

## University Rules: General Misconduct Rules (Students)

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### 1. Preamble

These Rules are made under Statute No. 22 Student Conduct.

### 2. Definitions

“Academic Misconduct” means any conduct by a student in relation to academic work that is dishonest or unfair and includes, but is not limited to:

- (a) plagiarism;
- (b) unauthorised collaboration;
- (c) cheating in assessment; and/or
- (d) theft of another student’s work;

“Act” means the *Edith Cowan University Act 1984*;

“activity” means the use of lecture theatres, laboratories or other University facilities or any part or parts thereof, attendance at any examination or test or activity leading towards an assessment or any part of an examination or test or activity leading towards an assessment or an enrolment in a unit of academic instruction;

“Appeal Committee” means the General Misconduct Appeal Committee established pursuant to these Rules;

“Centre” means an administrative organisational unit of the University designated as such by the Vice-Chancellor;

“Council” means the Council of the University;

“day” means a day on which the University is open to the public for normal business operations;

“date of notification” means the day on which the document is served, or deemed to have been served;

“Dean” means the Dean of a Faculty;

“Director” means a person appointed to or acting in a position of Executive Director or Director of a University Centre;

“Director, SSC” means the Director, Student Services Centre, or the successor to that position or a person acting in that position or his or her nominee;

“disposition” means a fine, an order to make restitution, suspension or expulsion;

“expel” means to cancel a student’s enrolment and to preclude that student from enrolling or re-enrolling at the University other than in the manner specified in these Rules;

“Faculty” means an academic organisational unit within the University;

“General Misconduct” means misconduct, other than Academic Misconduct, on University premises or in connection with University activities by a student and includes, but is not limited to, conduct which

- (a) breaches the University’s Act, Statutes, Rules and/ or By-laws or any Resolution of the Council or is deemed or stated to be misconduct under the Statutes, Rules and/ or By-laws or any Resolution of the Council; or
- (b) constitutes a serious impediment to the carrying out of the University’s function, including those academic and administrative functions which are properly ancillary to those provided in the Act or which relate to the participation by any person in the activities of the University; or
- (c) breaches any of the student obligations described in Schedule 1 of these Rules; or
- (d) is otherwise detrimental to the proper conduct of the University;

“Head of School” means a person appointed to or acting in a position of Head of School;

“hearing” includes a hearing conducted by telephone, teleconference or videoconference, and includes a resumed hearing after an adjournment;

“meeting” includes a meeting conducted by telephone, teleconference or videoconference, or other such media;

“Officer” means a person appointed to or acting in a position of Dean, Director or Head of School, or their nominee;

“School” means an academic organisational unit within a Faculty;

“Senior Officer” means a person appointed to or acting in a position of Vice-Chancellor, Deputy Vice-Chancellor, Vice President, Pro Vice-Chancellor, Executive Director, Executive Dean or Dean;

“Student” means an enrolled student as prescribed in the Admission, Enrolment and Academic Progress Rules at the time of any alleged misconduct;

“University premises” includes:

- (a) University lands, meaning those lands, vested in or under the management and control of the University, which are declared to be University lands pursuant to section 29(2) of the Act;
- (b) all premises and facilities owned or occupied by the University, whether in the State of Western Australia, another Australian State or Territory or overseas;
- (c) the premises of any residential college or off-campus accommodation owned or operated by the University;
- (d) the location of clinical or professional placements that form the whole or part of a course offered by the University;
- (e) the location of camps, field placements, workshops and any other study activities controlled or supervised by the University;
- (f) any other place in the temporary possession, whether actual or constructive, of the University; and
- (g) the University’s rights of access and egress.

### **3. Procedure for Dealing with Allegations of General Misconduct**

- (1) An allegation of general misconduct, other than a complaint of sexual harassment, harassment or discrimination, must be reported by a staff member or a student to an Officer as soon as possible after the person reporting becomes aware of that act and, in any case, within seven days of becoming aware of that act.
- (2) A complaint of sexual harassment, harassment or discrimination shall be reported to a University staff member (“the contact officer”) with responsibility to act under the provisions of the University’s policies on the prevention of harassment, bullying and discrimination. The contact officer may subsequently choose to report the allegation to an Officer.
- (3) The Officer receiving a report may refer the report to another Officer or Senior Officer for investigation if:
  - (a) the Officer believes that it is more appropriate for the matter to be dealt with by another Officer or Senior Officer, and
  - (b) the Officer has consulted with that other Officer or Senior Officer.
- (4) Where an Officer receives a report or otherwise becomes aware of an alleged act of general misconduct and believes that there is an immediate or continuing risk of:
  - (a) serious injury or detriment to any person;
  - (b) serious detriment to the interests or reputation of the University;
  - (c) substantial damage to University property; or
  - (d) severe disruption to any activity carried on by the University,the Officer shall immediately refer the matter to a Senior Officer.

