



THE UNIVERSITY OF
NOTRE DAME
A U S T R A L I A

POLICY:
MANAGING MISCONDUCT

Purpose: To ensure that allegations of misconduct made against Staff Members of the University are handled appropriately.

Responsible Executive: Chief Operating Officer

Responsible Office: Professional Standard and Conduct

Effective Date: 17 February 2017

Modification History:

Last Edited:

Date of Next Review: TBA

1 Introduction and Purpose

The purpose of this document is to set out clear guidelines to be followed by those responsible for investigating allegations of misconduct or serious misconduct. This Policy is designed for the benefit of both those responsible for investigating the alleged misconduct and the Staff Member the subject of any investigation.

In following this Policy those responsible for implementing the process must be guided by the principles of procedural fairness and natural justice.

2 Definitions and Scope

- 2.1 This Policy will be used where allegations of misconduct or serious misconduct are raised. For the purpose of this Policy, these procedures apply in the same way to misconduct and serious misconduct.
- 2.2 For the purposes of this Policy, **Staff Member** means any employee of the University or any other person who is subject to this Policy by reason of their contractual relationship with the University.
- 2.3 Allegations of misconduct or serious misconduct will not be treated as a grievance under the University's Staff Grievance Policy.
- 2.4 This Policy will not be used where allegations of Workplace Bullying are raised, except to the extent that the University's Workplace Bullying Policy provides for the matter to be actioned under this Policy.
- 2.5 For the purposes of this Policy, **misconduct** means any behaviour that is not serious misconduct but is unacceptable or unsatisfactory within the employment relationship. It may include, but is not limited to, conduct that is in breach of the University's Objects, Code of Conduct, Statutes, Policies and Procedures, or conduct which is inconsistent with the duties in the Staff Member's contract of employment (such as intentional failure to comply with lawful and reasonable directions and dishonest use of University property).
- 2.6 For the purposes of this Policy, **serious misconduct** means:
- a) wilful or deliberate behaviour by a Staff Member that is inconsistent with the continuation of the contract of employment;
 - b) conduct or behaviour of a kind that constitutes a serious impediment to the carrying out of a Staff Member's duties or to a Staff Member's colleague carrying out their duties;
 - c) serious dereliction of duties;
 - d) misconduct of sufficient seriousness as could constitute termination of employment;
 - e) conduct that causes serious and imminent risk to:
 - i. the health or safety of a person; or
 - ii. the reputation, viability or profitability of the University;

- f) the Staff Member refusing to carry out a lawful and reasonable instruction that is consistent with the Staff Member's contract of employment;
- g) repeated instance(s) of misconduct (whether similar or different in form); and
- h) conduct that of itself may not normally be considered serious misconduct, but is part of an established pattern of behaviour of misconduct by a Staff Member.

3 Policy

- 3.1 The University will maintain this policy for dealing with allegations of misconduct against Staff Members which can be accessed by Staff Members.
- 3.2 In dealing with an allegation of misconduct the University will ensure that:
 - a) the Staff Member against whom a complaint of misconduct is made is afforded substantive and procedural fairness;
 - b) the interests of all parties are given full consideration; and
 - c) the matter is dealt with confidentially and in a timely manner.

4 Process

Allegation of Misconduct

- 4.1 Where an allegation of misconduct has been made against a Staff Member, the allegation must be set out in writing and referred immediately to the Dean or Executive Director relevant to the Staff Member and to the Vice Chancellor.

Local Level Management

- 4.2 Where appropriate, the Dean or Executive Director may deal with the allegation at the local level through an initial enquiry into the matter and resolution at the local level using appropriate interventions, including but not limited to, counselling, mediation and training.
- 4.3 Where the Dean or Executive Director considers that it is appropriate to deal with the allegation at the local level, he or she will advise the Staff Member of the allegations in sufficient detail (where possible) to enable the Staff Member to understand, properly consider and respond to the allegations.
- 4.4 Where the Dean or Executive Director determines that a meeting is required to discuss the allegations, the Dean or Executive Director will schedule a meeting with the Staff Member, at which the Staff Member may bring a support person, who may be a Union representative.
- 4.5 The Dean or Executive Director must provide the Staff Member with a copy of this Policy and, if applicable to their employment, a copy of the relevant clause of the University of Notre Dame Staff Enterprise Agreement 2015 – 2017 ('the Enterprise Agreement').

Referral to Vice Chancellor

4.6 Where the Dean or Executive Director:

- a) is unable to resolve the allegation at the local level; or
 - b) is of the view that it is not appropriate to deal with the allegation at the local level; or
 - c) perceives a conflict of interest on their part in dealing with the matter; or
 - d) considers it to be in the best interests of all parties;
- they will refer the complaint to the Vice Chancellor.

Formal Investigation

4.7 The Vice Chancellor will appoint an **Investigating Officer** to deal with the allegation/s.

4.8 The Investigating Officer will write to the Staff Member against whom the allegation/s has been made within 5 working days of the allegation/s being made, to advise the Staff Member:

- a) of the allegation/s made against the Staff Member in sufficient detail (where possible) to enable the Staff Member to understand and properly consider and respond to the allegation/s;
- b) that the Investigating Officer has been appointed by the Vice Chancellor to conduct an investigation into the allegation/s; and
- c) of arrangements for a meeting between the Staff Member and the Investigating Officer to give the Staff Member the opportunity to respond to the allegation/s.

4.9 Where a Staff Member is required to attend a meeting under clause 4.8(c) they will be entitled to have a Support Person present, who may be a Union representative.

