Review of Student Disciplinary Policy and Processes Including in relation to the Management of Sexual Misconduct Complaints

At

The University of Queensland

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1. Executive Summary

This is the first report of an external review panel, which was appointed by The University of Queensland to conduct an independent review of its student disciplinary policy and processes, including in relation to the management of sexual misconduct complaints (see *Appendix*).

1.1 Key Findings

1.1.1 Workload - The University's student disciplinary system deals with a significant workload. On average, it investigates about 1600 matters each year. About 1300 of these matters concern allegations of academic misconduct – with the balance concerning allegations of other forms of misconduct. It seems likely that this workload will increase substantially, in both volume and complexity, in the coming years.

1.1.2 Framework - In our view, the basic framework of this disciplinary system is wellsuited to its purpose. It involves a broad network of staff being available to receive and investigate complaints of student misconduct. It has a triage system to ensure that each complaint is investigated and responded to in an appropriate way. For matters which require a formal hearing and determination, it has a decision-making system which is apt to produce determinations which are both procedurally fair and substantively just. The system also contains a number of effective checks and balances, including a right of appeal, to ensure that it is self-correcting.

1.1.3 Performance - In general, this system appears to be operating efficiently, justly and compassionately. Many matters are being dealt with through a purely educative response (eg by warning and counselling). Those matters which proceed to a formal disciplinary hearing do not generally result in any serious contest – and the outcome is rarely appealed. In the last few years, a small number of difficult cases have identified shortcomings in the system which need to be addressed. In our view, however, these shortcomings are readily rectified.

1.1.4 Personnel - In our view, a significant strength of the disciplinary system derives from the skills, experience and commitment of the cohort of University staff who are involved in its administration. It is important that the disciplinary system use, to full advantage, the personal skills and judgment of those who administer it.

1.1.5 Victim Support - By its recent efforts, the University has succeeded in developing effective, responsive and compassionate systems to support students who have been the victims of crime, including sexual assault. These systems are based upon a co-ordinated response from a number of different agencies within the University. These systems, and the staff who work in this area, are another considerable strength of the University's approach. We do not suggest that any material changes to these systems are required.

1.1.6 Policies - There is a high degree of consensus, amongst those involved in the administration of the disciplinary system, that the current policy framework requires attention. In essence, a simplified and more flexible approach is favoured, rather than a further elaboration of the current policies. We agree with this view.

1.1.7 Implementation - We believe that the necessary changes to policies can be implemented with very little practical impact upon the day-to-day operations of the disciplinary system. That is because any new approach will involve, to a very large extent, the same team of people continuing to perform their existing functions – but working pursuant to simplified and more flexible policies.

1.2 Summary of Recommendations

1.2.1 Simplification We recommend that the relevant policies be simplified, so that they can be more easily read, understood and applied by all members of the University community. The key points of simplification are outlined below.

1.2.2 Flexibility We recommend that the student misconduct policy should be framed in a less prescriptive way. It should be framed with greater flexibility, so that the disciplinary process can be adapted to suit the more challenging circumstances which can arise. The key points requiring greater flexibility are outlined below.

1.2.3 Prevention To respond to the upward trends in student misconduct, we recommend that the University continue to take a strong preventative approach. This will require a co-ordinated use of a number of strategies. These strategies should include: (a) effective student education; (b) monitoring academic assessment practices to assess vulnerability to misconduct; (c) using sampling tools to detect suspicious behaviour; and (d) seeking to deter misconduct, through the high risk and significant consequences of detection.

1.2.4 Online Management Given the volume of misconduct matters which need to be managed, we recommend that the University introduce a new online misconduct management system. We understand that the University has approved the procurement of such as system. This system does not need to be particularly complex, but should allow: (a) the progress of individual misconduct matters to be appropriately monitored and managed; (b) prior allegations of misconduct by a particular student to be easily identified; (c) trends across the University to be identified and acted upon; (d) the consistency of approach across the University to be monitored; and (e) guidelines to be developed to promote the imposition of consistent penalties for similar misconduct across the University. This system would seem to be critical to any effective preventative strategy.

1.2.5 Disciplinary System Manager Given the volume of misconduct matters, we do not consider that it is viable or desirable for the Academic Registrar to continue to perform all of the roles which are currently assigned to this officer under the current misconduct policies. We recommend that the University create a new position for a senior administrative officer who can take primary responsibility for managing the student disciplinary system. For the purposes of this report, we have called this officer the Disciplinary System Manager (**DSM**). Again, having the services of an officer of this kind would seem to be critical to any effective preventative strategy.

1.2.6 Jurisdiction – Students We recommend that the jurisdiction of the University's disciplinary system over students be clarified, to confirm that this jurisdiction does not

necessarily lapse if the student has ceased to be enrolled. Disciplinary orders which may be required in this situation should be included in the policy.

1.2.7 Jurisdiction – Nexus We recommend that the jurisdiction of the University's disciplinary system over students be clarified, to confirm that it applies to any conduct of a student which has a specified nexus to the University or which affects their suitability as students. In our view, an appropriate nexus to the University will exist where the conduct occurred either: (a) on property owned or occupied by the University or a University-affiliated residential college; or (b) in relation to any academic or work experience programme which has a connection to the University; or (c) in relation to another member of the University community (eg conduct towards another student). A suitability issue will arise if the student has engaged in a serious breach of the criminal law, regardless of whether that conduct has any nexus to the University.

1.2.8 Code of Conduct and Definition of Misconduct We recommend that any *enforceable* standards of student conduct should be defined in a separate Code of Conduct. This will allow: (a) students to be more effectively informed of their duties, by reference to a simpler document; (b) the student misconduct policy to be simplified, by removing the detailed definitions of misconduct; (c) the standards to be defined by reference to underlying principles; and (d) common categories of misconduct to be defined with appropriate clarity and without undue width. Further work to refine these definitions is required.

1.2.9 Complaints We do not recommend any material change to the way in which the University receives complaints of student misconduct. We recommend, however, that the sexual misconduct policy makes it clear that all University staff, who are informed confidentially by a victim (or someone acting on their behalf) of a complaint of sexual misconduct, are entitled to respect the confidentiality of that information. This recommendation is subject to legal analysis of the implications, if any, of such an approach upon the University's duty of care.

1.2.10 Dealing with Categories of Misconduct We recommend that the student disciplinary system be simplified by removing the distinction between the processes to be followed for academic misconduct and general misconduct. In the usual course, all complaints of misconduct should be investigated and processed in the same way.

1.2.11 Training The effective operation of the student disciplinary system requires the skilled involvement of a large number of staff – and some students. We recommend that all those involved in the student disciplinary system complete an online training programme dealing with: (a) the objects of the disciplinary system; (b) the processes involved; (c) the nature of the legal requirements for procedural fairness; and (d) the practical steps required to determine a matter and impose a penalty. The DSM should be available to answer any more specific questions which can arise from time to time.

1.2.12 Investigation and Early Resolution We recommend that the student misconduct policy be amended to create greater scope for an early, consensual resolution of misconduct matters. Matters should only proceed to a formal misconduct determination when there is a real need for this to occur. Even then, the need to conduct formal hearings should be avoided

where appropriate. This can be achieved by allowing students, with the support of the Integrity Officer or DSM, to advise the decision-maker of their willingness to submit to a particular determination without the need for a hearing. Leniency should be extended to students who take this approach.

1.2.13 Pre-Hearing Processes For matters which are to proceed to formal determination, we recommend that the relevant Integrity Officers (or DSM) have greater responsibility for managing the pre-hearing processes (including the issuing of allegation notices). This would seem to be a more timely and efficient approach. By the use of approved forms for key documents (eg allegation notices), unnecessary detail about these steps can be removed from the misconduct policy.

1.2.14 Committees We recommend that all disciplinary matters be determined by a committee, rather than by an individual decision-maker. In principle, this would seem to be a preferable approach. In practice, it would not seem to require any significant change to existing staffing arrangements. That is because all individual decision-makers are currently assisted by another member of staff, who acts in an advisory role. We envisage that these two staff members would, in future, constitute the relevant disciplinary committee, with the senior academic staff member (or Academic Registrar) having a casting vote.

1.2.15 Disciplinary Committees Most student disciplinary matters should be determined by a network of Disciplinary Committees operating across the University. These committees would usually be based in the Faculties but would continue to include a centrally-based committee. They would be constituted by two authorized staff members and chaired by a senior member of academic staff (or the Academic Registrar). To provide the disciplinary system with appropriate flexibility, and to ensure that Disciplinary Committees have the skills required to deal with particular matters, the DSM should have power: (a) to convene as many Disciplinary Committees as are required both within a Faculty, across Faculties and centrally (b) to manage the allocation of matters to Disciplinary Committees; and (c) to manage the allocation of staff to Disciplinary Committees.

1.2.16 University Disciplinary Board There should continue to be a more senior body, the University Disciplinary Board, which would usually be constituted by three authorized members (including a student) and chaired by a senior academic member of the University's executive. To provide appropriate flexibility, and to ensure that the University Disciplinary Board has the skills required to deal with particular matters, the Chair should have power to draw upon a wider range of authorized persons to serve on the University Disciplinary Board for a particular matter (including to serve in the role of Acting Chair).

1.2.17 Jurisdiction and Powers of Disciplinary Bodies To avoid disputes about jurisdiction, both the Disciplinary Committees and the University Disciplinary Board should have jurisdiction to deal with all types of misconduct – no matter how serious. However, only the University Disciplinary Board should have power to impose the most serious penalties, including: (a) expulsion; (b) revocation of a degree; or (c) suspension for more than 2 weeks. Through the triage process, the Integrity Officers (or the DSM) should refer matters to the University Disciplinary Board if there is the potential for penalties of this kind to be imposed.

1.2.18 Interim Measures We recommend that the Academic Registrar be given wider powers to make appropriate interim arrangements concerning the student, whilst misconduct proceedings against them are pending.

1.2.19 Nature of the Process We recommend that the University continues to conduct its disciplinary hearings on a non-legalistic and non-adversarial basis, without the rules of evidence applying. In cases where the disciplinary committees require assistance, they should continue to be able to obtain private legal advice from the University's legal office (or an approved external lawyer appointed by the University's Legal Services). In difficult cases, they should be able to appoint a lawyer (who may be a university legal officer) to act as an independent counsel to assist the committee in an open and transparent way. Disciplinary committees should not have powers to compel any persons to attend before them or to produce documents. However, they should have broad powers to manage proceedings in a flexible way (eg by allowing amendments to the charges of misconduct, by allowing further evidence etc). If the student does not require a formal hearing, the matter should be capable of being dealt with on the papers.

1.2.20 Penalties and Disciplinary Orders We recommend that guidelines be published regularly by the DSM indicating the usual range of penalties and other disciplinary orders made in particular categories of matter – including matters where a lenient approach was taken because of the student's early acceptance of responsibility. The range of available orders should be reviewed to ensure that they provide disciplinary committees with a sufficiently broad range of powers (eg powers to deal with students who have cancelled their enrolment).

1.2.21 Right of Appeal We recommend that a student's right of appeal from a primary decision should be qualified. It should be available only if error in the primary decision can be demonstrated or material new evidence becomes available. If those requirements are satisfied, the appeal board should have the power to either rehear the matter on the existing materials or conduct a full rehearing *de novo* of the matter.

1.2.22 Appeals We recommend that the primary decisions of Disciplinary Committees should be subject to appeal to the University Disciplinary Board. We recommend that the primary decisions of the University Disciplinary Board be subject to appeal to a University Disciplinary Appeals Board. We favour an approach which does not link the University Disciplinary Appeals Board to the University's Senate. We favour an approach which allows the University Disciplinary Appeals Board to be constituted by a panel of authorised persons, who have the most appropriate combination of skills and experience to deal with the particular matter. As with the University Disciplinary Board, there should be an appointed Chair, who has the power to convene an appropriately constituted panel for each matter. The quorum should continue to be four.

1.2.23 Non-Staff Members on Disciplinary Bodies We recommend that the existing practice of including a student, where possible, on the University Disciplinary Board and the University Disciplinary Appeal Board should continue. There should also be sufficient flexibility to authorize other non-staff members and non-academic senior staff members to serve on disciplinary committees, where this is considered beneficial. It is important that all

such persons complete the required training and receive an appropriate indemnity against liability for their service. It is also important to ensure that all disciplinary committees are constituted by persons who are validly empowered to exercise the University's disciplinary powers.

1.2.24 Procedural Fairness We recommend that procedures be reviewed to ensure that students: (a) are given reasonable notice of the charge of misconduct and the evidence to be relied upon against them at a hearing; (b) are given reasonable notice of the penalty which is proposed to be imposed upon them; (c) have reasonable notice of what they should do to contest the matter; and (d) are given a reasonable time period to prepare for the hearing. Any failure to accord procedural fairness in a primary decision should be capable of being corrected by a hearing on appeal.

1.2.25 Enforcement Procedures should be established to ensure that the penalties or conditions imposed by disciplinary bodies are satisfied – by involving the police service or the courts where appropriate. In practical terms, however, it is likely that breaches of confidentiality in relation to disciplinary proceedings will not be able to be effectively remedied.

1.2.26 Criminal Proceedings In some matters, complaints may lead to both disciplinary proceedings and criminal proceedings. In general, we recommend that the University's disciplinary system deal with these matters by: (a) making any necessary interim orders; but (b) deferring any disciplinary hearing until after the criminal proceedings have been concluded.

1.2.27 Difficult Cases – General Whilst the vast bulk of matters to be dealt with by the disciplinary system are relatively straight-forward, the system does need to be able to accommodate difficult cases. We consider that the elements of flexibility which are suggested above will enable the system to deal with these difficult cases.

1.2.28 Difficult Cases – Sexual Misconduct The most difficult issue to be considered is how to reconcile a trauma-informed approach to supporting victims of sexual misconduct with the legal requirements involved in taking disciplinary proceedings against the perpetrator. Unfortunately, we are unable to suggest a procedure by which matters of sexual misconduct, if genuinely disputed, can be determined without the risk of the complainant being involved in the proceedings. In cases where the complainant wishes the University to take disciplinary action, but does not wish to be involved in the proceedings, we believe the only viable procedure is pursuant to the University's power to counsel students and give reasonable directions. We recommend that a fact sheet be prepared, which fairly and accurately explains the main legal options available to complainants and their advantages and disadvantages. The appropriate use of this fact sheet, in a particular case, is a matter for the support staff to determine.

1.2.29 Governance We believe that governance of the disciplinary system will be enhanced if data is more readily available for analysis. Within the data, the key indicators will be: (a) trends in complaints generally; (b) trends in particular categories of complaints; (c) average time taken to resolve complaints; (d) rates of consensual resolution; (e) rates of appeal; and (f) consistency of penalty for similar matters across the university. These indicators, when properly analysed, should assist in developing strategies to prevent misconduct and in identifying any delays or systemic problems in the system. The data review will be assisted by a review of the reasons given in successful appeals or applications for judicial review.

1.2.30 Implementation Plan We recommend that following receipt of relevant feedback, the University may wish to consider developing an implementation plan, given the number of different policies aligned to the Student Discipline Policy that may need to be changed and the range of very different activities in the recommendations.

2. Scope and Objectives

2.1 Terms of Reference

On 24 September 2020, the University appointed an external review panel to conduct an independent review of its student disciplinary policy and processes, including in relation to the management of sexual misconduct complaints.

The review was to be conducted pursuant to written Terms of Reference (Appendix).

The panel was requested to:

- review the University's policy frameworks in relation to student discipline issues (the Student Integrity and Misconduct Policy (*SIMP*)) and sexual misconduct (and associated procedures and guidance materials) and Senate's oversight of those matters.
- consider the implementation of any recommendations in the context of associated policies (including the Student Grievance Resolution Policy and Research Misconduct Policy), and in the entities associated with UQ such as residential colleges or clubs and societies.
- make recommendations for improvement in the University's management of student disciplinary issues and obligation to promote and foster the wellbeing and safety of staff and students, including maintaining an institutional environment free from sexual assault and sexual harassment.
- give particular consideration to draft updates to the sexual misconduct policy and procedures and a draft redesigned student disciplinary policy (and associated guidance materials).

