

# Disciplinary Action for Misconduct or Serious Misconduct Procedure



## 1 Purpose

To outline the processes involved in managing Misconduct or Serious Misconduct of Employees at the University.

## 2 Scope

This Procedure applies to Employees whose conditions of employment are covered by the USQ Enterprise Agreement, excluding casuals and Employees whose conditions of employment are covered by a written agreement or contract with the University.

Whilst casual Employees are formally excluded from the Procedures for Disciplinary Action for Misconduct or Serious Misconduct in this Policy and Procedure, casual Employees may have their employment with the University terminated with one hour's notice, in accordance with the provisions of the USQ Enterprise Agreement.

Individuals other than Employees may have their association with the University terminated, or have their right or access to University services, facilities or infrastructure revoked.

## 3 Procedure Overview

This Procedure outlines the University's management of Misconduct or Serious Misconduct of Employees in accordance with the provisions of relevant legislation, agreements, awards and contracts of employment.

## 4 Procedures

### 4.1 Investigation

Prior to initiating any action in accordance with 4.2 through 4.5, the University will make every effort to resolve instances of possible Misconduct or Serious Misconduct through guidance, counselling or other appropriate action. If the concerns are not able to be resolved, then the University may undertake an initial investigation process to establish whether a Complaint can be reasonably substantiated or clarified with no need for further action.

Delegates and Employees have an obligation to advise of any perceived, potential or actual Conflict of Interest that may undermine the application of natural justice and procedural fairness.

The investigation process will be conducted in accordance with the principles of natural justice

and procedural fairness and may include questioning other individuals who may be involved in, or observed, the incident in question. Where there is a reasonable suspicion of Serious Misconduct having occurred, discussions will occur with the Director (Integrity and Professional Conduct) to ascertain where notification to the Crime and Corruption Commission is required.

Where the Vice-Chancellor determines that there is a case of Misconduct or Serious Misconduct to answer, then the process in 4.2 will be initiated. Where the Vice-Chancellor determines that there is no case of Misconduct or Serious Misconduct to answer, there will be no further action taken by the University.

In some circumstances a Complaint under this Procedure may also be regarded as a matter that requires attention under the Public Interest Disclosure Policy and Procedure.

With the exception of Complaints that are made in accordance with the University's Public Interest Disclosure Policy and Procedure, the University will not normally investigate anonymous Complaints unless the issues raised within the Complaint are of a serious nature and sufficient information is provided.

## 4.2 Formal action

Any allegation of Misconduct or Serious Misconduct will be considered by the Vice-Chancellor. If the Vice-Chancellor believes such allegations warrant further investigation, the Vice-Chancellor will:

- notify the Employee in writing and in sufficient detail to enable the Employee to understand the precise nature of the allegations, and to properly consider and respond to them;
- require the Employee to submit a written response within 10 working days from the receipt of the letter.

If the allegations are denied by the Employee, and the Vice-Chancellor is of the view that there has been no Misconduct or Serious Misconduct, the Vice-Chancellor will immediately advise the Employee, in writing, and may, by agreement with the Employee, publish the advice in an appropriate manner.

If the allegations are admitted in full by the Employee, and the Vice-Chancellor is of the view that the conduct amounts to Misconduct or Serious Misconduct, the Vice-Chancellor will advise the Employee, in writing, of the Vice-Chancellor's Decision and the operative date of the Disciplinary Action.

If the allegation is denied in part or in full, or if the Employee has not responded to the allegations, the Vice-Chancellor will refer the matter to an external investigator unless the Vice-Chancellor decides to take no further action or counsel or censure the Employee for unsatisfactory behaviour and take no other action.

## 4.3 Suspension

At the time of notifying the Employee under 4.2, or subsequently, in exceptional circumstances the Vice-Chancellor may suspend the Employee on full pay, or may suspend the Employee without pay if the Vice-Chancellor is of the view that the alleged conduct amounts to Serious Misconduct such that it would be unreasonable to require the University to continue the Employee's employment during a period of notice.

Where suspension without pay occurs at a time when the Employee is on paid leave of absence, the Employee will continue to receive a salary for the period of leave of absence.

