

30 July 2015

Kerry Penton
Director Workforce Engagement
TAFE NSW

RE: PSA Response to TAFE NSW claims Enterprise Agreement (updated)

Further to our previous correspondence 28 July 2015, please find the amended version of the PSA/CPSU response to the TAFE Claims as discussed below.

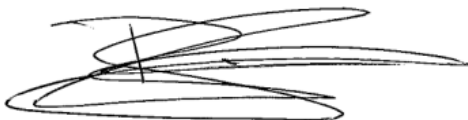
TAFE NSW tabled the “Proposed Conditions and Allowances” document during the 1-2 July 2015 Enterprise Bargaining meeting and subsequently published this document on the TAFE management’s Enterprise Bargaining website. During the meeting 15-16 July 2015, TAFE NSW confirmed that these were the claims TAFE was making for the next Enterprise Agreement and that TAFE expected a response in writing to these claims.

TAFE also framed the document as a “discussion point” rather than formal claims. However now that TAFE has tabled this document publically as a proposal the PSA/CPSU is required to respond. This is to ensure that the Union meets our obligations under the Good Faith Bargaining requirements to “*[respond] to proposals made by [TAFE] in a timely manner*”. Given the extraordinarily detailed proposals covering a broad range of topics, the Union is unable to provide as comprehensive a response as we would prefer.

Please refer to the attached response by the PSA/CPSU to the claims contained in the “Proposed Conditions and Allowances” document.

Please note that the PSA/CPSU responded to the salary spine claim in the bargaining meetings 1-2 July and 15-16 July 2015 verbally and with the provision of an initial counter offer. A response to the proposed Flex Time Agreement will be considered shortly and the PSA/CPSU will respond in due course.

Regards



Blake Stephens
A/Senior Industrial Advocate
Public Service Association of NSW and
the **Community and Public Sector Union**

| Condition | TAFE Proposal – as summarised by the PSA (updated 29 July) | PSA/CPSU Initial Reaction / Response |
|---|--|---|
| Enterprise Agreement Structure | Add an additional Section 6 for the new classification structure/system while maintaining the current system. New jobs & current staff as they get restructured will move onto the new classifications | PSA REJECTS Note 1 |
| Job Evaluation & the move to the new system | New jobs to be evaluated under the Work Level Standards still to be developed. The move to the new classification system would occur through the implementation of restructures, new jobs being advertised including promotion. New jobs & current staff as they get restructured will move onto the new classifications | PSA REJECTS IMPLEMENTATION, NOT YET ACCEPTS WLS Note 2 |
| Types of Employment | Introduce part year, and part year/part time employment in the enterprise agreement | PSA REJECTS Note 3 Because there was no regulation or protection being proposed. UPDATE (29 July) TAFE has now provided some framework around part year which we are now considering. |
| Probation | 6 month probation with maximum extension to 12 months, less than the current 24 months. | PSA REJECTS PSA COUNTER OFFER Note 4 Because under the Fair Work legislation 6 months is the maximum period that an employee has to work before access to unfair dismissal. UPDATE (29 July): The PSA has proposed a compromise, noting the offer by TAFE to reduce the extension period |
| Weekly ordinary hours of work | For Up to 80% of staff to increase their weekly hours from 35 to 37 per week, 20% of staff to decrease their weekly hours from 38 to 37, but lose their RDOs and lose many allowances. | PSA REJECTS Note 5 Because the PSA considers there increase is offered without compensation |
| Flex-time & RDOs | Remove flex time from people who do partial shifts or rosters. Remove RDOs from all other staff. No flextime or RDOs for part year staff | PSA REJECTS Note 6 |
| Daily Bandwidth | ALL staff to move to a bandwidth of 6am – 9pm (Update TAFE confirms Monday to Friday). This includes split shifts for any staff, no | PSA REJECTS Note 7 UPDATE: TAFE has now confirmed that |

