54 DISCIPLINARY ACTION FOR MISCONDUCT

Application

54.1 The procedures outlined in this Clause apply to all staff (other than casual staff) employed by the University.

Definition

54.2 'Misconduct' means:

(a) serious misbehaviour of a kind which constitutes a serious impediment to the carrying out of a staff member’s duties or to a staff member’s colleagues carrying out their duties; or
(b) conviction by a Court of competent jurisdiction of an offence of a kind that may be reasonably regarded as constituting a serious impediment to the discharge by the staff member of his or her functions or duties, or to the staff member’s colleagues carrying out their functions or duties; and/or
(c) serious dereliction of duties.

54.3 'Disciplinary action' means any action by the University to discipline a staff member for misconduct and may include one or more of the following:

(a) formal censure
(b) formal counselling
(c) demotion by one or more classification levels or increments
(d) withholding of an increment
(e) suspension with pay
(f) termination of employment.

Procedures

54.4 The Vice-Chancellor must follow the procedures of this Clause before taking disciplinary action against a staff member for misconduct. However, where a matter that may involve misconduct has been dealt with in good faith as if it were a case of unsatisfactory performance under Clause 53, the procedures of this Clause are not required, but the procedures of Clause 53, including notice periods and review procedures, must be followed.

54.5 The Vice-Chancellor will consider any allegation/s of misconduct. If the Vice-Chancellor believes the allegation/s warrant further investigation then the Vice-Chancellor will:

(a) notify the staff member in writing and in sufficient detail to enable the staff member to understand the precise nature of the allegation/s, and to properly consider and respond to them, and
(b) require the staff member to submit a written response within ten working days.

54.6 If the staff member denies in part or full the allegation/s, or fails to submit a written response to any allegations, the Vice-Chancellor will:

(a) arrange for the matter to be investigated; or
(b) counsel and/or censure the staff member for unsatisfactory behaviour and take no other action; or
(c) take no further action.

54.7 If the staff member admits in full the allegation/s, and the Vice-Chancellor is of the view that the conduct amounts to misconduct, then the Vice-Chancellor may take disciplinary action, subject to following the procedure described in sub-clause 54.8.

54.8 Before deciding to take disciplinary action, the Vice-Chancellor will:
(a) invite the staff member to advise within five working days, in writing, any matters that he or she may wish the Vice-Chancellor to take into account at the time a decision as to disciplinary action is considered.

(b) have regard to any such matters brought to attention by the staff member when deciding whether any disciplinary action should be taken, and

(c) advise the staff member of that decision and of the operative date of any disciplinary action to be taken.

54.9 Where the Vice-Chancellor is of the view that there has been no misconduct and decides to take no further action under sub-clause 54.6, the Vice-Chancellor will immediately advise the staff member in writing and may, by agreement with the staff member, publish the advice in an appropriate manner.

Investigation of misconduct

54.10 Where a matter is referred for investigation in accordance with sub-clause 54.6(a), an Investigator will be appointed normally within ten working days [refer to Clause 55, Reviewers and Investigators].

54.11 The Investigator will investigate the facts relating to the alleged misconduct, including whether any mitigating circumstances are evident.

54.12 The Investigator will:

(a) conduct proceedings as expeditiously as possible consistent with the need for fairness

(b) provide an opportunity for the staff member and the Vice-Chancellor, should they so choose, to be assisted in the proceedings (but not by a person who is a solicitor or barrister in private practice)

(c) provide an opportunity for the staff member to be interviewed by the Investigator and ensure that he/she has adequate opportunity to answer any allegations of misconduct and put his/her case

(d) conduct all interviews in the presence of the staff member and the Vice-Chancellor and, where applicable their representatives

(e) ensure that the staff member and the Vice-Chancellor have the right to ask questions, to make submissions and to present and challenge evidence

(f) interview any person the Investigator thinks fit to establish the facts of the particular case and take into account any material the Investigator believes appropriate to the case

(g) keep a record of proceedings and

(h) provide a report together with a record of proceedings to the Vice-Chancellor and the staff member as expeditiously as possible following completion of the proceedings

(i) conclude the investigation as expeditiously as possible following appointment of the investigator unless otherwise agreed between the Investigator, the Vice-Chancellor and the staff member.

54.13 On receipt of the report of the Investigator, and having considered the findings on the facts related to the alleged misconduct, including any findings as to whether any mitigating circumstances are evident, the Vice-Chancellor may take disciplinary action.

54.14 If, having considered the investigator's findings on the facts, the Vice-Chancellor is of the view that there has been no misconduct the Vice-Chancellor will immediately advise the staff member in writing. The Vice-Chancellor may, by agreement with the staff member, publish the advice in an appropriate manner.

Suspension

54.15 The Vice-Chancellor may suspend a staff member with pay if the Vice-Chancellor is of the view that it would be unreasonable to continue the staff member's attendance at work pending further investigation.
54.16 During any period of suspension the staff member may be excluded from the University, however, he/she will be permitted reasonable access to the University for the preparation of his/her case and to collect personal property.

Other matters

54.17 This Clause in no way constrains the University from carrying out other or further investigations relating to the consequences of conduct of a staff member or former staff member when required in the public interest, eg inquiring into the truth of research results.

54.18 The action of the Vice-Chancellor under this Clause will be final. However, this Clause does not exclude the jurisdiction of any external tribunal that would be competent to deal with the matter.