

Form F17—Employer’s Declaration in Support of Application for Approval of Enterprise Agreement

IN FAIR WORK AUSTRALIA

FWA Matter No.:

[Insert FWA matter number appearing on the main application form, if known.]

Applicant:

University of New England

EMPLOYER’S DECLARATION IN SUPPORT OF APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT

Fair Work Act 2009—s.185

Note: This declaration must be made by an employee or officer of the employer.

I, Professor James Barber

Of the University of New England, Armidale NSW 2351,

Vice-Chancellor and CEO,

Make the following declaration under the *Statutory Declarations Act 1959*:

Part 1: About the agreement

1.1 What is the name of the agreement?

The University of New England Academic Staff – Union Collective Agreement 2010-2012.

1.2 Is the agreement a single-enterprise agreement or a multi-enterprise agreement?

[X] single-enterprise agreement;

[] multi-enterprise agreement.

1.3 What is the name of the employer or employers to be covered by the agreement?

University of New England

1.4 What is the name and address of the business or businesses of the employer or employers covered by the agreement?

University of New England, Armidale NSW 2351

1.5 What is the kind of work that is to be done by employees under the agreement?

Provision of educational services – teaching and research.

1.6 Are you aware of other agreement(s) in identical or substantially identical terms having been dealt with by FWA?

Yes

No

1.7 If the answer to question 1.6 is “Yes”, please provide information that would assist in identifying such agreement(s) (e.g. identification number and date of FWA’s decision, the name of such agreement, the name of the member of FWA who dealt with such agreement or the name of the employer covered by such agreement):

Part 2: Requirements for approval

2.1 (a) Was a notice of representational rights complying with s.174 given to each employee who will be covered by the agreement in accordance with s.173?

Yes

No

If the answer is “Yes”, please attach to this statutory declaration a copy of the notice given.

(b) Was the bargaining initiated by the employer?

Yes

No

If the answer is “Yes”, when and with whom did the employer initiate the bargaining?
(s.173(2)(a))

(c) Did bargaining commence because the employer agreed to bargain with employees or an employee organisation acting as a bargaining representative of employees?

Yes

No

If the answer is “Yes”, when and with whom did the employer agree to bargain?
(s.173(2)(a))

15 September 2008, with the National Tertiary Education Union

2.2 Please provide the following dates:

(a)	Date on which the last notice of representational rights under s.173(1) was given to an employee who will be covered by	1 July 2009
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	the agreement:	
(b)	Date on which voting for the agreement commenced (voting commences on the first day that an employee is able to cast a vote - see s.181):	5 August 2010
(c)	Date on which the agreement was made (that is, the date on which the voting process by which employees approved the agreement concluded - see s.182):	6 August 2010

2.3 If the date specified in question 2.2(c) is more than 14 days before the application for approval of the agreement was lodged, please provide details of the circumstances which FWA should take into account in deciding if it is fair to extend the time for lodging the application: (s.185(3)(b))

2.4 Please specify the steps taken by the employer to ensure that the relevant employees were given, or had access to, the written text of the agreement and any other material incorporated by reference in the agreement during the 7 day period ending immediately before the start of the voting process: (s.180(2)(a))

All employees were notified by email on 28 July 2010 by the Vice-Chancellor and CEO of the forthcoming ballot. The notification included hyperlinks to the full proposed agreement and a “plain English” document summarising the major changes in the proposed agreement. These documents were also available through an obvious link on the University’s Human Resources web site. Both documents continue to be available through this site. (Note: this type of email communication is the official communication method used at the University of New England. Staff cannot unsubscribe themselves from this email process.)

2.5 Please specify the steps taken by the employer (at least 7 days before the start of the voting process) to notify all relevant employees of the time and place at which the vote was to occur and the voting method to be used: (s.180(3))

The email referred to in 2.4 above contained details on how the vote was to be undertaken and gave the contact details of a University officer who could answers questions about the vote or make alternative arrangements if there was likely to be any problem with the electronic ballot.

2.6 Please specify the steps taken by the employer to explain the terms of the agreement, and the effect of those terms, to relevant employees: (s.180(5))

[Note: Your answer must include information on the manner in which the explanation took account of particular circumstances and needs of the relevant employees. (For example, where the employees were from a non-English speaking background, were young employees or did not have a bargaining representative).]

