

## Schedule

### 1 Purpose

- 1.1 The purpose of this Schedule is to ensure that fair processes are followed in the event of suspected misconduct in the Hall and that, wherever possible, the Hall's response to the misconduct addresses the harm caused and the needs of all the parties.

### 2 Principles

- 2.1 The Hall will address suspected misconduct in a way that safeguards:
- (a) the physical and emotional well-being of any person affected by suspected misconduct, the resident who is suspected of misconduct and the Hall community; and
  - (b) the integrity of the Hall community.
- 2.2 The Hall will manage suspected misconduct in a timely manner and, wherever possible, through:
- (a) an informal process at the lowest level appropriate; and
  - (b) restorative processes that involve the direct participation of affected parties in a facilitated conversation and in consensus-based decision-making on how things may be put right.
- 2.3 The Hall is committed to acknowledging the Treaty of Waitangi by working in partnership with Māori. The spirit of Tikanga is to seek resolutions to disputes and complaints in a manner that encourages a facilitated open exchange of views, with a view to seeking consensus and acceptance from all parties.
- 2.4 Residents suspected of misconduct will be given a reasonable opportunity to respond to a complaint before any finding of misconduct or decision as to the appropriate consequence occurs.
- 2.5 Residents have the right to translation services. Such translation services will, if necessary, be provided at the University's expense.
- 2.6 Residents have the right to appeal a finding of misconduct, and/or the penalty imposed. Any appeal must be determined by persons who were not involved in the decision under appeal.
- 2.7 The standard of proof applicable to any formal misconduct procedure is on the balance of probabilities

### 3 Misconduct

- 3.1 This Schedule applies to residents that are not enrolled as students at the University and who are suspected of misconduct within the Hall.
- 3.2 Misconduct is defined as:
- (a) conduct in breach of any University Hall of Residence handbook;
  - (b) conduct that contravenes a lawful and reasonable direction by a member of the Hall;

- (c) conduct that impedes or prejudices study or that infringes the ability of others to participate in the life of the Hall;
- (d) conduct that is detrimental to the safety or well-being of other people, the effective functioning of the Hall or to the reputation of the Hall;
- (e) conduct that is dishonest or fraudulent; or
- (f) conduct that is not in keeping with the University's core ethical values of respect, responsibility, fairness, integrity and empathy.

#### 4 **Initiating Misconduct Procedures**

##### 4.1 *Referral to Head of Hall/Hall Manager*

- (a) Any person can refer suspected misconduct to the Head of Hall.

##### 4.2 *Head of Hall/Hall Manager to consider whether suspected misconduct is serious misconduct*

- (a) A Head of Hall/Hall Manager who becomes aware of suspected misconduct, whether through a complaint or otherwise, must first consider whether the alleged misconduct, if established, would amount to serious misconduct.
- (b) The alleged conduct will amount to serious misconduct if it could warrant expulsion from the Hall if established or if the accused resident has engaged in a previous pattern of behavioural misconduct which has been dealt with pursuant to this Schedule.

##### 4.3 *Referral to Associate Director, Student Living for complaints of serious misconduct*

- (a) If the suspected misconduct would amount to serious misconduct if established, the Head of Hall/Hall Manager must refer the matter to the Associate Director, Student Living (the "Associate Director") so that the Associate Director can act as decision-maker for the matter.

##### 4.4 *Different Decision-Makers for complaints of general and serious misconduct*

- (a) The Head of Hall/Hall Manager will act as decision-maker for complaints of general misconduct while the Associate Director will act as decision-maker for complaints of serious misconduct.
- (b) The Head of Hall/Hall Manager and the Associate Director have the right to appoint nominees as decision-makers pursuant to this process. All references to the decision-making powers of the Head of Hall and the Associate Director in this Schedule include the decision-making powers of the nominee decision-makers.

