

# 10 Reasons to Re-Think the Recommendation

Prepared by NTEU Fightback UWA - this is not an official NTEU publication

## JOBS PROTECTION FRAMEWORK Summary & Recommendation to Members



### Our Recommendation

Your Union representatives entered into national negotiations with University Executives because the extreme financial pressure stemming from the COVID-19 pandemic would require extraordinary measures to avoid mass job losses.

We believe the proposed temporary variations to UWA's Enterprise Agreements, in conjunction with the Memorandum of Understanding, will substantially reduce the possibility of forced redundancies, prevent unpaid stand-downs, minimise potential job losses in 2020-21, and provide greater security for casual and fixed term staff.

We acknowledge that despite measures to minimise the impact on staff, the proposal involves staff making temporary sacrifices in return for an enforceable commitment to protect jobs. We believe that reaching an accommodation with University management along these lines is essential as there is no prospect of a return to business as usual in the next 12 months.

We recommend that NTEU members vote YES to endorse the local jobs protection framework measures at UWA.

### Protections

- No unpaid stand downs; minimum of 50% salary or \$1500 per fortnight, whichever is the greater.
- Work will first be allocated to staff who would otherwise face forced redundancy.
- Fixed term and casual staff employment continues as long as their usual work is available. If usual work isn't available, they have first preference for any other work unless another staff member would otherwise face redundancy.
- Two weeks paid COVID-19 leave for all employees.
- 5 days paid domestic violence leave for all employees.
- No reduction to other leave entitlements.
- Work from home arrangements for employees at high risk.
- COVID-19 impact factored into all performance evaluations, probation targets and workload calculations.
- Reimbursement for reasonable costs incurred by work from home and other COVID-19 arrangements.

### Savings Measures

- Pay rise due January 2021 deferred until June 2021.
- December 2020 leave loading payment cancelled.
- Direction to purchase 19 days leave, which is to be taken during Christmas and Easter shutdown periods, and the rest by mutual agreement.

○ Additional saving measure: no pay rises from reclassification

### Safety Net

- Superannuation will continue to be paid as if nothing has changed.
- The University must take individual hardship circumstances into account when implementing savings measures.
- Redundancy and termination pay-outs are not affected by cost saving measures.
- Joint Committee with equal NTEU/UWA nominees will oversee savings measures and deal with disputes quickly and locally.
- Independent Expert Assessment Panel must assess cost saving measures to ensure they minimise job losses.

○ Inequitable distribution of burden

○ Changes to duties allowed

○ Redundancies are still on the table

○ No requirement to prove impact of COVID-19

Vote NO!

# 10 Reasons to Re-Think the Recommendation

**Vote NO!**

**1**

## Temporary sacrifices?

The statement “temporary sacrifices in return for an enforceable commitment to protect jobs” is incorrect. There is no legally enforceable commitment to protect jobs in the proposed variation. The only direct reference to jobs protection is in the title of the framework, and titles are not enforceable. It is clear that some staff will lose their jobs while this variation is in force. That is why the detail of the recommendation talks about “minimising” job losses in 2020-2021 rather than “preventing” them.

**2**

## Temporary solution?

The statement “there is no prospect of a return to business as usual in the next 12 months” is a clear indication that the NTEU recognises the fact that the university will still be under “extreme financial pressure” (the NTEU’s own description of the current situation) in a year’s time when the variation is set to end. Therefore, while the variation itself has a ‘sunset clause’, we will be facing significant potential job losses again as soon as it expires. There is no commitment whatsoever that the sacrifices we are asked to make now will protect jobs at that point.

**3**

## Protecting casuals?

### 4. Allocation of work

4.2 Where there is no work or insufficient work available for an ongoing or fixed-term Employee, the University will seek to identify other work for that Employee to perform. Within this process, available work will be assigned first with a view to preventing compulsory Redundancy, then to Employees who have been stood down, in order to provide them with some work under clause 3 of Schedule C. This allocation of work for these purposes shall take precedence over the allocations described in clauses 4.3 to 4.6 of Schedule C.

