

THE AUSTRALIAN NATIONAL UNIVERSITY

Medical Leave Statute 2007

MEDICAL LEAVE RULES 2007

The Council of the Australian National University makes the following Rules under section 3 of the *Medical Leave Statute 2007*.

Dated: 7 December 2007.

Allan Hawke
Chancellor

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MEDICAL LEAVE RULES 2007

PART I: PRELIMINARY

1 Name of Rules and commencement

- 1.1 These Rules are the Medical Leave Rules 2007.
- 1.2 These Rules commence on the day after they are registered.

2 Interpretation

2.1 In these Rules, unless the contrary intention appears:

applicant means any person who is seeking enrolment in, or to audit, a program in, or a course offered by, the University;

Medical Appeals Panel means the persons appointed by the Vice-Chancellor under rule 8;

medical examination includes an examination by a medical, psychological or allied health practitioner;

medical leave means leave of absence from the University taken by a student under subrule 4.10, or imposed by the Registrar under subrule 5.1 or the Medical Appeals Panel under subrule 11.1 on a student who has a serious health condition;

notifiable disease means a health condition notifiable under the *Public Health Act 1997* (ACT) or any similar legislation;

Registrar includes a nominee of the Registrar appointed under rule 19;

serious health condition includes:

- (a) a medical condition, including any notifiable disease that makes the person unfit to attend the University or to pursue or study a program or course, that:
 - (i) is likely to physically endanger the person or any other person; or
 - (ii) causes or results in behaviour that might cause the person to harass to a significant extent any member of the University; or

- (iii) causes or results in behaviour that might cause severe emotional disturbance to any member of the University; or
 - (iv) causes or results in behaviour that might cause the person to disrupt the provision of academic or general services to any member of the University; or
 - (v) is of such a nature that would prevent the person from successfully completing a program or course that the person is applying for or in which the person is currently enrolled; or
- (b) a disability that, because of the requirements of a relevant program or course, is likely to physically endanger the person or any other person; or
- (c) an illness or psychiatric condition that causes or results in behaviour that might cause:
- (i) the person to harass to a significant extent any member of the University; or
 - (ii) severe emotional disturbance to any member of the University; or
 - (iii) the person to disrupt the provision of academic or general services to any member of the University;

staff means any person employed by the University at any time under a contract of employment;

student means any person who is a candidate for an award or who is or was enrolled in a program or a course offered by the University, or who is or was given permission by the University to audit such a course or program;

Students' Association means the Australian National University Students' Association or the Australian National University Postgraduate and Research Students' Association Inc.;

Vice-Chancellor includes a nominee of the Vice-Chancellor appointed under rule 19.

3 Reporting serious health condition

3.1 Any person who considers that an applicant or a student may be suffering from a serious health condition may report the person's behaviour to the Registrar.

4 Registrar's enquiries

4.1 When the Registrar becomes aware (whether as a result of a report under rule 3 or not) that an applicant or a student may be suffering from a serious health condition, the Registrar may make whatever enquiries he or she sees fit into the report.

4.2 If the Registrar has reasonable grounds for believing that the applicant or student may have a serious health condition, the Registrar, subject to subrule 4.3, must give the person written notice that:

- (a) outlines the nature of the report, setting out the grounds for considering that the person's medical condition constitutes a serious health condition together with information about the potential consequences of such a finding; and
- (b) includes copies of any substantive material upon which the report was made; and
- (c) allows the person not less than 7 days to respond to the notice, either in writing or in person as set out in the notice.

4.3 However, if the Registrar has reasonable grounds for believing, on information available to the Registrar at the time of preparing the notice referred to in subrule 4.2, that the health of

the person about whom the report was made may be adversely affected by such a notice, the Registrar may take and follow advice, including medical advice, on the most appropriate method of contacting the person concerned and of conducting any enquiries.

[Note: It is intended that, in the circumstances described in subrule 4.3, it may be appropriate that a counsellor or a person with medical qualifications be present when the notice is given to the applicant or student concerned with a view to assisting him or her.]

4.4 If the person about whom the report was made has elected to respond to the notice in person, the Registrar must set down a time for an initial meeting with the person within 14 days of the response.

4.5 At the meeting:

- (a) the person about whom the report was made is entitled to be accompanied by another person who may provide support or otherwise assist the person to respond to matters raised by the Registrar; and
- (b) the Registrar may have a person present to provide assistance to the Registrar.

4.6 In undertaking any enquiries, the Registrar may give consideration to any matter relating to the person's health condition as the Registrar thinks fit, including:

- (a) a statement from any of the person's lecturers, supervisors, tutors, counsellors or disability advisors or from other staff or students, who may have information relevant to the Registrar's enquiries; or
- (b) medical reports related to the person's condition; or
- (c) oral or written submissions made by the person about his or her condition.

