

Introduction

Federation University Australia (the University) expects that all its employees will conduct themselves in a manner that is consistent with the principles of the University, and University's policies and procedures, including the *Staff Code of Conduct Policy HR1659*.

All allegations of misconduct or serious misconduct against continuing and fixed-term TAFE teaching staff (excluding casual/sessionals) will be addressed using the *Managing allegations of misconduct or serious misconduct* process (the Process).

Proven allegations of misconduct or serious misconduct may result in a range of actions from a formal written warning or termination (with notice or payment in lieu of notice). In some circumstances, the seriousness of the behaviour and/or action may be of such a nature that it would be unreasonable to require the University to continue the employee's employment during the required period of notice.

Definitions

Term	Definition
Disciplinary action	<p>Means, measures or actions that may be taken by the University in relation to misconduct or serious misconduct and includes, but is not limited to:</p> <ul style="list-style-type: none"> a) giving an employee a written warning (including, where appropriate, a final written warning); or b) termination of employment.
Misconduct	<p>Misconduct means dereliction of duty or unacceptable behaviour. This includes, but is not limited to:</p> <ul style="list-style-type: none"> • conduct which is an impediment to the performance of the work of the employee or other employees in the University; • behaviour that may be reasonably perceived as bullying, harassing, intimidating, overbearing or physically or emotionally threatening; • an action of the employee which is prejudicial to the health or safety of other employees, students or members of the public; • a contravention, without reasonable excuse, of a lawful direction given to the employee by a person authorised to give the direction; • conduct of the employee that results in a conviction, sentence or other order imposed by a court which restricts the activities of an employee in a manner that constitutes an impediment to the employee carrying out their duties; • deceptive behaviour of a minor nature related to research, learning and teaching; • a contravention of the Staff Code of Conduct Policy; • employees making improper use of their position for personal gain; • employees making improper use of information, acquired by virtue of their position, to gain personally or for anyone else, financial or other benefits or to cause detriment to the University.
Nominated investigator	<p>A person employed within the University who is independent of the area where the allegations have originated from, and who has sufficient seniority and experience to undertake an investigation and make an impartial determination of the facts of the matter based on the balance of probabilities; or</p> <p>A person external to the University who is suitably qualified and experienced to undertake workplace investigations.</p>

Term	Definition
Serious misconduct	<p>Serious misconduct means misconduct of such a nature that it would be unreasonable to require the University to continue the employment of the staff member. This includes, but is not limited to:</p> <ol style="list-style-type: none"> a) a reoccurrence or continuation of conduct which has been found to be misconduct on the part of the staff member; b) wilful or deliberate behaviour by a staff member that is inconsistent with the continuation of the contract of employment; c) conduct that causes serious and imminent risk to: <ol style="list-style-type: none"> i. the health or safety of a person; or ii. the reputation, viability or profitability of the employer's business; d) the staff member, in the course of the staff member's employment, engaging in: <ol style="list-style-type: none"> i. theft; or ii. fraud; or iii. assault; e) the employee being intoxicated or otherwise seriously impaired by the influence of illicit drugs at work; f) the staff member refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment; g) dishonest behaviour in teaching activities and assessment; or h) a conviction by a court of an offence which constitutes a serious impediment to the carrying out of their duties.
Principles of natural justice	<p>Involves all of the following elements:</p> <ul style="list-style-type: none"> • the right to a fair and prompt hearing; • presumption of innocence until proven guilty; • the right to attend hearings with a friend or support person, if required; • the opportunity for all parties involved to be heard; • the respondent having full knowledge of the nature and substance of the complaint; • the complainant having the opportunity to respond to all the information gathered in the course of an investigation; • the right to an independent, unbiased decision-maker; and • a final decision that is based solely on the relevant evidence.

Process

Before taking disciplinary action against a staff member for misconduct or serious misconduct, the University will undertake the following process:

Formulating allegations of misconduct and/or serious misconduct

1. Where a Director or Education Manager becomes aware of behaviours or actions that may constitute misconduct or serious misconduct, the relevant Director or Education Manager shall seek advice from their HR Business Partner.

