

## Sexual Misconduct Policy – Student

Policy Number	4/2020
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 (Code of Conduct) Misconduct Policy – Non-Academic Misconduct Procedure – Non-Academic Student Handbook Anti-Discrimination, Bullying and Harassment Policy Grievance Policy and Procedure: Non Academic Matters Sexual Misconduct reporting form

### 1. DEFINITIONS

Term	Definition
<b>Act</b>	A law of either the Commonwealth or NSW parliaments that apply/ies to this policy and to which all members of the NIDA community must comply.
<b>Act of Indecency</b>	When a person does something of a sexual nature with or towards another person or makes the person do something of a sexual nature towards them. <a href="http://www.health.nsw.gov.au/sexualassault/Pages/default.aspx">http://www.health.nsw.gov.au/sexualassault/Pages/default.aspx</a>
<b>Confidentiality</b>	Limiting disclosure of information relating to an allegation to as few people as possible, and only to those who are legitimately involved in the process of resolving the issue. (i.e. to only those with a need to know).  Confidentiality will be preserved as far as is possible whilst ensuring thorough investigation of the issue and the development of an action plan, as appropriate. (AFTRS)
<b>Consent</b>	Occurs when a person freely and voluntarily agrees to sexual activity/intercourse.

Sexual assault occurs when someone is unable to and/or does not give consent. The law says that a person is unable to give consent when:

- asleep or unconscious
- significantly intoxicated or affected by drugs
- unable to understand what they are consenting to due to their age or intellectual capacity
- intimidated, coerced or threatened
- unlawfully detained or held against their will
- they submit due to the person being in a position of trust or power over them.

These laws do not generally apply to people under the age of 16 years and vulnerable people who, under the law, cannot be said to have consented because of their age and vulnerability.

Modified from <http://www.health.nsw.gov.au/sexualassault/Pages/default.aspx> (April 2018)

<b>Complainant</b>	The individual who makes an allegation of misconduct (in this case, sexual misconduct).
<b>Disclosure</b>	The act of providing information, or the provision of evidence, regarding the alleged incident.
<b>Indecent assault</b>	Touching (or the threat to touch) a person's body in a sexual manner without consent by another person. For example it can include unwanted touching of a person's breast, bottom, or genitals. <a href="http://www.health.nsw.gov.au/sexualassault/Pages/default.aspx">http://www.health.nsw.gov.au/sexualassault/Pages/default.aspx</a>
<b>Natural justice</b>	The principles of natural justice are also referred to as procedural fairness and have been developed to ensure that decision making is fair and reasonable. Simply speaking natural justice involves decision makers informing people of the complaint or concern made against them and by whom, where an investigation will lead to recommendations about the matter, and includes giving them an opportunity to respond. It is not necessary to apply these principles in cases where information only is being sourced.
<b>NIDA community</b>	All NIDA staff, the NIDA Board, contractors, volunteers and full and part time NIDA students enrolled in accredited courses.
<b>NIDA property</b>	Any premises, machinery, facilities or equipment, leased, owned, operated or supervised by NIDA, including NIDA vehicles and any location at which NIDA activities occur.
<b>Prohibited Behaviour</b>	The Anti-discrimination Board of NSW provides the following examples of sexual harassment and of prohibited behaviour: Examples of Sexual Harassment Examples of Prohibited Behaviour Some types of behaviour are very likely to offend at least some people, so they are completely banned, these are as follows: <ul style="list-style-type: none"> <li>▪ having sex at work (read school)</li> <li>▪ touching the sexual parts of anyone else's body</li> <li>▪ indecent or sexual assault</li> <li>▪ exposing the sexual parts of your own or someone else's body</li> <li>▪ deliberately accessing pornography on the internet</li> </ul>

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- displaying or distributing pornography, sexual, material in any form anywhere in the workplace (read school)
  - obscene communications
  - initiation rites (hazing practices) that are sexual, dangerous or offensive, humiliating or intimidating in other ways.
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## **Sexual Assault**

Sexual assault occurs when someone is forced, coerced or tricked into sexual acts or exposed to sexual situations against their will.

Sexual assault can also occur when a person is unable to consent, such as if they are intoxicated or asleep. Sexual assault or sexual violence can include rape, incest, indecent assault, sexual assault and sexual molesting.

<http://www.health.nsw.gov.au/sexualassault/Pages/default.aspx>

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## **Sexual Harassment**

The Anti-discrimination Board of NSW provides the following examples of sexual harassment and of prohibited behaviour:

Examples of Sexual Harassment:

- sexual or suggestive remarks
- sexual propositions
- uninvited touching / physical contact such as pinching, patting, massaging, pushing, jostling or brushing up against a person
- sexually suggestive comments or jokes
- inappropriate advances on social networking sites
- offensive phone calls, letters or sending sexually explicit information or images in electronic form
- sexually explicit conversations
- repeated invitations when all earlier invitations have been declined
- suggestive looks, leers or gestures
- wolf whistling
- kissing or hugging, unless it is clear that this is welcome
- unnecessarily leaning over someone or standing too close to them
- unwelcome physical contact such as massaging a person without invitation, deliberately brushing up against them or forcing a person to perform sexual acts
- inappropriate or repeated questions about someone's personal life
- touching or fiddling with a person's clothing including lifting up skirts or shirts, flicking bra straps, or putting hands in another person's pocket
- behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent assault, sexual assault, stalking, or obscene communications.

