

Notice of agreed variation to Deed of Settlement

Class Action

Jeremy Smith v University of Ballarat (No. VID 135 of 2006)

By now most, if not all of you, will have read the Deed of Settlement dated 1 February 2008 (**Deed**) that can be found on the University's and the NTEU's web site (the actual links to which were set out in the Notice of Application for Approval of Proposed Settlement that was sent to you in early February 2008).

For the reasons set out below, the parties to the Deed (Dr Jeremy Smith, the NTEU and the University) have agreed to vary the terms of settlement set out in the Deed.

The *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008* proposes amendments to the *Workplace Relations Act 1996 (WR Act)* which will affect the application of the UB UCA to staff who entered into what are known as post-reform AWAs (an AWA lodged with the Workplace Authority after 27 March 2006) and who agree to terminate their AWA.

If passed, the proposed amendments will mean that the *University of Ballarat Union Collective Agreement 2006-2008 (UB UCA)* will apply to staff who entered in to a post-reform AWA and who have agreed to terminate their AWA, by operation of law.

Because of proposed amendments to the WR Act, the parties to the Deed have agreed to vary clause 6.2 to provide as follows:

'Until such time that by operation of law, the UB UCA applies to those staff members who agree to terminate their post-reform AWA, the University agrees that it will apply the UB UCA to set the minimum terms and conditions of employment for the staff members who agree to terminate their post-reform AWA.'

The effect of the variation is that until the UB UCA applies to staff who entered into a post-reform AWA by operation of law (either because the proposed amendments have been passed or otherwise), the University agrees that it will apply the UB UCA to set their minimum terms and conditions of employment.

In order to be clear, under the proposed settlement, including this variation, the UB UCA will apply to any staff member who agrees to terminate their AWA.

As previously advised, Dr Smith will seek the approval of the Federal Court of Australia (**Court**) of the proposed settlement, including this variation, at a hearing in the Court at 12noon on Monday 17 March 2008. (Please note that this date was changed by the Court. The hearing was originally listed for 10.15am on 18 March 2008.) The hearing will be held at the Commonwealth Law Courts, 305 William Street, Melbourne.

If the Court grants approval of the settlement, including this variation, then the settlement, including this variation, will be binding on Group Members.