



**MASSEY UNIVERSITY**

**STUDENT DISCIPLINARY REGULATIONS**

# STUDENT DISCIPLINARY REGULATION

## 1. INTRODUCTION

### Purpose

- 1.1 The purpose of these regulations is to provide a process which is an efficient and flexible way to resolve complaints of misconduct against student members of the University, brought by:
- (a) other students;
  - (b) staff of the University; or
  - (c) persons outside the University community affected by the actions of students and which, in each case, concerns conduct either:
    - (i) occurring upon University premises, grounds or residential accommodation; or
    - (ii) otherwise connected with the student's course of studies; or
    - (iii) otherwise directly and demonstrably related to the student's status as a student of the University.

### Application

- 1.2 These regulations will apply to all students enrolled at Massey University and every student shall, by virtue of his or her enrolment, be deemed to have accepted the disciplinary jurisdiction provided for in the Regulation.
- 1.3 These regulations will continue to apply to complaints of misconduct whilst the Respondent was a student of the University, notwithstanding that the Respondent may no longer be enrolled.
- 1.4 These regulations are to be read in conjunction with the Massey University Student Contract, the Student Academic Integrity Policy and the Procedure for Managing Breaches of Academic Integrity.

### Structure

- 1.5 The structure of these Regulations is to:
- (a) classify complaints into three levels, for which different processes are prescribed:
    - (i) "Level 1";
    - (ii) "Level 2"; and

- (iii) "Level 3";
- (b) prescribe the processes applicable to each category of complaint; and
- (c) prescribe certain requirements common to each category.

## 2. DEFINITIONS

- 2.1 **Academic Integrity Officer** means College-based staff responsible for the management of Level 2 allegations of breaches of the Academic Integrity Policy.
- 2.2 **Appellant** means a Respondent who has brought an appeal in accordance with section [13].
- 2.3 **Code** means the Massey University Code of Student Conduct.
- 2.4 **Complainant** means the person who has referred the complaint of misconduct to the University.
- 2.5 **Infringement** means a breach of a University regulation in respect of which a penalty or process is already prescribed by that regulation.
- 2.6 **Misconduct** means any conduct which:
- (a) is in breach of Part B of the Massey University Code of Student Conduct; or
  - (b) is in breach of any other regulation of the University; or
  - (c) could otherwise reasonably be held to be prejudicial to the functioning or interests of the University and/or its students (provided that nothing in this paragraph shall prevent persons reasonably exercising their rights to freedom of expression and peaceful assembly),
- and which
- (d) occurs upon University premises, grounds or residential accommodation; or
  - (e) is otherwise connected with the respondent's course of studies; or
  - (f) is otherwise directly and demonstrably related to that student's status as a student of the University;
- and which in any case is deserving of censure.
- 2.7 **Level 1 Misconduct means** misconduct at a level that it could be dealt with by the staff member responsible for the academic delivery. Or Campus Registrar if the allegation is non-academic.

