

Appeals Regulations 2014

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary	3
1. Objective	3
2. Authorising provision.....	3
3. Commencement.....	3
4. Definitions.....	3
Part 2 – Appeal	5
5. Appealable decisions.....	5
6. Grounds for appeal.....	5
7. Lodgement of notice of appeal.....	5
8. Appeal Panel composition.....	6
9. Functions of the Appeal Panel.....	6
10. Appeal Hearing	7
11. Decision.....	7
12. External appeal.....	8

VICTORIA UNIVERSITY

Victoria University Act 2010

The Council makes the following Regulations:

Dated: 1 October 2014

THE COMMON SEAL of **VICTORIA**)
UNIVERSITY was affixed to this)
document at the direction of the **COUNCIL**)
in the presence of:)
)



Handwritten signature of Professor Peter Dawkins in blue ink.

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Professor Peter Dawkins
Vice-Chancellor and President

Handwritten signature of Ms Natalina Velardi in blue ink.

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Ms Natalina Velardi
Director – Legal, Governance and Risk

PART 1—PRELIMINARY

1. Objective

The objective of these Regulations is to provide for the appeal of University decisions relating to student affairs.

2. Authorising provision

These Regulations are made under the *Governance, Academic and Student Affairs Statute 2013* and sections 28, 29 and 30 of the *Victoria University Act 2010*.

3. Commencement

These Regulations come into operation on 1 October 2014.

4. Definitions

In these Regulations-

academic progress decision means a decision made under any Regulation or supporting instrument regarding Academic Progress;

admission decision means a final decision made under any University policy or procedure relating to admission decisions;

appeal means a decision that has been referred to an Appeal Panel under Part 2;

Australian legal practitioner has the same meaning as in the *Legal Profession Act 2004*;

complaint decision means a decision made under the University's Student Complaint policy and procedures;

eligible person means someone who is not a current student, but who is eligible under the Student Complaints policy to lodge a complaint under that process.

misconduct decision means a decision made under sub-regulation 15(3) or 15(4) of the Student Misconduct Regulations 2014;

notice unless otherwise specified, notice will mean notice that is provided in person, or sent either by post or by email, to a student's last known postal or email address;

statutory decision means a decision in respect of which Commonwealth or State legislation requires the University to provide a right of appeal to a student or eligible person which is not covered by another appeal process;

Victoria University
Appeals Regulations 2014

Part 1—Preliminary

student means

- (a) a person enrolled at the University in a course leading to a degree, diploma, certificate, licence or other award; or
- (b) a person whose study performance is being or is to be assessed by the University, notwithstanding that such a person is not enrolled at the University in a course leading to a degree, diploma, certificate, licence or other award;

Note

The above definition of student is from section 3 of the *Victoria University Act 2010* and Council Resolution C2010 – 070;

University business day means any weekdays on which the University is open for normal business and includes semester breaks, study and examination periods, and any public holidays not observed by the University (eg, Labour Day). It excludes all weekend days, public holidays that are observed by the University and University Holidays declared on an annual basis (such as Easter Tuesday and Christmas shutdown periods).

PART 2 – APPEAL

5. Appealable decisions

- (1) A student or other eligible person may appeal decisions regarding –
 - (a) a misconduct decision;
 - (b) a complaint decision;
 - (c) an admission decision;
 - (d) an academic progress decision; and
 - (e) a statutory decision.

6. Grounds for appeal

- (1) An appeal must be on one or more of the following grounds –
 - (a) the existence of new relevant material of a significant nature, being relevant material that was not reasonably available to the student or eligible person prior to the original decision being made and which is inherently different from material that was available;
 - (b) there was a misapplication of procedure resulting in some real disadvantage to the student or eligible person that was the subject of the decision;
 - (c) the decision was manifestly wrong or manifestly excessive; or
 - (d) there was a bias or a conflict of interest on the part of the original decision maker or decision makers.

