

**Proposed variation to the Monash University Enterprise Agreement (Academic and Professional Staff) 2019**

**Version Dated 09 June 2020**

The Monash University Enterprise Agreement (Academic and Professional Staff) 2019 is varied as follows:

**1. Amending clause 2 - Arrangement**

Adding reference to Part M, clause 89 and Schedule 6 to the arrangement clause.

**2. Adding a new Part M and clause 89 - National Jobs Protection Framework stating:**

**PART M - National Jobs Protection Framework**

89. National Jobs Protection Framework

89.1 This Agreement includes a new Schedule 6 - The COVID-19 Schedule as part of implementing the National Jobs Protection Framework.

**3. Adding a new Schedule 6 in the terms attached:**

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## SCHEDULE 6 – THE COVID-19 SCHEDULE

### PART 1: INTRODUCTION AND OPERATIVE PARTS

#### 1. Purpose and aim

- 1.1 The purpose of this Schedule is to give effect to the National Jobs Protection Framework for the University, its academic and professional staff and NTEU to respond to the impact of COVID-19. The Framework recognises that:
- 1.1.1 on 11 March 2020, the World Health Organisation declared a global pandemic arising from the spread of the COVID-19 coronavirus.
  - 1.1.2 as a result of that pandemic, many public health measures have been adopted by governments, including travel bans and limiting physical interaction.
  - 1.1.3 the response to the impact of COVID-19 in some ways will be short-term and others long-term;
  - 1.1.4 the University has suffered a significant financial detriment as a result of the impact of COVID-19;
  - 1.1.5 all staff are integral to the delivery of the University's goals; and
  - 1.1.6 special provisions are needed for maintaining employment of staff members affected by the impact of COVID-19.
  - 1.1.7 this Schedule is to be read in conjunction with the terms of the Memorandum of Understanding between the University and NTEU dated 22 June 2020 (but the Memorandum of Understanding is not incorporated into this Schedule).
- 1.2 This Schedule contains a number of temporary changes to some Agreement provisions to lessen the number of job losses that would otherwise occur as a result of the significant financial impact of the impact of COVID-19 on the University.

#### 2. Operative parts

- 2.1 This Schedule will take effect from the date specified in the decision by the Fair Work Commission to approve this Schedule as a variation of the Agreement.
- 2.2 The terms of this Schedule will cease to operate on 30 June 2021 unless extended or foreshortened in whole or in part by agreement in writing of the University and NTEU. No such extension can apply beyond 31 December 2021.
- 2.3 Any such agreed extension(s) or foreshortening(s) shall be notified in writing to staff and to the Fair Work Commission within seven (7) days of that agreement being reached.
- 2.4 This Schedule does not alter the nominal expiry date of the Agreement.
- 2.5 The terms of this Schedule prevail over the terms of the remainder of the Agreement, but only to the extent of any inconsistency.
- 2.6 A staff member who accepted a reduced fraction or salary on a temporary basis after 11 March 2020 but before the commencement of this Schedule, shall be deemed to have accepted such a reduction pursuant to the terms of this Schedule and shall have the entitlements attached thereto.

- 2.7 The Agreement will be read and interpreted in conjunction with the National Employment Standards (**NES**). Where there is an inconsistency between the Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

Restorations upon expiry of this Schedule

- 2.8 Upon the expiry of this Schedule, all rates of pay and fractions will be restored prospectively, and service shall be calculated, as if this Schedule and measures taken under it never had effect. A staff member whose job role or duties has changed as a result of the operation of this Schedule will return to perform the duties or job role they held prior to this Schedule coming into effect, unless the job is abolished in accordance with the terms of this Schedule. For the avoidance of doubt, a reference to rates of pay includes any incremental advancement and salary increases consequent upon promotion or reclassification that a staff member would have been entitled to had this Schedule never come into effect.

Application

- 2.9 In giving effect to this Schedule 6, the cost savings provisions in Schedule 6 apply to all staff members covered by the Agreement and subject to this clause, this includes;
- 2.9.1 staff members employed on performance-based contracts under clause 15 of the body of the Agreement (or predecessor enterprise agreement); and
- 2.9.2 staff members to whom any entitlements preserved under clause 32 of the body of the Agreement apply.
- 2.10 For the period that this Schedule 6 is in operation, the Agreement will apply to Eligible Senior Management Team Staff. Such staff are employed, or will otherwise be taken to be employed, under performance-based contracts under clause 15 of the body of the Agreement.
- 2.11 In respect of staff members employed on performance-based contracts:
- 2.11.1 the salary reductions in Part 5 only apply in respect of staff who are members of the University's Senior Management Team earning above the amount stated in the relevant clauses (and excluding members of the Senior Management Team who have agreed to a greater salary reduction);
- 2.11.2 any future salary increases will continue to be in accordance with the provisions of their performance-based contract and general salary increases under the Agreement continue not to apply to them; and
- 2.11.3 provisions in respect of redeployment, redundancy, discipline, unsatisfactory performance, research misconduct, performance-management, salary packaging, grievances, overtime/TOIL, and termination of employment, will continue to be in accordance with the provisions of their performance based contract rather than this Agreement.
- 2.12 A notice/direction under this Schedule will prevail over any provision in a staff member's employment contract. Where the University gives notice of a measure to a staff member in accordance with clauses in Parts, 4, 5 and/or 6 of this Schedule, the notice will apply to the staff member's employment and have the effect stated in this Schedule and bind the staff member and the University. The notice and its effect apply notwithstanding any provisions in an employment contract that may otherwise have obliged the University to maintain the staff member's terms and conditions (including any higher contractual salary entitlements) that applied at the time the notice is given.

