

PREVENTION OF AND RESPONSE TO SEXUAL HARASSMENT

Te Ture ārai Whakaraweke Tangata

Document Control	
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High-Level Policy: People & Culture	Next Review Date: Transitioning to Te Pūkenga
Relates to NZQA Key Evaluation Question(s):	5. Governance & Management 6. Compliance

Te Pūkenga is currently creating their national policy framework. As per the [grandparenting policy](#) any gaps in policy while the framework is being formalised will be addressed by the existing policy at this business division (Te Pūkenga ki Waikato). Unless a policy or procedure is identified as a risk to ākongā, kaimahi and Te Pūkenga, all existing Te Pūkenga ki Waikato policy will remain current until they are replaced or reformed under Te Pūkenga's policy framework. Where risk is identified the policy and or procedure will be reviewed by the appropriate business division policy manager.

1. Purpose & Scope

We are committed to ensuring a healthy and safe place of work and study and a culture of dignity and respect where people are free from sexual harassment.

We take our legal and moral obligations in this respect seriously and will not tolerate any form of bullying, harassment or discrimination, including sexual harassment as defined by the Human Rights Act 1993 and the Employment Relations Act 2000.

This subsidiary policy and procedure(s) are part of our overarching People & Culture Policy Statement, which is managed by the People & Culture team. It is intended to align with our Student Values and Code of Conduct and our [Values](#), particularly Valuing People – Whakamana i te tangata.

2. Policy Statement

This policy covers the prevention and response to sexual harassment concerns and behaviours as defined below that happen:

- a) in the workplace during and/or outside work hours (including behaviours between colleagues/work associates in social or professional work situations, for example, during work events such as training, conferences, social work-related functions); and/or
- b) outside the workplace and outside work hours if it is in the context of the employment relationship and/or affects or is related to the workplace (for example, conduct in social media or email or text messaging).

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This policy applies to any person undertaking work, studies or duties on behalf of, or under the guidance of Wintec. This includes but is not limited to staff, students and contractors.

Wintec will endeavour to demonstrate that:

- a) We will do our best to prevent sexual harassment by making staff and students aware of this policy.
- b) We will respond promptly, appropriately and fairly to any complaint's that are brought to our attention.
- c) All employees are aware of Wintec's commitment to anti-sexual harassment principles through the on-boarding programme and policies.
- d) All employees are aware of Wintec's commitment to the Treaty of Waitangi and understand the principles.
- e) All students are aware of Wintec's commitment to anti-sexual harassment principles through the Code of Conduct, Student Voice and Student Values policies, along with student representation support.

This policy should be read in conjunction with the following Wintec policies:

- Employee Complaint Management
- Protected Disclosure
- Staff Discipline
- Safety & Wellbeing
- Social Media
- Student Voice
- Student Values
- Code of Conduct for Students, Peer Tutors and Student Mentors
- Principles of Professional Practice (staff)
- Anti-bullying and Harassment
- Diversity and Inclusion
- Wintec's Academic Regulations

3. Key Roles & Expectations

This subsidiary policy and procedure(s) are part of our overarching People & Culture Policy Statement which is managed by the People & Culture team. It is intended to align with Wintec's Values, particularly Valuing People – Whakamana i te tangata. It is also a part of Wintec Students Complaints policies and Code of Conduct.

The following roles have key responsibilities:

