

# University of Canberra (Medical Leave) Rules 2022

made under the *University of Canberra Act 1989*, s 40 (Statutes) and the *University of Canberra (Medical Leave) Statute 2017*

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## PART 1 – Object and Authority

### 1 Name of instrument

This instrument is the *University of Canberra (Medical Leave) Rules 2022*.

### 2 Commencement

This instrument commences on the day it is approved by Council.

### 3 Repeal

- (1) The *University of Canberra (Medical Leave) Rules 2017* are revoked.
- (2) Determinations made under the *University of Canberra (Medical Leave) Rules 2017* are deemed to have been made under these Rules and continue in force until those determinations or these Rules are revoked.

### 4 Purpose

Where a student has a serious health condition, this instrument authorises the University to:

- (a) support a student to consent to a period of medical leave;
- (b) place a student on a period of involuntary medical leave; or
- (c) place conditions on a student's enrolment.

### 5 Definitions

In these rules, unless the contrary intention appears:

**Act** means the *University of Canberra Act 1989* (ACT) and includes statutes and rules made under that Act;

**academic requirements** has the same meaning as in *University of Canberra Courses and Awards (Courses of Study) Rules 2013*;

**Authorised Officer** means a person holding the role of Dean, Deputy Dean, Associate Dean, Director, Pro-Vice Chancellor, Deputy Vice-Chancellor or Vice-President, appointed by the Vice-Chancellor under Rule 7;

**Deputy Vice-Chancellor** means a person holding the role of Deputy Vice-Chancellor at the University;

**ESOS Act** means the *Education Standards for Overseas Student Act 2000* (Cth);

**involuntary medical leave** includes to defer or suspend enrolment as defined in the *National Code of Practice for Providers of Education and Training to Overseas Students* as amended from time to time;

**legal qualifications** means a barrister or solicitor admitted to an Australian Court who is entered on the Roll of Legal Practitioners in an Australian jurisdiction;

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

**Medical Appeals Panel** means the panel established pursuant to Rule 25;

**mental disorder** has the same meaning as defined in the *Mental Health Act 2015* (ACT);

**mental illness** means a mental illness as defined in the *Mental Health Act 2015* (ACT);

**notifiable condition** means a disease or medical condition as defined in the *Public Health Act 1997*(ACT);

**Partner Institution** means an organisation or company that provides education services to students of the University at the Partner Institution's premises under an Agreement with the University;

**Placement Provider** includes an organisation or company that provides clinical or work integrated learning for students of the University at the Placement Provider's premises under an agreement with the University;

**Prescribed Authority** has the same meaning as defined in the Student Conduct Rules;

**Secretary** means the secretary of the Medical Appeals Panel appointed pursuant to rule 26;

**serious health condition** means a mental disorder, mental illness or notifiable condition, that:

- (a) renders a student unable to undertake or complete their course of study or a unit of study at the University;
- (b) poses a substantial threat to his/her own safety or well-being and/or that of others;
- (c) causes or results in behaviour that may cause the person to harass to a significant extent or cause severe emotional disturbance to a member of the University community;
- (d) causes or results in behaviour that may disrupt the provision of academic or general services to any member of the University Community; or
- (e) causes or threatens damage to property at the University campus;

**suspension** means the withdrawal of specified rights and privileges of a student of the University, including the right to enter or to be on University campus or remain enrolled in a course or unit;

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

**Statute** means the *University of Canberra (Medical Leave) Statute 2017*;

**student** has the same meaning as in the *University of Canberra (Student Conduct Rules) 2018* as amended from time to time;

**Student Conduct Rules** means the rules made by Council under the *University of Canberra (Student Conduct) Statute 2015* as amended from time to time;

**University campus** means buildings or land owned or occupied by the University,

and includes buildings or land owned or occupied by a Partner Institution or a Placement Provider; and

**University community** means staff, students, members of Council, staff employed by Partner Institutions or Placement Providers and consultants of the University or Partner Institutions or Placement Providers.

*Note 1 Terms used in this Statute have the same meaning that they have in the Act (see Legislation Act, s 148). For example, the following terms are defined in the Act:*

- council
- university
- vice-chancellor

*Note 2 A reference to a statute or rule includes a reference to that statute or rule as repealed and amended since the reference was made, see the Legislation Act, s 102.*

## **6 Governing principles of these Rules**

- (3) The rules of procedural fairness apply to all decisions made under these Rules.
- (4) An action taken by the University in relation a person reasonably suspected of having a serious health condition will be the least restrictive action reasonably available to protect the student or another member of the University community or to prevent disruption of academic or general services to any member of the University community.

