Name of Policy | Misconduct and Serious Misconduct Policy
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Description of Policy | This policy outlines the processes and procedures to be followed in relation to allegations of misconduct and serious misconduct by staff at ACU.
Policy applies to | ☒ University-wide
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Policy Status | ☒ Revision of Existing Policy

Approval Authority | Vice-Chancellor and President
Governing Authority | Chief Operating Officer
Responsible Officer | Director, Human Resources

Approval Date | March 2012
Effective Date | March 2012
Approval Date of Last Revision | 1 July 2019
Effective Date of Last Revision | 1 July 2019
Date of Policy Review* | May 2022

* Unless otherwise indicated, this policy will still apply beyond the review date.

Related legislation, policies, procedures, guidelines and local protocols | Australian Catholic University Staff Enterprise Agreement 2017 - 2021
Acceptable Use of IT Facilities Policy
The ACU Mission
Code of Conduct for All Staff
Paid Outside Work Policy
Workplace Bullying Policy and Procedure
Protected Disclosures Policy
Discrimination and Harassment Policy
1. **Purpose**

This policy outlines the process to be undertaken to address cases of alleged misconduct or serious misconduct by a staff member at the University.

2. **Scope**

2.1 This policy applies to Academic and Professional Staff members who are covered by the provisions of the *Australian Catholic University Staff Enterprise Agreement 2017 - 2021* (the Agreement) and who have passed their minimum period of employment.\(^1\)

2.2 This policy does not apply to casual staff or during a staff member’s minimum period of employment.

2.3 References in this policy refer to the relevant provisions of the Agreement. Nothing in this policy limits the rights of a staff member to make a protected disclosure in accordance with the University’s Protected Disclosures Policy.

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\(^1\) The Minimum Period of Employment is normally six months of service from the date of commencement.
3. **Policy Statement**

The University expects its staff to behave professionally and uphold the University’s Mission, Values and Code of Conduct for All Staff in undertaking their duties. Cases of alleged misconduct or serious misconduct by a staff member will be dealt with seriously and promptly, and in line with natural justice and procedural fairness principles in accordance with this policy.

4. **Approvals**

All decisions in relation to the application of this policy must be in accordance with the relevant Delegations of Authority Policy and Register.

5. **Principles and Procedures**

5.1 **Action to Address Misconduct or Serious Misconduct Principles**

5.1.1 As per clause 7.2 of the Agreement, the provisions provided in this clause are a complete code to address misconduct or serious misconduct. The provisions do not apply to casual staff or during a staff member’s minimum period of employment.

5.1.2 The provisions of this clause in no way restrict the University from carrying out investigations relating to the consequences of conduct of a staff member or former staff member when required to do so in the public interest.

5.1.3 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.

5.1.4 Nothing prevents a Member of the Executive or Senior Executive, or the Vice-Chancellor and President, 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.

5.1.5 Throughout the proceedings associated with misconduct or serious misconduct, a staff member may choose to be assisted by a person of their choice, provided that person is not a practising barrister or solicitor.
5.1.6 Proceedings associated with misconduct or serious misconduct will be conducted in line with natural justice and procedural fairness.

5.1.7 The Vice-Chancellor and President may at any time suspend a professional staff member with pay, or an academic staff member with or without pay, if the Vice-Chancellor and President is of the view that the alleged conduct amounts to conduct of a kind envisaged in Regulation 1.07 of the Fair Work Act Regulations 2009, so that it would be unreasonable to continue the staff member’s attendance at work pending further investigation.

5.1.8 The management of misconduct/serious misconduct will be in accordance with the University Misconduct and Serious Misconduct Policy and Procedures.

5.2 Misconduct and Serious Misconduct

5.2.1 If an allegation of misconduct or serious misconduct (as defined in clause 1.3 of the Agreement) is made, the staff member will be:

a. advised in writing of the alleged misconduct or serious misconduct, including details of the allegations and whether they are considered to be serious misconduct; and

b. given a reasonable opportunity to be heard and/or to make written submissions, within 10 working days, in relation to the allegations.

5.2.2 If the staff member admits to the allegations, and if appropriate in the University’s view, the University may give the staff member a reasonable opportunity to improve their conduct, otherwise the matter will be considered by the Vice-Chancellor and President under clause 5.4 of this Policy.

5.3 Suspension and Additional Allegations

5.3.1 Where an allegation of serious misconduct has been made against a staff member, the Vice-Chancellor and President may, at any stage during the procedures under this clause, suspend a professional staff member with pay, or an academic staff member with or without pay, until the conclusion of the matter provided that:

(i) with the approval of the Director, Human Resources, the staff member may draw on any accrued entitlement to recreation leave or long service leave for the duration of the suspension without pay;
(ii) the Director, Human Resources may, at any time, direct that salary be paid in part or in full, on the grounds of hardship for the period of suspension or a part period;

(iii) the Vice-Chancellor and President may, at any time, reconsider the issue of the suspension of the staff member.

