

# MinterEllison

23 May 2016

**BY EMAIL:** amod@fwc.gov.au; chambers.ross.j@fwc.gov.au; chambers.johns.c@fwc.gov.au

The Hon. Justice Ross  
President  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

Dear Associate

## **AM2014/229 - Higher Education Industry-Academic Staff-Award 2010 [MA000006]**

We refer to our correspondence of 16 May 2016 and confirm that we act on behalf of Bond University.

We acknowledge receipt of the Bond University Academic Staff Association's (**BUASA**) correspondence to the Commission on 19 May 2016 and the submission of the National Tertiary Education Union (**NTEU**) regarding outstanding matters dated 18 May 2016.

### **Background**

Bond University has only very recently become aware that, on 20 April 2015 and 10 March 2016, BUASA lodged submissions and evidence with the Fair Work Commission in respect of amendments it proposes to the Higher Education Industry Academic Staff Award 2010 (**Academic Staff Award**).

BUASA seeks to vary the coverage terms of the Academic Staff Award by amending clause 10.2 of the Academic Staff Award, which appears in clause 5.6(a) of the Exposure Draft issued by the Commission on 18 December 2015. We assume it does so on behalf of one or more of its members. BUASA is not a registered organisation (or transitionally registered or recognised) pursuant to the *Fair Work Act 2009* (Cth), but has representational rights under the *Bond University Act 1987* (Qld).

### *Substantive issues AM2015/6 – extension sought by Bond University*

We understand that BUASA's submission will form part of the substantive issues to be dealt with in hearings before the Full Bench from July-November 2016.

The Direction of Commissioner Johns of 20 April 2016 provides that each interested party files in the Commission a written outline of submissions and any witness statements and documentary materials in reply by **3 June 2016**. Bond University seeks an extension to enable it to comply with that direction (if necessary) in light of the matters set out below.

### *Outstanding technical and drafting issues – directions sought by Bond University*

We understand that there have been a number of conferences held between the Australian Higher Education Industrial Association (**AHEIA**), the NTEU, and Group of Eight Universities (**Go8**) in relation to outstanding technical and drafting issues.

In accordance with directions issued by Commissioner Johns on 12 May 2016, we understand a further amended version of the exposure draft of the Academic Staff Award is to be released next week, with



outstanding technical and drafting issues to be the subject of a hearing before a Full Bench on **6 and 7 June 2016**.

In its letter of 19 May 2016, BUASA appears to be seeking directions in relation to Bond University's participation in the proceedings regarding outstanding technical and drafting issues.

Bond University agrees that, if the Commission sees fit, it would be appropriate to make directions for the filing of submissions by Bond University and any reply material by BUASA and other interested parties. In the circumstances it seeks an adjournment of the hearings on 6 and 7 June 2016.

Depending on the outcome of these matters, it may be necessary for Bond University to make submissions in the substantive matter, including putting on witness evidence in response to the two unsigned statements provided by BUASA. It appears that the outstanding issues will not be able to be dealt with before the direction in AM2015/6 of 3 June 2016. Accordingly, Bond University requests that it be permitted to make submissions and file evidence in the substantive proceedings, if required, at a later date.

### **Position**

Bond University seeks to be heard in relation to both the technical and drafting issues and the substantive issues concerning clause 5.6(a) of the Exposure Draft. The proposed amendments would have a significant and material effect on the University's operations.

Bond University also seeks to be heard on the appropriateness of BUASA's proposed variation being dealt with at all in the Four Yearly Review process.

The submission by BUASA is in fact a new claim. It seeks, for the first time, to extend critical provisions in the Academic Staff Award to Bond University. It is not appropriate for this submission to be dealt with as part of the Four Yearly Review. Rather, it should be the subject of a separate application to vary a Modern Award, in which the interested parties may include several other Universities who are yet to become aware of the application.

The Higher Education Contract of Employment Award 1998 (HECE) restrictions on fixed term contracts were applied to public universities (with some exclusions) following a lengthy and heavily contested arbitration. The Australian Industrial Relations Commission's decision to impose the restrictions was made on the basis of evidence, at that time, of the practices of public universities in relation to fixed term contract use.

