Procedure: Review of decision

Purpose

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

Definitions

**Days** means working days (i.e. days that are not a weekend or public holiday).

**Decision Maker** means the person who made the decision, which gave cause to the staff member lodging their application for review.

**Executive** means the Vice-Chancellor, Provost, Deputy Vice-Chancellor, Pro-Vice Chancellor, Chief Operating Officer or other executive manager as determined by the Vice-Chancellor.

**Parties** mean the University and the staff member.

**Representative** means a person nominated by either the staff member or the Director – Human Resources to represent them, but does not mean a practising barrister or solicitor.

**Review Committee** means the Committee established by the Director – Human Resources, with input from a relevant union, to review a decision which is complex or relates to the termination of a staff member’s employment, in accordance with the procedure.

**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.

**Vice-Chancellor** is the Vice-Chancellor, President and Chief Executive Officer. For the purposes of the procedure, reference to the Vice-Chancellor also means their nominee.

Procedure
Application

1. A staff member may seek a review of decision 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:
      i. unremediated underperformance;
      ii. serious misconduct
      iii. serious research misconduct;
      iv. redundancy;
      v. annulment of probationary employment; or
      vi. due to ill-health in accordance with the ill health assessment provisions of the ANU Enterprise Agreement
   b. disciplinary action in the form of demotion or serious misconduct, on the grounds that procedural fairness was not applied;
   c. 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; and
   d. other circumstances as may be determined from time to time by the University.

Terms of reference and principles for review of decision

2. The terms of reference for a review of decision 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;
      i. whether any proposed disciplinary action was in proportion to the findings of the original decision making process;
      ii. whether discrimination or victimisation influenced the original decision making process, and
      iii. 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. A staff member requesting a review of decision must submit a written request to the Director – Human Resources:

   a. within 5 days (except for academic staff redundancy, where 10 days applies) from the date of notification of the decision made under clause 1, and
   b. outline their reasons for a review of decision in accordance with the terms of reference defined in clause 2(above).

5. Applications to review decisions other than termination of employment or demotion will be reviewed by the Director – Human Resources, who will make a determination within 10 days.

6. If the matter is complex, or the Director – Human Resources has a conflict of interest, or the decision relates a termination of employment or demotion, the Director – Human Resources will endeavour to initiate the establishment of a Review Committee within five days. The Director – Human Resources will communicate the status of the Review Committee composition to the staff member within five 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 Chair 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. Review Committee nominees will normally be University staff members and 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 influenced the decision under review.

11. During the review process the parties:
   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, and have an opportunity to present evidence and make oral submissions prior to the Review Committee’s final determinations;
   c. will have a right to see all documentation provided to the Review Committee and may wish to obtain further information in relation to, or arising from, documents provided to the Review Committee. In these circumstances, the Chair will be approached and they will endeavour to obtain the information requested. Where information has been given to the Review Committee in confidence, that confidence will be respected;
   d. will have an opportunity to hear all oral submissions; respond to any such further material or submissions; and ask questions of any person who was interviewed by the Review Committee; and
   e. 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 a Review Committee convening to review the decision, the Review Committee will prepare and provide a written report outlining the findings to the Director – Human Resources.

13. 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 provide the written report to the Director – Human Resources.

14. 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

15. The Director – Human Resources has five (5) days to notify the staff...
member, their supervisor and the original decision maker of the Review
Committee 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 Committee; or

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

d. the original decision was 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.