

Name of Policy	Sexual Assault and Harassment Prevention Policy
Description of Policy	This policy defines sexually harmful behaviour and provides guidance to staff and students on how to identify, report and help prevent unacceptable behaviour occurring at Toi Whakaari.
Policy applies to	<input type="checkbox"/> Staff only <input type="checkbox"/> Students only <input checked="" type="checkbox"/> Staff and Students <input checked="" type="checkbox"/> Fee paying guests
Policy status	<input type="checkbox"/> New policy <input checked="" type="checkbox"/> Revision of existing policy

Approval authority	<input checked="" type="checkbox"/> Board <input type="checkbox"/> Director
Governing authority	<input checked="" type="checkbox"/> Director
Responsible officer	Head of Resources

Approval date	June 2020
Effective date	Immediately
Approval date of last revision	
Effective date of last revision	
Date of next policy review*	Reviewed on a 2 yearly cycle or earlier if requested

**unless otherwise indicated, this policy will still apply beyond the review date*

Related legislation, policies, procedures, guidelines and local protocols	<ul style="list-style-type: none"> • Human Rights Act 1993 • Employment Relations Act 2000 • Health and Safety at Work Act 2015 • Protected Disclosures Act 2000 • Harmful Digital Communications Act 2015 • Bullying and Harassment Policy • Performance Management Policy • Misconduct Policy • Health & Safety Policy • EEO Policy • Staff Code of Conduct • Toi Whakaari Student Handbook • Information Technology, Digital Communications, and Media Engagement Policy Manual
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Purpose

This policy sets minimum standards within our organisation to create and maintain a safe School working environment free from sexual assault and harassment.

Scope and Application

It applies to all staff and students engaged at all levels of the School, whether contractors or employees, all unpaid workers, students, suppliers and visitors including adjunct and visiting staff, visiting scholars and interns.

Note that in this policy we will refer to everyone as Staff and Students whether they are members of the Board, administrators or tutors, contractors or employees, unpaid workers, students, suppliers or visitors including adjunct and visiting staff, visiting scholars and interns.

The policy applies wherever and whenever we do the work of the School. This includes:

- at the School, including our offices, classrooms, workshops, theatre, on location or in the field, or anywhere where we are in order to carry out our work
- School and work events, such as production launches and other School related social events, and
- outside of the School or our workplace, including being in transit to and from location, in accommodation on location, private homes or public meeting spaces, whenever it's related to the work of the School.

Policy Principles

Sexually harmful behaviour will not be tolerated at Toi Whakaari. Disciplinary action up to and including dismissal, termination of contract or cancellation of student placement at Toi Whakaari may result following an investigation that finds that sexual assault or harassment occurred.

What is Sexual Harassment?

Sexual harassment is any unwelcome or offensive sexual behaviour that is repeated or is of such a significant nature to have a harmful effect, or which contains an implied or overt promise of preferential treatment, or an implied or overt threat of detrimental treatment.

A student or staff member is sexually harassed if their tutor, employer (or a representative of the School) or another member of the School:

- asks the staff member or student for sex, sexual contact or other sexual activity, with a:
 - promise (it can be implied) of better treatment
 - or a threat (it can be implied) of worse treatment
- subjects (either directly or indirectly) the staff member or student to behaviour that they don't want or is offensive to them (even if they don't let the tutor, employer or the School's representative know this) and which is either so significant or repeated that it has a negative effect on their place in the School including their ability to learn, their grades, employment, job performance or job satisfaction and their engagement in School activities:
 - by using (in writing or speaking) sexual language, or
 - by using sexual visual material (e.g. pictures, diagrams, photos, videos, etc), or
 - through sexual physical behaviour (e.g. gestures, indecent or inappropriate exposure).

