



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by the University of Technology Sydney and **accepted** by the Fair Work Ombudsman pursuant to s 715 of the *Fair Work Act 2009*

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (**FW Act**) by the University of Technology Sydney (**UTS**) (ABN 77 257 686 961).

COMMENCEMENT

2. The Undertaking comes into effect when:
 - a) the Undertaking is executed by UTS; and
 - b) the FWO accepts the Undertaking so executed (as evidenced by the FWO's endorsement below) (**Commencement Date**).

BACKGROUND

3. UTS is a public university incorporated by the *University of Technology Sydney Act 1989* (NSW). UTS has seven faculties and 30 schools. According to its 2021 Annual Report, in 2021-22 UTS employed 3,390 full time equivalent (**FTE**) staff with 642 FTE casual staff (both academic and professional).
4. UTS is a registered charity under the *Australian Charities and Not-for-Profits Commissions Act 2012* (Cth) and is a higher education provider subject to the governance and accountability obligations under the *Higher Education Support Act 2003* (Cth), the *Tertiary Education Quality and Standards Agency Act 2011* (Cth), and the *Higher Education Standards Framework (Threshold Standards) 2021* (Cth).
5. On 24 May 2021, UTS notified the FWO that UTS:
 - a) had become aware of potential underpayments of its casual professional staff as a result of them not being paid the appropriate minimum engagement period entitlements under the Applicable Professional Staff Agreements (**Self-Report**);
 - b) had engaged Deloitte Australia (**Deloitte**) to conduct a compliance review to determine the extent of the underpayments and assist in undertaking the remediation of the underpayments to its casual professional staff (**Compliance Assessment**); and

- c) was fully committed to remedying the non-compliance in full as soon as possible.
6. On 24 August 2021, UTS confirmed that it would conduct a broader review of its compliance with the UTS Staff Agreements beyond the scope of the Compliance Assessment, and include casual academic staff (**University Wide Review**).
7. As a result of the Compliance Assessment, UTS has identified, as at the date of this EU:
- a) a total underpayment of \$4,419,883.72 (**Wage Underpayment**) impacting 2777 current and former employees (**Affected Employees**). The Affected Employees were divided into five cohorts by UTS, called "Waves". All Affected Employees were covered by the Applicable Professional Staff Agreements over the period from 5 September 2014 to 14 May 2021 (**Relevant Period**);
 - b) additional costs of \$235,828.78 in relation to superannuation (**Superannuation Amount**) and \$1,107,883.96 in relation to interest owed on both the Wage Underpayment and Superannuation Amount (**Interest Amount**). The Interest Amount is calculated as at 31 December 2022 and will vary slightly as UTS continues to remediate the Affected Employees into 2023;
 - c) the non-compliance identified was likely the result of UTS:
 - i) not updating systems (specifically, an "agreed hours" clause in a template contract) to reflect a change in the Professional Staff EA 2014; and
 - ii) misapplying the minimum engagement period clauses in the Applicable Professional Staff Agreements; and
 - d) the need for UTS to implement ongoing compliance monitoring activities to confirm the accuracy of payments.
8. The FWO acknowledges the co-operation and early and open disclosures made by UTS to the FWO including the provision of detailed documentation relating to the Compliance Assessment.
9. The FWO also acknowledges that UTS has agreed that, in calculating and remedying the Wage Underpayment to the Affected Employees, and pursuant to clause 45.5.2 of the Professional Staff EA 2014 and clause 46.21 of the Professional Staff EA 2018, it will adopt

a methodology in relation to minimum engagement periods which the FWO considers acceptable, by applying the minimum period of engagement under those clauses, in any one day:

- a) to each separate contract of employment;
- b) to all aggregated time worked where there is a gap of 30 minutes or less between shifts; and
- c) to each shift where there is a gap of more than 30 minutes between shifts.

10. The FWO further acknowledges UTS's commitment to establish and implement systems/processes across UTS to avoid any similar contraventions recurring as detailed in the Undertakings in clause 20 below.

