

## Misconduct Policy – Non-Academic

Policy Number	2/2020
Approving Authority	NIDA Board of Directors
Date Implemented	
Current Version	24 October 2019
Date of Review	January 2021
Contact Officer	Head of Student Engagement Learning and Quality Assurance
Related Policies, Procedures and Documents	NIDA Student Charter, including Code of Conduct Grievance Policy and Procedure: Non Academic Matters Anti-discrimination, Bullying and Harassment Policy Sexual Misconduct Policy Misconduct Procedure – Non-Academic Alcohol, Drugs, and Smoking Policy Assessment Policy Attendance Policy Student Handbook Fees Policy

### 1. DEFINITIONS

Term	Definition
<b>Behavioural Agreement Contract</b>	A binding document between NIDA and the student which outlines: <ul style="list-style-type: none"> <li>- What constitutes inappropriate behavior</li> <li>- What corrective action will be necessary (including penalties or restrictions imposed)</li> <li>- The length of the agreement (from several days to the remainder of the student's NIDA enrolment)</li> <li>- The probable outcome if the agreement is not upheld by the student.</li> </ul>
<b>Disciplinary action</b>	Formal action taken by NIDA that imposes a penalty on a student. This formal action is recorded on a student's permanent record.

<b>Expulsion</b>	Permanent cancellation of a student's NIDA enrollment. Students who are expelled from NIDA are not allowed access to NIDA property or facilities and are not eligible to reapply to study at NIDA. Expelled students are not eligible to receive refunds of tuition fees and the expulsion is recorded on the student's NIDA record.
<b>In Absentia</b>	Formal Latin phrase used to mean "while absent", in the graduation context it means the student will graduate and be given a certificate but they will not attend any formal graduation ceremony.
<b>Laws of the Land</b>	Any Australian State, Territory or Commonwealth laws and the laws of any land in which the student may be undertaking an industry placement.
<b>NIDA Code of Conduct</b>	Framework outlining the rights and responsibilities of all members of the NIDA community in terms of behavior whilst at NIDA, working for NIDA or involved in NIDA related activities offsite.
<b>Misconduct</b>	Any behavior/s that do not comply with the NIDA Code of Conduct or any of the other NIDA Student Policies and Procedures or laws of the land.
<b>Procedural Fairness</b>	<p>The right to a fair process of review and the process for making a decision, not the decision itself. It requires:</p> <ul style="list-style-type: none"> <li>▪ ensuring there is a timely and thorough investigation of evidence and that all relevant submissions and any mitigating factors are taken into account;</li> <li>▪ the opportunity for all parties to be heard,</li> <li>▪ those who have had a complaint made against them to be aware of the allegations and their right of response to the allegations;</li> <li>▪ ensuring all parties are informed of the procedures under which the matter is being handled and are given access to the relevant policy and procedure documents;</li> <li>▪ the right to have any material considered by an unbiased, impartial decision-maker</li> <li>▪ advising all parties that disciplinary penalties may apply for unfounded or malicious allegations and for breaches of the Code of Conduct or policies</li> </ul>
<b>Suspension</b>	A period of exclusion where a student is not able to attend NIDA classes and is not allowed to access NIDA property or facilities. No refunds will be issued and the suspension forms part of the student's permanent record.
<b>Safe work environment</b>	One that is free from violence, bullying, discrimination or harassment and where organizational efforts are focused on reasonably practicable reduction of health and safety risks.
<b>Show Cause</b>	The student is given the opportunity to provide an explanation and provide any supporting evidence they feel is required to explain why they should be given an opportunity to continue their studies or in the case of exclusion to explain how they are ready to return to NIDA studies.

## 2. PURPOSE and PRINCIPLES

The purpose of this policy is to support the health, safety and welfare of the NIDA community.

The purpose of this document is to set out the penalties for breach of NIDA's non-academic policies, by which alleged breaches of the NIDA Student Code of Conduct or other policies will be managed.

NIDA considers that in the interests of the NIDA community allegations of misconduct or breach of policy should be addressed in a manner that is fair, consistent, timely, transparent and in accordance with the principles of procedural fairness and privacy.

### **3. SCOPE and RESPONSIBILITIES**

This policy applies to all students enrolled in accredited courses at NIDA, for all subjects.

This policy and procedure does not replace or modify NIDA's obligations to report under state or federal law.

