

Template higher education sector enterprise agreement Schedule

Version 2 June 2020

SCHEDULE TO [AGREEMENT], TO BE KNOWN AS 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 employees and NTEU to respond to the impact of COVID-19. The Framework recognises that:

**Commented [SA1]:** This clause is contextual only

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 employees affected by the impact of COVID-19.

1.2 This Schedule is to be read in conjunction with the terms of the Memorandum of Understanding between the University and NTEU (but the MOU is not incorporated into this Schedule).

**Commented [SA2]:** The terms of the University-level MOU do not form part of the Schedule. They do not have legal effect as terms of the EA.

1.3 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 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 of the University and NTEU. No such extension can apply beyond 31 December 2021.

**Commented [SA3]:** This enables extension of the period of the operation of the Schedule without the need to go through another staff vote.

2.3 Any such agreed extension(s) or foreshortening(s) shall be notified in writing 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.

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- 2.5 The terms of this Schedule shall prevail over the terms of the Agreement, but only to the extent of any inconsistency.
- 2.6 An employee 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.

**Commented [SA4]:** This operates to exclude the operation of clauses in the EA that deal with the same matters in a different way.

#### 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. An employee 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 an employee would have been entitled to had this Schedule never come into effect.

### **PART 2: JOB PROTECTION MEASURES**

#### **3. Stand down**

- 3.1 The purpose of this clause is to ensure employees who might otherwise be stood down without pay continue to receive a salary.
- 3.2 Where an employee 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 employee down (i.e. where an employee could have been stood down under the FW Act).
- 3.3 An employee is only able to be stood down during a period in which the circumstances in clause 3.2 exist. An employee or their representative may request a review of this at any time.
- 3.4 Where an employee is stood down, the following shall apply:
- 3.4.1 the University must continue to explore all options for other work that could be assigned to the employee during the period of stand down;
- 3.4.2 the University must consider any professional development or training that could be undertaken;
- 3.4.3 the University must offer the employee a voluntary redundancy, if the stand down continues beyond 30 days' duration. The employee may choose to accept that offer or to reject it and remain stood down;

**Commented [SA5]:** This clause is in lieu of the standard stand down provisions of the FW Act. It provides for some payment and the allocation of work where the employee has been stood down.

**Commented [SA6]:** It is obviously open to the University to avoid making a redundancy payment by ending the stand down period before the lapse of 30 days (eg. if there is likelihood that the employee can be usually employed in the near future).

3.4.4 without prejudice to the requirements of clause 3.2, the University may require the employee to do some work under this clause.

3.5 The University need not pay the employee's usual salary where an employee is stood down. Instead, the employee will be paid, in any given pay period, in accordance with the following:

3.5.1 for any period in which the University is declared to be Category B, 30% of the employee's usual salary or \$1500 a fortnight, whichever is greater;

3.5.2 in all other circumstances, 50% of the employee's usual salary or \$1500 a fortnight, whichever is greater.

3.6 For the avoidance of doubt, this clause replaces the power to stand down employees provided by s 524 of the FW Act.

#### 4. Allocation of work

4.1 This clause governs only:

4.1.1 the allocation of work to retain casual employees and the allocation of positions to retain fixed-term employees in employment; and

4.1.2 the order of preference to be given in the temporary reassignment of duties to different categories of employees;

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 employee, the University will seek to identify other work for that employee to perform. Within this process, available work will be assigned first with a view to preventing compulsory redundancy, then to employees who have been stood down, in order to provide them with some work under clause 3. This allocation of work for these purposes shall take precedence over the allocations described in clauses 4.3 to 4.6.

**Commented [SA7]:** The opening sentence here is very important. The allocation of work to under-utilised continuing and fixed-term employees takes precedence over the obligations set out in Clauses 4.3 and 4.4.

