

Misconduct and Serious Misconduct Policy

Section 1 - Purpose

(1) This Policy outlines the process to be undertaken to address cases of alleged misconduct or serious misconduct by a staff member of the University.

Section 2 - Scope

(2) This Policy applies to Academic and Professional Staff members who are covered by the provisions of the [ACU Staff Enterprise Agreement 2022-2025](#) (the Agreement) and who have passed their minimum period of employment. The Minimum Period of Employment is normally six months of service from the date of commencement.

(3) This Policy does not apply to casual staff or during a staff member's minimum period of employment.

(4) References in this Policy refer to the relevant provisions of the Agreement. Nothing in this Policy limits the rights of a staff member to make a protected disclosure in accordance with the [Protected Disclosures Policy](#).

Section 3 - Policy Statement

(5) The University expects its staff to behave professionally and uphold the [ACU Mission, Identity and Values](#) and [Code of Conduct for Staff](#) in undertaking their duties. Cases of alleged misconduct or serious misconduct by a staff member will be dealt with seriously and promptly, and in line with natural justice and procedural fairness principles in accordance with this Policy.

Section 4 - Approvals

(6) All decisions in relation to the application of this Policy must be in accordance with the [Delegations of Authority Policy and Register](#).

Section 5 - Principles and Procedures

Action to Address Misconduct or Serious Misconduct Principles

(7) As per clause 7.2 of the Agreement, the provisions provided in this clause are a complete code to address misconduct or serious misconduct. The provisions do not apply to casual staff or during a staff member's minimum period of employment.

(8) The provisions of this clause in no way restrict the University from carrying out investigations relating to the consequences of conduct of a staff member or former staff member when required to do so in the public interest.

(9) The University may instigate an investigative process that might give rise to disciplinary action for misconduct or serious misconduct where it appears that a staff member may have committed a breach of the law or a serious breach of a University policy.

(10) Nothing prevents a Member of the Executive or Senior Executive, or the Vice-Chancellor and President, from referring a question of possible misconduct or serious misconduct to a supervisor for appropriate action, or from undertaking an enquiry into a staff member's behaviour.

(11) Throughout the proceedings associated with misconduct or serious misconduct, a staff member may choose to be assisted by a person of their choice, provided that person is not a practising barrister or solicitor.

(12) Proceedings associated with misconduct or serious misconduct will be conducted in line with natural justice and procedural fairness.

(13) The Vice-Chancellor and President may at any time suspend a professional staff member with pay, or an academic staff member with or without pay, if the Vice-Chancellor and President is of the view that the alleged conduct amounts to conduct of a kind envisaged in Regulation 1.07 of the [Fair Work Act 2009 \(Cth\)](#), so that it would be unreasonable to continue the staff member's attendance at work pending further investigation.

(14) The management of misconduct / serious misconduct will be in accordance with this Policy.

(15) The exercise of freedom of speech or intellectual freedom by a staff member as defined in clause 1.10 of the ACU Staff Enterprise Agreement and Statute 13 does not constitute misconduct or serious misconduct.

Misconduct and Serious Misconduct

(16) If an allegation of misconduct or serious misconduct (as defined in clause 1.3 of the Agreement) is made, the staff member will be:

- a. advised in writing of the alleged misconduct or serious misconduct, including details of the allegations and whether they are considered to be serious misconduct; and
- b. given a reasonable opportunity to be heard and / or to make written submissions, within 10 working days, in relation to the allegations.

(17) If the staff member admits to the allegations, and if appropriate in the University's view, the University may give the staff member a reasonable opportunity to improve their conduct, otherwise the matter will be considered by the Vice-Chancellor and President as per clauses (20) to (26) of this Policy.

