PART G - TERMINATION OF EMPLOYMENT

56 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.

56.1 Application

The provisions of this Clause apply to all continuing staff.

56.2 Definition

‘Redundant position’ means a position that is identified as surplus to the University's requirements for reasons of an economic, technological, structural or similar nature. Such reasons may include, but are not limited to:

(a) a decrease in student demand or enrolments in any academic course or subject or combination or mix of courses or subjects conducted on one or more campuses
(b) a decision to reduce or cease providing or to vary a service, function or activity conducted on one or more campuses
(c) financial exigency within an organisational unit or cost centre; or
(d) changes in technology or work methods.

56.3 Consultation

56.3.1 Where the University has decided to make one or more positions redundant, it will consult with the affected staff, and where requested their representative, in accordance with sub-clause 16.2 [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.

56.3.2 Following the discussions with the affected staff under sub-clause 56.3.1, the University will decide which measure(s) will be pursued to mitigate any negative consequences of the change.

56.4 Application for voluntary separation or redeployment

The Vice-Chancellor may invite the staff member(s), who have been provided with information as required under sub-clause 56.3.1, to apply for voluntary separation (as provided under sub-clause 56.5) or redeployment (as provided under sub-clause 56.6).

A staff member who has received an invitation from the Vice-Chancellor in accordance with this sub-clause will have five working days from the date of the Vice-Chancellor’s invitation to request a review of the University's decision to make her/his position redundant in accordance with sub-clause 56.7.
56.5 Voluntary separation

A staff member will have six weeks from the date of the Vice-Chancellor's invitation in which to submit an application for voluntary separation to the Vice-Chancellor. The Vice-Chancellor may decline a request for voluntary separation and the staff member will be advised of the reason(s) in writing for this decision and will be informed that their employment is to continue.

56.5.1 Voluntary separation benefit

(a) The amount paid for voluntary separation will consist of the following components:

(i) a lump sum of twelve weeks pay
(ii) severance pay at the rate of three weeks pay for each completed year of service for the first ten years of service
(iii) severance pay at the rate of two weeks pay for each completed year of service thereafter
(iv) the total amount of payment under (i), (ii) and (iii) above shall not in total exceed payment equivalent to 78 weeks pay
(v) entitlements in the form of accrued annual leave and long service leave.

'Pay' as referred to above in this sub-clause will be the staff member’s ordinary rate of pay as defined in Clause 3 [Definitions].

(b) The final date of employment will be determined by the Dean or Director in consultation with the staff member.

(c) All payments under sub-clause 56.5.1 (a) will be calculated on the basis of the pay applicable to the staff member’s average proportion of full-time employment over his/her last five years of service or his/her proportion of full-time employment at the date of cessation of employment, whichever is the greater.

(d) The benefits under 56.5.1(a) are in lieu of any notice period, access to a scheme of redeployment or other redundancy benefit.

56.6 Redeployment

56.6.1 A staff member will have six weeks from the date of the Vice-Chancellor’s invitation under 56.4 in which to respond with a written request for the redeployment option to the Vice-Chancellor. The redeployment option will provide for a period of up to 15 weeks of redeployment and retraining which will commence from the date of the staff member’s written request.

56.6.2 If after requesting the opportunity for redeployment and at the end of the 15 week period there is no offer to be redeployed then the staff member’s employment will be terminated and they will be provided with the voluntary separation benefits which would have been available to the staff member under sub-clause 56.5.1, excluding the lump sum of twelve weeks pay. There is no obligation on the staff member to complete the 15 week period of redeployment. A staff member may accept voluntary separation and end the period of redeployment before the end of the 15 week period. The voluntary separation benefit then available to the staff member will be reduced by the period of redeployment served (that is, from the commencement of the redeployment period to their final date of employment) up to a maximum equivalent to the lump sum of twelve weeks pay.

56.6.3 During the redeployment process, staff will continue to maintain existing rights and privileges under this agreement and will continue to be engaged in productive and meaningful employment within the University.

56.6.4 The staff member will participate fully in the redeployment process including, where applicable, by maintaining a proactive job search; making themselves available to be considered for redeployment to a vacancy and participating in training.

56.6.5 The University will provide assistance and support to staff seeking redeployment. Staff seeking redeployment will be considered ahead of other applicants for any vacancy or new position
considered by the University or the staff member to be suitable. A suitable position will normally mean a position:

- at the same classification level of the staff member, and
- for which the staff member may have the necessary skills, qualifications and experience, or
- for which the staff member may acquire the necessary skills with a reasonable period of training/retraining.

56.6.6 Where a staff member is assessed by the University as being suitable to fill a vacancy or new position, the staff member will receive a formal offer of appointment to the position, which they may accept or reject. A staff member shall not unreasonably refuse to accept redeployment to a suitable position, or training/retraining following the identification of a suitable position. When a staff member accepts redeployment to a position, redundancy processes will cease.

