

## Monash University Procedure

<b>Procedure Title</b>	Exclusion Appeals Panel Procedures
<b>Parent Policy</b>	No parent policy
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<b>Scope</b>	
<b>Purpose</b>	
<b>PROCEDURE STATEMENT</b>	

### 1. Membership and role of the Exclusion Appeal Panel

- 1.1. The EAP panel is a pool of potential decision makers appointed by the Academic Board. To be eligible for appointment a person must be a member of the academic staff of a faculty that has not less than two years experience as an APC Chair or is a member of the academic staff of the Faculty of Law with experience in the area of administrative law.
- 1.2. The role and powers of the EAP members are set out in Part 4 of the Monash University (Academic Board) Regulations.
- 1.3. The function of an EAP member in any particular case is to determine if the appeal is upheld on the ground/s relied on by the student.

#### **Responsibility**

Academic Board  
EAP members

### 2. When can a student appeal to an EAP member?

- 2.1. If a student is excluded by the APC of any faculty, the student may appeal on one or both of the following grounds:
  - a. new evidence not reasonably available to the student concerned at the time of the APC hearing which has the potential to alter the outcome of the student's case; or
  - b. a procedural irregularity in the hearing or processing of the case, which is a breach of the rules for procedural fairness (natural justice) or a deviation from the requirements of the following, with the potential to alter the outcome of the student's case:
    - Monash University (Academic Board) Regulations, Part 4; or
    - Faculty Academic Progress Committee Procedures

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- 2.2. 2.2 A student who fails to respond to the Notice of Hearing and Referral has no right of appeal to an EAP member. Instead the right of appeal is to the dean of the faculty, who may exercise discretion to refer the matter back to a new APC for a rehearing where he/she finds there are exceptional circumstances in the particular case.

### Responsibility

All coursework students  
EAP Secretary  
Deans

## 3. Advice on preparation of appeals and assistance to students appealing an exclusion outcome

- 3.1. Students are encouraged to seek advice about the preparation and presentation of an appeal from the student rights officers of the relevant student association at the University or equivalent assistance available at the student's campus. This person may also assist a student if called to appear before the EAP member at a hearing.
- 3.2. Additionally, student support is available from a range of University services including the University Counselling Service. A current list of Student Support Services and contact details will be made available to students and faculties.
- 3.3. A student may also seek advice about the preparation and presentation of an appeal by contacting a local community legal service, such as the Monash-Oakleigh Legal Service on 60 Beddoe Avenue, Clayton 3168 (appointments may be made by telephoning extension 9905 4336). These services do not provide representation if there is a hearing before an EAP member, but may assist a student in preparing their appeal documents.

### Responsibility

All coursework students  
Student support services

## 4. Procedure for lodging an appeal

- 4.1. The student has a period of 20 working days following the deemed delivery of the APC Notice of Decision to lodge the appeal with the secretary of the EAP. The appeal must be in writing, accompanied by the [Notice of Appeal Against Decision to Exclude proforma](#) and indicate the ground/s of appeal relied upon, being a procedural irregularity and/or new evidence.
- 4.2. Students must submit a written statement of the ground/s of their appeal when lodging the appeal. Documentation in support of the appeal ground/s must be either submitted at the time the appeal is lodged, or advice provided as to when the documentation will be available.
- 4.3. Students may provide independent supporting documentation from a treating medical practitioner, psychologist or psychiatrist or a member of another profession (such as a social worker or minister of religion) at the time of lodging their appeal. Documentation should be comprehensive. For example, a medical certificate that states only that the student has "a medical condition" (not specified) may not be helpful to the student's case. Students need to provide comprehensive information and documentation in support of their case explaining the issue (diagnosis and prognosis), its impact on the student in the past, and its likely future impact on the student, particularly as it relates to the student's study. For more information on medical reports, go to [APC Medical Report Guidelines](#).
- 4.4. Original documentation supporting the student's appeal is not required. However unless originals are available when requested by the EAP member for verification purposes, the document may be disregarded.

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- 4.5. Any documentary material furnished by or on behalf of a student, including the written appeal against the faculty APC decision to exclude, will be provided to the Faculty APC Chair for a response.
- 4.6. It is the student's responsibility to retain copies or records of his or her correspondence, including proof of postage or despatch of any material sent.
- 4.7. No student encumbrance relating to the exclusion is to be placed on Callista pending the outcome of the appeal. If the appeal is upheld, this includes until the outcome of the dean's consideration and any APC rehearing is known.