### **4. Summary Powers**

- (1)
  - (a) Subject to sub-rule 4(1)(b), a Senior Officer may require the temporary removal from University premises of a student who the Senior Officer believes on reasonable grounds is committing or has committed an act of general misconduct, or who is committing or has committed or is about to commit an act of general misconduct. Reasonable grounds may exist even when the Senior Officer’s belief is based only on what that Officer has been told by another Officer.
  - (b) The power conferred by sub-rule 4(1)(a) shall not be exercised unless –
    - (i) the Senior Officer believes on reasonable grounds that the student’s conduct may endanger the safety of any person, cause damage to any property or unduly interfere with the maintenance of good order; and
    - (ii) the Senior Officer believes on reasonable grounds that the student concerned has been requested by a member of staff to leave University premises and the student has refused or failed to comply with the request.
  - (c) A Senior Officer exercising powers under sub-rule 1(a) must direct that an investigation of the alleged misconduct be commenced within seven days of this power being exercised.
- (2) A member of the academic staff who believes on reasonable grounds that a student has committed an act of general misconduct by disrupting a lecture, seminar, tutorial, laboratory or other class or library session conducted by that staff member may:
  - (a) require the student to leave the activity; and

- (b) may prohibit the student from attending or participating in that or a related activity for a period not exceeding 24 hours after taking action under sub-rule 4(2)(a).
- (3) A member of the general staff who is responsible for the operation or maintenance of any of the University's facilities or processes and who believes on reasonable grounds that a student has committed an act of general misconduct by obstructing or interfering with the operation of these facilities or processes may –
  - (a) require the student to leave the activity; and
  - (b) may prohibit the student from using those facilities and processes for a period not exceeding 24 hours after taking action under sub-rule 4(3)(a).
- (4) The Director, SSC may exclude a student from attendance at or require a student to leave an examination or other form of supervised assessment if such action is believed on reasonable grounds by the Director, SSC to be necessary to preserve order.

## **5. Investigation of Allegations of General Misconduct**

- (1) A Officer or Senior Officer acting pursuant to rule 3 may direct that an investigation of the alleged general misconduct be commenced within seven days of the report of that alleged misconduct to the Officer or Senior Officer. The Officer or Senior Officer investigating an alleged act of general misconduct must:
  - (a) not have any prior involvement with the alleged misconduct;
  - (b) within seven days of receiving notification of the alleged act:
    - (i) notify the student concerned and provide sufficient details, in writing, of the alleged misconduct to enable the student to respond orally or in writing to the allegation;
    - (ii) provide the student with any documents, including edited versions of documents, relevant to the allegation which may be used as evidence;
    - (iii) offer the student the opportunity to be heard;
    - (iv) inform the student that any written response to the allegations and / or a request to be heard before that Officer or Senior Officer must be received or meeting requested within ten days of the date of notification to the student of the alleged misconduct;
    - (v) inform the student of the procedures proposed to be followed in any meeting held subject to sub-rule 5(1)(b)(iv);
  - (c) if the student so requests, arrange a meeting with the student within seven days of the date specified in sub-rule 5(1)(b)(iv);
  - (d) disregard any documents or portions of documents that have not been disclosed to the student.
- (2) Meetings arranged under sub-rule 1(c) may, at the discretion of the Officer or Senior Officer, be conducted by telephone, teleconference or videoconference or by other such means, provided that the preference of the student is taken into account when making this decision.
- (3) At meetings arranged under sub-rule 1(c), the student has the right to be accompanied by another student, a staff member of the University or of the Student Guild ("the accompanying person"), provided that the accompanying person is not a legal practitioner.
- (4) The accompanying person will not be permitted to participate in the meeting without leave of the Officer or Senior Officer.
- (5) The Officer or Senior Officer may deal with the matter in the absence of any response from the student within the period specified in sub-rule 5(1)(b)(iv).

