



## Student General Misconduct procedure

This document is pursuant to the [Regulation 4.1\(1\) General Misconduct](#)  
*This procedure came into effect on 14 November 2011 and applies to General Misconduct matters rising on and from that date.*

### DEFINITIONS

Terms used in this procedure have the same meaning given to them in [Regulation 4.1\(1\)](#).

### PROCEDURE

#### Notification of Vice-President (Enterprise)

- 1 The Chair of the Student Misconduct Committee ("**SMC Chair**") must as soon as practicable after receiving a report of an allegation of General Misconduct under sections 5 or 6 of [Regulation 4.1\(1\) General Misconduct](#) notify the Vice-President (Enterprise) of the allegation of General Misconduct.
- 2 As soon as practicable after receiving notification from the SMC Chair, the Vice-President (Enterprise) (VPE) must consider whether the emergency powers set out in section 8 of [Regulation 4.1\(1\)](#) apply.
- 3 Any direction or prohibition made by the VPE in accordance with section 8 of the Regulation:
  - 3.1 may be made orally or in writing, and if made orally, the VPE must as soon as practicable after making the direction or prohibition provide to the Student a record of it in writing
  - 3.2 must include the date at the end of which the direction or prohibition ceases, such date being no more than fourteen (14) days from the date the direction or prohibition was made
  - 3.3 must clearly state the terms of the direction or the extent of the prohibition.
- 4 The VPE must as soon as practicable after receiving notification from the SMC Chair of an allegation of General Misconduct consider whether to report to the police, under section 9 of [Regulation 4.1\(1\)](#), any circumstances relating to the allegation.
- 5 If the VPE or nominee makes a report to the police under section 9 of the Regulation and if it is determined that an investigation by the University is to be deferred pending the outcome of any police investigation, the VPE must inquire of the police from time to time to ascertain whether there will be a police investigation and the outcome of any such investigation.
  - 5.1 The VPE or nominee must inform the SMC Chair as soon as practicable as to whether there will be a police investigation and the outcome of any police investigation.
  - 5.2 If the VPE or nominee determines that an investigation by the University into the allegation of General Misconduct is to proceed and not be deferred pending the outcome of a police investigation, the VPE or nominee must communicate this determination to the SMC Chair as soon as practicable.

## **Initial Considerations of the Chair of the Student Misconduct Committee**

- 6** In accordance with section 11 of [Regulation 4.1\(1\)](#), the SMC Chair will consider whether an allegation of General Misconduct should be dismissed on the basis that the allegation has no merit, and may do so only after having been informed by the VPE:
  - 6.1 that an investigation by the University into the allegation is to proceed and not be deferred pending the outcome of a police investigation, or
  - 6.2 that there will be no police investigation of matters that are the subject of a report made under section 9 of the Regulation, or
  - 6.3 of the outcome of an investigation by the police following a report made under section 9 of the Regulation, or
  - 6.4 that no report was made to the police under section 9 of the Regulation.
- 7** Circumstances where the SMC Chair may dismiss an allegation of General Misconduct on the basis that it has no merit include (but are not limited to):
  - 7.1 where, in the opinion of the SMC Chair, the allegation is frivolous, vexatious, misconceived, lacks substance, or is otherwise an abuse of the processes of the University
  - 7.2 where the allegation is made without there existing reasonable grounds for belief that there has been an act of General Misconduct
  - 7.3 where the allegation, even if proved, would not comprise General Misconduct
  - 7.4 where the person against whom the allegation is made is not a Student.
- 8** The SMC Chair must provide written notification to the person reporting the allegation of General Misconduct of any dismissal of the allegation including a brief statement of the reasons for that dismissal. Such notification must be provided within five (5) working days of the SMC Chair dismissing the allegation.
- 9** If the SMC Chair does not dismiss the allegation the SMC Chair must appoint a person or persons to investigate, hear and determine the allegation of General Misconduct. The SMC Chair will appoint either:
  - 9.1 a single member of the Student Misconduct Committee (SMC), or
  - 9.2 a full SMC comprising no less than three members. Where a full SMC is appointed, the SMC Chair must nominate a Chairperson (the Panel Chair) for the purposes of dealing with the particular allegation of General Misconduct under [Regulation 4.1\(1\)](#) and this procedure.
- 10** A decision by the SMC Chair not to dismiss the allegation but to proceed with an investigation, hearing and determination:
  - 10.1 is not in any way to be taken as supporting any conclusion that General Misconduct has occurred or is proved for the purposes of [Regulation 4.1\(1\)](#)
  - 10.2 is to be disregarded by the SMC appointed for the purposes of [Regulation 4.1\(1\)](#)
  - 10.3 does not preclude the SMC Chair comprising or being a member of the SMC or being the Panel Chair for the purposes of [Regulation 4.1\(1\)](#) or this procedure on