*Note: For example the least restrictive option may include suspension from attending the University campus while making provisions for online submission of assignments.*

- (5) The University will seek to protect an affected person's privacy and dignity by involving as few people as is reasonably necessary in exercising its powers under these Rules.

## **7 Appointment of Authorised Officer/s**

- (1) The Vice-Chancellor may appoint up to six (6) Authorised Officers to exercise the functions of an Authorised Officer under these Rules.
- (2) The Vice-Chancellor may remove an Authorised Officer from office at any time, including where they have demonstrated a failure or incapacity to attend to their duties.

## **8 Right to support person**

- (1) A student who is the subject of enquiries or a hearing under these Rules may be accompanied by a support person or representative in any interaction with the University under these Rules.
- (2) A support person may advise the student, may address the Authorised Officer or Medical Appeals Panel and at a hearing may call witnesses on behalf of the student (providing that the Authorised Officer or Chair of the Medical Appeals Panel is satisfied that any witness so called will not be subjected to harassment in the giving of their evidence).
- (3) A legal representative may appear as a support person at enquiries or a hearing, with the prior consent of the Authorised Officer or Chair of the Medical Appeals Panel.

## **9 Non-Disclosure**

No information or record of any inquiries, reports, minutes, notices, hearings or decisions made under these Rules may be disclosed by the University other than to the student, the student's representative or support person, except as

authorised by the student or as required by these Rules or a law of the Commonwealth or the Australian Capital Territory.

## **10 Service of Notices**

- (1) Subject to sub rule 10(2) notices issued under these Rules must be sent in writing and by Registered Post to the affected student's last known mailing address as provided by them, and to the student's University email address or an alternative email address provided by the student if appropriate.
- (2) If an Authorised Officer has reasonable grounds for believing, on the basis of the information available to them at the time of preparing a notice under these Rules, that the health of the student may be adversely affected by receipt of such a notice, the Authorised Officer must obtain and act on advice, including but not limited to medical advice, about the most appropriate manner in which to contact the student.

## **PART 2 – Powers of the University**

### **11 Powers in urgent situations**

- (1) At any time a Deputy Vice-Chancellor may, where there is an imminent threat and without prior notice, do one or all of the following:
  - (a) deny a student access to all or any of the University's facilities;
  - (b) deny a student access to all or any part of the University campus; and
  - (c) deny a student access to any activity, conducted by or on behalf of the University or on the University campus,

where the Deputy Vice-Chancellor suspects on reasonable grounds that the student has or is reasonably suspected of having a serious health condition.

- (3) The powers conferred in sub rule 11(1) are to:
  - (i) protect the health and safety of the student concerned or any other person present on the University campus or member of the University Community; or
  - (ii) protect or preserve any property located at the University campus, a Placement Provider or a Partner Institution.
- (2) A decision under sub rule 11(1) shall remain in place for the period set by the Deputy Vice-Chancellor, or until a determination has been made by an Authorised Officer.
- (3) A decision under sub rule 11(1), may be lifted, varied or extended for a further specified period by a Deputy Vice-Chancellor pending the determination of an Authorised Officer.
- (4) To avoid doubt, denial of access under this Rule does not, of itself, terminate a student's enrolment.
- (5) Subject to sub rule 10(2), a decision under this Rule must be communicated to the student by notice as soon as possible and must specify:
  - (a) the terms of the decision;
  - (b) reasons for the decision; and
  - (c) the nature of the information relied upon.
- (6) A copy of the notice of a decision issued under sub rule 11(5) must be provided to an Authorised Officer and constitutes a report pursuant to sub rule 12(1).

- (7) A copy of the notice issued under sub rule 11(5) must be provided to the Secretary.

## **12 Reporting serious health condition**

- a. Any person who suspects on reasonable grounds, that a student has a serious health condition may report their concerns to an Authorised Officer.
- b. A person who makes a report under this Rule may request that their identity be kept confidential from the student.
- c. Malicious reporting under this Rule is misconduct for the purposes of student and employee discipline.