4.3 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 the Casual Employee had a reasonable expectation that they would continue to be employed by the University, then the Casual Employee will continue to be engaged to perform that work. Where such a Casual Employee suffers a reduction in casual work or has no work as a result of the impact of COVID-19, the Casual Employee will have first order of preference to resume that work upon it becoming available again.

### 5. Redeployees

5.1 In filling any vacancies, redeployees will have first preference, and then all other Employees (including Casuals) are to be considered according to the University’s existing merit-based selection procedures.

The EAV gives casual employees without work first preference to resume work once it’s available. However, this preference is overridden by clause 5.1, meaning work must go to ongoing and fixed-term employees FIRST. This means that a casual whose work was lost due to COVID-19 can be replaced by an ongoing employee under this EAV.

## 4

### No reclassification pay rises

#### **24. Reclassification (Professional & General)/ Promotion (Academic)**

24.1 The date of effect for the increase in salary arising from a reclassification/ promotion (at the Employee's initiative) will be the date no earlier than the day after Schedule C ceases to apply or the University is no longer in either Category A or B, whichever comes first.

There's a fourth cut in the Variation that the NTEU outline doesn't mention: an employee who has successfully been reclassified through promotion (Professional & General) or granted a promotion (Academic) doesn't get a pay rise during the life of the EAV.

## 5

### Accounting for hardship?

#### **23. Hardship**

23.1 The University must allow for individual exceptional circumstances of hardship.

23.2 Where an Employee would experience hardship in individual exceptional circumstances as a result of the application of clauses 21 and 22 of Schedule C the Employee may make a written application to the Director of Human Resources (or nominee) for special consideration.

23.3 The application will specify the circumstances that are individual to the Employee and how they will result in hardship. An application made in accordance with this clause will be considered expeditiously (but no more than 7 working days). If the University rejects an application, it must provide written reasons for their decision.

The University has repeatedly refused to disclose what the criteria of this process will be. All we know it is that it will be an application to HR. There is no guarantee of basic privacy protections, and no guidelines as to what constitutes hardship or what personal documents will have to be disclosed. In addition, the emphasis on "exceptional" circumstances means that circumstances causing hardship for a significant number of employees (ie the fact that we rely on our salaries to meet our mortgage or rent obligations!) will, by definition, not be able to be taken into account. It will be necessary to show something deeply personal (and private, and possibly quite distressing/embarrassing) to qualify. Further, while the University has to give reasons for rejecting an application, there is no provision for any right of challenge/appeal, and again, no guarantee of privacy in any such process

Employees on parental leave are only exempt from clause 22 (purchased leave), not from clause 21 (leave loading). However, it looks like they are only exempt for the period they spend on parental leave, and may be required to purchase leave pro rate for the rest of the variation period. This clause is unclear and requires clarification.

## Adequate oversight?

### 26. Change management

26.2 Where a Workplace Change is proposed by the University, the CTMC will consider any proposed change and within 5 working days, agree to a timeframe and process to consult with affected Employees about the change.

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

- a) any urgency created by the impact of COVID-19;
- b) the scale of the change (including, without limitation, the number and nature of Employees who will be affected by the change, the level to which the affected Employees 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 an Arbitrator in accordance with the dispute settling clause 30.5 of Schedule C.

The CTMC has no actual power to prevent or indeed influence substantive change management decisions (such as redundancy rounds) made by the University administration. The CTMC is only directly involved in the decision on how to *consult* about a change. Apart from that, it is basically a watching brief.

### 29. COVID-19 Temporary Measures Committee

29.4 The function of the CTMC are those assigned to it under the terms of this Schedule C, and to:

- a) be provided with information relevant to the operation of Schedule C;
- b) oversee the implementation of Schedule C;
- c) carry out its functions in relation to change management as set out in clause 26 of Schedule C; and
- d) deal with any disputes in accordance with clause 30.1 of Schedule C.

29.5 The CTMC is not empowered to deal with disputes about matters dealt with in Part J or which cost-saving measures the University may implement.