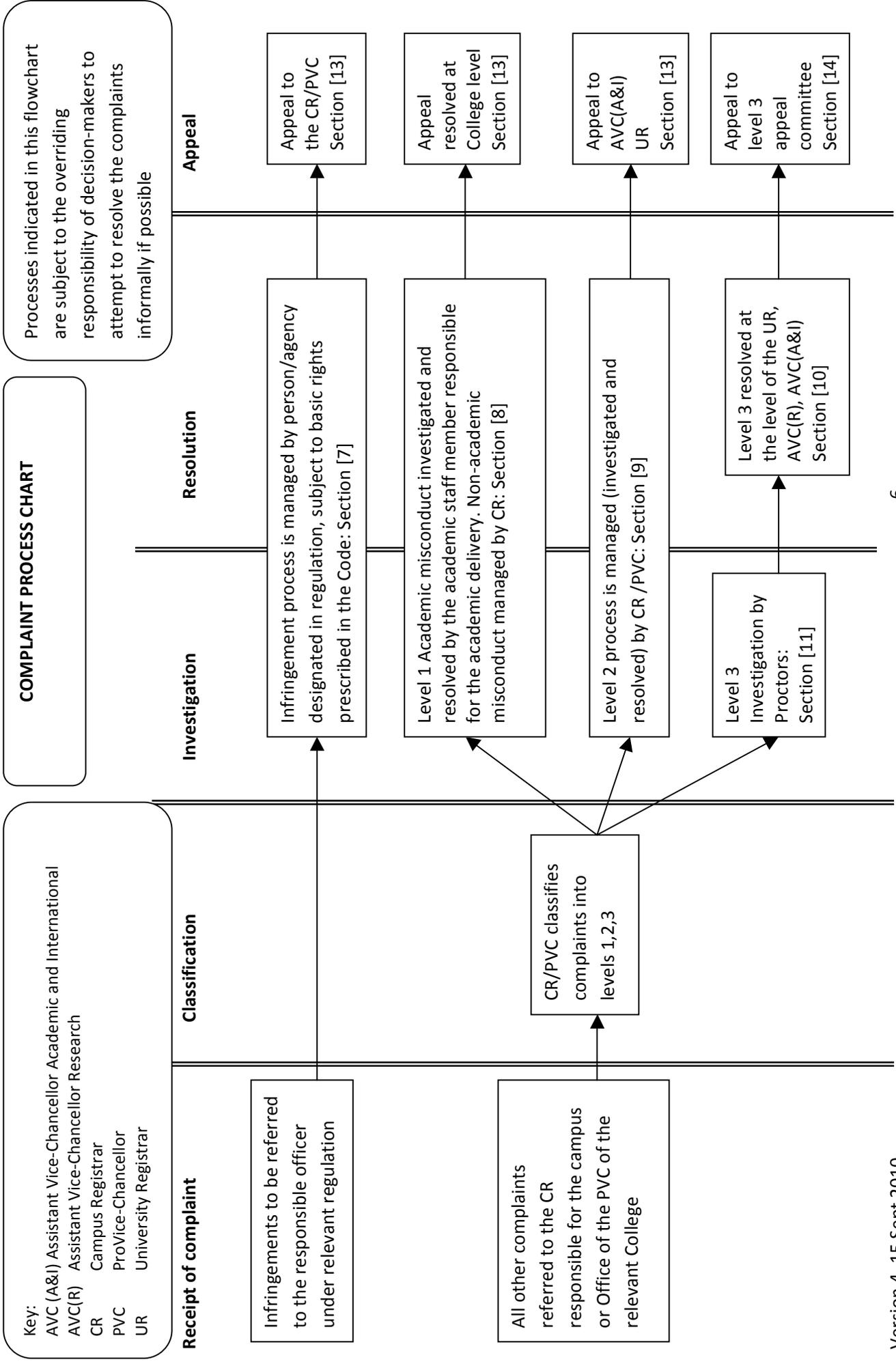
- 2.8 **Level 2 Misconduct** means misconduct not amounting to an infringement and that in the opinion of the Campus Registrar or Pro Vice Chancellor of the relevant College is sufficiently serious to require investigation and resolution, having regard to the limits on penalties available to the relevant Campus Registrar or Pro Vice Chancellor in Appendix 1; but does not amount to level three misconduct.
- 2.9 **Level 3 Misconduct** means misconduct that:
- (a) in the opinion of the Assistant Vice-Chancellor Academic and International, Assistance Vice-Chancellor Research or Pro Vice-Chancellor acting under clause [3.2], is sufficiently serious to warrant penalty in excess of that applicable in the case of level 2 misconduct and/or requiring referral to the police; and
  - (b) is referred to an Assistant Vice-Chancellor or University Registrar for resolution.
- 2.10 **Natural justice** means ensuring that the standards of procedural fairness are met, and seen to be met, at all times, including the following three basic requirements:
- (a) the respondent must be given notice of the complaint and the process to be used;
  - (b) the respondent must be given the opportunity to respond to the complaint;
  - (c) the decision-maker(s) must act impartially, honestly and without bias at all times;
  - (d) have the right to representation, including legal representation.
- 2.11 **Proctor** means that person who is authorised by the University to investigate level 3 allegations.
- 2.12 **Respondent** means the student whose conduct is the subject of a complaint.
- 2.13 **Student** means a person enrolled in a course of study at Massey University, or a person who is currently studying at the University under an exchange agreement with another institution.
- 2.14 **University** means Massey University (and shall include all its constituent components eg colleges, institutes, schools, etc).

### 3. RECEIPT OF COMPLAINTS

- 3.1 Every complaint of misconduct (other than an infringement of an existing regulation), in respect of which the complainant seeks the imposition of a penalty, shall be referred either to the office of the Campus Registrar of the campus attended by (or responsible for) the Respondent, or to the office of the Pro Vice Chancellor of the relevant College.

Note: AIOs may be delegated the responsibility for managing the level 2 breaches of the Student Academic Integrity Policy.

