

<b>Name of Guidelines</b>	<b>Dealing with Misconduct Guidelines</b>
<b>Description of Guidelines</b>	
<input type="checkbox"/> New Policy <input type="checkbox"/> Revision	
<b>Description of Revision</b>	<i>Delete</i>  <i>Please type brief description of the deletion and specify information to be deleted</i>
	<i>Insert</i>  <i>Please type brief description of the insert and specify information to be inserted</i>

### Human Resources Directorate

<b>Policy and Revision Number</b>	
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## 1. INTRODUCTION

The following guidelines are intended to assist nominated supervisors and managers undertake their roles in managing misconduct and serious misconduct. Human Resources Consultants in each State are available to provide further advice.

Nominated supervisors and managers must adhere to natural justice principles in dealing with cases of misconduct or serious misconduct. This means that all aspects of the process must be reasonable, transparent and procedurally fair.

If necessary, the University may investigate the consequences of conduct of a staff member or former staff member when required to do so in the public interest. The University may instigate an investigative process that might give rise to disciplinary action for misconduct or serious misconduct where it appears that a staff member may have committed a breach of the law or a serious breach of a University policy.

Nothing in this Policy prevents an Executive Staff member, a Executive Planning Group member or the Vice-Chancellor from referring a question of possible misconduct or serious misconduct to a supervisor for appropriate action or from undertaking an enquiry into a staff member's behaviour.

## 2. NATURAL JUSTICE AND PROCEDURAL FAIRNESS

Natural justice is about the concept of fairness. The two primary principles that underpin natural justice are:

- a person who will be affected by a decision should be given a fair opportunity to state her/his case and to know and answer the other side's case before that decision is made; and,
- the decision-maker must be unbiased.

The main elements of procedural fairness are:

- a person must be advised of precise details of the allegations against him/her, including the source(s) of the allegation;
- a person should be given a reasonable opportunity to present his or her version of events at each step of the process before further action is taken;
- the person who is making the allegation should not be the person who investigates the matter;
- an investigation must be undertaken impartially and be open to consideration of the case provided by the staff member and by those persons asked to give testimony;
- the final decision should be impartial and based on the facts.

## 3. MISCONDUCT AND SERIOUS MISCONDUCT

### 5.1 What is Misconduct?

The University defines misconduct to mean the behaviour, attitude or a particular act of a staff member that is considered by the University to be unacceptable.

## **5.2 What is serious misconduct?**

The University defines serious misconduct to mean serious misbehaviour or deliberate action(s) of a staff member which may cause a serious impediment to the carrying out of the staff member's duties or to the staff member's colleagues carrying out their duties.

Serious misconduct may include, but is not limited to, actions such as:

- fraud;
- dishonesty;
- theft;
- being intoxicated or affected by drugs at work;
- assault;
- refusal to carry out a lawful or reasonable instruction;
- wilful or gross negligence such as to endanger health or safety.

## **4. DEALING WITH MISCONDUCT**

This policy sets out the key steps to be taken when required to address misconduct. It is essential that these steps are carried out in accordance with the natural justice and procedural fairness principles outlined above.

It is expected that nominated supervisors will exercise good judgement in dealing with matters of unacceptable behaviour which come to their attention. While all such matters should be dealt with promptly, it may not be necessary to take action under the University's misconduct provisions in every case. Under many circumstances, informal counselling of the staff member may produce the desired improvement.

Where a nominated supervisor receives a complaint or otherwise forms a view that a staff member's behaviour, attitude or action(s) may constitute misconduct, then he or she may undertake a preliminary inquiry into the matter.

## **5. MEETING WITH THE STAFF MEMBER**

If, following preliminary inquiries and discussions with a staff member, a supervisor reasonably forms a view that the behaviour of a staff member is not acceptable, it will be necessary to inform the staff member. This is best done by arranging a meeting with the staff member.

### **5.1 Preparing for the Meeting**

In preparation for the meeting with the staff member to discuss the concerns, it is recommended that the supervisor take the following steps:

- Organise a suitable time and location for the meeting;
- Inform the staff member that they may be assisted by a person of their choice, provided that person is not currently a practising barrister or solicitor.
- Inform the staff member in advance of the purpose of the meeting, including the fact that the meeting is being held to discuss matters of concern in;
- Review any relevant documentation, including extracts from the enterprise agreement and these guidelines;

- Identify the specific behaviour, attitude or action(s) which have given rise to the problem;
- List the reasons for the view that the behaviour, attitude or action(s) constitutes misconduct;
- Identify specific improvements that are required;
- Consider what opportunities could be offered to the staff member in order to improve their behaviour, attitude or action(s). This may include training or counselling;
- Establish a realistic time frame for the improvements to be made;

## 5.2 The Meeting

At the meeting with the staff member to discuss the matters of concern, the nominated supervisor will:

- Inform the staff member of the concern(s) and the reasons for those concern(s);
- Invite the staff member to provide details of any mitigating circumstances which may have adversely affected their behaviour, attitude or action(s) and give fair consideration to these;
- Inform the staff member specifically about how their behaviour, attitude or action(s) are unacceptable;
- If applicable, counsel the staff member on the specific nature of the required improvement;
- Discuss suggestions for improving performance, including desirable/appropriate behaviours, and/or provision of further training or counselling;
- Set a reasonable time frame for the required improvement. The time frame should be sufficient to provide a reasonable opportunity to remedy the problem;
- Advise the staff member of the consequences of failing to improve their behaviour, attitude or actions, including the possibility of formal disciplinary action;
- Make a record of the meeting and provide a copy to the staff member, the nominated supervisor's manager and the relevant Executive staff member.

