

Policy and Procedure for the Prevention of Sexual Harassment of 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. Policy

The Council of the Northern Melbourne Institute of TAFE is committed to providing an environment for students that is free from sexual harassment and a procedure for resolution of claims of sexual harassment.

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. Definitions

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

A **complaint** is a complaint about sexual harassment.

Conciliation is a process in which the parties to a dispute, with the assistance of a conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement.

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

The **institute** means 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 of natural justice 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 their 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 and
- 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 or entity against whom the complaint is made.

Sexual harassment is any unwelcomed and unreciprocated conduct of a sexual nature that is reasonably likely in the circumstances to offend, insult, humiliate or intimidate another person.

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

A **support person** is one who is permitted to assist one of the parties by attending meetings or interviews. The support person will not be a member of the legal fraternity and will act within the bounds of the processes established for the meeting or interview.

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

3. Principles

- 3.1 Students have the right to study and participate in campus activities in an environment free from sexual harassment.
- 3.2 Sexual harassment will not occur if each individual recognizes and respects the rights of others.
- 3.3 The institute recognizes that an essential element in combating sexual harassment is to raise awareness about the issues with the student body and throughout the institute community. Teaching staff will receive regular training to identify potentially offensive and inappropriate behaviours in classrooms, teaching environments and on campus and implement appropriate strategies to deter the behaviours.
- 3.4 The institute will not tolerate sexual 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 sexual 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*".
- 3.5 All complaints will be viewed seriously and treated confidentially.
- 3.6 The complaint procedure will attempt to resolve complaints quickly in an informal and conciliatory manner. Every effort will be made to maintain confidentiality and protect the complainant and the respondent.

- 3.7 Students will be advised of this policy and the appropriate avenues to make complaints under the policy.
- 3.8 Frivolous complaints will be dismissed and complaint resolution processes will cease. This may occur at any time during the complaint resolution proceedings.
- 3.9 Vexatious complaints may lead to disciplinary proceedings being taken against the complainant.
- 3.10 Where it is apparent that the nature of the alleged sexual harassment constitutes a criminal offence the complainant will be advised to report the issue to the police. In this circumstance the institute will conduct an internal investigation into the alleged sexual harassment and determine the matter passed on its own processes and according to the principles of natural justice.

4. Scope

- 4.1 This policy applies to complaints by students about sexual harassment at NMIT.
- 4.2 These procedures should be read in conjunction with the Institute Rule: Student Discipline This rule will apply where the parties are both students and investigations have established that sexual harassment has continued after the respondent has been advised of the offending behaviours.
- 4.3 Where a prima facie case is established that the allegations of sexual harassment may constitute serious misconduct under the provisions of the Institute Rule Student Discipline, actions that may lead to disciplinary procedures may be recommended and complaint resolution procedures will cease.
- 4.4 Where the complainant is a student and the respondent is an employee of the institute, the matter will be referred to the Personnel Department for investigation and possible action under the institute Employment Procedures.
- 4.5 There are a number of options for dealing with complaints of sexual harassment. Students are encouraged to seek advice from the Student Services Department or a member of the teaching staff in the first instance.
- 4.6 There are five steps outlined for the procedure to resolve complaints. No costs or charges apply to any of the internal steps 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

These five steps are not mandatory nor do they have to be followed sequentially. The complaints procedure can begin at any of the steps, particularly when the issue is very sensitive.

- 4.7 At any stage complaints can be taken to the Equal Opportunity Commission Victoria (www.eoc.vic.gov.au) or the Human Rights and Equal Opportunity Commission (www.hreoc.gov.au).

5. Procedure

5.1 Step 1: Self-management

- 5.1.1 Students who believe that they are being sexually harassed or have been sexually harassed are encouraged to seek advice in the first instance. Students can:

- speak confidentially with a counsellor in the Student Services Department who can:
- help clarify whether the behaviour constitutes sexual harassment
- explain the procedure for making a complaint of sexual harassment,
- offer emotional support whether the student decides to proceed with the complaint or not
- speak to a member of the teaching staff
- contact the Equal Opportunity Commission for information and advice.

