

COMPLAINTS POLICY



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Policy Steward: Chief of Staff

Related Documents

Higher Education Support Act 2003, Division 19 Section 45

Higher Education Standards Framework 2021, Section 2.4, 6.2, 6.3

Education Services for Overseas Students Act 2000, Section 19

National Code of Practice 2018, Standard 9 and 10

Conduct and Misconduct Policy

Regulation 82: *Code of Conduct*

Complaints Notification Form

1. Rationale and Objectives

- 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 Members of the University have a right to make a complaint if they feel an action or behaviour by another member of University towards them constitutes an act of misconduct.
- 1.3 The Complaints Policy establishes the process by which complaints or allegations of misconduct within the scope of Regulation 82 and the Conduct and Misconduct Policy are raised, addressed and resolved.

2. Scope

- 2.1 This Policy applies to all members of the University as set out in Regulation 82.
- 2.2 This Policy is to be used to raise, address and resolve complaints of general misconduct as defined in the Conduct and Misconduct Policy .
- 2.3. This Policy does not usually apply to academic misconduct which is primarily addressed through the processes of the Academic Integrity Policy and the Appeals Policy.

3. Definitions

- 3.1 **Authorised Officer:** The Vice-Chancellor or a senior member of the University appointed by the Vice-Chancellor, such as a College Principal, for the purpose of making a determination under the Complaints Procedure.

- 3.2 **Complaints Notification Form:** The form approved by the Vice-Chancellor and published on the University's website. This form must be used to lodge a complaint under this Policy.
- 3.3 **Conciliator:** A person appointed by the Vice-Chancellor for the purposes of assisting in Stage 2 of the Complaints Procedure.
- 3.4 **Fair Treatment and Safeguarding Coordinator:** The Chief of Staff at the University of Divinity is the Fair Treatment and Safeguarding Coordinator in accordance with section 6.6 of the Conduct and Misconduct Policy.

4. Principles

- 4.1 Complaints of misconduct made against members of the University are dealt with justly and within a timeframe proportionate to the gravity or urgency of the matter.
- 4.2 Complaints of a criminal nature are referred to the appropriate authorities as required by State or Commonwealth law. A complaint may also be made to the University about the same matter.
- 4.3 The parties to a complaint access the complaint processes of the University without charge.
- 4.4 During the assessment and investigation of a complaint, the University may make provision for complainants and respondents to have access to independent professional and pastoral support that is proportional and appropriate to the nature of the alleged misconduct.
- 4.5 The principles of procedural fairness apply to the investigation and assessment of a complaint. This means that:
- a) respondents have the right to be informed of the alleged complaint against them and to be provided with a reasonable opportunity to respond to the allegations
 - b) respondents have the right to have the alleged complaint determined by an unbiased decision-maker/s
 - c) respondents and complainants have the right to regular updates from the University's Fair Treatment and Safeguarding Coordinator on the status of the assessment and investigation process
 - d) the University makes every effort to maintain the confidentiality of complainants and respondents (the parties), and to inform them of the need also to maintain confidentiality.
- 4.6 In making a determination as to whether misconduct has occurred, decision-makers must document both the decision and the reason for reaching the decision, including the relevant facts found to be proven and the evidence on which the findings were based.
- 4.7 Every effort is made to resolve complaints at the most immediate (or local) level while respecting the need to escalate complaints as determined by the gravity and urgency of the matter.

4.8 Where the result of misconduct is repairable, educative processes may be used which make appropriate restitution or improve the educational outcomes for the parties.

4.9 Where misconduct is found to have occurred, any penalty imposed:

- a) falls within the list of permitted penalties in Section 82.4 of Regulation 82
- b) is proportionate to the gravity of the misconduct
- c) takes account of the potential to achieve restitution or educational outcomes for the parties.

4.10 The University is committed to ongoing improvement of its culture and procedures by learning from best practice and from the experience and evidence generated by processes established under this Policy.

5. Procedural Fairness, Confidentiality, and Historic Incidents

5.1 The principles of procedural fairness apply to the handling of complaints. Primarily, this means that:

- a) the University must not make a decision that could adversely affect either party unless it has given that party an opportunity to present their case
- b) an investigator or decision-maker must not be biased towards a party or have a separate interest in the complaint
- c) information provided by a complainant is considered 'protected disclosure' and must be kept confidential, except as required to investigate the complaint or unless disclosure is specifically required by law.

