Misconduct - Student Non-Academic Misconduct Policy

(1) **Any allegation of misconduct made under this policy before 1 January 2016 will continue to be dealt with in accordance with the policy, to the conclusion of any appeal. From 1 January 2016, allegations of misconduct are to be made, investigated and determined in accordance with the Student Misconduct Rule.**

Section 1 - Purpose and Context

(2) As part of the overall good management of the University, and in the interests of promoting the welfare and safety of staff and students of the University, the Student Non-Academic Misconduct Policy aims to deal with allegations of student misconduct in a timely and fair manner.

Preamble

(3) This policy should be read in conjunction with any separate policies in areas such as the Library or Information Technology where various rules and procedures are stipulated governing access to and use of facilities. Various penalties or restrictions may apply in those policies (eg. withdrawal of borrowing or network access privileges) separate from this policy. Matters may be referred to be dealt with under this policy where deemed necessary or appropriate.

(4) All allegations arising out of incidents occurring in or under the auspices of UWS Village (on campus Student accommodation) should firstly be determined by Campus Living Villages (CLV) under the UWS Village Rules. CLV will report all allegations as per the standard incident reporting protocols where a determination will be made by the Pro Vice-Chancellor, Students to refer any allegations of student misconduct to the Vice-President, People and Advancement for handling under the policy where they are deemed to be serious or have a wider implication for the safety and wellbeing of the University community.

(5) All allegations arising out of incidents occurring in or under the auspices of any student association formally registered with the University should firstly be determined by it according to the constitution and associated policies and procedures of that association. The most senior officer of any such student association may refer allegations of student misconduct to the Vice-President, People and Advancement for consideration to be dealt with under this policy where they are deemed to be serious and have a wider implication for the safety and wellbeing of the University community.

(6) The University reserves the right where incidents occur in or under the auspices of the University, the UWS Villages (on campus student accommodation) or the student associations to refer matters to the Vice-President, People and Advancement for consideration under this policy where they are deemed to have a wider implication for the safety and wellbeing of the University Community.

(7) The timelines specified in this policy may be varied at the discretion of the Vice-President, People and Advancement where there are substantive practical reasons requiring a variation. Where a variation is necessary or desirable in the interests of procedural fairness, sufficient notice will be given to all parties, and timelines may be extended or, in exceptional circumstances reduced (for example, where an International student requests expediency

if going overseas).

(8) The failure to meet a time line stipulated in this policy is not of itself grounds to dismiss or not proceed with a matter. The Vice-President, People and Advancement or the Chair of a misconduct investigation committee or appeal committee should consider any applications with respect to alleged breaches of time lines and may determine whether or not the matter can proceed. In making such determinations the Vice-President, People and Advancement or chair must consider what detriment, if any, a party can demonstrate they suffered or will suffer as a result of the failure to meet the specified time line.

(9) The Vice-President, People and Advancement may delegate all or part of his or her role under this policy to another officer of the University.

(10) The Office of Governance Services will designate a contact officer to provide administrative support and issue notification to the respondent student as required on behalf of the University.

Section 2 - Definitions

(11) For the purpose of this policy:

a. student - means all persons taking or auditing any courses at the University of Western Sydney. Any course enrolment characterises the person as a "student" from the point of admission to the completion of study at graduation.
b. respondent student - refers to the student charged with allegations of non-academic misconduct.
c. date of delivery - means:
    i. the date on which a notice is handed to the respondent student, or
    ii. the date on which a notice is delivered to the contact address (as held by the Academic Registrar's Office on the student records) of the respondent student, or
    iii. the date of a formal acknowledgement or receipt evidencing delivery or receipt, or
    iv. the date that is two working days after the date of posting a notice by mail to the contact address of the respondent student (as held by the Academic Registrar's Office on the student records), or
    v. the date of transmission by e-mail (to the student's University email account) or facsimile where the respondent student has acknowledged receipt of material by that method and, in the case of facsimile has provided a transmission address.
d. mail - means express post or registered mail or facsimile or e-mail.
e. Unit Head - means any person who holds any of the following positions:
    i. Vice-Chancellor and President
    ii. Deputy Vice-Chancellor, or nominee
    iii. Vice-President, or nominee
    iv. Campus Provost
    v. Pro Vice-Chancellor
    vi. Dean or nominee
    vii. Director or nominee
    viii. Director, Campus Safety and Security, or nominee
    ix. Any other position designated by the Vice-President, People and Advancement as a Unit Head for the purposes of this policy.

