

**LA TROBE UNIVERSITY**

**EXPLANATORY MEMORANDUM FOR THE GENERAL MISCONDUCT  
STATUTE 2009**

Council is invited to make the attached **General Misconduct Statute 2009** (the new Statute).

The new Statute targets a wide range of misconduct which is not “academic misconduct” under the **Academic Misconduct Statute 2009**. “General misconduct” defined in section 4 and covers much of the same ground that is presently covered under the University’s legislation regarding general misconduct. One exception is section 4(h), which provides that general misconduct includes conduct which “involves an attempt to bribe, or the bribing of, a member of the academic or general staff of the University”. This is to cover situations where, among other things, a student may attempt to bribe a member of staff in order to get higher marks.

It is important to note that the new Statute only applies to “general misconduct” by students. Misconduct by staff would be dealt with under the relevant terms and conditions of employment, while misconduct by a member of the public who is not a student would be a matter for the police or, possibly, a matter to which the **University Grounds Statute 2009** might apply.<sup>1</sup>

Allegations of general misconduct are determined by “general misconduct officers” under Part 3 of the new Statute and appeals from those determinations lie with the University Appeals Committee (or UAC) (see Part 4).

In extreme or urgent cases of general misconduct, the Vice-Chancellor may take rapid or immediate action under Part 5 to exclude a student. There are no appeals to the UAC in respect of a decision under Part 5 and if a student wished to challenge such a decision he or she would have recourse to the courts.

Allegations of general misconduct in the nature of sexual or other harassment or discrimination are dealt with in Part 6 of the new Statute, which provides that such matters are to be dealt with in accordance with the relevant University policy and procedures.



---

<sup>1</sup> The **University Grounds Statute 2009** deals with such things as litter, animals on campus, the consumption of alcohol on campus and the erection of unauthorised structures on campus.

**LA TROBE UNIVERSITY**  
**GENERAL MISCONDUCT STATUTE 2009**

The Council of La Trobe University makes this Statute under section 30 of the *La Trobe University Act 1964*.

**PART 1—PRELIMINARY**

**1. Name and commencement**

- (1) This Statute is the **General Misconduct Statute 2009**.
- (2) This Statute comes into full force and effect on 1 July 2009.

**2. Purpose**

The main purpose of this Statute is to provide for the general discipline and good government of the University by—

- (a) defining and prohibiting general misconduct by students;
- (b) providing for the reporting of incidents of suspected or alleged general misconduct by students; and
- (c) empowering officers of the University to investigate and determine cases involving allegations of general misconduct and to impose suitable penalties on students found guilty of general misconduct.

**3. Interpretation**

- (1) In this Statute—

*commencement day* means the day on which this Statute comes into full force and effect;

*general misconduct officer* means a general misconduct officer appointed under Part 3;

*head*, of an academic division, includes a person who is the acting head of an academic division;

*Old Statute* means Statute 16 – Student Discipline and Misconduct, and any regulations made under that Statute, as in force immediately before the commencement day;

**senior officer of the University** means a senior member of the academic or general staff;

**student** includes—

- (a) a person who was an enrolled student at a time when he or she is alleged to have engaged in general misconduct;
- (b) a person who was not an enrolled student at a time when he or she is alleged to have engaged in general misconduct of the kind referred to in section 4(k) but who then becomes an enrolled student after that time;

**student accommodation facility** means any premises owned by the University and used primarily for the accommodation of students.

