

Name of Policy	Misconduct and Serious Misconduct Policy
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	<input checked="" type="checkbox"/> University-wide <input type="checkbox"/> Specific (<i>outline location, campus, organisational unit etc.</i>) <hr/>
	<input checked="" type="checkbox"/> Staff Only <input type="checkbox"/> Students Only <input type="checkbox"/> Staff and Students
Policy Status	<input type="checkbox"/> New Policy <input checked="" type="checkbox"/> Revision of Existing Policy
Description of Revision	This policy has been updated to include the right of staff members to make Protected Disclosures.

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

Approval Date	18 October 2016
Effective Date	18 October 2016
Date of Last Revision	13 October 2014
Date of Policy Review*	30 June 2017

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

Related Policies, Procedures, Guidelines and Local Protocols	Acceptable Use of IT Facilities Policy ACU Mission The Code of Conduct for All Staff Email Messaging Policy Paid Outside Work Policy Workplace Bullying Policy and Procedure Workplace Grievance Policy and Procedure Protected Disclosures Policy
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1. Background Information

This policy has been developed to outline the processes and procedures to be followed in relation to allegations of misconduct or serious misconduct by staff at ACU.

2. 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, promptly, in line with natural justice and procedural fairness principles in accordance with this policy.

3. Policy 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.

4. Application of Policy

This policy applies to Academic and Professional Staff members who are covered by the provisions of *the Australian Catholic University Staff Enterprise Agreement, 2013 - 2017* (the **Agreement**) and who have passed their minimum period of employment¹. 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.

5. Approvals

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

6. Principles and Procedures

6.1. Action to Address Misconduct or Serious Misconduct Principles

6.1.1. This policy does not apply to casual staff or during a probationary staff member's period of probationary employment, or during a staff member's minimum period of employment.

6.1.2. 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.

¹ The Minimum Period of Employment is normally six months of service from the date of commencement.

- 6.1.3.** 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.
- 6.1.4.** 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.
- 6.1.5.** 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.
- 6.1.6.** 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 1.3(xxx) of the Agreement).
- 6.1.7.** The role of a support person is to provide moral and practical support to the staff member, but not to act as their advocate.
- 6.1.8.** 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.
- 6.1.9.** Proceedings associated with misconduct or serious misconduct will be conducted in line with natural justice and procedural fairness.
- 6.1.10.** 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.
- 6.1.11.** The management of misconduct/serious misconduct will be in accordance with this University Misconduct and Serious Misconduct Policy and Procedures.
- 6.1.12.** At any stage during the proceedings associated with misconduct or serious misconduct, a staff member is entitled to make a protected disclosure in accordance with the University's Protected Disclosures Policy, provided that the disclosure is of the type that is identified as 'Reportable Conduct' under the Protected Disclosures Policy.

6.2. Action to Address Misconduct

- 6.2.1.** Where the University becomes aware of behaviour of a staff member which may constitute misconduct or serious misconduct, depending upon the seriousness of the possible misconduct or serious misconduct, the relevant University officer (who may be the supervisor and/or member of the Executive); may undertake preliminary inquiries and/or discuss the matter with the staff member.
- 6.2.2.** The supervisor and/or Member of the Executive may form the view that there is no case to answer and advise the staff member accordingly.
- 6.2.3.** If, following preliminary inquiries and/or discussions with the staff member, a supervisor and/or Member of the Executive reasonably forms a view that the behaviour of the staff member is not acceptable, the supervisor and/or Member of the Executive may implement one or more of the following options:
- (i) Counsel the staff member on the nature of the improvement required and the time within which reasonable improvement is expected and how the staff member's behaviour and/or interaction with colleagues and stakeholders will be assessed,
- and/or
- (ii) Refer the matter to the relevant Member of the Senior Executive for consideration of potential disciplinary action through the submission of a report to the Vice-Chancellor and President. A copy of the report will be provided to the staff member who will be invited to submit a response to the report to the relevant Member of the Senior Executive within ten (10) working days.

Where the Supervisor/Member of the Executive Decides to Counsel the Staff Member

- 6.2.4.** If the supervisor and/or Member of the Executive decide to counsel the staff member and, at the end of the specified review period, the staff member's behaviour has improved to the required standard; the supervisor and/or Member of the Executive will advise the staff member that no further action will be taken under this clause. The staff member's behaviour and performance will be managed in accordance with the University's performance management policies and procedures and in accordance with the Code of Conduct for All Staff.
- 6.2.5.** If the supervisor and/or Member of the Executive decide to counsel the staff member and, at the end of the specified review period, the staff member's behaviour has not improved to the required standard, the supervisor and/or Member of the Executive will submit a report to the relevant Member of the Senior Executive. A copy of the report will be provided to the staff member who will be invited to submit a response to the report to the relevant Member of the Senior Executive within ten (10) working days.

6.2.6. In circumstances where the supervisor and/or Member of the Executive has decided not to counsel the staff member, but rather to refer the matter/s to the Member of the Senior Executive, the supervisor and/or Member of the Executive will submit a report to the relevant Member of the Senior Executive. A copy of the report will be provided to the staff member who will be invited to submit a response to the report to the relevant Member of the Senior Executive within ten (10) working days.

