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**Submission to Inquiry into the *Public Interest Disclosure (Whistleblower Protection)*
Bill 2013**

19 April 2013

The National Tertiary Education Union (NTEU) represents approximately 27,000 members employed in Australia's higher education sector. We welcome the opportunity to make a submission to the inquiry by the House Standing Committee on Social Policy and Legal Affairs into the *Public Interest Disclosure Bill 2013*.

NTEU previously made a submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Whistle-blower Protections within the Australian Government Public Sector (see Attachment A) in which the Union, while expressing broad support for whistleblower protections and processes, noted that the inclusion of university employees within the original definition of public sector employees was due to the use of a statistical classification by the Australian Bureau of Statistics (ABS), and not because there was perceived to be a problem regarding whistleblower protections within the sector.

On reading of the proposed Bill, we do not believe that universities fulfil the current definition of a prescribed authority; with the possible exception of the Australian National University (ANU), the University of Canberra (UC) and Charles Darwin University (CDU) as these are established under Commonwealth legislation. As stated in our original submission, we sought to have the university sector excluded from this legislation as it was simply not appropriate for use within the sector. Our universities are unique in that, unlike other forms of employment, the fundamental right of academic freedom is considered as integral to the employment relationship; indeed, under the Higher Education Support Act (2003), guarantees regarding intellectual freedom are an explicitly acknowledged (HESA 2003 Section 19-115). Universities thus have several tiers of public policy and legislation relating to public interest disclosure. Furthermore, NTEU notes that whilst there are legitimate arguments for improved whistleblower protections for the public sector in general, an *ad hoc* application of a 'one size fits all' policy to the university sector would cause unnecessary complications and potentially undermine those existing arrangements that would apply to any university member seeking to make a disclosure in the public interest.

The university sector is also unique in that current industrial arrangements, via each institution's NTEU negotiated collective agreement, already provide mechanisms to deal with various types of disclosures. These current forms of protection have evolved to suit the each institutional environment and are the best way of achieving a fair and equitable balance between all parties concerned and that the principles of natural justice and procedural fairness for the party against which a claim has been made also apply.

These principles, as embodied in university collective agreements, mean that if an allegation or disclosure leads to the initiation of disciplinary procedures against a staff member on the grounds of misconduct, the identity of the whistleblower will need to be disclosed to the staff member and the latter has the right to hear the evidence against her or him, to question the person making the allegation against her or him, and to challenge that evidence.

These provisions fall under a number of different industrial areas, depending upon the nature of the allegation being made and the circumstances of those involved. The Committee will note that universities are unique and diverse institutions with considerable operational complexity – for example, a typical university's activities will involve teaching, research, administration, governance, collaboration with external organisations (including the various tiers of government) and community engagement. Therefore, situations that may be considered to be 'whistle blowing' may not only be covered by specific whistleblower provisions but may also encompass an institution's policy, principles and regulations around academic freedom, freedom of speech, research integrity, official misconduct and discipline processes, as well as relevant state legislation.

Finally, it should also be understood that, within the university environment, allegations of misconduct and/or illicit activity may not always be clear cut. Section 4 (page 5) of the Attached submission details this further and provides an example. How the proposed legislation would deal with this situation is not apparent, and NTEU has concerns as to how it may be applied in the context of universities.

NTEU remains firmly of the view that while more should be done to support and protect whistleblowers, in a university context the application of the proposed legislation creates unnecessary complications and potentially intersects with current provisions within collective agreements. Thus, we do not believe any universities should be captured by this legislation, and that the definition of *public officer* be amended to specifically exclude university employees.

Concerns regarding the Bill more broadly

Insofar that the proposed Bill relates to the public officials more broadly, NTEU is has a number of fundamental concerns. First and foremost, we noted that the definition of who is a 'public official' excludes politicians, despite the fact that they hold a public office with considerable authority and responsibility. As such, public servants would not be protected under this Act should they seek to report or expose wrongdoing by politicians (including corruption or bribery). Only disclosures relating to senior public servants or contractors would be, along with employees working in statutory authorities (such as the Australian Competition and Consumer Commission) or the Australian Defence Force would be covered.