4.10 The Staff Member will be provided with a copy of this Policy and, if applicable to their employment, a copy of the relevant clause of the Enterprise Agreement.

Staff Member's Response to Allegation/s

4.11 Where the Staff Member admits the allegation/s in full, the Investigating Officer may:

- a) advise the Vice Chancellor; and
- b) recommend to the Vice Chancellor the appropriate disciplinary action to be taken against the Staff Member.

4.12 A Staff Member who admits the allegation/s in full is only entitled to appeal the disciplinary action proposed.

Suspension With or Without Pay Pending Outcome of Investigation

- 4.13 If, at any time, the Investigating Officer is of the view that the allegation/s would, if substantiated, constitute serious misconduct, the Investigating Officer may recommend to the Vice Chancellor that the Staff Member be suspended from their employment with or without pay pending the outcome of the investigation.
- 4.14 The Vice Chancellor may suspend the Staff Member with or without pay pending the outcome of the investigation.
- 4.15 A Staff Member will be advised of any decision to suspend the Staff Member in accordance with clause 4.14 as soon as practicable after the decision is made.
- 4.16 Where a Staff Member is suspended without pay, any lost income will be reimbursed if it is found that there was no serious misconduct.
- 4.17 In the event that the Staff Member is suspended without pay, he or she may apply to take leave or on the grounds of financial hardship to the Vice Chancellor. Any decision will be at the absolute discretion of the Vice Chancellor.

Conduct of Investigation

- 4.18 The Investigating Officer must gather all available information in relation to the alleged misconduct, including interviewing any person/s involved. The Staff Member to whom the allegation/s relate will be provided with no less than 7 working days to prepare a response to any allegation/s.
- 4.19 The Investigating Officer will prepare a report which must:
- a) state their findings of fact concerning the allegation/s referred for investigation;
 - b) state the basis for those findings of fact;
 - c) state whether or not, in their view, the allegation/s of misconduct have been substantiated;
 - d) identify any relevant mitigating circumstances arising from the investigation; and
 - e) make a recommendation to the Vice Chancellor as to what disciplinary action, if any, will be taken against the Staff Member.
- 4.20 The disciplinary action that may be recommended to the Vice Chancellor may include, but is not limited to:
- a) providing the Staff Member with a written warning;
 - b) requiring the Staff Member to undertake counselling or training; or
 - c) where serious misconduct has been substantiated, terminating the employment of the Staff Member, with or without notice depending on the circumstances.
- 4.21 The Investigating Officer will provide a copy of the report to the Vice Chancellor and the Staff

Member.

- 4.22 The Investigating Officer will advise the Staff Member that he or she has the right to appeal the findings and/or recommendations of the Investigating Officer and that the Staff Member must lodge an appeal with the Vice Chancellor, in writing, within 5 working days of receipt of the Investigating Officer's report.
- 4.23 If the Staff Member does not lodge an appeal with the Vice Chancellor within the timeframe set out in clause 4.22, the Vice Chancellor may make a decision on the basis of the report as to any disciplinary action to be taken and that decision will be final, except to the extent that any tribunal or court can determine the matter.
- 4.24 If the Staff Member does not lodge an appeal with the Vice Chancellor, where appropriate, the complainant will be notified of the Vice Chancellor's decision.

5 Appeal

- 5.1 In the event that the Staff Member lodges an appeal of the findings or recommendations as to disciplinary action of the Investigating Officer, the Vice Chancellor will refer the matter to a Staff Review Committee convened for this purpose.
- 5.2 In conducting its review, the Staff Review Committee will:
- a) investigate the evidence, and the Investigating Officer's report;
 - b) ensure that the Staff Member has had adequate opportunity to answer allegations;
 - c) take into account all materials it believes appropriate to establish facts in dispute;
 - d) be able to hear any person or receive any materials it sees fit to assist in its deliberations;
 - e) allow the Staff Member, if they so choose, to be represented in the matter;
 - f) ensure that the Staff Member or their representative has the right to make submissions, provide relevant witnesses and to present and challenge evidence; and
 - g) in its discretion, allow any other person the Staff Review Committee wishes to hear from (or their representative) the right to make submissions and to present and challenge evidence.
- 5.3 The Staff Review Committee will provide a written report to the Vice Chancellor setting out:
- a) their findings of fact concerning the allegation/s referred for investigation;
 - b) the basis for those finding of facts;
 - c) whether or not, in their view, the allegation/s of misconduct have been substantiated;
 - d) any relevant mitigating circumstances arising from the investigation;
 - e) what disciplinary action, if any, should be taken against the Staff Member; and

- f) where a suspension without pay has been imposed, whether, and on what grounds, back-payment should be made.
- 5.4 Following consideration of the Staff Review Committee report, the Vice Chancellor will provide a copy to the Staff Member and, as soon as practicable, advise the Staff Member, in writing:
- a) of the Vice Chancellor's decision;
 - b) of any disciplinary action that will be taken against the Staff Member; and
 - c) where a suspension without pay has been imposed, whether back-payment will be made.
- 5.5 The action of the Vice Chancellor under clause 5.4 will be final, except to the extent that any tribunal or court can determine the matter.
- 5.6 Where appropriate, the complainant will be notified of the Vice Chancellor's decision.

6 Records

- 6.1 Where there is a finding of misconduct or serious misconduct against a Staff Member, documentation relating to the investigation may be placed on the Staff Member's Staffing file. Such documentation may include records of meetings, discussions with witnesses, responses, correspondence and reports.