

POLICY

PPMF | TAFESA | 1078

Title

Sexual Assault and Sexual Harassment Policy

Contact Officer

Position

Manager, Student Services

Phone

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TAFE SA Policies are issued under the TAFE SA Policy Management Framework. They are binding on all TAFE SA employees.

1 Policy

TAFE SA is committed to providing an environment free from sexual harassment and sexual assault. TAFE SA has zero tolerance of sexual assault and sexual harassment and expects all members of the TAFE SA community, including its visitors and agents, to adhere to this policy and treat each other with respect, courtesy and consideration.

TAFE SA will ensure that staff and students have access to this policy. Awareness-raising activities will be overseen by the Human Resources and Student Experience Directorates.

The purpose of this policy and associated procedures is to:

1. Promote a respectful, safe and inclusive TAFE SA environment that is free of sexual assault and/or sexual harassment.
2. Set out the process for receiving disclosures of sexual assault and/or sexual harassment.
3. Set out the process for receiving reports of sexual assault and/or sexual harassment.
4. Describe the support mechanisms available to TAFE SA staff and students.
5. Ensure that processes:
 - a. provide procedural fairness to all parties
 - b. provide appropriate support to all parties
 - c. are transparent and subject to review
 - d. maintain the safety and rights of complainants
 - e. hold students and/or staff accountable who have committed sexual assault and/or sexual harassment against a member of the TAFE SA community
 - f. appropriately engage with external parties and procedures as required

2 Scope

2.1 This policy applies to:

2.1.1 disclosures of sexual assault and/or sexual harassment by TAFE SA staff and/or students

2.1.2 reports of sexual assault and/or sexual harassment by TAFE SA staff and/or students

2.2 This policy applies to all of TAFE SA's:

2.2.1 Campuses

2.2.2 Digital environments, including but not limited to:

- a) Staff and student email accounts
- b) Online learning environments, including social media
- c) Messaging and digital meeting environments such as Skype for Business

2.2.3 Activities related to TAFE SA business that are not conducted on TAFE SA campuses, including but not limited to:

- a) Vocational placements, work experience and volunteering
- b) Field trips
- c) Student accommodation
- d) Social functions
- e) Events including career expos, conferences and open days
- f) TAFE SA online chat rooms

3 Definitions

<p>Sexual Consent</p>	<p>Sexual Consent is 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 and requires that a person is able to freely choose between two options: yes, and no.</p> <p>Sexual Consent cannot be assumed by:</p> <ul style="list-style-type: none"> • A person’s clothing or body language • Being in a dating relationship or having had previous sexual activity with someone • Being married to someone • A person’s silence, passivity or lack of resistance <p>Sexual Consent cannot be given where the person:</p> <ul style="list-style-type: none"> • Expresses by words or behaviour, a lack of consent to engage in the activity. • Is asleep or unconscious. • Is intoxicated by alcohol or any other substance to the point of being unable to give free and voluntary consent. • Is unclear about the identity of the person committing the act. • Has been tricked into doing something they did not want to do. • Has been detained or held against their will. • Has been intimidated, coerced or threatened, including where they are afraid of harm to themselves or someone else. • Is under 17 years of age. (The age of consent to sexual activity and the definition of consent may vary across Australian state and territory jurisdictions as well as internationally). • Is under 18 years old and the person committing the act is in a position of authority in relation to them, eg. a TAFE SA staff member or vocational placement supervisor. <p>A person is free to withdraw their consent at any time prior to or during a sexual act, for any reason.</p>
<p>Complainant</p>	<p>A complainant is any person who makes a disclosure or report of sexual assault and/or sexual harassment.</p>
<p>Disclosure</p>	<p>A disclosure is a form of complaint in which a complainant or another person tells someone about an incident or a suspected incident of sexual assault and/or sexual harassment.</p> <p>Disclosing is not the same as reporting, but allows the complainant to be heard and to be provided/referred to appropriate support and information.</p>
<p>Employee Assistance Program (EAP)</p>	<p>The program implemented by TAFE SA to deliver staff counselling services. Ph: 1300 360 364 http://in.tafesa.edu.au/hr/employee_assistance_program.php</p>
<p>Natural justice</p>	<p>Natural justice is a process whereby:</p> <ul style="list-style-type: none"> • All parties are given the opportunity to present their case