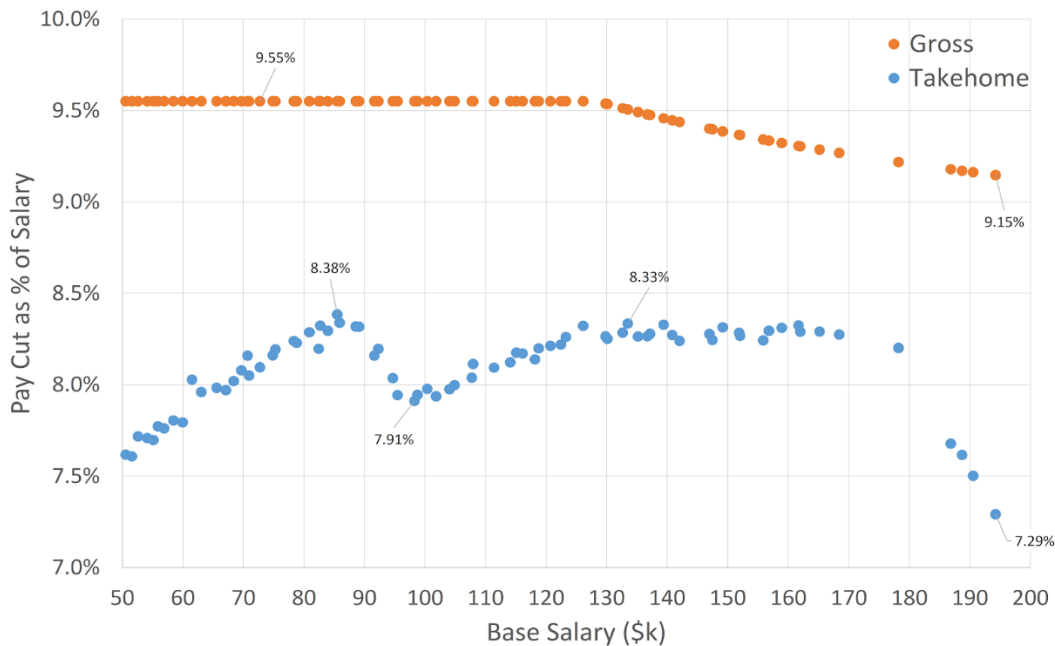
As above, the CTMC is only involved in negotiating the process for *consulting staff about* the redundancy, not the terms of the redundancy itself. These are very limited powers providing little protection – the CMTC appears to function mostly as an observer.

## Inequitable distribution of the burden

One of the most extraordinary features of the proposed cost-saving measures is that they will affect the net income of those on lower wages more than those on higher wages. Because of the Australian income-tax bracket system, an almost 10% pay cut on gross salary translates into a bigger percentage loss of net income for workers on lower salaries. This measure is bound to create a large pool of potential applicants for the hardship exemption, for which there are no clear criteria or procedures

The drops in the effect on take-home (net pay) are a result of income tax bracket thresholds, at \$90k and \$180k.

Pay Cut vs Salary



## 8

### Changes to duties allowed

#### 15. Changes to duties (Professional and General only)

15.1 By giving 2 weeks' notice, the University may direct Employees to temporarily undertake duties outside the scope of their classification and position description or expectations, so long as the duties are within the Employee'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 Employee'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 an Employee shall not at any time be paid at a rate less than that which would apply to that work under the Award.

Clause 15 relevantly fails to identify:

- Any limits to the number of times the university can make a 'temporary' change to an employee's duties;
- Any time limitation on the duration of each change in duties;
- Any particulars about the relevant assessment of Employee's skill levels and competencies;
- Whether the Employee has any right of appeal, or whether there is a process to have the change reviewed;
- Whether the Employer is able to implement performance management processes for Employees who fall short of the requirements of the temporary change of duties.

There will be no HDA payable for higher level appointments, which has not otherwise been formally proposed as a variation to Clause 32 of the Enterprise Agreement (EA).

The clause states that Employees shall not at any time be paid at a rate less than the relevant Award. Does this mean the Employer intends to abandon EA remuneration rates in favour of some other unspecified award? Is there an intention to pay Employees less than the current EA entitlement? We need more clarity on this clause.