4.3 Where there is work required to be performed and that work was usually performed by a casual employee who had been regularly employed by the University and the employee had a reasonable expectation that they would continue to be employed by the University, then the casual employee will continue to be engaged to perform that work. Where such a casual employee suffers a reduction in casual work or has no work as a result of the impact of COVID-19, the employee 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 employee, and the employee was not subject to any formal disciplinary procedures, the employee shall be offered a new contract if their contract comes to an end. Where a fixed-term employee is not offered a further contract as a result of the impact of COVID-19, and the employee was not subject to any formal disciplinary procedures, the employee 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 employee 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 employee'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 employees (including casuals) are to be considered according to the University's existing merit-based selection procedures.

**Commented [SA8]:** This gives priority to identifying redeployment opportunities for employees whose positions may become redundant.

**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. 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 employees and employment by the University, whether or not that employment is covered by this Agreement.

**Commented [SA9]:** This clause provides a range of exceptions to the "no new appointments" provision.

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

**7. COVID-19 leave**

**Commented [SA10]:** This clause reflects provisions that Universities are already implementing.

- 7.1 An employee 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 An employee, other than an employee 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 employees as paid leave (meaning payment for the work/hours which would have been performed other than for the leave) on the same basis as employees entitled to personal leave.

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

## 8. Domestic and Family Violence protections

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

**Commented [SA11]:** There has been an increased incidence of family and domestic violence in Australian society following lock down being imposed.

8.2 Employees who experience domestic and family violence during the operation of this Schedule will be entitled to 5 days' paid domestic and family violence leave, such leave is in addition to any other domestic and family violence leave entitlements contained in the Agreement.

## 9. Employees at higher risk

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

**Commented [SA12]:** This has a "wherever possible" rider; there is also no mandated longer period specified.

9.1.1 Aboriginal and Torres Strait Islander staff;

9.1.2 other employees in high risk groups (such as defined by 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. Employee performance evaluation

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

**Commented [SA13]:** This is a common-sense statement related to the possible impact on COVID-19 on work output.

## 11. Probationary employees

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 employee or the University. Any changes to targets must be agreed to by the employee.

**Commented [SA14]:** This goes hand-in-hand with Clause 10.

## 12. Recovery of expenses

**Commented [SA15]:** This clause places appropriate limits on what an employee can expect to be reimbursed for work-related expenditure they personally incur.

- 12.1 Where the employee has incurred costs to enable the employee to perform their job role in response to the impact of COVID-19, the University will reimburse the employee the full amount of the costs. This does not apply where the costs are unreasonable, unrelated to performing the employee's job or would have been incurred by the employee regardless of their role with the University.
- 12.2 The employee 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 employee 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 Subject to the Rules of the superannuation fund, an employee who is a member of a defined benefit scheme will continue to make contributions in alignment with the contributions made by the University.

**Commented [SA16]:** This clause maintains employer super contributions for all employees based on the salary rate they would have been receiving if not for a pay freeze or reduction or fraction imposed on continuing or fixed-term employees under Part 5 of the Schedule. Those measures don't apply to casual staff, so this provision is not needed for casual staff.

**Commented [SA17]:** This is needed in order to satisfy the UniSuper DBD requirement that the employer/employee contribution ratio remain 17/7.

**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 employees to temporarily undertake duties outside the scope of their classification and position description or expectations, so long as the duties are within the employee'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 employee'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 an employee 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 of the Agreement do not apply to these temporary assignments.
- 15.4 Where practicable, work which would otherwise be paid as overtime should be allocated to another employee in order to make up a shortfall in the load of the latter employee.

**Commented [SA18]:** This provides the University with wide scope in the assignment of duties to employees as appropriate.

**Commented [SA19]:** This provides flexibility without the need to worry about rate of pay changes.

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 an employee 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 employee 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 employee's workload for the year.
- 15.7 An employee whose fraction is reduced (whether voluntarily in accordance with clause 16 or by direction in accordance with clause 21) 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 employee 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. Employee-initiated change to hours of work and leave

- 16.1 An employee 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 employee-initiated change will not attract overtime rates);
- 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 employee 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 employee will agree upon the end date of a flexible working arrangement, which may be beyond the expiry of this Schedule.