Non-Academic Misconduct

(12) Non-academic misconduct - includes, but is not limited to, conduct where a student:

a. contravenes any provision of the University of Western Sydney Act, By Law, Rules or Policies;
b. behaves in a manner that prejudices the good name or academic standing of the University;
c. engages in unlawful or criminal activity on University premises;
d. damages or destroys University property (including library books, computing hardware or software, or the deliberate release of computer viruses);
e. misuses University facilities, systems and equipment, to engage in illegal activity or activity prohibited by the University's rules and policies (for example, computer hacking, infringing copyright);
f. steals or misappropriates University property or equipment;
g. harasses, vilifies, bullies, abuses, threatens, assaults or endangers staff, students or other members of the University's community directly or by other means of communication;
h. unreasonably disrupts staff or students or other members from undertaking their normal activities at the University;
i. fails to follow reasonable directions of an employee of the University;
j. alters, falsifies or fabricates any document or record of the University (eg. Statement of Academic Record);
k. alters or falsifies any documentation that the University requires of the student (eg. medical certificate or other supporting documentation);
l. divulges confidential or personal information relating to any University matter, staff member or student (eg. employment records, in-camera committee discussions) in circumstances where there is no reasonable or lawful excuse for doing so;
m. behaves inappropriately in an activity (eg. In the virtual and physical environments such as e-learning sites, face to face classes, meeting), facility in or under the control or supervision of the University or a recognised University student association;
n. refuses or is unable to identify him/herself or produce a University Student ID card when asked to do so by an officer of the University (eg. security officer, examination invigilator);
o. knowingly provides false or misleading information to staff of the University; or
p. fails to comply with a penalty imposed or outcome agreed to under this or other policies of the University.

Section 3 - Policy Statement

(13) This policy applies to all students of the University of Western Sydney and to conduct occurring at any premises or facilities owned or occupied by the University and to any events or activities conducted under the name and auspices of the University such as excursions, educational placements with outside organisations and the like.

(14) When students allegedly behave in a manner regarded as being contrary to the principles and ethos of the University, the matter will be dealt with as Academic Misconduct, Research Misconduct or Non-Academic Misconduct.

(15) An allegation of non-academic misconduct may be brought against any student of the University. An allegation may be made by University staff, students or an external person with an association to the University. An allegation of non-academic misconduct may be dealt with in accordance with the procedures outlined in:

a. Part A covering temporary removal situations; or
b. Part B covering situations where a unit head may deal with a matter; or
c. Part C and Part D covering matters to be referred to the Non-Academic Misconduct Investigation Committee.

(16) An allegation of non-academic misconduct in terms of Part B or Part C will normally be in writing and be referred, in the first instance, to the relevant Unit Head. Instances under Part A will normally be reported to the relevant Unit Head.

(17) The respondent student is entitled to fairness in the handling of any allegation in accordance with this policy including any appeal. A Fairness in Proceedings Guideline is contained in this policy and those principles should be applied where it is reasonably practicable to do so.

(18) The misconduct investigation and all information and/or documents in relation to it, are considered confidential, details of which will normally not be disclosed to any persons other than for authorised or lawful purposes.

(19) The respondent student may admit to an allegation of non-academic misconduct that has been made at any time in proceedings undertaken in accordance with this policy. On such an admission the relevant proceedings will from that time on, only be concerned with consideration related to the nature of any penalty that may be recommended or imposed.

(20) A respondent student will be unable to graduate until after a misconduct matter has been dealt with in accordance with this policy, and any appeal by the student has also been dealt with or the time for lodging an appeal has expired, and any penalty imposed has been finalised.

(21) Where a student is permanently excluded from the University, the exclusion status is recorded in the student's electronic record.

Section 4 - Procedures

Part A - Temporary Removal from Activities, Facilities or University

(22) The provisions in this part relating to the temporary removal of a student from activities and facilities, or from the University itself, are to be applied primarily to circumstances of urgency where the student's behaviour impedes the normal functioning of the activity or facility or where the student's actions, statements or demeanour are perceived as a threat to the safety of people or property.

(23) Any person having responsibility for the management of an activity or facility or precincts of the University, may temporarily remove any student from that activity or facility where they have reason to believe that there is evidence that the student may be guilty of non-academic misconduct, in or in relation to the activity or facility, and that the alleged misconduct is in their opinion, of a serious nature sufficient to warrant temporary removal.

(24) Specific examples of where temporary removal may occur include:

a. disruption amounting to misconduct in an activity such as a lecture, tutorial, examination or field trip that adversely affects the running of that activity;
b. misconduct in Library or Information Technology facilities or precincts; or
c. misconduct in the general precincts of the University, including the open public spaces, grounds and car parks.

(25) Any temporary removal of a student in the circumstances under (a) may be imposed for the duration of the particular activity and in the case of conduct under (b) or (c) for a period of no greater than 48 hours.

(26) Any person, other than a Unit Head who temporarily removes a student under this Part should normally within two working days report the temporary removal to the Unit Head of the activity or facility in which the non-academic misconduct is alleged to have occurred. Where it is not immediately apparent which is the relevant facility, the report should be made to the Campus Provost who shall assume the role of Unit Head for the purposes of this policy.