the basis of a conflict of interest or otherwise.

### **Investigation, Hearing and Decision: General**

- 11** In performing any functions under [Regulation 4.1\(1\)](#) or this procedure, and in addition to any requirements of the Regulation, members of the SMC must:
- 11.1 act in the best interests of the University
  - 11.2 avoid any actual or perceived conflict of interest
  - 11.3 stand down from any appointment under section 12 of the Regulation if any actual or perceived conflict of interest arises in the course of performing functions under the Regulation or this procedure.
- 12** Without limiting the previous clause, a member of the SMC appointed under section 12 of [Regulation 4.1\(1\)](#) must, with a view to avoiding conflict of interest, immediately stand down from an appointment if:
- 12.1 they have in any way been involved in or associated with (or alleged to have been involved in or associated with) the circumstances relating to the relevant allegation of General Misconduct
  - 12.2 they have, or have in the past had, a close association with:
    - 12.2.1 the Student who is the subject of the allegation of General Misconduct, or
    - 12.2.2 any person who made the allegation of General Misconduct, or
    - 12.2.3 a close relative of either.
- 13** Any allegation against a member of the SMC that there exists an actual or perceived conflict of interest must be considered by the SMC Chair or, if it relates to the SMC Chair, by the full SMC with the exception of the SMC Chair. A determination must be made by the SMC Chair or the full SMC (with the exception of the Chair) as to any appropriate action to be taken in all the circumstances. Actions to be taken may include standing down the member of the SMC in relation to the consideration of the allegation of General Misconduct in question.
- 14** A person who stands down or is stood down from an appointment is not precluded from giving evidence or providing information relevant to an investigation of an allegation of General Misconduct.

### **Investigation**

- 15** Any investigation carried out by the SMC into an allegation of General Misconduct must be carried out in accordance with section 15 of [Regulation 4.1\(1\)](#).
- 16** Without limiting the generality of the previous clause, the SMC may co-opt any person or persons (whether from within or outside the University) to assist it in conducting any investigation. This may include assistance with the following matters:
- 16.1 making all enquires believed to be relevant
  - 16.2 seeking information or material from the Student who is the subject of the

allegation, the person who reported the matter under sections 5 or 6 of [Regulation 4.1\(1\)](#), and other witnesses.

- 17** The nature and scope of the investigation will be determined by all relevant circumstances including the nature and seriousness of the allegation of General Misconduct.
- 18** Information or material will be relevant to an investigation if it tends logically to prove or disprove the allegation of General Misconduct.
- 19** Having conducted all relevant enquiries and having obtained all relevant information or material, the SMC must provide the following information in writing to the Student who is the subject of any allegation of General Misconduct ("notice") at least 10 working days prior to the date of the hearing:
  - 19.1** an adequate statement of particulars of all allegations of General Misconduct
  - 19.2** a statement that a hearing will be held by the SMC at which the Student will be given an opportunity to be heard orally and/or by way of written submission, and the date, time and location of the hearing
  - 19.3** any evidence relied upon by the SMC in relation to allegations of General Misconduct, including a list of any witnesses to be called
  - 19.4** a statement that the Student may make a written submission to the SMC and the date by which that should be done
  - 19.5** a statement informing the Student that he or she is entitled to be accompanied at the hearing by a person of their choice, provided that the person is not a practising lawyer
  - 19.6** a statement informing the Student that he or she may call witnesses to provide evidence at the hearing, or apply to the SMC to have the SMC require a person to attend as a witness, and question any witnesses produced by the SMC to give evidence
  - 19.7** a copy of, or internet addresses for [Regulation 4.1\(1\) General Misconduct](#) and this procedure, including [Schedule A: Penalties for Student General Misconduct](#).

