

Does the National Framework advantage workers facing redundancy?

There are supposed to be advantages for workers facing redundancy under the Framework compared with the Fair Work Act and enterprise agreements. To the extent that these advantages exist, they are marginal and are offset by the loss of rights.

Redundancy clauses are complex and often not easy to read. Unfortunately, the national leadership of the NTEU have so far (19 May) failed to release any of the clauses that they want to be inserted into our EAs.

In what circumstances can workers be made redundant?

The first point here is that the Heads of Agreement involve sweeping changes to “change consultation” clauses. Instead of an often extensive, multi step process which gives workers a chance to slow restructures down and have a say, the local implementation committee has five days to agree on the scope of consultation – and if they can’t agree, the decision goes to rapid arbitration.

This dramatically limits the ability of workers and our union to slow down or minimise the impact of the frequent restructurings that fuel wide scale redundancies. We have a separate explainer about this in our Vote NO campaign resources folder. But the take home is, management will find it much easier to push through massive changes which include redundancies if the Framework comes into operation.

Another point here is that clause 19 of the heads of agreement allows management to simply direct workers to perform duties outside their classification – which gets around consultation and classification clauses that can stop management from doing exactly what they want in a restructure.

The *Work* vs *Job* distinction

There are some clauses in the Heads of Agreement which look OK at first blush – for instance, clause 44 states that there will be “no forced redundancies as a generalised cost cutting measure which are not connected to a reduction in work”.

However this protection essentially exists in the Fair Work Act, which states that a redundancy can only occur when “the person’s employer no longer required the person’s job to be performed by anyone”.

The NTEU officials emphasise the distinction between redundancies because a “*job*” is no longer going to exist, which is the criterion in the Fair Work Act, and because there has been a reduction of “*work*”, which is the wording under the Framework.

In some circumstances this can be a useful distinction. It can give the union more scope to argue that, for instance, if one person’s *job* functions are split up into parts and then given

to workmates, it's not necessarily a redundancy situation for that individual, because the *work* still has to be done.

However this distinction *isn't* so helpful in the current situation, when the *work* itself is disappearing – either because of declining enrolments from international students, or because management have decided to slash the amount of work being done (closing campuses or areas of study, or wholesale admin restructuring).

In any case, management can engage in a two-step process to work around this Job/Work obstacle to making workers redundant: they can reorganise a workplace, ensure that work that has diminished or disappeared is allocated to specific positions, and then make occupants of those positions redundant.

Redeployment

Clause 30 of the National Framework's Heads of Agreement (available [here](#) or see below) provides that, in the filling of vacancies, redeployees have first preference, and then all other employees (including casuals) are considered according to the University's current merit criteria. Clause 47 and 48 state that workers can only be made redundant once redeployment options have failed.

There are four things worth noting about this.

First, it's positive that casuals are included in this process. Second, however, current circumstances are precisely ones in which this provision is likely to be meaningless, as universities are shedding labour and in freezing the filling of vacancies.

Third, a huge amount depends on the wording here. Again, it's a big problem that we don't have access to the actual wording of EA variation clauses. "First preference" to be "considered" doesn't put any obligation on the employer – if the wording is stronger, it's more meaningful.

Which brings us to the fourth point. Redeployment is already provided for in many enterprise agreements. In many, the clause is stronger than what is outlined in the Heads of Agreement. e.g. at ANU:

*If the staff member meets the selection criteria for the position, or could be expected to meet the selection criteria with appropriate training within a reasonable timeframe, they **will** be appointed to the position. [emphasis added]*

At La Trobe, where the EA is not generally as good as ANU, the relevant clause (32.8) states that "the University shall... offer the Employee redeployment to a suitable vacant position where such a position exists":

For the purpose of this clause, a suitable vacant position means a position at the same classification level and same time fraction as the Employee's redundant role, and for which the Employee has the skills and qualifications to undertake. A suitable vacant position may be one that requires an Employee to update skills and

experience to undertake the duties of the position, provided that the relevant period of time does not exceed six (6) months.

There's provision for the worker to accept a job on lesser pay, with salary maintenance for up to a year.

So to summarise – the redeployment clauses in the HofA look fine, but they don't appear to offer enhanced protections for the big majority of workers in the sector, especially in the context of the economic and pandemic crisis, which is likely to persist for years. And we still haven't seen the actual EA clauses!

Voluntary separation packages

Clauses 45 and 48 of the HofA outline the terms under which VSPs can or must be offered. These will be the most attractive sections of the Framework for some workers, especially those on good incomes approaching retirement.

However there are some qualifiers. The HofA say that VSPs must be offered if there is a reduction of work in a particular work area (clause 48) – but not in the case of a whole work area being abolished (47).

And again, an enormous amount depends on the wording of the clauses. "Vital" staff can be refused VSPs under clause 48 – what's the definition of vital? Are the terms of the VSP as generous as the terms of redundancy? Some EAs (for instance La Trobe) don't have set clauses for VSPs, so the wording of the EA variations will be very significant.

There's also the question of whether it's worth trading the benefits of VSPs as a method management can use to cut jobs against the significant cuts to wages and conditions (especially major change clauses) which are at the heart of the Framework.

For convenient reference, relevant clauses of the Framework and Fair Work Act are below

Framework

19. The University may direct employees to undertake duties outside the scope of their classification, so long as the duties are within their skill level and competency and it is safe to do so. These may be higher-level or lower-level duties, but the employee's pay will not be affected. Any existing temporary higher-level appointment or higher duties allowance arrangement will not be set aside as a consequence. The consultation and managing change provisions of the Agreement do not apply to any temporary assignments.

30. In the filling of vacancies, redeployees have first preference, and then all other employees (including casuals) are considered according to the University's current merit basis.

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.

44. There will be no forced redundancies as a generalised cost cutting measure which are not connected to a reduction in work during the life of the EAV Schedule.

45. The University may implement a VSP round at any time as a generalised cost cutting measure. The University must accept those who volunteer, except for vital staff.

46. The University may only use compulsory/forced redundancy in circumstances where a definite decision has been made to permanently abolish a substantial work function (such as the abolition of a discipline) or closure of a campus, or where there is a surplus of employees due to insufficiency of work in a particular work unit or function.

47. Where the redundancy is due to the permanent abolition of substantial work function (such as the abolition of a discipline) or closure of a campus, the University must ensure: a. the employee's work is no longer required to be performed by anyone; and b. all attempts to redeploy or take other measures to avoid termination have failed; and all relevant details have been reported to the CTMC prior to the issuing of a termination notice.

48. Where the redundancy is due to an insufficiency of work in a particular work unit or function and there is a surplus of employees, the University must ensure: a. a localised VSP process has not achieved the necessary reduction in staff numbers. The University must accept those who volunteer, except for vital staff; b. fair and objective criteria for selection for redundancy have been applied; and c. all attempts to redeploy or take other measures to avoid termination have failed; and all relevant details have been reported to the CTMC prior to the issuing of a termination notice. Nothing shall prevent multiple units or functions being dealt with simultaneously.

Fair Work Act

389 Meaning of *genuine redundancy*

(1) A person's dismissal was a case of ***genuine redundancy*** if:

(a) the person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise; and

(b) the employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.