11. In consideration of these matters, the FWO accepts this Undertaking, the terms of which are set out below.

ADMISSIONS AND UNDERTAKINGS

Admissions

12. The FWO has formed a reasonable belief, and UTS admits, that during the Relevant Period, UTS contravened section 50 of the FW Act by failing to pay each Affected Employee the amount or amounts to which that employee was entitled for each minimum engagement period under:

- a) clause 45.5.2 of the Professional Staff EA 2014; and
- b) clause 46.21 of the Professional Staff EA 2018.

13. The contraventions identified in clause 12 of this Undertaking do not include:

- a) any contraventions which relate to or arise as a consequence of UTS failing to correctly apply the Applicable Professional Staff Agreements to any employee who is not an Affected Employee, or because of any failure by UTS to correctly apply the Applicable Professional Staff Agreements to an Affected Employee other than those set out in clause 12 above; and
- b) any contraventions which have not yet occurred at the date that this Undertaking is

offered by UTS.

Undertakings

14. Upon commencement of this Undertaking, UTS will take the actions set out at clauses 15 to 38 (inclusive) below.
15. By 31 July 2023, UTS will (subject to clauses 16 and 18):
 - a) pay to each Affected Employee any outstanding Wage Underpayment and associated Interest Amount to the Wage Underpayment relating to that Affected Employee; and
 - b) pay to the nominated superannuation fund for each Affected Employee any outstanding Superannuation Amount and associated Interest Amount to the Superannuation Amount relating to that Affected Employee.
16. UTS will take Reasonable Steps to locate each Affected Employee owed an outstanding Wage Underpayment, Interest Amount or Superannuation Amount.
17. By 30 August 2023, UTS will provide to the FWO Reasonable Evidence of:
 - a) all payments made to Affected Employees to rectify the Wage Underpayment, Interest Amount, and Superannuation Amount; and
 - b) the Reasonable Steps taken for any Affected Employees UTS could not locate.
18. If any of the Affected Employees to whom a Wage Underpayment is owed cannot be located by 31 July 2023, UTS will pay the Wage Underpayments owing to those Affected Employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. UTS will complete the required documents supplied by the FWO for this purpose.
19. In the event that the FWO is able to locate and contact any Affected Employees to whom the Wage Underpayments are owed, with the consent of the Affected Employee, the FWO will (in addition to its obligations under section 559 of the FW Act) notify UTS in writing of the name and contact details of the Affected Employee. Within 28 days of receiving any such notice UTS will:
 - a) pay to the Affected Employee the Interest Amount relating to the Affected Employee's Wage Underpayment; and

- b) pay to the Affected Employee's nominated superannuation fund the Superannuation Amount and associated Interest Amount relating to the Superannuation Amount relating to that Affected Employee.

Systems improvements and training

20. By 30 June 2023, UTS will have completed the implementation of the following systems improvements and/or training to avoid any repeat of similar contraventions that are relied on as the basis for this Undertaking:

Systems and Process Improvements

- a) develop, distribute, and implement written guidelines to ensure consistency in the application of minimum engagement periods for casual professional staff, in a way that is consistent with the methodology set out in clause 9 (while the Professional Staff EA 2018 applies to UTS and applicable employees), and ensure the guidance is communicated to all relevant existing and commencing staff (while the Professional Staff EA 2018 applies to UTS and applicable employees);
- b) provide evidence of any planned and/or completed system and process improvements including moving to a new payroll system and/or new Human Resource Information System, updating record keeping systems as they relate to wage and entitlement payments, and removal of incorrect templates from UTS's current employment systems;
- c) implement on-going compliance monitoring activities through appropriate mechanisms to confirm the correct application of minimum engagement periods for casual professional employees;

Training

- d) develop training programs which will be delivered by qualified internal HR resources as either face to face or online training modules including:
 - i) mandatory training for Timesheet Approvers for casual professional staff (any UTS staff member who approves timesheets) to ensure a consistent approach is applied. Where new Timesheet Approvers are engaged, this training is to be

completed as part of their induction to UTS and within one month of commencement;

- ii) training for casual professional employees covered by the Professional Staff EA 2018 advising of minimum engagement period entitlements; and
- iii) training on the appropriate application of the Professional Staff EA 2018 for staff responsible and accountable for the management of employees, human resources, recruitment, and payroll;

Communications

- e) develop and distribute FAQs covering key minimum engagement period entitlements for casual professional staff; and
- f) provide comprehensive internal communications within UTS regarding timesheet submission and approval processes and correct interpretation of the Professional Staff EA 2018.