In 2008 the Fair Work Commission made a decision<sup>1</sup> to include the HECE restrictions in the Academic Staff Award. However, the Commission decided that it was not appropriate to apply the HECE restrictions to Universities which were not covered by the HECE Award as those Universities had not been the subject of the original arbitration which formed the basis for the imposition of the restrictions.

There has been no change to these circumstances and there is no reasonable basis for BUASA's submission that the restrictions should now apply to Bond University or, in the alternative, all Universities.

We would be grateful if this correspondence could be brought to the attention of Commissioner Johns so that he may consider issuing directions in light of the matters raised.

Yours faithfully  
**MinterEllison**

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<sup>1</sup> [2008] AIRCFB 1000 – 19 December 2008 at [173-174].

# MinterEllison

21 June 2016

**BY EMAIL: amod@fwc.gov.au; chambers.ross.j@fwc.gov.au; chambers.johns.c@fwc.gov.au**

Associate to Commissioner Johns  
Full Bench AM2015/6  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

Dear Associate

**Full Bench proceedings AM2015/6 - Higher Education Industry-Academic Staff-Award 2010**  
**Our client: Bond University**

We refer to our correspondence of 23 May 2016.

The Direction of Commissioner Johns of 20 April 2016 provides that each interested party files in the Commission a written outline of submissions and any witness statements and documentary materials in reply by 3 June 2016. By letter dated 23 May 2016 Bond University sought to be heard in the Full Bench proceedings and sought an extension to enable it to comply with the direction of Commissioner Johns, if necessary, subject to the resolution of outstanding technical and drafting issues in AM2014/229.

## **Bond University's request to be heard in Full Bench AM2015/6 (opposed by BUASA)**

On 24 May 2016 a response was received from the Associate to Justice Ross, which advised that Bond University could be heard in AM2014/229 on 6 and 7 June 2016, and that Bond University's request to be heard in the Full Bench proceedings had been forwarded to the AM2015/6 Full Bench for attention in relation to substantive matters.

We have not heard further from the Full Bench and it was not clear, until confirmed by Justice Ross on 7 June 2016, whether the application by the Bond University Academic Staff Association (**BUASA**) had in fact been referred to the AM2015/6 Full Bench. The confusion arose because the 'Summary of Submissions' table dated 30 May 2016 (and earlier versions of the table) does not record that the matter has been referred to the Full Bench (and does so in relation to a number of other matters). Justice Ross confirmed on 7 June 2016 that BUASA's application has been referred to the Full Bench.

At the mention on 7 June 2016, BUASA advised that it opposes Bond University being heard in the Full Bench proceedings. Justice Ross advised that this would be a matter for the Full Bench to consider. Bond University would be grateful if the Full Bench could consider its request to be heard as outlined in its correspondence of 23 May 2016 (copy **attached**).

## **Directions sought by Bond University**

At the mention on 7 June 2016 BUASA indicated that if Bond University is to be heard in the Full Bench proceedings, it would seek to make further submissions and supplement the evidence currently before the Commission.

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In the event the Full Bench decides that Bond University may be heard, Bond University seeks the following directions for the filing of material:

1. BUASA be permitted to file supplementary submissions, any witness statements and documentary materials in support of their variation on or before 4.00 pm on Tuesday 26 July 2016.
2. Bond University, being an interested party, be permitted to file a written outline of submissions, any witness statements and documentary materials in reply to BUASA's material on or before 4.00 pm on Tuesday 16 August 2016.
3. BUASA be permitted to file written submissions in response to Bond University's reply submissions on or before 4.00 pm on Tuesday 30 August 2016.

Bond University respectfully suggests that these directions could be accommodated without any amendment to paragraph 7 of Commissioner Johns' direction of 20 April 2016 – ie that the parties jointly file a proposed timetable for the hearing of evidence on or before 4.00 pm on 8 July 2016. Bond University's proposal to the other parties would be that BUASA's application be listed for hearing on one of the listed dates in October or November 2016.

We would be grateful if this correspondence could be brought to the attention of Commissioner Johns for his consideration.

Yours faithfully  
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