In addition to the “plain English” document which highlighted major changes in existing entitlements, the email referred to in 2.4 above contained an email contact for staff to use if they had any questions about either the proposed agreement or the “plain English” document.

2.7 Please provide the following details of the vote on the agreement:

Number of employees who will be covered by the agreement:	604
Number of employees who cast a valid vote:	198
Number of employees who voted to approve the agreement:	193

2.8 Does the agreement cover all employees of the employer or employers?

Yes

No

2.9 If the answer to question 2.8 is “No”, specify the group(s) of employees covered by the agreement and how FWA can be satisfied that such group(s) were fairly chosen, including by reference to the geographical, operational or organisational distinctness of such group(s): (s.186(3) and (3A))

The agreement covers “academic” employees. Academic employees are identified by the work that they undertake, that is primarily teaching and research. Employees who do not fall into this category, are covered by an alternative agreement, “The University of New England General Staff and ELC Teachers Collective Agreement 2009-2012”.

2.10 If the agreement is a multi-enterprise agreement, has each employer who will be covered by the agreement genuinely agreed to the making of the agreement and done so free from coercion or threats of coercion to make the agreement?: (s.186(2)(b))

Yes

No

Not applicable

2.11 Please identify any terms of the agreement that deal with the matters contained in the National Employment Standards:

- (a) *Maximum weekly hours* – not dealt with in this agreement
- (b) *Requests for flexible working arrangements* – clause 15 “Flexible and Family Working Arrangements” and clause 28 “Parental leave”
- (c) *Parental leave and related entitlements* – clause 28 “Parental leave”
- (d) *Annual leave* – clause 25 “Annual leave”
- (e) *Personal/carer’s leave and compassionate leave* – clause 27 “Personal leave”
- (f) *Community service leave* – clause 29 “Jury and Witness Leave” in relation to jury and witness leave only. (Emergency services leave Military leave are dealt with through University policy.)
- (g) *Long Service leave* – clause 26 “Long Service Leave”
- (h) *Public Holidays* – clauses 22 and 23, “Public Holidays” and “Christmas Break”
- (i) *Notice of termination and redundancy pay* – clauses 33 and 42, “Redundancy” and “Termination of Employment”
- (j) *Fair Work Information Statement* – not dealt with in this agreement

2.12 Please identify any terms of the agreement that exclude in whole, or in part, the National Employment Standards:

None

2.13 Please identify any terms of the agreement that are detrimental to an employee in any respect when compared to the National Employment Standards:

None

2.14 Does the agreement contain any discriminatory terms? (s.194(a))

Yes

No

If the answer is "Yes", please identify the relevant terms of the agreement:

2.15 Does the agreement contain any objectionable terms? (s.194(b))

Yes

No

If the answer is "Yes", please identify the relevant terms of the agreement:

2.16 Does the agreement contain any terms that deal with the rights of employees in relation to unfair dismissal? (s.194(c) and (d))

Yes

No

If the answer is "Yes", please identify the relevant terms of the agreement:

2.17 Does the agreement contain any terms that deal with the taking of industrial action that are inconsistent with Part 3-3 of Chapter 3 of the Act? (s.194(e))

Yes

No

If the answer is "Yes", please identify the relevant terms of the agreement:

2.18 Does the agreement contain any terms that deal with the rights of officials or employees of employee organisations to enter the employer's premises? (s.194(f) and (g))

Yes

No

If the answer is "Yes", please identify the relevant terms of the agreement:

2.19 Does the agreement contain any designated outworker terms? (s.186(4A))

Yes

No

If the answer is “Yes”, please identify the relevant terms of the agreement:

2.20 What is the nominal expiry date of the agreement and the term that specifies that date: (s.186(5))

Nominal expiry date	Term/clause specifying nominal expiry date
30 June 2012	Clause 4 – Period of Operation, specifically 4.1

2.21 Please identify the term of the agreement which specifies a procedure for FWA, or another independent person, to settle disputes about any matter arising under the agreement and to settle disputes in relation to the National Employment Standards: (s.186(6)(a))

Clause 53 – Dispute Settlement Procedures

2.22 Does the term identified in question 2.21 allow for the representation of employees covered by the agreement for the purposes of the dispute settling procedure? (s.186(6)(b))

Yes

No

2.23 Has a scope order or a low-paid authorisation been issued in relation to the agreement?

Yes

No

If the answer is “Yes”, please provide the unique print number and date of the order:

PR _____

Date: ___ / ___ / ___

2.24 If the agreement is a multi-enterprise agreement, do the provisions of s.184 of the Act apply?

Yes

No

2.25 If the answer to question 2.24 is “Yes”, has a bargaining representative to the agreement varied the agreement as required by s.184(2)?

