48 MANAGING UNSATISFACTORY PERFORMANCE

Application

48.1 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.

48.2 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.

48.3 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 or serious misconduct under Clause 49, the procedures of this Clause are not required, but the procedures of Clause 49, including notice periods and review procedures, must be followed. Nothing in this Clause prevents the relevant Dean, Deputy Vice-Chancellor or the Vice-Chancellor from referring a question of possible unsatisfactory performance to a supervisor for appropriate action.

Definition

48.4 ‘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 or without pay; and  
(f) termination of employment.

Procedures

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

(a) counsel the staff member on the nature of the improvement required and the time within which reasonable improvement is expected; and  
(b) make a record of the counselling given and provide a copy to the staff member; and  
(c) inform the staff member that if the required improvement in performance is not achieved in the timeframe specified, action will be taken in accordance with this Clause.

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

48.7 Where a supervisor believes that the processes referred to in sub-clause 48.5 have not produced the desired improvements in performance, the supervisor will make a report to the Dean and, at the same time, provide a copy to the staff member. At the request of the staff member, a supervisor will consult with colleagues in the academic unit before making a report to the Dean. The Dean 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 sub-clause 48.5 are complied with in substance and in a manner appropriate to the circumstances; or
(c) refer the report to the Senior 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.

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

48.9 Upon receipt of the report and any written response from the staff member, the Senior 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.

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

(a) take no further action
(b) refer the matter back to the supervisor (via the Dean) to ensure that the steps referred to in sub-clause 48.5 are complied with in substance and in a manner appropriate to the circumstances; or
(c) recommend to the Vice-Chancellor that disciplinary action be taken.

48.11 The Senior Deputy Vice-Chancellor will advise the staff member in writing of his/her recommendation in relation to disciplinary action. Following receipt of the Senior 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 Senior Deputy Vice-Chancellor's recommendation.

48.12 If the staff member does not request a review of the process leading to the Senior Deputy Vice-Chancellor's recommendation, the Senior Deputy Vice-Chancellor will refer his/her recommendation to the Vice-Chancellor. The Vice-Chancellor will consider the recommendation and determine whether 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.

Review

48.13 Where a staff member requests a review of the process leading to the Senior Deputy Vice-Chancellor's recommendation in accordance with sub-clause 48.11, a Committee will be appointed normally within ten working days. The Committee will be established in accordance with Clause 50.

48.14 The Committee will review the steps taken during the process to ensure that the staff member was afforded procedural fairness throughout the managing of staff performance process. The Committee will submit a report on its findings of this review to the Vice-Chancellor as expeditiously as possible consistent with the need for fairness.

48.15 If the Committee concludes that the procedures set out in sub-clause 48.5 to 48.9 were not properly followed the Vice-Chancellor will consider the report and the Senior Deputy Vice-Chancellor's recommendation. In light of the Committee's report, the Vice-Chancellor may first take steps to remedy any perceived unfairness as may seem reasonable to the Vice-Chancellor.

48.16 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.

48.17 If the Committee concludes that the procedures set out in sub-clauses 48.5 to 48.9 were followed properly, the Vice-Chancellor will consider the Committee’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.

48.18 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.