ROLE OF REGISTRAR’S NOMINEES ATTENDING HEAD OF SCHOOL HEARINGS OF ALLEGATIONS OF STUDENT ACADEMIC MISCONDUCT

The following guidelines are intended to help you understand and fulfil your role as a nominee of the Registrar at Head of School hearings of allegations of academic misconduct by students.

Providing advice to ensure procedural fairness in the School's handling of a case

Clause 38 (c.) of the Misconduct - Student Academic Misconduct Policy provides that ‘a representative of the Registrar will attend [Head of School hearings of allegations of student academic misconduct] to advise on procedural fairness’.

The essential principles of procedural fairness can be found in the attached summary, taken from the University's Misconduct – Student Non Academic Misconduct Policy.

The intention of the clause referring to your role is to emphasise that procedural fairness must be central to the University's processes for dealing with allegations of student academic misconduct. Since breaches of procedural fairness can be appealed by students, your advisory role as Registrar’s nominee is critical.

Advice you give to the Head will include, but may not be confined to, advice about issues of procedural fairness arising during a hearing. It may include advice concerning the possible implications of lapses in observance of procedural fairness in processes that have led to a hearing. You may sometimes need to offer advice to a Head, whether or not a point of procedural fairness is raised by the student.

Providing information about administrative matters connected with a hearing

More generally, your role as Registrar’s nominee is to provide the Head of School with advice regarding any operational and administrative matters connected with the hearing and its outcome. Registrar’s nominees are often in a good position to perform that role because of their knowledge of student administration processes and/or because of their ability to obtain information for the Head about relevant processes quickly and efficiently.

Your role does not entail providing administrative support to a Head in the conduct of a meeting, such as taking notes for the Head at the meeting or recording documentation related to the hearing. Those matters should be the responsibility of an appropriately qualified school officer, as delegated by the Head of School.

Being informed about procedural matters that require attention by Registrar’s nominee

The Student Academic Misconduct Policy (at http://policies.uws.edu.au/view.current.php?id=00051 contains detailed processes and procedures that must be followed in the conduct of investigations into, and in hearings of, allegations of student academic misconduct.

It is therefore essential that you be familiar with the Policy. Sections 3, 4 (up to, and including, clause 45) and Section 5 (clauses 94 to 104) are particularly relevant to your role. You must also be familiar with clauses 68 to 71 of the Policy, which deal with the right of a student to appeal a decision by a Head of School on specified grounds, including the student’s perception that the decision may have been made in breach of procedural fairness.

Examples of circumstances in which it is essential that procedural fairness be strictly adhered to and where you may need to alert a Head of School, or discuss, an issue with them, are the following.
• The timeframes in the Policy for notice to students are aspects of due process. [NB: In exceptional circumstances the timeframes can be varied, but that requires the formal approval of the Pro Vice-Chancellor (Learning and Teaching).] You should therefore notify the Head immediately you become aware that required timeframes are not being observed (this may be prior to, or during, or after, the meeting).

• The Policy provides that, in inviting a student to attend a hearing, the Head must ensure that the student receives, at that time,

- clear notice of what the student is alleged to have done,
- copies of 'all documentation related to the allegation that will be considered' in the hearing, and
- an invitation to respond, in writing, to the allegation and documentation provided.

Tight timeframes sometimes mean that one or more of these requirements are overlooked. In a case where this happens, you should alert the Head to the possibilities that the student may raise the issue at the hearing and/or appeal against any decision by the Head on the grounds of a breach of procedural fairness.

It is obvious that, just as it is vital that the student receives hearing documentation in time to consider it before the meeting, it is important that, if you are to perform your role properly, you need to receive it in good time also. If necessary, you may need to ask the Head of School's Executive Assistant for the documentation in advance of a hearing, if you have not received it.

• The Policy provides that hearings of allegations should be conducted ‘with the principal object of impartially and fairly investigating the facts surrounding the allegation’ and that 'Proceedings will be formal, but will not be adversarial…" You should therefore be alert to any evidence of what you consider to be unacceptable bias or confrontation in documentation provided to students or in the conduct of hearings. You should be prepared to discuss such issues with the relevant Head.

• As one means of limiting the intrusion of unintentional bias, the Policy provides that Head of School will only consult a student's prior record of misconduct at the time the Head is determining a penalty for proven misconduct, and not before, or during, the hearing itself. That is consistent with the general principle underlying the Policy that a hearing should focus only on impartial investigation of the particular allegation of misconduct at hand. You may need to advise the Head about that provision.

• From time to time, you may encounter in hearings other circumstances that raise issues of procedural fairness that are not referred to in detail here. They may include matters as diverse as the correct procedures to be followed in cases of collusion by students or in cases where a student is the subject of allegations in more than a single unit, the use that can be made of TURNITIN reports (TURNITIN is a text matching tool used by some academic staff to identify possible plagiarism) and how many academic staff, if any, in addition to the Head of School, it is appropriate to be present at hearings of allegations. You will use your judgement in dealing with such issues, but you may also, on occasion, wish to seek advice from officers mentioned below in the final section of this document.

