



## **Student Conduct Rules**

**These Rules were made by Council to provide procedures for dealing with allegations of breaches of the Student Code of Conduct.**

**The Student Conduct Rules were made by Batchelor Institute of Indigenous Tertiary Education Council pursuant to section 51 of the *Batchelor Institute of Indigenous Tertiary Education Act 1999* at its meeting on 21 March 2002.**

**They were published in accordance with the Batchelor Institute of Indigenous Tertiary Education (Rules) By-laws on 22 March 2002 and take effect from the date of publication.**

# Table of Contents

## Clause

1. Preamble
2. Definitions and Interpretations
3. Allegations of Breaches and Summary Powers of Suspension
4. Investigations of Alleged Breaches of the *Student Code of Conduct*
5. Misconduct Advisory Panel
6. Penalties
7. Appeals
8. Confidentiality
9. Procedural Fairness
10. Victimisation
11. Counselling and Other Support

# BACHELOR INSTITUTE OF INDIGENOUS TERTIARY EDUCATION STUDENT

## CONDUCT RULES

### 1. Preamble

- (1) Batchelor Institute Council made the *Student Code of Conduct* to describe the responsibilities and rights, and associated expected basic level of conduct, of all Batchelor Institute students, so that the Institute is a safe, healthy and harmonious academic and work environment, free from harassment for all members of the Institute community.
- (2) Council made these *Student Conduct Rules* so that all members of the Institute community are aware of the procedures and potential consequences if a student breaches the *Student Code of Conduct*.
- (3) Any report of a breach of the *Student Code of Conduct* brought against a student will be dealt with in accordance with the provisions of these Rules, unless the Director determines that the Act or a regulation of the Institute requires the use of another process.
- (4) Nothing in these Rules invalidates an individual's or the Institute's right or responsibility to refer at any stage alleged breaches of the *Student Code of Conduct* to authorities external to the Institute.

### 2. Definitions and Interpretations

Unless otherwise specified, in these Rules:

"the Act" means the Batchelor Institute of Indigenous Tertiary Education Act;

"Appellant" means the student—formerly the Respondent—who has lodged an appeal under Rule 7 of these Rules;

"Appeals Committee" means a Student Disciplinary Appeals Committee established under rule 7(3)(b) of these Rules;

"Code" means the *Student Code of Conduct*;

"Council" means the Council of the Institute constituted under Division 1 of Part 3 of the Act;

"Deputy Director" means the Deputy Director of the Institute appointed under section 28 of the Act;

"Director" means the Director of the Institute appointed under section 27 of the Act;

"exclusion" means the cancellation for a specified time of a student's enrolment and all rights and privileges as a student of the Institute, including the right to re-enrol as a student and the right to enter or to be on Institute grounds or premises, the effect of which includes that the student will no longer be entitled to:

- (a) attend the Institute;
- (b) attend at any Institute lecture, tutorial or training;
- (c) use any of the facilities of the Institute;
- (d) take part in any student activity;
- (e) be refunded any fees paid or be relieved to pay fees already payable;
- (f) sit for any examination or enrol for any course or subject; or
- (g) receive any Institute award;

but, at the completion of the exclusion period, the student has the right of automatic re-enrolment in the course from which he or she was excluded provided he or she has complied with all conditions specified in the exclusion notice;

"expulsion" means the cancellation of enrolment, for either a specified or indefinite period, of a *Student Conduct Rules*

student and termination of all rights and privileges as a student of the Institute, including the right to enter or to be on Institute grounds or premises and the right to participate in the life of the Institute—at the expiration of the period of expulsion, that person may apply for admission to the Institute but there is no automatic right of admission;

“divisional head” means the Head of a School or Division of the Institute;

“Institute” means the Batchelor Institute of Indigenous Tertiary Education established under section 4 of the Act;

“Institute activity” means any activity in which students participate under the Institute’s name regardless of whether or not the activity takes place on an Institute campus or facility;

“Institute facility” includes any real or personal property owned, leased or which are otherwise, at the time, within the Institute’s care and control;

“regulation of the Institute” means any and all of the by-laws made under section 49 of the Act or rules made under section 51 of the Act or Codes of Conduct made under section 52 of the Act;