#### 17. Impact on service

- 17.1 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

#### 18. Introduction

- 18.1 This Part of this Schedule allows the University, where the circumstances in the clause are met, to change an employee's pay.

#### 19. Temporary reductions to salary and allowances

**Commented [SA20]:** This is an important management provision that enables the allocation of teaching or other duties where an academic has a reduction in any area of activity. This may include allocating teaching beyond percentage limitations, or across all teaching terms, notwithstanding EA academic workload clause specifications to the contrary.

**Commented [SA21]:** This is a flexibility provision relevant for professional staff (that will already be available to many universities via a signed IFA with an employee).

**Commented [SA22]:** Part 5 of the Schedule contains the provisions for salary and increment freezes, salary reductions and forced fraction reductions. That set of measures is subject to a limit of an employee drop in pay of 10% for Category A and 15% for Category B. The 10% and 15% limits are actually slightly lower where a salary reduction is involved, as the first \$30,000 in salary of any such employee is exempt from the reduction (see Clause 22.2.3 example).

19.1 If the University is declared to be in Category A and remains in Category A, the University may implement any of the below to an amount equivalent to a maximum total of 10% of an employee's salary in any given pay period:

19.1.1 deferral of the date of effect of pay rises and/or salary point increments (as outlined in clause 20);

19.1.2 generalised fraction reduction up to 10% (e.g. a 9-day fortnight) (as outlined in clause 21); and

19.1.3 temporary reduction in salary, to a maximum of 5% of the salary above \$30,000 (as outlined in clause 22).

19.2 If the University is declared to be in Category B and remains in Category B, the University may implement any of the below to an amount equivalent to a maximum total of 15% of an employee's salary in any given pay period:

19.2.1 deferral of pay rises and/or salary point increments (as outlined in clause 20);

19.2.2 generalised fraction reduction up to 10% (e.g. a 9-day fortnight) (as outlined in clause 21); and

19.2.3 temporary reduction in pay, to a maximum of 10% of the salary above \$30,000 (as outlined in clause 22).

19.3 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.

19.4 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.

19.5 The comparator is against the salary of the given pay period the employee would have received had this Schedule never come into effect.

## 20. Deferral of pay rises and incremental progression

20.1 This clause applies to:

20.1.1 any increase in salary or rate of pay due to an employee pursuant to a term of the Agreement setting salaries generally for employees; and

20.1.2 any service-related incremental pay increase within a classification (howsoever called) due to an employee pursuant to a term of the Agreement.

20.2 If the University is declared to be in Category A or Category B, then the University may defer the date of effect of any increase under clause 20.1 above for a period within the duration of this Schedule, until the expiry of this Schedule or the University is no longer in either category, whichever comes first.

20.3 This clause does not apply to casual employees.

## 21. Fraction reductions

**Commented [SA23]:** The exclusion of discretionary payments from the "salary" definition means the University can deal with that separate amount at its discretion outside the limitations on salary reductions and the overall drop in pay.