2.2 Members of the Panel

The panel appointed to conduct the review comprised Emeritus Professor Carol Dickenson AM and Adjunct Professor John McKenna QC.

The panel members have a measure of independence from the University. Neither of us has ever been a member of the University's management or academic staff. Nor have we ever had any previous involvement in the formulation, administration or application of the University's student disciplinary policy and processes. Each of us, however, could fairly be described as members of the wider University community. Professor Dickenson held senior executive positions at QUT for many years prior to her retirement at the end of 2019. Since her retirement, Professor Dickenson now serves as College President of The Women's College at the University of Queensland and is on the Board of the Translational Research Institute. Mr McKenna is a barrister in private practice. He is a member of the University's alumni community, currently serving as President of the University of Queensland Law Alumni Association and as an Adjunct Professor in the Law School.

2.3 Approach

We were urged, from the outset, to provide an honest and (if need be) critical assessment of the position – and have had no difficulty in approaching the review in this way.

To facilitate the review, we were provided with confidential access to any documents and officers of the University we considered relevant. During the review, we interviewed a wide range of people with different roles and perspectives on the disciplinary system – including many on the front line of dealing with disciplinary matters (including complaints of sexual assault). We are most grateful for their assistance and acknowledge them individually in Chapter 5.

Whilst we did not consider it practical to interview students who have been victims of misconduct or who have been respondents to misconduct proceedings, we did interview the President of the Student Union. Further, we had no difficulty in viewing matters from their perspective. In large part, this was because all the people we interviewed conveyed to us their obvious empathy for the position of all the students involved.

Our understanding of the issues was also enhanced by studying a number of the more challenging cases which the University's disciplinary and student support system has faced in recent years. These were difficult cases. They prompted criticism of the University from a number of quarters – both internal and external – and led to significant changes to the University's approach. They also provided the immediate catalyst for the present review.

From all these sources of information, we sought to understand:

- the underlying causes of student disciplinary issues, including sexual misconduct.
- the objectives which can realistically be achieved in preventing, deterring and responding to student misconduct.
- the most effective methods which could be employed to achieve these objectives.
- the perspective of students who are subject to disciplinary action.
- the perspective of those who are victims of misconduct.
- the challenges and pressures faced by University staff in seeking to administer the disciplinary system.

On most issues, we found a high degree of consensus amongst those we consulted.

2.4 Overarching Objectives

From our consultations, it seemed to be common ground that the University should be seeking to achieve three overarching objectives:

- **Prevention** to reduce the inherent risk of its students engaging in academic or other misconduct.
- **Student Discipline** to operate a student disciplinary system which will deal fairly, promptly, empathetically and effectively with any complaints of student misconduct which do in fact arise.
- **Victim Support** to provide compassionate, professional and effective support to all students who are victims of misconduct.

2.4.1 Objective 1 – Prevention

The first of these overarching objectives depends upon the use of at least five methods:

• **Education** – clearly and effectively educating all students, at the outset and in an ongoing way, about the standards of academic and general conduct which are

expected of them, the reasons for those standards, and the serious personal consequences of any breach.

- **Culture** promoting a culture in which the student community, as a whole, voluntarily aspires to live up to these standards and protect each other (and the University) from any departure from them.
- **Assessment** monitoring and developing methods of assessment to reduce the opportunity for academic misconduct.
- **Environment** maintaining an environment, on campus, which enables students to protect their own personal safety.
- **Deterrence** providing a disciplinary system which is apt to deter academic and other misconduct, because of the high risk of detection and the personal consequences which will follow for the wrongdoer.

2.4.2 Objective 2 – Student Discipline

The second of these overarching objectives (Student Discipline) lies at the heart of this review.

Amongst those we consulted, there seemed to be a high level of consensus that a student disciplinary system should have the following elements:

- **Standards** which clearly define and communicate to students the conventional standards of academic and personal integrity which are expected of them, consistently with the principles of the University.
- **Complaint Reception** which enables members of the University community, or the general public, to bring forward all genuine complaints of significant student misconduct, so as to ensure that all such misconduct is promptly detected and the subject of an appropriate response.
- **Triage** which ensures that all complaints are given appropriate consideration and are responded to promptly and appropriately, including by making any necessary interim arrangements for the protection of the University community.
- **Procedural Fairness** which provides a process to deal promptly, reliably, justly, efficiently, and compassionately with allegations of misconduct.
- **Substantive Quality** which ensures that the decision-makers in the process have appropriate experience, training and judgment to provide high quality and consistent decision-making.
- **Non-Legalistic** which ensures that the processes can be easily and fairly applied, by students and staff, without the need for legal training or the intervention of lawyers.
- **Workable** which ensures that the processes are practically workable, given the significant other commitments of the university's staff.
- **Checks and Balances** which incorporates reasonable checks and balances, to ensure that the disciplinary system operates in a fair, just and consistent way across the University.
- Integrity of Process which includes measures designed to protect the integrity of the disciplinary system and the legitimate interests of all those involved, by: (a) ensuring that, within reasonable limits, the process is confidential; (b) ensuring that the outcome of the process is carried into effect; and (c) protecting participants from retaliation or vilification.

- Integration with Criminal Justice which ensures that the disciplinary system
 integrates appropriately with the operation of the criminal justice system, to: (a)
 facilitate the enforcement of interim and final decisions made in relation to students;
 and (b) avoid conflicting proceedings, concerning the same matter, in both the
 criminal justice system and the disciplinary system.
- Educational Context which ensures that the system is appropriate to an educational context, where: (a) the primary aim is to help students to understand, and voluntarily act in accordance with, conventional standards of academic and personal integrity; (b) any departure from these standards is, wherever appropriate, subject to an appropriate educational response; and (c) a clear distinction is drawn between matters which should appropriately be noted on the student's academic record and those which require only an administrative response.
- **Institutional Integrity** which ensures that the system is appropriate to protect and preserve the culture, integrity and reputation of the University as a world-class tertiary educational institution, and the reputation of its degrees and awards, through the effective detection, investigation and enforcement of its standards.
- Duty of Care which ensures that the system is framed and applied in a way which enables the University to fulfil its moral and legal duty of care to those in its community, by: (a) deterring misconduct generally; (b) detecting particular acts of misconduct and providing a disciplinary response which is apt to remediate harm and prevent recurrence; and (c) taking interim preventative measures, where necessary, to minimize any further harm.

2.4.3 Objective 3 – Victim Support

The third of these overarching objectives (Victim Support) is closely related to the disciplinary process – but is quite different in its aims.

The University is committed to an effective, trauma-informed approach to supporting the victims of serious misconduct (including sexual assault). This involves the following elements:

- **Prompt and Skilled Response** which provides a widespread network of skilled persons who are appropriately trained in supporting those who are victims of serious misconduct and available to promptly provide that support.
- **Confidentiality** which ensures that victims have complete confidence that they can discuss their situation confidentially with those in the support network.
- **Continuity of Support** which ensures, wherever possible that victims receive continuity of support from the same person in the support network.
- Comprehensive Support which ensures, wherever possible, that the support provided to the victim covers the full range of issues which may arise from the misconduct (eg academic issues, accommodation issues, physical and psychological issues, financial issues.,etc).
- Regaining Control which ensures that victims of misconduct regain control of their situation, by making a fully-informed determination about how they wish to respond to the misconduct (eg by determining whether or not to report the matter to police or other authorities).

In cases where a victim of serious misconduct wishes to report the misconduct and assist the authorities (including the University) to take action against the alleged perpetrator, this approach fits harmoniously within the University's disciplinary system.

In other cases, however, potential difficulties arise. The difficulties arise because:

- Loss of Confidentiality the University cannot take disciplinary action against a student unless it can identify the name of that student and has sufficient evidence to take proceedings against them. In many cases, this can only happen if the victim is willing to disclose these matters to the University – rather than maintaining their full right to confidentiality.
- Investigation a reliable disciplinary process must commence with a prompt and independent investigation of any allegations, to gather high-quality evidence of the relevant circumstances. In most cases, this requires a statement to be taken from the victim of the misconduct, which should deal with both corroborating and noncorroborating matters. This approach is fundamentally different to the fully supportive approach provided by a victim's support network.
- **Contested Facts** a student has the right to defend disciplinary proceedings by contesting the factual allegations made against them. If the relevant allegations depend upon truthfulness and reliability of the victim's statement (eg about issues of consent), this may involve challenging the reliability of the victim's evidence. This approach is again fundamentally different to a fully supportive approach.
- Suitability of Forum a university's disciplinary process is fundamentally unsuited to dealing with contested allegations which, however framed, involve allegations of serious criminal misconduct. Matters of this kind are most appropriately dealt with by the police service and the criminal courts. The criminal justice system has the benefit of: (a) a skilled investigation by the police service (and any necessary forensic services); (b) a skilled prosecution service; (c) a procedural system where witnesses can be compelled to give evidence; (d) a full testing of all evidence in open court; (e) a requirement to establish the claims beyond a reasonable doubt; and (f) a trial being conducted under the control of an experienced Judge or Magistrate. This is a high-quality decision-making process which is appropriate to the gravity of the issues and cannot ever be replicated by a student disciplinary process.

The most challenging issue in this review has been to develop an appropriate way to deal with these difficulties.

3. Current Position

3.1 Introduction

The starting point for this review was to understand the current disciplinary system – and its strengths and weaknesses.

This required an understanding of: (a) the volume of matters involved; (b) the different types of matters involved; (c) the functional elements of the system; (d) the range of staff who operate the system and their training, skills and experience; (e) the governing policies, including definitions of "misconduct"; and (f) any particular areas of challenge or difficulty.

We then explored the related issues of: (a) how the victim support services operate and interact with the disciplinary system; (b) how the student grievance procedures operate and interact with the student disciplinary system; (c) how the research higher degree misconduct procedures operate and interact with the student disciplinary system; and (d) how the student disciplinary system is accommodated with the University's governance framework.

As required by the Terms of Reference, we specifically considered the proposed redrafts which have recently been prepared of the student disciplinary policies and sexual misconduct policies. It quickly became clear to us, however, that those who administer these policies would prefer that a fresh approach was taken. The general view was that the proposed redrafts represent a valiant attempt to revise policies which really required a more fundamental reconsideration. Accordingly, we studied the redrafted policies carefully to identify the issues they were seeking to address, but we do not recommend that they be adopted.

3.2 Volume and Types of Matters

The University's student misconduct system is typically required to investigate about 1600 matters each year.

This number does not include matters where, after initial investigation, a higher degree research student has been cleared of research misconduct. Nor does it include matters where victims of sexual misconduct, or other criminal acts, have sought support from the University's student services unit but do wish to make a formal report.

About 1300 of the 1600 matters concern allegations of academic misconduct – with the balance concerning allegations of other forms of misconduct. Very few of these matters concern research misconduct by higher degree research students.

Within the academic misconduct matters, a finding of misconduct is typically made in about 600 matters each year (about 46% of those investigated). Of these, only about 20 cases involve serious misconduct – with the vast majority concerning acts of low-level misconduct (over 85% of misconduct findings).

It is important to note that there has been a very substantial growth in findings of low-level academic misconduct over the last four years (204%).

Within the general misconduct matters, a finding of misconduct is typically made in only about 20 matters each year (about 6.6% of those investigated). Of these, only about 8 cases involve serious misconduct. At these low numbers, it is difficult to discern any particular trends.

Given the size of the University's student population (approximately 55,000), the annual number of misconduct findings (620) suggests that about 1.1% of the student population is being found to have engaged in misconduct in any given year. It is difficult, in the absence of data across the tertiary sector, to compare this rate to other Australian universities. However, experience suggests that it is broadly in line with other universities – but far from ideal and unfortunately, likely to grow.

The key observations we would make about this information is as follows.

First, even at existing volumes (1600 matters annually), it is a very significant challenge for the University to appropriately manage a student disciplinary system of this size. In the past, it may have been feasible for the Academic Registrar – amongst his or her other roles at the University - to also take primary responsibility for managing the disciplinary system and serving in a range of decision-making roles. However, we do not think that this approach will be workable in the longer term. In our view, the time has now come for a specific officer to be appointed to a senior administrative role, with responsibility for managing all aspects of the student disciplinary system across the University. For the purposes of this report, we call this new officer the Disciplinary System Manager (**DSM**). We assume that the DSM would report directly to the Academic Registrar.

Secondly, even at existing volumes, it is difficult to see how a student disciplinary system of this size can be managed effectively across the University without the assistance of a specialized computerbased management system. The need for such a system has already been recognized and acted upon by the University. This is discussed further below.

Thirdly, there is a substantial risk that the volume and complexity of misconduct may increase – particularly from conduct which is only indirectly related to a student's enrolment at the University. The main areas of risk appear to be:

- Sexual Misconduct We were consistently advised that, at present, most victims of sexual misconduct within the student community choose not to formally report the matter to the police or the University. However, victims may well choose in future to adopt a more assertive response with the consequent risk of the University receiving more complaints of this kind.
- Social Misconduct We were warned of a number of social trends which are combining to impose new demands on the disciplinary system: (a) the growing use of social media by students; (b) the growing use of intemperate language, particularly in social media; (c) an increasing sensitivity or intolerance to the views and conduct of others; and (d) an increasing willingness to complain about conduct which is considered offensive.
- Cheating We were advised of a growing practice by which students, in some disciplines, engage third parties to assist with their assessment tasks (contract cheating) or collaborate together in an impermissible way (collaborative cheating). To date, this practice seems to have been detected in only a small number of subjects (eg because of the presence, in numerous papers, of the same eccentric error). The concern is that if this practice continues or detection rates increase the volume of misconduct may increase significantly.
- International Students International students appear to give rise to particular concern, because: (a) they sometimes come from educational systems with a different understanding of what is acceptable academic or general conduct; (b) there may be language issues causing difficulty with their studies; and (c) they may be under financial or other undue pressures to achieve academic success.
- *Mental Health Issues* Students with mental health issues, or unconventional behaviour, are testing the boundaries of acceptable conduct.

- **Uncooperative Responses** We were advised of a rise in aggressive and legalistic responses to investigations of student misconduct.
- **Staff Fatigue** We were advised of a concern that, for busy members of the University's teaching staff, the time required to investigate and report minor academic misconduct can deter a staff member from initiating a complaint. Accordingly, changes in the disciplinary system may themselves cause more matters to be reported.

Fourthly, some of these trends have already become apparent in the data – with a substantial rise in low-level academic misconduct in recent years. This suggests that a new strategy is urgently required to seek to reverse this trend. Elements of this strategy may involve:

- requiring the existing online Integrity Module to be completed by all new students.
- considering whether more targeted educational campaigns are required for cohorts of student, particular disciplines or particular subjects.
- considering whether, in particular subjects, any change in assessment methods is required to deter misconduct of this kind.

Fifthly, to monitor and manage these trends, the University may wish to consider whether to adopt (for internal governance purposes only) a target maximum rate for student misconduct. The long-term aim should be to reduce the annual student misconduct rate to a level which the University considers acceptable. In our view, the current rate - where about 1.1% of all students are being found to have engaged in misconduct in any given year - is not ideal. We would hope that a realistic, long-term target would be at about half that rate.

3.3 Functional Elements

In functional terms, the University's disciplinary system deals with matters by a seven-step process.

In our view, this is the optimal framework to adopt. We do not suggest that it be changed.

In short, the steps in the process are as follows.

Step 1 Complaint - The process begins when a member of the University community, or the general public, alert the University to a case of potential misconduct (including anonymous complaints or complaints which do not identify the alleged perpetrator or victim).

Step 2 Investigation – The next step involves a preliminary investigation into the complaint. During this phase, it may be immediately apparent that the complaint is: (a) outside the scope of the disciplinary jurisdiction; or (b) about conduct which could not constitute misconduct; or (c) unsupported by sufficient evidence to establish a case to answer. In matters of this kind, the complaint is immediately dismissed. For the remaining matters, a decision needs to be made about how best to respond to the matter.

Step 3 Triage – Where the investigation establishes that there is a case to answer, a number of preliminary decisions need to be made.

