

THE AUSTRALIAN NATIONAL UNIVERSITY

Discipline Rule 2018

I, Professor Brian P. Schmidt, Vice-Chancellor, make the following rule.

Dated 19 March 2018

Professor Brian P. Schmidt AC FAA FRS
Vice-Chancellor

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Part 1—Preliminary

1 Name

This is the *Discipline Rule 2018*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *Vice-Chancellorship Statute 2013*, section 9.5.

4 Definitions

In this instrument:

complainant, in relation to conduct: see section 8(3) (Respondent and complainant in relation to conduct).

course means a subject of scholarly study, whether it is taught:

- (a) in a connected series of classes or demonstrations; or
- (b) by means of practical work, including, for example, the production by students of essays, theses or case studies or the attendance and participation by students in seminars or workshops; or
- (c) by clinical or professional practice; or
- (d) in another way or in a combination of ways.

Dean, in relation to a student, means the Dean of the ANU College responsible for:

- (a) the program or course in which the student is or was enrolled or seeking enrolment; or
- (b) the course the student was given permission to audit.

discrimination includes unfair or inequitable treatment on the basis of a person's race, colour, sex, sexual preference or orientation, marital status, pregnancy or potential pregnancy, status as carer, age, disability, ethnic or national origin, breastfeeding requirements, religious, political or union affiliation, or any other attributes applied by or set out in any Commonwealth, State, Territory or University legislation that applies in relation to a University activity.

examination includes:

- (a) a task required to be performed or undertaken by a student for the assessment of the student's performance in a program or course in which the student is admitted or enrolled; and
- (b) a thesis, dissertation, minor thesis, research project, written report, assignment or essay undertaken for the assessment of a student's performance for an award offered by the University; and
- (c) a task required to be performed or undertaken by a person for the purpose of enabling the person to qualify for admission as a student in a program in the University.

exercise a function includes perform the function.

function includes authority, duty and power.

harassment: for forms of harassment that are not sexual harassment, see section 5(2) (Sexual harassment and other forms of harassment).

inquiry means an inquiry under Part 4 (Inquiries).

misconduct: see section 6 (Misconduct).

obligation includes:

- (a) a non-monetary obligation, a monetary penalty or compensation (whether to be made or payable to the University or another person) under a University statute (other than the Parking and Traffic Statute), rule or order; and
- (b) a monetary obligation (for example, a fee or charge for accommodation, board or a related service) payable to the University or to a hall of residence or affiliated college under a contract or agreement.

prescribed authority means:

- (a) in relation to any student—the Dean, the Registrar or a person nominated for the purpose by the Vice-Chancellor, as the case requires; and
- (b) in relation to a student who is a resident in a hall of residence or lodge of the University—the Head of the hall of residence or lodge.

property includes any form of real and personal property.

Example of property

Intellectual property, including intellectual property in any data or information.

reviewable decision: see section 25 (Meaning of *reviewable decision*).

sexual assault includes any offence of a sexual nature committed on another person without the other person's consent.

Examples of sexual assault

Conduct that is an offence against the *Crimes Act 1900* (ACT), section 54 (Sexual intercourse without consent) or section 60 (Act of indecency without consent).

[Note: Sexual assault includes a range of behaviours, all of which are unacceptable and constitute a crime, whereby a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they have withdrawn their consent.]

sexual harassment: see section 5(1) (Sexual harassment and other forms of harassment).

student means a person who is or was enrolled in, or seeking enrolment in, a program or course offered by the University, or who is or was given permission by the University to audit a course offered by the University.

University-related conduct means conduct that is connected with the University.

Examples

1 Conduct that relates to the University, its activities, or its staff, or students, in their capacity as members of the staff, or students, of the University.

2 Conduct that happens on or in, or in connection with, land or premises owned or occupied by the University.

3 Conduct that happens in, or in connection with, University House, Graduate House, a hall of residence, an affiliated college, or any other accommodation provided or arranged by the University.

4 Conduct engaged in using, or facilitated by, University information infrastructure or services or any other University resources, equipment or services.

5 Conduct that happens during, or relates to, the exercise of functions for the University.

6 Conduct that happens during, or in connection with, any function or event connected with the University (whether or not organised or approved by the University).

7 Conduct that happens when a person is representing the University in any capacity.

victimisation includes any unfavourable treatment, including adverse changes to a person's work or study environment, denial of access to resources, work opportunities or training, or ostracism of a person as a consequence of the person's involvement in a grievance under any grievance procedures applying in the University.

working day means a day that is not a Saturday, a Sunday, a public holiday in the Australian Capital Territory, or a University holiday.

5 Sexual harassment and other forms of harassment

- (1) For this instrument, a person sexually harasses another person (the **person harassed**) if the person:
- (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
 - (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

[Note: This definition mirrors the definition of **sexual harassment** in the *Sex Discrimination Act 1984* (Cwlth.), section 28A(1).]

- (2) For this instrument, a person subjects another person (also the **person harassed**) to another form of harassment if the person engages in conduct that:
- (a) is offensive, humiliating or intimidating to the person harassed, but is not sexual harassment; and
 - (b) is engaged in by the person in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.
- (3) For subsections (1) and (2), the circumstances to be taken into account include, but are not limited to, the following:
- (a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
 - (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
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- (c) any disability of the person harassed;
 - (d) any other relevant circumstance.

(4) In this section:

conduct of a sexual nature includes the making of a statement of a sexual nature to, or in the presence of, a person, whether the statement is made orally or in writing.