#### 4. What is general misconduct?

In this Statute, **general misconduct** means misconduct other than academic misconduct and includes conduct which—

- (a) contravenes any Statute, regulations, policy or rules of the University relating to one or more of the following—
  - (i) the use of computer or information technology facilities;
  - (ii) smoking, alcohol or illicit drugs;
  - (iii) intellectual property;
  - (iv) conduct in a student accommodation facility of the University;
  - (v) the use of the University Library;
  - (vi) occupational health and safety;
  - (vii) clinical or professional placements, experience or education;
  - (viii) research or ethics relating to the conduct of research;
  - (ix) sexual or other harassment or discrimination;
- (b) contravenes any legislation, policy or rule of an organisation or agency outside of the University that relates to clinical or professional placements, experience or education;

- (c) interferes with the proper use of, or causes or is likely to cause damage to—
  - (i) the property or facilities of the University;
  - (ii) the property of any other person present at the University;
- (d) 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;
- (e) constitutes any of the following—
  - (i) an attack on, or a threat to attack, a person;
  - (ii) the intimidation of, or a threat to intimidate, a person;
  - (iii) physical or verbal abuse of a person;
- (f) causes, or is likely to cause, physical injury to any person;
- (g) involves the use of offensive language against a person;
- (h) involves an attempt to bribe, or the bribing of, a member of the academic or general staff of the University;
- (i) prevents, obstructs or hinders, or is intended to prevent, obstruct or hinder, a person authorised by the University to speak at a lecture, class, seminar or other activity or event held within the University;
- (j) impairs the freedom of another person to pursue his or her studies, research or other lawful activity within the University or to participate in the life of the University;
- (k) is detrimental to the interests or good reputation of the University;
- (l) involves the impersonation of a person or the use of forged, false or incomplete evidence of identity, academic status or record or any other relevant matter in order to enrol or maintain enrolment in any course of study or subject offered by the University;
- (m) contravenes any legislation or rules relating to parking and the control of traffic on land owned or controlled by the University;  
or

- (n) is stated to be general misconduct under any provision of this or any other Statute or any regulations.

**5. Fines and damages**

- (1) A fine or order of damages imposed on a student under this Statute shall be due and payable no later than 28 days after the day on which the fine is imposed.

**Note:**

Section 42A(1) of the Act provides that any fine imposed on a member of the staff or a student of the University pursuant to the Statutes and regulations shall be a civil debt recoverable summarily by the University in any court of competent jurisdiction. See also section 42A(2) of the Act.

- (2) A student who fails to pay a fine or order of damages by the date it is due under this section is guilty of general misconduct.
- (3) While a fine or order of damages which is overdue remains unpaid, the student upon whom the fine or order or damages was imposed may not, without the written consent of the Vice-Chancellor or the Deputy Vice-Chancellor—
  - (a) enrol or re-enrol in any course, subject or unit;
  - (b) receive the results of any assessments;
  - (c) graduate or be given any academic award;
  - (d) receive a certificate or transcript of academic record.

**PART 2—ACTION BY MEMBERS OF THE ACADEMIC AND GENERAL STAFF**

**6. Students who disrupt lectures etc may be excluded for prescribed period**

- (1) If a student behaves in a disruptive fashion at a lecture, seminar, tutorial or other activity or event conducted by a member of the academic staff of the University (the *member*), the member may exclude the student from—
  - (a) the lecture, seminar, tutorial or other activity or event; and
  - (b) any further lectures, seminars, tutorials or other activities or events to be conducted by the member for up to 4 weeks.
- (2) If a member excludes a student from any further lectures, seminars, tutorials or other activities or events to be conducted by the member, the member must give written notice of the exclusion to the excluded student as soon as practicable after the exclusion is given. A notice must set out the reasons for the exclusion.

**Examples for subsections (1) and (2)**

A student causes some minor disruption to a lecture, and the lecturer decides to exclude the student from the lecture. The lecturer may do so simply by asking the student to leave the lecture. No written notice of exclusion is required.

A student disrupts a number of lectures in a row, and the lecturer decides to exclude the student from any further lectures for the prescribed period. The lecturer may ask the student to leave the lecture and then give the student written notice of the length of the exclusion afterwards.

- (3) A student must comply with an exclusion given under this section.
- (4) A student who fails to comply with an exclusion given under this section is guilty of general misconduct.