A key decision is whether the appropriate response to the matter is by way of a process of counselling, with a view to the student: (a) accepting responsibility for their own actions; (b) consenting to appropriate acts of remediation or education; and (c) receiving specific warnings or directions from the University, which would have serious practical consequences for the student were they to reoffend. This response is designed to be a proportionate and educative response to

errors of judgment which many students are likely to make – without creating a lasting blot on their record.

The only alternative to this approach is to proceed to a formal disciplinary hearing. This response is designed to deal with more serious matters or with students who are not genuinely accepting responsibility for their own actions. This response is particularly appropriate where steps are required to protect the University and its community, to mark the University's disapproval of conduct of this nature or to deter future misconduct of this kind.

If the matter is to proceed in a formal way, it is necessary to formulate the charge of misconduct and assemble the evidence which is to be relied upon in support of the charge.

It is also necessary to identify the most appropriate primary decision-making body to conduct the formal hearing and the persons who are to constitute this body.

Appropriate procedural arrangements also need to be made for the period leading up to the hearing. In some cases, these arrangements will include interim arrangements to minimize the risk of further harm to the University and its community. It may also involve liaising with the student, to ascertain whether the matter is to be contested.

Step 4 Primary Decision - The next step typically requires the authorized decision-maker to convene a formal hearing, to provide the student with a reasonable opportunity to respond to the charges made against them. Whilst these hearings are typically conducted in a non-legalistic way, they involve a number of potentially difficult decisions, including:

- whether there is jurisdiction over the matter.
- what are the elements which must be established to show relevant misconduct.
- whether the procedure leading up to the hearing has been procedurally fair.
- who should be permitted to appear at the hearing.
- what evidence should be received and how it is will be received.
- how contests of evidence should be resolved.
- whether it has been proved (on the balance of probabilities) the student has engaged in conduct which satisfies the definition of misconduct.
- how allegations are framed and put to the student.
- what factors are potentially relevant to penalty.
- what penalties are conventionally imposed in circumstances of this kind.
- the appropriate penalty to be imposed in this case.
- the appropriate way to record the reasons of the decision-maker and the precise terms of the penalty imposed.

Step 5 Right of Appeal - If the student is dissatisfied with the primary hearing, the student may require a reconsideration of the matter (including penalty) by a more senior decision-making body (eg a panel of at least three members). This involves some further pre-hearing decisions to facilitate the appeal, as in Step 3.

Step 6 Appeal Decision - If there is an appeal from the primary decision, a secondary decision-maker proceeds to reconsider the matter. This involves a similar process to Step 4.

Step 7 Enforcement – If a penalty is imposed, the final step is for the University to take appropriate steps to enforce the decision.

It should be noted that, outside of this seven-step process, the student also has the right to:

- make a complaint to the Queensland Ombudsman about the disciplinary process (*Ombudsman Act 2001* (Qld)).
- take legal action in the courts against the University to restrain the disciplinary process or its enforcement.
- seek to invoke the student grievance resolution policy to complain about the University's actions.

There are a number of important points to make about the University's seven-step process.

First, it is important to understand the source of the University's legal authority to operate and enforce this disciplinary process. In some jurisdictions (eg NSW), universities are given statutory powers over student discipline. In Queensland, there is no such general power. The only legal authority which the University has to operate and enforce this disciplinary process arises from: (a) its common law power, as a landholder, to determine who enters and uses its land and facilities; (b) its inherent power, as an educational institution, to determine its own academic requirements and who has satisfied them; (c) the terms of any contractual or voluntary relationship it has with its students (pursuant to which students may agree to be subject to a disciplinary process); and (d) a limited statutory power to direct persons to leave University land (*University of Queensland Act 1998* s 57, Sch 1 s 13).

The most important practical consequences of this are that:

- university officers can only validly exercise any of these powers, on behalf of the University, if they are authorized by the University to do so – and act within the scope of their authority.
- the University can only exercise disciplinary powers over its current students, being persons who are seeking to complete the University's academic requirements or use its land or facilities and to a very limited extent over former students (eg to revoke a degree).
- the only interim orders which the University can effectively make against its students are:

 (a) to limit their permission to go onto University land; or (b) to limit their permission to participate in University courses. Thus, for example, the University simply has no legal power to impose direct requirements on how residential colleges deal with their students.

Secondly, in operating its disciplinary process, the University will be legally obliged to: (a) comply with the common law's requirements to act with procedural fairness (which are flexible principles adapted to the circumstances of each case); and (b) comply with the mandatory requirements of its own policies. If the University fails to comply with these requirements, then it is at risk of a student taking legal action against the University to: (a) restrain its disciplinary proceedings; (b) have any proceedings declared invalid; and (c) seeking to recover damages for any losses caused by the invalid action.

The practical effects of this are that:

- to the extent that it is possible to do so, mandatory limits upon the authority of University staff or upon processes should be avoided as these create the risk of legal challenge.
- because the requirements of procedural fairness are flexible and adapted to the circumstances of each case (eg a right to legal representation), it is difficult for the University's policies to create procedures which will be legally valid in all categories of case. This requires: (a) training of all decision-makers to assist them in dealing with this appropriately; (b) an appeal process which allows any complaint about procedural fairness to be rectified; and (c) in more challenging matters, where difficult issues of procedural

fairness arise, the flexibility to deploy decision-makers with suitable expertise in dealing with this issue.

Thirdly, it is desirable to maintain some appropriate separation between: (a) university officers who manage, investigate and instigate misconduct proceedings; and (b) university officers who decide whether misconduct has occurred.

In the context of court proceedings, a distinction is often drawn between an adversarial model (where the decision-maker stands aloof from the contest which is conducted between prosecution and defence) and an inquisitorial model (where the decision-maker has an active role in both investigating and deciding the matter). In both models, the decision-maker is required to be free from bias – or any reasonable apprehension of bias.

In a university context, it is obviously impractical and undesirable to operate a disciplinary system using wholly independent decision-makers. However, it is practical and desirable to maintain a reasonable degree of separation between those staff members who are involved in reporting and investigating misconduct (or, indeed, are the victims of misconduct) and those who determine whether misconduct has in fact occurred.

The model which the University currently operates is a form of the inquisitorial model where, conventionally:

- Steps 1, 2, 3 and 5 above are undertaken by one group of University officials whose role is to receive complaints, investigate them, provide any necessary counselling, decide whether the matter should proceed to a formal hearing and otherwise facilitate the hearing.
- Steps 4 and 6 above are undertaken by a separate group of University officials who receive evidence they consider to be relevant, together with any evidence and submissions from the student respondent, and then determine whether misconduct has occurred and (if so) the appropriate penalty.
- no officers of the University appear to "prosecute" the matter in the hearing before the decision-makers.

At present, there is some potential for individuals to be involved in a matter as both an investigator and decision-maker. This is undesirable.

Save in this respect, however, the present model would seem to be the optimal approach to adopt in the present context. Whilst the decision-makers are not in any sense independent of the University, they have a degree of independence which is apt to promote an impartial approach. It also tends to avoid any suggestion that the decision-maker is acting on evidence and other material which has been privately acquired by the decision-maker, but has not been disclosed to the student (contrary to the requirements of procedural fairness).

3.4 Personnel

The quality of any disciplinary system is highly dependent upon the experience, skills and personal qualities of the personnel involved.

Accordingly, it is very important: (a) to appoint suitable persons to these roles ; (b) to provide them with appropriate training on an ongoing basis; and (c) to install appropriate checks and balances to avoid, or self-correct, any errors which may occur from time to time.

Having interviewed a reasonable cross-section of those involved in dealing with disciplinary matters, we were immediately impressed by their experience, professionalism and compassion. This is one of the great strengths of the University's current disciplinary system – and one we are anxious not to disturb.

Another strength of the current arrangements is the system of checks and balances which is already built into the system. The key elements are:

- the requirement for two different staff members to be satisfied that a misconduct has been established during the triage stage (eg Course Coordinator and Integrity Officer);
- the referral of the matter to a further staff member to make any formal determination of misconduct (or a panel of at least three members for serious matters);
- the ability for students to refer the matter to a panel of at least three different members by way of appeal.

In this way, a seriously contested case of misconduct will need to satisfy between six and nine different persons in the disciplinary system.

These arrangements are designed to ensure a just and consistent approach to disciplinary matters across the university. Again, these arrangements are one of the great strengths of the current system – and there are only minor ways in which we suggest that it can be enhanced.

There is a need for training of the staff and students involved in these processes and to reconsider the management and oversight of cases, including difficult cases.

The current staffing arrangements can most easily be described by working through the seven-step procedure described above.

Step 1 – Complaints Under the existing policies, a very wide network of staff members are authorized to receive complaints of misconduct on behalf of the University.

This network includes: (a) the Course Coordinators of every subject offered at the University; (b) a range of more senior academic staff members; (c) for sexual misconduct matters, a very large network of trained supporters including those in the First Responders Network (FRN) and the Sexual Misconduct Support Network (SMSU); and (d) key personnel in the central administration of the disciplinary system, being the Academic Registrar and the Chair of the Disciplinary Board.

The breadth, diversity and skill-set of this network is very well suited for this role in the disciplinary system. The only recommendation we make is to introduce an online management system, which will allow this network to efficiently record the complaints which they receive. Some action is also needed on templates and resources available to staff to ensure a smooth and consistent approach and some further development of information provided to complainants on the website.

Step 2 – Investigation During the preliminary investigation phase, different processes are followed depending upon the nature of the misconduct.

In academic misconduct matters, the primary responsibility for investigating the complaint rests upon the staff member who initiated the process (eg the relevant Course Coordinator). In conducting the investigation, however, they are required to consult with the relevant Integrity Officer. Integrity Officers are appointed to each academic unit of the University. They are senior members of the academic staff who are specifically responsible for promoting academic integrity in their School, Faculty or other academic unit. In sexual misconduct matters, and other matters where the complaint was received by the Academic Registrar, the primary responsibility for investigating the complaint rests upon the Academic Registrar.

In other general misconduct matters, the primary responsibility for investigating the complaint rests upon the staff member who initiated the process (eg the relevant Course Coordinator). In conducting the investigation, they are required to consult with the Academic Registrar.

None of these staff members are trained investigators. However, the University has an Integrity and Investigations Unit (IIU) which is available to provide specialist investigation services or guidance, as required. The IIU is staffed by a team of experienced and well-trained staff, mostly former members of the police service. They include both male and female members and have specific expertise in dealing with sexual misconduct matters. The investigations undertaken by the IIU produce reports which are thorough, balanced, and clearly set out written evidence which a decision-maker can appropriately act upon (eg transcripts of interviews with witnesses, video evidence etc).

Four points may be made about the investigative process.

First, it is a strength of the disciplinary system that all investigations are supervised by a core network of Integrity Officers and a central senior officer of the University (presently the Academic Registrar). This allows some consistency of control and supervision of the investigation process across the University.

Secondly, it is a strength of the disciplinary system that all investigations can draw upon the expertise of the IIU when required.

Thirdly, as those who undertake the bulk of investigations are members of university academic staff, it would seem that some training will be required to assist them in producing reports which are balanced and provide relevant evidence that can be acted upon by decision-makers.

Fourthly, it is undesirable that the Academic Registrar should have both an investigative and decision-making function in general misconduct matters. A separation between these two functions is desirable, with the investigative function vested in the DSM.

Step 3 – Triage The triage step is a critical step in the process which calls for experienced judgment.

At present, this function is largely vested in the Integrity Officers and the Academic Registrar, with: (a) some administrative functions (eg the issue of allegation notices) vested in the primary decisionmaker; and (b) the power to make interim protection orders vested in either the Academic Registrar (in sexual misconduct matters) or the Vice Chancellor (in other matters).

We strongly support an approach which vests wider triaging powers in this network of Integrity Officers and a suitable central officer. The strength of this approach is that it allows the University's most experienced and skilled officers to use their discretionary judgment to identify the most appropriate way of dealing with the circumstances of each case.

However, we would make three points.

First, we do not believe that it is necessary for the primary decision-makers to have any role in the triaging function. At present, the Integrity Officers (or the Academic Registrar) in fact produce draft allegation notices – with the primary decision-makers then having up to 14 Business Days to decide

whether to issue the notice. In our view, the Integrity Officers (or the DSM) should be responsible for issuing these notices.

Secondly, we believe that the Integrity Officers (and the DSM) should be given wider discretionary powers to resolve disciplinary matters by a counselling approach in appropriate cases. Unless there is a good reason for matters to proceed to a disciplinary hearing, it is desirable that students be encouraged to accept responsibility for their own missteps and voluntarily make amends.

Thirdly, we believe that the Academic Registrar (in all misconduct cases) should have powers to make interim protection orders of a similar kind to those which he or she can make in sexual misconduct matters.

Step 4 – Primary Decision Again, this is a critical step in the disciplinary process, which calls for experienced judgment.

At present, there are three levels of primary decision-makers. The least serious (Level 1) are referred to a single staff member for decision (eg Head of School, Deputy Head of School, Academic Registrar etc). The more serious matters (Level 2) are referred to another single staff member for decision (eg Executive Dean, Academic Registrar etc). The most serious matters (Level 3) are referred to either: (a) the Disciplinary Board, which comprises a panel of at least three people, to deal with matters of academic misconduct; or (b) the Academic Registrar or the Disciplinary Board, to deal with matters of general misconduct. In practice, all decision-makers are assisted by an assisting officer (Secretary). This officer has responsibility for keeping minutes of the proceedings and providing advice to the decision-maker.

Having interviewed a cross-section of staff members who serve as Level 1, 2 and 3 decision-makers, we were again impressed by their experience, professionalism and compassion. These personal qualities are another great strength of the disciplinary process.

However, the policy framework pursuant to which they operate is not ideal.

First, we consider that it is an unnecessary complication in the system to have three levels of decision-makers – particularly when their jurisdiction is determined by the uncertain test of whether the matter is "minimal", "moderate" or "serious" in character. This framework is also likely to lead to jurisdictional complications and objections, particularly where there are multiple charges of differing degrees of seriousness. The key point would seem to be that only the Disciplinary Board should have power to make an expulsion order (or a similarly serious order) – and matters where this kind of order is in serious prospect should be referred to the Board. All other matters should be referred to a network of disciplinary committees which are largely based in the Faculties.

Secondly, it is inherently undesirable that any disciplinary decisions be made by a single person. The second person need not be a senior member of the academic staff. They may be an experienced and knowledgeable person who would otherwise act in the role of Secretary. Given the ease with which matters can be recorded, there is no need for a dedicated minutes secretary.

Thirdly, it is desirable that the Disciplinary Board deal with all matters with serious consequences for students.

Fourthly, it is desirable that all those who serve in a decision-making capacity received appropriate training across all steps in the disciplinary process.

Fifthly, it is desirable that there be greater flexibility in those who serve on these bodies. This allows each matter to be considered by decision-makers with an appropriate skillset. It also allows the

University to deal with situations where the usual decision-maker is unable to act (eg because of a lack of independence in the particular matter or a conflict of interest) – or becomes unable to act (eg because of illness). This flexibility could include both academic and professional staff and external experts as required and appropriate to the matter.

Steps 5 and 6 – Appeals The decision whether to appeal vests solely in the student. The University has no right of appeal. When an appeal is instituted, the Academic Registrar is responsible for the pre-hearing procedural arrangements. The policy then makes detailed provision to identify the appropriate decision-maker for each category of matter – based upon whether it is a Level 1, 2 or 3 matter, and whether it involves academic or general misconduct. Appeals from the Disciplinary Board are heard by the Senate Discipline Appeals Committee – a body of five, constituted by two senators (who are not academic staff and are appointed by the Senate, one academic board member (appointed by the Chancellor) and two students (appointed by the Chancellor). A quorum of four is required.

The views we have expressed above, in relation to procedural administration, apply equally to this process. These matters should be dealt with by the DSM.

Similarly, the views we have expressed above, in relation to the Disciplinary Board, apply equally to the SDAC. There is a need for appropriate flexibility in the composition of this body, so it has the combination of skills which are most appropriate to deal with the particular matters which may come before it. These skills may relate to particular disciplines (eg in relation to research misconduct), complex administrative issues, or to mental health issues (eg where the student suffers from this condition) or to the proper conduct of legal proceedings (eg where a dispute gives rise to complex legal or factual disputes). For reasons explained further below, we do not consider that this body should be, in any sense, a sub-committee of Senate.