“Respondent” means the student who is alleged to have breached the *Student Code of Conduct* and, if the allegation arising out of the same incident or circumstance is against more than one student, includes all those students;

“staff” means the Director, Deputy Director, academic or other salaried staff of the Institute or any other personnel employed by the Institute;

“student” means a person enrolled as a student of the Institute;

“Student Counsellor” means the person or persons employed by the Institute in the positions, the primary role of which is to assist, support and, as necessary, counsel students of the Institute, normally on a confidential basis and on non-academic matters, in ways that facilitate their studies, whether or not the positions are known by that title;

“Student Representative Committee” means the official Institute student representative body, whether or not it is known by this title;

“suspension” takes place when a staff member in charge of an Institute lecture, workshop or other type of teaching activity or Institute facility denies a student access to that activity or facility for a specified period of time;

“teaching activity” means any lecture, tutorial, seminar, demonstration, class or similar activity, whether or not one that students are required to attend, and any musical, dramatic or other artistic performance or production associated with their studies;

“written” or “in writing” includes the use of facsimile transmissions, provided an appropriate signature is included on the document, and does not include the use of electronic mail unless an exclusive personal signature is included.

### **3. Allegations of Breaches and Summary Powers of Suspension**

- (1) An allegation of a breach of the *Student Code of Conduct* may be made by a member of the Institute staff or a student, or by a person outside the Institute.
- (2) An allegation of a specific occurrence of a breach of the *Student Code of Conduct* must be made within two weeks of that incident; and exceptions will be made only where this is demonstrably not practicable or where the allegation relates to a pattern of conduct or a series of related incidents which might have occurred over a longer period of time.
- (3) An allegation of a breach of the *Student Code of Conduct* must be made in writing and must:
  - (i) specify the particulars of the alleged breach including, if known, full names, addresses, contact telephone numbers and enrolment details of the persons involved and any witnesses, and any subsequent action taken;
  - (ii) be signed and dated by the person making the allegation; and
  - (iii) be lodged through:

- in the case of a staff member making the allegation, his or her immediate supervisor; in the case of a student making the allegation, his or her lecturer or a Student Counsellor; or
  - in the case of a person outside the Institute making the allegation, a member of the Institute staff;
- with the Deputy Director for investigation.
- (4) The fact that an allegation of a breach of the *Student Code of Conduct* has been made against a student:
- (a) will not be entered on any official record kept by the Institute with respect to the student until the allegation has been finalised in accordance with this Code, and then only if it results in the imposition of a penalty on the student; but
  - (b) the record of the allegation and outcome may become part of the Institute's official record, other than the student's file.
- (5) If a member of staff in charge of an Institute lecture, workshop or other type of teaching activity, or of an Institute facility or other Institute property believes that:
- (a) a breach of the Code has been committed by a student in, or in connection with, a class or workshop conducted by that member of the staff; or
  - (b) the behaviour of a student in that facility amounts to a breach of the Code; or
  - (c) there is an imminent threat of a breach of the Code by a student in that facility;
- that member of staff may suspend the student from the class or workshop or facility for up to 48 hours.
- (6) In the event of a suspension imposed under Sub-Rule (5) above, the member of staff must:
- (a) within 24 hours inform his or her supervisor and the Deputy Director in writing of the alleged breach or imminent threat of a breach of the *Student Code of Conduct*, including the fact of and the circumstances resulting in the suspension; and
  - (b) as soon as the suspension is imposed, inform the student in writing of the suspension and circumstances of the suspension and that an allegation of a breach of the *Student Code of Conduct* has been referred or will be referred, as the case may be, to the Deputy Director; and
- the Deputy Director will handle the matter as for any other allegation of a breach of the *Student Code of Conduct*, in accordance with these Rules.
- (7) A suspension imposed under Sub-Rule(5) above:
- (a) may be shortened by the Deputy Director on conditions determined in consultation with the suspended student, the Institute staff member who imposed the suspension and his or her supervisor;
  - (b) may be extended by the Deputy Director but only if, after consultation with students and staff directly affected by the allegation, the Deputy Director believes it is reasonably necessary to do so; and
  - (c) will not prevent any subsequent action, in accordance with this Code, in respect of the alleged breach.

