

Policy number	P86	Version	4
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## 1. Purpose

The purpose of this document is to outline NIODA's position on sexual misconduct and to document the processes to be followed should any allegation of sexual misconduct be reported.

## 2. Terminology

NIODA acknowledges that people who experience sexual misconduct may refer to themselves as a complainant, victim or survivor. For simplicity, this Policy refers to people who have experienced Sexual Misconduct as 'complainants', and persons who report (but have not personally experienced) Sexual Misconduct as 'reporters'.

Sexual misconduct is unwelcome behaviour of a sexual nature. The behaviour can be physical, spoken or written, and can make you feel offended, humiliated or intimidated. It can be directed to both women and men; in either case, it is totally unacceptable.

Sexual misconduct can be described as a broad range of sexual behaviours by another person that can make you feel uncomfortable, frightened or threatened. Sexual misconduct can include rape, sexual assault and sexual harassment.

All sexual misconduct is unlawful, some types of sexual misconduct may also be offences under criminal law, such as indecent exposure, stalking and sexual assault and rape. A single incident is enough to constitute sexual misconduct.

Rape occurs when a person intentionally penetrates another person without their consent.

Sexual assault occurs where a person intentionally sexually touches another person without their consent.

Consent usually involves free agreement which can be a complicated concept at law. Consent does not usually occur where:

- is forced, or in fear of force or harm of any type
- is unlawfully detained
- is asleep or unconscious, or is so intoxicated as to be incapable of consenting
- is mistaken about the sexual nature of the act or identity of any other person involved
- mistakenly believes that the act is for medical or hygienic purposes
- is not saying or doing anything to indicate consent
- gives consent and later withdraws it to the act taking place or continuing.

**Note:** behaviour that is based on mutual attraction, friendship and respect is not sexual misconduct.

Sexual harassment can be defined as:

Sexual harassment is unwelcome behaviour of a sexual nature. The behaviour can be physical, spoken or written, and can make you feel offended, humiliated or intimidated. It can be directed to both women and men; in either case it is totally unacceptable.

Sexual harassment can be physical, verbal or written, and can include:

- someone asking you to go out with them repeatedly
- touching
- leering or staring suggestively
- sexual comments on how a person looks or is dressed
- comments on a person's sex life or sexuality
- sexual jokes or anecdotes
- displays of pornography (including screen savers, photos, calendars or objects)
- sexually explicit emails, text messages or posts on social networking sites
- being hassled for sex

Some types of sexual harassment may also be offences under criminal law, such as indecent exposure, stalking and sexual assault. A single incident is enough to constitute sexual harassment.

Definitions on rape, consent and sexual or indecent assault are found in sections 35-48B of the Victorian Crimes Act:

[http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/LTObject\\_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/23147C4DEA6CB6D2CA25849B00817C2F/\\$FILE/58-6231aa289%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/23147C4DEA6CB6D2CA25849B00817C2F/$FILE/58-6231aa289%20authorised.pdf)

In NSW, the definitions are found in Division 10 of the NSW Crimes Act:

<https://www.legislation.nsw.gov.au/#/view/act/1900/40>

### **3. Scope**

Sexual misconduct can be experienced by both men and women and in the context of NIODA may involve co-workers, students, volunteers, service providers or clients.

### **4. Application**

This policy applies to the entire NIODA community. That is, it applies to all staff, students, members of the boards and committees in respect of all actions and activities within the Institute.

The principles set out in this policy are intended to apply to any Institute-related context. This extends to occasions such as classes, meetings, conferences, workshops, seminars, research, consulting assignments, work functions, social events and business trips. It also includes virtual environments (e.g. email, intranet systems, social media, online forums, communities and platforms).

## 5. Policy Statement

NIODA recognises that sexual misconduct is unlawful and it is the right of every member of the NIODA community to be able to attend work and study without being subjected to any form of sexual misconduct. NIODA does not tolerate sexual misconduct under any circumstances and is fully committed to creating an environment for the NIODA community that is free from sexual misconduct.