| Condition | TAFE Proposal – as summarised by the PSA (updated 29 July) | PSA/CPSU Initial Reaction / Response |
|---|--|--|
| | penalty rates or overtime. | the daily bandwidth is Monday to Friday and not Monday to Sunday as we first interpreted. |
| Minimum & Maximum Hours | All full time & part time staff, minimum of 2 hours a day, and maximum of 10, open to split shifts, 6am to 9pm, without any penalty rates (unless on shift work after 7pm) or overtime applicable, working up to 37 hours. | PSA REJECTS Note 8 |
| Breaks, tea breaks, crib breaks and meal breaks | PSA's initial reading is that TAFE proposes removing the afternoon tea break for 80% of staff. For staff on flex time, reduce the lunch break from max of 2.5 hours to max of 1.5 hours. Changes to paid meal breaks (will have 30min when required to remain on premises) | PSA REJECTS Note 9 <i>UPDATE: TAFE has indicated their intention was for afternoon tea breaks to still be available.</i> |
| Broken Shifts | TAFE wants to allow <u>all</u> staff to be rostered onto broken shifts, with up to 5 hours between shifts on any one day | PSA REJECTS Note 10 because even with a span of 12 hours of broken shifts, this would still reduce the take home pay drastically, impacting on work/life balance. |
| Ordinary rates of pay for full time staff | New salary for the new classification structure that provides a flat percentage rate increase from the bottom to the top. | PSA REJECTS Note 11 because the PSA considers this to disadvantage the lower paid workers who have far less income through their progression points |
| Ordinary rates of pay for part time staff | No loadings for part time security staff. Any additional hours for part time staff have annual leave paid as a loading, but no accrual of sick leave, extended leave, any other forms of leave or loadings. | PSA REJECTS Note 12 because no clear proposal around how part time staff have been provided. <i>UPDATE: Tafe has now indicated that the current provisions for part time staff would continue</i> |
| Casual Rates of Pay | TAFE is offering 23.3% loading. | PSA REJECTS Note 13 Because this provide less than the standard national minimum of 25% loading for casual employees, |
| Shift Work | No morning shift penalties Daylight equivalent removed Standard penalty rates for any/all shift workers All staff able to be rostered on shift work, including split shifts Afternoon and evening shift penalties reduced to 15%-30% | PSA REJECTS Note 14 |

| Condition | TAFE Proposal – as summarised by the PSA (updated 29 July) | PSA/CPSU Initial Reaction / Response |
|---|--|---|
| | Afternoon shift only available if formally rostered to work past 7pm | |
| Shift work penalty rates | Remove the early morning shift work penalty rates. Remove early afternoon rates. Extend the start of the evening rate from 6pm to 7pm. | PSA REJECTS Note 15 because this would cut the penalty rates for all staff to the lowest rates. |
| Split Shifts Broken Shifts | Broken shifts, or split shifts, able to be used for any/all staff. Up to 5 hours off between shifts, across any 12 hour period. Broken shifts can be rostered anytime. | PSA REJECTS Note 16 because there would be no limits on how many shifts per day. |
| Overtime Rates | Standard 150% for the first 2 hours then 200% for every hour after that for Monday to Saturday. For Sundays 200% for all hours and for public holidays 250% for all hours | PSA REJECTS Note 17 |
| When overtime is paid (rules) | No overtime payable for work inside the bandwidth (6am – 9pm) unless more than 10 hours in any one day or 9 hours for casuals. | PSA REJECTS Note 18 |
| Overtime for part time and casual staff | Overtime only payable after someone works for more than 10 hours in any one day or outside the 6am-9pm bandwidth. Standard overtime rates apply. | PSA REJECTS Note 19 |
| Minimum and Maximum overtime | Monday to Friday, no minimum. Weekends and public holidays, minimum 3 hours. | PSA REJECTS Note 20 |
| Rest Periods – Shift Work and Overtime | Day workers, 10 hours rest between work days Shift workers, 8 hours rest between shifts | PSA REJECTS Note 21 |
| On Call, Recall, Call Back and Standby | Standardised rules for all staff. Minimum of 3 hours only when called back. | PSA REJECTS Note 22 |
| Allowances | A majority of current Allowances being removed. | PSA REJECTS Note 23 because there no compensation being offered for the loss of the entitlement |

Note 1 – added Section 6 with new conditions and classification structure

The PSA does not believe that the introduction of a full suite of new conditions of employment *in addition to* the current detailed conditions will provide TAFE with the streamlining and simplification TAFE seeks. The requirement to keep the current conditions while [transferring, by the restructure method, all employees across to the

new classifications with their own, specific conditions of employment, is unwieldy, complicated and unnecessary. TAFE management's preferred method of transferring current by restructure will also exacerbate the lowering of morale in TAFE's greatest asset – its staff.

