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**Sent:** Friday, 26 August 2016 3:50 PM  
**To:** Chambers - Johns C  
**Cc:** AMOD; Linda Gale; Shannon, Allison; Silvapulle, Stephen; Catherine Pugsley (cpugsley@ahc.edu.au)  
**Subject:** AM 2014/229 and AM 2014/230 [CU-Legal.FID1793353]

Dear Associate

We refer to the above matter and the directions of Commissioner Johns dated 18 July 2016 and to the subsequent filing of two additional witness statements by the NTEU on 10 August 2016.

Please find attached response on behalf of the Group of 8. Consistent with the response we will be seeking to address the Commission at an appropriate time on whether the Statement of Dr Nurka, in particular, should be received and dealing with the objections to eth statement. We will raise this when we are before the Full Bench during the course of next week.

Regards

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**GROUP OF EIGHT RESPONSE TO WITNESS STATEMENTS OF DR MICHAEL DIX AND DR  
CAMILLE NURKA FILED BY THE NTEU ON 10 AUGUST 2016**

*Higher Education Industry - Academic Staff Award 2010 (AM2014/229) & Higher Education Industry -  
General Staff Award 2010 (AM2014/230)*

**1. Directions**

1.1 Pursuant to directions made by Commissioner Johns on 18 July 2016 (**Directions**), the NTEU filed and served the following two additional witness statements in these proceedings on 10 August 2016:

(a) Dr Michael Dix (**Dix Statement**); and

(b) Dr Camille Nurka (**Nurka Statement**).

1.2 The Directions were made in response to the NTEU request for leave to submit further witness evidence "in substitution for the witness statement of Dr Clare McCarty" (**McCarty Statement**) and were on the basis that such further witness statements would "go to the same subject matters as" the McCarty Statement. The Directions reflect what was intended and agreed between the parties.

1.3 The Directions also provided for the Group of 8 and AHEIA to file and serve any written outline of submissions, witness statements and documents in response by Friday 26 August 2016.

1.4 Dr Dix and Dr Nurka have presently been included in the timetable of witnesses on 21 October 2016.

**2. Overview**

2.1 Following review and consideration of both the Dix and Nurka Statements, and as previously foreshadowed to the NTEU, are clients are concerned that:

(a) the statements are not properly "in substitution" for the McCarty Statement.

(b) there are significant parts of the statements and attachments that are objectionable and a number of significant admissibility issues that arise.

2.2 We have set out below the general concerns with the Dix and Nurka Statements. We have also included a Table of Objections which identifies specific objections that we have to these statements based on some of these concerns and issues of admissibility.

**3. General Concerns regarding the Dix and Nurka Witness Statements**

3.1 The Dix and Nurka Witness Statements are not properly "in substitution" for the McCarty Statement and go beyond "the same subject matters" as the McCarty Statement as required by the Directions.

3.2 In short, the McCarty Statement deals with the following broad subject matters:

(a) her experience as a casual academic at Flinders University;

(b) the University's expectations and requirements regarding policy familiarisation and discipline currency;

