53 MANAGING UNSATISFACTORY PERFORMANCE

Application

53.1 The procedures outlined in this Clause apply to all continuing and fixed-term staff employed by the University. This Clause does not apply to casual and probationary staff.

53.2 It is expected that supervisors will have provided regular feedback on performance as part of the performance review processes at UTS and will deal promptly and fairly with issues. Supervisors will provide guidance and counselling and, where appropriate, staff development, to address performance issues when these are first identified.

53.3 The procedures of this Clause must be followed before disciplinary action against a staff member for unsatisfactory performance may be taken. However, where a matter that may involve unsatisfactory performance has been dealt with in good faith as though it were a case of misconduct under Clause 54, the procedures of this Clause are not required, but the procedures of Clause 54 including notice periods and review procedures, must be followed. Nothing in this Clause prevents the relevant Dean, Director, Head of Division or the Vice-Chancellor from referring a question of possible unsatisfactory performance to a supervisor or Manager for appropriate action.

Definition

53.4 ‘Disciplinary action’ means action by the University to discipline a staff member for unsatisfactory performance in accordance with the provisions of this Agreement and may include one or more of the following:

(a) formal censure
(b) formal counselling
(c) demotion by one or more classification levels or increments
(d) withholding of an increment
(e) suspension with pay
(f) termination of employment.

Procedures

53.5 Where a supervisor forms a view that the performance of a staff member is unsatisfactory, the supervisor will:

(a) inform the staff member that action is being, or may be, taken in accordance with this Clause
(b) counsel the staff member on the nature of the improvement required and the time within which reasonable improvement is expected, and
(c) make a record of the counselling given and provide a copy to the staff member.

53.6 A staff member may choose to be accompanied by a representative of the staff member’s choosing at any counselling or meeting convened in accordance with this Clause, provided that person is not a barrister or solicitor in private practice.

53.7 When performance issues are identified as part of the University’s performance review processes and the staff member has been advised in accordance with sub-clause 53.5(b), the procedures outlined in that process for dealing with performance issues may be deemed to satisfy the requirements of sub-clause 53.5.

53.8 Where a supervisor believes that the processes referred to in 53.5 have not produced the desired improvements in performance, the supervisor will make a report to the Dean or Director (as appropriate) and, at the same time, provide a copy to the staff member. The Dean or Director will review the report and any response provided by the staff member and may decide to:

(a) take no further action
(b) refer the matter back to the supervisor to ensure that the steps referred to in subclause 53.5 are complied with in substance and in a manner appropriate to the circumstances; or
(c) refer the report to the Deputy Vice-Chancellor. The report will state clearly the aspects of performance viewed as unsatisfactory and the record of attempts to remedy the problem/s.

53.9 The Dean or Director will provide the staff member with a copy of the report at the time it is referred to the Deputy Vice-Chancellor. The staff member may, within ten working days of receipt of the report by the Deputy Vice-Chancellor, submit to the Deputy Vice-Chancellor a written response to the report.

53.10 Upon receipt of the report and any written response from the staff member, the Deputy Vice-Chancellor will first be satisfied that:

(a) appropriate steps have been taken to bring the unsatisfactory nature of performance to the staff member’s attention
(b) an adequate opportunity to respond was given
(c) any response was taken into account, and
(d) a reasonable opportunity has been afforded to remedy the performance problem.

53.11 Following consideration of the report and any written response from the staff member, the Deputy Vice-Chancellor may then:

(a) take no further action
(b) refer the matter back to the supervisor (via the Dean or Director) to ensure that the steps referred to in sub-clause 53.5 are complied with in substance and in a manner appropriate to the circumstances, or
(c) advise the staff member, in writing, of the recommendation being made to the Vice-Chancellor concerning disciplinary action be taken.

53.12 Following receipt of the Deputy Vice-Chancellor’s written advice, the staff member has five working days to submit, in writing, a request for a review of the process leading to the Deputy Vice-Chancellor’s recommendation.

53.13 If the staff member does not request a review of the process leading to the Deputy Vice-Chancellor’s recommendation, the Deputy Vice-Chancellor will refer his/her recommendation to the Vice-Chancellor. The Vice-Chancellor will consider the recommendation and determine if any disciplinary action is to be taken. The Vice-Chancellor will advise the staff member, in writing, of her/his decision and the operative date of any disciplinary action to be taken.

Review

53.14 Where a staff member requests a review of the Deputy Vice-Chancellor’s recommendation in accordance with sub-clause 53.12, a Reviewer will be appointed normally within ten working days [refer to Clause 55, Reviewers and Investigators].

53.15 The Reviewer will:

(a) conduct proceedings as expeditiously as possible consistent with the need for fairness
(b) allow the Deputy Vice-Chancellor and staff member to be assisted, if they so choose, by an agent of his/her choice who is not a solicitor or barrister in private practice
(c) give the staff member adequate opportunity to put his/her case that fair process was not observed up to the point of the recommendation by the Deputy Vice-Chancellor to advise the staff member that his/her performance is unsatisfactory
(d) provide an opportunity for the staff member to be interviewed
(e) conduct all interviews in the presence of the staff member and the Deputy Vice-Chancellor and, where applicable their representatives
(f) ensure that the staff member and the Deputy Vice-Chancellor have the right to ask questions, to make submissions and to present and challenge evidence
(e) interview any person the Reviewer thinks fit to establish the facts of the particular case
(f) take into account other material the Reviewer believes appropriate to the case;
(g) keep a record of the interviews and proceedings
(h) provide a report together with a record of proceedings to the Vice-Chancellor and the
staff member as expeditiously as possible following completion of the proceedings
(i) conclude the proceedings as expeditiously as possible following appointment of the
Reviewer.

53.16 If the Reviewer concludes that the procedures set out in sub-clause 53.5 to 53.10 were not
properly followed the Vice-Chancellor will consider the Deputy Vice-Chancellor’s
recommendation in light of the Reviewer’s report and may first take steps to remedy any
perceived unfairness as may seem to the Vice-Chancellor reasonable.

53.17 The Vice-Chancellor will then decide if disciplinary action is to be taken. The Vice-
Chancellor will advise the staff member in writing of her/his decision, and of the operative
date of any disciplinary action to be taken. If the Vice-Chancellor decides there has been no
unsatisfactory performance, she/he will immediately advise the staff member in writing, and
may, by mutual agreement with the staff member, publish the advice in an appropriate
manner.

53.18 If the Reviewer concludes that the procedures set out in sub-clauses 53.5 to 53.10 were
followed properly, the Vice-Chancellor will consider Reviewer’s report and the Deputy Vice-
Chancellor’s recommendation and decide if disciplinary action is to be taken. The Vice-
Chancellor will advise the staff member in writing of her/his decision, and of the operative
date of any disciplinary action to be taken.

53.19 The action of the Vice-Chancellor under this Clause will be final. However, this Clause does
not exclude the jurisdiction of any external tribunal that would be competent to deal with the
matter.