Examples of sexual harassment or sexually harmful behaviour may include:

- personally sexually offensive comments
- sexual or smutty jokes
- unwanted comments, intrusive questions or teasing about a person's sexual activities or private life (including via social media)
- offensive hand or body gestures
- unwelcome physical contact such as encroaching on someone's personal space, patting, pinching or touching (outside of that which is required in the course of instruction)
- staring or leering
- provocative posters with a sexual connotation
- persistent and unwelcome social invitations (or telephone calls, texts, emails) from staff or students or at home
- hints or promises of preferential treatment in exchange for sexual activity
- threats of differential treatment if sexual activity is not offered
- behaviour which could also be an offence under criminal law, such as physical assault, indecent exposure, sexual assault or obscene communications.

Sexually harmful behaviour can happen to or be caused by someone of any gender. It can be subtle or more obvious.

Who has responsibilities under this policy?

Everyone has a role in preventing sexually harmful behaviour.

Toi Whakaari will:

- establish a School culture that is fair and free of sexual assault and harassment including instilling a zero-tolerance policy towards sexually harmful behaviour and ensure this zero-tolerance policy is visible and known to all staff and students
- make supporting material (e.g. sexual harassment prevention posters, referral information) readily available and visible to help create a safe School environment
- identify factors that contribute to sexual harassment (e.g. isolation, power and gender imbalances, blurring of work, teaching and social situations) and put effective control measures in place to eliminate or minimise these risks so far as is reasonably practicable
- ensure there are processes and systems in place for reporting and responding to sexually harmful behaviour that are fit-for-purpose and regularly reviewed
- ensure all students and staff know what processes and systems are in place, what support, protection and advice is available, and their rights to representation
- have specific policies for handling sensitive and sexual screen material (e.g. adherence to Equity Intimacy Guidelines, engagement of intimacy coordinators, management of rushes and post workflow) and communicate these to all students and staff involved
- encourage and invest in positive leadership style, focusing on behaviour rather than people, and promote harmonious and professional relationships across the School
- provide a supportive environment to both those who complain about sexually harmful behaviour and the respondent to such a complaint

- ensure employees know that they have the right to raise a personal grievance under the Employment Relations Act 2000 and
- ensure students and staff including contractors know they have the right to submit a complaint under the Human Rights Act 1993 to the Human Rights Commission
- provide training to key student representatives, staff and heads of department on how to handle disclosures or complaints and give support and advice (sexual assault and harassment contact persons)
- have clear and appropriate remedies and consequences for confirmed sexually harmful behaviour as well as false reports
- treat all complaints with strictest confidentiality, except where required by the law to do otherwise
- ensure that the School's Sexual Assault and Harassment Prevention Policy is always the current version (download-able from the Toi Whakaari website)
- regularly review the effectiveness of its sexual assault and harassment prevention measures (through activities like exit interviews or an annual anonymous survey of students and staff).

Managers and Heads of Departments will

- ensure staff have clarity on what their roles entail, such as handling of sensitive material
- ensure students and staff have clarity on what their rights are, and those of others in the School
- ensure key student representatives and staff have undertaken training in sexual safety
- call out and deal with any inappropriate behaviour before it escalates
- take prompt action in response to any report of sexually harmful behaviour, including seeking advice from both parties as to how they wish to deal with the situation, complaint or allegation.
- provide a supportive environment to those who believe they have been sexually assaulted or sexually harassed and the alleged harasser, including treating all parties fairly/impartially while allegations are dealt with
- record and investigate complaints impartially and in line with the School's policies and processes.
- treat any complaints seriously, promptly and with strictest confidentiality so that information about a complaint is only provided to those people who need to know about it.

Students and Staff will:

- build a common understanding about what sexual assault and sexual harassment is, such as undertake standard industry training
- behave in a manner that does not sexually harass others
- challenge inappropriate behaviour if they feel safe and comfortable to do so and keep an eye out for other people (e.g. providing support when seeing a person isolated, unsafe or experiencing reprisals)
- tell their head of department or a sexual assault and harassment contact person if they experience or witness any sexually harmful behaviour – if the complaint relates to the head of department, then advise another head of department or the Director
- follow the School's processes when reporting sexually harmful behaviour including keeping a copy of the report for your reference and treating all complaints with strictest confidentiality.