	<ul style="list-style-type: none"> • The respondent must be notified of the details of the allegations made against them and given information about their right to advocacy • The respondent must be given a reasonable timeframe in which to respond • The decision maker must act without bias, declare any conflict of interest, consider all relevant evidence and base a decision on supporting evidence • All parties must be notified of the decision relating to the report, and of the reasons for the decision
Report	A report is a form of complaint which occurs when a member of the TAFE SA community wants to formally report an incident of sexual assault and/or sexual harassment.
Respondent	A respondent is a member of the TAFE SA community about whom a report of sexual assault and/or sexual harassment has been made.
Sexual assault	<p>Sexual assault is 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.</p> <p>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. Sexual assault can include sexual behaviours that involve the use of force, threats, coercion or control towards a person.</p>
Sexual harassment	<p>Sexual harassment is 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.</p> <p>Sexual harassment includes, but is not limited to:</p> <ul style="list-style-type: none"> • 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, 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;

	<ul style="list-style-type: none"> • 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 gestures, 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; and • requests for sexual favours.
TAFE SA community	Refers to TAFE SA staff, students, employers, stakeholders and community members who are involved in TAFE SA business. This includes agents, placement providers and associates of staff and students.
TAFE SA staff member	A TAFE SA staff member is someone employed by TAFE SA under the TAFE SA Act or the Public Sector Act, including casual staff members. It also includes contractors and visiting lecturers, whether paid or unpaid.
TAFE SA student	<p>A TAFE SA student includes:</p> <ul style="list-style-type: none"> • Domestic and international students • Students studying accredited Vocational Education and Training (VET) award courses • Students studying accredited higher education award courses • Students studying accredited short courses, skill sets or licensing courses • Students studying non-accredited short courses • Students studying on campus, online, or via blended delivery.
Trauma Informed Response	<p>Trauma-informed response demonstrates understanding and recognition of the impact of trauma, and emphasises physical, psychological and emotional safety. It recognises that sexual assault and sexual harassment is an infringement of a person's basic human rights, and seeks to reassert those rights through a focus on empowerment and choice for those who have experienced sexual assault or sexual harassment.</p> <p>Trauma-informed responses are inclusive of transparent processes and policies to build a climate of trust to enable disclosures. Trauma-informed responses give recognition to the historical and cultural factors which contribute to the occurrence of sexual assault and/or sexual harassment, and identify opportunities for contributing to the prevention of further sexual assault and sexual harassment by changing the cultural conditions and environment under which it occurred.</p>

Victimisation	Victimisation occurs when a person commits an act, or threatens to commit an act against a complainant or respondent, or against another person acting as a support person to the complainant or respondent, as a result of that person's report.
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4 Related policies and procedures

PPMF TAFESA 1010	Respectful Behaviours Policy
PPMF TAFESA 1032	Customer Resolution and Feedback Policy
PPMF TAFESA 164	Customer Resolution and Feedback Procedure
PPMF TAFESA 136	Student Conduct and Disciplinary Policy
PPMF TAFESA 1005	Whistleblowers Protection Policy and Procedure
PPMF TAFESA 38	Access and Equity Policy and Procedure
PPMF TAFESA 119	Staff Grievance Resolution Procedure
PPMF TAFESA 1040	Student Critical Incident Policy
PPMF TAFESA 1018	Social Media Policy