Yes

No

2.26 If the answer to question 2.25 is “Yes”, has a bargaining representative to the agreement provided the relevant notices to the other bargaining representatives as required by s.184(3)?

Yes

No

2.27 Does the agreement cover any shiftworkers? (s.196)

Yes

No

If the answer is “Yes”, please identify any terms of the agreement that define or describe the employees as a shiftworker for the purposes of the National Employment Standards:

2.28 Does the agreement cover any pieceworkers? (s.197)

Yes

No

If the answer is “Yes”, please identify any terms of the agreement that deal with the entitlements of pieceworkers:

2.29 Does the agreement contain terms providing for school-based apprentices or trainees to receive loadings in lieu of paid leave? (s.199)

Yes

No

If the answer is “Yes”, please identify any terms of the agreement that deal with such loadings:

2.30 Does the proposed agreement cover any outworkers? (s.200)

Yes

No

If the answer is “Yes”, please identify any terms of the agreement that deal with entitlements of outworkers:

2.31 Please identify the flexibility term in the agreement: (ss.202, 203, 204)

Clause 59 - Flexibility

2.32 Please identify the consultation term in the agreement: (s.205)

Clause 8 – Consultation Arrangements

Part 3: Comparison data

Reference instrument(s)

[FWA must apply the better off overall test to the agreement by reference to relevant instrument(s): see s.193 of the Fair Work Act 2009 and item 18 in Schedule 7 to the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009. It is essential that you set out the names of any modern award(s) or award-based transitional instrument(s) - typically pre-reform award(s) or NAPSAs - accurately in full and include the “MA”, “AP” or “AN” number of each such instrument. These numbers can be located via a title search on the “Find an award” search facility at: <http://www.fwa.gov.au/index.cfm?pagename=awardsfind>.]

3.1 List the modern award(s) and award-based transitional instrument(s) (e.g. pre-reform awards or NAPSAs), if any, that cover or apply to the employer and the whole or any portion of the employees to whom the agreement will apply:

*[Note: Under the legislative scheme an award will not **apply** to employees if an existing enterprise agreement is in place however an award that would apply in the absence of such agreement will still **cover** those employees.]*

Higher Education Industry-Academic Staff-Award 2010, Award ID: MA000006

Operative Date: 1 January 2010, Print ID: PR985116 Matter No.: AM2008/3

3.2 For the purposes of enabling FWA to apply the better off overall test in the context of transitional provisions in a modern award, list the award-based transitional instrument(s) (e.g. pre-reform awards or NAPSAs), if any, that covered the employer and the whole or any portion of the employees immediately before the commencement of any modern award referred to in 3.1:

3.3 If the classifications in the agreement are different from the classifications in any of the reference instrument(s) named in 3.1 and 3.2, please attach a table that identifies how classifications in the agreement relate to classifications in the reference instrument(s).

Improvements/reductions

3.4 Does the agreement contain any terms or conditions of employment that are *less beneficial* than equivalent terms and conditions in the reference instrument(s) identified in questions 3.1 or 3.2?

Yes

No

If “Yes”, identify the terms and conditions in the reference instrument(s) that are more beneficial than the agreement, the employees affected and the specific terms in the agreement that bring about the reductions:

[Note: your answer must indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the group(s) of employees affected.]

Clause 17 – Industry specific redundancy provisions, specifically subclause 17.6 – Employees not accepting redundancy. This affects staff who are over 40 with less than 20 years service.

3.5 Does the agreement contain any terms or conditions of employment that are *more beneficial* than equivalent terms and conditions in the reference instrument(s) identified in questions 3.1 or 3.2?

Yes

No

If “Yes”, identify the terms and conditions in the reference instrument(s) that are less beneficial than the agreement, the employees affected and the specific terms in the agreement that bring about the improvements:

[Note: your answer must indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the group(s) of employees affected.]

