



NATIONALITY FOR ALL

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Sexual Misconduct Adjudication Process

Warning: Please note that this process addresses issues of sexual violence and uses descriptions and examples of this conduct which can be triggering. This Process applies to Nationality For All employees, board members, sub-contractors and beneficiaries, and is available to all of them.

The Sexual Misconduct Adjudication Process (SMAP) is the adjudication process applicable to complaints against NFA employees, sub-contractors and board members (hereinafter collectively referred to as 'NFA personnel') accused of sexual exploitation and/or abuse (including sex and gender discrimination; sexual and sex and gender-based harassment; sexual exploitation and abuse; sexual assault and rape), stalking and relationship violence (including domestic and dating violence). This adjudication process is intended to be prompt, fair and impartial and will provide for disciplinary action, as appropriate.

When NFA Secretariat receives a complaint, the office will contact the person who felt harmed to ask if they want to resolve the matter using:

- The Formal Process
- The Informal Process

Formal Process Summary

Initiating the Disciplinary Process

Complaints based on sexual misconduct, stalking and/or relationship violence can be initiated under this process in two ways:

Complainant Initiated Complaints

An individual, the Complainant, can decide to personally file a complaint against an NFA personnel, more than one NFA personnel, or the entire organization, the Respondent. The Complainant will be asked to submit 2 forms:

1. Complainant's Statement - detailed statement regarding the allegations
2. Privacy/Non-Retaliation Acknowledgment - agreement to maintain discretion and respect the privacy of the process, and refrain from any retaliatory conduct

Administrative Complaints

The Secretariat may independently initiate a disciplinary complaint against the NFA personnel/s in situations where a victim/survivor is unable or uninterested in initiating a SMAP complaint directly. To initiate an Administrative Complaint, the Secretariat will obtain enough information about the incident to prepare a complaint statement which will be used in place of the Complainant's Statement within this process.

Responding to a Disciplinary Complaint

The Respondent shall be given written notification when a disciplinary complaint has been filed against them and must meet with the Secretariat representative. During this meeting:

- The Respondent will sign a Privacy/Non-Retaliation Acknowledgment - agreement to maintain discretion and respect the privacy of the process, and refrain from any retaliatory conduct
- All relevant policies and processes are reviewed
- The Respondent will receive a copy of the Complainant's Statement or Administrative Complaint Statement
- A No-Contact Order is put in place

After the meeting, the Respondent has five business days to either:

- Accept charges and proceed to the question of discipline OR
- Prepare a Respondent's Statement - a detailed written response to the Complaint Statement

Next Step

The Complainant receives a copy of the Respondent's Statement.

Fact-Finding Investigation

The Investigator will gather information relevant to the complaint and the facts raised in the complainant and respondent statements. During the course of the investigation, the investigator may utilize some or all of the following procedures, in whatever order the investigator deems most appropriate:

- **Document Review** - The Investigator will obtain and review any documents or other materials deemed relevant to the investigation.
- **Complainant/Respondent Interviews** - The investigator will interview the complainant and the respondent separately to discuss the event(s) in question. Note that the complainant's or respondent's support person/advisor may accompany them to all the meetings with the investigator but may not participate in the conversation.
- **Witness Interviews** - The investigator will interview any witnesses identified by the complainant and/or respondent deemed to be relevant to the resolution of the disciplinary complaint.
- **Expert Witnesses** - The investigator reserves the right to consult with any experts who they deem necessary to the determination of the facts of this case.
- **Site Visits** -The investigator may decide to visit a relevant location to observe and/or collect information about the location.

Investigation Report

Once the fact-finding investigation has been completed, the Investigator will prepare a report summarizing and analyzing the relevant facts obtained through the investigation, noting any supporting documentation or statements. The Investigator may draw conclusions regarding the credibility of statements of witnesses and the reliability of documentation. The investigation report will include references to any conflicting testimony or documents. The report will be submitted to the Decision-Making Panel for their consideration.

Pre-Decision Conferences

A Decision-Making Panel will be assembled to review the Investigation Report and determine 1) whether NFA policy has been violated, and (2) what disciplinary action should be imposed if the policy is found to have been violated.

