

Fair Work Act 2009

s. 156 – 4 yearly review of Modern Awards

AM2014/47 – Annual Leave

Submission of the National Tertiary Education Industry Union

1. The National Tertiary Education Industry Union ('NTEU') represents members in each of Australia's 39 Universities.
2. These submissions are made in response to submission of the Australian Higher Education Industrial Association (AHEIA) and the Group of Eight Universities in relation to **excessive annual leave**.
3. Both the *Higher Education (General Staff) Award 2010* [MA000006] and the *Higher Education (Academic Staff) Award 2010* [MA000007] include provisions around "Management of annual leave" which deal with excessive annual leave accruals (over 30 days).
4. The NTEU submits that it is appropriate to vary both Awards to reflect the model clause proposed by the Full Bench on 31 July 2015¹ as those changes will provide clarity around processes to deal with excessive annual leave.
5. The Commission's proposed model clause includes a staged approach to the direction to take leave and mandates that the employer and employee must first try to reach agreement. It is our submission that these provisions strengthen protections around eliminating excessive leave accruals.
6. It is therefore our submission that the proposed model clause need not be tailored in any way. The establishment of particular clauses to deal with excessive annual leave entitlements does and can continue to occur via enterprise bargaining in the higher education sector.
7. We reject the submission of the Group of Eight Universities (17 July 2015) that the model be amended to give an employee "binding notice in respect of the taking of annual leave to 'periods falling outside the teaching and examination period (to which work is allocated)"; [at 9].
8. While it is usually the case that university staff organise their planned leave to occur during times when this will cause least disruption in the workplace (for example during times when they do not have scheduled teaching commitments), any reasonable award regime should not impose this as a pre-requisite requirement for the taking of leave. In most areas of

¹ [2015] FWCFB 5219

university employment, there is a steady requirement for the performance of different aspects of work throughout the calendar year, and it is in the interests of both employees and employers that leave be planned in advance such that work can be organised around that leave. Teaching hours are an obvious thing that may be difficult to work around, although in many cases there are other staff who can step into the breach and ensure that teaching continues in the absence of a particular staff member.

But teaching is far from the only time-constrained factor. The deadlines for submitting research grant applications often fall in January or February, requiring that considerable work be performed in those months to ensure that funding is received. Intensive marking and enrolment activities occur between semesters, and increasingly, universities are changing their approach to the number and timing of teaching periods, such that teaching work continues throughout the year. Further, many staff covered by both the Academic and the General Staff awards do not have any teaching responsibilities at all.

9. Therefore the employers' approach to the management of excessive leave balances reflects an already outdated understanding of the organisation of work in the University sector. This outdated approach is reflected in the current award provisions.

The model clause, by contrast, allows appropriate flexibility for a worker to apply for leave at a time that most suits them, and for the employer to approve such leave if it suits them to do so. A requirement for a genuine attempt to agree on a mutually convenient time for the taking of excess leave is to the benefit of all concerned.

10. As the Group of Eight Universities submit themselves, "Universities have generally negotiated annual leave management provisions in enterprise agreements that help accommodate these (sector specific) issues"; [11].
11. These University negotiated clauses are often detailed; see for example the *La Trobe University Collective Agreement 2014* (AG2014/6179) and the *University of NSW (Academic Staff) Enterprise Agreement 2015* (AG2015/3196). In any case, the prescription in the proposed model clause that the parties must try and agree on how to reduce leave entitlements would overcome the unlikely event that an academic, for instance, would insist on taking leave when they had pre-arranged teaching commitments. The Group of Eight Universities cannot have it both ways; they cannot insist *that the parties at the workplace abide by sector specific criteria for dealing with excessive leave*, and then suggest that the parties need only 'confer' [13]. The use of technology in the modern workplace means that the parties should always be able to meet and negotiate in order to reach agreement, even without being physically present in the same location. This distinction between 'meeting'

and 'conferring' may be splitting hairs but if the parties are to "genuinely try to agree" they must do more than have a passing conversation. We reject this suggestion.

12. NTEU rejects the submission of AHEIA [10] that the proposed model clause would *reduce* the flexibility of employers to direct staff to take excessive leave. Sub-clause 1.2 (b) of the model clause provide that the employer may give written direction to take a period of leave. The major change from the clauses in the two higher education awards is that this occurs following a period during which the parties try to reach agreement; in our view this creates more flexibility and represents the reality of civil relationships in the modern university.
13. NTEU submits that the *Higher Education (General Staff) Award 2010* [MA000006] and the *Higher Education (Academic Staff) Award 2010* [MA000007] should both be varied to reflect the proposed model clause.

NTEU

8 September 2015