PART G - TERMINATION OF EMPLOYMENT

51 REDUNDANCY

Principles

The University recognises that job security is important for staff and is committed to minimising the need for forced redundancies by exploring alternative measures to mitigate any negative consequences of the change. Such measures may include natural attrition, or voluntary measures such as voluntary separations, fixed-term pre-retirement contracts, leave without pay, voluntary conversion to part-time employment (for a specified period of time unless otherwise agreed), long service leave, and/or redeployment. Forced redundancies will be implemented as a last resort.

51.1 Application

The provisions of this Clause apply to all continuing staff.

51.2 Consultation

51.2.1 Where the University is considering a decision that is likely to make one or more positions redundant, it will consult with the affected staff and the union in accordance with sub-clause 16.5 [Managing Change in the Workplace] of this agreement. As part of those discussions the University will provide the affected staff with relevant information, including:

(a) the redundancies and the reasons for them
(b) the number and categories of staff likely to be affected; and
(c) the time when, or the period over which, the University intends to carry out the redundancies.

51.2.2 As soon as practicable after making the decision the University will give the affected staff member(s) opportunity to consult with the University in accordance with sub-clause 16.6 on:

(a) possible measures to avert the abolition or minimise the number of redundant position(s)
(b) possible measures to mitigate the adverse effects of the termination/s, and
(c) the identification of objective criteria that would be used to identify/differentiate specific position(s) in the event that retrenchment becomes necessary.

51.2.3 Following the discussions with the affected staff under sub-clause 51.2.2, the University will decide which measure(s) will be pursued. Such measures may include natural attrition, or voluntary measures such as voluntary separations, fixed-term retirement contracts, leave without pay, voluntary conversion to part-time employment (for a specified period of time unless otherwise agreed), long service leave, and/or redeployment.

51.3 Application for voluntary separation

The Vice-Chancellor may invite a staff member, who has been provided with information as required under sub-clause 51.2.1, to apply for voluntary separation.

51.4 Voluntary Separation

A staff member will have four weeks from the date of the Vice-Chancellor's invitation in which to submit an application for voluntary separation to the Vice-Chancellor.

51.5 Where a staff member applies for voluntary separation the Vice-Chancellor must inform the staff member within seven days of receipt of the application whether the application is approved. Where the Vice-Chancellor does not approve the application, the staff member will be advised of the reasons for that decision and will be informed that their employment is to continue.
51.6 **Voluntary separation benefit options**

51.6.1 Voluntary separation as referred to above will be on the basis of an amount determined in the following manner. The University will calculate the amounts that would be payable to the staff member under benefit options 1 and 2 below. These amounts will be shown as both gross and net of tax. The individual staff member will choose his/her preferred option.

*Benefit option 1*

The amount paid under benefit option 1 will consist of the following components:

- normal salary for six months of further employment, commencing from the date on which the staff member receives written advice that the application is approved
- severance pay at the rate of two weeks pay for each completed year of service, to a maximum of 52 weeks, and
- accumulated entitlements in the form of accrued annual leave and long service leave.

Under benefit option 1, the staff member will cease employment at the conclusion of the six-month period of further employment. However, if the staff member requests, and if the University agrees, the Vice-Chancellor may waive all or part of the six-month period of further employment, in which case, the staff member will receive payment of the balance or four weeks pay, whichever is the lesser.

*Benefit option 2*

The amount paid under benefit option 2 will consist of the following components:

- severance pay at the rate of three weeks pay for each completed year of service, to a maximum of 60 weeks, and
- accumulated entitlements in the form of accrued annual leave and long service leave.

Under benefit option 2, the final date of employment will be determined by the Dean but will not be earlier than one week nor later than six weeks from the date on which the staff member receives written advice that the application is approved. Where the final date of employment is less than six weeks, the staff member will receive payment in lieu of the balance of the six-week period.

51.6.2 All payments under sub- clause 51.6.1 will be calculated on the staff member’s proportion of full-time employment at the date of cessation of employment, or, on the basis of the average proportion of full-time employment over his or her employment, whichever is the greater.

