



## DISPUTES, COMPLAINTS AND LEGAL PROTECTIONS POLICY AND PROCEDURES

*For those involved in a University of Notre Dame Australia (UNDA) degree or course, UNDA Policies and Procedures also apply. Where there is a conflict between this policy and the UNDA policies, the UNDA policies should be followed.*

### Purpose

This policy outlines how to manage disputes and complaints against personnel (staff, governance members, volunteers and contractors) at Te Kupenga. It also outlines specific legal protections and provides guidance on where to find additional information should the need arise.

### Scope

This policy relates primarily to disputes between Te Kupenga personnel, or complaints against Te Kupenga personnel for actions related to conduct or human rights concerns.

For complaints related to academic matters, refer to the Student Complaints, Grievances and Appeals Policy and the Academic Integrity Policy.

For complaints against students, refer to the Student Behaviour and Conduct Policy.

Where the issue regards a minor (under 18) or an adult at risk<sup>1</sup>, whether current or historic, refer to the Safeguarding Policy.

Where the issue would be considered an employment dispute, refer to the Te Kupenga Staff Code of Conduct, the staff member's employment agreement, and relevant employment legislation.

### Principles

Te Kupenga is committed to dignity and respect at work, through an environment which is free from discrimination, harassment and bullying. Key principles from Catholic social teaching, notably human dignity and the dignity of work, reinforce protections in law.

Should any situation arise which poses an immediate risk to personal safety, the staff member(s) concerned should remove themselves from the situation and report it promptly, as per the Te Kupenga Health and Safety guidelines.

All processes will follow the principles of natural justice:

- The right to know what the nature of the concern is.
- The right to a fair and unbiased hearing.
- The right to comment on a proposed course of action before it is taken.

At any point of intervention, all parties have the right to have their supervisor, advocate and/or whānau/family/other support person present.

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<sup>1</sup> An **adult at risk** is a person unable by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw him or herself from the care or charge of another person.

## Disputes and Complaints Procedure

These procedures relate to disputes or complaints against Te Kupenga personnel. This does not include conduct that is physically threatening or involves a minor or adult at risk.

The procedures are to be worked through step by step. The procedures can be ended at the completion of any step, so long as both parties are satisfied. If not, continue to the next step.

1. **Individual approach:** Approach the person directly about the problem in the first instance, if it is appropriate and safe to do so, to discuss and agree on a solution.
2. **Escalate:**
  - a. If you are not satisfied, or feel unable to approach the person concerned, you may choose to involve:
    - i. The relevant manager.
    - ii. In the case of a student complaining about a teacher, the Assistant Dean.
    - iii. In the case of racial or sexual harassment, a designated Te Kupenga contact person – see list below.
  - b. The manager or contact person will provide you with options, which may include assistance to mediate and resolve the problem internally, external mediation, or making a formal complaint.
3. **Formal complaint:** If you are not satisfied with the outcome, or feel that the matter is more serious, you can make a formal complaint.
  - a. The complainant may approach any Te Kupenga staff member or Governance Board member.
  - b. The staff or Board member will listen empathetically and inform the complainant that she/he will assist them to submit their complaint. Where the complaint concerns a legal protection, they will also advise them of other supports, such as Te Kupenga designated contacts or external agencies, who can assist them during the process (see Legal Protections, below).
  - c. It is encouraged that the complaint be submitted by the complainant in writing, or written by a staff member and checked with the complainant for accuracy.
  - d. The staff or Board member will inform the Chief Executive of the complaint (or, if the Chief Executive is directly involved, the Chair of the Governance Board), and seek advice on an appropriate Te Kupenga representative.
  - e. The Chief Executive (or Chair) will appoint a representative not directly involved in the dispute to manage the complaint. This will be the Chief Executive, Dean, another staff member or member of the Governance Board, as is appropriate to the situation.
  - f. The Chief Executive will inform the Governance Board (subject to privacy considerations and anonymised as needed) of formal complaints at regular meetings. Scenarios where other staff must be notified include, but are not limited to, where the complaint concerns:
    - i. The professional conduct of a teacher: the complaint should also be passed on to the Dean.
    - ii. The conduct of a volunteer: the complaint should also be passed on to the volunteer's supervisor.
    - iii. The conduct of the Chief Executive: the complaint should be provided to the Chair of the Governance Board. The Chair may delegate their responsibility to deal with the complaint to another Governance Board member.
  - g. The Te Kupenga representative will provide the complainant with a copy of the Disputes, Complaints and Legal Protections Policy. The Te Kupenga representative will also clarify the complainant's concerns, discuss how the complainant believes the complaint can be resolved and agree on possible timeframes.
    - i. Te Kupenga can opt not to investigate complaints where the content or nature of them is frivolous, vexatious, or discriminatory in intent. The complainant will be notified that this decision has been made.

