

MinterEllison

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The Hon. Justice Ross
President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

Dear Associate

AM2014/229 - Higher Education Industry-Academic Staff-Award 2010 [MA000006]

We refer to our correspondence of 16 May 2016 and confirm that we act on behalf of Bond University.

We acknowledge receipt of the Bond University Academic Staff Association's (**BUASA**) correspondence to the Commission on 19 May 2016 and the submission of the National Tertiary Education Union (**NTEU**) regarding outstanding matters dated 18 May 2016.

Background

Bond University has only very recently become aware that, on 20 April 2015 and 10 March 2016, BUASA lodged submissions and evidence with the Fair Work Commission in respect of amendments it proposes to the Higher Education Industry Academic Staff Award 2010 (**Academic Staff Award**).

BUASA seeks to vary the coverage terms of the Academic Staff Award by amending clause 10.2 of the Academic Staff Award, which appears in clause 5.6(a) of the Exposure Draft issued by the Commission on 18 December 2015. We assume it does so on behalf of one or more of its members. BUASA is not a registered organisation (or transitionally registered or recognised) pursuant to the *Fair Work Act 2009* (Cth), but has representational rights under the *Bond University Act 1987* (Qld).

Substantive issues AM2015/6 – extension sought by Bond University

We understand that BUASA's submission will form part of the substantive issues to be dealt with in hearings before the Full Bench from July-November 2016.

The Direction of Commissioner Johns of 20 April 2016 provides that each interested party files in the Commission a written outline of submissions and any witness statements and documentary materials in reply by **3 June 2016**. Bond University seeks an extension to enable it to comply with that direction (if necessary) in light of the matters set out below.

Outstanding technical and drafting issues – directions sought by Bond University

We understand that there have been a number of conferences held between the Australian Higher Education Industrial Association (**AHEIA**), the NTEU, and Group of Eight Universities (**Go8**) in relation to outstanding technical and drafting issues.

In accordance with directions issued by Commissioner Johns on 12 May 2016, we understand a further amended version of the exposure draft of the Academic Staff Award is to be released next week, with



outstanding technical and drafting issues to be the subject of a hearing before a Full Bench on **6 and 7 June 2016**.

In its letter of 19 May 2016, BUASA appears to be seeking directions in relation to Bond University's participation in the proceedings regarding outstanding technical and drafting issues.

Bond University agrees that, if the Commission sees fit, it would be appropriate to make directions for the filing of submissions by Bond University and any reply material by BUASA and other interested parties. In the circumstances it seeks an adjournment of the hearings on 6 and 7 June 2016.

Depending on the outcome of these matters, it may be necessary for Bond University to make submissions in the substantive matter, including putting on witness evidence in response to the two unsigned statements provided by BUASA. It appears that the outstanding issues will not be able to be dealt with before the direction in AM2015/6 of 3 June 2016. Accordingly, Bond University requests that it be permitted to make submissions and file evidence in the substantive proceedings, if required, at a later date.

Position

Bond University seeks to be heard in relation to both the technical and drafting issues and the substantive issues concerning clause 5.6(a) of the Exposure Draft. The proposed amendments would have a significant and material effect on the University's operations.

Bond University also seeks to be heard on the appropriateness of BUASA's proposed variation being dealt with at all in the Four Yearly Review process.

The submission by BUASA is in fact a new claim. It seeks, for the first time, to extend critical provisions in the Academic Staff Award to Bond University. It is not appropriate for this submission to be dealt with as part of the Four Yearly Review. Rather, it should be the subject of a separate application to vary a Modern Award, in which the interested parties may include several other Universities who are yet to become aware of the application.

The Higher Education Contract of Employment Award 1998 (HECE) restrictions on fixed term contracts were applied to public universities (with some exclusions) following a lengthy and heavily contested arbitration. The Australian Industrial Relations Commission's decision to impose the restrictions was made on the basis of evidence, at that time, of the practices of public universities in relation to fixed term contract use.

In 2008 the Fair Work Commission made a decision¹ to include the HECE restrictions in the Academic Staff Award. However, the Commission decided that it was not appropriate to apply the HECE restrictions to Universities which were not covered by the HECE Award as those Universities had not been the subject of the original arbitration which formed the basis for the imposition of the restrictions.

There has been no change to these circumstances and there is no reasonable basis for BUASA's submission that the restrictions should now apply to Bond University or, in the alternative, all Universities.

We would be grateful if this correspondence could be brought to the attention of Commissioner Johns so that he may consider issuing directions in light of the matters raised.

Yours faithfully
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¹ [2008] AIRCFB 1000 – 19 December 2008 at [173-174].