

# Misconduct and Serious Misconduct Policy - Senior Management, Executive and Senior Executive Policy

## Section 1 - Purpose

(1) This Policy outlines the approach to be undertaken to address cases of alleged misconduct or serious misconduct by a Senior Manager, Member of the Executive or member of the Senior Executive of ACU in respect of their employment.

## Section 2 - Scope / Application

(2) The Policy applies to all Senior Managers, Executives and Senior Executives. It does not apply to any employee covered by the [ACU Staff Enterprise Agreement 2022-2025](#).

(3) This Policy operates in conjunction with each Senior Manager, Executive and Senior Executive's contract of employment (but is not incorporated into the contract), with other relevant policies stated to apply to Senior Managers, Executives and Senior Executives, any applicable law and any modern award (where applicable).

(4) The Policy does not apply in respect of allegations or complaints of Research Misconduct (which are dealt with in accordance with the [Australian Code for the Responsible Conduct of Research 2018](#) and [Research Code of Conduct](#)).

(5) The Policy does not compel ACU to adopt a particular course or approach and, depending on the particular issue or conduct, at the discretion of the relevant Delegate as outlined in the [Delegations of Authority Policy and Register](#) at clause 6.47, ACU may choose not to apply the Policy or parts of it or to adopt a different process or approach.

## Section 3 - Policy Statement and Principles

(6) ACU expects its Senior Managers, Executives and Senior Executives to behave professionally and uphold the [ACU Mission, Identity and Values](#) and [Code of Conduct for Staff](#) when undertaking their duties and representing the University. Further, as leaders and Senior Managers the University expects Senior Managers, Executives and Senior Executives to model appropriate behaviours.

(7) Cases of alleged misconduct or serious misconduct by a Senior Manager, Executive or Senior Executive will be dealt with appropriately and promptly, in line with natural justice and procedural fairness principles and in accordance with this Policy.

(8) 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 2022-2025](#) and [Statute 13 - Freedom of Speech, Intellectual Freedom and Academic Freedom](#) does not constitute misconduct or serious misconduct.

## Section 4 - Definitions

(9) The following terms are defined as below for application within this Policy:

Term	Definition
Enterprise Agreement	means the <a href="#">ACU Staff Enterprise Agreement 2022-2025</a> as varied or replaced from time to time.
Delegate	means a position, for the purposes of this Policy, consistent with the <a href="#">Delegations of Authority Policy and Register</a> .
Executive	means a person employed in a position identified by ACU as an Executive position as described in the <a href="#">Delegations of Authority Policy and Register</a> .
Misconduct	includes conduct by a Senior Manager, Executive or Senior Executive that breaches or is inconsistent with their employment obligations, the <a href="#">Code of Conduct for Staff</a> , applicable law and / or any of ACU's policies or procedures but is not Serious Misconduct.
OGC	means the Office of General Counsel.
Senior Executive	means a person employed in a position identified by ACU as a Senior Executive position as described in the <a href="#">Delegations of Authority Policy and Register</a> (but does not include the Vice-Chancellor and President).
Senior Manager	means a person employed in a position identified by ACU as a Senior Manager position as described in the <a href="#">Delegations of Authority Policy and Register</a> .
Serious Misconduct	is misconduct that is sufficiently serious to warrant the termination of the Senior Manager, Executive and Senior Executive employment without notice, and includes: <ol style="list-style-type: none"><li>1. dishonesty;</li><li>2. disobeying a reasonable and lawful direction;</li><li>3. sexual harassment or unlawful discrimination;</li><li>4. any kind of physical assault, threatened or actual;</li><li>5. theft;</li><li>6. misappropriation or abuse of property, including electronic or intellectual property or willful damage to property;</li><li>7. serious breaches of health and safety practices or procedures or any action which endangers the health or safety of members of the University community;</li><li>8. premeditated dishonest act or omission;</li><li>9. falsification or misrepresentation of qualifications or experience;</li><li>10. criminal activity while at work or performing duties;</li><li>11. criminal activity outside of work where such activity is inconsistent with the Executive's contract of employment;</li><li>12. serious breaches of trust and confidentiality;</li><li>13. other serious breaches of employment obligations; and</li><li>14. repeated misconduct.</li></ol>
SSC	means the Senate Standing Committee.
Decision Maker	means: <ol style="list-style-type: none"><li>1. in respect of decisions to dismiss, terminate or suspend Senior Executives, the Senate Standing Committee on recommendation of the Vice-Chancellor and President; and</li><li>2. otherwise, means the relevant Delegate.</li></ol>

