

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

Supporting plans, policies and procedures	<ul style="list-style-type: none"> • Code of Conduct • Critical Incidents Business Continuity Policy and Procedure • Health and Safety Policy and Procedure • Student Complaints and Appeals Policy and Procedure • Staff Complaints and Appeals Policy and Procedure • Student Handbook • Staff Handbook • Student Orientation Policy and Procedure • Privacy Policy • Student Welfare, Wellbeing and Support Policy and Procedure • Equity, Diversity and Aboriginal and Torres Strait Islander Peoples Framework and Policy • Risk Management Policy
Related Legislation	<ul style="list-style-type: none"> • Higher Education Standards Framework (Threshold Standards) 2021 • Tertiary Education Quality and Standards Agency (TEQSA) Act 2011 • Age Discrimination Act 2004 • Disability Discrimination Act 1992 • Racial Discrimination Act 1975 • Sex Discrimination Act 1984
Version	3.0
Approved by	Board of Directors and Academic Board
Date approved	23 July 2021
Document review	This document is to be reviewed every two-years at a minimum from the date of final approval

Version	Review Date and Person/Body	Notes
0.1	Draft prepared by CEO and reviewed at 7 January 2020 Board of Directors meeting	
0.2	Presented at 1 April 2020 Board of Directors (BoD) meeting	Examples of bullying, harassment and/or discrimination have been added
0.3	Presented at 21 April 2020 Academic Board for review	AB asked for further additions, specifically referring to the Guidelines for universities responding to reports of sexual assault and sexual harassment by Universities Australia. The AB feedback have been incorporated in this updated version
1.0	Presented to the Academic Board on 19 May 2020	
1.1	Discussed at Learning and Teaching Committee (LTC) meetings in May and June 2020	Updated based on Academic Board feedback on 19 May 2020 and LTC feedback in May and June 2020
1.2	Approved by the Academic Board on 16 June 2020	
2.0	Approved by the Board of Directors on 1 July 2020	

2.1	Reviewed and approved at 20 October 2020 Academic Board meeting	Minor amendments following comments from external reviewers
	Reviewed and approved at 28 October 2020 Board of Directors meeting	
3.0	Reviewed and approved by the Board of Directors and Academic Board via email circulation on 23 July 2021	Updates made following the response to the TEQSA Request for Information 23 July 2021

Background and Scope

This document has been developed to support MIHE's commitment to a safe work and study environment. It outlines MIHE's approach to bullying, harassment, discrimination, sexual assault and sexual harassment. MIHE is committed to eliminate the risks to health and safety of all its members. This Policy will assist MIHE to comply with its legal responsibilities through the development and implementation of strategies to prevent and deal with discrimination, bullying and harassment.

Sexual harassment is unlawful under Equal Opportunity Act 2010 (Vic) and the Sex Discrimination Act 1984 and constitutes misconduct. This policy and procedure applies to all MIHE students, staff, contractors and consultants. MIHE will abide by Australia's anti-discrimination law (<https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Australias-Anti-Discrimination-Law.aspx>). In Australia, it is unlawful to discriminate on the basis of a number of protected attributes including age, disability, race, sex, intersex status, gender identity and sexual orientation in certain areas of public life, including education and employment. Australia's federal anti-discrimination laws are contained in the following legislation:

- Age Discrimination Act 2004
- Disability Discrimination Act 1992
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984.

Definitions

Refer to Glossary of Terms.

Policy

MIHE does not tolerate any form of sexual assault, sexual harassment, bullying, or discrimination on campus and/or while staff and students are engaged in their work or academic endeavours. This policy and procedure are informed by the principle that all students and staff of MIHE are entitled to be treated fairly and equally with dignity and respect. Any allegations of sexual assault, sexual harassment, bullying, or discrimination will be investigated, and the appropriate action taken. Note:

a person may feel that they are a victim of sexual assault, sexual harassment, bullying, or discrimination even if it was not the intention of the person who allegedly committed the act.

MIHE has zero tolerance for sexual assault and sexual harassment and expects that all staff and students can participate fully in work and study and will feel welcome, safe and supported.

MIHE is committed to supporting individuals who have been affected by sexual assault or sexual harassment. The safety and wellbeing of a person disclosing or reporting sexual harassment is the priority and MIHE provides support via wellbeing and counselling services and referrals for staff and students.

MIHE aims to ensure that all staff and students understand their responsibilities and:

- are aware of the behaviours that may constitute sexual harassment;
- are informed in the prevention of sexual harassment;
- know where to get support for themselves or others;
- know where to report sexual harassment.

