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## STAFF MISCONDUCT PROCEDURE

<b>Section</b>	Human Resources		
<b>Approval Date</b>	29.06.2009	<b>Approved by</b>	Directorate
<b>Next Review</b>	16.11.2018	<b>Responsibility</b>	Chief Executive
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### PURPOSE

Ensure that allegations of misconduct are promptly and properly investigated and a fair procedure followed.

Treat allegations of misconduct seriously, confidentially and professionally.

### SCOPE

All situations where an allegation has arisen and where misconduct of an Employee is indicated.

Allegations originating from students, staff or the public will be dealt with in the same way.

### INTRODUCTION

There are two distinct disciplinary procedures separately covering:

1. Misconduct.
2. Serious misconduct.

Examples of each of these are given in Appendix A.

### DEFINITIONS

<b>Allegation</b>	Claimed, but unconfirmed, misconduct, serious misconduct of an Employee of Nelson Marlborough Institute of technology (NMIT)
<b>CE</b>	Chief Executive
<b>Delegate</b>	A person with written authority to act on behalf of the Director or Manager.
<b>Directorate</b>	The CE, Director of Māori Education, Director of Learner Services, Chief Operating Officer, Director of Marketing and International Development,

	Director of Finance and Business Improvement, Director of Learning and Teaching
<b>Disciplinary procedures</b>	Procedures for investigating and dealing with “misconduct”, “serious misconduct”.
<b>Employee</b>	The person (respondent) against whom an allegation has been made.
<b>Manager</b>	The Employee’s immediate manager, unless specified otherwise.
<b>Mitigating factors</b>	Include: <ul style="list-style-type: none"> <li>a. the favourable aspects of the Employee’s service record.</li> <li>b. NMIT’s responsibility, if any, for the development of the situation.</li> </ul>
<b>Representative/Support person</b>	An Employee’s organisation, bargaining agent, solicitor, etc representing the interests of an Employee.

## RESPONSIBILITIES

1. The Directorate member or his/her delegate will assume the manager’s role for all allegations of misconduct within the Directorate member’s area of responsibility.
2. The manager of an Employee against whom an allegation has been made shall investigate the allegation according to this procedure except in the case of serious misconduct where the Chief Executive (CE) or his/her delegate shall undertake the investigation.
3. Where the manager responsible for investigating an allegation requires advice as to which, if any, disciplinary procedure applies, the manager should consult with the Manager of People and Organisation Development. The Manager of People and Organisation Development, after taking advice as he or she considers necessary, shall identify the procedure to be followed.
4. Where an allegation is made under these disciplinary procedures the manager will advise the person making the allegation of the procedure followed to deal with the allegation and the progress and outcome of the allegation.

## UNDERLYING PRINCIPLES

1. All allegations must be put in writing. An allegation must be specific, with clear references to incidents and any evidence available including dates and times. If the nature of an allegation changes, the amendment to the allegation will also be put in writing.
2. All procedures will be initiated as promptly as is reasonably possible having regard to the nature of the allegation.
3. Parties involved in the Staff Misconduct Procedure must observe the utmost confidentiality so as to protect individual privacy.
4. An Employee has the right to:

- a) be advised of the level of seriousness of the allegation; which procedure Nelson Marlborough Institute of Technology (NMIT) intends to follow to deal with the allegation and the consequences of the allegation being substantiated;
  - b) know the full details of an allegation and the name of the person or persons laying the allegation, prior to any meetings held to discuss the allegation;
  - c) be given prior notice of any meetings to be held under these procedures which the Employee is to attend.
  - d) have a representative or support person of the Employee's choice (who is not the manager) present at any meeting; and
  - e) be given a full opportunity of offering an explanation for the alleged conduct in a face-to-face meeting with the person responsible for deciding the outcome of any stage of the disciplinary procedures, (such as a warning or dismissal) prior to any decision being made.
5. The parties attending any meeting under these procedures shall be notified in advance of the roles of others attending (including representatives).
  6. Where a student lays an allegation against an Employee, the student has the option of involving a support person, whose role is to support the student and to ensure that no disadvantage or prejudice follows the laying of the allegation. The Senior manager responsible for Academic and Quality will ensure through the appropriate Manager no disadvantage or prejudice occurs. Any perceived disadvantage or prejudice will be taken up directly with the Senior manager responsible for Academic and Quality.
  7. Any issue, in the opinion of the manager, that remains ambiguous will be interpreted in favour of the Employee.

