



REGULATION 04.01(1) - GENERAL MISCONDUCT

Purpose

1. The overarching obligation of all students is to act in the best interests of the University. The purpose of this regulation is to provide a framework for dealing with general misconduct by students. The University may make policies, procedures, rules and guidelines to give effect to this Regulation.

Definitions

2. In this regulation:

General Misconduct means conduct by a Student which is detrimental to the University or its members, whether taking place on University Premises, or while the Student is engaged in University activities, or during activities approved by the University, or otherwise, whether or not on University Premises. It does not include Academic Misconduct (including misconduct in research) which is dealt with in regulation 4.1(2). Examples of General Misconduct are set out in section 3 of this regulation.

Schedule of Penalties means the schedule of penalties applicable to acts of General Misconduct that is located in the University's policies, procedures or rules made pursuant to this Regulation.

Student includes:

- (a) a person enrolled in a course or unit in the University pursuant to **Statute 5.1 - Admission Selection and Enrolment**;
- (b) a student of another higher education institution to whom Deakin grants rights of access to University Premises and facilities;
- (c) a candidate for an award of the University whose work has been examined or assessed but on whom the award has not been conferred;
- (d) a person who was a student at the time the alleged conduct occurred;
- (e) a person who is on leave of absence from or who has deferred enrolment in a unit or course of the University;
- (f) a person designated as a student by Council.

Student Misconduct Committee means a committee appointed by the Faculty to hear and determine allegations of General Misconduct under this regulation.

University Appeals Committee means a Committee established by the Academic Board for purposes which include hearing and determining appeals in relation to findings of General Misconduct.

University Premises means any campus of the University including any property owned or occupied by the University, or any property or precincts or institution occupied or used by one or more Students in the course of or in relation to academic or practical work forming part of a course of study at the University.

Examples of General Misconduct

3. General Misconduct includes but is not limited to:
 - (a) breaching a Statute, regulation, policy or rule of the University;
 - (b) disobeying any reasonable order or direction given by a University staff member in accordance with **section 4** of this **regulation**.
 - (c) behaving in a manner that is disorderly or detrimental to the interests and good repute of the University;
 - (d) obstructing or interfering with the proper use of any of the facilities of the University by any other member of the University or other authorised user;
 - (e) obstructing or disrupting the University's, whether conducted face to face or on-line;
 - (f) misusing the information technology communication infrastructure of the University or its wholly owned entities, including using networks and systems to:
 - (i) threaten, harass or menace any person; and/or
 - (ii) access data without authority;
 - (g) attacking, harassing or threatening to attack or harass, or intimidating any person, or causing another person to fear for their safety, security or wellbeing, whether face to face, by telephone or by the use of technology;
 - (h) engaging in conduct which causes or may cause injury to any person or damage or loss of property;
 - (i) causing damage to, or without authority, removing or wrongfully interfering with any property:
 - (i) of the University wherever situated; or
 - (ii) of a member of the University; or
 - (iii) of any person, firm, or corporation engaged in University activities or activities approved by the University;
 - (j) providing false information or evidence to the University or falsifying a University record or document;
 - (k) refusing to or failing to provide identification when requested to do so by an officer of the University acting in the course of official duties, provided that when making such a request the officer concerned produces identification to the Student;
 - (l) breaching the *Copyright Act* 1968 (Cth), including copying or attempting to copy computer software;
 - (m) failing to adhere to policies procedures and rules of external organisations while on placement, practicum, or work experience;
 - (n) failing to behave in a manner appropriate to the codes of conduct relevant to the profession being pursued in the course of study.

Staff to Give Reasonable Orders and Directions

4. Members of the University staff have the power to give Students reasonable orders and directions:
 - (a) to ensure the safety of the Student or of any other person;
 - (b) to prevent damage to or destruction of University property or facilities;

- (c) for the proper performance of the staff member's duties regarding the custody, maintenance or use of University property or facilities;
- (d) to ensure the orderly conduct of any teaching or learning group, examination, ceremony of the University or any meeting of Council, a board, committee or other body constituted by or pursuant to the *Deakin University Act 2009* (Vic), Statutes or regulations, policies or procedures or appointed by any such body which has been so constituted; and
- (e) for the maintenance of good order.

Reporting General Misconduct

- 5. A member of the University *staff* who has reasonable grounds to believe that an act of General Misconduct has been committed by a Student must promptly report the matter to the Chair of the Student Misconduct Committee.
- 6. A Student who has reasonable grounds to believe that an act of General Misconduct has been committed by another Student may report the matter to the Chair of the Student Misconduct Committee.
- 7. A report made under **sections 5** or 6 is an allegation of General Misconduct under this regulation.