#### **4. Investigations of Alleged Breaches of the *Student Code of Conduct***

- (1) The decision about whether or not an allegation of a breach of the *Student Code of Conduct* will be investigated rests with the Deputy Director and will be made within 48 hours of receiving the written allegation or as close to that time as possible.
- (2) If the Deputy Director decides there will be no investigation of the allegation, he or she will:
- (a) inform the Respondent of the allegation, the enquiries made and the outcome of the allegation; and inform the person making the allegation of the outcome.

- (3) If the Deputy Director determines that the allegation is to be investigated, which may still occur even if, subsequent to the alleged breach of the *Student Code of Conduct*, the Respondent ceased to be a student of the Institute, he or she will:
  - (a) personally investigate the allegation as he or she thinks fit, subject to Sub-rule (4) below; or
  - (b) develop appropriate terms of reference for an investigation and refer the allegation:
    - (i) to a specific staff member for investigation and presentation within seven days of the collated facts of the allegation to the Misconduct Advisory Panel; and
    - (ii) subsequent examination of the facts of the allegation by a Misconduct Advisory Panel which is established in accordance with Rule 5 on each occasion it is required; but
  - (c) whichever of (a) or (b) above is chosen, any granting or conferring of an award of the Institute to or on the Respondent will be delayed until the matter has been resolved, at which time the matter of the award will be reviewed.
- (4) The Deputy Director may, if he or she deems it necessary for the management and good government of the Institute to do so, suspend the Respondent from the Institute or specified locations or activities of the Institute until the completion of the investigation and any subsequent action.
- (5) As part of the investigation into the allegation, whether it is undertaken in accordance with Sub-rule (3)(a), or (b), the Deputy Director must provide to the Respondent:
  - (a) written advice about the details of the allegation, including copies of any documents provided to support the allegation and, unless inappropriate, the name of the person making the allegation; and
  - (b) a copy of these Rules, the *Student Code of Conduct* and information about possible subsequent action;
- (6) All investigations must comply with principles of natural justice and, in particular, will:
  - (a) give the Respondent full opportunity to answer the allegation, through a request for a response within seven days;
  - (b) if warranted by the circumstances and in consultation with the Deputy Director, provide the Respondent with a reasonable extension of time to respond;
  - (c) provide a statement of reasons for any decision or recommendation, including an account of facts and evidence on which the decision or recommendation is based.
- (7) The Respondent may respond to the allegation orally or in writing, by telephone or in person and detailed records will be kept of all oral responses.
- (8) The Deputy Director or the investigator appointed under Sub-rule (3)(b)(i) or the Misconduct Advisory Panel may interview any other person he or she or it believes might be able to assist the investigation or examination of the facts, but cannot compel a person to answer any question.
- (9) The Misconduct Advisory Panel must, within seven days of appointment or as close to that time as possible, provide the Deputy Director with a report detailing the investigations, findings and a recommendation for subsequent action and any penalties.
- (10) On the basis of the findings of the investigation, the Deputy Director may take one or more of the following actions in relation to the matter:
  - (a) take no further action;
  - (b) lift any suspension already imposed;
  - (c) impose a penalty.

- (11) The Deputy Director must reach a decision on the subsequent action and any penalties within 21 days, or as close to that time as possible, of notifying the Respondent of the allegation but the period will be automatically extended by a period equivalent to any extension of time given to the Respondent under Rule 4(6)(b) above.
- (12) The Deputy Director must:
  - (a) set down the details of the matter, including the findings and any penalties, in a confidential report to the Director;
  - (b) forward copies of the confidential report to the Respondent and to the person who made the allegation; and  
within 24 hours of making the decision at Sub-rule (11); and also report the matter to the next meeting of Council.

