

ACADEMIC AND GENERAL MISCONDUCT – A SHORT GUIDE

Introduction:

The purpose of this paper is to explain the meaning of academic misconduct and general misconduct and to provide a summary of the processes to be followed with reference to relevant La Trobe University legislation. Misconduct dealt with in this paper is solely concerned with misconduct by students, not by staff.

It is crucial to ensure at the outset that a student's alleged behaviour is properly categorised as either academic or general misconduct as the procedures for academic misconduct and general misconduct are different.

What is Academic Misconduct?

La Trobe University Statute 16 Student Discipline and Misconduct, Regulation 16.2 Student Discipline and Misconduct Academic Misconduct, Regulation 21.12 Examinations and Assessment and the Academic Misconduct Policy regulate how academic misconduct by students is dealt with by the University. Links to the University legislation can be found at <http://www.latrobe.edu.au/legalservices/>

The term 'Academic Misconduct' is defined in Section 1 of Statute 16 to mean -

'cheating, plagiarism or any other conduct engaged in by a student with a view to gain for himself, herself or another an unjustified advantage in assessment whether such advantage occurs or not, and includes any conduct which constitutes a breach of a relevant Statute or Regulation, the Academic Misconduct Policy, or any other relevant University policy.'

Academic Misconduct relates to a student gaining or attempting to gain an advantage in academic assessment. Other types of misconduct by students may amount to general misconduct.

What is General Misconduct?

La Trobe University Statute 16 Student Discipline and Misconduct and Regulation 16.1 Student Discipline and Misconduct General Misconduct regulate how general misconduct by students is dealt with by the University.

The term 'General Misconduct' is defined in Section 1 of Statute 16. The definition is attached to this paper. General misconduct means misconduct *other than academic misconduct* and *includes* conduct which falls within paragraphs (a) to (q) attached.

It is important to note that this definition is an *inclusive* one. While it includes conduct which falls within (a) to (q), other conduct which does not fall within (a) to (q) may also amount to general misconduct. This definition is different to that of academic

misconduct which is an *exhaustive* definition (that is, conduct must fall within the words of the definition of academic misconduct to amount to academic misconduct).

Whom does it cover?

The legislation referred to above deals with misconduct by students of the University. Misconduct by staff is covered by the Enterprise Bargaining Agreement.

Procedures

The following section is a short outline of the relevant procedures. Staff should read the relevant Regulations in full to ensure that all action taken is in strict accord with the legislation.

Summary of Procedures for dealing with Academic Misconduct:

1. Formal examinations – Section 5 (1) of Reg. 21.12: When an examination supervisor believes that a student has deliberately breached examination instructions, he/she makes a written report to the Examinations Unit of Academic Services and advises the student that this has occurred. The Unit then notifies the relevant Head of School (HOS).
2. Examinations other than formal examinations and other assessable work – Section 5 (2) of Reg. 21.12: Chief examiner or any member of academic staff who suspects that an act of academic misconduct may have been committed by a student at an examination makes a written report to the relevant HOS and advises the student that this has occurred. Any member of academic staff who suspects that an act of academic misconduct may have been committed by a student in assessing any assessable work makes a written report to the relevant HOS.
3. Section 6 of Reg. 21.12: Head of School either dismisses the case and takes no further action, or notifies the student in writing of details of the alleged academic misconduct and gives student opportunity to respond (and may interview the student). The HOS then makes a decision on the allegation. If the HOS imposes a penalty, the student may appeal; the appeal is heard by the relevant FAMC. Alternatively, if the HOS considers that the alleged offence is serious, he/she refers the matter to the relevant Faculty Academic Misconduct Committee (FAMC) for hearing.
4. Regulation 16.2 deals with:
 - the composition, hearing procedure and powers of the FAMC;
 - the composition, hearing procedure and powers of the Academic Misconduct Review Committee which is empowered to hear an appeal by a student against a decision of the FAMC and of the Higher Degrees Academic Misconduct Committee; and

- the composition, hearing procedure and powers of the Higher Degrees Academic Misconduct Committee which hears matters referred to it by the Higher Degrees Committee (Research) under Part III or Part IV of Regulation 21.12 where the HDC (R) is of the view that academic misconduct may have occurred in connection with a thesis.

Academic Misconduct Policy and Academic Misconduct Administrative Guidelines

The Academic Misconduct Policy can be found at <http://www.latrobe.edu.au/policies/> It describes the kind of conduct that constitutes academic misconduct with particular reference to plagiarism. It sets out the responsibilities of the University and of students and the University's strategy for minimising plagiarism. The Policy also refers to the Academic Misconduct Administrative Guidelines which contain a detailed discussion of the procedures for dealing with Academic Misconduct.

If there is any inconsistency between the Academic Misconduct Policy or the Academic Misconduct Administrative Guidelines and the University legislation dealing with Academic Misconduct, the legislation overrides the Policy and Guidelines.

Summary of Procedures for dealing with General Misconduct:

The procedures are contained in Regulation 16.1.