Part 2—Misconduct

6 Misconduct

- (1) It is ***misconduct*** if a student engages in conduct:
- (a) that is dishonest, unethical, or otherwise demonstrates a lack of integrity or a lack of respect for the safety or wellbeing of other members of the University community; or
 - (b) that unreasonably hinders other members of the University community in the pursuit of their studies or research in the University or in participation in the life of the University; or
 - (c) that is otherwise:
 - (i) a contravention of the values set by the Council for the University; or
 - (ii) prejudicial to the good order and government of the University; or
 - (iii) reprehensible conduct for a member of the University community to engage in.

[Note: For the values currently set by the Council for the University, see the Strategic Plan 2017-2021.]

- (2) Without limiting subsection (1), it is ***misconduct*** if a student:
- (a) sexually assaults or sexually harasses another member of the University community; or
 - (b) engages, or threatens to engage, in any other non-consensual conduct of a sexual nature in relation to another member of the University community if a reasonable member of the University community would, in all the circumstances, consider the conduct to be:
 - (i) an invasion of privacy; or
 - (ii) indecent; or
 - (iii) otherwise unacceptable conduct for a student to engage in in relation to another member of the University community; or
 - (c) subjects another member of the University community to any other form of harassment, victimisation or discrimination; or
 - (d) otherwise behaves in an violent, threatening or intimidating way to another member of the University community or otherwise creates a hostile study, research or work environment; or
 - (e) intentionally, recklessly or negligently causes risk or danger to the health or safety of another member of the University community; or
 - (f) intentionally or recklessly obstructs or disrupts an activity or proceeding of the University; or
 - (g) intentionally, recklessly or negligently destroys, damages, defaces, loses, removes or otherwise interferes with, or makes unauthorised use of, property of the University or another person; or
 - (h) enters a place in the University that the student is not permitted to enter; or
 - (i) contravenes a reasonable order or direction (however described) of an officer or employee of the University or a person acting with the lawful authority of the University; or
 - (j) contravenes a University statute, rule or order or an order or direction (however described) given under a University statute, rule or order; or

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- (k) acts dishonestly or unfairly in connection with:
 - (i) any assessment for admission to the University; or
 - (ii) the preparation or presentation of any assignment or material in support of an application for admission to the University; or
 - (l) makes a statement to the University, or to an officer or employee of the University, that the student knows to be false (including the provision of a falsified medical certificate or falsified academic transcript); or
 - (m) engages in, or is party to, conduct intended to deceive the University (including the provision of a falsified medical certificate or falsified academic transcript); or
 - (n) contravenes the University's instructions to students at, or in relation to, an examination.

Examples for paragraph (b)

Conduct that is an offence against the *Crimes Act 1900* (ACT), section 61B (Intimate observations or capturing visual data etc.), section 72C (Non-consensual distribution of intimate images) or section 72E (Threaten to capture or distribute intimate images).

[Note: An example of the operation of a provision is not exhaustive and may extend the operation of the provision (see *Acts Interpretation Act 1901* (Cwlth.), section 15AD and *Legislation Act 2003* (Cwlth), section 13(1)(a)).]

Part 3—Consequences of misconduct

7 Reporting misconduct etc.

- (1) If any person considers that a student has, or may have, engaged in conduct that is misconduct, the person may report the student's conduct to the Vice-Chancellor or a prescribed authority.
- (2) To remove any doubt, if a prescribed authority considers that a student has, or may have, engaged in conduct that is misconduct, the prescribed authority may report the student's conduct to the Vice-Chancellor or another prescribed authority.
- (3) If the Vice-Chancellor or a prescribed authority (the *relevant authority*) considers that a student has, or may have, engaged in conduct that is misconduct, the relevant authority may exercise functions under this instrument in relation to the student's conduct even though the relevant authority has not received a report under this section about the conduct.

8 Respondent and complainant in relation to conduct

- (1) This section applies if:
 - (a) a report is made under section 7 (Reporting misconduct etc.) about the conduct of a student; or
 - (b) the Vice-Chancellor or a prescribed authority decides under section 7 to exercise functions under this instrument in relation to the conduct of a student.
- (2) For the purposes of this instrument, the student may be referred to as the *respondent*.
- (3) For the purposes of this instrument, each of the following may be referred to as the *complainant* in relation to the conduct:
 - (a) if this section applies because a report is made under section 7—the person who makes the report or, if the report is made on behalf of another person who is a student, the other person;
 - (b) in any case—any other person if the conduct affects, or may affect, the other person in the other person's capacity as a student.

9 Keeping complainant informed

- (1) This section applies if:
 - (a) a report is made under section 7 (Reporting misconduct etc.) about the conduct of a student; or
 - (b) the Vice-Chancellor or a prescribed authority decides under section 7 to exercise functions under this instrument in relation to the conduct of a student.
- (2) The Vice-Chancellor or a prescribed authority may, from time to time, tell a complainant in relation to the conduct, orally or in writing, about any of the following:
 - (a) whether any action has been taken under this instrument or otherwise in relation to the conduct;
 - (b) if action, or particular action, has not been taken in relation the conduct—the reasons for not taking action, or that particular action, in relation to the conduct (including any finding made);

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- (c) if action has been taken in relation to the conduct—the action taken in relation to the conduct, the reasons for taking that action (including any finding made) and the outcome of that action;
 - (d) whether any proceedings have been taken under or in relation to the Appeals Rule in relation to the conduct and, if so, the nature of the proceedings, the outcome of those proceedings and the reasons for that outcome;
 - (e) anything else that the Vice-Chancellor or prescribed authority considers that the complainant should be told about.