## 6. REVIEW

Throughout the review period, the nominated supervisor should be monitoring whether the staff member has improved their behaviour, attitude or action(s).

If, at the end of the review period, the staff member's behaviour, attitude or action(s) have improved to the required standard, a meeting should be held with the staff member in order to advise her/him accordingly. This should be documented and the staff member provided with a copy of the documentation.

If, at the end of the review period, the staff member's behaviour, attitude or action(s) have not improved to the required standard, a report to that effect should be submitted to the relevant Executive staff member. The report should state clearly which specific aspects of the staff member's behaviour, attitude or action(s) are considered unacceptable and record the actions taken to remedy the problem. A copy of the report will also be provided to the staff member.

If the Executive staff member concludes that the process has not produced the required improvement(s), the report, endorsed by the Executive Staff member, is forwarded to the relevant Executive Planning Group (EPG) member and a copy is provided to the staff member. The report will state the problem clearly, record the actions taken to remedy it and set out the recommended course of action to address the concerns.

The staff member should then be invited by the EPG member to submit a written response to the report to the EPG member within ten working days.

## **7. EXECUTIVE PLANNING GROUP MEMBER ACTION**

The EPG member considers the report, the staff member's response and consults with the Executive staff member.

In order to satisfy the requirements of procedural fairness, the EPG member will check that the following have been undertaken:

- Appropriate steps have been taken to bring the specific nature of the staff member's unacceptable behaviour to the staff member's attention;
- The staff member has been given a reasonable opportunity to respond;
- Any response from the staff member has been taken into account;
- The staff member has been given a reasonable opportunity to rectify the problem.

If these requirements have not been met, the EPG member should refer the matter back to the Executive staff member for appropriate action. Alternatively, the EPG member may decide that no further action is warranted and advise the staff member and the Executive staff member accordingly.

If the EPG member considers that misconduct has occurred, the EPG member submits a recommendation to the Vice-Chancellor concerning disciplinary action, or the need to have the matter further investigated. If formal allegations of misconduct are to be provided to the staff member, the principles of natural justice and procedural fairness must be applied to the process for investigating the matter. The Director, Human Resources and the Executive Staff member will review the documentation relating to the matter of misconduct, and will prepare draft formal allegations. The draft formal allegations will be considered by the Vice-Chancellor and provided to the staff member if a formal investigation is to be undertaken by a Misconduct Committee.

If the Vice-Chancellor believes the matter requires further investigation he may refer the matter for prompt investigation by a Misconduct Committee for staff covered by the ACU Staff Enterprise Agreement 2005 – 2008 or, alternatively, to an Investigator in the case of a staff member covered by an AWA at ACU.

## **8. DEALING WITH SERIOUS MISCONDUCT**

If a nominated supervisor forms the view that a staff member's behaviour or actions may give rise to the need for an investigation for serious misconduct, this should be discussed with the relevant Executive Staff member who will consult with the Director, Human Resources. The Director, Human Resources and the Executive Staff member will review the documentation relating to the matter of serious misconduct, and will assess if formal allegations are to be prepared. If formal allegations of serious misconduct are to be provided to the staff member, the principles of natural justice and procedural fairness must be applied to the process for investigating the matter.

Formal allegations of serious misconduct must be referred to the Vice-Chancellor to be investigated.

## **9. DISCIPLINARY ACTION BY THE VICE-CHANCELLOR**

If, having considered the recommendations from the Executive Planning Group member and the report of the Executive Staff member and, where applicable, a Misconduct Committee's findings on the facts, the Vice-Chancellor is of the view that there has been no misconduct or serious misconduct the Vice-Chancellor will promptly advise the staff member in writing, and may, by agreement with the staff member, record the advice in an appropriate manner.

Before deciding to formally take disciplinary action, the Vice-Chancellor will:

- (a) invite the staff member to advise within five working days, in writing, any matters that she/he may wish the Vice-Chancellor to take into account at the time a decision as to disciplinary action is to be considered;
- (b) have regard to any such matters brought to attention by the staff member when deciding whether any disciplinary action should be taken; and,
- (c) advise the staff member of that decision and of the operative date of any disciplinary action to be taken.

If formal disciplinary action is to be taken, the Vice-Chancellor will advise the staff member in writing of the decision and the date of effect of the decision.

## **10. CHECKLIST FOR NOMINATED SUPERVISORS AND MANAGERS**

- Do you have all relevant and accurate details?
- Is there sustainable evidence that the required standard of conduct has not been met?
- Has the staff member been made aware of all aspects of the unacceptable behaviour, attitude or action(s)?
- Has the staff member been advised that their behaviour, attitude or action(s) are unacceptable?
- Have the consequences of the behaviour, attitude or action(s) been explained to the staff member from the outset?
- Have you checked the notes from any previous relevant discussions?
- Are you being consistent in relation to similar behaviour, attitude or action(s) of other staff members?
- Has the misconduct interview been thoroughly planned?
- Is the planned action appropriate to the seriousness of the problem?
- Has the process been fully documented?