

Sexual Assault, Sexual Harassment, Harassment, Discrimination, Victimisation and Bullying Policy

Newcastle International College has established and published policies. These policies are reviewed periodically, and student's relying upon any of these policies to support or guide their studies should refer to the College's website (<https://www.nic.nsw.edu.au/>) for the most current and up to date version.

OVERVIEW

This policy was approved by the Senior Management Team in February 2020 and supersedes all previously published Newcastle International College Harassment Policies and alike.

REGULATORY FRAMEWORK

Newcastle International College recognises its responsibility to satisfy State (NSW) and Commonwealth legislative requirements. It is understood that legal requirements differ slightly from one jurisdiction to another, accordingly, this policy is to be read in conjunction with the following relevant legislation, which includes, but is not limited to:

- *Sex Discrimination Act 1984* (Cth)
- *Crimes Act 1900* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Anti-Discrimination Act 1977* (NSW)
- *Crimes (Domestic and Personal Violence) Act 2007* (NSW)
- *Fair Work Act 2009* (Cth)
- *Australian Human Rights Commission Act 1986* (Cth)
- *Education Services for Overseas Students Act 2000* (Cth)
- National Code of Practice for Providers of Education and Training to Overseas Students 2018 (<https://internationaleducation.gov.au/>)

PURPOSE/OBJECTIVE

Newcastle International College (NIC) recognises the right of all students and staff to study, work and participate in a higher education learning environment where equal opportunity, inclusion and diversity, are all valued, promoted and practised.

NIC acknowledges that its staff and students represent a mix of gender, age, ethnicity, religious and political beliefs, physical and intellectual abilities, domestic arrangements, and other diverse characteristics. NIC values these differences and aims to create a fulfilling and rewarding teaching and learning environment in which all can work and study, free from sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying.

The sexual assault, sexual harassment, harassment, bullying of, discrimination or victimisation against staff or students by any member of the teaching and learning environment is unacceptable, against the law and contrary to the educational and employment policies of NIC. NIC has zero tolerance for these behaviours and all reasonable steps have been taken to ensure that staff and students are aware of this policy and the procedures available to deal with complaints and disclosures of this nature.

NIC takes all forms of sexual assault, sexual harassment, harassment, victimisation, bullying, and unlawful discrimination very seriously. These behaviours erode individual's rights, debilitate morale and interfere with the effectiveness of the working and learning environment.

These behaviours may also:

- Lead to intimidating, hostile, offensive or distressing work or study environments;
- Adversely affect the performance or progression of individual staff or students;
- Adversely affect an individual's access to and participation in a range of educational opportunities, support services, social and recreational facilities provided by NIC;
- Adversely reflect on the integrity and reputation of NIC; and
- Cause NIC in its capacity as an education provider and an employer to be vicariously liable.

In accordance with the NIC Student Code of Conduct (<https://www.nic.nsw.edu.au/policies>), all students are expected to observe appropriate standards of behaviour with respect to all NIC staff, students, activities and NIC and the University of Newcastle property.

This policy and its procedures (Procedures for Reporting and Responding to Sexual Assault, Sexual Harassment, Harassment, Discrimination, Victimization and Bullying), detail NIC's approach to preventing, reporting and responding to sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying, including the provision of support to affected individuals and managing student and staff concerns.

NIC is committed to providing wellbeing resources, as well as referral and support services to individuals affected by these behaviours.

SCOPE

NIC understands that it is legally bound to take reasonable measures to prevent these illegal acts and behaviours from occurring in the teaching and learning environment.

NIC takes its responsibilities seriously, and provides structure to informing all staff and students about sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying, through the implementation of this policy and its corresponding procedures. NIC provides staff and students with a measure of education surrounding these tools at the commencement of and during the student life cycle, as well as throughout staff employment, including the induction process.

This policy and its procedures apply to all staff and students engaged in relevant activities organised by NIC either on or off campus and including online interactions. This includes, but is not limited to; scheduled study based activities, excursions, social events, and examinations.

Incidents that occur within the residential area of the University of Newcastle 'Student Living', and involving any NIC student will be managed according to the University of Newcastle protocols, in consultation with NIC.

SECTION 1 – POLICY

1. Responsibilities and commitments towards education and communication

1.1. NIC

1.1.1. NIC takes its responsibilities concerning staff and student’s wellbeing and conduct, as well as the environment within which they function together very seriously. Accordingly, NIC is committed to providing a variety of methods of communication, as well as taking every opportunity to communicate its zero tolerance stance towards these illegal acts and behaviours.

1.1.2. NIC has initiatives in place to clearly educate students and staff on appropriate and inappropriate behaviours, how to identify them, and the expectations of the College, including:

- This policy and its relevant procedures,
- Orientation information sessions,
- Police information sessions (predominantly providing legal information to students and staff),
- NIC’s website information, including NIC’s Student Code of Conduct,
- Daily information and reminders promoting appropriate behaviour on loop through NIC campus eCommunication,
- Policy and procedure information and updates through the online ‘Student Lounge’ (students have 24 hour access),
- Further guidance and instruction for staff during employment induction, ongoing internal training and participation in student information sessions,
- Tailored orientation sessions for Younger Overseas Students (under 18 years).