The Employee may engage in external paid employment or draw on any annual leave or eligible long service leave credits during the suspension without pay.

The Vice-Chancellor may direct that salary be paid on the grounds of hardship.

Where a suspension without pay has been imposed and the matter is subsequently referred to an external investigator, the Vice-Chancellor will ensure that the investigator initially determines whether suspension without pay should continue. The investigator will provide advice as to whether the suspension without pay should continue.

During any period of suspension the Employee may be excluded from the University, provided that the Employee will be permitted reasonable supervised access to the University campus and to request relevant documentation in order to prepare their response to any allegations of Misconduct or Serious Misconduct that has been made against them; and to collect or have personal property returned.

## 4.4 Misconduct Investigation

The external investigator is to report on the facts relating to the alleged Misconduct or Serious Misconduct, including whether any mitigating circumstances are evident.

Where a matter is referred to an external investigator, the Vice-Chancellor will engage the investigator within 10 working days, where practicable.

The investigator will be appointed from a pool of individuals agreed annually between the Vice-Chancellor and Employee representatives on the Staff Consultative Committee. The Employee representatives on the Staff Consultative Committee will be consulted with on the selection of the investigator.

The appointed investigator has an obligation to advise of any perceived, potential or actual Conflicts of Interest that may undermine the application of natural justice and procedural fairness.

The investigator who is considering allegations of Misconduct may, where they are convinced that the merits and facts of the particular case go substantially beyond those contained in the

initial allegation, indicate that the allegation must be considered one of Serious Misconduct.

The Employee must be clearly informed, in writing, of which new matters the investigator considers may constitute Serious Misconduct and be given full opportunity to respond.

The investigator will:

- provide an opportunity for the Employee against whom the allegations are made to be interviewed by them and ensure that the Employee has adequate opportunity to answer allegations of Misconduct or Serious Misconduct, either in writing or in person;
- consider such further materials as they believe appropriate to substantiate or otherwise the facts in dispute;
- interview any other person they see fit to establish the merits or facts of the particular case;
- ensure that the Employee, or their Nominated Representative, and the Vice-Chancellor or Delegate, or Nominated Representative, have the right to make submissions, present and challenge evidence and ask questions of interviewees (where appropriate);
- conduct the investigation as expeditiously as possible consistent with the need for fairness;
- keep a taped record of any interview conducted during the investigation which will be available on request to the Employee or the Vice-Chancellor; and
- make the report available to the Vice-Chancellor and the Employee within 10 working days following the conclusion of the investigation.

At any stage during the investigation, the Employee may be represented by a Nominated Representative. The Vice-Chancellor or Delegate may also be represented by a Nominated Representative.

## **4.5 Report to Vice-Chancellor**

On receipt of the investigation report, and having considered the findings on the facts related to the alleged Misconduct or Serious Misconduct, the Vice-Chancellor may take Disciplinary Action.

If the Vice-Chancellor is of the view that there has been no Misconduct or Serious Misconduct, the Vice-Chancellor will immediately advise the Employee in writing, and may, by agreement with the Employee, publish the advice in an appropriate manner.

Where an Employee has been suspended without pay pending the Decision of the Vice-

Chancellor, any lost income will be reimbursed if there was no Misconduct or Serious Misconduct. However, a Decision taken by the Vice-Chancellor, at the Vice-Chancellor's discretion, not to dismiss or impose another penalty, will not be construed as an admission that there was no conduct justifying suspension without pay.

The University is not constrained from carrying out other investigations relating to the consequences of conduct of an Employee.

All actions of the Vice-Chancellor under this Section will be final, except that nothing in this Section will be construed as excluding the jurisdiction of any external court, tribunal or commission competent to deal with the matter.

## 5 Delegated Responsibilities

Approver	Level of Delegation
Vice-Chancellor	Decision (after considering the investigation report)
External Investigator	Determination
Executive Director (Human Resources)	Ensure matter proceeds in accordance with other relevant policies and timeframes; and to provide Procedure and process recommendations to the Vice-Chancellor

## 6 References

Nil.

## 7 Schedules

This procedure must be read in conjunction with its subordinate schedules as provided in the table below.

