

# INITIAL ASSESSMENT OF NATIONAL FRAMEWORK HEADS OF AGREEMENT

**NTEU FIGHTBACK!**

**THURSDAY 14 MAY 2020**

## **KEY POINTS**

- Continuing and fixed-term workers can be directed to perform work previously done by casuals.
- Managing change clauses in enterprise agreements would be replaced by unspecified, rapid ad hoc processes.
- Union nominations to the national expert panel, which makes crucial decisions and on which union nominees are in a minority, will not be responsible to the union.
- Local implementation committees will not be able to challenge decisions of the national expert panel.
- Many clauses are vague and their consequences will depend on how the enterprise agreement variations are phrased.
- All changes could remain until the end of 2021.
- **The small gains from this deal are vastly outweighed by the legally enforceable enterprise agreement provisions that are lost.**

## **OVERVIEW OF SIGNIFICANT CLAUSES (SOURCE DOCUMENT [HERE](#))**

5. Timeframe 30 June 2021 unless extended by no more than 6 months.

The crisis at universities could last five or more years. We will be in a weak position to insist that existing conditions continue into the next enterprise agreement if they have been suspended for well over a year.

8. Framework provisions prevail over existing provisions where there is inconsistency.

9. Two weeks paid COVID leave for all employees who get the disease.

This is already happening at many universities.

11. Recovery of reasonable costs associated with the employee.

This is already happening at many universities.

13. all rates of pay and fractions will be restored as if the EAV Scheduled never existed. An employee will revert to their pre-existing job role and duties unless they no longer exist.

Does "unless they no longer exist" mean that if the uni decides there is less work for an employee to do, their fraction may not revert back to the original after the framework expires?

14. An employee stood down or lost employment after 11 March 2020 shall have the same status as an existing employee to be considered for work which becomes available.

This is just access to internal appointments.

18 Flexibility in work from home, reduced fraction, purchased leave.

This does not mean reduced hours for the same pay. Uni can reasonably refuse.

19. Other duties.

Enables uni managers to assign work previously performed by casuals to continuing and fixed-term workers (see 32). Eliminates managing change and consultation safeguards for reassigned duties.

21. Research time can only be taken away where it cannot be performed due to the pandemic.

Allows universities to take away research time they otherwise couldn't under the current EA. Workloads can be increased later, if lower now, overriding workload clauses in EA. The rest are rights already in EAs.

22. Employees may be directed to take annual leave at a mutually agreeable time within 8 weeks. A two week balance must be retained, and employees cannot be directed to take leave while they have unavoidable work to do.

Can be directed to take all but two weeks of accrued leave, on two weeks' notice, to be taken within an 8 week window specified by management.

29. The University may make no new external appointments unless all internal applicants have been considered, except in exceptional circumstances.

This is already the current procedure when there are restructures.

32. Where there is no work or insufficient work available for a continuing or fixed-term employee, the University will seek to identify other work for that employee, which might include work usually performed by casual employees. This provision takes precedence over items 33. and 34.

So, for example, continuing and fixed-term lecturers can take on casuals' tutes if the number of tutes has declined. Likewise for library staff and professionals.

33. Where there is work required to be performed and that work was usually performed by a casual employee who had been regularly employed by the University and had a reasonable expectation that they would continue to be employed by the University, the casual employee will continue to be engaged or, where this work has reduced as a result of the impact of COVID-19, will have first order of preference to resume that work.

What is work and what is regularly? What is reasonable? This doesn't cover casuals who were sacked in semester one. Also see 19. "The University may direct employees to undertake duties outside the scope of their Classification". Under 32. continuing and fixed-term workers can take on casuals' work. So, overall, casuals sacked because the work has disappeared, mainly as a result of lower enrolments are likely to get little, if any work. This is an example of how the wording of clauses matters.

The NTEU comments say - "Where work has been reduced eg fewer tutorials because of reduced enrolments, the casuals who would have performed the work have first preference, This prevents displacement of existing and recent casuals by new staff.

"These two provisions will bring casuals back to work."

Only if continuing and fixed-term staff haven't been directed to do their work, there hasn't been a decline in workload and existing workload rules are enforced. Certainly not the case at ANU.

34. Where there is work required to be performed and that work was usually performed by a fixed term employee, the fixed term employee shall have a new contract.

Fixed term workers are gone if their work is gone. Already across many unis fixed term staff are not being renewed.

36. Conditions for standing down workers.

These are in the Fair Work Act already. And indicate that the unis will find it difficult to use stand-downs at all: they cannot be used just to save money or because the uni is in financial difficulty.

39. Workers stood down to be paid 30-50% of previous wage if a uni is in category B.

But stand downs have not been a preferred measure by unis anyway.