¹ In situations where there is a significant and imminent safety risk the School may be forced to break confidentiality to preserve a student's or staff member's safety. In any such case the School will inform the complainant before it takes this action. Otherwise, information about a complaint will be provided only to those people who need to know in order to deal with the complaint.

What happens when sexually harmful behaviour has happened?

If a student or staff member experiences or sees sexually harmful behaviour, any one or more of the following four actions can be taken.

1. Seek advice and support

Talk with a trusted person (e.g. a friend, whānau member) about what happened. Seek advice and support from others at School such as the registrar, a head of department, or one of our sexual assault and harassment contact people.

Seek advice and support from public sector agencies or other organisations (e.g. unions, helplines, counsellors, lawyers etc).

2. Deal it with themselves

If the student or staff member feels safe and comfortable to do so they may want to approach the other person(s) involved to explain that their behaviour is or has been unwelcome, inappropriate, or offensive, and needs to stop or change. This could be in person and/ or in writing. They may wish to have a support person with them when they do this.

Students or staff members should not approach someone directly about their behaviour if by doing so they would feel unsafe or threatened in any way. There is no requirement for a student or staff member to tell the other person that their conduct is inappropriate.

3. Report sexually harmful behaviour to the School

To report the sexually harmful behaviour, students or staff members can make a written or verbal report. The School will take all reports seriously.

When making a complaint or report, any details you can provide will help the process. Clearly state what happened, the context, where and when it happened, how you felt, and the names of any witnesses and, if you wish to, what you would like to happen. Any information you provide will be shared with the person alleged to have behaved inappropriately to allow them to understand the alleged behaviour and to respond.

Reports Forms

The report form can be found in the following locations:

- on the School Website www.toiwhakaari.ac.nz
- EnableHR
- The School Learning management system

Verbal reports

Students and staff can report sexually harmful behaviour to:

- one of our sexual assault and harassment contact people
- their head of department
- School Director or Human Resources

4. Report sexually harmful behaviour to an outside agency

Students and staff members can decide to seek help from an outside organisation, such as the Police for sexual assaults, physical assaults and criminal harassment, or a sexual violence support provider such as HELP.

If you wish to make a formal complaint to an external agency your available avenues depend on whether you are a student or staff member.

- Employees can raise a personal grievance under the Employment Relations Act 2000 with the School, or lodge a claim with the Employment Relations Authority (within 90 days),
- Students and staff members including contractors can submit a complaint under the Human Rights Act 1993 with the Human Rights Commission (within 1 year).

In any of the above options, students and staff members may wish to have a support person present, such as an in-house support person, union delegate, colleague, whānau member or, legal representative. To avoid potential conflicts of interest, the same support person should not support both parties involved.

Responding to a report of sexually harmful behaviour

If Toi Whakaari receives a report of sexually harmful behaviour, we will take the report seriously and we will do the following:

- act promptly by setting timelines to deal with the report as soon as we can
- seek input from both parties as to how they wish to deal with the situation
- carefully and clearly consider response options for the specific circumstance (where appropriate promoting informal options over formal ones) including appointing an unbiased and appropriately trained person to look into the report of sexual harassment

- if there is to be a formal investigation, clearly communicating the process for the investigation including telling those involved what the process is and if there are delays to timelines
- protect all the people involved, including both sides of the complaint, support people and witnesses, from victimisation, which could include being punished, bullied, intimidated
- allow a support person(s) to be present at interviews or meetings, such as in-house support person, union delegate, colleague, whānau support, legal representative
- maintain confidentiality and ensure details of the matter are only known to those directly concerned, including their representative or support person, and those involved in investigating and considering the reported behaviour
- make decisions based on the facts
- treat everyone involved fairly, including ensuring both the person(s) making the complaint and the person(s) responding to the complaint are given the opportunity for full disclosure and response
- clearly tell the people involved what actions will be taken, taking into account privacy
- keep good documentation, including ensuring actions and decisions are documented and all information is secured and access is restricted
- following up with parties to check the effectiveness of solutions put in place and work to repair the working relationship and promote positive work values
- if a decision has been made not to proceed with a formal investigation, let the people involved know and advise them of their legal rights

Disciplinary action, up to and including cancelling student placement, dismissal from employment, termination of a contract or being excluded from the School may result following an investigation that finds that sexually harmful behaviour has occurred.