NIC has special responsibilities for the care and welfare of students under the age of 18. NIC provides, in co-operation with the University of Newcastle’s appointed parental representative (Guardian), age and culturally appropriate information on who to contact in emergencies and seeking assistance in the case of actual or perceived sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying. NIC also provides these students with a tailored orientation program and regularly scheduled meetings to check in with the student and their welfare.

1.1.3. NIC ensures that:

- staff, students and members of the teaching and learning environment are informed of this policy, the relevant procedures and their responsibilities,
- managers and other supervisory staff are aware of their particular responsibilities in the prevention and resolution of complaints of sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying,
- The standards of behaviour that are acceptable and unacceptable are communicated at various times of the student life cycle and staff employment journey,
- The relevant policy and procedure documents are available in a variety of online locations as well as physically from NIC’s office at its campus location.

1.2. Staff

1.2.1. NIC management and staff are required to conform to the standards provided by the College’s chief employer Navitas.

1.2.2. NIC educates staff internally on a continuing basis through policy and legal updates, staff participation during student education, and access to policies and procedures through the NIC website (<https://www.nic.nsw.edu.au/policies>).

1.3. Students

- 1.3.1. Upon acceptance of an offer to study at NIC, students agree to abide by the College's rules and standards as stated in NIC's and the University of Newcastle policies and procedures and advised on the Letter of Offer (Section 3: Acceptance Declaration/ General).
- 1.3.2. Students are subject to State and Commonwealth legal requirements as well as NIC's Student Code of Conduct.
- 1.3.3. The documented standards of behaviour stated in the Student Code of Conduct, are available at all times online (<https://www.nic.nsw.edu.au/policies> and in the online student lounge) and in hard copy from NIC's office at its campus location.

1.4. College Director and Principal

- 1.4.1. The College Director and Principal will lead all staff in providing and managing a number of initiatives surrounding the education and communication of this information. The focus will be upon:
 - Promoting and encouraging awareness, understanding and appreciation of the differences amongst cultural groups and acknowledging, celebrating and welcoming other cultural contributions to College life,
 - Highlighting for students that NIC has a responsibility to educate concerning these behaviours and the measures and steps that can be taken in prevention and reporting,
 - Respecting and protecting the rights of all students and staff to study and work in an environment free of these behaviours,
 - Actively encouraging appropriate behaviour by students, staff, managers and those in positions of authority,
 - Providing the most appropriate and effective processes, structures and resources available in order to eliminate and address as promptly, effectively and confidentially as possible, any complaints involving sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying,
 - Providing the information contained in this policy in a variety of online locations as well as hosting information sessions to verbally communicate the standards of acceptable behaviour NIC expects from its students and staff, and
 - Ensuring that NIC's policies and procedures are not directly or indirectly discriminatory.

2. Where and when may these behaviours occur

- 2.1. These illegal acts or unacceptable behaviours can occur anywhere and at any time day or night.
- 2.2. These illegal acts and behaviours may occur anywhere on the University of Newcastle's campus grounds.
- 2.3. These illegal acts and behaviours may also occur away from campus grounds.
- 2.4. Whether these events occur on campus or away from campus grounds, where a student has been involved in such an event, NIC encourages students to discuss the matter with staff to allow NIC an opportunity to provide support measures, access to third party support services, internal resolutions, and/or support during police contact where this becomes necessary.

3. Between whom these behaviours may occur

- 3.1. NIC has a responsibility to protect both students and staff from all forms of sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying. NIC has a responsibility to provide a learning environment free from these acts and behaviours.
- 3.2. These acts and behaviours are against all NIC policies, principles, standards and ideals of acceptable behaviour. Aside from NIC's stance, many of these behaviours are illegal and

may be criminal in accordance with State and Commonwealth law.

- 3.3. These acts and behaviours can occur between those of equal or unequal status within the College, accordingly, incidents may occur between:
 - Students and students,
 - Staff and students, or
 - Staff members and staff members.
- 3.4. Regardless of whom the behaviour occurs between, NIC will treat all complaints with equal attention and seriousness. In handling all matters of this nature, NIC will satisfy any legal requirements, and be directed by its principles, policies and procedural guidelines to resolve, report, and support all impacted students and staff.
- 3.5. NIC policies state that students found to be acting or behaving in an unacceptable manner towards other students or staff are in breach of the Student Code of Conduct and considered to have been involved in Misconduct. Penalties may be applied as per the Student Code of Conduct and as stated in this policy under 'Resolutions and Actions concerning Complaints'.