### Responsibility

All coursework students  
EAP Secretary  
EAP members

## 5. Determining if there is a prima facie case

- 5.1. Once an appeal is lodged which sets out in writing the ground/s of the appeal, within 10 working days the EAP member is to be appointed to decide the appeal. The EAP member must not be working in the student's faculty, except where the appeal raises a complex issue of a legal nature, in which case the EAP member appointed must have legal qualifications. Where the complexity of the appeal is not clear, the chair of the Learning and Teaching Committee (or delegate) will determine if the appeal raises a complex issue of a legal nature.
- 5.2. The EAP member must determine whether or not there are prima facie grounds for the appeal (i.e. sufficient evidence that could establish the appeal ground, making it an arguable case) being
  - a. new evidence that was not reasonably available to the student at the time of the APC Hearing with the potential to alter the exclusion decision, or
  - b. procedural irregularity with the potential to alter the exclusion decision, or both.
- 5.3. The failure by the student to make available to the APC all relevant material reasonably available to the student at the time of the hearing is not a ground to appeal.
- 5.4. It is the student's responsibility to update their address details in the records of the University. The following reasons/grounds are not grounds for an appeal:
  - failure to have paid any outstanding fees;
  - failure to notify the University of the student's changed address;
  - failure to make adequate forwarding arrangements for mail;
  - failure to keep copies and records of correspondence; and
  - failure to follow up on non-acknowledgement of previous correspondence.
- 5.5. Prior to making a decision the EAP member should have benefit of any comment the student chooses to make on the content of the Hearing Record Sheet for the APC. The student will be provided with a copy of the Hearing Record Sheet and permitted up to 7 days from the date it was sent to make comment.
- 5.6. Before deciding whether there is a prima facie case the EAP member may seek a response to the appeal ground from the Faculty APC chair through the secretary to the EAP. If the response raises a substantial new matter and the EAP member is considering dismissing the appeal, the student must be given an opportunity to comment on the substance of the faculty response.5.6 The EAP member may either find no prima facie grounds and dismiss the appeal, or find prima facie grounds and then proceed to decide the appeal.
- 5.7. The student and the dean of the faculty must be sent Notice of Decision including the reasons for the EAP member's decision. The reasons for decision should be a clear statement explaining why the

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decision was made. Where the effect of the decision is the student remains excluded, the Notice of Decision must include a statement of the implications on visas for international students who are excluded by their faculty and advice of the right to apply to the Victorian Ombudsman to review the decision.5.8 The EAP member has no power to require a faculty in which the student had not been enrolled previously to admit the student.

### **Responsibility**

All coursework students  
EAP members  
EAP secretary

## 6. Deciding the appeal where arguable case

- 6.1. Where there are prima facie grounds for the appeal, the EAP member must consider how to conduct the appeal. The EAP member may determine the appeal on the material available or convene a hearing.
- 6.2. The decision about whether to convene a hearing is in the discretion of the EAP member. The decision is to be based on an assessment of the ground/s of appeal and material available or that could be available to the EAP member. Consideration could include whether full and sufficient evidence is available to determine the appeal; whether the faculty and the student have had or could have an adequate opportunity to respond to the issues raised in the appeal without a hearing; whether a hearing would be helpful to resolve any conflicts in the evidence raised in support of the matters to be determined in the appeal; and whether a hearing is likely to decide the appeal.
- 6.3. If decided without a hearing, the substance of any material that the EAP member might use in its deliberations must be made available to the student by the EAP Secretary, and inviting the student to respond to this material.
- 6.4. If there is a hearing held by the EAP member, notice of the hearing must be sent by email or post to the student advising of the date, time and place at which the hearing is to be held. The notice of hearing must be sent so its deemed delivery date is at least 10 calendar days prior to the hearing, unless the student agrees to a shorter period. The notice should refer the student to the Disability Services Unit (DSU) to arrange any necessary accommodations for a disability during the hearing.

### **Responsibility**

EAP Secretary  
EAP member

## 7. The Hearing

- 7.1. Any hearing will be conducted in the English language. The EAP member is responsible to ensure the fair and efficient conduct of the hearing and determination of the appeal. The procedure adopted for the hearing needs to be sufficiently flexible to respond to the circumstances of the particular case. The hearing should provide the student with a reasonable (but not unlimited) opportunity to present his or her evidence and arguments in support of the appeal ground.
- 7.2. A student may appear in person at the hearing and submit written evidence and make oral submissions. The student may be accompanied and assisted by a student of the University, a staff member at the student's campus, a student rights officer or campus equivalent or other person approved by the EAP member, who may also speak at the hearing.
- 7.3. Where a hearing is held to decide an appeal, a representative of the faculty APC will be present at the hearing. He/she and the student may make present evidence and make submissions to the EAP member. The faculty representative's role is to assist the EAP member in their enquiries by informing the EAP member of the procedures followed by the faculty APC in reaching its decision to exclude

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the student. The faculty representative appearing before the EAP member should, except in exceptional circumstances, also have been a member of the Faculty APC.

