

NMIT ĀKONGA MISCONDUCT PROCEDURE

Section	Problem Resolution		
Approval Date	19.05.2020	Approved by	Business Division Lead
Next Review	21.02.2024	Responsibility	Executive Director: Ōritetanga, Teaching and Learners
Last Reviewed	21.02.2023	Key Evaluation Question	5

PURPOSE

To ensure:

- › Ākonga have a clear understanding of what constitutes ākonga misconduct and the consequences of ākonga misconduct.
- › Kaimahi of Te Pūkenga trading as Nelson Marlborough Institute of Technology (NMIT) have clear and consistent procedures to follow when dealing with instances of ākonga misconduct.
- › Ākonga are treated fairly and consistently when ākonga misconduct is alleged, and
- › That the principles of natural justice are adhered to.

SCOPE

The Ākonga Misconduct Procedure applies to:

- › Ākonga of NMIT (including ākonga of NMIT training partners) whether:
 - (a) On NMIT premises; or
 - (b) Off campus on course-related activities.
- › Situations where an allegation of ākonga misconduct also involves the Police.

The misconduct will be regarded as **serious** if by its nature and/or degree it:

- › Adversely affects (or has the potential to adversely affect) the safety and/or wellbeing of other ākonga or kaimahi of NMIT; or
- › Is likely to bring the name of NMIT or its quality standards into disrepute; or
- › Involves behaviour considered to be seriously inappropriate for an ākonga of NMIT; or
- › Is part of a number of instances of misconduct committed by the same ākonga. It is not necessary that the instance of misconduct is the same or similar in nature and/or degree to previous instances of misconduct.

Additionally, where a Protection Order is in place, the safety of the ākonga who has obtained the Protection Order is paramount; and that ākonga rights will be given priority by NMIT over those of the subject of the Protection Order. There can be no restriction on the ākonga who obtained the protection order. The restrictions apply only to the ākonga who is subject to the protection order.

NOT IN SCOPE

Suspicions or allegations of academic misconduct, refer to [NMIT Academic Integrity and Academic Misconduct policy](#) and [NMIT Academic Misconduct Procedure](#).

For ākongā failing to meet academic requirements, refer to [NMIT Unsatisfactory Academic Progress Procedure](#).

The Ākongā Misconduct Procedure does not replace specific Programme Regulations, which may also address matters such as what constitutes 'fit and proper' behaviour (e.g. Nursing ākongā expected professional behaviour) and drug and alcohol criteria.

PRINCIPLES

TIMELINESS

All procedures will be initiated as promptly as is reasonably possible having regard to the nature of the allegation.

PRIVACY

Those involved in the *Ākongā Misconduct Procedure* must observe the utmost confidentiality to protect individual privacy. All information relating to the allegation will remain confidential to those parties involved in the case and will not be divulged to outside parties or agencies, with the following exceptions:

- Of any cases relating to criminal activity or activities which contravene any external regulations;
- Where someone is at risk of causing harm to themselves or others;
- To allow any of the parties (NMIT, the person making the allegation, the ākongā) to take legal advice.

PRINCIPLES OF NATURAL JUSTICE

The **principles of natural justice** shall apply, as outlined below:

1. The ākongā will be given all relevant information regarding the allegation, a reasonably adequate opportunity to prepare and present evidence, and to respond to the arguments presented
2. The person/s deciding on the allegations will be impartial and make a decision based on a balanced and considered assessment of the information
3. Decisions regarding allegations are based on logical proof or evidence

Based on the above **an ākongā has the right to:**

- › Be advised **on the procedure that will be followed** in dealing with the allegation and the potential consequences if substantiated;
- › **Know all details of an allegation** including the name of the person making the allegation, prior to any meetings held to discuss the allegation;
- › Receive **all documentation** relating to the allegation prior to the meeting
- › **Be given sufficient notice of any meetings** they need to attend regarding the allegation to enable them to prepare their response or arrange any representation.
- › **Have a Support Person and/or Advocate** (including legal representation) of their choice present at any meeting. The ākongā must be notified of this right, in writing, when notice is given of any meeting.

