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Senate Education and Employment Legislation Committee  
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Dear Committee Secretary

Thank you for the opportunity to provide a submission to the Government's inquiry into the quality of governance at Australian higher education providers (the **Inquiry**). Relevant to the Inquiry's focus on compliance with workplace laws, this submission provides insights from the Fair Work Ombudsman's (**FWO**) substantial and ongoing work with universities to promote harmonious, productive, cooperative and compliant workplace relations in Australia's higher education sector.

We wrote to Chancellors and Vice Chancellors of 42 universities in November 2020 based on our intelligence and public reports regarding alleged sector non-compliance with workplace laws. Since then, many Australian universities have reported substantial underpayments to the FWO, affecting both academic and professional staff. Our investigations have revealed systemic sector-wide non-compliance.

To support the sector resolve issues and embed a culture of workplace compliance, we have been undertaking our functions under the *Fair Work Act 2009* (**FW Act**) in conjunction with supporting collaborative tripartite stakeholder engagement.

While significant work has been undertaken, and the improved engagement we are seeing from the sector is an important step in the right direction towards fostering a culture of compliance, work is still needed. The FWO continues to invest significant time and resources into university investigations. Sharing insights from our regulatory work, such as through this submission, is one way of influencing sector-wide change through bringing additional scrutiny to and raising the importance of collaboratively investing in a culture of compliance where all voices are heard.

### **The FWO's role and activities in the university sector**

The FWO is an independent statutory office that promotes harmonious, productive, cooperative and compliant workplace relations, including through providing education, assistance and advice about Australian workplace laws as prescribed under the FW Act. Our functions also include promoting and monitoring compliance with those workplace laws, inquiring into and investigating alleged breaches of the FW Act, and taking appropriate enforcement action when necessary. We work collaboratively with workplace community stakeholders to enhance the tripartism at the heart of our strategic enforcement approach, reflected in our publicly available [Statement of Intent](#) and [Compliance and Enforcement Policy](#).

In 2020-21, we commenced a strategy to address non-compliance in the university sector including naming it as a priority area. Our work has been informed by disclosures of significant underpayments by universities, intelligence from university staff and unions, and media reporting.

Investigations have related largely to breaches of enterprise agreements relating to casual professional staff and academic staff. Identified non-compliance has involved unpaid work primarily for marking, lecture/tutorial attendance and other student interactions, the application of incorrect classifications, unpaid entitlements, the improper use of piece rates, and the failure to keep proper records.

Since late 2020, the FWO has been in contact with 33 institutions in the university sector (covering 34 entities) in relation to potential underpayments. From July 2019 to 31 December 2024, the FWO's activities have recovered over \$176 million for more than 80,000 higher education sector employees. This accounts for 9% of the FWO's total recoveries in that time. We have seen some improvement in the sector's acknowledgement of systemic issues but our investigations continue to take up significant resources and time as internal reviews by universities themselves, that we verify, are progressing slowly.

We are also continuing to influence sector-wide positive behavioural and cultural change through engagement with the higher education stakeholder community. We have been sharing our experiences and insights and raising concerns to assist the sector to collaborate on identifying and implementing solutions that encourage compliance and cultural change. Recent engagement work has included:

- Conducting quarterly meetings with a Higher Education Reference Group, comprising the Australian Higher Education Industrial Association and the National Tertiary Education Union, which provides a regular forum for confidential consultation and information sharing to inform our activities and drive workplace compliance. We're currently consulting on our new Higher Education sector website content that will be available later this year.
- Engaging with peak university bodies and government agencies including the Tertiary Education Quality and Standards Agency (TEQSA), the Department of Education and the Australian Universities Accord Panel. Our work with the Australian Universities Accord Panel and TEQSA has resulted in commitments to develop new criteria and annual reporting requirements for all higher education providers regarding their management processes in relation workplace relations compliance.
- Hosting public webinars and conference presentations in 2023 and 2024, to share learnings and lessons on underpayments in the university sector, based on our investigative activities.

While the FWO welcomes the improved engagement from the sector and the increasing improvement in acknowledgement of systemic issues, sector-wide resolution of non-compliance and the underlying causes is not yet complete.

### **Key trends leading to non-compliance in the university sector**

In the initial stages of our investigative work with universities it became apparent that non-compliance at individual institutions was not isolated, and nor were the underlying causes. Our review of university governance processes regarding compliance with workplace laws revealed significant sector-wide

weakness and systemic issues. Inadequate governance and a lack of senior management oversight emerged as the underpinning element of the common issues and themes of non-compliance the FWO has identified. Other trends include employment of a high number of casual workers, and a lack of investment in human resources functions, payroll systems, expertise and auditing.