- 21.1 This clause allows the University, where the circumstances in the clause are met, to temporarily reduce the hours of work of employees on a generalised basis (e.g. across the whole University, or a substantial part based on the nature of the work, or in a work unit such as Faculty, School or area) for a specified period time.
- 21.2 If the University is declared to be in Category A or Category B, the University may implement a reduction in hours equivalent up to a maximum of 10% of the ordinary hours of duty of employees provided that:
- 21.2.1 the University gives at least two weeks' notice; and
- 21.2.2 where possible any reduction will be for a whole day/s (e.g. 9-day fortnight) unless otherwise requested by the employee; and
- 21.2.3 the direction to reduce hours is for a specified period of time; and
- 21.2.4 there is a commensurate reduction in each employee's workload.
- 21.3 An employee can dispute the reduction in hours on the basis that that they cannot reasonably perform all their assigned duties within the reduced fraction.
- 21.4 The University cannot request or require any employee to perform work in the time foregone by the reduced fraction without compensation (for academic employees, this may include a workload credit).
- 21.5 Any fraction reduction occasioned by clause 21.2 shall be disregarded for the purpose of all leave accrual calculations and other service-related entitlements.
- 21.6 The fraction reduction will not apply to employees who:
- 21.6.1 for compelling special circumstances is unable to reduce their fraction;
- 21.6.2 is an employee who is stood down;
- 21.6.3 at their election, takes an amount of annual leave or long service leave equivalent to the fraction reduction;
- 21.6.4 voluntarily reduced their hours of work prior to the commencement of the Schedule (as a result of the impact of COVID-19) or in accordance with clause 16, to the extent that reduction in hours of work were equal to or greater than the fraction reduction imposed by this clause;
- 21.6.5 are employed on a casual basis.

## 22. Temporary salary reductions

- 22.1 Subject to the conditions set out in clause 19, the University may implement a generalised temporary salary reduction in accordance with this clause.
- 22.2 The University may implement, by giving two weeks' notice:

**Commented [SA24]:** The University has flexibility as to the fraction reduction itself and as to the categories of staff to whom it is applied. It could be applied to all academic staff or all professional staff or in particular areas. It needs to be accompanied by a reduction in workload. A full-time employee subject to a 9 day fortnight direction will therefore need to be able to reasonably perform all of their assigned duties in 9 days rather than 10.

**Commented [SA25]:** An 80% part-time employee can only have their fraction reduced to 72%. This can't be a whole day reduction. This is awkward, but protects the employee's pay.

**Commented [SA26]:** As a corollary of this, a 10% fraction reduction imposed on an employee who voluntarily went onto a 95% fraction (ie a smaller time fraction) as a result of COVID-19 will have that fraction replaced with a 90% fraction.

22.2.1 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 an employee's salary, for which the first \$30,000 (per annum) shall be exempt;

(for example, an employee on \$100,000 per annum where the University is in Category A, the maximum reduction is \$3,500 per annum and their temporarily reduced salary would be \$96,500 per annum).

22.2.2 if it is declared to be in Category B, a temporary reduction in pay in any given pay period, to a maximum of 10 % of an employee's salary, for which the first \$30,000 (per annum) shall be exempt.

22.2.3 For the purposes of Clauses 19.1 and 19.2, the \$30,000 exempt amount shall be disregarded. For example, if a 5% salary reduction is imposed in accordance with clause 22.2.1 or 22.2.2 it will be regarded as a 5% reduction for the purposes of clauses 19.1 and 19.2 notwithstanding the 5% reduction doesn't apply to the \$30,000 exempt amount.

**Commented [SA27]:** See comment on Clause 18.1.

22.3 The salary reduction will not apply to an employee:

22.3.1 while they are stood down; or

22.3.2 who is employed on a casual basis.

### 23. Extreme hardship

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

**Commented [SA28]:** An example of extreme hardship would be where a fraction reduction would put a Visa holder in breach of Visa requirements.

23.2 Where an employee 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 Director of Human Resources (or equivalent) or a nominee.

23.3 The application will specify the circumstances that are individual to the employee 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 their decision.

### 24. Promotion and reclassification

24.1 The date of effect for the increase in salary arising from a promotion or reclassification (at the employee's initiative) shall be the date no earlier than the day after this Schedule ceases to apply or the University is no longer in either Category A or B, whichever comes first.

### 25. Implementation of measures under clauses 20 and 22

25.1 For the avoidance of doubt, where the University implements a measure under clause 20 or clause 22, the salary rate prescribed by the Agreement and payable to an employee affected shall be temporarily altered accordingly.

**Commented [SA29]:** This is new wording replacing the 23 May draft wording. This wording makes it clear that the employee's salary rate as specified in the EA is itself temporarily altered by a pay reduction or pay freeze.

