

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Award stage
(AM2014/224, AM2014/229 and AM2014/230)

NTEU Submissions In Reply on Exposure Drafts issued 18 December 2015

4 yearly review of modern awards – award stage – Group 3 awards

These submissions are made by the National Tertiary Education Industry Union in response to submissions of the **Group of Eight Universities (Go8)** and the **Australian Higher Education Industrial Association (AHEIA)** made on 14 April 2016.

Where these submissions below are silent, the NTEU relies on our original submissions on the Exposure drafts, also made on 14 April 2016.

Higher Education (Academic Staff) Award 2015 [MA000006]

Clause 10.5 Annual Staff Development/Performance Review:

The **Go8** submit that the proposed change to (current) clause 19.5 changes the meaning of the clause. The NTEU agrees.

NTEU does not support the change suggested by the Commission. As currently drafted the meaning of the clause with respect to skills is tolerably clear: “The aims of the review will at least include ... assessment of ... the acquisition and use of skills over the previous 12 months”. The change suggested in the exposure draft would give rise to uncertainty as to what is meant by “The aims of the review will at least include ... the acquisition and use of skills over the previous 12 months”.

NTEU does not support the change suggested by the Commission.

Clause 12.3: Leave Loading

NTEU agrees to the change proposed by **AHEIA**. The alternative wording proposed by NTEU in our submission on the Exposure Drafts would “future proof” the Award against future changes in reporting practice by the ABS, but we do not press the matter in the absence of support from the other parties.

Clause 16: Public Holidays

NTEU is unsure what the **Go8** is referring to regarding the words “subject to the provisions in this clause”; these words do not appear in the current Award or the Exposure draft, but are found in the equivalent clause in the General Staff Award.

Schedule B: Professorial and Clinical Loadings:

The **Go8** suggest certain changes to the representation of Professorial and Clinical Loadings in Schedule B of the Exposure Draft.

NTEU agrees that the column heading in Schedule B “Full clinical department in a medical school” should have the words “and responsible for patient care” added for clarity.

NTEU does not object to the words from clause 9.2(c)(ii) of the Award being also included as a note to Schedule B.

Higher Education (General Staff) Award 2015 [MA000007]

New Clause 8.1: Classifications

As the **Go8** indicate, the NTEU has submitted a substantive application to ensure that the classification structure/rates of pay are linked to the Classification Definitions (Currently in Schedule B of the Award). This can be found in Part F of the NTEU submission of 11 March 2016.

The words sought by the NTEU are the same as those set out by Go8 in their Submission on Exposure draft [18], but do not include the final sentence proposed by the Go8.

NTEU submits that the words:

“No employee shall refuse to perform duties reasonably required, consistent with the employee’s classification and which the employee is competent to perform.”

are not ‘allowable’ in a modern award, nor are they incidental or essential to the operation of any matter which may or must be in a modern award; (ss. 139 and 142-149D of the *Fair Work Act*).

The history and origins of that final sentence is different from the remainder of the previous clause, and that sentence does not and never has formed part of the provision linking the classification definitions in Schedule A to the rates of pay in the Award.

In respect to s. 139(1) (a) (i) skill- based classifications and career structures, the words proposed by NTEU fall under the permitted matter “minimum wages”. The additional words sought by the Go8 go to the allocation of duties *consistent with the employee’s classification level* – they have nothing to do with describing or defining

the skill based classification/career structure and their relationship to wages and are therefore not incidental or essential to the operation of this matter.

The question of whether the additional sentence proposed by the Go8 ought be included in the modern award has been canvassed between the parties without agreement. NTEU expects that it will be the subject of submissions in the substantive proceedings in this matter.

Clause 17: Leave Loading

NTEU agrees to the change proposed by **AHEIA** in relation to leave loading. The alternative wording proposed by NTEU in our submission on the Exposure Drafts would “future proof” the Award against future changes in reporting practice by the ABS, but we do not press the matter in the absence of support from the other parties.

**Educational Services (Post-Secondary Education) Award
2015 [MA000075]**

NTEU relies on our original submissions.