##### 4.5 *Decision-Maker to decide what process to take*

##### 4.6 Once the relevant decision-maker becomes aware of suspected misconduct, whether through a complaint or otherwise, must consider:

- (i) whether interim expulsion in accordance with paragraph 5 below is required to manage risk associated with the relevant behaviour; and

(ii) whether to proceed with an alternative resolution process in accordance with paragraph 6 below; or

(iii) whether to proceed with the formal misconduct procedures in accordance with paragraph 7 below.

(b) If it is considered that none of the courses of action identified in paragraphs 4.6(i) to (iii) are appropriate, the complaint may be dismissed.

## 5 Interim Exclusion

5.1 Interim exclusion is available if the decision-maker is satisfied that the presence within the Hall of a resident suspected of serious misconduct presents an unacceptable risk to the safety or wellbeing of residents, staff or property.

5.2 Before proceeding to temporarily exclude a resident from the Hall, the decision-maker must:

- (a) provide the resident with a reasonable opportunity to comment on the proposed interim exclusion; and
- (b) consider any effects the proposed interim exclusion may have on the resident's personal course of study and emotional or mental well-being.

5.3 In each case, the interim exclusion:

- (a) takes effect as soon as the resident has been advised either orally or in writing; and
- (b) may last until the applicable processes under this Schedule are concluded; and
- (c) when concluded, will be followed by efforts to ensure the resident's reintegration into the Hall community (if applicable) is managed positively

## 6 Restorative Justice Process

6.1 Restorative justice promotes consensus-based resolution through participation, accountability and repairing the harm that occurred.

6.2 Restorative justice is available if:

- (a) the decision-maker considers the matter is suitable for restorative justice;
- (b) the resident acknowledges responsibility for the conduct;
- (c) the decision-maker, the resident and any other relevant parties agree to proceed with restorative justice in accordance with the principles of restorative justice.

6.3 For the purposes of this Schedule the principles of restorative justice are:

- (a) participation is voluntary;
- (b) the process provides an opportunity for open and respectful dialogue about the misconduct and its impact;
- (c) if other parties have been directly affected by the incident, they should be invited to participate in the resolution process and may determine the level of their involvement;

- (d) where multiple interests are at stake, independent facilitation of the process should be considered and used where appropriate;
- (e) outcomes should always seek to address harms and needs and promote repair;
- (f) outcomes must reflect the agreed view of all parties;
- (g) outcomes must promote accountability by the resident and represent an appropriate and achievable response to the conduct in question.

6.4 If the restorative justice process reaches an agreed resolution, no further action will be taken. If the restorative justice process does not reach an agreed resolution, formal investigation of the suspected misconduct may continue.

## 7 **Procedural requirements for dealing with complaints of general and serious misconduct**

7.1 A decision-maker:

- (a) must notify the resident suspected of misconduct. Such notice must be in writing and must:
  - (i) inform the resident that either general or serious misconduct is suspected;
  - (ii) set out a clear explanation of the suspected misconduct and the possible penalties;
  - (iii) attach copies of any written material relating to the misconduct;
  - (iv) advise the resident of the next steps in the process and invite him or her to a meeting to discuss the matter;
  - (v) advise the resident of their entitlement to have a support person or representative attend the meeting; and
- (b) must use reasonable endeavours to convene a meeting with the resident as soon as practicable;
- (c) must provide a reasonable opportunity for the resident to respond to the complaints either in person, in writing or by other appropriate means of communication
- (d) may seek additional information from the resident or from other parties and must put any information provided from other parties to the resident for comment; and
- (e) must consider the resident's response.

## 8 **Determine whether misconduct has occurred**

8.1 The decision-maker must determine:

- (a) whether general or serious misconduct has occurred;<sup>1</sup> and
- (b) the appropriate penalty.

8.2 If the decision-maker determines that no misconduct has occurred, the decision-maker must:

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<sup>1</sup> Only the Associate Director (or nominee) has the power to make a finding of serious misconduct.

- (a) dismiss the matter; and
- (b) advise the resident in writing.

