

Notes on the proposed UWA variation

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1. Introduction

In summary, the enterprise agreement variation proposed for the University of Western Australia

- Allows management to impose a wage cut of up to ten percent
- Guts existing provisions around consultation and major change (and disputes over these clauses)
- Provides “job protection” measures which are threadbare at best
- Provides Covid-19 related entitlements which largely either exist already or are unenforceable

The proposed UWA EAV is closely modelled on the terms of the “National Jobs Protection Framework”. Despite publicly abandoning the Framework, the NTEU’s national leadership is still attempting to impose EAVs based on it. The template for these agreements is available on the Australian Higher Education Industry Association [website](#).

The EAV is based on the premise that ‘the University has suffered a significant financial detriment as a result of the impact of COVID-19’, but no evidence has been provided to staff that this is the case. The University has equally failed to demonstrate that there is no alternative to cutting staff wages to face this crisis. UWA is sitting on \$2.1 billion worth of assets and endowments, against which it should be possible to borrow the necessary sums to face the shortfall.

The Expert Assessment Panel, outlined at clause 31, which has the responsibility to assess the state of the University and the proportionality of the cost-saving measures, is unsatisfactory. The University should transparently present the case for a variation to its staff, who are an integral part of the university, and not keep it behind closed doors for the benefit of a panel that UWA staff know nothing about and to which they have not agreed.

Most of the clauses of the UWA EAV are identical to the EAVs proposed for La Trobe, Monash, and the University of Tasmania, though with some differences, most importantly around the mechanism for the pay cut.

2. Wages

Clause 19.1 allows management to cut wages by “an amount equivalent to a maximum total of **10% of an Employee’s salary** over a period of 12 months”.

The three main mechanisms to achieve this wage cut are:

- Compulsory purchase of leave: workers will have to purchase 19 additional days of annual leave, reducing wages by 7.3%. 13 days of this leave will have to be taken as part of an extended shutdown over Christmas/ New Year and Easter next year. The other six days by agreement or as directed by management, prior to June 30 2021.
- Cancellation of annual leave loading of 17.5% on all annual leave.
- The 2.6% pay rise scheduled for January 2021 is pushed back to July 2021.

This calculator shows the combined effects of these three measures over the next twelve months:

<https://chr1sg.com/nfeu/wage-calc-uwa.php>

For a professional staff member (Level 4 Step 1) on an annual wage of \$65,588 pa, this would amount to a pay cut of \$6,420 over the next year, an incredible \$247 per fortnight. That pay rate is obviously not high: the median full time female wage in Australia is \$65,000 per year. There is a chart of some typical pay rates and how they will be affected in section 8.

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, a 10% pay cut on gross salary translates into a bigger percentage loss of net income for workers on lower salaries.

Section 8 of this document has a couple of graphs explaining this.

Unlike some other EAVs based on the National Framework, there is no protection for the first \$30,000 of income in any of these wage cutting measures. There is provision for workers facing “individual exceptional circumstances of hardship” (not defined) to apply in writing for “special consideration” (also not defined).

There are other clauses in the EAV which allow management to reduce workers’ incomes below enterprise agreement entitlements:

- Clause 15.1 and 15.2: a worker can be directed to perform higher duties, with no additional pay (see point 7, below).

- Clause 24: a worker who has successfully been reclassified through receiving a promotion doesn't get a pay rise during the time of the EAV.

Management can also direct staff to take long service leave down to a balance of 65 days.

3. Job protections

Job protections are meant to be the big attraction of the EAV:

Protect UWA Jobs - Job losses must be Management's last resort. All other savings measures - including cutting Executive pay - must happen before any job losses.

Does this mean that the Vice Chancellor and senior executives will reduce their salaries to that of a level 4.1 admin worker (\$65,588 pa) - and then accept the incredible 9% pay cut they are about to impose on this worker over the course of a year (\$246.94 per fortnight), before cutting jobs?

We don't think so.

The core premise of the EAV, and others like it, is the implication that **all the money from wage cuts will be used to save jobs**. However there are simply no enforceable guarantees of this.

Nor is anything in the EAV which actually guarantees that all other savings measures "must" happen before job losses. As we explain in detail in the document [Fighting back against job cuts](#) on the [NTEU Fightback website](#), the only requirement is that management gives a statement to an "Expert Assessment Panel" to "indicate the number of jobs preserved" by measures such as cutting pay.

However, it's important to pay attention to the exact wording here. There is no requirement (or mechanism) for the Expert Assessment Panel to *ensure* that all money from cost savings such as pay cuts will be devoted to preserving jobs. Nor does the EAV give the Panel the capacity to check whether a specific number of jobs are saved after the pay cuts are implemented, or to force management to comply with their estimate of the "jobs preserved".