## 8 Procedure Information

<b>Subordinate Schedules</b>	
<b>Accountable Officer</b>	Executive Director (Human Resources)
<b>Responsible Officer</b>	Executive Director (Human Resources)
<b>Policy Type</b>	University Procedure

<b>Approved Date</b>	8/8/2019
<b>Effective Date</b>	8/8/2019
<b>Review Date</b>	3/4/2022
<b>Relevant Legislation</b>	<a href="#">Crime and Corruption Act 2001</a> <a href="#">Fair Work Act 2009</a> <a href="#">Public Interest Disclosure Act 2010 (Qld)</a> <a href="#">University of Southern Queensland Act 1998</a> <a href="#">USQ Enterprise Agreement</a>
<b>Related Policies</b>	<a href="#">Code of Conduct Policy</a> <a href="#">Fraud Corruption and Control Management Policy and Procedure</a> <a href="#">Media Engagement Policy</a> <a href="#">Public Interest Disclosure Policy and Procedure</a> <a href="#">Termination and Separation Policy</a>
<b>Related Procedures</b>	<a href="#">Appointments: Casual Procedure</a> <a href="#">Employee Conflict of Interest Procedure</a> <a href="#">Media Engagement Procedure</a> <a href="#">Termination of Employment Procedure</a>
<b>Related forms, publications and websites</b>	<a href="#">Public Interest Disclosure Website</a>
<b>Definitions</b>	<p><b>Terms defined in the Definitions Dictionary</b></p> <p><a href="#">Complaint</a></p> <p>A Complaint is an “expression of dissatisfaction made to or about the University, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required”.</p> <p><a href="#">Conflict of Interest</a></p> <p>A Conflict of Interest is a situation where an individual's personal</p>

interests could improperly influence the performance of their Official Duties and/or University Responsibilities. Conflicts of Interest may be: an actual conflict involves a direct conflict between a person's Official duties and University Responsibilities to and a competing interest or obligation, whether personal or involving a third-party a perceived conflict exists where it could reasonably be perceived, or give the appearance, that a competing interest could improperly influence the performance of a person's Official Duties and University Responsibilities a potential conflict arises where a person has an interest or obligation, whether personal or involving a third-party, that could conflict with the person's Official Duties and University Responsibilities

### [Decision](#)

A determination made by an Employee, contractor or other authorised delegate in the course of their duties on behalf of the University.

### [Delegate \(noun\)](#)

Delegate (noun) means the officer, Employee or committee of the University to whom, or to which, a delegation of authority has been made under this Policy.

### [Employee](#)

A person employed by the University and whose conditions of employment are covered by the USQ Enterprise Agreement and includes persons employed on a continuing, fixed term or casual basis. Employees also include senior Employees whose conditions of employment are covered by a written agreement or contract with the University.

### [Policy](#)

A high level strategic directive that establishes a principle based approach on a subject. Policy is operationalised through Procedures that give instructions and set out processes to implement a Policy.

### [Procedure](#)

An operational instruction that sets out the process to operationalise a Policy.

### [University](#)

The term 'University' or 'USQ' means the University of Southern Queensland.

[USQ Enterprise Agreement](#)

University of Southern Queensland Enterprise Agreement 2018-2021.

**Definitions that relate to this procedure only**

**Disciplinary Action**

Means action by the University to discipline an Employee for Misconduct or Serious Misconduct and includes: formal censure or counselling; demotion by one or more classification levels or increments; withholding of an increment; suspension with or without pay; or termination of employment for Serious Misconduct only.

**Misconduct and Serious Misconduct**

Are defined in accordance with the USQ Enterprise Agreement definitions 4.2.24 and 4.2.33 respectively.

**Nominated Representative**

Means in relation to an Employee, a person selected by the Employee to assist or represent the Employee. The person may be an officer or Employee of the relevant Union, or any other person chosen by the Employee. In relation to the University, it means a person selected by the University to assist or represent the University. The person may be an Employee of the University, or an officer or Employee of AHEIA, or any other person selected by the University. The Nominated Representative must not be a practising barrister or solicitor and must not present a Conflict of Interest.

**Keywords**

Misconduct, serious misconduct, discipline, allegations, suspension

**Record No**

13/300PL