

## Attachment 2: Examples of relevant University clauses

**University of SA (academic and general)****46. MISCONDUCT/ SERIOUS MISCONDUCT****46.1 Misconduct**

For the purposes of this clause, misconduct occurs when a staff member breaches their obligations under their contract of employment. Examples of misconduct include but are not limited to:

- a) Significant breaches of policies, codes of conduct and other reasonable instructions;
- b) Unauthorised absence from duty; and
- c) Inappropriate use of University property and facilities.

**46.2 Serious Misconduct**

Serious misconduct is behaviour by a staff member that causes serious detriment to the University or serious risk to:

- The health or safety of a staff member, student, other member of the University or visitor to the University; and/or
- The reputation of the University.

Examples of serious misconduct include but are not limited to:

- a) Threatened or actual assault of another staff member, student or member of the public;
- b) Serious conflict of interest;
- c) Acts of dishonesty in relation to University property and facilities i.e. misappropriation or repeated damage or misuse of University property or facilities;
- d) Serious or repeated bullying, abuse or sexual harassment of another staff member, student or member of the public;
- e) Serious failure to observe occupational, health, safety and welfare policies, instructions and requirements; and
- f) Refusal to carry out a lawful and reasonable instruction that is consistent with the staff member's contract of employment.

**46.3 Disciplinary Action**

Action to discipline a staff member for misconduct or serious misconduct may only be taken by the Vice Chancellor, and means:

- a) Formal censure or counselling; and/or
- b) Suspension with or without pay for a reasonable period; and/or
- c) Withholding of an increment; or
- d) Demotion by one or more increments; or
- e) Demotion by one or more classification levels; or
- f) Termination of employment (for serious misconduct only).

**46.4 Academic Freedom, Whistle Blowing and Participation in University Governance**

Statements by staff which have the potential to be seen as damaging the reputation or business of the University will not be treated as misconduct where the making of the statement is consistent with the University's Code of Ethical Conduct and:

- a) Is made by an academic staff member and concerns a matter within their field of academic expertise;

- b) Brings to public attention a matter on which the University has breached its act, policies, or accepted norms of practice for universities; and
- c) Is made by a member of staff contributing to debate of a matter being considered by Council or one of its Committees.

#### 46.5 **Disciplinary Action for Misconduct/Serious Misconduct**

- a) Before the Vice Chancellor takes disciplinary action against a staff member for reasons amounting to misconduct or serious misconduct, the Vice Chancellor's nominee must take the steps in this clause, except that, where a matter which may involve misconduct or serious misconduct has been dealt with in good faith as if it were a case of unacceptable performance under clause 45, the procedures of this clause are not required, but the provisions of clause 45 including notice periods and review procedures must be followed.
- b) Any allegation of misconduct/serious misconduct shall be considered by the Vice Chancellor's nominee. If the Vice Chancellor's nominee believes such allegations warrant further investigation he/she shall:
  - i) notify the staff member in writing and in sufficient detail to enable the staff member to understand the precise nature of the allegations, and to properly consider and respond to them;
  - ii) require the staff member to submit a written response within ten (10) working days.
- c) The Vice Chancellor's nominee may suspend the staff member on full pay at the time of notifying the Vice Chancellor in accordance with sub clause 46.5 b) above, or may suspend the staff member without pay if the Vice Chancellor's nominee is of the view that the alleged conduct amounts to conduct of a kind envisaged in sub clause 46.2. Provided that:
  - i) where suspension without pay occurs at a time when the staff member is on paid leave of absence the staff member shall continue to receive a salary for the period of leave of absence;
  - ii) the staff member may engage in paid employment or draw on any recreation leave or long service leave credits for the duration of the suspension without pay;
  - iii) the Vice Chancellor's nominee may at any time direct that salary be paid on the ground of hardship;
  - iv) where a suspension without pay has been imposed and the matter is subsequently referred to a Dispute Committee, the Vice Chancellor's nominee shall ensure that the Committee at its first meeting considers whether suspension without pay should continue and recommends whether the suspension should continue or not.
- d) If the allegations are denied by the staff member and the Vice Chancellor's nominee is of the view that there has been no misconduct or serious misconduct he/she shall immediately advise the staff member in writing, and may, by agreement with the staff member, publish the advice in an appropriate manner.
- e) If the allegations are admitted in full by the staff member and the Vice Chancellor's nominee is of the view that the conduct amounts to misconduct or serious misconduct the matter will be referred to the Vice Chancellor. The Vice Chancellor shall advise the staff member in writing of their decision on the recommendations and the operative date of the disciplinary action.
- f) If the allegation is denied in part or in full or if the staff member has not responded to the allegations the Vice Chancellor's nominee shall refer the matter to a Dispute Committee within a reasonable period of time in accordance with clause 43, unless he/she decides to take no further action or refer the matter to the Vice Chancellor. The Vice Chancellor may counsel or censure the staff member for unacceptable behaviour and take no other action.
- g) During any period of suspension the staff member may be excluded from the University, provided that he or she shall be permitted reasonable access to the University for the preparation of his or her case and to collect personal property.
- h) **A Dispute Committee convened under sub clause 46.5 f) shall act in such a way as to ensure that fairness, natural justice and due process are observed and practiced. This shall include, but not be limited to, providing the opportunity for the staff member to be heard, to be given adequate opportunity to answer findings or allegations, to be represented in proceedings of the Committee, to present and challenge evidence, and**

