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<th>Interim – Australian Workplace Agreement Policy</th>
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<td>Description of Policy</td>
<td>This policy covers the purpose, requirements and procedures of Australian Workplace Agreements for staff at ACU.</td>
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Personnel Relations and Equal Opportunity Directorate

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1. **Background Information**

1.1 An Australian Workplace Agreement (AWA) is an individual written agreement made under the Workplace Relations Act 1996, between the University and a staff member. An AWA sets out the terms and conditions of employment which the staff member and the University have agreed upon and is offered as an alternative form of regulation to the Enterprise Agreement.

1.2 An AWA will override a state law on conditions of employment which is inconsistent with the AWA. However, an AWA cannot override a state law dealing with occupational health and safety, workers’ compensation or apprenticeships.

1.3 This policy has been developed in support of the University’s objective to provide an existing staff member with choice and flexibility in agreement making by offering her/him a choice between an Australian Workplace Agreement (AWA) and an Enterprise Agreement.

1.4 A prospective staff member may be offered an AWA as a condition of entering employment. Such a staff member may, thereafter, be further employed or offered a variation to employment conditions under an AWA.

1.5 In this Policy, an existing staff member is a person employed at the University prior to and on 30 November 2005.

1.6 In this policy a prospective staff member is a person who was or is offered employment on or after 1 December 2005.

1.7 A prospective staff member must not enter on duty at ACU until she/he signs an AWA if their employment is offered conditional on them signing an AWA.

1.8 All casual staff members employed from 30 June 2006 must be offered an AWA at the commencement of each casual engagement, unless the staff member has an existing AWA with the University applying to engagements for the particular type of work. If there is such an existing AWA it will apply for each casual/sessional engagement until the AWA ceases to operate.

2. **Policy Statement**

The University may enter into an AWA with an existing or prospective staff member. At ACU an AWA operates to the exclusion of, and prevails over, the terms of any enterprise agreement which may be in operation at the University at the time. An existing staff member may choose to accept or decline an AWA offer. A prospective staff member on and from 1 December 2005 shall be offered an AWA at the time of being offered employment. Some prospective staff may be offered employment and subsequently a variation or renewal of employment conditional upon the signing of an AWA.

3. **Policy Purpose**

The purpose of this policy is to articulate University processes in relation to AWAs and to outline the steps involved in establishing an AWA at ACU.

4. **Application of Policy**

4.1 This policy applies to all existing and prospective staff members of the University, as defined in Section 1.5 and Section 1.6, including:

- Academic Staff – Continuing and Fixed-Term;
- General Staff – Continuing and Fixed-Term;
- Employment in Centres – Continuing and Fixed-Term;
- Casual Academic Staff;
- Casual General Staff;
- Casual Teachers in Centres; and
- Senior Staff.

4.2 An AWA can introduce certain flexibilities into the regulation of employment that may be tailored to the work needs of an individual staff member and/or the University. An AWA may be utilised by the University or a staff member to negotiate special AWA benefits or working conditions which vary from those that apply generally.

The University has made available special AWA benefits which a staff member may choose to utilise subject to there being no reasonable work unit or service delivery impediment. Such options, which may vary over time, are provided to cover such matters as those listed in Attachment 2. An existing or prospective staff member may propose a special AWA benefit or wish to negotiate an option that may be of benefit to her/him for consideration by the University. Such proposals will be given due consideration, however, the University is not bound to agree to any such proposal/s.

4.3 Discussions about an AWA may be initiated by the University or by an existing or prospective staff member.

4.4 Prospective staff members may initiate negotiations about the content and scope of an AWA following verbal notification of their successful application for a position.

5. Approvals

The Executive Director, University Services and the Director, Personnel Relations and Equal Opportunity are the sole delegated officers of the University with the authority to approve the terms of an AWA, including an AWA template.

6. Procedures

The University has adopted the practice of offering AWAs in template form. Prospective and existing staff members who are offered an AWA will receive an AWA information kit containing the Terms of AWA Offered. Each offer must be in the standard form approved by the Director, Personnel Relations and Equal Opportunity and is open for consideration for a fixed period of 21 days.

An information kit, which includes the template of the AWA offered, an Information Statement for Employees (Australian Workplace Agreements) issued by the Workplace Authority, an explanation of the University’s current enterprise agreement and a response to AWA offer form accompanies the offer. The information statement from the Workplace Authority provides details on the process of making, varying and terminating an agreement. If a staff member wishes to accept the offer, they must do so within the period specified for acceptance.