## Redundancies are still on the table

### ***Redundancy following permanent abolition of a substantial work function or campus closure***

28.5 Where the University decides to permanently abolish a substantial work function (such as the abolition of a discipline) or close a campus the University must only make an Employee's employment Involuntarily Redundant where:

- a) the Employee's work is no longer required to be performed by anyone;
- b) the University has sought to redeploy the Employee. In exploring redeployment, the University will ensure the Employee is made aware of all relevant vacancies and redeploy them to any Suitable Alternative Employment. 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;
- c) the University has explored with the Employee other measures that may be taken to avoid termination of employment; and
- d) the University must report the actions it has taken under this clause to the CTMC prior to issuing a notice of termination of employment.

### ***Redundancy where there is a permanent insufficiency of work in a particular work unit or function and there is a surplus of employees***

28.6 Where there is a permanent insufficiency of work in a particular work unit or function and there is a surplus of Employees, the University must only make an Employee's employment Involuntarily Redundant where it has:

- a) identified the number of surplus Employees;
- b) offered a Voluntary Redundancy to all affected Employees. The University must allow all those who volunteer to separate, unless the Employee 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 Employees volunteering than the identified surplus (in which case then clause 28.6(c) of Schedule C will apply);
- c) adopted fair and objective criteria for selection for Redundancy where the University is required to select Employees for Involuntary Redundancy, either as a result of too few Employees volunteering or too many Employees volunteering;
- d) sought to redeploy the Employee. In exploring redeployment, the University will ensure the employee is made aware of all relevant vacancies and redeploy them to any Suitable Alternative Employment. 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;
- e) explored with the Employee other measures that may be taken to avoid termination of employment; and
- f) reported the actions it has taken under this clause to the CTMC prior to issuing a notice of termination of employment.

These are the same redundancy processes as in the current Agreement. The only difference is the requirement to inform the CTMC. Under clauses 28.5 (d) and 28.6 (f), the university will report the actions it has taken to the CTMC prior to issuing a notice of termination of employment. There is nothing the CTMC can actually do about this! All it does is receive the report. The rest of the redundancy process is the same as under the existing EA.

The redundancy provisions in EAV still allow the University to make employees redundant in much the same way as before the development of the EAV. In fact, it specifically allows the University to impose large-scale involuntary redundancies for reasons that have *nothing to do with the impact of COVID-19*. This is a clear signal of the extent to which the "cost saving measures" in the EAV are responding to pressures that the University was already facing pre-COVID-19. The narrative of staff making a temporary, one-off sacrifice in response to COVID-19 simply does not hold up. There is no guarantee that any of these pressures will have eased in a year's time when the variation ends.

## No requirement to prove impact of COVID-19

### 33. Categories

33.1 The University is in Category A if the following metrics are met:

- a) it can demonstrate a forecast reduction in total revenue between 5.0% and less than 10.0% (measured over a 12-month period against 2019 actuals); and
- b) it has a core operating cash flow margin of greater than 3.0% and less than or equal to 6.0%; or
- c) it meets one of the metrics as identified below as it relates to Category B.

33.2 The University is in Category B if the following metrics are met:

- a) it can demonstrate a forecast reduction in total revenue of 10.0% or greater (measured over a 12-month period against 2019 actuals); and
- b) it has a core operating cash flow margin of 3.0% or less.

33.3 For the purpose of this clause, the percentage total revenue reduction test is to be measured on a calendar actual year to date and forecast basis for 2020 and 2021 compared to 2019 full year total revenue actual result.

Clause 33 sets out the requirement for the University to satisfy the EAP (Expert Assessment Panel) that it has reduced revenue (compared with 2019) or limited operating cash flow, so that it can go ahead with implementing the variation. What is glaringly absent from this clause is any requirement to show a connection between the financial position the University is reporting to the EAP and *the impact of COVID-19*. This is particularly striking because “Impact of COVID-19” is actually a defined term – see clause 35, and see its use in clause 1.1(d) at the very beginning of the variation.

Why bother defining the term at all if it is not going to be used where it really matters – showing that the variation is necessary *because of COVID-19*, and not because of any underlying financial mismanagement or pressure that the University would be facing anyway? This is crucial, because that is the *only* basis on which the variation is being justified to staff in clause 1. The most plausible explanation for this drafting is that the University knows it cannot satisfy the EAP that its revenue/cashflow issues are due to COVID-19.

**Vote NO!**