5.2 In order to enable effective resolution of a complaint, to protect the individuals concerned and prevent interference by persons not involved in the complaint, the University must inform all complainants and respondents of the need for them also to maintain confidentiality. Failure to maintain such confidentiality may give rise to a subsequent complaint.

5.3 The University may entertain complaints regarding both current and historical matters, including cases where either the complainant or the respondent is no longer a member of the University. In doing so, the University must consider the particular circumstances of the parties and the nature of the complaint.

6. Complaints Procedure – Overview

6.1 Where practicable, complainants should maintain and have available accurate records of the alleged misconduct, including the time and place of the alleged incident/s and the names of any witness/es.

6.2 There are three stages to the Complaints Procedure:

Stage 1: Advice and Informal Resolution

Stage 2: Conciliation

Stage 3: Investigation and Determination.

6.3 The stages are usually undertaken sequentially. It is appropriate to undertake one or more of the stages depending on the gravity or urgency of the matter. The stage to be applied in any particular matter is reserved to the absolute discretion of the University. If the police or another external authority (e.g., child protection agency) become involved in a particular complaint, the University may adapt these procedures or wait for the outcome of the external investigation as appropriate in the circumstances.

7. Complaints Procedure – Stage 1: Advice and Informal Resolution

7.1 The aim of Stage 1 is to clarify the alleged misconduct as perceived by the complainant or respondent and to facilitate informal resolution. This may appropriately occur at College or School level, as set out in the Conduct and Misconduct Policy. However if a satisfactory resolution is not reached, individuals who have a concern about alleged misconduct should consult the University's Fair Treatment and Safeguarding Coordinator. There is no requirement for the complainant to lodge a written complaint in Stage 1.

7.2 The Fair Treatment and Safeguarding Coordinator may assist complainants by:

- a) Clarifying whether the alleged behaviour may constitute unlawful discrimination, sexual harassment, discriminatory harassment, vilification, bullying, victimisation, serious misconduct or criminal behaviour
- b) Providing information about this Policy and the Complaints Procedure
- c) Advising them of their rights under the relevant policy and legislation
- d) Advising them of the options available to them, including making a complaint to an external body
- e) Directing them to complete a Complaints Notification Form if the complaint has been received in person, by phone or by email
- f) Encouraging them to seek the type of support that they need and provide referrals as appropriate
- g) Exploring strategies to resolve the matter.

7.3 It is preferable that individuals seek to resolve an issue themselves directly. However, if this is unsuccessful or inappropriate, or in the case of serious misconduct, the complainant may choose to proceed and lodge a formal complaint.

7.4 The complainant then makes the complaint in writing on the University's Complaints Notification Form. The complainant must include a written summary (up to two pages) of the particular incident/s that have led to the complaint. The written statement must identify the person/s against whom the alleged complaint is made and the nature of the alleged misconduct, and provide supporting evidence, including the names of witnesses where appropriate.

7.5 The Complaints Notification Form is sent to the Fair Treatment and Safeguarding Coordinator. The Complaints Notification Form is considered by the Authorised Officer to determine whether to assess the complaint using Stage 2, Conciliation, or Stage 3, Investigation and Determination.

7.6 The Fair Treatment and Safeguarding Coordinator must acknowledge in writing to the complainant receipt of the form, normally within ten working days.

8. Complaints Procedure – Stage 2: Conciliation

8.1 Stage 2 introduces a neutral third party (the Conciliator) to assist the parties to resolve the complaint through a mutually accepted agreement. Conciliation only occurs if both parties agree to it voluntarily. The complainant must be willing to be identified to the respondent. It must not occur if it is inappropriate in the circumstances, for example in relation to certain allegations of serious misconduct or criminal behaviour.

8.2 The respondent is provided with details of the alleged complaint. The respondent is given the opportunity to seek advice from the Fair Treatment and Safeguarding Coordinator and may submit a short written response (of up to two pages) to the complaint to the Fair Treatment and Safeguarding Coordinator, normally within ten working days. A copy of any written response is provided to the Conciliator and complainant.