NTEU is also deeply concerned with the exemptions for disclosure to intelligence agencies, whereby public interest disclosures to third parties (such as the media), must not relate or refer to intelligence information or an intelligence agency. This exclusion extends not only to potential issues of corruption and bribery, but also inhibits the reporting of a whistleblower of misconduct such as bullying, sexual harassment or unethical practices within these agencies.

The processes outlined in the Bill – which requires that the public official first raise concerns internally or to the Commonwealth Ombudsman, (unless there is “*a substantial and imminent danger to health and safety*” – noting that while this sets a considerably high bar) before taking information to the media is problematic, as it also requires that the information is “*not, on balance, contrary to the public interest*”. It also notes that reporting to the media may only occur if the matter is not “*adequately dealt with*” internally or by the ombudsman; again, a highly subjective description of a process that should be far more precise, given the potential ramifications to whistleblowers. The Union is also concerned that an internal response is only deemed to be inadequate if it hasn’t been completed in “*a reasonable period*”, yet there is no specification of what a reasonable period is.

The effect is that a whistleblower must first navigate through a complex framework to determine whether it is safe to make an external disclosure, else risk potential jail terms or loss of employment. The lack of precision in both the language and the overall processes means that this is, in the view of the NTEU, an ineffective Bill. Thus, while the Union broadly supports protections for public officials who act as whistleblowers, we do not believe this legislation adequately performs this task.

Should the Committee wish to discuss any aspect of this submission please contact any of the following people:

NTEU President, Jeannie Rea
NTEU Policy and Research Co-ordinator, Paul Kniest
NTEU Policy and Research officer, Terri MacDonald

We welcome any opportunity to discuss our submission with you at further length.

Regards,

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NTEU Submission

to the

**House of Representatives Standing Committee on Legal and
Constitutional Affairs Inquiry into**

Whistle-blower Protections within the Australian Government Public Sector

Organisation: National Tertiary Education Industry Union

Contacts: Dr Carolyn Allport, President, NTEU

Terri Mac Donald, Policy and Research Officer

Date: 30th November 2008

The National Tertiary Education Union (NTEU) welcomes the opportunity to make a formal submission to the *Inquiry into Whistleblower Protections within the Australian Government Public Sector* being conducted by the House of Representatives Standing Committee on Legal and Constitutional Affairs.

The NTEU represents the industrial and professional interests of 25,000 staff employed at Australia's universities. While we understand that the scope of the Inquiry encompasses all publicly funded institutions, the Union's submission is focused specifically on whistleblower protections and processes within the context of the higher education sector.

1. Whistleblower Provisions within the University Sector

The University sector is unique in that, unlike other forms of employment, the fundamental right of academic freedom is considered as integral to the employment relationship. The United Nations Educational, Scientific and Cultural Organization (UNESCO) *Recommendation Concerning the Status of Higher-Education Teaching Personnel* (11 November 1997) makes note of this right in a number of provisions, in particular stating that

27. The maintaining of the above international standards should be upheld in the interest of higher education internationally and within the country. To do so, the principle of academic freedom should be scrupulously observed. Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source. Higher-education teaching personnel can effectively do justice to this principle if the environment in which they operate is conducive, which requires a democratic atmosphere; hence the challenge for all of developing a democratic society.

UNESCO, VI. *Rights and freedoms of higher-education teaching personnel* Section A. *Individual rights and freedoms: civil rights, academic freedom, publication rights, and the international exchange of information*, 1997.

http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

Furthermore, under *Section D: Duties and Responsibilities of Higher Education Teaching Personnel*, the UNESCO recommendation highlights the obligation of staff to ensure their conduct is professional and accountable, particularly in relation to research, that processes are open and transparent, and that they contribute to the public accountability of their institution (effectively their employer):

36. Higher-education teaching personnel should contribute to the public accountability of higher education institutions without, however, forfeiting the degree of institutional autonomy necessary for their work, for their professional freedom and for the advancement of knowledge.