Step 7 – Enforcement Enforcement of any determination is the responsibility of the Academic Registrar. If necessary, the University's security staff or the police may be involved. We do not suggest any change to this approach.

3.5 Policy Framework

The policy framework which underpins the student disciplinary policy is complex – and in some respects unsuited to its purpose.

The starting point for any disciplinary system is a policy which defines the *enforceable* duties and responsibilities of students – being duties which, if breached, will involve *misconduct*.

Ideally, these duties would be collected together in a single document. In principle, an approach of this kind would give effect with basic principles of fairness – so those who are governed by rules can readily identify what is required of them. In practical terms, this approach would also assist the University in educating its students about these requirements – and minimize the scope for students to complain that they were not aware of their responsibilities.

There is presently no single document of this kind.

There is a Student Charter (Policy 3.60.1). However, this is properly described as "a summary of mutual aspirations and expectations of the UQ community". It does not seem to be a statement of enforceable duties, any breach of which would constitute misconduct (see, eg, "We expect you to…treat other members of the University community with respect and courtesy…"). To similar effect is the Higher Degree by Research Candidate Charter (Policy 4.60.02).

There is also the Sexual Misconduct Policy and Procedures (Policy 1.50.13). This policy "prohibits all forms of Sexual Misconduct and requires all members of the UQ Community to comply with this prohibition". That would seem to be intended to create an enforceable duty. However, the policy goes on to state that "Sexual Misconduct as defined in this policy <u>may</u> amount to 'misconduct'...for the purposes of the Student Integrity and Misconduct Policy" (emphasis added). This suggests that not all "Sexual Misconduct" will constitute "misconduct". This apparent contradiction may, perhaps, be explained by the imprecise definition of Sexual Misconduct as "a broad term encompassing any unwelcome behaviour of a sexual nature without Consent". This definition is to be contrasted with the more precise, and legally established, definitions of "Sexual Offence" and "Sexual Harassment".

There is also the UQ Model Code for the Protection of Academic Freedom of Speech and Academic Freedom (Policy 1.00.01 Schedule), which sets out principles to be taken into account when drafting new policies. However, the task of applying these principles to help define the boundaries of misconduct has not yet been undertaken.

There are also numerous other policies which each contain requirements, the breach of which may fall within the definition of "misconduct" under the Student Integrity and Misconduct Policy (Policy 3.60.04). For example, "research misconduct" under that policy is defined as "a failure to comply with the principles or specific provisions of University policies relating to the conduct of research".

Finally, there are the extensive definitions of "academic misconduct" and "general misconduct" in the SIMP (clause 6.1-6.3 and associated definitions).

It would be desirable if these various sources of information about what constitutes "misconduct" could be drawn together and reconciled.

The second requirement for a disciplinary system is a policy which defines the procedures to be adopted. This topic is largely codified in the SIMP.

However, some procedural matters concerning early steps in the process are to be found in the Sexual Misconduct Policy and Procedures and the Research Misconduct – Higher Degree by Research – Procedures (Policy 4.20.10).

Extensive work has been undertaken, with the assistance of external lawyers, to prepare a revised draft of the SIMP. We found this a very useful document, which identifies and rectifies a number of particular problems with the existing SIMP. In this report, we have not sought to list all these matters of detail and set out our views on each of the suggested changes. That is because, when we consulted the principal users of the SIMP, they did not wish to see the SIMP simply revised. They expressed a strong preference for a simpler and more flexible approach. Accordingly, the focus of this paper has been on issue of principle, rather than issues of detail. However, the detail contained in this carefully prepared revised document should be considered when a new SIMP is prepared.

Extensive work has also been undertaken, with the assistance of a different firm of external lawyers, to prepare a revised draft of the Sexual Misconduct Policy and Procedures. This would have been a challenging document to prepare, because it is seeking to deal with a problem which has implications for a number of disparate aspects of university life, including: (a) student and staff education; (b) the culture of the University community and its environment; (c) support and reasonable measures for victims; (d) workplace relations and proceedings against staff; (e) disciplinary proceedings against students; and (f) victimization.

As with the redrafted SIMP, we are concerned that these policy documents may be overly complex and difficult to follow for those who are affected by them.

On points of substance, however, we make the following observations.

First, it is critical that this policy distinguishes between enforceable duties (a breach of which would involve misconduct) and more general statements of responsibility. For example, the statement that "all members of the UQ Community are required to take all reasonable steps to maintain a safe and respective environment at or related to UQ" imposes a very broad obligation. Is it intended that any breach of this clause would be misconduct?

Secondly, where enforceable duties are involved, care should be taken to ensure that the duty is framed with clarity and is not unduly wide. Mention has already been made about the width and uncertainty of the concept of "Sexual Misconduct", which continues to be adopted in the new draft of the policy. Similar concerns arise in relation to the definition of "Victimisation", which does not follow the substance of the definition in the *Anti-Discrimination Act 1991* (Qld).

Thirdly, it is important that the Sexual Misconduct Policy and Procedures and the SIMP operate harmoniously. The key points are that:

- there needs to be clarity about the position where a victim makes a disclosure to University staff but wishes to maintain confidentiality – so that university staff are permitted to respect this confidentiality and not engage the SIMP without the victim's consent.
- there needs to be a clear point when the terms of the SIMP are engaged and this would ordinarily seem to be when a Formal Report under the Sexual Misconduct Procedures is received by the Academic Registrar (or other designated officer under the SIMP).
- during the investigation phase under the SIMP there should be guidelines about the involvement of support staff in any interviews with the victim.
- during triage phase under the SIMP, the powers of the Integrity Officer (or DSM) should be sufficiently broad to allow cases of this kind to be dealt with in accordance with the wishes of the victim, where that is appropriate (eg by counselling, apology, education etc).

3.6 Difficult Matters

The vast majority of disciplinary matters give rise to no particular difficulty. They concern isolated acts of misguided conduct by students, which are easily proved, which do not cause any specific harm to others in the University community, and which can be quickly and fairly processed and resolved.

In our view, it is important that student disciplinary policies be framed with this core category of case clearly in mind – with a simple and practical approach adopted.

However, the disciplinary system must also be sufficiently flexible to deal with difficult cases when they arise.

Accordingly, in our view, it is important that we seek to identify these categories of case and consider how the disciplinary system should deal with them.

First, there is the situation where the University experiences an unexpected spike in misconduct matters, arising at the same time in the same unit of the University. In our view, this requires the University to have flexibility: (a) to be able to resolve matters consensually, without formal hearings, if possible; or (b) to engage a number of decision-makers, within the one unit of the University or across the University, to provide the formal hearings required.

Secondly, there are misconduct cases which require special subject matter expertise (eg research misconduct matters). In our view, this category of case may best be resolved by involving a decision-maker (as part of the relevant panel) who has this expertise.

Thirdly, there are misconduct cases which arise from a student's mental health issues. In our view, this category of case may best be resolved by involving a decision-maker (as part of the relevant panel) who has expertise in this area.

Fourthly, there are misconduct cases which give rise to questions about the conduct of the University itself (or its staff). This gives rise to two main complications. First, there is the problem of ensuring that the decision-makers have an appropriate degree of impartiality. This problem can be dealt with by having sufficient flexibility to appoint a panel which is free from any actual or apparent bias. Secondly, there is the potential problem of parallel processes against the staff member. This is unavoidable. If an allegation is made against a staff member in the handling of a misconduct matter that needs to be investigated, then the University would need to manage this under the Enterprise Agreement. If allegations are made against an individual who is both a staff member and a student, then a judgment call would need to be made about whether the alleged conduct occurred as a result of behaviour by the individual acting as a student or as a staff member to determine the relevant policy/enterprise agreement process to follow.

Fifthly, there are misconduct cases which involve difficult legal, procedural or factual questions or which are being contested in a combative or legalistic way. In our view, this category of case may best be resolved by involving a decision-maker with expertise in dealing with matters of this kind (eg a serving or retired Judge).

Sixthly, there is the difficult category of case where: (a) disputed questions of fact are involved; (b) these questions depend upon a decision about which of competing witnesses is to be believed; and (c) the result of this determination may have very serious consequences for the reputation and career of the student. Cases of this kind can arise in a range of contexts, from research misconduct to sexual misconduct. They typically involve disputes about consent. As has already been observed, these cases are not naturally suited to resolution by a student disciplinary process. If they arise, however, they need to be dealt with. In our view, these matters are best resolved by involving a decision-maker with judicial expertise – and perhaps also a lawyer to act as counsel assisting the tribunal. On this approach, the proceedings are likely to be managed within the bounds of reasonableness – with expert questioning of the student undertaken (if necessary).

Finally, there is the category of case mentioned above where: (a) a person has been the victim of a sexual assault, violence or other forms of intimidation; (b) the victim wishes to have action taken; but (c) the victim wishes to remain anonymous or, at least, not become involved in confrontational proceedings. In our view, unless the relevant acts can be proved without the victim's assistance, it is most unlikely that it could be prosecuted. In this event, the disciplinary system can only deal with the matter of this kind through counselling of the perpetrator – which may well be successful in cases of genuine remorse or in cases where the perpetrator fears that criminal or disciplinary proceedings may otherwise follow.

In difficult matters, consideration should be given to the oversight of the case and the escalation of responsibility for this oversight. This can be complicated. For example, it is not difficult to imagine a situation where the Chancellor and Vice-Chancellor become directly involved in a student disciplinary matter (eg as the victims of the alleged misconduct) - and other senior executive officers of the University are unable to become involved in the management of the matter as they are

potentially involved as decision-makers (eg Chair of the University Disciplinary Board). In these circumstances, typically, the oversight role would fall to the Deputy Chancellor and Provost.

We return to the problems of difficult matters at section 4.27 below.

3.7 Victim Support Services

We were satisfied that the University offers a high standard of support for victims of crime – and would not suggest any changes to this system.

The availability of the support service seems to be well publicized (respect.uq.edu.au) and provides a prompt and co-ordinated response by a large number of units across the University.

First, the University has a team of security staff, who are available to respond at short notice to provide physical protection and support for students on campus.

Secondly, there is a network of trained first responders, based across the University, who are able to provide immediate support and guidance to victims of sexual misconduct.

Thirdly, there is the University's student services team, which is able to act on short notice to assign appropriately-skilled counsellors to provide ongoing one-on-one support to victims of sexual misconduct, and deal with any immediate academic, accommodation, financial, protective and other practical issues which require attention on their behalf.

Fourthly, the Academic Registrar of the University is available on short notice to facilitate any interim security arrangements or other reasonable measures which are necessary to protect victims of alleged misconduct or the wider University community.

Finally, there is the University's Integrity and Investigation Unit, which has the specialized training and expertise required to investigate and assemble the evidence required to initiate student misconduct proceedings in relation to matters of this kind.

We were again impressed by the professionalism and compassionate approach of the staff we interviewed from the University's student services team and the Integrity and Investigation Unit. However, given the number of staff involved in providing support, there are opportunities to improve the information available on the website, utilize the benefits of an online management systems across the different support areas and develop templates and resources to ensure a smooth, coordinated approach. Further information is provided below.

3.8 Student Grievance Procedures

It is appropriate to mention that the University has a Student Grievance Resolution Policy and Procedures (Policy 3.60.02). These policies provide a procedure by which students can complain about the conduct of other students, as well as about conduct by the University and its staff.

It does not appear to have any material impact upon the present review because: (a) we have seen no evidence of the University not following up complaints made about students under the SIMP; and (b) we have seen no evidence of students seeking to respond to investigation under the SIMP by commencing their own grievance action against the University.

3.9 Research Higher Degree Misconduct Procedures

Research misconduct by higher degree by research students is governed by the Research Misconduct Higher Degree by Research Students (Policy 4.20.10).

This policy creates a series of preliminary procedures which are specially designed to investigate claims of research misconduct, before the SIMP is engaged.

Because of the complexity of the issues involved in this area, this would seem to be a most desirable approach – and one which we have been advised is working well.

However, in matters which do progress to be dealt with under the SIMP, this category of case gives rise to particular difficulty. Accordingly, it is important that this category of case be given special attention.

3.10 Governance

At present, there are essentially three ways in which appropriate governance of the disciplinary system is undertaken.

First, there are controls upon the appointment of the key personnel who have responsibilities under the disciplinary system. At the highest level, these controls are exercised by:

- the Senate in appointing two members of Senate (who are not academic staff members) to the SDAC.
- the Chancellor in appointing an academic staff member and two students to the SDAC.
- the Vice-Chancellor in appointing the members of the Disciplinary Board.

Secondly, there are the usual controls exercised through the regular reporting channels within the University. These controls are assisted by useful quantitative data, including the number of disciplinary matters and the number of appeals.

Thirdly, there is the direct knowledge of the operation of the disciplinary system which is gained by the two Senators who serve on the SDAC.

3.11 Assessment

In our view, the student disciplinary system appears to be dealing with reported cases of student misconduct efficiently, justly and empathetically. Many matters are being dealt with through a purely educative response (eg by warning and counselling). Those matters which proceed to a formal disciplinary hearing do not generally result in any serious contest – and the outcome is rarely appealed.

In our view, this is largely due to the skills, experience and commitment of the University officers who are involved in administering the disciplinary system. Having interviewed a reasonable cross-section of these officers, we are anxious not to disturb this considerable strength of the disciplinary system.

By its recent efforts, the University has succeeded in developing effective, responsive and compassionate systems to support students who have been the victims of crime, including sexual assault. These systems are based upon a co-ordinated response from a number of different agencies within the University. Again, these systems are a considerable strength of the University's approach and ones which we do not wish to disturb.

However, there are a number of looming challenges to the disciplinary system which are a cause for concern and require further action.

There is a high level of consensus, from those directly involved in administering the student disciplinary system, that these challenges require a new approach to the policy framework governing student discipline. A simplified and more flexible approach is favoured – rather than a variation on the existing approach, as is currently proposed.

We support this consensus approach and believe that it can be implemented with very little practical impact upon the day-to-day operations of disciplinary system. That is because it involves, to a very large extent, the same team of people continuing to perform their existing functions – but working within a simplified and more flexible policy framework.

4. Recommendations

4.1. Simplification

Recommendation: We recommend that the relevant policies be simplified, so that they can be more easily read, understood, and applied by all members of the University community.

This recommendation received strong support during the consultation process.

A degree of complexity is, of course, unavoidable in policies of this nature. Complexity can also bring the benefit of certainty. However, the current policies – and the proposed redrafts - have a degree of complexity which the principal users of the policies consider to be undesirable. We agree. Policies of this nature must be workable in a university context. They need to be easily located, read and understood by the students who are affected by them, and easily read and followed by the staff who are seeking to apply them.

The most significant points which call for simplification are specifically identified below.

4.2 Flexibility

Recommendation: We recommend that the student misconduct policy should be framed in a less prescriptive way. It should be framed with greater flexibility, so that the disciplinary process can be adapted to suit the more challenging circumstances which can arise.

This recommendation received strong support during the consultation process.

Policies in this area require a degree of rigidity to provide sufficient clarity and certainty. This particularly applies in: (a) defining the concept of "misconduct"; (b) defining the jurisdiction of the disciplinary bodies; and (c) defining the range of penalties or other orders that can result. Beyond these areas, however, a degree of flexibility is desirable to allow the disciplinary system to deal efficiently and effectively with the unpredictable range of circumstances which may arise.

In contentious matters, this approach also tends to remove the scope for unnecessary legal disputes about whether there has been compliance with the procedural requirements of the policies.

We are concerned that flexibility may be perceived as the opportunity to extend timelines unnecessarily. The current policy provides timelines that appear to be relevant in most cases. However, there needs to be the capacity to extend these timelines in some matters.

The most significant aspects of the system which call for greater flexibility are identified below.