8.3 Upon referral of the request, the Fair Treatment and Safeguarding Coordinator must review the complaint and related documentation. If conciliation is appropriate, the Fair Treatment and Safeguarding Coordinator must invite the parties to participate. If conciliation does not proceed, the Fair Treatment and Safeguarding Coordinator must discuss further options with each party.

8.4 The conciliation process must be conducted through the complainant and the respondent meeting with the Conciliator either together or separately. The role of the Conciliator is not to make a formal finding but to assist the parties to reach a mutually agreed resolution. The complainant and respondent are each entitled to have a support person during the conciliation, but not a legal representative or advocate.

8.5 The complaint may end at Stage 2, either because the complaint was resolved through conciliation or because neither the complainant, the respondent or the University progresses the complaint to Stage 3. Alternatively, the complaint may progress to Stage 3: Investigation and Determination at the request of the complainant or the respondent or the University.

9. Complaints Procedure – Stage 3: Investigation and Determination

9.1 Stage 3 is the investigation of the complaint and the making of determinations based on the investigation.

9.2 The Authorised Officer may review the complaint and relevant documentation if Stage 2 has been undertaken, and then make a decision regarding whether to proceed with an investigation normally within ten working days. As appropriate, the Fair Treatment and Safeguarding Coordinator may be involved in the decision-making process.

9.3 The respondent is provided with details of the alleged misconduct if this has not already occurred. The respondent is given information about the procedure (if this has not already occurred) by the Fair Treatment and Safeguarding Coordinator and the opportunity to seek advice and to respond to the complaint in writing, normally within ten working days. A copy of any written response is provided to the investigator/s. The investigation is conducted in a manner that the Authorised Officer considers

appropriate in the circumstances. Investigations are conducted by either an individual investigator or an Investigation Panel (see Section 10) appointed by, and reporting to, the Authorised Officer. The investigator or an Investigation Panel may recommend an appropriate penalty but the decision-maker in relation to the penalty must be:

- a) the relevant Authorised Officer, or
- b) in the case of exclusion from the University, the Vice-Chancellor, or
- c) in the case of revoking or annulling the conferral of a degree or other award, the University Council, or
- d) in the case of expunging an offence, the University Council.

10. Complaints Procedure – Investigation Panel

10.1 If there is a single Investigator, that person must be independent and suitably qualified. The Investigator is assisted by the Fair Treatment and Safeguarding Coordinator.

10.2 If there is an Investigation Panel, members of the Panel are:

- a) A Chair, who is an independent and suitably qualified investigator appointed by the Chancellor
- b) Two members of the Council nominated by the Chancellor and with no association with the person against whom a complaint has been made or any College involved.

10.3 The Fair Treatment and Safeguarding Coordinator may convene, attend and provide support for meetings of the Investigation Panel but is not a member of the Panel.

10.4 The Investigation Panel meets as soon as possible after the decision to proceed to investigation has been taken. All deliberations must be strictly confidential.

10.5 The Investigation Panel may receive submissions in writing from any interested party, and must, to ensure provision of procedural fairness, interview the member of the University against whom misconduct is alleged. They may also interview the complainant.

10.6 All members of the Panel must attend all meetings. All members including the Chair have a vote. All decisions of the Panel are made by majority vote of the members; the Chair has the casting vote in the event of a tied vote.

10.7 Minutes must be taken of all Investigation Panel meetings. The Investigation Panel's recommended outcome including any penalty must be communicated in writing to the Authorised Officer.

11. Complaints Procedure – Potential Outcomes from an Investigation

11.1 Potential outcomes from an investigation are:

- a) a finding that the complaint was not substantiated
- b) a finding that the complaint was substantiated or substantiated in part

- c) steps to restore the complainant to the position that the complainant was in prior to the incident/s that led to the complaint
- d) training in this policy and related matters
- e) referral to other support services or strategies
- f) counselling
- g) further monitoring of the situation
- h) statement of regret or apology, where appropriate
- i) requirement to change processes or procedures
- j) disciplinary action or imposition of a penalty established by Regulation 82: Code of Conduct.

11.2 The outcome from an investigation must specify the person or persons accountable for ensuring the outcome is achieved, such as the imposition of a penalty or the completion of training.