(27) Where the Unit Head considers that the incident has been effectively dealt with by virtue of the temporary removal, then the Unit Head may decide to take no further action. Otherwise the Unit Head should consider further action in accordance with the non-academic misconduct procedures under Part B or Part C. In the case of referral of a matter to the Vice-President, People and Advancement under Part C, the Unit Head may extend the period of temporary removal by a further five working days.

(28) Generally a matter should be referred for further consideration under the Part B or Part C provisions where:

a. the conduct resulting in the removal has been recurring or is likely to recur;
b. the conduct represents a threat to the health and/or safety of others;
c. the conduct directly resulted in a physical or non-physical injury, including fear and apprehension, to another person;
d. the respondent student disputes the matter;
e. the incident involved some physical contact by the student on another person.

Part B - Matters Dealt With by a Unit Head

(29) A Unit Head is responsible for assessing an allegation of non-academic misconduct that has been received. The Unit Head may then deal with the matter under this Part or refer the matter to the Non-Academic Misconduct Investigation Committee, via the Vice-President, People and Advancement, under Part C. A Unit Head should aim to assess an allegation and make a determination as quickly as possible and normally within 20 working days. Where this is not practicable the Unit Head should advise parties of the reasons for the delay and the likely time frame.

(30) The provisions of this part relate to matters that can be dealt with locally by a Unit Head or their nominee, (typically a Dean) and with the participation of the respondent student. Minor matters are generally matters that can be satisfactorily resolved by way of conciliation, consultation, warning, apology or recompense. This means that all parties are generally in agreement that this action conclusively and adequately deals with the matter. However, circumstances will always vary and assessments need to be made for each matter having regard to all of the information. The Unit Head has the responsibility to assess the issue and make the determination. A minor matter could involve:

a. a one off dispute where a student has temporarily gone beyond the bounds of acceptable behaviour in addressing a matter; or
b. theft or damage to University property with a replacement or repair value of no more than $250 and which is a first breach; or
c. a first breach (conduct is unlikely to be of a minor nature if the respondent student has been found guilty of a prior breach of this policy or its antecedent policies).

(31) Where there is a complainant, the Unit Head should provide that person with the opportunity to respond to the Unit Head's proposal to deal with the misconduct as a minor matter. The complainant may within five working days request that the Vice-President, People and Advancement review the decision.

(32) The Unit Head or nominee should write to the student outlining the nature of the allegation and arrange to meet with the respondent student to discuss the allegation. In contacting a student about an allegation the Unit Head must ensure that contact details are provided for University and student association support services and that the student is provided with a copy of this policy. The respondent student should also be advised in writing that they may elect to have the matter dealt with under the formal misconduct process pursuant to this policy notwithstanding that the Unit Head has determined that the matter may be finalised as a minor matter. Where the respondent student does not respond or meet with the Unit Head as requested, the Unit Head must refer the matter to the Vice-President, People and Advancement in accordance with Part C. Refer to Associated Information for template letters.

(33) A Unit Head should follow the Fairness in Procedures Guidelines contained in this policy (Section 5) when dealing with matters under this part, including provision for the student to be accompanied by a support person at the meeting. The Unit Head may require the attendance of relevant staff members to attend the meeting.

(34) If it is not appropriate for a Unit Head or their nominee to deal with a matter, having regard to the Procedural Fairness Guidelines (e.g. conflict of interest situation) the Unit Head must refer the matter to the Vice-President, People and Advancement in accordance with Part C. Similarly if the Unit Head in dealing with a matter under this Part comes to the view that the matter should be dealt with under Part C, the Unit Head may terminate proceedings under this Part and refer the matter to the Vice-President, People and Advancement. In these circumstances, the Unit Head would not make any determination.

(35) The meeting is to be documented and the outcome recorded and notified to the respondent student and any complainant by mail. A notice in the prescribed form will be placed on the student's central University file while the substantive papers will be held on the Unit's files in the University's TRIM records system. A standard form of notification is provided in Associated Information.

(36) Penalties that may be imposed by a Unit Head under this Part are:

a. no further action.
b. a reprimand or warning.
c. in the case of damage to University facilities or property, reimbursement of the cost of replacement where the cost is no more than $250.
d. that the student provide a formal apology.
e. voluntary undertakings by the student (for example a student may provide an undertaking not to approach another student with whom they have been in some form of dispute).
f. a community service order be undertaken by the student that will be of benefit to the University.

(37) A penalty may involve a combination of the penalties listed and in addition a Unit Head may also recommend courses of action to a student, such as recommending that the student seek academic or personal counselling.

(38) The penalty provisions in this section relating to matters dealt with by a Unit Head as far as possible should not affect a student's ability to continue to pursue their studies, attend classes, visit the library and the like.