UNESCO, VI. *Rights and freedoms of higher-education teaching personnel* Section D VII. *Duties and responsibilities of higher education teaching personnel*, 1997.

http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

Ensuring academic freedom within the employment relationship is also a requirement of the *National Guidelines for Higher Education Approval Process, National Protocols A and D*, which describe the requirements and processes institutions must meet and adhere to in order to operate as an Australian university¹:

¹ *The National Protocols and the National Guidelines apply to all higher education institutions operating, seeking to operate or purporting to operate in Australia. No institution may operate or purport to operate as a higher education institution in Australia or offer a higher education course in Australia without approval.*

16.2.4 The institution has policies, procedures and practices in place which encourage academic integrity and honesty as well as free intellectual inquiry in the teaching, research and scholarship activities of the institution.

(Evidence to be provided by initial applicants includes):

- Evidence that academic freedom and a commitment to free inquiry are built into employment conditions
- Academic policies and procedures which relate to academic integrity and honesty, and free intellectual inquiry with examples of how these policies are implemented and understood by staff.

MCEETYA, *National Guidelines for Higher Education Approval Processes - Guidelines for establishing Australian universities (relating to National Protocols A and D), Section 16.2 Goals and culture of the institution (D3, A2, A3), 2007.*

http://www.mceetya.edu.au/verve/resources/NationalGuidelinesOct2007_AandD.pdf

In addition to provisions for academic freedom, processes for the protection for staff wishing to make a disclosure in the public's interest are found within the relevant collective agreement of the institution, which prevail to the extent of any inconsistency. State whistleblower legislation also applies in the event that an agreement is silent on a particular aspect of public interest disclosure, or where the agreement specifically refers to the state legislation. NTEU notes that, with the exception of the Northern Territory (which is currently seeking to introduce whistleblower protection legislation) all states and territories have legislation that deals with whistleblower activity:

- New South Wales – *Protect Disclosure Act 1994*
- Australian Capital Territory – *Public Interest Disclosure Act 1994*
- Queensland – *Whistleblowers Protection Act 1994*
- Victoria – *Whistleblowers Protection Act 2001*
- Tasmania – *Public Interest Disclosures Act 2002*
- Western Australia – *Public Interest Disclosure Bill 2002*

2. Concerns Over the Coverage of Universities by Federal Whistleblower Legislation

The terms of reference for the current inquiry include the university sector as public sector entities due to their statistical classification as such by the Australian Bureau of Statistics (ABS). However, the Union does not believe that alone, the ABS' preliminary classification is sufficient reason for their inclusion, and urges the Committee to consider the fact that, unlike the majority of public sector institutions (for which this legislation is clearly intended to cover), universities already have several tiers of public policy and legislation relating to public interest disclosure.

Furthermore, NTEU notes that whilst there are legitimate arguments for improved whistleblower protections for the public sector in general, an *ad hoc* application of a 'one size fits all' policy to the university sector would cause unnecessary complications and potentially undermine those existing arrangements that would apply to any university member seeking to make a disclosure in the public interest .

This is due to the fact that university sector is unique in that current industrial arrangements, via each institution's NTEU negotiated collective agreement, already provide mechanisms to deal with various types of disclosures.

NTEU believes these forms of protection are the best way of achieving a fair and equitable balance between all parties concerned. NTEU's aim in bargaining for collective agreements is to supplement existing protections is to ensure that whilst there are appropriate protections and support for the 'whistleblower' in place, the principles of natural justice and procedural fairness for the party against which a claim has been made also apply. These principles, as embodied in university collective agreements, mean that if an allegation or disclosure leads to the initiation of disciplinary procedures against a staff member on the grounds of misconduct, the identity of the

whistleblower will need to be disclosed to the staff member and the latter has the right to hear the evidence against her or him, to question the person making the allegation against her or him, and to challenge that evidence.

These provisions fall under a number of different industrial areas, depending upon the nature of the allegation being made and the circumstances of those involved. The Committee will note that universities are unique and diverse institutions with considerable operational complexity – for example, a typical university’s activities will involve teaching, research, administration, governance, collaboration with external organisations (including the various tiers of government) and community engagement. Therefore, situations that may be considered to be ‘whistle blowing’ may not only be covered by specific whistleblower provisions but may also encompass an institution’s policy, principles and regulations around academic freedom, freedom of speech, research integrity, official misconduct and discipline processes, as well as relevant state legislation.