21. By 31 July 2023, UTS will provide to the FWO Reasonable Evidence of UTS's compliance with clause 20.

22. By 31 October 2023, UTS will provide to the FWO Reasonable Evidence of the completion of any planned system and process improvements referred to in clause 20.b) above.

Establishment of a complaints and review mechanism for Affected Employees

23. By 31 March 2023, UTS will establish a complaints and review mechanism (**Mechanism**) for Affected Employees in relation to the Wage Underpayment and Interest Amount. The Mechanism will follow the procedural steps set out at **Attachment A**. The existence of the Mechanism will be promoted to Affected Employees in each UTS communication in relation to the Wage Underpayment. Guidance will be issued to all decision makers under the terms of the Mechanism detailing UTS's approach to assumptions and expectations in regard to resolving the disputes.

24. UTS will notify the FWO within 14 days of becoming aware of any complaint covered by clause 23.

25. UTS will establish and maintain centralised oversight of any complaint covered by clause

23 above to ensure consistent management and outcomes.

26. Where appropriate, the FWO will notify UTS within 14 days of any request for assistance being received by the FWO where the FWO identifies that the Mechanism has not first been applied. Where appropriate, the FWO will take no further action in relation to such a request for assistance until the Mechanism in clause 23 has been followed.
27. Within 60 days of receipt, UTS will provide to the FWO information regarding the outcome of any complaint and/or review made under the Mechanism. UTS will also provide, within a reasonable period specified by the FWO, any such further Reasonable Evidence requested to satisfy itself that UTS has met its obligations with respect to the Affected Employee/s who raised the complaint under the Mechanism under this Undertaking and/or the FW Act.
28. UTS undertakes to cooperate fully in relation to any request for assistance received by the FWO in relation to an Affected Employee where the Affected Employee does not consider the complaint has been addressed through the application of the Mechanism.

University Wide Review

29. The FWO acknowledges that prior to executing this Undertaking, UTS has provided the FWO with a report containing the proposed scope of the University Wide Review.
30. During the University Wide Review, UTS:
- a) will provide the FWO with "sprint" reports, which may contain assumptions made or interpretations (as at that date) adopted by UTS in relation to any of the UTS Staff Agreements that are to be used in the University Wide Review for calculating any entitlements owed to employees;
 - b) agrees that the FWO may make recommendations to UTS on the scope, assumptions and interpretations in the "sprint" reports (described in clause 30.a) above) to be used in the University Wide Review; and
 - c) agrees to instruct its service providers to amend the scope, assumptions and interpretations (described in clause 30a) above) in accordance with the FWO's recommendation made under sub-clause b) above. Prior to UTS giving any instruction

to its service providers under this sub-clause:

- i) UTS may provide the FWO with a written response to any recommendation made by the FWO; and
- ii) the FWO agrees to reasonably consider any written response and will confirm with UTS in writing whether or not it maintains that recommendation;
- d) will provide the FWO with the “sprint” report within 4 weeks following the conclusion of the sprint; and
- e) will comply with any request by the FWO for any update on the University Wide Review, or to review any report or calculation, within a reasonable timeframe.