- (6) The Officer or Senior Officer must investigate the matter, including giving the person bringing the allegations an opportunity to be heard and consulting with any other person or persons they consider appropriate, before making a decision.
- (7) When investigating an alleged act of general misconduct, the Officer or Senior Officer has the power to:
  - (a) deal with multiple charges and multiple accused;
  - (b) discontinue an investigation if the alleged misconduct is trivial.
- (8) If the Officer or Senior Officer finds the allegations proven, they shall –
  - (a) give the student the opportunity to be heard on the issue of any penalty to be imposed;
  - (b) in imposing a penalty as provided in rule 6, consider all relevant factors, including:
    - (i) mitigating factors;
    - (ii) the use, where relevant and appropriate, of non-financial dispositions;
    - (iii) the impact of any penalty on the student's overall program of study, including any delay that the penalty may cause to the completion of that program; and
    - (iv) aggravating factors;
  - (c) within five days of the finding of the Officer or Senior Officer, provide the student with written notice of their reasons for that decision and for the penalty imposed;
  - (d) inform the student of the matters set out in rule 7.
- (9) If the student has previously been found guilty of another or other breaches of obligations, those previous breaches may be taken into account in determining the weight to be given, if any, to the mitigating factors.
- (10) If the Officer or Senior Officer finds that the student has not committed an act of general misconduct they shall give written notice of that finding to the student and the person bringing the allegation within five days, including in the notice the reasons for that decision.
- (11) The Officer or Senior Officer shall provide a copy of the notices referred to in sub-rules 5(8)(c) and 5(10) to the Director, SSC for retention in University records.

## **6. Penalties**

- (1) An Officer may, for any act of general misconduct by a student:
  - (a) fine the student an amount not exceeding \$100; and/or
  - (b) require a student to make restitution of an amount not exceeding \$500 for University property lost, damaged or destroyed as a result of the misconduct; and/or
  - (c) suspend the student for a period not exceeding 28 days from any participation in activities or the use of facilities or services for which the Officer is responsible.
- (2) A Senior Officer may, for an act of general misconduct by a student:
  - (a) fine the student an amount not exceeding \$250; and/or
  - (b) require a student to make restitution of an amount not exceeding \$500 for University property lost, damaged or destroyed as a result of the misconduct; and/or

- (c) suspend the student for a period not exceeding twelve months from any participation in University activities or the use of University facilities or services; and/or
  - (d) expel the student.
- (3) More than one disposition may be imposed or ordered pursuant to these rules provided that -
- (a) the total extent of the penalties reflects the nature and severity of the general misconduct; and
  - (b) the monetary penalty for any one offence does not exceed the limits specified in these rules.
- (4) The persons authorised to impose a penalty under these rules may:
- (a) caution or reprimand the student instead of, or in addition to, any penalty that might be imposed for general misconduct; and/or
  - (b) defer the imposition of a penalty until the time for appealing against that penalty has expired or on such terms and conditions, including undertakings by the student, as the person granting the deferment considers appropriate.
- (5) If both a fine and suspension from participation in the activities or the use of services or facilities of a School, Faculty or Centre are imposed as penalties, the person imposing the penalties may stipulate that the period of suspension is to conclude on payment in full of the fine.
- (6) The Officer or Senior Officer investigating an alleged act of general misconduct has the power to:
- (a) not record a finding of guilt even if the charge is proven; and
  - (b) not impose a penalty if a finding of guilt is made.
- (7) A student expelled from the University may only apply to re-enrol if the Director, SSC consents in writing. That consent may be given subject to such terms and conditions, including undertakings by the student, as the Director, SSC believes are appropriate.
- (8) The relevant person must notify the student in writing if action is taken under sub-rules 6(1) or (2).

## **7. Appeal to a General Misconduct Appeal Committee**

- (1) A student may appeal to an Appeal Committee against
- (a) a finding of general misconduct; and/or
  - (b) a disposition
- imposed by an Officer or a Senior Officer.
- (2) An appeal must be in writing, specifying in detail the grounds for the appeal, and be lodged with the Director, SSC within fifteen days of notification to the student of the relevant decision or penalty.
- (3) (a) The Appeal Committee shall comprise:
- (i) the Chair or nominee of the Academic Board (Chair);
  - (ii) a member of the general staff nominated by the Vice President (Resources) and Chief Financial Officer; and
  - (iii) a student representative appointed by either the Student Guild or Postgraduate and Honours Students' Association according to the level of study of the appellant.