### 26. Performance-based contract staff

26.1 Part 5 applies to senior/performance-based contract staff.

**Commented [SA30]:** PBC employees covered by the EA are to be treated in the same way as other employees in relation the application of measures under Part 5.

## PART 6: DIRECTIONS TO TAKE LEAVE

### 27. Annual leave

- 27.1 The University may direct an employee 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.
- 27.2 The employee is entitled to retain a minimum 10 days balance, unless the Agreement allows for a lower minimum balance to remain.
- 27.3 The leave must be taken at a time that is agreed, but within two months of the direction.
- 27.4 Leave will not be directed to be taken at a time when the employee otherwise has unavoidable work obligations (e.g. grant applications).
- 27.5 Where leave is directed to be taken, the leave must be accounted for in workload that has been allocated, and performance expectations.
- 27.6 By agreement with the University, an employee 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).

### 28. Long service leave

- 28.1 Subject to the application of the NES, the University may, on two weeks' notice direct an employee to take long service leave in accordance with this clause, where the direction is reasonable in all the circumstances. This clause does not limit the University's capacity to otherwise direct the taking of long service leave under the Agreement.
- 28.2 If the University is declared to be in Category A, the University may direct an employee to take long service leave to reduce their long service leave balance down to 65 working days.
- 28.3 If the University is declared to be in Category B, the University may direct an employee to take long service leave to reduce their long service leave balance down to 45 working days.
- 28.4 The leave must be taken at a time that is agreed, but within two months of the direction.
- 28.5 Leave will not be directed to be taken at a time when the employee otherwise has unavoidable work obligations (e.g. grant applications).
- 28.6 Where leave is directed to be taken, the leave must be accounted for in workload that has been allocated, and performance expectations.
- 28.7 By agreement with the University, an employee may choose to take an extended period of long service leave at a commensurately lower rate of pay (e.g. 20 days leave at half-pay, instead of 10 days leave at full-pay).

**Commented [SA31]:** Most EAs do not allow for directions of this type, and are usually limited to excess leave balance situations.

**Commented [SA32]:** The NES as it applies to LSL is complex. It differs for each university according to the application or otherwise of industrial instruments applying to the University as at 31 December 2009, so Universities should seek advice before giving directions under this clause.

## PART 7: CHANGE MANAGEMENT

### 29. Change management

- 29.1 This clause does not apply to the temporary reassignment of duties under clause 14 or stand downs under clause 3 or change management processes commenced in accordance with the Agreement prior to the commencement of this Schedule.
- 29.2 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 employees about the change.
- 29.3 In coming to agreement, the CTMC will take into account:
- 29.3.1 any urgency created by the impact of COVID-19;
- 29.3.2 the scale of the change (including, without limitation, the number and nature of employees who will be affected by the change, the level to which the affected employees will have their work arrangements changed, potential for job losses or loss of job or promotion opportunities).
- 29.4 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 32.17.
- 29.5 Any consultation process determined under clause 29.2 or 29.4 above must involve the University providing information to the employees and NTEU about the change, and invite the employees 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 employees about the impact of the change. An affected employee must be able to appoint a representative for the purpose of the consultation. For a change to the employee's regular roster or ordinary hours of work, the Agreement term will apply.

**Commented [SA33]:** The CTMC cannot contest the substance of any major change proposal that the University decides upon. Its role is limited to considering the issue of timeframe and method of consultation. That needs to occur within 5 working days

**Commented [SA34]:** "agreement" can be by a majority view (see Clause 32.8).

**Commented [SA35]:** All disputes that go to arbitration need to be determined by arbitrated decision with a further 5 working days (unless the parties to the dispute agree to a longer period).

## PART 8: TERMINATION OF EMPLOYMENT

### 30. Termination pay

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

**Commented [SA36]:** The employee's salary rate on termination will be deemed to be the salary that it would have been if not for a measure taken by the University under Part 5, and a fraction reduction under Part 5 will not count so as to decrease the employee's overall average service fraction if relevant to a redundancy pay calculation.