To illustrate this point, attached to this submission is a briefing paper outlining NTEU’s current model clause on intellectual freedom, which also encompasses research conduct, discipline processes and whistleblower activities. Also attached are examples of clauses from a number of university institutions that deal with whistleblower activity and protection.

3. The Committee’s Proposed Model

In addition to the Union’s general concern over the university sector being included in any broad public sector whistleblower legislation, there are a number of specific issues we wish to raise in relation to the Committee’s preferred model.

Point 2 of the preferred model defines the types of disclosure that should be protected, stating:

2. the types of disclosures that should be protected:

a *these could include allegations of the following activities in the public sector: illegal activity, corruption, official misconduct involving a significant public interest matter, maladministration, breach of public trust, scientific misconduct, wastage of public funds, dangers to public health and safety, and dangers to the environment; and*

b. *the Committee should consider:*

- i). whether protection should be afforded to persons who disclose confidential information for the dominant purpose of airing disagreements about particular government policies, causing embarrassment to the Government, or personal benefit; and*
- ii). whether grievances over internal staffing matters should generally be addressed through separate mechanisms;*

The majority of our current collective agreement provisions for dealing with misconduct (particularly research misconduct) are procedurally well defined and industrially robust, and the application of federal whistleblower legislation to this area would cause unnecessary complexities. Moreover, there are a number of other concerns with this clause. Specifically, if the test to determine whether disclosure of suspected activities should occur is listed under sub-point **2a** then the Union would argue that there should be no further requirement (as listed under sub point 2b), as either inappropriate activity has occurred and thus should be investigated as appropriate, or has failed the test and would be deemed to not apply under this legislation.

Furthermore, within the university context, the Union notes that the provisions under point **2b i)** risks conflict with existing provisions within university collective agreements, as well as institutional policy and practice, concerning the protection of intellectual and academic freedom. Clause **2b ii)** may also overlap with existing processes (again, as defined within existing industrial instruments and in institutional policy and practice) for misconduct.

The Union also holds a number of related concerns with point 3, which states:

3. *the conditions that should apply to a person making a disclosure, including:*
 - a. *whether a threshold of seriousness should be required for allegations to be protected, and/or other qualifications (for example, an honest and reasonable belief that the allegation is of a kind referred to in paragraph 2(a)); and*
 - b. *whether penalties and sanctions should apply to whistleblowers who:*
 - i). *in the course of making a public interest disclosure, materially fail to comply with the procedures under which disclosures are to be made; or*
 - ii). *knowingly or recklessly make false allegations;*

As the test for whether an allegation should be investigated is defined under **Point 2a**, we believe that the additional test cited under **Point 3a** is unnecessary. Instead, the Union believes that, should the allegation be proven, then an assessment of the seriousness of the charge should be reflected in the penalty handed down.

Point 3 b i) is more complex, particularly in a university context, as it could potentially undermine existing provisions for academic freedom and critical debate. The Union also notes that, in relation to **Point 3 b ii)**, the intent of this clause has already been provided for within universities via industrial clauses and institutional policy that outline discipline processes and penalties.

Point 4 states that:

4. *the scope of statutory protection that should be available, which could include:*
 - a. *protection against victimisation, discrimination, discipline or an employment sanction, with civil or equitable remedies including compensation for any breaches of this protection;*
 - b. *immunity from criminal liability and from liability for civil penalties; and*
 - c. *immunity from civil law suits such as defamation and breach of confidence;*

The Union notes that, while we support such provisions as an important element of whistleblower protection in general, our current collective agreements, in conjunction with various university procedures and policies, already deal with instances of victimisation, discrimination, discipline or employment sanction, and provide for appropriate remedies.

Finally, NTEU notes the provisions of **Point 5**, which state:

5. *procedures in relation to protected disclosures, which could include:*
 - a. *how information should be disclosed for disclosure to be protected: options would include disclosure through avenues within a whistleblower's agency, disclosure to existing or new integrity agencies, or a mix of the two;*
 - b. *the obligations of public sector agencies in handling disclosures;*
 - c. *the responsibilities of integrity agencies (for example, in monitoring the system and providing training and education); and*
 - d. *whether disclosure to a third party could be appropriate in circumstances where all available mechanisms for raising a matter within Government have been exhausted;*

NTEU is also concerned that, should the provisions within **Point 5** be directly applied to universities, there would be considerable problems in managing the complexity that these additional procedural requirements under Federal legislation would bring. Furthermore, the proposed involvement of external agencies in addition to those already created under state based whistleblower legislation could also create further levels of convolution.

