

# Probation for Academic & General Staff



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# What does Probation mean?

- Probation is the last stage of the recruitment process where the University and the new staff member test whether the appointment will work
- Until 1 July 2009, a staff member whose probation was not confirmed did not have access to the Australian Industrial Relations Commission (now Fair Work Australia) for an alleged unfair dismissal. However under the Fair Work Act, the concept of probation has disappeared.

# Provisions of the Fair Work Act

- Although Probation has been removed, the Act requires a staff member to serve a 6 month “minimum employment period” before being able to make a claim for an alleged unfair dismissal
- This 6 month Minimum Employment Period only applies to new staff of the University
- The concept of a Minimum Employment Period has been tested and Fair Work Australia will not hear a case of alleged unfair dismissal unless the person has been employed for 6 months

# The ACU Staff Enterprise Agreement Provisions

The Agreement provides for a maximum period or maximum term of probation

- For general staff - up to 6 months, and
- For academic staff - up to 5 years.
- The University can rely on this clause in setting timeframes for probation, but if challenged would still have to demonstrate that the timeframe is reasonable depending on the job involved.
- The requirements for probation to be confirmed (ie the **probationary criteria**) must be specified in the letter of offer from the University so that criteria becomes a term of the contract of employment.

# What does a maximum period mean?

- A staff member can only be required to serve a period of probation **once**. (NB there is one exception only for academic staff in very particular circumstances)
- Once a maximum period of probation has been set in the letter of offer, it cannot be extended or renewed.
- It is crucial that the timeframes for probationary reviews are met because if no action has been taken by the University, a staff member is **automatically confirmed** if she or he reaches the date of the maximum period of probation.

# Maximum Periods of Probation

## Fixed term general staff

The University's General Staff Probation Policy recommends the following maximum periods of probation:

- For staff on fixed-term contracts of employment the period of probation is 6 months, or if the period of the contract is less than 6 months, the entire period of the contract will form the probationary period.

# Maximum Periods of Probation

## Fixed-term academic staff

- The maximum period of probation for academic staff employed on fixed-term contracts is 18 months and the normal terms are:
- No period of probation for contracts < 6 months
- 3 months for contracts of 6 – 12 months
- 6 months for contracts of 1 – 2 years, and
- 12 months for contracts of 2 or more years

# Probation Criteria

## What is needed to draft specific criteria for the letter of offer?

- The purpose of the criteria is to assess whether the staff member has the capacity to work productively at ACU
- The criteria must be specified as realistic, definable goals which are achievable within the time frames allowed
- The goals must be measurable and able to be determined in an objective manner. How they will be measured and by whom must be discussed with the staff member.

# Generic Probationary Criteria

## – All Staff

The generic criteria are listed in the Academic and General Staff Policies as follows:

- *Demonstrated capacity and willingness to undertake all the duties and responsibilities of the position (including basic issues such as attendance, punctuality, relations with co-workers);*
- *Demonstrated willingness to respond to changes in workplace requirements within the scope of the position description (if applicable); and,*
- *Demonstrated capacity to achieve work outcomes as required within the scope of the position description*

# Measuring Generic Probationary Criteria

- The Academic policies state that evidence may be required to support an application for confirmation
- This may include providing evidence of enrolment in and/or a progress report from a PhD supervisor
- Reviews of performance should focus on information gathered from peers, students and any other relevant stakeholders

# General Staff Probation Criteria

***Criteria can be drawn from 4 source documents and the final criteria must be consistent with each of the 4:***

1. The requirements listed in the relevant HEW classification descriptor (sourced from the Enterprise Agreement)
2. The generic general staff probation criteria (see sub-clause 6.4 of the Interim Probation for General Staff Policy),
3. The requirements of the position description (sourced from the PIQ), and
4. Specific criteria (eg task based) to be incorporated into the letter of offer

# The HEW Classification Descriptors

*Each HEW classification descriptor contains 7 dimensions each of which is defined. They are:*

1. Task level
2. Judgement, Independence and Problem Solving
3. Level of Supervision (both above and below)
4. Organisational Knowledge
5. Training level or Qualifications required
6. Occupational equivalent
7. Typical activities

Probationary criteria can be based on all of these dimensions except for (6)

# General Staff Probationary Criteria

- Criteria will normally be sourced from the Requirements of the Position details contained in the PIQ and the Position Description
- The Position Description contains details of the Position Purpose, the Position Responsibilities and the Selection Criteria. Each of these should be examined to draw out suitable probationary criteria
- The criteria should clearly identify the **key functions, responsibilities and tasks** to be undertaken during the probationary period, which should be prioritised and converted to very clear, actionable and measurable goals for the staff member to achieve
- This is a similar process to developing a general staff member's individual performance review and learning plan. Probation is also an introduction to the PDP and development of an individual learning plan.