(c) working pressures for non-casual academics; and

- (d) the use of Information Technology at home and the services and facilities provided by the University.
- 3.3 We acknowledge that the Dix Statement does cover these same subject matters albeit in respect of his employment at Swinburne University (predominantly).
- 3.4 The same cannot be said for the Nurka Statement. Whilst the Nurka Statement does cover some of the same broad subject matters as the McCarty Statement, it also goes beyond those subject matters and detail in a number of respects. For example, the Nurka Statement:
- (a) contains a number of paragraphs which refer to two positions that Dr Nurka has recently applied for (at La Trobe University and University of New England) attaching and/or referring to position descriptions and selection criteria for those positions and her application for those positions (see paragraphs 20 to 24). Such subject matters are not dealt with in the McCarty Statement. They also raise a number of other admissibility issues, particularly about relevance, which we have addressed in the Table of Objections below;
- (b) refers to teaching-focussed positions and the 'teaching-research nexus' (see paragraphs 33 and 34) and attaches academic literature and other documents relating to these matters (Attachments CN-15 and CN-16). Again, these subject matters are not dealt with in the McCarty Statement and they also raise a number of other admissibility issues, particularly in relation to the academic literature, which we have addressed in the Table of Objections below.
- 3.5 Whilst it was agreed that the witness may not be from Flinders, the Nurka Statement is not confined to one University like the McCarty Statement (and the Dix Statement) but seeks to introduce evidence across 5 Universities, including the University of Melbourne, the University of Sydney, University of New South Wales, Western Sydney University and La Trobe University. This factor alone significantly expands the evidence requiring instructions from at least 5 Universities in respect of the Nurka Statement and at least one other University in respect of the Dix Statement as opposed to one University (Flinders) in respect of the McCarty Statement.
- 3.6 Finally, the volume of material filed as part of the Dix and Nurka Statements does not reflect a "substitution" of the McCarty Statement. In this regard, we note that the McCarty Statement was 12 pages in length with 4 attachments. Whereas, the Dix and Nurka Statements are 41 pages with 17 Attachments totalling over 200 pages. The Nurka Statement alone is 21 pages in length and contains 16 attachments which total a further 165 pages.
- 3.7 Taking into account the matters set out above (and below), the Nurka Statement, in particular does not reflect a substitution of the McCarty Statement. Notwithstanding the direction to file "up to two further witness statements", this was to address a concern that a single witness may not be identified to cover all the subject areas covered by the McCarty statement. The Dix Statement is a reasonable and appropriate "substitution" for the McCarty Statement including because it is confined to the same subject matters as the McCarty Statement.
- 3.8 For the above reasons and given the objections set out in the table, the Nurka Statement should not be admitted.
4. **Table of Objections**
- 4.1 The Attachment to this document contains a Table of Objections which sets out objections to the Dix Statement and the Nurka Statement which are largely based upon issues of admissibility but also reflect, where relevant, the concerns set out above.
5. **Response / Next Steps**
- 5.1 We have sent this document to the NTEU and seek a response to the matters set out above and in the attached.

5.2 Pending any NTEU response and determination of objections and admissibility, our clients do not presently propose to file any other material or witness statements in response.

**Clayton Utz**

**Solicitors for the Group of Eight**

**26 August 2016**

**Attachment: TABLE OF OBJECTIONS**

Witness	Reference	Evidence	Objection
Dr Michael Dix	Para 49	Whole Paragraph - "It is my understanding that SUT has obtained a direct financial benefit from research publications, including those of casual academic staff, and of course the university obtains the non-financial benefit of advancement to its reputation."	Relevance, opinion - speculative
	Para 51 (Page 15)	Part Paragraph - first sentence "and my colleagues", third sentence "and my close colleagues", all references to "we" - e.g. "we employ", "we know that", "we discuss with them", "we know the sessionals we supervise".	hearsay, opinion <ul style="list-style-type: none"> <li>• can't give evidence as to what others "know", do and discuss, can only give evidence of his own direct knowledge.</li> <li>• paragraph should be about his direct knowledge.</li> </ul>
Dr Camille Nurka	Para 19 Attachment CN-11	Whole Paragraph and Attachment re Literature - "An investigation into excellent tertiary teaching: Emphasising reflective practice"	<ul style="list-style-type: none"> <li>• opinion, relevance, hearsay                             <ul style="list-style-type: none"> <li>• she is not the author of the literature</li> <li>• no direct relevance to the claims or subject matter</li> <li>• submission not evidence</li> </ul> </li> <li>• McCarty Statement does not deal with the same subject matter</li> </ul>
	Para 20 Attachment CN-12	Whole Paragraph and Attachment.	<ul style="list-style-type: none"> <li>• relevance - no direct relevance to the discipline currency claim or any other claim</li> <li>• parts of the paragraph are opinion - speculation, submission not evidence - e.g.                             <p style="margin-left: 20px;">"While a sound and broad knowledge was a criterion for appointment, clearly it would be expected of the position that I continue to maintain and develop my knowledge after appointment. The same is true of casual employment."</p> </li> </ul>

