

# SEXUAL HARRASSMENT

Policy number	64	Version	1
Approved by Board on	3 September 2015	Scheduled review date	September 2016

## 1 Purpose

The purpose of this document is to outline NIODA's position on sexual harassment and to document the process that is to be followed should any grievances in relation to sexual harassment arise.

## 2 Scope / Application

This code of conduct applies to all students and staff at NIODA, in respect of all actions and activities relating to or impacting on NIODA students and staff.

## 3 Policy Statement

NIODA recognises it is the right of every staff member and student to be able to attend work and to perform their duties without being subjected to any form of sexual harassment.

Equally, it is the obligation and responsibility of every staff member and student to ensure that the workplace is free from sexual harassment.

NIODA is fully committed to its obligations to eliminate sexual harassment in the workplace.

NIODA will not tolerate sexual harassment under any circumstances. Responsibility lies with every Manager and staff/student to ensure that sexual harassment does not occur.

Both federal and state Equal Employment Opportunity legislation provide that sexual harassment is unlawful. NIODA considers that legislative obligations under the Acts establish minimum standards of behaviour for all staff and students.

The principles set out in this policy are intended to apply to any work-related context, including conferences, work functions, social events and business trips.

A breach of this policy will result in disciplinary action. Depending upon the severity of the case, consequences may include apology, counselling, transfer, demotion, dismissal, or other forms of disciplinary action deemed appropriate.

NIODA strongly encourages any staff member or student who feels they have been sexually harassed to take immediate action, preferably by making it clear that such behaviour is unwelcome and offensive alternatively, or in addition, they may follow the procedures for reporting the behaviour.

Any reports of sexual harassment will be treated seriously and promptly with sensitivity. Such reports will be treated as completely confidential up to the point where a formal or informal complaint is lodged against a particular person, at which point that person must be notified under the rules of natural justice.

Complainants have the right to determine how to have a complaint treated, to have support or representation throughout the process, and the option to discontinue a complaint at any stage of the process.

The alleged harasser also has the right to have support or representation during any investigation, as well

# SEXUAL HARRASSMENT

as the right to respond fully to any formal allegations made. There will be no presumptions of guilt and no determination made until a full investigation has been completed.

No staff member or student will be treated unfairly as a result of rejecting unwanted advances. Disciplinary action may be taken against anyone who victimises or retaliates against a person who has complained of sexual harassment, or against any staff member or student who has been alleged to be a harasser.

All staff and students have the right to seek the assistance of the relevant tribunal or legislative body to assist them in the resolution of any concerns.

NIODA managers who fail to take appropriate corrective action when aware of harassment of a person will be subject to disciplinary action.

The following outlines NIODA's responsibilities and procedures in respect to this policy.

## 4 Definitions

*Sexual harassment* means any unwelcome sexual advance, unwelcome request for sexual favours, or other unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated, and where that reaction is reasonable in the circumstances. Examples of sexual harassment include, but are not limited to,

- intrusive enquiries into an staff's private life
- reference to their sexuality or physical appearance
- unwanted body touching or physically molesting a person
- standing too close
- excessively lengthy handshakes
- unwanted brushing against another's body
- indecent exposure
- obscene, suggestive or offensive communications, including electronic mail
- pornographic or offensive posters, handouts or screensavers
- sexual jokes or anecdotes
- leering or staring
- unwanted sexual compliments or excessive flirting
- sexual assault.

Behaviour that is based on mutual attraction, friendship and respect is not sexual harassment.

# SEXUAL HARRASSMENT

## 5 Responsibilities

It is the responsibility of the CEO to ensure that:

- They understand and are committed to the rights and entitlements of all staff to attend work and perform their duties, without fear of being sexually harassed in any form
- They understand what constitutes an act of sexual harassment
- All reasonable steps are made to eliminate sexual harassment
- All staff and students are regularly made aware of their obligations in relation to providing a workplace free from sexual harassment
- They provide an environment which discourages harassment and victimisation and set an example by their own behaviour
- They treat all complaints seriously and confidentially
- They take immediate and appropriate corrective action if they become aware of any offensive action.
- Guidance and education is provided, where requested and/or appropriate, to cases and subsequent decisions relating to sexual harassment
- Ongoing support and guidance is provided to all staff in relation to the prevention of sexual harassment.

## 6 Procedures

### 6.1 Complaint Process

Sexual harassment can occur at any level of the organisation, can be experienced by both men and women and may involve a co-worker, student, manager, service provider or client. Lack of intent is no defense in sexual harassment cases.

Staff or students who believe they are the subject of sexual harassment should take firm, positive and prompt action.