- | | |
|--|--|
| All Staff, Students and Board Members | <ul style="list-style-type: none">• Responsible for adhering to this policy and are aware of the process for raising concerns and/or complaints• are encouraged to promote and maintain a respectful and inclusive culture, recognising that Wintec students and staff are from diverse backgrounds |
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| | <ul style="list-style-type: none">• know their rights and responsibilities and know where they can seek help, in relation to this and other related policies. |
| Student Representatives | <ul style="list-style-type: none">• Responsible for ensuring students are aware of key policies, and the forums available to them should they wish to raise concerns• assist in creating a culture of change and encouraging students to look out for each other. |
| All Staff and Board Members | <ul style="list-style-type: none">• Complete Wintec's Values and Success profile e-learning training• complete Wintec's Safety and Wellbeing e-learning training• complete Wintec's anti-bullying, harassment and discrimination training. |
| Managers | <ul style="list-style-type: none">• Are aware of and ensure their team are aware of, and committed to this policy and the processes to follow, and the Stand Up – Speak Up information page• aware of their obligations under any applicable diversity and inclusion strategy or initiatives• aware of Wintec's obligations under the Human Rights Act 1993• work with the People and Culture team to ensure records capture, supports current business processes as well as wider Wintec goals• monitor their team's compliance with this policy. |
| People & Culture Mental Health Business Partner | <ul style="list-style-type: none">• Provide support to staff and students to cope with the mental health impacts of alleged sexual harassment (at the person's request). |
| Safety and Wellbeing Manager | <ul style="list-style-type: none">• Provides tools and support for the monitoring and measurement of staff wellbeing under this policy• provides materials and training that supports anti-bullying, harassment and discrimination for students and staff• ensures that Wintec has a team of mental health first aid responders who are confident and capable to support staff and community• ensure that Safety and Wellbeing representatives, Wellbeing champions and Mental Health first aid responders are skilled and capable to support, educate and promote this policy. |
| Executive Director, People and Culture | <ul style="list-style-type: none">• Responsible for ensuring that Wintec meets its statutory and accountability obligations concerning this policy• responsible for conducting an annual assessment of this policy, the objectives and progress made toward achieving them. |
| People and Culture Board sub-committee | <ul style="list-style-type: none">• Approves this policy through the Wintec Board and ensures that Wintec meets its statutory and accountability obligations• monitors progress on objectives. |

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- Wintec Board**
- Responsible for oversight of the effectiveness and application of this policy.

4. Measuring Success

The measurements of successful implementation and management of our prevention and response to sexual harassment policy are:

- Achieve [Workwell Gold Accreditation](#) by 2020.
- Annually report to Wintec Board progress on bullying, harassment (specifically sexual harassment) and discrimination initiatives.
- Establish and regularly review policy and practices, ensuring awareness of this policy and that our values are demonstrated in everything that we do.
- Develop/link in with education programme(s) for employees on bullying, harassment and discrimination wellbeing in the workplace.
- Regularly review Wintec's people and culture policies to promote Wintec's value-based behaviours and wellbeing in the workplace.
- Continue to build a support team, including mental health first aid responders, who are confident and capable to support staff and community.
- Monitor exit surveys and complete regular staff surveys to monitor workplace culture.

5. Supporting Information

5.1. Raising a Concern

We provide a range of options and processes for people to speak up and bring concerns, allegations and complaints in relation to sexual harassment; regardless of whether the person(s) are directly affected or have witnessed sexual harassment. Issues will be resolved at the most appropriate level of intervention, subject to the rights of the complainant and the respondent.

Where possible, we promote the resolution of issues at the lowest appropriate level of intervention as this may sometimes be the fastest and most effective way of dealing with inappropriate behaviour, particularly for issues that are perceived as 'minor' (for example, behaviours that do not cause the complainant to feel unsafe, or seriously harmed, threatened or intimidated).

We recognise that people may find it difficult or embarrassing to instigate a complaint of sexual harassment. A support person can always be invited to be present. This also applies to staff and students when accessing counselling services.

5.2. Digital Communication and Social Media

We recognise that not all sexual harassment takes place face-to-face. Digital communication includes any form of electronic message, including texts, emails, posts on social media, photos and recordings. Harmful digital communications include cyber-harassment, such as:

- sending or publishing threatening or offensive material

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- spreading damaging rumours
- sending or publishing sensitive personal information, e.g. embarrassing photos or videos.

We take seriously [our obligations](#) under the [Harmful Digital Communications Act 2015](#) (HDCA) and the [10 Communication Principles](#) outlined within. We expect all staff members and students to treat others with respect when using digital communication and social media. Staff members are expected to follow our [Social Media policy](#) and related guidelines when operating Wintec social media accounts or when referring to Wintec in their own personal social media accounts.

In the event that you receive or witness a digital communication that breaks any of the principles of the HDCA, you can raise a concern or make a complaint as per *5.1 Raising a Concern* above.

