

THE GENERAL MISCONDUCT STATUTE 2009

A SHORT GUIDE

1. *What is “general misconduct”?*

The **General Misconduct Statute 2009** (*the Statute*) defines “general misconduct” quite broadly by reference to wide range of conduct, including such things as contravening the intellectual property rules of the University, conduct which constitutes a breach of the criminal law, interfering with or damaging the property or facilities of the University, attacks on or the abuse or harassment of other persons, bribing University staff and so on: section 4 of the Statute.

There are a couple of important things to note about this definition:

- a. The first is that it specifically excludes academic misconduct. This means that, if conduct can be characterised as academic misconduct under the Academic Misconduct Statute 2009, then it must be dealt with under that Statute as academic misconduct.
- b. The second thing to note about this definition is that it is deliberately broad, and that the range of conduct listed in section 4 is not an exclusive list. For example, it may be that a student engages in some sort of misconduct which is not specifically described in section 4 but which may be every bit as harmful to the interests of the University or the interests or wellbeing of another student or a member of staff.

You should contact Legal Services for advice if you are ever in any doubt about whether misconduct in a particular case amounts to general misconduct.

Another important point that ought to be made at the outset is that this Statute only applies to misconduct engaged in by a student. Misconduct engaged in by a member of staff may be dealt with by the University under the staff member’s contract of employment, while misconduct engaged in by visitors to the University is a matter for the general law (for example, the law of trespass or the criminal law).

2. *Students who disrupt lectures, tutorials etc*

Section 6 of the Statute enables members of the academic staff to deal with disruptive behaviour by students in lectures, tutorials and the like, and specifically empowers the academic staff member to expel the student from the lecture tutorial etc and to prohibit the student from returning to class for up to 4 weeks. Students who are simply told to leave a particular lecture or tutorial etc do not need to be given written notice setting out the reasons for the decision to exclude them, but if the student is also prohibited from returning to any further classes for an extended period then the student has to be given a written notice explaining the decision as soon as practicable.

A refusal by a student to leave a class or stay away from one when excluded is itself a form of general misconduct. In addition to this, security staff may be called in to escort an offending student from the class should they refuse to leave.

3. *Students who disrupt examinations*

Similarly, section 7 of the Statute enables a member of the academic staff of the University, or any person employed by the University to act as an invigilator at the examination, to exclude a student from an examination where the student is behaving in a disruptive fashion. As with classes, a refusal by a student to leave an examination is itself a form of general misconduct. In addition to this, security staff may be called in to escort an offending student from the examination should they refuse to leave.

4. *General misconduct arising in other circumstances*

Section 8 of the Statute requires members of the senior academic or general staff to investigate allegations of general misconduct which they become aware of or which have been reported to them. For the purposes of section 8, a senior member of the academic staff is a member of the academic staff employed at the level of C or higher, and a senior member of the general staff is a member of the general staff employed at the level of HEO9 or higher.

If, after conducting an investigation, the senior member of the academic or general staff concludes that there is enough evidence to support a finding of general misconduct, he or she must refer the matter to a general misconduct officer (GMO) for determination. If need be, a senior member of the academic or general staff may obtain advice from Legal Services to help them decide whether there is enough evidence of general misconduct to support such a finding.

GMO's are appointed by the Vice-Chancellor under section 9 of the Statute, and their role is to conduct hearings into allegations of general misconduct and to make determinations as to whether a student engaged in general misconduct: section 10. Academic Services can provide advice on where to contact a GMO.

The penalties available for general misconduct can be quite substantial, and include:

- a. imposing a reprimand;
- b. imposing a fine of up to 10 penalty units (the value of a penalty unit is set by the State Government and indexed annually, and at the time of writing was worth \$116.82);
- c. if the general misconduct involved damage to any property of the University, ordering the student to pay an amount of damages for the cost of restoring or repairing the damaged property;
- d. directing that the student be prohibited from entering, remaining at or using the areas or facilities of the University specified in the direction for the period specified in that direction;
- e. directing that the student be suspended or excluded from the University.

Because the penalties for general misconduct can be so serious, the Statute provides that a student to whom a decision under section 10 relates must be given a clear written statement setting out the reasons for the decision and advising the student that he or she can appeal the decision to the University Appeals Committee (*the UAC*). Appeals to the UAC can only be made on particular

grounds – a student cannot appeal the decision simply because they do not like it or feel that it is generally unfair. The grounds of appeal are set out in section 12 and are as follows:

- (a) the finding that the alleged general misconduct took place is flawed;
- (b) the person or body responsible for the decision did not act in accordance with the requirements of this Statute when hearing and determining the allegation of general misconduct;
- (c) the penalty imposed is too severe.

The appeal must be in writing and can be based on any one or more of these grounds. In making the appeal, the student must “specify the grounds on which the review is sought and provide particulars in support of those grounds”. This means, for example, that a student cannot simply claim the penalty was too severe; they must explain why.

The determination of the UAC is the last stage in the University’s internal review mechanisms for cases of general misconduct, and the only other options left to a student for challenging a finding of general misconduct (or the penalty imposed) are outside the University and rest with the law courts.

5. Dealing with high-risk students

An unfortunate aspect of contemporary University life is that, on rare occasions, a student may engage in conduct which positively dangerous to the health and wellbeing of other students as well as staff. At other times, a student may engage in dangerous conduct which causes, or threatens to cause, significant damage to the property or facilities of the University.

In dangerous situations like these, the University needs to be able to take immediate action to remove the student. Formal, time-consuming procedures like investigations and hearings are inappropriate in these circumstances, and so section 13 of the Statute provides the Vice-Chancellor with the power to exclude or suspend the student with immediate effect, and to terminate the student’s enrolment.

A refusal by a student to comply with an exclusion or suspension is itself a form of general misconduct and, in addition, security staff may be called in to escort the student from the University should they refuse to leave. As you might expect, Victoria Police may also be brought in if the situation is dangerous enough.

Note that the Statute does not provide for the review by the UAC of decisions of the Vice-Chancellor under section 13.

Legal Services, June 2010.