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Sent: Friday, 4 August 2017 2:41 PM
To: Chambers - Johns C
Cc: AMOD; Pill, Stuart; Shannon, Allison; Linda Gale
Subject: AM2014/229 & AM2014/230 - Response to exposure drafts [CU-Legal.FID1999041]

Dear Commissioner

Four Yearly Review of Modern Awards
AM 2014/229 - Higher Education Industry - Academic Staff - Award 2010
AM 2014/230 - Higher Education Industry - General Staff Award 2010

We refer to the Revised Exposure Drafts for the *Higher Education Industry-General Staff-Award 2015* and the *Higher Education Industry-Academic Staff-Award 2015*, both of which were released on 17 July 2017.

In relation to both of the Revised Exposure Drafts, the Group of 8 agrees with the changes made to the drafts since the previous published versions. We confirm that, where applicable, the changes reflect the agreed position of the parties based on previous correspondence to the Commission and conferences with Commissioner Johns approximately 12 months ago and/or the approach determined by the Commission.

Notwithstanding the above, we note there are a number of matters in both of the Revised Exposure Drafts that the Commission has asked the parties to specifically consider and/or address. We have responded to these matters below.

Academic Staff Award

1. Examples: - The Group of Eight is not proposing examples.
2. Clause 5.7 - Casual Employment: Noted. We confirm that the Group of 8 has filed written submissions in relation to this issue on 2 August 2017.
3. Clause 21.6: The Group of 8 has no objection to the proposed variations regarding "*occupational health and safety*" being changed to "*workplace health and safety*".

General Staff Award

1. Examples: - The Group of 8 is not proposing examples.
2. Clause 9.1 - Penalty Payable on Public Holiday: The Commission has asked whether a penalty payable on a public holiday should be included in clause 15 or 20 for the purposes of clause 9.2(b)(v). Clause 9.2(b)(v) states that the penalty payable on a public holiday is in accordance with clause 16 - Overtime. Clause 16.1 then identifies the penalty rate for public holidays as 250%. The Group of 8 submits that it would be unnecessary to include any reference to the public holiday penalty in either clause 15 or clause 20 given it is already dealt with in both clause 9.2(b)(v) and clause 16.1.

We note that clause 9.2(b)(v) contains a **typographical error**. The first sentence refers to "*shiftwok*" instead of "*shiftwork*". This error should be corrected. Also references added in clauses 15.3 and 16.5 to "clause 9.2(b)(ii)" are incorrect and should be "clause 9.2(b)(iii)".

3. Shift penalties v shift loadings: In light of the decision in [2017] FWCFB 3433, the Group of 8 agrees for the term "*shift loading*" in clause 9.2(b)(iv) to be amended to "*shift penalty*". This will also ensure consistency of terminology throughout the award itself which refers to penalty rather than loading (including in the preceding clause, 9.2(b)(iii)).
4. Clause 17.5 - Annual Leave Loading: The Group of 8 agrees to the term "*Australian Statistician's average*" being changed to "*Australian Bureau of Statistics' average full time*" and to the clause being updated to reflect the biannual publication of the ABS figures. This

issue also arises in part in the Academic Staff Award at clause 12.3 (although not identified by the Commission with a note.

5. Clause 20 - Public Holidays:
 - a. We confirm that the NTEU has provided a response and agrees that public holiday substitution should be dealt with by the Group 3 Full Bench.
 - b. The Group of 8 notes that pursuant to the Full Bench decision in [2014] FWCFB 9412, clause 20.3 - Effect on Payment for holidays is inconsistent with the NES.
 - c. The Group of 8 agrees that the words "*subject to the provisions of this clause*" can be deleted from clause 20.1.
6. Clause 25.6 and A.2.1(a): The Group of 8 has no issue with the proposed variations regarding "*occupational health and safety*" being changed to "*workplace health and safety*".
7. Schedule C Leading Hand Allowance: The Commission has asked the parties to consider whether the leading hand allowance identified on page 64 should be for "*more than 20 employees*" as per the *Higher Education Workers Victoria Award 2005 (HEW Vic Award)* rather than for "*20 or more employees*" as currently stated. As is presently the case, it is unclear what allowance an employee supervising 20 employees will get. Based on the current wording they can get the \$39.00 per week allowance and the \$49.56 per week allowance. Having regard to the other provisions with respect to the leading hand allowance (i.e. different allowances for supervision of "*1 to 10 employees*" and "*11 to 20 employees*"), it follows that the most appropriate wording is "*more than 20 employees*". This would also be consistent with the historical awards including the HEW Vic Award as noted.

Please contact us if you have any queries regarding the above.

Regards,

Stuart Pill, Partner

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