5.3. Handling Complaints

Whether behaviour or language amounts to sexual harassment is often a matter of subjective and personal judgment. For that reason, we consider informal processes for raising and resolving issues may, in particular circumstances, be sufficient. However, that does not affect the right of an individual to make a formal complaint.

We undertake that all complaints of sexual harassment will be treated seriously, provided they are made in good faith. Disciplinary action may be taken against an individual whose complaint is frivolous, vexatious, or not made in good faith.

No person is obliged to make a complaint of sexual harassment if that person chooses not to do so.

All complaints made under this policy, and information gathered while investigating complaints, will be treated as confidential information, subject to the Privacy Act 1993.

Staff members, contractors and volunteers at Wintec who wish to raise concerns, check what internal and external support is available, or make complaints in relation to sexual harassment, should refer to our [Employee Complaint Management policy](#) and the [Stand Up, Speak Up information page](#).

If a complaint relates to the Chief Executive, it should be made directly to the Board Chair. See the [Protected Disclosures \(Whistle Blowing\) policy](#).

Students of Wintec who wish to raise concerns, check what support is available, or make complaints in relation to sexual harassment, should refer to our [Student Voice policy](#).

5.4. Self-help

It may be sufficient for a complainant to approach the alleged offender directly, in person or in writing, and:

- identify the language or behaviour that has given offence,
- state that the language or behaviour is unwelcome and offensive,
- seek an assurance that it will not be repeated.

If the complainant and the offender speak directly, it may be appropriate for the complainant to be accompanied by a support person or a manager or a representative from the People and Culture team.

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Wintec's Mental Health Business Partner is available to support staff and students with the mental health impacts of alleged sexual harassment.

Informal resolution through direct communication is the preferred first step, although that will not always be appropriate or practical. The objective is to bring the unwelcome and offensive nature of the language or behaviour to the attention of the person responsible for it. In many cases, this will be enough to stop the unwelcome behaviour.

An apology, with an assurance that there will be no repetition, may be an appropriate resolution.

5.5. Informal Approach

If a complaint cannot be resolved directly, or a complainant is not comfortable raising the matter directly, the individual should seek help from a support person or a manager or a representative from the People and Culture team.

When a request for an informal intervention is made, the request must be acted on quickly, discreetly and fairly. All discussions and any investigations must be conducted in confidence and in consultation with a People and Culture or Safety and Wellbeing Business partner or manager.

The aim of this informal intervention is to ensure that the alleged harasser becomes aware of, and understands the effect of, the language or behaviour on the complainant. The intervenor should seek an undertaking that the language or behaviour will not be repeated. There may also be an apology to the complainant.

5.6. Mediation

In some situations, arranging for a complainant and respondent to discuss the complaint with a skilled mediator may be an appropriate way to address the issue. Both parties need to agree to mediation.

Mediation is not always appropriate to resolve behaviour issues, particularly if there is a power imbalance. Mediation may be suitable where:

- there is basic agreement on the facts
- both parties agree to try to resolve the situation through this method
- the harassment is of a low level and serious disciplinary consequences do not appear warranted.

A mediator may be someone mutually agreed between the parties or from the Ministry of Business, Innovation and Employment's mediation service.

If a complainant and the respondent cannot resolve the complaint through mediation, then formal options are available.

5.7. Formal Approach

If a staff member has been unable to achieve a resolution through the informal approach, or circumstances are such that resolution through the informal approach would be inappropriate due to the nature or seriousness of the complaint, Wintec will follow the formal approach set out in the [Employee Complaint Management policy](#) or [Protected Disclosure policy](#), if applicable.

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5.8. Complaint to Human Rights Commission

A staff member may take a complaint of sexual harassment directly to the [Human Rights Commission](#) under the Human Rights Act 1993. A complaint to the Commission is an alternative to a personal grievance under the Employment Relations Act.