### **3. Stand down**

- 3.1 The purpose of this clause is to ensure staff members who might otherwise be stood down without pay as a result of COVID -19 are not stood down. It does not limit stand down under clause 3.2 for causes that are unrelated to COVID-19, where a staff member could have been stood down under the FW Act.
- 3.2 Where a staff member cannot usefully be employed due to a stoppage of work for any cause for which the University cannot reasonably be held responsible, the University may stand the staff member down (i.e. where a staff member could have been stood down under the FW Act), but only if that cause is not related to or arising from COVID-19.
- 3.3 The University does not intend to exercise any right to stand down a staff member for any cause related to or arising from COVID-19. If circumstances exist such that a staff member could be stood down under the FW Act because of a reason related to or arising from COVID-19, any such stand down would require prior agreement of NTEU and the relevant staff member.

### **4. Allocation of work**

- 4.1 This clause governs only:
- 4.1.1 the allocation of work to retain casual staff members and the allocation of positions to retain fixed-term staff members in employment; and
  - 4.1.2 the order of preference to be given in the temporary reassignment of duties to different categories of staff members;
- and does not govern the selection process for a vacant continuing position.
- 4.2 Where there is no work or insufficient work available for a continuing or fixed-term staff member, the University will seek to identify other work for that staff member to perform. Within this process, available work will be assigned first with a view to preventing compulsory redundancy. This allocation of work for this purpose shall take precedence over the allocations described in clauses 4.3 to 4.6.
- 4.3 Where there is work required to be performed and that work was usually performed by a casual staff member who had been regularly employed by the University and the staff member had a reasonable expectation that they would continue to be employed by the University, then the casual staff member will continue to be engaged to perform that work. Where such a casual staff member suffers a reduction in casual work or has no work as a result of the impact of COVID-19, the staff member will have first order of preference to resume that work upon it becoming available again.
- 4.4 Where there is work required to be performed and that work was usually performed by a fixed-term staff member, and the staff member was not subject to any formal disciplinary procedures, the staff member shall be offered a new contract if their contract comes to an end. Where a fixed-term staff member is not offered a further contract as a result of the impact of COVID-19, and the staff member was not subject to any formal disciplinary procedures, the staff member will have first order of preference to be offered a further fixed-term contract upon that work becoming available again.
- 4.5 For the purposes of this clause, a casual staff member includes a person who has lost employment due to the impact of COVID-19 and includes persons who had a reasonable expectation of casual employment in the second half of 2020.
- 4.6 Subject to clauses 4.2 to 4.5 nothing in clause 4 prevents the University from making staff allocation and selection decisions.

- 4.7 Allocation of work under this provision will not of itself change the staff member's employment status (for example, will not change from continuing to fixed-term or casual, or from fixed-term to casual).

## **5. Redeployees**

- 5.1 In the filling of vacancies, redeployees have first preference, and then all other staff members (including casuals) are to be considered according to the University's existing merit-based selection procedures.

## **6. No new external appointments**

- 6.1 No external appointment will be made whilst this Schedule is in effect except as follows:

6.1.1 professorial appointments; or

6.1.2 bona fide circumstances where the receipt of a grant from an external source which substantially covers the employment is dependent on the identity of the occupant of the position to be filled; or

6.1.3 special circumstances where a job requires skills or attributes that are not available within the existing workforce (including where no one in the existing workforce who has those skills or attributes is available or willing to apply for the role). Each such proposed appointment shall be reported to the CTMC; or

6.1.4 a person who, prior to the commencement of this Schedule, had received an offer of employment during 2020; or

6.1.5 a person referred to in clause 4.

- 6.2 To avoid doubt, the limitations on external appointments referred to in this clause relate to staff members and employment of staff members by the University, whether or not that employment is covered by this Agreement.

## **PART 3: SPECIAL COVID-19 ENTITLEMENTS**

### **7. COVID-19 leave**

- 7.1 A staff member who has a certified diagnosis of COVID-19 and who is not fit for work shall have access to two weeks' paid leave to cover a period of any consequent illness, to be known as COVID-19 leave. This leave shall not reduce other leave entitlements.

- 7.2 A staff member, other than a staff member described in clause 7.1, will be entitled to up to two weeks' paid leave (without deduction from other leave credits) if:

7.2.1 they are required to isolate on medical advice or on the advice of public health authorities; or

7.2.2 where in order to perform caring duties for a person for whom carers' leave applies is required to isolate on medical advice or the advice of health authorities; and

7.2.3 because of those circumstances is not reasonably able to perform all of their duties or hours.

