

BURGMANN COLLEGE

APPEALS AND GRIEVANCE POLICY AND PROCEDURES

This document is to be read in conjunction with:

- the Burgmann College Incorporated Rules 2004
- Order 00 (formerly Discipline Regulation, made 16 December 1970) made under those Rules
- the Burgmann College Handbook 2004 et seq
- the Burgmann College Resident Handbook for Covid-19 Compliance April 2020 et seq
- the Burgmann College Sexual Misconduct (Sexual Harassment and Sexual Assault) Policy
- the Burgmann College Sexual Misconduct (Sexual Harassment and Sexual Assault) Procedure

It applies only to resident members of the College (3.1) except in relation to Harassment and Discrimination (section D) which includes staff of Burgmann College.

A. INTRODUCTION

1.0 ENVIRONMENT OF SAFETY, RESPECT AND DIGNITY

Burgmann College at The Australian National University is committed to providing an environment of safety, respect and dignity for all members of the College community, together with guests, contractors and the general public who may be present, and respect for the property of Burgmann College and individuals within the College. The College also has a legal responsibility to ensure that its members are not subjected to behaviour, work practices, policies or processes that may constitute unlawful discrimination, harassment, victimisation or vilification.

The College therefore aims to provide a living and learning environment in which members always act with the best interests of others in mind. Tolerance and respect for others and their rights and freedoms should be a primary concern as should a concern for their health and personal safety.

By accepting residency, residents agree to respect this basic philosophy of Burgmann College. The residential community standards which arise from this philosophy are detailed in the College Handbooks. The College for its part undertakes to act in a way that is fair, timely and ethical, and to offer its services, benefits, opportunities and facilities without discrimination.

Importance of addressing grievances

An essential part of developing such an environment is to encourage residents to come forward with grievances knowing that prompt and effective action will be taken. Unaddressed grievances can grow into major problems that may cause tension, low morale and reduced performance and productivity. Unresolved or poorly handled grievances can also lead to legal action against the College and/or its staff.

2.0 PURPOSE OF POLICY

The purpose of this policy is to define the rights and responsibilities of residents and the procedures and sanctions to be invoked. While elements of this policy may have similarities with the legal system, the type of hearing that is appropriate for the College is inquisitorial rather than adversarial, with grievances dealt with in an educative and administrative fashion. It is also accepted that members of the College, staff and guests, are subject to state and federal statutes, orders and laws.

3.0 SCOPE OF POLICY

3.1 This policy applies to current residents whether they are under a contract of residency or not. It therefore covers residents who are contracted (including Summer Scholars) and uncontracted resident members eg a staff member in residence.

- 3.2 Any current resident who believes they have a grievance relating to a breach of community standards, discrimination or harassment, or an administrative decision, may take action under this policy. Section D (Harassment and Discrimination) also applies to College staff and employees of Chartwells.
- 3.3 The grievance may be in relation to the College, a staff member, resident, guest or contractor.
- 3.4 In so far as matters of discrimination or harassment are concerned, this policy provides one avenue for resolution, *provided the discrimination and harassment occurs at Burgmann College on the ANU campus.* (See the ANU policy.) Where the discrimination and harassment occurs elsewhere on campus, other avenues must be used.
- 3.5 Some grievances may be covered by other policies or rules, such as, for example, those covering work performance issues, staff or resident misconduct, EBAs and AWAs. On receiving a formal grievance, the College will determine under which of its policies or procedures the grievance will be considered.
- 3.6 Non-limitation. This policy does not extinguish the right of an individual to seek the assistance of other external bodies, such as the University, a union, association, independent advocate or relevant external agency to resolve the grievance. In particular, a person raising a grievance may refer that grievance to an external body (such as the Human Rights and Equal Opportunity Commission) at any time. Should a grievance be referred to an outside body, the internal processes of the College may be suspended pending the outcome of the external review.
- 3.7 All Burgmann residents and staff will be made explicitly aware of this policy in their respective contracts of residence and employment.

4.0 MAJOR AREAS COVERED BY THE POLICY

This document covers the following situations:

- 4.1 A resident has a grievance relating to action taken by the College for a breach of community standards (ie discipline);
- 4.2 A resident or staff member has a grievance relating to harassment and discrimination, etc;
- 4.3 A resident has a grievance relating to an administrative decision of the College.