**7. Students who disrupt examinations etc may be excluded**

- (1) If a student disrupts an examination, a member of the academic staff of the University, or any person employed by the University to act as an invigilator at the examination, may exclude the student from the examination.
- (2) If a student fails to comply with any rules or instructions specified for the conduct of an examination, a member of the academic staff of the University, or any person employed by the University to act as an invigilator at the examination, may exclude the student from the examination.
- (3) A student must comply with an exclusion given under this section.

- (4) A student who fails to comply with an exclusion given under this section is guilty of general misconduct.

**Note:**

A student who fails to comply with any rules or instructions specified for the conduct of an examination may also be guilty of academic misconduct: see section 4 of the **Academic Misconduct Statute 2009**.

**8. Senior members of academic and general staff to investigate alleged or suspected general misconduct**

- (1) A senior member of the academic or general staff of the University, other than a senior member who has been appointed as a general misconduct officer under Part 3, must investigate any alleged or suspected act of general misconduct on the part of a student of which he or she becomes aware or which is brought to his or her attention.
- (2) If, after conducting an investigation in accordance with the prescribed requirements (if any), a senior member of the academic or general staff is reasonably satisfied that there is enough evidence to support a finding that a student has engaged in general misconduct, the senior member must report the matter to a general misconduct officer for determination under Part 3.
- (3) A report under subsection (2) must include details of the evidence upon which the report is based.
-

**PART 3—ACTION BY GENERAL MISCONDUCT OFFICERS**

**9. General misconduct officers**

The Vice-Chancellor may, in accordance with the regulations, appoint any number of senior officers of the University to act as general misconduct officers.

**10. General misconduct officers to hear and determine allegations of general misconduct**

- (1) A general misconduct officer must hear and determine all allegations of general misconduct in respect of students that are referred or reported to him or her under this Statute or the regulations.
- (2) In a hearing under subsection (1), a student may be accompanied by a support person, other than a legal practitioner or person with a law degree.
- (3) A support person accompanying a student under subsection (2) is not entitled to make submissions or present arguments to the general misconduct officer on behalf of the student, or act in any other way as an advocate for the student.
- (4) If after conducting a hearing under subsection (1) the general misconduct officer finds that an allegation of general misconduct is substantiated, the general misconduct officer may do any one or more of the following—
  - (a) impose a reprimand;
  - (b) impose a fine of up to 10 penalty units;
  - (c) if the general misconduct involved damage to any property of the University, order the student to pay an amount of damages for the cost of restoring or repairing the damaged property;
  - (d) direct 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) direct that the student be suspended or excluded from the University;
  - (f) impose any other prescribed penalty.
- (5) A general misconduct officer must give a written notice of a determination under this section which—
  - (a) sets out the reasons for the determination;

- (b) includes a statement—
  - (i) informing the student that he or she may apply to the University Appeals Committee under section 12 of the Statute for a review of the decision; and
  - (ii) describing the requirements prescribed in section 12 for making such an application.
- (6) A notice of a determination under this section must be given to the student concerned as soon as practicable after the decision is made.
- (7) The University may recover an amount of damages assessed against a student by a general misconduct officer under subsection (4)(c) in any court of competent jurisdiction as a debt due to the University.
- (8) A student who fails to comply with a direction given under subsection (4)(d) is guilty of general misconduct.

**11. Procedural requirements for general misconduct officers**

- (1) In conducting a hearing under this Part, a general misconduct officer—
    - (a) is bound by the rules of natural justice;
    - (b) is not bound by the rules of evidence or practices or procedures applicable to courts of record; and
    - (c) may inform him or herself on any matter as he or she sees fit.
  - (2) A general misconduct officer—
    - (a) must conduct each hearing with as little formality and technicality, and determine each proceeding with as much speed, as the requirements of this Statute, the regulations and a proper consideration of the matters before it permits; and
    - (b) subject to this Statute and the regulations, may regulate his or her own procedure.
-

