

Handling Kaimahi Complaints guidelines

Mō wai me te whānuitanga | Audience and scope

This guideline applies to:

- a) all kaimahi (including permanent, fixed-term and casual kaimahi/employees) of Manukau Institute of Technology (MIT) and Unitec.

Under this guideline, “complaints” may include, but are not limited to: harassment; disadvantage; work stress; bullying; discrimination; disputes about the interpretation, application or operation of an employment agreement; or any other work complaint which has the potential to have a negative impact on the kaimahi, their colleagues, and MIT|Unitec. Further definitions of some of these terms can be found in [Section 8. Definitions.](#)

Out of scope of this guideline are:

Student complaints

Complaints laid against a kaimahi by a student are handled under the Akonga Concerns, Complaints and Appeals. If a student complaint concerning a kaimahi is considered serious – such that the nature of the issue may require a preliminary and or a disciplinary investigation – People and Culture must be notified immediately. People and Culture will work with the relevant manager to ensure that the situation is addressed appropriately through the applicable employment policies and processes.

Kaimahi discipline and misconduct

When a complaint is raised, MIT|Unitec may in its sole discretion determine that the matter would be more appropriately dealt with under the kaimahi’s Discipline policy. In such instances the provisions of the Handling Kaimahi Complaints guidelines no longer apply.

Stress as a result of disciplinary action

In this circumstance a kaimahi would be advised to seek counselling and other relevant support. We provide help through our employee assistance programme.

Personal grievances and other statutory mechanisms

This guideline does not apply to any kaimahi raising a personal grievance, as defined in [Part 9 of the Employment Relations Act 2000.](#)

This guideline does not limit a kaimahi’s statutory rights to pursue their complaints through other statutory bodies such as the Human Rights Commission, Privacy Commission or other legal remedies.

Mokamoka whakaaetanga | Approval details

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Guideline on Handling Kaimahi Complaints

1. Pūtake | Purpose

We are committed to maintaining a safe working environment and fostering positive and effective working relationships; towards this end we encourage any potential issues or problems to be dealt with via the informal process and to be resolved as soon as practicable. In the event the informal process is unsuccessful or not the appropriate way to achieve a resolution, the formal process set out in this policy may apply.

2. Ngā Mātāpono | Principles

When handling kaimahi complaints, we commit to the following principles:

2.1. Fair and accountable

Complainants are treated fairly and respectfully at all times. Kaimahi are aware of their responsibilities and complaint decisions and remedies are recorded. Investigations are done in good faith and according to the principles of natural justice. Where appropriate, actions and process/practice improvements are acted upon, followed up and reported to the Executive Leadership Team and appropriate bodies (our privacy obligations notwithstanding).

2.2. Accessible

Whether kaimahi are following the informal or formal complaints management process, we aim to make the process as clear and accessible as possible.

2.3. Responsive and efficient

We recognise that a robust and efficiently managed complaints process helps enable quick and effective resolution. All parties must act in good faith and engage honestly, cooperatively, and respectfully throughout any complaint process.

2.4. Solution focused

We are committed to taking a solution-focused approach to resolving problems where practicable. We acknowledge that complaints can highlight weaknesses in our policies, procedures and delivery and we are committed to making improvements in these where appropriate.

2.5. Confidential

Any personal information relating to a complaint is kept confidential and will be protected from unnecessary or undue disclosure. Personal information is only used for addressing the complaint. This includes the complaint itself, and any actions and outcomes of the complaint.

Certain information may need to be shared with others to address the complaint, however, complainants will be made aware of this before the information is shared.

2.6. Measuring Success

This guideline will be deemed effective when:

- a) Kaimahi are aware of and actively use the complaint management processes when necessary.
- b) Complaints are discussed with the relevant managers or others who can assist with managing and resolving the situation.
- c) Complaints are addressed, and as far as practicable, managed and resolved in an effective and timely

manner.

d) Learnings from a complaint process are implemented as improvements in the way we work.