- › Be given a **full opportunity to explain** the alleged conduct in a face-to-face meeting with the person or persons responsible for deciding the outcome of any stage of the disciplinary procedures, prior to any decision being made.
- › **Attend class for courses they are enrolled on** unless the Resolution Facilitator at his/her absolute discretion deems this inappropriate due to the nature of the alleged misconduct. Alternative arrangements will be made so that the ākonga's study is uninterrupted.
- › Be **given the option** or right to sit in on all formal meetings and evidence collection meetings, and to ask questions of witnesses at a designated time.
- › Be treated with respect, which includes recognising and respecting New Zealand's cultural diversity and the unique position of Māori.

RECORDS

All allegations must be made in writing. An allegation must be specific and include the following information:

- › Date of writing
- › Date, time, location of and people present during incident
- › Name of person making the allegation
- › Preferred contact details e.g. phone (home or other) and/or email address
- › Name of the ākonga against whom the allegation is being made
- › Title of the programme this ākonga is enrolled on (if known)
- › Clear details of incident along with any evidence available attached or referenced

Any changes to the nature of an allegation need to be put in writing.

If the allegation is **not upheld**: All information relating to ākonga misconduct will be immediately removed from the Student Management System (SMS), and the Ākonga Case File

If the allegation is **upheld**: All information relating to ākonga misconduct will be removed from the SMS once the ākonga has completed the programme of study it relates to, or 12 months from the final decision, whichever is the greater. The information will be retained in the Ākonga Case File.

AMBIGUITY

Any issue, in the opinion of the person or body deciding on the outcome of an allegation, that remains ambiguous will be interpreted in favour of the ākonga.

REFUNDS

Excluded ākonga may be withdrawn from any courses not yet started, and associated fees may be refunded as appropriate (Refer: [NMIT Withdrawal Policy](#) and [NMIT Withdrawal Procedure](#)).

SUSPENSION

The Curriculum Area Manager can suspend an ākonga for alleged serious misconduct for 12- 48 hours. After that, the Business Division Lead can extend an ākonga's suspension for up to two weeks.

FAILURE TO ENGAGE IN THE PROCESS

In cases where the ākonga is unreachable (e.g. has not been contactable, has not responded to requests to attend meetings); has not evidenced behaviour that convinces the Resolution Facilitator that they will engage in the process; or indicates they are unable to attend a meeting to discuss the allegation of misconduct, NMIT reserves

the right to recommend suspension or exclusion, notwithstanding the process requirements.

DEFINITIONS

Advocate	<p>A person who speaks on behalf of the ākonga, such as a friend, whānau member, or a member of SANITI.</p> <p>The ākonga must complete and sign the Authorisation to Advocate form. The Advocate must also sign.</p>
Ākonga	The learner against whom an allegation has been made
Ākonga Case File	<p>In relation to the misconduct disciplinary procedure, the file held by the Resolution Facilitator [and passed to the office of the Quality Enhancement Manager on conclusion of case]; or</p> <p>In relation to the serious misconduct disciplinary procedure, the file held by the office of the Quality Enhancement Manager.</p>
Allegation	A charge of misconduct made against an ākonga of NMIT (including ākonga of NMIT training partners)
Appeals Panel	<p>A panel convened to consider an appeal of a disciplinary outcome, and determine whether the following grounds for appeal are satisfied.</p> <p>a) There is new information which has a bearing on the matter, and which was previously unavailable (and could not reasonably have been made available at the time the disputed decision was made),</p> <p>OR</p> <p>b) There was a flaw in the process relating to the decision the ākonga seeks to appeal.</p> <p>The Appeals Panel consists of kaimahi with knowledge and experience of appeals processes.</p> <p>Membership is determined by the nature of the decision being appealed and the cultural, disability, or other needs of the appellant.</p> <p>The membership of each Appeals Panel must also consider any Professional or Regulatory Body representation requirements.</p> <p>All Appeals Panel members will be independent of the complaint process in question to date.</p> <p>The Appeals Panel decides who amongst them will Chair the appeal hearing.</p>
Appellant	The ākonga bringing the appeal.
Condition	<p>Stipulated behaviour requirements.</p> <p>In the context of this procedure, conditions may include, but are not limited to: contract of expected behaviour, counselling services, regular check-ins with nominated NMIT kaimahi, maintaining distance from certain parties/buildings</p>
Disciplinary procedures	Procedures for investigating and dealing with “misconduct” and “serious misconduct”.