Besides, if management was really devoted to the cause of saving jobs, they would insist on clauses in their proposed EAVs which would bind them to that. Yet this is simply not the case.

Management [has admitted that jobs will be lost](#) regardless, while being incredibly vague about what the cash saved from our salaries will actually be used for:

The variation would allow the University to implement redundancies during its operation. We cannot rule out that redundancies may be required to effect changes in specific parts of the University as they are now. However, implementing these cost saving measures would allow the University to increase its cash flow so that it can make strategic changes that would work towards securing the University's future.

This phrasing indicates that the university is seeking to restructure, and they want to increase cash flow by cutting our salaries to implement restructuring and the subsequent redundancies.

The EAV is ultimately set up to make it easier to make people redundant.

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

For the duration of Schedule C, the University will not implement Involuntary Redundancies as a generalised cost-cutting measure if it is not connected to a reduction in work.

However in practice this is 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”.

The NTEU’s national leadership has talked up the distinction between the use of the word “work” rather than “job” in the EAV redundancy clause. As we explain in the detailed document on redundancy on our [website](#), this distinction might be useful in some circumstances. But it offers no extra protection in the current situation of managements making deep cuts in the work carried out in courses and administrative areas.

Similarly, the protections around redeployment offer no advance on existing EA rights, especially in the current circumstances where opportunities for redeployment will be very limited.

Forced redundancies are explicitly permitted. Either the abolition of a work area, or a “permanent insufficiency of work in a particular work unit or function”, can trigger redundancies - including forced redundancies - under clauses 28.4 and 28.5.

Where there is an “insufficiency of work in a particular work unit” (and not where there is 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 wide scope to pick less expensive staff to sack, rather than the long term workers approaching retirement who might be most interested in a VSP.

This is one of several “job protection” measures which look fine on the surface, but lack substance when examined closely.

The main clause in the variation supposedly guarantees 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 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.

The main problem here (apart from being reliant on work continuing, with no enforceable guarantee of that), is the phrase “reasonable expectation”. Management practices mean that a “reasonable

expectation” of ongoing work is almost impossible to prove, which therefore makes the whole clause useless. We have further detail on this in our document *Fighting back against job cuts*.

The benefits to casuals are further undermined by clause 4.2, which states that work can be taken from casuals and given to ongoing staff. And 4.6 reminds us that, subject to these incredibly weak provisions, “nothing in clause 4 of Schedule C [the EAV] prevents the University from making staff allocation and selection decisions.”

Clause 3 on **stand down** also looks good at first sight:

The purpose of this clause is to ensure Employees who might otherwise be stood down without pay continue to receive a salary.

There is a guarantee of **no stand downs without pay** for Covid-19 related stand downs. Unfortunately, the following subsections set out a wide range of exceptions to this general rule. In particular, the University retains the power to stand down employees ‘due to a stoppage of work for any cause for which the University cannot reasonably be held responsible’. Since these measures are being proposed *precisely because* of extraordinary events allegedly impacting the work of the University beyond its control (the pandemic), there can be legitimate doubts as to how effective (if at all) this protection will be. The use of the word ‘reasonably’ provides further latitude for the University’s discretion in this area.

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 very few documented cases of stand downs in Australian universities during the current crisis. 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 one important exception to this has been in the English language colleges, often operated by private providers but affiliated with universities. So it is one of the few genuine positives of the whole package that ELICOS staff are considered.

The benefits of this are limited, however, by the fact that the assurances over stand downs for ELICOS staff are confined to the Memorandum of Understanding (clause 6) rather than the EAV. MOUs are difficult if not impossible to enforce in any court. This is exactly why unions always prefer to have workers’ entitlements guaranteed in legally enforceable enterprise agreements.

So it is troubling that there is no mention of a single-clause variation being inserted into the University of Western Australia ELICOS Teachers Agreement 2018, to rule out stand downs without pay.

4. A temporary change?

The EAV is scheduled to run until 30 June 2021. However the crisis which is being used as justification for these attacks 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 the new normal.

30 June 2021 is also the nominal expiry date for our enterprise agreements, so we will be starting bargaining from behind. "There is nothing as permanent as a 'temporary' measure" is a popular saying in Greece, which has endured a decade of austerity following the 2008-2009 financial crisis.

The interim VC has admitted that the recovery for UWA will take at least three years, but likely five years. How will a temporary salary cut be enough, then, to save UWA if we need five years to recover?

5. Major blow to consultation and dispute resolution mechanisms

One of the most significant attacks contained in EAVs based on the National Framework is the gutting of the major change and disputes clauses in existing enterprise agreements.