## Section 5 - Identification or Complaints or Issues of Misconduct / Serious Misconduct

(10) ACU may become aware of issues of potential, alleged or actual misconduct or serious misconduct through a number of means. This includes complaints (formal and informal), observation and / or reports.

## **Informal Complaint**

(11) Complainants may approach their supervisor / manager and may make an informal complaint by raising and discussing their concerns. Where appropriate, the complainant is encouraged to raise the issues or behaviours with the Senior Manager, Executive or Senior Executive concerned and resolve the issues directly, unless considering the concern or conduct, this would be an inappropriate choice.

## **Formal Complaint**

(12) If the issue is not resolved a complainant may lodge a formal, written complaint about a Senior Manager, Executive or Senior Executive.

## **Initial Consideration and Approach**

(13) Where an issue is identified or a complaint or report received, the relevant Delegate may assess the issue or complaint and determine the appropriate process to be adopted, which can include informal or formal inquiries, the show cause process set out in Section 6, or further formal investigation. The relevant Delegate may also determine that the complaint or report is false, trivial or vexatious and take no further steps.

## **Vexatious Complaints**

(14) A complaint may be determined by the relevant Delegate to be false, vexatious or frivolous. If this occurs, then the University may consider the complaint to be an act of Misconduct or Serious Misconduct and determine an appropriate disciplinary response.

## **Anonymous Complaints**

(15) It is preferable for complaints to be raised by identified complainants as greater steps and action can be taken and procedural fairness provided to any people complained about. If a complaint is made anonymously including as a Protected Disclosure in line with the [Protected Disclosures Policy](#) and [Protected Disclosures Procedure](#):

- a. ACU may be restricted in its ability to effectively handle the complaint and formal inquiries / investigation may not be available; and
- b. nonetheless, ACU will, to the extent reasonable, take appropriate action to consider and address the matters raised by the complaint in the circumstances.

# **Section 6 - Inquiry and "Show Cause" Response Process**

(16) Where a formal complaint is received, which is not considered false, vexatious or frivolous and has not been referred to another process, the following approach will generally be applied.

(17) The Senior Manager, Executive or Senior Executive 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 within a period of up to 10 working days to provide a response and / or to make written submissions including any mitigating matters as appropriate, in relation to the allegations. The Senior Manager, Executive or Senior Executive will be required to 'show cause' and either admit or deny the allegations, and why action should not be taken. The response should include the reasons for the denials, and any relevant documentation or information to support the denials.

(18) Following the response, the relevant Delegate may:

- a. form the view that there is sufficient information to form the reasonable belief that the allegations are not made out or do not warrant further inquiry and dismiss the complaint (where applicable), and inform the Senior Manager, Executive or Senior Executive why the allegations had not been substantiated;
- b. form the view that there is sufficient information to form the reasonable belief that some or all of the allegations are made out and determine whether it is appropriate for either or both of a 'corrective action' (e.g. mediation, coaching, an apology) or disciplinary action (e.g. counselling, warning, demotion, termination) to be taken; and
- c. consider any further inquiry or investigation that may be required and where applicable, subsequent to any further formal investigation, and investigation report and, with the assistance of the Chief People Officer or OGC as appropriate, determine that no action be taken or a course of either or both of corrective action and disciplinary action to be taken.

(19) In relation to the conduct of any formal investigation, the relevant Delegate may engage an internal or external investigator.