### 31. Redundancy

- 31.1 During the life of this Schedule there will be no forced redundancies as a generalised cost-cutting measure which are not connected to a reduction in work.
- 31.2 Redundancies may only be made in accordance with this clause. Before any redundancy, consultation as contained in clause 29 must occur.

#### When a redundancy may occur

- 31.3 The University may only make employees involuntarily redundant in the following circumstances:

**Commented [SA37]:** This provides for two different redundancy situations.

31.3.1 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 31.4 which results in the work no longer being required to be performed by anyone; or

31.3.2 where the redundancy is due to an insufficiency of work in a particular work unit or function and there is a surplus of employees, in accordance with clause 31.5

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

**Commented [SA38]:** Situation 1

31.4 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 an employee involuntarily redundant where:

31.4.1 the employee's work is no longer required to be performed by anyone;

31.4.2 the University has sought to redeploy the employee. In exploring redeployment, the University will ensure the employee is made aware of all relevant vacancies and redeploy them to any position in the University that is appropriate to the skills and competencies of the employee or which the employee could perform at a satisfactory level within a reasonable time with appropriate training and support, provided that an employee 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;

31.4.3 the University has explored with the employee other measures that may be taken to avoid termination; and

31.4.4 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 employees

**Commented [SA39]:** Situation 2

31.5 Where there is a permanent insufficiency of work in a particular work unit or function and there is a surplus of employees, the University must only make an employee involuntarily redundant where it has:

**Commented [SA40]:** In this second redundancy situation, a position can be made redundant notwithstanding some of the duties of the position remain and are redistributed to other positions in the unit.

31.5.1 identified the number of surplus employees;

31.5.2 offered a voluntary redundancy to all affected staff. The University must allow all those who volunteer to separate, unless the employee 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 31.5.3 will apply);

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

31.5.4 sought to redeploy the employee. In exploring redeployment, the University will ensure the employee is made aware of all relevant vacancies and redeploy them to any position in the University that is appropriate to the skills and competencies of the employee or which the employee could perform at a satisfactory level within a reasonable time with appropriate training and support, provided that an employee 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;

**Commented [SA41]:** Redeployment is to occur where a suitable position is identified by the University. The employee cannot opt to take a redundancy payment in these circumstances.

31.5.5 explored with the employee other measures that may be taken to avoid termination; and

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

31.5.7 Nothing in clause 31.5 shall prevent multiple units or functions being dealt with simultaneously.

#### Voluntary separation packages

31.6 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.

**Commented [SA42]:** This does not prevent the University from offering VSPs to a particular work area, as is needed for Clause 31.5.2 situations.

31.7 The University must allow all those who volunteer to separate, unless the employee has particular skills and/or experience such that they are essential to the operation of the particular work unit or function.

#### Redundancy pay

31.8 This Schedule does not affect redundancy or like payments, or provisions relating to notice periods as governed by the Agreement.

**Commented [SA43]:** This preserves the redundancy entitlements of employees under the EA, such as any entitlement to be paid out in lieu of any termination notice period or receive payment in lieu of a redeployment exploration period.

### **PART 9: COMMITTEES**

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

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

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

**Commented [SA44]:** The NTEU nominees may include a nominee(s) of another union in appropriate circumstances.

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

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

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

32.4.2 oversee the implementation of the Schedule;

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32.4.3 carry out its functions in relation to change proposals in accordance with clause 29;

**Commented [SA45]:** This needs to occur within 5 working days.

32.4.4 deal with any dispute over a term of this Schedule or the application of this Schedule, in accordance with clause 32.13 to 32.16.

**Commented [SA46]:** This needs to occur within 5 working days.

32.5 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.

**Commented [SA47]:** This makes it clear that the CTMC does not have a role in relation to the determination of which measures are made available to the University as a Category A or B university or as what measures the university chooses to implement from those available to it as a Category A or B university.