42 - 43. Major changes not subject to EA managing change provisions, there will be new managing change provisions which may vary according to the change and will ultimately be left up to an arbitrator.

Managing change clauses in EAs are crucial for at least slowing down adverse changes. Nothing here indicates that the new, "case-by-case" processes will be stronger, on the contrary. This clause apparently applies to all universities, not just those defined as being financial difficulties.

44 - 48.

Redundancy provisions are marginally different from FWC status quo (reference to work instead of job) If a course is abolished the job is abolished and the work is abolished, so those involved in its delivery can be made redundant.

NTEU writes "This provision prevents the common practice of renaming a job, making the individual redundant and then employing someone else to do the same work."

This is probably no more enforceable by the union because it still allows for a job name to be changed, its duties to be modified and then abolished. No forced redundancies to save costs. This won't prevent abolition of courses, which are cost-cutting measures.

45. There can be voluntary redundancy rounds.

We all know what "voluntary redundancy" rounds look like - some workers get the push, it also leaves those behind with increased workloads.

46. Redundancies are still allowed if there is insufficient work or a campus is closed.

Allows redundancy rounds with no more protection for workers than currently exists in EAs. It does not save jobs.

50. National expert panel.

Union minority. Will operate in a rush, so scope for detailed analysis minimal. In the preconditions to attacks on workers, there is a very vague reference to "debt capabilities", presumably borrowing. Many unis have already taken steps to reduce non-employment cost-cutting.

51. Nominees on the expert panel are not representatives.

i.e. they are not accountable to the union for their decisions.

54. If a uni's financial position has improved, they are no longer entitled to access cost saving measures "prospectively".

NTEU gloss changes can be reversed [This does not, presumably, mean that workers will be reimbursed the pay they have lost or for the massively increased workloads due to the shift online, only that they won't lose more.]

56 - 57.

Will most unis fall into category A or B (revenue fall of more than 10% plus "core operating cash flow margin" below 3%), allowing cuts and deeper cuts? "Core operating cash flow margin" seems to mean profit/core revenue. Not even an estimate.

59 - 60.

Pay rate cuts of up to 10%. Total pay reduction of up to 15%. First \$30,000 of a salary will not be reduced (some difference between the percentages for low and high paid staff). Casuals are exempt from temporary pay reductions. If individuals can show extreme hardship they can be exempt. What is "extreme hardship" as opposed to great hardship? Who decides?

61. Revenue reduction to be calculated on forecast for rest of this year and next year.

Who does the forecast?

Several clauses that sound nice simply describe current industrial law, current EA provisions and management practices, e.g. 29. External appointments; 47. redeployment of redundant staff; 82. long service leave to be taken into account in workload calculation; 94. taking Covid problems into account in performance management.

62. Core operating cash flow margin (%): is calculated as Core Operating Result + Depreciation + Interest + Other Non-Cash items + Smoothed Investment Income / Operating Revenue excluding Non-core items.  
=profit/core revenue?

63 -66. Pay cuts of 10% to 15% on pay above \$30,000 for continuing and fix-term workers. Exemption in case of "extreme hardship".

What is "extreme hardship" as opposed to great hardship? Who decides?

67. Up to 10% reduction in hours can be imposed except for workers with "compelling special circumstances".

Time reductions means consequent reduction in pay. Does this apply in all unis, whether they are defined as being in financial difficulties or not? What are "compelling special circumstances" as opposed to very difficult circumstances? Who decides? Especially for academic workers, moving everyone to 9 day fortnight will probably mean just working full week anyway, particularly because of increased workloads from sacking casuals and not renewing fixed term staff.

69.

This is meant to guarantee that staff can't be asked to work during their time off - this is likely to be highly insufficient.

70. Hours reductions except for workers with "exceptional circumstances of extreme hardship".

What is "exceptional" as opposed to hardship experienced by workers? What is "extreme hardship" as opposed to great hardship? Who decides?

73. Freeze on pay rises in current EAs

74. Freeze on increments

76. If you are promoted no pay increase until after the framework expires.

77 - 79. Workers can be directed to take long service leave, reducing accrued LSL down to 65 to 45 days.

Forcing workers to take LSL earlier than they planned does not reduce costs now, it is designed to reduce costs way into the future when workers have gained increments, been promoted or had other pay increases.

80. Long service leave must be taken in a two month period specified by management.

88. The CTMC is not empowered to deal with disputes regarding the thresholds or which cost saving measures the University may implement.

50/50 local union/management committee cannot overturn decisions of the national union minority committee on the nature of cuts, only their implementation.

90. CTMC deadlock broken by non-union arbitrator.