

VICTORIA UNIVERSITY

Victoria University Act 2010

Student Appeals Regulations 2019

The Vice-Chancellor makes the following Regulations:

Dated: 08/04/2019

THE COMMON SEAL of VICTORIA)
UNIVERSITY was affixed to this)
document at the directions of the)
VICE-CHANCELLOR in the presence of:)



.....
Professor Peter Dawkins
Vice Chancellor and President

.....
Teresa Tjia
Vice-President (Planning) and Registrar

Student Appeals Regulations 2019

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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 the date this is sealed.

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 – Appeal);

Australian legal practitioner is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate in Australia;

complaint decision means a decision made under the University's general student complaint policy and procedures;

eligible person means someone who is not a current student, but who is eligible under the applicable policy or the *Exclusion for Safety Reasons Regulation 2019* to lodge a complaint or an appeal;

misconduct decision means a decision made under sub-regulation 15(3) or 15(4) of the *Student Misconduct Regulations 2019*;

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;

safety decision means a decision made under sub-regulation 7(1) or 8(1) of the *Exclusion for Safety Reasons Regulations 2019*;

senior staff means anyone nominated by the Vice Chancellor to be a member of the Appeal Panel;

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;

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 (e.g., 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

A student or other eligible person may appeal decisions regarding -

- (a) a misconduct decision;
- (b) a safety decision
- (c) a complaint decision;
- (d) an academic progress decision; and
- (e) a statutory decision

unless a specific appeal process exists under the relevant University Policy or Regulation.

6. Grounds for appeal

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 regulation 5 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.

8. Appointment of Appeal Panel Chair

Upon receipt of a notice of appeal that meets the form prescribed, the Vice Chancellor will appoint an Appeal Panel Chair as soon as practicable and within five University business days of the notice of appeal being lodged (unless there are extenuating circumstances).

9. Functions of the Appeal Panel Chair

- (1) The Appeal Panel Chair will consider the notice of appeal and any relevant supporting documents and take any of the following actions:
 - (a) if she or he considers that the appeal lacks merit, the Chair may dismiss the appeal without referring the matter to the Appeal Panel for hearing;
 - (b) if she or he considers that a clear error or procedural deficiency has occurred, the Chair may remit the matter back to the original decision maker/s for reconsideration, with guidance on how to remedy the error or procedural deficiency; or
 - (c) refer the appeal to the Appeal Panel for hearing in accordance with regulation 11.
- (2) 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 Chair may also make one or more of the following interim directions:
 - (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 Panel composition

- (1) If the Appeal Panel Chair refers an appeal to the Appeal Panel, the Secretariat of the Appeal Panel will appoint members of the Appeal Panel. The Appeal Panel must consist of three persons (including the Chair) as follows -
 - (a) in the case of an appeal relating to non-academic matters, two members must be senior staff 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;

Notwithstanding regulation 10(1)(a) and regulation 10(1)(b),

- (c) where an appeal is brought by a student enrolled in a graduate program, one member of the Appeal Panel must be the President of Victoria

University Post-Graduate Association (VUPA) or a student nominated by the President of VUPA;

- (d) where an appeal is brought by a student not enrolled in a graduate program, one member of the Appeal Panel must be the President of Victoria University Student Union (VUSU) or a student nominated by the President of VUSU; and
 - (e) where an appeal is brought by a student who is enrolled in an offshore campus, one member of the Appeal Panel must be a nominee nominated by the most senior officer responsible for the University's international operations.
- (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) Wherever practical, the membership of the Appeal Panel will remain the same throughout the hearing of the matter notwithstanding any adjournment.
 - (4) 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.

11. 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 to a shorter period of notice..
- (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 or eligible person 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 the student or eligible person 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.

12. 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.
- (3) If the appeal is allowed in whole or in part, the Appeal Panel may -
- (a) set aside any decision or sanction; or
 - (b) substitute or vary any decision or sanction.
- (4) The Appeal Panel via the Secretariat of 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 and the reasons for that decision to -
- (a) the student or eligible person;
 - (b) the original decision makers;
 - (c) the manager responsible for University Governance; and
 - (d) the Director of Student Administration.

13. 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.

PART 3 – REVOCATION

14. Revocation and transitional arrangements

- (1) The *Student Appeals Regulations 2014* are revoked.
- (2) Without limiting the meaning of sub-regulation (1), any process which commenced under the former regulations must be dealt with under the former regulations and as though these regulations had not been made.