

# An analysis of the Monash Enterprise Agreement Variation (EAV) – and the spin being used to sell it.

The full EAV is available at [www.nteufightback.site](http://www.nteufightback.site) along with a shorter version of this document. All specific clauses referenced here are detailed at the end of the document.

## 1. Major change, consultation and disputes

The enterprise agreement variation (EAV) being proposed at Monash would gut existing protections around major change: this is perhaps the most significant attack contained in the variation. It is concerning, then, that this change is not mentioned in either the emails from the Vice Chancellor or the NTEU Branch President. It is also notably absent from the short summary chart of the variation released by management yesterday.

Clause 26 of the proposed Monash EAV supplants the existing change management clauses in clause 13 of the Monash enterprise agreement. While this is far from the strongest change clause in the industry (e.g. see Sydney Uni), the existing clause provides for a two step process where management is required to consult with staff before implementing change – with a minimum timeframe of two weeks for workers to consider their response – and then to consult again on the impact of the change. Any perceived breach of these consultation obligations are subject to dispute, which can go to Fair Work and in some circumstances all the way to the Federal Court.

Consultation and change management clauses provide a measure of protection for staff, to slow down and resist the sweeping restructures that university management teams commonly implement, which fuel mass redundancies. The clauses don't provide a veto, but they are subject to the disputes clause. So if management fails to consult properly, they can be dragged through a lengthy Fair Work process. It's this that allows time which can be, and often is, used by staff to kick up a fuss, go public about the change, unionise colleagues, and often mitigate the change.

The successful campaign against job cuts at Sydney Uni in 2012 is one high profile example of this sort of campaign, as are the campaigns against major job-destroying restructures at La Trobe and Melbourne in 2014-2015. Workers and our union have often been able to hold up smaller local restructures and build union strength by disputing management's application of major change clauses. We document some of these disputes in the NTEU Fightback document *Fighting back against job cuts*, available on our website.

Precisely because the change management and disputes clauses can be effective in slowing down and blunting management attacks, higher education employers have frequently and loudly complained about these clauses. In February, the *Australian Financial Review* [reported](#) the complaints of the employer body (the AHEIA) about these clauses:

*Some universities cited a challenging industrial environment and a history of industrial reaction to change as a key challenge to realising reform objectives.*

*This includes union-initiated proceedings in courts and the Fair Work Commission perceived to be in pursuit of dragging out the change process timeline rather than to address supposed procedural deficiencies.*

So it's a big deal that the proposed Monash variation, along with several similar variations being pushed through universities including La Trobe and the University of Tasmania, effectively gut these important clauses for however long the variation is in force. The variations are meant to be time limited (see notes on this below). However, the rapid-fire restructures management would be able to push through will definitely not "snap back", if and when the variation ends.

There is no set form or timeframe for consultation under Clause 26. Clause 26.5 of the EAV outlines the absolute legal minimums of consultation outlined by the Fair Work Act. No two steps, and no minimum timeframe. Decisions on the form of consultation are made by the Covid Temporary Measures Committee. The CTMC has 50/50 union/management representation and they have five days to agree on the form of consultation.

If there is no agreement, a dispute over consultation and change management (like any other dispute relating to the variation) goes not to Fair Work with its established processes, but to rapid arbitration by a private arbitrator. Private arbitrators commonly make their money from arbitrating disputes between businesses, and it's rare to find one who has any sort of a background as a unionist.

Fair Work is still bent towards management, but at least it has well established rules and procedures and an appeal mechanism to a Full Bench or even Federal Court. As noted above, these lengthy processes can provide the time needed to organise workers and apply pressure to management at a local level, much to the distress of the employer body.

To conclude, the gutting of consultation provisions around major change are a serious attack on existing entitlements. They meet a long standing demand of the employer body in higher education. Scrapping these entitlements for the duration of the variation is a backward step that staff at Monash should reject.