- 7.3 This entitlement shall be subject to the provision of reasonable evidence.

- 7.4 The entitlements under clauses 7.1 and 7.2 shall also be extended to casual staff members as paid leave (meaning payment for the work/hours which would have been performed other than for the leave) on the same basis as staff members entitled to personal leave.

7.5 To avoid doubt, these provisions do not operate to reduce any other leave entitlement under the Agreement.

## **8. Family Violence protections**

8.1 The parties recognise that the impact of COVID-19 has created particular problems for staff members experiencing family violence.

8.2 Staff members who experience family violence during the operation of this Schedule will be entitled to 5 days' paid family violence leave, such leave is in addition to the entitlements contained in clause 51 of the body of the Agreement.

## **9. Staff members at higher risk**

9.1 Recognising the higher risk of COVID-19 faced by various groups of staff members, the University will wherever possible facilitate periods of working from home beyond those mandated for this purpose for:

9.1.1 Aboriginal and Torres Strait Islander staff; and

9.1.2 other staff members in high risk groups (such as defined by the Australian Government Department of Health).

9.2 In doing so, the University may ask for appropriate evidence from a registered health professional, in the case of clause 9.1.2.

## **10. Staff performance evaluation**

10.1 The University will take into account the impact of COVID-19 on the working environment and personal lives of all staff members when undertaking any performance evaluation, or managing performance of any staff member.

## **11. Probationary staff members**

11.1 Probation targets will, where necessary, be adjusted to reflect any disruption caused by the impact of COVID-19. This can be initiated by either the staff member or the University. Any changes to targets must be agreed to by the staff member.

## **12. Recovery of expenses**

12.1 Where the staff member has incurred costs to enable the staff member to perform their job role in response to the impact of COVID-19, the University will reimburse the staff member the full amount of the costs. This does not apply where the costs are unreasonable, unrelated to performing the staff member's job or would have been incurred by the staff member regardless of their role with the University.

12.2 The staff member should make reasonable attempts to obtain any necessary equipment from the University, or University approval prior to incurring any expenditure on work-related items. Approval will not be unreasonably refused.

## **13. Superannuation**

13.1 Where any measure in this Schedule would result in a reduction in employer superannuation contributions than would otherwise be paid to the staff member if the Schedule was not in effect, the University will continue to make contributions as if the Schedule had never come into operation.

13.2 Where a staff member's salary would have increased but does not because of the operation of deferral of a pay rise and/or service-related incremental pay increase within a classification,

under clause 21 of this Schedule or deferral of promotion or reclassification under clause 23, the University will pay employer superannuation contributions in respect of those deferred salary amounts, notwithstanding the deferral.

- 13.3 Subject to the Rules of the superannuation fund, a staff member who is a member of a defined benefit scheme will continue to make contributions in alignment with the contributions made by the University.

#### **PART 4: CHANGES TO CONDITIONS**

##### **14. Introduction**

- 14.1 This Part allows the University, where the circumstances in the clause are met, to change the specified employment conditions, but only to the extent provided by the clause.

##### **15. Change to duties**

- 15.1 By giving two weeks' notice, the University may direct staff members to temporarily undertake duties outside the scope of their classification and position description or expectations, so long as the duties are within the staff member'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 staff member'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 a staff member shall not at any time be paid at a rate less than that which would apply to that work under the relevant Award.
- 15.3 The consultation and managing change provisions in this Schedule and in the body of the Agreement (including in clauses 13 and 74) do not apply to these temporary assignments.
- 15.4 Where practicable, work which would otherwise be paid as overtime should be allocated to another staff member in order to make up a shortfall in the load of the latter staff member.

##### Academic workload

- 15.5 The existing academic workload clauses in the Agreement continue to apply, subject to the following.
- 15.6 To the extent that a staff member is unable to perform their research or other duties due to the impact of COVID-19, the University may allocate alternative work (including additional teaching work) to the staff member in order to make up a full workload allocation. The overall workload cap in the Agreement will continue to apply, but this might include re-arranging the academic staff member's workload for the year.
- 15.7 A staff member whose fraction is reduced voluntarily in accordance with clause 16 will have a commensurate reduction in workload.
- 15.8 In addition to any procedural requirements contained in the Agreement, the University must discuss the alteration of the workload with sufficient time for the staff member to prepare for the change in workload allocation.
- 15.9 Any expectations in relation to research performance or output (as they relate to performance evaluation, or career progression, or promotion, or probation) must be adjusted to take account of any direction or reallocation made under this clause.

