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 TECHNOLOGY, SYDNEY

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 PETER BOOTH  
Of THE UNIVERSITY OF TECHNOLOGY, SYDNEY  
ACTING VICE-CHANCELLOR AND PRESIDENT

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 TECHNOLOGY SYDNEY ACADEMIC STAFF AGREEMENT 2010

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?

THE UNIVERSITY OF TECHNOLOGY, SYDNEY

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

THE UNIVERSITY OF TECHNOLOGY SYDNEY  
15 BROADWAY ULTIMO 2007

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

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
[X] 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?

[X] 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
[X] 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?

[X] Yes
[  ] No

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

1 July 2009 with the National Tertiary Education Industry Union (NTEU)
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 the agreement: | 31 August 2009 |
| (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): | 31 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): | 3 September 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 staff were notified by the Deputy Vice-Chancellor (Corporate Services) of the forthcoming ballot via a broadcast email sent on 25 August 2010. The notification included hyperlinks to the full proposed agreement and a document that summarised the changes to the current agreement being proposed. These documents were made available from the Human Resources web site, and they continue to be available for staff from this site. (NOTE: This type of broadcast email communication is the official communication method used at the University of Technology, Sydney. 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 the details on how the vote was to be undertaken. The hyperlink referred to above included the contact details of a University officer whom staff could contact if they had any questions concerning the Agreement or the ballot process.

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 document referred to in 2.4 above which highlighted the changes being proposed by the proposed Agreement, staff were given the opportunity to ask questions they had in relation to the proposed agreement at the ballot meetings, prior to the ballot being held.
2.7 Please provide the following details of the vote on the agreement:

<table>
<thead>
<tr>
<th>Number of employees who will be covered by the agreement:</th>
<th>3019 (includes casuals)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of employees who cast a valid vote:</td>
<td>25</td>
</tr>
<tr>
<td>Number of employees who voted to approve the agreement:</td>
<td>25</td>
</tr>
</tbody>
</table>

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

[ ] Yes
[X] 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 Staff, who are generally identified as the group of staff who primarily provide the teaching and research activities of the University. Staff who do not fall into the category of academic staff are covered either by the UTS Support Staff Agreement 2010, or by the UTS Senior Staff Group Agreement 2007.

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
[X] 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 36.7 (Academic workload allocation), and Clause 33.16 (part of Parental leave)
(c) *Parental leave and related entitlements* – Clause 29 “Parental Leave”
(d) *Annual leave* – Clause 23 “Annual Leave”
(e) *Personal/carer’s leave and compassionate leave* – Clause 26 “Personal Leave”
(f) *Community service leave* – Clause 30 “Community Leave”
(g) *Long service leave* – Clause 27 “Long Service Leave”
(h) *Public holidays* – Clause 22 “Public Holidays”
(i) *Notice of termination and redundancy pay* – Clause 50 “Redundancy” and Clause 52 “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
[X] 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
[X] 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
[X] 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
[X] 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))

[X] Yes
[ ] No

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

Clause 11.7
2.19 Does the agreement contain any designated outworker terms? (s.186(4A))

[ ] Yes
[X] 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))

<table>
<thead>
<tr>
<th>Nominal expiry date</th>
<th>Term/clause specifying nominal expiry date</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 June 2013</td>
<td>Clause 8 – Length of the Agreement</td>
</tr>
</tbody>
</table>

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 12 – Resolving Disputes

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))

[X] Yes
[ ] No

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

[ ] Yes
[X] 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
[X] 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
[X] 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
[X] 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
[X] 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 10 – Individual Flexibility Arrangements

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

Clause 14 (Principles of Consultation at UTS) and Clause 16 (Managing Change)
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?

[X] 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.]

Sub-clause 23.3 Leave Loading – All fixed-term and continuing employees – sub-clause 17.6 of the Agreement notes that the rates of pay include annual leave loading.
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?

[X] 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 11 – Employment categories
Clause 16.2 – Transfer to lower paid duties
Clause 18.1/18.2 – Rates of pay
Clause 19 – Salary movement within an academic level
Clause 21 – Superannuation
Clause 22 – Hours of work
Clause 23.1 – Management of annual leave
Clause 24 – Parental leave
Clause 25 – Personal/Carer’s 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?

<table>
<thead>
<tr>
<th>Group</th>
<th>Number of employees within group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>496</td>
</tr>
<tr>
<td>Non-English speaking background</td>
<td>202</td>
</tr>
<tr>
<td>Aboriginal or Torres Strait Islander</td>
<td>13</td>
</tr>
<tr>
<td>Disabled</td>
<td>51</td>
</tr>
<tr>
<td>Part-time</td>
<td>93</td>
</tr>
<tr>
<td>Casual</td>
<td>2019</td>
</tr>
<tr>
<td>Under 21 years of age</td>
<td>1 (plus 11 casuals)</td>
</tr>
<tr>
<td>Over 45 years of age (mature age)</td>
<td>697 (plus 778 casuals)</td>
</tr>
</tbody>
</table>
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:

University of Technology Sydney Academic Staff Agreement 2006

Agreement ID: AC301405  Industry: Educational Services  FWA Matter No:
WPA/Old ID: CAUN06552214

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: Sydney
[place]

On: 9/9/10
[date]

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

[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=resourcefactsstatdec]
Please provide your contact details for any future inquiries related to this declaration:

<table>
<thead>
<tr>
<th>Name</th>
<th>Frank Young</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>University of Technology Sydney</td>
</tr>
<tr>
<td>Suburb:</td>
<td>Ultimo</td>
</tr>
<tr>
<td>State:</td>
<td>NSW</td>
</tr>
<tr>
<td>Postcode:</td>
<td>2007</td>
</tr>
<tr>
<td>Telephone:</td>
<td>02 9514 1078</td>
</tr>
<tr>
<td>Mobile:</td>
<td></td>
</tr>
<tr>
<td>Facsimile:</td>
<td>02 9514 1088</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:frank.young@uts.edu.au">frank.young@uts.edu.au</a></td>
</tr>
</tbody>
</table>