MIHE aims to ensure that all staff and students understand their responsibilities and:

- are aware of the behaviours that may constitute sexual harassment;
- are informed in the prevention of sexual harassment;
- know where to get support for themselves or others;
- know where to report sexual harassment.

MIHE encourages the reporting of behaviour that is harmful and disrespectful so it can be addressed to ensure MIHE is a safe and respectful of the work and study environment of MIHE community.

MIHE visitors, students, staff, contractors and consultants must not engage in sexual harassment, discriminatory or bullying behaviour. MIHE does not tolerate such behaviour and may take disciplinary action up to and including dismissal against visitors, students, staff, contractors and consultants who:

- participates in sexual harassment, discriminatory or bullying behaviour; or
- victimises or retaliates against a visitor, student, staff, contractor or consultants who has lodged a complaint about harassment, discrimination or bullying.

Examples of bullying, harassment and/or discrimination include (and are not limited to ¹ include students:):

¹ Adapted from the following sources:

- the making of vexatious allegations against an individual or group;
- spreading rude and/or inaccurate rumours about an individual or group;
- conducting an investigation in a grossly unfair manner;
- behaving aggressively;
- teasing or practical jokes;
- pressuring an individual or group to behave inappropriately;
- excluding an individual or group from work-related or student-related events;
- unreasonable work demands; and
- unfairly treating an individual or group because of their race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Examples of sexual assault include:

- sexual intercourse without consent;
- oral sex without consent;
- anal sex without consent;
- groping and inappropriate touching of a sexual nature without consent;
- not consensual sexual act or behaviour.

Further, and in accordance with the Criminal Code Act 1995 a person's consent to an act is not freely and voluntarily given if it is obtained:

- by force; or
- by threat or intimidation; or
- by fear of bodily harm; or
- by exercise of authority; or
- by false and fraudulent representations about the nature or purpose of the act; or
- by a mistaken belief induced by the accused person that the accused person was the person's sexual partner

Sexual harassment occurs in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Examples of sexual harassment: One-off or repeated incidences of:

<https://www.fwc.gov.au/anti-bullying-benchbook/what-workplace-bullying>; <https://www.fairwork.gov.au/employee-entitlements/bullying-and-harassment>; <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/workplace-discrimination>

- Unwanted or unsolicited intimate physical contact such as patting, pinching or touching in a sexual way;
- unnecessary familiarity such as deliberately brushing against a person;
- sexual propositions;
- unwelcome and unsolicited remarks or insinuations about a person's sex or private life;
- suggestive comments about a person's appearance or body;
- offensive telephone calls, texts, emails or social media posts of a sexual nature;
- staring or leering;

Sexual harassment is unlawful under Equal Opportunity Act 2010 (Vic) and the Sex Discrimination Act 1984 and constitutes misconduct. Sexual harassment is a form of harassment and includes any unwelcome or unsolicited conduct of a sexual nature that is offensive, humiliating, intimidating or threatening. The behaviour does not have to be repeated for it to constitute sexual harassment.

Conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Note: Individual or group can be students, staff, contractors and consultants. This policy also applies to behaviours and actions online.

All MIHE students, staff, contractors and consultants are to:

- comply with MIHE values and code of conduct;
- treat others in a professional, courteous, respectful and fair way;
- treat sexual assault, sexual harassment, bullying, or discrimination matters seriously, and deal with them in a prompt, confidential and fair manner; and
- report any incidents to an appropriate person.

MIHE aims to eliminate all forms of sexual assault and sexual harassment, bullying and/or discrimination from its campus and commits to providing a safe, equitable and inclusive environment where staff and students are able to participate in all work and study activities.

MIHE commits to the promotion of core values to prevent sexual assault and sexual harassment, bullying and/or discrimination by students, staff, contractors and consultants and will support this through:

- promoting a clear message of zero tolerance regarding behaviours which constitute sexual assault and sexual harassment, bullying and/or discrimination;
- explicitly communicating with students, staff, contractors and consultants about the expectations for being a member of a respectful and inclusive MIHE community;
- promoting respectful behaviours through a variety of media;

- clearly communicating the options for reporting incidents of sexual assault and sexual harassment, bullying and/or discrimination, and how to seek support.

Responsibilities

All MIHE staff and students are responsible for ensuring that breaches of this policy do not occur. Supervisors and managers have a leadership role and are responsible for preventing incidents and taking prompt action if breaches do occur.