## MISCONDUCT DISCIPLINARY PROCEDURE

**Note:** Please read the above section: *Underlying Principles* that apply to all procedures.

1. This procedure will be used in situations where:
  - a) an allegation of misconduct is made against an Employee; or
  - b) an Employee has already been given a warning which is current, and a further allegation of misconduct is made against the Employee.

In summary, this procedure involves two written warnings, being an initial warning and a final warning, prior to dismissal.

2. Where two written warnings have been given and dismissal could result, the CE or his/her delegate will assume the manager's role.
3. The manager will carry out an investigation to determine the validity of the allegation. With the CE or his/her delegate's approval, if appropriate the manager may suspend the Employee on pay whilst investigations are being carried out.
4. The precise nature of the allegation will be communicated to the Employee. A meeting will be set up where the Employee is given a full opportunity to respond to the allegations made.
5. The Employee will be encouraged to respond verbally at this meeting. The meeting may need to be adjourned and resumed to enable further information to be obtained. The Employee will be given a written summary of the meeting.
6. In determining whether the allegation is substantiated, the manager must decide on the balance of probabilities, whether the conduct complained of occurred and whether it constitutes misconduct.
7. If the manager determines the allegation is not substantiated the manager will give written advice to the Employee. No further action is necessary on that allegation.

8. If the manager determines that the allegation is substantiated the manager must then consider:
  - a) whether mitigating factors excuse the conduct; and
  - b) whether procedural fairness has been followed, including:
    - \* whether the allegation has been investigated fairly
    - \* whether the Employee has had the allegations put to him/her and has been given a full opportunity to explain and respond.
  - c) overall whether a fair and reasonable employer would give a warning.

If after considering 8a –8c above the manager determines a warning will be issued then the Employee will be issued with an initial warning in writing.

9. The warning will state the precise nature of the unsatisfactory conduct, a clear statement of expected conduct and the consequences of committing the same or any other type of misconduct while the warning is current. The warning will state that it remains in force for twelve months.
10. If an allegation is made while the initial warning is current, that the Employee has committed the same type of conduct alleged in the initial warning, or any other type of misconduct, the procedure in Steps 3. to 9. above will be followed. If the manager determines that a warning should be issued, a final warning will be issued in writing.
11. If an allegation is made while the final warning is current, that the Employee has committed the same type of conduct alleged of in the final warning, or any other type of misconduct, the procedure in Steps 3. to 9. above will be followed. If the CE or his/her delegate determines that the allegation is substantiated, the CE or his/her delegate must then consider:
  - a) whether mitigating factors excuse the conduct; and
  - b) whether procedural fairness has been followed, including:
    - whether the allegation has been investigated fairly
    - whether the Employee has had the allegations put to him/her and has been given a full opportunity to explain and respond.
  - c) overall whether a fair and reasonable employer would dismiss the Employee.

If after considering 9a) – 9c) above the CE or his/her delegate considers the Employee should be dismissed the Employee will be dismissed without notice in writing.

## SERIOUS MISCONDUCT DISCIPLINARY PROCEDURE

**Note:** Please read the earlier section: *Underlying Principles* that apply to all procedures.

1. This procedure will be used in situations where the conduct complained of is so serious that, if proven, immediate dismissal would be considered.
2. The CE, or his/her appointed delegate, will assume the manager role for this procedure.
3. Where it is agreed that criminal conduct may be involved, the CE or his/her delegate shall inform the police. The manner and timing of such action shall be determined by the CE or his/her delegate. NMIT's serious misconduct procedure will proceed independently of any police criminal investigation.
4. The CE or his/her delegate will carry out an investigation to determine the validity of the allegation. If appropriate, the Employee may be suspended on pay whilst investigations are carried out.
5. The precise nature of the allegation will be communicated to the Employee. A meeting will be set up where the Employee is given a full opportunity to respond to the allegations made.
6. The Employee will be encouraged to respond verbally at this meeting. The meeting may need to be adjourned and resumed to enable further information to be obtained. The Employee will be given a written summary of the meeting.