4.3 Prevention

Recommendation: To respond to the upward trends in student misconduct, we recommend that the University continue to take a strong preventative approach. This will require a co-ordinated use of a number of strategies. These strategies should include: (a) effective student education; (b) monitoring academic assessment practices to assess vulnerability to misconduct; (c) using sampling tools to detect suspicious behaviour; and (d) seeking to deter misconduct, through the high risk and significant consequences of detection.

In our view, these strategies should be founded upon the assumption that new students: (a) may have no conception of what good academic practices are; (b) may have very little understanding of

the boundaries of acceptable personal interaction; (c) are likely to learn from other students about, and be tempted to adopt, any dubious practices which are in use; and (d) may have no real appreciation of the risk of detection and the personal consequences for them of any misconduct proceedings.

In our view, four key strategies are required to deal with this problem.

First, effective educational strategies are required to ensure students are: (a) aware of the standards expected of them; (b) warned of the risk of detection; and (c) understand the personal consequences of transgression.

We are attracted to an approach which includes:

- providing all students with a relatively simple document which clearly explains the enforceable standards expected of them (*Code of Conduct*).
- a compulsory online course for all students which: (a) clearly and specifically explains, in a
 positive light, the *academic* standards expected of them and the reasons for those
 standards; (b) gives specific examples (drawn from observable trends in misconduct) of what
 is unacceptable conduct (eg contract cheating) and how readily it is detected; and (c)
 explains the serious consequences of misconduct (eg disciplinary proceedings, failure of a
 subject, and an adverse mark on their student record).
- a compulsory online course for all students which: (a) clearly and specifically explains, in a
 positive light, the *personal* standards expected of them as part of the University community
 and the reasons for those standards; (b) gives specific examples (drawn from observable
 trends of misconduct) of what is unacceptable conduct (eg stalking, bullying, sexual assault
 etc) and how readily it is reported; and (c) explains the serious consequences of misconduct
 (eg criminal or disciplinary proceedings, suspension or exclusion etc).
- consideration about the timing of these online courses. Some universities have made completion of such online courses a part of their enrolment processes. Another approach is to ensure completion of courses is undertaken before the end of first semester, once students have a better understanding of the education environment in which they operate. A third option is to ensure that students undertake a very general course as part of their enrolment process and complete the full online courses before the end of first semester.
- a programme of more specific ongoing campaigns, driven by the current data being collected concerning student misconduct, which are more specifically focused upon: (a) issues which are known to affect a particular student cohort (eg international students); (b) issues which are known to affect particular disciplines or subjects; or (c) issues which concern particular types of misconduct.

Secondly, in relation to assessment practices, this issue is no doubt considered as part of accreditation/reaccreditation processes of programs through Academic Board and in some cases through external accreditation bodies. The quality assurance role of Academic Board may include receiving reports on academic integrity, including academic misconduct. Such reports could inform program design principles to be used as part of the review undertaken of each program as they undergo accreditation/reaccreditation.

Thirdly, to assist in uncovering and deterring misconduct, we are attracted to the use of efficient sampling practices, across the University, which are apt to detect misconduct (eg routinely searching for a significant absence of correlation between a particular student's results in invigilated examinations and the results of their assignment work; routinely checking a sample of medical

certificates for authenticity etc). The university is likely to be using electronic detection methods to assist in uncovering forms of academic misconduct. While this is a difficult area, improvements are constantly being made in detection methods to assist the growing industry of academic misconduct.

Fourthly, to achieve any level of deterrence, it is critical that students believe that serious misconduct is likely to be discovered and prosecuted. This is a strategy which should underlie the whole approach to the disciplinary system – including giving appropriate publicity to some of the routine detection practices which are used and the consequences that have occurred.

4.4 Online Management

Recommendation: Given the volume of misconduct matters which need to be managed, we recommend that the University introduce a new online misconduct management system. We understand that the University has approved the procurement of such as system. This system does not need to be particularly complex, but should allow: (a) the progress of individual misconduct matters to be appropriately monitored and managed; (b) prior allegations of misconduct by a particular student to be easily identified; (c) trends across the University to be identified and acted upon; (d) the consistency of approach across the University to be monitored; and (e) guidelines to be developed to promote the imposition of consistent penalties for similar misconduct across the University. This system would seem to be critical to any effective preventative strategy.

As we have noted, the annual volume of misconduct matters which are being managed is already quite substantial (about 1600 per annum) – with a significant risk that this volume will increase over time. Difficulties in managing these workflows also arise because of the decentralized way in which misconduct matters are processed. There is also the problem of attempting to detect trends in the data, including any problems of inconsistency of approach across the University. All of these factors suggest that it is not feasible to manage misconduct matters without an effective online system. The minimum functionality required from this system would be to allow authorized persons:

- to record the details of all complaints of student misconduct received by the University, including: (a) the name of the student and their Faculty or School; (b) the nature and category of complaint; (c) the date and source of the complaint; and (d) whether any interim action was urgently required.
- to track and record the progress of the procedural steps taken to deal with the complaint, including: (a) any decision that there was no case to answer (with brief reasons); (b) any decision to deal with the complaint by administrative warning and direction (with brief reasons); (c) any decision to assign the complaint to a particular decision-maker; (d) any decision to take interim action; (e) any decision by a primary decision-maker (with brief reasons); (f) any appeal and decision by a secondary decision-maker (with brief reasons); and (g) details of compliance or non-compliance by the student with the penalties or conditions imposed.
- to record any disciplinary orders which are to form part of the student's record.
- to search the database for prior allegations of misconduct by a particular student, whenever a new complaint of student misconduct is received.
- to extract and analyse data across the University, to identify: (a) significant trends in the data; (b) consistencies or inconsistencies of approach across the University; and (c) the appropriate range of penalties which are conventionally imposed for particular categories of misconduct.

4.5 Disciplinary System Manager

Recommendation: Given the volume of misconduct matters, we do not consider that it is viable or desirable for the Academic Registrar to continue to perform all of the roles which are currently assigned to this officer under the current misconduct policies. We recommend that the University create a new position for a senior administrative officer who can take primary responsibility for managing the student disciplinary system. For the purposes of this report, we have called this officer the Disciplinary System Manager (*DSM*). Again, having the services of an officer of this kind would seem to be critical to any effective preventative strategy.

Until now, it has been feasible for the Academic Registrar – amongst his or her many other roles - to have responsibility for carrying out a number of important functions in the student disciplinary system. These functions include: (a) a role in the investigative phase of all misconduct matters; (b) a decision-making role in matters of general misconduct; and (c) a managerial role in administering the student disciplinary system generally across the University.

Given the volume of misconduct matters which are now being managed, we do not think that this approach will be workable in the longer term. In our view, the time has now come for a specific officer to be appointed to a senior administrative role, with responsibility for managing all aspects of the student disciplinary system across the University. This also brings about a desirable division between: (a) those who manage or investigate misconduct; and (b) decision-makers in misconduct matters.

The specific roles which the DSM may serve in the disciplinary system are explained further below. This position will be critical to the future direction of the discipline system. Therefore, priority should be given to recruit to this role as considerable work will be required to execute all elements of an Implementation Plan.

4.6 Jurisdiction – Students

Recommendation: We recommend that the jurisdiction of the University's disciplinary system over students be clarified, to confirm that this jurisdiction does not necessarily lapse if the student has ceased to be enrolled. Disciplinary orders which may be required in this situation should be included in the policy.

The disciplinary system has always had jurisdiction over current students. However, the Court of Appeal held in *University of Queensland v Y* [2020] QCA 216, that the student disciplinary policy was not intended to maintain jurisdiction over former students, there being no penalty which could be effectively applied in this situation.

In our view, it is desirable that this outcome be reversed. At present, students can avoid disciplinary proceedings by simply terminating their enrolment – and can then seek to finish their studies elsewhere (or even at the University at a later date). The University should have the power, in appropriate cases, to pursue disciplinary proceedings against former students in relation to their conduct as a student. It should also have wider powers to make appropriate orders (eg orders preventing re-enrolment). Problems can also arise when it is later discovered by the University that a former student's academic results (or degree) were obtained by misconduct. Again, the University should have the jurisdiction, in appropriate cases, to pursue these disciplinary proceedings and make appropriate orders (eg revoking any degree).

This recommendation has given rise to some concern in the feedback we have received. In our view, it is clear that the University needs to have at least some jurisdiction to deal with former students. An obvious example is the student whose qualification for a degree (or credit for a subject) may be questionable because of a later finding of cheating. On the other hand, the University in many cases will have no interest in pursuing former students who, after apparently committing some act of general misconduct, have left the University. In principle, there are only two ways of dealing with this situation. The University can either: (a) seek to create rules to define the circumstances in which former students can be pursued; or (b) create a broad jurisdiction over former students, but leave it to a discretionary judgment in the triaging process to determine whether to proceed with the matter. In general, rules are difficult to establish because: (a) it is hard to predict every situation which may arise and provide for it; and (b) it creates complexity in the system and potential for dispute. Our preference would be to leave it to the discretion of the triaging officer with guidelines to assist them.

4.7 Jurisdiction – Nexus

Recommendation: We recommend that the jurisdiction of the University's disciplinary system over students be clarified, to confirm that it applies to any conduct of a student which has a specified nexus to the University or which affects their suitability as students. In our view, an appropriate nexus to the University will exist where the conduct occurred either: (a) on property owned or occupied by the University or a University-affiliated residential college; or (b) in relation to any academic or work experience programme which has a connection to the University; or (c) in relation to another member of the University community (eg conduct towards another student). A suitability issue will arise if the student has engaged in a serious breach of the criminal law, regardless of whether that conduct has any nexus to the University.

Doubts have arisen about the extent to which the University's disciplinary system should have jurisdiction over the private lives of its students – including conduct at the residential colleges which are affiliated with the University. This is a difficult issue of policy which the University will need to consider.

We consider that these doubts should be resolved, by adopting an approach which reflects the underlying principles governing the University's disciplinary system.

It is clear that the standards of conduct set by the University are intended to apply to all conduct on the University's various campuses and is most readily accepted in terms of misconduct in a lecture room during a course.

In our view, these standards of conduct should also apply to conduct in University-affiliated residential colleges. Whilst these colleges are separate and self-governing bodies – and have every right to set their own standards of conduct and enforce their own disciplinary processes - it is artificial to suggest that University-wide standards should cease to apply at the college gate. Indeed, some College policies already refer to the University's policies, listing resources offered and allowing students to determine whether sexual misconduct matters, for example, are dealt with by the University or by the College. It therefore seems to us that collaboration between the University and the Colleges is both desirable and possible. It would be important to consult with Colleges on this matter though rather than advising them of a decision made about this. This consultation could also cover the information sharing with Colleges raised by TEQSA in its recent Compliance Assessment report.

It is clear that these standards of conduct should also apply to off-campus conduct in the course of academic or work experience programmes which have a connection to the University.

In our view, however, these standards should also extend to any off-campus conduct by a student in relation to other members of the University's community. In principle, that is because a university is essentially a scholarly community – and its standards of conduct are those which are intended to govern relationships within that community. The issue may be tested this way. If one student assaults or racially abuses another student of the University, does it make any difference in principle whether this occurs: (a) in a lecture room; (b) walking between lectures; (c) walking home from lectures; or (d) on a social occasion in a private home? In all cases, the root of the problem is that the conduct offends against the norms of behaviour which apply within a scholarly community.

Of course, every time the nexus between student conduct and the university is widened, there is scope for disagreement. Some may not want the nexus to be extended to conduct at residential colleges or UQ managed accommodation. Others, however, would think that this is clearly within the appropriate nexus range.

In principle, however, there are only three main ways of dealing with this problem – each of which has its own difficulties:

- the first approach would involve having a nexus which is narrow and relatively certain in application (eg conduct on campus or during work experience). The difficulty with this approach is that its boundaries are somewhat arbitrary, and it does not capture conduct which most people would think should be subject to disciplinary proceedings (eg an assault of a student by another student just outside the campus boundary).
- the second approach is to have a nexus which is wider but uses a criterion which is more debatable in application (eg conduct "in relation to" the University). The difficulty with this approach is that it is apt to create issues, in individual cases, about whether the University has jurisdiction over a particular matter. For example, in the case of an off-campus assault by one student against another, it is not obvious how a disciplinary body would determine what kinds of assault have the requisite nexus to the University.
- the third approach is to have a nexus which is wider but uses a criterion which is relatively certain in application. This is the approach we have recommended. The difficulty with it is that it potentially involves UQ's disciplinary system in a wide range of student-to-student conduct, which has a relatively weak nexus to the University. However, this approach is preferred because: (a) it accords with the underlying principles of adopting standards of conduct in a scholarly community; (b) it avoids complexity and uncertainty in the application of the policy, with students debating whether or not the nexus requirement is satisfied in particular cases; (c) in practice, if the triaging officer has a wide discretion to deal with these situations with a weak nexus to UQ via counselling and direction, then it is unlikely to cause practical difficulties for the operation of the disciplinary system and may well promote a more harmonious university; and (d) it will assist the University in satisfying its duty of care.

Whilst the University may generally have no legitimate interest in how a student behaves towards strangers in their leisure time, there seems to us to be a difference when the student engages in a serious breach of the criminal law. That is because conduct of this kind casts doubts on their suitability to remain a member of a scholarly community. The issue may be tested this way. If a student commits an act of murder, is their suitability to continue with their studies really affected by whether the act was committed on campus or on Hawken Drive?

Further work is required to define the kind of criminal conduct (unrelated to UQ) that gives rise to suitability issues. In broad terms, we consider that this conduct should include: (a) any conviction which results in a sentence of imprisonment (whether or not the sentence is suspended); and (b) any conviction for an offence which involves an actual, threatened or attempted act of violence against a person.

4.8 Code of Conduct and Definition of Misconduct

Recommendation: We recommend that any *enforceable* standards of student conduct should be defined in a separate Code of Conduct. This will allow: (a) students to be more effectively informed of their duties, by reference to a simpler document; (b) the student misconduct policy to be simplified, by removing the detailed definitions of misconduct; (c) the standards to be defined by reference to underlying principles; and (d) common categories of misconduct to be defined with appropriate clarity and without undue width. Further work to refine these definitions is required.

There are three main problems here.

First, if prevention of misconduct is a key object, then it would seem to be important that all students have ready access to a single document – with a self-evident name (Code of Conduct) - which clearly explains their duties and why those duties exists. This object is not served if the governing standards of conduct are not easily found or are incorporated in policies which deal with other matters. To some extent, this problem can be relatively easily resolved by moving the definitions of misconduct from the student misconduct policy to a new Code of Conduct. The main difficulty arises because misconduct is defined to include a breach of *any* policy of the University. Further work is required to determine whether this category is truly necessary.

Secondly, it is important to maintain a clear distinction between aspirational statements of what is expected of students and prescriptive statements of enforceable standards of conduct. The present Student Charter falls largely within the former category. The present student disciplinary policy – and any Code of Conduct - is concerned with the latter category. The potential ambiguity between these two distinct kinds of requirement provides another reason for making the Code of Conduct a self-contained code of enforceable standards of conduct. A Code of Conduct can, of course, begin with statements of principle or aspiration which provide a basis to interpret the enforceable standards of behaviour which follow. However, the enforceable standards of conduct need to be defined with appropriate clarity and without undue width.

Thirdly, it is quite difficult to formulate an appropriate definition of misconduct. Having reviewed the policies from a number of universities, we have not found any one model which is entirely acceptable. From our examination of these policies, however, a number of important points emerge.

It seems to us to be unavoidable that each common category of misconduct should be dealt with separately. This approach is necessary to clearly convey to students; (a) that this category of conduct is unacceptable; and (b) the scope of the conduct which is unacceptable. This means that definitions of misconduct will necessarily be quite long. For reasons explained further below, a key category of misconduct should also be the failure to comply with an express direction by the University to comply with the Code of Conduct.

It seems to us desirable that, standing above all this detail, there should be an over-arching definition of misconduct and a statement of the governing principles and purposes. This approach has two main benefits: (a) it helps decision-makers to apply the Code of Conduct consistently with its

underlying principles and purposes; and (b) it also allows disciplinary action to be taken in a novel situation which does not squarely fit within an established category of misconduct. The kind of general definition we have in mind is:

"Misconduct means any conduct, by a student, which fails to meet the standards of reasonably acceptable academic and general conduct which are conventionally observed at the University".