- 5.1.2 In general, students are encouraged, where appropriate, 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.

In many instances a complainant will feel unable to raise the issue directly with the respondent, and in these circumstances the student should contact a member of the teaching staff or the Student Welfare Co-ordinator in the Student Services Department for assistance.

5.2 Step 2: Informal internal process

- 5.2.1 If the matter remains unresolved after initial attempts by the complainant and the complainant wishes to pursue the matter, the complainant should either contact the Student Welfare Co-ordinator in the Student Services Department directly or speak to a member of the teaching staff who will arrange for the Student Welfare Co-ordinator to meet with the student.
- 5.2.2 The Student Welfare Co-ordinator will attempt to resolve the complaint with the parties concerned within five working days.
- 5.2.3 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.

- 5.2.4 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.
- 5.2.5 The parties concerned will be informed of any outcomes that may result from the informal complaint resolution processes.
- 5.2.6 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.
- 5.2.7 If the matter remains unresolved after this stage, the complainant may choose to register a formal internal complaint.

5.3 Step 3: Formal internal complaint

- 5.3.1 Where steps 1 and 2 have failed to resolve the matter, 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.
- 5.3.2 When a complaint regarding sexual harassment is submitted in writing to the Associate Director/Academic Head of Higher Education Programs/Manager Student Services Department, the following must occur:
 - The relevant Associate Director/Academic Head of Higher Education Programs /Manager Student Services Department will inform the Co-ordinator Student Welfare of the nature of the complaint and request details of any actions previously taken to attempt to resolve the matter.
 - Within five working days of receiving the complaint the Associate Director/Academic Head of Higher Education Programs/Manager Student Services will convene appropriate meetings with the parties involved (unless already previously attempted).
 - The complainant shall be given the opportunity to attempt resolution of the issue by conciliation (if not already attempted) or have the matter investigated.
 - The decision by the complainant to attempt conciliation or have the matter investigated will be conveyed to the parties in writing within 2 days of the decision being taken.
- 5.3.3 If the parties agree to conciliation, this should be commence within 10 working days unless otherwise agreed upon by the parties
- 5.3.4 Where conciliation is entered into, the conciliator will provide the parties and the Associate Director/Academic Head of Higher Education Programs/Manager Student

Services Department with a written summary of any agreements entered into at the conclusion of the process, regardless of the outcomes.

- 5.3.5 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 Associate Director/Academic Head of Higher Education Programs/Manager Student Services Department for a period of five years.
- 5.3.6 If the respondent refuses to agree to conciliation or the conciliation process fails to resolve the matter satisfactorily, or it is deemed inappropriate in the circumstances, the Associate Director/Academic Head of Higher Education Programs/Manager Student Services Department will formally investigate the complaint according to the principles of natural justice.
- 5.3.7 The investigation must be completed within 5 working days from the date of the decision not to attempt resolution through conciliation was formally conveyed to both parties. The Associate Director/Academic Head of Higher Education Programs/Manager Student Services will provide a written report including recommendations to the CEO within five working days after the completion of the investigation.
- 5.3.8 After considering the report the CEO may:
- Determine that sexual harassment has been proven and refer the matter to either the Director Programs or the Director Corporate Services for action under the Institute Rule Student Discipline, where the respondent is a student or the Employment Procedures of the institute where the respondent is an employee. The complainant will be advised of the outcome.
 - Determine that sexual harassment has not been proven and advise the complainant of the outcome and of external avenues for redress if the complainant is not satisfied with the determination.

5.4 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.

5.5 Step 5: External complaint

Where the complainant remains dissatisfied with the outcome of attempts to resolve the

TITLE: POLICY AND PROCEDURE FOR THE PREVENTION OF SEXUAL HARASSMENT OF STUDENTS



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7

Page: 7 of

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issue, the complainant may wish to lodge a complaint with the Equal Opportunity Commission Victoria at any time within their statutory limits.