3. Tirohanga Whenua | Overview

This guideline provides both informal and formal pathways for resolving kaimahi complaints, enabling early and effective resolution where possible.

It is designed in alignment with all relevant New Zealand employment legislation and reflects the principles in section 2 and our values.

This guideline does not limit any statutory rights under New Zealand law. Kaimahi retain the right to pursue a concern, or to contact the Human Rights Commission, particularly for matters involving harassment or discrimination.

3.1. Prevention

Our priority is to prevent inappropriate behaviour, bullying, harassment or discrimination from occurring in the first instance.

Our prevention approach includes:

- promoting positive workplace behaviours, based on our code of conduct and values;
- ensuring our recruitment systems, processes and practices are designed to avoid the chance of direct or indirect discrimination;
- engaging with our people to help identify and address direct or indirect discrimination;
- ensuring our policy, processes and guides are promoted, accessible, easy to understand, and regularly updated as necessary;
- ensuring kaimahi and managers have access to information about the support available to all parties when there is alleged inappropriate behaviour, bullying, harassment or discrimination;
- ensuring training and education on preventing and responding to inappropriate behaviour, bullying, harassment and discrimination is available;
- processes which enable effective reporting and monitoring but that are also sensitive to privacy and confidentiality considerations; and ensuring managers and senior leaders are aware of their responsibilities

4. Hātepe | Procedure

There are two different approaches to managing kaimahi complaints: the informal procedure and the formal procedure.

4.1. Informal Approach

The informal approach involves the kaimahi seeking to resolve the complaint themselves in the first instance, with the goal of restoring a productive working relationship. This could be through one or more of the following:

- a) Direct discussion between the relevant parties (may be facilitated)
- b) The complainant writing a letter outlining the complaint with evidence (e.g. details of the behaviour/s) to the respondent and providing them with the opportunity to consider and respond to the complainant;
- c) Discussing the complaint with the kaimahi's line manager, next level manager (where disclosure to the

line manager may be inappropriate) or with the People and Culture team, to determine how to deal with the matter, and/or whether to proceed;

d) Involving an independent, internal or external, third party to:

- i. raise the kaimahi's complaint on their behalf; or
- ii. mediate, refer the matter to external mediation, or facilitate dialogue between the parties to achieve a resolution (e.g. EAP provider or the Ministry for Business, Innovation and Employment (MBIE)).

It may be sufficient for a complainant to approach the accused party (respondent) directly, in person or in writing:

- identifying the language or behaviour that has given offence;
- stating that the language or behaviour is unwelcome and offensive;
- seeking an assurance that it will not be repeated.

If the complainant and the accused party (respondent) 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.

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 sufficient to stop the unwelcome behaviour.

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

Where a kaimahi raises a complaint under clause 4.1 c) and the line manager, next level manager or People and Culture team determine that, in the circumstances the matter would be more appropriately dealt with under the formal approach, the kaimahi's Discipline policy or other reasonable option, the informal approach shall cease and the relevant approach as determined by MIT|Unitec or in the kaimahi's Discipline Policy shall be followed.

The employee assistance programme providers and People, Culture, Wellbeing and Safety representatives are available to support at any time.

4.2. Formal Approach

Where the kaimahi 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, MIT|Unitec will follow the formal approach set out in this section.

4.2.1 As a first step, the kaimahi must submit their complaint in writing to a manager at MIT|Unitec or their People and Culture Business Partner. This should preferably be their immediate line manager; however, where this is not appropriate, should contact the next level manager, or People and Culture team.

