

## CONDUCT AND MISCONDUCT POLICY



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Approved by Council: 9 Oct 2019  
Revised by Council: None

### Related Documents

Higher Education Support Act 2003, Division 19, Section 45

Higher Education Provider Guidelines 2012, Chapter 4, 'Grievance and Review Procedures'

Higher Education Standards Framework, Section 2.4

Regulation 82: Code of Conduct

*Privacy Policy*

### 1. Rationale

- 1.1 "The University of Divinity is committed to the highest standards of conduct. This commitment is expressed by ensuring academic integrity, academic freedom, fair treatment of all people, and the safety and wellbeing of members of the University" [Regulation 82.1.1].
- 1.2 For the University of Divinity, fair treatment of all people is underpinned by the principle of equity in education, employment and wellbeing for current and prospective students and staff, and by providing a safe environment that is, so far as is reasonably practicable, free from risks to health, wellbeing, and safety.
- 1.3 To this end, unlawful discrimination, discriminatory harassment, vilification, sexual harassment, bullying, victimisation and serious misconduct or criminal behaviour are not tolerated.
- 1.4 In preventing or responding to alleged misconduct, the University is committed to procedural fairness, with objective and proper procedures being used when making a decision.

### 2. Aims and Objectives

- 2.1 This Policy aims to support the University and its members to understand and embrace the Code of Conduct and its supporting policies. This includes measures which:
  - a) inform the University community about the goals and philosophy of equal opportunity and fair treatment in accordance with the Code of Conduct and its supporting policies;
  - b) promote the Code of Conduct and its supporting policies through procedures, official documentation and publications;
  - c) support and assist University staff to act and exercise their leadership to create an effective, safe and diverse work, learning and research environment;

- d) provide the University community with information about its condemnation of unlawful discrimination, sexual harassment, discriminatory harassment, vilification, bullying and victimisation;
- e) protect, mitigate, and act against unlawful discrimination, sexual harassment, discriminatory harassment, vilification, bullying or victimisation of students or staff;
- f) support Colleges, staff and students with information about processes of early intervention and conciliation;
- g) establish and maintain clear processes within the University to respond to incidents covered by this Policy;
- h) provide advice and support to Colleges, students and staff in relation to complaints regarding matters covered by this Policy.

2.2 The University aims to provide structures and practices that are free from any unlawful discrimination (both direct and indirect), noting however that anti-discrimination law recognises that treating people equally does not necessarily mean treating people in exactly the same way. Accordingly, there may be circumstances (e.g., in relation to certain equity groups) where the University adopts policies or take special measures that lawfully discriminate between groups of individuals. Special measures are temporary measures for the benefit of a particular group to enable them to enjoy their human rights equally with others. Where necessary, the University makes reasonable adjustments to requirements, conditions or practices for individuals with relevant attributes so that they may enjoy equal opportunity.

### 3. Scope

3.1 This Policy applies to all members of the University as set out in Regulation 82.1.3.

3.2 Activities of the University, and University-related interactions between members of the University, may extend beyond University premises.

3.3 This Policy does not cover Academic Misconduct which is addressed in the University's Code of Conduct and the Academic Integrity Policy. All other misconduct is included in this Policy as General Misconduct.

### 4. Definitions

4.1 **Bullying** is repeated, unreasonable misconduct directed toward a member of the University by another member of the University that creates a risk to health and safety. A single incident of sustained or aggressive misconduct that creates a risk to health and safety may also be viewed as bullying.

4.2 **Discrimination** means either direct or indirect discrimination on the basis of an attribute.

4.2.1 **Direct discrimination** is one form of discrimination prohibited under relevant State and Commonwealth legislation (the other being indirect discrimination). Direct discrimination occurs when a person treats, or proposes to treat, someone with an attribute less favourably than someone without the attribute (or with a different attribute) in the same or similar circumstances. In relation to disability discrimination,

direct discrimination also occurs if an employer does not make, or proposes not to make, reasonable adjustments for a disabled person and a failure to make a reasonable adjustment has the effect of, because of the disability, that person being treated less favourably than a person without the disability in the same or similar circumstances.

4.2.2 **Indirect discrimination** is one form of discrimination prohibited under relevant State and Commonwealth legislation (the other being direct discrimination). Indirect discrimination occurs when a person imposes, or proposes to impose, a requirement, condition or practice that:

- a) someone with an attribute does not or cannot comply with; and
- b) has or is likely to have the effect of disadvantaging the person with the attribute; and
- c) is not reasonable in the relevant circumstances.

In relation to disability discrimination, indirect discrimination also occurs if:

- d) an employer requires or proposes to require persons to comply with a requirement or condition; and
- e) because of the disability, the person would comply if the employer made reasonable adjustments, but the employer does not do so; and
- f) the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.