Part C - Matters Referred to the Non-academic Misconduct Investigation Committee

(39) When a Unit Head refers an allegation of misconduct under this Part the role of the Unit Head is to:

a. ensure that the allegation is clearly stated and that all supporting material is provided, this includes, where necessary, a covering submission outlining the chronology of events and referencing of relevant documents being submitted;
b. advise any persons bringing forward the allegation that the allegation and supporting material will be made available to the Committee and the respondent student;
c. advise the parties of any interim arrangements that are to be put in place pending the formal consideration and processing of the allegation. Such arrangements are not intended to be punitive; they are aimed at keeping the peace and may involve obtaining undertakings from the parties, requirements for reporting and avoidance of parties or particular precincts of the University. As far as possible the arrangements should not affect a student's ability to continue to pursue their studies, attend classes, visit the library and the like;
d. consider whether the matter should initially proceed in accordance with the University's complaints or other formal procedures;

e. consider whether the Work Health and Safety Unit should be advised where a matter may affect the health and/or safety of members of the University community.

(40) The Vice-President, People and Advancement on receiving such an allegation should determine within five working days of its receipt, whether to:

a. forward the matter to the Non-Academic Misconduct Investigation Committee; or
b. determine the matter should be handled more appropriately under another University procedure or process; or
c. dismiss the matter if the Vice-President, People and Advancement is of the view that the allegation is unfounded or does not constitute non-academic misconduct; or
d. determine that the matter requires further investigation. Any such investigation should normally be conducted within 30 working days of receipt by the Vice-President, People and Advancement. Where this is not practicable the Vice-President, People and Advancement should advise parties of the reasons for the delay and the likely time frame; or
e. determine that the matter should be managed by a Unit Head in accordance with Part B and refer the matter accordingly.

(41) Where a matter is proceeding to a hearing and the circumstances of the allegations are of such seriousness that some immediate action is warranted, particularly in the interests of health and safety, the Vice-President, People and Advancement may temporarily suspend the student from the University precincts or restrict the respondent student from attendance or use of particular activities, facilities or services at the University. Such a suspension or restriction may be limited in time but otherwise shall remain in force until the completion of the disciplinary proceedings including any appeal period unless revoked by the Vice-President, People and Advancement at an earlier time.

(42) The University contact officer will notify the respondent student of the Vice-President, People and Advancement's decision under clause 40 within five working days of the decision being made.

(43) Where the matter is deemed to be referrable to the Non-Academic Misconduct Investigation Committee the initial notification to a respondent student concerning the allegation will normally:

a. provide the respondent student with the precise terms of the allegation;
b. provide the respondent student with a copy of this policy and any guidelines;
c. provide advice to the respondent student on options available within the University for independent advisory services and student associations, including relevant contact details;
d. provide the respondent student with advice of any action taken, or statutory obligation on the University, to report the matter to an external agency;
e. advise the respondent student of the option to admit the allegation and have the matter dealt with summarily in which case there is no right of appeal;
f. notify the respondent student of any immediate and temporary suspension or restrictions that have been imposed; and
g. ask the respondent student whether he or she wishes to admit the allegation and if so to make a submission with regard to any penalty that might be imposed or any mitigating circumstances that the student feels should be taken into account.

(44) Such a notice is to be sent to the respondent student by mail and the respondent student is to be provided with no less than five working days from the date of delivery to respond.

(45) In the circumstances where the student admits the allegation as made within the time allowed under clause 44, the Vice-President, People and Advancement should decide within five working days to:

a. impose a penalty in accordance with the list in clause 80; or
b. proceed with the matter to the Non-Academic Misconduct Investigation Committee but only for consideration and recommendation as to the penalty that might be imposed.

(46) The University contact officer will notify the student by mail of the action taken under clause 44 within five working days of the decision being made.

(47) A complainant in a matter may, on request be provided with details of the allegation against a respondent student, but only with respect to the allegation that relates to the complainant.

Part D - University Non-Academic Misconduct Investigation Committee and Misconduct Hearing

Non-Academic Misconduct Investigation Committee

(48) The role of the Non-Academic Misconduct Investigation Committee is to examine the allegation through written and/or oral evidence from any complainants, the respondent student, relevant witnesses and any University investigation reports. The hearings of the Non-Academic Misconduct Investigation Committee are administrative in nature and are not formal legal proceedings. As such the Committee will consider evidence on the basis of the balance of probability, which is the civil standard of proof. This means that it must be more probable than not that the allegations are made out. The High Court case of Briginshaw v Briginshaw is the authority for the proposition that the strength of evidence necessary to establish an allegation on the balance of probabilities will vary according to the seriousness of the issues involved. That is, the more serious the matter the higher the standard of evidence required.

(49) The purpose of the Committee's examination is to:

a. establish the facts of the matter;
b. assess and form a view as to whether or not, on the balance of probabilities, the allegations are made out;
c. consider what penalty might be imposed, having regard to any mitigating circumstances; and
d. report and make recommendations on these matters to the Vice-President, People and Advancement.

(50) The Non-Academic Misconduct Investigation Committee comprises:

a. a Chairperson who may either be a staff member of the University or an external person with equivalent experience;
b. a member of staff of the University; and
c. an enrolled student of the University.