4. Reporting

- 4.1. Staff and students who become aware of any such act or behaviour are encouraged to bring it to the attention of the NIC Student and Academic Services team. Such conduct is unlikely to be solely a personal matter between individuals; it may well be affecting other staff and students as well as productivity, learning and working relationships.
- 4.2. A complaint of sexual assault, sexual harassment, harassment, discrimination, victimisation and/or bullying may be reported in accordance with this policy and its associated procedures at any time following an incident, regardless of whether or not it has been reported to the police.
- 4.3. The incident may be reported by a victim, a bystander, or with their consent, by another person (e.g. staff member or fellow student). Initial reporting can be made via email to NIC's Incident Reporting email address (IncidentReporting@nic.nsw.edu.au), or through direct or phone conversation with NIC staff.
- 4.4. The Procedures for Reporting and Responding to Sexual Assault, Sexual Harassment, Harassment, Discrimination, Victimisation and Bullying outline the process for reporting, responding and resolving these concerns in detail.

5. NIC's role concerning reporting

- 5.1. The College does not intervene in personal relationships. It does however, have a duty of care to intervene where student or staff actions are that of sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying.
- 5.2. NIC has a responsibility to take complaints seriously and take prompt effective action, provide remedial action and resolutions, as well as provide support and/or access to appropriate support resources. Failure to take prompt, immediate and effective action is against NIC policy, and in some circumstances may be viewed as condoning or tolerating the offending act or behaviour.
- 5.3. At the time of making a complaint or disclosure, NIC may initially put in place precautionary actions (eg. temporary amendment to timetable where parties study in common) where it is deemed necessary in consideration of the type of complaint or disclosure being made. Precautionary actions are non-disciplinary in nature and may form part of NIC's immediate response. The purpose of any precautionary action is to ensure the immediate safety of the affected individuals, to discourage or prevent victimisation and retaliation, and to prevent any further incidents occurring, whilst also preserving NIC's ability to conduct investigation into the matter.
- 5.4. NIC may decline to take action in respect of a complaint that is assessed as frivolous or vexatious.
- 5.5. NIC will intervene, regardless of whether there has been a complaint or disclosure from students or staff, where it deems any acts or behaviours are:
 - Creating an intimidating, threatening, hostile or offensive learning

environment,

- Adversely affecting an individual's or group's performance,
- Adversely affecting an individual's employment, promotion, or scholarly prospects,
- Resulting in resignation or withdrawal from studies,
- Creating a non-supportive learning or working environment,
- Reflecting poorly on the integrity and standing of the College.

5.6. NIC will be guided by this policy and its corresponding procedures (Procedures for Reporting and Responding to Sexual Assault, Sexual Harassment, Harassment, Discrimination, Victimization and Bullying) to respond to any behaviours requiring NIC intervention, or in response to a complaint or disclosure of this nature.

6. Resolution and Actions concerning Complaints

6.1. NIC is committed to taking all action necessary to prevent, report and resolve incidents, whilst also providing any relevant support or access to support, to students and staff in situations involving sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying.

6.2. Where required by law, or due to the seriousness or gravity of an incident, NIC reserves the right to refer any complaint to a relevant external authority, (ie. Police) and/or refer the matter to the University of Newcastle where appropriate, for further action under its own procedures.

6.3. Where matters are to be managed internally, NIC will be guided by this policy and its corresponding procedures (Procedures for Reporting and Responding to Sexual Assault, Sexual Harassment, Harassment, Discrimination, Victimization and Bullying), as well as any other policies and procedures that are relevant to the particular complaint being reported. Other relevant policies and procedures can include the following; NIC's Student Non-Academic Grievance Policy and procedures, NIC Staff Grievance Policy and procedures, Navitas Sexual Assault Prevention and Response Policy, Navitas Anti-Discrimination and the Prevention of Harassment, Vilification and Bullying Policy (Australia), Navitas Disciplinary Policy for operations based in Australia, Navitas Grievance Management Policy (Australia), and Navitas Internal Investigation Procedure (Australia).

6.4. NIC will handle reported complaints and disclosures as expeditiously as the circumstances of the complaint allow.

6.5. Potential outcomes / resolutions NIC may reach, any or a combination of the following:

- Put in place non-disciplinary precautionary actions whilst investigating the matter internally,
- Decline to take action if the complaint or disclosure is assessed as frivolous or vexatious in nature,
- Officially (in writing) reprimand the at fault party (ie. student, staff member)
- Exclude a student for a period of time,
- Cancel an offending student's Confirmation of Enrolment and terminate the student's enrolment with the College,
- Report the incident to the appropriate external authorities,
- Refer the matter to the University of Newcastle.
- Refer the matter to Navitas Human Resources where potential disciplinary action or dismissal of a staff member is deemed necessary.

SECTION 2 – DEFINITIONS and EFFECTS of BEHAVIOURS

The statements and definitions below are intended to assist individuals in identifying conduct that may constitute sexual assault, sexual harassment, harassment, discrimination, victimisation and bullying. These statements and definitions are not inflexible; however, they may best be used as a form of guidance with an understanding that these terms may encompass many issues, behaviours and events.