This provision does not apply if the requirement or condition is unreasonable, having regard to the circumstances of the case.

4.2.3 In the context of discrimination, **attribute** means any of the following attributes (drawing on relevant State and Commonwealth legislation): age; breastfeeding; employment activity; gender identity; intersex status; disability; industrial activity; lawful sexual activity; marital status; parental status or status as a carer; physical features; political belief or activity; pregnancy; race; religious belief or activity; gender; sexual orientation; an expunged homosexual conviction; personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

4.3 **Discriminatory harassment** means any conduct of a person towards another person on the basis of an attribute of that other person, that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the other person.

4.4 **Incident** means an event of general misconduct that is referred to, or an allegation of general misconduct that is made to, a University staff member, most usually a lecturer, supervisor, head of department, Academic Dean, Research Coordinator, College welfare officer, College Principal, Dean of Academic Programs, Dean of School of Graduate Research, University Secretary.

4.5 **Mandatory reporting** is legally required notification of a criminal act, such as child abuse, to the appropriate authority.

4.6 **Member** means a member of the University as set out in the University's Regulation 82.

- 4.7 **Serious misconduct or criminal behaviour** means behaviour which does or could amount to a breach of the criminal law including (but not limited to): assault or physical violence; blackmail; serious or repeated bullying, sexual harassment, discrimination, discriminatory harassment, vilification or victimisation; use or sale of illicit drugs; threats to kill or inflict serious injury; sexual assault; sexting; stalking a person; using technology to menace, harass or cause offence to a person; abuse of a position of power or responsibility within the University; theft, dishonesty or fraud; or deliberately making false or vexatious allegations against a student or staff member.
- 4.8 **Sexual harassment**, under relevant State and Commonwealth legislation, is when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person, or engages in any other unwelcome conduct of a sexual nature in relation to another person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.
- 4.9 **Victimisation** is when a person subjects, or threatens to subject, another person to a detriment, which includes humiliation and denigration, because that other person has made a complaint or been involved in a complaints procedure, or because the first person thinks the other person intends to make a complaint or be involved in a complaints procedure.
- 4.10 **Vilification** means any form of conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of another person or class of person on the grounds of their race or religious beliefs or practices.

## 5. Related Legislation

- 5.1 For the purposes of application of this Policy related legislation includes (but is not limited to) the following, and to equivalent legislation in states other than Victoria in which the University operates:

*Age Discrimination Act 2004 (Cwlth);*  
*Australian Human Rights Commission Act 1986 (Cwlth);*  
*Charter of Human Rights and Responsibilities Act 2006 (Vic);*  
*Disability Discrimination Act 1992 (Cwlth);*  
*Disability Standards for Education 2005 (Cwlth);*  
*Equal Opportunity Act 2010 (Vic);*  
*Equal Opportunity for Women in the Workplace Act 1999 (Cwlth);*  
*Fair Work Act 2009 (Cwlth);*  
*Privacy and Data Protection Act 2014 (Vic);*  
*Occupational Health and Safety Act 2004 (Vic);*  
*Occupational Health and Safety Regulations 2017 (Vic);*  
*Racial and Religious Tolerance Act 2001 (Vic);*  
*Racial Discrimination Act 1975 (Cwlth);*  
*Sex Discrimination Act 1984 (Cwlth).*

## 6. Conduct

- 6.1 The conduct expected of members of the University is set out in the University's Code of Conduct. Further information about what constitutes good or appropriate conduct for

members of the University in the University environment may be understood by examining its opposite in the information in section 7 (Misconduct) of this Policy, and so knowing what is inappropriate or unacceptable.

- 6.2 The Code of Conduct must be easily accessible on the University's website and Learning Management System (ARK).
- 6.3 Persons who become members of the University must be informed of their rights and responsibilities under the Code of Conduct. This is achieved through the following means:
- a) Students agree to adhere to the Code of Conduct at admission and re-enrolment
  - b) Staff members agree to adhere to the Code of Conduct in their application to become a staff member or through their Employment Agreement
  - c) Library staff and workers agree to the Code of Conduct through the University's Library Agreement
  - d) Other members of the University as defined in Regulation 82 adhere to the Code of Conduct by virtue of their membership.
- 6.4 College Principals and the Vice-Chancellor have responsibility for ensuring that the Code of Conduct is communicated to persons who may not be members of the University but whose activities may include engagement in University activities or presence in facilities which are used for University activities for the purposes of ensuring such persons observe the Code of Conduct to the extent that it applies to the terms of their participation, appointment or engagement.
- These persons, as defined in Regulation 82, may include:
- a) persons who are auditing classes held by the University
  - b) staff appointed or employed by Colleges or Libraries of the University
  - c) contractors engaged by the University.
- 6.5 The University must ensure that training materials and guides to promote awareness of the Code of Conduct and to support good conduct are available to all members of the University. This is achieved through the following means:
- a) Discussion of the Code of Conduct in student, staff and employee induction or orientation programs at the Colleges and in the Office of the Vice-Chancellor
  - b) Publication of resources on the University website and Learning Management System (ARK)
  - c) Annual review of the Code of Conduct and its implementation by the University Executive.
- 6.6 The Vice-Chancellor must appoint a staff member of the Office of the Vice-Chancellor as a Fair Treatment Coordinator who is responsible for the provision of information and support to members of the University in relation to conduct and misconduct at the University.