- 3.2 The Campus Registrar or Pro Vice Chancellor or AIO to whom the PVCs have delegated this responsibility, shall either:
- (a) dismiss the complaint if it appears either trivial, vexatious, or beyond the scope of clause [1.1]; or
  - (b) seek to resolve the complaint via informal processes, in accordance with clause [6.1]; or
  - (c) decide the complaint shall be processed, in which case the Campus Registrar or Pro Vice Chancellor shall classify it as:
    - (i) Infringements which may be referred to the person or agency designated in the regulation.
    - (ii) Level 1 misconduct which is managed by the staff member involved.
    - (iii) Level 2 misconduct. (Note that academic misconduct at this level may be referred to an AIO).
    - (iv) Level 3 (in which case it should be referred to the appropriate person as specified in section [10]),and in doing so shall have regard to the definitions of those terms in section [2] and to the prospective penalties prescribed in Appendix 1 and or the Student Academic Integrity Policy.
- 3.3 When a complaint of misconduct is received, the Campus Registrar or Pro Vice Chancellor shall, without delay, consider whether interim measures should be taken under section [5] and, if any of those measures are considered appropriate, shall advise the Vice-Chancellor accordingly.
- 3.4 The powers of the Campus Registrar or Pro Vice Chancellor under clause [3.2] and clause [3.3] may be delegated to other persons appointed by them for that purpose.
- 3.5 Every Complainant shall be notified of the receipt of their complaint and advised how the complaint will be processed.
- 3.6 A decision under clause [3.2] that the complaint be dealt with as:
- (a) Level 1 or level 2 misconduct, does not preclude a subsequent redetermination that it should be processed instead as level 3 misconduct;
  - (b) Level 3 misconduct, does not preclude a subsequent redetermination that it should be processed instead at a lower level.
- 3.7 Responsibilities of parties under this Regulation are summarised in the table at Appendix 2. The process is described in the following flowchart.



#### **4. COMMON PROCEDURAL REQUIREMENTS**

- 4.1 No complaint of misconduct shall be upheld without the due process having been followed as provided for in this Regulation.
- 4.2 A person accused of misconduct shall be presumed innocent until duly found otherwise in accordance with this Regulation.
- 4.3 A determination of misconduct (including level 3 misconduct) shall only be made if the relevant decision-maker is satisfied on the balance of probabilities that the Respondent was responsible for the misconduct alleged.
- 4.4 All persons having responsibility under this Regulation shall take due care to ensure they are cognisant of the cultural beliefs and values of the parties involved when carrying out their functions.

#### **5. INTERIM MEASURES**

- 5.1 Pending the resolution of a complaint of misconduct, on the advice of the Pro Vice-Chancellor or Campus Registrar, the Vice Chancellor may (when and to the extent he or she considers it necessary to do so) suspend the right of the Respondent to:
  - (a) attend any University premises, grounds or residential accommodation; and/or
  - (b) attend events organised by or for the University; and/or
  - (c) otherwise use the resources of the University.
- 5.2 Before the Respondent is suspended under clause [5.1], the Respondent shall (insofar as practicable) be given a reasonable opportunity to comment on the proposed suspension. In any case where suspension is effected before the Respondent has had a reasonable opportunity to comment, that opportunity shall remain open to the Respondent.
- 5.3 When considering whether to suspend the Respondent under clause [5.1], the Vice-Chancellor shall take into account the following (where relevant):
  - (a) health, safety and reputation of members of, and visitors to, the University;
  - (b) the orderly conduct of teaching and research at the University;
  - (c) protection of property or resources of the University;
  - (d) potential effects of suspension on the Respondent's course of study, and any other matters raised by the Respondent;
  - (e) any other matters the Vice-Chancellor considers appropriate in the circumstances.
- 5.4 If the Vice-Chancellor is unavailable, the Campus Registrar or the Pro Vice-Chancellor concerned may exercise the powers in clause [5.1].

## **6. INFORMAL RESOLUTION**

- 6.1 All decision-makers under this Regulation are permitted to resolve complaints without resort to formal processes where appropriate in the circumstances of the misconduct alleged, provided that at all times the requirements of natural justice are observed.

## **7. INFRINGEMENTS**

- 7.1 The infringement process should be managed by the person or agency designated in the regulation concerned. Students accused of an infringement have the right, before the imposition of any penalty:
- (a) to be adequately informed as to the nature of the alleged infringement; and
  - (b) to offer an explanation to the person or agency designated in the regulation; and
  - (c) to be notified of their entitlement to representation and to appropriate formal or informal support such as the Student Advocacy Service, Student Counselling Service, and whanau support.
- 7.2 The penalty for an infringement shall be that prescribed in the regulation concerned.
- 7.3 A student against whom a complaint of infringement is upheld, may appeal against this decision in accordance with section [13].

## **8. Level 1 MISCONDUCT**

- 8.1 Academic Misconduct will be managed by the academic staff member responsible for the academic delivery.

Note: The management of academic misconduct is described further in the Student Academic Integrity Policy and Procedure.

## **9. Level 2 MISCONDUCT**

### **Process**

- 9.1 The Campus Registrar or Pro Vice Chancellor concerned shall investigate any complaint that is to be processed as Level 2 misconduct.
- Note: The management of academic misconduct is described further in the Student Academic Integrity Policy and Procedure.
- 9.2 That investigative responsibility may be delegated to other persons appointed by them for that purpose. AIOs may be delegated the authority to manage allegations of level 2 misconduct.
- 9.3 Where any investigation is undertaken pursuant to clause [9.1] the Campus Registrar or Pro Vice Chancellor should ensure, in all cases, that the investigative procedures are conducted fairly and without prejudice, bias or any conflict of interest.