Exclusion	Formal removal of an ākonga from study on a NMIT programme (including a programme delivered by NMIT training partners). If required, this may be accompanied by a trespass notice restricting access to all or part of NMIT premises.	
External Regulations	A set of principles, rules or law that are set by an organisation other than NMIT, that apply to the programme an ākonga is enrolled on (e.g. Nursing Council, Civil Aviation Authority)	
Impartial Person	<p>For the purpose of this procedure an Impartial Person is an NMIT senior manager.</p> <p>The NMIT senior manager will receive training on the NMIT Ākonga Misconduct Procedures from the QEM.</p> <p>The NMIT senior manager will perform the role of an Impartial Person for a period of two years. A pool of at least three trained staff members will be available to perform the role of an Impartial Person at any given time.</p>	
Kaiako	Tutor / course facilitator	
Kaimahi	Staff member, includes kaiako, learning advisor (WBL), ākonga support, and allied services	
Misconduct (Misconduct and Serious Misconduct)	Means 'misconduct' or 'serious misconduct' as the context dictates.	
	<p>Misconduct</p> <p>Misconduct is when an ākonga's actions have a negative impact, either by: doing something, or not doing something. e.g.</p> <ul style="list-style-type: none"> • Using inappropriate language • Internet misuse • Minor instances of failing to follow NMIT's reasonable and lawful instruction • Minor breaches of the Student Rules e.g. smoking, parking violations 	<p>Serious Misconduct</p> <p>Serious misconduct involves the ākonga acting with intent of destroying or undermining the trust and confidence of people. e.g.</p> <ul style="list-style-type: none"> • Violent behaviour • Bullying • Harassment • Theft or fraud • Behaviour that endangers the health and safety of others • Use of illegal drugs • Illegal activity
Panel	The group convened to conduct an official hearing under the Serious Misconduct Disciplinary Procedure.	
QEM	Quality Enhancement Manager	
Resolution Facilitator	The Resolution Facilitator is appointed by the Quality Enhancement Manager in collaboration with the appropriate line manager. For the purpose of this procedure means a Curriculum Area Manager (or elected senior manager) who is not from the programme area where the ākonga is enrolled, or a Business Support Team Leader / Manager; or a Health and Safety Rep.	
SANITI Student President	For the purpose of this procedure the SANITI Student President (or delegate) is one of the Panel members under the Serious Misconduct Disciplinary Procedure.	

	Represents and works for and on behalf of ākonga. The SANITI Student President sits on NMIT Academic Committee and its sub-committees ensuring the ākonga voice is heard at all levels of NMIT.
Support Person	<p>Person or group able to provide support or advice to the ākonga e.g. NMIT Student Learning Advisor; Student Association (SANITI); friend, family member or other trusted person.</p> <p>A Support Person’s role is to empower the ākonga to speak for themselves with knowledgeable support. A Support Person cannot speak on behalf of the ākonga.</p> <p>If the ākonga requests the Support Person to move into the role of an Advocate, a signed authority needs to be completed. See Authorisation to Advocate form.</p>
Suspension	The formal removal of an ākonga from NMIT for a set period of time in relation to an alleged ākonga misconduct. Suspension conditions may be set that vary depending on the nature and seriousness of the alleged ākonga misconduct.
Training Partner(s)	Organisation(s) or individual(s), with whom NMIT has a contracted arrangement, who provides delivery of training on behalf of NMIT, to NMIT ākonga.

RESPONSIBILITIES

All NMIT kaimahi (including NMIT training partners) including the Business Division Lead are expected to initiate this procedure should they identify alleged ākonga misconduct/serious misconduct.

The Quality Enhancement Manager, in collaboration with the relevant line manager, is responsible for appointing a Resolution Facilitator.