5 References (eg legislation, standards, Treasurer's Instructions, Premier and Cabinet circulars)

C2014C00002	Sex Discrimination Act 1984 (Cwlth)
Document citation/link	Equal Opportunity Act 1984 (SA)
Document citation/link	Criminal Consolidation Act 1935 (SA)
Document citation/link	Children and Young People (Safety) Act 2017 (SA)
Document citation/link	TAFE SA Act 2012 (SA)
Document citation/link	Public Sector Act 2009 (SA)
Document citation/link	Code of Ethics for the South Australian Public Sector
Document citation/link	Public Interest Disclosure Act 2018 (SA)
	Standards for RTOs 2015 (Cwlth)
Document citation/link	Higher Education Standards Framework (Threshold Standards) 2015 (Cwlth)
Document citation/link	ESOS Act

Document citation/link	National Code of Practice for Providers of Education and Training to Overseas Students 2018
Document citation/link	TEQSA Guidance Note: Grievance and Complaint Handling
Document citation/link	TEQSA Guidance Note: Wellbeing and Safety
Universities Australia	Guidelines for university responses to sexual assault and sexual harassment
	Report to the Minister for Education: Higher education sector response to the issue of sexual assault and sexual harassment
Document citation/link	TAFE SA acknowledges the UniSA Sexual Assault and Sexual Harassment Policy which has been used as an important source in the development of this policy.

6 Guiding Principles

6.1 Rights-based response

Sexual assault and sexual harassment violate basic human rights. It is important to respond to victims in a way which affirms their rights, dignity, humanity and self-determination. The first responses a person receives when they disclose or report incidents of sexual assault or sexual harassment are critical to their recovery. TAFE SA will respond to disclosures and reports of sexual assault and/or sexual harassment in a compassionate, empathic and supportive way, and will assist the person to identify their needs for additional support.

6.2 A whole-of-community approach

TAFE SA is committed to a preventative approach through information and awareness-raising, creating a culture which fosters inclusion and respectful behaviours and in which there is zero tolerance to sexual assault and sexual harassment. Incident reporting rates will be monitored and reported to Executive to enable the ongoing review and refinement of our strategic approach and support processes.

6.3 Disclosure and reporting

Transparent and robust processes for disclosure and reporting are clearly outlined in this policy. The process reflects a trauma-informed approach which prioritises empowerment and choice for those who have experienced sexual assault and/or sexual harassment. Where reports involving TAFE SA staff or students are made to external agencies, TAFE SA will continue to provide support and sanction as appropriate.

6.4 Investigation of reports

In circumstances where a report of sexual assault and/or sexual harassment requires TAFE SA investigation, such investigations will not compromise current or potential police investigations. TAFE SA will ensure that students and staff who wish to disclose or report sexual assault and/or sexual harassment are directed to responders who can offer information, assistance and support. Investigations will only be undertaken at the direction of the relevant Executive. (Executive Director, People and Culture for reports involving staff, Director Student Experience for reports involving students).

6.5 Support and assistance

Support will be offered to staff and students who disclose or report sexual assault and/or sexual harassment within the TAFE SA community. This support includes: referral to the Employee Assistance Program (EAP) for Staff, and referral to Student Services counselling for students; provision of information about reporting options and support with reporting; and support with emotional wellbeing and the impact of sexual harassment and assault. Support and assistance will also be offered to staff and students who are subject to reports of sexual assault and/or harassment within the TAFE SA community.

6.6 Power and vulnerability

TAFE SA recognises that sexual assault and/or sexual harassment may be experienced by any person regardless of their sexuality or gender identity, culture and language group, abilities and age. People from vulnerable population groups may be subjected to sexual assault or sexual harassment at higher rates than others. The support provided by TAFE SA will be tailored to complainants' respective needs.

TAFE SA recognises that as an education provider, power dynamics exist between staff and students which can significantly impact on issues of consent so that students may be vulnerable. The relevance of power dynamics and vulnerability informs the TAFE SA approach to sexual assault and harassment.

6.7 Confidentiality and privacy

Confidentiality and privacy of students and staff disclosing or reporting sexual assault and/or sexual harassment will be upheld in accordance with legislative requirements and TAFE SA policies. Under the *Children and Young People (Safety) Act 2017* TAFE SA is required to make a mandatory report to the Child Abuse Report Line in relation to complaints of sexual assault which have occurred within South Australia where the complainant is aged under 18.

6.8 Natural justice

TAFE SA will follow the principles of natural justice when considering reports of sexual assault or sexual harassment. This means that any investigation will be carried out in a fair, impartial and equitable way.

7 Disclosures of sexual assault and sexual harassment

7.1 Members of the TAFE SA community can disclose sexual harassment and/or sexual assault to a TAFE SA staff member. Students who disclose sexual assault and/or sexual harassment at TAFE SA will be directed to a Student Services Counsellor who will initiate a support response. Staff members will be directed to their Human Resources Business Partner for support.

Responses to disclosure include:

- Support in managing the emotional impact
- Provision of information regarding reporting options, rights and policies
- Support with decision-making and referral to services
- Support with the reporting process

Disclosure requires notification to appropriate authority when:

- Disclosure involves persons under 18 years of age
- There is a duty to protect the public
- Disclosure involves actions of a staff member who may have violated the law or committed misconduct

- 7.2 In the case of people under the age of 18 years, TAFE SA staff members have an obligation under Section 31 of the *Children and Young People (Safety) Act 2017 (SA)* to notify the Department for Child Protection if, in the course of their work, they suspect on reasonable grounds that a person under the age of 18 years has been or is being abused.
- 7.3 If the complainant wants TAFE SA to investigate the incident of sexual assault and/or sexual harassment, they should make a formal report as outlined in clause 8 below.
- 7.4 Normally, TAFE SA will not notify authorities in relation to a disclosure without the complainant's consent, unless:
- 7.4.1 The person who has disclosed sexual assault and/or sexual harassment is under the age of 18 years.
 - 7.4.2 There is a reasonably foreseeable ongoing threat to the safety of person or persons relating to the disclosure.
- 7.5 TAFE SA will inform the person making the disclosure before commencing an investigation or notification.

8 Reporting sexual assault and sexual harassment

- 8.1 All members of the TAFE SA community can make a formal report about sexual assault and/or sexual harassment to TAFE SA if:
- 8.1.1 they want TAFE SA to take specific action, and
 - 8.1.2 the report is about TAFE SA-related conduct, including conduct by students or TAFE SA staff members.
- 8.2 Under the *Code of Ethics for the South Australian Public Sector*, TAFE SA staff members are additionally obligated to *'report to an appropriate authority workplace behaviour that a reasonable person would suspect violates any law, is a danger to public health or safety or to the environment, or amounts to misconduct'*.
- 8.3 Reports of sexual assault and/or sexual harassment will be received by Student Services Counsellors (student complainant) or Human Resources Business Partner (staff complainant). Reports will be documented using the Sexual Assault and Sexual Harassment Report Form available in this policy (Appendix 1).
- 8.4 Reports of sexual assault and/or sexual harassment received by TAFE SA will, under some circumstances, be referred directly to an appropriate authority for investigation.
- 8.4.1 Reports involving people under the age of 18 years will be reported to the Department for Child Protection. Obligations under Section 31 of the *Children and Young People (Safety) Act 2017 (SA)*.
 - 8.4.2 Reports involving reasonably foreseeable ongoing threat to the safety of the person or persons will be reported to the Police.
 - 8.4.3 Reports relating to a staff member who is reasonably suspected of violating the law or of misconduct will be reported to an appropriate authority as per the *Code of Ethics for the South Australian Public Sector*.

8.5 Reports to the Police

- 8.5.1 A member of the TAFE SA community has the right to report sexual assault and/or sexual harassment to the Police.
- 8.5.2 A member of the TAFE SA community may make a disclosure or report to TAFE SA about sexual assault and/or sexual harassment, but decide not to report it to the Police.
- 8.5.3 If a report is referred or likely to be referred to the Police, TAFE SA will not take action to compromise any Police investigation. This may mean that an internal TAFE SA investigation is suspended, pending the completion of the Police investigation.

9 Whistleblower protection

- 9.1 In accordance with the South Australian *Whistleblowers Protection Act 1993* a member of the TAFE SA community must not victimise or subject another person to detrimental action because that person has:
 - 9.1.1 Made a disclosure or a report of sexual assault or sexual harassment.
 - 9.1.2 Supported a person who has made a report or disclosure of sexual assault or sexual harassment.
 - 9.1.3 Engaged in safe bystander intervention.
- 9.2 Refer to the TAFE SA Whistleblowers Protection Policy and Procedure for further information.

10 Breach of this policy

- 10.1 TAFE SA will take disciplinary action against anyone who is knowingly involved in a breach of this policy.
- 10.2 Where this person is a student, this may include action as outlined in the *TAFE SA Student Conduct and Disciplinary Policy*.
- 10.3 Where this person is a TAFE SA staff member, this may include action as provided for in the *Public Sector Act 2009 (SA)* and the *TAFE SA Act 2012 (SA)*.
- 10.4 Breaches of this policy may constitute criminal offences or offences against State or Commonwealth regulations which can result in other actions taken by relevant authorities.

11 Procedure content

Where a report is investigated by TAFE SA and actions are taken, the subject of those actions may appeal decisions made by TAFE SA (ie. disciplinary actions taken according to the *Student Conduct and Disciplinary Policy*). Appeals in relation to actions taken in accordance with this policy can be directed to the relevant Director.

- Staff appeal to Executive Director, People and Culture
- Student appeal to Director, Student Experience

12 Responsibilities

12.1 Executive Director, People and Culture

- 12.1.1 The Executive Director, People and Culture, is responsible for ensuring Human Resources staff are appropriately trained and informed to receive disclosures and reports relating to sexual assault and/or sexual harassment, and to apply the principles and processes associated with this policy as it relates to TAFE SA staff.
- 12.1.2 The Executive Director People and Culture is responsible for convening the Sexual Assault and Harassment working group to implement prevention, and for monitoring disclosure and reporting requirements outlined in this policy.
- 12.1.3 The Executive Director People and Culture is responsible for monitoring and reporting incident trends relating to staff to enable the ongoing review and refinement of our strategic approach and support processes.

12.2 Director, Student Experience

- 12.2.1 The Director, Student Experience is responsible for ensuring Student Services staff are appropriately trained and informed to receive disclosures and reports relating to sexual assault and/or sexual harassment, and to apply the principles and processes associated with this policy as it relates to TAFE SA students.
- 12.2.2 The Director, Student Experience is responsible for monitoring and reporting incident trends relating to students to enable the ongoing review and refinement of our strategic approach and support processes.

12.3 TAFE SA Executive

- 12.3.1 TAFE SA Executive are responsible for endorsing and supporting the implementation, monitoring and review of this policy.
- 12.3.2 TAFE SA Executive are responsible for the provision of resources which enable the promotion and implementation of this policy across TAFE SA.

12.4 TAFE SA students

- 12.4.1 All TAFE SA students have a responsibility to ensure the wellbeing and safety of themselves and others and to conform to the requirements set out in the *Student Code of Behaviour*.

12.5 TAFE SA staff members

- 12.5.1 All TAFE SA staff members have a responsibility to behave professionally and with respect for others, in accordance with the *Code of Ethics for the South Australian Public Sector* and other relevant legislation. All staff have the responsibility to undertake any prescribed training in relation to this policy.

12.6 TAFE SA Managers

- 12.6.1 All managers are responsible for promoting a respectful work environment, ensuring staff undertake prescribed training, and for taking all reasonable steps to ensure that sexual assault and/or sexual harassment are prevented.

12.6.2 When incidents, disclosures or reports do occur, managers must respond appropriately and in accordance with this policy and related procedures.

13 Review of TAFE SA policy

This policy will be reviewed in full, including staff consultation and TAFE SA Executive/Board approval, no more than two years after the effective-from date. The policy may be reviewed sooner than this, according to strategic priorities, reforms or feedback received.

Appendix 1

Contact details for emergency and ongoing assistance and support

Emergency help – TAFE SA students and staff members

If you are in immediate danger or need urgent medical help, or you believe others are at risk:

- **Call the Police or an Ambulance on 000**
- If you are on a TAFE SA campus, you can contact Security or a TAFE SA Manager on campus.
- In non-emergency situations, you can contact the police on 131 444. If possible, phone a friend or family member to come to you. Remember, you may be in shock.
- If you don't need urgent medical treatment, contact [Yarrow Place Rape and Sexual Assault Service](#) (South Australia Wide, 24 hours a day/7 days a week) or call them on 1800 817 421.
- You can also go to your nearest hospital emergency department.
- For phone support, you can also call the [National Sexual Assault, Domestic Family Violence Counselling Service](#) on 1800 737 732 (1800 RESPECT).
- If you are concerned about a child and have a reasonable suspicion that a child is being abused or neglected, phone the Child Abuse Report Line (CARL) 131 478.

Ongoing assistance and support – TAFE SA students

TAFE SA Student Counsellors. Contact the TAFE SA InfoLine: 1800 882 661

TAFE SA has student counsellors available to assist students in relation to sexual harassment and/or assault. Counsellors provide a confidential and professional service and are located on most TAFE SA campuses. Support can be provided face-to-face or via telephone. TAFE SA Counsellors may recommend referral to external specialist counselling services for longer term or specialist services.

<https://www.tafesa.edu.au/services/counselling>

Students are also able to access support for sexual harassment from the appropriate legislative body, such as the [Equal Opportunity Commission](#) and the [Australian Human Rights Commission](#).

Ongoing assistance and support – TAFE SA staff members

[Employee Assistance Program \(EAP\)](#) P: 1300 360 364 (Appointments)

Staff are also able to access support for sexual harassment from the appropriate legislative body, such as the [Equal Opportunity Commission](#) and the [Australian Human Rights Commission](#).

[Online Support Services advice](#)

Appendix 2 Reporting Form Template

1. I am:*

- A TAFE SA Student
- A TAFE SA Staff Member
- Other (provide details)

2. I am reporting on behalf of:*

- Myself
- A TAFE SA Student
- A TAFE SA Staff Member
- Other (provide details)

3. My report relates to the action(s) of:*

- A TAFESA Student
- A TAFESA Staff Member
- Other (provide details)

4. When did the incident take place?

- In the last 24 hours
- In the last week
- In the last month
- In the last year
- Over a year ago

5. Where did the incident take place?

6. Please use this box to provide more information relating to the report: You can attach further information if you choose.

Who was involved?

What happened?

Other relevant information?

7. What action would you like TAFESA to take? (Tick all that apply)*

- Contact you confidentially and let you know what options are available as a next step for you
- Provide you with details on specific support services available to you
- Manage the report in line with TAFESA policy and procedures (this may include the commencement of an investigation).
- Assist you to make a report to the police
- No further action
- Other (please provide details)