1. Section 2 of Regulation 16.1: Any member of academic staff has the power to exclude a student from class for not more than one week for an act of general misconduct causing disruption to the conduct of the class. The cumulative period of exclusion in any semester for more than one incident may not exceed one week.
2. Section 3: Alternatively, a staff member or student may make a written report to the appropriate Senior Officer about the alleged act of general misconduct.
3. Except in cases of a serious continuing risk (in which case the Senior Officer immediately refers matter to Vice-Chancellor who deals with the matter under section 6; see paragraph 5 below), the relevant Senior Officer notifies the student in writing and gives the student an opportunity to respond by a specified date. The Senior Officer then makes decision as to whether the student has committed an act of general misconduct.
4. Following investigation by the Senior Officer, if he/she considers that the student has committed an act of general misconduct, he/she may impose a penalty under section 4 (1). Alternatively, if the Senior Officer considers that these penalties are inappropriate or inadequate, he/she refers the matter to the Vice-Principal (Resources and Administration) for hearing by the Discipline Committee.

5. Complaints of sexual harassment, harassment and discrimination are dealt with separately in accordance with the University's Policies and Procedures on Sexual Harassment, Harassment and Discrimination. If conciliation under those Policies and Procedures fails to resolve the matter, or any of the parties request that the matter be referred to the Pro Vice-Chancellor (Equity and Student Services) for a decision on whether the formal discipline procedures should be invoked, the Pro Vice-Chancellor (Equity and Student Services) may proceed to deal with the matter as a Senior Officer under section 3(3) and (4) and section 4.
6. As noted in paragraph 2 above, the Vice-Chancellor has powers under section 6 where he/she believes that a student is behaving in such a way as to pose a serious risk. These powers include immediate suspension of the student's enrolment. If, after considering any response from the student, the Vice-Chancellor is satisfied that the student poses a serious risk, he/she may exclude the student permanently or for a specified period. If the Vice-Chancellor considers that a student has committed an act of general misconduct, he/she may refer the matter to the Vice-Principal (Resources and Administration) for hearing by the Discipline Committee.
7. Section 7 sets out the composition, appointment and powers of the Discipline Committee to impose a penalty. The procedures to be followed by the Discipline Committee are set out in section 8.
8. A student may only appeal to the Proctorial Board from a decision of the Vice-Chancellor or the Discipline Committee if the student has been excluded for a period of more than six months. Regulation 16.3 deals with the composition, procedure and powers of the Proctorial Board.

Conclusion

Staff should familiarise themselves with the University legislation dealing with academic and general misconduct and with the Academic Misconduct Policy. As noted in this paper, it is imperative that at the outset the alleged behaviour is correctly categorised as either academic or general misconduct as different procedures apply.

Staff making decisions in this area may find it useful to refer to a paper 'Decision-making Principles of University Bodies' which can be found at http://www.latrobe.edu.au/legalservices/genl_issues.html. That paper contains a discussion of the legal standards for good decision-making.

Angela Smith
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September 2007

This paper is not an exhaustive statement of the law. Staff who wish to obtain detailed advice on a specific matter should contact Legal Services.

DEFINITION OF GENERAL MISCONDUCT

S.1 of Statute 16

General misconduct means ‘misconduct other than academic misconduct and includes conduct which

- (a) breaches the policy or any statutes or regulations of the University with respect to the use of computing and network facilities;
- (b) breaches the policy or any statutes or regulations of the University with respect to smoking, alcohol or illicit drugs;
- (c) breaches the policy or any statutes or regulations of the University with respect to intellectual property;
- (d) breaches the policy or any statutes and regulations of the University in relation to Parking and the Control of Traffic and which is not actionable under the Road Safety Act 1986;
- (e) breaches the policy or any statutes or regulations or rules in relation to conduct in the Colleges in the University;
- (f) breaches the policy or any statutes or regulations or rules in relation to use of the Library;
- (g) breaches the policy or any statutes or regulations or rules in relation to occupational health and safety;
- (h) breaches the policy, statutes, regulations or rules of the University or of an organisation or agency where the student is undertaking clinical or professional experience or education, relating to patient or client confidentiality, or breaches an undertaking made by the student in relation to clinical or professional experience or education;
- (i) breaches any research or ethics policy, rules or approval of the University in relation to the conduct of research;
- (j) constitutes sexual harassment, harassment or discrimination as defined in the University’s Policy on Sexual Harassment, Harassment and Discrimination;
- (k) interferes with causes damage to or obstructs the use of any property or facilities of the University;
- (l) constitutes a failure to comply with a lawful direction given by a person authorised by the University to ensure the safety of any person, the preservation of any property or the maintenance of good order within the University;
- (m) constitutes
 - (i) an attack or a threat to attack another;
 - (ii) intimidation or a threat to intimidate another;
 - (iii) physical or verbal abuse towards another;
 - (iv) offensive language;
 - (v) physical injury or is calculated to cause physical injury towards another;
- (n) unreasonably prevents or attempts to prevent any person authorised by the University to speak at any lecture, class, seminar or any other activity held within the University;
- (o) impairs the reasonable freedom of another to pursue studies research or lawful activities within the University or to participate in the life of the University;
- (p) is detrimental to the interests or good repute of the University;
- (q) involves the impersonation of another person or the use of forged false falsified or incomplete evidence of academic status and any other relevant matter in order to gain or maintain enrolment in any course of study or subject in the University.’