

## Notice of Application for Approval of Proposed Settlement

### CLASS ACTION

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

#### Class Action

As you may be aware, in 2006 a representative proceeding or "class action" was commenced in the Federal Court of Australia ("**the Court**") against the University of Ballarat ("**the University**").

The class action was commenced by an employee of the University, Dr Jeremy Smith, on his own behalf and also on behalf of all persons who were academic staff or general staff (other than casual academic staff, casual general staff and TAFE general staff) employed by the University as at 14 February 2006 ("**Group Members**").

If you are, or think you might be, a Group Member then you should read this notice carefully as it may affect your rights.

Orders made by the Court on 18 July 2006 set out a process under which Group Members may "opt out" of the class action. If you elected to opt out, then you are no longer a Group Member.

#### The Allegations in the Class Action

The allegations in the class action are that the University knowingly made false or misleading statements to Group Members with the intention of persuading Group Members to make an Australian Workplace Agreement ("**AWA**").

The University is alleged to have made the false or misleading statements in an email sent by the University to all staff on 14 December 2005 and in a webpage on the University website from 19 December 2005 until 27 January 2006.

The class action alleges that the University breached s 170WG(2) of the *Workplace Relations Act 1996* (Cth) ("**WR Act**") and the contracts of employment of Group Members.

The University denies that it has breached s 170WG of the WR Act or the contracts of employment of Group Members and has defended the class action.

In the class action, Dr Smith seeks, on his own behalf and on behalf of Group Members, the imposition of penalties on the University, declarations and an injunction. No claim for damages was made.

#### Proposed Settlement of the Class Action

Dr Smith and the University have reached an agreement to settle the class action. The National Tertiary Education Industry Union ("**NTEU**") is also party to the proposed settlement agreement. The proposed settlement is without any admission of liability by the University.

The proposed settlement requires approval by the Court before it takes effect.

Under the proposed settlement all general staff and academic staff employed by the University who made an AWA with the University under the WR Act will have the opportunity, if they so wish, to make an agreement with the University to terminate their AWA. If a staff member wishes to terminate their AWA, they must make a written request to the University between 2 April 2008 and a date to be advised which will be 7 days after agreement in principle is reached for an agreement to replace the *University of Ballarat Union Collective Agreement 2006-2008*.

In addition, the University and the NTEU will conduct information sessions with staff on dates to be advised in February and March 2008. The purpose of these information sessions will be to explain the terms of the proposed settlement to academic and general staff. Further information sessions will be held during the period referred to in the previous paragraph. The purpose of these further information sessions will be to inform academic and general staff about the process relating to the termination of AWAs (and other matters, if agreed).

The University and Dr Smith will also consent to an order dismissing the class action with no order as to costs save that if the Court requires advertisements to be placed in a newspaper as part of the settlement approval process, the University will meet the cost of placing the advertisements.

The full terms of the proposed settlement agreement may be obtained from either the University's website at [http://www.ballarat.edu.au/aasp/staff/workplace\\_relations/](http://www.ballarat.edu.au/aasp/staff/workplace_relations/) or the NTEU's website at <http://www.nteu.org.au/ballaratawasettlement>

### **Court Approval**

Dr Smith will seek the Court's approval of the proposed settlement at a hearing in Federal Court of Australia at 10.15 am on 18 March 2008. The hearing will be held at the following location:

Commonwealth Law Courts  
305 William Street  
MELBOURNE VIC 3000

If the Court grants approval then the settlement will be binding on every Group Member.

### **What You Must Do**

**If you are a Group Member and you are in favour** of the settlement then there is nothing you need to do at this time. A further notice will be published on the University's and the NTEU's website and emailed to Group Members who have a University email address advising of the outcome of the Court's approval process.

**If you are a Group Member and you wish to object** to the settlement then you **must** send a written notice to the Court. It **must** have the heading shown below. **It must be received by the Court on or before 3 March 2008**. You **must** also **send** a copy to the solicitors for the Applicant by post to Maurice Blackburn, PO BOX 523, Melbourne, Victoria, 3001, or by email to [jsubsettlement@mauriceblackburn.com.au](mailto:jsubsettlement@mauriceblackburn.com.au)

If you wish to speak in support of your objection you will need to attend the hearing referred to above at 10.15 am on 18 March 2008. If so, you may wish to engage a lawyer to represent you.

Please consider the above matters carefully. If there is anything about which you are unsure, you may contact

- the NTEU on (03) 9254 1910 or (03) 9254 1930;
- the University of Ballarat on (03) 5327 9441; and/or
- Kamal Farouque of Maurice Blackburn on (03) 9605 2700;

In addition, please note that you are entitled to seek your own legal advice.

## **NOTICE OF OBJECTION**

**Jeremy Smith v University of Ballarat**

**Federal Court of Australia (No. VID 135 of 2006)**

### **CLASS ACTION**

1. Addressed to: District Registrar, Federal Court of Australia,  
Commonwealth Law Courts, 305 William Street,  
Melbourne 3000.
2. Filed by: *(Insert Group Member's name, address, telephone/email  
contact details)*
3. Reasons for Objection: *(Set out written reasons)*
4. Signed and dated: