

Policy and Procedure on Equal Opportunity for Students

Note: The Council of the Northern Melbourne Institute of TAFE became the Board of the Northern Melbourne Institute of TAFE in July 2007.

1. Introduction

The Council of the Northern Melbourne Institute of TAFE is committed to providing an educational environment that supports anti-discrimination legislation and which recognises and positively promotes equal opportunity for all students.

NMIT will not tolerate unlawful discrimination, bullying, harassment or any form of offensive behaviour that adversely affects the capacity of students to participate fully in both academic and non-academic spheres of student life.

Allegations of sexual harassment will be dealt with through the *Prevention of Sexual Harassment Policy and Procedure for Students*.

Students should read the policy and procedure carefully and seek advice from the Student Services Department or a member of the teaching staff if they are unsure of the process.

This policy and procedure is available in the Student Services Department section of the Quality Assurance Manual located on the NMIT staff intranet, on the NMIT website for both prospective and current students (www.nmit.vic.edu.au/rules), on the NMIT student intranet under institute rules (www.class.nmit.vic.edu.au) and in the Student Diary, which is available to all enrolled students.

2. Relevant legislation

The institute Equal Opportunity Policy and Procedure for Students reflects the following Commonwealth (Cth) and Victorian (Vic) legislation:

- Disability Discrimination Act 1992 Cth
- Equal Opportunity Act 1995 Vic
- Human Rights and Equal Opportunity Commission Act 1986 Cth
- Public Sector Management and Employment Act 1998 Vic
- Racial and Religious Tolerance Act 2001 Vic
- Racial Discrimination Act 1975 Cth
- Racial Hatred Act 1995 Cth
- Sex Discrimination Act 1984 Cth

The Equal Opportunity Act 1995 (The Act) makes it unlawful to treat someone unfairly or harass them because of their actual or assumed

- age
- breastfeeding
- gender identity

- impairment
- industrial activity
- lawful sexual activity
- marital status
- parental status or status as a carer
- physical features
- political belief or activity
- pregnancy
- race
- religious belief or activity
- sex
- sexual orientation
- personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

The Act prohibits direct or indirect discrimination (where):

- Direct discrimination occurs if a person treats, or proposes to treat, someone with an attribute less favourably than the person treats or would treat someone without that attribute, or with a different attribute, in the same or similar circumstances, and
- Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice:
 - that someone with an attribute does not or cannot comply with; and
 - that a higher proportion of people without that attribute, or with a different attribute, do or can comply with; and
 - that is not reasonable.

The Act promotes equality of opportunity between persons of different sex, age, marital status, race and the other specified attributes and provides redress for those who have been subjected to discrimination.

The Victorian Racial and Religious Tolerance Act and the various Commonwealth Acts provide similar prohibitions against discrimination in their respective areas.

The Victorian Equal Opportunity Commission administers the Equal Opportunity Act 1995 (Vic).

The Commission's address is:

Level 3, 380 Lonsdale Street

Melbourne 3000

Ph: (03) 9281 7111

TTY: (03) 9281 7110

The Human Rights and Equal Opportunity Commission (HREOC) administers all complaints made under discrimination laws. Information can be obtained from the HREOC website: www.hreoc.gov.au or by calling complaints information hotline on 1300 363 992.

3. Definitions

Bullying is actual hurtful behaviour directed by more powerful individuals or groups against those who are less powerful. Bullying takes many forms and can be physical, such as kicking and hitting, verbal, such as abusive comments, name-calling or obscene or threatening phone calls, social, such as spreading rumours or excluding someone from an activity or emotional, such as victimization or extortion.

The **complainant** is the person making the complaint.

A **complaint** is an allegation about discrimination, bullying or harassment.

An **employee** means any employee of the institute or any independent contractor and any employee of any independent contractor engaged by the institute.

Harassment is any unwelcomed or unreciprocated behaviour that is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person.

Institute means the Northern Melbourne Institute of TAFE (NMIT).

Natural justice is a fundamental legal principle that ensures that an impartial decision maker reaches a fair decision. The elements include:

- advising a person of the allegations made against them and the nature of the evidence supporting the allegation
- ensuring that the person has the right to respond and present arguments or evidence in defence
- conducting proper investigations into the allegations ensuring that all parties are heard
- forming a view based on the evidence that is fair and unbiased and, if a penalty is required, ensuring that it is not harsh, unreasonable or unjust
- advising the person of any rights of review or appeal.