(51) The Vice-President, People and Advancement will appoint the membership of each Committee from a pool of staff and students who have received the requisite training or who have equivalent qualifications and experience.

(52) In certain cases the Committee Chair or Vice-President, People and Advancement may appoint one or two additional members to the Committee where they believe this is warranted or necessary in the interests of ensuring fairness and thoroughness of the proceedings.

(53) Where it is apparent that a Committee member has or discloses a conflict of interest or potential conflict, the membership of the Committee may be changed by the Vice-President, People and Advancement.

(54) The Vice-President, People and Advancement will from time to time approve pools of staff and students to serve on the Non-Academic Misconduct Investigation Committee subject to availability and having had the appropriate training and/or qualifications.

(55) Student nominations may be received from Deans, Campus Provosts and recognised University Student Union. Staff nominations will be sought periodically and training will be made available to those nominated prior to serving on a Non-Academic Misconduct Investigation Committee.

(56) In maintaining the pool and in constituting the committees the Vice-President, People and Advancement will have regard to the need to have a broad cross-section of the University community and to maintain impartiality, gender balance, expertise and integrity.

Non-Academic Misconduct Investigation Committee Hearing

(57) A hearing of the University Non-Academic Misconduct Investigation Committee will normally, unless varied in accordance with clauses 6 and 7 of this policy, be held within 30 working days from the date of delivery on which the respondent student was notified of the allegation.

(58) The University contact officer is responsible for notifying the respondent student of the hearing date, time and place, ten working days before the hearing date. That notification will normally include copies of all available documentation being provided to the Non-Academic Misconduct Investigation Committee.

(59) Additional documents not available at the time of the notification under clause 57 may be tabled at the hearing. In such instances the Chair will provide the respondent student sufficient time to review the documentation prior to the hearing and have regard to the fairness in procedures guidelines.

(60) With respect to the hearing, a respondent student should:

a. notify the University contact officer of their intention to attend the hearing or not, at least three working days prior to the hearing; and
b. notify the University contact officer of their intention to bring any witnesses at least three working days prior to the hearing and provide details as to the identity of the witnesses and their relevance to the proceedings; and
c. notify the University contact officer of their intention to bring a support person as provided for in clause 62.

(61) A respondent student who does not wish to attend the hearing will have the allegation heard in his or her absence. Whether attending or not, the respondent student may provide a written submission that will be considered at the hearing. Any written statements by witnesses need to include the full identity of the witness, including contact details and a statement as to their availability to attend and answer questions at any committee hearing in the matter.

(62) A student at a hearing may be supported by a fellow enrolled student, a member of staff, a friend or family member, or an employee of a University recognised student association.

(63) The person assisting the student will normally not also act in the capacity of a witness for the purpose of this hearing unless given prior approval by the Chair. The person assisting the student may provide the student with advice, but may not act as an advocate or directly address the Committee, unless the Chair, has given permission having regard to the particular circumstances. A support person must be identified to the Committee and provide identification such as a student ID card if requested by the Chair.

(64) A student may also apply to the Committee to be legally represented at the proceedings under this part. An application should be made at least seven working days before the date of the hearing. Legal representation is not permitted with respect to actions under Parts A and B of this policy.

(65) The University contact officer will be responsible for the collation of the documentation to be considered by the Committee and for consulting with the respondent student on the witnesses to be called and support person attending. The Chair may request the University contact officer to seek additional information in relation to the

allegations. The University contact officer may also liaise with witnesses attending.

(66) The Chair of the Non-Academic Misconduct Investigation Committee shall have the power to require any member of the University community to appear before it with a view to assisting the Committee's deliberations. The Chair of the Non-Academic Misconduct Investigation Committee may also seek legal advice as necessary.

(67) A person who is a complainant or who is providing or presenting information on behalf of the University may also arrange for additional witnesses to attend or provide written statements subject to the same requirements that apply to the respondent student.

(68) There will normally be the opportunity for all parties to know what has been said or written and to ask questions. However, any questioning of parties at the hearing will be undertaken by the Committee through the Chair. In circumstances where there may be the potential for harassment or intimidation of persons at the hearing, the Committee Chair may vary the process of interview and questioning to avoid this but in a manner consistent with procedural fairness. In circumstances where evidence is presently separately, the Chair will inform the respondent student of the nature and content of the evidence presented.

(69) Evidence placed before the Committee should be directly related to the events detailed in the allegation. The Chair has the discretion to make a determination of the relevance of any evidence placed before the Committee.

(70) The conduct of the hearing and the order of appearance of persons are determined by the Chair according to the circumstances but normally would proceed as follows:

a. Identification of those attending the hearing and the capacity in which they are in attendance.
b. Confirmation of the details of the allegations to be considered at the hearing.
c. Confirmation of any notified intention to admit the allegations in part or in whole.
d. Invitation to the respondent student to respond to the allegation/s.
e. Invitation to parties present to recount relevant facts and information and in particular allow complainants and respondents to articulate their version of the events and the outcomes as related to the allegation being heard.
f. Enable the asking of questions and clarification of matters by the respondent student.
g. Invitation to the respondent student to make a final statement prior to concluding the hearing.