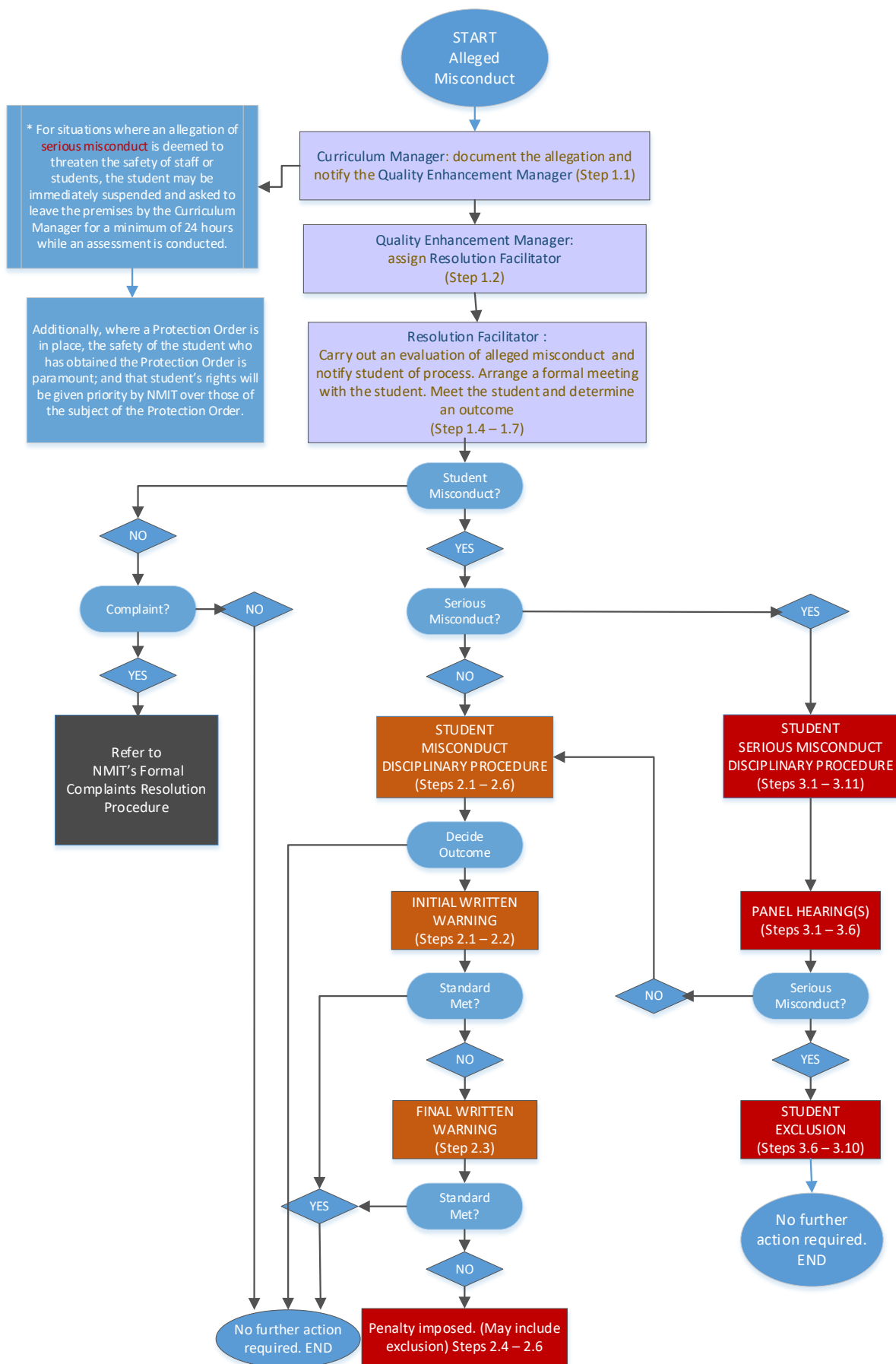
If the **Resolution Facilitator** requires advice regarding which procedure applies, they should consult the **Quality Enhancement Manager** who will, after taking advice as they consider necessary, identify the disciplinary procedure to be followed.

The **Resolution Facilitator** shall ensure that both parties (the person making the allegation and the person against whom the allegation has been made) are kept informed of the progress and outcome of the allegation.