(20) Where appropriate the relevant Delegate may refer or direct the matter to an external body for consideration.

(21) In conducting the above processes and considerations, the relevant Delegate may seek advice and/or support from the Chief People Officer (if not the subject of the complaint) or in accordance with clause 2.5 of the [Delegations of Authority Policy and Register](#).

(22) If the Senior Manager, Executive and Senior Executive admits the allegations, and if appropriate in the relevant Delegate's view, ACU may give the Senior Manager, Executive or Senior Executive a reasonable opportunity to improve their conduct, otherwise the matter will be considered by the Decision Maker under clause (31) of this Policy.

## **Decision**

(23) Depending on the conclusions reached the Decision Maker may:

- a. impose disciplinary outcomes, including but not limited to, counselling, warning, demotion, termination on notice or summary termination, subject to the applicable provisions in the relevant Senior Manager, Executive or Senior Executive's contract;
- b. impose corrective action, including requirements to attend training, mediation, coaching, make an apology or take some other action;
- c. informally counsel the Senior Manager, Executive or Senior Executive;
- d. take no further action.

## **Section 7 - Support Person Involvement**

(24) A Senior Manager, Executive or Senior Executive who is the subject of a complaint is permitted to have a support person present at meetings that occur as a result of the complaint.

(25) The role of a support person is to provide moral and practical support to the Senior Manager, Executive or Senior Executive, but not to act as their advocate.

(26) Alternatively, the Senior Manager, Executive or Senior Executive may choose to be assisted by a union or legal representative.

(27) All staff, including Senior Managers, Executives or Senior Executives have access to the [Employee Assistance](#)

## Section 8 - Suspension and Interim Steps

(28) The relevant Delegate may suspend a Senior Manager, Executive or Senior Executive, with pay, if the relevant Delegate is of the view that the alleged conduct amounts to Serious Misconduct, such that it would be unreasonable to continue the Senior Manager, Executive or Senior Executive's attendance at work pending further inquiry or investigation. The suspension does not constitute disciplinary action.

(29) Unless directed otherwise, during the period of suspension, a Senior Manager, Executive or Senior Executive:

- a. may be directed not to attend ACU's premises or events;
- b. may be directed not to have any contact with anyone from ACU including via email, telephone or physical contact;
- c. must continue to act in the best interests of ACU; and
- d. must co-operate fully in the inquiry or investigation process.

(30) The relevant Delegate may also issue directions or put in place interim arrangements, including changes in reporting lines and / or other measures, including to ensure the health and safety of all persons, whilst a matter is being considered or inquiries / investigation is being made.

(31) Failure to comply with any of the above requirements may itself result in disciplinary action, including, but not limited to, termination of employment.

## Section 9 - Confidentiality

(32) Confidentiality in relation to all complaints, inquiries and investigations in respect of an allegation of Misconduct / Serious Misconduct against a Senior Manager, Executive or Senior Executive will be maintained. Information should be provided only to those with the need to be directly involved in the process.

(33) All Senior Managers, Executives or Senior Executives are required to maintain confidentiality at all times. This does not limit the Senior Manager, Executive or Senior Executive from seeking advice on a confidential basis or participating in the processes under this Policy. Any breaches of confidentiality will be considered seriously and may be dealt with under this Policy.

## Section 10 - Review

(34) In line with the [Policy Development and Review Policy](#), this Policy is scheduled for review every five years or more frequently if appropriate.

## Section 11 - Further Assistance

(35) 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 12 - Associated Information

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

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	24th January 2025
<b>Review Date</b>	24th January 2030
<b>Approval Authority</b>	Governance Officer
<b>Approval Date</b>	7th January 2025
<b>Expiry Date</b>	Not Applicable
<b>Responsible Executive</b>	Angelle Laurence Chief People Officer
<b>Responsible Manager</b>	Angelle Laurence Chief People Officer
<b>Enquiries Contact</b>	Bernardine Lynch ER and Safety Committees and Policy Officer <hr/> People and Capability