Sexual harassment may also include:

- a. reluctant consent, where there is a disparity in relative authority or power or where a person is in a position to make a decision more or less favourable;
  - b. 'consent' that is based on fear; or
  - c. intimidation or other circumstances relating to the relative status of those involved. For example, a student may find it difficult to refuse an advance from an academic supervisor out of fear of a potential impact on future results. In these circumstances, a perceived consensual relationship may be found to be sexual harassment (University of Wollongong).
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*# NOTE: This list provides examples of sexually harassing behaviour and is not exhaustive. It should be noted that harassment can be defined “depending on the context and the situation”.*

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<b>Sexual Misconduct</b>	Includes; sexual indecency, sexual harassment, sexual assault, prohibited behavior.
<b>Student</b>	Any person enrolled in an accredited course at NIDA.
<b>Vexatious</b>	An action or the action of a person that is brought forward without sufficient grounds purely to cause annoyance or harm to another person or persons.

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## 2. PURPOSE and PRINCIPLES

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

NIDA is committed to ensuring the health, safety and welfare of its students, staff and visitors whilst at NIDA and to providing a healthy learning and teaching environment free from all forms of sexual misconduct inclusive of sexual harassment, sexual indecency or sexual assault.

NIDA values diversity of thought and experience and believes that an inclusive and collaborative culture underpins teaching excellence in the performing arts.

The context of studying in the dramatic arts will involve NIDA students in the staged representation of a range of human behavior, including close physical contact and drawing on material that may represent intimate or sexual activities or sexual assault, harassment and violence as part of their studies for live and screen performance and production. In this context, consent for any staged activities of an intimate or violent nature must be sought by all parties. NIDA students will be supported through professional training in appropriate and safe processes to enable the communication of consent or withholding of consent in the context of their drama studies.

Equity, diversity and inclusion are considered essential to the continued success of NIDA.

## 3. SCOPE OF POLICY and RESPONSIBILITIES

This policy and the associated NIDA misconduct procedure does not replace or modify NIDA's obligations, including reporting requirements under state or federal law.

This policy applies to all students enrolled in NIDA accredited courses and applies to students' activities whether at the campus in Sydney or any other venue or site.

This policy applies to any form of contact or communication that is relevant to NIDA activities, including but not limited to verbal engagements, notes, letters, posters, images, email, phone, fax, online social media and other applications or methods.

This policy and procedure has rights and responsibilities as follows:

All members of the NIDA community are responsible for ensuring that sexual misconduct does not occur.

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.

All NIDA students are responsible for:

- Complying with and supporting the policy at all times when on NIDA property or engaged offsite on NIDA related activities
- Reporting any behaviors that contravene this policy and or that pose a potential risk to students, staff or NIDA's reputation.

## 4. POLICY

### 4.1 General

- 4.1.1 This policy and the associated NIDA misconduct procedure does not replace or modify NIDA's obligations, including reporting requirements under state or federal law.
- 4.1.2 NIDA is committed to providing safe and supportive learning and teaching environment that is free from sexual misconduct inclusive of sexual harassment, sexual indecency or sexual assault. NIDA recognises its responsibilities under a range of Commonwealth and State Acts and will apply the principles of natural justice when investigating claims of sexual misconduct inclusive of sexual harassment or sexual assault.
- 4.1.3 NIDA will treat reports of indecency, sexual harassment and sexual assault seriously and confidentially and will respond to disclosures and complaints promptly and impartially.
- 4.1.4 Investigations into allegations of indecency, sexual harassment and sexual assault will be dealt with as per the NIDA Grievance, Complaint and Appeals Policy- Student.
- 4.1.5 NIDA management retains the right to engage external investigators to investigate claims of sexual misconduct should it consider it necessary.
- 4.1.6 NIDA encourages and will support any student who believes they have been sexually assaulted or harassed to raise the issue in line with this policy.
- 4.1.7 Students who are found to have either committed or condoned sexual misconduct at NIDA, including harassment and/or assault, will be subject to disciplinary action as per the Misconduct Policy and Procedure and may be subject to police investigation.
- 4.1.8 No student is to knowingly make a false accusation, vexatious or malicious complaint.
- 4.1.9 No student is to make a complaint without reasonable cause.
- 4.1.10 Individuals shall not victimise or harass other parties involved in the matter.
- 4.1.11 Complainants will not suffer detriment or disadvantage as a direct result of making a complaint.

### 5.2 Breach of this policy

Disciplinary action may be taken against any student who is knowingly in breach of this policy. Any action taken will be consistent with NIDA's Misconduct Procedure.

## 5. CHANGE HISTORY

Date	Change Description	Reason for Change	Author	Version
October 2019			Head of SELQA	2.0

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April 2018

Creation

L and T Manager  
developed from the  
Executive Director of  
People and Culture's  
policy and procedure

1.0

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## 6. CONSULTATION/BENCHMARKING

Benchmarked against policies and practice from a number of higher education providers and other sources.

Relevant policy documents from the following are gratefully acknowledged:

- University of New South Wales
- University of Wollongong
- University of Sydney

<b>Legislation and Regulatory Frameworks</b>	Crimes Act 1900 (NSW) Criminal Procedure Act 1986 (NSW)
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