MIHE will:

- make clear that it takes a zero-tolerance approach to sexual assault and sexual harassment, bullying and/or discrimination;
- provide in this policy, a definition of what may constitute sexual assault and sexual harassment, bullying and/or discrimination;
- provide clarity around the options for reporting incidents of sexual assault and sexual harassment, bullying and/or discrimination;
- inform staff and students of their responsibilities under related policy and procedures to raise awareness, prevent these behaviours and promote respectful campus communities;
- make clear that MIHE does not tolerate victimisation of individuals who have taken action as a victim/survivor or bystander;
- ensure that managers and other supervisory staff are aware of their particular responsibilities in the prevention of sexual assault and sexual harassment, bullying and/or discrimination and in promoting respectful campus communities;
- provide in MIHE policies, explanations of conflict of interest, personal relationships in the workplace and awareness of power imbalance, to assist in the identification, reporting and resolution of related behaviours and circumstances;
- ensure all staff are aware of the Code of Conduct as part of onboarding;
- treat individuals fairly, impartially, equitably and with compassion and empathy, while adhering to the principles of natural justice (procedural fairness) in making decisions related to alleged incidents;
- provide meaningful outcomes for affected staff and students, as far as possible and seek to minimise the impact of incidents of these behaviours on affected staff and students' work and study environments.
- ensure staff and students will be informed of this policy and have access to the information and training needed to both prevent and respond to incidents of sexual assault and sexual harassment, bullying and/or discrimination.

- encourage all staff and students to participate in training and awareness activities. The Administration Manager and/or Dean will organise regular workshops for raising awareness regarding sexual assault and sexual harassment, bullying and/or discrimination.
- ensure training will be provided to staff at induction and at regular intervals.
- ensure staff will complete any mandated training within the prescribed timelines.
- ensure students will be offered training opportunities around the issues of sexual assault and sexual harassment, bullying and/or discrimination.

Reporting, Investigations and Appeals Procedure

The major steps in relation to the procedure for reporting, investigations and appeals, is summarised in attachment 1 for students and attachment 2 for staff, including who is responsible for each step and key decision points. There are five key steps in the procedure:

- 1. Reporting** allegations/complaints of bullying, harassment, discrimination, sexual assault and/or sexual harassment.
- 2. Investigation and potential resolution** through informal means, providing extra support or through conciliation and/or mediation.
- 3. Formal Complaints:** If resolution of the allegations/complaints is not possible after the step 2, this step is taken when allegations/complaints become formal complaints and an independent investigator (external or internal) can be appointed.
- 4. Formal Investigations and Decisions:** A formal investigations report is developed in this step to inform a decision.
- 5. Appeal and Escalation:** If the claimant is not satisfied that their allegations/complaints has been dealt with they can appeal in this step.

Step 1 – Reporting

All MIHE staff and students are required to report allegations of sexual assault and sexual harassment, bullying and/or discrimination.

MIHE is committed to responding appropriately and sensitively when incidents of sexual assault and sexual harassment, bullying and/or discrimination.

MIHE has a Student Welfare and Support Officer to provide appropriate information and referrals for staff and students when sexual assault, harassment (including sexual harassment), bullying or discrimination may have occurred. The Student Welfare and Support Officer can provide information about MIHE's sexual assault, harassment (including sexual harassment), bullying and discrimination policies and procedures and promote a discrimination free work and study environment.

MIHE provides counselling and wellbeing support services which can be accessed on campus, online or via telephone for staff and students who have been affected by these behaviours.

If staff or students are in immediate danger or require urgent medical attention, the first step should be to call police or emergency services on 000 (112 from mobile phones) or call MIHE available anytime (7 days a week, 24 hours a day). Emergency contact details will be provided on the MIHE website and prominently displayed around the MIHE campus.

If translation or interpreting services are required, call: The Translating and Interpreting Service National on 13 14 50.

Staff or students who experience sexual assault can report their experience to the Victoria police. MIHE will support the right of students and staff to report to the police or not.

A complaint of sexual assault or sexual harassment by staff may be reported in accordance with this policy and its associated procedures at any time following an incident and while the alleged perpetrator is still a staff member of MIHE, regardless of whether or not it has been reported to the police.

The incident may be reported by a victim/survivor, bystander, or with their consent by another person (e.g. a colleague or supervisor). The reporting and responding may include informal report, formal complaint and investigation, reporting to external agencies (e.g. Police).

MIHE will keep confidential all information relating to the report of sexual assault or sexual harassment, unless the student or staff consents to disclosure of part or all the information for a specified purpose.