The PSA/CPSU believes that if a new streamlined classification system is agreed, the transfer across to the new system should also be smooth and harmonious without the need to keep the complex current system.

Note 2 – implementation of the new classification structure/system

The PSA notes that the work level standards have yet to be finalised. Until the PSA can review and assess the final draft, we are obliged to reject an unfinished version of a draft classification evaluation system.

Note 3 – part year employment, part time & part year employment

TAFE has indicated they are seeking clear definitions of “ongoing, temporary, casual, full time, part time, apprentices and trainees”. Without seeing the exact proposal the PSA/CPSU is unable to provide considered feedback. However TAFE is also proposing “part year employment with annualised hours” which also allows for these categories to be both part time and part year.

TAFE has not provided any security or clear framework around the use of part time, part year employment. If this is implemented as a generic category able to be used for any employees covered by the Agreement, the PSA/CPSU must reject this claim.

The transfer of the workforce, or significant parts of the workforce, to part year (with or without part time) employment, that is not self nominated by the employee, and without any safeguards, limitations, guidelines or protections for these staff, the PSA/CPSU must reject the claim. This could see more and more staff being ‘restructured’ into part year, part time employment with annualised hours, contracted for no more than a nominal few weeks. Additional work could then be added to effectively treat the majority of the workforce as casuals without the penalty rates or appropriate compensation.

UPDATE (30 July): TAFE has now provided some initial guidelines around part year employment which the PSA is considering.

Note 4 - Probation

The PSA/CPSU notes that this is one of the very few areas that TAFE is seeking to actual improve for all employees. The PSA/CPSU discussed this matter with TAFE and the other unions during a ‘side meeting’ organised by TAFE. Arising from these discussions, the PSA/CPSU tabled a draft clause which provided for no more than a 6 month probation period. Based on these discussions and the draft clause, the PSA/CPSU rejects the proposal for probation to extend beyond 6 months.

Note 5 – ordinary weekly hours of work

TAFE is proposing to move 80% of its workforce covered by this Agreement from 35 hours a week to 37 hours a week. Not all of this 80% are working full time. This is an increase of 5.7% of the weekly hours without any proposed increase in salary or other compensation for the increased work.

During a time when there are rising costs of living, especially the rising costs of homes, for both purchases and renters, in the Sydney area, traveling to and from

work and maintaining a good work life balance is becoming more and more difficult. Any suggestion by any employer that their employees should volunteer to be contracted to increase their work by 5.7% for no compensation, directly negatively impacting on their quality of life, must be rejected. The PSA/CPSU rejects this claim by TAFE and strongly recommends that TAFE reconsider its priorities and pursue an alternative option of moving the less than 20% of its (head count) workforce from 38 hours to 35 hours per week.

Note 6 –Rostered Days Off

TAFE Management's proposal effectively removes all RDO's for those employees currently entitled to them, and as most (if not all) of the effected employees are shift workers, or do part shifts/rosters, they would also be excluded from access to flex time.

There is no clear rationale for the removal of all flexible work and rostered flexible work from these categories of employees. Especially when there has been no clear rationale or compensation offered for the total removal of access to flex time or RDO's provided.

The PSA/CPSU does not consider this proposal to be well developed and must reject it entirely.

Note 7 – Bandwidth of work

TAFE is proposing to move all staff to a daily bandwidth of 6am to 9pm, and what could be Monday to Sunday. UPDATE (30 July) TAFE has now confirmed that this is only Monday to Friday. This would limit the access of overtime and/or shift penalties to those staff who TAFE require to work during this time. There has been no clear or rationale reasons provided for this change, other than to move everyone onto the same bandwidth. If that is the only reason, the PSA/CPSU suggests that a single bandwidth of 7.30 am to 6.00pm, which currently applies to the vast majority of staff, should be maintained and provided to all employees.