After reviewing the investigation report, but prior to issuing a decision, the Decision-Making Panel Chair and NFA Executive Director will schedule separate Pre-Decision Conferences with the Complainant and the Respondent to review the preliminary factual findings.

The Complainant and Respondent may each provide a rebuttal statement, impact statement or narrative, or identify any new documents or information that may be relevant to the finding. Any additional information or statements must be provided, in writing, to the Executive Director within five business days after the Pre-Decision Conferences.

Options After Pre-Decision Conferences

Prior to the Decision-Making Panel issuing their decision, the following options are possible:

Respondent May Accept Responsibility

If the respondent accepts responsibility for the conduct alleged in the disciplinary complaint, the fact-finding investigation will end. The matter would then be referred to the Decision-Making Panel to decide the appropriate disciplinary action against the respondent. Once the respondent accepts responsibility, such acceptance cannot be withdrawn.

A written decision will be issued by the Decision-Making Panel. These documents will become part of the respondent's employee records in accordance with any other employers' policies and procedures and the outcome of the SMAP will be shared with the complainant consistent with the relevant privacy law of Australia.

At any time up until three (3) business days after the Pre-Decision Conference, the respondent has the right to withdraw as an employee from NFA. In such a case, the respondent will leave NFA with the permanent notation "Employee Withdrew with Disciplinary Charges Pending" on their letter of recommendation and will not be eligible to return to NFA at any time in the future. The respondent's withdrawal from NFA will end the Sexual Misconduct Adjudication Process (SMAP) for that complaint.

Complainant May Withdraw the Complaint

Prior to the Decision-Making Panel's decision, the complainant may withdraw the disciplinary complaint by notifying the Executive Director of their desire to do so. Once a complaint has been withdrawn, it cannot be filed again by the complainant within this process.

NFA reserves the right to move forward with the disciplinary complaint, even after the complainant decides to withdraw it, at the request of the respondent or in order to protect the interests and safety of the NFA community. If NFA does not choose to move forward, the withdrawal of the complaint will, under most circumstances, end the Sexual Misconduct Adjudication Process (SMAP) for that complaint. Even if a complainant chooses to withdraw their complaint, they will still be given the opportunity to participate in a pre-decision conference and will be informed of the outcome of the SMAP in writing consistent with the relevant privacy law of Australia.

Panel's Decision

Upon determining that all of the issues regarding the disciplinary complaint have been fully investigated and adequately addressed, the Decision-Making Panel will issue its decision. The Panel's decision will be reached by a majority and the written decision will be submitted to the Executive Director. The Panel may issue the following decisions to a disciplinary complaint:

- A finding that the NFA policy was violated. The Decision-Making Panel will then impose the appropriate disciplinary action.
- A finding that a NFA policy was not violated as there is insufficient information to substantiate the allegations of the disciplinary complaint. The Decision-Making Panel will then dismiss the disciplinary complaint.

Appeals

Both the Complainant and Respondent are entitled to one appeal of the Decision-Making Panel's Decision. Appeals must be filed within seven business days and submitted to the Executive Director. The appeals process will usually be completed within thirty (30) days from the filing. The Decision-Making Panel's decision can be appealed on the following 3 grounds (more than one can be used):

Procedural Error

The appellant alleges that there was a (i) deviation or change from the procedures outlined in the Sexual Misconduct Adjudication Process (SMAP) and (ii) that deviation had an adverse impact on the outcome of the complaint against the appellant. If the Appellate Panel determines that there was a procedural error that could have altered the outcome of the case, the appeal will be submitted to the original Decision-Making Panel for a determination regarding the impact that the procedural error had on the outcome of the complaint.

New Information

The appellant alleges that, subsequent to the issuance of the Decision-Making Panel's decision, new information became available which would have impacted the outcome of the disciplinary complaint. The appellant must: (i) present the new information; (ii) show why it was unavailable prior to the Decision-Making Panel's decision; and (iii) show that the new information could have altered the outcome of the complaint. If the Appellate Panel determines that there is information that meets these three requirements, the appeal will be submitted to the original Decision-Making Panel for review in light of the new information. At the Decision-Making Panel's discretion, additional investigation of the new information can be requested.