## **13 Authorised Officer may make enquiries**

- a. An Authorised Officer, on receipt of a report under sub rule 12(1) or otherwise becoming aware that a student may have a serious health condition, may make all enquiries reasonably necessary to ascertain whether the student has a serious health condition.
- b. In making their enquiries, an Authorised Officer may consider, but is not limited to, the following:
  - i. a statement from any member of the University community, who may have information relevant to the Authorised Officer's enquiries;
  - ii. medical and psychological reports related to the student's condition; and
  - iii. oral or written submissions made by the student about their condition.
- c. If the Authorised Officer has reasonable grounds for believing that any medical reports available are not sufficient for the Authorised Officer to draw reasonable conclusions regarding the extent of the student's health condition, the Authorised Officer may ask the student 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 University.
- d. For the purposes of sub rule 13(3) a medical report will not be sufficient if:
  - i. it does not include contemporaneous information prepared by a suitably qualified medical practitioner to assist the Authorised Officer to understand the student's medical condition at the time the enquiries are being made; or
  - ii. it does not include information sufficient or necessary for the Authorised Officer to determine whether medical leave conditions mentioned in sub rule 15(2) should be imposed; or
  - iii. for any other reason an objective person would consider to be reasonable in the circumstances.
- e. If the student:
  - i. does not undergo a medical examination arranged by the Authorised Officer or is otherwise uncooperative with the Authorised Officer; or
  - ii. does not provide information requested; or
  - iii. does not attend a medical examination arranged by the Authorised

Officer;

the Authorised Officer may determine the referral and may draw conclusions unfavourable to the student arising from the student's lack of cooperation.

- f. An Authorised Officer may direct a staff member of the University to provide any requested information to inform the Authorised Officer's enquiries under this rule.

#### **14 Notice of Authorised Officer's intention to impose medical leave of absence**

- a. If the Authorised Officer is satisfied on reasonable grounds that a student has or is reasonably suspected of having a serious health condition, the Authorised Officer must, subject to sub rule 10(2) and Rule 15, afford the student the opportunity to show cause why they should not be subject to a determination under these Rules by providing the student with a show-cause notice.
- b. The show-cause notice must:
  - i. specify reasons for the Authorised Officer's proposed decision;
  - ii. outline the nature of the information relied upon;
  - iii. subject to sub rule 12(2), provide copies of any substantive material relied upon;
  - iv. afford the student the opportunity to consent to a period of medical leave;
  - v. outline the student's options to participate in this process; and
  - vi. advise the student that they have 10 business days to respond to the Authorised Officer as set out in the notice. This timeframe may be extended if extenuating circumstances exist which prevent the student from responding within that time.
- c. At a minimum, the affected student may engage with this process by:
  - i. submitting a written submission;
  - ii. submitting new relevant evidence; and
  - iii. being afforded an opportunity to respond to the notice in person upon request.
- d. On receipt of a request from the affected student to appear and respond in person, the Authorised Officer must convene a meeting at an agreed time within 10 business days of the request to allow this to occur.
- e. At any meeting with a student under these Rules, an Authorised Officer must be accompanied by a staff member of the University Medical and Counselling Centre.

#### **15 Powers of Authorised Officer to impose medical leave of absence**

- a. In making a determination under this Rule, the Authorised Officer must consider the consequences of that determination upon the affected student's:
  - i. welfare;
  - ii. accommodation; and
  - iii. visa status, if applicable.
- b. If the Authorised Officer is satisfied on reasonable grounds that a student

has or is reasonably suspected of having a serious health condition, the Authorised Officer may determine, having regard to the circumstances and the information available, that one or more of the following should occur:

- i. the student be placed on a period of medical leave for up to 12 months;
  - ii. specified conditions be satisfied to permit a student's continuing enrolment;
  - iii. specified conditions be satisfied before the University will consider reinstatement of a student's enrolment; or
  - iv. the student is discontinued from the University if there are no suitable conditions available to the University which would allow for their continued enrolment.
- c. Conditions which may be imposed by the Authorised Officer under these Rules include (but are not limited to) compliance with any relevant medical treatments prescribed by a medical professional, including pharmacological treatments, and behavioural or psychological therapies.
  - d. The University may review any period of medical leave or condition imposed on a student's enrolment under sub rule 15(2) prior to the cessation of the 12 month period.

## **16 Notice of determination**

- a. Notice of a determination made by an Authorised Officer under Rule 15 must be provided to the affected student and must:
  - i. outline the findings on material questions of fact;
  - ii. outline the nature of the evidence or other material relied upon to make findings;
  - iii. give reasons for the Authorised Officer's decision; and
  - iv. subject to sub rule 12(2), provide an itemised list of any substantive material relied upon.
- b. The Authorised Officer must cause a copy of the notice to be provided to:
  - i. the Secretary; and
  - ii. relevant University staff, including the relevant Faculty Board to give effect to the determination.