9.4 Upon undertaking an investigation, the Campus Registrar or Pro Vice-Chancellor should take the following preliminary steps:

- (a) notify the Respondent of the complaint as soon as reasonably practicable, including:
  - (i) identify of the complainant; and
  - (ii) the reasonable particulars of the misconduct, the procedure to be followed, and the possible penalties should the complaint be upheld (refer Appendix 2); and
  - (iii) the Respondent's right not to answer any questions at any point in the investigation; and
  - (iv) the Respondent's right to representation and the existence of appropriate formal or informal support, such as the Student Advocacy Service, Student Counselling Service and whanau support; and
- (b) invite the Respondent to respond to the complaint within a specified time.

9.5 If, following the preliminary steps in clause [9.4]:

- (a) the Respondent accepts responsibility for the misconduct alleged, the Campus Registrar or Pro Vice Chancellor may resolve the matter in accordance with clause [9.7]; or
- (b) the Respondent denies responsibility for the misconduct alleged or fails to respond within the specified time, the Campus Registrar or Pro Vice Chancellor may select an appropriate procedure for further investigation which either:
  - (i) follows the investigative procedure set out in Appendix 3; or
  - (ii) involves a less formal approach provided that clause [9.3] is complied with at all times.

9.6 Once an investigative procedure pursuant to clause [9.5(b)] is complete and if the Campus Registrar or Pro Vice Chancellor proposes to uphold the complaint, he or she should:

- (a) advise the Respondent of that fact;
- (b) offer the Respondent an opportunity to submit any further response and/or an opportunity to meet with the Campus Registrar or Pro Vice Chancellor to respond to the complaint orally; and then
- (c) resolve the complaint in accordance with clause [9.7].

#### **Resolution**

9.7 The Campus Registrar or Pro Vice Chancellor may resolve the complaint by:

- (a) referring the complaint for determination as level 3 misconduct (in accordance with section [10]); or
- (b) referring the complaint to mediation. In the event that the Respondent declines to mediate, or the mediation is unsuccessful, then the matter will be referred back to the Campus Registrar or Pro Vice-Chancellor for resolution; or
- (c) dismissing the complaint as not proved, trivial or vexatious; or
- (d) upholding the complaint, and either:
  - (i) imposing no penalty; or
  - (ii) imposing an appropriate penalty taking into account the limits prescribed in Appendix 1; or
- (e) resolving the complaint in some other manner agreed as between the Campus Registrar or Pro Vice-Chancellor and the Respondent.

9.8 If a level 2 misconduct complaint is upheld, the Campus Registrar or Pro Vice Chancellor must provide a decision in writing which shall:

- (a) summarise the reasons why it was held that the complaint was proven; and
- (b) if a penalty is imposed, give a reason or reasons why that particular penalty is imposed; and
- (c) notify the Respondent of his or her right to appeal pursuant to clause [9.9] and the grounds on which an appeal may be brought under section [13].

#### **Appeal**

9.9 A Respondent against whom a complaint of level 2 misconduct is upheld, may appeal against this decision to the relevant AVC(A&I) or AVC(R) or University Registrar in accordance with section [13].

9.10 Outcomes concerning level 2 misconduct complaints which are agreed between the Regional Chief Executive or Pro Vice Chancellor and the Respondent, may not be appealed.

### **10. LEVEL 3 MISCONDUCT**

#### **Referral**

10.1 Any complaint which is not trivial or vexatious, and pursuant to clause [3.2] is classified as one of serious misconduct, shall be referred as follows:

- (a) misconduct related to course work, examinations or other academic matters, to the Assistant Vice-Chancellor Academic and International;

- (b) misconduct related to research (i.e. 90 credits and above), to the Assistant Vice-Chancellor Research; and
- (c) all other level 3 misconduct to the University Registrar.

**Process**

10.2 Upon receiving a complaint classified as level 3 misconduct, the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar concerned shall notify the Respondent of the complaint as soon as reasonably practicable including:

- (a) the identity of the complainant; and
- (b) the reasonable particulars of where, when, and in what circumstances the alleged Level 3 misconduct took place, and a statement of the nature of the alleged serious misconduct; and
- (c) the procedure to be followed in investigating and resolving the complaint and the possible penalties should the complaint be upheld (refer Appendix 1); and
- (d) the Respondent's right not to answer questions at any point in the Proctor's investigation; and
- (e) the Respondent's right to representation and the existence of appropriate formal or informal support such as the Student Advocacy Service, Student Counselling Service, and whanau support.

10.3 The Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar concerned shall refer the complaint to a Proctor for a report, and the provisions of clauses [11.2 - 11.4] shall apply.