4.7 If the Registrar has reasonable grounds for believing that any medical reports available are not sufficient for the Registrar to draw reasonable conclusions regarding the extent of the person's health condition, the Registrar may ask the person about whom the report was made to undergo a medical examination, at the expense of the University, by a person or persons nominated by the Registrar.

4.8 If the person:

- (a) does not undergo a medical examination arranged by the Registrar or is otherwise uncooperative with the Registrar; or
- (b) does not provide information requested or attend a medical examination arranged by the Registrar;

the Registrar may reach a determination that the person has a serious health condition, taking into account the uncooperative behaviour of the person, which may contain adverse conclusions arising from the person's lack of cooperation.

4.9 After the Registrar has considered all of the material before the Registrar, including any submission made by the person, the Registrar must decide whether the person about whom the report was made has a serious health condition.

4.10 During the course of the Registrar's enquiries, if:

- (a) a student voluntarily decides to take leave on conditions acceptable to the Registrar, the Registrar may terminate his or her enquiries; or

- (b) an applicant voluntarily decides to withdraw their application, or to agree to any conditions applicable to their enrolment that are acceptable to the Registrar, the Registrar may terminate his or her enquiries.

5 Decision of Registrar

5.1 If the Registrar has made a determination under subrule 4.8 that a student has a serious health condition, the Registrar must inform the student in writing within 7 days of that decision, setting out:

- (a) any conditions that must be satisfied if the student is to continue to be enrolled, including taking medication, obeying medical, behavioural, or other directions; or
- (b) the duration of any medical leave of absence and any conditions to be satisfied before continuation of enrolment or re-enrolment will be considered by the University; or
- (c) whether the student's candidature or enrolment is to be terminated on medical grounds; and
- (d) the student's right of appeal.

5.2 If the Registrar has made a determination that an applicant has a serious health condition that prevents the enrolment of the applicant, the Registrar must inform the applicant in writing within 7 days of that decision, setting out:

- (a) any conditions that must be satisfied if the applicant is to be enrolled, including taking medication, obeying medical, behavioural, or other directions; or
- (b) the duration of any period during which the applicant is not permitted to enrol and any conditions to be satisfied if a future application for enrolment is to be considered by the University; or
- (c) whether any future application for enrolment will be considered; and
- (d) the applicant's right of appeal.

5.3 In giving information to an applicant or a student to whom subrule 4.3 applies, the Registrar may take and follow advice, including medical advice, on the most appropriate method of contacting the person concerned.

5.4 However, a student's enrolment may not be terminated until any appeal under Part 2 has been concluded.

5.5 The powers of the Registrar under this rule may be exercised whether or not the person on whom a notice under subrule 4.2 is given has responded to it.

6 Denial of access

6.1 If there are reasonable grounds for believing that an applicant or a student has a health condition that is likely to be a serious health condition, the Registrar may, without prior notice to the person, deny the person access to all or any of the University's facilities, or to all or any part of the University's premises, or to any activity conducted by or on behalf of the University or on University grounds, if there are reasonable grounds for believing that such action is reasonably necessary:

- (a) to protect the health and safety of the applicant or student concerned or any other person present at the University; or

(b) to protect or preserve any property located at the University.

6.2 A denial of access under subrule 6.1 is to remain in place for the period set by the Registrar or, if an appeal is lodged under rule 7, until varied by the Vice-Chancellor.

6.3 To avoid doubt, denial of access under subrule 6.1 does not, of itself, terminate a student's enrolment.

PART 2: MEDICAL APPEALS PANEL

7 Appeal of decision

7.1 An applicant or a student may, within 20 working days after being notified under rule 5 of a decision of the Registrar, appeal to the Medical Appeals Panel against the decision.

7.2 An appeal must be in writing and must be addressed to the Vice-Chancellor.

7.3 If:

- (a) a person is denied access under subrule 6.1 to facilities, activities, premises or University grounds for a period; and
- (b) the person concerned has lodged an appeal under subrule 7.1; and
- (c) the denial of access would cause real hardship to the person concerned;

the person may ask the Vice-Chancellor to vary the period of the denial of access and, if the circumstances so warrant, the Vice-Chancellor may vary the period pending the outcome of the appeal.

8 Medical Appeals Panel

8.1 The Vice-Chancellor must appoint a Medical Appeals Panel to hear and determine an appeal within 14 days of the receipt of the appeal.

8.2 The Medical Appeals Panel must, wherever practicable, include:

- (a) a person who has special knowledge of the type of health or disability related issues suffered by the appellant; and
- (b) a person with knowledge of the academic discipline being studied or proposed to be studied by the appellant; and
- (c) not more than 5 other persons as the Vice-Chancellor thinks fit.

