65. Management of Unsatisfactory Work Performance

65.1. This Clause 65 will apply in conjunction with Schedule 7 (2), *Transitional Arrangements*.

65.2. Definition

*Unsatisfactory work performance* means where the University has established that a staff member has failed to meet, over a reasonable period and despite attempts to improve performance, the standard of performance as informed by the *Academic Classification Standards*.

65.3. Application

65.3.1. This Clause 65 does not apply to casual or probationary staff members.

65.3.2. Before the University imposes a sanction identified in Clause 65.9 on a staff member due to the unsatisfactory work performance of the staff member, it must comply with the provisions of this Clause 65.

65.3.3 In calculating the periods of time referred to in subclauses 65.8.2, 65.10.2 and 65.10.9, where a staff member is on leave or away from their normal place of work for work purposes, these days will not constitute working days.

65.4. Principles

65.4.1. A staff member may be represented by their Union or other nominated representative throughout the Unsatisfactory Work Performance Process, including during the resolution of work performance issues at the local level.

65.4.2. A record of all meetings with the staff member will be kept by the University and a copy of these meeting records will be provided to the staff member.

65.4.3. The University and the staff member will work cooperatively toward the preferred outcome of early intervention to improve the staff member’s work performance to a satisfactory level of work performance.

65.5. Resolution of Work Performance Issues at the Local Level

65.5.1. A line manager will initially deal with matters of poor or non-effective work performance when these matters first arise, through normal discussions, before initiating the Unsatisfactory Work Performance Process in accordance with this Clause 65.

65.5.2. While not part of the Unsatisfactory Work Performance Process, these initial discussions about work performance, where relevant, can be referred to and taken into account within the Unsatisfactory Work Performance Process.

65.5.3. These initial discussions, though informal, will be confirmed in writing by the line manager with the staff member within 5 working days of these discussions taking place. Where requested by the staff member, the line manager will also provide evidence of the staff member’s poor or non-effective work within 5 working days of these discussions taking place.

65.5.4 A staff member will be given a reasonable period of time, which is not less than 6 months after the initial discussions referred to in subclause 65.6 to improve their poor or non-effective work performance. The actual period of time in which a staff member is to be given to improve their poor or non-effective work performance will be agreed upon by the staff member and line manager. Where no agreement is reached on a reasonable period of time for the staff member to improve their poor or non-effective work performance, the staff member will be given 12 months to improve their poor or non-effective work performance.

65.5.5 Where a staff member is on leave during this period, is away from their normal place of work or acts in another position during this period, the period of time in which a staff member will be given to improve their poor or non-effective work performance will be extended by the amount of time they were on leave, away from their normal place of work or acted in another position.

65.5.6 The staff member will be given all necessary support, including training, mentoring and any relevant courses of study, to achieve the required improvements in performance. These will be agreed to by the University and will be confirmed in writing.

65.6. Step 1 - Unsatisfactory Work Performance Process

65.6.1. Where, after the period of time under subclause 65.5.4, for a staff member to improve their poor or non-effective work performance, in the view of the line manager a work performance issue has not been remedied in accordance with discussions between the line manager and the staff member, as prescribed in subclause 65.5.1, the line manager will:

a) inform the staff member, verbally and in writing, that:
   i) their work performance is unsatisfactory and is to be dealt with in accordance with this Clause 65 Management of Unsatisfactory Work Performance; and
   ii) they are entitled to be represented by their Union or other nominated representative throughout the Management of Unsatisfactory Work Performance process;

and

b) formally meet with the staff member to:
i) discuss the staff member’s work performance, including identifying the nature of the unsatisfactory work performance and evidence or examples that demonstrate the work performance is unsatisfactory; and
ii) identify the sustained improvement in work performance required from the staff member and determine the reasonable timeframe within which work performance improvements are to be achieved; and
iii) inform the staff member of the range of penalties which may be imposed upon the staff member under the Unsatisfactory Work Performance Process; and
iv) develop a written Performance Improvement Plan (PIP) in collaboration with the staff member for improving their work performance;