Knowing how to alert a Head of School to procedural fairness issues

Your role is essentially a combination of (i) assisting the Head of School to conduct hearings that meet the principles of procedural fairness and (ii) ensuring that, if there is nevertheless any identifiable breach of procedural fairness that has not resolved by the Head and that may lead to an appeal, you inform the Registrar.
It is therefore essential that you provide helpful, informed and clear advice to the relevant Head, from the time you are notified that a hearing is to take place. It is also essential that you bring to the attention of the Registrar any apparently serious breach of procedural fairness that nevertheless occurs in a hearing. You should first raise the breach in a cooperative and problem-solving manner with the Head. If, however, on a rare occasion, you find that you and the Head have not been able to agree on how such an issue of procedural fairness should be resolved, you should inform the Registrar in a factual report. Any such report should, wherever reasonably appropriate, be copied to the Head.

Providing advice for the Head of School about student administration matters

Sometimes, during hearings or as a Head of School is reaching a decision after a hearing, the Head may ask you to provide, or to obtain, advice about appropriate administrative procedures that are necessary to effect a decision. Often, you will be in a position to provide that advice on the spot, because of your own expertise and experience. Where you are unable to do that, you should refer, as a matter of urgency, to the appropriate Manager of the relevant RO, school or college administrative unit and provide written or emailed advice to the Head as soon as possible.

Knowing where to go for advice

After familiarising yourself with the Policy and principles of procedural fairness and, provided you have attended a relevant ODU training session, you should feel confident to exercise your own judgement in identifying and raising any issue of an actual or potential breach of procedural fairness. However, if confronted with a difficult or complex problem, or if you need advice about matters of process referred to in the Policy, you can also seek confidential advice and assistance at any time from one of the following:

(a) the Assistant Registrar, Academic Secretariat or one of the other Assistant Registrars;
(b) the Executive Officer to Academic Senate in the Academic Secretariat;
(c) the Manager, Complaints Resolution; or
(d) one of the College Committees Officers in the Academic Secretariat.

Helping to improve policies and procedures relating to student misconduct

The more Head of School hearings you attend, the better able you will be able to contribute to improving the University’s relevant Policy and procedures. You will be a valuable resource of expertise for that purpose. Should you have suggestions, please discuss them with your Manager and send them to the Executive Officer to Academic Senate’s Education Committee in the Academic Secretariat.
GUIDELINES ON PROCEDURAL FAIRNESS AND AVOIDANCE OF BIAS

Extracted from the Student Non-Academic Misconduct Policy

(110) The University is committed to ensuring the elements of procedural fairness are followed. These include:

a. The opportunity to be heard - a person should be given the opportunity to be heard before a decision that could adversely affect him or her in an individual way is made.
b. Adequate prior notice of hearing - the person will normally be given adequate notice of the hearing.
c. Absence of bias - the decision maker will normally not be biased. Bias may be actual or perceived.
d. Disclosure of relevant material before the decision - the person about whom the decision is to be made is entitled to know what case is to be met.
e. Reasonable opportunity to respond - the person about whom a decision is to be made should have a reasonable opportunity to respond before a decision is made.
f. Relevance - decision makers will normally take account of relevant considerations and ignore irrelevant ones.

(111) The University is committed to ensuring that all procedures and policies are implemented according to the principles of procedural fairness. Training in these principles, and in appropriate investigation techniques, will be provided to staff who sit on Non-Academic Misconduct Investigation Committees and Non-Academic Misconduct Appeals Committees. In particular, the University is committed to ensuring that:

a. sufficient notice will be given to all parties and adequate time allowed for the consideration and preparation of cases;
b. any notification to a student about misconduct proceedings will be sent to the student's residential address as contained in the student records or delivered personally to the student by a staff member of the University;
c. a student accused of misconduct will be advised in writing of the allegation against them;
d. the advice of the allegation will specify the detail and behaviour that is the subject of the complaint;
e. the student will be given advice on procedures that will be followed, including membership of the hearing body, the availability of advice and support services of the University and relevant student associations, and the penalties that may apply;
f. the complainant and the student will have the opportunity to put their cases to the body that is hearing the matter, and subject to legitimate considerations about confidentiality, have equal access to information pertaining to the matter;
g. all relevant submissions and evidence will be considered by the hearing body (this can include witness statements and documents relevant to the complaint);
h. a student will be able to present their case verbally, or in writing, or both and to be accompanied by a support person, but not a person who is a currently practising solicitor or barrister except in the case of matters handled under parts C and D where an application can be made for legal representation;
i. there should be the opportunity for a student to correct information, ask questions generally and about evidence presented, explain mitigating circumstances, or make a submission as to penalty;
j. committees will not be bound by any rules of evidence and no cross-examination of witnesses will be allowed. Questions related to evidence will be directed to the Chair of the Committee hearing the matter;
k. any matter not relevant to a particular complaint will not be taken into account when hearing the matter;
l. proceedings will be conducted in a manner that upholds the need for confidentiality and privacy for parties concerned;
m. students understand that while the University will conduct the proceedings in a confidential manner, the University may be compelled by law to provide information or documents in accordance with external legal processes;
n. a student's prior record of misconduct may only be considered in the context of the penalty to be imposed;
o. any person who has had any prior involvement with a matter under consideration, including advising a student, will not be in a decision-making role on the same matter or any related matter; and
p. members of the Non-Academic Misconduct Investigation Committee and Non-Academic Misconduct Appeals Committee will declare any conflict of interest at the earliest opportunity.