Chart 1 shows the overall grievance framework for these processes. The heading 'breach of community standards' refers to so-called 'disciplinary' matters. Obviously some incidents of discrimination and harassment will also be 'breaches of community standards', but they are treated separately here, with separate procedures. (See section 7.9 for further discussion.)

Chart 2 shows the processes for complaints relating to discrimination and harassment. It follows ANU's policy and procedures (Policy 270/2002), and is tailored to the residential setting at Burgmann.

B. PROCEEDINGS AND APPEAL MECHANISMS

- 5.0 The College encourages the informal resolution of grievances, so long as natural justice is assured and reporting requirements met.
- 5.1 Confidentiality is assured. Where Burgmann College is required to report certain misconduct to the Deputy Vice Chancellor under the Residential Colleges Affiliation Rules 2013, the ANU Rules state that this will be in confidence (see section 6.6B below).
- 5.2 Where a resident makes an appeal under section 6.7 or 8.8, the resident is entitled to be advised of the appeal hearing, the processes to be followed, and to be able to put their point of view. In accordance

with the principles of natural justice and procedural fairness, the resident (applicant) must be provided with the opportunity to be present at the hearing. If the appellant chooses to attend, they may be accompanied by a supporter.

- 5.3 Supporter. A resident who is required to meet with the Principal, the Internal Review Panel or a panel constituted by the Management Board, may be accompanied by another resident acting in the role of supporter. The supporter's role is to observe the meeting and provide support and guidance to the resident, as requested, but may not represent the resident nor speak on their behalf. Conflicts of interest should be avoided when choosing a supporter. For example, a resident tutor, a witness or another resident involved in the matter under consideration may not act in this role.
- 5.4 Formal rules of evidence are not applicable. In relation to alleged breaches of community standards, the Principal may make a decision based on the preponderance of the evidence. This "balance of probability" is not the same as "beyond reasonable doubt".

C. BREACHES OF COMMUNITY STANDARDS (DISCIPLINE)

- 6.0 This section must be read in conjunction with section 19 ('Expulsion of members of the College') of the Burgmann College Inc Rules 2004 and any Order made under that section.
- 6.1 The College Handbook 2004 states (p.19): *"Harmonious community life in College depends on the respectful, cooperative conduct of individual residents. The good order, management and discipline of the College is the responsibility of the Principal. The basic principle of discipline in the College is that actions of an anti-social nature that will be considered as breaches of discipline. Anti-social actions are defined as those actions that might reasonably be thought to cause offence to or infringe upon the rights and freedoms of another person."* The College Handbook enumerates what these are, both in its framework and detail. They include behaviour related to alcohol and drugs, noise, smoking, disregarding reasonable instructions from staff, wilfully damaging the property of others and actions endangering the community. The Contract which residents sign with the College includes formal acceptance by each resident of these community standards.
- 6.2 Examples of antisocial behaviour which are in breach of community standards include:
- 6.2.1 Disruptive or unruly behaviour, excessive noise, undue mess, smoking offences, drug use, fire safety offences, misuse of safety equipment, theft, possession of stolen property, vandalism, unauthorised use of property or service, alcohol policy infringements, misuse of computers, aiding and abetting, forcible entry or trespass, causing mental or bodily harm, possession of dangerous weapons, manufacture, sale, offering for sale or distribution of controlled substances.
 - 6.2.2 Antisocial behaviour relating to harassment, discrimination, vilification etc are dealt with in section D.
- 6.2B. The 'Burgmann College Resident Handbook for Covid-19 Compliance' enumerates the standards and requirements residents must adhere to during the Covid-19 pandemic. These standards and requirements are implemented for community health and safety and must be adhered to by residents.
- 6.3 Where a resident fails to regard these standards, the following applies.
- 6.3.1 A matter is brought to the attention of the Principal (or delegate).
 - 6.3.2 The Principal investigates and, if thought necessary, meets with the resident as quickly as possible to discuss the matter. Where a meeting is not possible, another means may be used.