5.3.2 While suspended, the staff member will be excluded from the University or any identified parts of the University, but will be permitted reasonable access to the University including electronic records to prepare their case and to collect personal property.

5.3.3 If at any stage during the procedures under this clause, it is found that the allegation(s) should be amended or new allegations added, or the allegation(s) contain additional elements which amount to serious misconduct, the staff member must be advised of this in writing and be given a further reasonable opportunity to be heard and to make written submissions prior to any further steps being taken by the University.

5.4 Decision

5.4.1 The Vice-Chancellor and President will consider the allegation(s) and the staff member’s response.

5.4.2 The Vice-Chancellor and President may seek additional information prior to making their decision if it is considered necessary.

5.4.3 The Vice Chancellor and President may determine that allegation(s) of serious misconduct amount only to misconduct.

5.4.4 The Vice-Chancellor and President will advise the staff member in writing of their decision as to whether there was misconduct and/or serious misconduct. If there was misconduct and/or serious misconduct, the Vice-Chancellor and President will notify the staff member of their decision, any disciplinary action and of the operative date of that disciplinary action.
5.4.5 The staff member’s employment may be terminated without notice (or payment in lieu) if they have engaged in serious misconduct. If the Vice-Chancellor’s decision is to terminate for serious misconduct without notice, the decision will take effect at the end of ten (10) working days after notification under clause 5.4.4, or if the staff member seeks a review in accordance with clause 5.5 and the original decision is confirmed under clause 5.7.1 will take effect at that time.

5.4.6 If the Vice-Chancellor and President determines that no disciplinary action will be taken, and the staff member has been suspended under clause 5.3.1, the staff member will be reinstated at no loss of salary or conditions.

5.4.7 Except where the staff member seeks a review in accordance with clause 5.5 of a decision to terminate or demote, the Vice-Chancellor and President’s decision under clause 5.4.4 is final, subject to the jurisdiction of any court or tribunal which, but for this clause, would have jurisdiction to deal with the matter.

5.5 Review of Decision – Termination of Employment or Demotion

If a decision made under 5.4.4 is a decision to terminate the employment of a staff member or to demote, a staff member may seek review of the decision of the Vice-Chancellor and President within ten (10) working days of the staff member receiving notice of the decision.

In order to request a review, a staff member must provide the Director, Human Resources with the following materials at the time the request is lodged:

(i) the basis for requesting the review;
(ii) any written submissions supporting the request for review;
(iii) any documentary evidence that the staff member relies on in respect of (i) and (ii).

5.6 Independent Review

5.6.1 If the staff member seeks a review in accordance with clause 5.5 the Director, Human Resources will engage an Independent Reviewer within ten (10) working days and provide the reviewer with the request for review and materials. The Independent Reviewer is to be agreed between the University and the NTEU or CPSU NSW as appropriate.
5.6.2 The University will provide the Independent Reviewer with its submissions and any supporting materials within ten (10) working days of the request for review.

5.6.3 The Independent Reviewer will report their findings and recommendations to the staff member and the Vice-Chancellor and President or Director, Human Resources, outlining:

a. whether there is, overall, sufficient evidence to support a finding of misconduct/serious misconduct (in the case of review of decisions under clause 5.5);

b. whether there has been a substantial flaw in following the procedures of this clause; and

c. make a recommendation(s) (if any) about disciplinary action in light of the matters outlined in (a) and (b).

5.6.4 The Independent Reviewer will consider material provided in accordance with clause 5.6.2. The Independent Reviewer may seek additional information if the Independent Reviewer considers that this is necessary.

5.6.5 The Independent Reviewer will provide their report within ten (10) working days of receiving the University’s submissions to the Vice-Chancellor and President or Director of Human Resources of the matters in the clause.

5.6.6 The Director, Human Resources, will not unreasonably refuse a request from the Independent Reviewer for an extension of time of up to ten (10) working days.

5.7 Further consideration of termination or demotion decision

5.7.1 The Vice-Chancellor and President, having considered the Independent Reviewer’s report, may confirm the original decision or may reconsider the preliminary decision and determine what, if any, disciplinary action should be taken. The Vice-Chancellor and President may seek additional information if the Vice-Chancellor and President considers that this is necessary.

5.7.2 The Vice-Chancellor and President will then advise the staff member’s supervisor or relevant member of the Executive and the staff member in writing of the decision.
5.7.3 Where the original decision was to terminate the staff member’s employment and this is confirmed, the notice period (if any) (or payment in lieu) will then apply from the written notification in clause 5.7.2.

5.7.4 The decision of the Vice-Chancellor and President will be final, subject to the jurisdiction of any court of tribunal which, but for this clause, would have jurisdiction to deal with the matter.

