SERIOUS MISCONDUCT

66 Misconduct or Serious Misconduct

66.1 Definitions

Disciplinary Process means the process prescribed in this Clause [66], Misconduct or Serious Misconduct.

Misconduct means a breach of appropriate standards of conduct expected of staff members at the University.

Serious misconduct means any or all of the following:

a) serious misbehaviour of a kind that constitutes a serious impediment to the carrying out of a staff member’s duties or to a staff member’s colleague(s) carrying out their duties;

b) serious dereliction of the duties required of a general staff member’s office;

c) conviction by a Court of an offence that constitutes a serious impediment to the carrying out of a staff member's duties or to a staff member’s colleague(s) carrying out their duties.

66.2 Application

66.2.1 For the purposes of this Clause [66], all references to misconduct are taken to include serious misconduct.

66.2.2 This Clause [66] does not apply to casual or probationary staff members.

66.2.3 The University must comply with this Clause [66] before applying a disciplinary sanction against a staff member for misconduct or serious misconduct. Decisions to apply a disciplinary sanction or to suspend a staff member are to be made by the relevant Executive Manager, other than decisions to suspend without pay or to terminate the staff member’s employment which are to be made by the Vice-Chancellor.

66.3 Principles

66.3.1 The University’s Code of Conduct and Guiding Ethical Principles may be referred to for guidance on appropriate standards of conduct expected of all staff members at the University. A copy of the University’s Code of Conduct and Guiding Ethical Principles will be available to staff members on the University’s website

66.3.2 A staff member may be represented by their Union or other nominated representative throughout the conduct of the disciplinary process.

66.3.3 A record of all meetings with the staff member will be kept by the University and a copy of these meeting records will be provided to the staff member.
66.3.4 All parties have an obligation to ensure that confidentiality is maintained throughout the disciplinary process.

66.4 **Step 1 - Enquiry into Matters Concerning Staff Member’s Conduct**

66.4.1 A line manager will normally deal with matter(s) concerning a staff member’s conduct through initial enquiry into the matter(s) and resolution at the local level using appropriate interventions, including counselling, mediation, and staff training.

66.4.2 Notwithstanding subclause [66.4.1], where the line manager:

a) is unable to resolve the matter(s) at the local level; or
b) is of the view that it is not appropriate to deal with the matter(s) at the local level; or

c) perceives a conflict of interest on their part in dealing with the matter(s);

the line manager will refer the matter(s) to the relevant Executive Manager for further consideration and advise the staff member concerned in writing of his or her decision to do so.

66.5 **Step 2 - Notification of Allegation(s)**

The Executive Manager will write to the staff member to:

a) notify the staff member of the allegation(s) being investigated by the University in sufficient detail to enable the staff member to properly respond to the allegation(s); and
b) inform the staff member of their right to be represented by their Union or other nominated representative throughout the disciplinary process; and

c) require the staff member to submit a written response to the allegation(s) within 10 working days or other period as agreed between the Executive Manager and the staff member; and

d) inform the staff member of the disciplinary action that may be taken in accordance with this Clause [66] should the allegation(s) be substantiated; and

66.6 **Step 3 - Response by Staff Member to Allegations**

66.6.1 Where the staff member admits the allegation(s) in full, the Executive Manager may decide to:

a) refer the matter back to the line manager with advice on further dealing with the matter;
b) apply appropriate disciplinary sanction other than termination of employment; or

c) make recommendation to the Vice-Chancellor to terminate the employment of the staff member on the grounds of serious misconduct.
66.6.2 Where the staff member fails to respond to the allegation(s) within the required timeframe, the Executive Manager will refer the allegation(s) for investigation and report in accordance with the terms of this Clause [66].

66.6.3 Where the staff member denies the allegation(s) in part or in full, the Executive Manager will either:

a) refer the allegation(s) for investigation and report in accordance with the terms of this Clause [66]; or
b) inform the staff member in writing that no further action will be taken, having considered the staff member’s response and formed the view that there has been no misconduct or serious misconduct.

66.7 Step 4 - Investigation

66.7.1 The Executive Manager will appoint a suitably experienced internal or external investigator to undertake the investigation of allegation(s) and make a report.