5.9. Personal Grievance

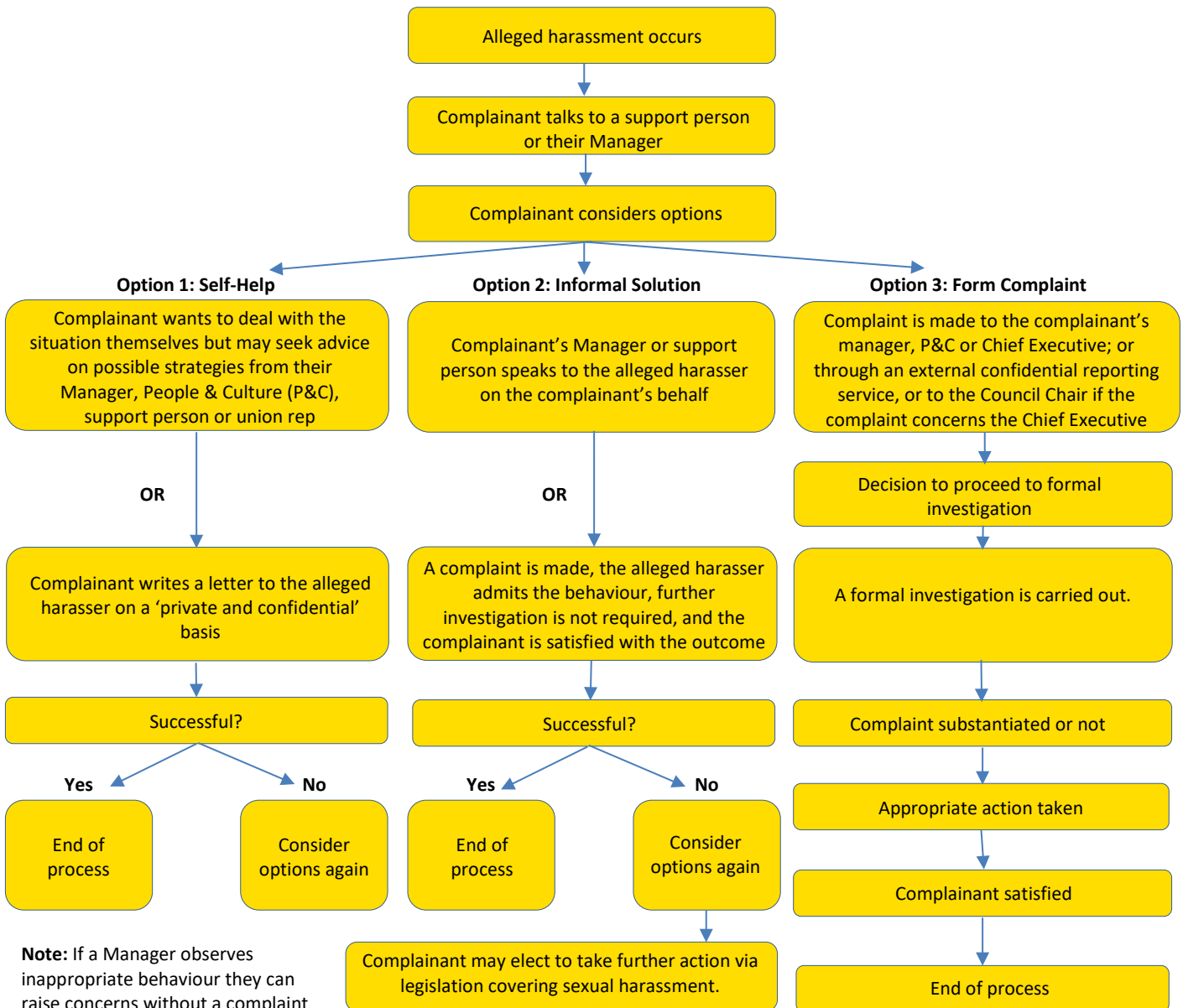
An employee may lodge a personal grievance, alleging sexual harassment in employment, with the Employment Relations Authority under the Employment Relations Act 2000. A personal grievance is an alternative to a complaint to the Human Rights Commission.