10 Prescribed authority's role

- (1) If a prescribed authority becomes aware that a student (the *respondent*) has, or may have engaged, in conduct that is misconduct, the prescribed authority must initially decide whether action should be taken in relation to the respondent under this instrument in relation to the conduct.
- (2) The prescribed authority may decide that action should not be taken in relation to the respondent under this instrument in relation to the conduct if the prescribed authority considers:
 - (a) that there are not adequate grounds for believing that the respondent engaged in the conduct or that the conduct is misconduct (or both); or
 - (b) that it is otherwise not appropriate for action to be taken, or taken for the time being, in relation to the respondent under this instrument in relation to the conduct.

Examples for paragraph (b)

1 A criminal investigation or prosecution has begun in relation to the conduct.

2 The conduct is not University-related conduct.

- (3) If the prescribed authority makes a decision under subsection (2), the prescribed authority must, within 5 working days after the day the decision is made, tell the respondent in writing about the decision.
 - (4) To remove any doubt, if the prescribed authority considers that it is not appropriate for action to be taken for the time being in relation to the respondent under this instrument in relation to the conduct, this instrument does not prevent the prescribed authority, another prescribed authority or the Vice-Chancellor from later deciding that it is no longer inappropriate for action to be taken in relation to the respondent under this instrument in relation to the conduct.
 - (5) If the prescribed authority decides that action should be taken in relation to the respondent under this instrument in relation to the conduct and considers that there are adequate grounds for believing that the respondent engaged in the conduct and the conduct is misconduct, the prescribed authority may:
 - (a) decide to hold an inquiry into the conduct; or
 - (b) refer the conduct to the Vice-Chancellor, if the prescribed authority considers that the conduct should be dealt with by the Vice-Chancellor and the conduct was not referred to the prescribed authority by the Vice-Chancellor under section 12(5)(a) (Powers of, and action by, Vice-Chancellor).
 - (6) If the prescribed authority decides to hold an inquiry into the conduct, the prescribed authority must, within 5 working days after the day the decision is made, give the respondent a written notice that:
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- (a) tells the respondent about the decision, including the name of the prescribed authority; and
 - (b) includes a description of the conduct to be inquired into; and
 - (c) includes, or is accompanied by, copies of the material in the possession of the prescribed authority on which the prescribed authority may rely in the inquiry; and
 - (d) states the date, time and place fixed for the hearing of the inquiry; and
 - (e) includes, or is accompanied by, a statement to the effect that:
 - (i) the purpose of the inquiry is to decide whether there has been misconduct by the respondent and that the powers of the prescribed authority include power to find that there has been misconduct by the respondent; and
 - (ii) the inquiry will be conducted in an informal way; and
 - (iii) the respondent may appear in person at the inquiry; and
 - (iv) if the respondent does not appear at the time and place fixed for the hearing of the inquiry, the inquiry may be held in the absence of the respondent; and
 - (v) the respondent may present to the inquiry oral or written statements (whether made by the respondent or another person); and
 - (vi) the respondent may, in addition to or instead of appearing in person at the inquiry, give the inquiry a written statement about the conduct being inquired into (whether made by the respondent or another person); and
 - (vii) the respondent may be accompanied at the inquiry by another person who may observe the proceedings and, with the express approval of the prescribed authority, act as an advocate; and
 - (viii) the prescribed authority is not bound by rules of evidence.
- (7) The notice must be given to the respondent at least 5 working days before the date fixed for the hearing, unless the respondent consents to being given the notice later.

11 Additional interim powers of prescribed authority

- (1) If, in a case to which section 10(1) (Prescribed authority's role) applies, the prescribed authority is satisfied that the respondent is likely to have engaged in conduct that is misconduct, the prescribed authority may, before holding an inquiry into the conduct:
- (a) deny the respondent access to all or any University facilities, to all University premises, any University premises or any part of University premises, or to all or any activities conducted by or on behalf of the University, for 20 working days (or, if the Vice-Chancellor sets a longer period by written notice given to the respondent, the longer period); or
 - (b) if conduct was engaged in during an examination or other assessment—exclude the respondent from attendance at that examination or assessment.

[Note: For certain conduct in relation to information infrastructure or services, action may be taken under the Information Infrastructure and Services Rule.]

- (2) However, the prescribed authority may, under subsection (1)(a), deny the respondent access to facilities, premises or activities only if the prescribed authority considers that the conduct is of a nature that causes imminent and serious risk to the health or safety of a person or that the respondent's continued access to the facilities, premises or activities otherwise presents a serious risk to the University or its students, staff or property.
- (3) Also, the prescribed authority may, under subsection (1)(b), exclude the respondent from attendance at examination or other assessment only if the prescribed authority's considers

that the exclusion is necessary to preserve the integrity of the examination or other assessment or order and decorum at the place of the examination or other assessment.

- (4) If the prescribed authority takes action under subsection (1) in relation to the respondent, the prescribed authority must, as soon as is possible:
 - (a) tell the respondent in writing about the action taken; and
 - (b) give the respondent a written statement of the reasons for the decision to take the action; and
 - (c) report the action taken, and the circumstances relating to it, to the Vice-Chancellor.
- (5) If the prescribed authority takes action under subsection (1) in relation to the respondent, the action does not, of itself, terminate the respondent's enrolment as a student.