12. Complaints Procedure – Delivery of Outcomes of an Investigation

12.1 The complainant, respondent and relevant officers are informed, as appropriate, of the findings and relevant outcomes of the investigation. The decision-maker may also notify another area of the University about a pending or concluded misconduct proceeding on a strictly need-to-know basis.

12.2 A copy of reports of formal investigations under the Complaints Policy must be lodged with the Fair Treatment and Safeguarding Coordinator.

12.3 The Fair Treatment and Safeguarding Coordinator must provide an annual report to the University Council about the number of complaints formally investigated in the previous year with de-identified general information about the types of complaints and their outcomes.

12.4 The Fair Treatment and Safeguarding Coordinator is authorised to inform other educational institutions and Church or accreditation authorities of an established complaint if appropriate and permitted by law.

12.5 In relation to delivering any College-specific outcomes from an investigation, the process is managed in accordance with the policies and governance of the College concerned.

13. University Initiation of a Complaint

13.1 In general, the complainant influences the progress of the complaint through the Complaints Procedure of this Policy. In some circumstances, the seriousness of the allegations mean that the University is under a legal obligation (e.g, to keep the work, learning or research environments safe and without risks to the health of members of the University) to ensure that a matter is investigated beyond the extent which the complainant intends or wishes. For this reason, where it is appropriate in the circumstances, the University may initiate a complaint or progress a complaint without

the involvement of the complainant. Where appropriate, this may involve de-identifying details of the complainant.

- 13.2 The University must provide the respondent with written notification of the complaint should the University-initiated complaint progress to either Stage 2: Conciliation or Stage 3: Investigation and Determination.
- 13.3 At any stage of the Complaints Procedure, or when a concern cannot be addressed using this Complaints Procedure, the University may consider and implement actions as necessary to address concerns regarding individuals' safety, wellbeing or participation in work, study or research. These actions do not imply any wrongdoing or any case to answer.

14. Complaints about Relevant Senior Officer

- 14.1 Where there is a complaint against the Fair Treatment and Safeguarding Coordinator, this should be brought to the attention of the Vice-Chancellor.
- 14.2 The Fair Treatment and Safeguarding Coordinator must not exercise any responsibility for dealing with complaints about their own behaviour or that of the Vice-Chancellor.
- 14.3 Where there is a complaint about the Fair Treatment and Safeguarding Coordinator, the Vice-Chancellor or the Vice-Chancellor's delegate is empowered to act as the Fair Treatment and Safeguarding Coordinator for the purposes of the Complaints Procedure and assume the role and responsibilities of the Fair Treatment and Safeguarding Coordinator.
- 14.4 Where there is a complaint against the Vice-Chancellor, the Chancellor is empowered to act as the Fair Treatment and Safeguarding Coordinator for the purposes of the Complaints Procedure and assume the role and responsibilities of the Fair Treatment and Safeguarding Coordinator.

15. False or Misleading Allegations

- 15.1 Knowingly making a false complaint under this Policy 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 a complaint is malicious, frivolous or vexatious, the complainant may face disciplinary action.

16. Complaints to External Bodies

- 16.1 While members of the University are encouraged to use the University's Complaints Procedure, particularly in relation to less serious or non-criminal complaints, the University is supportive of members of the University bringing their complaint to a relevant external body, particularly in the case of serious matters, such as serious misconduct or criminal behaviour. Nothing in this Policy should be taken as limiting the right of a member of the University to contact an external body or pursue their complaint through the mechanisms provided by that external body.
- 16.2 Members of the University may, at any time, seek advice from and/or lodge a complaint with, relevant external bodies.

16.3 If a member of the University pursues a complaint with an external body, the University may determine to suspend or terminate its Complaints Procedure. In these circumstances, the University may consider and implement other actions as necessary to address concerns regarding individuals' safety and wellbeing, and participation in work, learning or research.

16.4 Should a party to a Complaints Procedure wish to appeal the decision of the University, the party does not have recourse to the University's Appeals Policy but may appeal to an external body such as:

- Dispute Settlement Centre of Victoria
- State and territory offices of the Ombudsman
- Consumer Affairs Victoria
- Any solicitor

17. Date of Next Review

17.1 This Policy must be reviewed no later than 31 December 2029.