to make submissions. Proceedings shall be conducted in camera unless otherwise agreed between the staff member and the University. The committee shall keep a tape record of the proceedings, but not its own deliberations, which shall be available on request to either the University or staff member. The committee may interview any person it thinks fit, in the presence of the staff member and advocate, in order to establish the merits of the case or facts of the matter under dispute.

- i) On receipt of the report of the Dispute Committee, and having considered its findings on the facts related to the alleged misconduct or serious misconduct, the Vice Chancellor may take disciplinary action. The staff member shall be advised of the Vice Chancellor's decision within ten (10) days of the Vice Chancellor receiving the report from the Dispute Committee.
- j) Where a staff member has been suspended without pay pending the decision of the Vice Chancellor, then any lost income shall be reimbursed if there was no serious misconduct. However, a decision taken by the Vice Chancellor in his or her discretion not to dismiss or impose another penalty shall not be construed as an admission that there was no conduct justifying suspension without pay.
- k) If having considered the Committee's findings on the facts relating to the alleged misconduct or serious misconduct, the Vice Chancellor is of the view that there has been no misconduct or serious misconduct he/she shall immediately advise the staff member in writing, and may, by agreement with the staff member, publish the advice in an appropriate manner.

#### 46.6 Research Misconduct

- a) This clause is adopted from the AVCC/NHMRC statement/guidelines on research misconduct.
- b) For the purposes of this sub clause:

"Misconduct" or "Scientific misconduct" is taken here to mean fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research.

It includes the misleading ascription of authorship including the listing of authors without their permission, attributing work to others who have not in fact contributed to the research, and the lack of appropriate acknowledgment of work primarily produced by a research student/trainee or associate. It does not include honest errors or honest differences in interpretation or judgements of data.

## **Macquarie – Academic and General Staff**

2.9.1 The University is committed to act in a manner consistent with the protection and promotion of intellectual freedom within the University and in accordance with the University's Academic Freedom policy and Code of Conduct.

2.9.2 Intellectual freedom includes:

- (a) the rights of all Staff Members to express opinions about the operation of the University and higher education policy more generally;
- (b) the rights of Staff to pursue critical open enquiry and to discuss freely, teach, assess, develop curricula, publish and research within the limits of their professional competence and professional standards;
- (c) the right to participate in public debates and express opinions about issues and ideas related to their discipline area;
- (d) the right of all Staff Members to participate in professional and representative bodies and to engage in community service without fear of harassment, intimidation or unfair treatment; and
- (e) the right to express unpopular or controversial views, although this does not mean the right to vilify, harass or intimidate.

2.9.3 In the exercise of intellectual freedom, Staff Members will act in a professional and ethical manner and will not harass, vilify or defame the University or its Staff Members.

2.9.4 The University will encourage Staff Members to participate actively in the operation of the University and in the community. The University will take all reasonable steps to ensure that all governing bodies within the University operate in a transparent and accountable manner, encouraging freedom of expression and thought. This does not prevent a University committee from considering a matter 'in camera'.

3.1.1 Recruitment and selection processes at the University will uphold the principle of competition on merit

## **UNE (Academic Staff) -**

### **1. COMMITMENTS**

The University and its staff agree that they are committed to:

improve the performance, competitiveness and success of the University in order to achieve sustainable future growth;

a flexible approach to change that reflects the demands in operational requirements;

a culture of mutual respect with consultation, participation, trust, flexibility, collegiality and continuing improvement;

treating each other in a fair and reasonable manner and being accountable for their responsibilities;

an inclusive workplace and will work to prevent and eliminate discrimination, bullying and harassment in the workplace and to achieve equal employment opportunity;

achieving and maintaining a healthy and safe working environment;

enhancing flexibility and streamlining administrative processes.

**act in a manner consistent with the protection and promotion of intellectual freedom within the University where staff are able to:**

- (a) express opinions about issues and ideas related to their professional area of expertise and higher education issues; participate in public debates and debates relating to decision-making processes and express unpopular or controversial views, which do not defame, harass, vilify or intimidate;**
- (b) pursue critical and open academic inquiry;**
- (c) express their opinions in their private capacity as an individual member of society, not as a University spokesperson unless authorised to do so; and**
- (d) participate in professional and representative bodies, and engage in community service without fear of harassment, intimidation or unfair treatment.**

Intellectual freedom carries with it the duty of staff members to use the freedom in a reasonable manner consistent with a responsible and honest search for, and dissemination of, knowledge and truth.