- 7.4. A student who wishes to be accompanied and assisted by a person with legal qualifications should give five working days notice to the EAP Secretary. A student is not entitled to be accompanied and assisted by a lawyer without prior approval from the EAP member. If approval is given, the representative of the Faculty APC may also be accompanied and assisted by a legal practitioner, who may also speak at the hearing.
- 7.5. A student who does not intend to appear at the hearing should inform the EAP Secretary prior to the hearing. The student can submit further written material in support of the appeal to be considered by the EAP member in the student's absence. Where a student does not attend the hearing, the appeal will be heard based solely on the written submissions of the student and any faculty response. A student who is prevented by circumstances beyond his/her control from appearing at the hearing should notify the EAP Secretary immediately of any such event. Where a student is unable to appear in person, alternative arrangements may be made to hold the hearing by prior arrangement made through the EAP Secretary.

### Responsibility

All coursework students  
Faculty representative  
EAP members

## 8. Conduct of Hearing

- 8.1. The EAP member is appointed to act fairly and impartially. The EAP member is responsible to ensure the conduct of those present and the process is fair. The EAP member must respect the sensitivity of the information which they acquire through the process. This information is not to be used or disclosed for purposes not relevant to the university's management of student progress. The EAP member must bring an open mind to the matter to be determined and not prejudge the issue. If the EAP member feels unable to fulfil these obligations, the member should ask to be replaced by another EAP member. Where an EAP member does not or cannot fulfil these obligations, their appointment may be revoked.
- 8.2. The hearing is conducted in private. The persons who attend are the EAP member, the student and any person providing assistance or support to the student, the faculty representative and the EAP Secretary and such other staff whose services may be required. Where the student is permitted to be legally represented, the faculty representative shall also be permitted to be legally represented. In the case of double degree students, where they are being considered for exclusion by one or both faculties of enrolment, the faculty representative from the other faculty may also be present. Any person who attends as a witness to give evidence will be in the hearing room only for the time during which their evidence is given.
- 8.3. The EAP member does not have the power to require the attendance of witnesses. It is therefore the student's responsibility to make arrangements for the attendance of any person whom he/she wishes to give evidence on matters relevant to the appeal. A student who wished to have a witness attend should inform the EAP Secretary at the time the appeal is lodged, or as soon as possible thereafter.
- 8.4. Upon commencement of the hearing, the EAP member should introduce all persons present and explain the process of the hearing. The EAP member should then ask the student and the faculty representative (in turn) if there is any objection to the hearing proceeding at this time to the EAP member hearing the case, for example on the ground of a reasonable perception of bias. If an objection is raised the EAP member must ask the reasons for the objection and must determine the objection. The EAP member may take a short adjournment to determine the objection. An objection should only be granted if justifiable grounds are raised in support of it. An objection that the EAP member is affected by a reasonable perception bias must be raised at the first reasonable opportunity and must not be withheld until an adverse decision is known.

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- 8.5. When an objection is allowed, the hearing must be conducted according to that decision. This may necessitate the hearing being adjourned to a time set and for the EAP member to be replaced by another EAP member for the hearing to proceed. If the objection is denied, the hearing should proceed.
- 8.6. The objective of the hearing is to determine the appeal ground relied on by the student: whether there was procedural irregularity in the processing or hearing of the student's case at the faculty APC and/or new evidence becoming available since that hearing. The hearing must confine its considerations to the appeal ground. The appeal is not concerned with whether the EAP member agrees with the final decision of the APC.
- 8.7. The faculty representative should be invited by the EAP member to outline the procedures followed by the Faculty APC in determining to exclude the student, with particular reference to any procedural irregularity or new evidence claimed by the student. The faculty representative may also offer evidence and other matters that he/she considers the EAP member should take into consideration in deciding the appeal.
- 8.8. The EAP member should then invite the student to comment on the statements made by or on behalf of the faculty. The student will be given a chance later to present their case to the EAP member, and so the student should at this stage be asked to only comment on the faculty representatives statements.
- 8.9. The EAP member may ask questions of either party but should avoid interrupting another person speaking unless the matters canvassed are known or unhelpful. Any questions that the student or faculty wished to raise during the hearing should be directed to the EAP member, without any direct questioning between the two parties, except with the EAP member's permission.
- 8.10. The student should then be invited by the EAP member to outline the case they wish to present to substantiate the allegation of procedural irregularity and/or claim of new evidence. The person supporting the student should be invited to add any comment he/she wishes to make.
- 8.11. The faculty representative will be invited to comment on the statements made by or on behalf of the student.
- 8.12. Upon hearing the appeal, the EAP member may either dismiss or uphold the appeal.
- 8.13. Where the EAP member dismisses the appeal, there is no further right of appeal and the APC exclusion decision stands and will be processed on the student information system by the faculty.
- 8.14. Where the EAP member upholds the appeal, the student's circumstances will be referred back to the dean for consideration. The dean may take no further action, impose conditions on the student's enrolment, or refer the student to a rehearing before a newly convened faculty APC. The faculty APC rehearing must have different membership from the original hearing. It must contain no member of the APC that made the original decision to exclude the student. Where directed by the EAP member, the newly convened faculty APC is to be augmented by another EAP member acting as chair of the faculty APC re-hearing.