Severity of The Disciplinary Action

The appellant alleges that the disciplinary action issued in the Decision Making Panel's decision is inappropriate for the behavior alleged or is inconsistent with the type of discipline issued by NFA to others who were found to be responsible for substantially similar violations or offenses. If the Appellate Panel determines that the disciplinary action was inappropriate for the behavior alleged or is inconsistent with discipline for similar violations, it will remove the discipline issued by the Decision-Making Panel and issue a new disciplinary action in its place. Disciplinary actions can be increased or decreased in severity at the discretion of the Appellate Panel.

Informal Process Summary

The list of informal options may differ case-by-case. The NFA Secretariat works with the Complainant to help them feel safe. This may include assisting with different housing, academic flexibility, a referral for therapy or other support. This is not an exhaustive list.

A Complainant may be satisfied stopping the informal process at this step. To receive these resources and support, the Complainant does not need to tell the NFA Secretariat who the Respondent is or details of what happened.

Prevention Step/Coaching and Counseling Conversation

A member of the NFA Secretariat can have a discussion with the respondent about how to change their behavior so that they do not hurt others in the future. Complainants can choose to be anonymous in this discussion and work with NFA staff on how much to include or share with Respondent in the conversation.

Additional Options

The NFA Secretariat may refer the Complainant or Respondent to the Board of Directors.

The NFA Secretariat can refer parties to the Board of Directors if a No Contact Order is requested by either party.

Moving to a Formal Process

If the Respondent's name(s) is known to the NFA Secretariat from another source or incident, the Secretariat may be required to move to a formal process. NFA Secretariat will always talk with both parties if an administrative complaint is necessary.

The Complainant can shift to a formal process at any step. The NFA Secretariat reserves the right to move to a formal process at any time or recommend an administrative complaint. The NFA Secretariat also reserves the right to make a finding in an informal case.

Parties Involved

Complainant

The individual(s) who brings a complaint of sexual misconduct, stalking, and/or relationship violence under the Sexual Misconduct Adjudication Process (SMAP) is the *complainant*. A complainant may also self-identify as “victim” or “survivor” throughout the SMAP. Although most cases involve one complainant and one respondent, more than one complainant may bring a complaint against one or more respondents under the SMAP. The NFA Secretariat may also act as a complainant.

Respondent

The NFA personnel/s against whom a complaint of sexual misconduct, stalking, and/or relationship violence is filed under the Sexual Misconduct Adjudication Process (SMAP) is the *respondent*. A respondent may also self identify as “accused” throughout the process. There may be more than one respondent in a case.

Reporting Party

Any individual who raises a complaint, concern or policy violation related to the NFA’s PSEA Policy (or other NFA policy) on behalf of another person. A *Reporting Party* can also make a request or raise a concern about support/interim measures for another person. In some circumstances, a reporting party may also be a complainant.

NFA Secretariat/Executive Director

The NFA Secretariat is responsible for making inquiries into allegations of conduct that may violate the NFA’s PSEA Policy (info@nationalityforall.org; +61431997318). The Executive Director coordinates responses regarding issues of sexual misconduct, stalking and relationship violence and compliance with the sexual misconduct laws of Australia and the country of the respondent. The NFA Secretariat provides the fact-finding investigators for all complaints brought under the Sexual Misconduct Adjudication Process (SMAP). Within the SMAP, the Executive Director or designee assigns investigators and selects panel members for the Decision-Making and Appellate Panels. The Executive Director also coordinates support resources/interim measures and remedies (if necessary) and facilitates the Decision-Making Conferences. The Executive Director also facilitates the communication of the Decision-Making Panel’s Decision and Appellate Decision to the complainant and respondent. The Executive Director for NFA is Subin Mulmi (subin.mulmi@nationalityforall.org; +977-9841444787).

