

**AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

*Workplace Relations Act 1996*

**s.576 (E)(1) – Procedure for carrying out award modernisation process**

**IN THE MATTER OF:**

**AM2008/3 – Higher Education Industry**

**SUBMISSIONS OF CPSU, THE COMMUNITY AND PUBLIC SECTOR  
UNION (SPSF Group)**

**RE: HIGHER EDUCATION – GENERAL STAFF – AWARD 2010  
RE: TRANSITIONAL PROVISIONS IN THE AWARD**

1. These submissions deal with the question of whether any transitional provisions should be incorporated into the Higher Education – General Staff Award 2010 (“the Award”) and, if so, with what matters they should deal.
2. The CPSU, SPSF Group (“SPSF”) submits that there should be transitional provisions with respect to three specific matters, namely:
  - Hours of work;
  - Personal/carer’s leave, and
  - Qualification for payment of a higher duties allowance.
3. SPSF submits that transitional provisions with respect to these matters are necessary because the terms of the Award, in conjunction with the National Employment Standards (“NES”), are significantly lesser than the present award conditions of a significant number of general staff employees to whom the Award will apply and also to a significant number of general staff employees to whom enterprise awards apply.
4. Further, in New South Wales, the number of general staff employees in each of these categories is comparable.
5. This means that, in the present enterprise bargaining round taking place in universities, employees at certain universities have a higher safety net from which to bargain than those at other universities. Such universities are often in close physical proximity to each other.
6. For example, general staff employees at the University of Technology, Sydney (UTS), have the benefit of an enterprise award (the University of Technology, Sydney, General Staff Award 2002), which contains a provision for a 35 hour week and an entitlement to 15 days per annum sick leave, the untaken portion of which is fully cumulative.

7. In contrast, general staff employees of the University of Sydney, the main campus of which is no more than 15 minutes walk from the main campus of UTS, will have the Award plus the NES as their platform for enterprise bargaining, with a 36  $\frac{3}{4}$  hour working week (or 38 if they are non-PACCT staff) and the NES quantum of only 10 days per annum personal/carer's leave.
8. Further, general staff employees of the University of New South Wales, only a short drive away from the University of Sydney, also have an enterprise award (The University of New South Wales General Staff Award 2003). It provides a 35 hour week and superior sick leave entitlements, the same as those proposed below as a transitional provision except that the accumulation provision under the enterprise award is two weeks for each completed year of service less sick leave actually taken during the employment.
9. This situation is not confined to NSW. General staff employees of the University of Queensland are entitled (under The University of Queensland General Staff Award 2003) to a 36  $\frac{1}{4}$  hour working week, while general staff employees of Griffith University and the Queensland University of Technology, both of which are also in the Brisbane metropolitan area, will have a working week under the Award of 36  $\frac{3}{4}$  hours, unless they are non-PACCT staff, in which case their working week will be 38 hours.
10. The situation of general staff at many universities having their safety net for enterprise bargaining set by enterprise awards while general staff at other universities will theirs set by the Award is particularly inequitable because it is fortuitous. The enterprise awards were made to give effect to the Item 51 Review conducted as a requirement of the *Workplace Relations Act* prior to its amendment by Work Choices.
11. A number of universities were quick to negotiate the terms of the enterprise awards with the CPSU and other relevant unions while others took longer and had not completed the task when the introduction of Work Choices effectively terminated the process. It was therefore fortuitous whether general staff at a particular university have the relatively better conditions of an enterprise award as their safety net or whether they have the Award plus the NES as their safety net.
12. While it may be argued that this is a sector in which enterprise bargaining covers close to 100% of employees, the safety net is still relevant in that an enterprise agreement has to pass the no-disadvantage test or, as it will become, the Better Off Overall Test.
13. SPSF therefore submits that general staff employees to whom the Award will apply will suffer real disadvantage, within the meaning of Paragraph 2 (c) of the Consolidated Ministerial Request, to their bargaining position. This is especially so when the conditions of employment of general staff who will be employed under the Award are

compared to those of general staff to whom enterprise awards will continue to apply.