### **Hearing**

- 20** Hearings of the SMC must be conducted in accordance with [Regulation 4.1\(1\)](#) and these rules of procedure.
- 21** The Student who is the subject of the allegation of General Misconduct must be given a reasonable opportunity to be heard orally or in writing or both.
- 22** If the Student agrees or requests, the Student may be heard by way of written submission only (and not orally).
- 23** If the Student who is the subject of the allegation of General Misconduct attends the hearing the Student is entitled to be accompanied by a person of their choice, provided that the person is not a practising lawyer. Where the Student is to be heard by way of an oral submission, the SMC may permit the accompanying person to speak on behalf of the Student. Neither the Student nor the University is entitled to be legally represented.
- 24** Subject to this procedure a hearing is confidential and must be conducted in private. The University may record the hearing.

- 25 Subject to this procedure, the SMC may co-opt any person or persons (whether from within or outside the University) to assist it in conducting a hearing. This may include assistance with calling or cross-examining witnesses, presenting evidence in relation to the allegation of General Misconduct, or other aspects of the hearing.
- 26 The Student and the SMC may call witnesses and question them. Witnesses must not be present at a hearing except when giving evidence and must respect and adhere to the confidentiality of the hearing. The Student may be questioned by the SMC.
- 27 A hearing may be adjourned by the SMC at any time, but the same SMC must be reconvened to continue the hearing as soon as reasonably practicable.
- 28 If the Student does not provide any written submissions and does not appear at any hearing, the hearing must be conducted in the Student's absence on the basis that the Student does not admit the allegation of General Misconduct.

### Decision

- 29 If the Student admits to the allegation of General Misconduct in any written submission or in person, the SMC must record a finding that the allegation has been proved. In such a case, the SMC must consider the Student's written submission and any other evidence or information presented by or on behalf of the Student in mitigation of, or having a bearing on, any penalty imposed or other action taken by the SMC.
- 30 Once an investigation and hearing have been completed a decision must be made on the balance of probabilities (on the basis that it is more probable than not) that the allegation of General Misconduct is either proved or not proved.
- 31 Although the SMC may do so, it is not bound to make a decision at the time of the hearing. If a decision is not made at the time of the hearing, the SMC must make a decision as soon as reasonably practicable after the conclusion of the hearing.
- 32 Any decision of the SMC must be reached in private. A decision in relation to a hearing by a full SMC must be reached by a simple majority with the Panel Chair having a casting vote.
- 33 In accordance with section 19 of [Regulation 4.1\(1\)](#), a decision that an allegation of General Misconduct is not proved must be advised in writing to the Student who is the subject of the allegation, the person who reported the matter, and the Chair of the Academic Board. Notification must be provided within five (5) working days of the decision being made.
- 34 If a decision is made that an allegation of General Misconduct is proved the SMC may do one or more of the following:
  - 34.1 impose one or more of the penalties within their power set out in [Schedule A: Penalties for General Student Misconduct](#) appearing at the end of this procedure, and/or
  - 34.2 make appropriate recommendations to the Student who is the subject of the proved allegation (for e.g. to attend counselling), and/or
  - 34.3 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.

- 35** If a decision is made that an allegation of General Misconduct is proved the SMC must within five (5) working days of that decision inform the Student in writing of:
- 35.1 the decision, the penalty imposed, any other recommendations and any agreement for voluntary University service work to be undertaken in lieu of a penalty
  - 35.2 the reasons for the decision, including the findings on material facts
  - 35.3 the right to appeal the decision and/or penalty and the body to whom and the time within which an appeal may be made and notify the Chair of the Academic Board in writing of the finding of General Misconduct, any penalties imposed, any recommendations by the SMC, and any undertakings by the Student to perform voluntary University service.
- 36** The SMC will report its decisions to the Faculty Board, including any penalties imposed, any recommendations by the SMC, and any undertakings by the Student to perform University service.
- 37** The Faculty Board will report on decisions of the SMC to the Academic Board.