It is the obligation and responsibility of every member of the NIODA community to ensure that the Institute is free from sexual misconduct.

## 6. Responsibilities

All members of the NIODA community are responsible for ensuring a teaching and learning environment that is free from sexual misconduct.

It is the responsibility of the CEO to instigate this policy in order to ensure that:

- all members of the NIODA community understand and are committed to their rights and entitlements to attend work and study without fear of sexual misconduct.
- all members of the NIODA community understand what constitutes an act of sexual misconduct
- all members of the NIODA community are made aware of their obligations in relation to providing an environment free from sexual misconduct
- any complaints of sexual misconduct are treated seriously and confidentially, subject to the laws of natural justice, see below
- immediate and appropriate action is taken in the event of sexual misconduct being reported
- guidance and education about eliminating sexual misconduct is provided to the NIODA community, where requested and/or appropriate.

NIODA staff members and members of the boards and committees are responsible for reporting any concerns about the possibility of breaches in the execution of this policy.

## 7. Principles to be applied to allegations of sexual misconduct

- Any allegation of sexual misconduct will be treated seriously, promptly and with sensitivity.
- Any allegations will be treated confidentially until a formal complaint is made, at which point the alleged perpetrator must be notified of the nature of the complaint under the rules of natural justice.
- Complainants have the right to have support or representation throughout the complaint process, and the option to discontinue a complaint at any stage.
- If the complaint involves an allegation of sexual assault or other behaviours that are criminal in nature and the complainant decides to report the matter to police for investigation, NIODA will support the complainant to make the report. There may be circumstances in which NIODA will proceed to take disciplinary action under this policy.
- An alleged perpetrator also has the right to have support or representation during any investigation, as well as the right to respond fully to any formal complaints made. A full investigation must be

completed before any allegation can be substantiated.

- No member of the NIODA community 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 misconduct, or against any member of the NIODA community who has been alleged to be a perpetrator of sexual misconduct.
- In the context of sexual assault or sexual harassment allegations, all members of the NIODA community have the right to seek assistance from external agencies to assist them. Information about resources for assistance and support is available on the NIODA website at <https://www.nioda.org.au/sexual-misconduct/>

## **8. Incident procedures**

Complainants and by-stander reporters can report sexual misconduct by making a report to NIODA, or a report to an external body. At any stage of the Incident Procedure (detailed items 8.1 - 8.5), or when a concern cannot be addressed using this Incident Procedure, NIODA may consider and implement actions as necessary to address concerns regarding individuals' safety, wellbeing, or participation in work, study life.

### **8.1. Initial response**

Any complainant who feels they have been sexually assaulted or experienced criminal sexual misconduct are encouraged to contact the police or a sexual crisis line on <https://www.nioda.org.au/sexual-misconduct/>. See section 8.5 (Criminal Sexual Misconduct).

Any complainant who feels they have been affected by any other form of sexual misconduct should, in the first instance take immediate action, preferably by making it clear to the alleged perpetrator that the behaviour is unwelcome and should stop. Alternatively, or in addition, they may follow the complaint process (see below).

Sexual misconduct is never acceptable.

### **8.2. Complaint process**

If the person feels unable to speak to the alleged perpetrator(s) directly, they should contact either the Student Advisor, Chief Executive Officer (CEO) or Chair of the Board of Governance (the Board) to report the behaviour. If one of those persons is the alleged perpetrator, one of the other two mentioned above should be contacted. The email addresses and telephone numbers are available in NIODA internal platform at <https://sites.google.com/nioda.org.au/internalplatform/home>, and may be used to report behaviour that is considered to be in breach of this policy. The NIODA contact person must initiate appropriate actions in response, as set out in this policy document.