A student complainant relating to sexual assault or sexual harassment can contact the Student Welfare and Support Officer and file a complaint in a confidential and private meeting.

A staff complainant relating to sexual assault or sexual harassment can contact the Administration Manager or their Manager and file a complaint in a confidential and private meeting.

If a claim of bullying, harassment or discrimination is regarding students, this should be raised with the relevant academic staff or Dean who will attempt to resolve such claims locally and informally in the first instance if the claim is not of a serious nature.

If a claim of bullying, harassment or discrimination is regarding staff, this should be raised with the relevant staff or their manager/supervisor or welfare officer, who will attempt to resolve such claims locally and informally in the first instance if the claim is not of a serious nature.

Where the attempt to informally resolve the matter fails or is not appropriate, the claim or allegation should be discussed with the next most senior MIHE officer or Chief Executive Officer.

MIHE will review the allegations and respond to the complainant (who raised the complaint).

Step 2 – Investigation and potential resolution

MIHE will treat all reported allegations of sexual assault and sexual harassment, bullying and/or discrimination seriously, impartially, in a timely manner and in accordance with the principles of natural justice. MIHE will ensure the following as it investigates and reports on all allegations of bullying, harassment or discrimination:

- all reasonable steps are taken to respect the confidentiality of the people involved in a complaint;
- fairness and impartiality prevail throughout the appropriate resolution process - until a complaint is investigated and a decision is made, a grievance is an allegation, not a fact;
- appropriate records are maintained throughout the resolution process;
- persons who complain are protected from victimisation or reprisal;
- persons who complain are regularly informed of the progress of the matter and of the consequences of any finding if the grievance is substantiated.

Step 3 – Formal Complaints

In circumstances where the of sexual assault and sexual harassment, bullying and/or discrimination complaint is unable to be resolved at the informal stage or local level, the nominated supervisor or next most senior MIHE officer who has received the complaint may refer the matter to Chair of the Board or Chair of the Academic Board regarding Academic matters.

If resolution of the allegations/complaints is not possible after the step 2, this step is taken when allegations/complaints become formal complaints.

The relevant staff member in consultation with the Chief Executive Officer, may attempt to conciliate or mediate the matter, by agreement with the parties, or appoint an appropriate independent (internally or externally appointed) person who will investigate the matter to make findings of fact.

In the event that the matter is referred for investigation, the investigator will:

- Commence an initial investigation within 10 working days of receiving the Formal Complaint;
- Conduct the investigation with due regard to procedural fairness, timeliness, and the individual's safety and well-being;
- Notify the parties of the investigation;
- Seek sufficient particulars of the alleged conduct to enable the complaint/concern to be factually investigated;
- Provide the respondent with a summary of allegations and/or a statement of the alleged conduct;
- Provide the respondent with an opportunity to respond to the complaint and/or alleged conduct;

- Interview the parties and, where necessary, any witnesses;
- Review any relevant documentation; and
- Prepare an investigation report detailing the complaint, how the investigation was conducted, relevant facts, and findings, and present this to the relevant Member of the Executive.

Step 4: Formal Investigations and Decisions

The Chief Executive Officer or Board Chair will then make a decision based on the investigation report as to whether the alleged conduct is proven, proven in part or not proven. The decision, along with a summary of reasons for making the decision and a clear statement of what actions will follow, will be provided to the complainant, the respondent/s, and registered in the Complaints Register.

If the complaint is dealt with formally, the MIHE will aim to ensure:

- Before a complaint is investigated, the grievant relevantly describes their allegations (in most instances, but not all, this will need to be in writing), including particulars of the allegations so that they can be investigated appropriately;
- The person against whom the allegations are made is provided with a copy of the allegations that will be investigated;
- All parties are informed in writing of the outcomes of any investigative process; and
- Where the complainant requires moral or social support, he/she may be accompanied by a support person, who may be the complainant's friend, family members or staff of MIHE.

Step 5: Appeal and Escalation

If a Complainant is not satisfied with the proposed resolution and lodges an Internal Appeal and Review, the matter must be escalated and assessed by a MIHE staff member as a review of the appeal. The Reviewer must be at least one level of seniority (in accordance with the MIHE organisational structure) above the person who conducted the initial assessment.

The Reviewer should commence within ten working days of receiving written notice from the Complainant.

The Reviewer must inform the Complainant and Respondent in writing of the process of the review of the Internal Appeal and allow them the opportunity to provide additional information, evidence or statements.

