

FAQ

Vote NO to the National “Jobs Protection” Framework

NTEU FIGHTBACK!

THURSDAY 14 MAY 2020

WHY VOTE NO?

The “National Jobs Protection Framework” is the biggest attack on wages and conditions for university staff in living memory. Pay cuts of up to 15% will be devastating for workers especially those in single-income families. And there is nothing in the framework that protects against mass redundancies, nor that mandates the re-employment of the thousands of casuals who have already had a semester without work.

On 13 May the National Tertiary Education Union released [some detail](#) on the Framework. We still don't have the wording of the actual Enterprise Agreement clauses that will govern our pay and conditions, if the Framework is voted up.

However the limited detail has been released makes it clear that, at heart, the Framework is just a plan for cutting wages and trashing important conditions – especially around the implementation of major change.

We're being asked to vote for lower pay and worse conditions for our workmates and ourselves, in “exchange” for threadbare promises of job protection. It's far from the promised “life jacket”: if implemented, the Framework will have us drowning in concessions.

Even before the release of the Framework, the “concession bargaining” approach of the union's national leadership had been condemned by large majorities in the three biggest NTEU branches, along with hundreds of other NTEU members around the country.

The fact that the Framework has been [endorsed](#) by federal education minister Dan Tehan tells us a lot about it. It's a disgrace that our union's national leadership is an active participant in these attacks, rather than digging in to fight them off.

[NTEUFightback](#) is a group of union members arguing to Vote NO to put a firewall around our EA entitlements.

We know the attacks will continue to come thick and fast in the current crisis, whether or not we vote to cut the wages and conditions of ourselves and our fellow workers. We urgently need a real fight, both locally and nationally, to save jobs, stop spiralling workloads, and win the government funding the sector needs.

Voting NO is important because it's about drawing a line. It will preserve wages and conditions. The Vote NO campaign is already rebuilding the union strength we so sorely need to protect jobs and conditions – and it's the start of rebuilding our union, and turning our sector around.

WHAT DOES THE NATIONAL FRAMEWORK MEAN FOR WAGES?

In short, the National Framework means massive wage cuts for ongoing, fixed term and sessional staff.

Under the National Framework, management would be able to implement pay cuts of up to 15% by a combination of enforced cuts to hours, cuts to wage rates, increments being deferred and pay rises cancelled. For a professional staff member on a salary of \$65,000 per year (the median full time female wage), this would be a cut of \$9,750 per year or \$375 per fortnight. This can be the difference between comfort and poverty for many workers – especially those of us with household members who have been sacked or had hours cut during the current crisis.

How is the size of the wage cut determined?

Universities where a majority of workers vote for the Framework will be sorted into three categories by a “national expert panel”, based on financial grounds. If a university can “demonstrate a forecast reduction in total revenue” of 10% or more, and a “core operating cash flow margin” of less than 3%, it will be in Category B and management can cut workers' pay by the maximum 15%.

A forecast revenue reduction of between 5 and 10%, and a “core operating cash flow margin” of between 3 and 6%, puts the university into Category A – in this case management would be able to reduce wages by up to 10%. A lesser reduction in forecast revenue reduction or cash flow means the university would not be entitled to reduce wages under the Framework.

There are at least three big problems with this complicated scheme to allow management to cut our wages.

1. We would lose a legally enforceable entitlement, and instead gives power over our wages to a committee on which union reps are only a minority. Three members are nominated by the union, three by management, with an "independent" chair. According to the Heads of Agreement (clause 51) "the nominees are not representatives" – so they are not even accountable to the union. And of course the whole committee is premised on the idea that our wages can be cut.

2. The union-minority committee has to assess financial accounts produced by university management -- a group of people notorious for bullshitting and crying poor when it comes to wages and other entitlements.

The criteria which the committee are meant to use are far from transparent. If you're scratching your head wondering what a "core operating cash flow margin" is, you're not alone. The formula is found in clause 62 of the Heads of Agreement, but it's based on information which doesn't seem to be publicly available. Google "core operating cash flow margin" and you won't be any wiser – this appears to be a financial measure found nowhere in the world apart from the National Framework.