(71) While hearings are held in camera, persons who supply information to the Non-Academic Misconduct Investigation Committee should understand that the parties involved in the hearing will see information and be aware of its source.

(72) In some cases, the identity of the person providing information may need to remain confidential or the proceedings be conducted in private. It is the Chair's responsibility to determine if and when this is appropriate.

(73) The Committee hearing and associated processes under this policy are not protected from formal external legal proceedings and material can be subpoenaed or accessed under the Government Information (Public Access) Act 2009. The hearing, evidence and associated proceedings are considered confidential as well as being subject to privacy laws and any breaches may result in disciplinary action.

(74) All persons appearing before or present at a hearing of the Non-Academic Misconduct Investigation Committee will normally conduct themselves in a proper manner at all times. If a person fails to conduct themselves appropriately, the Committee Chair may have the person removed and they may be subject to disciplinary action.

(75) In the event that the person required to leave the Committee hearing is the respondent student, the Committee Chair may determine to proceed in their absence.

(76) The Chair of the Committee may adjourn matters at his or her discretion. All members of the Investigation

Committee will normally participate at all Committee meetings. The Chair of the Committee has the authority to determine procedural matters subject to any provisions in this policy.

(77) The fact that external legal proceedings have been initiated with respect to action that is the subject of an allegation under this policy is not of itself grounds for suspending or cancelling proceedings under this policy.

(78) Where a student provides the Non-Academic Misconduct Investigation Committee with information of a highly sensitive or personal nature about themselves, the student may submit those details in a sealed envelope clearly marked "confidential". Such material will be treated with the utmost confidentiality and will only be seen by the Chair of the Non-Academic Misconduct Investigation Committee who will decide how the material should be considered.

(79) Where the Chair of the Non-Academic Misconduct Investigation Committee decides that the material should be considered by all of the Committee members, the student will be advised accordingly. The student will be given the opportunity to withdraw the material.

(80) Where the Chair of the Non-Academic Misconduct Investigation Committee decides that the material is of such a highly sensitive or personal nature that it should not be considered by the Committee, he or she will make a recommendation about the appropriate course of action to the Investigation Committee for its consideration.

Part E - Findings of the Non-Academic Misconduct Investigation Committee

(81) The Non-Academic Misconduct Investigation Committee will prepare a written report of its findings. Where the Non-Academic Misconduct Investigation Committee is of the view that the allegations are sustained whether in full or in part, it may in accordance with those findings recommend to the Vice-President, People and Advancement any one or more of the following actions:

a. no further action be taken against the student;
b. a warning be given;
c. a reprimand be given;
d. the student be denied access to certain or all University activities, facilities or services for a specified period of time or that access be only in accordance with particular conditions;
e. the student provide full restoration of the cost of any damage done to University property;
f. a fine, not exceeding $1,000 be imposed;
g. a community service order be undertaken by the student that will be of benefit to the University;
h. the student be required to apologise formally to any aggrieved party where appropriate;
i. the student undertake some form of remediation, such as counselling;
j. the student be suspended for a period no greater than 12 months, and is subject to the same conditions of suspension as provided in Section 2 - Definitions in the Progression and Unsatisfactory Academic Progress Policy;
k. the student be excluded from the University for a period no greater than 24 months, and is subject to the same conditions of exclusion as provided in Section 2 - Definitions in the Progression and Unsatisfactory Academic Progress Policy;
l. the student be expelled (permanent exclusion) from the University; and/or
m. such other penalty or action considered appropriate.

(82) In making its recommendation, the Non-Academic Misconduct Investigation Committee will consider whether there are any mitigating circumstances and may take into account the fact that the respondent student has admitted the allegation.

(83) The Committee may also recommend on the timing of the imposition of any penalty or that the imposition of any penalty be suspended under specified conditions that the Committee may deem appropriate having regard to the particular circumstances of the respondent student.

(84) In making any recommendations about a penalty, the Non-Academic Misconduct Investigation Committee may, but is not required to, have regard to previous student disciplinary cases of a similar nature. In such instances, the written report of the Non-Academic Misconduct Investigation Committee will normally include details of any such consideration. The respondent student's previous record of misconduct will be provided by the University contact officer to the Chair when the penalty is being considered (i.e. after the allegation/s have been sustained).

(85) Where a recommendation of a penalty of suspension or exclusion relates to an international student, the University will report the penalty to the relevant Government agency which may effect the student's confirmation of enrolment.

(86) The Non-Academic Misconduct Investigation Committee will on finalising its deliberations provide its report within seven working days of concluding its deliberations to the University contact officer who will then provide a copy to the respondent student by mail within five working days.