1. Sexual Assault

- 1.1. Sexual assault is a general term used to describe a broad range of sexual crimes prescribed by the *Crimes Act 1900* (NSW). For the purposes of this policy document, sexual assault should be considered as any sexual misconduct that is punishable at law and in particular those acts described under s61 of the *Crimes Act 1900* (NSW).
- 1.2. It is a crime consisting of any unwanted or forced sexual act or behaviour occurring without consent.
- 1.3. The crime of Sexual Assault includes, but may not be limited to the following:

Sexual Act or Behaviour	Definition
Sexual intercourse without consent	Penetration of a non-consenting person's body by any object or body part of another person
Oral or anal sex without consent	Penetration of a non-consenting person's mouth or anal cavity
Indecent assault and acts of indecency	Inappropriate touching without consent including: <ul style="list-style-type: none">• Sexual touching,• Touching of genitals,• Touching of other intimate areas,• Inciting the victim to touch the genitals or intimate areas of the other person,• Inciting a third person to sexually touch the victim,• Inciting the victim to touch a third person sexually.

- 1.4. **Aggravated Sexual Assault** occurs when the above mentioned crimes are committed under the following circumstances:
 - The person is threatened (whether actual or implied),
 - Done in the company of other people,
 - Committed upon a person under a particular age,
 - Committed upon a person with serious physical or cognitive disability,
 - Committed under authority of the offender (teacher/relative/care giver),
 - Involves the use of a weapon, force or threat.

1.5. Consent

Consent must be freely and voluntarily given by a person with the cognitive capacity to do so. Consent is defined in s61HE of the *Crimes Act 1900* (NSW) and NSW Communities and Justice for Victims Services summarises that **a person does NOT validly consent if the person is:**

- Significantly intoxicated, or affected by drugs,
- Unable to understand what they are consenting to due to their age or

- intellectual capacity,
- Unconscious or asleep,
- Intimidated, coerced or threatened,
- Unlawfully detained or held against their will,
- Submits due to the person being in a position of trust.

(https://www.victimsservices.justice.nsw.gov.au/sexualassault/Pages/sexual_assault_victims.aspx#Consent – Accessed 30 January 2020).

****Note:** It is **NOT** sexual assault if a sexual act or behaviour is done or made with **consent** of both parties.

1.6. Effects of Sexual Assault

“Sexual Assault is a crime of violence. It aims to humiliate and degrade the victim. It can be a frightening experience with long lasting effects. Anyone can be a victim of sexual assault and its effects regardless of age, gender, status, culture, ability or sexual orientation”

(https://www.police.nsw.gov.au/crime/sex_crimes/adult_sexual_assault/sexual_assault_categories/what_is_sexual_assault - Accessed 31 December 2019).

There are a range of physical and emotional effects of sexual assault. Many of these can be short term; however, studies indicate that there are many long term and lasting effects. NIC is dedicated to assisting students impacted by sexual assault to gain access to suitable support in the hope of reducing the effects of this crime.

2. Harassment

- 2.1. Generally, harassment is repeated behaviour that is directed at an individual or group of students or staff, and is offensive, humiliating, intimidating or threatening. The behaviour is generally unwelcome making it difficult to work or study effectively.
- 2.2. Harassment can be against the law when a person is treated less favourably on the basis of certain personal characteristics, such as race, sex, pregnancy, marital status, breastfeeding, age, disability, sexual orientation, gender identity or intersex status. (Some limited exemptions and exceptions apply.) (<https://www.humanrights.gov.au/quick-guide/12040> - Accessed 8 January 2020.)
- 2.3. Harassment can be considered to have occurred in circumstances where a reasonable person would have expected that the behaviour was going to be offensive, humiliating or intimidating. Quite often, the behaviour is sexual in nature, or can be based upon a number of other factors as stated above in section 2.2 and referenced by State and Federal Anti-Discrimination legislation.
- 2.4. Harassment should not be confused with legitimate comments or advice, which may include criticism regarding standards of work, workplace behaviour or feedback on student work or performance.
- 2.5. The following are examples of harassment, this is not an exhaustive list of circumstances:

Harassment is considered...
<ul style="list-style-type: none"> • Making offensive, suggestive, threatening or abusive phone calls, letters, messages, emails, text messages or social media posts that are persistently used to make contact. This contact is through the use of carriage devices/services and is a stand-alone criminal offence (this includes electronic devices/services and computer networks). <ul style="list-style-type: none"> • According to s474.17 of the <i>Criminal Code Act 1995</i> (Cth), the use of a carriage service to menace, harass or cause offence is a criminal offence, aside from any breach of the law concerning the actual harassment that is taking place.
<ul style="list-style-type: none"> • Continually displaying offensive, obscene or objectionable pictures, posters, graffiti, electronic images (including screen savers) or written materials.
<ul style="list-style-type: none"> • Using insulting or threatening language and/or gestures.