5.8 Notice Periods in Relation to Serious Misconduct

Where, in accordance with provisions of this clause, the Vice-Chancellor and President has confirmed a decision to terminate the employment of a staff member, notice or payment in lieu will be as provided in accordance with this clause. The staff member will receive the minimum period of notice, or payment in lieu of notice, of their last day of employment as outlined below:

<table>
<thead>
<tr>
<th>Period of Continuous Service at the end of the day notice is given</th>
<th>Period of Notice</th>
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<tbody>
<tr>
<td>Less than 3 years</td>
<td>At least 2 weeks</td>
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<tr>
<td>3 years but less than 5 years</td>
<td>At least 3 weeks</td>
</tr>
<tr>
<td>5 years or over</td>
<td>At least 4 weeks</td>
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<tr>
<td>Over 45 years and greater than 2 years continuous service</td>
<td>Plus one additional week to the above</td>
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Payment instead of notice will be made if the University does not require the person to work out the notice period. Where the staff member is only required to work part of the notice period, the University will pay out the remainder of the notice period.

Any payments in lieu of notice will be based on the staff member’s substantive salary at the date of cessation of employment.

6. Assistance for Staff Members

As per clause 5.1.5, the staff member should consider the following guidance if choosing assistance by a person of their choice throughout the proceedings:

6.1 The person who is providing assistance may undertake the role of either a support person, or the role of the staff member’s “staff representative” (as defined in clause 1.3 of the Agreement).
6.2 The role of a support person is to provide moral and practical support to the staff member, but not to act as their advocate.

6.3 Alternatively, a staff member may choose to be represented by their “staff representative” who may be a union member or union official, but who is not a practising barrister or solicitor.

7. Revisions made to this Policy

<table>
<thead>
<tr>
<th>Date</th>
<th>Major, Minor or Editorial</th>
<th>Description</th>
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<tbody>
<tr>
<td>18 October 2016</td>
<td>Major</td>
<td>Updated to include the right of staff members to make Protected Disclosures.</td>
</tr>
<tr>
<td>1 July 2019</td>
<td>Major</td>
<td>Updated to incorporate provisions as per clause 7.2 of the ACU Staff Enterprise Agreement 2017 – 2021.</td>
</tr>
</tbody>
</table>

The University may make changes to this policy from time to time to improve the effectiveness of its operation. In this regard, any staff member who wishes to make any comments about this policy may forward their suggestions to Human Resources.

8. Further Assistance

Any staff member who requires assistance in understanding this policy should first consult their nominated supervisor who is responsible for the implementation and operation of these arrangements in their work area. Should further information or advice be required staff should visit Service Central.
Appendix 1
Process for managing an allegation of Misconduct or Serious Misconduct

When an allegation of misconduct or serious misconduct is made the staff member in question is advised in writing of the alleged misconduct or serious misconduct and given a reasonable opportunity to be heard and/or to make written submissions within ten (10) working days in relation to the allegations.

Note: Where an allegation of **serious misconduct** has been made against a staff member the Vice-Chancellor and President (VCP) may suspend a Professional or Academic staff member until the conclusion of the matter.

The VCP considers the allegation(s) and the staff member’s response and may seek additional information prior to making a decision. The VCP may determine that allegation(s) of serious misconduct amount only to misconduct.

The VCP advises the staff member in writing of their decision as to whether there was misconduct and/or serious misconduct. If there was misconduct and/or serious misconduct, the VCP will also advise any disciplinary action and the effective date of that action.

If the VCP determines that no disciplinary action will be taken the matter is closed. If a staff member has been suspended, the staff member will be reinstated at no loss of salary conditions.

The VCP may decide to terminate the staff member’s employment without notice (or payment in lieu) if the staff member has engaged in **serious misconduct** which will take effect at the end of ten (10) working days from the date the staff member is notified in writing.

The staff member may make a request with the Director, Human Resources for an independent review of the decision by the VCP to demote or terminate their employment by lodging a request within ten (10) working days of the staff member receiving notice.

Human Resources will engage an Independent Reviewer within ten (10) working days of receiving the staff member request, to be agreed between the University and the NTEU and CPSU NSW as appropriate. The University will provide the Independent Reviewer with its submissions and any supporting materials within ten (10) working days of the request for review.

The Independent Reviewer will provide their report within ten (10) working days of receiving the University’s submissions to the VCP or the Director, Human Resources. An extension of ten (10) working days may be granted to the Independent Reviewer by the Director, Human Resources.

The VCP considers the Independent Reviewer’s report and may reconsider the preliminary decision and determine what, if any, disciplinary action should be taken, and may seek additional information if considered necessary.

The VCP advises the staff member’s Nominated Supervisor and the staff member in writing of the decision, which is considered final. Where the original decision to terminate the staff member’s employment is confirmed the notice period will apply from the date of the written notification.