8.3 The Vice-Chancellor must appoint a person, not being a student, to be the Chair of the Medical Appeals Panel.

8.4 The Vice-Chancellor must appoint a person (not being a member of the Medical Appeals Panel) to be the secretary to the Medical Appeals Panel.

8.5 The Vice-Chancellor may appoint a person (not being a member of the Medical Appeals Panel) to assist the Medical Appeals Panel with matters of procedure, the presentation of evidence, the calling and questioning of witnesses and the making of submissions to the Medical Appeals Panel.

- 8.6 A Medical Appeals Panel is not to include:
- (a) a person who has treated the appellant for any health condition; or
 - (b) a person who has given advice to the appellant in relation to any health condition.

9 Procedure at hearing of appeal

9.1 Before the Medical Appeals Panel hears an appeal, if the appellant so wishes, the President of the relevant Students' Association must be advised of the hearing.

9.2 The Medical Appeals Panel must:

- (a) fix a date, time and place for the hearing of an appeal; and
- (b) give not less than 7 days notice of the hearing to the appellant.

9.3 At the hearing of an appeal:

- (a) the quorum of the Panel is 3 members including the Chair of the Panel; and
- (b) the procedure to be followed is at the discretion of the Panel; and
- (c) the Panel may consult any person and inform itself on any matter in relation to an appeal in any manner it thinks fit; and
- (d) the Panel may require the appellant to undergo a medical examination, at the expense of the University, by a person or persons nominated by the Panel; and
- (e) the Panel has all the powers granted by these Rules to the Registrar; and
- (f) the Panel is not bound by rules of evidence.

9.4 Unless the Medical Appeals Panel directs to the contrary, a person is not entitled to be present at the hearing of an appeal unless the person is:

- (a) a member of the Panel; or
- (b) the appellant or the person nominated by the appellant under subrule 10.4; or
- (c) the Secretary to the Panel; or
- (d) a person giving evidence before the Panel; or
- (e) a person appointed under subrule 8.5.

9.5 An appeal hearing under these Rules is not ineffective by reason only of a formal defect or irregularity in the convening or conduct of the Medical Appeals Panel.

9.6 If the appellant fails to co-operate reasonably with the Medical Appeals Panel, refuses to provide information, including medical reports, requested by the Panel or fails to attend an examination required under paragraph 9.3(d), the Panel may proceed to a determination of the appeal, which may contain adverse conclusions arising from the person's lack of cooperation or assistance.

10 Appellant's rights on appeal

10.1 At the hearing of an appeal before the Medical Appeals Panel, an appellant may:

- (a) appear in person;
- (b) make oral or written statements; and
- (c) with the leave of the Panel, call witnesses (providing that the Panel is satisfied that any witness so called will not be subjected to harassment in the giving of his or her evidence).

10.2 Not less than 7 days before the day on which the appeal is to be heard, the Medical Appeals Panel must provide the appellant with copies of any material in existence at that time and upon which the Medical Appeals Panel may rely.

10.3 However, if the Medical Appeals Panel has reasonable grounds for believing, on information available to the Panel at the time of providing the material referred to in subrule 10.2, that the health of the person about whom the report was made may be adversely affected by provision of the material, the Medical Appeals Panel or the Registrar may take and follow advice, including medical advice, on the most appropriate method of making that material available to the appellant.

[Note: It is intended that, in the circumstances described in subrule 10.3, it may be appropriate that a counsellor or a person with medical qualifications be present when the material is provided to the appellant with a view to assisting the appellant.]

10.4 At the hearing of an appeal, the appellant is entitled to be accompanied by a person nominated by the appellant, being a person who may provide support or otherwise assist the person to respond to matters raised by the Medical Appeals Panel.

10.5 A support person nominated under subrule 10.4 may advise the appellant in relation to the appeal, may address the Medical Appeals Panel and call witnesses on behalf of the appellant (providing that the Panel is satisfied that any witness so called will not be subjected to harassment in the giving of his or her evidence).

10.6 On application being made in writing to the Vice-Chancellor by a student who has been directed to take medical leave by the Registrar under paragraph 5.1 or is denied access under subrule 6.1, the Vice-Chancellor may direct that the student be permitted to continue to undertake that program of study or course pending the determination of the student's appeal.

11 Decision by Medical Appeals Panel

11.1 After hearing the appeal, the Medical Appeals Panel may:

- (a) affirm the decision of the Registrar; or
- (b) vary the decision; or
- (c) set aside the decision and make a fresh decision in substitution for the decision set aside; or
- (d) set aside the decision.

11.2 The decision of the Medical Appeals Panel and the reasons for the decision must be given in writing to the appellant and the Vice-Chancellor by the Secretary to the Panel within 7 days of the decision.