Investigator

The investigator is responsible for conducting the intake, notice, and fact finding investigation portion of the Sexual Misconduct Adjudication Process (SMAP). The investigator is an independent personnel not under any benefits from NFA and is appointed by the Executive Director with the approval of the Board of Directors. The SMAP does not involve a hearing or other live or face-to-face meetings between parties. Instead, the investigator will gather the complainant and respondent statements and any other information relevant to the complaint. It is the responsibility of the investigator, not the complainant or respondent, to gather information relevant to the resolution of the complaint. In all cases, the investigator will make best efforts to conduct a prompt, fair and impartial investigation into the allegations of the complaint, reviewing all information deemed to be relevant by the investigator. It is the responsibility of the investigator to determine whether the issues raised and/or documents presented are relevant and probative of the alleged conduct.

After completing the investigation, the investigator writes and makes available, by a secure on-line access portal, a draft investigation report to the parties, containing all information relevant for the resolution of the complaint. The parties will have **five (5) business days** to review the investigative report and to provide additional input for the investigator to determine, at the investigator's discretion, whether revision to the investigative report and/or additional investigation is appropriate. NFA Secretariat will then submit the final investigative report to the Decision-Making Panel.

Investigations will be conducted only by the hired investigators who have been trained on investigation techniques, analyzing complaints under applicable law and organizational policy, and who have received training on issues relevant to investigating complaints of sexual misconduct, stalking and/or relationship violence. Assigned investigators will have received training on the principles of confidentiality and privacy applicable throughout a SMAP, including: 1) confidentiality in reporting, generally; 2) how to respond to and adhere to, as appropriate, requests for confidentiality; 3) factors to consider when a complainant requests confidentiality and how to explain to complainants when confidentiality cannot be afforded; and, 4) information about available confidential resources.

Decision-Making Panel

Under the Sexual Misconduct Adjudication Process (SMAP), the decision regarding the complaint will be made by a Decision-Making Panel consisting of three trained, impartial administration, independent persons or staff members from throughout NFA or NFA's partners. Panelists have been trained on the SMAP and on topics relevant to the adjudication of sexual misconduct, stalking and/or relationship

violence complaints. The three panel members will be chosen by the Executive Director with the approval of the Board of Directors who will communicate their identities to the complainant and respondent along with a brief biographical summary of each panelist's professional experience. Best efforts will be made to have the Decision Making Panel be reflective of the demographics/identities of the complainant and/or respondent, particularly if requested by either or both of the parties, and if known and available. The Executive Director will ask the complainant and respondent and each panel member if there are any conflicts of interest related to the chosen panel members. Each party has the right to raise any concerns they may have. If a conflict is raised, the Executive Director may choose another trained panel member to sit in the place of the original panelist. The Executive Director will select the Panel Chair. Decisions regarding the composition of the Panel are made at the discretion of the Executive Director or designee.

The Executive Director will facilitate a Pre-Decision Conference where each party will meet individually with the Panel Chair to discuss the complaint, the investigation, any preliminary findings regarding policy violations and any corresponding discipline (if necessary), and the Decision-Making Panel's basis for any such preliminary findings. During the Pre-Decision Conference, the Panel Chair will have the opportunity to ask the parties any additional questions; similarly, each party will have the opportunity to express concerns or ask questions about the basis for any preliminary findings. Following the Pre-Decision Conference, the parties will have **five (5) business days** to submit any additional rebuttal or impact statement to the Executive Director for the Decision-Making Panel's review and consideration before issuing a final decision.

Appellate Panel

Once a Decision-Making Panel's decision has been issued, both the complainant and respondent have a right to appeal the decision. For more information about the appellate process. Any appeal will be considered by a different three-person *Appellate Panel* consisting of three different trained administrators, faculty or staff members from throughout NFA and our partners. These panelists will be chosen from the same pool of NFA Board of Directors and partners, all of whom have been trained, and continue to be trained annually, in the adjudication of matter covered by the Sexual Misconduct Adjudication Process (SMAP). The three appellate panel members will again be chosen by the Executive Director or designee, who will communicate their identities to the complainant and respondent, along with a brief biographical summary of each panelist's professional experience. Best efforts will be made to have the Panel be reflective of the

demographics/identities of the complainant and respondent, particularly if requested by either or both of the parties, and if known and available. The Executive Director will ask the complainant and respondent and each panel member if there are any conflicts of interest related to chosen panel members and each party has the right to raise any concerns they may have. If a conflict is raised, the Executive Director may choose another trained panel member to sit in the place of the original panelist. The Executive Director will select the Panel Chair. Decisions regarding the composition of the Panel are made at the discretion of the Executive Director or designee. The decision of the Appellate Panel is the final step in the SMAP.