4.2.2 It is recommended that all complaints are received as soon as possible and within a short period of the incident/matter of concern occurring, so that they can be dealt with in a timely manner. For sexual harassment complaints, a complainant may feel more comfortable seeking immediate assistance from a trusted colleague, manager or other support person. However, we encourage early reporting to achieve a timely response. See the Preventing and Responding to Bullying, Discrimination and Harassment policy

including the relevant MIT Disciplinary policy and Unitec Disciplinary and Performance Management policy for further details. The written complaint should include:

- a) The kaimahi's (complainant) full name and the date of the complaint
- b) Details of the complaint and any background details and circumstances the kaimahi considers relevant to the complaint
- c) The name of the individual(s) accused party (respondent) against whom the complaint is being raised (where the complaint is about another individual(s))
- d) Specific examples, dates, places and or times relevant to the complaint
- e) The names of any witnesses, where relevant to the circumstances
- f) Details such as how and why the complainant believes the matter has arisen
- g) Details of the informal process the complainant has previously undertaken to address the matter and the outcomes (if any) in respect of that informal process
- h) The names of any other individuals to whom the complaint has been disclosed, including other MIT|Unitec kaimahi and external parties, such as the NZ Police
- i) Suggested solutions to help resolve the situation and
- j) Copies of any relevant documents.

4.2.3 For sexual or racial harassment complaints, kaimahi may feel uncomfortable or unable to approach the person(s) concerned directly. In such cases, it is best practice for kaimahi to raise complaints or concerns with the People and Culture team. The Human Rights Commission also provides a free, confidential service for advice or to make a complaint involving discrimination or harassment.

4.2.4 If the complaint involves or is otherwise against the kaimahi's immediate line manager, the complainant should submit their complaint to the next level manager, or People and Culture team if this is not appropriate.

4.2.5 If the complaint involves or is otherwise against the Chief Executive, a complaint should be made to the MIT|Unitec Chairperson and can be under the Kaupapa here Protected Disclosures (Whistleblowing) Policy, the procedures outlined in that policy apply.

4.2.6 Depending on the circumstances of the complaint, or if there is uncertainty about who to speak to, the kaimahi may seek advice from the People and Culture team to clarify the process.

4.2.7 Upon receiving the written complaint, the manager will endeavour to:

- a) Acknowledge the receipt of the complaint promptly, usually within five working days
- b) Assess the complaint in consultation with People and Culture and determine whether the matter may be more appropriately dealt with by an informal approach or through a mediated discussion and if so, request all parties to attend to help facilitate a resolution
- c) Assess the complaint in consultation with People and Culture and determine whether the matter would be more appropriately dealt with under the kaimahi's Discipline Policy. If so, the manager shall inform the kaimahi; and refer to the relevant process outlined in the kaimahi's Discipline Policy

Note: If the complaint is against a contractor or other person engaged to perform work for MIT|Unitec

but who is not employed directly by MIT|Unitec, the manager shall refer the matter to the contractor's employer, and/or refer to the relevant clause in the contractor's agreement with MIT|Unitec.

- d) Explain the formal approach to the complainant and refer them to this procedure and any other supporting information, and
- e) Ensure that consultation continues with the People and Culture team and notification to the relevant member of the Executive Leadership Team, providing them with a copy of the formal complaint.

4.2.8 The manager, or another person deemed appropriate by the People and Culture team, after assessing the complaint under clause 4.2.7, may then conduct an investigation into the complaint. There will be consideration to the nature and seriousness of the complaint and any perceived or real conflict of interest. The employer will determine who the appointed investigator may be to conduct the investigation.

4.2.9 Meetings with the complainant, respondent and other parties may be audio recorded and/or recorded in writing.

4.2.10 Additional advice and assistance may be offered by others present at any meeting, e.g. support person, People, Culture, Wellbeing and Safety representative.

4.2.11 MIT|Unitec will determine if the appointed investigator is a MIT|Unitec kaimahi or an external investigator.

4.2.12 On conclusion of the investigation, the investigator will draft a report for the respondent to provide further comment before the final report is provided to the manager.

4.2.13 On conclusion of the investigation, the manager will provide to the complainant (and respondent where applicable), a written response outlining the outcome of the investigation and providing reasons for any decisions made or remedies offered.

4.2.14 MIT|Unitec may proceed with a disciplinary process under the kaimahi's Discipline policies if, as a result of this formal procedure, it is determined that a breach of MIT|Unitec policies and/or procedures has occurred.