11.3 In giving the decision to an appellant to whom subrule 4.3 applies, the Registrar may take and follow advice, including medical advice, on the most appropriate method of contacting the appellant.

12 Non-appearance before Appeals Committee

12.1 If an applicant or a student has lodged an appeal under subrule 7.1 and the appellant:

- (a) does not appear in person at the hearing of the appeal; and
- (b) is not otherwise represented at the hearing of the appeal; and

(c) does not make a written statement under paragraph 10.1(b); the appeal lapses and the decision of the Registrar is affirmed.

13 Decision final

13.1 The decision of the Medical Appeals Panel is final.

PART 3: MISCELLANEOUS

14 Application of *Disability Discrimination Act*

14.1 To avoid doubt, when exercising powers under these Rules, the Registrar, the Vice-Chancellor and the Medical Appeals Panel must take into account the provisions of the *Disability Discrimination Act 1992*.

15 Discipline Rules and serious health conditions

15.1 If proceedings have been brought against a student under the Discipline Rules and it appears that the student may have a serious health condition, the Vice-Chancellor may:

- (a) suspend further proceedings under the Discipline Rules and refer the student to the Registrar to be assessed according to these Rules; or
- (b) take no action.

15.2 If, as a result of a referral under paragraph 15.1(a), the student is found to have a serious health condition and is removed from the University on medical leave, the Vice-Chancellor may permanently stay the Discipline Rules proceedings or determine that they be deferred for a reasonable period.

15.3 If, as a result of a referral under paragraph 15.1(a) the student is not found to have a serious health condition, the Vice-Chancellor may reinstate the Discipline Rules proceedings.

15.4 If a student has engaged in behaviour that is found under these Rules as not being attributable to a serious health condition but might otherwise be regarded as misconduct under the Discipline Rules, the Registrar or the Medical Appeals Panel may refer the student's conduct to the Vice-Chancellor for consideration under the Discipline Rules.

16 Effect of cancellation of enrolment and medical leave

16.1 If a student, whose enrolment is cancelled as a result of a decision of the Registrar or the Medical Appeals Panel, has paid fees to the University, the Registrar or the Medical Appeals Panel must recommend to the Vice-Chancellor whether all or any part of the fees should be repaid to the student.

16.2 If a student is permitted to remain enrolled or re-enrol following a period of medical leave, then, to the extent possible, the time to meet academic standards for completion in the course or program must be extended taking into account the duration of the leave.

17 Confidentiality of private information to be maintained

17.1 Except as required by these Rules or the Discipline Rules, personal information obtained by the Registrar or the Medical Appeals Panel must be kept confidential and hearings or other consideration of the circumstances of the applicant or student concerned is to be conducted in private.

18 Breach of conditions

18.1 If a student whose enrolment, re-enrolment or continuation in a course or program is subject to a condition imposed by the Registrar or the Medical Appeals Panel breaches a condition, the Vice-Chancellor may, after giving the student an opportunity to make submissions, exclude the student from the course or program, or, if the Vice-Chancellor believes that the circumstances of the person so warrant, impose alternative conditions.

19 Delegation by Vice-Chancellor or Registrar

19.1 The Vice-Chancellor may delegate, in writing, to his or her nominee the exercise of the Vice-Chancellor's powers and the performance of the Vice-Chancellor's functions under these Rules.

19.2 The Registrar may delegate, in writing, to the Registrar's nominee the exercise of the Registrar's powers and the performance of the Registrar's functions under these Rules.

19.3 To avoid doubt, a delegation by the Vice-Chancellor or Registrar to a nominee does not prevent the performance or exercise of a function or power by the Vice-Chancellor or Registrar.

20 Notices

20.1 For the purposes of these Rules, a notice or communication that is delivered by hand or sent by post to a student at a place shown in the records of the University as the student's semester address, or permanent home address, is regarded as having been given to the student on the date on which the notice was delivered by hand or, if sent by post, on the date that it would, in the ordinary course of post, have been delivered to the student.

20.2 For the purposes of these Rules, a notice or communication that is delivered by hand or sent by post to an applicant at a place advised to the University as the applicant's address, is regarded as having been given to the applicant on the date on which the notice was delivered by hand or, if sent by post, on the date that it would, in the ordinary course of post, have been delivered to the applicant.

20.3 For the purposes of these Rules, a notice may be sent by email or other instantaneous electronic format to an address shown in the records of the University as belonging to the person concerned, and is regarded as being received by that person at the time notified by the electronic communication medium as being successfully sent by the University.

21 Extension of time

21.1 If the Vice-Chancellor has reasonable grounds for believing that it is just to do so, the Vice-Chancellor may extend any time limit set out in these Rules.

These Rules commenced on 14 December 2007.