<ul style="list-style-type: none"> Continually making unjustified and unnecessary comments about a person's work or capacity for work.
<ul style="list-style-type: none"> Making derogatory comments, jokes or taunts about a person or group of people.
<ul style="list-style-type: none"> Sabotaging a person's study or work (including interference with their space, materials, equipment or property, apart from what would be considered absolutely necessary).
<ul style="list-style-type: none"> Abusing someone verbally in relation to a characteristic such as calling someone a name that mocks him or her.
<ul style="list-style-type: none"> Repeatedly asking intrusive questions about someone's personal life.
<ul style="list-style-type: none"> Treating a person in a dismissive manner or providing material expressing prejudice or stereotypical assumptions about a group to which a person may belong.
<ul style="list-style-type: none"> Continually excluding a person or group from normal conversation, work / student assignments, work related social activities or workplace / student networks.
<ul style="list-style-type: none"> Stalking is a form of harassment; however, it is also a stand-alone crime that is legislated under s13 of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW). Stalking can be defined as a persistent course of conduct or actions by a person that is intended to maintain contact with or exercise power and control over another person. This includes following a student or staff member within, to or from the College. These actions cause feelings of harassment, distress, fear and loss of control, and occur more than once. Stalking can involve threats or sexual innuendo, and the stalker generally tries to intimidate or induce fear in the other person. Sometimes the person being stalked may not realise it until they identify a pattern of strange or suspicious incidents occurring. Examples of stalking include: <ul style="list-style-type: none"> Phone calls Text messages Messages on social media Notes left at the persons desk or on their car Strange or unwanted gifts being left for the person Being followed Being continually stared at or gestured to by another person Use of a carriage device/service (any form of digital communication) to persistently make contact <p>(https://www.police.nsw.gov.au/crime/domestic_and_family_violence/what_is_stalking - Accessed 8 January 2020).</p>

2.6. The following are examples of what is NOT considered to be harassment, however, this is not an exhaustive list:

Harassment is <u>NOT</u>...
<ul style="list-style-type: none"> A single or isolated conflict or remark between people, (except in the case of sexual harassment).
<ul style="list-style-type: none"> Gestures or remarks that arise from a relationship of mutual consent such as giving a friend a hug or a compliment.
<ul style="list-style-type: none"> legitimate comments or advice, which may include criticism regarding standards of work, workplace behaviour or feedback on student work or performance.

2.7. Some forms of harassment constitute sexual harassment, as specifically referred to in part 3 below.

2.8. Effects of Harassment

Harassment creates an uneasy, hostile, intimidating and/or offensive environment that interferes with the recipient's performance, job satisfaction or studies.

Responses to harassment vary. Some recipients may decide to respond publicly, others attempt to ignore the behaviour or pretend amusement. Sometimes it is accepted by the recipient due to fear of reprisal, disadvantage, rejection or objection.

The impact and consequences of harassment vary between individuals based upon the duration and severity of the offensive behaviour. Generally, people react to harassment by exhibiting symptoms of increasing distress, including:

- Loss of confidence and self-esteem, a sense of powerlessness,
- Disbelief, isolation, withdrawal, illness, depression, anxiety, panic attacks,
- Anger or self-blame, sometimes outbursts of misplaced anger,
- Loss of sleep and appetite,
- Feeling demoralised, humiliated, intimidated,
- Fear of attending work or campus,
- Inability to concentrate,
- Increased absenteeism and sick leave,
- Suppression of emotions caused by harassment can result in physical illnesses such as headaches, ulcers and other disorders.

Common reasons for not reporting complaints of harassment, or initiating any action against the behaviour include:

- Concern that a complaint will jeopardise career aspirations, or academic assessment,
- Belief that others will think it was asked for/invited treatment,
- Feeling of inferiority and helplessness,
- Fear of adverse treatment by peers and those in authority,
- Fear of disbelief by others,
- Belief that it is unprofessional to inform or disclose,
- Desire to avoid getting the harasser into trouble,
- Fear that the situation may worsen,
- Desire for it to simply 'go away'.

NIC is dedicated to eliminating harassment in all its forms.

NIC will provide all available assistance and support to students and/or staff impacted by harassment.

3. Sexual Harassment

3.1. Sexual harassment is a particular form of harassment. It includes any unwanted or unwelcome behaviour of a sexual nature where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated. It has nothing to do with mutual attraction or consensual behaviour (<https://www.humanrights.gov.au/quick-guide/12096> - Accessed 8 January 2020).

3.2. Sexual harassment includes a number of different behaviours and conduct; it can be a one-off or a series of repeated incidences. It can be deliberate or unintentional or verbal or physical in nature.

3.3. Often these behaviours are accompanied by intimation that, in return for sexual favours, the victim will gain some sort of advantage. It may be implied that there will be further consequences if a sexual advance is rejected.

3.4. Sexual harassment is unlawful under the *Sex Discrimination Act 1984* (Cth) and the *Anti-*

Discrimination Act 1977 (NSW), and some types of sexual harassment are considered to be criminal offences.