- h. The Te Kupenga representative will then contact the party or parties who are the subject of the complaint, put the complaint to them, ask them for their interpretation of the situation and how they think the issue can be resolved.
  - i. Where the Te Kupenga representative deems it to be appropriate, they may request that the person put their comments into writing.
  - ii. The representative will provide them with a copy of the Disputes, Complaints and Legal Protections Policy.
  - iii. Where the outcome may involve misconduct or serious misconduct of a staff member, reference should also be made to the employee's employment agreement.
  - iv. If deemed necessary or appropriate, Te Kupenga may arrange (by agreement or by provision under the employment/volunteer/contracting agreement) one or both parties to work from home or not to report for work while the formal complaints process is in progress.
- i. The above steps in the complaint process will take place within 15 working days of the complaint being received by Te Kupenga. If any further investigations are necessary, timeframes will be discussed with the complainant.
- j. The Te Kupenga representative will conduct or commission any other investigations as are necessary.
  - i. Where a *formal investigation* is commissioned, the fact finder will be separate from the decision maker.
  - ii. A complaint cannot be formally investigated without the express permission from the person except where the law allows.
- k. The Te Kupenga representative will resolve the complaint, preferably with the agreement of both parties, and ensure that any required action is taken.
  - i. Complaint outcomes may include training or professional development sessions, and targeted service delivery changes and improvements.
  - ii. Where the outcome includes a disciplinary process, reference will be made to the employee's employment agreement.
- l. The Te Kupenga representative will then write to the complainant and to the other party or parties confirming Te Kupenga's understanding that the complaint has been resolved.
- m. At any stage in the complaint procedure, or in the case that a complaint cannot be resolved, the Chief Executive may escalate the complaint to the Chair of the Governance Board for consideration of next steps.

#### 4. Confidentiality and records:

- a. Information about a complaint will only be given to people directly involved in the complaint, as outlined above. Everyone will be advised about the need for confidentiality. Information regarding the complaint will only be kept on an employee's file if they are disciplined.
- b. Information relating to complaints will be kept for the purposes of monitoring the quality of service being provided. Any party to the complaint has the right to access and correct their personal information, in accordance with the Privacy Act.

- 5. **Other complaint avenues:** Nothing in this policy prevents someone using another complaint avenue available to them, for example the Human Rights Commission. In respect of students, Te Kupenga must let students know about the availability of the New Zealand Qualifications Authority complaints process (National), and the Professional Standards Committee, Diocese of Auckland (Confidential Phone Line: 09 361 1359).

## **Legal Protections**

### ***Equal Employment Opportunity***

Te Kupenga is committed to an employment environment which is free from unlawful discrimination, open to all on the basis of merit and welcoming of diversity, with equal opportunity for development and career progression and equal pay for work of equal value.

The Human Rights Act 1993 s21 outlines the grounds for unlawful discrimination in matters of employment and offers guidance to employees on their rights within the workplace.

Specific provisions to ensure that Te Kupenga meets its commitment to equal employment opportunity are outlined in its Employment and Performance Management policies.

Should any current or intending staff member experience unlawful discrimination or have concerns about their own treatment or that of others on the basis of characteristics listed in the Human Rights Act, they should raise it in the first instance with the hiring manager or their immediate manager. If not resolved to their satisfaction, they can escalate their concern to the Chief Executive or the Chair of the Te Kupenga Governance Board (the Board). There are also external avenues of redress through the Human Rights Commission, union (if a member) or legal representative.

Te Kupenga undertakes to conduct any investigation of an alleged breach of equal employment opportunity promptly and fairly, with full involvement of the complainant and as much transparency as possible.

Te Kupenga is committed to actively measuring and reporting its progress towards being an equal employer. Every second year, the Chief Executive is responsible for doing a Diversity and Inclusion Stocktake for the organisation, reported to the board and staff. The stocktake will take into consideration the size and roles in the organisation, which may prohibit some reporting due to the need for privacy. The stocktake will then form the basis to set goals over a two-year period to improve diversity and inclusion, in consultation with staff (which may include measures such as training, pay reviews, or consideration of new policies or practices).

### ***Protected Disclosure***

Protected disclosure refers to the protections available to employees who believe on reasonable grounds that a serious wrongdoing has occurred, is occurring, or might occur at Te Kupenga and wish to bring it to the attention of an appropriate person for investigation. Te Kupenga acknowledges its duty to enable protected disclosure.

The Protected Disclosures Act 2000 encourages people to report serious wrongdoing in their workplace by providing protection for employees who want to 'blow the whistle'. The Office of the Ombudsman has oversight of the Act and provides guidance on what the Act covers and how to make a protected disclosure.