31. At the conclusion of the University Wide Review, UTS will:

- a) provide the FWO with a consolidated sprint report setting out the findings of the University Wide Review, including full calculations supporting any underpayments identified, within 60 days of the conclusion of the University Wide Review (**University Wide Review Report**);
- b) if requested by the FWO, provide the FWO with any evidence UTS or its service provider has relied on to support any finding made in the University Wide Review Report, or to support any calculation, within 60 days of a request being made;
- c) remedy any underpayment identified in the University Wide Review Report or supporting calculations, including by:
 - i) within 9 months of the University’s receipt of the University Wide Review Report, taking Reasonable Steps to locate and pay any underpayment, including superannuation and interest (adopting the methods in the definition of Interest Amount), to any current or former employee identified by the University Wide Review Report as having been underpaid;
 - ii) paying any underpayment owed to any former employee who cannot be located within 9 months to the Commonwealth of Australia in accordance with section 559 of the FW Act (including by completing the required documents supplied by the FWO for this purpose); and

- iii) where FWO is able to locate and contact any employee the subject of clause 31c)ii) above and with the consent of that employee the FWO notifies UTS in writing of the name and contact details of the that employee, within 6 weeks of that notification:
 - (1) paying interest to the employee; and
 - (2) paying to the employee's nominated superannuation fund any superannuation and associated interest on that superannuation relating to the employee; and
- d) use and promote the Mechanism (including all steps set out in clauses 23 to 28) as the complaints and review mechanism for the University Wide Review;
- e) if any underpayment is identified in the University Wide Review Report, UTS will, within 90 days of the FWO receiving a copy of the University Wide Review Report, provide to the FWO a written report detailing any further systems improvements and/or training that UTS will implement, including timeframes for implementation, to avoid any repeat of similar underpayments to those identified in the University Wide Review.

Independent Compliance Audit

32. UTS undertakes to engage, at its cost, an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct an independent audit of UTS's compliance with the FW Act and the UTS Staff Agreements in scope of the University Wide Review (**Compliance Audit**). The Compliance Audit will concern whether UTS is compliant in relation to any contraventions that may be identified in the University Wide Review Report.

33. UTS agrees that:

- a) it will obtain the FWO's approval in writing before engaging the Independent Auditor, and the FWO may reasonably request that UTS use a different Independent Auditor than one nominated by UTS;
- b) it will ensure that the Independent Auditor commences the Compliance Audit no later than a date twelve months following the provision of the University Wide Review

Report in clause 31a) above (**Compliance Audit Start Date**);

c) the Compliance Audit:

- i) will examine two full pay periods falling within the two months immediately following the Compliance Audit Start Date;
- ii) will assess 5% of all employees to whom the UTS Staff Agreements apply, across a range of classifications, locations and employment types (full time, part time and casual employment), during the relevant audit period (**Sampled Employees**) in respect of their employment by UTS;
- iii) will assess whether the pay and conditions of the Sampled Employees during the relevant audit period are compliant with the FW Act (to the extent compliance with the FW Act is within scope of the Compliance Audit as outlined in clause 32 above) and the UTS Staff Agreements and that pay slip and record keeping requirements are compliant with the FW Act and the *Fair Work Regulations*. Without limitation, this will include an assessment of any entitlements or obligations, including record keeping, arising out of the University Wide Review Report which the FWO may notify UTS in writing within 28 days of approving the Independent Auditor, as set out in (a) above;

d) will use its best endeavours to ensure that the Independent Auditor:

- i) within four months of the Compliance Audit Start Date, produces a draft written report on the Compliance Audit, setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO. UTS will direct the Independent Auditor to not provide the draft report, or a copy of the same, to UTS without the FWO's approval.;
- ii) within one month of the FWO providing any comments on the draft report to the Independent Auditor, finalises the Compliance Audit and provides a written report of the Compliance Audit (**Compliance Audit Report**) directly to the FWO. UTS will direct the Independent Auditor to not provide the Compliance Audit Report, or a copy of the same, to UTS without the FWO's approval. UTS will be provided with a copy of the Compliance Audit Report following FWO's receipt of it; and

iii) includes in the Compliance Audit Report the following declarations from the Independent Auditor:

- (1) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
- (2) an undertaking that, notwithstanding that the Independent Auditor is retained by UTS, it has acted independently, impartially, objectively and without influence from UTS in preparing the report;
- (3) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
- (4) the report is provided to the FWO for its benefit and the FWO can rely on the report.