10.4 Upon receiving notice from the Proctor that:

- (a) no prima facie case of either serious misconduct or low level misconduct has been established, the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar must dismiss the complaint;
- (b) a prima facie case of lower level misconduct only has been established, the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar shall refer the matter to the appropriate Campus Registrar or Pro Vice Chancellor;
- (c) a prima facie case of serious misconduct has been established, the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar concerned shall:
  - (i) provide a report to the Respondent for response specifying a period of not less than 14 days for that purpose; and

- (ii) inform the Respondent that he or she may provide a response in writing or in person at a meeting convened pursuant to clause [10.4(c)(iv)] (or both); and
- (iii) receive and consider any written response from the Respondent; and
- (iv) convene a meeting between themselves, the Proctor and the Respondent, at which the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar will consider any response given by the Respondent and any submissions made by the Proctor.

10.5 At a meeting convened under clause [10.4(c)(iv)]:

- (a) if the Respondent accepts responsibility for the misconduct alleged or fails to appear the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar may impose a penalty not exceeding that specified in Appendix 1;
- (b) if the Respondent does not accept the misconduct alleged, the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar shall dissolve the meeting and convene a hearing in accordance with clause [10.6].
- (c) A hearing may be convened pursuant to clauses [10.5(a) or (b)] and shall be conducted in accordance with the procedure specified in Appendix 4.

#### **Resolution**

10.6 Following a hearing conducted pursuant to clause [10.5] the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar may:

- (a) dismiss the complaint; or
- (b) refer the complaint to mediation. In the event that the Respondent declines to mediate, or the mediation is unsuccessful, then the matter will be referred back to the Assistant Vice-Chancellor Academic and International, or Assistant Vice-Chancellor Research or University Registrar for resolution; or
- (c) dispose of the complaint as lower level misconduct, imposing an appropriate penalty taking into account the limits prescribed in Appendix 1; or
- (d) uphold the complaint as serious misconduct, and impose an appropriate penalty taking into account the limits prescribed in Appendix 1.

#### **Appeal**

10.7 A Respondent against whom a complaint of serious misconduct is upheld, may appeal against this decision in accordance with section [13].

## **11. PROCTORS**

- 11.1 The Vice-Chancellor shall appoint as Proctors staff members of appropriate experience, with no less than two appointed from each of the University's campuses. Of the Proctors appointed, at least one shall be Maori and there shall be a mix of gender. All Proctors must be prepared as required to investigate complaints at campuses other than the one at which they are located.
- 11.2 Proctors shall be appointed for terms of up to three years renewable at the discretion of the Vice Chancellor and, subject to the foregoing requirements of this clause, preference shall be given to the appointment of staff members with qualifications in law or arbitration.
- 11.3 A Proctor to whom a complaint of level 3 misconduct has been referred, shall investigate that complaint and in the course of doing so, shall follow the investigative process set out in Appendix 3.
- 11.4 Having carried out an investigation under clause [11.3], the Proctor may conclude that:
- (a) a prima facie case of level 3 misconduct has been established, in which case the Proctor shall, as soon as reasonably practicable, provide a written report to the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar, which summarises the evidence reviewed and includes the conclusions of the Proctor as to why a prima facie case of level 3 misconduct has been established, or in the case of an admission by the Respondent, a statement that the Respondent has admitted the level 3 misconduct alleged; or
  - (b) a prima facie case of level 1 or 2 misconduct only has been established, in which case the Proctor must advise the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar of this; or
  - (c) no prima facie case of either level 3 misconduct or low level misconduct has been established, in which case the Proctor must advise the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar of this.
- 11.5 If the Proctor provides a report concluding that serious misconduct has occurred (in accordance with clause [11.4(a)]), the Proctor shall perform any further functions which may be required at a meeting convened pursuant to clauses [10.4(c)(iv)], a hearing convened pursuant to clause [10.5] and the procedure in Appendix 4. The Proctor may make, in this report, a recommendation as to appropriate penalties should the misconduct be proven.

## **12 ACADEMIC INTEGRITY OFFICERS**

- 12.1 The Pro Vice-Chancellors or Assistant Vice-Chancellor Academic and International or the Assistant Vice-Chancellor Research shall appoint Academic Integrity Officers.
- 12.2 Academic Integrity Officers may be responsible for managing allegations relating to level 2 breaches of the Academic Integrity Policy.
- 12.3 Academic Integrity officers shall be appointed for terms of up to three years renewable at the discretion of the Pro Vice Chancellor or Assistant Vice-Chancellor Academic and International.

## **13 APPEALS**

### **Timing of Appeal**

- 13.1 Notice of an appeal must be given within 28 days of the date of the decision being appealed against. The relevant appeals persons or body may, in its discretion, permit an appeal to be brought outside this time limit.

### **Manner of bringing Appeal**

- 13.2 Notice or letter seeking an appeal must be submitted in writing to the relevant person or body and must include the ground or grounds for the appeal, being grounds specified in clause [13.3].