# Drafting Probationary Criteria

Each Criterion should specify:

- the task/goal to be achieved
- the time frame by which it must be completed
- how completion or non completion will be determined and
- by whom

**Do not** list too many criteria to be met, as the criteria must meet the “reasonableness” test. Generally speaking 3 – 4 criteria should be sufficient for all but the most complex positions.

# Examples of General Staff Probationary Criteria

## *For positions classified at HEW 1 – 3*

The following is an example of reasonable probationary criteria for a Laboratory Assistant:

- *“Within 4 weeks of commencement, demonstrate the capacity to use Microsoft Word and Excel to maintain the data base for equipment and consumables. This will be assessed by your supervisor.*
- *Within 6 weeks of commencement, demonstrate the capacity to satisfactorily set up classroom materials for workshops in a timely manner and with minimal supervision. This will be assessed by your supervisor with feedback from other lecturing staff as appropriate.*
- *Provide evidence within 10 weeks of commencement, of your enrolment in an appropriate OH&S course.”*

# Drafting Probationary Criteria

## *Examples of reasonable probationary criteria for HEW 4 – 6 positions:*

- *“Within 10 weeks of commencement, provide a report to Management of the information requirements and priorities of the academic staff of the School of X.”*
- *“Within 6 weeks of commencement, deliver at least 2 information sessions to students and/or staff of the relevant School. The quality of your sessions will be assessed by your supervisor including through seeking feedback from the students (and/or staff) concerned.”*
- *“Within 4 months of commencement, provide recommendations for purchase in line with the Unit’s Policy/local guidelines. These will be assessed by your supervisor.”*

# Drafting Probationary Criteria (some more good examples)

- *“By the end of (month) prepare a timeline of major tasks for the 2007-2008 admissions cycle, to be assessed by your supervisor.*
- *Within 3 months of commencement, demonstrate effectiveness as a member of the School of X administration team. This will be measured by feedback sought from colleagues by your supervisor.*
- *Within 2 months of commencement, demonstrate the ability to satisfactorily provide technical and operational support for the specialist information systems, software and facilities used by the School of X. This will be assessed by feedback sought from staff within the School.”*

# Probationary Criteria

## – What not to do

Below are some not so good (real) examples that need tightening up as there is no specific time frame or task, nor is there information about how each of these is to be measured

- *“Over the entire probation period, display initiative and reliability and conscientiously support and adapt to change”*
- *“Demonstrate timely completion of tasks in accordance with documented procedures”*
- *Demonstrate an ability and willingness to adopt a proactive approach in working with School of X lecturers to investigate new releases of relevant Information Systems software. This includes negotiating with, and obtaining quotes from software suppliers.”*

# Academic Probation

- The normal period of probation for a continuing academic staff member is 5 years with a review at 3 years (5 years is the maximum term under the EA)
- An academic staff member employed on a fixed-term contract who has served a period of probation may be required to serve an additional 2 years of probation if she/he is offered a continuing appointment.

# Academic Probation

- If a staff member takes 6 months or more LWOP her or his Probation is suspended for the duration of the leave
- The University's Probation Policies contain an Interim Review Report document and a Final Review Report. Each requires a progress report on the generic and specific terms of probation

# Academic Probationary Criteria

Probationary Criteria is set by the Selection Committee and is based on the MSALs (Minimum Standards for Academic Levels).