Without any clear basis for the need, and certainly without any proposed compensation for the loss of penalty rates, overtime and unfriendly working hours, the PSA/CPSU cannot accept this proposal and rejects the claim made by TAFE.

Note 8 – Minimum/maximum hours per day

TAFE is proposing to have all staff be able to be directed to work a minimum of 2 hours in any and up to 10 hours in any one day, or 9 hours for casuals. Currently, different categories of staff have minimum developed in different ways. Contrary to the claim by TAFE, administrative staff who are working on the flexible working hours, have a general minimum of 5.5 hours per day, with the ability to reduce to 4 hours in any one day.

Note 9 – Tea break, lunch break

The proposal to remove the afternoon tea break for staff is rejected by the PSA/CPSU. There is no need to remove this condition and does more damage to the morale of staff than any potential cost saving. The proposal that staff can only access a second 10 min paid break if they work 8 hours means that many staff working flexible working hours (and all staff working ordinary hours) would lose the second tea break. – UPDATE (30 July), TAFE has now confirmed the removal of the afternoon tea break was not their intention.

The claim to reduce the ability to have up to a 2.5 hour lunch break for those staff on flextime would negatively impact the work life balance this provision encourages. For

staff to be able to negotiate a longer lunch to visit their doctor and make up the hours later (or beforehand) provides the work/life balance that should be available to all workers. The PSA/CPSU rejects these claims by TAFE.

Note 10 – Broken shifts

Currently the only categories of staff doing broken shifts are security guards, (limited) hospitality employees and general service officers. There are other options to make available the access to broken shifts for those employees that would like to elect to do. The PSA/CPSU does not accept that there is any rationale for the widespread application of broken shifts to all staff covered by this Agreement. The PSA/CPSU rejects this claim by TAFE.

Note 11 – new rates of pay

There is no understanding as yet of the impact for staff when transferring to the new classification system and the salary spine. Current staff, when classified against the new system, may end up with their salary being graded with a range lower than what they currently have.

Without having a clearer picture of the changes and its impact for our members the PSA/CPSU cannot accept the claim by TAFE.

Note 12 – rates pay for part time workers

Part time workers should be provided with clear agreed times of work, the pattern of work, the hours of work each day & week. Part time workers arrange their lives around the part time work for a range of reasons. This includes jobs with other employers as what they earn from TAFE may not be enough.

When part time workers are asked to do additional hours, these should be paid as overtime. The PSA/CPSU has serious concerns that TAFE may seek to employ hundreds of staff on base part time hours, of say 1-2 days a week, and then ask them to do equivalent to full time hours, potentially saving TAFE considerable money as the only 'loading' would be in lieu of annual leave. Casual loading is 25%, overtime is 1.5 x the base rate or 2x the base rate, the loading in lieu of annual leave is around 12%. This is not an acceptable way to treat staff. The PSA/CPSU rejects this claim

Note 13 – casual loading

The Fair Work system when introduced provided that casual loading rates would increase to a standard 25% under the Modern Awards. The government at the time recognised that employers would need a transition as there were many areas where the casual loading rate was much lower.

The PSA/CPSU believes this transition period has ended and the new national standard of 25% loading for all casuals is now applicable having been adopted by the vast majority of all employers across all industries. The general standard that is accepted across the majority of all workforces is a minimum of 25% loading for all casuals. The PSA/CPSU rejects TAFE's claim of providing a lower casual loading rate than the rest of the country.

Note 14 – shift work schedules

The shift work schedules relate directly to the shift work penalty rates. Please see below for the rationale which applies to this claim as well. The PSA rejects this claim by TAFE.

Note 15 – shift work penalty rates

TAFE is proposing to remove many of the shift work penalty rates many of our members. The claim by TAFE is to remove the early morning shift, the different levels of afternoon shift and to move the evening shift time from 6pm to 7pm. The PSA rejects the claims by TAFE which seek to move everyone to the minimum possible denominator.