## **5. Misconduct Advisory Panel**

- (1) The functions of a Misconduct Advisory Panel are to:
  - (a) examine the facts, collated by the investigator appointed under Rule 4(b)(i), of an allegation of a breach of the *Student Code of Conduct* to determine whether or not a breach has occurred; and
  - (b) advise the Deputy Director of its findings, including a recommendation of any penalties to be imposed for breaches of the Code.
- (2) The selection of a Misconduct Advisory Panel will take into account appropriate gender balance and comprise three people, of whom:
  - (a) one will be a member of staff appointed by the Deputy Director to chair the Panel;
  - (b) one will be a member of staff nominated by the Aboriginal and Torres Strait Islander Staff Committee or, failing a nomination by that Committee, a second member of staff appointed by the Deputy Director; and
  - (c) one will be a student nominated by the Student Representative Committee or, failing nominations by that Committee, a student nominated by the Deputy Director.
- (3) Each member of the Panel will act in his or her personal capacity and no member will:
  - (a) be a member of or a student in an academic or administrative unit of the Institute in respect of which the alleged breach occurred, or which was directly and particularly affected by the alleged breach, or in which the Respondent was a student;
  - (b) have any other conflict of interest in the matter; or
  - (c) act as a representative or counsel for the person who made the allegation nor for the student against whom the allegation was made.
- (4) For the purposes of decisions by the Panel, a quorum will be all three members.
- (5) If a member of the Panel becomes unavailable to act as a Panel member, a replacement member with the same qualification under Sub-rules (2) and (3) above must be appointed or nominated to the Panel but the replacement of more than one of the original three members will constitute a new panel, in which case the examination by the original Panel will cease and the new Panel will begin afresh the examination of the facts collated by the investigator appointed under Rule 4(b)(i).

## **6. Penalties**

- (1) If an allegation of a breach of the Code is substantiated, the Deputy Director may impose on the Respondent a penalty, which may be one or more of the following:
  - (a) a written caution;
  - (b) a written reprimand;

- (c) a monetary fine up to the limit allowed for Rules made under section 51 of the Act; a condition of continued or renewed enrolment that the student undergo counselling of a specified nature and extent;
  - (d) suspension from a particular class or workshop for a period not exceeding seven days;
  - (e) exclusion from the Institute for a specified period not exceeding one calendar year;
  - (f) expulsion from the Institute.
- (2) If the breach involved or resulted in the loss or destruction of, or damage to, any property, the Deputy Director may also:
- (a) assess the amount of money required to replace or repair the property lost, destroyed or damaged; and
  - (b) order the Respondent to pay by way of compensation an amount of money, not exceeding the amount assessed under sub-paragraph (a).
- (3) When deciding a penalty under these Rules, the Deputy Director may take account of any other penalty imposed on the Respondent by any authority outside the Institute in respect of or arising out of the same breach.
- (4) A record of all penalties will be kept by the Institute.
- (5) If a penalty is imposed, the Deputy Director will:
- (a) advise the Respondent of this fact in writing;
  - (b) advise the person making the allegation of this fact in writing;
  - (c) advise the divisional head of the area in which the Respondent is enrolled of this fact in writing; and
  - (d) advise the Respondent of his or her right to appeal against the Deputy Director's findings in relation to the allegation of a breach of the Code of Conduct, or against the severity of a penalty imposed in relation to the allegation, or both.
- (6) Any penalty imposed is stayed until the expiry of the appeal notification period as described at Rule 7(1) or, in the event of an appeal, until the appeal is determined or withdrawn.
- (7) A student under suspension, exclusion or expulsion will be a trespasser if he or she enters upon any Institute premises from which he or she has been barred and, as such, will be liable to the due processes of the law and may be lawfully removed from Institute premises by any person or persons so authorised by the Director who may lawfully use any reasonable force to effect such removal.

## **7. Appeals**

- (1) A Respondent may appeal to:
- (a) the Director if the penalty is suspension or exclusion; or
  - (b) the Council, through the Director, if the penalty is expulsion;
- by lodging a written notice with the Director within 14 days (or later if granted an extension of time by the Director) of receiving written notification of the Deputy Director's decision or penalty, at which time the Respondent becomes the Appellant.
- (2) Respondents may appeal on the grounds of:
- (a) the Deputy Director's findings, including issues of application of the Student Code of Conduct or procedure, the interpretation of facts or new evidence; or
  - (b) the penalty imposed, in comparison with similar offences; and
- the notice of appeal must specify the nature and grounds of the appeal and the Appellant will not be entitled to use any additional grounds at the appeal hearings. If a Respondent does not lodge a written notice of appeal within the time allowed, this will be taken as an intention not to appeal and the imposition of any penalties will proceed.