## 9 **Notify Decision**

9.1 Where the decision-maker determines that misconduct has occurred, the decision-maker must, as soon as practicable, notify the resident of that decision. Such notice must:

- (a) inform the resident of the decision and what, if any, penalties are imposed;
- (b) in the case of general misconduct, caution the resident, that a second incident of the same or similar behaviour could result in a finding of serious misconduct;
- (c) advise the resident that if they do not agree with the outcome they have the right to appeal the decision under paragraph 11 below.

## 10 **Penalties**

10.1 Wherever possible the penalties for misconduct should seek to address harms, promote accountability and repair, and meet the needs of all parties, so that both individual and community well-being are enhanced.

### *General misconduct penalties*

10.2 Penalties may include:

- (a) a public or private apology from the resident;
- (b) an undertaking as to future behaviour (which may also include suspending or waiving additional penalties imposed if the resident complies with the terms of the undertaking);
- (c) an educational or supervision programme;
- (d) an oral or written warning;
- (e) an order to pay compensation for any loss or damage caused by or arising from the misconduct;
- (f) an order to make reparation for any harm caused by or arising from the misconduct;
- (g) a community service project within the Hall which bears some relevance to the misconduct;
- (h) exclusion from any particular area of, or activity associated with, the Hall for a period not exceeding two weeks;
- (i) a ban on guests and/or alcohol for a period not exceeding the balance of the current trimester; and
- (j) any other action which may relieve any distress caused to the complainant, repair any damage caused by the resident, or address the resident's conduct.

### *Serious Misconduct penalties*

10.3 Penalties may include all of the penalties for general misconduct as set out in paragraph 10.2 above and:

- (a) permanent exclusion or eviction from the Hall;

## 11 Appeals

11.1 *Right of appeal for general misconduct finding or penalty*

- (a) A resident may appeal a finding of general misconduct or a penalty imposed pursuant to that finding to the Associate Director (the "Appeal Decision-Maker").

11.2 *Right of appeal for serious misconduct finding or penalty*

- (a) A resident may appeal a finding of serious misconduct or a penalty imposed pursuant to that finding to the Director, Student and Campus Living (the "Appeal Decision-Maker").

## 12 Appeal process

12.1 A resident must:

- (a) submit an appeal in writing to the relevant Appeal Decision-Maker within 20 working days of the date of the letter notifying a finding of misconduct; and
- (b) indicate in their submission whether they wish to appear in person before the Appeal Decision-Maker.

13 Upon receipt of the appeal, the Appeal Decision-Maker has the right to appoint a nominee to consider the appeal.

14 The Appeal Decision-Maker may extend the timeframe if he or she is satisfied that there is a good reason why the appeal was not submitted within the specified timeframe.

15 Within 10 working days of receipt of an appeal the Appeal Decision-Maker must in writing:

- (a) acknowledge receipt of the appeal;
- (b) outline the anticipated timeframe for the appeal.

## 16 Consideration of the appeal

16.1 The Appeal Decision-Maker must review the decision.

16.2 If the Appeal Decision-Maker wishes to seek further information as part of the review process they must do so in accordance with the principles of natural justice.

## 17 Decision on the appeal

17.1 The Appeal Decision-Maker must not allow an appeal unless satisfied that:

- (a) the decision of the decision-maker was:
  - (i) unfair because of some material defect in the procedure followed; or
  - (ii) was incorrect on the basis of:

- (A) the information considered by the decision-maker; or
- (B) additional information not available to the decision-maker; or
- (C) additional information available to the decision-maker but not considered; or

(iii) the penalty imposed by the decision maker was manifestly excessive.

17.2 The Appeal Decision-Maker may:

- (a) if the decision was unfair because of some material defect in procedure, set aside the decision and refer it back to the decision-maker;
- (b) if the decision was incorrect, set aside the decision and substitute another decision;
- (c) if the penalty was manifestly excessive, set aside the penalty and substitute another penalty.

17.3 The Appeal Decision-Maker must provide written reasons for its decision to allow or not allow an appeal to:

- (a) the resident appealing;
- (b) the decision-maker.

17.4 The decision of the Appeal Decision-Maker is final.