

**Email**

2 March 2015

The Registrar  
Fair Work Commission

**amod@fwc.gov.au**

Dear Registrar

**4 Yearly Review of Modern Awards - Award Stage - Group 3 and 4 Awards**  
**AM 2014/229 - Higher Education - Academic Staff Award 2010 ("Academic Staff Award")**  
**AM 2014/230 - Higher Education - General Staff Award 2010 ("General Staff Award")**

We act on behalf of seven of the Group of 8 Universities (University of Melbourne, Monash University, University of Sydney, University of New South Wales, Australian National University, Adelaide University and University of Western Australia). We anticipate receiving similar instructions from the University of Queensland.

We refer to the above matters and to the statement issued by the President dated 23 January 2015. That statement asked the parties *"to identify the nature of any changes they intend to propose during the review of these awards"* and do so by no later than 4pm 2 March 2015.

We are instructed that our clients wish to participate in the process for review of the above awards, both in the award stage and in relation to matters concerning casual and part-time professional staff, being dealt with as part of the common issues.

In relation to the above specific direction of the President:

1. It is intended to propose that the "severance pay" provisions upon the expiration of fixed term employment be deleted. Entitlement to severance pay (if any) would be governed by the NES as in force and as amended from time to time. The relevant provisions currently appear at:
  - (a) clause 12.4 of the Academic Staff Award; and
  - (b) clause 11.4 of the General Staff Award;

These changes are proposed on a number of bases, which will be expanded upon as part of the review process, including that:

- (a) this entitlement to severance upon expiration of certain fixed term contracts was originally included in the historical awards at a time that there was no Federal legislative redundancy scheme or termination entitlements. The *Fair Work Act 2009 (Cth)* introduced legislative entitlements to redundancy and specifically identifies redundancy attaching to "termination" for reasons of redundancy and also expressly excludes the expiration of contracts for a specified period of time/specified task;
- (b) provisions which operate to exclude the NES or part of the NES are void and are of no effect under the Act. While an award can supplement the NES, in this instance the higher education awards adopt a position which is inconsistent with the NES and operates to exclude at least part of the NES;

- (c) there is a public interest in ensuring that the awards provide a clear safety net and such clauses, having unclear operation given the intersection with the NES, do not do so;
  - (d) the awards already significantly limit when fixed term contracts can be used. If it is accepted that contracts meeting the requirements/limitations can be offered on a fixed term basis as provided for in the award, the cessation of employment due to the expiration of that fixed term/effluxion of time should not attach termination/severance payments;
  - (e) there are no similar provisions attaching severance entitlements to the expiration of a fixed term contract, in other modern awards;
  - (f) these are more properly matters for enterprise bargaining;
  - (g) part of the rationale for a severance/redundancy payment is to compensate for loss of non-transferable leave credits and in this sector service with other employers is generally recognised for the purposes of leave that is not paid out by the former employer, particularly long service leave. Accordingly, even if applicable, the rationale for such payments is not fully supported here.
2. Secondly, our clients note that clause 17.6 provides for an entitlement to a notice payment of between 6 and 12 months upon redundancy in addition to NES notice and NES severance payments. This entitlement is based not on service, but upon the age of the employee. Our clients consider that the Commission should determine whether the age based redundancy/notice scale should be retained, rather than a service based entitlement, given its apparent discriminatory impact on the basis of age, and as it is inconsistent with modern redundancy standards.
3. There are some other minor issues with the modern awards which require updating, which we anticipate would be the subject of discussions between the parties (for example, the reference to the calculation of annual leave loading by reference to the relevant statistics from the August quarter is now out of date as there is no August reporting - see clause 30.3 of the General Staff Award and clause 23.3 of the Academic Staff Award).

Otherwise, our clients note the current programming conference set down for 30 March 2015.

Yours faithfully



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