Note 16 – broken shifts, split shifts

This is one of the more contentious claims made by TAFE. Broken shifts have traditionally been limited to areas only where its been absolutely necessary and unions have generally been strongly opposed to it. The PSA/CPSU rejects TAFE's claims for split shifts as this provides some of the worst family friendly conditions possible. The proposal to extend the ability to have split shifts applicable to all TAFE staff covered by this Agreement is unnecessary and strongly rejected by the PSA/CPSU.

Note 17 – overtime rates

TAFE is claiming to reduce the overtime rates for a number of categories of staff. This reduction is not acceptable and should not be included. The harmonisation of conditions should not be a race to the bottom and the PSA/CPSU rejects this claim.

Note 18 – when overtime can be paid

The principle of overtime is to provide the employer with an important lever which is designed to send the main signal every employer responds to. This is the cost of overworking your staff. The introduction of flexible working arrangements where staff agree to do additional work and take an equivalent time off later, hour for hour with no penalty or cost signal for the employer, has driven a new mentality amongst employers that is becoming dangerous.

The purpose and intention of flexible working practices is to provide more autonomy and flexibility for your staff. The benefit to the employer, is that staff will often volunteer to do the extra work that would otherwise be paid for by overtime.

Under no circumstances is it acceptable to replace this important cost signal with a strictly controlled flexible work system that effectively replaces overtime with unpaid labour. The PSA/CPSU contends that all work in addition to the normal daily hours, that is directed by the employer, must be paid as overtime. Flexitime is only when an employee volunteers and wants to do the work. The PSA/CPSU rejects the claim by TAFE to exclude overtime being paid for work above the employee's normal daily hours.

Note 19 – overtime for part time / casual staff

For part time staff, overtime should be paid when the employer requires additional hours to be worked. This directly impacts on their lives and other responsibilities and arrangements they may have in place. As described above, overtime is an important cost signal to employers that indicate they need to improve or adjust their business and staff resources. The PSA/CPSU rejects the claim by TAFE that overtime is not payable to part time staff for hours above their normal daily contracted hours.

Note 20 – minimum and maximum hours

TAFE claims that many staff do not have a minimum rate of hours per day. This is technically not correct as there are a range of other protections that impact on these

staff and provide for daily and weekly minimums. For full time staff to have a minimum of 2 hours on any one day, is not practical nor acceptable. The PSA/CPSU rejects this terrible proposal as it would significantly adversely affect the work/life

Note 21 – rest periods between shifts and after overtime

Reducing the rest periods if staff are moved from day workers to late shift workers, to a possible 8 hours, is may have a horrible impact on some staff. The minimum should be at least 12 hours rest between shifts or days of work. Staff must be able to spend time with their families, and to recover and rest between work days & shifts. In the Sydney region in particular, the travel time to and from work is increasing significantly for more and more staff as housing prices are forcing people further away from central areas. The impact on your lower waged staff could be that after a 2 hour trip home, facing a 2 hour trip to work the next day, they have only 4 hours to change, shower, eat, sleep, prepare and catch up with their family before the next working day. For the health and safety of your staff, the PSA/CPSU rejects this claim by TAFE.

Note 22 – on call, stand by, and recall to work

For Trades Assistant staff and Skilled Trades staff, the stand by rate is ordinary hourly rates, with a minimum of 4 hours overtime for any call back. The reduction in these conditions is not acceptable. There is no need for TAFE to reduce everyone's conditions to meet the lowest. TAFE is perfectly able to include provisions that limit the more beneficial rates for stand by and recall to work to these categories of staff. The PSA rejects the claim by TAFE to cut these conditions from these categories of staff.

Note 23 – allowances

The PSA/CPSU understands the desire to rationalise and consolidate the wide range of allowances applicable. However this does not equal the wholesale removal of the vast majority of allowances. There is no rationale argument that would prevent the allowances being maintained as a schedule in the Agreement, applicable to the respective duties of any TAFE staff who undertakes those duties. The PSA/CPSU would consider some consolidation of allowances especially in how they are described, however the union must reject the claim by TAFE to eliminate the majority of allowances, especially without any compensation