The Reviewer must provide the proposed resolution in writing to the Complainant within five working days of making a decision.

The process and outcome of the Internal Appeal and Review and proposed resolution must be entered into the Complaints Register.

When a Complaint is not resolved (or not resolved to the Complainant's satisfaction) through the internal processes, it may be referred for external appeal. The Complainant must lodge a request for External Appeal and Review within 10 days of receiving the outcome/resolution of the Internal Appeal and Review in writing.

The complainant may choose to escalate for external review to person/body nominated by MIHE as the External Reviewer or the applicable higher education regulatory authority, or for the international student the Overseas Students Ombudsman or other legal authorities.

A formal complaint to the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission can be made. Due to the discrimination law being complex, it is best to lodge a formal complaint to either the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission.

Cases of physical abuse or assault may result in the behaviour being deemed as illegal under the Victorian criminal law. Such cases should immediately be reported to the police and proceeded directly to arbitrated or adjudicated process.

Support Services Contact details - Where can I get support?

Sexual Assault and harassment Centre Against Sexual Assault (CASA House): provides 24-hour crisis care support following a sexual assault in the last two weeks and 24-hour telephone counselling and support.

Sexual Assault Crisis Line: (1800 806 292): provides an after-hours, confidential, telephone crisis counselling service for victim/survivors of both past and recent sexual assault.

1800RESPECT: National telephone counselling service if you have experienced sexual assault or domestic family violence or domestic family violence.

QLife: a national telephone (1800 184 527) and web counselling service for lesbian, gay, bisexual, trans and intersex (LGBTI) people, families and friends.

Victorian Aboriginal Health Service provides health and support services to the Victorian Aboriginal community including crisis counselling via CASA.

Sexual Assault Report Anonymously (SARA): report a sexual assault anonymously.

Victorian Police Safety Advice: provides advice to victims of family violence, sexual assault or child abuse.

Women's Information and Referral Exchange (WIRE): provides information, support and referrals to women with a phone support service and a walk-in centre.

International Students

Complainants that are International Students will be able to access the external appeals process through the Overseas Students Ombudsman (OSO) at no cost. Further information on what the OSO will investigate and the process to lodge a complaint with them are available at:

<http://www.ombudsman.gov.au/about/overseas-students>

Students should be aware that OSO will only investigate matters once MIHE's internal Complaints and Appeal process has been exhausted. If the OSO decides to investigate the complaint, MIHE will fully cooperate and provide all required evidence and documents as required by OSO. The OSO cannot provide a resolution, but they may overturn any decisions made by MIHE.

In the event that a decision is overturned by the OSO, and the student and MIHE cannot come to an agreed resolution, that matter will be referred to an external mediation service for resolution, such as the Resolution Institute's Expert Determination service.

The Resolution Institute's Expert Determination service is available to students as an avenue for External Appeal and Review. This service will provide the Complainant with an external resolution by people independent of MIHE.

Complainants wishing to access this need to lodge the matter with the Resolution Institute at www.resolution.institute/resolving-disputes/expert-determination

MIHE will bear the cost of the Resolution Institute's Expert Determination service and students will not need to pay for the Resolution Institute's services in dealing with the External Appeal and Review. If the Complainant is not satisfied with the resolution provided by the Expert Determination from the Resolution Institute, they will be informed of their legal rights under Australian and Victorian law that they may be able to take the matter further through legal action.

If the Complainant wishes to proceed beyond the Resolution Institute's Expert Determination, they will be advised that they will need to seek their own professional legal advice regarding this. Complainants will be informed that any action taken after the Expert Determination step will be at their own cost.

Complainants will also be informed that they may make a complaint to the Tertiary Education Quality and Standards Agency (TEQSA). Students enrolled in a higher education course (subject to TEQSA approval) can make a complaint to TEQSA. For more details on what complaints TEQSA will investigate, please see their complaints page: <https://www.teqsa.gov.au/complaints>.