It is very easy for definitions of misconduct to be framed too widely or without any appropriate content. Examples of this can be seen in the current policies, which:

- define academic misconduct as conduct that "hinders the pursuit of academic excellence" (which seems too wide and uncertain) or conduct which involves seeking advantage "through improper use of University facilities, information or the intellectual property of others" (which begs the question of what is "improper").
- define general misconduct as any conduct which "impairs the reasonable freedom of others" (which again seems too wide because it covers any act of impairment, regardless of degree or circumstances).
- define sexual misconduct as "a broad term encompassing any unwelcome behaviour of a sexual nature without Consent". This gives rise to particularly difficult issues, which are considered further below.

In our view, this concern requires detailed consideration of each category of misconduct. To a large extent, this work has already been undertaken in the redraft of the student misconduct policy, but some further refinement is required.

Some consideration should be given to incorporating into the definition of misconduct the concept of acting "without reasonable excuse". Under the criminal law, there are only limited categories of offences which impose strict liability – where no excuse is allowable. In general, the law accepts that conduct which would otherwise be unlawful may be excusable for a range of reasons (eg an unexpected medical episode which causes a traffic accident). So there is some reason for incorporating a similar exception in the student disciplinary context. The main concern is that an exception of this kind will result in the disciplinary system being bogged down with students relying upon invalid excuses (eg claims that they were told by other students that the conduct in question was acceptable) – rather than relying upon these excuses in mitigation of penalty. This issue requires further consideration.

The issue of the use of social media has been mentioned previously and concern raised that its use has increased significantly. The University no doubt encourages the use of social media generally but would not condone its misuse. Misuse could be covered in a Code of Conduct with a definition of conduct covered by misconduct proceedings such as –

"Publishing material, which is abusive, offensive, vilifying, harassing or discriminating about another student or an officer of the University in any forum or medium including digital media or communication technologies."

Finally, in framing these definitions, it is important to take into account the University's adoption of the *Model Code for the Protection of Freedom of Speech and Academic Freedom*. Whilst the Model Code is expressed as a statement of principle, these principles need to be applied to student conduct in a way which is practically workable.

4.9 Complaints

Recommendation: We do not recommend any material change to the way in which the University receives complaints of student misconduct. We recommend, however, that the sexual misconduct policy makes it clear that all University staff, who are informed confidentially by a victim (or someone acting on their behalf) of a complaint of sexual misconduct, are entitled to respect the confidentiality of that information. This recommendation is subject to legal analysis of the implications, if any, of such an approach upon the University's duty of care. It is fundamental to an effective student disciplinary system that anyone, including members of the public, who become aware of significant misconduct should be able to readily complain of that misconduct to the University.

In our view, the University already has effective systems in place to receive complaints of this nature. However, some action is needed on information contained on the University's website and resources available to the network of staff involved in complaints.

There is a webpage which allows a range of complaints to be made. This webpage readily appears when a web search is undertaken for "complaint misconduct student UQ". The webpage includes a specific panel for complaints about sexual misconduct - but could perhaps be improved by including a more general panel for complaints about students. However, as advised by TEQSA in their recent Compliance Assessment report – "While the UQ Respect website contains easy to understand information, resources and contact points, information about SASH is not easily located on the UQ website or the student portal my.UQ." This advice includes information on word searches and points out the difficulties of students from non-English speaking backgrounds and survivors/victims of SASH needing to search relevant information quickly and easily which may reduce the likelihood of them engaging with the University's services and reporting SASH matters. At present, the wording on the website could be perceived as University-centric and not student-centric. Feedback from students on the information on the website and the language used is critical in this area given the difficult circumstances students may be in when undertaking searches for obtaining help.

Within the policies, the University has also created a wide network of staff who are authorized to receive complaints about academic, general or sexual misconduct – and who are then required to consider those complaints.

It would be desirable, of course, for all these avenues for complaint to be funneled into an online misconduct system. This would certainly enhance a warm hand-over approach (ie without the need to continually repeat the events that led to the complaint when students need to be referred on or assisted by different groups). It would also be desirable to develop fact sheets and other relevant information for this network of staff to ensure consistency of approach. There could be the impression of the approach being reactive or ad hoc particularly when a complaint is initially received. A little more structure around responses, roles and responsibilities is required.

The one difficult area concerns complaints about sexual misconduct. It is critical that victims of sexual misconduct feel confident in seeking support from the University. In practice, however, this creates a difficulty because: (a) many victims wish to confide in supporters, at least initially, on a confidential basis; but (b) supporters may be concerned that they have a conflicting duty to report alleged perpetrators of sexual misconduct to the University authorities.

We think that this position should be clarified. In principle, whether or not the supporter is a health professional, it should be clear that they are entitled to maintain the confidentiality of any report of

sexual misconduct made by a victim (or on their behalf) on a confidential basis – unless, of course, there is some overriding statutory obligation to do otherwise.

In dealing with this issue, it is desirable that further consideration be given to the related question of how such an approach may affect the University's risk of civil liability. This risk arises in cases where a victim of subsequent misconduct complains that their harm was caused, in part, by the University's failure to act upon an earlier report. In broad terms, there are two main ways of dealing with this risk – neither of which is very attractive. One approach is to require staff to report allegations of sexual misconduct, regardless of the wishes of the victim. There are obvious difficulties with this approach, as it effectively prohibits support staff from speaking to victims on a wholly confidential basis. Paradoxically, it may also increase the risk to the University, if staff members do not actually comply with such a duty. The alternative approach is to confirm that staff are not required, by the University, to breach the legal duties of confidentiality which they may owe to victims of sexual misconduct. It is possible that this approach would actually decrease the risk to the University of liability – as it may result in the relevant knowledge of staff not being imputed to the University. However, this is a difficult issue which requires further consideration.

4.10 Dealing with Categories of Misconduct

Recommendation: We recommend that the student disciplinary system be simplified by removing the distinction between the processes to be followed for academic misconduct and general misconduct. In the usual course, all complaints of misconduct should be investigated and processed in the same way.

At present, a significant source of complexity in the student disciplinary policy is the distinction between academic and general misconduct. This distinction leads to each category of case being subject to different procedures.

These distinctions reflect valid concerns. In general, academic misconduct is most appropriately dealt with by the course co-ordinators, Integrity Officers and senior academic staff of each Faculty. We also expect that these staff members may not consider themselves best suited to deal with issues of general misconduct. However, we consider that these concerns can best be dealt with by a more flexible approach, managed centrally by the DSM, rather than by a rigid classification of matters.

In our view, the key points are that:

- in educational terms, it is artificial to seek to draw a bright line between academic and general misconduct. Any form of student misconduct is likely to be symptomatic of an underlying problem with the student – and it is the main academic units of the University which have the most obvious interest in: (a) maintaining the integrity of their operations; and (b) providing appropriate pastoral care to their students. So these units should ordinarily be the primary location for the prevention, investigation and determination of misconduct matters.
- there will be occasions when this approach is not feasible or appropriate. For example: (a) the particular Faculty may be overwhelmed with academic misconduct matters, and have no capacity to deal with general misconduct matters; (b) a general misconduct matter may not arise out of conduct within the Faculty and may be more appropriately processed centrally; (c) the matter may have a personal connection with a key member of staff (eg a student who is a close relative of a staff member), and so be more appropriately dealt with centrally and perhaps under different procedures; or (d) there may be pressures on the Faculty (eg arising

from mass academic misconduct), which mean that the matter is more appropriately dealt with centrally.

These circumstances suggest that there should be a measure of flexibility in the way misconduct matters are processed, and that the DSM is the most appropriate person to make the relevant management decision.

4.11 Training

Recommendation: The effective operation of the student disciplinary system requires the skilled involvement of a large number of staff – and some students. We recommend that all those involved in the student disciplinary system complete an online training programme dealing with: (a) the objects of the disciplinary system; (b) the processes involved; (c) the nature of the legal requirements for procedural fairness; and (d) the practical steps required to determine a matter and impose a penalty. The DSM should be available to answer any more specific questions which can arise from time to time.

It is obvious that some form of training is required for everyone who may be asked to serve on a disciplinary body. It is also required for those who investigate or make administrative decisions in the process. The key purpose of the training is: (a) to ensure that matters are investigated in an appropriate way; (b) to ensure that the primary decision-makers are provided with evidence that they are able to act upon; (c) to ensure allegations are appropriately framed; (d) to ensure high-quality decision-making; and (e) to ensure consistent approaches across the university.

In our view, given the numbers of people requiring training, one or more online training programmes would seem to provide the most appropriate solution.

In terms of SASH matters, TEQSA has also recommended that mandatory training be undertaken for key roles such as the Academic Registrar and key committees such as the Disciplinary Board.

4.12 Investigation and Early Resolution

Recommendation: We recommend that the student misconduct policy be amended to create greater scope for an early, consensual resolution of misconduct matters. Matters should only proceed to a formal misconduct determination when there is a real need for this to occur. Even then, the need to conduct formal hearings should be avoided where appropriate. This can be achieved by allowing students, with the support of the Integrity Officer or DSM, to advise the decision-maker of their willingness to submit to a particular determination without the need for a hearing. Leniency should be extended to students who take this approach.

From our discussions with frontline staff, a number of important points emerged:

- the proper processing of misconduct matters is often time-consuming. It commonly involves a substantial amount of duplicated work by: (a) the Course Co-ordinator; (b) the Integrity Officer; and (c) the primary decision-maker.
- this work often turns out to be unnecessary, in that hearings often proceed without the student contesting the allegations made against them.
- the level of work involved in these matters can create a disincentive for staff to raise issues of misconduct in the first place.
- in many matters, the appropriate educational response is: (a) to encourage the student to voluntarily acknowledge their error and show contrition; (b) to take action which corrects

any unfair academic advantage which may have been received; and (c) to take action which is likely to ensure that the student does not reoffend.

In the light of this guidance, we are attracted to an approach to the investigation and triage of matters which has the following features.

First, if the investigation reveals that the student has no case to answer, we support the current approach which vests power in the Integrity Officers or the Academic Registrar (as appropriate) to dismiss the complaint. This is an important feature of the system, because of the potentially damaging effect to students of malicious, mistaken or unfounded complaints.

Secondly, in cases where: (a) the investigation does reveal that the student has a case to answer; (b) the student genuinely accepts responsibility for their misconduct; (c) the student has no prior record of misconduct; and (d) the matter is not sufficiently serious to justify disciplinary proceedings, then we believe that the Integrity Officers and the Academic Registrar should have a wide discretion to resolve the matter by administrative directions made with the consent of the student. Ideally, these directions should be noted in the online discipline management data base but not be recorded in the official student management system. However, a broad range of possible directions should be potentially available, to allow the Integrity Officers and the Academic Registrar the ability to achieve the educational objects of the disciplinary system. In practical terms, this will be achieved by an interview with the student, coupled with directions:

- for any necessary adjustment to the student's academic results, to remove any improper advantage obtained by academic misconduct.
- requiring the student to undertake any appropriate remedial activities (which may include campus service or further studies about academic standards) to show contrition.
- requiring compliance with the Code of Conduct. This is an important step, because any material breach of such a direction should be treated as giving rise to serious disciplinary issues.

Thirdly, in all other matters, the case should be referred to a primary decision-maker. A finding of misconduct by a primary decision-maker should form part of a student's official record. Even in this category of case, however, there should be scope for students to show contrition. An appropriate procedure for doing so would be to allow a student to submit, with the support of the Integrity Officer, a document which submits to a specific finding of misconduct on the basis that a specific penalty is imposed and waives the need for any formal hearing. It would then be a matter for the primary decision-maker to decide whether this outcome was acceptable.

This approach broadly mirrors a central principle of the criminal justice system, in which an early plea of guilty and a demonstration of genuine contrition usually results in a significantly more lenient penalty. This approach also has the incidental effect of significantly reducing the administrative burden on the justice system of matters which do not properly call for a full hearing.

There is a risk that this approach may lead to some units of the University taking a more lenient approach to misconduct than others. The role of ensuring that this approach is applied with reasonable consistency across the University would rest with the DSM supported by the online management system.

4.13 Pre-Hearing Processes

Recommendation: For matters which are to proceed to formal determination, we recommend that the relevant Integrity Officers (or DSM) have greater responsibility for managing the pre-hearing processes (including the issuing of allegation notices). This would seem to be a more timely and efficient approach. By the use of approved forms for key documents (eg allegation notices), unnecessary detail about these steps can be removed from the misconduct policy.

Under the current SIMP, the point at which management of the matter is handed over by the Integrity Officer (or Academic Registrar) to the primary decision-maker is before the allegation notice is prepared. The decision-maker then has 14 business days within which to issue the allegation notice.

In our view, consideration should be given to deferring this handover point until all pre-hearing processes have been completed. In practice, the Integrity Officers already prepare draft allegation notices and are the appropriate persons to be involved in liaising with students prior to any hearing. So they would seem to be the natural choice of officer to manage these steps.

We are also attracted to an approach which uses approved forms, rather than detailed provisions, to regulate the content of allegation notices and any response to them. The use of standard forms makes it easier for them to be completed. The removal of unnecessary provisions from the policy also helps to simplify it. We note that, in practice, a standard form of allegation notice is currently in use. However, for reasons explained further below, this should be revised.

4.14 Committees

Recommendation: We recommend that all disciplinary matters be determined by a committee, rather than by an individual decision-maker. In principle, this would seem to be a preferable approach. In practice, it would not seem to require any significant change to existing staffing arrangements. That is because all individual decision-makers are currently assisted by another member of staff, who acts in an advisory role. We envisage that these two staff members would, in future, constitute the relevant disciplinary committee, with the senior academic staff member (or Academic Registrar) having a casting vote.

The present disciplinary system calls for Level 1 and Level 2 matters to be determined by a single person – who is either a senior member of the academic staff or the Academic Registrar. In practice, however, this decision-maker is assisted by a Secretary. The Secretary's role is an advisory one.

In principle, we are attracted to an approach which does not leave it to any one person to make disciplinary determinations. Even a committee of two is apt to produce a higher quality decision – and be more easily viewed as a collective decision of the University. It is not necessary that the second decision-maker be another senior member of academic staff. Indeed, there is much to be said for a school manager, who has long experience of dealing with disciplinary matters, serving in this role. For that reason, assuming that the Secretaries to the Level 1 and Level 2 decision-makers are suitable to act as decision-makers, this approach would not seem to involve staffing issues. However, the soundness of this assumption requires further enquiries.

4.15 Disciplinary Committees

Recommendation: Most student disciplinary matters should be determined by a network of Disciplinary Committees operating across the University. These committees would usually be based

in the Faculties but would continue to include a centrally-based committee. They would usually be constituted by two authorized staff members and chaired by a senior member of academic staff (or the Academic Registrar). To provide the disciplinary system with appropriate flexibility, and to ensure that Disciplinary Committees have the skills required to deal with particular matters, the DSM should have power: (a) to convene as many Disciplinary Committees as are required both within a Faculty, across Faculties and centrally; (b) to manage the allocation of matters to Disciplinary Committees; and (c) to manage the allocation of staff to Disciplinary Committees.

The current disciplinary system has a number of complications.

Matters are classified by a largely undefined level of seriousness (Level 1: "minimal"; Level 2: "moderate"; and Level 3: "serious"). Depending upon this classification, and whether the matter involves academic or general misconduct, different decision-makers are given jurisdiction to hear different categories of matter. For Level 1 and 2 matters, the jurisdiction is to be exercised by a specified member of the senior academic staff or the Academic Registrar. Level 3 matters are to be decided by the Disciplinary Board – which is constituted by a chairperson, two members of academic staff and two students. The quorum for the Disciplinary Board is three.

There is also an element of inflexibility in the current system. A student may be facing a number of related complaints, each of which has a different level of seriousness. Whilst it is obviously desirable that all complaints be heard by the one body, it is doubtful whether this is permissible. Different types of matters also call for different kinds of expertise. Some cases may benefit from a panel which includes a member with expertise in mental health. Some cases may benefit from a panel member with subject matter expertise in the particular discipline (eg research misconduct cases). Some matters may involve complex administrative issues. Matters which are legally complex, or hotly contested, may benefit from a chair who is a serving or retired Judge.