## **2. Wages**

Back in mid May, NTEU President Ben Eltham stated that the "National Jobs Protection Framework", with its sliding scale of cuts to wages and hours which could result in a 15% pay cut, was "the best deal university staff are likely to get in the current crisis".

In yesterday's email he writes: "As you'll see below, the proposal is a lot better than the worst-case scenario." And in particular: "There are **no pay cuts.**"

It's true that the jaw-dropping wage cuts enabled under the Framework are now off the table at Monash: that Eltham's "best deal in the current crisis" has now become his "worst-case scenario", thankfully avoided. We'll give credit for that to those who have been campaigning to expose the size of these cuts, rather than those who endorsed them as "the best deal university staff are likely to get".

(According to NTEU National President Alison Barnes, a worker on the median full time female wage of \$65,000 per year would have seen a pay cut by \$305 per fortnight under the terms of the Framework – see our document *Barnes admits \$305 wage cut* on our website for the correspondence).

Instead of this, a range of measures will serve to impose an effective pay cut relative to the terms of the enterprise agreement, over the life of the variation:

- Staff can be required to work in a higher classification, with no extra pay (clauses 15.1 and 15.2)
- No increments for the life of the variation (clause 21). Depending on classification and the timing of increments, this might cost a general staff member anything up to \$1,500 (HEW 4), and an academic staff member double that (Level A).
- EA pay rise of 2% due on 8 December 2020, deferred until 30 June 2021 (clause 21). This would cost a general staff member on HEW 4.3 around \$700.
- Pay cuts for senior executives of 5% on salary above \$25,000 (clause 20.1.2). We're not about to pass the hat around for senior executives, but this does establish a precedent that management can cut wages. If the variation is extended down the track, this precedent could very well be widened to include other layers of staff.

All of these are retrograde steps which should be rejected. For an admin worker on \$65,000, these changes can still cost a week's wages over the course of the variation. Household incomes are under pressure due to unemployment and short time already - this is money that is sorely needed in many households.

If workers at Monash vote to cut our own and our colleagues pay relative to established EA entitlements, it only encourages management here and around the country to push further with these attacks.

### 3. No guarantees on jobs

Ben Eltham's email asserts:

*Most importantly, the proposal commits Monash management to **no forced redundancies** except where Monash implements a "permanent abolition of a substantial work function." However, voluntary separation packages will be made available to some staff.*

*Some of the key aspects of the proposal are:*

***no forced redundancies** (except where there is a whole campus, work area or department closed down – we have no indications of that currently)...*

This is simply not the case. It is contrary to the plain language of the proposed variation.

Forced redundancies *are indeed* permitted, and not only where a work area is abolished. A “permanent insufficiency of work in a particular work unit or function” can trigger redundancies, including forced redundancies, under clauses 28.3.2 and 28.5.

In this circumstance (and unlike the abolition of a whole work area), a voluntary separation package must be offered first. However management can reject applications for a VSP if “the staff member has particular skills and/or experience such that they are essential to the operation of the particular work unit or function”. This gives management the ‘flexibility’ to pick less expensive staff to sack, rather than longer term staff approaching retirement who might be most interested in a VSP.

This is one of a whole range of “job protection” measures which look fine on the surface, but each of them lack substance when examined closely.

Clause 28 on **redundancy** looks good at first. It states:

*During the life of this Schedule there will be no involuntary redundancies as a generalised cost-cutting measure which are not connected to a reduction in work.*

However, this is in practice little different to the minimum guarantees in the Fair Work Act, which say a redundancy is [valid](#) if “the employer no longer requires the person's job to be performed by anyone”.

There has been a bit of a song and dance from the NTEU’s national leadership about the distinction between the use of the terms “work” and “job” in redundancy clauses. As we explain in our detailed document *Does the national framework advantage workers facing redundancy?* on our website, this distinction might be useful in some circumstances. However, this offers no extra protection in the sort of scenario playing out now on many campuses, where management is deciding to make deep cuts in the work carried out in courses and administrative areas.

Similarly, the protections around redeployment offer no advance on common EA rights, especially in the current circumstances where there will be very limited options for redeployment, at best.