### **Grounds of Appeal**

- 13.3 An appeal may be made only on one or more of the following grounds:
- (a) that the process used for investigating or resolving the misconduct alleged was unfair;
  - (b) that the decision reached as to the misconduct alleged could not reasonably be sustained on the evidence;
  - (c) that the penalty imposed was out of proportion to the nature of the misconduct alleged; or
  - (d) that significant new evidence has become available since the initial process which could have a material effect on the decision made or the penalty imposed, and which was not reasonably obtainable prior to the decision.
- 13.4 Outcomes concerning Level 1 or level 2 complaints which are agreed between the Campus Registrar or Pro Vice Chancellor and the Respondent, may not be appealed.

### **Nature of Appeal**

- 13.5 On an appeal, the Respondent bringing the appeal becomes known as the "Appellant".

## **Appeal Process**

### **Level One or Infringements**

- 13.6 For complaints classified as infringements against existing regulations other than academic misconduct:
- (a) an appeal shall be referred to the office of the Campus Registrar of the campus attended by (or responsible for) the Appellant or office of the Pro Vice-Chancellor of the relevant College; and
  - (b) the Campus Registrar or the Pro Vice-Chancellor concerned shall consider the decision of the initial decision maker and any further submissions made by the Appellant.
  - (c) Level 1 academic misconduct decisions should be reviewed using standard processes in the relevant college.

### **Level Two**

- 13.7 For complaints classified as level 2 misconduct:
- (a) an appeal shall be referred:
    - (i) to the Assistant Vice-Chancellor Academic and International, where the misconduct relates to course work, examinations or other academic matters; or
    - (ii) to the Assistant Vice-Chancellor Research where the misconduct relates to research (i.e. 90 credit research paper and above); or to the University Registrar in all other cases of misconduct.
  - (b) The Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar concerned shall consider the decision of the initial decision maker and any further submissions by the Appellant.

### **Level Three**

- 13.8 For complaints classified as level 3, an appeal shall be referred to the Level 3 Misconduct Appeals Committee which shall be convened by the Vice-Chancellor or his/her nominee in accordance with clause [13.2].

### **Resolution of Appeals**

- 13.9 The relevant appeals person or body may:
- (a) dismiss the appeal and uphold the decision;
  - (b) vary the decision;

- (c) vary a penalty imposed in the decision, either by decreasing that penalty or increasing it to a level which does not exceed that specified in Appendix 1; or
  - (d) allow the appeal and rescind the decision.
- 13.10 The decision of the relevant appeals person or body shall be issued in writing to the Appellant.
- 13.11 The decision of the appeals person or body on an appeal shall be the final decision.

**14. LEVEL 3 MISCONDUCT APPEALS COMMITTEE**

**Establishment**

- 14.1 There shall be a level 3 Misconduct Appeal Committee.
- 14.2 Upon notice of appeal to the Vice-Chancellor under clause [13.8] the Vice Chancellor shall, as soon as reasonably practicable, convene the Level 3 Appeal Committee.

**Membership**

- 14.3 The level 3 Misconduct Appeal Committee shall consist of:
- (a) one permanent independent chairperson appointed by the Council on the recommendation of the Vice-Chancellor who is neither a current student nor an employee of the University;
  - (b) two University staff members appointed by the Academic Board; and
  - (c) two student representatives appointed by the Massey University Students' Associations Federation (MUSAF).
- 14.4 All five members must be present to constitute a valid hearing.
- 14.5 The members of the Level 3 Misconduct Appeal Committee must be appointed no later than 1 March in each academic year. In addition, alternates shall also be appointed for each principal appointee:
- (a) The number of alternates shall correspond to the number of principal appointees; and
  - (b) The alternates shall act in place of the principal appointees when those appointees are unable to sit, and the choice of alternate in that event shall be the sole responsibility of the chairperson (or, where necessary, the alternate to the chairperson).

The principal appointees or alternates appointed by the Academic Board and the Massey University Students' Associations Federation, where possible shall include one Maori member.

- 14.6 Appointment to the Level 3 Misconduct Appeal Committee shall be for a period of between one to three years provided that any member may resign from the committee or withdraw from a particular hearing. Members are eligible for reappointment at the end of any term of appointment.
- 14.7 Upon the resignation of any member of the committee, a new member shall be appointed by the relevant appointing body (and the same shall apply where for any reason insufficient alternates are available in any particular case).

#### **Powers**

- 14.8 The Level 3 Misconduct Appeal Committee shall have the power to hear and determine any appeal concerning a complaint which has been classified as level 3 misconduct.