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

#### Information

32.7 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

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

#### NTEU nominees

32.9 NTEU nominees on the CTMC who are University employees will have reasonable time release during working hours to carry out duties in relation to the implementation of this Schedule.

32.10 NTEU delegates will be allowed reasonable time during working hours to assist NTEU nominees in carrying out the role of the CTMC.

#### Communication

32.11 In addition to holding meetings with employees, members of the CTMC may consult by Email List with employees 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.

**Commented [SA48]:** "Email List" is defined in Clause 37.

32.12 Employees 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

32.13 This clause governs:

32.13.1 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;

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

32.14 These procedures shall apply to any dispute raised by an employee, Union or the University to which the University is a party.

For the avoidance of doubt, the dispute settling clause 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.

32.15 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.

32.16 An employee may appoint a Representative for the purpose of this dispute settling procedure.

**Arbitration**

32.17 Wherever this Schedule refers to a matter being arbitrated, it shall be arbitrated in accordance with clause 32.18 to 32.24.

32.18 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, employees and NTEU. The reasonable cost of the Arbitrator in each case shall be met by the University.

32.19 The Arbitrator shall be nominated from the Arbitration Panel, with the University and NTEU alternating nomination of the Arbitrator.

32.20 The dispute will be arbitrated in one of the following ways:

32.20.1 with agreement of the parties, an informal conference with the parties agreeing in advance to accept a recommendation of the Arbitrator; or

32.20.2 with the agreement of the parties, by final offer arbitration; or

32.20.3 by hearing.

32.21 Where the dispute is to be heard, the following apply:

32.21.1 the Arbitrator will decide all matters as quickly as possible having regard to equity, good conscience and the substantial merits of the case;

32.21.2 the Arbitrator shall determine a fair and efficient procedure, ensuring procedural fairness (which may include production of information), having regard to clause 32.22;

32.21.3 the CTMC may agree such other powers and procedures as may be necessary.

32.22 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).

**Commented [SA49]:** These arbitration provisions apply in substitution of the role normally conferred on the Fair Work Commission by a dispute settling clause. (The FWC retains that role on matters not governed by the Schedule).

**Commented [SA50]:** It is intended that the Panel comprises members with significant IR expertise, such as ex members of the Fair Work Commission or State industrial tribunals.

**Commented [SA51]:** This is a "rapid arbitration" process; compared to the FWC processes that can often take many months to complete.



- 32.23 No person bound by the Agreement shall knowingly give false or misleading information or evidence to the Arbitrator.
- 32.24 Arbitration proceedings shall be conducted in public or private as determined by the Arbitrator. Arbitration decisions will be published and are not confidential. Brief reasons for decision shall be given, but not necessarily at the same time as giving the decision.
- 33. Expert Assessment Panel**
- 33.1 Before accessing any cost-saving measures in Parts 4, 5 and 6 of this Schedule, available to a university in Category A or Category B, 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:
- 33.1.1 a cut in senior executive salaries higher than that borne by employees;
  - 33.1.2 reduction in capital works;
  - 33.1.3 reduction in travel;
  - 33.1.4 debt capabilities;
  - 33.1.5 drawing on cash reserves;
  - 33.1.6 drawing on investments.
- 33.2 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.
- 33.3 The EAP will appoint an independent accountant to verify the figures provided and the methodology used to calculate them.
- 33.4 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 further before confirming a decision which will be final.
- 33.5 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 or Category B, 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.

**Commented [SA52]:** These provisions have been modified from those in the HOA document in line with recommendations contained in legal advice provided to Vice-Chancellors on 14 May 2020. The EAP has only one decision-making role: to rule on whether the University meets the financial threshold for either Category A or Category B. The University is able to obtain the EAP's decision before deciding whether to put this proposed EA Variation to a vote of staff. It is expected that when putting an EA Variation to a vote of staff, the University will outline to staff the particular measures that it is intending to use as a Category A or Category B University.