If such a course is deemed appropriate, the staff member or student should make the perceived harasser(s) aware that they find their behaviour offensive, unwelcome, unacceptable, and that it needs to stop immediately.

If the behaviour continues, or if the staff or student feels unable to speak to the person(s) directly, they should contact the CEO. Alternatively, a staff member or student may contact a Board member they feel comfortable with. In this latter case the complaint will be then referred to a specially convened subcommittee of the Board for action that will follow policy as set out in this document. (If the latter is the case please read 'Board subcommittee' in place of 'CEO' in the following).

Support will be provided and the nature of the complaint and the wishes of the complainant ascertained.

The complainant does not have to request a full formal investigation if they will be satisfied by less formal treatment of the issue.

# SEXUAL HARRASSMENT

## 6.2 Informal Intervention

The staff member or student's rights and responsibilities under NIODA's policy, procedures and Equal Employment Opportunity or anti-discrimination legislation will be explained.

Informal intervention may be undertaken through a process of mediation or conciliation. During informal intervention the alleged harasser will be made aware of the allegations being made against them and given the right to respond.

This procedure will be complete when the complainant and the respondent come to an agreement on the procedure to be followed. If this occurs, no record will be made of the proceedings, and any subsequent proceedings will begin *de novo*. If this does not occur, the formal procedure should be followed.

## 6.3 Formal Complaints Procedure

Proceeding with a formal complaint requires the consent of the person complaining, particularly as witnesses or senior management may become involved.

The formal procedure will be co-ordinated by the CEO.

The complaint should be clarified and a step-by-step account of the incident obtained. More than one interview may be necessary.

All such interviews will be documented accurately and avoid irrelevant information. Relevant information will include parties involved, timing, location, and nature of conduct complained against.

Records are to be kept and filed in a confidential and secure place. These records should be kept for a period of seven years. Under no circumstances will records be placed on the complainant's personnel file.

An investigation will be organised, which in most cases may involve but is not limited to:

- A private interview to ascertain the facts and what the complainant expects to happen as a result of making the complaint
- An interview with the alleged harasser(s) to ascertain their defense
- Interviews with other staff, students or individuals who may be able to assist
- Examination of any relevant documents
- Determination of previous behaviours or issues.

All evidence should be referred to the person conducting the investigation. Such evidence may include:

- Supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker
- Personnel records (e.g. unexplained request for transfer or shift changes, sudden increase in sick leave)
- Complaints or information provided by other employers or students about the behaviour of the alleged harasser
- Records kept by the person claiming to have been harassed

# SEXUAL HARRASSMENT

- Information on whether the evidence was presented by the parties in a credible and consistent manner
- Information on the absence of evidence where it should logically exist.

On completion of the investigation, the complainant and the CEO will determine a course of action to be taken.

Possible course of actions may include, but not be limited to, any combination of the following:

- Counselling
- Disciplinary action against the harasser (e.g. demotion, transfer, suspension, probation or dismissal)
- Official warnings that are noted in the respondent's personnel file
- Disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious
- Formal apologies and undertaking that the behaviour will cease
- Conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution
- Re-crediting any leave taken as a result of the harassment.

Outcomes will depend upon factors such as:

- The severity and frequency of the harassment
- The weight of the evidence
- The wishes of the person who was harassed
- Whether the harasser could have been expected to know that such behaviour was a breach of policy
- The level of contrition
- Whether there have been any prior incidents or warnings.

The CEO will advise all relevant parties of the outcome.

If there is insufficient proof to decide whether or not the harassment occurred, the CEO will:

- Remind those involved of expected standards of conduct
- Conduct further training and awareness raising sessions for staff and students
- Monitor the situation carefully.

The outcome will be monitored to ensure that the offensive behaviour has ceased, and that neither party has been victimised. This may involve follow-up interviews.

If there has been any substantiated victimisation, disciplinary procedures will be followed.

# SEXUAL HARRASSMENT

## **6.4 Procedures for Dealing with Criminal Conduct**

Some forms of severe sexual harassment (e.g. sexual assault, stalking, indecent exposure, physical molestation, obscene phone calls) may constitute criminal conduct.

While NIODA is committed to treat most sexual harassment complaints at an organisation level as far as possible, this type of conduct is not suited to internal resolution. Such complaints should be treated by the criminal justice system.

In relation to alleged criminal offences such as rape or sexual assault, the matter must be immediately referred to the CEO. Staff/students should be advised of the option of police support or intervention. It is not the obligation or duty of the company to report such matters to the police on behalf of the complainant.

## **7 Related Documents**

Staff Dispute Resolution Policy

Bullying Policy

Staff Dispute Resolution Policy