Suspension and Additional Allegations

(18) Where an allegation of serious misconduct has been made against a staff member, the Vice-Chancellor and President may, at any stage during the procedures under this clause, suspend a professional staff member with pay, or an academic staff member with or without pay, until the conclusion of the matter provided that:

- a. with the approval of the Chief People Officer, the staff member may draw on any accrued entitlement to recreation leave or long service leave for the duration of the suspension without pay;
- b. the Chief People Officer may, at any time, direct that salary be paid in part or in full, on the grounds of hardship for the period of suspension or a part period;
- c. the Vice-Chancellor and President may, at any time, reconsider the issue of the suspension of the staff member.

(19) While suspended, the staff member will be excluded from the University or any identified parts of the University, but will be permitted reasonable access to the University including electronic records to prepare their case and to

collect personal property.

(20) If at any stage during the procedures under this clause, it is found that the allegation(s) should be amended or new allegations added, or the allegation(s) contain additional elements which amount to serious misconduct, the staff member must be advised of this in writing and be given a further reasonable opportunity to be heard and to make written submissions prior to any further steps being taken by the University.

Decision

(21) The Vice-Chancellor and President will consider the allegation(s) and the staff member's response.

(22) The Vice-Chancellor and President may seek additional information prior to making their decision if it is considered necessary.

(23) The Vice-Chancellor and President may determine that allegation(s) of serious misconduct amount only to misconduct.

(24) The Vice-Chancellor and President will advise the staff member in writing of their decision as to whether there was misconduct and / or serious misconduct. If there was misconduct and/or serious misconduct, the Vice-Chancellor and President will notify the staff member of their decision, any disciplinary action and of the operative date of that disciplinary action.

(25) The staff member's employment may be terminated without notice (or payment in lieu) if they have engaged in serious misconduct. If the Vice-Chancellor and President's decision is to terminate for serious misconduct without notice, the decision will take effect at the end of ten (10) working days after notification under clause (24), or if the staff member seeks a review in accordance with clauses (27) and (28) and the original decision is confirmed under clause (36) will take effect at that time.

(26) If the Vice-Chancellor and President determines that no disciplinary action will be taken, and the staff member has been suspended under clause (18), the staff member will be reinstated at no loss of salary or conditions.

(27) Except where the staff member seeks a review as per clauses (27) and (28) of a decision to terminate or demote, the Vice-Chancellor and President's decision as per clause (23) is final, subject to the jurisdiction of any court or tribunal which, but for this clause, would have jurisdiction to deal with the matter.

Review of Decision - Termination of Employment or Demotion

(28) If a decision made under clause (24) is a decision to terminate the employment of a staff member or to demote, a staff member may seek review of the decision of the Vice-Chancellor and President within ten (10) working days of the staff member receiving notice of the decision.

(29) In order to request a review, a staff member must provide the Chief People Officer with the following materials at the time the request is lodged:

- a. the basis for requesting the review;
- b. any written submissions supporting the request for review;
- c. any documentary evidence that the staff member relies on in respect of a. and b.

Independent Review

(30) If the staff member seeks a review in accordance with clauses (27) and (28), the Chief People Officer will engage an Independent Reviewer within ten (10) working days and provide the reviewer with the request for review and materials. The Independent Reviewer is to be agreed between the University and the NTEU or CPSU NSW as

appropriate.

(31) The University will provide the Independent Reviewer with its submissions and any supporting materials within ten (10) working days of the request for review.

(32) The Independent Reviewer will report their findings and recommendations to the staff member and the Vice-Chancellor and President or Chief People Officer, outlining:

- a. whether there is, overall, sufficient evidence to support a finding of misconduct/serious misconduct (in the case of review of decisions under clauses (27) and (28);
- b. whether there has been a substantial flaw in following the procedures of this clause; and
- c. make recommendations (if any) about disciplinary action in light of the matters outlined in a. and b.

(33) The Independent Reviewer will consider material provided in accordance with clause (31). The Independent Reviewer may seek additional information if the Independent Reviewer considers that this is necessary.