##### **16. Staff member initiated change to hours of work and leave**

- 16.1 A staff member who is working from home may apply for one or more of the following flexible working arrangements:

- 16.1.1 a change to their start and finish times to suit their personal and/or family circumstances (any such staff member initiated change will not attract overtime rates or shift penalties);
  - 16.1.2 a reduction in fraction; and/or
  - 16.1.3 purchase of extra leave with a consequent reduction in pay (e.g. under a 48/52 scheme).
- 16.2 Any request by the staff member for one of the above flexible working arrangements will not be unreasonably refused by the University. The University must provide a written response to an application for a flexible working arrangement under clause 16.1 within five (5) working days, unless otherwise agreed.
- 16.3 The University and the staff member will agree upon the end date of a flexible working arrangement, which may be beyond the expiry of this Schedule.
- 17. Agreed flexibility for commencement/finish time for professional staff**
- 17.1 The purpose of this clause is to assist staff by facilitating staggered commencement and finish times by agreement when working on campus. This will assist to manage capacity and minimise health risks associated with public transport and travelling on roads during peak times.
- 17.2 To help facilitate the safe return of staff members to working on campus, the University and a professional staff member (who is not a shift worker) may agree that the professional staff member may commence or finish work up to 2 hours before or up to two hours after their span of ordinary hours (but which will not extend beyond 8pm), Monday to Friday. This measure is subject to agreement and any occupational health and safety considerations. If such agreement is reached, the professional staff member will not be entitled to any overtime rates or shift penalties for the time worked prior to 8am or after 6pm under the agreement.
- 17.3 Any agreement reached under clause 17.2 will be in writing and will include the end date of the arrangement, which may be extended by agreement.
- 18. Impact on service**
- 18.1 A break in employment caused by the impact of COVID-19 shall not count as service for any purpose, but shall not constitute a break in service for any purpose.

## **PART 5: TEMPORARY CHANGES TO PAY**

### **19. Introduction**

- 19.1 This Part of this Schedule allows the University, where the circumstances in the clause are met, to defer salary and increment increases under the Agreement for all staff and, only in the case of Eligible Senior Management Team Staff, can direct a temporary reduction in salary.

### **20. Temporary reductions to salary and allowances**

- 20.1 If the University is declared to be in Category A under clause 30 and has not been notified under clause 30.6 that it no longer meets the Category A threshold, the University may implement any of the below to an amount equivalent to a maximum total of 10% of a staff member's salary in any given pay period:

- 20.1.1 deferral of the date of effect of pay rises and/or salary point increments (as outlined in clause 21);
- 20.1.2 temporary reduction in salary for Eligible Senior Management Team Staff, to a maximum of 5% of the salary above \$30,000 (as outlined in clause 22).



- 20.2 For the purpose of this Part, salary means salary and allowances or loadings (howsoever described) other than allowances that constitute a reimbursement of expenditure or are discretionary payments.
- 20.3 Any reduction in salary and allowances permitted by this Part is not subject to later retrospective payment for the period in which the reduction was in effect.
- 20.4 In calculating the reduced salary amounts, the comparator is against the salary of the given pay period the staff member would have received had this Schedule never come into effect.

## **21. Deferral of pay rises and incremental progression**

21.1 This clause applies to:

21.1.1 any increase in salary or rate of pay due to a staff member pursuant to a term of the Agreement setting salaries generally for staff members; and

21.1.2 any service-related incremental pay increase within a classification (howsoever called) due to a staff member pursuant to a term of the Agreement.

21.2 If the University is declared to be in Category A, then the University may defer the date of effect of any increases under clause 21.1 above for a period within the duration of this Schedule, until the expiry of this Schedule or the University is no longer in Category A and is notified of that under clause 30.6, whichever comes first.

21.3 This clause does not apply to casual staff members.

## **22. Temporary salary reductions**

22.1 This clause applies only to Eligible Senior Management Team Staff. Subject to the conditions set out in clause 20, the University may implement a temporary salary reduction in accordance with this clause. Any temporary salary reduction under this clause 22 may only be implemented during the period 1 January 2021 to 30 June 2021.

22.2 The University may implement, by giving two weeks' notice, if it is declared to be in Category A, a temporary reduction in pay in any given pay period, to a maximum of 5% of a Eligible Senior Management Team Staff member's salary, for which the first \$30,000 (per annum) shall be exempt.

22.3 For the purposes of clause 20.1, the \$30,000 exempt amount shall be disregarded. For example, if a 5% salary reduction is imposed in accordance with clause 22.2 it will be regarded as a 5% reduction for the purposes of clause 20.1 notwithstanding the 5% reduction doesn't apply to the \$30,000 exempt amount.

## **23. Promotion and reclassification deferral**

The date of effect for the increase in salary arising from a promotion or reclassification (at the staff member's initiative) shall be deferred and shall be the date no earlier than the day after this Schedule ceases to apply or the University is no longer in Category A and is notified of that under clause 30.6, whichever comes first. This clause only applies to promotions and reclassifications arising from applications made after the commencement of this Schedule.

## **24. Extreme hardship**

24.1 The University must allow for individual exceptional circumstances of extreme hardship.

24.2 Where a staff member would experience extreme hardship in individual exceptional circumstances as a result of the application of clauses 21 or 22 they may make an application to the Chief Human Resources Officer or a nominee.

