Procedure: Review of decisions

Purpose
To outline the procedure for the review of decisions as provided for under the ANU Enterprise Agreement.

Definitions
Vice-Chancellor also means his or her nominee
Executive means the Vice-Chancellor, Deputy Vice-Chancellor, Pro-Vice Chancellor or other executive manager as determined by the Vice-Chancellor
Decision Maker means the person who made the decision, which gave cause to the staff member lodging their application for review
Representative means a person nominated by the staff member to represent them, but does not mean a practising barrister or solicitor
Parties mean the University and the staff member
Days means working days
Suitable alternative position means a position which has substantially the same duties, classification level and career standing as the staff member’s existing (redundant) position and for which the staff member in question currently possesses the skills and experience, or could reasonably be expected to develop the required skills within a limited period, to satisfactorily perform the duties of the position

Procedure

Application
1. A staff member may seek a review of decisions made in relation to their employment at the University, provided that the decision is concerning one of the following employment matters:
   a. termination of employment for reasons of unremediated underperformance, serious misconduct, serious research misconduct or redundancy;
   b. termination due to ill-health as defined within ill health assessment
provisions of the Enterprise Agreement

c. disciplinary action in the form of demotion or serious misconduct, on the grounds that procedural fairness or natural justice was not applied;
d. withholding of increments for reasons of underperformance, on the grounds that procedural fairness or natural justice was not applied;
e. annulment of a probationary employment;
f. refusal to convert employment from casual to either fixed term or continuing employment;
g. refusal to grant an extension of the redeployment or notice period for a professional staff member due to personal/sick leave;
h. suitability of a redeployment transfer decision to a ‘suitable alternative position’, on the basis that the decision will have a detrimental impact on the staff member’s career standing;
i. a decision taken in relation to outside work in accordance with the Outside Work provision of the Enterprise Agreement; and
j. other circumstances as may be determined from time to time by the University.

Terms of reference and principles for review of decisions

2. The terms of reference for a review will, in all cases, be the consideration of whether:

a. the University followed the procedures which were applicable to the original decision;
b. there is sufficient evidence to support the original finding and/or decision;
c. and, where relevant;
   • whether any proposed disciplinary action was in proportion to the findings of the original decision making process;
   • whether discrimination or victimisation influenced the original decision making process, and
   • in the case of redundancies, whether the University used fair and objective criteria to determine which position(s) was/were declared excess to requirements.

3. The Review Committee will apply the principles of natural justice. The terms of reference will take into account whether or not the staff member was given a fair go all round.
Commencing a review

4. In order to request a review of a decision, a staff member must, within 5 days of the date of notification of the decision (except for academic staff redundancy where 10 days applies), request a review of that decision in writing to a member of the Director – Human Resources outlining their reasons in accordance with the terms of reference above.

5. When the Director – Human Resources receives an application to review cases other than termination of employment or demotion, the Director – Human Resources must make a determination within 10 days.

6. If the matter is complex, the Director – Human Resources has a conflict of interest, or it relates a termination of employment or demotion, reviews will be referred to a Review Committee within 5 days.

Review Committee composition

7. The Review Committee will comprise three (3) members, including a nominee from the University, a nominee of the relevant union, and a Chairperson agreed by the nominators.

8. When establishing a Review Committee, if the relevant union fails to make a nomination within five (5) days of receiving notification, the University will nominate a staff member.

9. Staff Review Committee nominees will be allowed necessary time from their normal duties to ensure the review process is conducted within the set timeframe.

Review process

10. The review committee may seek and take into account any material which is relevant to, or had influenced the decision under review.

11. During the review process the staff member and/or the Director – Human Resources:

   a. may appoint and be represented by a union or staff representative of their choice (but not a practising barrister or solicitor);
   b. will have an opportunity to review the other party's evidence and written submissions prior to final submissions being made;
   c. will have a right to see all documentation provided to the Committee and where information has been given in confidence, that confidence will be respected;
d. may wish to obtain further information in relation to, or arising from, documents provided to the Committee. In these circumstances, the Chair will be approached and they will endeavour to obtain the information requested;

e. will have an opportunity to present evidence and make written and/or oral submissions;

f. will have an opportunity to hear all such oral submissions; respond to any such further material or submissions; and ask questions of any person who was interviewed by the Review Committee; and

g. where academic judgement is required for cases of academic annulment of employment, may request evidence and participation from staff with experience and knowledge of the relevant discipline.

Review Committee

12. Within 15 days of the matter being referred to the Chair of the Review Committee, the committee will convene and review the decision, and provide a written report outlining the findings to the Director – Human Resources.

13. Where it considers that discrimination or victimisation may have influenced the original decision, the Review Committee may seek and take into account any further material it believes appropriate.

14. The Chair may request an extension of time from the Director – Human Resources or, if the request is declined and once so advised, the Review Committee will have five (5) days to hand the written report to the Director – Human Resources.

15. The Director – Human Resources will then consider the review committee’s report, assess the application and make a determination, advise the staff member of their determination and provide them with a copy of the report.

Review outcome and notification

16. The Director – Human Resources has five (5) days to notify the staff member, their supervisor and the original decision maker of their findings, within the Terms of Reference, and the actions to be taken. The Director – Human Resources will determine that either:

   a. the original decision was appropriate and that it stands. If the decision relates to a termination of employment, the staff member will be provided with payment for the unexpired part of any notice period between the initial notification of termination of employment and the outcome of the review; or
b. the original decision making process was procedurally incorrect, or there was insufficient evidence, or discrimination or victimisation influenced the decision. The matter will be reconsidered in accordance with the appropriate decision making process, consistent with the findings of the review; or

c. the proposed disciplinary action is not appropriate under the circumstances and advise what alternate disciplinary action/s, if any, will apply; or

d. the original decision is inappropriate and make another finding. Where the staff member would have received benefits had it not been for the original decision, the University will make any necessary arrangements to ensure that the staff member receives any remuneration or other benefits to which they are entitled.