and

c) include in the PIP:
i) the work performance issues to be addressed and the work performance improvements required; and
ii) a timeframe during which work performance improvements are to be achieved; and
iii) any support and resources the line manager will provide; and
iv) the manner in which the line manager will monitor the staff member’s work performance; and
v) the frequency with which the line manager will meet with the staff member during the specified timeframe as determined in collaboration with the staff member;

and

d) meet and consult with the staff member to monitor the progress of the PIP and assess the staff member’s work performance progress over the specified timeframe;

and

e) if and where necessary, taking into account the progress of the PIP and the staff member’s work performance progress, review the PIP in collaboration with the staff member.

65.6.2 Where the line manager determines that the required sustained improvement in work performance has been achieved, that outcome will be recorded and the Unsatisfactory Work Performance Process is concluded. The record will be placed on the staff member’s personnel file and the staff member will be advised of this outcome in writing.

65.6.3 A staff member will be given a minimum of 12 months to improve their work performance issues under the Unsatisfactory Work Performance Process. The actual period of time in which a staff member is to be given to improve their work performance issues will be agreed upon by the staff member and line manager. Where no agreement is reached on a reasonable period of time for the staff member to improve their work performance issues, the staff member will be given 24 months to improve their work performance issues.

65.6.4 Where a staff member is on leave during this period, is away from their normal place of work, or acts in another position during this period, the period of time in which a staff member will be given to improve their work performance issues will be extended by the amount of time they were on leave, away from their normal place of work or acted in another position.
65.7. Step 2 - Reporting of the Unresolved Work Performance Matters

65.7.1. Where, after the period of time under subclause 65.6.4 for the staff member to improve their work performance, the line manager determines that the required sustained improvement in work performance has not been achieved, the line manager will refer the matter to the appropriate Executive Manager, through line management and provide the Executive Manager with a report identifying the following:
   a) nature of the unsatisfactory work performance;
   b) evidence or examples to demonstrate the unsatisfactory work performance;
   c) the process and PIP undertaken by the line manager and the staff member to remedy the unsatisfactory work performance.

65.7.2. The line manager will advise the staff member that the report has been provided to the Executive Manager.

65.8. Step 3 - Assessment of Work Performance by Executive Manager

65.8.1. The Executive Manager will within 1 working day provide a copy of the report to the staff member.

65.8.2. The staff member may:
   a) make a written response to the report to the Executive Manager within 15 working days of receipt of the report, unless a longer period is agreed in extenuating circumstances; and
   b) on submission of the written response, request a meeting with the Executive Manager to discuss the substance of the response.

65.8.3. After consideration of the line manager’s report and any written or verbal response from the staff member, and after consultation with the Director, Human Resources or nominee, the Executive Manager will decide to:
   a) take no further action; or
   b) refer the matter back to the line manager with advice on further dealing with the matter; or
   c) recommend to the Vice-Chancellor that a sanction be imposed in accordance with Clause 65.9. This recommendation must provide the reasons for the Executive Manager making their decision and any recommendations, and address the issues raised in the staff member’s response.

65.8.4. The Executive Manager will provide the staff member with a copy of his or her recommendation at the same time as it is provided to the Vice-Chancellor.

65.9. Step 4 - Sanctions in Response to Unsatisfactory Work Performance

Where the Executive Manager decides to recommend to the Vice-Chancellor to impose a sanction or sanctions on a staff member for unsatisfactory work performance in accordance with the provisions of this Clause 65, the sanction may include formal censure or reprimand and no more than one of the following:
   a) withholding or reducing an increment;
b) reversion to substantive appointment where a variation to employment contract exists;
c) transfer to another suitable position in the University;
d) removal from University office bearing roles while remaining in the employ of the University;
e) demotion to a lower classified position and where necessary transfer to another position in the University;
f) termination of employment with notice or payment in lieu of notice.