12 Powers of, and action by, Vice-Chancellor

- (1) If the Vice-Chancellor becomes aware that a student (the *respondent*) has, or may have, engaged in conduct that is misconduct and that the conduct is not being dealt with by a prescribed authority, the Vice-Chancellor must initially decide whether action should be taken in relation to the respondent under this instrument in relation to the conduct.
- (2) The Vice-Chancellor may decide that action should not be taken in relation to the respondent in relation to the conduct if the Vice-Chancellor considers:
 - (a) that there are not adequate grounds for believing that the respondent engaged in the conduct or that the conduct is misconduct (or both); or
 - (b) that it is otherwise not appropriate for action to be taken, or taken for the time being, in relation to the respondent under this instrument in relation to the conduct.

Examples for paragraph (b)

- 1 A criminal investigation or prosecution has begun in relation to the conduct.
- 2 The conduct is not University-related conduct.

- (3) If the Vice-Chancellor makes a decision under subsection (2), the Vice-Chancellor must, within 5 working days after the day the decision is made, tell the respondent in writing about the decision.
- (4) To remove any doubt, if the Vice-Chancellor considers that it is not appropriate for action to be taken for the time being in relation to the respondent under this instrument in relation to the conduct, this instrument does not prevent the Vice-Chancellor or a prescribed authority from later deciding that it is no longer inappropriate for action to be taken in relation to the respondent under this instrument in relation to the conduct.
- (5) If the Vice-Chancellor decides that action should be taken in relation to the respondent under this instrument in relation to the conduct and considers that there are adequate grounds for believing that the respondent engaged in the conduct and that the conduct is misconduct, the Vice-Chancellor may:
 - (a) refer the conduct to a prescribed authority to be dealt with by the prescribed authority under this Part and Part 4 (Inquiries); or
 - (b) refer the conduct to a panel of persons appointed by the Vice-Chancellor for inquiry into the conduct on behalf of the Vice-Chancellor; or
 - (c) decide to hold an inquiry into the conduct.

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- (6) If the Vice-Chancellor decides to deal with the conduct under subsection (5)(b) or (c), the Vice-Chancellor must, within 5 working days after the day the decision is made, give the respondent a written notice that:
- (a) tells the respondent about the decision; and
 - (b) includes a description of the conduct to be inquired into; and
 - (c) includes, or is accompanied by, copies of the material in the possession of the Vice-Chancellor on which the panel or the Vice-Chancellor may rely in the inquiry; and
 - (d) if a panel has been appointed under subsection (5)(b)—tells the respondent the names of the members of the panel; and
 - (e) states the date, time and place fixed for the hearing of the inquiry; and
 - (f) includes, or is accompanied by, a statement to the effect that:
 - (i) the purpose of the inquiry is to decide whether there has been misconduct by the respondent and that the powers of the Vice-Chancellor include the power to find that there has been misconduct by the respondent; and
 - (ii) the inquiry will be conducted in an informal way; and
 - (iii) the respondent may appear in person at the inquiry; and
 - (iv) if the respondent does not appear at the time and place fixed for the hearing of the inquiry, the inquiry may held in the absence of the respondent; and
 - (v) the respondent may present to the inquiry oral or written statements (whether made by the respondent or another person); and
 - (vi) the respondent may, in addition to or instead of appearing in person at the inquiry, give the inquiry a written statement about the conduct being inquired into (whether made by the respondent or another person); and
 - (vii) the respondent may be accompanied at the inquiry by another person who may observe the proceedings and, with the express approval of the Chair of the panel or the Vice-Chancellor (as the case requires), act as an advocate; and
 - (viii) the panel or the Vice-Chancellor (as the case requires) is not bound by rules of evidence.
- (7) However, if, at the time that the Vice-Chancellor gives the respondent the notice under subsection (6), not all of the members of the panel under subsection (5)(b) have been appointed, the Vice-Chancellor must, by a subsequent written notice given to the respondent, tell the respondent the names of the members of the panel.
- (8) The notice under subsection (6), and any notice required by subsection (7), must be given to the respondent at least 5 working days before the date fixed for the hearing, unless the respondent consents to being given the notice later.
- (9) If the Vice-Chancellor appoints a panel under subsection (5)(b), the panel must consist of 2 members of the academic staff of the University (one of whom is to be appointed as the Chair of the panel) and 1 student appointed by the Vice-Chancellor after consultation with the President of the Australian National University Students' Association Inc. or the Australian National University Postgraduate and Research Students' Association Inc., as the case requires.

13 Additional interim powers of Vice-Chancellor

- (1) If, in a case to which section 12(1) (Powers of, and action by, Vice-Chancellor) applies, the Vice-Chancellor is satisfied that the respondent is likely to have engaged in conduct that is misconduct, the Vice-Chancellor may, before an inquiry is held into the conduct:

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- (a) deny the respondent access to all or any University facilities, to all University premises, any University premises or any part of University premises, or to all or any activities conducted by or on behalf of the University, for a specified period or until the inquiry has been completed and its finding dealt with under this instrument, whichever happens first; or
 - (b) if conduct was engaged in during an examination or other assessment—exclude the respondent from attendance at that examination or assessment.

[Note: For certain conduct in relation to information infrastructure or services, action may be taken under the Information Infrastructure and Services Rule.]

