57 SEPARATION FROM EMPLOYMENT ON MEDICAL GROUNDS

Application

57.1 The procedures outlined in this Clause apply to all staff covered by this Agreement, excluding casuals. Nothing in this Clause is intended to preclude a staff member from initiating separation from employment on medical grounds or from applying to their superannuation fund for ill-health retirement or temporary disability benefit.

Procedures

57.2 If the Vice-Chancellor believes there is doubt regarding a staff member’s capacity to perform the duties of their office, the Vice-Chancellor may require the staff member to undergo a medical examination. The University will choose a medical practitioner to conduct the medical examination at the expense of the University. The Vice-Chancellor will provide a staff member with written notice of not less than two months, except in exceptional circumstances, that a medical examination is required.

57.3 If, within the notice period referred to in sub-clause 57.2, the staff member elects to apply to their superannuation fund for ill-health retirement or temporary disability benefit and provides the Vice-Chancellor with evidence of the application and co-operates with the superannuation fund in the processing of the application, the requirement for a medical examination will lapse. In this case, subject to the provisions of this Clause, the Vice-Chancellor will take no further action until such time as the superannuation fund has reached a decision on the application.

57.4 Where the superannuation fund decides that the staff member, following a period of receipt of a temporary disability benefit, is capable of resuming work and the Vice-Chancellor elects to dispute this decision, the Vice-Chancellor may proceed to provide the staff member with written notice of not less than two months, except in exceptional circumstances, that a medical examination is required.

Medical report

57.5 Where a medical examination is conducted in accordance with this Clause, the practitioner conducting the examination will be asked to advise whether the staff member is unable to perform his or her duties and is unlikely to be able to resume those duties within a reasonable time, being not less than twelve months. A copy of the medical practitioner’s report will be made available to the Vice-Chancellor. The Vice-Chancellor will supply a copy of the report to the staff member, together with written advice that an application to refer the report to a panel of medical practitioners for confirmation may be made within 14 days of the medical report being supplied to the staff member.

57.6 Notwithstanding the provisions of sub-clause 57.5, where a staff member has been continually absent from employment on account of a medical condition which has been the subject of examination under sub-clause 57.5, and the absence has been for a period of not less than two years, the University may terminate the staff member’s employment under the provisions of sub-clauses 57.11 and 57.12.

57.7 A staff member (or person acting on their behalf) may request that the findings of the medical examination referred to in sub-clause 57.5 be confirmed by a panel of medical practitioners in accordance with sub-clause 57.9 below. The Vice-Chancellor must receive such a request within 14 days of the medical report being supplied to the staff member.

57.8 If such a request is received, the Vice-Chancellor will not terminate the employment of the staff member unless and until the panel confirms the findings of the report.

57.9 Where a request pursuant to sub-clause 57.7 is received, the required panel will consist of three medical practitioners, as follows:

(a) one medical practitioner appointed by the University
(b) one medical practitioner appointed by the staff member or a person acting on his/her behalf; and
(c) one medical practitioner appointed by the President of the New South Wales Branch of the Australian Medical Association.

This panel will not include the practitioner who made the initial report. Every effort will be made to appoint a panel no later than seven days from the staff member's request being received by the Vice-Chancellor.

57.10 In making an assessment as to whether or not a staff member is unable to perform his/her duties and is unlikely to be able to resume them within twelve months, the medical practitioner or panel of practitioners, as far as possible, will apply the same standards of permanent incapacity as contained in the trust deeds of the staff member's superannuation scheme, if any, in determining qualification of a disablement pension or other similar benefit.

Separation from employment

57.11 If the medical examination reveals that the staff member is unable to perform his or her duties and is unlikely to be able to resume them within twelve months, and a request pursuant to sub-clause 57.7 has not been received, the Vice-Chancellor may terminate the staff member's employment. In this case, the University will provide six months notice or pay in lieu thereof.

57.12 The University may, at its option, pay compensation in lieu of notice equal to the total amounts that the University would have been liable to pay to the staff member if the staff member's employment had continued until the end of the required period of notice. Prior to taking action to terminate the employment of a staff member, the Vice-Chancellor may offer the staff member the opportunity to submit a resignation. If a resignation is offered, the Vice-Chancellor will accept it immediately and will not proceed with action to terminate employment.

57.13 The Vice-Chancellor may construe a failure by a staff member to undergo a medical examination as prima facie evidence that a medical examination would have found the staff member unable to perform their duties and unlikely to be able to resume them within twelve months. In this case, the Vice-Chancellor may act in accordance with sub-clause 57.11. However, such a failure by a staff member in these circumstances will not constitute misconduct nor lead to any greater penalty or loss of entitlements than would have resulted from an adverse medical report.

57.14 These provisions will not displace or override any existing workers' compensation schemes or awards whether State or Federal, including WorkCover, or the provisions contained in any workers' compensation or relevant discrimination legislation that may be enacted.

57.15 Medical records shall be provided to the Director, Human Resources for appropriate confidential filing.