**PART 4—UNIVERSITY APPEALS COMMITTEE**

**12. Applications for review**

- (1) A student affected by a decision made under section 10 may lodge an application for review of the decision by the University Appeals Committee on one or more of the following grounds—
  - (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 or the regulations when hearing and determining the allegation of general misconduct;
  - (c) the penalty imposed is too severe.
- (2) An application for review must be lodged with the University Appeals Committee within 20 working days of receiving notice of the decision.
- (3) An application under this section for review must—
  - (a) be in writing and in the English language; and
  - (b) specify the grounds on which the review is sought and provide particulars in support of those grounds.
- (4) In subsection (1)(c), *penalty* includes a reprimand, fine, order or direction imposed under section 10(4).

**PART 5—ACTION BY VICE-CHANCELLOR**

**13. Students who pose risk of injury or damage may be excluded and suspended or terminated**

- (1) If the Vice-Chancellor is satisfied that a student has engaged in general misconduct of the kind referred to in section 4(c), (e) or (f), or that a student's conduct otherwise poses a risk of injury or damage to any person or property or to the interests or good reputation of the University, the Vice-Chancellor may—
    - (a) exclude the student from the University or any part or facility of the University indefinitely or for a period determined by the Vice-Chancellor; and
    - (b) suspend or terminate the student's enrolment.
  - (2) The Vice-Chancellor must give written notice of his or her decision under subsection (1) to the student concerned as soon as reasonably practicable. A notice of decision must set out the reasons for the decision.
  - (3) If the Vice-Chancellor is reasonably satisfied that it is appropriate or necessary in the circumstances, an exclusion given under subsection (1)(a) may be expressed to take effect immediately and, if so expressed, shall take effect immediately, even if the written notice required by subsection (2) cannot be given to the student concerned immediately.
  - (4) A student must comply with an exclusion given under subsection (1)(a).
  - (5) For the avoidance of doubt, a student who fails to comply with an exclusion given under subsection (1)(a) is guilty of general misconduct.
  - (6) Nothing in subsection (5) affects any other right or remedy which the University may have against the student under other legislation or at common law.
-

**PART 6—SEXUAL HARASSMENT, HARASSMENT AND  
DISCRIMINATION**

**14. Application**

This Part applies despite anything to the contrary elsewhere in this Statute.

**15. General misconduct in the nature of sexual or other harassment or discrimination**

- (1) A matter involving an allegation of general misconduct in the nature of sexual or other harassment or discrimination must be dealt with in accordance with the University's policies and procedures relating to sexual harassment, harassment and discrimination, as in force from time to time.
- (2) Despite subsection (1), if a matter involving an allegation of general misconduct in the nature of sexual or other harassment or discrimination cannot be satisfactorily resolved as between the parties in accordance with the policies and procedures referred to in subsection (1), or if one of the parties to the matter so requests, the Pro Vice-Chancellor (Equity and Student Services) must refer the matter to a general misconduct officer for hearing and determination under Part 3.

**PART 7—GENERAL**

**16. Transitional**

- (1) Despite the coming into full force and effect of this Statute, the Old Statute continues to apply to a proceeding under the Old Statute which, immediately before the commencement day, had been commenced but not completed.
- (2) In subsection (1), *proceeding* means a proceeding before the Discipline Committee.

**17. Regulations**

- (1) The Council may make regulations—
  - (a) for or with respect to or providing for any other matter or thing required to be regulated for the purposes of this Statute; and
  - (b) amending or revoking any regulations made under this Statute.
- (2) The Council must ensure that regulations made under this Statute are promulgated by having the regulations displayed on an official notice board of the University for a period of at least 14 days.
- (3) For the purposes of determining when regulations made under this Statute come into full force and effect within the meaning of section 30(4) of the Act, the regulations are taken to have been promulgated in accordance with sub-section (2) at the start of the first day on which they are displayed on an official notice board of the University.

=====

Approved by the Council—

Approved by the Minister—