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

## **PART 6: DIRECTIONS TO TAKE LEAVE**

### **25. Annual leave**

- 25.1 The University may direct a staff member to take annual leave on two weeks' notice, but only in accordance with this clause, and if the direction is reasonable in all the circumstances.
- 25.2 The staff member is entitled to retain a minimum 10 days balance, unless the Agreement allows for a lower minimum balance to remain.
- 25.3 The leave must be taken at a time that is agreed, but within two months of the direction.
- 25.4 Leave will not be directed to be taken at a time when the staff member otherwise has unavoidable work obligations (e.g. grant applications).
- 25.5 Where leave is directed to be taken, the leave must be accounted for in workload that has been allocated, and performance expectations.
- 25.6 By agreement with the University, a staff member may choose to take an extended period of annual leave at a commensurately lower rate of pay (e.g. 20 days leave at half-pay, instead of 10 days leave at full-pay).
- 25.7 Clauses 40.3 and 40.5 in the body of the Agreement continue to operate but apply separately to the provisions under this clause 25.

## **PART 7: CHANGE MANAGEMENT**

### **26. Change management**

- 26.1 This clause does not apply to the temporary reassignment of duties under clause 15 or stand downs under clause 3 or change management processes commenced in accordance with the Agreement prior to the commencement of this Schedule. Any change management process commenced in accordance with the Agreement prior to the commencement of this Schedule and implementation of the actions and measures identified in that change process will continue to be governed solely by the clauses in the body of the Agreement and not by this Schedule.
- 26.2 Where a workplace change is proposed by the University, the CTMC will consider any proposed change and within five (5) working days, attempt to agree to a timeframe and process to consult with affected staff members about the change.
- 26.3 In coming to agreement, the CTMC will take into account:
- 26.3.1 any urgency created by the impact of COVID-19; and
  - 26.3.2 the scale of the change (including, without limitation, the number and nature of staff members who will be affected by the change, the level to which the affected staff members 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 the Arbitrator in accordance with the dispute settling clause 29.17.

- 26.5 Any consultation process determined under clause 26.2 or 26.4 above must involve the University providing information to the staff members and NTEU about the change, and invite the staff members to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities) and the University must consider any views given by the staff members about the impact of the change. An affected staff member must be able to appoint a representative for the purpose of the consultation. For a change to the staff member's regular roster or ordinary hours of work, the Agreement term will apply.

## **PART 8: TERMINATION OF EMPLOYMENT**

### **27. Termination pay**

- 27.1 Upon termination of employment for any reason whatsoever (whether during the operation of this Schedule or beyond its expiry), the staff member's final pay will be calculated as if this Schedule and any measures taken under it never had any effect (other than leave taken).

### **28. Redundancy**

- 28.1 During the life of this Schedule there will be no involuntary redundancies as a generalised cost-cutting measure which are not connected to a reduction in work.
- 28.2 Redundancies may only be made in accordance with this clause. Before any redundancy, consultation as contained in clause 26 must occur.

#### When a redundancy may occur

- 28.3 The University may only make staff members involuntarily redundant in the following circumstances:
- 28.3.1 where the redundancy is due to the permanent abolition of a substantial work function (such as the abolition of a discipline) or closure of a campus, in accordance with clause 28.4 which results in the work no longer being required to be performed by anyone; or
- 28.3.2 where the redundancy is due to an insufficiency of work in a particular work unit or function and there is a surplus of staff members, in accordance with clause 28.5.

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

- 28.4 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 a staff member involuntarily redundant where:
- 28.4.1 the staff member's work is no longer required to be performed by anyone;
- 28.4.2 the University has sought to redeploy the staff member. In exploring redeployment, the University will ensure the staff member is made aware of all relevant vacancies and redeploy them to any position (at or one level below the staff member's substantive level) in the University that is appropriate to the skills and competencies of the staff member or which the staff member could perform at a satisfactory level within a reasonable time with appropriate training and support, provided that a staff member shall not be required to accept redeployment to a lower classification level. 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;
- 28.4.3 the University has explored with the staff member other measures that may be taken to avoid termination; and

28.4.4 the University must report the actions it has taken under this clause to the CTMC prior to issuing a notice of termination.

Redundancy where there is a permanent insufficiency of work in a particular work unit or function and there is a surplus of staff members

28.5 Where there is a permanent insufficiency of work in a particular work unit or function and there is a surplus of staff members, the University must only make a staff member involuntarily redundant where it has:

28.5.1 identified the number of surplus staff members;

28.5.2 offered a voluntary redundancy to all affected staff members. The University must allow all those who volunteer to separate, unless the staff member 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 people volunteering than the identified surplus (in which case then clause 28.5.3 will apply);

28.5.3 adopted fair and objective criteria for selection for redundancy where the University is required to select staff members for involuntary redundancy, either as a result of too few people volunteering or too many people volunteering;

28.5.4 sought to redeploy the staff member. In exploring redeployment, the University will ensure the staff member is made aware of all relevant vacancies and redeploy them to any position (at or one level below the staff member's substantive level) in the University that is appropriate to the skills and competencies of the staff member or which the staff member could perform at a satisfactory level within a reasonable time with appropriate training and support, provided that a staff member shall not be required to accept redeployment to a lower classification level. 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;

28.5.5 explored with the staff member other measures that may be taken to avoid termination; and

28.5.6 reported the actions it has taken under this clause to the CTMC prior to issuing a notice of termination.