Consultation and change management clauses provide a measure of protection for staff: they can be used 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, it can be dragged through a lengthy Fair Work process. This allows time which can be, and often is, used by staff to kick up a fuss, go public about the change, unionise their 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 complained about these clauses long and loud. In February this year 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 EAV at UWA, along with similar variations, effectively gut these important clauses for however long the variation is in force. The variations are meant to be time limited. However the restructures which management will be able to push through in this time will definitely not "snap back", if and when the variation ends.

Clause 26 of the proposed EAV supplants the existing change management clauses in the UWA EA (clause 36 in the Academic EA, clause 55 in the Professional EA). While the existing clauses are far from the strongest change clause in the industry (Sydney Uni probably takes that award), they at least provide for a two step process where management is required to consult before proceeding with the change – with a minimum timeframe of two weeks for workers to consider their response – and then consult again on the impact of the change. Any perceived breach of consultation obligations is subject to dispute, which can go to Fair Work and in some circumstances beyond, to the Federal Court.

All of this would be scrapped for the duration of the proposed variation. Instead, 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.

There is no set form or timeframe for consultation under clause 26 of the EAV. 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 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, of course, is also skewed towards the employer – but it at least has well established rules and procedures and an appeal mechanism to a Full Bench or even Federal Court. As noted above, these lengthy processes are sometimes exactly the time needed to organise workers and apply pressure to management at a local level, much to the distress of the employer body.

It is crucial to understand that doing away with the jurisdiction of the Fair Work Commission is an unprecedented attack on procedural guarantees against the impact on employment of Change Management, with potential serious implications for the freedom of speech and academic freedom of UWA employees. It also constitutes an extremely dangerous precedent.

It is also worth noting that the CTMC is cannot deal with disputes about "which cost-saving measures the University may implement." This is determined at a national level by the Expert Assessment Panel.

To sum up: 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 UWA should reject.

6. Covid 19 entitlements (EAV part C - clause 7)

This section includes initiatives such as two weeks paid leave for Covid-19 diagnosis or self-isolation; five days additional domestic and family violence leave; a commitment for the University to “take into account” the pandemic when undertaking performance evaluations, and so on.

However, many of these measures are already in place, without the need to offer wage cuts and other concessions. The [annotated clauses](#) on the AHEIA website comments: “This clause reflects provisions that Universities are already implementing.”

For instance, two weeks paid pandemic leave (available to casuals as well as fixed term and ongoing staff) was [announced](#) by the Vice Chancellor on March 20.

Other measures sound fine but are simply unenforceable.

For instance clause 9.1, the one mention of Indigenous staff, looks fine on the surface:

9.1 Recognising the higher risk of COVID-19 faced by various groups of Employees, the University will, wherever possible, grant periods of working from home beyond those mandated. For this purpose such Employees include:

- (a) Aboriginal and Torres Strait Islander Employees; and*
- (b) other Employees in high risk groups (such as defined by Australian Government Department of Health).*

However the words “wherever possible” give management a giant loophole in the working from home provisions. The [annotated version](#) on the AHEIA website confirms that this is a weak clause. A note next to the clause states:

This has a “wherever possible” rider; there is also no mandated longer period specified.

In summary, many of the decent measures outlined in this section of the EAV are either unenforceable, or already granted in policy, and in either case not a justification for dramatic wage cuts and other concessions.

7. Changes in Duties

EAV Clause 15 relevantly fails to identify:

- Any limits to the number of times they 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 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.

8. Charts showing percentage wage cuts

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, a 10% pay cut on gross salary translates into a bigger percentage loss of net income for workers on lower salaries.

Here are a spreadsheet and a series of graphs that explain this:

General Staff Salaries

Level	Annual Salary	Total Annual Cut	Fortnightly Cut
1	\$50,562	\$4,949.47	\$190.36
2	\$54,114	\$5,297.17	\$203.74
3	\$56,909	\$5,570.77	\$214.26
4	\$65,588	\$6,420.35	\$246.94
5	\$70,693	\$6,920.07	\$266.16
6	\$80,902	\$7,919.42	\$304.59

Academic Staff Salaries

Level	Annual Salary	Total Annual Cut	Fortnightly Cut
A	\$70,936	\$6,943.86	\$267.07
B	\$100,374	\$9,825.52	\$377.90
C	\$122,456	\$11,987.11	\$461.04
D	\$146,992	\$14,138.19	\$543.78

**UWA Staff have suffered enough.
VOTE NO**

The graph below shows that the percentage cut in gross pay declines above \$130,000, as a result of leave loading being capped at \$65.6364/hr.

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

<https://www.ato.gov.au/rates/individual-income-tax-rates/>