3. We are being asked to ditch legally enforceable entitlements, and instead allowing a union-minority committee using obscure criteria to inspect the financial chicanery of university management, in order to assess whether we should have our wages cut, is this: **it will result in our workmates and ourselves getting our wages cut!!**

This is bad for all of us and our households. It is bad for other groups of workers facing the same pressure from management to give up wages and conditions.

It's also good for the Liberal government which is refusing to fund universities. Dan Tehan is refusing to fund the sector precisely to put pressure on Vice Chancellors to trash our wages and conditions. If we vote to cut our wages, it just takes the pressure off the government to fund the sector properly.

For many years we've put up with stagnant wages and rising workloads. We should draw a line and see Vote NO as a first step to turning the tide.

What else about wages and the process?

Clause 66 of the Heads of Agreement states: "The University must allow for individual exceptional circumstances of extreme hardship." What constitutes "extreme" hardship, and how this might differ from "severe" hardship or "serious" hardship, is not specified.

Local disputes go to a local committee with half union, half management, with any lack of consensus resulting in an "independent", i.e. non union, arbitrator making a decision. This committee "is not empowered to deal with disputes regarding the thresholds or which cost saving measures the University may implement." (clause 88) So it can't overturn decisions of the national (union minority) committee on the scale of cuts allowed to management.

AREN'T THERE EXTRA PROTECTIONS AROUND REDUNDANCIES?

Short answer: not really.

Clause 44 of the Heads of Agreement states that there will be "no forced redundancies as a generalised cost cutting measure which are not connected to a reduction in work". This is not promising much. The Fair Work Act states that redundancy is only valid when "the person's employer no longer required the person's job to be performed by anyone", which is no different to what's envisaged under the Framework.

Universities routinely restructure to make workers redundant, including by cutting courses or closing campuses: both of these measures are explicitly allowed under the Heads of Agreement (clause 46).

In fact, the framework allows a significant reduction in workers' rights to resist restructures. The "Redundancies and Organisational Change" clauses of the Heads

of Agreement (42 onward) indicate that "a new change management process" would be inserted into Enterprise Agreements -- a streamlined process with minimal consultation. If the union doesn't agree within five days, the matter will be sent to rapid arbitration.

This is a big problem. Change provisions have been hard fought for in many EAs. While far from perfect, they are a good way for the union to slow major restructures down while they mobilise members to oppose or shape the change.

The "future ready" process at La Trobe in 2014, the Business Improvement Program at Melbourne Uni, various proposals to introduce KPIs and restructures at Sydney Uni – all sparked significant mobilisations to pressure management over major change.

There were some wins and some losses in these fights. But management being able to bypass these extensive provisions within a few days, on the say-so of a non-union arbitrator, dramatically limits the space for union mobilisation. This is a serious setback to developing an active membership – as well as letting management get away with all sorts of things they've wanted to implement for ages, on the basis that “this is an emergency”.

Monash for instance is due to launch a major restructure, with a “workshops” model with one tutor among 75 students being mooted for next semester. This sort of jobs-destroying

(and quality education-destroying) restructure won't be stopped by anything in the Framework. And gutting the significant change provisions of our EAs will make it much easier to ram through changes such as this.

The Framework allows Voluntary Separation Packages to be offered as a cost cutting measure which will be popular, especially among staff approaching retirement. However the experience of many VSP provisions is that staff are cut and not replaced (indeed, this is the whole point of the exercise from management's point of view!) leading to significant workload issues.

ARE THERE EXTRA PROTECTIONS FOR CASUALS?

The statement in the NTEU's publicity material that “everyone gets a lifeline” is clearly a lie.

The NTEU “Casuals Fact Sheet” says of the Framework:

It maximises new work opportunities for casuals by:

- Banning new external appointments-maximising work for existing casuals and casuals will have access to the internal jobs pool.

However once we put the spin to one side and look at the wording of the Framework, it's clear there is no such “ban”. Clause 29 of the Heads of Agreement reads: “The University may make no new external appointments unless all internal applicants have been considered, except in exceptional circumstances.”

Anyone with any experience of reading enterprise agreements will immediately recognise “exceptional circumstances” as a good sized loophole – and management having to “consider” something puts no legal obligation on them to do anything at all of consequence.