## **Appeals**

- 38** An appeal against a decision adverse to a Student that an allegation of General Misconduct has been proved and/or against the penalty imposed may be heard by a relevant appeal committee ("appeal committee") being:
- 38.1 in the case of a decision made or penalty imposed by a single member of the SMC, a full SMC
  - 38.2 in the case of a decision made or penalty imposed by a full SMC, the University Appeals Committee.
- 39** An appeal may only be made within seven (7) working days from when the decision or penalty was notified or could reasonably have been expected to have been notified to the Student concerned.
- 40** An appeal may not be made on any grounds other than the grounds set out in section 24 of [Regulation 4.1\(1\)](#). An appeal is commenced by the Student lodging all of the following documents with the Chair of the appropriate appeal committee:
- 40.1 a written notice of appeal setting out the ground or grounds under section 24 of the Regulation on which the appeal is made
  - 40.2 a written submission detailing the substance of the appeal
  - 40.3 any documentation or other material supporting the ground or grounds of appeal.
- 41** The Chair of the appeal committee must consider the notice of appeal and must decide whether the appeal should be dismissed on the basis that it is lacking in substance. A decision to dismiss an appeal must be notified to the Student within ten (10) working days of the formal lodgment of the appeal. A decision by the Chair to dismiss an appeal is final and binding.

- 42** If an appeal is not dismissed by the Chair, it must be heard in accordance with [Regulation 4.1\(1\)](#) and this procedure.
- 43** Without limiting [Regulation 4.1\(1\)](#), a member of the relevant appeal committee must, with a view to avoiding conflict of interest, immediately stand down for the duration of the appeal if:
- 43.1 they have in any way been involved in or associated with (or alleged to have been involved in or associated with) the circumstances relating to the relevant allegation of General Misconduct
- 43.2 they have, or have in the past had, a close association with:
- 43.2.1 the Student who is the subject of the allegation of General Misconduct, or
- 43.2.2 any person who made the allegation of General Misconduct, or
- 43.2.3 a close relative of either.
- 44** Any allegation against a member of the appeal committee that there exists an actual or perceived conflict of interest must be considered by the Chair of the appeal committee or, if it relates to the Chair, by the full appeal committee with the exception of the Chair, and a determination made as to any appropriate action to be taken in all the circumstances which can include being stood down from the appeal committee in relation to the consideration of the appeal.
- 45** A person who stands down or is stood down from an appointment is not precluded from giving evidence or providing information relevant to an appeal.
- 46** The appeal must be heard as soon as practicable after receipt of notice of appeal. The Student must be given at least ten (10) working days notice of the time, date and location of the hearing of the appeal.
- 47** The Student making the appeal must be given a reasonable opportunity to be heard orally or in writing or both.
- 48** If the Student making the appeal is to appear at the hearing, the Student and the University are entitled to be legally represented or represented by any other person. Subject to this procedure, the appeal committee may co-opt any person or persons (whether from within or outside the University) to assist it in conducting an appeal.
- 49** If the Student appealing the decision does not appear at the hearing, the appeal will be conducted on the basis of any written submission detailing the substance of the appeal and any documentation or other material supporting the ground or grounds of appeal submitted by the Student and any other information obtained by the appeal committee in accordance with [Regulation 4.1\(1\)](#).
- 50** The Student appealing the decision bears the onus of establishing one or more grounds of appeal on the balance of probabilities (on the basis that it is more probable than not).
- 51** Subject to [Regulation 4.1\(1\)](#) and this procedure a hearing on appeal is confidential and must be conducted in private. The University may record the hearing.
- 52** Any decision of the appeal committee must be reached in private. A decision in relation to an appeal must be reached by a simple majority with the Chair having a casting vote.