In our view, it is difficult to see any real purpose in distinguishing between three different levels of misconduct – particularly if a policy is to be adopted of seeking to deal with simpler matters by way of counselling and agreed penalties if possible.

The key concern is to ensure that any serious penalty (eg expulsion) can only be imposed by a panel with the highest level of objectivity, perspective and experience.

However, in seeking to achieve this object, it is important to avoid the potential for any jurisdictional disputes, as to which decision-maker has jurisdiction over a particular matter.

In our view, these objects can be achieved by an approach in which:

- there are only two levels of decision-making bodies: Disciplinary Committees (located in Faculties or centrally based) and the University Disciplinary Board.
- to remove any risk of jurisdictional disputes, both levels of decision-making bodies are formally given jurisdiction to deal with all matters but the powers of the Disciplinary Committees are limited by reference to the kinds of penalties which they can impose.
- in practice, the default position should be that disciplinary matters are referred to a network of two-person Disciplinary Committees, operating across the University, each of which is chaired by a senior member of the academic staff or the Academic Registrar. The role of the DSM is critical here. This officer would assess the most appropriate arrangements to be made across the University and organize a set of committees each with nominated people who would ordinarily be expected to serve on the committee. The DSM would make the management decision of allocating each matter to the appropriate Disciplinary Committee

and ensuring that each committee has members with appropriate experience and expertise to deal with the matter. These arrangements can be varied, from time to time, to deal with whatever exigencies arise.

• it is only when matters have the real potential to engage the powers of the University Disciplinary Board, that matters should be referred to it.

4.16 University Disciplinary Board

Recommendation: There should continue to be a more senior body, the University Disciplinary Board, which would usually be constituted by three authorized members (including a student) and chaired by a senior academic member of the University's executive. To provide appropriate flexibility, and to ensure that the University Disciplinary Board has the skills required to deal with particular matters, the Chair should have power to draw upon a wider range of authorized persons to serve on the University Disciplinary Board for a particular matter (including to serve in the role of Acting Chair).

Save in one important respect, we do not envisage that any material change to the current Disciplinary Board.

The key change is to create greater flexibility in the composition of the Board. The panel of persons who are authorized to sit on the University Disciplinary Board should be sufficiently large, and sufficiently diverse, to ensure that matters can be resolved by a Board with the most appropriate combination of experience and expertise. The power to convene an appropriate panel should be vested in the Chair of the University Disciplinary Board. In matters which are legally controversial, or hotly contested, the Chair should have the ability to appoint a current or retired Judge to serve as Acting Chair of the Board for that matter.

4.17 Jurisdiction and Powers of Disciplinary Bodies

Recommendation: To avoid disputes about jurisdiction, both the Disciplinary Committees and the University Disciplinary Board should have jurisdiction to deal with all types of misconduct – no matter how serious. However, only the University Disciplinary Board should have power to impose the most serious penalties, including: (a) expulsion; (b) revocation of a degree;; or (c) suspension for more than 2 weeks. Through the triage process, the Integrity Officers (or the DSM) should refer matters to the University Disciplinary Board if there is the real potential for penalties of this kind to be imposed. The reasons for this recommendation have been discussed above. We note, however, that any change to the SIMP which involves revocation of a degree may require consequential changes to the University's Awards Policy.

4.18 Interim Measures and Penalties

Recommendation: We recommend that the Academic Registrar be given wider powers to make appropriate interim arrangements concerning the student, whilst misconduct proceedings against them are pending.

In a small number of difficult cases, the University is likely to be faced with a situation where: (a) an allegation of serious misconduct is made against a student (eg assault); (b) the truth of this allegation will take some time to resolve (eg by criminal trial); (c) in the meantime, the student is proposing to continue with their residential and study arrangements at the University (which may include close contact with the alleged victim); and (d) the University becomes concerned that this situation is creating an unacceptable risk of harm to members of the University community.

Where sexual misconduct by a student is involved, the Academic Registrar has wide powers of this nature to implement what are described as "reasonable measures". In other misconduct matters, narrower powers are vested in the Vice-Chancellor by the student misconduct policy.

In principle, there is no reason why the Academic Registrar should not have wider powers to implement reasonable measures in all cases. That is because non-sexual violence or threatening behaviour gives rise to a similar need to take urgent action. In all cases, the Academic Registrar would seem to be at the appropriate level in the executive structure to make decisions of this kind.

It is important that any directions of this kind are made in a form which is legally enforceable by University security – and, to the extent possible, by the police service and the courts (eg valid directions to leave, and not reenter, University land).

It is also important that any directions of this kind proceed upon the express basis that the allegations against the student are regarded as unproven and the measures are only made to facilitate the good order of the University and for the wellbeing of the whole university community.

4.19 Nature of the Process

Recommendation: We recommend that the University continues to conduct its disciplinary hearings on a non-legalistic and non-adversarial basis, without the rules of evidence applying. In cases where the disciplinary committees require assistance, they should continue to be able to obtain private legal advice from the University's legal office (or an approved external lawyer appointed by the University's Legal Services). In difficult cases, they should be able to appoint a lawyer (who may be a university legal officer) to act as an independent counsel to assist the committee in an open and transparent way. Disciplinary committees should not have powers to compel any persons to attend before them or to produce documents. However, they should have broad powers to manage proceedings in a flexible way (eg by allowing amendments to the charges of misconduct, by allowing further evidence etc). If the student does not require a formal hearing, the matter should be capable of being dealt with on the papers.

The student disciplinary policies do not presently explain, in any detail, the nature of the process involved in a disciplinary hearing. Nor do they describe how evidence is normally received (eg by written statement) and whether the rules of evidence apply.

In practice, however, the University's disciplinary bodies usually proceed in a non-legalistic and nonadversarial way upon the basis of documentary materials, statements from those who have investigated the matter and (on occasions) statements from witnesses. The members of the disciplinary bodies are not usually lawyers. No lawyers usually appear to represent the students. No one appears, on behalf of the University, to prosecute the matter. The disciplinary bodies do not usually attempt to compel anyone to attend or to produce documents.

In difficult cases, however, complications are likely to arise. Students can request to be legally represented – and in some matters this will be appropriate. We can imagine cases where the student will be entitled to ask for an opportunity to question witnesses – and where the committee will also want to question the student. Legal questions may also arise, including question of procedural fairness.

In our view, the student disciplinary policy should be sufficiently flexible to allow the committees to deal appropriately with these difficult cases – but without changing its fundamentally non-adversarial approach.

In many cases, it will be enough for the committee to follow the present practice and simply obtain any necessary advice from the University's legal office (or an approved external lawyer appointed by the University's Legal Services). However, it is important for all concerned that this involvement does not affect the independence of the committee. So, if the University's legal office has already been advising the University about a matter, it may be necessary for the University to engage an external lawyer to assist the committee. Ideally, the external lawyer should be someone who is already familiar with the University's disciplinary system.

In more difficult cases, we do not think that it is desirable that the University should appear at disciplinary proceedings to take a prosecutorial role. The better course is for the committees to have the ability to request the University to appoint a suitable lawyer, whether from the University's legal office or elsewhere, to be engaged to act as counsel assisting the committee. This may involve providing independent legal analysis of issues or it may involve questioning witnesses.

Whilst courts have the power to compel relevant witnesses to attend their hearings or compel parties to produce relevant documents, we do not think that an approach of this kind (which could only apply to University staff or documents) is appropriate for a University's disciplinary process. That should be made clear to avoid argument.

It is also important that committees have significant discretionary powers to set or order time limits, to allow amendments to charges of misconduct, to allow further evidence to be submitted and to otherwise manage the proceedings in a fair and just way.

4.20 Penalties and Disciplinary Orders

Recommendation: We recommend that guidelines be published regularly by the DSM indicating the usual range of penalties and other disciplinary orders made in particular categories of matter – including matters where a lenient approach was taken because of the student's early acceptance of responsibility. The range of available orders should be reviewed to ensure that they provide disciplinary committees with a sufficiently broad range of powers (eg powers to deal with students who have cancelled their enrolment).

During the consultation process, we were advised of a significant practical problem in dealing with disciplinary matters, because of the difficulty in identifying the conventional range of penalties for particular kinds of matter. This difficulty has the potential for inconsistencies of approach across the University. To deal with this problem, one option is to make available a penalty database/register which may be a module in an online management system – which identifies matters by number only (eg No 1 of 2020) and the type of misconduct, then identifies the penalties imposed. The preferable option is for the DSM to aggregate this data to provide public guidelines as to the usual range of penalties. To encourage early resolution of disciplinary matters, these guidelines should also give some indication of the more lenient penalty which would be appropriate in these circumstances. We understand that work has commenced on these guidelines.

There are also doubts as to whether the range of penalties which can be imposed under the student disciplinary policy are sufficiently broad (eg penalties for students who have ceased to be enrolled). As courts are likely to adopt a strict reading of any power to impose penalties, it is desirable that any types of penalty which are thought useful are included in the policy.

4.21 Right of Appeal

Recommendation: We recommend that a student's right of appeal from a primary decision should be qualified. It should be available only if error in the primary decision can be demonstrated or material new evidence becomes available. If those requirements are satisfied, the appeal board should have the power to either rehear the matter on the existing materials or conduct a full rehearing *de novo* of the matter.

All legal processes should have appropriate checks and balances. In the University's disciplinary system, a right of appeal introduces an important self-correcting function. The appeal is determined by a fresh and independent panel – which is larger in number, with student participation, and with a generally more experienced and objective perspective. The appeal can only be instituted by students, not the University. It is available to students as of right in all cases. It involves the appellate body being required to conduct a full rehearing *de novo* of the matter (as if there never had been a primary decision).

In our view, all but one of these features of the current appeal system is desirable and should be retained. Appeals from Disciplinary Committees should lie to the University Disciplinary Board. Appeals from the University Disciplinary Board should lie to a University Disciplinary Appeals Board.

The one feature which gives us concern is that appeals are always to be conducted as full rehearings *de novo*. This seems undesirable. It is apt to encourage any student who is dissatisfied with a primary hearing to simply conduct the same case all over again on appeal. It would seem preferable that appeals should be limited to cases where the appellant can demonstrate that some error has been made by the primary decision-maker and/or that material new evidence has become available. For clarity, error would include any kind of material error, including errors in according procedural fairness, but not errors which could have had no effect on the result. If this test can be satisfied, then the appeal board can proceed to a full rehearing *de novo* if that is considered the most appropriate course.

4.22 Appeals

Recommendation: We recommend that the primary decisions of Disciplinary Committees should be subject to appeal to the University Disciplinary Board. We recommend that the primary decisions of the University Disciplinary Board be subject to appeal to a University Disciplinary Appeals Board. We favour an approach which does not link the University Disciplinary Appeals Board to the University's Senate. We favour an approach which allows the University Disciplinary Appeals Board to be constituted by a panel of authorised persons, who have the most appropriate combination of skills and experience to deal with the particular matter. As with the University Disciplinary Board, there should be an appointed Chair, who has the power to convene an appropriately constituted panel for each matter. The quorum should continue to be four.

At present, in most disciplinary matters, an appeal lies to an independent Disciplinary Board. In more serious matters, an appeal lies from the Disciplinary Board to the Senate Discipline Appeals Committee. On the SDAC, two members of the committee are appointed by the Senate – with a further member appointed from the academic board by the Chancellor and two students appointed by the Chancellor. All members are appointed for fixed terms. The quorum of the committee is four.

The involvement of a body such as the SDAC in disciplinary matters is unusual amongst Australian universities. It appears to reflect a principle that the Senate, as the governing body of the University,

should be the ultimate arbiter of whether a student should be expelled or subject to a similarly serious penalty.

For a number of reasons, we consider that this approach should be reconsidered.

First, in principle, it seems to us to be important that disciplinary committees have a degree of independence from other organs of the University – and be seen by students and the public as having this degree of independence. In part, this is achieved by having students serve on the appeal committees. It can also be achieved by having a person of impeccable qualifications and independence serving as chair of the ultimate appeal committee (eg a serving or retired Judge). This perception of independence will be enhanced if the ultimate appeal committee is separated (in name and composition) from Senate.

Consideration needs to be given to the appointment of members of the Appeals Committee, particularly the Chair and where the committee reports. As there are fundamentally two types of committees in universities – those reporting to Senate and those reporting to the Vice-Chancellor - consideration should be given to the University Disciplinary Appeals Board reporting to the Vice-Chancellor or nominee. If an independent chair is appointed for a specified period (eg three years), then the independence of the committee is achieved through this chair. Appointment of the chair by Senate draws Senate into the situation.

It is important that this responsibility to appoint members of the Board is not confused with the decision making role. Decision making must be independent of earlier processes and without influence from senior officers. Regular reports to Senate would be required on difficult cases and biannual or annual reports to Senate of misconduct matters generally across the different disciplinary committees and the appeal committee. See below under Governance for more information on reporting.

Secondly, in practice, we support greater flexibility in the composition of all disciplinary committees, to allow the most suitable combination of skills to be brought together to deal with particular matters. This should include the chair of committees having the capacity to appoint an acting chair, as required. The present arrangements make this difficult, because they contemplate a limited number of specific persons serving for fixed terms on the SDAC.

Thirdly, we think that the more appropriate role for the Senate is in providing high-quality governance of the whole disciplinary system – rather than seeking to have a direct role in decision-making. This is discussed further below.

Accordingly, we favour the creation of a University Disciplinary Appeals Board to hear appeals from the primary decisions of the University Disciplinary Board.

In many respects, the UDAB follows the model of the University Disciplinary Board. It should have a quorum of at least four, including one student. Rather than having a fixed membership, the University should authorize a panel of persons, with a sufficiently broad range of skills, to serve on the UDAB. Indeed, in principle, there is no reason why a single panel of persons should not be authorized to serve on both the University Disciplinary Board and the UDAB – but, of course, with no one serving on both boards in the same matter. This is an approach taken by some superior courts (eg Federal Court), where all Judges of the court are rotated to serve on appeals from other Judges. However, there is much to be said for the concept of the UDAB having an independent chair, who is seen by the public as bringing impeccable skills, independence and integrity to the role (eg a serving or retired Judge).

4.23 Non-Staff Members on Disciplinary Committees

Recommendation: We recommend that the existing practice of including a student, where possible, on the University Disciplinary Board and the University Disciplinary Appeal Board should continue. There should also be sufficient flexibility to authorize other non-staff members and non-academic senior staff members to serve on disciplinary committees, where this is considered beneficial. It is important that all such persons complete the required training and receive an appropriate indemnity against liability for their service. It is also important to ensure that all disciplinary committees are constituted by persons who are validly empowered to exercise the University's disciplinary powers.

During our consultation, there was no suggestion that there should be any change in the practice of including students on the University Disciplinary Board and the final appeal committee. However, a number of points of concern were expressed.

First, there was a concern that some students were not properly trained, or not sufficiently interested or experienced, to usefully contribute to the decision-making. These concerns would seem to be met by establishing an appropriate online training course and being more rigorous in the selection of students.

Secondly, there was a concern that, in some matters, students may be unwilling to serve and so create difficulties in establishing a quorum. This concern would seem to be met by a combination of: (a) continuing existing practices, under which the presence of a student is not necessary to establish a quorum; and (b) the proposed new approach, in which there is a larger pool of people who are authorized to serve on disciplinary bodies.

Thirdly, there was a concern that students, unlike members of university staff, are at risk of personal liability (eg liability in defamation) for their conduct in serving on a disciplinary body. This concern has been met, in the past, by providing non-staff members with a deed of indemnity.

Fourthly, our attention was drawn to the statutory limits upon the way in which the University can delegate its powers. These limits are not unduly restrictive, but require detailed consideration to ensure that the disciplinary committees are established in conformity with all necessary legal formalities.