The main clause in the variation supposedly guaranteeing some **rights for casuals** is 4.3, which states:

*Where there is work required to be performed and that work was usually performed by a casual staff member who had been regularly employed by the University and the staff member had a reasonable expectation that they would continue to be employed by the University, then the casual staff member will continue to be engaged to perform that work.*

The main problem here (apart from being reliant on work continuing, with no enforceable guarantee of that), is the phrase “reasonable expectation”. This has proved almost impossible to prove over many years, and therefore makes the whole clause useless. We have some detail on this in our document *Fighting back against job cuts*.

Clause 3 offers a guarantee of **no forced stand downs**. However, there are already legal restrictions on stand downs, outside of circumstances such as Qantas where much of an industry is prohibited from working by government order.

This is why there are no documented cases of stand downs in Australian universities during the current crisis, outside of privatised English language teaching colleges and 17 staff at a privately operated sports stadium at Curtin in WA when sports were shut down by state government order.

We have a detailed explainer on stand downs and why they haven't been widespread at universities in the current crisis, available on our website. Short version: a guarantee not to stand down is easy for employers to give because of existing legal restrictions.

The core logic of the variation is really the assertion that **all the money from wage cuts will be used to save jobs**. There are simply no enforceable guarantees of this. As we explain in *Fighting back against job cuts*, the national Expert Assessment Panel considers a statement from management on the number of jobs to be saved by particular measures. However there is no *enforcement* mechanism for this.

Finally, the personnel on the EAP do not inspire confidence that workers' interests will be uppermost, as we'll be discussing in coming days. And any cuts endorsed at a national level by the EAP cannot be overruled locally (clause 29.5).

#### **4. A temporary variation?**

The problem is, the crisis is likely to be far from temporary. Governments, economic commentators and Vice Chancellors alike are all talking about the possibility of a prolonged downturn. So today's "temporary" measures stand every chance of becoming a new normal.

"There is nothing as permanent as a 'temporary' measure" is a popular saying in Greece, where workers have endured a decade of austerity following the 2008-9 financial crisis. Today's "better than the worst-case scenario" cuts are very likely to be the thin end of a pretty large wedge if the crisis continues.

#### **5. Other clauses**

Enforced taking of annual leave, down to a minimum balance of 10 days, is the other main cost saving measure.

We'll provide some more detailed analysis of other clauses over the coming days. Most of the "positives" are already covered in university policy, industrial law, or the existing EA.

#### **6. So what do we do now?**

In one word: **organise**.

We have a huge task in getting information about the case for Voting No in front of as many of our colleagues as possible. Forwarding of information is crucial but our best hope is in organising workplace meetings, wherever we can, to discuss the actual clauses of the variation and why staff should Vote No.

The time frames outlined by the Branch President and Vice Chancellor are:

Thurs 11 June: variation considered for approval by NTEU National Executive

Thurs 18 - Fri 19 June: electronic ballot of NTEU members

Weds 24 - Thurs 25 June: all staff ballot on variation

The stakes are high, not just here at Monash but around the country. The Federal Government has spent a lot of effort in sending universities “broke on purpose” in order to encourage Vice Chancellors to attack wages and conditions. Our national union leadership, deeply pessimistic about the prospects of resistance, is happy to trade long standing conditions in return for a place at the table.

A whitewash for the “yes” case will encourage management to push for more concessions, both at Monash and far beyond. By contrast, building a strong Vote No turnout will send a message that we’re prepared to stand up for properly funded public education, and for the entitlements fought for and won by previous generations of unionists.

Every ounce of experience and union strength we can develop in the push to reject these changes and for a real fight on jobs and job security, will be crucial in the many battles facing higher education workers.

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## **Clauses referenced in this document**

4.3 Where there is work required to be performed and that work was usually performed by a casual staff member who had been regularly employed by the University and the staff member had a reasonable expectation that they would continue to be employed by the University, then the casual staff member will continue to be engaged to perform that work. Where such a casual staff member suffers a reduction in casual work or has no work as a result of the impact of COVID-19, the staff member will have first order of preference to resume that work upon it becoming available again.