- 3.5. Sexual harassment can occur between individuals, among peers or between people in subordinate/supervisory roles. This includes sexual harassment between students, between staff and students, and between members of staff. It creates an uncomfortable, often frightening, stressful and unproductive working or learning environment.
- 3.6. The following are examples of sexual harassment, however, this is not an exhaustive list of circumstances:

Sexual Harassment is considered...
<ul style="list-style-type: none">• One-off or repeated incidences of:<ul style="list-style-type: none">• Unwanted, deliberate physical contact such as patting, pinching, brushing, hugging, kissing, rubbing or touching in a sexual way,• Sexual propositions, requests for sexual favours, offers of reward for sexual favours,• Unwelcome and uncalled for remarks or insinuations about a person's sex or private life,• Suggestive comments about a person's appearance or body,• Making ongoing unwanted requests to go out,• Sexually oriented discussion, language or jokes,• Making statements of a sexual nature in the presence of a person, whether made verbally, or in writing,• Making offensive phone calls, texts, emails or social media posts of a sexual nature,<ul style="list-style-type: none">• According to s474.17 of the <i>Criminal Code Act 1995 (Cth)</i>, the use of a carriage service (a service used for telecommunications) to menace, harass or cause offence is a stand-alone crime, aside from the actual crime of sexual harassment taking place in these circumstances.• Displaying sexually graphic materials.

- 3.7. The following are examples of what is NOT considered to be sexual harassment, however, this is not an exhaustive list:

Sexual Harassment is <u>NOT</u>...
<ul style="list-style-type: none">• Sexual contact with consent of the recipient. (Consent cannot be obtained through fear, intimidation, threats, or force, or where there is a power imbalance in the relationship),• Flirting that is invited and not unwelcome,• Attraction or friendship that is invited and not unwelcome.

3.8. **Effects of Sexual Harassment**

Sexual harassment has nothing to do with mutual friendships, sexual attraction or flirtation, since these behaviours involve choice and consent. Sexual harassment causes embarrassment and humiliation and is clearly distinguishable from acceptable social and professional interaction.

Recipients of sexual harassment are not flattered by; appreciative or desirous of their treatment, but often feel unable to report the issue.

The effects of sexual harassment can be profound, and can range from uncomfortable to devastating. They can last a short or long time, and can generate a 'ripple effect' of negative symptoms in the learning and working environment.

The recipient of sexual harassment may have experienced:

- Anger, fear, self-consciousness or embarrassment,
- Loss of confidence, self-esteem,
- Difficulty sleeping, loss of appetite,
- Disbelief, isolation, withdrawal, illness, depression, anxiety, panic attacks,
- Anger or self-blame, sometimes outbursts of misplaced anger,
- Feeling demoralised, humiliated, intimidated,
- Trouble concentrating on work or studies,
- Loss of ability to perform well,
- Lack of participation, avoiding certain places on campus, fear of attending campus or work,
- No longer participating in study groups, no longer turning up to work/class, increased absenteeism and sick leave,
- Requesting to withdraw from studies, changing study programs or modules, thinking of leaving the workplace/college,
- Participating less in team meetings, or not attending,
- Physical illness.

(Accessed 14 January 2020 - <https://harass.stanford.edu/be-informed/effects-sexual-harassment>).

Often those being sexually harassed will not report the issue (for the same reasons stated above in "Effects of Harassment"), however, this is an issue with profound effects and will be treated with the upmost seriousness, consideration and discretion by NIC.

4. Discrimination

4.1. Discrimination occurs when a person is treated less favourably than another person due to certain characteristics (direct discrimination), or when a requirement that is the same for everyone has an unfair effect on some people due to a particular attribute, such as race, pregnancy, gender, disability (indirect discrimination). This behaviour of treating people unfairly, whether directly or indirectly, may amount to unlawful discrimination or harassment.

4.2. Characteristics/Attributes

In accordance with State and Commonwealth legislation, it is unlawful to discriminate on the basis of the following characteristics/attributes:

- Sex,
- Marital or relationship status,
- Pregnancy or breastfeeding,
- Family responsibilities and parental status (responsibility to care for or support a spouse, defacto partner, child, step-child, adoptive child, foster child, persons under guardianship, grandchild, brother, sister, parent or grandparent - there are some limited exemptions),
- Age,
- Race (including colour, descent, nationality, national or ethnic origin or ethno-religion),
- Disability (covers most physical and psychological conditions),
- Religion (*Australian Human Rights Commission Act 1986 (Cth)*),
- Political opinion (*Australian Human Rights Commission Act 1986 (Cth)*),
- Trade union activity,
- Gender identity,
- Sexual orientation,
- Intersex status,

- Association with, or relation to, a person identified on the basis of any of the above attributes.