6.7 A difference or disparity in power between two individuals or groups may be a factor in misconduct, and may contribute to behaviour that is not perceived as misconduct by the transgressor. Power imbalances can result from circumstances including age, gender, knowledge, language, culture, race, status (e.g., between lecturer and student, ordained and lay) or physical attributes. Members of the University are encouraged to be aware of the potential impact on behaviour of such disparities. Training opportunities, including theological reflection on awareness of power and its uses, are encouraged.

## **7. Misconduct**

7.1 It is General Misconduct if a member of the University:

- a) while on University premises, using a University facility or service, or engaging in a University activity,
  - i) commits a criminal offence
  - ii) engages in conduct which causes the University to be guilty of a crime
  - iii) intentionally or recklessly causes injury to another person;
- b) intentionally or recklessly causes damage to, or commits theft of University property or property on University premises;
- c) interferes with or improperly or unsafely uses University property, a facility or service;
- d) while on University premises, using a University facility or service, or engaging in a University activity acts improperly, including through:
  - i) sexual abuse
  - ii) sexual misconduct
  - iii) harassment
  - iv) bullying
  - v) vilification
  - vi) threatening or intimidating behaviour
  - vii) discriminatory behaviour
  - viii) use of abusive language
  - ix) disorderly behaviour
  - x) breach of the peace
  - xi) access, display, download, upload or broadcast of prohibited or illegal material
  - xii) breach of laws or University policies relating to discrimination
  - xiii) breach of laws or University policies relating to smoking, alcohol consumption, use of drugs, gambling or health and safety

- e) interferes with a University teaching, learning or research activity;
- f) engages in conduct which is detrimental to the reputation of the University;
- g) engages in a pattern or sequence of conduct which places substantial demand on University resources, vexatiously or without proper justification;
- h) forges a University document or a document submitted to the University;
- i) offers a bribe or other improper inducement in relation to the provision of a University service or the discharge of the function or duty of a University staff member;
- j) engages in misrepresentation in relation to the provision of a University service or the discharge of the function or duty of a University staff member;
- k) falsely claims an identity, qualification, prior learning or experience;
- l) falsely uses a title;
- m) acts in breach of a provision of the Regulation 82 or a University policy relating to conduct, privacy or disclosure of information given in confidence;
- n) while on University premises, using a University facility or service, or delivering a University service, engages in a breach of copyright;
- o) incites another person to commit general misconduct;
- p) fails to comply with an order of summary exclusion issued under a policy or policies authorised by the Council under Regulation 82.

7.2 In some instances, misconduct may be inadvertent, or done through ignorance. Neither of these is an excuse or a defence.

## **8. Incidents of General Misconduct**

8.1 An incident is any event where a member of the University commits general misconduct in the context of this Policy.

8.2 A member of the University who witnesses, becomes aware of, or experiences misconduct is encouraged to seek advice from, discuss with, or report the incident to a member of staff. This may include persons such as a lecturer, Academic Dean, Registrar, College welfare officer, College Principal, the Dean of the School of Graduate Research, the Dean of Academic Programs, or the Fair Treatment Coordinator.

8.3 Colleges are expected to provide students and staff with a list of designated people for the purpose of providing advice or receiving a report, striving to provide a diverse choice of people with attention to factors such as gender, age and cultural background.

8.4 A staff member to whom misconduct is reported must initiate a confidential written Incident Report, regardless of the level of seriousness of the misconduct or whether the misconduct is yet substantiated.

8.5 Incident Reports must be securely and confidentially lodged with a designated officer at the relevant College (or at the Office of the Vice-Chancellor [OVC] when the report was

made at the School of Graduate Research and among OVC staff or other University members).

- 8.6 A deidentified summary of Incident Reports and their nature must be provided annually to the University Council, through the University Executive. The summary must identify what action has been taken, where necessary, to address underlying causes such as where there is a pattern of repetition or a serious incident.