56.6.7 Where a staff member is not assessed by the University as being suitable to fill a vacancy or new position, the staff member and the University may agree to a trial redeployment of up to three months to the position. During the trial period, the staff member and their supervisor will discuss the progress of the trial redeployment. Should either the University or the staff member find during the trial period that the position is unsuitable, the trial redeployment will cease and the staff member will be receive the voluntary separation benefits which would have been available to the staff member under sub-clause 56.5.1(a) excluding the lump sum of twelve weeks pay (unless the period of redeployment and the trial period served is less than twelve weeks in which case the balance of the lump sum will be paid).

56.6.8 Where a staff member accepts redeployment to a position which is at a lower level, the University will maintain the staff member’s salary at the level received prior to their position being declared redundant for a period of six months from the date of taking up the redeployment position.

56.6.9 Where a staff member accepts redeployment to a fixed-term position and there are then no further employment opportunities available at the conclusion of the fixed-term, the staff member’s employment will be terminated and they will be provided with the benefits available under voluntary separation less the lump sum of twelve weeks pay (refer to sub-clause 56.5.1(a)).

56.6.10 The voluntary separation benefits applicable to staff who request redeployment will be calculated on the staff member’s pay on the date of the staff member’s written request for redeployment.

56.7 Review

56.7.1 Within five working days of a staff member lodging an application for review in accordance with 56.4 a Reviewer will be appointed [refer to Clause 55, Reviewers and Investigators]. The role of the Reviewer will be to determine whether the process in 56.3.1 was followed or whether a genuine redundancy decision was made by the University.

56.7.2 The Reviewer will

(a) conduct proceedings as expeditiously as possible consistent with the need for fairness
(b) allow the Vice-Chancellor and staff member to be assisted, if they so choose, by an agent of his/her choice who 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 decision of the Vice-Chancellor to advise the staff member that his/her position is redundant or it is one position within a class of positions where one or more of those positions are redundant
(d) provide an opportunity for the staff member to be interviewed
(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) conclude the review within ten working days of the appointment of the Reviewer unless otherwise agreed between the Reviewer, the Vice-Chancellor and the staff member.

56.7.3 Within five working days (or longer period as agreed between the Vice-Chancellor and staff member) of completing the process under 56.7.2, the Reviewer will provide a report to the Vice-Chancellor and the staff member.
56.7.4 If the Reviewer finds that the University has acted appropriately in terms of its process in inviting the staff member to apply for voluntary redundancy or redeployment, the Vice-Chancellor will provide the staff member with ten working days to apply for voluntary separation (as provided under Clause 56.5) or redeployment (as provided under Clause 56.6).

56.7.5 If the reviewer finds that the University has not acted appropriately in terms of its process in inviting the staff member to apply for voluntary redundancy or redeployment, the Reviewer will report this fact to the Vice-Chancellor setting out reasons, specifically identifying what failures of the process had taken place.

56.7.6 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 Reviewer’s report but may first take steps to remedy the perceived unfairness as seem to him/her reasonable.

56.8 Retrenchment

56.8.1 Following the close of the period for application referred to in 56.5, the Vice-Chancellor may formally advise in writing any staff member who has not applied for voluntary separation that the staff member is an excess staff member and that their employment will be terminated in accordance with this Clause. Such a termination is referred to as a ‘retrenchment’.

56.8.2 Benefits on retrenchment

(a) A staff member will be given eight weeks notice (or equivalent compensation) prior to a retrenchment taking effect.
(b) On retrenchment, a staff member will receive a severance payment of two weeks for each completed year of service with the University, to a maximum of 38 weeks salary.

Payment will be the staff member’s ordinary rate of pay.

56.8.3 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.

56.9 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 reasonable local travel and other incidental expenses incurred in attending such interviews as determined by the head of school/unit (or equivalent).

The University will reimburse reasonable costs and charges as determined by the Dean (or equivalent) associated with a program of retraining as an agreed measure to mitigate the effects of his/her position being surplus.

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.

58 TERMINATION OF EMPLOYMENT

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

- Clause 35 (Absence from duty)
- Clause 46 (Probation)
- Clause 53 (Managing unsatisfactory performance)
- Clause 54 (Disciplinary action for misconduct)
- Clause 56 (Redundancy)
- Clause 57 (Separation from employment on medical grounds)

58.2 Notice Periods

58.2.1 Where the Vice-Chancellor makes a decision to terminate the employment of a staff member in accordance with Clauses 53 or 54, notice or payment in lieu will be as provided in sub-clauses 58.2.2 to 58.2.5.

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

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<thead>
<tr>
<th>Period of continuous service</th>
<th>Period of notice</th>
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<tbody>
<tr>
<td>One year or less</td>
<td>one week</td>
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<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>
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</tbody>
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58.2.3 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.

58.2.4 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.
58.2.5 Any payments in lieu of notice will be based on the staff member’s salary at the date of cessation of employment.

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