65.10. Step 5 - Work Performance Process Review Committee

65.10.1. Where the Executive Manager recommends to the Vice-Chancellor that a sanction be imposed in accordance with this Clause 65, the staff member may, within 15 working days of the date of the advice of the Executive Manager’s recommendation, request the convening of a Review Committee to:
   a) review the staff member’s work performance, unsatisfactory work performance process and the recommendations arising from that process, assessment of work performance by Executive Manager and any recommendations arising from that assessment; and
   b) report to the Vice-Chancellor on the following:
      i) the findings of its review;
      ii) whether or not these findings support the assessment that the staff member’s work performance is unsatisfactory, the outcome of the Unsatisfactory Work Performance Process, and/or the Executive Manager’s recommendation;
      iii) whether there are any mitigating circumstances.

65.10.2. The Review Committee will comprise:
   a) 1 management representative nominated by the Vice-Chancellor; and
   b) 1 union representative nominated by the Union; and
   c) an independent Chair, external to the University, as agreed between the University and the Union.

65.10.3. The Review Committee will take into account the needs of the staff member and the University and will:
   a) Ensure natural justice and procedural fairness are observed and practiced; and
   b) Enable the interviewing of any person the Review Committee thinks fit, in the presence of the staff member and their Union or other nominated representative.

65.10.4. The Review Committee will have access to relevant documentation in order to establish the facts.

65.10.5. The staff member and the University will be given an opportunity for the following:
   a) to be heard;
   b) to answer findings or allegations;
   c) to be represented in proceedings of the committee;
   d) to present and challenge evidence. Where a witness statement is submitted as evidence, the party submitting the witness statement must make the witness available to be questioned in the proceedings, unless the other party and the Review Committee agree to waive this requirement in writing;
   e) to make submissions;
65.10.6. Proceedings will be conducted in camera unless otherwise agreed between the staff member and the University.

65.10.7. The Review Committee will prepare and provide a report of its findings to the Vice-Chancellor.

65.10.8. The Review Committee will provide a copy of the report to the University and the staff member.

65.10.9. The staff member must provide their response to the report, if any, to the Vice-Chancellor within 15 working days of receipt of the report.

65.11. Step 6 - Decision in Relation to Unsatisfactory Work Performance

65.11.1. The Vice-Chancellor will consider the recommendation of the Executive Manager, any response from the staff member, and any report of a Review Committee, and may:
   a) take no further action; or
   b) refer the matter back to the line manager(s) with advice on further dealing with the matter; or
   c) impose a sanction or sanctions in accordance with Clause 65.9.

65.11.2. Where the Review Committee makes a recommendation, the Vice Chancellor must follow this recommendation, except where he or she has reasonable grounds for believing their recommendations to be incorrect or inappropriate.

65.11.3. The staff member will be advised in writing of the Vice-Chancellor’s decision and the operative date of any sanction. Where the Vice-Chancellor does not follow the recommendations of the Review Committee under subclause 65.11.2, the Vice-Chancellor will outline in writing what he or she believes are the reasonable grounds for believing the Review Committee’s recommendations to be incorrect or inappropriate when notifying the staff member and the line manager of his or her decision.

65.11.4 Termination of employment under subclause 65.9(f) may only be utilised by the Vice-Chancellor where a staff member’s work performance has not improved at all during the unsatisfactory work performance process in this clause 65 and the staff member has not attempted to improve their work performance during the unsatisfactory work performance process in this clause 65. Where the Vice-Chancellor imposes a disciplinary sanction of termination of employment under subclause 65.9(f) the Vice-Chancellor must provide to the staff member in writing at the time of their decision, the rationale for why these disciplinary sanctions were justified in the circumstances.

65.11.5 Nothing in this Clause 65 prevents the utilisation of Clause 62, Dispute Resolution Procedure. Where a matter is referred to Fair Work Australia as part of the Dispute Resolution Procedure, in any arbitration the burden of proof rests on the University to prove the staff member’s unsatisfactory work performance beyond reasonable doubt.