28.5.7 Nothing in clause 28.5 shall prevent multiple units or functions being dealt with simultaneously.

Voluntary separation packages

28.6 At any time during the life of this Schedule, the University may make a general call for voluntary separations across the entire University or a substantial part based on occupation or organisational structure, or an early retirement scheme.

28.7 The University must allow all those continuing staff members who volunteer to separate, unless the staff member has particular skills and/or experience such that they are essential to the operation of the particular work unit or function and will make a voluntary redundancy and long service leave payment as follows:

28.7.1 for continuing academic staff members to whom clause 53 of the Agreement applies, a voluntary separation payment equal to the redundancy payment calculated in accordance with Table G of clause 53.6 of the Agreement; and

28.7.2 for continuing professional staff members to whom clause 55 of the Agreement applies, a voluntary separation payment equal to the redundancy payment calculated in accordance with clauses 55.7, 55.11, 55.12 and 55.13 of the Agreement.

#### Redundancy pay

28.8 Whilst this clause 28 of the Schedule sets out the circumstances and processes in which redundancies can occur, to the exclusion of the applicable clauses in the Agreement (being clauses 53-56), this Schedule does not affect redundancy or like payments, or provisions relating to notice periods as governed by the Agreement. Accordingly, the amount of any redundancy payment, notice period, and long service leave entitlement for continuing staff members will be as follows:

28.8.1 for continuing academic staff members: as set out in clause 53.6 (Table G) or clause 53.15 (Table H) of the Agreement, as applicable; and

28.8.2 for continuing professional staff members: as set out in clauses 55.7 and 55.11-55.13 of the Agreement, as applicable.

### **PART 9: COMMITTEES**

#### **29. COVID-19 Temporary Measures Committee**

29.1 This clause establishes the COVID-19 Temporary Measures Committee (the **CTMC**).

29.2 The CTMC shall consist of three nominees of the University and three nominees of NTEU.

29.3 The CTMC will meet as often as necessary to fulfil its functions as assigned in this Schedule.

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

29.4.1 be provided with information relevant to the operation of this Schedule;

29.4.2 oversee the implementation of this Schedule;

29.4.3 carry out its functions in relation to change proposals in accordance with clause 26;

29.4.4 deal with any dispute over a term of this Schedule or the application of this Schedule, in accordance with clauses 29.13 to 29.16.

29.5 The CTMC is not empowered to deal with disputes about matters dealt with in Part 10 or which cost-saving measures the University may implement.

29.6 Nominees may be changed by providing written notice to the other members of the CTMC.

#### Information

29.7 There must be full information-sharing about matters relevant to the application of this Schedule (itself subject to arbitration), including any dispute about confidentiality. Where it is agreed (or arbitrated) that information is to be provided on a confidential basis, those confidences must be respected.

#### Agreement of the CTMC

29.8 An agreement of the CTMC is deemed to have been made on a majority view.

#### NTEU nominees

- 29.9 NTEU nominees on the CTMC who are University staff members will have reasonable time release during working hours to carry out duties in relation to the implementation of this Schedule.
- 29.10 NTEU delegates will be allowed reasonable time during working hours to assist NTEU nominees in carrying out the role of the CTMC.

#### Communication

- 29.11 In addition to holding meetings with staff members, members of the CTMC may consult by Email List with staff members in an area affected by the implementation of measures provided by this Schedule. This consultation can occur by use of an Email List that is to be used solely for the purpose of ensuring that the terms of this Schedule are operating as intended.
- 29.12 Staff members shall be entitled to be consulted during work times subject to specific operational requirements (e.g. lecture times), including by virtual/online meetings and other forms of workplace consultation.

#### Disputes

- 29.13 This clause governs:

29.13.1 any dispute in relation to a matter arising under this Schedule or in relation to the National Employment Standards as they relate to the operation of this Schedule;

29.13.2 a dispute about whether a dispute is about a matter arising under this Schedule.

- 29.14 These procedures shall apply to any dispute raised by a staff member, the NTEU or the University to which the University is a party.

For the avoidance of doubt, the dispute resolution procedure at clause 12 in the body of the Agreement shall not apply to a matter arising under this Schedule or in relation to the National Employment Standards as they apply to a matter governed by this Schedule.

- 29.15 Any dispute shall first be considered by the CTMC. The CTMC will attempt in good faith to resolve the dispute by attempting to achieve agreement. If the dispute is not resolved by the CTMC within 5 working days, the dispute may be referred by either party to an Arbitrator for resolution.
- 29.16 A staff member may appoint a Representative for the purpose of this dispute settling procedure.