## **9. Incident Response**

- 9.1 In determining how to respond to an incident of actual or alleged misconduct, key principles include:

- a) the ongoing safety and wellbeing of those immediately involved
- b) support for those who have been harmed by the misconduct
- c) support for key people involved in the alleged misconduct
- d) fairness
- e) adopting viewpoints and making decisions based on evidence
- f) undertaking early intervention, rather than a 'wait and see' attitude
- g) escalating (or handing up to a more senior staff member or the Principal) the incident if it is serious or becomes more complex
- h) an overall timely response
- i) having material available that educates about misconduct and also the rights of those affected to respond and pathways for doing so
- j) encouraging an environment of evidence-based organisational learning to generate preventative improvements that aim to avoid or reduce the recurrence of similar issues.

## **9.2 Emergency Response**

- 9.2.1 In a critical or severe event of unacceptable or criminal behaviour, physical harm, ongoing threat, or similar, the safety and physical and mental welfare of the person who is harmed is the priority, as well as others who may be endangered or affected.
- 9.2.2 In an emergency situation, a member of the University (or another person if needed) may immediately call Emergency Services (Ambulance and or Police) on behalf of the affected person or persons.
- 9.2.3 If the incident is a sexual assault or sexual harassment, the decision to contact police to make a formal complaint, or to seek medical attention, is the right of the person assaulted (unless there are legal requirements because of the age of the person assaulted). The national 1800RESPECT line and Centres Against Sexual Assault (CASA) have 24 hour phone services and are alternative support referrals.

## **9.3 Immediate Response**



- 9.3.1 In the event of a significant occurrence of misconduct or unacceptable behaviour, if needed, the College's or OVC's supervising or first contact staff member should be contacted.
- 9.3.2 The contact details for this supervising or first contact staff member (e.g. Reception) who is available during all the hours that the College or the OVC is open, should be clearly promoted to students and other staff. The staff member needs to have clear understanding of the processes of support, including backup and after hours phone numbers, and also of relevant response and emergency procedures.
- 9.3.3 The Office of the Vice-Chancellor must ensure a telephone service for students on overseas student visas is available at all times for reporting incidents, including those which require an immediate response.
- 9.3.4 An incident requiring an immediate response must be followed up with one or more of the following:
- a) a Consultative Response
  - b) a formal complaint under the University's Complaints Policy
  - c) a criminal charge.

#### **9.4 Summary Exclusion**

- 9.4.1 If any person behaves in a disruptive, disorderly, offensive, unsafe or threatening manner while on University premises, using University facilities and services, or engaging in University activities, any University staff member or security officer may exclude the person from University premises, using University facilities and services, or engaging in University activities immediately and for a reasonable period.
- 9.4.2 A person must comply with an exclusion given under this Policy.
- 9.4.3 A person who fails to comply with an exclusion given under this Policy is guilty of general misconduct and a penalty may be applied in accordance with Regulation 82 and the Complaints Policy.

#### **9.5 Consultative Response**

- 9.5.1 A consultative response is the most usual response to an incident. When an incident is discussed with or reported to a staff member, the staff member must take into account the nature of the alleged misconduct and its perceived severity, and either:
- a) address the issue
  - b) escalate the issue to the College Principal or another senior staff member, or (in the case of the Office of the Vice-Chancellor) to a member of the Senior Management Team
  - c) both a) and b), consecutively.
- 9.5.2 The aggrieved person has the right at any stage to make a formal complaint under the University's Complaints Policy.
- 9.5.3 Methods that may be used in making a consultative response include:

- a) ascertaining the facts
- b) interviewing each party, and witnesses if needed
- c) counselling one or both parties
- d) informal mediation
- e) clarification of processes
- f) changes in processes
- g) education regarding particular aspects of the Conduct and Misconduct Policy and supporting information
- h) instigation of a formal complaint under the University's Complaints Policy by either the College Principal or the Vice-Chancellor for the purpose of investigating whether misconduct has occurred and, where it has occurred, the imposition of a penalty.

**10. False or Misleading Allegations**

10.1 Knowingly making a false allegation regarding matters of misconduct is a serious matter and is unacceptable. For this reason, all members of the University should be aware that, where the University is satisfied that an allegation is malicious, frivolous or vexatious, the person making the allegation may face disciplinary action.

**11. Complaints**

11.1 As noted above, a member of the University who has been directly affected or harmed by alleged misconduct may make a formal complaint about an incident or series of incidents of misconduct. A College Principal or the Vice-Chancellor may also instigate a formal complaint.

11.2 The University's Complaints Policy is to be consulted and followed in making and proceeding with the complaint.

**12. Date of Next Review**

12. This Policy must be reviewed no later than 31 December 2023.