There's plenty of this spin in the NTEU's publicity documents. Unfortunately, there are also plenty of decent looking clauses in the Heads of Agreement that get less meaningful once they are seen in context.

Clause 33 is a good example:

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.

At first, this looks great. The handy note attached [NTEU26] says: “This provision prevents the transfer of casual work to ongoing staff... These two provisions will bring casuals back to work.” Clause 34 is identical but applies to fixed term staff.

However, like a lot of “Job Retention” clauses in the Framework, the closer we look, the flimsier this gets.

There are the issues of defining “usually performed”, “regularly employed” and (especially) what's a “reasonable expectation” of continued employment. And there's the fact that if the university doesn't “require the work to be performed”, there is no work for the casual. Often ongoing and fixed term staff overlap in the courses they teach – under this clause could management decide that “the work” done by a fixed term tutor was simply “required to be performed” by an ongoing lecturer?

But even after before a casual worker gets to try and clear those hurdles, there's clause 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 the clauses would “bring casuals back to work” so long as the university “requires the work to be performed”, the worker can clear the hurdles of “usually performing”, “regularly employed” and “reasonable expectation” -- and if the university hasn't allocated their work to someone else.

After all this, both casuals and fixed term workers might be left wondering exactly what is being guaranteed here.

If things seem dodgy for casuals at the level of individual clauses, they're more like a bleak farce if you look at who has shaped the deal.

La Trobe Vice Chancellor John Dewar is one of four Vice Chancellors who have personally signed off on the Framework. Dewar boasted in an all staff email on 12 May that he'd cut \$7 million worth of casual positions. He made it very clear in his email that this was \$7 million banked towards cost savings – there was not the remotest hint that these cuts would be

reversed under the National Framework that he was negotiating.

“Getting casuals back to work” is simply not on Dewar’s radar – and he’s one of the architects of the Framework. That should tell us something.

Similarly, Monash VC Margaret Gardner is apparently planning a restructure that would transform tutorials into “workshops” with up to 75 students. There’s clearly no problem for her in signing on to the deal while slashing sessional jobs.

WHAT ABOUT PROTECTION AGAINST STAND DOWNS?

The Framework has some OK looking protections around stand downs.

Instead of being stood down without pay, as the Fair Work Act allows, stood down workers would get 50% of their wage if they work for a Category A institution, and 30% of their pay or \$1,500 per fortnight (whichever is the higher) if employed by a Category B institution.

But the reality is that Vice Chancellors see no problem in offering these protections, for the simple reason that stand downs are rarely used – and legally can’t be used against the vast majority of university employees, as our detailed explainer notes.

Section 524 of the Fair Work Act states:

An employer may... stand down an employee during a period in which the employee cannot usefully be employed because of ... a stoppage of work for any cause for which the employer cannot reasonably be held responsible.

The Fair Work Ombudsman site explains the limitations of this:

Whether the option of standing down employees is available in circumstances relating to coronavirus is very fact dependent and an employer should exercise the option cautiously...

Employers cannot generally stand down employees simply because of a deterioration of business conditions

So Qantas can’t fly due to government orders, and therefore can stand down pilots. However commercial decisions made in response to the crisis, e.g. generalised cost cutting, are not valid reasons for stand downs under the Fair Work Act. The Independent Education Union has recently had some good success in pushing back legally against stand downs outside the bounds allowed under the Fair Work Act.

So while stand downs cannot be ruled out, the limited legal protections around them have so far deterred their widespread use in universities. A list read to National Councillors on April 24 indicated that the number of directly employed workers stood down at Australian universities was zero. Since then 17 workers at Curtin Uni’s stadium have been stood down due to state government restrictions on sports.

WHO GETS TO VOTE AND WHEN?

The whole point of the National Framework is to insert new clauses in our Enterprise Agreements. Two votes happen before our EAs can be changed in this way:

- first a vote of union members, held anytime after 20 May,
- then a vote held under the Fair Work Act on whether to vary our EAs.

Both votes are important.

The union vote

A meeting of members of the NTEU’s National Council will be held on Wednesday 20 May. The National Executive of the NTEU might repeat their undemocratic “meeting of National Councillors” held in late April, where a vote approving negotiations on concessions was shoved through after only minimal debate. Those opposed to concessions were given only ten minutes to argue their case in a two hour meeting.

