

AG2015/6962 - TAFE Commission of NSW TAFE Managers Enterprise Agreement 2015

The above application has been allocated to Commissioner Roe.

The Commissioner has raised the following issues:

General NES Issues

The following NES entitlements are not explicitly provided for in the agreement:

- Parental Leave
- Long Service Leave
- Public Holidays
- Termination
- Redundancy

The Commissioner notes that, according to sections 55 and 56 of the Fair Work Act 2009, NES entitlements will apply as a minimum to the employees covered by the proposed enterprise agreement.

However, to avoid doubt the Commissioner requests an **undertaking** that the NES in respect of parental leave, long service leave, public holidays, termination and redundancy will apply, as a minimum, to employees covered by the agreement.

Community Service Leave

Clause 19.4.1 of the agreement states that the employer may grant paid community service leave to an employee performing jury service or acting as an Emergency Volunteer.

Further, clause 19.5.3 suggests that the TAFE Special Leave policy provides paid leave for jury service and emergency volunteers in certain circumstances.

The Commissioner notes that the NES provides various minimum entitlements in relation to Community Service Leave.

Thus, to avoid doubt the Commissioner requests an **undertaking** that the application of clauses 19.4 and 19.5 will not reduce an employee's entitlement to Community Service Leave under the NES.

Paid Personal Leave/Carer's Leave

Clause 19.3.1 indicates that the an employee's full annual entitlement to paid personal leave is available on 1 January each year.

The Commissioner notes that the NES provides that paid personal leave entitlements accrue progressively throughout the year.

Depending on how a person accrues personal leave throughout the year, the application of clause 19.3.1 can be more favourable or less favourable than the NES.

Thus, to avoid doubt the Commissioner requests an **undertaking** that the application of clause 19.3 will not reduce an employee's entitlement to Personal/Carer's Leave under the NES.

Maximum Term Contracts

Clause 4.2 allows for temporary employees to be employed under a maximum term contract.

Maximum term contracts were considered in *Mk2 Recruitment Pty Ltd [2015] FWC 6600*, where the Commissioner stated that maximum term employment is not consistent with the NES.

Furthermore, the relevant modern award for employees covered by this agreement, the Educational Services (Post-Secondary Education) Award 2010, does not provide for maximum term employment.

The Commissioner requests an **undertaking** that removes maximum term contracts from the agreement.

Alternatively, you may wish to provide submissions as to how the maximum term employment under this agreement is consistent with the NES. Thus, you may wish to provide an undertaking that clarifies the rights of employees under a maximum term contract, in consideration of the NES.

If you do wish to provide any undertakings please do so in a written and **signed** format and return it via email to the address provided below. Any undertakings should be **signed by the employer**. Furthermore, the Commissioner asks that you seek the views of all bargaining representatives, if any, regarding any proposed undertakings. Any objections to the proposed undertakings should be raised with the Commission prior to the approval of the agreement.

The Commissioner has asked that you provide any **undertakings**, submissions or further information **by close of business on Friday, 22 January 2016**.