

# Procedure: Managing misconduct, serious misconduct and suspension

## Purpose

To outline the process for the management of misconduct, serious misconduct and suspension of staff, in accordance with the [ANU Enterprise Agreement](#) and [Unsatisfactory performance and misconduct policy](#).

## Definitions

**Designated person** means a Pro Vice Chancellor appointed by the Vice Chancellor to receive complaints and allegations of research misconduct.

**Disciplinary action** means formal counselling; written warnings; withholding increments; demotion from an increment point within a classification level; demotion to a lower classification; other action as recommended by a review committee; or termination of employment.

**Misconduct** means conduct which is not serious misconduct or serious research misconduct but which is wilful conduct which is unsatisfactory, which may include research misconduct; a breach of the Code of conduct; or failure to follow reasonable direction.

**Research misconduct** means significant behaviour that improperly appropriates the intellectual property or contributions of others; that intentionally impedes the progress of research; or that risks corrupting the research record or compromises the integrity of research practices.

**Research misconduct assessor** means a senior researcher appointed by the University to assess whether allegations may be research misconduct.

**Serious misconduct** means a recurrence or continuation of conduct which has previously been found to be misconduct; or serious misbehaviour which may be a single occurrence of a kind which constitutes: a serious impediment to the carrying out of the staff member's duties, or to other staff carrying out their duties; a serious risk to the safety of staff, students or visitors to the University; a serious risk to University property, serious misconduct in research, a serious dereliction of duties, a conviction by a court of an offence which constitutes a serious impediment to the carrying out of duties.

**Serious research misconduct** means the recurrence or continuation of conduct which has previously been found to be research misconduct; a failure to follow research protocols approved by the research ethics committee or statutory licence conditions, where that failure has resulted in an unreasonable risk or actual harm to humans, animals, the environment, or the University.

## Procedure

### Principles

1. The University will endeavour to assist staff members to perform to a high standard through the setting of performance objectives against University goals, regular feedback, and the provision of development opportunities.
2. The University's conduct expectations are specified in University Codes, including the [Code of conduct](#), [Code of research conduct](#), [Code of practice for teaching and learning](#) and [Code of practice for philanthropy](#).
3. The University through the supervisor, and the staff member, must make every effort to resolve instances of possible misconduct, through guidance, counselling and appropriate staff development, or appropriate work allocation before a possible report to the Director – Human Resources.
4. The principles of procedural fairness and natural justice will be applied to all misconduct processes. Those involved in any disciplinary action or grievance process have a duty that any decision not be affected by favouritism, bias or conflict of interest and they must act fairly and impartially.
5. A staff member may seek assistance from a union or staff representative and may seek procedural advice from the Human Resources Division at any time during the processes.
6. Supervisors may seek advice from their local Human Resources area regarding the application of this procedure, or from the Human Resources Division where informal processes have not resulted in improved conduct.
7. All decisions to discipline or terminate the employment of a staff member will be in accordance with this procedure, and before any decision is made to discipline a staff member for misconduct, or serious misconduct, the University must ensure that the steps in this procedure have been complied with.

### Procedures

8. In relation to any allegations of research misconduct or serious research misconduct, before action is taken under this procedure, the allegations will be

referred to a designated person. The designated person will refer the allegation(s) to one of the research misconduct assessors to determine:

- a. whether the conduct that is central to the substance of the allegation(s), if proven, would amount to research misconduct; and
- b. whether a prima facie case of research misconduct exists.

9. If clause 8 (a) and (b) are not satisfied, the allegations will either be dismissed or referred to another relevant process (e.g. misconduct or serious misconduct), the staff member who is subject to the allegations will be informed accordingly.

10. If clause 8 (a) and (b) are satisfied, the research misconduct assessor will refer the allegations back to the designated person who will decide whether the allegations will be pursued according to the provisions of the research misconduct and serious research misconduct procedure as allegations of research misconduct or serious research misconduct.

## **Suspension**

11. The University may, at any time while the process for managing misconduct is in progress, suspend a staff member with pay, or without pay. Suspension of a staff member without pay may occur where the alleged misconduct is of a nature that causes imminent and/or serious risk to the health or safety of a person; and/or the staff member's continued presence on campus otherwise presents a serious risk to the University, its staff, students and/or visitors. Where this occurs, the staff member may draw on accrued annual leave or long service leave entitlements. Any lost salary and other entitlements will be reimbursed if it is ultimately determined that the allegation is dismissed.

12. A staff member who has been suspended must not attend the grounds of the University without prior approval from the Director – Human Resources. Provided that the Director – Human Resources is satisfied that the behaviour of the staff member is not likely to be serious research misconduct, Director – Human Resources will, on application by the staff member, give permission for a staff member to attend a specific part of the University for approved purposes.