34. If the Compliance Audit Report identifies any underpayments to any current or former employees, UTS will:

- a) rectify any underpayments identified in the relevant audit period, and provide to the FWO evidence of such rectification within 60 days of UTS's receipt of the Compliance Audit Report;
- b) if any former employees identified in the Compliance Audit as having underpayments owing to them cannot be located within 60 days of the Compliance Audit Report, pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act within a further 60 days. UTS will complete the required documents supplied by the FWO for this purpose.

35. If requested by the FWO, UTS will provide the FWO with all records and documents used to conduct the Compliance Audit within 14 days of such a request.

Workplace Training

36. By 31 December 2023, UTS is to deliver training to all staff responsible and accountable for the management of employees, human resources, recruitment and payroll on:

- a) entitlements and obligations in the UTS Staff Agreements; and
- b) applicable record-keeping obligations in the FW Act.

37. The training can be delivered by qualified internal or external practitioners as either face to face or online training modules.

38. By 28 February 2024, UTS will provide to the FWO evidence of its compliance with clause 36 above.

Extensions on times for completion

39. UTS may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. The FWO will not unreasonably withhold agreement on a request for an extension of time.

40. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

No Inconsistent Statements

41. UTS must not and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

42. UTS acknowledges that:

- a) the FWO may;
 - i) make this Undertaking available on the FWO internet site at www.fairwork.gov.au;
 - ii) release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - iii) issue a media release in relation to this Undertaking;
 - iv) from time to time, publicly refer to the Undertaking and its terms; and
 - v) rely upon the admissions made by UTS set out in clause 12 above in respect of decisions taken regarding enforcement action in the event that UTS is found to

have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by UTS to comply with its obligations under this Undertaking;

- b) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
- c) consistent with section 715(3) of the FW Act, UTS may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d) if UTS contravenes any of the terms of this Undertaking:
 - i) the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
 - ii) this Undertaking may be provided to the Court as evidence of the admissions made by UTS in clause 12 above, and also in respect of the question of costs.

Dictionary

Unless the contrary intention appears, words in the singular include the plural, and other than terms defined, have their ordinary natural meaning.

- **Applicable Professional Staff Agreements** means:
 - From 5 September 2014 to 26 December 2018, the Professional Staff EA 2014; and
 - From 27 December 2018 to 14 May 2021, the Professional Staff EA 2018
- **Interest Amount** in relation to the Wage Underpayment is calculated in accordance with the Federal Court Pre Judgment Rate. Interest on the Superannuation Amount is to be calculated at a rate of 10% using the simple method
- **Professional Staff EA 2014** means the *University of Technology Sydney Professional Staff Enterprise Agreement 2014*
- **Professional Staff EA 2018** means the *University of Technology Sydney Professional Staff Enterprise Agreement 2018*
- **Reasonable Evidence** means such evidence as the FWO may reasonably require, and which could reasonably be expected to satisfy a court of:

- a) the truth of any fact asserted by UTS or by any of its servants or agents; and/or
- b) the accuracy and correctness of any information provided by UTS, or by any of its servants or agents; and/or
- c) compliance by UTS with any term of this Undertaking
- **Reasonable Steps** will include, but are not limited to, repeated and multi-channel attempts to contact an affected employee through:
 - a) last known details from employee files including email, mobile telephone for direct calls and SMS and last known address for post; and
 - b) utilisation of assistance by the Head of Department or relevant manager of the former employee as appropriate.
- **Total Underpayment** means the Wage Underpayment and the Superannuation Amount
- **UTS Staff Agreements** means all applicable industrial instruments that cover and apply to UTS and its employees and which are to be considered as part of the University Wide Review and Independent Compliance Audit described in this Undertaking. The term includes:
 - a) the Professional Staff EA 2014 and the Professional Staff EA 2018;
 - b) the *University of Technology Sydney Academic Staff Agreement 2014* and *University of Technology Sydney Academic Staff Agreement 2018*;
 - c) the *University of Technology Sydney Senior Staff Group Collective Agreement 2013*;
 - d) any enterprise agreement that may cover and apply to UTS and applicable employees and that replaces any of the Professional Staff EA 2018, the *University of Technology Sydney Academic Staff Agreement 2018* or the *University of Technology Senior Staff Group Collective Agreement 2013* while the University Wide Review and Independent Compliance Audit are underway.