- (b) Without limiting sub-rule 7(3)(a), the Appeal Committee shall comprise at least one male and one female.
  - (c) The quorum for a hearing by the Appeal Committee shall be two members, one of whom must be the Chair.
  - (d) Each Appeal Committee member must not have had any involvement with the matters that constituted the alleged misconduct or the investigation of the alleged misconduct.
- (4) The Appeal Committee may refuse to consider an appeal on the papers if the Committee decides that the appeal is frivolous or vexatious or that the stated grounds for the appeal are insufficiently particularised, provided that if the stated grounds for the appeal are insufficiently particularised the student must first be given the opportunity to provide further particulars.
- (5) If the Appeal Committee decides to hear the appeal, it must:
- (a) do so within fifteen days of the appeal being lodged;
  - (b) give the student at least five days notice of the hearing time;
  - (c) inform the student of the procedures to be followed and of the student's rights as set out in sub-rule (6);
  - (d) permit the Officer or Senior Officer who investigated the complaint to be present throughout the hearing; and
  - (e) permit the University to be represented by a member of staff, nominated by the Vice-Chancellor, other than a legal practitioner, who shall be entitled to be present throughout the hearing and to call, examine and cross-examine witnesses.
- (6) (a) Students attending a hearing are permitted to:
- (i) be accompanied at the hearing by another student, a staff member of the University or a staff member of the Student Guild, who shall not be a legal practitioner, but who shall be permitted to represent the student at the hearing;
  - (ii) be present with their representative throughout the hearing; and
  - (iii) to call, examine and cross-examine witnesses.
- (b) If the student and, if the student is represented, the student's representative, fails to appear at a hearing, the appeal shall be dismissed by the Appeal Committee unless the Committee, at its discretion on application by the student, decides to adjourn the hearing to another date and time.
- (7) The Appeal Committee
- (a) has the discretion to conduct a hearing or part of a hearing by telephone, teleconference or videoconference, or by other such means that may be appropriate to the circumstances;
  - (b) may follow any procedures it considers appropriate at a hearing, including taking any actions necessary to maintain order and decorum and determining if a hearing should be open to members of the University;
  - (c) is not bound by the rules of evidence or other technicalities or legal formalities and may inform itself in relation to any matter in any manner that it considers appropriate, providing that the Committee must –
    - (i) give both parties the opportunity to present their case and to correct or contradict any relevant statement that either party believes to be damaging to that party's case; and

- (ii) ensure that all documents that are to be relied on by either party have been made available to the other party as soon as reasonably practicable prior to the hearing;
  - (d) may dismiss the appeal if it considers that the finding or disposition the subject of the appeal did not constitute a substantial miscarriage of justice.
- (8) After consideration of the appeal, and within five days of the end of the hearing, the Appeal Committee may:
  - (a) if the appeal is against a finding only:
    - (i) dismiss the appeal, or
    - (ii) uphold the appeal and set aside the finding and the disposition,
  - (b) if the appeal is against a disposition only:
    - (i) dismiss the appeal, or
    - (ii) uphold the appeal, set aside the disposition, and substitute a disposition that could have been ordered by the original decision-maker,
  - (c) if the appeal is against both a finding and disposition:
    - (i) dismiss the appeal, or
    - (ii) uphold the appeal against the finding and set aside the finding and the disposition, or
    - (iii) dismiss the appeal against the finding but uphold the appeal against the disposition, set aside the disposition, and substitute a disposition that could have been ordered by the original decision-maker.
- (9) The Appeal Committee must inform the student and the Officer or Senior Officer, in writing, of the decision.
- (10)
  - (a) The Chair shall have a deliberative vote only and, in the event of an equality of votes, the appeal against the finding and / or penalty must be upheld.
  - (b) Any point of law must be determined by the Chairperson alone.
- (11) The Appeal Committee shall not have the power to order costs to either the student or the University.
- (12) The Appeal Committee must:
  - (a) keep a record of its procedures, including a summary of the evidence received, its final decisions and reasons for each decision; and
  - (b) provide a copy of that record to the student and the Director, SSC within ten days of the conclusion of the hearing.
- (13) The Appeal Committee is the final avenue of appeal within the University.

## **8. Miscellaneous Provisions**

- (1) All students are required to produce proof of identity and, if appropriate, proof of authorised access to any University facility when requested to do so by a University member of staff acting under these Rules.
- (2) A person who has held the office of an Officer or a Senior Officer may continue to investigate an allegation of general misconduct in accordance with these Rules notwithstanding the expiry of the term of appointment or office of that Officer or Senior Officer.