The **parties** mean the complainant and the respondent to a complaint.

The **respondent** is the person, persons or entity against whom the complaint is made.

A **student** means an NMIT enrolled student or prospective student. It can also mean groups of students or prospective students.

Vexatious complaints are unsubstantiated complaints deliberately intended to annoy or bring distress or suffering to other parties.

4. Principles

NMIT is committed to promoting equal opportunity for all students to pursue their studies, achieve appropriate educational outcomes, access services and facilities and participate in activities provided by the institute.

NMIT will actively seek to eliminate and prevent discriminatory practices, either direct or indirect, that hinder or limit the ability of students to pursue their education and participate in student life.

NMIT is committed to inclusive practices and anti-discrimination accommodations for individual students that reflect the needs of all students based on commonsense and negotiated actions and

outcomes.

NMIT will provide ongoing training and professional development for all staff with regard to matters relating to equal opportunity for students.

NMIT will ensure that this policy and updated information on equal opportunity issues for students is disseminated to all areas of the institute.

NMIT procedures are designed to:

- facilitate the fair and prompt resolution of complaints of harassment, bullying or discrimination that affect students within the institute
- resolve complaints in an informal and conciliatory manner
- maintain confidentiality
- ensure the application of the principles of natural justice to the resolution of complaints.

5. Scope

- 5.1 These procedures apply to complaints by students relating to incidences of harassment, bullying or unlawful discrimination.
- 5.2 Students who believe they have been the subjects of sexual harassment should access the institute Prevention of Sexual Harassment Policy and Procedure For Students.
- 5.3 The institute will not tolerate bullying or harassment and will ensure that appropriate action is taken in relation to any complaint. It is recognized, however, that in some instances unacceptable behaviour may not be the result of a deliberate intention to offend or distress. It may be the outcome of a genuine lack of awareness on the part of one person or of a group. For this reason the Institute Rule: Student Discipline Section 1.7.10 clarifies misconduct relating to bullying and harassment as “*conduct within the precincts of the institute that constitutes bullying, harassment or sexual harassment and which continues after the student has been clearly advised of the nature of the offending behaviours, conduct or language*”.
- 5.4 Where a prima facie case is established that the allegations may constitute misconduct under the provisions of the Student Discipline Rule, actions that may lead to disciplinary procedures may be recommended.
- 5.5 There are a number of options for dealing with complaints of harassment and discrimination. Students are encouraged to seek advice in the first instance.
- 5.6 There are five steps outlined for the resolution of complaints. No costs or charges apply to any of the internal stages or the external review. The steps are:
 - Step 1: Self-management
 - Step 2: Informal internal process
 - Step 3: Formal internal complaint

- Step 4: External review
- Step 5: External complaint

5.7 These five steps are not mandatory nor do they have to be followed sequentially. The complaints procedure can begin at any of the steps.

5.8 Frivolous complaints will be dismissed and complaint resolution processes will cease. This may occur at any time during the complaint resolution proceedings.

5.9 Vexatious complaints may lead to disciplinary proceedings being taken against the complainant.

6. Procedures

6.1 Step 1: Self-management

6.1.1 Students are encouraged to seek advice from members of the teaching staff or a counsellor in the Student Services Department in the first instance. Institute staff can:

- provide advice on whether discrimination may have occurred
- advise on appropriate action to take, including referrals to appropriate institute staff members or services
- support the student whether they decide to take action on their complaint or not.

6.1.2 Where a student believes he or she has been the subject of harassment, bullying or discrimination, the complainant may choose to raise the matter either verbally or in writing with the person who has undertaken the behaviour causing the complaint. This should be done as soon as possible after the behaviour has occurred.

6.1.3 The respondent may attempt to address the issue and respond to the complainant.

6.1.4 If the complainant feels that the nature of the relationship with the person or entity that they allege has harassed, bullied or discriminated against them precludes them from raising the matter directly with them, the complainant may choose to have the matter dealt with through an informal resolution process (Step 2) or by lodging a formal complaint (Step 3).