#### **Procedure**

- 14.9 The Level 3 Misconduct Appeal Committee must hold a hearing to hear and determine an appeal. Such an appeal need not be a full rehearing of the evidence.
- 14.10 The Level 3 Misconduct Appeal Committee may determine the procedure to apply at an appeal hearing, however in the interests of natural justice, certain procedures should be adhered to, namely:
- (a) the Appellant, and the Proctor who investigated the misconduct, must be given notice of a hearing of the Level 3 Appeal Committee no less than two weeks in advance of the date set down for the hearing;
  - (b) the Appeal Committee should ensure that the Appellant has all relevant material prior to the hearing;
  - (c) the Appellant, the Proctor who investigated the misconduct, and any other member of the University who, in the opinion of the Level 3 Appeal Committee has a special interest in the proceeding, have the right to appear at the hearing in person, and to be accompanied/represented by a person of their choice and should be informed of this right;
  - (d) all of the above parties have the right to make submissions at the hearing and should be given reasonable time in which to do so;
  - (e) subject to clause [14.10(c)], all hearings shall be in private and their proceedings shall be confidential;
  - (f) if an Appellant fails to appear, the matter shall be determined in the absence of the Appellant but taking into account any written submissions the Appellant may have submitted;
  - (g) before making any determination, the Level 3 Appeal Committee must consider the initial decision, any relevant evidence, and all written and oral submissions presented to it.

15. **UNIVERSITY DISCIPLINARY ADVISORY COMMITTEE**

**Establishment**

15.1 There shall be a University Disciplinary Advisory Committee.

**Membership**

15.2 The University Disciplinary Advisory Committee shall be chaired by the Assistant Vice-Chancellor Academic and International, and the remaining members shall include:

- (a) Assistance Vice-Chancellor Academic and International
- (b) Assistant Vice-Chancellor Research;
- (c) one Campus Registrar;
- (d) one Pro Vice Chancellor;
- (e) the University Registrar;
- (f) one Proctor;
- (g) one Academic Integrity Officer
- (h) one student representative appointed by the Federation of Student Associations at Massey University Inc.; and
- (i) the University Disputes Advisor.

The University Disciplinary Advisory Committee has the power to co-opt a Maori University staff member if it requires a Maori perspective on a particular issue(s).

15.3 The Chair and two other members of the University Disciplinary Advisory Committee shall constitute a quorum.

**Functions**

15.4 The functions of the University Disciplinary Advisory Committee are to:

- (a) report to the Vice-Chancellor on the efficiency and consistency of the disciplinary processes;
- (b) review the consistency of decision-making at all levels of the process;
- (c) produce forms and precedents for the efficient and consistent disposition of complaints.

15.5 The University Disciplinary Advisory Committee shall make a report to the Vice Chancellor at the end of each academic year. Such report shall contain a summary of all cases of Level 2 and level 3 misconduct disposed of during the year but shall not include the names of individual students.

## 16. INVOLVEMENT OF EXTERNAL AGENCIES

### Referrals to law enforcement agencies

- 16.1 Where a complaint also constitutes a criminal offence, the University may at any stage also refer that complaint to the appropriate law enforcement agency.
- 16.2 Subject to clause [16.3], such a referral shall not prevent the complaint being heard and investigated pursuant to procedures in this Regulation.

### Criminal charges

- 16.3 Where a law enforcement agency has charged the Respondent with a criminal offence prior to the complaint being resolved under this Code:
- (a) no final decision shall be made on that complaint until the charge has been determined. However, interim measures in section [5] may still be directed; and
  - (b) evidence of any conviction shall be admissible as proof of misconduct or infringement.

### Notification

- 16.4 The University shall notify any external agency, lawfully interested in the Respondent's status as a student, of any changes in that status as a result of penalties imposed under this Code.
- 16.5 When an external agency is notified under clause [16.4], the University shall inform the Respondent of that fact.

## 17. ENFORCEMENT OF PENALTIES

- 17.1 Where a penalty has been imposed on, or an undertaking agreed to by a Respondent and no appeal is pending, the Vice Chancellor may, in his or her discretion, suspend the right of that Respondent to attend any University premises or grounds, or any events organised by or for the University, unless or until the required terms of that agreement or penalty are met.

## 18. RECORDS

### Record of misconduct

- 18.1 Details of proven cases of both level 2 and level 3 misconduct are to be retained in the Office of the Assistance Vice Chancellor Academic & International or the Assistance Vice Chancellor Research and kept separately from the official student record. That data shall be kept for a period of six years, at which time it shall be removed and destroyed. However, data shall be kept indefinitely where misconduct has resulted in permanent exclusion.

### **Retaining information**

18.2 All information obtained by the Level 3 Misconduct Appeals Committee before and/or during a hearing into a complaint of serious misconduct shall be retained for a period of six years from the date the complaint was upheld, at which time it will be removed and destroyed.

### **19. PRIVACY AND CONFIDENTIALITY**

19.1 Every complaint (including any subsequent investigation and/or hearing) shall be treated confidentially, and the Respondent and complainant shall be entitled to the protection provided by the Privacy Act 1993.

19.2 Nothing in clause [19.1] shall prevent disclosure:

- (a) to any person for the purposes of hearing, considering or investigating a complaint pursuant to this Code; or
- (b) to any external agency pursuant to section [15].

