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Senator Tony Sheldon
Chair
Senate Education and Employment Committee
By email: eec.sen@aph.gov.au

Dear Senator Sheldon,

I write to you in your role as Chair of the Education and Employment Legislation Committee, in reply to your letter advising the University of the opportunity to respond to comments made in Senate Estimates hearing on Friday, 2 June 2023, which may contain potentially adverse reflections pertaining to the University of Newcastle.

At the time of preparing this letter the Hansard of this hearing was not yet finalised, so you will forgive any errors of transcription.

I would most particularly like to respond to claims made regarding the University's actions during Enterprise Bargaining. Statements you made as Chair included that the University is: using 'a strategy of not negotiating in good faith'; and 'making sure there is a rollover of minimum conditions'; and moving to 'activate arbitration by the (Fair Work) Commission'. Further, there was an implication that following the vote last year by staff, the University sought to avoid further negotiations.

The assertion that the University has tried to avoid negotiations is patently not true. The University has engaged in negotiations with Community and Public Sector Union (CPSU) and the National Tertiary Education Union (NTEU) and independent staff bargaining representatives over a period of 22 months, from August 2021 to June 2023. Following the December 2022 vote, to which you referred, the University, the NTEU, the CPSU and staff representatives returned to the negotiating table in good faith at the beginning of 2023. As a result of these negotiations in-principle agreement on the University's Professional Staff Enterprise Bargaining Agreement was arrived at with the CPSU on 11 May 2023. At this time, though there was in-principle agreement from NTEU nominated representatives at the bargaining table, NTEU members did not endorse the terms negotiated by their representatives at the bargaining table. At this point, the CPSU publicly criticised other parties for delaying the uptake of the agreement¹.

Following this, an independent staff bargaining representative, and subsequently the University, made separate applications to the Fair Work Commission under the provisions in Section 240 of the Fair Work Act 2009 to seek its assistance through conciliation and facilitated bargaining, not arbitration.

¹ NSW CPSU, The Broken Telephone Game, 31 May 2023, <https://cpsunsw.org.au/2023/05/31/the-broken-telephone-game/>

The implication from the Chair's comments that the University was seeking arbitration from the Fair Work Commission is incorrect and misleading. Since the Estimates Committee the University, the relevant unions, and independent staff bargaining representatives participated in facilitated bargaining and conciliation. I am pleased to advise that with the Commission's assistance, an in-principle agreement has been reached between the University and both union representatives, facilitated by Fair Work.

I note this form of conciliation was the intended purpose of this section of the Act. As outlined by Acting Prime Minister the Hon Julia Gillard MP² when introducing the Bill, these provisions were put in place in 2009 by the Government for instances where:

'despite their best efforts, parties cannot reach agreement. To assist the parties, the bill enables Fair Work Australia to exercise broad conciliation powers at the request of one of the parties... that they will be able to walk away without having a settlement imposed on them.'

At all times, and across the nearly two-year bargaining period, the University has engaged in good faith and consistent with what was outlined by Acting Prime Minister Gillard in Parliament in 2008³:

'attending, and participating in, meetings at reasonable times; disclosing relevant information; responding to proposals; giving genuine consideration to the proposals of others and giving reasons for responses to those proposals; and refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining.'

The bill specifies that the good faith bargaining requirements do not require a bargaining representative to make concessions during bargaining or to reach agreement on the terms that are to be included in the agreement. Parties are entitled to take a tough stance in negotiations.'

With regard to the claim the University was seeking to roll over 'minimum conditions', the University is proud the in-principle agreements contain conditions that would not be considered minimal by comparison to many other workplaces. This includes above minimum parental leave (26 weeks), flexible personal leave arrangements, domestic violence leave, generous redundancy benefits and severance benefits far in excess of the National Employment Standards, and 17% superannuation for permanent and fixed term staff. We are proud to maintain and expand these conditions where possible.

As Chair, you further stated the University was trying to 'ram through real wage cuts for their casualised workforce', with the implication the University's workforce is increasingly casualised. The University is on record as having moved to decrease the number and proportions of casual staff in our workforce more than two years ago, and the numbers of casuals have decreased significantly over that time by approximately 40%. It is the University's intention to continue working toward more secure employment for more people, and this is reflected in the proposed agreement conditions to improve equity for casuals. This includes conversion provisions, recognition of some casual service for parental leave for professional staff, and creating new permanent positions for academic staff. In addition, casual staff will receive the benefits of the proposed wage increases. The Newcastle NTEU representative is on record in local media agreeing that the level of casual staff at the University are lower than the sector average, or 'pretty good when compared with the sector'⁴.

² Gillard, Hon Julia, Second Reading Speech Fair Work Bill 2008, 25 November 2008, p 11194
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2008-11-25%2F0005%22;src1=sm1>

³ Gillard, Second Reading Speech Fair Work Bill, p11192.

⁴Parris, Michael, Union Withdraws Demand for Casuals Super Parity, 14 June 2023, Newcastle Herald
<https://www.newcastleherald.com.au/story/8231816/union-withdraws-demand-for-casuals-super-parity-in-newcastle-uni-deal/>

With regard to the claim of 'wage theft', the University proactively conducted a thorough review of all payments, once underpayment was uncovered in one area of the University. The University then voluntarily referred itself to the Fair Work Ombudsman, and entered into an Enforceable Undertaking on 29 August 2022. Since then, the University has been fully compliant with the Undertaking and received notification that it was finalised on 8 May 2023. During the review, both underpayments and overpayments were uncovered, and those with net overpayments were not required to repay in any way. We continue to proactively review and upgrade systems and training consistent with the Undertaking.

The Fair Work Ombudsman recognised the proactive steps the University took to systematically investigate, and the 'early and open disclosures' made by the University. The University did not attract a contrition payment, for its efforts in correctly remediating the underpayments. The Ombudsman further identified⁵ the complexity of the Enterprise Agreement as one of the sources of underpayment, which has been a focus of the recent Enterprise Bargaining negotiations.

I trust you will consider the information set out in this letter in good faith, and look forward to your reply.

Yours sincerely,

Professor Alex Zelinsky, AO
Vice-Chancellor and President

20 June 2023

⁵ Fair Work Ombudsman, Enforceable Undertaking University of Newcastle, 24 August 2022
www.fairwork.gov.au/sites/default/files/2022-08/University%20of%20Newcastle%20EU_REDACTED.pdf