#### Arbitration

- 29.17 Wherever this Schedule refers to a matter being arbitrated, it shall be arbitrated in accordance with clause 29.18 to 29.24.
- 29.18 By the commencement of this Schedule or soon after, the General Secretary of NTEU and the University shall agree on the members of an Arbitration Panel. Members of the Arbitration Panel must be independent of the University, staff members and NTEU. The reasonable cost of the Arbitrator in each case shall be met by the University.
- 29.19 The Arbitrator shall be nominated from the Arbitration Panel, with the University and NTEU alternating nomination of the Arbitrator.
- 29.20 The dispute will be arbitrated in one of the following ways:

- 29.20.1 with agreement of the parties, an informal conference with the parties agreeing in advance to accept a recommendation of the Arbitrator; or
- 29.20.2 with the agreement of the parties, by final offer arbitration; or
- 29.20.3 by hearing.
- 29.21 Where the dispute is to be heard, the following apply:
- 29.21.1 the Arbitrator will decide all matters as quickly as possible having regard to equity, good conscience and the substantial merits of the case;
- 29.21.2 the Arbitrator shall determine a fair and efficient procedure, ensuring procedural fairness (which may include production of information), having regard to clause 29.22;
- 29.21.3 the CTMC may agree such other powers and procedures as may be necessary.
- 29.22 The dispute will be arbitrated within 5 working days of the referral to the Arbitrator (or such longer period if agreed by the parties to the dispute).
- 29.23 No person bound by the Agreement shall knowingly give false or misleading information or evidence to the Arbitrator.
- 29.24 Arbitration proceedings shall be conducted in public or private as determined by the Arbitrator. Arbitration decisions will be published. Brief reasons for decision shall be given, but not necessarily at the same time as giving the decision. The Arbitrator's published decision must not include commercial in confidence or confidential material, or the personal or health information of any person without that person's prior consent.
- 30. Expert Assessment Panel**
- 30.1 Before accessing any cost-saving measures in Parts 4, 5 and 6 of this Schedule available to the University in Category A, the University must satisfy the Expert Assessment Panel (**EAP**) that the relevant Category threshold referred to in Part 10 of this Schedule has been met, including by providing relevant internally-certified financial information and enrolment data. In making its submission to the EAP, the University will also demonstrate how the cost saving measures selected by the University are proportional to the financial impact and are necessary to avoid or minimise loss of job opportunities. The statement will indicate whether the University has identified and implemented other reasonable cost-saving measures and indicate the number of jobs preserved as a result. The cost saving measures to be considered by the University will be:
- 30.1.1 a cut in senior executive salaries higher than that borne by staff members;
- 30.1.2 reduction in capital works;
- 30.1.3 reduction in travel;
- 30.1.4 debt capabilities;
- 30.1.5 drawing on cash reserves;
- 30.1.6 drawing on investments.
- 30.2 The EAP consists of two nominees of AHEIA, two nominees of NTEU and an agreed independent Chair. As far as practicable, the nominees will remain the same throughout the

term of this Schedule to ensure consistency for all participating universities. The members are nominees not representatives, given the function is to determine a question of fact.

- 30.3 The EAP will appoint an independent accountant to verify the figures provided and the methodology used to calculate them.
- 30.4 The role of the EAP is to consider the University submission and determine whether a Category threshold has been met. The EAP will act quickly and provide a draft decision to the University for comment before confirming a decision which will be final.
- 30.5 The EAP's final report will be provided to the University and the NTEU and will outline whether the University has met the criteria for Category A, the measures in Part 5 of this Schedule that the University has indicated it intends to use, and the extent to which these measures are likely to protect jobs.
- 30.6 The EAP will conduct a review six monthly at the initiative of the University or the NTEU to determine whether the relevant Category threshold continues to be met, or at any other time if there is an extraordinary change to the University's financial situation. If the EAP determines that the University no longer meets the category threshold previously determined, the EAP will give reasonable notice to the University that it is not eligible to access the particular costs savings measures attaching to the category prospectively.
- 30.7 For the avoidance of doubt, the EAP cannot direct or require the University to adopt or not adopt any cost saving measure, either under this Schedule or otherwise.
- 30.8 All information provided by the University to the EAP is provided on a commercial in confidence basis.

## **PART 10: DETERMINING THRESHOLDS**

### **31. Introduction**

- 31.1 The University may access the cost-saving measures contained in Parts, 4, 5 and 6 once the University has demonstrated to the EAP that it has met the threshold of the Category defined below.

### **32. Categories**

- 32.1 The University is in Category A if the following metrics are met:
- 32.1.1 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
- 32.1.2 it has a core operating cash flow margin of greater than 3.0% and less than or equal to 6.0%; or
- 32.1.3 it meets one of the following metrics:
- 32.1.3.1 it can demonstrate a forecast reduction in total revenue of 10.0% or greater (measured over a 12-month period against 2019 actuals);  
or
- 32.1.3.2 it has a core operating cash flow margin of 3.0% or less.
- 32.2 For the purpose of this clause, the % 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.