Checking how well the sexually harmful behaviour control measures are working

- Every year the School will carry out an anonymous survey asking workers about sexually harmful behaviour
- When workers leave, the HR team will carry out exit interviews, and ask specific questions about sexually harmful behaviour

The results will be used to review and if needed improve the control measures.

Further Information and assistance

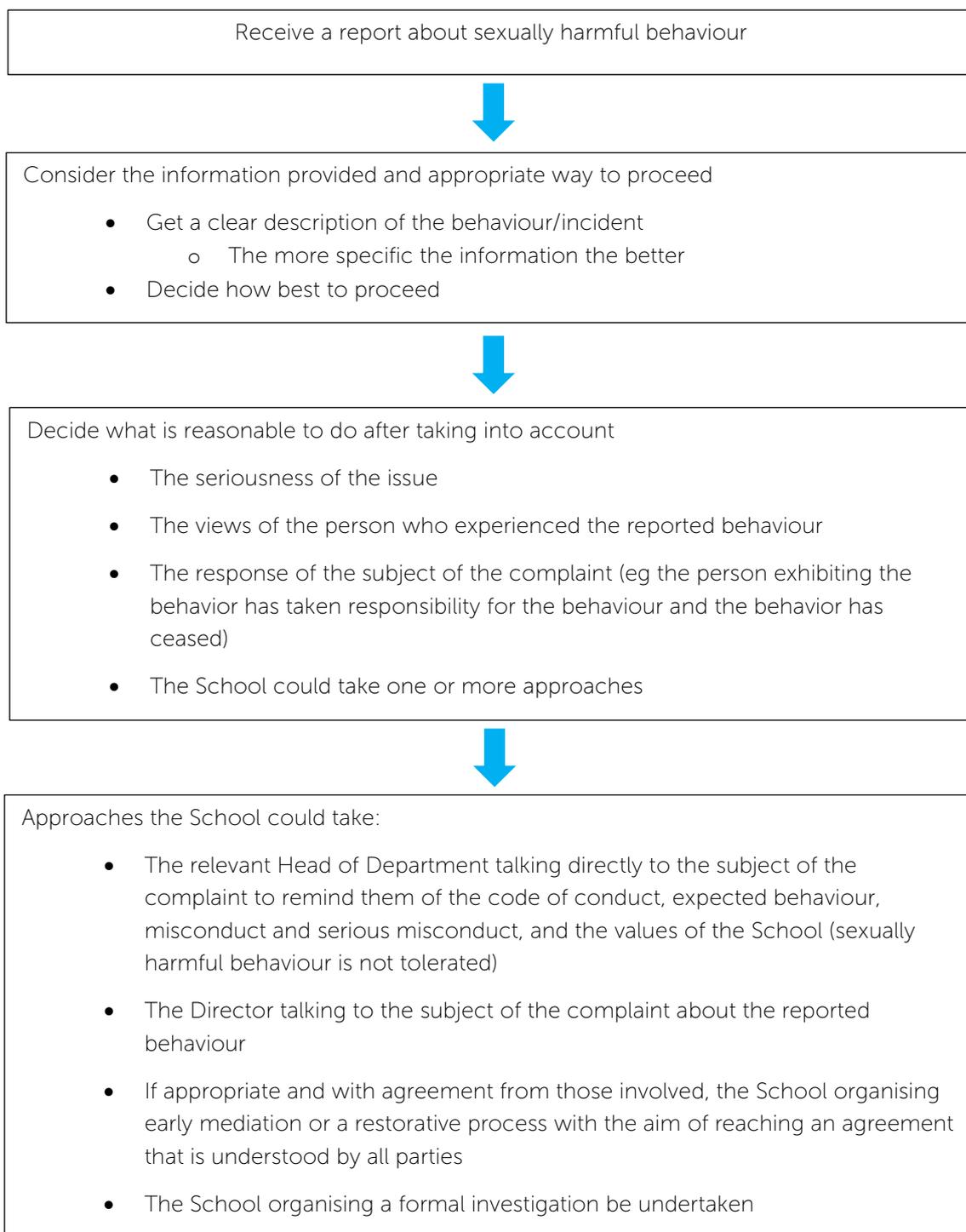
- For further support you may choose to approach your Manager, Head of Department, Human Resources, Tumuaki-Director, the Student Registrar or representative
- The Employee Assistance Programme (EAP) – Vitae www.vitae.co.nz is available to all staff to contact confidentially at any time.
- [Student Counselling Services?]
- You may wish to approach the Human Rights Commission or Employment New Zealand for assistance and advice.