Throughout our investigation work we have observed:

- Poor corporate governance and management oversight practices that do not prioritise workplace relations risks or compliance have been common. For instance, inadequate oversight by governing boards and audit and risk committees, and an absence of systems for identifying compliance risks.
- Lack of investment in payroll and time-recording systems resulting in poor or inadequate record-keeping, that, as well as contributing to underpayments occurring, has significantly impacted underpayments quantification and the speed at which affected staff are repaid.
- Lack of centralised human resources (HR) functions resulting in entitlements being inconsistently applied across faculties and schools, exacerbated by the common expectation that HR and pay related issues are dealt with by academic managers who lack appropriate expertise in those areas.
- Failure to comply with enterprise agreement provisions including: misclassifying duties, roles or qualifications of academics against classification structures; paying casual academics according to piecework 'benchmarks', such as time-per student, exam or essay marked, instead of enterprise agreement hourly rates; unpaid time for casual academics; and failing to pay minimum shifts, casual employee allowances and loadings in accordance with enterprise agreements.

As previously shared with the Australian Universities Accord Panel, the lack of certainty regarding future engagement, particularly for casual academic staff, leads to a culture within universities where employees rarely raise underpayment concerns or where a systematic claims review approach is not adopted.

The effective operation of strong worker voice mechanisms that enable all workplace participants to proactively identify, engage with and resolve issues within the workplace early, is a key feature of compliant workplaces and will be a valuable area of focus for universities going forward.

Other areas of focus for universities include:

- Ensuring contemporary payroll and record keeping system infrastructure is maintained.
- Improving oversight of workplace relations processes through centralising processes and providing workplace relations and Enterprise Agreement training to staff responsible for functions including human resources, recruitment and payroll.
- Maintaining employee complaint and review mechanisms.
- Establishing consultative tripartite bodies comprising university management, employees and union representation to ensure flow of information and consultation on governance and management of workplace compliance across employee and executive levels.
- Improving governance measures such as committing university councils to focussing on workplace law compliance as a standing item of discussion.

Ongoing investment in these areas of improvement will be key to universities making good on previous failures and embedding sustained compliance with workplace law obligations.

### **The FWO's compliance and enforcement outcomes in the sector**

Our university investigations have resulted in the use of significant enforcement tools including Enforceable Undertakings and civil litigations that play an important role in requiring universities to focus on investing in these areas of improvement. Further outcomes from ongoing investigations are anticipated. Enforceable Undertakings, which are court enforceable, are particularly valuable mechanisms for the FWO to require and oversee university implementation of measures to prevent future non-compliance and drive cultural change.

Through Enforceable Undertakings, universities are acknowledging breaches and governance failings, committing to remediation measures, and investing in infrastructure, governance processes and worker voice mechanisms to support future compliance. Communication to staff regarding Enforceable Undertaking terms and written apologies to affected employees are routinely required. In addition, the FWO requires provision of progress reports for implementation oversight, and notification of any new employee complaints or further non-compliance issues identified.

Since 2022, Enforceable Undertakings have been signed with five universities – the University of Newcastle, Charles Sturt University, University of Melbourne, University of Sydney and University of Technology Sydney, all of which are publicly available on the FWO's [website](#).

In 2024, the FWO also secured \$74,590 in court ordered penalties against the University of Melbourne, which was found to have taken adverse action against two casual academics for exercising their workplace right to make complaints or inquiries about their work. Another litigation, against the University of New South Wales, is currently before the courts alleging failure to make and keep records of hours, rates of pay and details of loadings owed to casual employees; and failure to include lawfully required information on pay slips relating to casual loading.

### **Concluding remarks**

The scale of non-compliance has been particularly disappointing given the university sector's social licence, receipt of substantial taxpayer support, and because existing governance structures have regrettably not, in our experience, ensured workplace compliance. This has had a hefty financial and wellbeing impact on university staff.

As outlined, while we have been pleased with the improved sector engagement and willingness of universities to work with the FWO to address non-compliance, underpayments are significant, and in many cases still being resolved, and more work is needed from the sector.

Resolving non-compliance, addressing underlying cultural and governance causes and embedding a culture of compliance with workplace laws through genuine, sector-wide change is best supported by a collaborative tripartite strategic response. Our work with university sector stakeholders extends beyond rectifying underpayments and seeks to assist universities embrace collaborative, best practice approaches to achieve workplace compliance and resolve workplace issues early and in ways that promote productive

and harmonious employment relationships. Compliance with workplace laws ultimately supports improved culture, institutional reputations and, importantly, improved outcomes for not just affected staff but student bodies and the broader Australian community.

We trust the information included in this submission is of assistance. For further information you are welcome to contact Mr Anthony Fogarty, Executive Director of Policy, on or via

Yours sincerely,

Anna Booth

**Fair Work Ombudsman**

3 March 2025