## **17 Effect on enrolment and fees**

If a student is placed on medical leave or their enrolment is discontinued as a result of a decision under these Rules, the University must consider remission of all or part of the student's fees in accordance with the *Higher Education Support Act 2003* (Cth) and the ESOS Act.

## **18 Time for the purpose of academic standards**

Following a period of medical leave of absence, the relevant Faculty Board, to the extent possible, will extend the time to meet the academic requirements for the student's course to take into account the duration of the medical leave.

## **PART 3 - Appeals**

### **19 Review of Decision**

- a. A student subject to a determination under Rule 15 may seek a review of the decision by making an application to the Medical Appeals Panel pursuant to the grounds for appeal stated in Rule 20.
- b. Only one application for review per determination under Rule 15 can be made under these Rules.
- c. An appeal will only progress to a hearing before the Medical Appeals Panel where the request for an appeal is:
  - i. made in writing;
  - ii. establishes at least one ground of appeal set out in Rule 20;
  - iii. is delivered to the Secretary; and
  - iv. is received not later than 20 business days after the day on which the notice of determination is provided to the student.

*Procedure where valid appeal made – Committee Inquiry*

- d. Where a student lodges an appeal that meets the requirements of sub rule 19(3), the Secretary must cause notice of the appeal to be given to the Chair of the Medical Appeals Panel who will proceed with a hearing of the Medical Appeals Panel in accordance with Rule 21.

*Procedure where invalid appeal made*

- e. Where a student lodges an invalid appeal, including where sufficient grounds for appeal are not stated, the Secretary must cause a copy of the notice to be sent to the Chair of the Medical Appeals Panel who will consider the material and give notice to the student:
  - i. that the appeal is invalid and set out the reasons why the appeal is invalid; or
  - ii. that the Chair will grant the student special leave to appeal.
- f. The Chair must cause a copy of the notice to be provided to the Secretary.

*Effect of Determination during Appeal Process*

- g. A determination remains in force during any appeal period.

## **20 Grounds of Appeal**

- a. An appeal is not limited to but should address the grounds that the Authorised Officer:
  - i. did not take all relevant material into account; or
  - ii. took irrelevant material into account; or
  - iii. did not give the student a fair hearing; or
  - iv. was biased against the student.

## **PART 3 – Procedures on Appeal**

### **21 Hearing of Appeals**

- (1) The Medical Appeals Panel must:
  - (a) convene within 20 working days from receipt of a valid appeal;
  - (b) fix a date, time and place for the hearing of an appeal; and
  - (c) give not less than 7 days' notice of the hearing to the appellant.

- (2) At a hearing of the Medical Appeals Panel:
  - (a) the quorum of the Medical Appeals Panel is three (3) members;
  - (b) the procedure to be followed is at the discretion of the Chair subject to the rules of procedural fairness;
  - (c) the Medical Appeals Panel may consult any person and inform itself on any matter in relation to an appeal in any manner it thinks fit;
  - (d) the Medical Appeals Panel is not bound by rules of evidence.
- (3) At the hearing of an appeal before the Medical Appeals Panel, an appellant may:
  - (a) appear in person;
  - (b) appear via video conference at the discretion of the Medical Appeals Panel;
  - (c) make oral or written statements; and
  - (d) with leave of the Chair of the Medical Appeals Panel, seek the attendance of relevant persons to present information in support of the appeal.
- (4) If the appellant fails to co-operate reasonably with the Medical Appeals Panel or refuses to provide information, including medical or other reports, requested by the Medical Appeals Panel, the Medical Appeals Panel may proceed to a determination of the appeal, and may draw conclusions unfavourable to the applicant based upon the appellant's lack of cooperation or assistance.
- (5) A decision of the Medical Appeals Panel is to be taken to be the decision of the original decision maker.
- (6) A decision of the Medical Appeals Panel is final within the University.

## **22 Notice of determination of appeal**

- a. The Medical Appeals Panel must give written notice of its decision to the appellant and the original decision maker within 20 working days of the hearing.
- b. Notice of a determination under Rule 21 must:
  - i. outline the findings on material questions of fact;
  - ii. outline the nature of the evidence or other material relied upon to make findings;
  - iii. give reasons for the Medical Appeal Panel's decision;
  - iv. subject to sub rule 12(2) provide an itemised list of any substantive material relied upon; and
  - v. outline the student's right to appeal the decision to the ACT Ombudsman.
- c. The Medical Appeals Panel must cause a copy of the notice to be provided to:
  - i. the Secretary; and
  - ii. relevant University staff to give effect to the determination.