Consideration of the Report and Response

6.2.7. In considering the report and the staff member's response, the relevant Member of the Senior Executive will first need to be satisfied that the matter has been appropriately and fairly managed in line with the University policy.

6.2.8. If the relevant Member of the Senior Executive decides that the matter has not been appropriately managed, they may refer the matter and/or issues to the supervisor and/or Member of the Executive in order to address the matter or issues in line with the relevant University policy and procedures.

6.2.9. Following consideration of the report and response, if the relevant Member of the Senior Executive concludes that:

a) the behaviour of the staff member may constitute misconduct or serious misconduct,
and/or

the required improvements in behaviour and conduct have not been achieved within the specified timeframe,

b) the relevant Member of the Senior Executive will either:

(i) endorse the report and forward it to the Vice-Chancellor and President with a recommendation that the University consider taking action in relation to potential misconduct or serious misconduct, along with any other appropriate consideration and/or recommendation;
or

(ii) refer the matter back to the relevant supervisor or Member of the Executive to counsel the staff member in accordance with clause 7.2.2.2(i) of the Agreement or take some other appropriate action that does not constitute disciplinary action as defined in the Agreement.

6.2.10. If, on consideration of the report and the staff member's response the Vice-Chancellor and President decides that the matter warrants further investigation then the Vice-Chancellor and President will notify the staff member of the allegation(s) in writing and invite the staff member to submit a written response within ten (10) working days.

- 6.2.11.** The staff member will also be advised in writing that if they fail to respond to the allegations, the Vice-Chancellor and President may determine that the alleged behaviour constitutes misconduct or serious misconduct, and take disciplinary action as defined in sub-clause 1.3(viii) of the Agreement.
- 6.2.12.** If the staff member admits in part or in full the allegation(s), and the Vice-Chancellor and President is of the view that the conduct amounts to misconduct or serious misconduct, then the Vice-Chancellor and President may take disciplinary action.
- 6.2.13.** Alternatively, if the staff member denies the allegation(s), the Vice-Chancellor and President may:
- a) counsel and/or censure the staff member for unsatisfactory behaviour; and/or
 - b) arrange for the matter to be investigated by a Misconduct Investigation Committee or
 - c) take no further action.

6.3. Investigation of Misconduct/Serious Misconduct

- 6.3.1.** Where a matter is referred for investigation a Misconduct Investigation Committee will be appointed by the Vice-Chancellor and President to investigate and prepare a report on the facts of the matter/s referred.
- 6.3.2.** The Misconduct Investigation Committee will consist of three (3) members, namely:
- a) an independent Chairperson external to the University chosen by the Vice-Chancellor and President from the panel of chairpersons established in accordance with the Agreement or, if such a member is not available, another eminent person mutually agreed between the University and the NTEU or CPSU depending on the nature of the allegations;
 - b) a nominee of the Vice-Chancellor and President from within the University; and,
 - c) a union nominee.
- 6.3.3.** The Committee will be assisted by an Executive Officer provided by the University.
- 6.3.4.** In conducting its investigation, the Misconduct Investigation Committee will operate in camera and, will be guided by the principles of natural justice and procedural fairness to inquire into and prepare a report about the facts of the matter(s).
- 6.3.5.** The Committee will:
- (i) where relevant, interview the staff member and any other appropriate person to establish the facts relating to the matter(s) referred for investigation;
 - (ii) take into account any other relevant material or information;
 - (iii) conduct its own fact finding proceedings and interviews. These may occur either in the presence of the staff member and if they so choose, their chosen representative (as defined in sub-clause 1.3(xxx) of the Agreement) allowing the asking of questions, presentation or challenging of evidence, and/or the

provision of submission; or, at the discretion of the Chair, a witness may be interviewed via video conferencing facilities;

- (iv) where it decides that it is appropriate to do so, create, maintain and making available on request to the participants in the process, a sound or video recording of its proceedings but not including its deliberations (subject to the Committee obtaining the written consent of all of the participants to be recorded, in accordance with Federal Privacy Regulations), and
- (v) present a copy of its final report to the Vice-Chancellor and President and the staff member as soon as practicable.

6.4. Consideration and Action by the Vice-Chancellor and President

6.4.1. On receipt of the written report of the Misconduct Investigation Committee and having considered the findings, the Vice-Chancellor and President may:

- a) if no misconduct or serious misconduct has been found, promptly advise the staff member in writing; or,
- b) Take disciplinary action as defined in sub-clause 1.3(viii) of the Agreement.

6.4.2. All actions of the Vice-Chancellor and President to discipline a staff member shall be final, except that nothing in this sub-clause shall be construed as excluding the jurisdiction of any external court or tribunal which, but for this sub-clause, would be competent to deal with the matter. The final determination of the Vice-Chancellor and President is final and is not open to challenge via the Disputes Settling Procedures of the Agreement.

7. Policy Review

The University may make changes to this policy from time to time to improve the effectiveness of its operation. In this regard, staff members who wish 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 – Outline of process for managing Misconduct or Serious Misconduct