- (2) However, the Vice-Chancellor may, under subsection (1)(a) deny the respondent access to facilities, premises or activities only if the Vice-Chancellor considers that the conduct is of a nature that causes imminent and serious risk to the health or safety of a person or that the respondent's continued access to the facilities, premises or activities otherwise presents a serious risk to the University or its students, staff or property.
- (3) Also, the Vice-Chancellor may, under subsection (1)(b), exclude the respondent from attendance at an examination or other assessment only if the Vice-Chancellor considers that the exclusion is necessary to preserve the integrity of the examination or other assessment or order and decorum at the place of the examination or other assessment.
- (4) If the Vice-Chancellor takes action under subsection (1) in relation to the respondent, the Vice-Chancellor must, as soon as possible:
 - (a) tell the respondent in writing about the action taken; and
 - (b) give the respondent a written statement of reasons for the decision to take the action.
- (5) If the Vice-Chancellor takes action under subsection (1) in relation to the respondent:
 - (a) the action does not, of itself, terminate the respondent's enrolment as a student; and
 - (b) the respondent may, within 10 working days after the day subsection (4) is complied with in relation to the respondent, make a written submission to the Vice-Chancellor about the action.
- (6) If the respondent makes a submission under subsection (5)(b), the Vice-Chancellor must consider the submission and must decide, as soon as possible, whether to vary or end the denial of access or exclusion.
- (7) If the Vice-Chancellor makes a decision under subsection (6), the Vice-Chancellor must, as soon as possible:
 - (a) tell the respondent in writing about the decision; and
 - (b) if the decision is not to end the denial of access or exclusion and not to vary it as sought by the respondent—give the respondent a written statement of reasons for the decision.

Part 4—Inquiries

14 Inquiries

- (1) A prescribed authority, a panel appointed under section 12(5)(b) (Powers of, and action by, Vice-Chancellor) or the Vice-Chancellor may hold an inquiry into conduct of a student (the *respondent*).
- (2) The Registrar may appoint a person to assist the person or panel holding the inquiry to conduct the inquiry into the conduct.
- (3) The person or panel holding the inquiry must consider any oral or written statement presented by the respondent to the inquiry and may consider any other matters that the person or panel considers appropriate.
- (4) The respondent must be given the opportunity at the inquiry to comment on the material in the possession of the person or panel holding the inquiry on which the person or panel intends to rely.
- (5) The inquiry must, subject to this section, be conducted in the way that the person or panel holding the inquiry decides.
- (6) The person or panel holding the inquiry may act in an informal way and is not bound by the rules of evidence, but may inform itself on any matter as the person or panel considers just.
- (7) At the inquiry, the respondent may:
 - (a) appear in person; and
 - (b) present to the inquiry oral or written statements (whether made by the respondent or another person); and
 - (c) in addition to or instead of appearing in person, give the inquiry a written statement about the conduct being inquired into (whether made by the respondent or another person).
- (8) At the inquiry, the respondent may be accompanied by another person who may:
 - (a) observe the proceedings; and
 - (b) with the express approval of the person or panel holding the inquiry, act as an advocate.
- (9) If the respondent was given notice of the inquiry in accordance with section 10(6) and (7) (Prescribed authority's role) or section 12(6), (7) and (8) (Powers of, and action by, Vice-Chancellor), the person or panel holding the inquiry may exercise its powers whether or not the respondent is present at the hearing of the inquiry.

15 Finding and action: prescribed authority

- (1) This section applies if a prescribed authority holds an inquiry under section 14 (Inquiries) into conduct of a student (the *respondent*).
- (2) The prescribed authority may, after considering the matter, find:
 - (a) that the respondent has not engaged in conduct that is misconduct; or
 - (b) that the respondent has engaged in conduct that is misconduct.

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- (3) If the prescribed authority finds that the respondent has not engaged in conduct that is misconduct, the prescribed authority must dismiss any proceeding by the prescribed authority under this instrument in relation to the conduct inquired into.
- (4) If the prescribed authority finds that the respondent has engaged in conduct that is misconduct, the prescribed authority may do 1 or more of the following:
- (a) decide to take no action;
 - (b) reprimand the respondent;
 - (c) deny the respondent access to all or any University facilities, to all University premises, any University premises or any part of University premises, or to all or any activities conducted by or on behalf of the University, for a specified period of no longer than 12 months;
 - (d) suspend the candidature or enrolment of the respondent in a program or course in which the respondent is admitted or enrolled, and prohibit the resumption of candidature or enrolment, for a specified period of no longer than 12 months;
 - (e) determine the conditions under which the respondent may attend classes or lessons, use any facility of the University, or otherwise continue with the respondent's studies or research program;
 - (f) refer the matter to the Vice-Chancellor, if the prescribed authority considers that the misconduct should be dealt with by the Vice-Chancellor;
 - (g) require the respondent to apologise, or take the other action the prescribed authority considers appropriate, with a view to mitigating the effect of the misconduct;
 - (h) accept an undertaking from the respondent, including, for example, an undertaking to attend University Counselling (or another appropriate counselling provider) to address behavioural issues;
 - (i) tell any relevant professional, government or other organisation or agency about the finding and any action taken in relation to it.
- (5) In deciding what action (if any) should be taken in relation to respondent, the prescribed authority must take all relevant matters into account, including, for example, the following:
- (a) the health and safety of students and staff of the University, and the protection of University property;
 - (b) the objectives of punishment, deterrence and rehabilitation;
 - (c) the nature and severity of the respondent's misconduct;
 - (d) the effect of the misconduct, including any loss, damage or harm caused to the University or its students, staff or property.
- (6) Without limiting subsection (5), the prescribed authority may take into account any other finding of misconduct made in relation to the respondent and the action (if any) taken in relation to that finding.
- (7) If the prescribed authority exercises powers under this section in relation to the respondent, the prescribed authority must report the action taken, and the circumstances relating to it, to the Vice-Chancellor as soon as possible after the action is taken.
- (8) If the prescribed authority suspends the respondent's candidature or enrolment under this section, the suspension does not take effect until the later of the following:
- (a) the end of the time within which the respondent may apply for review under the Appeals Rule of the prescribed authority's decision;
 - (b) if the respondent applies for review of the decision under the Appeals Rule—the application for review is finally decided.
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[Note: A denial of access under this section to facilities, premises or activities continues to have effect even though an application for review has been made under the Appeals Rule (see Appeals Rule, section 11).]