- 6.3.3 The Principal may, at or after such a meeting, issue a warning, informally or formally (in writing). Where a warning is given, a file note is made.
 - 6.3.4 The College acknowledges the widely-accepted “three strikes and out” standard. That is, that the giving of a third formal warning constitutes grounds for expulsion. (File note is made).
 - 6.3.5 Formal notification of sanction which the College is applying, together with any relevant time frames.
- 6.4 Natural justice. The College prefers seeking ‘win-win’ situations with persons admitted into its membership as residents. It therefore offers residents the opportunity to respond. In certain circumstances the College may ask the resident to ‘show cause’ why a certain sanction should not be carried out. Where a sanction is notified, the notification includes advice of any appeal procedures that are applicable.
- 6.5 Sanctions. The College Handbook lays down a variety of responses for breaches of community standards relating to ‘disciplinary’ matters. These range from a discussion with the Principal with or without a formal note, formal written warnings, financial penalties, community service, reparation of finances or fabric, up to withdrawal of membership within a contracted period. Not to offer a returning place in College is not a sanction.
- 6.5.1 Which sanction is decided upon depends on the severity of the breach and circumstances. In ascending order the sanctions might be:
 - 6.5.2 A discussion that certain behaviour is unacceptable and should desist
 - 6.5.3 A formal meeting with the Principal and a file note
 - 6.5.4 A Formal Warning notice. The College operates the standard ‘three strikes’ policy in regards to formal warnings - three formal warnings and the person’s contract of residence is deemed to be withdrawn.
 - 6.5.5 Obligation to make good – eg replace or pay for damage, refund the College or an individual
 - 6.5.6 Community service
 - 6.5.7 Suspending a resident’s rights – eg withdrawal of IT access for breaking ANU’s IT regulations, exclusion from certain events
 - 6.5.8 Revising room allocation privileges
 - 6.5.9 Imposing a financial penalty
 - 6.5.10 Removing a resident from College employment
 - 6.5.11 Suspending a resident from College
 - 6.5.12 Expelling a resident from College (Note that Rule 19 of the College’s Rules and Orders made under that Rule applies to this situation.)
- 6.6 Some College responses are *not* sanctions, but the working out by the College of a resident having failed to fulfil contractual obligations. For example:
- 6.6.1 a handling charge for overdue payments on a resident’s account or a cleaning charge for a room left unacceptably dirty;
 - 6.6.2 delaying an offer to a returning resident until payment of outstanding fees from the previous year;
 - 6.6.3 postponing admissions decisions until relevant documents requested have been lodged.

6.6B ANU Residential Affiliation Rules 2013. Burgmann College has obligations under the ANU Residential Affiliation Rules 2013 (“the ANU Rules”).

6.6B.1 If an allegation is made, of misconduct that, if proven, might result in a student being suspended or otherwise removed from the College, it will be reported in confidence to the Deputy Vice-Chancellor together with a statement of the action proposed to be taken in relation to the allegation. Once the allegation is resolved, the College will report the outcome to the Deputy Vice Chancellor (see Rule 2(3) of ANU Rules 2013).

6.6 B.2 The College will provide reports to the Deputy Vice-Chancellor regarding standards of student behaviour as may be required by the Deputy Vice-Chancellor from time to time (see Rule 2(4) of the ANU Rules 2013).

6.7 Review and Appeal Procedures

6.7.1 Internal Review Panel. If still unresolved, the resident may (within 7 days of receiving the Principal’s written response) lodge a written appeal with the Internal Review Panel (IRP) by writing to the Principal. The IRP will be comprised of the residential Senior Fellow (Chair) or the College Officer, the BRA President or nominee, and a person elected from and by the academic staff of the College.

6.7.2 The grounds on which this appeal can be requested would normally be limited to the following grounds:

6.7.2.1 that the Principal did not follow the stated policy or procedures;

6.7.2.2 that the Principal did not take into account certain ‘evidence’ or circumstances in reaching a decision;

6.7.2.3 the inconsistency of the sanction with the nature of the breach.

6.7.3 The IRP must hear the grievance within 7 days of its receipt. It may request further information from the person and the College and may invite one or both parties to be present. It may reject the appeal, confirm the College’s decision, or recommend that the College review the decision. The Chair of the IRP must notify both parties in writing within 3 days of its decision. Where the IRP commends that the Principal review the decision, the Principal must determine and advise the result within 7 days.

6.7.4 Appeal to the Management Board. If the resident still feels that the matter is unsatisfactorily unresolved, including where the Principal makes an amended decision as a result of the IRP’s recommendation, the resident may (within @14 days of receiving the IRP’s response) appeal to the Management Board of the College Council by writing to the Secretary of the College Council, care of the Principal’s Office. The Management Board will determine how this is to be handled, whether by the Board itself or an Appeal Panel constituted by it. The grounds for, method of lodging, and procedures for such an appeal will be as the Board determines. The Management Board or its Panel must determine the grievance within @@14 days of its receipt and notify both parties in writing within 3 days of its decision. Its decision is final.