Executed as an undertaking

EXECUTED by an authorised person of UTS ABN 77 257 686 961 in the presence of:

ANDREW PARFITT

VICE CHANCELLOR

(Name and position of authorised
signatory)

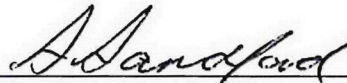


(Signature of authorised signatory)

in the presence of:

SAMANTHA SANDFORD

(Name of witness)



(Signature of witness)

4/5/2023

(Date)

ACCEPTED BY THE FAIR WORK OMBUDSMAN PURSUANT TO SECTION 715(2) OF THE FAIR
WORK ACT 2009 ON:

MARK SCULLY

DEPUTY FAIR WORK OMBUDSMAN - COMPLIANCE & ENFORCEMENT

[Insert name and role of Delegate]



(Signature of Delegate)

5/5/2023

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

Cheryl Tam

(Name of Witness)

ATTACHMENT A – DISPUTE RESOLUTION PROCEDURE FOR COMPLAINTS AND REVIEW MECHANISM (SEE CLAUSE 23)

Principles

1. The following dispute settling procedure must be followed in relation to any complaint by a current or former staff member (**staff member**) that is referred to the complaints and review mechanism in clause 23 of this Undertaking.
2. Any reference to a staff member in this cause may include more than one staff member.
3. Until the steps in clauses 7- 11 have been concluded, and if the complainant is a current UTS staff member:
 - a. work will continue in the normal manner;
 - b. UTS will not change work, staffing or the organisation of work, if such action is the subject of the dispute; and
 - c. the parties to the dispute will not take any action likely to exacerbate the dispute.
4. Nothing in sub-clause 3 above will prevent the termination of a current UTS staff member's employment under an applicable enterprise agreement.
5. Where a genuine occupational hazard is involved, a current UTS staff member will not be required to work in an unsafe environment and UTS will undertake suitable alternative duties until the issue is resolved.
6. Where UTS agrees there is or was an error in a staff member's position classification, appointment category, base pay rate or other entitlement, it will be remedied by UTS as soon as possible after it is identified.

Notification of Dispute

7. A staff member (or an industrial association on their behalf) will in the first instance notify the Executive Director, People and Culture of UTS (or their nominee), in writing, of the dispute (**'the dispute notification'**). The dispute notification must include details of the dispute and the resolution sought.

First Dispute Meeting

8. The staff member (and/or industrial association) and representatives of UTS, will meet within five working days of the dispute notification to try to resolve the dispute, unless the parties agree in writing to a different timeframe.
9. Where a dispute is not resolved following the procedure in clause 8, the parties will have five working days to consider if there would be utility in a second dispute meeting. If either party does not believe there would be utility in a further meeting to try to resolve the matter, the dispute may be referred to the Fair Work Commission (**FWC**) in accordance with clause 11.

Second Dispute Meeting

10. Where the parties agree to a second dispute meeting to try to resolve the matter, the staff member (and/or industrial association) and representatives of UTS will meet within five working days of the first dispute meeting, unless the parties agree in writing to a different timeframe.

Referral of Dispute to the FWC

11. Where a dispute is not resolved following the procedures in clauses 7 - 11, and the dispute falls within the scope of a dispute resolution procedure under the staff member's applicable enterprise

agreement, the dispute may be referred by either the staff member or industrial association or the University to the FWC for resolution by mediation and/or conciliation, or where mediation or conciliation does not resolve the dispute, by arbitration. Any such referral to the FWC must be done within four weeks of the second dispute meeting referred to in clause 10 (or within five weeks of the first dispute meeting in the absence of a second dispute meeting) subject to the terms of the dispute resolution procedure in the staff member's applicable enterprise agreement.

12. If an application for arbitration is made, as referred to in clause 11, the FWC may exercise any of its powers under the FW Act. The decision of the FWC will be implemented by the parties, subject to either party exercising a right of appeal against a decision of the FWC.