4.24 Procedural Fairness

Recommendation: We recommend that procedures be reviewed to ensure that students: (a) are given reasonable notice of the charge of misconduct and the evidence to be relied upon against them at a hearing; (b) are given reasonable notice of the penalty which is proposed to be imposed upon them; (c) have reasonable notice of what they should do to contest the matter; and (d) are given a reasonable time period to prepare for the hearing. Any failure to accord procedural fairness in a primary decision should be capable of being corrected by a hearing on appeal.

The requirements of procedural fairness call for a common sense approach to the circumstances of each case, rather than the application of rigid rules.

In short, it is necessary for a student to have a reasonable opportunity to prepare and present their response to an allegation of misconduct. This normally requires that the student have reasonable notice of: (a) the allegations made against them (including the particular policy breached and the

particular breach alleged) and the penalty which is sought to be imposed; (b) the evidence being placed before the decision-maker; and (c) the steps they may take to respond to the matter. The student then should be given a reasonable opportunity to contest the allegations, including by providing further evidence and making submissions.

We have some concern that existing policies may not satisfy these requirements. The key points of concern are:

- the policy contemplates that students will be given allegation notices which outline the substance of the allegations made against them, but does not expressly require the identification of the particular provision of the policy which is alleged to be breached. The latter requirement is critical.
- the policy does not contemplate that the allegation notice would provide the student with copies of the evidence which is to be relied upon or any notice of their right to request such evidence. Whilst the policy requires the decision-maker to make this evidence available to students at the hearing, that would seem to be too late to be of any practical utility. These problems can be overcome by the Integrity Officer preparing a standard form brief of evidence for the disciplinary committee, which can then be made available to the student.
- the policy, and standard form allegation notices, do not give students sufficient guidance about how to contest the issues, including the issue of penalty.
- how to ensure that students are given a reasonable opportunity to respond to allegation notices.
- how to ensure that students have a reasonable opportunity to respond to the particular kind of penalty which may be proposed.

If guidelines about the usual range of penalties for a particular matter are available, then a standard form allegation notice could provide this information and invite the student to make submissions on this issue as part of their response. The only complication will then arise if the disciplinary committee wishes to impose a different penalty in the particular circumstances of the case. In that event, the student will need to be given a reasonable opportunity to consider and respond to that proposal.

4.25 Enforcement

Recommendation: Procedures should be established to ensure that the penalties or conditions imposed by disciplinary bodies are satisfied – by involving the police service or the courts where appropriate. In practical terms, however, it is likely that breaches of confidentiality in relation to disciplinary proceedings will not be able to be effectively remedied.

In any disciplinary process, it is important that all involved have an expectation that the outcomes will be enforced. This is particularly important when safety issues are involved. However, it is also important to maintain the deterrent effect of the disciplinary system.

During the consultation process, we were advised that there have been occasions when conditions imposed by a disciplinary committee (eg a condition that fitness to resume studies be received) were not in fact satisfied – but were circumvented by the student. Procedures are required to ensure that this does not occur.

On some occasions, there may be legal or practical problems in enforcing penalties or conditions which have been imposed (eg enforcing orders for the payment of compensation). We also accept

that there will be occasions in which it would be inappropriate to seek to enforce penalties or conditions in a heavy-handed way (eg by police or court action). We expect that cases where students breach the confidentiality of the disciplinary process will fall into this category.

We have considered whether, in cases where such a breach of confidentiality occurs, the University policies should permit the University to act on the basis that the disciplinary process is no longer confidential. We do not think this is appropriate, because such a step might adversely affect the interests of all the individuals involved in the process (eg the student serving on the disciplinary body). It may also be a communication which will not enjoy the legal protection from defamation actions which would otherwise apply to confidential communications in the course of disciplinary proceedings. However, consideration of this could be made on a case by case basis.

4.26 Criminal Proceedings

Recommendation: In some matters, complaints may lead to both disciplinary proceedings and criminal proceedings. In general, we recommend that the University's disciplinary system deal with these matters by: (a) making any necessary interim orders; but (b) deferring any disciplinary hearing until after the criminal proceedings have been concluded.

This recommendation gives effect to the principle that persons charged with criminal offences have the right to silence. This right would be undermined if, prior to their criminal trial, they were required to defend themselves in disciplinary proceedings concerning the same matter.

4.27 Difficult Cases – General

Recommendation: Whilst the vast bulk of matters to be dealt with by the disciplinary system are relatively straight-forward, the system does need to be able to accommodate difficult cases. We consider that the elements of flexibility which are suggested above will enable the system to deal with these difficult cases.

In section 3.6 above, we sought to identify the main categories of difficult cases which may come before the disciplinary system. In most cases, the most appropriate way to deal with these cases is to change the composition of the disciplinary body – to ensure that the most appropriate decision-maker is assigned to deal with the matter. This is the approach suggested above.

In consultation with staff and members of Senate as part of this review, the perceived lack of senior oversight in some recent difficult cases was mentioned. It would be useful to have a senior officer of the University to provide guidance and wise oversight on difficult cases. However, there would need to be some clear boundaries around such oversight. Once a decision maker is involved in the matter, there are significant legal difficulties if the decision maker is influenced by others. An obvious role for consideration to provide this oversight is the Provost role but others may also be relevant to the matter.

4.28 Difficult Cases – Sexual Misconduct

Recommendation: The most difficult issue to be considered is how to reconcile a trauma-informed approach to supporting victims of sexual misconduct with the legal requirements involved in taking disciplinary proceedings against the perpetrator. Unfortunately, we are unable to suggest a procedure by which matters of sexual misconduct, if genuinely disputed, can be determined without the risk of the complainant being involved in the proceedings. In cases where the complainant wishes the University to take disciplinary action, but does not wish to become involved in the

proceedings, we believe the only viable procedure is pursuant to the University's power to counsel students and give reasonable directions. We recommend that a fact sheet be prepared, which fairly explains the main legal options available to complainants and their advantages and disadvantages. The appropriate use of this fact sheet, in a particular case, is a matter for the support staff to determine.

In section 3.7 above, we noted the practical difficulties which often arise in matters of sexual misconduct.

In some cases, a matter of sexual misconduct can be the subject of disciplinary proceedings without the involvement of the victim (eg where a particular incident is captured by a security camera or witnessed by a bystander). In this category of case, the University's duty of care to all students is likely to require proceedings to be taken against the perpetrator, even if the victim does not personally wish to be involved.

In many cases, however, the victim will be the only witness to the relevant events. In these circumstances, the wishes of the victim are crucial.

In these circumstances, the University's disciplinary system can only provide victims with three practical options:

- to make a Formal Report and work with those in the disciplinary system to prepare the evidence required to take disciplinary action against the perpetrator and then participate in the hearing if required. This option can lead to disciplinary orders being made.
- to make a Formal Report which identifies the key elements of the misconduct, but no more. This option can lead to the perpetrator receiving counselling for their conduct, with a view to their accepting responsibility for their actions, undertaking some form of remediation, treatment or education, and receiving a formal direction from the University to comply in future which their obligations as a student. Even if the perpetrator did not accept responsibility, a formal direction could still be made. The Formal Report and these directions will also registered on the University's online misconduct system and will be flagged if there is any subsequent complaint against the perpetrator.
- to not make a Formal Report. In which case, unless another party makes a Formal Report about the same incident, the University will have no basis to take disciplinary action.

There is a fourth possible option – where the victim makes a Formal Report and provides an initial statement, but the victim defers any decision about their involvement in the matter until more is known about what is involved. In practice, this approach may produce the desired outcome – with the perpetrator either accepting responsibility or terminating their enrolment. However, we are not sure whether this kind of approach is undesirable from a victim's perspective, because it prolongs their anxiety about the matter. This is something which requires further investigation.

In any event, it would seem desirable that a suitable fact sheet be prepared, which fairly outlines the options available, with their advantages and disadvantages. It is then a matter for the relevant support staff to determine how it should be used.

4.29 Governance

Recommendation: We believe that governance of the disciplinary system will be enhanced if data is more readily available for analysis. Within the data, the key indicators will be: (a) trends in complaints generally; (b) trends in particular categories of complaints; (c) average time taken to

resolve complaints; (d) rates of consensual resolution; (e) rates of appeal; and (f) consistency of penalty for similar matters across the university. These indicators, when properly analysed, should assist in developing strategies to prevent misconduct and in identifying any delays or systemic problems in the system. The data review will be assisted by a review of the reasons given in successful appeals or applications for judicial review.

A disciplinary system, by its nature, involves a large number of independent decisions being made on the facts of individual cases. As in a court system, it is difficult to measure the quality of the decision-making which occurs.

Accordingly, the appropriate governance of a disciplinary system would seem to involve:

- establishing an appropriate policy framework, with suitable inbuilt checks and balances.
- appointing suitably qualified persons to carry out duties under the framework.
- establishing a system of appropriate training for these persons.
- monitoring the quantitative data emerging from the system for trends and warning signs.
- monitoring the reasons in successful appeals for warning signs about primary decisionmakers.
- seeking regular feedback from key participants in the system to obtain their assessment of its performance.
- Producing regular and ad hoc reports as required for reporting and continuous improvement purposes.

We consider that each of these approaches can be applied to the University's disciplinary system, with a DSM being well placed to monitor and report upon each of these matters, with the assistance of an online management system.

4.30 Implementation Plan

Recommendation: We recommend that following receipt of relevant feedback, the University may wish to consider developing an implementation plan, given the number of different policies aligned to the Student Discipline Policy that may need to be changed and the range of very different activities contained in the recommendations.

5. Acknowledgements

We are both most grateful for the assistance of Karen Wheeler, Associate Director Finance Operations, in providing us with access to materials and interviews with key members of the University community.

We would also like to thank all members of the University community who gave us the benefit of their guidance:

Mr Peter Varghese AO, Chancellor
Ms Tonianne Dwyer, Deputy Chancellor
Professor Deborah Terry AO, Vice-Chancellor and President
Professor Aidan Byrne, Provost and Senior Vice-President
Professor Joanne Wright, Deputy Vice-Chancellor (Academic)
Professor Bronwyn Harch, Deputy Vice-Chancellor (Research) and Vice-President (Research)
Professor Peter Adams, President of the Academic Board
Professor Mark Blows, Pro-Vice-Chancellor (Research)
Professor Vicki Chen, Executive Dean, Engineering Architecture and Information Technology
Mr. Glenn Cranny, Gilshenan & Luton
Ms Anne Cross, Senator and Chair of the Colleges Working Party
Mr Mark Erickson, Academic Registrar
Mr Tom Fletcher, Minter Ellison
Professor Katharine Gelber, Head, School of Political Science and International Studies
Professor Andrew Griffiths, Executive Dean, Faculty of Business, Economics and Law
Mr David Lavell, Associate Director, Integrity and Investigations Unit
Mr Anthony Lennon, Associate Director Workplace Relations, Human Resources Division
Professor Doune Macdonald, Pro-Vice-Chancellor (Teaching and Learning)
Professor Alaistair McEwan, Pro-Vice-Chancellor (Research Training)
Mr Grant Murdoch, Senator and member of the Senate Disciplinary Appeals Committee

Dr Sally Pitkin, Senator and Chair of the Senate Disciplinary Appeals Committee

Ms Connie Seeto, General Counsel

Professor Nick Shaw, Associate Dean (Academic), Faculty of Medicine

Ms Andrea Strachan, Director Student Services

Mr Ethan Van Roos Douglas, President, UQ Union

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Date: 3 December 2020

Emeritus Professor Carol Dickenson AM

Adjunct Professor John McKenna QC

6. Appendix

Review of student disciplinary policy and processes, including in relation to the management of sexual misconduct complaints

1. Background

In light of a number of recent issues, the University is instigating a full external review of its student disciplinary policy and processes, including in relation to the management of sexual misconduct complaints.

This review will build on recent efforts by the University to consider changes to its current student disciplinary policy framework and the policy framework in relation to sexual misconduct, including:

- An internal review undertaken as part of the University's 2016 quality assurance review cycle
- Recommendations made by an external panel convened in 2018 to review UQ's student disciplinary processes
- Outcomes from appeals and legal challenges to recent disciplinary and sexual misconduct cases
- Grievances concerning the way the University has dealt with disciplinary issues and allegations of sexual misconduct
- Operational issues identified during the course of recent student disciplinary and sexual misconduct matters
- Outcomes of a series of internal consultations undertaken in early 2020 that resulted in an agreed schedule of necessary changes to the student disciplinary policy framework.

2. Expert Panel

The expert panel will be made up of two members external to the University: Professor Carol Dickenson AM and John McKenna QC

- **Professor Carol Dickenson AM** has had extensive senior executive experience in a University environment, with deep experience and responsibility for compliance, governance and the University's processes for responding to misconduct (including sexual misconduct) and reporting directly to the Vice-Chancellor.
- John McKenna QC has deep experience in advising and acting for universities in relation to grievances concerning the handling of misconduct allegations, both in terms of claims in courts and in responding to regulators.

3. Terms of Reference

The expert panel is requested to:

- Review the University's policy frameworks in relation to student discipline issues (the Student Integrity and Misconduct Policy or 'SIMP') and sexual misconduct (and associated procedures and guidance materials) and Senate's oversight of those matters.
- Consider the implementation of any recommendations in the context of associated policies (including the Student Grievance Resolution Policy and Research Misconduct), and in the entities associated with UQ such as residential colleges or clubs and societies.
- Make recommendations for improvement in the University's management of student disciplinary issues and obligation to promote and foster the wellbeing and safety of staff and students, including maintaining an institutional environment free from sexual assault and sexual harassment.

In undertaking the review, the expert panel will give particular consideration to draft updates to the sexual misconduct policy and procedures and a draft redesigned student disciplinary policy (and associated guidance materials).

The expert panel will also have access to:

- Briefing notes in relation to key policy issues and suggested areas for redrafting and updating.
- UQ's current policies and procedures for the management of student disciplinary issues and sexual misconduct allegations.
- UQ's Principles for the Protection of Freedom of Speech and Academic Freedom and other relevant policies.
- Comparable policies from other Australian universities, including The University of Melbourne, The University of Sydney, Griffith University and QUT.
- The Supreme Court's decision in *Y v The University of Queensland & Anor* [2019] QSC 282, together with the decision of the Court of Appeal (when available).
- The *Higher Education Standards Framework (Threshold Standards) 2015* (Threshold Standards), [2.3], [2.4], [6.1.4] and [6.2.1.j].
- The Commonwealth Ombudsman's Complaint Handling at Universities: Australasian Best Practice Guidelines (2016).
- The Tertiary Education and Quality Standards Agency (TEQSA) Guidance Note: Wellbeing and Safety (Version 1.2, 8 January 2018).
- TEQSA's Report to the Minister for Education: Higher Education sector response to the issue of sexual assault and sexual harassment (25 January 2019)
- TEQSA's Good Practice Note: Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector (July 2020).
- Independent Commissioner Against Corruption (South Australia): Statement About an Investigation The University of Adelaide (26 August 2020).

In addition, the expert panel will be able to consider any other material they consider necessary to undertake the review and they will also be able to commission input from other relevant experts.

4. Key Activities and Deliverables

Following receipt of a detailed documentary brief, workshops/meetings will be held with:

- Chancellor (allow approximately 1 hour)
- Vice-Chancellor (allow approximately 1 hour)
- Deputy Vice-Chancellor, Academic (allow approximately 1 hour)
- Academic Registrar (allow up to one day with case studies to be examined)
- Representatives of the Senate Discipline Appeals Committee including the Chair and legal representative (allow half a day)
- Disciplinary decision makers including level 1 and 2 decision makers, Acting Chair, Chair and legal representatives (allow half a day)
- Representative of the Student Union (allow 1 hour)
- Representatives of Student Services (allow 1.5 hours)
- Representatives of the Integrity and Investigations Unit (allow 1 hour)
- Other stakeholders as considered appropriate

A report and recommendations will then be prepared by November 2020 and considered by:

- UQ Senior Executive Team
- Senate Governance Committee
- UQ's Senate

5. Support for Expert Panel

The expert panel's contacts are as follows:

- Executive contact: Professor Deborah Terry (VC) and Professor Joanne Wright (DVCA)
- Day to day contact: Mark Erickson (Academic Registrar)
- Secretariat: Karen Wheeler