- See WorksafeNZ information on Sexual Harassment <https://worksafe.govt.nz/topic-and-industry/sexual-harassment/>
- Sexual harassment - Advice for workers <https://worksafe.govt.nz/topic-and-industry/sexual-harassment/advice-for-workers/>
- Examples of Sexual Harassment at work <https://worksafe.govt.nz/topic-and-industry/sexual-harassment/examples-of-sexual-harassment-at-work/>

Appendix 1:

Guidance and procedures for management of complaints

The following process flow provides guidance on how to determine the approach to be taken when receiving a report about sexually harmful behaviour



Investigation Procedure

Inform the subject(s) of the complaint as soon as possible after a complaint has been received

Support everyone involved

Treat the complaint confidentially providing information only to those who require the information including the person(s) making the complaint, the subject(s) of the complaint (who may provide the information on a confidential basis to support persons) and those who will investigate and consider the outcome of the complaint. Ensure that all parties understand the requirement for confidentiality

Decide whether interim measures should be taken to ensure the safety and welfare of the people involved during the investigation. Depending on the circumstances, options could include:

- reassignment to other duties or relocation to another part of the School until the investigation is complete
- the subject of the complaint taking a voluntary leave of absence or being placed on paid leave or being suspended pending the outcome of the investigation (note: any action should be consistent with the terms and conditions of the contract/employment)
- the complainant taking leave.



Prepare a terms of reference document after consulting with the parties about the intended process detailing the nature of the complaint, the process to be followed to investigate the complaint, who the decision maker will be

Engage or appoint an investigator (ensuring that the investigator is someone who is trained to carry out investigations into sexually harmful behaviour complaints and is unbiased / not involved in the incident)

The investigator:

- confirms the process and timelines with everyone involved
- interviews all parties involved and any witnesses, and reviews any relevant documentation to determine the facts
- gives the subject of the complaint reasonable opportunity to respond to the allegations/concerns in writing and in person, including providing a copy of part or whole of the draft report before finalizing in order to ensure that the investigator has accurately recorded the information provided by the parties to the report
- gives the decision maker a written report on their findings



On receipt or the report, the School will:

Give people involved a copy of the report

Meet with the people involved separately to discuss the report and the actions the School proposes to take (including disciplinary action). Seek the views of the people involved about this

Tell the people involved what the decision is

Tell the people involved what the processes are if either is unhappy with the outcome



During the investigation the School will;

Regularly check the wellbeing of all involved

Work to assist the repairing of student and staff relationships and put things right if the situation has resulted in a tense or hostile working relationship



Review and improve control measures to ensure that the School is actively managing the risks from sexually harmful behaviour



Following an investigation that finds that sexual harmful behaviour occurred:

- A range of consequences, up to and including disciplinary action, dismissal from employment, termination of contract or exclusion from the School and workplace may result