The staff member indicates acceptance by returning the response to AWA offer form to the University with the appropriate accept box marked. After acceptance, the University will prepare a personalised AWA for signature, first by the staff member and then by the University.

Subsequent to the initial offer a staff member may at any time, thereafter, propose an AWA or a variation to a generic AWA to the University for consideration and negotiation.
6.1 Provision of AWAs to Existing and Prospective Staff Members

6.1.1 Existing Staff

All existing staff members employed before 29 April 2005 will have been made an AWA offer by the 30 August 2006.

At the time of offering an AWA to an existing staff member, the University will offer a genuine and informed choice between the AWA and the enterprise agreement. It will do this through an AWA Information Kit.

When an existing staff member was made an AWA offer prior to 30 August 2006, the offer was in the standard form approved by the Director, Personnel Relations and Equal Opportunity and staff were provided with an AWA information kit. This kit included the Terms of AWA Offered, an Information Statement for Employees (Australian Workplace Agreements) issued by the then Office of the Employment Advocate (now the Workplace Authority), an explanation of the University’s current enterprise agreement, a Special AWA Benefits sheet and the Response to Australian Workplace Agreement (AWA) Offer form.

An existing staff member who is offered an AWA subsequent to 30 August 2006 has 21 days to consider the terms of AWA offered. If the terms of this offer are accepted the University will provide the staff member with a personalised AWA offer. An existing staff member has 7 days to consider this personalised AWA. This period may be waived, in writing.

The staff member or her/his bargaining agent (see Section 6.2) on request may ask questions to clarify the AWA.

6.1.2 Prospective Staff

Commencing from 1 December 2005, all prospective staff have been offered an AWA prior to commencing at ACU.

Prospective staff may be offered employment conditional on acceptance of an AWA. Where employment is not conditional upon the acceptance of an AWA, upon commencement, the staff member’s employment (in the case of Academic Staff A-E and General Staff 1-9) will be regulated by the enterprise agreement or by the relevant Award or the Australian Fair Pay and Conditions Standard (in the case of Teachers in Centres) or University Determinations (in the case of senior staff); unless and until the staff member chooses to enter into an AWA.

When a prospective staff member is made an AWA offer the offer will be in the standard form approved by the Director, Personnel Relations and Equal Opportunity and she/he will be provided with a letter advising her/him how to access the University’s AWA documents on the relevant PREOD web site. The AWA documents include the Terms of AWA Offered, an Information Statement for Employees (Australian Workplace Agreements) issued by the Workplace Authority, an explanation of the University’s current enterprise agreement, a Special AWA Benefits sheet and the Response to Australian Workplace Agreement (AWA) Offer form.

A prospective staff member has 21 days to consider the terms of AWA offered. If this offer is accepted the University will provide the staff member with a personalised AWA offer. A prospective staff member has 7 days to consider this personalised AWA, unless this period is waived in writing.

The prospective staff member or her/his bargaining agent, where notified to the University, may ask questions to clarify the AWA offer. Where requested, explanations must be communicated in a way that is sensitive to the individual staff member’s needs – electronic, print or otherwise as appropriate or needed to cater for a language other than English or for a staff member with a disability.
6.2 Bargaining Agent

An offer of an AWA may be made by the University to an existing or prospective staff member. Alternatively, an existing or prospective staff member may propose an AWA to the University. The initial offer of an AWA will be made between the University and the existing or prospective staff member directly in the first instance in order to ensure compliance with the Federal Government’s Higher Education Workplace Reform Requirements (HEWRRs).

An existing or prospective staff member may choose to appoint a bargaining agent of their choice to assist or represent her/him in negotiating an AWA. A bargaining agent can be any person the staff member chooses upon whose advice she/he can rely.

A bargaining agent must be appointed in writing and a copy of this written Appointment Notice must be provided to the University by the existing or prospective staff member. This may occur either before or after the offer of, or proposal for, an AWA is made.

All documents associated with the approval of an agreed AWA and its lodgement with the Workplace Authority will be provided directly to the existing or prospective staff member. The staff member may then, if she/he so chooses, forward such documents to the bargaining agent. Alternatively, the staff member may advise the University in writing that such documentation is to be forwarded to the bargaining agent on the behalf of the staff member.

