

Email

5 April 2019

Four Yearly Review of Modern Awards
Fair Work Commission

amod@fwc.gov.au

Dear Sir/Madam

RE:

Four Yearly Review of Modern Awards
AM 2014/229 - Higher Education Industry - Academic Staff - Award 2010
AM 2014/230 - Higher Education Industry - General Staff Award 2010

We act on behalf of the universities comprising the Group of Eight universities.

We refer to the Statement of President Ross dated 28 February 2019 ([2019] FWC 1262) regarding updated exposure drafts.

In accordance with Attachment A of the Statement, we provide the following comments on the Revised Exposure Drafts for the *Higher Education Industry - General Staff - Award* and the *Higher Education Industry - Academic Staff - Award*, both of which were released on 8 March 2019.

Higher Education Industry - Academic Staff - Award Exposure Draft (AS Exposure Draft)

The Group of Eight notes the changes made to the AS Exposure Draft since its last publication on 17 July 2017. We confirm that where applicable, the changes reflect the agreed position of the parties based on previous correspondence with the Commission and/or the approach determined by the Commission on technical and drafting matters including changes following the outcome of the substantive claims in [2018] FWCFB 1087 and the common issues.

Higher Education Industry - General Staff - Award (GS Exposure Draft)

The Group of Eight notes the changes made to the GS Exposure Draft since its last publication on 17 July 2017. Where applicable, the changes reflect the agreed position of the parties based on previous correspondence with the Commission and/or the approach determined by the Commission on technical and drafting matters including changes following the outcome of the substantive claims in [2018] FWCFB 1087 and the common issues.

We note however:

1. clause 9.2(b)(v) contains a typographical error. The first sentence refers to "*shiftwok*" instead of "*shiftwork*".
2. clause 5 contains a typographical error. The heading refers to "*Facilitative provisions Your location*" instead of "*Facilitative provisions*".
3. references added in clauses 15.3 and 16.5 to "clause 9.2(b)(ii)" are incorrect and should be "clause 9.2(b)(iii)". These matters were previously raised by the Group of Eight in correspondence to the Commission on 4 August 2017 following publication of the 17 July 2017 iteration of the exposure draft;
4. the GS Exposure Draft is silent in relation to entitlement to overtime for casual employees and the applicable rate at which overtime is paid for casual employees and does not clearly identify the interaction between the casual loading and other penalties and loadings. The revised exposure draft continues to be ambiguous on the issue of overtime for casuals highlighting that:

- (a) no amendment has been made to the existing overtime provision in the modern award which is replicated at clause 16 of the exposure draft; and
- (b) the inclusion of Schedule B, in particular B.2 - Adult Casual Rates relates to ordinary hours and does not address overtime or reflect any determination by the FWC in this 4 yearly review.

The issue of ambiguity in respect of applicability of overtime for casuals and the applicable overtime rate is a matter before the Commission in AM2017/51- Overtime for Casuals. In that matter the Group of Eight previously provided a draft variation to reflect the pre-reform award position, that was inadvertently not included in the GS Award when it was made. This is a matter that will be progressed, including at the directions and report back which has been listed before Vice President Hatcher on 12 July 2019.

Yours sincerely



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