



Curtin University

WHAT TO DO IF YOU SUSPECT ACADEMIC MISCONDUCT: A PROCEDURAL FAIRNESS PERSPECTIVE

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What is Procedural Fairness?

- Procedural fairness comprises two rules –
 - hearing rule; and
 - bias rule.
- If a statute expressly provides that procedural fairness must be afforded, then it must be afforded to the extent and in the manner that the statute provides.
- Where a statute is silent about procedural fairness, the courts may imply a duty to afford it if a person's 'legal rights, interests, or legitimate expectations' may be affected by a decision.

What do the courts say about when procedural fairness should be granted to a student in the context of misconduct?

- Subject to the wording of the university statute and the individual facts and circumstances of the case, the rules of procedural fairness generally apply before a *final* decision is made but not to a preliminary recommendation as to whether the matter should be determined by a formal process.
- ‘The decision making process, [must be] viewed in its entirety’: *South Australia v O’Shea* (1987) 163 CLR 378, 389 per Mason CJ.
- Examples - *X v UWS* [2013] NSWSC 1329 and *Wilde v University of Sydney* [2002] NSWSC 954 (15 October 2002).



What does the university legislation say about when procedural fairness should be granted to a student in the context of misconduct?

Curtin University's Academic Misconduct Rules provide that –

‘A Staff Member or Associate who has reason to believe that a Student may be guilty of Academic Misconduct must report the matter to an Authorised Officer.’

Curtin University of Technology Council, *Academic Misconduct Rules* r 2.1(1).



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Should procedural fairness be afforded at the stage before a formal allegation of academic misconduct is made?

- Adverse consequences of a *finding* of academic misconduct - but an *allegation* itself can have serious consequences for a student.
- Despite the fact that a student's conduct may seem to be at first instance a 'clear cut' case of academic misconduct, there are several examples of conduct that are less 'clear cut' than they appear at first instance, and on further inquiry, it may be revealed that such conduct does not constitute academic misconduct.



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- **Recommendations:**
 - More consideration to be given to this stage both at a judiciary and university level.
 - Universities to consider amending their statutes to provide for the application of the rules of procedural fairness when academic misconduct is first suspected in the form of a simple, non-prescriptive statement.