaints

- 13.1 A person must not make a vexatious or malicious complaint of sexual misconduct or sexual harassment.
- 13.2 For the purposes of this policy, a complaint will be considered vexatious or malicious if the person makes it:
- (a) knowing it to be false; and
 - (b) for the primary purpose of damaging Mandelbaum House or the person against whom the complaint is made.
- 13.3 Making a vexatious complaint may result in disciplinary action, including (as relevant) expulsion, suspension, termination of employment or termination of contract.

14 Record keeping

- 14.1 Mandelbaum House will keep appropriate records in a secure location, in accordance with the Commonwealth *Privacy Act 1988*.
- 14.2 Subject to clause 8, access to information about a complaint of sexual misconduct or sexual harassment will be restricted to Mandelbaum House staff and Council members who have a need to access and use the information in order to meet their responsibilities under this policy and the *Complaint Resolution Procedures*.

SCHEDULE 1 – Emergency contacts

- 1) In an emergency, students should contact **emergency services** by dialling triple zero (**000**).
- 2) Residents who feel unsafe on campus or are concerned for someone else’s safety can also contact **Campus Security** on **9351 3333**, 24 hours a day.
- 3) Residents and former residents who have experienced sexual assault can contact:
 - (a) **NSW Rape Crisis Service** on **1800 424 017**, 24 hours a day;
 - (b) **1800RESPECT** on **1800 737 732** or online via www.1800respect.org.au, 24 hours a day;
 - (c) **Royal Prince Alfred (RPA) Hospital Sexual Assault Service** on **9515 9040** (Monday to Friday) or **9515 6111** (after hours). Counselling and medical services are available for anyone who has been sexually assaulted. Campus Security can arrange transport to RPA.
- 4) Residents who have experienced sexual misconduct or sexual harassment have access to a range of University support services and assistance, including:
 - (a) **Counselling and Psychological Services (CAPS): 8627 8433** (from 9am-4:30pm, Monday to Friday);
 - (b) **USYD 24/7 Crisis Line: 1300 474 065 (telephone support)** (from 5pm to 9am weekdays, 24 hours on weekends and public holidays);
 - (c) **USYD 24/7 Crisis Text: 0488 884 429 (SMS chat)** (from 5pm to 9am weekdays, 24 hours on weekends and public holidays);
 - (d) **University Health Service: 9351 3484** (from 8:30am to 5pm, Monday to Friday).

Notes

Sexual Misconduct Policy 2019

Date adopted: 7 November 2019

Date commenced: 7 November 2019

Related documents: *Discrimination, Harassment and Bullying Policy 2019*
Complaint Resolution Procedures 2019

Related legislation: *Anti-Discrimination Act 1977 (NSW)*

Crimes Act 1900 (NSW)

Privacy Act 1988 (Cth)

Sex Discrimination Act 1984 (Cth)