- (9) However, the prescribed authority may, by written notice given to the respondent, direct that the suspension is to take effect immediately.
- (10) The prescribed authority may give a direction under subsection (9) only if the prescribed authority considers that there would be an imminent and serious risk to the health or safety of students or staff of the University, or to University property, if the direction were not given.
- (11) If the prescribed authority takes action under subsection (4)(c) or (d) in relation to the respondent, the action does not, of itself, terminate or suspend the respondent's enrolment.

16 Finding and action: Vice-Chancellor

- (1) This section applies if a panel appointed under section 12(5)(b) (Powers of, and action by, Vice-Chancellor), or the Vice-Chancellor, holds an inquiry under section 14 (Inquiries) into conduct of a student (the *respondent*).
 - (2) The Vice-Chancellor may, after considering the matter (including, if the inquiry was held by the panel, any report or recommendation of the panel), find:
 - (a) that the respondent has not engaged in conduct that is misconduct; or
 - (b) that the respondent has engaged in conduct that is misconduct.
 - (3) If the Vice-Chancellor finds that the respondent has not engaged in conduct that is misconduct, the Vice-Chancellor must dismiss any proceeding under this instrument in relation to the conduct inquired into.
 - (4) If the Vice-Chancellor finds that the respondent has engaged in conduct that is misconduct, the Vice-Chancellor may do 1 or more of the following:
 - (a) decide to take no action;
 - (b) reprimand the respondent;
 - (c) deny the respondent access to all or any University facilities, to all University premises, any University premises or any part of University premises, or to all or any activities conducted by or on behalf of the University, for a specified period;
 - (d) impose on the respondent a monetary penalty of not more than \$500 for each occurrence of misconduct to which the finding relates;
 - (e) if, as a result of the misconduct, property was damaged or a person incurred expense—order the respondent to pay the owner of the property or the person who incurred the expense, as the case requires, compensation determined by the Vice-Chancellor;
 - (f) exclude the respondent from the University;
 - (g) suspend the candidature or enrolment of the respondent in a program or course in which the respondent is admitted or enrolled, and prohibit the resumption of candidature or enrolment, for a specified period of no longer than 12 months;
 - (h) determine the conditions under which the respondent may attend classes or lessons, use any facility of the University, or otherwise continue with the respondent's studies or research program;
 - (i) accept an undertaking from the respondent, including, for example, an undertaking to attend University Counselling (or another appropriate counselling provider) to address behavioural issues;
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- (j) tell any relevant professional, government or other organisation or agency about the finding and any action taken in relation to it;
 - (k) determine that the relevant award for the program the student is studying should not be conferred;
 - (l) recommend to the Council that an award of the University conferred on the respondent be revoked.
- (5) In deciding what action (if any) should be taken in relation to the respondent, the Vice-Chancellor must take all relevant matters into account, including, for example, the following:
- (a) the health and safety of students and staff of the University, and the protection of University property;
 - (b) the objectives of punishment, deterrence and rehabilitation;
 - (c) the nature and severity of the respondent's misconduct;
 - (d) the effect of the misconduct, including any loss, damage or harm caused to the University or its students, staff or property.
- (6) Without limiting subsection (5), the Vice-Chancellor may take into account any other finding of misconduct made in relation to the respondent and the action (if any) taken in relation to that finding.
- (7) If the respondent becomes liable to pay the University or another person a monetary penalty or compensation under a decision under this section, the respondent must pay the University or other person the amount of the penalty or compensation, or enter into an arrangement for its payment satisfactory to the Vice-Chancellor or the other person (as the case requires), not later than 20 working days after:
- (a) if an application for review is not made under the Appeals Rule in relation to the decision—the day the respondent is given notice of the decision under section 17 (Notice of decisions); or
 - (b) if an application for review is made under the Appeals Rule in relation to the decision—the day the application for review is finally decided.
- (8) If the Vice-Chancellor suspends the respondent's candidature or enrolment under this section, the suspension does not take effect until the later of the following:
- (a) the end of the time within which the respondent may apply for review under the Appeals Rule of the Vice-Chancellor's decision;
 - (b) if the respondent applies for review of the decision under the Appeals Rule—the application for review is finally decided.
- [Note: An exclusion under this section from the University, or a denial of access under this section to facilities, premises or activities of the University, continues to have effect even though an application for review has been made under the Appeals Rule (see Appeals Rule, section 11).]
- (9) However, the Vice-Chancellor may, by written notice given to the respondent, direct that the suspension is to take effect immediately.
- (10) The Vice-Chancellor may give a direction under subsection (9) only if the Vice-Chancellor considers that there would be an imminent and serious risk to the health or safety of students or staff of the University, or to University property, if the direction were not given.
- (11) If the Vice-Chancellor takes action under subsection (4)(c) or (g) in relation to the respondent, the action does not, of itself, terminate or suspend the respondent's enrolment.
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17 Notice of decisions