6.7.5 An appeal to the Management Board under this section will be handled in the same way and by the same body as an appeal to the Management Board relating to an administrative decision (8.8.2.7). These will be further specified when an Order is made under section 19 of the new Rules. Notwithstanding that that Order relates to a disciplinary situation (expulsion), its provisions will be sufficient and appropriate for dealing also with an appeal relating to an administrative decision.

D. GRIEVANCES ON GROUNDS OF DISCRIMINATION AND HARASSMENT

7.0 This section applies to staff of Burgmann College as well as resident members.

7.1 Harassment and discrimination are unacceptable forms of behaviour at Burgmann College, whether this be personal harassment, sexual and racial harassment, or vilification and victimisation.

7.2 Burgmann College follows the ANU policies and procedures for resolving grievances related to discrimination, harassment, vilification and victimisation. These are principally laid out in its Policy 270/2002 (which also refers to related ANU policies, and there are additional relevant ANU guidelines, eg for staff and students).7.3 Burgmann adapts ANU's policy to its residential setting as shown in Chart 2.

7.4 The procedure in simple terms is:

7.4.1 Informal procedure – may involve any or all of the following:

7.4.1.1 Self-help: tell the person that you don't like the behaviour and you want it to stop. Give them a copy of the policy, highlighting the section you feel they are breaching.

7.4.1.2 Seek advice and support in the above from one of the College's trained *Student Contacts (Tutors)*;

7.4.1.3 Seek advice and support from other sources, eg ANU's Equity and Diversity Unit.

7.4.2 Formal procedure, if still unresolved:

7.4.2.1 Make a formal complaint to the College's *Responsible Officer (Staff Tutors)* or the ANU's Equity and Diversity Unit. If still unresolved after 2 weeks, the matter is referred to the ANU's Grievance Office. If it is still unresolved after 4 weeks, the matter is referred to the Deputy Vice-Chancellor and a decision is made within 2 weeks.

7.5 In the case of staff, the *Contact Officers* will be as advised and the *Responsible Officer* the Bursar.

7.6 Reporting. All communications are in confidence. Where formal procedures have been invoked, the ANU's Equity and Diversity Unit is notified of the general terms of the resolution.

7.7 Documentation. A complaint may be made in writing or in person. All notes made by Student Contacts and Responsible Officer are destroyed after resolution, except where there is also a further breach of community standards affecting the person's standing in relation to the College. In this case the notes are attached to the resident or staff member's personal file.

7.8 Retaliation. The College will not permit any form of retaliation against someone using the grievance procedures in good faith.

7.9 Interaction of this section with consideration of discipline. ANU's policy (6.2 and 7.2) refer to a potential overlap between an incident of harassment and the disciplinary process. In short:

7.9.1 An incident of harassment may also be a matter of misconduct under the University policies, or a breach of community standards under College rules. For example, repeated harassment, physical assault, sending of threatening messages.

7.9.2 In such cases, disciplinary procedures might also be invoked. They can run parallel to those in this section, provided that natural justice and avoidance of conflict of interest are observed.