51.6.3 The benefits under sub- clause 51.6.1 are in lieu of any notice period, access to a scheme of redeployment or other redundancy benefit.

**Retrenchment**

51.7 Following the close of the period for application referred to in sub- clause 51.4, the Vice-Chancellor may formally advise in writing any staff member who was invited to apply for voluntary separation but who did not make application that the staff member is an excess staff member. In reaching such a decision the Vice-Chancellor will give due regard to any criteria determined under sub- clause 51.2.2(c) and advise the staff member that their employment will be terminated, the nature of the applicable benefits and the further employment options described below.

51.8 **Further Employment**

(a) An excess staff member may nominate a period of further employment to be undertaken prior to termination according to the following age-based scale:

<table>
<thead>
<tr>
<th>Age</th>
<th>Further employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>45 years and over</td>
<td>12 months</td>
</tr>
<tr>
<td>44 years</td>
<td>11 months</td>
</tr>
</tbody>
</table>
(b) Any period of further employment will commence from the date on which the staff member receives advice from the Vice-Chancellor under sub-clause 51.7. The University will, for any period of further employment under this sub-clause, maintain the normal salary of the staff member concerned.

(c) If the staff member so requests, and if the University agrees, the Vice-Chancellor may waive all or part of the period of further employment. In this case, the staff member will receive payment of the balance or four weeks pay, whichever is the lesser.

(d) At the end of the period of further employment arising under sub-clause 51.8(a), the Vice-Chancellor may terminate the employment of an excess staff member. Such termination is referred to in this Clause as ‘retrenchment’.

51.9 Notice

When the Vice-Chancellor terminates the employment of a staff member in accordance with sub-clause 51.7, the staff member will be given notice of their last day of duty or compensation in lieu of notice as set out below:

<table>
<thead>
<tr>
<th>Period of continuous service</th>
<th>Period of notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>One year or less</td>
<td>one week</td>
</tr>
<tr>
<td>Over one year and up to the completion of three years</td>
<td>two weeks</td>
</tr>
<tr>
<td>Over three years and up to the completion of five years</td>
<td>three weeks</td>
</tr>
<tr>
<td>Over five years of completed service</td>
<td>four weeks</td>
</tr>
</tbody>
</table>

In addition to this period of notice, staff members who are over 45 years of age at the time of the giving of notice and who have at least two years continuous service with the University will receive an additional one week of notice.

51.10 Benefits on retrenchment

51.10.1 A staff member who is retrenched will receive the following amount of severance pay in respect of a continuous period of service.

<table>
<thead>
<tr>
<th>Service</th>
<th>Severance pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to the completion of two years</td>
<td>four weeks</td>
</tr>
<tr>
<td>Two years and up to the completion of three years</td>
<td>six weeks</td>
</tr>
<tr>
<td>Three years and up to the completion of four years</td>
<td>seven weeks</td>
</tr>
<tr>
<td>Four years and over</td>
<td>eight weeks</td>
</tr>
</tbody>
</table>

51.10.2 All payments under this sub-clause will be calculated on the staff member’s average proportion of full-time employment over his/her employment or his/her proportion of full-time employment at the date of cessation of employment, whichever is the greater.

51.11 Review

51.11.1 Where a staff member has been formally advised under sub-clause 51.7 that she/he is an excess staff member, she/he may lodge with the Vice-Chancellor an application for review of the decision. The staff member must lodge such an application within seven days of receiving the Vice-Chancellor’s advice.
51.11.2 Within five working days of a staff member lodging an application for review in accordance with sub-clause 51.11.1 a Committee will be appointed [refer to Clause 50, Review Committees]. The role of the Committee will be to determine whether the process in sub-clause 51.2 was followed or whether a genuine redundancy decision has been made by the University.

51.11.3 Within five working days (or longer period as agreed between the Committee Chair, the Vice-Chancellor and the staff member) of completing the process under sub-clause 51.11.2, the Committee will provide a report to the Vice-Chancellor and the staff member.