## ***Generic academic probationary criteria include:***

- Substantial progress toward or completion of a doctorate;
- Membership of the relevant professional body;
- Establishment of a program of research (eg. progress towards or obtain a competitive grant or acceptance of a refereed publication)

# Academic Probationary Criteria

In 2009, an additional generic probationary criterion was added to the Policy, namely:

- ***Establishment/maintenance of a teaching portfolio consistent with the level of appointment.***

The other generic criterion is:

- ***Achieving satisfactory ratings on evaluations of teaching.***

# Academic Probation

- The Probation Review Committee undertakes a formal review of a staff member's performance before the end of the 3<sup>rd</sup> Year of Probation. Details of the process are found in the Policy documents
- The academic staff member and her/his supervisor are requested to submit an application and the relevant form for consideration of the Committee
- If the criteria have been met, the Committee can recommend that the appointment is confirmed
- A staff member can apply for confirmation prior to the scheduled review at Year 3 and may be confirmed if the criteria have been met

# Academic Probation

If the criteria have not been met, the Committee can decide to recommend that:

- The probation be extended to the maximum term (up to another 2 years) where provision for a maximum term of 5 years has been made in the contract of employment, and/or
- The Committee will conduct another formal review prior to the end of the 4<sup>th</sup> year (and if needed before the final year of probation).

# What happens if the appointment goes wrong?

- If it turns out that the new staff member is “a square peg in a round hole”, then the sooner this is realised and action taken the better. Remember if the University does not take **timely action**, the staff member may be confirmed by default.
- Hold regular probation review meetings with the staff member, and advise her or him of progress and any issues.
- If there are performance/behavioural issues arising, deal with them sooner not later in order to see if the appointment can proceed (remember the costs of recruitment are substantial).
- For general staff, a confirmation review meeting must be held no later than 6 weeks before the end of the probationary period.

# If things go wrong, (continued)

As probation cannot be extended, there are only 2 possible outcomes from a general staff probation review meeting:

- 1. Confirmation:** Where the staff member has satisfactorily met the probationary criteria, the supervisor signs off on the final Probation Review Report, sends it to HR and the University will advise the staff member that she or he is confirmed. The staff member's performance is then managed through the General Staff Performance Development Program.
- 2. Termination:** Supervisors should get advice from their HR Consultant if they wish to recommend termination as the staff member must be given the opportunity to respond and be given a reasonable time to do so. A recommendation for termination at any time during the probationary period, must be sent to the Director HR.

# If things go wrong, (continued)

- Clause 4.7.3 of the Enterprise Agreement states that the Vice-Chancellor may dismiss a probationary staff member on performance grounds with notice, provided that:
  - *“the staff member is serving a reasonable probationary period, having regard to the nature and circumstances of the employment; **and***
  - *The dismissal complies with the University probation review and appeal procedures; **and,***
  - *Notice of dismissal is given in writing”*

# Internal Appeals

- A staff member may lodge an appeal against a decision not to confirm her or his appointment by activating the University's Appeals Policy.
- An appeal may only be lodged whilst the staff member is still employed by the University.
- The Appeals Committee will only determine whether the original Committee (or person) who “ ... *made the decision under review committed or made a procedural error or omission which materially and adversely affected a decision concerning the staff member's application...* ”

(see “Terms of Reference, clause 5.9 of the Interim Policy – Staff Appeals)

# Other Jurisdictions

A person who has been employed for the minimum period of 6 months and whose probation is not confirmed, has access to Fair Work Australia to lodge a claim of alleged unfair dismissal and possibly a claim of alleged adverse action. In addition she or he has access to other jurisdictions for related claims. These include:

- Notifying a dispute under the University's Enterprise Agreement
- The FWA for an alleged unlawful termination (i.e, if a termination is based on discriminatory grounds as defined in the Act such as age or gender),
- The Human Rights and Equal Opportunity Tribunal, (if a related complaint of discriminatory treatment applies as defined in the relevant Acts),
- A state based Discrimination Tribunal eg. the NSW Anti-Discrimination Board (if a related complaint of discriminatory treatment applies as defined in the relevant Act).

# Probation not confirmed

- The University will be able to defend a decision not to confirm a staff member's probation only if due process has been followed
- If it is not satisfied that due process has been followed, Fair Work Australia has the power to order a person to be reinstated as a staff member (including reinstatement into a particular School or Unit)
- Alternatively, FWA may award compensation of up to 6 months salary if reinstatement is not a practicable option.

# Probation at ACU

*Any questions?*



*Thank you for attending*