Soon after that (maybe very soon after), the NE says we’ll have “a national electronic ballot of all members to see whether the entire membership supports the Framework. If approved overall in this national membership ballot, the results will be broken down university-by-university.”

This means that every union member, no matter which campus you work on, will get a vote – and that means we need active Vote NO campaigns, on every campus, active from now – see the end of this FAQ for details.

From what the NTEU has provided, it seems we won’t be able to see the detailed clauses to be inserted in our Enterprise Agreements until after the union’s National Councillors, and then the membership, have voted on whether to accept the Framework as a whole. If this is the case, it would be a terrible and undemocratic decision by the union’s national leadership, and a sharp break from best union practice.

Usually, a union vote on an enterprise agreement only happens when members are in possession of the actual agreement – so we can see the actual clauses, the loopholes like “where practicable” or “consider”, and how it all hangs together. It seems that the NTEU national leadership will break with this practice, and push through a vote on the national framework before members get to see the actual detailed clauses.

Any such vote would be an undemocratic farce – we’ll be arguing to Vote NO and keep organising.

Fair Work Act vote

After the union vote, there will be another vote – a legally binding vote of all staff (not just union members) on the actual variation to our EA. This is required by the Fair Work Act.

There is a legal requirement for workers to be given the actual clauses of an EA variation, prior to any vote under the Fair Work Act. Due to recent changes to the Fair Work Act regulations, however, workers might only get 24 hours notice of a vote. In a (not legally enforceable) Memorandum of Understanding between the union and the employers which is part of the National Framework, we’re meant to get seven days.

At any rate, time is short, and the task is huge: in both the union and FWA ballots, we have to organise our way to every corner of the universities with a message of Voting NO – to preserve hard won entitlements for ourselves, our fellow workers, and those who will come into the industry after us.

WOULD THE MEASURES BE TEMPORARY?

If approved, the Framework will run at least until June 2021, with a possible six month extension if the union and management agree. For our admin worker on the median full time female wage of \$65,000 or \$2,500 per fortnight, a cut of 15% or \$375 per fortnight would cost her \$14,625 in income over the next 18 months.

This is bad enough – along with whatever major changes can be rammed through under the Framework’s fast tracked change clauses.

But these dates also take the cuts to wages and conditions into the next bargaining period, which kicks off in June 2021. By agreeing to concessions now, we’re encouraging management to push for more concessions in bargaining for the next EA – while doing nothing to develop our union’s strength.

“Temporary” measures often end up far from “short term”. US auto workers who accepted “temporary” cuts to wages and conditions in the GFC are still stuck with these cuts a decade later.

Many respected economic forecasters are predicting that the economic crisis will be deep and prolonged. It’s impossible for us to control that. Neither can we control how the continuing health and economic crisis will impact on universities, or precisely how universities will manage that impact, whether a new turn of the economic screws will unleash a new wave of sackings despite our sacrifice, or much else besides.

One of the few things we can control is, do we vote to cut the wages and conditions of ourselves and our workmates, for at least a year and quite possibly for years into the future. For us, the answer is a clear Vote NO.

WHAT ELSE IS IN THE PACKAGE?

Several clauses simply describe current industrial law and management practices in many places, e.g. 82 long service leave to be taken into account in workload calculation; 94 taking Covid problems into account in performance management.

Management would be able to direct workers to take annual leave, leaving only two weeks in reserve, and long service leave, leaving 65 or 45 days in reserve depending on whether the employer is Category A or Category B.

Management would be able to direct workers to perform different duties, though with no loss of pay.

We’ll continue to update and expand these FAQs in the hours and days ahead. We’re committed to building the biggest possible Vote NO campaign – to preserve the entitlements of every worker in the sector, and start to turn the tide in our union and in the sector.

This FAQ has been produced by university workers and unionists who are part of NTEU Fightback – No Concessions. Get in touch through [our facebook page](#) or email noconcessions.fight@gmail.com

With a vote fast approaching, please sign on to our regular email updates by

Signing on to our statement:
<https://forms.gle/ayqomaZxp4SrF1Su5>

Signing the pledge to Vote NO:
www.tinyurl.com/votenopledge