

Name of Guidelines	Executive/Senior Executive Staff - Dealing with Misconduct and/or Serious Misconduct Guidelines
Description of Guidelines	<i>The Guidelines deal with misconduct matters including dismissal for misconduct or serious misconduct. The purpose of the Guidelines is to provide guidance on how to manage misconduct issues and how to conduct a misconduct investigation for an Executive/Senior Executive staff member.</i>
<input type="checkbox"/> New guidelines	<input checked="" type="checkbox"/> Revision
Description of Revision	Revised to clarify the scope of the Guidelines and to introduce a process for managing complaints against Executive and Senior Executive Staff Members

Original Effective Date	4 February 2015
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1 Guidelines Purpose

The Guidelines deal with misconduct matters including dismissal for misconduct or serious misconduct. The purpose of the Guidelines is to provide guidance on how to manage misconduct issues and how to conduct a misconduct investigation. The Guidelines are not legally binding on the Australian Catholic University.

The Guidelines are relevant to Executive/Senior Executive Staff Members described in the Delegations of Authority Policy and Register.

2 Grounds for Dismissing an Executive/Senior Executive Staff Member

Lawful reasons for dismissing an Executive/Senior Executive Staff Member will usually be those specified in the staff member's contract of employment or otherwise applicable common law implied terms.

3 Procedures for Complaints against an Executive/Senior Executive Staff Member

The following procedures apply where any staff member (**Complainant**) makes a complaint against an Executive or Senior Executive Staff Member that is capable of constituting misconduct or serious misconduct (**Complaint**):

- a) Staff members should submit the Complaint to Human Resources at Notifications.HR@acu.edu.au marked to the attention of the Director of Human Resources.
- b) The Director of Human Resources shall immediately refer the Complaint to:
 - i. the relevant Senior Executive Staff Member or another Senior Executive Staff Member determined by the Vice-Chancellor if the relevant Senior Executive Staff Member is a subject of the complaint; and
 - ii. the Vice-Chancellor.
- c) Upon receipt of the Complaint, the relevant Senior Executive Staff Member will appoint, and engage directly with, an independent external legal practitioner approved by General Counsel in accordance with the template at Annexure 'A' to:
 - i. provide advice on any relevant available external complaint resolution process or body to which the Complainant should be referred for complaint management; and/or
 - ii. inquire into and provide advice on the veracity of the complaint, the steps that should be taken by the University and the risks involved; and/or
 - iii. where relevant, investigate the matter or, if considered appropriate on advice from the external legal practitioner, engage an independent investigator to investigate the matter, with a view to making findings of fact and providing a report to the Senior Executive Staff Member in accordance with the process outlined in clause 4.
- d) In the event that the Complainant is able to access an external complaint resolution process or body, the relevant Senior Executive Staff Member shall inform the Complainant that no internal investigation or complaints resolution process will be commenced by the University or that any existing internal investigation or complaints resolution process commenced by the University will immediately cease.
- e) In the event that the Complainant is unable to access an external complaint resolution process or body, the Senior Executive Staff Member shall instruct the independent external legal practitioner to commence or continue the investigation (either directly, or through an independent investigator, as appropriate) and to provide the relevant report referred to in clause 3(c)(iii). Any such investigation shall be conducted in accordance with clause 4.
- f) The independent external legal practitioner engaged by the Senior Executive Staff Member may seek the assistance of General Counsel for the sole purposes of gaining access to relevant documents or witnesses.
- g) Where relevant, the Senior Executive Member of Staff will consult with the Director of Human Resources to effect a dismissal of an Executive/Senior Executive Staff Member, if relevant, at the conclusion of any independent external investigation conducted in accordance with the process outlined in this clause 3 and clause 4.
- h) With the exception of:

- i. the roles ascribed to the Director of Human Resources, General Counsel and an alternate Senior Executive Staff Member (as required) in paragraphs (a), (b), (b)(i), (c), (f) and (g) above; and
 - ii. the Vice-Chancellor,
- no other Executive or Senior Executive Staff Member may be involved in the management of the Complaint unless so determined by the Vice-Chancellor.

4 Procedures for Investigation and Steps Leading to Dismissal

Before the University takes action to dismiss an Executive/Senior Executive Staff Member the subject of a Complaint, the following steps should be taken by the relevant Senior Executive Staff Member responsible for the Complaint:

- a) An investigation by an independent, external investigator engaged by the relevant Senior Executive Staff Member or through the independent external legal practitioner in accordance with clause 3(c) must be conducted and commenced, where reasonably practicable, within 7 days of the University's receipt of the Complaint.
- b) A written statement of the Executive/Senior Executive Staff Member's alleged misconduct and/or serious misconduct should be prepared and given to the Executive/Senior Executive Staff Member within 7 days of the University's receipt of the investigation report;
- c) The Executive/Senior Executive Staff Member should be invited to respond to the allegations in writing within 14 days of the Executive/Senior Executive Staff Member's receipt of the written statement of allegations;
- d) The Executive/Senior Executive Staff Member should be given an opportunity to be heard, having regard to the circumstances of the particular case as to those allegations, including on whether they should be dismissed;
- e) The Executive/Senior Executive Staff Member should be asked to provide relevant information about the allegations, including matters which might mitigate the situation within 14 days of the Executive/Senior Executive Staff Member's receipt of the written statement of allegations;
- f) The University may suspend the Executive/Senior Executive Staff Member from duty, on full pay, during the period of the investigation.

The University may waive or vary these steps if it determines the seriousness of the alleged conduct warrants such a departure.

5 Decision of the Vice-Chancellor

The Vice-Chancellor will consider all relevant information including the information from the investigation and decide what disciplinary action is appropriate in the circumstances. Only the Vice-Chancellor has the delegation to dismiss an Executive/Senior Executive Staff Member of Australian Catholic University and in such circumstances, the decision of the Vice-Chancellor is final.

6 Guidelines review

The University may make changes to this policy and procedures 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 the Director, Human Resources.

Annexure 'A' – Template Engagement Letter

To: [] (Practitioner)¹

Re: [] (Matter)²

Instructed by: [] (Senior Executive Staff Member)³

The Practitioner is engaged in relation to the Matter to:

1. provide advice to the Senior Executive Staff Member on behalf of the University; and/or
2. carry out investigation(s), consistent with the *Executive/Senior Executive Staff - Dealing with Misconduct and/or Serious Misconduct Guidelines* (as may be amended from time to time); and
3. advise the Vice-Chancellor, as necessary.

This engagement shall be subject to the terms of engagement and costs disclosure ordinarily adopted by the Practitioner.

Signed by the Senior Executive Staff Member as an authorised representative on behalf of the University:

.....

Name:

Position:

Date:

¹ Insert name and address of independent legal practitioner to be engaged in accordance with clause 3(c) of the Guidelines.

² Insert subject matter of the advice/investigation (e.g. Allegations of misconduct involving [name of employee and position]).

³ Insert the name of the relevant Senior Executive Staff Member responsible for engaging the Practitioner.