2. The relevant Director or Education Manager will gather all relevant details and supporting evidence of the alleged misconduct and/or serious misconduct and provide a preliminary report and supporting documents to the HR Business Partner. This report will also include recommendations for action in accordance with this process
3. The HR Business Partner will review the preliminary report and supporting documents and provide a copy to the Director, Human Resources who shall consider any prima facie allegation(s) of misconduct and/or serious misconduct. If the Director, Human Resources determines it to be appropriate they shall:
 - a) require the Pro Vice-Chancellor, VET (PVC, VET) (or person acting with the PVC's authority), to notify the staff member in writing; in sufficient detail to enable the staff member to understand the precise nature of the allegation(s) and to properly consider and respond to it(them).

The HR Business Partner will provide support to the PVC (VET) in preparing the notifications to staff members; and
 - b) require the staff member to submit a written response to the allegation(s) within 10 working days.

Suspension

1. If, in the view of the PVC (VET) the alleged conduct is of such a serious nature that the staff member should be suspended from the workplace while an investigation takes place, the PVC, VET will consult with the Vice-Chancellor and Director, Human Resources in relation to the alleged actions of the staff member, prior to making the decision to suspend.
2. The PVC (VET) may summarily suspend, for a defined period of time, a staff member with pay or without pay, if the PVC (VET) is of the view that the alleged conduct, prima facie amounts to serious misconduct such that it would be unreasonable to continue employment.
3. Prior to suspension with pay taking effect, the staff member will be advised by the PVC (VET) and a representative from Human Resources of the nature of the allegations and the reasons why the University feels suspension is the appropriate course of action.
4. Where practicable, prior to suspension without pay, the staff member should have the opportunity to respond to any allegations in the presence of the PVC (VET) or nominee before a final decision to suspend without pay is made.

Investigating misconduct/serious misconduct allegations

1. If the staff member admits in full the allegation(s) and the Director, Human Resources (after considering any information put forward in mitigation) is of the view that the conduct amounts to misconduct or serious misconduct, then the Director, Human Resources shall make a recommendation to the PVC (VET) in accordance with the disciplinary action stage of this process.
2. If the staff member denies the allegation(s) in part or in full, or fails to submit a written response to any allegation, the Director, Human Resources will appoint an investigator to conduct an investigation and provide findings to the Director, Human Resources.
3. The nominated investigator will conduct the investigation with regard for procedural fairness and the principles of natural justice. The investigation will be undertaken in a timely manner with due regard for the privacy, safety and wellbeing of all individuals involved.
4. Determinations as to whether the allegations are substantiated or not will be formed by the investigator on the evidence provided and available and based on the balance of probabilities. That is, it is more probable that something occurred than not.
5. The relevant HR Business Partner will conduct the investigation or oversee the progress of the investigation and provide administrative support for the nominated investigator.
6. If, upon receipt of the investigator's final report, the Director, Human Resources is of the view the staff member's conduct amounted to misconduct or serious misconduct, a recommendation will be made to the PVC (VET) to take disciplinary action.

7. Where the Director, Human Resources is of the view that there has been no misconduct or serious misconduct, the staff member will be advised by the PVC (VET), in writing within five working days of making the determination.

Disciplinary action

Where disciplinary action is to take place, the following process will be observed:

1. The Director, Human Resources will write to the PVC (VET) within five working days of receiving the investigator's report and provide information on the allegations, responses from the staff member and findings of the investigation and, if relevant, a copy of the investigator's report.

The Director, Human Resources will recommend one of the following actions including, but not limited to:

- a) provision of a written warning and a direction to the staff member on expectations of the University; or
 - b) provision of a final written warning to the staff member; or
 - c) termination of the employment of the staff member.
2. The PVC (VET), following consultation with the Vice-Chancellor and Director, Human Resources will advise the staff member in writing within five working days of the outcome of the investigation and whether the recommended disciplinary action is accepted or not, including the operative date of the decision.

The PVC (VET) may also decide to impose a different sanction(s) as appropriate, following discussion with the Director, Human Resources. The HR Business Partner will provide support in preparing the notifications to the staff member.