4 The University Environment and Academic Freedom

Finally, it should also be noted that, within the university environment, allegations of misconduct and/or illicit activity may not always be clear cut. To illustrate this point, consider a situation in which an allegation of 'soft marking' of international students has been levelled against a academic

staff member. While initially this allegation may be proven as correct; it is revealed later that it is institutional policy (be this official or otherwise, such as the result of a specific direction or suggestion from a manager to an individual employee) that 75% of international students should pass their nominated subjects and that failure to meet this target has repercussions. The question may be asked “Has any official misconduct occurred?” If so, is the academic guilty of misconduct, or is the manager, or is it the institution?

Extending this example, should this academic decide to voice his or her concerns in the context of academic debate around teaching quality, (such as expressing concerns that the institution’s nominated percentage may not accurately reflect the academic level of those students) the question of whether this situation would constitute protection under the proposed whistle blower model must be considered (or would instead the individual be excluded under sections **2 b**, or even risk penalty as under **3b i**)?

5. NTEU Summary and Recommendation:

Whilst the Union believes the role played by whistleblowers is valuable and more should be done to support such individuals, in a university context the application of the proposed model causes unnecessary complications and, in a number of instances, overlaps with current provisions within collective agreements. Furthermore, the application of the model proposed may have unintentional consequences for the fundamental tenets of academic freedom and critical inquiry, rights considered essential within the context of the westernised university model. The Union believes that, should the proposed model apply to universities, there is a risk that this legislation could undermine these basic academic rights.

NTEU makes the following recommendations to the Committee:

- 1. That, given the organisational complexity of university institutions and the potential ramifications such legislation could have on rights of academic freedom and critical inquiry, university institutions are excluded from the proposed whistle blower model (as per the model’s definition of public sector bodies);**
- 2. That universities be allowed a period of 2 years to internally review their current arrangements, including collective agreements, policy and procedures relating to whistleblower activity, and to report by the end of 2010;**
- 3. Following this period, the Federal Government should consult the relevant parties to examine whether these arrangements provide an appropriate regime of protections.**

Attachment 1: NTEU Briefing Paper

Intellectual Freedom

Background

IMPORTANT– it should be noted that the only legally enforceable protections for academic freedom are in the collective agreements. – the Steele Case is an illustration of this.

The Steele case at the University of Wollongong in 2001 and 2002 highlighted the need for commitments to intellectual freedom in university Agreements. In that case, the University summarily dismissed an academic staff member (without following the misconduct procedures in the Agreement) after the staff member publicly stated that he had been instructed to alter students' marks.

In the light of that case in particular, and in accordance with the Union's long-standing policy on protection of intellectual freedom, intellectual freedom was prioritised in the 4th Round of bargaining. Due to the wide agenda in that Round, and the introduction of the HEWRRs which required aggressive "simplification" of Agreements, in most cases Branches ended up with a statement of principles on intellectual freedom without much more. In some cases this applied to academic staff only, or to staff "within their area of expertise." Round 5 presents an opportunity to augment University commitments to protecting intellectual freedom.