6.3 Time for Considering an Offer of an AWA

6.3.1 There are different requirements with respect to considering an AWA for existing and prospective members of staff. Under the Workplace Relations Act 1996 both existing and prospective staff members are entitled to a minimum of seven (7) days to consider an AWA before signing. The University is required to allow existing staff members at least fourteen (14) days to consider an AWA offer by the terms of the Staff Enterprise Agreement 2005-2008. This requirement is satisfied by the procedures set out in sub-section 5.1.2

6.3.2 A staff member may waive the period in which to consider an AWA but must formally waive this period in writing to the University.

6.4 Signing an AWA

After the staff member has accepted the terms of AWA offered, the University will provide the staff member with a personalised AWA for signature. The University, must provide the staff member with the required time in which to consider the AWA prior to signing as referred to in sub-section 5.3.1.

Unless a waiver has been signed, a staff member must not sign an AWA until the minimum amount of time has elapsed, otherwise the AWA will be returned for appropriate signature and dating and the 7 day minimum period will recommence.

The staff member and then the University must each sign and date the AWA, and the signatures must be witnessed. The full name and address of each signatory, including witnesses, must accompany all signatures.

Once the AWA is signed and dated by the staff member and the University and those signatures are witnessed the AWA is an approved agreement.
6.5  Lodgement of an AWA

When the AWA is signed, witnessed and dated by both the staff member and the University's delegate, the AWA becomes an approved agreement. The University must lodge the approved agreement and the completed Employer Declaration Form with the Workplace Authority within fourteen (14) days after the approval. Lodgment will usually be made electronically but may be made in paper copy by post. When lodged electronically, the delegated representative of the University will sign the Employer’s Declaration by typing her/his name on the online document.

The AWA starts to operate on the day the Workplace Authority receives the Employer's Declaration.

A Receipt will be issued by the Workplace Authority to the University and the staff member to confirm lodgment. The University will then provide a copy of the AWA that was lodged with the Workplace Authority to the staff member.

6.6  The Fairness Test

The Workplace Authority will assess all AWAs lodged after 7 May 2007 to determine whether or not the AWA needs to be assessed against the “Fairness Test”. This Test applies to staff whose annual salary is less than $75,000 which at ACU from 12 July 2007, includes the following categories of staff:

- Continuing and Fixed-term Academic Staff, all Level A and Level B (steps 1 – 5)
- Casual and Sessional Academic Staff
- General Staff HEW Levels 1 – 8
- Casual General Staff employed at HEW Levels 1 – 8
- Continuing and Fixed-term Teachers in Centres
- Casual Teachers in Centres

The “Fairness Test” assesses whether or not a staff member has been fairly compensated if her/his AWA removes or changes any protected Award conditions which would otherwise have applied. At ACU there is only one protected Award condition which may be changed in an AWA; namely that a staff member may choose to roll her or his Annual Leave Loading into her or his regular annual salary. As there is no change to a staff member’s annual remuneration the rolling into salary of the annual leave loading does not result in any disadvantage to the staff member. Therefore the University considers that its AWAs will pass the “Fairness Test”.

The Workplace Authority will separately advise the University and the staff member whether the AWA has to be assessed under the “Fairness Test”. After the test has been conducted, a further letter will be sent to the University and the staff member to advise whether or not the AWA has passed the Test.

6.7  Retention of signed AWA

The University will retain the approved AWA on the staff member’s personal file for the duration of the agreement and for a period of seven years after:

- the employment relationship ends, or
- the agreement is replaced by another workplace agreement, or
- the agreement is terminated in accordance with the Act.
6.8 Prohibited content

Prohibited content is content that cannot be included in AWAs. The *Workplace Relations Act 1996* provides that a term of an agreement that contains prohibited content is void and cannot be enforced.

In September 2006, the University submitted all of its Template AWAs to the Workplace Authority (formerly the Office of the Employment Advocate) and obtained a certificate that the agreement(s) do not contain content prohibited by the *Workplace Relations Act 1996* or the Regulations made pursuant to that Act.

Details of the matters which are Prohibited Content in an AWA are set out in the *Information Statement for Employees* issued by the Workplace Authority and included in the information kit.