The following provisions in the reference instrument are less beneficial than the agreement. All employees are affected by these provisions:

Clause 7 – Award flexibility

Clause 8 – Consultation regarding major workplace change

Clause 16.2 - Transfer to lower paid duties

Clause 18.1/2 – Rates of Pay

Clause 21 - Superannuation

Clause 23.1 Management of annual leave

Clause 24 – Parental leave

Clause 25 – Personal/carer’s leave and compassionate leave

Exceptional circumstances (agreement fails the better off overall test)

3.6 If the employer considers that the agreement does not pass the better off overall test as set out at s.193 of the *Fair Work Act 2009* (and, possibly, item 18 of Schedule 7 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*), identify any exceptional circumstances that FWA should consider when deciding whether approving the agreement would not be contrary to the public interest (s.189):

Part 4: Statistical information

4.1 Of the employees to be covered by the agreement, how many employees are in the following demographic groups?

Group	Number of employees within group
Female	295
Non-English speaking background	89
Aboriginal or Torres Strait Islander	5
Disabled	33 (10 with workplace adjustment)
Part-time	117
Casual	113
Under 21 years of age	0
Over 45 years of age (mature age)	410

4.2 In what State/Territory will the agreement be in operation?

[Mark all applicable boxes with an "X".]

ACT [] NSW [X] NT [] Qld [] SA [] Tas [] Vic [] WA []

4.3 Please list the full and precise name of all collective agreements (including any ID number if known) that operated in relation to the employees prior to the making of this agreement:

The University of New England Workplace Agreement 2006-2008

Agreement ID: AC301769 **Industry:** Educational services **FWA Matter No.:**

WPA/Old ID: CAUN06661492

4.4 What is the primary activity of the employer?

[e.g. music retailer, plumbing contractor, steel fabricator.]

Educational services

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

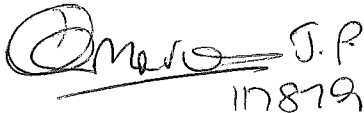
[Signature of person making the declaration.]

Declared at: Armidale
[place]

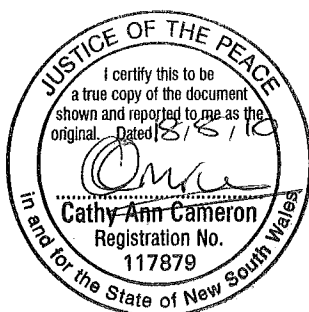
On: 18 August 2010
[date]

Before me:

[Signature of person before whom the declaration is made.]


J.P.
117879

[Set out the witness' full name, qualification to witness a statutory declaration and address (all in printed letters). Note: A statutory declaration must be made before a "prescribed person": s.8, Statutory Declarations Act 1959 (Cth). For a full description of prescribed persons, go to www.fwa.gov.au/index.cfm?pagename=resourcefactsstatdecs.]



Please provide your contact details for any future inquiries related to this declaration:

Name:	Margaret Lockyer		
Address:	University of New England		
Suburb:	Armidale	State: NSW	Postcode: 2351
Telephone:	02 6773 3536	Mobile: 0418 206 165	
Facsimile:	02 6773 2755	Email: mlockyer@une.edu.au	

Schedule 2.1 Notice of employee representational rights

(regulation 2.05)

Fair Work Act 2009, subsection 174 (6)

The University of New England gives notice that it is bargaining in relation to two enterprise agreements (*The University of New England General Staff and ELC Teachers Enterprise Agreement* and *The University of New England Academic Staff Enterprise Agreement*) which is proposed to cover employees that are employed by the University of New England in the classifications of: HEO 1 to 10 for General Staff ; Salary Level 1 to 12 for English Language Centre Staff including Language Instructor, Senior Language Instructor and Deputy Director of Studies; and Level A to E for Academic staff.

What is an enterprise agreement?

An enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Australia.

If you are an employee who would be covered by the proposed agreement:

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before Fair Work Australia about bargaining for the agreement.

You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative or you revoke the union's status as your representative.

If you are an employee covered by an individual agreement:

If you are currently covered by an Australian Workplace Agreement (AWA), individual transitional employment agreement (ITEA) or a preserved individual State agreement, you may appoint a bargaining representative for the enterprise agreement if:

- the nominal expiry date of your existing agreement has passed; or
- a conditional termination of your existing agreement has been made (this is an agreement made between you and your employer providing that if the enterprise agreement is approved, it will apply to you and your individual agreement will terminate).

Questions?

If you have any questions about this notice or about enterprise bargaining, please speak to either your employer, bargaining representative, go to www.fairwork.gov.au, or contact the Fair Work Australia Helpline on 1300 799 675.