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**Staff Conduct Policy – Guidelines**

**Informal Process**

**Formal Process**

**Tikanga Māori Process**

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## **GUIDELINES FOR AN INFORMAL PROCESS**

An informal method of resolving alleged misconduct is where the relevant parties resolve the matter by mutual agreement and without either one having the authority to impose a resolution over the other. The parties must deal with each other in good faith which includes providing the opportunity for each to consider and respond to the other.

Informal methods may include the assistance of a third party (e.g. an independent facilitator), but without the third party having the authority to impose a resolution.

It should be noted that if a person covered by the Staff Conduct Policy refuses to participate in an informal process, the matter may be dealt with under the formal process for dealing with alleged misconduct.

### **Advantages of an Informal Process**

- Speedy resolution
- Resolution by the parties
- Resolution by agreement
- Greater likelihood of maintaining the relationship between the parties

### **When an Informal Process may be appropriate**

There are many circumstances in which an informal process may be appropriate. An informal process is reliant on the co-operation of both parties, good faith and a commitment to resolving the issues. Some examples where an informal process may be appropriate and encouraged are:

- In a one-off situation which has arisen unexpectedly, such as a dispute between two colleagues who normally have a good working relationship.
- Where the appropriate remedy for the alleged misconduct is not a disciplinary penalty (e.g. a formal warning) but may be an apology and/or an agreement about how the parties will interact in future.
- Where a person may be genuinely unaware that they have acted inappropriately and, once made aware, is willing to correct their behaviour.
- After a formal discipline process to try and restore the relationship between the parties (Note that this would require the agreement of the relevant manager and all participating parties).

### **When an Informal Process may not be appropriate**

The University encourages the use of informal methods for resolving alleged misconduct in circumstances such as those listed above. However, an informal process would not usually be appropriate where the alleged misconduct may warrant some form of disciplinary penalty (e.g. a formal warning).

### **Procedure for an Informal Process**

- (a) Where there is an allegation of misconduct (for example, where there is a dispute or a person considers they have cause to raise a complaint against another person), the relevant parties may decide to deal with the matter informally. Employees may seek advice about an informal process from Human Resources, a relevant manager, or a union representative. Students alleging misconduct against an employee may seek advice from the Student Interest and Disputes Resolution Adviser or the VUWSA Student Advocate.
- (b) The relevant Manager, once aware of an allegation of misconduct, has the discretion to determine whether a matter should be dealt with informally or formally. The

Manager will seek the advice of Human Resources prior to determining the process to be followed.

- (c) Where an informal resolution is sought, the matter should be dealt with as soon as practicable.
- (d) Methods of seeking an informal resolution include, but are not limited to, the following:
  - (i) Direct discussions between the parties
  - (ii) Where the alleged misconduct involves a complaint:
    - o the complainant discussing the issue with a third party but not proceeding further;
    - o a third party representing the complainant's concerns on her or his behalf;
    - o the complainant writing a letter to the other party.
  - (iii) Discussions between the parties and mediated by a third party  
Where a third party is involved, such as a manager or a facilitator, the role of the third party will be to:
    - o assist the parties to a dispute or disagreement to find constructive solutions using a co-operative problem solving process;
    - o be even-handed to all parties and allow each party equal opportunity to participate;
    - o promote respectful dialogue between the parties;
    - o respect the confidentiality and privacy of all parties and deal with any issues sensitively to maintain the dignity and respect of the individuals involved, and to encourage them to accord each other the same respect; and
    - o allow the parties to make their own decisions, including who will be informed of the outcome.
  - (iv) One or both of the parties (and depending on whether it is appropriate given the nature of the misconduct) choosing to change their own circumstances to avoid any repetition of the alleged misconduct.

### **Agreed Outcomes**

Some examples of agreed outcomes of an informal resolution process are:

- Where the alleged misconduct relates to a dispute between employees or a complaint made by a person against an employee, an apology (written or verbal) and/or an agreement on how the parties will interact in the future. For example, this may include treating each other with respect, listening, ensuring that requests or instructions are clear, etc.
- Where the alleged misconduct relates to a dispute involving work activities an agreed outcome could involve roles being clarified and an agreement reached on the responsibilities that will be assumed by each party in the future.

### **Resource People**

People who **employees** may approach for advice and support are:

- Human Resources

For advice about any aspect of resolving alleged misconduct informally. Where appropriate, Human Resources can refer the employee to a specific resource person such as an independent facilitator to assist with informal resolution of the matter.