Emergency Powers

- 8. Where there is an allegation of General Misconduct and it is considered necessary by the Chief Operating Officer to act immediately to preserve the peace or to protect University staff, Students or property, the Vice-President (Enterprise) has the power to:
 - (a) direct the Student the subject of the allegation to leave the University Premises or any defined part of the University Premises (including a campus, faculty, the Library or the Student Residences); or
 - (b) prohibit the Student the subject of the allegation from entering University Premises or any defined part of the University Premises (including a campus, faculty, the Library or the Student Residences)

for a period of up to fourteen days.

Notifying the Police

- 9. The Vice-President (Enterprise) may report any circumstances relating to an allegation of General Misconduct to the police.
- 10. If a matter is reported to the police under **section 9**, the Vice-President (Enterprise) must determine whether the investigation of the allegation of General Misconduct under this regulation is to continue or is to be deferred pending the outcome of the police investigation.

Investigation

- 11. If the Chair of the Student Misconduct Committee is of the view that an allegation of General Misconduct has no merit, the Chair may dismiss the allegation.
- 12. If after receiving an allegation of General Misconduct the Chair of the Student Misconduct Committee is of the view that Misconduct may have occurred, the Chair must either:
 - (a) appoint a single member of the Student Misconduct Committee; or
 - (b) appoint a full Student Misconduct Committee,to investigate, hear and determine in accordance with this regulation the allegation of General Misconduct.

13. No member of the Student Misconduct Committee may be appointed under **section 12** if they have been in anyway involved in or associated with, or alleged to have been involved in or associated with, the circumstances relating to the allegation General Misconduct, or if they have, or have in the past had, a close association with the Student the subject of the allegation or the Student who made the allegation of General Misconduct under **section 6**.
14. Where a Student Misconduct Committee is convened under **section 12(b)**, the membership of the Student Misconduct Committee must remain the same throughout the hearing of the matter notwithstanding any adjournment. A quorum for each meeting of the Student Misconduct Committee will be any three members.
15. An investigation into an allegation of General Misconduct must be carried out in accordance with the following rules:
 - (a) the investigation must be carried out expeditiously with as little formality and technicality as possible;
 - (b) Committee members:
 - (i) must act fairly and impartially;
 - (ii) must treat all information gathered in the course of the investigation as confidential;
 - (iii) must make all enquires they believe to be relevant, including seeking information or material from the Student the subject of the allegation, the person who reported the matter under **sections 5 or 6**, and other relevant persons; and
 - (iv) are not bound by legal rules of evidence and may inform themselves as the Committee thinks fit.
 - (c) the Student must be provided with adequate particulars of all allegations and any information or material relied on by the Committee;
 - (d) the Student must be given a reasonable opportunity to be heard orally or in writing or both;
 - (e) the Committee can at any time co-opt persons onto the Committee or to advise it in any way that it considers appropriate.
16. If an oral hearing is conducted, the Student the subject of the allegation is entitled to be accompanied by a person of their choice, provided that the person is not a practising lawyer. The University is not entitled to be legally represented.

Decision

17. When an investigation is complete a decision must be made on the balance of probabilities (ie it is more probable than not) that the allegation of General Misconduct is either proved or not proved.
18. A decision by a Student Misconduct Committee convened under **section 12(b)** is to be made by simple majority.
19. A decision that an allegation of General Misconduct is not proved must be advised in writing to each of the following within five working days of that decision being made:
 - (a) the Student the subject of the allegation;
 - (b) the person who reported the matter;
 - (c) the Chair of the Academic Board.

20. If a single member of the Student Misconduct Committee convened under **section 12(a)** or a full Student Misconduct Committee convened under **section 12(b)** reach a decision that an allegation of General Misconduct has been proved they:
 - (a) may impose one or more of the penalties within their power in **the Schedule of Penalties**;
 - (b) may make appropriate recommendations to the Student the subject of the proved allegation, for example the benefit of attending counselling;
 - (c) may, in lieu of a penalty, allow the Student the subject of the proved allegation to undertake a specified number of hours of voluntary University service work.
21. Within five working days of a decision that General Misconduct has been proved, the Student must be informed in writing of:
 - (a) the decision, the penalty imposed and any other recommendations;
 - (b) the reasons for the decision, including the findings on material facts; and
 - (c) their right to appeal and the body to whom and the time within which an appeal may be made.