Ākonga shall comply with the *Student Charter*, and *Student Rules* and the *Programme Regulations* on which they are enrolled. These documents should be read in conjunction with these procedures.

NMIT shall not be responsible for any costs incurred by the ākonga, the Support Person or the Advocate.

OVERVIEW OF ĀKONGA MISCONDUCT PROCEDURE



PROCEDURE

STEP	INITIAL INVESTIGATION	RESPONSIBILITY
1.1	<p>Where ākonga misconduct is alleged, record the allegation on the Summary Document, (available from the <i>Forms, Templates and Guidelines</i> section of the QMS) assign a unique code to the allegation (ākonga initials and 6-digit date e.g. AB010521 and notify the Quality Enhancement Manager</p> <p><i>For situations deemed to threaten the safety of kaimahi or other ākonga, the ākonga may be immediately suspended by the Curriculum Area Manager, and asked to leave the premises for no less than 24 hours.</i></p>	Curriculum Area Manager
1.2	Assign a Resolution Facilitator .	QEM
1.3	<p>Notify ākonga of alleged misconduct, and that a meeting will be arranged to investigate the validity of the allegation. Advise or arrange suitable support or advocacy for the ākonga as early as possible.</p> <p><i>Note: At any point the Resolution Facilitator, in consultation with the Quality Enhancement Manager, may determine that the allegation be treated directly through the serious misconduct disciplinary procedure (Step 3).</i></p>	Resolution Facilitator
1.4	<p>Arrange formal meeting with ākonga using the Alleged Misconduct Meeting Request Template, (available on the <i>Forms, Templates and Guidelines</i> section of the QMS):</p> <ul style="list-style-type: none"> › Agree on communication method and ensure correct email / phone details › Set meeting for mutually agreeable time as soon as practicable. › Advise ākonga as to who will be at the meeting and of their right to bring a Support Person and/or Advocate. › Provide to the ākonga: <ul style="list-style-type: none"> a. The written allegation at least two working days prior to meeting or at a time parties agree to; and b. Advice on potential consequences should the allegation be substantiated; and c. All relevant details of the allegation including the name of the person making the allegation and any evidence that will be presented at the meetings. d. A copy of the Ākonga Misconduct Procedure and any related documents. 	Resolution Facilitator
1.5	<p>Meet with ākonga</p> <ul style="list-style-type: none"> › Advise ākonga of all matters known › Give ākonga opportunity to respond › Record what is said at the meeting, using a Digital Voice Recorder or equivalent. › Call on others (e.g. the person making the allegation, coordinator, fellow ākonga) if required, to clarify situation 	Resolution Facilitator
1.6	<p>Determine whether there are sufficient grounds for the alleged misconduct to be:</p> <p>Not upheld. No further action shall be taken and both parties (ākonga and the person making the allegation) are notified.</p> <p>Destroy all records relating to the allegation</p> <p>Upheld (not Serious) Notify the ākonga of this outcome. Follow the MISCONDUCT DISCIPLINARY PROCEDURE (p.9)</p> <p>or</p> <p>Upheld (and Serious) Notify the Quality Enhancement Manager and the ākonga of this outcome. Follow the SERIOUS MISCONDUCT DISCIPLINARY PROCEDURE (p.10)</p>	Resolution Facilitator