- Occupational Nurse – Health and Wellness

For advice about medical and general well-being issues. Where appropriate, the Occupational Nurse can refer the matter to an appropriate counselling, facilitation or similar service provider.

- Union

For advice and advocacy, employees may contact their union organiser.

- EAP

The EAP Counselling service does not normally participate in informal or formal processes per se. However, it provides assistance as follows:

- To participants in the process who wish to avail themselves of counselling as a result of their involvement; and
- To participants in the process who may wish some assistance with regard to possible emotional outcomes,
- To report recurring systemic problems to the university.

EAP is a confidential service and can be contacted directly as follows:

- Wellington office: 472 5886
- After hours and emergency number: 0800 327 669 (answer service)

or referral can be arranged by the Occupational Health Nurse.

People who **students** may approach for advice and support are:

- Student Interest and Disputes Resolution Adviser

Students who wish to seek advice or raise an issue against an employee may contact the Student Interest and Disputes Resolution Adviser. Where appropriate, the Student Interest and Disputes Resolution Adviser may assist the student to gain a resolution or refer the matter as appropriate.

- VUWSA Student Advocate

For advice and advocacy, students may contact the VUWSA Student Advocate.

## GUIDELINES FOR A FORMAL PROCESS

A formal process under the Staff Conduct Policy is where alleged misconduct/serious misconduct or ongoing poor performance is formally investigated, and a determination is made by a Manager. For most employees, the Discipline and Dismissal Procedures in their employment agreement will apply.

Instances of alleged misconduct/serious misconduct or ongoing poor performance by a person covered by the Staff Conduct Policy may come to the attention of a Manager in a number of ways, such as where:

- A person is alleged to have breached the University's standards of conduct;
- A person makes a formal complaint against another person;
- There is a dispute and a person is alleged to have acted in a way that constitutes misconduct;
- A person is not considered to be meeting the performance standards and requirements of their role.

It should be noted that a formal process is not intended to preclude normal staff management practices. Managers are entitled and expected to raise matters of concern with their staff.

### How to Make a Formal Complaint

- (a) Any person can make a formal complaint where they consider that the alleged misconduct of a person (covered by the Staff Conduct Policy) warrants a formal process. The complainant may wish to seek advice before deciding whether to make a formal complaint. Persons who can be approached for this advice include, but are not limited to:
- Human Resources
  - the complainant's manager
  - the respondent's manager
  - a senior manager
  - the complainant's union representative
  - VUWSA Student Advocate.
- (b) Depending on the nature of the alleged misconduct and the relationship between the complainant and the respondent, the complaint may be referred to:
- the complainant's manager
  - the respondent's manager
  - a senior manager
  - Human Resources.
- (c) A formal complaint should be in writing and include:
- The name of the respondent
  - Details of the alleged misconduct (e.g. breach of policy, unacceptable behaviour, etc.), including dates, time and place (where applicable).
  - The names of any witnesses to the alleged misconduct
  - The name of the person to whom the complaint was first formally reported (where applicable)
  - Complainant's signature and the date of the complaint.

If an oral complaint is made and the complainant wishes the University to consider dealing with the matter formally, the complaint must be put in writing and signed by the complainant. Natural justice requires that complainants must be identified so that respondents are provided with all relevant information and a proper opportunity to respond to the complaint.

*Note: Retaliatory action against a complainant for making a complaint will be viewed seriously by the University and may constitute a breach of the Staff Conduct Policy.*

## Investigating Alleged Misconduct

The following procedure applies where allegations of misconduct are made against employees of the University.

For all other persons covered by the Policy, the procedure for investigating alleged misconduct will be determined by Human Resources in consultation with the relevant manager. The procedure will take account of the particular relationship between the individual concerned (e.g. contractor, adjunct, etc) and the University, and the circumstances of the situation.

The procedure for ongoing poor performance by employees is dealt with in the Guidelines for Managing Ongoing Poor Performance under the Staff Conduct Policy.

A formal process for investigating alleged misconduct is undertaken by the relevant Manager<sup>1</sup> who must be the person to whom the employee provides their explanation. Prior to an allegation being investigated, the Manager in consultation with Human Resources, will determine whether or not the alleged conduct constitutes a possible breach of the Staff Conduct Policy and, if established, whether it would be misconduct or serious misconduct.