4.2.15 All meetings, investigations and outcomes that detail sensitive information of individuals will be and remain confidential to the parties involved. However, the investigator/manager shall report the outcome to the relevant member of the Executive Leadership Team and the People and Culture team.

5. External mediation services

If a kaimahi believes their complaint has not been resolved through this policy, they can, in consultation with People and Culture, refer the matter to external mediation. Mediation services are provided by the [Ministry of Business, Innovation and Employment \(MBIE\)](#) for the resolution of employment relationship problems.

Kaimahi should be aware that except for a personal grievance for sexual harassment, any other personal grievance must be raised with us within 90 days of the date on which the action alleged to amount to the grievance occurred or came to the kaimahi's attention (section 114(6) of the ER Act), otherwise they may not be able to pursue the grievance.

In relation to a personal grievance for sexual harassment under section 103(1)(d) of the ER Act these must be raised with us within 12 months of the date on which the action alleged to amount to sexual harassment occurred or came to the kaimahi's attention, otherwise they may not be able to pursue the grievance.

6. Raising concerns and/or Whistle Blowing

In some instances, a kaimahi may wish to express a concern they have, but not feel the need to make a formal or informal complaint. In these instances:

- a) The kaimahi may express their concern(s) to a MIT|Unitec manager or to the People and Culture team.
- b) Any manager informed of a concern will, with the kaimahi consent, ensure it is forwarded to someone with the authority to review the concern/s and address or make changes where required. This may include a manager in the relevant school/centre/business unit; the relevant Executive member, or the People and Culture team.
- c) If the kaimahi does not give consent and the concern is deemed to be of a serious nature, it may be forwarded to someone with the authority to review without the kaimahi consent. If this is the case, the kaimahi will be informed as to why the concern is deemed serious, and who the concern has been referred to.
- d) While a formal response to the individual raising the concern is not required, it is considered best practice that the person in receipt of the complaint may wish to let the kaimahi know it has been sent to the appropriate manager to review accordingly.

Where a kaimahi wishes to report serious wrongdoing in and/or by MIT|Unitec and have such a disclosure protected, they should follow the procedures outlined in the Protected Disclosures (Whistle Blowing) policy.

Under the Protected Disclosures policy and procedures, MIT|Unitec will endeavour to keep the identity of the kaimahi making the protected disclosure confidential. However, if an employment investigation results from the disclosure, MIT|Unitec is required to provide, under the principles of natural justice, the alleged wrongdoer with any information or allegation relating to them. This may include information provided by the kaimahi who alleged the serious wrongdoing, and their identity if necessary.

7. Ngā Haepapa | Responsibilities

Role	Responsibilities
All kaimahi	Read and agree to the terms and conditions of this subsidiary guideline take all reasonable steps to ensure compliance with this subsidiary guideline
Complainant	The MIT Unitec kaimahi expressing a concern or making a formal or informal complaint if making a formal complaint, must do so in writing allowed a representative or support person may appeal a decision.
Respondent (accused party)	The person(s) the complaint is about must be provided with a copy of the complaint allowed a representative or support person may appeal a decision.
Managers	Depending on which procedure has been followed, may refer to the complainant's manager, respondent's manager, or the People & Culture kaimahi assigned to manage the complaint may meet with kaimahi (both the complainant and the respondent) to conduct an investigation (in the event an external investigator is not used)