- (1) If the prescribed authority or the Vice-Chancellor (the *relevant authority*) makes a decision under section 15 (Finding and action: prescribed authority) or section 16 (Finding and action: Vice-Chancellor), the relevant authority must, within 5 working days after the day the decision is made, give the respondent and the Registrar written notice of the decision.
- (2) The notice must include, or be accompanied by, a statement of reasons for the decision.
- (3) Without limiting subsection (1), the notice must:
 - (a) specify the conduct to which the decision applies; and
 - (b) if the decision is that the respondent did not engage in conduct that is misconduct—tell the respondent that no further action is to be taken under this instrument in relation to the conduct; and
 - (c) if the decision is that the respondent did not engage in conduct that is misconduct—tell the respondent about the action taken by the relevant authority in relation to the conduct, that the respondent may apply for review of the decision under the Appeals Rule, and how and by when an application for review must be made.

18 Undertaking by respondent

- (1) If the prescribed authority or the Vice-Chancellor (the *relevant authority*) accepts the respondent's undertaking under section 15(4) (Finding and action: prescribed authority) or section 16(4) (Finding and action: Vice-Chancellor) in relation to a finding of misconduct:
 - (a) the relevant authority must give a written copy of the undertaking to the respondent and the Registrar; and
 - (b) if the respondent contravenes the undertaking, the relevant authority may take action under that subsection in relation to the misconduct.
- (2) In deciding what action (if any) to take under section 15(4) or 16(4) (as the case requires), the relevant authority may take into account the respondent's contravention of the undertaking and any explanation provided by the respondent for the contravention.
- (3) Subsection (2) does not limit the matters that the relevant authority must or may take into account.

19 Effect of denial of access

If, under this instrument, a student is denied access to facilities, premises or activities, the student must not:

- (a) use any facility to which the student is denied access; or
- (b) enter any premises, or the part of any premises, to which the student is denied access; or
- (c) engage in any activity to which the student is denied access.

20 Exclusion of student from University

If, under this instrument, a person is excluded from the University, the person ceases to be a student and, except with the permission of the Vice-Chancellor:

- (a) must not be enrolled again; and

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- (b) must not use any University facility, or enter any University premises or any part of University premises, that the Vice-Chancellor determines the person must not use or enter; and
 - (c) must not engage in any activities conducted by or on behalf of the University at the University or at a place other than the University.

Part 5—Failure to meet obligations

21 Failure to meet obligations by due date

- (1) The Vice-Chancellor may terminate the enrolment of a person as a student, deny a person access to all or any University facilities, to all University premises, any University premises or any part of University premises or to all or any activities conducted by or on behalf of the University, or withdraw the rights and privileges to which a person would otherwise have been entitled, if an obligation of the person is not met:
 - (a) within 10 working days after the due date determined in accordance with a University statute, rule or order or by the Vice-Chancellor, as the case requires; or
 - (b) within any further period determined by the Vice-Chancellor.
- (2) The termination of the enrolment of the person as a student, the denial of access of a person to facilities, premises or activities, or the withdrawal of a person's rights and privileges, under subsection (1) does not extinguish any undischarged liability of the person to meet an obligation.
- (3) If the Vice-Chancellor takes action under subsection (1) in relation to a person, the Vice-Chancellor must tell the person in writing about the action.

22 Re-enrolment following suspension

A person whose enrolment as a student has been suspended may not re-enrol until the person pays any fees owed by the person under the Fees Rule (including late fees) and agrees to comply with any conditions that the Vice-Chancellor may impose in relation to the revived enrolment.

23 Liability of persons financially supported by third parties

- (1) The Vice-Chancellor may accept an undertaking by a third party to meet an obligation on behalf of a person.
- (2) However, the person remains personally liable for the obligation if it is not discharged by the third party.

24 Sanctions against persons who fail to meet obligations

- (1) Without limiting section 21 (Failure to meet obligations by due date), if a person fails to meet an obligation that the person is required to meet, the Vice-Chancellor may direct that, while the obligation remains to be met:
 - (a) the person may not enrol or re-enrol in a program or course at the University; or
 - (b) the person may not be given a transcript of the person's academic record; or
 - (c) the person may not be given the results of any assessment in a course or program; or
 - (d) the person may not receive a degree, diploma, certificate or other award of the University.
- (2) If the Vice-Chancellor gives a direction under subsection (1) in relation to a person, the Vice-Chancellor must tell the person in writing about the direction.

Part 6—Review and call-in of decisions

25 Meaning of *reviewable decision*

- (1) The following decisions under this instrument are *reviewable decisions*:
- (a) a decision under section 11(1) (Additional interim powers of prescribed authority) to deny a student access to facilities, premises or activities or to exclude a student from attendance at an examination or other assessment;
 - (b) a finding by a prescribed authority under section 15(2)(b) (Finding and action: prescribed authority) that a student has engaged in conduct that is misconduct;
 - (c) a decision by a prescribed authority under section 15(4) to take action in relation to a student (including the action taken);
 - (d) a direction by a prescribed authority under section 15(9) that a suspension is to take effect immediately;
 - (e) a finding by the Vice-Chancellor under section 16(2)(b) (Finding and action: Vice-Chancellor) that a student has engaged in conduct that is misconduct;
 - (f) a decision by the Vice-Chancellor under section 16(4) to take action in relation to a student (including the action taken);
 - (g) a decision by a prescribed authority or the Vice-Chancellor under section 18 (Undertaking by respondent) to take action in relation to a student (including the action taken).