This policy and procedure has rights and responsibilities as follows:

The Head of Student Engagement Learning and Quality Assurance is responsible for:

- Ensuring the accessibility of this policy by staff and students
- Implementation of this policy
- Monitoring and ensuring currency of the policy and ensuring amendments are updated as required
- Establishing a communication process that is transparent, fair and confidential with respect to misconduct matters

Course Leaders and Heads of Department are responsible for:

- Being aware of and following the policy
- Escalating potential incidents of misconduct appropriately
- Academic teaching staff are responsible for:
  - Notifying the relevant Course Leader of any behavior that might be considered misconduct or of any behavior that poses a potential threat to the NIDA community, it's members and or reputation
- Maintaining the privacy and confidentiality of the student(s)

Administrative staff are responsible for:

- Recording upon request notifications of Misconduct investigations and their outcomes in the relevant student file
- Maintaining the privacy and confidentiality of the student/s and their records
- Students, including alumni, exchange students or ex-students (who were enrolled at the time of the alleged misconduct) are responsible for:
  - Being aware of and following the policy and procedure
  - Communicating to their Course Leader or NIDA staff if they become aware of or witness behavior they believe constitutes misconduct and or a breach of any NIDA Policies and Procedures.

## 4. POLICY

4.1 Behaviour that breaks laws of the land, breaches the NIDA Code of Conduct or any of the other NIDA Policies and Procedures or poses a potential risk to the safety and well-being of others is not acceptable and will be investigated.

### 4.2 Investigation

- 4.2.1 The investigation will be undertaken by the relevant Director or their nominated representative/s
- 4.2.2 The investigation into an alleged misconduct will commence within ten (10) working days of the written allegation being received. If the allegation is serious immediate action may be taken
- 4.2.3 All practicable measures will be taken -to ensure privacy and reputation prior to and after the determination
- 4.2.4 In any interview the student against whom the allegation has been made is able to have a support person present.

4.3 As a result of investigation, which will be conducted as per the Misconduct Procedure – Non-Academic, penalties for misconduct include but are not limited to:

- 4.3.1 A formal apology to be made to the relevant party
- 4.3.2 Restitution of damages
- 4.3.3 Placement of a student on a Behavioural Agreement Contract or a Performance Management Plan which might require a student:
  - to enter into mediation with relevant parties
  - to attend counselling or seek professional assistance and support.
  - to accept restricted access to NIDA facilities or activities, including assessments and classes for a stated period of time
- 4.3.4 In the case of academic misconduct, the issue a formal reprimand or warning, to reduce the student's marks or fail the student in the subject or course or to require remedial educative action. Such a warning forms part of the student's permanent record.
- 4.3.5 Disciplinary action – including but not limited to
  - a formal Code of Conduct Warning. Such a warning forms part of the student's permanent record, and or
  - Withdrawal of student access to some or all NIDA activities (including assessment activities such as productions), facilities or services for a specific period of time
  - Provision of access to facilities and resources under certain conditions
- 4.3.6 Suspension - Suspending the student from NIDA and NIDA courses for a period of any duration up 24 months, including the option of conditional return from exclusion- show cause
- 4.3.7 Expulsion - Cancelling the student's enrolment at NIDA. Expulsion from NIDA is permanent with no ability to reapply or refund of monies paid.

4.4 Return to NIDA courses for students who are suspended or excluded for a period of time is not automatic. Students who have been suspended or excluded must reapply for admittance at the end of the exclusion period and show cause as to how they are ready to recommence studies.

- 4.5 Students suspended, excluded or expelled from NIDA in accordance with this policy shall not be entitled to any refund of course fees.
- 4.6 NIDA retains the right to withhold the awarding of a degree or diploma pending the conclusion of an investigation.
- 4.7 NIDA has the right to exclude a student from an award ceremony and to award a degree, diploma or any other qualification 'in absentia'.
- 4.8 NIDA's published procedures do not preclude NIDA from reporting allegations to the relevant authorities, such as the police, for investigation and instituting civil or criminal proceedings against a student should this be warranted.

## 5. LEGAL and POLICY FRAMEWORK

<b>Legislation and Regulatory Frameworks</b>	Age Discrimination Act 2004: Disability Discrimination Act 1992 Racial Discrimination Act 1975 Sex Discrimination Act 1984 New South Wales Anti-Discrimination Act 1977 (NSW) Smoke Free Environment Act 2000 (NSW) Smoke Free Environment Regulation 2007 (NSW) Work Health and Safety Act 2000 (NSW) Work Health and Safety Regulation 2011 Drugs, Poisons and Controlled Substances Act (DPSCA) Commonwealth regulations related to NIDA's funding and sub-lease agreements Other relevant legislation and industry standards
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## 6. APPENDIX: CHANGE HISTORY

<b>Date</b>	<b>Change Description</b>	<b>Reason for Change</b>	<b>Author</b>	<b>Version</b>
October 2019	Policy and Procedure separated into independent documents			

February 2017	As part of the review the procedure was altered (delay caused by review of NIDA Code of Conduct, which shifted from a student code to a NIDA community code. Changes include: Reference to new NIDA Code of Conduct, inclusion of an expulsion option, the shift in first stage of reporting to the Executive Director of Learning and Teaching and Director, Vocational Education	Review Date – January 2016 Policy and Procedure Review	Education Manager	2.0 Misconduct Policy and Procedure
October 2013				Student Misconduct Procedures