	<p>may be responsible for handling all aspects of complaint management with support from the People & Culture team</p> <p>assists in ensuring that all complaint documentation and records are maintained in accordance with the Privacy Act 2020</p> <p>reports the outcome of the complaint process to the relevant member of the Executive Leadership Team.</p>
People & Culture Business Partner	<p>Provides advice and assistance in handling complaints</p> <p>assists in ensuring that all complaint documentation and records are maintained in accordance with the Privacy Act 2020</p> <p>Will support the manager to manage the complaints process.</p>
Investigator	<p>May be another MIT Unitec kaimahi or an external investigator</p> <p>must be unbiased and considers all information in a balanced way</p> <p>establishes the facts but may not also make the decision regarding any action to be taken</p>
Mediator	<p>Used when both parties voluntarily agree to attempt resolving issues using an independent mediator</p> <p>can, with permission make a written recommendation</p> <p>can be provided for free by Employment Mediation Services, a division of the Ministry of Business, Innovation and Employment (MBIE), or private mediation can also be used (with both party's agreement).</p> <p>Note: In cases where an MBIE mediator is used, they can complete a record of settlement or legally binding decision</p>
Executive Leadership Team	<p>Responsible for reviewing an appeal (along with the original complaint and investigation) to determine whether correct processes were followed</p> <p>may liaise with all parties concerned regarding an appeal</p> <p>makes a decision on whether there are grounds for the appeal to be upheld.</p>
People & Culture Director	<p>ensure that all complaint documentation and records are maintained in accordance with the Privacy Act 2020</p> <p>Holds overall responsibility for the implementation of this policy.</p>

8. Ngā Tikanga | Definitions

Term	Means
Complainant	The kaimahi expressing a concern or making an informal or formal complaint. Where a group of kaimahi lodges a concern or complaint, MIT Unitec may ask that one member be nominated to receive all communications on behalf of the group.
Respondent (accused party)	The person(s) the complaint is about.

Term	Means
Concern	<p>A concern is an expression of disquiet received from a kaimahi where no informal or formal complaint has been received and where a formal response is not required. The kaimahi may be seeking improvement in a situation where he/she considers appropriate standards have not been met.</p>
Complaints	<p>Complaints and problems in the workplace can take many forms. For the purpose of this guideline, 'complaints' may include (but are not limited to):</p> <p><i>Bullying</i> Workplace Bullying is repeated and unreasonable behaviour directed towards a kaimahi or group of kaimahi that can be physical, verbal or relational/social (excluding someone or spreading rumours). Bullying is considered repeated behaviour that is persistent and can involve a range of actions over time.</p> <p><i>Discrimination</i> Workplace discrimination can take many forms. All people are protected from unlawful discrimination in their employment. This includes, but not limited to discrimination on the grounds of a persons age, race/skin colour, ethnicity, sex, employment status, political opinion or union involvement.</p> <p><i>General harassment</i> could include any unwanted and unjustified behaviour which another person finds offensive or humiliating and because it is serious or repeated. It has to have a negative effect on the person's employment, job performance or job satisfaction.</p> <p><i>Racial harassment</i> is any behaviour where one party uses language (written or spoken) or visual material, or physical behaviour that directly or indirectly expresses hostility or ridicule towards another kaimahi based on their race, skin colour, ethnic or national origins, and in doing so causes hurt or offense to the affected party.</p> <p><i>Sexual harassment</i> includes any behaviour where one-party subjects another to any form of communication, visual material or physical action that is sexual in nature and considered offensive or unwelcome by the recipient.</p> <p>Note: For comprehensive coverage of these topics, refer to the related MIT Unitec Bullying, Discrimination and Harassment Policy and Sexual Harassment policy here [insert link].</p>