66.7.2 The Executive Manager will inform the staff member whose conduct is being investigated of any investigation undertaken in accordance with this Clause [66].

66.7.3 The investigation will be undertaken in such a way as to ensure that the requirements of procedural fairness and natural justice are met, including providing an adequate opportunity for the staff member for the following:

a) to be heard;
b) to be represented by their Union or other nominated representative in their dealings with the investigator;
c) to respond to the allegation(s) arising in the course of the investigation which may be the subject of findings by the investigator;
d) to present and challenge evidence;
e) to make submissions; and
f) to access all relevant documentation except that which is legally privileged or commercial-in-confidence.

66.7.4 The investigator will provide the Executive Manager with the report which will:

a) state the investigator’s findings of fact concerning the allegation(s) referred for investigation; and
b) state the basis for those findings of fact; and
c) identify any relevant mitigating circumstances arising from the investigation.

66.7.5 The Executive Manager will provide a copy of the report to the staff member.

66.7.6 The staff member must provide their response to the report, if any, to the Executive Manager within 10 working days.

66.7.7 The Executive Manager will consider the staff member’s response, if any, and make his or her decision within 10 working days. The Executive Manager may:
66.7.8 The Executive Manager will provide the staff member with a copy of his or her decision.

66.8 Step 5 - Decision in Relation to Allegations of Misconduct or Serious Misconduct

66.8.1 The Executive Manager or the Vice-Chancellor may make a decision after the application of Step 3 where the staff member admits the allegation(s) in full, or following Step 4 of this Clause [66].

66.8.2 The Executive Manager or the Vice-Chancellor may, in making his or her decision, take into account the report of the investigator, recommendations of the line manager, the staff member’s response(s) and any part admissions to the allegation(s), and any other matter the Executive Manager or the Vice-Chancellor considers appropriate.

66.8.3 Where the Executive Manager or the Vice-Chancellor determines to impose a disciplinary sanction in accordance with Step 3 or following Step 4 of this Clause [66], he or she will advise the staff member and the line manager of his or her decision.

66.9 Step 7 - Disciplinary sanction

66.9.1 The disciplinary sanctions for misconduct or serious misconduct, include formal censure or reprimand and no more than one of the following:

   a) directive from line manager(s) to undertake relevant training and education;
   b) withholding an increment;
   c) withdrawal of other benefits;
   d) demotion by one or more classification levels or increments;
   e) reversion to substantive appointment where a variation to employment contract exists;
   f) transfer to another suitable position in the University;
   g) removal from any appointment or Office to which the staff member is assigned by the University, while remaining in the employ of the University;
   h) suspension with pay;
   i) suspension without pay;
   j) termination of employment with notice;
   k) termination of employment without notice.

66.9.2 The Vice-Chancellor will only impose the sanction at subclause [66.9.1] (j) or (k) in the case of findings of serious misconduct.

66.9.3 Nothing in this Clause [66] prevents the utilisation of Clause [62], Dispute Resolution Procedure.
66.10 Suspension

66.10.1 The Executive Manager may decide, following consultation with the Director, Human Resources or Associate Director(s) (Human Resources):

a) to suspend the staff member on full pay; or
b) to recommend to the Vice-Chancellor to suspend the staff member without pay, if the allegation(s) is of a sufficiently serious nature that it would, if substantiated, result in termination of employment.

66.10.2 Any decision by the Executive Manager or the Vice-Chancellor to suspend the staff member will be made in accordance with the following:

a) the staff member will be advised in writing as soon as practicable after the decision to suspend is made;
b) during any period of suspension, the University at its sole discretion may allow the staff member such supervised access to the University as is necessary for the staff member to prepare their case and to collect personal property; and
c) where a staff member has been suspended without pay and no allegation(s) of misconduct is substantiated at the completion of the disciplinary process then the University will restore the staff member’s pay and other entitlements withheld during the period of suspension.

66.11 Summary Dismissal

Notwithstanding the provisions of this Clause [66], if the Vice-Chancellor considers that a matter is of a sufficiently serious nature to warrant summary action, the staff member may be summarily dismissed without notice. This decision will be communicated to the staff member in writing as soon as possible.