E. APPEALING ADMINISTRATIVE DECISIONS OF THE COLLEGE

- 8.0 Life in a residential community requires the making of many decisions affecting residents, both as individuals and as groups. The College has a long tradition of consulting with residents and involving them in its ongoing governance and administration. There is a complex, well-developed network communicating regularly about community matters, including Council and committee meetings, tutors' meetings, house committee meetings, residential staff meetings and staff managers' meetings. At these meetings, many issues relating to administrative decisions are raised for discussion. In addition, individuals are encouraged to raise matters that concern them with staff, tutors and residential staff and members of the house committee.
- 8.1 This section refers only to matters affecting individual residents, not decisions taken by the College concerning the resident body at large, or sections of it. Concerns about such generic decisions should be raised with elected representatives and referred onwards if necessary through the College's governance channels.
- 8.2 Examples of matters handled under this section might include: the resident's financial account; selection of residents to tutorial or other rebatable positions; the allocation of rooms.
- 8.3 Where a resident has a concern about a decision of the College affecting them, the College's preferred ethos of personal responsibility indicates a threefold strategy:
- 8.3.1 The individual takes the initiative in raising the matter;
 - 8.3.2 The matter is raised directly with an appropriate person;
 - 8.3.3 The matter is first raised informally, rather than starting with a formal grievance.
- 8.4 Because management of the College is entrusted to the Principal, it is inappropriate to initiate a grievance by taking matters up with the College Council or its Executive. There is provision later in the grievance process to appeal outside the College Administration.
- 8.5 'Appropriate' people are, during Office hours, the Office staff and, after hours, the tutors and residential staff. They will deal with the matter or refer it on.
- 8.6 Most issues referred to the College are resolved quickly and simply, many being the result of misunderstanding, or incomplete information. Where someone remains unhappy about a decision, however, it can be raised in a more formal manner. Items of a personal nature are normally followed up with a letter or through a discussion with the Principal. If a resident is still unhappy, they may choose to press the grievance to a further formal stage or agree to disagree with the College.
- 8.7 At any time, a resident may seek advice and support, eg from other residents or staff members.
- 8.8 The procedure is:
- 8.8.1 Informal procedure
 - 8.8.1.1 Raise the matter informally with an appropriate person, seeking reasons for the decision, preferably face to face;
 - 8.8.1.2 If unresolved, raise the matter informally with the Principal (or delegate).
 - 8.8.2 Formal procedure, if still unresolved
 - 8.8.2.1 Raise the matter formally with the Principal, ie in writing, seeking a review of the decision. The Principal will respond in writing within 7 days giving reasons for the decision. The response may be that further investigation is needed;
 - 8.8.2.2 Internal Review Panel. If still unresolved, the resident may (within 7 days of receiving the Principal's written response) lodge a written appeal with the Internal Review Panel (IRP) by writing to the Principal. The IRP will be comprised of the residential Senior Fellow (Chair) or the College Officer, the

BRA President or nominee, and a person elected from and by the academic staff of the College.

- 8.8.2.3 The grounds on which this appeal can be requested would normally be limited to the following grounds:
- 8.8.2.4 that the Principal did not follow the stated policy or procedures;
- 8.8.2.5 that the Principal did not take into account certain 'evidence' or circumstances in reaching a decision;
- 8.8.2.6 The IRP must hear the grievance within 7 days of its receiving the grievance. It may request further information from the person and the College and may invite one or both parties to be present. It may reject the appeal, confirm the College's decision, or recommend that the College review the decision. The Chair of the IRP must notify both parties in writing within 3 days of its decision. Where the IRP commends that the Principal review the decision, the Principal must determine and advise the result within 7 days.
- 8.8.2.7 Appeal to the Management Board. If the resident still feels that the matter is unsatisfactorily unresolved, including where the Principal makes an amended decision as a result of the IRP's recommendation, the resident may (within 14 days of receiving the IRP's response) appeal to the Management Board of the College Council by writing to the Secretary of the College Council, care of the Principal's Office. The Management Board will determine how the appeal is to be handled, whether by the Board itself or an Appeal Panel constituted by it. The grounds for, method of lodging, and procedures for such an appeal will be as the Board determines. The Management Board or its Panel must determine the grievance within 14 days of its receipt and notify both parties in writing within 3 days of its decision. Its decision is final.
- 8.8.2.8 An appeal to the Management Board under this section will be handled in the same way and by the same body as an appeal to the Management Board relating to a breach of community standards (6.7). These will be further specified when an Order is made under section 19 of the new Rules. Notwithstanding that that Order relates to a disciplinary situation (expulsion), its provisions will be sufficient and appropriate for dealing also with an appeal relating to an administrative decision.

F. RESOLVING OTHER GRIEVANCES

9.0 From time to time difficult issues of an interpersonal nature may arise. These may manifest eg as personal conflict, an allegation of theft of clothing, difference of opinion or lifestyle that blow up into considerable tension, sometimes affecting others in residence. They are neither breaches of community standards nor the outcome of any administrative decision. Where they are brought to the College's attention, and it is in the interests of the community, the Principal may intervene, personally, or through a delegate, to seek to achieve outcomes acceptable and appropriate for the community.

10.0 ACKNOWLEDGEMENTS

This document arises from Burgmann's own experience of over 30 years but it acknowledges ANU's policies and practices (themselves based on a model from the University of New South Wales) and those of Monash University Residential Services (based in turn on those developed at Griffith University for its residences).

11.0 REVISION OF POLICY DOCUMENT

The Principal will review the effectiveness and appropriateness of this policy and its procedures and report to the Management Board on a regular basis.

Last updated: 29 April 2020