Term	Means
	<p><i>Incompatibility</i> Where there's a fundamental breakdown in the relationship between two or more kaimahi, to the point where either party feels they can no longer work with the other. In these instances, mediation may be the most useful way to resolve the issue.</p> <p>There will be very rare instances where problems have occurred over a period of time that are so severe and the disharmony so serious that it becomes unworkable for the kaimahi to stay in their roles. In those circumstances disciplinary action may be taken. Refer to the kaimahi's Discipline policy.</p>
Good Faith	<p>Kaimahi, employers and unions are obliged to deal with each other at all times in good faith. There are three elements involved:</p> <p>Parties must not act in a misleading or deceptive way.</p> <p>Parties must be responsive and communicative.</p> <p>Parties must be given sufficient information and the proper opportunity to comment before a decision is made.</p> <p>It involves treating others fairly and respectfully with common sense. Every action taken by an employer and a kaimahi must be done in good faith.</p>
Informal Complaint	<p>A complainant is unhappy with a situation and makes direct contact with a manager at MIT Unitec or the People and Culture team, relating to their dissatisfaction and seeking a resolution and response.</p>
Formal Complaint	<p>A complainant is unhappy with a situation and may submit a written complaint that they present to either a manager at MIT Unitec or the People and Culture team, seeking a formal resolution and response.</p>
Formal Response	<p>A formal response can be sent by traditional mail, on MIT Unitec letterhead; or emailed to the complainant.</p>
Frivolous Complaint	<p>A complaint without serious purpose or value. It may have little merit and be trivial, or where investigating it would be out of proportion with the seriousness of the issues complained about. In determining whether a complaint is frivolous, MIT Unitec will take into account all the circumstances surrounding it.</p>

Term	Means
Mediation	Where an independent and impartial person helps the relevant parties (usually (a) kaimahi and their employer but sometimes between kaimahi) resolve an employment relationship issue in a semi-formal and confidential environment. Both parties must agree in order for mediation to take place, and with their agreement, the mediator's decision can be legally binding.
Misconduct and Serious Misconduct	A behavioural issue with a kaimahi. Misconduct is labelled 'serious' if it can have the effect of destroying or undermining the relationship of trust and confidence between MIT Unitec and a kaimahi, and therefore can result in dismissal (as without this trust and confidence an employment relationship can't continue). Misconduct not labelled 'serious' does not usually justify dismissal unless the kaimahi has previously committed misconduct. All instances of misconduct and serious misconduct are dealt with under the kaimahi's Discipline policy.
Natural Justice	<p>The rights of both parties to a complaint should be protected under the principles of natural justice. These include the freedom from bias on the part of the person making the decision/judgement, and transparency and fairness in the complaint's management procedure.</p> <p>The right to justice, or tika ki te haepapa, is a right all people have under the Universal Declaration of Human Rights, and New Zealand's Bill of Rights Act 1990. Can also be described as a fair process.</p>
Executive Leadership Team	Member of the executive management team, or their nominated delegate.
Terms of Reference	May be used to define the scope of the investigation for the respondent, based on the complaint received.
Vexatious Complaint	A complaint without merit that is intended to cause inconvenience or expense to MIT Unitec or any MIT Unitec kaimahi. Includes obsessive, persistent, insistent, prolific, harassing or repetitious complaints. Where the complainant is insistent on pursuing unmeritorious complaints and/or unrealistic outcomes beyond all reason, or complaints with merit in an unreasonable manner. In determining whether a complaint is vexatious, MIT Unitec will take into account all the circumstances surrounding it.

9. Ngā Hononga ki Tuhinga kē | Links to Other Documents

<p>Ngā Kaupapa-Here e Hāngai ana Related policies</p> <p>Protected Disclosures Policy</p> <p>Preventing and Responding to Bullying, Discrimination and Harassment policy</p> <p>Disciplinary policy</p> <p>Privacy policy</p> <p>Wellbeing and Safety policy</p> <p>Code of Conduct (Unitec and MIT)</p>
<p>Ngā Tukanga me ngā Hātepe Processes and procedures</p> <p>Privacy Procedure</p> <p>Protected Disclosures Procedure</p> <p>Disciplinary procedures</p>
<p>Ture whai take Relevant legislation</p> <p>Education and Training Act 2020</p> <p>Employment Relations Act 2000</p> <p>Health and Safety at Work Act 2015</p> <p>New Zealand Bill of Rights Act 1990</p> <p>Human Rights Act 1993</p> <p>Privacy Act 2020</p>

Copies of New Zealand Legislation can be found on the [New Zealand Legislation Website](#).

You can view MIT|Unitec's Policies and Procedures on Te Aka or MITNET

This is not an exhaustive list of policies, procedures and legislation.