4.3. The following are examples of discrimination, however, this is not an exhaustive list of circumstances:

Discrimination is considered...
<ul style="list-style-type: none"> • Subjecting a person to humiliating ceremonies in order to be accepted into a group, where a characteristic/attribute made them a target for initiation, • Spreading gossip or rumours about a person based on a characteristic/attribute , • Refusing to work in a group with a person because of a characteristic/attribute (for example, a student is older, is of a particular nationality, sexual orientation or has family responsibilities), • Deliberately excluding a person from a study group because of a perception that they may not be able to keep up with other students due to a characteristic/attribute such as age, disability or sex, • Telling racially motivated jokes, • Using social media as a means of ridiculing a person based on a characteristic/attribute such as gender identity, sexual orientation or race. This may also be considered as using a carriage service (use of any electronic service or computer network) to menace, harass or offend, this behaviour is a stand-alone criminal offence, <ul style="list-style-type: none"> • According to s474.17 of the <i>Criminal Code Act 1995</i> (Cth), the use of a carriage service to menace, harass or cause offence is a criminal offence, aside from any other breach of the law concerning the discriminatory behaviour.

4.4. The following are examples of what is NOT considered to be discrimination, however, this is not an exhaustive list:

Discrimination is <u>NOT</u>...
<ul style="list-style-type: none"> • Making a complaint about another student on the basis of their contributions to a group assessment task, • Behaviour that may be considered bullying but is not directed to a person because of a characteristic/attribute, • Providing peer review feedback that is critical of the quality of another student's work, • Having a one-off conflict with a person of a different race when the conflict is not due to that person's race, • Adjusting to accommodate another person. For example, changing a meeting day or location to accommodate religious commitments, family responsibilities, or an inability to access the original location.

4.5. **Effects of Discrimination**

Whilst there are numerous effects of discrimination, in learning environments students often feel a sense of exclusion or rejection for reasons over which they have no control. It can cause extreme worry to the student and often result in feelings of anxiety, sadness, depression, guilt, emptiness, and that their contribution is unnoticed or insignificant. Feelings such as these can translate into depression, loss of interest or focus, eating disorders, and other stress-related conditions.

Aside from the learning and teaching environment, there are negative effects within the working environment for staff and management. The burden and stress caused by discrimination can be physical and psychological, which naturally compounds an already difficult situation.

Discriminatory practices can have negative effects on reputation, productivity, performance or morale, as well as the ability to attract and retain talented staff and students. Naturally, environments free from discriminatory practices will experience entirely different outcomes

concerning productivity, staff/student retention, motivation, and performance. NIC promotes a discrimination free environment for all staff and students.

5. Victimisation

- 5.1. Includes retaliation or reprisal. It occurs where a member of staff or student is treated harshly, or subjected to harm, as a result of making a complaint of sexual assault, sexual harassment, harassment, discrimination or bullying.
- 5.2. It is a matter of victimisation where a person is subjected to harm or disadvantage because they provided information or evidence in connection with sexual assault, sexual harassment, harassment, discrimination or bullying complaint.
- 5.3. Victimisation includes any unfavourable treatment, such as aggression, refusing to provide information, ignoring the person, dismissal, refusing to renew a contract of employment, or unfair assessment of student work.
- 5.4. Victimisation is unlawful and legislated under s50 of the *Anti-Discrimination Act 1977* (NSW).
- 5.5. Circumstances of victimisation, retaliation, or reprisal against persons making a complaint, will be treated as seriously as the original behaviour-giving rise to the complaint.
- 5.6. NIC is responsible for ensuring that victimisation of a complainant does not occur, either immediately or at any time after the complaint has been formally made.

5.7. Effects of Victimisation

Victimisation often affects people on an emotional, psychological, physical, social and potentially, financial level.

Those who find themselves subjected to victimisation will often suffer from shock and disbelief, however, once this initial shock has worn off, they will often experience anger, fear, frustration, confusion, guilt (self-blame), shame, and depression.

Sometimes a physical reaction may occur due to the type of victimisation occurring. A number of physical responses are the body's way of handling these times of stress and the fear imposed on the recipient. Physical reactions may include, episodes of increased adrenaline in the body, increased heart rate, hyperventilation, and can invoke the body's natural 'fight or flight' response (Accessed 15 January 2020 <https://www.bocsar.nsw.gov.au/>).

Victimisation may have social impacts as the recipient may no longer feel able to interact with certain groups or individuals that are associated with the behaviour occurring. There can also be financial impacts where those affected feel as though they can no longer attend the college/workplace.

For students and staff, this situation may create an environment of fear and stress which is not conducive to a successful and productive teaching, learning and working environment. NIC is committed to taking all reasonable steps to ensure that no individuals involved in the complaint process are victimised.

