

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.156 - Four Yearly Review of Modern Awards - Group 3 and 4 awards

Reply submissions on the technical and drafting issues related to the exposure drafts for:

The Higher Education Industry - Academic Staff - Award 2010 (AM2014/229)

The Higher Education Industry - General Staff - Award 2010 (AM2014/230)

(Filed by the Group of Eight Universities)

A. Introduction

1. These submissions are made on behalf of the Group of 8 in reply to the submissions of the NTEU dated 14 April 2016 in relation to the technical drafting issues in the exposure drafts for the Higher Education Industry (Academic Staff) Award 2010 (AM 2014/229) and the Higher Education Industry (General Staff) Award 2010 (AM 2014/230) (**NTEU Technical Exposure Draft Submissions**).
2. As stated in the previous Group of 8 submissions dated 15 April 2016 there are a significant number of substantive claims/applications to vary the above Awards which have been allocated to a Full Bench in AM 2015/2 and the subject of future submissions.
3. In the NTEU Technical Exposure Draft Submissions the NTEU reference a number of those substantive claims (for example they refer to clause 3 - Coverage being extended to include medical research institutes). These are not matters that arise as technical drafting issues from the exposure drafts produced by the Commission and accordingly the Group of 8 do not respond here to those aspects of the submissions given they are the subject of substantive proceedings.
4. By way of reply the Group of 8 provide further comment on 2 issues as set out below.

B. Clause 5 - Types of employment (Academic Staff Award) and clause 6 - Types of Employment (General Staff Award).

5. The exposure draft contains the existing typology of "full time", "part time", "fixed-term" or "casual". It is acknowledged that on its face the clause distinguishes between full time, part time and fixed-term employment and does not explicitly recognise that full time employment can be both ongoing or fixed-term and similarly that part time employment can be ongoing and fixed-term.

6. However, rather than replacing "full time" with "ongoing" or "continuing" it is more appropriate to identify that employment may be full time, part time or casual and then identify that full time and part time employment may be fixed term. This could readily be done by identifying that fixed-term employment may be full time or part time.
7. This basic typology of full time, part time and casual would be consistent with the majority of all other modern Awards. It does not derogate from the limitations on and incidents of fixed term employment.
8. To equate full time with ongoing or continuing (as suggested by the NTEU) simply creates a different tension given that part time employment may also be continuing.
9. Accordingly, the following clauses in the Higher Education Industry (Academic Staff) Award 2010 could be amended to provide as follows (Marked up from the FWC's exposure draft).

"5. Types of Employment

5.1 *A person under this award must be engaged in one of the following categories:*

(a) full-time;

(b) part-time; or

~~(c) fixed-term; or~~

(cd) casual.

.....

5.4 Full-time employment

Full-time employment means ~~all~~ employment other than ~~fixed-term,~~ part-time, or casual.

.....

5.6 Fixed-term employment

Fixed-term employment means full time or part time employment for a specified term or ascertainable period, for which the instrument of engagement will specify the starting and finishing dates of that employment (or instead of a finishing date, will specify the circumstance(s) or contingency relating to a specified task or project, upon the occurrence of which the term of the employment will expire).

.....

5.8 Probation

(a) *The terms of engagement for a ~~full-time, or part-time or fixed-term~~ employee (including a fixed-term employee) may contain a reasonable probationary period that is directly related to the nature of the work to be carried out under the contract."*

10. These amendments would also overcome the potential issue in clause 9 of the Higher Education Industry (Academic Staff) Award 2010 regarding the application of the rates of pay.

11. The same amendments could be made to sub-clauses 6.1, 6.4 and 6.6(a) of the Higher Education Industry (General Staff) Award 2010.

C. Clause 16 - Public holidays (Academic Staff Award) and clause 20 (General Staff Award).

12. The Group of 8 acknowledge the NTEU submission and stated basis for it in respect of inconsistency with the NES and it does reflect the accepted circumstances of the industry whereby staff are provided with additional university holidays during the Christmas/New Year close down period in recognition that they are required to work on certain that fall during the teaching and examination periods, which would otherwise be gazetted public holidays.

13. Whilst the Group of 8 consider that the existing clause can remain as it supplements the NES, the Group of 8 presently note:

- (a) That many Modern awards of the Commission refer to substitution by agreement of a majority of employees, which raises slightly different but similar issues of consistency with the NES;
- (b) That the *Educational Services (Teachers) Award 2010* also provides "An employer may substitute a public holiday or part holiday for another day or part day to be taken during term weeks in the school year" at clause 26.2;
- (c) That in AM 2014/301 dealing with Public Holidays issues, the Commission on 27 April 2016 issued directions that "Any party seeking variations to the public holiday provision in any modern award shall file in the Commission the draft variation determination(s) sought" and would appear intended to deal with all public holiday matters.

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