(34) The Independent Reviewer will provide their report within ten (10) working days of receiving the University's submissions to the Vice-Chancellor and President or Chief People Officer of the matters in the clause.

(35) The Chief People Officer, will not unreasonably refuse a request from the Independent Reviewer for an extension of time of up to ten (10) working days.

Further Consideration of Termination or Demotion Decision

(36) The Vice-Chancellor and President, having considered the Independent Reviewer's report, may confirm the original decision or may reconsider the preliminary decision and determine what, if any, disciplinary action should be taken. The Vice-Chancellor and President may seek additional information if the Vice-Chancellor and President considers that this is necessary.

(37) The Vice-Chancellor and President will then advise the staff member's supervisor or relevant member of the Executive and the staff member in writing of the decision.

(38) Where the original decision was to terminate the staff member's employment and this is confirmed, the notice period (if any) (or payment in lieu) will then apply from the written notification in clause (37).

(39) The decision of the Vice-Chancellor and President will be final, subject to the jurisdiction of any court of tribunal which, but for this clause, would have jurisdiction to deal with the matter.

Notice Periods in Relation to Serious Misconduct

(40) Where, in accordance with provisions of this clause, the Vice-Chancellor and President has confirmed a decision to terminate the employment of a staff member, notice or payment in lieu will be as provided in accordance with this clause. The staff member will receive the minimum period of notice, or payment in lieu of notice, of their last day of employment as outlined below:

Period of Continuous Service at the end of the day notice is given	Period of Notice
Less than 3 years	At least 2 weeks
3 years but less than 5 years	At least 3 weeks
5 years or over	At least 4 weeks
Over 45 years and greater than 2 years continuous service	Plus one additional week to the above

(41) Payment instead of notice will be made if the University does not require the person to work out the notice period. Where the staff member is only required to work part of the notice period, the University will pay out the remainder of the notice period.

(42) Any payments in lieu of notice will be based on the staff member's substantive salary at the date of cessation of employment.

Section 6 - Assistance for Staff Members

(43) As per clause (12), the staff member should consider the following guidance if choosing assistance by a person of their choice throughout the proceedings:

- a. the person who is providing assistance may undertake the role of either a support person, or the role of the staff member's "staff representative" (as defined in clause 1.3 of the Agreement);
- b. the role of a support person is to provide moral and practical support to the staff member, but not to act as their advocate; and
- c. alternatively, a staff member may choose to be represented by their "staff representative" who may be a union member or union official, but who is not a practising barrister or solicitor.

Section 7 - Revisions made to this Policy

(44) The revision table includes revisions up until this document was migrated into the current policy platform. Any later changes will show in the Status and Details tab.

Date	Major, Minor or Editorial	Description
18 October 2016	Major	Updated to include the right of staff members to make Protected Disclosures.
1 July 2019	Major	Updated to incorporate provisions as per clause 7.2 of the ACU Staff Enterprise Agreement 2017-2021.

(45) The University may make changes to this Policy from time to time to improve the effectiveness of its operation. In this regard, any staff member who wishes to make any comments about this Policy may forward their suggestions to People and Capability.

(46) Unless otherwise indicated, this Policy will still apply beyond the review date.

Section 8 - Further Assistance

(47) Any staff member who requires assistance in understanding this Policy should first consult their nominated supervisor who is responsible for the implementation and operation of these arrangements in their work area. Should further information or advice be required, staff should visit [Service Central](#).

Section 9 - Additional Information

(48) For related legislation, policies, procedures and guidelines and any supporting resources, please refer to the Associated Information tab.

Status and Details

Status	Current
Effective Date	4th November 2024
Review Date	4th November 2029
Approval Authority	Governance Officer
Approval Date	29th October 2024
Expiry Date	Not Applicable
Responsible Executive	Angelle Laurence Chief People Officer
Responsible Manager	Angelle Laurence Chief People Officer
Enquiries Contact	Bernardine Lynch ER and Safety Committees and Policy Officer <hr/> People and Capability