51.11.4 If the Committee finds that the University has acted appropriately in terms of its process, the staff member will be invited to nominate a period of further employment (as provided under sub-clause 51.8).

51.11.5 If the Committee decides that fair process was not observed it will report this fact to the Vice-Chancellor setting out its reasons, specifically identifying what failures of the process had taken place.

51.11.6 If the Vice-Chancellor receives a report to the effect that the process was not observed, the Vice-Chancellor will reconsider his/her decision in light of the Committee's report but may first take steps to remedy the perceived unfairness as seem to him/her reasonable.

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

51.12 Leave and expenses

A staff member who is granted voluntary separation or is retrenched will be entitled to up to one day's time off with full pay per week for the purpose of seeking other employment including attendance at employment interviews. Where expenses to attend such interviews are not met by the prospective employer, the staff member will be entitled to local travel and other incidental expenses incurred in attending such interviews as determined by the Dean.

51.13 Salary maintenance

Where the University and staff member agree to an arrangement under sub-clause 51.2.2, which maintains the employment relationship but under circumstances that provide a reduced income (e.g. redeployment to a lower level position), the University will maintain normal salary for the period of further employment as set out in sub-clause 51.8.

51.14 Other matters

Where a staff member:

(a) is redeployed to a fixed-term position, or
(b) during the period of further employment referred to in sub-clause 51.8 accepts a fixed-term appointment

and there are then no further employment opportunities available at the conclusion of the fixed-term or at the conclusion of the period of further employment, whichever is the greater, then at that time the staff member will be retrenched under the conditions set out in sub-clause 51.7.

52. SEPARATION FROM EMPLOYMENT ON MEDICAL GROUNDS

Application

52.1 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

52.2 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.

52.3 If, within the notice period referred to in sub-clause 52.2, 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.

52.4 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

52.5 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.

52.6 A staff member (or person acting on their behalf) may request that the findings of the medical examination referred to in sub-clause 52.5 be confirmed by a panel of medical practitioners in accordance with sub-clause 52.8 be low. The Vice-Chancellor must receive such a request within 14 days of the medical report being supplied to the staff member.

52.7 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.

52.8 Where a request pursuant to sub-clause 52.6 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.

52.9 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

52.10 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 52.6 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.

52.11 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.

52.12 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 52.10. 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.

Other matters

52.13 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.

52.14 Medical records shall be provided to the Director, HRU for appropriate confidential filing.

53 TERMINATION OF EMPLOYMENT

53.1 Action by the University to terminate the employment of a staff member will only be in accordance with the following relevant provisions of this Agreement:

- Clause 35 (Probation)
- Clause 42 (Casual Academic Employment ie for termination of casual academic employment)
- Clause 48 (Managing unsatisfactory performance)
- Clause 49 (Disciplinary action for misconduct/ serious misconduct)
- Clause 51 (Redundancy ie voluntary separation or retrenchment)
- Clause 52 (Separation of employment on medical grounds).
53.2 **Notice Periods**

53.2.1 Where the Vice-Chancellor makes a decision to terminate the employment of a staff member in accordance with Clauses 48 or 49, notice or payment in lieu will be as provided in sub-clauses 53.2.2 to 53.2.5.

53.2.2 The staff member will receive the following minimum period of notice of their last day of duty as follows:

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<tbody>
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</tbody>
</table>

53.2.3 In addition to this period of notice, staff who are over 45 years of age at the time of giving notice and who have at least two years continuous service with the University will receive an additional one week of notice.

53.2.4 Payment instead of notice will be made if the University does not require the person to work out the notice period. Where the staff member is only required to work part of the notice period, the University will pay out the remainder of the notice period.

53.2.5 Any payments in lieu of notice will be based on the staff member’s salary at the date of cessation of employment.

53.2.6 In instances of termination as a result of misconduct involving suspension without pay, there will be no requirement for the notice prescribed in this Clause.

53.3 A staff member is required to provide the University with notice of resignation or retirement in accordance with University guidelines.