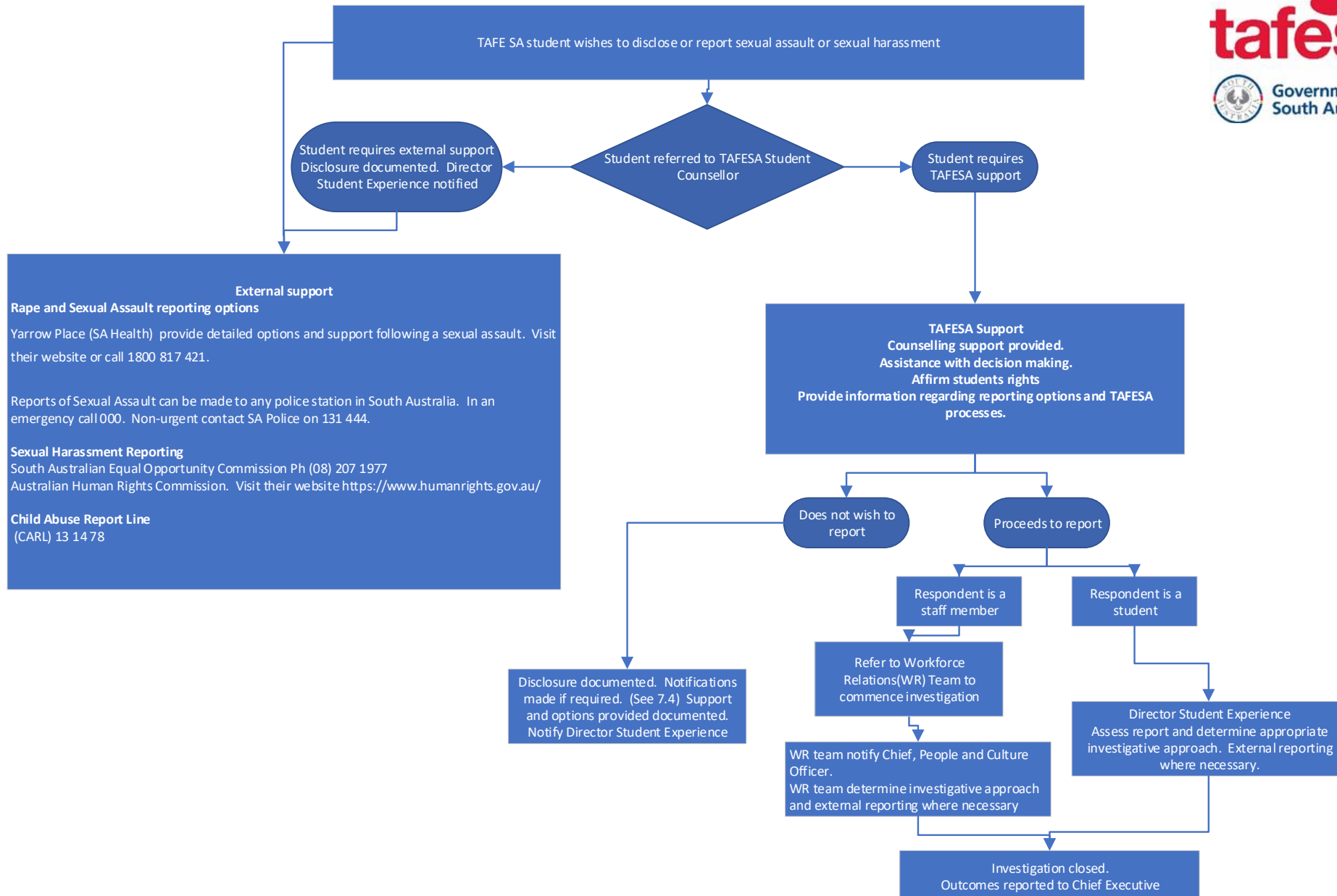
PERSONAL DETAILS

You do not have to reveal your name in order to make a report. However, if you identify yourself and there is a very serious risk of harm to you or another person your identity and the details of your report may have to be disclosed as a result of TAFE SA legal obligations.

TAFE SA would try and let you know before that step was taken.

Family name: _____
First name(s): _____
Preferred name: _____
Email: _____
Contact number: _____
Preferred contact: Please contact me by phone
 Other contact method (please provide details)

Appendix 3 Student Flowchart



Appendix 4 Staff Flowchart