6. Bullying

- 6.1. Bullying in the workplace is defined as repeated unreasonable behaviours toward a worker, or group of workers at work, and the behaviour creates a risk to health and safety *Fair Work Act 2009* (Cth).
- 6.2. In context for students, nationally within Australia, bullying is defined as an ongoing and deliberate misuse of power in relationships through repeated verbal, physical and/or social behaviour that intends to cause physical, social and/or psychological harm. It can involve an individual or a group misusing their power, or perceived power, over one or more persons who feel unable to stop it from happening. Bullying can happen in person or online, via various digital platforms and devices and it can be obvious (overt) or hidden (covert). Bullying behaviour is repeated, or has the potential to be repeated, over time (for example, through sharing of digital records) (<https://bullyingnoway.gov.au/> - Accessed 9 January 2020).
- 6.3. Single incidents and conflict or fights between equals, whether in person or online, are not defined as bullying (with the exception of sexual harassment).
- 6.4. Bullying which includes physical and psychological abuse is against the law.
- 6.5. The following are examples of bullying, however, this is not an exhaustive list of

circumstances:

Bullying is considered...
<ul style="list-style-type: none">• Repeated unreasonable criticism of a student's work,• Repeatedly and deliberately excluding someone from a group,• Behaviour intended to frighten, intimidate or degrade a person,• Deliberately supplying incorrect information or withholding information from a person,• Deliberately spreading misinformation about a person,• Making inappropriate comments about a person's appearance,• Physically abusing another person (which is also criminal behaviour),• Teasing or pranking a person repeatedly,• Cyberbullying – a form of abuse that includes threatening, insulting, or offensive gestures or language, whether verbal or in writing. These behaviours are considered cyberbullying when carried out through phone calls, messages, emails, text messages, or social media posts with the intent to cause harm. This is known as using a carriage device/service (use of any electronic device/service or computer network) to menace, harass or offend. This behaviour is a stand-alone criminal offence.• According to s474.17 of the <i>Criminal Code Act 1995</i> (Cth), the use of a carriage service to menace, harass or cause offence is a criminal offence, aside from any other breach of the law concerning the bullying behaviour being carried out.

6.6 The following are examples of what is NOT considered to be bullying, however, this is not an exhaustive list:

Bullying is <u>NOT</u>...
<ul style="list-style-type: none">• A one-off offensive comment about a person that is never repeated and is not of a sexual nature,• Having an argument, conflict or disagreement with another person (where there is no power imbalance),• Constructively critiquing a student's work,• Having a difference of opinion and expressing it to others in an appropriate way.

6.7 Effects of Bullying

Bullying in any form, or for any reason, can have immediate, medium and long-term effects on those involved, including bystanders.

Bullying is linked to many negative outcomes including impacts on mental health, substance use/abuse, and self-harm. It is important to discuss these issues and for staff, students and the College to have an opportunity to assist any parties impacted by bullying.

Quite often, those who are bullied can experience:

- Depression and anxiety, increased feelings of sadness and loneliness, changes in sleep and eating patterns, and loss of interest in activities they used to enjoy,
- Health complaints,
- Decreased academic achievement and participation. They are more likely to skip classes,
- Some may choose to retaliate in an inappropriate manner.

This is an issue with many profound and lasting effects. NIC will treat these matters with the utmost seriousness, consideration and discretion with the aim of eliminating bullying within the college community.

RELATED DOCUMENTS & LEGISLATION

- Student Code of Conduct
- Procedures for Reporting and Responding to Sexual Assault, Sexual Harassment, Harassment, Discrimination, Victimisation and Bullying
- NIC Staff Grievance Policy
- Equal Opportunity and Anti-Discrimination Policy
- NIC Student Non-Academic Grievance Policy
- Navitas Sexual Assault Prevention and Response Policy
- Navitas Anti-Discrimination and the Prevention of Harassment, Vilification and Bullying Policy (Australia)
- Navitas Grievance Management Policy (Australia)
- Navitas Disciplinary Policy for operations based in Australia
- Navitas Internal Investigation Procedure (Australia).
- *Sex Discrimination Act 1984* (Cth)
- *Crimes Act 1900* (NSW)
- *Disability Discrimination Act 1992* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Anti-Discrimination Act 1977* (NSW)
- *Fair Work Act 2009* (Cth)
- *Australian Human Rights Commission Act 1986* (Cth)
- *Crimes (Domestic and Personal Violence) Act 2007* (NSW)
- *Education Services for Overseas Students Act 2000* (Cth) (particularly standards 5 and 6)
- National Code of Practice for Providers of Education and Training to Overseas Students 2018 (<https://internationaleducation.gov.au/>)

AMENDMENT HISTORY

Department:	Governance	
Approval Authority:	SMT - Senior Management Team	
Approval Date:	10 February 2020	
Date for Next Review:	January 2023	
Revision Date	Version	Summary of changes
22/11/2011	1	Policy developed and implemented.
17/12/2011	2	Reformatted into new policy template.
27/09/2012	3	Document updated to reflect current UPD formatting. Related documents section updated to include the NIC Equal Opportunity and Anti-Discrimination Policy.
7/8/2014	4	Policy reviewed
18/01/2018	5	Policy reviewed
10/02/2020	6	Title and naming convention amended from Harassment Policy to Sexual Assault, Sexual Harassment, Harassment, Discrimination, Victimisation and Bullying Policy. Policy reviewed – in line with new requirements. Legislation referred to more heavily and relied upon for points of law. NIC statements and actions defined in more detail.