- (3) On lodgement of an appeal, the Director will appoint a Student Disciplinary Appeals Committee in accordance with Sub-rule (5) and (6) to determine the appeal.
- (4) The selection of a Student Disciplinary Appeals Committee will take into account appropriate gender balance and comprise three people, of whom:
  - (a) one will be a member of staff appointed by the Director to chair the Panel;
  - (b) one will be a member of staff nominated by the Aboriginal and Torres Strait Islander Staff Committee or, failing a nomination by that Committee, an Aboriginal or Torres Strait Islander member of staff appointed by the Director; and
  - (c) one will be the member of Council elected by students, i.e. the member appointed under section 10(3)(c) of the Act, unless that person is unavailable or the position is vacant, in which case a nominee of the Student Representative Committee will be appointed by the Director;
- (5) Each member of the Appeals Committee will act in his or her personal capacity and no member will:
  - (a) be a member of or a student in an academic or administrative unit of the Institute in respect of which the breach occurred, or which was directly and particularly affected by the breach, or in which the Appellant was a student;
  - (b) have served on the Misconduct Advisory Panel relating to the same breach;
  - (c) be the Deputy Director;
  - (d) have any other conflict of interest in the matter; or
  - (e) act as a representative or counsel for the person who made the allegation nor for the Respondent.
- (6) Within seven days of the appointment of the Appeals Committee:
  - (a) the Deputy Director will provide to the Appeals Committee all documentation from the investigation of the alleged breach and the subsequent findings;
  - (b) the Appeals Committee will fix a date and time, not later than 10 days after receiving the documentation from the Deputy Director, for the hearing of the appeal; and
  - (c) the Appeals Committee will notify the Appellant in writing of the hearing and invite the Appellant to put his or her case in person or in writing or by telephone link or through another person to the Appeals Committee.
- (7) In exercising its functions an Appeals Committee:
  - (a) will have a quorum of three;
  - (b) may continue to act if, subsequent to the breach, the Appellant ceased to be a student of the Institute;
  - (c) will make its decisions by consensus or by majority vote;
  - (d) subject to the Act, By-laws and Rules, may follow any procedure it considers appropriate; and
  - (e) must observe principles of natural justice and act fairly and according to the substantial merits of the case, without regard to technicalities or legal forms.
- (8) If a member of the Appeals Committee becomes unavailable to act as a member of that Appeals Committee, a replacement member with the same qualification under Sub-rules (5) and (6) above must be appointed or nominated to the Appeals Committee but the replacement of more than one of the original three members will constitute a new Appeals Committee, in which case the investigations by the original Appeals Committee will cease and the Appeals Committee will begin the matter afresh.
- (9) At a hearing of the Appeals Committee:
  - (a) the proceedings will be held in private;

- (b) the Appellant has the right to be represented or assisted by an adviser, who cannot be a person who is called to give evidence at the appeal hearing;
  - (c) the Institute has the right to be present and to be heard through a representative appointed by the Director, and the representative may be assisted by an adviser, but neither the representative nor adviser can be a person who is called to give evidence at the appeal hearing;
  - (d) neither the Appellant nor the Institute nor any other person associated with the appeal may have legal representation or legal counsel before the Appeals Committee;
  - (e) if the Appellant or a representative for the Appellant fails to appear for the hearing, the Appeals Committee has the discretion to proceed in the Appellant's absence or adjourn the hearing for up to seven days;
  - (f) the Appeals Committee is not bound by the rules of evidence;
  - (g) the Appellant, the Institute's representative and their respective advisers, if any, are entitled to be present throughout the hearing except when the members of the Appeals Committee wish to confer among themselves or to consider their decision;
  - (h) the Appeals Committee has full authority to keep order and may require the removal of any person, including the Appellant, the Institute's representative and their respective advisers, because of conduct which, in the opinion of the Appeals Committee, is unruly.
- (10) The Appeals Committee will conclude its inquiry and reach a decision within 21 days of its appointment, or as close to that time as is reasonable, and prepare for the Director a report which includes reasons for its decision, which may be that the Appeals Committee:
- (a) upholds the Deputy Director's decision; and/or
  - (b) varies in some way a penalty imposed by the Deputy Director; and/or
  - (c) varies any order for restitution or compensation; and/or
  - (d) upholds the appeal, in which case the Director may decide to reimburse some or all or any substantiated expenses incurred by the Appellant, on application by the Appellant.
- (11) The decision of the Appeals Committee is final and the Director will, within two working days of receiving the decision:
- (a) convey the decision in writing to:
    - (i) the Appellant;
    - (ii) the Institute's representative;
    - (iii) their respective advisers, if any;
    - (iv) the Deputy Director who, in turn, will convey the decision to the Student Counsellors, divisional heads and, through them, other relevant staff;
    - (v) the person who made the original allegation of a breach of the *Student Code of Conduct*; and
  - (b) arrange for any penalty to be imposed or other subsequent action to be taken as required.