Witness	Reference	Evidence	Objection
			<ul style="list-style-type: none"> <li>• McCarty Statement does not deal with the same subject matter - e.g. selection criteria for job applications, etc.</li> </ul>
	Para 21 Attachment CN-13	Part paragraph and Attachment - "In a non-casual position I recently applied for with the University of New England, as a Lecturer in Sociology, I needed to demonstrate 'evidence of effective teaching and experience in the area of sociology of sex, sexuality and gender' (Attachment CN-13 is part of my application addressing the selection criteria, and confirmation of my shortlisting for interview. In order to provide this, I detailed my curriculum-development experience."	<ul style="list-style-type: none"> <li>• relevance</li> <li>• McCarty Statement does not deal with the same subject matter</li> </ul>
	Para 22	Whole paragraph - "Both of these positions heavily emphasised teaching skills in their selection criteria."	<ul style="list-style-type: none"> <li>• relevance</li> <li>• McCarty Statement does not deal with the same subject matter</li> </ul>
	Para 23	Whole Paragraph - "I reached the interview stage of the job application process for each of these positions. This is evidence that my demonstration of 'knowledge' of the field in my response to the selection criteria matched up with these universities' expectations of what is essential for effective or competent teaching."	<ul style="list-style-type: none"> <li>• relevance</li> <li>• McCarty Statement does not deal with the same subject matter</li> <li>• opinion - speculation, submission not evidence</li> </ul>
	Para 24	Whole Paragraph - "For the La Trobe position, one of the essential criteria stipulated that I must demonstrate 'knowledge of research in teaching and learning'. This demonstrates that it is becoming increasingly important for early career researchers, whether casual or not, to keep up with the latest trends in teaching theory and to apply them in our workplaces, including through publishing in teaching and learning journals."	<ul style="list-style-type: none"> <li>• relevance</li> <li>• McCarty Statement does not deal with the same subject matter</li> <li>• opinion - speculation, conclusion, submission not evidence</li> </ul>

Witness	Reference	Evidence	Objection
	Para 25	Whole Paragraph - "The teaching and learning literature thus informs not only university policy on best practice in teaching, but also the content and wording of academic role descriptions: research that defines what makes a good teacher is highly influential in universities in the formulation of the kind of duties an employee is expected to carry out in their teaching role."	<ul style="list-style-type: none"> <li>opinion - speculation, conclusion, submission not evidence, relevance</li> </ul>
	Para 26	Part Paragraph - "No teacher ever simply arrives at knowledge and understanding of a subject. Knowing implies learning, which is always an evolving process. Therefore, casual tutors and lecturers, as an inherent part of our job, are expected to continually develop our knowledge of the field in which we are teaching."	opinion - speculation, conclusion, submission not evidence
	Para 27	Part Paragraph - "When students are impressed by a teacher's knowledge of the discipline, they see a person who is an expert in their field."	hearsay, opinion - speculation
	Paras 33 to 34 Attachments CN-15 and CN-16	Entire paragraphs and all Attachments	opinion, conclusion, relevance, hearsay <ul style="list-style-type: none"> <li>she is not the author of the literature</li> <li>no direct relevance to the claims or subject matter</li> <li>submission not evidence</li> </ul> Further, McCarty Statement does not deal with the same subject matter
	Para 35	Whole paragraph after the first sentence - "If these teaching and learning units generally agree that an academic's own research activities are crucial to the ability to teach, and if university position descriptions reflect this in their requirement that the employee must have knowledge of the subject, then it is reasonable that casual academics be paid for our investment in research that will have a direct impact on our performance as teachers."	opinion - speculation, conclusion, submission not evidence
	Para 36	Part paragraph - "tutors and lecturers in every stage of our careers"	opinion - speculation, hearsay <ul style="list-style-type: none"> <li>she cannot give evidence as to what drives all other</li> </ul>

Witness	Reference	Evidence	Objection
			tutors and lecturers throughout their careers
	Para 37	Part paragraph - "'Knowledge' as a requirement of teaching positions is not part of a person's character, but an ongoing cumulative achievement. It is thus a very important form of continual labour that needs to be acknowledged in the industrial contract."	opinion, conclusion, submission not evidence
	Para 44	Part paragraph - "but I know from what they have told me, and from messages I have received from them, that other tutors and lecturers certainly do."	hearsay