7. Lodgement of notice of appeal

- (1) A student or eligible person who wishes to appeal a decision under sub-regulation 5(1) must lodge a notice of appeal with the Secretariat of the Appeal Panel within 20 University business days of the original decision.
 - (2) The notice of appeal must clearly state the ground or grounds for appeal, summarise the basis for each ground or grounds and include any relevant material on which the student or eligible person wishes to rely.
 - (3) Upon receipt of a notice of appeal that meets the form prescribed, the Secretariat of the Appeal Panel will initiate the appeals process as soon as practicable and within five University business days of the notice of appeal being lodged.
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8. Appeal Panel composition

- (1) The Appeal Panel must consist of three persons as follows –
 - (a) in the case of an appeal relating to non-academic matters, two members must be senior officers of the University.
 - (b) in the case of an appeal relating to academic matters, two members must be academic staff currently serving on the Academic Board.
 - (c) if the student is enrolled in a graduate program, one member must be the President of the Victoria University Post-Graduate Association (VUPA) or a student nominated by the President of VUPA.
 - (d) if the student is not enrolled in a graduate program, one member must be the president of Victoria University Students Union (VUSU) or a student nominated by the president of VUSU.
- (2) Where an appeal involves both academic and non-academic matters, the matter will be treated as an academic matter for the purposes of the composition of the Appeal Panel.
- (3) The members of the Appeal Panel and the Appeal Chair will be selected by the Vice-Chancellor or his or her delegate in accordance with the relevant procedures.
- (4) Wherever practical, the membership of the Appeal Panel convened to hear an appeal will remain the same throughout the hearing of the matter notwithstanding any adjournment.
- (5) The Appeal Panel must not include anyone who has, or who may reasonably be perceived to have, a bias or conflict of interest in the matter.

9. Functions of the Appeal Panel

- (1) The Appeal Panel Chair will consider the notice of appeal and any relevant supporting documents.
 - (2) If, after considering the notice of appeal, the Appeal Panel Chair finds that the notice of appeal lacks merit, he or she may dismiss the appeal without hearing the matter and give notice of the decision.
 - (3) If the appeal is not dismissed, the Appeal Panel will hear the appeal in accordance with regulation 10.
 - (4) Having regard for the need for fairness to both the University and the student or eligible person and pending the final determination of the matter, the Appeal Panel Chair may make one or more of the following interim directions –
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- (a) to suspend the implementation of the decision that is the subject of the appeal;
- (b) to temporarily withdraw permission for the student to participate in a University activity or use or enter all or particular University premises or facilities where they consider it necessary for the maintenance of good order; or
- (c) any other direction that may be reasonable in all the circumstances.

10. Appeal Hearing

- (1) A student or eligible person making an appeal will receive at least 10 working days' notice of the hearing of the appeal, unless the student or eligible person agrees otherwise.
- (2) In determining an appeal, the Appeal Panel -
 - (a) will make a majority rule decision;
 - (b) will act impartially and fairly in all circumstances;
 - (c) may follow any procedure it considers appropriate;
 - (d) will not be bound by legal rules of evidence, technicalities or legal forms, and may inform itself in relation to any matter in any manner it thinks fits;
 - (e) will give the student the opportunity to present material and submissions (either in person or in writing) in support of the appeal and to respond to any other material relating to the appeal;
 - (f) will consider any material presented or made available to it; and
 - (g) will allow a student to have a support person and/or to be assisted with the preparation and presentation of their case by a student advocate, provided that the support person or student advocate is not –
 - (i) an Australian legal practitioner, unless with leave of the Chair; or
 - (ii) involved or alleged to be involved in the matter being determined.

11. Decision

- (1) Following the hearing of an appeal, an Appeal Panel must -
 - (a) allow the appeal in whole or in part; or
 - (b) dismiss the appeal.
 - (2) If the appeal is dismissed, the Appeal Panel must confirm the original decision.
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Victoria University
Appeals Regulations 2014

Part 2 – Appeal

- (3) If the appeal is allowed in whole or in part, the Appeal Panel must, wherever possible, remit the decision to the original decision maker or decision makers for the matter to be reconsidered in the light of the Appeal Panel's findings.
- (4) If the Appeal Panel considers that it is not appropriate to remit the decision, the Appeal Panel may –
 - (a) set aside any decision or sanction; or
 - (b) substitute or vary any decision or sanction.
- (5) The Appeal Panel must, when making its decision, include its reasons for the decision.
- (6) The Appeal Panel must, as soon as practicable after a decision is made and within five University business days, give notice in writing of the Appeal Panel's decision to –
 - (a) the student or eligible person;
 - (b) the original decision makers; and
 - (c) the Academic Registrar.
- (7) Where the matter is remitted back to the original decision makers, they must review the Appeal Panel's findings and reconsider their decision within 10 University business days. Once the decision has been reconsidered, the original decision makers must give notice of their decision in writing to –
 - (a) the student or eligible person; and
 - (b) the Academic Registrar.

12. External appeal

- (1) The decision of the Appeal Panel will be final.
- (2) This does not preclude a student seeking an external review of a University decision or process by an appropriate, independent external body such as the Victorian Ombudsman.