(87) The respondent student may within five working days of the date of delivery of the report provide recommendations or comments in writing to the Vice-President, People and Advancement about the findings and any penalty that may be recommended by the Non-Academic Misconduct Investigation Committee. Comments related to penalty may include, but are not limited to, the appropriateness or practicality of the penalty having regard to the student's circumstances.

Part F - Vice-President, People and Advancement's Decision

(88) The Vice-President, People and Advancement will consider the report of the Non-Academic Misconduct Investigation Committee and any written representations from the respondent student and make a determination within seven working days from the date the respondent student is entitled to respond under clause 86. The Vice-President, People and Advancement's determination will be in accordance with the actions outlined under clause 81 but may be at variance from the recommendations of the Non-Academic Misconduct Investigation Committee.

(89) Advice of the Vice-President, People and Advancement's final determination will be forwarded by the University's contact officer by mail to the respondent student, along with details of any penalty to be imposed and advising the respondent student of the right to lodge an appeal to the Non-Academic Misconduct Appeals Committee within ten working days from the date of delivery of notification of the outcome.

(90) If the penalty imposed (after any appeal time limit or hearing) is that the student be expelled (permanent exclusion) from the University, the Vice-President, People and Advancement will report the matter to the next practicable meeting of the Board of Trustees.

(91) The University contact officer will notify the Academic Registrar and any other relevant University staff member or unit with of the formal outcome of the proceedings after the appeal period has expired and where no appeal has been lodged.

(92) After the Vice-President, People and Advancement has determined the matter and after the appeal period has expired and where no appeal has been lodged, the University contact officer will notify the Unit Head reporting the matter of the final outcome. The University contact officer, if requested by the party who had made the original allegation and/or any other relevant party, may release aspects of the decision and outcomes that are relevant to their interests and have regard to the privacy and confidentiality of the parties.

(93) Failure to adhere to or comply with a penalty imposed under this policy can be the basis of further non-academic

misconduct proceedings against a student as provided for in the definition of non-academic misconduct.

(94) Where a respondent student does not complete the requirements of the penalty under this policy in the required time, the Vice-President, People and Advancement may impose an encumbrance on the respondent student. An encumbrance may involve the withdrawal of particular University services including enrolment and will remain in place until the requirements of the penalty have been met or any further consequential non-academic misconduct proceedings have been completed. In accordance with clause 19 a student will not be able to graduate where a penalty is still outstanding.

Part G - Appeals

Right of Appeal

(95) A respondent student may lodge an appeal with the Non-Academic Misconduct Appeals Committee against the determination made by the Vice-President, People and Advancement under Part F of this policy under either or both of the following grounds:

a. there is evidence that there has been a breach of procedural fairness; and/or
b. there is substantial new evidence now available relating to the original act of misconduct that was not available to the Non-Academic Misconduct Investigation Committee.

(96) An appeal must be lodged in writing within ten working days from the date of the official notification of the decision. The appeal must clearly state the grounds of the appeal as provided for under clause 94 and include evidence to support the appeal. It is the responsibility of the respondent student to ensure the submission of an appeal is completed in full at the time of lodgement. An extension of time to lodge an appeal may be granted by the Vice-President, People and Advancement where a student can demonstrate that there are particular circumstances that preclude them from lodging the appeal in time. In these circumstances a further and final extension of up to ten working days may be granted. Clauses 6 and 7 dealing with variations to time frames do not apply with respect to the lodgement of appeals.

(97) The Non-Academic Misconduct Appeals Committee will consider the application in the context of the grounds of appeal and determine whether the appeal can be heard. The student will be sent written advice of this decision.

(98) Where an appeal hearing is allowed, the hearing of the Non-Academic Misconduct Appeals Committee will normally be held within 30 working days from the date of delivery of the advice to the student that the appeal will be heard, unless varied in accordance with clauses 6 and 7 of this policy.

Non-Academic Misconduct Appeals Committee

(99) The Non-Academic Misconduct Appeals Committee shall comprise:

a. an external member of the Board of Trustees appointed by the Board;
b. a student member of the Board, or if not available another student of the University appointed by the Board; and
c. one other member appointed by the Board with relevant experience.

(100) The Board is to appoint one of its members of the Non-Academic Misconduct Appeals Committee as Chair. In the event that the Board of Trustees has not determined the members of the Committee and is not scheduled to meet prior to the appeal hearing date, the Chancellor may exercise the authority of the Board to appoint members of the Non-Academic Misconduct Appeals Committee.

(101) All members of the Non-Academic Misconduct Appeals Committee will normally participate at all meetings.

(102) No person who was previously involved or associated with the current matter either as a witness, complainant, a member of the Non-Academic Misconduct Investigation Committee or otherwise, may be a member of the Non-Academic Misconduct Appeals Committee.

