49 DISCIPLINARY ACTION FOR MISCONDUCT/SERIOUS MISCONDUCT

Application

49.1 The procedures outlined in this Clause apply to all staff (other than casual staff) employed by the University. A staff member's supervisor should, where appropriate, seek to resolve instances of possible misconduct through guidance, counselling or informal warning, before a report is submitted to the Vice-Chancellor.

Definitions

49.2 'Misconduct' means wilful conduct by a staff member which is unsatisfactory.

49.3 'Serious 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.

49.4 'Disciplinary action' means any action by the University to discipline a staff member for misconduct or serious 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 or without pay; and
   (f) termination of employment.

In cases of misconduct, disciplinary action will not include termination of employment.

Procedures

49.5 The following procedures apply where disciplinary action is to be taken against a staff member for misconduct or serious misconduct. However, where a matter that may involve misconduct or serious misconduct has been dealt with in good faith as if it were a case of unsatisfactory performance under Clause 48, the procedures of this Clause are not required, but the procedures of Clause 48 apply, including notice periods and review procedures.

49.6 The Vice-Chancellor will consider any allegation/s of misconduct and/or serious 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.

49.7 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:
   (c) refer the matter to a Committee for investigation; or
   (d) counsel and/or censure the staff member for unsatisfactory behaviour and take no other action; or
   (e) take no further action.
49.8 If the staff member admits in full the allegation/s, and the Vice-Chancellor is of the view that the conduct amounts to misconduct or serious misconduct, then the Vice-Chancellor may take disciplinary action.

49.9 Investigation of misconduct/ serious misconduct

49.9.1 Where a matter is referred for investigation in accordance with sub-clause 49.7(a), a Committee will be established normally within ten working days in accordance with Clause 50.

49.9.2 The Committee will investigate the facts relating to the alleged misconduct or serious misconduct, including whether any mitigating circumstances are evident.

49.9.3 The terms of reference of the Committee is to report solely on the facts relating to the alleged misconduct or serious misconduct, including whether any mitigating circumstances are evident.

49.9.4 If, having considered the Committee's findings on the facts, the Vice-Chancellor is of the view that there has been no misconduct or serious 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.

49.9.5 On receipt of the report of the Committee (including any minority report) and having considered the findings on the facts related to the alleged misconduct or serious misconduct, including any findings as to whether any mitigating circumstances are evident, the Vice-Chancellor may take disciplinary action.

49.10 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.

Suspension

49.11 The Vice-Chancellor may suspend a staff member with pay, or without pay if the Vice-Chancellor is of the view that the alleged conduct amounts to conduct of a kind that it would be unreasonable to continue the staff member's attendance at work pending further investigation.

49.12 Any such suspension will be subject to the following conditions:

(f) where suspension without pay occurs at a time when the staff member is on paid leave of absence the staff member will continue to receive a salary for the period of leave of absence

(g) the staff member may engage in paid employment or draw on any annual leave or long service leave credits for the duration of the suspension without pay

(h) the Vice-Chancellor may at any time direct that salary be paid on the ground of hardship

(i) where a suspension without pay has been imposed and the matter is subsequently referred to a Review Committee, the Vice-Chancellor will ensure that the Committee at its first meeting determines whether suspension without pay should continue. The Committee may recommend that the Vice-Chancellor revoke such a suspension from its date of effect.
49.13 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.

49.14 Where a staff member has been suspended without pay pending the decision of the Vice-Chancellor, then any pay withheld will be reimbursed if it is determined that there was no misconduct or serious misconduct.

49.15 A decision taken by the Vice-Chancellor not to dismiss or impose another penalty will not be construed as an admission that there was no conduct justifying suspension without pay.