Witnesses

The complainant and respondent have the right to identify witnesses who may have information relevant to the conduct alleged in the Sexual Misconduct Adjudication Process (SMAP) complaint. Witnesses can include individuals who may have seen and/or heard the incident and individuals to whom the complainant and/or respondent may have spoken to about the incident. Investigators may ask a party what a witness may contribute or know about the allegations and will make determinations as to relevancy. Please note that because the focus of an inquiry is on facts, character witnesses are not used within this process.

It is possible for the complainant and respondent to identify the same people as witnesses. The complainant and respondent may tell an individual that they have been identified as a witness, but they should **not** solicit witnesses or ask individuals if they are willing to be a witness in an investigation. The parties should carefully consider whether to discuss any details of the complaint with any witness as doing so may impact the integrity of the investigation and lead to unintended consequences (e.g., creation or exacerbation of a hostile environment, retaliation, etc.).

Witnesses should not be intimidated, threatened, or improperly influenced in any way by either the complainant or respondent or through others (e.g. friends, family members, attorneys, etc.). Any attempt to threaten, intimidate or otherwise improperly influence the testimony of a witness may result in a separate disciplinary action by NFA and may negatively impact the reliability of statements by the witness and others, including a complainant or respondent. The investigator will attempt to contact and interview any witnesses identified by the complainant and respondent that the investigator deems relevant to the resolution of the disciplinary complaint. The investigator may also identify additional witnesses through the Investigation. These decisions are made at the discretion of the investigator and in conjunction with all the facts gathered.

Witnesses have an obligation to cooperate in a timely way with the investigator regarding the investigation of a complaint under the SMAP and to be truthful. The failure or refusal of a witness to meet and cooperate with the investigator or any administrator within this process regarding a complaint may result in a separate disciplinary action as determined by the appropriate Dean. Witnesses will be required to sign and comply with the Privacy/Non Retaliation Acknowledgment.

Support Person/Advisor

Individuals involved in the Sexual Misconduct Adjudication Process (SMAP) as complainants or respondents may be more comfortable navigating the process with the help of a support person or an advisor of their choice. A support person/advisor is someone the complainant or respondent trusts to provide support, guidance or advice during the process. A support person/advisor can be a person the complainant or respondent feels comfortable confiding in, and need not be affiliated NFA (e.g., a friend, a family member, a person from a support or advocacy agency, legal counsel, etc.). However, in order to preserve the integrity of the investigation and process, a support person/advisor may not be a party or witness involved in the pending complaint. A support person may accompany the complainant/respondent to any part of the adjudication process, including to any meetings with the Dean or their designee, investigator, Decision-Making Panel, and/or Appellate Panel. Complainants and respondents are entitled to have one support person, each, at every meeting. The complainant and respondent must provide the identity and contact information (e-mail and telephone) of the support person/advisor who will be accompanying them to the person with whom they are meeting within **one** business day prior to the meeting.

A support person/advisor's role in these meetings is to observe the proceedings and support the complainant or respondent. A support person/advisor does not actively participate in any conversations, but instead provides support to the complainant/respondent in meetings solely through their presence. The support person/advisor will **not** be allowed to speak or otherwise interject in a meeting. A support person/advisor will be required to sign and comply with the Privacy/Non-Retaliation Acknowledgment form. If, at any point, an individual support person/advisor becomes disruptive or is otherwise unable to comport themselves within the parameters of the support person/advisor role, they will be asked to leave the meeting or may be restricted from further participation in the process.

Attorneys

Although not required, the complainant and respondent have the right to seek the assistance of a private attorney, at their own expense or through an advocacy agency, about sexual misconduct, stalking and/or relationship violence concerns. An Attorney may act as a support person/advisor. Attorneys acting as support persons/advisors may make process related inquiries directly to the NFA Secretariat. Attorneys acting in a representative capacity and/or seeking to discuss legal claims or other legal matters should direct inquiries to the NFA Board of Directors.