In most cases the Discipline and Dismissal Procedures (or the disciplinary procedures set out in the employee's employment agreement) will provide the appropriate context for investigation and resolution.<sup>2</sup> However, the Manager and their HR contact may decide that a preliminary investigation needs to be undertaken to determine whether the allegations have a factual basis, before those procedures are followed.<sup>3</sup>

### Procedure

If it is considered that the alleged misconduct constitutes a possible breach of the Policy, and that a formal process is the appropriate way to deal with it, the Manager will take the following into consideration:

- (a) Whether it is necessary to suspend the respondent employee pending the outcome of the investigation. Prior to any suspension, the employee will be informed of the alleged misconduct and given the opportunity to comment on whether he or she should be suspended;
- (b) If the matter concerns a complaint, whether it is necessary to discuss it with the complainant (and their representative or support person) to obtain any further relevant information.
- (c) Whether there are witnesses which may need to be interviewed.

The Manager will then:

- (d) Advise the employee, in writing, that a disciplinary meeting will be held and provide details of the specific alleged misconduct and the process to be undertaken at the meeting. Supporting documentation will include copies of the complaint (where applicable), the Staff Conduct Policy and/or the Discipline and Dismissal Procedures

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<sup>1</sup> The relevant manager is normally the line manager but may be a more senior manager or another manager where there is a potential conflict of interest.

<sup>2</sup> If there is an inconsistency between the Discipline and Dismissal Procedures and the procedures set out in an employee's employment agreement, the employment agreement procedures must be applied.

<sup>3</sup> In such cases it may be appropriate to undertake a preliminary fact-finding investigation. This may be in circumstances where there are a number of complainants, where there are witnesses to the alleged misconduct, where the allegation is of a very serious nature, or where the conduct complained about is of a complex nature and/or occurred over a period of time.

and any other relevant documentation (eg. further comments and clarifications from the complainant, witness statements).

- (e) Advise the employee of their right to have representation/support at the disciplinary meeting.
- (f) Conduct the process in a non-threatening and culturally appropriate manner.
- (g) Provide the employee with a real opportunity to be heard and offer explanations (where appropriate, time may be given for adjournment during the meeting so that both parties have time to consider a response to the allegations and explanations).
- (h) Ensure that attendees at the disciplinary meeting receive a record of the meeting. If any party disputes the record, their objection must be attached to the record.
- (i) Give full consideration to the employee's explanation and any mitigating circumstances before making a decision.
- (j) Advise the complainant (where applicable) whether or not their allegation of misconduct has been established.

## **Penalties**

Where misconduct is established, the following penalties are available:

1. Formal verbal warning (oral warning in writing)
2. Formal written warning
3. Final written warning
4. Dismissal

The level of the penalty imposed can be at any step, depending on the seriousness of the misconduct. Where serious misconduct is established, it may result in dismissal without notice.

Where appropriate, the Manager may suggest to the parties that they enter a restorative process. This will only proceed with agreement of all the relevant parties.

## GUIDELINES FOR A TIKANGA MĀORI PROCESS

The University is committed to acknowledging the Treaty of Waitangi by working in partnership with Māori. The spirit of tikanga is to seek resolutions to alleged misconduct, disputes and complaints in a manner that encourages a facilitated open exchange of views with a view to seeking consensus and acceptance from all parties as to the resolution.

Alleged misconduct (but not ongoing poor performance) may be addressed by applying tikanga Māori if the complainant, respondent, Deciding Manager, and Te Marae o Te Herenga Waka agree to such a process including, the participants in that process and the procedure to be followed. The Toiahurei, Tohunga and Ruahine will speak for Te Marae o Te Herenga Waka. The Toiahurei will have the responsibility of ensuring that all the other parties are sufficiently aware of tikanga before agreeing to the process.

For the purposes of the Staff Conduct Policy, tikanga comprises at least the following elements:

- (i) Resolution of the matter will take place within Te Tumu Herenga Waka.
- (ii) Te reo Māori will be used for te kawa o te marae. Within Te Tumu Herenga Waka, te reo Māori may be used and statements will also be repeated in English or an interpreter will be provided if this is necessary to ensure that all the parties have a clear understanding of what is being communicated.
- (iii) The process will be facilitated by all or some of the Toiahurei, the Tohunga o Te Herenga Waka and Ruahine o Te Herenga Waka. If a person holding one of these positions is involved as a party to the matter, in which case their involvement will not be in a facilitator capacity. The remaining party or parties will facilitate.
- (iv) All parties have the right at their discretion to be supported by whānau.
- (v) Where possible, decisions in respect of a matter will be negotiated by the parties.
- (vi) Where consensus is unable to be reached, the decision shall be made by the Toiahurei, the Tohunga and Ruahine o Te Herenga Waka. The decision may include, but is not limited to, any of the remedies provided for in the Discipline and Dismissal Procedures.