STEP	MISCONDUCT DISCIPLINARY PROCEDURE:	RESPONSIBILITY
2.1	Issue an initial written warning detailing: <ul style="list-style-type: none"> › Remedial action ākongā is required to take (note: ākongā support is available throughout this procedure from the Learner Services team in the first instance). › Required standard of conduct. › How the ākongā's conduct differs from required standard. › Condition/s ākongā is required to meet and related timeframes. › That a final written warning will result if conditions are not met within the prescribed timeframe. › Duration of the warning (twelve months maximum). using the template: Initial Written Warning	Resolution Facilitator
2.2	Conclude the Summary Document and have the ākongā sign it. If the ākongā does not sign, note the summary: "delivered, not attested". File the Summary Document and a copy of the written allegation in the Ākongā Case File and give a copy to the ākongā.	Resolution Facilitator
2.3	If the standard required (as set out in the initial written warning) is met within the prescribed timeframe, no further action is required. If the standard required (as set out in the initial written warning) is not met within the prescribed timeframe, <ul style="list-style-type: none"> › Issue a final written warning or › Refer to Quality Enhancement Manager for possible initiation of the Serious Misconduct Disciplinary Procedure. 	Resolution Facilitator
2.4	If the standard required (as set out in the final written warning) is met within the prescribed timeframe, no further action is required. If the standard required (as set out in the final written warning) is not met within the prescribed timeframe: <ul style="list-style-type: none"> › Consult with the Quality Enhancement Manager to ensure a fair and equitable process has been followed. › Decide appropriate outcome* for the ākongā in consultation with the Quality Enhancement Manager. › Advise the ākongā in writing of the outcome including the re-entry criteria once any period of exclusion expires and the right and grounds of appeal. Place a copy in the Ākongā Case File. › Notify the person who made the allegation of the fact that the process has been completed (do not include outcome) 	Resolution Facilitator
2.5	Withdraw ākongā from any courses not yet started, and refund associated fees as appropriate (Refer: NMIT Withdrawal Procedure).	Curriculum Director or Curriculum Area Manager
2.6	Remove all information relating to ākongā misconduct from the SMS (ebs) once the academic year it relates to is complete or twelve months from the final decision, whichever is the greater; but retain the information kept in the Ākongā Case File.	QEM and the Information & Enrolments Manager

* Possible outcomes include but are not limited to: formal reprimand, suspension from NMIT programmes for a period of time, written apology to affected parties, payment of damage to NMIT property/facilities, exclusion from NMIT. If ākongā nō tāwāhi (international learners) are excluded, Information and Enrolments Centre (IEC) need to be notified.

STEP	SERIOUS MISCONDUCT DISCIPLINARY PROCEDURE	RESPONSIBILITY
3.1	<p>Advise Quality Enhancement Manager immediately of serious misconduct</p> <p>Provide written report to Quality Enhancement Manager and the ākongā. Include details of serious misconduct, the result of the initial investigation and recommendations.</p>	<p>Person making the allegation (i.e. Curriculum Director/Curriculum Area Manager or Business Support Manager)</p>
3.2	<p>Determine if further action is required</p>	<p>Quality Enhancement Manager</p>
3.3	<p>If further action is not required:</p> <ul style="list-style-type: none"> › Provide the ākongā who has had the allegation of serious misconduct made against them with a copy of the Summary Document › Advise ākongā and the person/s who made allegation that the procedure had been followed and completed. 	<p>Quality Enhancement Manager</p>
3.4	<p>If further action is recommended</p> <ul style="list-style-type: none"> › Convene a panel comprising: Quality Enhancement Manager (Chair) SANITI Student President; an Impartial Person. 	<p>Quality Enhancement Manager</p>
3.5	<p>Hold confidential panel meetings after receiving report in accordance with 3.1 from Resolution Facilitator.</p> <p>Before the meeting, the Panel needs to: Agree on communication method and ensure correct email / phone details Set meeting for mutually agreeable time as soon as practicable. Advise ākongā as to who will be at the meeting and of their right to bring a Support Person and/or Advocate., and provide the ākongā with:</p> <ul style="list-style-type: none"> All documentation relating to the allegation at least two working days prior to meeting or at a time parties agree to; Advice on potential consequences should the allegation be substantiated; All relevant details of the allegation including the name of the person making the allegation and any evidence that will be presented at the meetings; A copy of this document, the Ākongā Misconduct Procedure. <p>The panel should meet individually with the Resolution Facilitator (as necessary), the person/s making the allegation and the ākongā.</p> <p>The ākongā has the right to be present to hear the allegation in person if they so wish. In some instances, to mitigate distress, the Panel may agree to the use of audio technology.</p> <p>The ākongā has the right to respond to the allegation, during their individual meeting with the panel.</p>	<p>Panel (Quality Enhancement Manager to coordinate and chair meetings)</p>

