

Policy Title: Misconduct and Serious Misconduct - General Staff

Descriptors : 1) Discipline 2) Code of Conduct 3) Termination

Category : Human Resources

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1. Intent

The organisational values outlined in the University's Code of Conduct define the general expectations of the University in relation to the professional behaviour of staff. This policy details the processes that are to be followed where alleged breaches in professional standards occur. These processes are to be used for allegations of misconduct and serious misconduct as they relate to fixed-term and ongoing General Staff.

The University will not tolerate misconduct and will address such instances promptly and in accordance with this policy. Allegations of misconduct or serious misconduct will be investigated in a fair and equitable way.

2. Organisational Scope

This policy applies to all Edith Cowan University General Staff excluding casual employees.

3. Definitions

'Decision maker' the Head of Faculty/Director of Centre/Office or the Vice-Chancellor.

'Disciplinary Action' action to discipline an employee for misconduct or serious misconduct and may include:

- a. Formal censure or counselling;
- b. Withholding a salary increment;
- c. Demotion by one or more salary increments;
- d. Suspension with or without pay; or
- e. Termination of Employment.

Depending on the severity and nature of the breach, acts of misconduct may result in criminal charges or civil action.

‘Employee Representative a person nominated by an employee or group of employees to act on their behalf who may or may not be an employee or union representative. An employee representative cannot be a person who is currently a practicing solicitor or barrister except for those employed by a registered employee association.

‘Natural Justice’ The principles of natural justice protect the rights and interests of an individual. The key tenets of natural justice are that:

- a. A person is to be clearly informed as to the nature of the matters raised and the standards of work expected of the employee;
- b. A person has ample opportunity to respond to the matters raised;
- c. The process is fair and objective to the extent that it is seen to be unbiased by a reasonable person;
- d. The Misconduct process be outlined to the employee;
- e. Investigations be conducted fairly and justly;
- f. The right to representation if the employee so chooses.

‘Misconduct’ means conduct that is not serious misconduct but that is unsatisfactory, constitutes an impediment to the employee carrying out their duties, refuses to carry out a reasonable instruction that is consistent with the employee’s contract of employment or is inconsistent with the University’s policies, procedures, code of conduct, statutes, acts or by-laws.

‘Serious Misconduct’ means wilful or deliberate behaviour of a kind that constitutes a serious impediment to the carrying out of an employee’s duties or to an employee’s colleague carrying out their duties. Serious misconduct includes conduct that causes imminent and serious risk to the health and safety of a person or the reputation or financial interests of the University.

Serious Misconduct includes theft, fraud, assault, being under the influence of alcohol or prohibited substances at work, serious dereliction of duties, conviction of a criminal offence that constitutes a serious impediment to the carrying out of an employee’s duties, conduct that is defined as criminal misconduct in the Policy for Dealing with Fraud and Misconduct at ECU.

‘Supervisor’ the person with managerial responsibility for the employee

4. Policy Content

The process for investigating claims of misconduct and serious misconduct is based on the principles of efficiency, effectiveness, equity, transparency and natural justice.

Investigations into allegations of misconduct and serious misconduct are to be carried out as soon as possible after the alleged misconduct is reported. The

University will ascertain all facts and circumstances and determine what action is to be taken in the shortest practicable period of time.

4.1 Initial Inquiry

- 4.1.1** Allegations of misconduct or serious misconduct shall be considered, in the first instance, by the employee's supervisor.
- 4.1.2** Where an allegation relates to misconduct, the supervisor will inform the staff member of the alleged inappropriate behaviour, outline the conduct that is expected from the employee and provide the employee with an opportunity to respond. If the supervisor determines that an allegation of misconduct is substantiated, then the supervisor is required to outline the relevant processes.
- 4.1.3** Where appropriate, the supervisor will attempt to resolve the matter through guidance, counselling or other appropriate action to assist the staff member to improve their conduct. If the matter is resolved, no further action is required.
- 4.1.4** If it is decided that a formal investigation into the allegations is warranted, then the supervisor will, as soon as possible, conduct or commission an investigation into matters relevant to the employee's alleged actions.
- 4.1.5** Should the information obtained during the initial inquiry or investigation process indicate that criminal misconduct has occurred, then the Director Human Resources is to be notified. The Director Human Resources is to refer the matter to the Director, Risk Management and Audit Assurance to ensure compliance with the Corruption and Crime Commission Act 2003 and the Policy for Dealing with Fraud and Misconduct at ECU.

4.2 Formal Investigation

- 4.2.1** The nominated investigator, normally the employee's supervisor, shall ensure that there are no conflicts of interest. Where a conflict of interest may exist, the investigations will be undertaken by the supervisor's supervisor.
- 4.2.2** The investigation process will be supported by an employee of the Human Resources Service Centre.
- 4.2.3** The staff member will be interviewed about the alleged misconduct. The staff member may request to have an employee representative or support person at any time during the process.
- 4.2.4** Disciplinary investigations may proceed concurrently with criminal investigations.
- 4.2.5** The Vice-Chancellor may decide to suspend the employee pending the outcome of the investigation.
- 4.2.6** Suspension during the investigation process shall normally be with pay, unless otherwise determined by the Vice-Chancellor. The loss of salary or other entitlements will be reimbursed if it is ultimately determined that the allegations be dismissed.

- 4.2.7** A staff member who has been suspended must not attend any campus of the University without the prior approval of the employee's supervisor.
- 4.2.8** The supervisor will provide a report to the Vice-Chancellor and to the employee, normally within ten (10) working days, following the conclusion of the investigation. The report will detail the facts related to the alleged misconduct, conclusions reached based on the evidence provided, reasons in support of the findings and any disciplinary recommendations.
- 4.2.9** Upon receipt of the supervisor's report, the employee will be invited to submit a written response to the Vice-Chancellor within ten (10) working days.
- 4.2.10** The Vice-Chancellor shall, before making a decision, satisfy themselves that the processes outlined in this policy have been followed and that the actions of the employee amount to misconduct or serious misconduct.
- 4.2.11** Where the allegations are denied in full by the employee and the Vice-Chancellor is satisfied that there has been no misconduct or serious misconduct, no further action will be taken and the employee will be advised accordingly.
- 4.2.12** Decisions of the Vice-Chancellor shall be provided to the employee in writing within seven (7) working days.

4.3 Summary Dismissal for Serious Misconduct

Notwithstanding the provisions of this policy, the employment of a staff member may be terminated without notice by the University for serious and wilful misconduct. In this instance, a statement of reasons for the dismissal will be provided within twenty four (24) hours of dismissal.

4.4 Records

Documentation relating to misconduct matters will be placed on a formal restricted access file. Such documentation may include records of meetings, discussions with witnesses, responses, emails and considerations relevant to the alleged misconduct.

5. References

Policy Code:	HR153	File No: Sub/365
Policy Owner:	Team Leader, Employee Relations	
Approved by:	Vice-Chancellor	
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Revision Date:	August 2012	
Amendments:	July 2009	Policy amended to comply with University Guidelines re drafting of Policy Documents.
Related Policies/Documents:	<ul style="list-style-type: none"> • Hr 117 Code of Conduct • Relevant Industrial Instrument • Misconduct & Serious Misconduct – General Staff Guidelines 	

6. Contact Information

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