

FOUR YEARLY REVIEW OF MODERN AWARDS

AM 2015/6 - Education Group Awards AM 2014/229 - Higher Education - Academic Staff - Award 2010 AM 2014/230 - Higher Education - General Staff - Award 2010

Group of Eight Universities

1. Draft text of proposed award variations to the Higher Education - Academic Staff - Award 2010 MA000006 and the Higher Education Industry - General Staff - Award 2010 (MA000007) were filed on 2 October 2015 by a number of parties including:
 - (a) the Group of Eight Universities;
 - (b) AHEIA; and
 - (c) NTEU.
2. By directions dated 10 September 2015 (in AM 2015/6) Commissioner Johns directed the parties to file submissions in reply to the text of the proposed variations.

Nature of these Submissions

3. We note that at this time parties proposing variations have not filed any significant submissions (or evidence or material) in support of the variations sought as to how the variation is necessary to give effect to the Modern Awards objective as required under s.138 of the *Fair Work Act 2009* (Cth) or is otherwise required to be made.
4. Necessarily therefore this outline of submissions are presently very limited, identifying some general preliminary submissions and primarily identifying the position of the Group of Eight in respect of the text of the variations sought by the AHEIA and NTEU, to assist in guiding the conference listed for 18 November 2015.
5. Given that a significant number of the extensive variations sought by the NTEU are generally opposed, if those variations are maintained, it is likely that a number of those claims will proceed to hearing, the Group of Eight Universities intend to make substantive submissions and provide evidence in response to the substantive submissions and evidence of the proponents at that time. In that context the Group of Eight reserves the right to modify or vary its position in respect of the proposed variations.

Preliminary position in response to AHEIA and NTEU text

6. The Group of Eight support the text of the variations sought by the AHEIA, save that the amendments proposed to substitute "full time" with "continuing" and consequential amendments are not supported. Both full time and part time employees can be fixed term or continuing and continuing and full time should not be equated.

7. In relation to the variations sought by the NTEU, the NTEU have sought significant changes to existing, well-established award provisions and also sought to include substantial new employee entitlements. There is no clear basis how it is said by the NTEU that in the 4 year review process, significant additional obligations on employers and inclusion of substantive new rights for employees are justified or supported by the Modern Awards objective, including having regard to the nature and role of this review process.
8. Further, some aspects of the text sought to be adopted by the NTEU are not clearly identified and in some instances text in the award has been changed and does not appear referable to the previous outline of variations, filed by the NTEU on 18 September 2015.
9. As a general submission the NTEU claims are not supported by the Modern Awards' objective and extend well beyond matters that are necessary to achieve that objective, including:
 - (a) The need to encourage collective bargaining;¹
 - (b) The need to promote increased workforce participation;²
 - (c) The need to promote flexible modern work practices;³
 - (d) The need to promote the efficient and productive performance of work;⁴
 - (e) The likely impact upon business including on productivity, employment costs and regulatory burden;⁵
 - (f) The need to ensure simple, easy to understand, stable and sustainable modern award system;⁶
 - (g) Likely impact upon employment growth and performance of the National economy.⁷
10. Further, a number of the NTEU claims would be unworkable, restrictive and costly and in a number of cases would also be inconsistent with other modern awards and extend into bargaining matters, well beyond a "fair, minimum safety net" of award terms.
11. The higher education awards have provided an effective minimum safety net, underpinning bargaining at all Group of Eight universities (and indeed all universities in the sector), which bargaining has led to comprehensive enterprise agreements that have been negotiated by employees, employers and unions in the industry. Significant and substantial additional entitlements as sought by the NTEU, are not supported by any identified necessity or compelling basis for amendment of the underlying awards.

¹ S.134(1)(a)

² S.134(1)(b)

³ S.134(1)(c)

⁴ S.134(1)(c)

⁵ S.134(1)(f)

⁶ S.134(1)(g)

⁷ S.134(1)(h)

12. By reference to the table below the Group of Eight has identified those matters which are opposed and some matters which are supported and other matters which require further explanation, before a position is able to be confirmed.

Party	Claim	Position
ACADEMIC STAFF AWARD		
NTEU	Clause 4 Coverage of research institutes Seek to vary award to cover general, technical and research staff in certain medical, health and science research institutes.	Primarily a matter for research institutes. Definition based upon "affiliation" is opposed.
NTEU	Clause 11 - Change from Full time to continuing. Deletion of second part of definition of "Part time".	Opposed No basis identified
NTEU	Subclause 13.3. Payment for Policy Familiarisation and Professional and Discipline Currency	Opposed
NTEU	Subclause 13.4 Conversion of "academic work"	Opposed Part of common issues
NTEU	Clause 18. Classification of academic staff (Use of MSALs as basis for promotion)	Opposed- basis and operation of proposed change unclear.
NTEU	Subclause 18.2 Rates of pay for casual academics - Amendments said to be to correct errors or omissions	Basis on which changes are said by NTEU to be "errors and omissions" unclear.
NTEU	Clause 22. Hours of Work - new clause and complex clause and claim	Opposed
NTEU	New Schedule C- IT Allowance	Opposed
NTEU	Other Amendments including Minor Drafting Errors and Omissions	For discussion
GENERAL STAFF AWARD		
NTEU	Clause 4 Coverage of research institutes Seek to vary award to cover general, technical and research staff in certain medical, health and science research institutes.	Primarily a matter for research institutes. Definition based upon "affiliation" is opposed.
NTEU	Clause 11 - Change from Full time to continuing. Deletion of second part of definition of "Part	Opposed

	time.	No basis identified
NTEU	<p>Clause 21- change to reference to ordinary hours</p> <p>Subclause 23.2 (Overtime) - new clause requiring "reasonable steps" to ensure employees not working excessive hours and claim for payment if respond to messages outside ordinary hours</p>	<p>Unnecessary</p> <p>Opposed</p>
NTEU	Schedule B - Classification descriptors	<p>NTEU identified that it did not intend to change work value for classifications. However, several changes appear to have that effect.</p> <p>Group of Eight prepared to discuss appropriate changes to descriptors to reflect modern workplace and changes to descriptors - for discussion at conference on the 18 November 2015</p>
NTEU	Subclause 15.3 Rates of Pay (Classification Levels)	<p>Support and seek addition of entirety of clause 6.4/6.5 of former AP815928 - Higher Education General Staff Salaries and Classifications Award 2002 and equivalent clause in Schedule B of the former AP844616 - Higher Education Workers Victoria Award 2005, including</p> <p>"No employee shall refuse to perform duties reasonably required, consistent with the employee's classification and which the employee is competent to perform"</p>
NTEU	Schedule C. New IT Allowance	Opposed
NTEU	Other Amendments including Minor Drafting Errors and Omissions	TBC

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