In the first instance, employees should make a disclosure in writing to the Chief Executive or the Board Chair, clearly stating that they are making the disclosure under the terms of the Act. An investigation will then take place, with appropriate safeguards for the source of the disclosure. The Chief Executive or Chair may choose to pass on the complaint to an external party for investigation. If either person is believed to be a party to the serious wrongdoing, or refuses to act, or takes more than 20 working days to act, then the disclosure can be made to the Office of the Ombudsman or other appropriate authority (listed in the guidance).

### ***Racial or Sexual Harassment***

Te Kupenga has zero tolerance of racial or sexual harassment. Both are a fundamental breach of human dignity and the inherent worth of each person. Te Kupenga is committed to a work environment in which no-one experiences unwanted behaviour of a racial or sexual nature. The provisions of this policy apply to all Te Kupenga staff, contractors, Board members and students.

The Employment Relations Act 2000 defines sexual and racial harassment. These are grounds for asserting a personal grievance.

For the avoidance of doubt, behaviour found to constitute racial or sexual harassment will be treated as a possible form of serious misconduct, leading to disciplinary action.

There is an escalating set of options for dealing with unwanted behaviour. The Ministry of Business, Innovation and Employment provide a thorough guide. This includes advice for dealing with it directly (if you feel able); dealing with it informally; or making a formal complaint. If you would like advice or assistance with an intervention, Te Kupenga's nominated contact people are John Kleinsman (Director, Nathaniel Centre), Marina Schmits (Operations Manager), Dr Rocio Figueroa (Lecturer in Theology), and Rev Dr Mervyn Duffy SM (Dean and Lecturer in Theology).

Someone concerned about racial or sexual harassment at Te Kupenga should follow the Disputes and Complaints Procedure, above. The complainant also has the option of directing a complaint to the Human Rights Commission or the Police. Complaints handled within Te Kupenga will be investigated promptly, observing procedural fairness and natural justice. Pastoral support for the complainant will also be made available, through Catholic Social Services or other appropriate agencies.

Te Kupenga students who experience racial or sexual harassment are entitled to exercise the same procedures for intervention, investigation and redress as Te Kupenga staff and contractors. A copy of these procedures is outlined in the Te Kupenga Student Manual.

### ***Bullying***

Te Kupenga regards bullying as unacceptable workplace behaviour, akin to racial or sexual harassment. It has no place in a faith-based work environment in which human dignity is valued and affirmed. Bullying is defined as unreasonable and repeated behaviour towards a person or group that can lead to physical or psychological harm. A single incident isn't considered bullying but can escalate if ignored. Managing performance in line with business policies and processes is not bullying, although criticism and feedback needs to be delivered in an appropriate manner and with regard to the particular vulnerability of the recipient.

Worksafe offers helpful guidance, from a health and safety perspective. It includes scenarios describing bullying behaviour, to illustrate the range of situations in which that behaviour can arise. It also lists behaviours and circumstances which are generally considered *not* to constitute bullying.

While there is no specific legislative treatment of generalised bullying, there is of cyber-bullying, through the Harmful Digital Communications Act 2015. The Act lists ten communications principles, representing minimum standards for appropriate communication. Netsafe offers helpful guidance to the provisions of the Act and to dealing with all forms of workplace bullying. There is also case law under the Employment Relations Act and the Health and Safety at Work Act that clearly identifies persistent bullying as a ground for legal action.

Someone concerned about bullying at Te Kupenga should follow the Disputes and Complaints Procedure, above. Complaints will be investigated promptly, observing procedural fairness and natural justice.

### ***Domestic Violence***

Te Kupenga is committed to supporting employees who are victims of domestic violence. Domestic violence is violence that occurs between people in a domestic relationship, such as spouse/partner, child, parent, sibling or other household member. Violence can be physical, psychological/emotional or sexual and includes damage to property and threats or intimidation. A person can be affected by domestic violence directly or through violence directed at a child in the same household.

Employees affected by domestic violence are entitled to paid leave as per their employment agreements, in addition to annual and sick leave entitlements. Employees seeking domestic violence leave should discuss their circumstances with their manager, who will treat the matter discreetly,

confidentially and with urgency. The manager may seek supporting information from the relevant authorities.

In addition to granting leave as needed, the manager will develop a workplace safety plan with the affected employee. This could include short-term flexible working arrangements, safety at work from the source of the violence, altering arrangements for receiving pay, change of work phone number and email address and active monitoring of attendance and unplanned absence, along with an emergency contact number or potential code word to use in the event of danger. The plan could also include a referral to support services, such as Catholic Social Services.

No employee will be treated unfairly or experience discrimination in the workplace as a result of seeking leave or other measures to deal with the effects of domestic violence.

### **Approval and Review**

The Disputes, Complaints and Legal Protections Policy is subject to the normal three-yearly review by the Governance Board

Reviewed: 24 March 2023

Next review: March 2026