6.9 Confidentiality Issues

No provisions in the AWA prohibit or restrict disclosure of details of the AWA by the University or the staff member to whom the AWA relates. However, a staff member who wishes to do so may keep the content of an AWA confidential if she or he so chooses. The staff member may discuss a proposed AWA with their bargaining agent or someone outside of their workplace.

The Workplace Authority, with whom the AWA must be lodged, however is not permitted to disclose information that may identify the parties to an AWA.

6.10 Documentation to Assist AWA Decision-Making by a Staff Member

6.9.1 When offering an AWA

At the time of offering an AWA, the University will provide the required information, to the staff member either in electronic or paper copy or otherwise as appropriate or needed (to cater for a language other than English or a disability), about the AWA as well as a copy of the Information Statement for Employees (Australian Workplace Agreements) issued by the Workplace Authority, an explanation of the University’s current enterprise agreement, the appropriate Special AWA Benefits sheet and the Response to Australian Workplace Agreement (AWA) Offer form.

6.11 Commencing Date of an AWA

The AWA comes into operation on the day it is lodged as an approved Agreement with the Workplace Authority. The lodgement receipt will be placed on the staff member’s personal file and a copy provided to the staff member. A copy of the AWA will be provided to the staff member’s nominated supervisor for her/his records.

6.12 Implementation of the AWA

6.12.1 The nominated supervisor is responsible for implementing at the local work area/workplace an AWA entered into between the staff member and the University.

6.12.2 Where a staff member has signed an AWA, it is the responsibility of the staff member’s nominated supervisor to ensure that the terms and conditions of employment for the staff member are those as agreed in her/his AWA. A staff member who has signed an AWA is not entitled to take advantage of any terms and conditions that may apply to other staff members who are subject to other employment agreements unless such terms or conditions are also included in her/his AWA.
6.12.3 When that staff member wishes to exercise one or more of the special AWA benefits included in the AWA, they must, in some cases, first seek the approval of their nominated supervisor (where approval is required, it is stated in the relevant policy). Conditions will necessarily need to apply in relation to the needs and capacities of local work areas and local workgroups. However, the special benefits and flexibilities will not be declined unreasonably wherever they can be implemented.

6.12.4 Where a nominated supervisor has approved a staff member’s request to exercise one or more of the special benefits included in the AWA, she/he must also obtain the approval of the relevant Executive Member and then advise the Personnel Relations and Equal Opportunity Directorate, so the necessary adjustments to the staff member’s circumstance can be effected. Advice must be on the relevant Notice of AWA Choice Form which will be attached to each policy of the University which provides for a special benefit that may be derived by a staff member through an AWA.

6.13 Varying an AWA

6.13.1 The University and a staff member may agree, in writing, to vary any of the terms of an AWA by making a Variation Agreement. The nominal expiry date of an AWA may be extended by making such an Agreement.

6.13.2 The procedure for making a Variation Agreement is the same as for making an AWA.

6.13.3 The Variation Agreement comes into operation on the day the approved Variation Agreement is lodged with the Workplace Authority.

6.14 Termination of an AWA

6.14.1 The nominal expiry date for an AWA cannot be more than five years from the date of lodgment of the approved agreement with the Workplace Authority. The University will specify the nominal expiry date of the AWA in the agreement.


6.14.3 An AWA does not automatically terminate after its nominal expiry date. An AWA does not cease to operate until it is replaced by another AWA, or it does not pass the “Fairness Test” and the AWA isn’t changed to make it pass the Test, or the AWA is terminated in accordance with the Act.

The Act provides that an AWA may be terminated if:

- the staff member and the University both wish to end the AWA and enter into a termination agreement. The procedure for making a termination agreement is the same as for making an AWA; or
- the AWA has passed its nominal expiry date and either the University or the staff member decides to terminate the AWA with at least 90 days written notice to the other party;

Templates for AWAs offered by ACU provide that the AWA will cease to operate if the staff member ceases to be employed by the University.

6.14.4 For either a Variation Agreement or a Termination Agreement the signing, witnessing, dating and lodgment requirements are the same as for an AWA.
6.14.5 The operation of the Act is such that a staff member who enters into an Australian Workplace Agreement will not return to the conditions of employment contained in the Staff Enterprise Agreement 2005-2008 if her/his AWA is terminated in accordance with the Act.

6.14.6 If a staff member’s AWA is terminated and the staff member and the University do not enter into a new AWA, her/his conditions of employment will be those contained in appropriate University policies and determinations. These are generally consistent with either the Enterprise Agreement or the AWA templates.