6.2 Step 2: Informal internal process

6.2.1 A complainant who chooses to have the matter dealt with through an informal resolution process will be referred to the Student Welfare Co-ordinator by a member of the institute staff or may contact the Student Welfare Co-ordinator.

6.2.2 The Student Welfare Co-ordinator will attempt to resolve the complaint with the parties concerned within five working days.

6.2.3 The Student Welfare Co-ordinator may request from both parties permission to seek

and release confidential information from designated institute staff in an effort to resolve the matter informally.

- 6.2.4 All relevant file notes kept during the course of the complaint resolution process and signed agreements will be secured in the office of the Student Welfare Co-ordinator for a period of five years.
- 6.2.5 The parties concerned will be informed of any outcomes that may result from the informal complaint resolution processes.
- 6.2.6 If the complaint is resolved, a note to that effect signed off by each of the parties will be placed in the file notes and secured in the office of the Student Welfare Co-ordinator for a period of five years.
- 6.2.7 If the matter remains unresolved after this stage, the complainant may choose to register a formal internal complaint.

6.3 Step 3: Formal internal complaint

- 6.3.1 Where steps 1 and 2 have failed to resolve the matter, have not been deemed appropriate or have not been attempted, the complainant may lodge a formal complaint. At this stage the matter should be lodged in writing with the relevant Associate Director/Academic Head of Higher Education Programs/ Manager Student Services Department.
- 6.3.2 When a complaint, is submitted in writing to the Associate Director/Academic Head of Higher Education Programs/Manager Student Services Department the following must occur:
 - 1. The Associate Director/Academic Head of Higher Education Programs/ Manager Student Services Department will inform the Student Welfare Co-ordinator of the nature of the complaint and request details of any actions previously take to attempt to resolve the matter;
 - 2. Within five working days the Associate Director/Academic Head of Higher Education Programs/Manager Student Services will investigate the complaint;
 - 3. The investigation will involve interviewing the complainant, seeking written responses from the respondent and others who have relevant information and conducting such meetings as may be required to determine the facts of the matter, and if possible, resolve the matter.
- 6.3.3 All relevant file notes kept during the course of the investigation into the complaint and signed agreements will be secured in the office of relevant Associate Director/Academic Head of Higher Education Programs/Manager Student Services Department for a period of five years.
- 6.3.4 If successful in resolving the matter a note to that effect and signed off by each of the parties will be placed in the relevant file and secured in the office of the relevant

Associate Director/Academic Head of Higher Education Programs/Manager Student Services Department for a period of five years.

6.3.5 If unsuccessful in resolving the matter the Associate Director/Academic Head of Higher Education Programs/Manager Student Services Department will provide a written report that outlines the complaint, the investigation, the conclusions of the investigation and recommendations for resolution to the CEO within five working days after the completion of the investigation.

6.3.6 After considering the report the CEO may:

- Determine that a breach of the institute’s Equal Opportunity Policy for Students has been proven and refer the matter to either the Director Programs or the Director Corporate Services for action under the relevant institute policy or rule. Examples of actions might include (but are not limited to):
 - application of the Student Discipline Rule where the complainant has been bullied by another student;
 - application of the institute’s Employment Procedures where a staff member has discriminated against the complainant; or
 - referral to the Faculty Board of Studies where a procedure unfairly discriminates against a student or group of students.
- Determine that there has not been a breach of the institute’s Equal Opportunity Policy for Students and dismiss the complaint.

6.4 Step 4 : External Review

Should the complainant or respondent be dissatisfied with the decision of the CEO, he/she can request in writing an external review to be conducted by a member of the Institute of Arbitrators and Mediators Australia (IAMA). NMIT will acknowledge receipt of this request and pass all information to the designated member of the IAMA. The CEO will consider the recommendation of the external reviewer prior to confirming or amending the original decision and communicate the decision with supporting reasons in writing to the parties involved in the process within two weeks. The cost for the external review process will be borne by NMIT.

6.5 Step 5 : External Complaint

Where the complainant remains dissatisfied with the outcome of attempts to resolve the issue, the complainant may wish to lodge a complaint with the Equal Opportunity Commission Victoria at any time within their statutory limits.