



4 April 2008

NES Exposure Draft submission
GC31
Workplace Relations Policy Group
Department of Education, Employment and Workplace Relations
GPO Box 9879
CANBERRA ACT 2601

Dear Sir/Madam

Re: National Employment Standards Exposure Draft

The Australian Higher Education Industrial Association is registered as an employer association under the *Workplace Relations Act 1996* (the Act), and represents 29 Australian universities and the Batchelor Institute of Indigenous Tertiary Education. The following submissions are made in response to the National Employment Standards Exposure Draft.

2. Request for flexible working arrangements for parents

Concerns have been raised about the possible occupational health and safety implications of arrangements for working from home under this Standard. The NES should not preclude employers from imposing reasonable OH&S requirements on staff who seek such an arrangement as a necessary condition for employer agreement to any arrangement.

The information and assistance to be provided to employers by Fair Work Australia in relation to “reasonable business grounds” needs to take account of (at least) employer’s regional and operational factors.

4. Annual leave

Academic staff enjoy considerable flexibility in relation to when they attend for work. In exchange for this flexibility, academics were commonly not asked to account for annual leave taken, other than through informal arrangements made within their school or faculty.

Accordingly, in a number of universities, records have not been kept centrally of the accumulation and discharge of annual leave. Instead, academic staff have been periodically “deemed” to have arranged and taken annual leave owing to them. Such arrangements were possible when contained in federal workplace agreements.

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Such “deeming” arrangements have been under challenge since the Fair Pay and Conditions Standards were introduced, as it was not clear whether such arrangements met all the detailed requirements set out in the WorkChoices changes to the Act.

Unlike the current minimum provision, the National Employment Standard on annual leave does not specify mechanisms for recording the accumulation and taking of annual leave. Under the proposed new system, informal arrangements that meet the need of the higher education sector should be possible under collective agreements.

In the absence of traditional “deeming” arrangements, the capacity to direct employees to take leave becomes much more important. The NES discussion paper talks of the capacity to direct leave to be taken being included in modern awards. Of particular interest to universities is the capacity to direct employees to take leave at particular times of the academic year and/or when entitlements exceed certain levels.

Similar considerations arise in relation to the “cashing out” of excess leave.

Provided the relevant modern award and/or collective agreement meet the minimum entitlement to the amount of annual leave under the NES, the NES should not preclude a collective agreement making provisions in relation to the above matters that address the needs of the enterprise and its staff, particularly where such provisions have historically provided flexible working arrangements to the benefit of both the enterprise and the staff.

5. Personal/carer’s & compassionate leave

The right of the employer to demand a medical certificate or other formal documentary evidence where the employer has doubts about eligibility for leave should be included in the NES, even if limited (e.g. where the absence is greater than 3 working days) or only in certain cases.

Further, the NES should not preclude employers from requiring independent medical examinations where the “reasonable person” would accept it is justified. Such cases include prolonged absences from work (even if leave entitlements cover the absence) or circumstances which involve significant OH&S “duty of care” obligations in relation to the absent employee or other employees. In many cases, it is to the benefit of the employee concerned, especially where medical retirement may be a possibility.

Also, the NES should not prevent reasonable rules being established by employers for access to paid “sick leave” (from the personal/carer’s entitlement) during pre-arranged annual leave.

7. Long service leave

Some universities currently provide in collective agreements or in AWAs for the cashing out of long service leave, or a certain part of long service leave entitlement, in certain circumstances. Currently this is possible because, as federal statutory instruments, workplace agreements prevail to the extent of inconsistency over state legislation.

Under the proposed NES, this may no longer be an option, although since university agreements typically provide for more generous long service leave entitlements than state legislation, the possibility of cashing out long service leave entitlements that are in excess of the minimum entitlement in the Standard has been raised. Clarification of whether this would be possible would be appreciated.

Provided the relevant modern award and/or collective agreement meet the minimum entitlement to the amount of long service leave under the NES, the NES should not preclude other aspects of long service leave arrangements being dealt with in the modern award and/or collective agreement, as appropriate.

10. Fair Work Information Statement

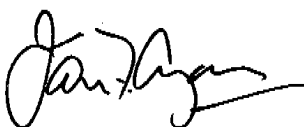
Allowing the Information Statement to be provided to employees prior to commencing employment would facilitate its early provision to casual employees, including particularly casual academic employees, who may not have formal contact with HR Departments between the time at which they are offered employment and the time at which they submit their first claim for payment.

It would also assist prospective employees, particularly those from overseas, to have information about their rights and entitlements in the workplace and where to go for further information when considering a letter of offer or whether to accept a job.

This could be achieved by inserting the words “unless the employer gave the employee the Fair Work Information Statement at the time of, or subsequent to, the offer of employment which was accepted” at the end of Section 58(1) of the NES.

Please direct any questions about this submission to the undersigned.

Yours sincerely



Ian Argall
Executive Director