- 32.3 For the purpose of this clause, Core Operating Cash Flow Margin = Core Operating Cash Flow [1][2][3] / Revenue excluding non-core and non-cash revenue items [4][5]

Core Operating Cash Flow Margin Notes

[1] Core operating cash flow = Operating result excluding non-core items [2] + Depreciation + Interest/finance costs + Other non-cash items [3]

[2] Examples of non-core items to be excluded from operating result are capital grants, impact of significant one-off items.

[3] Examples of non-cash items to be excluded from operating result are unrealised gains/losses in investments, leave provisions, gain/loss on disposal of assets. If any non-cash item has already been excluded from the operating result as a non-core item [2], do not exclude it here again (to prevent double counting).

[4] Example of non-core items reported in revenue and to be excluded from revenue is capital grants.

[5] Examples of non-cash items reported in revenue and to be excluded from revenue are unrealised gains/losses on investments, gains/losses on disposal of assets.

- 32.4 During the life of this Schedule, the University may move from Category A to no category and from no category to Category A upon declaration of the EAP.

## PART 11: INTERPRETATION

### 33. Interpretation

- 33.1 Headings are to be used as a guide to interpretation.
- 33.2 The purpose and aims set out in clause 1 provide the context for this Schedule, and all terms should be interpreted in that context.
- 33.3 Reference to the singular is a reference to the plural and vice versa.

### 34. Definitions

- 34.1 The following definitions apply to terms contained in this Schedule.
- 34.1.1 **Agreement:** the Monash University Enterprise Agreement (Academic and Professional Staff) 2019;
- 34.1.2 **Arbitrator:** person appointed under clause 29.19;
- 34.1.3 **Award:** either the *Higher Education Industry – Academic Staff – Award 2020* or *Higher Education Industry – Professional Staff – Award 2020*, as applicable;
- 34.1.4 **Category A:** see clause 32.1 of this Schedule;
- 34.1.5 **Casual:** a staff member engaged as a casual or sessional staff member in accordance with the Agreement;
- 34.1.6 **the impact of COVID-19:** events or circumstances directly caused by the COVID-19 crisis or indirectly, where COVID-19 was a substantial part of the cause;
- 34.1.7 **COVID-19 Temporary Measures Committee (or CTMC):** see clause 29 of this Schedule;

- 34.1.8 **Eligible Senior Management Team Staff:** the members of the University's senior management team with a base salary in excess of \$250,000 as at 1 January 2020, but excluding those members who are also members of the Vice-Chancellor's Group (each of whom have already agreed to a greater salary reduction) and the Head of Academic Board;
- 34.1.9 **Email List:** a bulk email address provided by the University which does not disclose the email addresses of individual staff members;
- 34.1.10 **Expert Assessment Panel (or EAP):** refer to clause 30 of this Schedule;
- 34.1.11 **FW Act:** the *Fair Work Act 2009* (Cth);
- 34.1.12 **Involuntary redundancy:** where the staff member has not accepted an offer of voluntary redundancy and is unable to be redeployed;
- 34.1.13 **Memorandum of Understanding:** the MOU signed by the NTEU and the University;
- 34.1.14 **NES:** is Part 2-2 of the FW Act;
- 34.1.15 **NTEU:** National Tertiary Education Industry Union;
- 34.1.16 **a Representative:** means a person nominated by choice (other than a person who is a practising legal practitioner), or a staff member of the University, or an officer or employee of NTEU, or an officer or employee of an employer association;
- 34.1.17 **the University:** Monash University as defined under clause 3.15 in the body of the Agreement;
- 34.1.18 **this Schedule:** means this Schedule 6;
- 34.1.19 **senior management team:** the University's leadership group comprising the Vice-Chancellor and President, Provost, Chief Operating Officer, Chief Financial Officer, Deputy Vice-Chancellors, Vice-Presidents, Vice-Provosts, Pro Vice-Chancellors, President of Academic Board, Deans of Faculty, Executive Directors and equivalent roles;
- 34.1.20 **voluntary redundancy:** means where staff members volunteer for redundancy;
- 34.1.21 **voluntary separation package:** a set of entitlements provided by the University consistent with the voluntary separation payments provided for in clauses 53.6 (Table G) of the Agreement for academic staff or clauses 55.7 and 55.11- 55.12 of the Agreement for professional staff , or on the same terms as if the staff member was retrenched for redundancy, whichever is the greater;
- 34.1.22 **workplace change:** means a change to a staff member's roster or ordinary hours of work initiated by the University, or a major workplace change that is likely to have a significant effect on staff members. **Significant effects** include:
- 34.1.22.1 termination of employment;
  - 34.1.22.2 changes to the composition, operation or size of the University's workforce or skills required of staff;
  - 34.1.22.3 elimination or diminution of job opportunities including opportunities for promotion or continuing employment;
  - 34.1.22.4 outsourcing of work; and

34.1.22.5 restructuring and/or relocation of work units.

Significant effects do not include a temporary change to duties in accordance with clause 15.

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