(103) The University contact officer shall, no later than seven working days prior to the date of a hearing forward a copy of the appeal papers to the members of the Non-Academic Misconduct Appeals Committee and to the student. Notice to the student will be by mail and include the details of the time, date and place of the appeal hearing and the relevant documentation.

(104) At the hearing, the Chair of the Non-Academic Misconduct Appeals Committee will give an overview of the grounds for the appeal and present the written report of the Non-Academic Misconduct Investigation Committee and the Vice-President, People and Advancement determination. The student will be invited to present a case in person and/or in writing. The Chair of the Non-Academic Misconduct Investigation Committee will attend the appeal hearing to answer any questions from the Non-Academic Misconduct Appeals Committee.

(105) The proceedings of the Non-Academic Misconduct Appeals Committee will be conducted in the same manner as provided for under Part D relating to the Non-Academic Misconduct Investigation Committee hearing and the Chair has authority to make determinations as to procedure and the interpretation of those clauses in the appeal context.

(106) The Non-Academic Misconduct Investigation Committee may, on hearing the appeal by the respondent student:

a. refer the matter back to the Non-Academic Misconduct Investigation Committee for further inquiry and recommendation; or
b. dismiss the appeal; or
c. uphold the appeal on either or both of the grounds specified under clause (94); and/or
d. vary, confirm, or abolish a penalty that has been imposed.

(107) The University contact officer shall, within five working days, advise the student of the Committee's decision. The University contact officer will also advise the Academic Registrar and other relevant staff or units of the University of the outcome of the matter to enable administrative actions to be undertaken, where required.

(108) The determination by the Non-Academic Misconduct Appeals Committee is final.

(109) Where the determination is that a student be permanently excluded, the decision will be reported to the Board of Trustees at the next practicable meeting.

Section 5 - Guidelines

Fairness in Procedures Guidelines

(110) Students are encouraged to act with respect and consideration for others, and for the University community's activities, property and facilities.

(111) The University is committed to ensuring the elements of procedural fairness are followed. These include:

a. The opportunity to be heard - a person should be given the opportunity to be heard before a decision that could adversely affect him or her in an individual way is made.
b. Adequate prior notice of hearing - the person will normally be given adequate notice of the hearing.
c. Absence of bias - the decision maker will normally not be biased. Bias may be actual or perceived.
d. Disclosure of relevant material before the decision - the person about whom the decision is to be made is entitled to know what case is to be met.

e. Reasonable opportunity to respond - the person about whom a decision is to be made should have a reasonable opportunity to respond before a decision is made.
f. Relevance - decision makers will normally take account of relevant considerations and ignore irrelevant ones.

(112) The University is committed to ensuring that all procedures and policies are implemented according to the principles of procedural fairness. Training in these principles, and in appropriate investigation techniques, will be provided to staff who sit on Non-Academic Misconduct Investigation Committees and Non-Academic Misconduct Appeals Committees. In particular, the University is committed to ensuring that:

a. sufficient notice will be given to all parties and adequate time allowed for the consideration and preparation of cases;
b. any notification to a student about misconduct proceedings will be sent to the student's residential address as contained in the student records or delivered personally to the student by a staff member of the University;
c. a student accused of misconduct will be advised in writing of the allegation against them;
d. the advice of the allegation will specify the detail and behaviour that is the subject of the complaint;
e. the student will be given advice on procedures that will be followed, including membership of the hearing body, the availability of advice and support services of the University and relevant student associations, and the penalties that may apply;
f. the complainant and the student will have the opportunity to put their cases to the body that is hearing the matter, and subject to legitimate considerations about confidentiality, have equal access to information pertaining to the matter;
g. all relevant submissions and evidence will be considered by the hearing body (this can include witness statements and documents relevant to the complaint);
h. a student will be able to present their case verbally, or in writing, or both and to be accompanied by a support person, but not a person who is a currently practising solicitor or barrister except in the case of matters handled under parts C and D where an application can be made for legal representation;
i. there should be the opportunity for a student to correct information, ask questions generally and about evidence presented, explain mitigating circumstances, or make a submission as to penalty;
j. committees will not be bound by any rules of evidence and no cross-examination of witnesses will be allowed. Questions related to evidence will be directed to the Chair of the Committee hearing the matter;
k. any matter not relevant to a particular complaint will not be taken into account when hearing the matter;
l. proceedings will be conducted in a manner that upholds the need for confidentiality and privacy for parties concerned;
m. students understand that while the University will conduct the proceedings in a confidential manner, the University may be compelled by law to provide information or documents in accordance with external legal processes;
n. a student's prior record of misconduct may only be considered in the context of the penalty to be imposed;
o. any person who has had any prior involvement with a matter under consideration, including advising a student, will not be in a decision-making role on the same matter or any related matter; and
p. members of the Non-Academic Misconduct Investigation Committee and Non-Academic Misconduct Appeals Committee will declare any conflict of interest at the earliest opportunity.

Status and Details

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