

## IN THE FAIR WORK COMMISSION

**MATTER NUMBER: AM2021/54**

**MATTER: CASUAL TERMS REVIEW – STAGE 2, GROUP 3 AWARDS**

### SUBMISSIONS OF THE GROUP OF EIGHT UNIVERSITIES

#### 1. Introduction

1.1 These submissions are filed on behalf of the Group of Eight Universities (**Go8**) in accordance with the Full Bench's statement in [2021] FWCFB 5123 (**Statement**). These submissions relate to the *provisional* views expressed by the Full Bench in relation to the *Higher Education Industry – Academic Staff – Award 2020 (Academic Award)* and the *Higher Education Industry – General Staff – Award 2020 (General Award)*.

#### 2. Casual Conversion

2.1 In relation to the General Award, the Full Bench has formed the *provisional* view that clause 12.4 of the General Award should be deleted and replaced with a reference to the NES casual conversion entitlements. The Go8 supports this proposed outcome.

2.2 Part of the reasoning in forming this *provisional* view is at [22] of the Statement, where the Full Bench stated that it is unlikely that the grounds specified in clause 12.4(c)(i), (ii) or (iv) of the General Award would, by themselves, constitute reasonable grounds for refusal under section 66H(1)(b) of the Act. Those reasonable grounds are reflected both in the General Award and in most enterprise agreements across the sector, taking into account the specific circumstances that can arise in the sector. The Go8 considers that there are circumstances in which those grounds could constitute reasonable grounds under section 66H(1)(b) of the Act (noting that the list of grounds in section 66H(1)(b) are non-exhaustive) depending upon the individual circumstances, and the Go8's support for the overall view is not to be taken as supporting a view that such grounds could not arise.

2.3 Notwithstanding the above, the Go8 agrees with the overall view formed by that Bench that deleting clause 12.4 of the Award and replacing it with a reference to the NES casual conversion entitlements would make the General Award consistent or operate effectively with the Act.

2.4 In relation to the Academic Award, the Go8 agrees with the Full Bench's assessment that there is no relevant provision in connection with casual conversion requiring consideration under section 48 of Schedule 1 of the Amending Act. The Full Bench has however formed the *provisional* view that the Academic Award should be varied pursuant to section 157(1) of the Act by adding a provision to refer to the NES casual conversion provisions, stating that doing so will assist users of the award and achieve consistency across modern awards. The Go8 respectfully notes that:

- (a) section 157(1) only permits the FWC to vary a modern award if the FWC is satisfied that doing so is necessary to achieve the modern awards objective. Section 134(1) of the Act sets out the modern awards objective and none of the factors set out in section 134(1) readily support that it is **necessary** to vary the Academic Award in the way that is proposed; and
- (b) this is also the case in circumstances where section 134(1) of the Act provides that modern awards and the NES are read together when considering whether modern awards meet the modern awards objective, and the NES now contain casual conversion provisions.

3. **Other provisional views expressed in the Statement and Attachment A to the Statement**

3.1 The Go8 otherwise agrees with the *provisional* views expressed at:

- (a) [40] and [43] in relation to additional work;
- (b) Attachment A (pages 43 to 46 of the Statement) in relation to the Awards. In particular the Go8 submits that:
  - (i) replacing the definition of casual employee in the Awards with a reference to section 15A of the Act; and
  - (ii) deleting the requirement to include the minimum number of hours required in the terms of engagement,

will make the Awards consistent or operate effectively with the Act.

**Clayton Utz**  
**on behalf of the Group of Eight Universities**

**25 August 2021**