### **Version Control**

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**APPENDIX 1****SCHEDULE OF PENALTIES**

<b>Complaint</b>	<b>Penalty</b>
Infringement	The penalty is that described in the relevant regulation
Level 1	Level 1 penalty as specified in the Student Academic Integrity Policy
Level 2	Penalties may include:  (a) a financial penalty or order for restitution which shall not exceed \$500; and/or  (b) an order suspending the respondent from attending the University for any period; and/or  (c) such other academic penalty as is considered appropriate.
Level 3	Penalties may include:  (a) a financial penalty or order for restitution which shall not exceed \$5,000; and/or  (b) an order suspending the respondent from attending the University for any period; and/or  (c) a permanent order excluding the respondent from attending the University; and/or  (d) such other academic penalty as is considered appropriate.

## APPENDIX 2

### MISCONDUCT RESPONSIBILITIES TABLE

Key:

AVC(A&I)	=	Assistant Vice-Chancellor Academic and International
AVC(R)	=	Assistant Vice-Chancellor Research
CR	=	Campus Registrar
PVC	=	Pro Vice Chancellor
L3MAC	=	Level 3 Misconduct Appeals Committee
URegr	=	University Registrar
AIO	=	Academic Integrity Officer

Task	Infringement	Level 1 Misconduct	Level 2 Misconduct	Level 3 Misconduct
Receipt/Classification	Officer responsible for that Regulation	Academic staff or person responsible for relevant regulation	CR/(PVC) (can be delegated to AIO)	AVC(A&I)/AVC(R)/URegr
Investigation	Officer responsible for that Regulation	Academic staff or person responsible for relevant regulation	CR/(PVC) (can be delegated to AIO)	Proctor
Resolution	Officer responsible for that Regulation	Academic staff or person responsible for relevant regulation	CR/(PVC) (can be delegated to AIO)	AVC (A&I)/AVC(R)/URegr
Appeal	CR/PVC	PVC	AVC (A&I)/URegr/AVC (R)	L3MAC

### **APPENDIX 3**

#### **INVESTIGATIVE PROCESS**

As a general rule, an investigating person or body should take the following steps:

- a. invite the Respondent to respond to the complaint;
- b. review relevant documentation;
- c. seek clarification or make other relevant inquiries;
- d. provide any material obtained in the course of the investigation to the Respondent except any material legally privileged;
- e. examine and evaluate relevant facts and evidence in order to determine whether misconduct has occurred;
- f. conform to the requirements of natural justice.

## APPENDIX 4

### LEVEL 3 MISCONDUCT HEARINGS

Hearings involving complaints of level 3 misconduct which are convened pursuant to clause [10.6], shall be convened as soon as reasonably practicable after the initial meeting and the following procedure should apply:

- a. the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar should request the Proctor who investigated the complaint of level 3 misconduct to give the Respondent notice of a hearing no less than two weeks in advance of the date set down for the hearing;
- b. notice as in (a) above, should:
  - (i) inform the parties of their right to appear at the hearing;
  - (ii) give particulars of the subject matter of the hearing, including any allegations or charges that must be met and the possible penalties should those allegations or charges be proven (refer Appendix 1);
  - (iii) in the case of the Respondent, inform him or her of his or her right to be represented by legal counsel or any other representative of his or her choice;
- c. all relevant material must be disclosed to the Respondent prior to the hearing in order to allow the Respondent to address the matter in issue;
- d. the Respondent, the Complainant and any other member of the University who, in the opinion of the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar, has a special interest in the proceeding shall be entitled:
  - (i) to appear at the hearing, in the case of the Respondent either by themselves or assisted by someone they have chosen for the purpose;
  - (ii) to give and call evidence, peruse all documentary evidence and make oral and/or written submissions;
  - (iii) to be present throughout the hearing.
- e. the Proctor who has made the report of level 3 misconduct which is the subject of the hearing, must attend the hearing and make a submission. He or she may also elect to call evidence;

- f. a Proctor may delegate his or her obligation under (e), but only where it is not possible for the Proctor to attend the hearing and the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar cannot offer any other suitable date (bearing in mind the need for a hearing to take place as soon as reasonably practicable);
- g. all parties at the hearing should be given reasonable time in which to make submissions or present any evidence;
- h. the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar conducting the hearing may determine the procedure to be followed at the hearings and the admissibility of evidence. Cross examination of witnesses may be allowed where the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar is satisfied that this is necessary or desirable in the interests of justice;
- i. subject to clause [d], all hearings shall be in private and their proceedings shall be confidential;
- j. the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar concerned shall consider and weigh all of the relevant evidence and submissions before making any determination;
- k. if a Respondent fails to appear, the matter shall be determined in the absence of the Respondent but taking into account any written submissions the Respondent may have submitted;
- l. the Assistant Vice-Chancellor Academic and International, Assistant Vice-Chancellor Research or University Registrar may reach any of the conclusions specified in clause [10.7] and shall issue his or her decision in writing as soon as reasonably practicable after the hearing has occurred. Such decision shall include reasons for the conclusion reached and, if relevant, for the penalty imposed.