Other remedies or outcomes may include:

- Undertaking to the respondent's whānau and Te Whānau o te Herenga Waka that the misconduct will not recur
- Reparation as agreed between the parties
- Undertaking to participate in further hui with work colleagues to heal relationships
- Undertaking to attend coaching or training sessions

*Note: Parties who are not familiar with tikanga may find that the concept of confidentiality is treated differently from other processes such as the Discipline and Dismissal Procedures, in that more people are usually involved in working together to reach a resolution. In addition, the discussion is not limited to the matter of the alleged misconduct, complaint or dispute. Other matters, past and present, may be raised and discussed.*

### How to Make a Complaint

Under the Tikanga Māori Process, the procedure for making a complaint is the same as the procedure for making a formal complaint:

- (a) Any person can make a formal complaint where they consider that the alleged misconduct of a person (covered by the Staff Conduct Policy) warrants a formal process. The complainant may wish to seek advice before deciding whether to make a formal complaint. Persons who can be approached for this advice include, but are not limited to:
  - Human Resources

- the complainant's manager
  - the respondent's manager
  - a senior manager
  - the complainant's union representative
  - the Tumuaki of Ngāi Tauira (or his/her nominee)
  - VUWSA Student Advocate.
- (b) Depending on the nature of the alleged misconduct and the relationship between the complainant and the respondent, the complaint may be referred to:
- the complainant's manager
  - the respondent's manager
  - a senior manager
  - Human Resources.
- (c) A formal complaint should be in writing and include:
- The name of the respondent
  - Details of the alleged misconduct (eg. breach of policy, unacceptable behaviour, etc), including dates, time and place (where applicable).
  - The names of any witnesses to the alleged misconduct
  - The name of the person to whom the complaint was first formally reported (where applicable)
  - Complainant's signature and the date of the complaint.

If an oral complaint is made and the complainant wishes the University to consider dealing with the matter under the Tikanga Māori Process, the complaint must be put in writing and signed by the complainant.

*Note: Retaliatory action against a complainant for making a complaint will be viewed seriously by the University and may constitute a breach of the Staff Conduct Policy.*

### **Procedure Following Request for Tikanga Māori Process**

If a complainant has requested the Tikanga Māori Process, the relevant manager ("the Manager") will:

- (a) Meet with at least two of the Toiahurei, Tohunga and Ruahine of Te Marae o Te Herenga Waka to discuss the appropriateness of applying the Tikanga Māori Process to the matter. If considered appropriate, agree on the process including the participants in that process, speaking rights and the procedure to be followed. A member of Human Resources will also attend this meeting.
- (b) Advise the respondent, in writing, that a complaint has been received, the details of the specific alleged misconduct, and that the Tikanga Māori Process has been requested by the complainant as the resolution process. Supporting documentation will include copies of the complaint, any other relevant documentation (eg. witness statements) and information about the Tikanga Māori Process.
- (c) Seek the respondent's agreement to the application of the Tikanga Māori Process. If necessary, arrange to meet with the respondent and their representative or support person to discuss. A member of Human Resources will attend this meeting and the Manager may request that one of the representatives of Te Marae o Te Herenga Waka also attend.

If a respondent has requested the Tikanga Māori Process, the Manager will:

- (d) Meet with the representatives of Te Marae o Te Herenga Waka as in (a) above to consider the respondent's request.
- (e) Where there is a complainant, advise the complainant of the respondent's request and seek the complainant's agreement. If necessary, arrange to meet with the complainant

and their representative or support person to discuss. A member of Human Resources will attend this meeting and the Manager may request that one of the representatives of Te Marae o Te Herenga Waka also attend.

The Manager will then:

- (f) Advise the complainant, respondent and Te Marae o Te Herenga Waka of the agreement or non-agreement of the relevant parties.

Where there is agreement, the Toiahurei must be satisfied that all parties are sufficiently aware of tikanga before finally agreeing that the process will proceed.

Where there is not agreement, the guidelines for resolving alleged misconduct will apply to the matter.

- (g) Notify key participants (other than the complainant and respondent) of the process and procedure to be followed and advise them of their right to have whānau present.
- (h) In conjunction with Te Marae o Te Herenga Waka, arrange a suitable time for the resolution process.

*Note: This may be outside normal working hours to accommodate all parties and their whānau. The time commitment will vary.*

### **Outcome of Tikanga Māori Process**

Once a decision is made, either by consensus or by the Toiahurei, and/or the Tohunga o Te Herenga Waka and/or the Ruahine o Te Herenga Waka, the Manager will confirm this decision, in writing, to the respondent.