Appeals

22. A Student the subject of an adverse decision may appeal:
 - (a) a decision of a single member of the Student Misconduct Committee that an allegation of General Misconduct has been proved, and/or the penalty imposed by that member, to a full Student Misconduct Committee;
 - (b) a decision of a full Student Misconduct Committee that an allegation of General Misconduct has been proved, and/or the penalty imposed by the Committee, to the University Appeals Committee.
23. The Student the subject of the decision must lodge a written notice of appeal which sets out the grounds of appeal, with the Chair of the Committee to which they seek to appeal, within seven working days of the day the decision was notified to them.
24. An appeal may only be made on one or more of the following grounds:
 - (a) there is new evidence which was not available or not known to the Student the subject of the decision at the time the allegation was initially investigated;
 - (b) the penalty imposed was too severe;
 - (c) there was a misapplication of procedures resulting in some disadvantage to the Student the subject of the decision;
 - (d) the decision is unreasonable in all the circumstances or cannot be supported by the evidence that was available at the time the decision was made;
 - (e) relevant evidence was not considered or irrelevant evidence was relied on in reaching the decision;
 - (f) there was bias on the part of the Student Misconduct Committee.
25. The Chair of the relevant appeal Committee must consider the notice of appeal and any other relevant papers, and may dismiss the appeal if the Chair considers it to be lacking in substance. If an appeal is not dismissed it must proceed to a hearing in accordance with this regulation.
26. If an appeal is dismissed under **section 25**, the Chair must notify the Student as soon as practicable. A decision by a Chair of an appeal Committee to dismiss an appeal is final.

27. The membership of the Committee convened to hear an appeal must remain the same throughout the hearing of the matter notwithstanding any adjournment. A quorum for each meeting of the Committee will be any three members.
28. No member of the Committee may be appointed to hear an appeal if they have been in anyway involved in or associated with, or alleged to have been involved in or associated with, the circumstances relating to the allegation of General Misconduct or its initial investigation, or if they have, or have in the past had, a close association with the Student the subject of the allegation or the Student who made the allegation under **section 6**.
29. A Student making an appeal is entitled to receive at least ten working days notice of the hearing of the appeal.
30. Appeals must be conducted as follows:
 - (a) expeditiously with as little formality and technicality as possible;
 - (b) members of the Committee conducting the appeal:
 - (i) must act fairly and impartially;
 - (ii) must treat all information gathered in the course of the investigation as confidential;
 - (iii) are not bound by the legal rules of evidence and may inform themselves as the Committee thinks fit;
 - (c) the Student appealing the decision must be given an opportunity to be heard orally or in writing or both;
 - (d) the Student appealing the decision bears the onus of establishing one or more grounds of appeal on a balance of probabilities (ie that it is more probable than not).
31. If an oral hearing is conducted the Student appealing and the University are entitled to be legally represented.
32. If the Student Misconduct Committee or the University Appeals Committee determines that the grounds of appeal relied upon by the Student appealing have not been established, the appeal must be dismissed.
33. If the Committee hearing the appeal determines that one or more grounds of appeal have been established:
 - (a) where the only successful ground of appeal is excessive penalty, they may vary the penalty; and
 - (b) in all other cases, they must rehear the matter in whole or in part as the case requires and such rehearing must be conducted in accordance with **sections 15 and 30**.
34. If the matter is reheard under **section 33(b)** the Committee may:
 - (a) uphold, vary or set aside the original decision;
 - (b) uphold, vary or set aside the original penalty.
35. When the Committee has reached a decision on appeal (or any rehearing under **section 33(b)**) the Chair must inform the Student appealing in writing of that decision within five working days of that decision being made.
36. A decision of the Student Misconduct Committee on appeal from a decision of a single member of the Student Misconduct Committee (or any rehearing under **section 33(b)**) is final and binding.

37. A decision of the University Appeals Committee on appeal from a decision of the Student Misconduct Committee (or any rehearing under **section 33(b)**) is final and binding.

Reporting and Recording Decisions

38. All findings of General Misconduct, the penalties imposed and any recommendations and undertakings by the Student to perform voluntary University service must be reported in writing to the Chair of the Academic Board.
39. The University will maintain a central database of General Misconduct matters.

*Approved by Council on 24 February 2011 and including all amendments to 11 August 2011.
Current as at 10 November 2011.*