- (3) The Appeal Committee as constituted at the commencement of a hearing may continue to hear an appeal against a finding and / or penalty imposed under these Rules, notwithstanding the expiry of the term of appointment or office of any member of the Appeal Committee.
- (4) The Director, SSC may take or direct that one, some or all of the following actions be taken if a student has not paid a fine or portion of a fine owing to the University:
  - (a) withhold official notification of the student's examination or other results (except for notice of supplementary or deferred examinations or assessment);
  - (b) defer the conferral of a degree, diploma or certificate on the student;
  - (c) not permit the student to re-enrol in a subsequent semester,until the outstanding fine, or portion of the fine, is paid in full.
- (5)
  - (a) The Director, SSC may cancel the enrolment of a student who has -
    - (i) gained admission to the University by misrepresentation, falsification of documents or other dishonest or fraudulent means; or
    - (ii) failed to fulfil the formal requirements for admission or enrolment.
  - (b) Any academic credits obtained by a student whose enrolment is cancelled pursuant to sub-rule 8(5)(a) shall be deemed not to have been awarded.

## **9. Service of Documents**

- (1) Where a notice or other document is permitted or required by these rules to be given or served, service of the notice or document may be effected on the person to be served:
  - (a) by giving the notice or document directly to that person;
  - (b) by sending, as an email message, the notice or document to that person's last known ECU email address;
  - (c) by sending, in the body of an email message to that person's last known ECU email address, a URL (uniform resource locator) link to the notice or document, together with notification that the person is required to download the notice or document;
  - (d) by posting the notice or document as a letter to that person's last known address; or
  - (e) by leaving it for that person at their last known place of abode.
- (2) Where the notice or document is sent in accordance with paragraphs (b) and (c) of sub rule (1), service is deemed to occur at the time of sending the message.
- (3) Where the notice or document is posted in accordance with paragraph (d) of sub rule (1), service is deemed to occur at the expiration of 5 working days from the time of posting.

## **10. Transitional Provisions**

- (1) Any procedures, investigations or appeals that have been commenced under the provisions of the repealed Statute 22 - Student Obligations before the making of these Rules must be completed under the provisions of that Statute.
- (2) Any allegation of general misconduct that relates to conduct that is alleged to have occurred before the making of these Rules must be dealt with under the provisions of Statute 22, unless the student who is the subject of the allegation elects in writing to be dealt with under these Rules.

### **Schedule 1 - Student Obligations**

1. Every student has the following obligations to the University and to each of the staff and students of the University:
  - (a) to act fairly and honestly;
  - (b) to respect the freedoms of the other members of the University;
  - (c) to act in an orderly and proper manner; and
  - (d) to comply with
    - (i) the provisions of all statutes, rules and by-laws of the University; and
    - (ii) all other acts, rules and by-laws, so far as failure to do so will or may affect the University.
  
2. Without limiting item 1, a breach of obligation by a student includes the following:
  - (a) obstructing or disrupting any University teaching, study, research, examination or test;
  - (b) obstructing or disrupting any official meeting, proceeding or ceremony within the University or any other University activity;
  - (c) interfering with the freedom of speech within the University of any member of the University or of any speaker invited by any section of the University to express her or his views;
  - (d) interfering with the freedom of movement within the University of any University member or any guest or visitor;
  - (e) failing to immediately leave any University building or part of any University building or any place within the University when directed to do so by a University officer;
  - (f) entering any place within the University which the student is forbidden to enter by a University officer or by any statute, rule, by-law or Council resolution or by any rule, direction or order made or given under such statute, rule, by-law or resolution;
  - (g) acting dishonestly or unfairly in connection with any University, faculty or school examination or test;
  - (h) obstructing or attempting to obstruct any staff member or University employee in the performance of their duties;
  - (i) deterring or attempting to deter any staff member or University employee in the performance of their duties;
  - (j) damaging, or wrongfully dealing with any University property, or the property within the University of any person;
  - (k) assaulting or attempting to assault any person within the University;
  - (l) failing to comply with any provision of any University statute, rule or by-law or any Council resolution or rule, direction or order made or given under such statute, regulation, by-law or resolution;
  - (m) failing to comply with any penalty imposed under any University statute, rule or by-law, or any Council resolution;
  - (n) engaging in harassment (including verbal harassment, bullying, racial vilification and victimisation) or discrimination contrary to the provisions of any State or Commonwealth legislation.
  
3. For the purpose of these Rules, a "breach of obligation" by a student is an act of misconduct.

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Approved by Council on 7 December 2006 under Amending Rule No 4 of 2006. Effective from 16 March 2007, the day Amending Statute No 4 of 2006 (Statute No. 22 – Student Conduct) was published in the Government Gazette.

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