- 53** Although the appeal committee may do so, it is not bound to make a decision in relation to the appeal at the time of the hearing. If a decision is not made at the time of the hearing, the appeal committee must make a decision as soon as reasonably practicable after the conclusion of the hearing.
- 54** The appeal committee may take one of the following actions, in accordance with sections 32-34 of [Regulation 4.1\(1\)](#):
- 54.1 dismiss the appeal, or
- 54.2 vary the penalty, or
- 54.3 wholly or partly rehear the matter (in accordance with sections 15 and 30 of the Regulation and this procedure).
- 55** If the matter is wholly or partly reheard, the appeal committee may take one of the following actions:
- 55.1 uphold, vary or set aside the original decision, or
- 55.2 uphold, vary or set aside the original penalty.
- 56** Any decision by the relevant appeal committee on appeal or on rehearing is final and binding.
- 57** The Chair of the appeal committee must provide written notification of the decision of the appeal committee to:
- 57.1 the Student, together with a statement of the reasons for the decision, within five (5) working days of the decision
- 57.2 the SMC
- 57.3 the Chair of the Academic Board
- 57.4 the Executive Director, Deakin International (if the Student is an international Student and a penalty is imposed which may affect the Student's enrolment).
- 58** The University Appeals Committee will report on its decisions with appropriate frequency to the Academic Board. Where the appeal committee is the full Student Misconduct Committee, the appeal committee will report on its decisions with appropriate frequency to the Academic Board via the Faculty Board.
- 59** Nothing in this procedure is intended to preclude a Student from exercising any legal right they may have to external review of a decision.

## **Records**

- 60** The University will maintain a confidential central database of General Misconduct matters.
- 61** The SMC Chair and the Chair of any relevant Appeal Committee (as the case may be) must provide to the Records Unit all documents and other records (including audio or audiovisual recordings of hearings) associated with the investigation, hearing and determination of any proceedings in relation to an allegation of General Misconduct, including any appeals, as soon as practicable after the conclusion of those proceedings and the expiration of any relevant appeal period.

## **Form of Notification**

**62** Where the University is required to give notice to a person of a matter arising out of [Regulation 4.1\(1\)](#) or this procedure, unless otherwise specified, that notice will be deemed to have been given if it is in writing and it is:

62.1 hand delivered to the person, or

62.2 delivered by courier to the person at the address provided by that person and recorded by the University as being their current residential address, or

62.3 posted by registered or express post to the person at the address provided by that person and recorded by the University as being their address for correspondence, or

62.4 if the person has an allocated university email address, emailed to that address.

## **RESPONSIBLE OFFICER**

The Chair of Academic Board is responsible for the development, compliance monitoring and review of this procedure.

## IMPLEMENTATION OFFICER

The University Solicitor is responsible for the promulgation and implementation of this procedure throughout the University.

### Schedule A: Penalties for Student General Misconduct

Penalty	Single Member Student Misconduct Committee.	Full Student Misconduct Committee
Suspend from a Unit or a Course <sup>1</sup>	√ <b>(for up to 2 weeks)</b>	√ <b>(for up to 4 Study Periods)<sup>2</sup></b>
Prohibit from entering the University Premises	√ <b>(for up to 2 weeks)</b>	√ <b>(for up to 4 Study Periods)</b>
Exclude from the University <sup>3 4</sup>		√
Restrict or deny access to a facility (eg IT, library)	√	√
Impose a fine	√ <b>(up to \$500)</b>	√ <b>(up to \$1,000)</b>
Impose a condition on enrolment in a Unit or Course	√	√
Pay the cost of investigating the misconduct	√	√
Pay the cost of the damage caused by the misconduct	√	√
Require the Student to refrain from contact with specified person/s	√	√
Require an apology	√	√
Reprimand and caution the Student	√	√

<sup>1</sup> If a Student is suspended from a Unit or a Course they remain enrolled as a Student but are precluded from pursuing the relevant Course or Unit for a specified period.

<sup>2</sup> 'Study Period' for the purposes of this Schedule A has the meaning given to it in [Regulation 5.2\(2\)](#).

<sup>3</sup> If a Student is excluded from the University they cease to be a Student of the University. However, for the purposes of this procedure, such a person remains a Student pending:

- i. expiration of the time allowed for lodging an appeal
- ii. where a notice of appeal is lodged, until the appeal process is finalised.

<sup>4</sup> Students who have been excluded may apply to have their student fees refunded in accordance with the University's policies and procedures dealing with fee refunds.

Accessed on 20 December 2011 at:

<http://theguide.deakin.edu.au/TheGuide/TheGuide2011.nsf/0/7AA6A54F1F29FD5CCA25794100007023?OpenDocument>