15.1 By giving two weeks’ notice, the University may direct staff members to temporarily undertake duties outside the scope of their classification and position description or expectations, so long as the duties are within the staff member’s skill level and competency and it is safe to do so.

15.2 These may be higher-level or lower-level duties, but the staff member’s pay will not be affected (including that any existing temporary higher-level appointment or higher level allowance is unaffected),

subject to the requirement that a staff member shall not at any time be paid at a rate less than that which would apply to that work under the relevant Award.

## 21. Deferral of pay rises and incremental progression

21.1 This clause applies to:

21.1.1 any increase in salary or rate of pay due to a staff member pursuant to a term of the Agreement setting salaries generally for staff members; and

21.1.2 any service-related incremental pay increase within a classification

## 26. Change management

26.1 This clause does not apply to the temporary reassignment of duties under clause 15 or stand downs under clause 3 or change management processes commenced in accordance with the Agreement prior to the commencement of this Schedule. Any change management process commenced in accordance with the Agreement prior to the commencement of this Schedule and implementation of the actions and measures identified in that change process will continue to be governed solely by the clauses in the body of the Agreement and not by this Schedule.

26.2 Where a workplace change is proposed by the University, the CTMC will consider any proposed change and within five (5) working days, attempt to agree to a timeframe and process to consult with affected staff members about the change.

26.3 In coming to agreement, the CTMC will take into account:

26.3.1 any urgency created by the impact of COVID-19; and

26.3.2 the scale of the change (including, without limitation, the number and nature of staff members who will be affected by the change, the level to which the affected staff members will have their work arrangements changed, potential for job losses or loss of job or promotion opportunities).

26.4 If the CTMC cannot agree to a process and timeframe, the matter will be referred to the Arbitrator in accordance with the dispute settling clause 29.17.

26.5 Any consultation process determined under clause 26.2 or 26.4 above must involve the University providing information to the staff members and NTEU about the change, and invite the staff members to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities) and the University must consider any views given by the staff members about the impact of the change. An affected staff member must be able to appoint a representative for the purpose of the consultation. For a change to the staff member's regular roster or ordinary hours of work, the Agreement term will apply.

28.3.2 where the redundancy is due to an insufficiency of work in a particular work unit or function and there is a surplus of staff members, in accordance with clause 28.5.

28.5 Where there is a permanent insufficiency of work in a particular work unit or function and there is a surplus of staff members, the University must only make a staff member involuntarily redundant where it has:

28.5.1 identified the number of surplus staff members;

28.5.2 offered a voluntary redundancy to all affected staff members. The University must allow all those who volunteer to separate, unless the staff member has particular skills and/or experience such that they are essential to the operation of the particular work unit or function, or there are more people volunteering than the identified surplus (in which case then clause 28.5.3 will apply);

28.5.3 adopted fair and objective criteria for selection for redundancy where the University is required to select staff members for involuntary redundancy, either as a result of too few people volunteering or too many people volunteering;

28.5.4 sought to redeploy the staff member. In exploring redeployment, the University will ensure the staff member is made aware of all relevant vacancies and redeploy them to any position (at or one level below the staff member's substantive level) in the University that is appropriate to the skills and competencies of the staff member or which the staff member could perform at a satisfactory level within a reasonable time with appropriate training and support, provided that a staff member shall not be required to accept redeployment to a lower classification level. Where more than one redeployee is an applicant for a particular position, the University's existing merit based selection procedures will apply in choosing between them. The redeployment period for exploring redeployment possibilities shall be a reasonable period, not less than any such period in the Agreement;

28.5.5 explored with the staff member other measures that may be taken to avoid termination; and

28.5.6 reported the actions it has taken under this clause to the CTMC prior to issuing a notice of termination.

28.5.7 Nothing in clause 28.5 shall prevent multiple units or functions being dealt with simultaneously.