14. SPSF submits that this can only be equitably addressed by inserting transitional provisions into the Award with respect to working hours in NSW and Queensland and personal/carer's leave (sick leave) in NSW. We also propose, as a transitional provision, that untaken personal/carer's leave accumulate as an entitlement to sick leave for general staff employees in Queensland.
15. SPSF further submits that transitional provisions should be inserted to enable general staff to retain the entitlement to be paid a higher duties allowance after working in the higher graded position for 5 days or more, where that is a pre-existing award condition. The Award provides that an employee must perform the higher duties for more than two consecutive weeks, or more than 4 if HEW Level 8 and above.

#### **Transitional Provisions re Hours of Work**

16. SPSF proposes the following transitional provisions for hours of work for general staff in the States of New South Wales and Queensland, being the present award conditions for general staff in those States, either under enterprise awards or current awards that will be replaced by the Award:

##### **“Hours of Work in New South Wales**

**Until 31 December 2014, the ordinary hours of work of employees employed in universities in the State of New South Wales or in campuses of universities in the State of New South Wales shall be 35 per week.**

##### **Hours of Work in Queensland**

**Until 31 December 2014, the ordinary hours of work of employees employed in universities in the State of Queensland or in campuses of universities in the State of Queensland shall be 36.25 per week.”**

#### **Transitional Provisions re Sick Leave**

17. SPSF proposes the following transitional provisions for hours of work in for general staff in the States of New South Wales:

##### **“Sick Leave – Employees in New South Wales**

**Until 31 December 2014, employees employed in universities in the State of New South Wales or in campuses of universities in**

**the State of New South Wales shall be entitled to sick leave on the following basis:**

**In the first year of service: 10 days**

**In the second year of service: 15 days**

**In the third and each subsequent year of service: 30 days or balance of untaken leave, whichever is greater in the third and subsequent years, up to a maximum accumulation of 410 days.**

#### **Sick Leave – Employees in Queensland**

**Until 31 December 2014, the untaken portion of an employee's annual entitlement to personal/carer's leave shall accumulate as an entitlement to sick leave."**

18. The proposed transitional provision with respect to New South Wales is found in the two main NSW instruments in the *Higher Education General and Salaried Staff (Interim) Award 1989*, namely the *Universities (General Staff Conditions of Employment) (State) Award* and the *Colleges of Advanced Education (Conditions of Employment) Award*.
19. This transitional provision would therefore apply to general staff employed by Charles Sturt University, Macquarie University, Southern Cross University, the University of Newcastle, the University of Sydney and the University of Wollongong.
20. The proposed transitional provision with respect to Queensland is found in the Queensland Universities (General Staff) Award 2000, which applies to general staff employed by the Central Queensland University, the Queensland University of Technology and the University of Southern Queensland, to whom the Award will apply from 1 January 2010.

#### **Transitional Provisions re Qualification for Higher Duties Allowance**

21. SPSF proposes the following transitional provision:

**Until 31 December 2014, an employee who was:**

- **employed under the terms of an award made under the *Workplace Relations Act 1996 (Cth)* immediately prior to 1 January 2010 ; and**
- **was entitled under that award to be paid an allowance for performing the duties of a higher graded position for a period less than that specified in Schedule B – Allowances for an employee at his/her classification level**

**he/she will retain the entitlement to be paid the higher duties allowance in the award applying to his/her employment prior to the commencement of this award.**

22. SPSF submits that the transitional provision should be in this form because general staff in most universities outside Victoria were entitled to the payment of a higher duties allowances after a lesser period of performing the higher duties than that prescribed in the Award but this varied from all such time to at least one day to at least five days to more than five days. It varied in some cases from one State or Territory to another or in other cases between original universities and universities formed from the amalgamation of former Colleges of Advanced Education).

### **Conclusion**

23. SPSF submits that the Award should contain the above transitional provisions for the reasons put forward above.

24. With respect to general issues relating to transitional provisions and the general approach appropriate to take, SPSF adopts the submissions of the Australian Council of Trade Unions.

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