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6. Processes

Process diagram for internal resolution of sexual harassment



For relevant processes, please refer to the following policies:

- Staff, contractors and volunteers: [Employee Complaint Management policy](#)
- Students: [Student Voice policy](#)
- See also our [Protected Disclosure \(Whistle Blowing\) policy \(for staff\)](#)

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7. Related Legislation, Regulations, Policies, Guidelines, and Forms

Legislation/Regulations	Policies	Guidelines/Forms
Human Rights Act 1993 Employment Opportunities Act Employment Relations Act 2000 New Zealand Bill of Rights Act 1990 Treaty of Waitangi State Sector Act 1988 Equal Pay Act 1972 Health and Safety at Work Act 2015 Harassment Act 1997 Crimes Act 1961 Protected Disclosures Act 2000 Harmful Digital Communications Act 2015 Privacy Act 1993	All Wintec policies, but specifically: <ul style="list-style-type: none"> • Employee Complaint Management • Protected Disclosure • Staff Discipline • Safety & Wellbeing • Social Media • Student Voice • Student Values • Code of Conduct for Students, Peer Tutors and Student Mentors • Principles of Professional Practice (staff) • Anti-bullying and Harassment • Diversity and Inclusion • Wintec's Academic Regulations 	Stand up – Speak up WorkSafe Sexual Harassment Advice
Copies of New Zealand Legislation can be found on the New Zealand Legislation Website . You can view Wintec's Policies and Procedures on the Policy Web . This is not an exhaustive list of policies, procedures and legislation.		

8. Key Definitions & Glossary

People and Culture team Wintec's People and Culture (P&C) team support managers and staff with queries relating to this policy.

Sexual Harassment Unwelcomed or offensive behaviour of a sexual nature that may be communicated person to person, electronically, pictorially or socially.

Unwelcome means that the behaviour is not solicited or invited or consented to and is regarded by the other person as undesirable or offensive at the time.

Sexual harassment can be subtle, dependent on context and may entail different cultural understandings of what is considered inappropriate behaviour. It can include, but is not limited to:

- the direct or indirect request for sexual intercourse;
- contact (e.g. touching, hugging, encroaching on someone's personal space);
- kissing, staring or leering, stalking, unwanted invitations to go out on dates;
- repeated and unwanted advances on email or social media;
- intrusive and sexually suggestive private questions or comments in person or via electronic means;

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- sexual gestures, indecent exposure or other form of sexual activity with an implied or overt promise of preferential treatment, detrimental treatment or threat to the present or future employment status of the employee, or other negative impact on a student, contractor or Board Member.

Behaviour may not constitute sexual harassment where the behaviour is genuinely friendly banter, mutually acceptable and accepted jokes, occasional appropriate compliments or behaviour based on mutual attraction and/or genuine consent.

The **Human Rights Act 1993** makes it unlawful for any person to make a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.

Employment Relations Act 2000

The **Employment Relations Act 2000** provides that an employee is sexually harassed in that employee's employment if that employee's employer or a representative of that employer —

- (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact, or other form of sexual activity that contains —
 - (i) an implied or overt promise of preferential treatment in that employee's employment; or
 - (ii) an implied or overt threat of detrimental treatment in that employee's employment; or
 - (iii) an implied or overt threat about the present or future employment status of that employee; or
- (b) by —
 - (i) the use of language (whether written or spoken) of a sexual nature; or
 - (ii) the use of visual material of a sexual nature; or
 - (iii) physical behaviour of a sexual nature, —

directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

The Act provides that an employee is also sexually harassed in that employee's employment if the unwelcome or offensive request or behaviour is made by a co-employee or by a client or customer of the employer.

Harassment

As referred to in the Employment Relations Act 2000, and/or the Human Rights Act 1993, and/or the Harassment Act 1997.

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Respondent The person who is alleged to have behaved in a way that constitutes or could be construed as bullying, harassment or discrimination, or any person who has encouraged, aided or abetted such behaviour.

Complainant The person/s who says that the behaviour has been directed at them.

9. Records Management

In with the Public Records Act 2005, Wintec is required to provide an Information and Records Management programme to ensure that authentic, reliable and usable records are created, captured and managed to a standard of best practice, and to meet business and legislative requirements. All records relevant to a specific policy need to be listed in every policy in the following format:

Record	Minimum retention period	Disposal Action	GDA Reference #
This policy document	Until superseded and administratively no longer required for reference purposes	Retain as public archive	5.1.1
All individual records related to sexual harassment complaints including correspondence, meeting notes, reports and outcomes.	7 years from date of last action	Destroy	D2

10. Version History

Version	Date Approved	Details
1	June 2019	First Published.
2	July 2020	Updated references and terminology.