Model Clause

1. The parties to the Agreement are committed to act in a manner consistent with the protection and promotion of intellectual freedom within the University.
2. Intellectual freedom includes:
 - a) the rights of all staff and students of higher education institutions to participate in decision-making processes and structures within their institution, including the right to express opinions about the operations of that institution and higher education policy more generally.
 - b) the rights of academic staff to pursue critical and open inquiry and to freely discuss, teach, assess, develop curricula, publish and research.
 - c) the right to participate in public debates and express opinions about issues and ideas related to their discipline area and about the institution within which they work or higher education issues more generally.
 - d) the right of all staff to participate in professional and representative bodies, including unions, and engage in community service without fear of harassment, intimidation or unfair treatment.
 - e) the right to express unpopular or controversial views, but this does not mean the right to harass, vilify or intimidate.
 - f) the procedures that protect staff from arbitrary dismissal for exercising the above rights.
3. In relation to governance, the University will encourage staff to actively participate in the operation of the institution and in the community. The institution will ensure that all governing bodies of the University operate in a transparent and accountable manner, encouraging freedom of expression and thought.
4. The parties agree to establish a committee comprising an equal number of institutional and NTEU nominees to review current policies and practices to ensure that they do not conflict with or interfere with such rights; and to make any necessary amendments consistent with the commitment to intellectual freedom. The review is to be completed within 6 months of the date of lodgement of the Agreement.
5. The University will adopt fair and transparent procedures for the protection of 'whistleblowers' within the institution, such procedures being identical to the disciplinary procedures of the University. These procedures will determine whether the action(s) of the staff member concerned constitutes

misconduct. A finding of misconduct arising from such procedures may only be made if the staff member acted both in bad faith and committed misconduct as defined.

Explanation of the Clause

The model clause above is necessarily comprehensive, as it seeks to assist branches in developing claims to ensure the institution protects and promotes intellectual freedom as well as encouraging the participation of staff and students in the professional and representative bodies of the institution.

However, the mandatory settlement point only requires a statement of principles protecting and promoting intellectual freedom. In achieving this, it is useful to ensure the statement of principles also commits the University to act in accordance with those principles, as this give us an avenue to deal with any improper action through the dispute-settling procedures (eg paragraph 1 above).

Arguments for the Claim

- In order for universities to fulfil their important role as critic and conscience of society, staff must be permitted to act as public intellectuals, and contribute to public debates without fear or favour.
- The nature of research is that it constantly uncovers new ideas and challenges existing ways of thinking. By its very nature, this means that some research, and public commentary relating to that area, can be unpopular or inconvenient for the University. However if staff fear, even mistakenly, that the University will take disciplinary action in response to inconvenient or unpopular activities, including research and public commentary, they will be less likely to undertake that research. This has a chilling effect on the nation's research output. One way the University can prevent this from occurring is to make a public commitment to the protection of intellectual freedom.
- Similarly, the reputation of the University is best protected by investigating accusations, for example, of mismanagement rather than instituting disciplinary proceedings against the accuser. If there are serious matters to be dealt with (such as soft marking, for instance) they should be dealt with rather than covered up – and staff will simply not raise such issues if they are worried about disciplinary action. Again, the University's best line of defence is to protect whistleblowers rather than target them.
- General staff should also be able to comment publicly on the governance of the university, just as academic staff should, and on other issues within their area of expertise. Why have a commitment to intellectual freedom for some staff and not for others, especially when the University has the defence of being able to institute misconduct procedures against general staff in usually more direct a fashion than against academic staff?

University of SA (academic and general)**46. MISCONDUCT/ SERIOUS MISCONDUCT****46.1 Misconduct**

For the purposes of this clause, misconduct occurs when a staff member breaches their obligations under their contract of employment. Examples of misconduct include but are not limited to:

- a) Significant breaches of policies, codes of conduct and other reasonable instructions;
- b) Unauthorised absence from duty; and
- c) Inappropriate use of University property and facilities.

46.2 Serious Misconduct

Serious misconduct is behaviour by a staff member that causes serious detriment to the University or serious risk to:

- The health or safety of a staff member, student, other member of the University or visitor to the University; and/or
- The reputation of the University.

Examples of serious misconduct include but are not limited to:

- a) Threatened or actual assault of another staff member, student or member of the public;
- b) Serious conflict of interest;
- c) Acts of dishonesty in relation to University property and facilities i.e. misappropriation or repeated damage or misuse of University property or facilities;
- d) Serious or repeated bullying, abuse or sexual harassment of another staff member, student or member of the public;
- e) Serious failure to observe occupational, health, safety and welfare policies, instructions and requirements; and
- f) Refusal to carry out a lawful and reasonable instruction that is consistent with the staff member's contract of employment.

46.3 Disciplinary Action

Action to discipline a staff member for misconduct or serious misconduct may only be taken by the Vice Chancellor, and means:

- a) Formal censure or counselling; and/or
- b) Suspension with or without pay for a reasonable period; and/or
- c) Withholding of an increment; or
- d) Demotion by one or more increments; or
- e) Demotion by one or more classification levels; or
- f) Termination of employment (for serious misconduct only).