TEQSA contact details are as follows:

- Phone: 1300 739 585
- Website: <https://www.teqsa.gov.au/>

- Email: enquiries@teqsa.gov.au

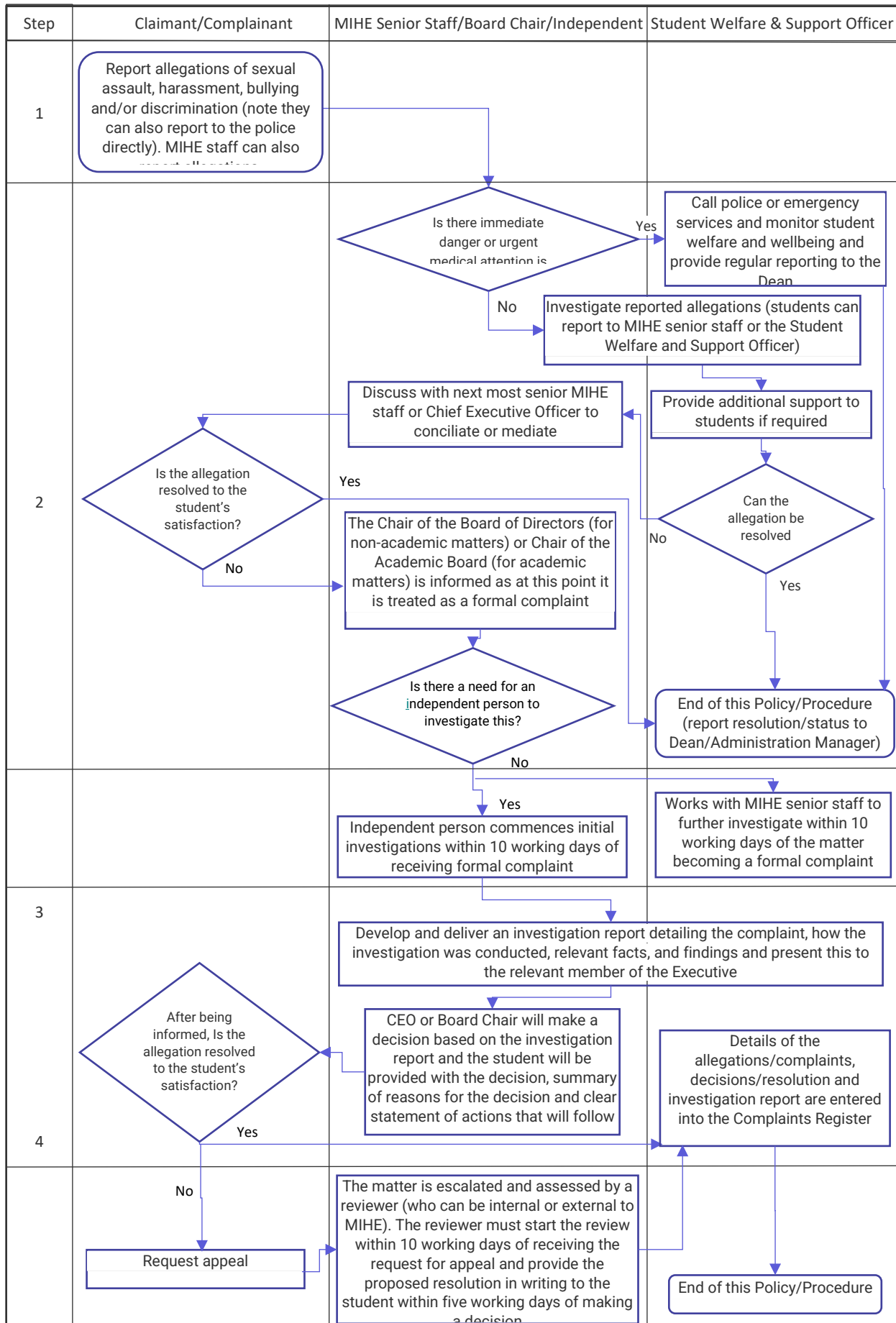
Breaches

Engaging in sexual assault and sexual harassment, bullying and/or discrimination in the workplace constitutes a breach of this policy and the MIHE *Code of Conduct* and may result in disciplinary action up to and including dismissal. In some instances, sexual assault and sexual harassment, bullying and/or discrimination may also amount to a criminal offence or a breach of relevant Commonwealth legislation. Disciplinary action may also be taken against anyone who retaliates against a person who has made a complaint. The consequence of breaching this Policy will depend on the seriousness of the case. Other actions to redress breaches may include requiring apologies to the affected person(s), providing mediation between the parties, providing targeted training to prevent unacceptable behaviours and offering support to the complainant and complainee.

Monitoring and Review

All instances of bullying that are investigated must be recorded, monitored and reported on for risk management and quality assurance. This data will be used for the development and improvement of bullying, harassment, discrimination and sexual assault prevention strategies at MIHE.

Attachment 1 – Reporting, Investigations and Appeals Procedure – For Students



Attachment 2 – Reporting, Investigations and Appeals Procedure – For Staff