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- 33.6 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 a University is no longer eligible to access particular cost saving measures the EAP will give reasonable notice to the University that it is not eligible to access those measures prospectively.
- 33.7 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.
- 33.8 All information provided by the University to the EAP is provided on a commercial in confidence basis.

## PART 10: DETERMINING THRESHOLDS

### 34. Introduction

- 34.1 The University may access the cost-saving measures contained in Part 5 once the University has demonstrated to the EAP that it has met the threshold of the Category defined below.

### 35. Categories

- 35.1 The University is in Category A if the following metrics are met:
- 35.1.1 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
- 35.1.2 it has a core operating cash flow margin of greater than 3.0% and less than or equal to 6.0%; or
- 35.1.3 it meets one of the metrics as identified below as it relates to Category B.
- 35.2 The University is in Category B if the following metrics are met:
- 35.2.1 it can demonstrate a forecast reduction in total revenue of 10.0% or greater (measured over a 12-month period against 2019 actuals); and
- 35.2.2 it has a core operating cash flow margin of 3.0% or less.
- 35.3 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.
- 35.4 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

**Commented [SA53]:** The Category A and B eligibility metrics set out in this clause were developed by a Technical Subgroup established by the negotiating parties, involving University CFOs as Subgroup members.

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*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.*

35.5 During the life of this Schedule, the University may move from one Category (or no category) to another Category (or no category) upon declaration of the EAP.

## **PART 11: INTERPRETATION**

### **36. Interpretation**

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

### **37. Definitions**

- 37.1 The following definitions apply to terms contained in this Schedule.
- 37.1.1 **Agreement:** the (insert Agt title);
- 37.1.2 **Arbitrator:** person appointed under clause 32.19;
- 37.1.3 **Award:** either the *Higher Education Industry – Academic Staff – Award 2020* or *Higher Education Industry – Professional Staff – Award 2020*, as applicable;
- 37.1.4 **Category A:** see clause 35.1 of this Schedule;
- 37.1.5 **Category B:** see clause 35.2 of this Schedule;
- 37.1.6 **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;
- 37.1.7 **COVID-19 Temporary Measures Committee (or CTMC):** see clause 32 of this Schedule;
- 37.1.8 **Email List:** a bulk email address provided by the University which does not disclose the email addresses of individual employees;
- 37.1.9 **Expert Assessment Panel (or EAP):** refer to clause 33 of this Schedule;
- 37.1.10 **FW Act:** the *Fair Work Act 2009* (Cth);
- 37.1.11 **Involuntary redundancy:** where the employee has not accepted an offer of voluntary redundancy and is unable to be redeployed;
- 37.1.12 **Memorandum of Understanding:** the MOU signed by the NTEU and the University;

- 37.1.13 **NES:** is Part 2-2 of the FW Act;
- 37.1.14 **NTEU:** National Tertiary Education Industry Union;
- 37.1.15 **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;
- 37.1.16 **the University:** (insert University)
- 37.1.17 **this Schedule:** this document, which has effect following approval by the Fair Work Commission;
- 37.1.18 **voluntary redundancy:** where employees volunteer for redundancy;
- 37.1.19 **voluntary separation package:** a set of entitlements provided by the University consistent with the voluntary separation payments provided for in the Agreement or on the same terms as if the employee was retrenched for redundancy, whichever is the greater;
- 37.1.20 **workplace change:** without derogating from the matters required to be considered under the Agreement, means a change to an employee'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 employees. **Significant effects** include:
- 37.1.20.1 termination of employment;
  - 37.1.20.2 changes to the composition, operation or size of the University's workforce or skills required of staff;
  - 37.1.20.3 elimination or diminution of job opportunities including opportunities for promotion or continuing employment;
  - 37.1.20.4 outsourcing of work; and
  - 37.1.20.5 restructuring and/or relocation of work units.

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