46.4 Academic Freedom, Whistle Blowing and Participation in University Governance

Statements by staff which have the potential to be seen as damaging the reputation or business of the University will not be treated as misconduct where the making of the statement is consistent with the University's Code of Ethical Conduct and:

- a) Is made by an academic staff member and concerns a matter within their field of academic expertise;

- b) Brings to public attention a matter on which the University has breached its act, policies, or accepted norms of practice for universities; and
- c) Is made by a member of staff contributing to debate of a matter being considered by Council or one of its Committees.

46.5 Disciplinary Action for Misconduct/Serious Misconduct

- a) Before the Vice Chancellor takes disciplinary action against a staff member for reasons amounting to misconduct or serious misconduct, the Vice Chancellor's nominee must take the steps in this clause, except that, where a matter which may involve misconduct or serious misconduct has been dealt with in good faith as if it were a case of unacceptable performance under clause 45, the procedures of this clause are not required, but the provisions of clause 45 including notice periods and review procedures must be followed.
- b) Any allegation of misconduct/serious misconduct shall be considered by the Vice Chancellor's nominee. If the Vice Chancellor's nominee believes such allegations warrant further investigation he/she shall:
 - i) notify the staff member in writing and in sufficient detail to enable the staff member to understand the precise nature of the allegations, and to properly consider and respond to them;
 - ii) require the staff member to submit a written response within ten (10) working days.
- c) The Vice Chancellor's nominee may suspend the staff member on full pay at the time of notifying the Vice Chancellor in accordance with sub clause 46.5 b) above, or may suspend the staff member without pay if the Vice Chancellor's nominee is of the view that the alleged conduct amounts to conduct of a kind envisaged in sub clause 46.2. Provided that:
 - i) where suspension without pay occurs at a time when the staff member is on paid leave of absence the staff member shall continue to receive a salary for the period of leave of absence;
 - ii) the staff member may engage in paid employment or draw on any recreation leave or long service leave credits for the duration of the suspension without pay;
 - iii) the Vice Chancellor's nominee may at any time direct that salary be paid on the ground of hardship;
 - iv) where a suspension without pay has been imposed and the matter is subsequently referred to a Dispute Committee, the Vice Chancellor's nominee shall ensure that the Committee at its first meeting considers whether suspension without pay should continue and recommends whether the suspension should continue or not.
- d) If the allegations are denied by the staff member and the Vice Chancellor's nominee is of the view that there has been no misconduct or serious misconduct he/she shall immediately advise the staff member in writing, and may, by agreement with the staff member, publish the advice in an appropriate manner.
- e) If the allegations are admitted in full by the staff member and the Vice Chancellor's nominee is of the view that the conduct amounts to misconduct or serious misconduct the matter will be referred to the Vice Chancellor. The Vice Chancellor shall advise the staff member in writing of their decision on the recommendations and the operative date of the disciplinary action.
- f) If the allegation is denied in part or in full or if the staff member has not responded to the allegations the Vice Chancellor's nominee shall refer the matter to a Dispute Committee within a reasonable period of time in accordance with clause 43, unless he/she decides to take no further action or refer the matter to the Vice Chancellor. The Vice Chancellor may counsel or censure the staff member for unacceptable behaviour and take no other action.
- g) During any period of suspension the staff member may be excluded from the University, provided that he or she shall be permitted reasonable access to the University for the preparation of his or her case and to collect personal property.
- h) **A Dispute Committee convened under sub clause 46.5 f) shall act in such a way as to ensure that fairness, natural justice and due process are observed and practiced. This shall include, but not be limited to, providing the opportunity for the staff member to be heard, to be given adequate opportunity to answer findings or allegations, to be represented in proceedings of the Committee, to present and challenge evidence, and**

to make submissions. Proceedings shall be conducted in camera unless otherwise agreed between the staff member and the University. The committee shall keep a tape record of the proceedings, but not its own deliberations, which shall be available on request to either the University or staff member. The committee may interview any person it thinks fit, in the presence of the staff member and advocate, in order to establish the merits of the case or facts of the matter under dispute.