### **Responsibility**

All coursework students  
Faculty Representative  
EAP members  
Faculty APC

## 9. Notice of EAP member's decision

- 9.1. Wherever possible, students will be informed of the outcome of their appeal at the conclusion of the hearing. In all cases, the student will be sent in writing Notice of Decision of the EAP member's decision and the reasons for the decision within seven days of it being made. The reasons for the decision should be a clear statement explaining why the decision was made.

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- 9.2. Where the effect of the decision is the student remains excluded, the Notice of Decision must include a statement of the implications on visas for international students and the right to apply to the Victorian Ombudsman for review of the decision.
- 9.3. The student may request the EAP Secretary provide more detailed reasons for a decision. Any such request must be made to the EAP Secretary within thirty days from the deemed delivery date of the Notice of Decision.

### Responsibility

EAP Secretary  
EAP members

## 10. General enquiries

- 10.1. Enquiries regarding the hearing of appeals should be directed to the secretary to the Exclusion Appeals Panel on telephone (03) 9905 5049.

### Responsibility

As above

<b>Responsibility for implementation</b>	All coursework students Faculty Representative EAP members Faculty APC
<b>Status</b>	
<b>Approval Body</b>	
<b>Definitions</b>	<p><b>APC:</b> means an Academic Progress Committee constituted by the Dean under regulation 29 of the Monash University (Academic Board) Regulations. Each Faculty may have one or more Academic Progress Committees.</p> <p><b>APC Hearing:</b> means a hearing conducted by an APC whether or not a student concerned is in attendance.</p> <p><b>Bias:</b> refers to a reasonable perception of bias about an APC member. Such a reasonable perception can exist where the person has a closed mind to the student's circumstances or has pre-judged the case or is influenced by personal factors in deciding the student's case.</p> <p><b>Deemed delivery date:</b> means the date a Notice is treated as having been delivered to the student after applying the delivery times in regulation 37 of the Monash University (Academic Board) Regulations. This anticipates a student regularly checks their email and postal mail. Any failure by the student to check their email and postal mail does not alter the deemed delivery date.</p> <p><b>EAP member:</b> means an Exclusion Appeals Panel member as described in regulation 33 of the Monash University (Academic Board) Regulations.</p> <p><b>New evidence:</b> means evidence that was not reasonably available to the student at the time of the APC Hearing with the potential to alter the outcome of the student's case.</p>

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	<p><b>Notice:</b> means any notice referred to in these Procedures.</p> <p><b>Notice of Decision:</b> means the Notice of Decision letter that formally advises the student of the outcome of the APC Hearing, the reasons for the decision and any right of appeal.</p> <p><b>Notice of Referral and Hearing:</b> means the Notice of Referral and Hearing letter which has the purposes of advising the student that they have been referred to the APC for consideration for exclusion.</p> <p><b>Procedural irregularity:</b> refers to a breach of the rules of procedural fairness (natural justice) or deviation from the requirements of Part 4 of the Monash University (Academic Board) Regulations or related procedures with the potential to alter the outcome of the student's case.</p>
<b>Legislation Mandating Compliance</b>	<p><a href="#">Monash University (Academic Board) Regulations, Part 4</a></p> <p><a href="#">National Code of Practice for Providers of Education and Training to Overseas Students 2018 (Cth)</a></p>
<b>Related Policies</b>	<p><a href="#">Faculty Academic Progress Committee Procedures</a></p>
<b>Related Documents</b>	