



THE UNIVERSITY OF  
**SYDNEY**

**Dr Michael Spence AC**

Vice-Chancellor and Principal

15 November 2019

Committee Secretary  
Senate Education and Employment Legislation Committee  
Parliament House  
Canberra ACT 2600  
By email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Secretary,

I read with interest the Proof Hansard of the Senate Education and Employment Legislation Committee's Estimates hearing held 24 October 2019, which included from page 66 several assertions made by Senator Amanda Stoker about the University of Sydney's policies and procedures for handling student misconduct matters.

Regrettably, many of the claims about the University's approach were inaccurate and caused me to write to Senator Stoker and the Chief Commissioner of the Tertiary Education Quality and Standards Agency (TEQSA), Professor Nicholas Saunders, outlining the facts from the University's perspective. Given this, I thought I should write to you in similar terms for the Committee's information and so that steps may be taken as appropriate to correct the Hansard record.

At the University of Sydney, student complaints are handled, in the first instance, in accordance with the University's [Student Complaints Procedures 2015](#). The purpose of the Student Complaints Procedures is to give effect to the [Resolution of Complaints Policy 2015](#), which sets out the general principles applicable to complaints from and about all members of the University community and from members of the public. The policy expressly provides for procedural fairness, the opportunity for the respondent to be heard (Clause 8) and for the prompt referral of matters involving possible criminal conduct to NSW Police (Clause 17).

Clause 8 (9) of the Student Complaints Procedures provides that, where a complaint about a student alleges conduct that might, if proven, constitute misconduct, involve possible criminal behaviour or involve a risk to others, the matter is to be referred to the Registrar for handling in accordance with the [University of Sydney \(Student Discipline\) Rule 2016](#). 'Misconduct' is defined in section 2.1 of the Rule. The disciplinary process is prescribed in Part 4 of the Rule. It requires:

- that the student be sent a notice of misconduct setting out the alleged misconduct;
- a preliminary meeting with the Registrar or their nominee, to which the student is entitled to bring a support person or representative (including a legal representative);
- a misconduct investigation, during which the investigator is required to:
  - give the student copies of any documents relating to the allegations;
  - give the student an opportunity to respond in writing and in person to the allegations and any documents provided;
  - invite the student to bring a support person or representative (including a legal representative) to any meeting;
  - allow the student to provide any documentary information relevant to the allegations, and the names of any witnesses who can provide information relevant to the allegations.
- that a report be provided to the Registrar setting out findings of fact and any findings of misconduct.

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Findings of fact are made on the balance of probabilities, which is the standard of proof to be satisfied in civil proceedings. The University takes into account the nature and seriousness of the alleged conduct when deciding whether the standard of proof is met.

Misconduct investigations are conducted by practicing solicitors with experience and expertise in administrative law. Investigation reports contain a detailed analysis of the weight and reliability of evidence and a clear statement of the reasons for any findings. The Registrar may accept or reject the findings set out in the investigation report. If the Registrar finds that a student is guilty of misconduct and decides to impose a penalty, the Registrar must give the student a written notice of the finding and of the penalty and a copy of the investigation report.

The appeals process is prescribed in Part 5 of the Rule. A student may appeal against either or both of the finding of misconduct and a decision to impose a penalty on a number of grounds, including:

- that the finding of misconduct is unreasonable or cannot be supported, having regard to the relevant evidence;
- that the finding of misconduct was made in breach of the requirements of procedural fairness, or based on a material mistake as to the facts;
- that new evidence has become available;
- that the penalty to be imposed on the student is excessive or inappropriate.

Appeals are heard by a Student Disciplinary Committee, which comprise three members (including a student) and are chaired by University staff or external appointees with appropriate qualifications. Students are entitled to be, and regularly are, represented at the appeal hearing by a practicing solicitor or barrister. The student representative bodies offer free independent legal advice and representation for students, with support provided indirectly by the University utilising funds collected through the Government's Student Services and Amenities Fee.

It is rare for the University to receive a complaint of student conduct that would constitute criminal conduct. Where a matter is referred to the police, the University liaises closely with the responsible officers and complies with any requests relating to the handling of evidence and communications with the student. Any University process is suspended pending completion of the criminal process.

The University is required under sections 316 and 316A of the *Crimes Act 1900 (NSW)* to report information about the commission of a 'serious indictable offence' to the police. The University takes this obligation seriously and advises complainants that, in some circumstances, a matter may need to be reported to the police against their wishes.

The University is committed to resolving student misconduct matters in a procedurally-fair manner and recently provided detailed information to TEQSA about its policies and procedures.

I trust this summary of our approach for managing student misconduct matters assists Committee members' understanding of the issues and would be pleased to provide further information as required.

Yours sincerely,



Michael Spence