	<p>The ākongā is entitled to have a Support Person and/or Advocate present at the panel meeting.</p> <p>Other parties should be interviewed if further information is required.</p> <p>All matters under consideration by the panel in determining an outcome in respect of the enquiry must be put to the ākongā.</p> <p>Proceedings should be recorded and a copy made available to the ākongā.</p> <p>The panel comes to a decision on the appropriate outcome, by consensus.</p>	
3.6	If the allegation of serious misconduct is substantiated the outcome may be exclusion from NMIT for a minimum period of six months.	Business Division Lead in consultation with the Quality Enhancement Manager
3.7	Sign Summary Document	Panel
3.8	<p>Inform the ākongā verbally as soon as possible. Follow up in writing:</p> <ul style="list-style-type: none"> > Panel decision with signed Summary Document attached. > That once any exclusion period expires normal re-entry criteria and any additional special requirements that are required to be met. > The right and grounds of appeal. <p>Request that the ākongā sign to confirm that they have read the Summary Document.</p> <p>Request ākongā returns signed document. If ākongā does not sign then submit summary as “delivered, not attested”.</p>	Quality Enhancement Manager
3.9	Inform person who made the original allegation that an outcome was reached (no details to be disclosed.)	Quality Enhancement Manager
3.10	File copy of completed Summary Document , letter to ākongā, any panel reports and Summary Document in the Ākongā Case File .	Quality Enhancement Manager
3.11	<p>Withdraw ākongā from any courses not yet started, and refund associated fees as appropriate (Refer: <i>Withdrawal Policy</i>).</p> <p>NB If ākongā nō tāwāhi (international learners) are excluded, the QEM to contact Information and Enrolments Manager.</p>	Curriculum Director or Curriculum Area Manager to initiate
3.12	Remove the information relating to ākongā misconduct from the SMS, once the programme of study it relates to is complete, or within 12 months from the final decision, whichever is the greater. Retain all information in the Ākongā Case File .	Information and Enrolments Manager and Quality Enhancement Manager

APPEAL

The ākongā has a right to appeal a decision made as a result of following the above disciplinary procedures.

A Notice of Appeal form must be completed by the ākongā.

The grounds for appeal will be assessed by an Appeals Panel member and, if satisfied, an Appeals Panel will be convened.

If the appeal is not upheld, the appellant has the right to appeal to Chair of Te Ohu Whakahaere Appeals, a subcommittee of Te Poari Akoranga, Te Pūkenga Academic Board.

FURTHER APPEAL

If not resolved following NMIT and Te Pūkenga procedures, the ākonga may choose to follow external procedures:

- Ākonga nō Aotearoa (domestic learners) and ākonga nō tāwāhi (international learners) may contact NZQA who provide an independent assessment of the issue and will either investigate their concerns or advise them what they can do next. Details are available via [NZQA website](#)

A complaint can be submitted by completing a [Formal Complaint Form](#) and emailing to risk@nzqa.govt.nz

Other agencies that may be able to help:

- Human Rights Commission procedures (as an alternative, not in addition to grievance procedures)
- [Privacy Commissioner](#)
- [Office of the Ombudsman](#)

REFERENCES

INTERNAL

[Authorisation to Advocate form](#)
[NMIT Ākonga Charter](#)
[NMIT Harassment \(Management and Prevention\)](#)
[NMIT Student Rules](#)
[NMIT Withdrawal Policy](#)
[NMIT Withdrawal Procedure](#)

Programme Regulations

[Ākonga Misconduct – Alleged Misconduct Meeting Request \[Template\]](#) (available for NMIT staff only)
[Ākonga Misconduct – Initial Written Warning \[Template\]](#) (available for NMIT staff only)
[Ākonga Misconduct – Final Written Warning \[Template\]](#) (available for NMIT staff only)
[Ākonga Misconduct – Summary Document](#) (available for NMIT staff only)
[Ākonga Misconduct – Suspension Notice](#) (available for NMIT staff only)

[Te Pūkenga Ākonga Appeals Policy](#)
[Te Pūkenga Ākonga Concerns and Complaints Policy](#)

EXTERNAL

Education and Training Act 2020

The Bill of Rights – [Principles of Natural Justice](#)