- i) On receipt of the report of the Dispute Committee, and having considered its findings on the facts related to the alleged misconduct or serious misconduct, the Vice Chancellor may take disciplinary action. The staff member shall be advised of the Vice Chancellor's decision within ten (10) days of the Vice Chancellor receiving the report from the Dispute Committee.
- j) Where a staff member has been suspended without pay pending the decision of the Vice Chancellor, then any lost income shall be reimbursed if there was no serious misconduct. However, a decision taken by the Vice Chancellor in his or her discretion not to dismiss or impose another penalty shall not be construed as an admission that there was no conduct justifying suspension without pay.
- k) If having considered the Committee's findings on the facts relating to the alleged misconduct or serious misconduct, the Vice Chancellor is of the view that there has been no misconduct or serious misconduct he/she shall immediately advise the staff member in writing, and may, by agreement with the staff member, publish the advice in an appropriate manner.

46.6 Research Misconduct

- a) This clause is adopted from the AVCC/NHMRC statement/guidelines on research misconduct.
- b) For the purposes of this sub clause:

"Misconduct" or "Scientific misconduct" is taken here to mean fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research.

It includes the misleading ascription of authorship including the listing of authors without their permission, attributing work to others who have not in fact contributed to the research, and the lack of appropriate acknowledgment of work primarily produced by a research student/trainee or associate. It does not include honest errors or honest differences in interpretation or judgements of data.

Macquarie – Academic and General Staff

2.9.1 The University is committed to act in a manner consistent with the protection and promotion of intellectual freedom within the University and in accordance with the University's Academic Freedom policy and Code of Conduct.

2.9.2 Intellectual freedom includes:

- (a) the rights of all Staff Members to express opinions about the operation of the University and higher education policy more generally;
- (b) the rights of Staff to pursue critical open enquiry and to discuss freely, teach, assess, develop curricula, publish and research within the limits of their professional competence and professional standards;
- (c) the right to participate in public debates and express opinions about issues and ideas related to their discipline area;
- (d) the right of all Staff Members to participate in professional and representative bodies and to engage in community service without fear of harassment, intimidation or unfair treatment; and
- (e) the right to express unpopular or controversial views, although this does not mean the right to vilify, harass or intimidate.

2.9.3 In the exercise of intellectual freedom, Staff Members will act in a professional and ethical manner and will not harass, vilify or defame the University or its Staff Members.

2.9.4 The University will encourage Staff Members to participate actively in the operation of the University and in the community. The University will take all reasonable steps to ensure that all governing bodies within the University operate in a transparent and accountable manner, encouraging freedom of expression and thought. This does not prevent a University committee from considering a matter 'in camera'.

3.1.1 Recruitment and selection processes at the University will uphold the principle of competition on merit

UNE (Academic Staff) -

1. COMMITMENTS

The University and its staff agree that they are committed to:

improve the performance, competitiveness and success of the University in order to achieve sustainable future growth;

a flexible approach to change that reflects the demands in operational requirements;

a culture of mutual respect with consultation, participation, trust, flexibility, collegiality and continuing improvement;

treating each other in a fair and reasonable manner and being accountable for their responsibilities;

an inclusive workplace and will work to prevent and eliminate discrimination, bullying and harassment in the workplace and to achieve equal employment opportunity;

achieving and maintaining a healthy and safe working environment;

enhancing flexibility and streamlining administrative processes.

act in a manner consistent with the protection and promotion of intellectual freedom within the University where staff are able to:

- (a) express opinions about issues and ideas related to their professional area of expertise and higher education issues; participate in public debates and debates relating to decision-making processes and express unpopular or controversial views, which do not defame, harass, vilify or intimidate;**
- (b) pursue critical and open academic inquiry;**
- (c) express their opinions in their private capacity as an individual member of society, not as a University spokesperson unless authorised to do so; and**
- (d) participate in professional and representative bodies, and engage in community service without fear of harassment, intimidation or unfair treatment.**

Intellectual freedom carries with it the duty of staff members to use the freedom in a reasonable manner consistent with a responsible and honest search for, and dissemination of, knowledge and truth.