## **Misconduct procedure**

13. Where a supervisor has concerns about the conduct of a staff member the supervisor will meet with the staff member as soon as is reasonably practicable to discuss these concerns and establish a reasonable review period. This will, where necessary, include:

- the specific deficiencies in the staff member's conduct;

- appropriate development assistance required to address the issue(s);
- the specific corrective action required;
- the conduct standards required; and
- a reasonable timeframe in which to address the issue/s.

14. Where the staff member has addressed the conduct concerns within the identified timeframe, the informal action will cease.

15. Following the completion of a reasonable review period as outlined in clause 13, if there is little or no improvement in the conduct of the staff member, and after considering any explanation offered by the staff member, the supervisor will work with the staff member to establish a Conduct Agreement, specifying in writing the specific improvements required, the review period, and, if necessary, the additional guidance, assistance and training which would reasonably enable the staff member to meet the appropriate conduct standards.

16. Payment of an increment that falls due where a Conduct Agreement is in place, will be delayed until the supervisor is satisfied that the Conduct Agreement conditions have been met.

17. At the end of the review period defined in clause 13, the supervisor shall advise the staff member in writing that either:

- a. the issues are resolved, and that no further action is required;
- b. a further period of review is required, specifying the new review period; or
- c. that the staff member's conduct constitutes misconduct and that proportionate disciplinary action is warranted, in which case the supervisor will make a report to the Director – Human Resources, which will include the aspects of the staff member's conduct seen as unsatisfactory, the record of the attempts to remedy the problem, and any issues in mitigation of which they were aware.

18. The University will provide the staff member with a copy of the report provided under clause 17 (c). The staff member will be entitled to a reasonable opportunity, of no less than five (5) working days, to submit a written response to the Director – Human Resources.

19. After considering the staff member's response, the Director – Human Resources or Vice-Chancellor's nominee will decide to:

- a. take no further action;
- b. where they are of the view that procedural fairness or natural justice have not been afforded to the staff member, refer the matter back to the

supervisor with a direction to revisit any steps or processes defined within this procedure; or

- c. take proportionate disciplinary action, in which case they will set out in writing and provide to the staff member a statement as to what material has been considered; what acts, omissions, or failing on the part of the staff member constitute misconduct, and any relevant conclusions upon which the findings are based.

20. Where a decision is made to take disciplinary action the staff member may only seek a review of this decision in accordance with the review of decision provisions of the ANU Enterprise Agreement.

### **Serious misconduct**

21. There is no requirement to commence a misconduct process prior to commencing a process for serious misconduct, provided that there are sufficient grounds for considering that serious misconduct may have occurred.

22. Where a supervisor concludes that there are reasonable grounds for any allegation(s) of serious misconduct against a staff member, they will provide a written report to the delegate of the area in which the staff member works. The delegate will firstly satisfy themselves that there are sufficient grounds for considering that serious misconduct may have occurred. If so satisfied the delegate will report in writing to the Director – Human Resources.

23. Where the Director – Human Resources is satisfied that serious misconduct may have occurred, the Director – Human Resources will inform the staff member of the receipt of allegations of serious misconduct and will clearly outline the nature of those allegations in writing to the staff member.

24. The staff member will have five (5) working days from the receipt of the allegations to submit a written response.

25. After considering the staff member's response and any other relevant report or material, the Director – Human Resources will:

- decide that there is no case to answer and inform the staff member, their supervisor and the delegate in writing that the matter is closed and there will be no further action; or
- decide that there is a case of unsatisfactory performance requiring a formal performance review process to commence under the unsatisfactory performance procedures; or
- decide that there is a case of misconduct requiring a formal misconduct review process to commence as defined in clause 15; or

- decide that there is a case of serious misconduct and take proportionate disciplinary action.

26. The Director – Human Resources may appoint an investigation officer to investigate the allegations at any point during the review of allegations.

### **Disciplinary action**

27. Where discipline action is recommended, disciplinary action will mean:

- formal counselling of a staff member by an appropriate supervisor;
- giving a staff member a written warning (including, where appropriate, a final warning);
- withholding an increment;
- demotion from an increment point within a classification level;
- demotion of a staff member;
- other action as recommended by a review committee; or
- termination of a staff member's employment (in the case of un-remediated unsatisfactory performance, serious research misconduct or serious misconduct).

28. In the case of serious misconduct when the decision maker decides to terminate the staff member's employment the staff member will be suspended without pay for five (5) working days in which time the staff member may make an application to have that decision reviewed in accordance with the review of decisions provision of the ANU Enterprise Agreement.

29. If the staff member fails to make an application for a review of the decision, the employment will cease at close of business on the fifth day.

30. If the staff member lodges an application to review the decision, the review process will proceed and the staff member shall remain suspended without pay until the review process is finalised.

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