## 8. Confidentiality

- (1) Provided the principles of natural justice are observed, the nature of any breach investigated under this Code, the penalty imposed and the outcome of any appeal may be made public but the identity of the students, staff or other persons involved in the investigation of the breach and the hearing of any appeal, including the identity of the person against whom an allegation of a breach is made, is confidential .
- (2) All parties involved in student conduct procedures, at whatever stage, are required to maintain strict confidentiality and to ensure the security of all documents in their possession related to the matter.
- (3) Information about the matter and associated hearings or resolution will be restricted and given

only to those who need access to the information in the course of their official duties.

- (4) If, at any stage, any of the parties involved in the matter seek support, guidance, or counselling from a party external to the proceedings, then such communication is covered by qualified privilege against any action for defamation but the party seeking such support, guidance, or counselling should remind the external party that the communication is sensitive and, should that external party breach confidentiality on the matter, the defence of qualified privilege would no longer be available.
- (5) Where the process or final outcome arising from an allegation of a breach of the *Student Code of Conduct* reflects adversely on the performance of any individual staff member or student, and the person or persons have been involved in the process, each will be entitled to attach his or her own comments about the written records on his or her personal file.
- (6) Apart from the records noted in these Rules, no other records will be kept which may tend to identify students or staff members concerned in a procedure related to allegations of breaches of the *Student Code of Conduct*.
- (7) Any person who breaches confidentiality in relation to the matter may:
  - (a) if he or she is a staff member or student of the Institute, be the subject of charges under the appropriate Code or Rules; or
  - (b) run the risk that defamation actions will be taken against them in an external forum.

## **9. Procedural Fairness**

- (1) These Rules incorporate the principles of procedural fairness and those involved in investigating an allegation of a breach of the Student Code of Conduct and subsequent action must observe these principles .
- (2) To ensure procedural fairness in the exercise of administrative power, the courts have developed the legal concept of the rules of natural justice, which are to be observed when investigating a grievance.
- (3) In this context, the concept of natural justice consists of two fundamental principles:
  - (a) a person directly affected by an impending decision must be afforded a fair hearing prior to that decision being made; and
  - (b) the decision maker must be impartial.
- (4) While the exact requirements of a fair hearing may vary according to the circumstances of a particular case, it will ordinarily involve the following action prior to the making of any decision:
  - (a) giving adequate notice to the person or persons directly affected;
  - (b) furnishing the persons directly affected with the content of the material which is to be considered and which is adverse to his or her cause;
  - (c) providing an opportunity for the persons directly affected to answer that material and otherwise make his or her submissions; and
  - (d) ensuring that the materials and processes associated with this particular case are presented or described in such a way that the persons directly affected might reasonably be expected to comprehend them.
- (5) As the requirement to act impartially stems from the principle that a person shall not be the judge in his or her own cause, the decision maker should not have a personal interest in the outcome or otherwise be perceived as biased.

## **10. Victimisation**

- (1) Victimisation of persons who lodge allegations of a breach of the Code is prohibited and the Institute will take all reasonable steps to ensure that parties involved in student conduct procedures are not victimised or harassed in any way.
- (2) If a student has fears of potential victimisation, he or she can:
  - (a) request the Respondent's Supervisor to make arrangements to protect the student's interests, including allocating the student to other classes, moderating the student's assessment, or assigning administrative dealings to another officer; and
  - (b) advise the Student Counsellors of the matter, with a request that the Counsellors monitor the situation.
- (3) A staff member with concerns about potential victimisation should discuss the matter with his or her supervisor.

## **11. Counselling and Other Support**

The Institute will provide counselling and, as determined by the Director, other appropriate support for staff and students affected by the problem or issue raised by action taken under these Rules.