The Board must convene a sub-committee of the Board of at least two members to initiate appropriate actions in response, as set out in this policy document. The CEO or the Board sub-committee must ensure that the complainant is offered support and that the nature of the complaint and the wishes of the complainant are ascertained as to the actions to be taken.

The complainant does not have to request a full formal investigation if their preference is for an informal intervention to be initiated.

### **8.3. Informal intervention**

Informal intervention may be undertaken through a process of mediation, facilitated by the CEO or the

Board of Governance sub-committee. During the informal intervention, the alleged perpetrator will be made aware of the allegations being made against them and given the right to respond.

Any mediation procedure will be complete when the complainant and the respondent come to an agreement as to the outcome of the mediation.

The outcome of any mediation will not be recorded, and any subsequent proceedings will begin *de novo* (begin again from the beginning). If a mediated outcome cannot be reached, the formal complaint procedure (set out below) should be followed.

#### **8.4. Formal Complaint Procedure**

A formal complaint may be initiated by the complainant, in which event a formal investigation must be undertaken.

The investigation will be coordinated by the CEO or, where appropriate, by the NIODA Board of Governance sub-committee. It may be appropriate for an investigation to be undertaken by a member of the NIODA community or by an independent party external to NIODA with the relevant skills and experience in workplace investigations. This will be a matter to be decided by the CEO or the NIODA Board of Governance sub-committee in the context of the particular allegations.

An investigation should involve but is not limited to:

- interviews with the complainant and the alleged perpetrator(s) to ascertain their versions of events
- interviews with any witnesses
- examination of any relevant documents or other evidence including supporting evidence provided by the complainant's or alleged perpetrator's medical practitioner, counsellor, family member, friend or co-worker; personnel or student records; records kept by the complainant
- determination of previously reported behaviours or issues with the alleged perpetrator(s)

A record of the investigation must be kept and filed in a confidential and secure place for a period of seven years. Under no circumstances will records be placed on the complainant's personnel or student file.

On completion of the investigation, the CEO or the Board sub-committee will determine a course of action to be taken, in consultation with the complainant.

Possible courses of action following a complaint will depend upon the outcome of the investigation and whether the complainant and respondent are students, staff members, members of the boards or committees, or other members of the NIODA community. Courses of action may include, but are not limited to, any combination of the following:

- a formal apology and undertaking that the behaviour(s) will cease
- conciliation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution
- counselling
- disciplinary action (e.g. demotion, suspension, probation or dismissal)
- official warnings

- disciplinary action against the complainant if there is strong evidence that the complaint was vexatious or malicious
- staff who have been complainants may have leave that they have taken re-credited
- recommended report to the police if criminality is indicated (see below)
- There may be circumstances in which NIODA will proceed to take disciplinary action under this policy.
- this will not preclude NIODA from taking internal action as it sees fit.

Outcomes will depend upon:

- the severity and frequency of the harassment
- the weight of the evidence
- the wishes of the complainant
- 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 including those required by legislation.

The outcome will be monitored to ensure that any behaviour in breach of this policy has ceased and that neither party has been victimised as a response to a complaint being made under this policy. This may involve follow-up interviews.

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

- remind those involved of expected standards of conduct
- conduct further training and awareness-raising sessions for members of the NIODA community
- the CEO will be alert to the possible scape-goating of any of the parties involved
- monitor the situation carefully

## **8.5. Procedures for dealing with criminal conduct**

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

Any allegation of sexual assault or criminal forms of sexual misconduct should be immediately referred to the police and the NIODA CEO notified.

Members of the NIODA Community will be advised of the option of police support or intervention. It is not the obligation or duty of NIODA to report such matters to the police on behalf of the complainant.

There may be circumstances in which NIODA will proceed to take disciplinary action under this policy.

## **9. Related Documents**

Code of Conduct Policy

General Misconduct Policy

Staff Dispute Resolution Policy

Bullying Policy

Student Grievance Policy

Student Support Policy