## **23 Failure to engage with Medical Appeals Panel**

- a. If a student has lodged an appeal under Rule 19 and:
  - i. does not appear in person at the hearing of the appeal; and
  - ii. is not otherwise represented at the hearing of the appeal; and
  - iii. does not make a written statement under sub rule 21(3)(b);
 the appeal lapses and the decision of the Authorised Officer is affirmed.
- b. The Medical Appeals Panel may restore or extend the student's right to an appeal in compelling or exceptional circumstances.

## **24 Hearings to be private**

- a. Any hearing conducted by the Medical Appeals Panel must be conducted in private.
- b. A person is not entitled to be present at a hearing unless the person is:
  - i. a member of the Medical Appeals Panel;
  - ii. the student;
  - iii. a person nominated to act on behalf of the appellant;
  - iv. a person nominated by the appellant as a support person;
  - v. the Secretary;
  - vi. a legal practitioner appointed by the Medical Appeals Panel to provide the Medical Appeals Panel with legal advice;
  - vii. a legal practitioner appointed by the student to appear on their behalf; or
  - viii. a person giving evidence before the Medical Appeals Panel.

## **PART 4 – Medical Appeals Panel**

### **25 Medical Appeals Panel**

- (1) The University shall establish a Medical Appeals Panel to determine applications for review under these Rules.
- (2) The Medical Appeals Panel consists of the following members, appointed by the Vice-Chancellor:
  - (a) a chair with relevant qualifications in psychology, psychiatry or medicine (who may be independent);
  - (b) a professor of the University from the academic discipline being studied or proposed to be studied by the appellant; and
  - (c) a person with legal qualifications (who may be independent).
- (3) The Vice-Chancellor may remove a member of the Medical Appeals Panel from office for failure or incapacity to attend to their duties.
- (4) 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; or
  - (c) a person who has made a decision about the appellant as an Authorised

Officer.

## **26 Appointment of Secretary**

The Vice-Chancellor shall appoint a person not being a member of the Medical Appeals Panel) to be Secretary to the Medical Appeals Panel.

## **PART 5 – Interaction with Student Conduct Rules**

### **27 Student Conduct Rules and serious health conditions**

- a. An Authorised Officer may receive a referral under these Rules from a Prescribed Authority where misconduct proceedings have been brought against a student under the Student Conduct Rules and the Prescribed Authority forms a reasonable belief that the student may have a serious health condition.
- b. Upon referral under sub rule 27(1), an Authorised Officer may make a recommendation to a Prescribed Authority to suspend further proceedings under the Student Conduct Rules.
- c. If a student is found to have a serious health condition and is placed on a period of medical leave, and that student was referred to the Authorised Officer pursuant to sub rule 27(1), the Authorised Officer will make a recommendation to the Prescribed Authority to stay the misconduct proceedings for a reasonable period or discontinue the misconduct proceedings.

*Note: A reasonable period may include a permanent stay of proceedings.*

- d. If a student is found not to have a serious health condition, the Authorised Officer will make a recommendation to the Prescribed Authority to resume the misconduct proceedings. A recommendation to resume the misconduct proceedings will be stayed if student lodges an appeal of a determination under these Rules.
- e. If a student has engaged in behaviour that is determined under these Rules as not being attributable to a serious health condition but might otherwise be regarded as misconduct under the Student Conduct Rules, the Authorised Officer or the Medical Appeals Panel may refer the student's conduct to a Prescribed Authority in accordance with the Student Conduct Rules.

## **PART 6 - Miscellaneous**

### **28 Procedures**

- (1) The Council may make procedures, not inconsistent with the Act, the Statute or these Rules, prescribing all matters that are necessary or convenient to give effect to these Rules, including but not limited to procedures relating to:
  - (a) a student's transition back into study following a period of medical leave;
  - (b) support services accessible by a student during enquiries or hearings under these Rules; and
  - (c) the giving of notices.

*Canberra Act 1989* and the *University of Canberra (Medical Leave) Statute 2017*.

In making these Rules the University had regard to the provisions of section 40B(1)(b) of the *Human Rights Act 2004*.

Rules approved at Council meeting [insert]