[Note: The decisions specified in this subsection are discipline decisions and reviewable decisions under the Appeals Rule (see Appeals Rule, sections 5 and 6).]

- (2) However, if, under section 27 (Vice-Chancellor may call in decision), the Vice-Chancellor calls in a decision mentioned in subsection (1) and makes a decision as if the Vice-Chancellor were the original decision-maker, the decision of the original decision-maker ceases to be a *reviewable decision*.

[Note: The Vice-Chancellor may not call in a reviewable decision if an application has been made under the Appeals Rule for review of the decision (see section 27(2)).]

- (3) To remove any doubt, a decision mentioned in subsection (1) that is made following a decision of the Vice-Chancellor under section 27(1) is a *reviewable decision*.
- (4) To remove any doubt, the following decisions are not *reviewable decisions*:
- (a) a decision of the Vice-Chancellor under section 27(1) to call in a decision for reconsideration;
 - (b) a decision by an Appeals Committee under the Appeals Rule.

26 Review of reviewable decisions

The Appeals Rule provides for the review of reviewable decisions.

[Note: The Appeals Rule provides that a person may, in accordance with that rule (including required time limits), apply for review of a reviewable decision affecting the person in the person's capacity as a student (see Appeals Rule, section 9).]

27 Vice-Chancellor may call in decision

- (1) If the Vice-Chancellor considers that a reviewable decision made (including any action taken) in relation to a student is inappropriate in the circumstances of the case, the Vice-Chancellor may, by written notice, call in the decision for reconsideration.

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- (2) However, the Vice-Chancellor may not call in the decision if an application for review of the decision has been made under the Appeals Rule.
 - (3) The Vice-Chancellor must give a copy of the notice to the student. The notice must contain, or be accompanied by, a statement of reasons for the decision to call in the decision.
 - (4) The Vice-Chancellor must give the student an opportunity to make submissions in relation to the reasons why the decision has been called in.
 - (5) After taking into account the submissions (if any) made by the student, the Vice-Chancellor may make a decision as if the Vice-Chancellor were the original decision-maker of the decision.
 - (6) The decision made by the Vice-Chancellor operates, on and from the day it is made, as if it were the decision made by the original decision-maker.
 - (7) If the Vice-Chancellor makes a decision under subsection (5), the Vice-Chancellor must, as soon as possible:
 - (a) tell the student in writing about the decision; and
 - (b) give the student a written statement of reasons for the decision.

Part 7—Miscellaneous

28 Nominees for University officials

- (1) A University official may, in writing, appoint a member of the staff of the University (the *nominee*) to exercise all or any of the official's functions under this instrument (other than this section).
- (2) A function exercised by the nominee under the appointment is taken to have been exercised by the University official.
- (3) This section does not prevent the University official from exercising a function in relation which the nominee has been appointed.
- (4) In this section:

University official means:

- (a) the Vice-Chancellor; or
- (b) the Registrar; or
- (c) a prescribed authority.

29 Multiple processes

- (1) This section applies if it appears that a student has engaged in conduct that:
 - (a) may be academic misconduct within the meaning of the Academic Misconduct Rule; and
 - (b) may be misconduct within the meaning of this instrument.
- (2) To enable the processes under the Academic Misconduct Rule to proceed:
 - (a) a prescribed authority conducting an inquiry under this instrument may suspend the inquiry; or
 - (b) the Registrar or the Vice-Chancellor may suspend an inquiry or other process under this instrument.
- (3) A prescribed authority, the Registrar or the Vice-Chancellor may recommence the inquiry or other process if the processes under the Academic Misconduct Rule are completed or if it appears that, in the circumstances, the suspension is not appropriate.

30 Extension of time

- (1) The Registrar may extend a time limit under this instrument.
- (2) In deciding whether to extend a time limit, the Registrar must take into account:
 - (a) the reason why an extension is sought; and
 - (b) the period of extension; and
 - (c) the prejudice (if any) that will be caused by granting the extension.
- (3) An extension must be for no longer than is reasonably necessary.
- (4) A time limit may be extended even though the time limit has expired.

31 Service of notices etc.

- (1) This section applies to a notice or other document that is required or permitted to be served on an individual under this instrument (whether the word ‘give’, ‘notify’, ‘send’, ‘tell’ or another word is used).
- (2) The document may be served on an individual:
 - (a) by giving it to the individual; or
 - (b) by sending it by prepaid post, addressed to the individual, to an address shown in the University’s records as the individual’s semester address, work address or permanent home address; or
 - (c) by emailing it to:
 - (i) if the individual is a student at the University—an email address provided by the University to the individual; or
 - (ii) if the individual is not a student at the University—an email address otherwise recorded by the University as the individual’s email address.
- (3) A document served by post on an individual under subsection (2)(b) is taken to have been served on the day it would have been delivered in the ordinary course of post.
- (4) A document served by email on an individual under subsection (2)(c) is taken to have been served on the day it would be received in the ordinary course of email transmission.

32 Repeal etc.

- (1) The *Discipline Rule 2017* is repealed.
- (2) To remove any doubt, a reference in a rule, order or other document of the University to the ***Discipline Rules*** (whether with or without the year of its making or the year and number of the year of its making) includes a reference to this instrument.

33 Transitional

- (1) To remove any doubt, this instrument applies to a decision taken, or a proceeding commenced but not concluded, before the commencement of this section.
 - (2) This section is additional to, and does not limit, the following provisions:
 - (a) the *Acts Interpretation Act 1901*(Cwlth.), section 7;
 - (b) the Interpretation Statute, section 9.
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