7. In determining whether the allegation is substantiated, the CE or his/her delegate must decide on the balance of probabilities, whether the conduct complained of occurred and amounts to serious misconduct.
8. If the CE or his/her delegate determines the serious misconduct allegation is not substantiated the CE or his/her delegate will give written advice to the Employee and no further action is necessary on that allegation.
9. If the CE or his/her delegate determines that the allegation is substantiated, the CE or his/her delegate must then consider:
  - a) whether mitigating factors excuse the conduct; and
  - b) whether procedural fairness has been followed, including:
    - whether the allegation has been investigated fairly
    - whether the Employee has had the allegations put to him/her and has been given a full opportunity to explain and respond.
  - c) overall whether a fair and reasonable employer would dismiss the Employee.

If after considering 9a) – 9c) above the CE or his/her delegate considers the Employee should be dismissed the Employee will be dismissed without notice in writing.

10. If the CE or his/her delegate determines that:
  - a) serious misconduct has not been substantiated, but misconduct has been proven and procedural fairness has been followed; or
  - b) serious misconduct has been substantiated but procedural or mitigating factors prevent dismissal,

then an initial warning or a final warning may be issued as appropriate.

## REFERENCES

### INTERNAL

Complaints Procedure  
Student Misconduct Procedure  
Student Problem Resolution Framework  
Safety, Health and Wellbeing Policy  
Staff Charter  
Student Charter  
The Employee's employment agreement  
Appendix A: Examples of conduct which could constitute Serious Misconduct and Misconduct

### EXTERNAL

Privacy Act, 1993  
Human Rights Act, 1993  
Employment Relations Act 2000

EXAMPLES of CONDUCT which could CONSTITUTE  
**MISCONDUCT and SERIOUS MISCONDUCT**

**Note:** The following lists are not definitive - in addition to the conduct specified, there will be other conduct that in NMIT's opinion falls into these categories.

**MISCONDUCT**

- \* Any example listed below under "Serious Misconduct" but considered by NMIT to be less serious.
- \* Recurring minor matters.
- \* Failing to comply with time recording procedures
- \* Abusive language causing offence to another person on NMIT premises or whilst on NMIT business.
- \* Misuses, or unauthorised use, of NMIT property.
- \* Posting offensive notices within NMIT premises.
- \* Failure to observe safety rules or failure to instruct students in the same.
- \* Preventing (or interfering with) another Employee from carrying out his/her work functions.
- \* Wasting time or material.
- \* Failure to report a fire or the use of fire equipment.
- \* Failure to report for work at the time required without notifying the manager/supervisor of the reason.
- \* Failure to complete the stipulated hours of work, unless sick or because of some personal emergency.
- \* Failure to report a work related accident.
- \* Continual lateness or lack of application to an assigned task.
- \* Smoking in restricted places.

SERIOUS MISCONDUCT

- \* Falsification of NMIT records.
- \* Misuse of drugs or alcohol on work premises.
- \* Possession of illegal substances on work premises.
- \* Unauthorised possession or use of NMIT property.
- \* Damage to NMIT property.
- \* Violence, intimidation or harassment against another person.
- \* Removing, or in possession of another Employee's property without permission.
- \* Misuse of fire or safety equipment.
- \* Acts adversely affecting hygiene, safety or quality.
- \* Refusal to carry out the lawful instructions of managers/supervisors.
- \* Unauthorised disclosure of classified NMIT information.
- \* Misrepresenting NMIT for personal gain.
- \* Negligence.
- \* Dishonesty in any way associated with work.
- \* Any serious or significant breach of the implied duty of fidelity.
- \* Being convicted of any crime
  - involving dishonesty, or
  - for which the Employee is sentenced to any term of periodic detention or imprisonment whether or not dishonesty is involved.
- \* Conducting himself or herself in a manner likely to bring him or her personally or the NMIT into disrepute, whether or not in the course of employment.
- \* Making frivolous or malicious statements against another Employee which could bring that Employee into disrepute.
- \* Recurring misconduct.
- \* Breaches of the Staff Charter or the Student Charter.
- \* Unprofessional conduct.
- \* Misuse or damage of electronic data or communication systems.