6.14.7 The formal regulation of a staff member’s employment will be through the Australian Fair Pay and Conditions Standards (AFPCS) and any protected Award conditions.

Details of the AFPCS and protected Award conditions are set out in the Information Statement for Employees issued by the Workplace Authority.

6.15 Subsequent AWAs

Where an AWA ceases to operate due to being terminated or where it has passed its specified nominal expiry date and a staff member wishes to enter into a further AWA or the University wishes to offer a further AWA, the process to be followed is the same as for an initial AWA.

6.16 Further Information on Australian Workplace Agreements

Should a staff members or nominated supervisor require further assistance regarding Australian Workplace Agreements, enquires may be directed to the Personnel Relations and Equal Opportunity Directorate through the special email address that has been established for this purpose: awa@acu.edu.au

7. Policy Review

The University will develop a process for reviewing the effectiveness of the AWA process established by this policy. Where applicable, the review will take account of necessary changes to other relevant University policies and procedures. Any staff member wishing to suggest improvements to the AWA Policy and Procedure is invited to forward her/his suggestions to the Director, Personnel Relations and Equal Opportunity.

8. Further Assistance

Any staff member who requires assistance in understanding the AWA Policy and Procedure should consult her/his nominated supervisor. Should further policy advice be needed, she/he should contact the Personnel Relations Consultant responsible for their campus.
Step 1: An existing or prospective staff member to whom an AWA is required to be offered is identified.

Step 2: Staff member is provided the AWA Information Kit which contains:
- The letter offering an AWA
- The Terms of AWA Offered document appropriate to the type of employment being offered;
- Workplace Authority Information Statement for Employees, Australian Workplace Agreement;
- Summary, Australian Catholic University Staff Enterprise Agreement 2005 – 2008
- Special AWA benefits list;

Step 3: The staff members have 21 days to consider the Terms of AWA Offered.

Step 4: If the staff member wishes to accept the Terms of AWA Offered the staff member returns the Response to AWA offer form.

Step 5: If the staff member wishes to consider the Terms of AWA Offered the staff member should return the Response to AWA offer form with the appropriate consider box marked.

Step 5a: The University contacts the staff member or their appointed bargaining agent with the contact details of the appropriate University representative with whom to negotiate terms.

Step 5b: The staff member or their bargaining agent may propose terms for negotiation and the University enters into bargaining regarding these proposals.

Step 5c: The staff member or their bargaining agent accepts the final AWA offered.

Step 5d: The staff member or their bargaining agent declines the final AWA offered.

Step 6: Staff member wishes to decline the AWA offer. The staff member should return the Response to AWA offer form with the “decline” box marked. Offers are made for 21 days. The staff member may simply allow this period to expire without response.

Step 6a: EXISTING STAFF MEMBER
Employee remains on existing terms and conditions as provided by the current Enterprise Agreement/Award and The Australian Fair Pay & Conditions Standards or University Determinations.

Step 6b: PROSPECTIVE STAFF MEMBER
Where employment is conditional upon signing an AWA, that employment offer does not proceed. If the AWA is not conditional upon the signing of an AWA the staff member’s terms and conditions of employment are those contained in the current Enterprise Agreement.

Step 7: The University issues the staff member with a personalised AWA for consideration and advises that the document must be considered for 7 days before signing, unless that time is waived. A waiver form is provided to the University.

Step 8: AWA Approval Process
The Staff member and then the University signs and dates the AWA and signatures are witnessed. The AWA is now an approved agreement.

Step 9: The AWA is lodged with the Workplace Authority within fourteen (14) days after the agreement is made. The AWA comes into operation on the day it is lodged with the Workplace Authority.

Step 10: A receipt is issued by the Workplace Authority to the University and the staff member to confirm lodgement. A copy of the lodged AWA is given to the staff member.

Step 11: The University retains a signed copy of the AWA on the staff member’s personal file for the duration of the agreement; and for a period of 7 years after the workplace agreement is terminated or replaced or the employment relationship ends.

Step 12: PREOD informs the nominated supervisor of the staff member’s acceptance of an AWA. The nominated supervisor implements the AWA in the local workplace. When the staff member wishes to access the benefits in the AWA, they discuss this with their nominated supervisor. Once approval has been given for Access to a benefit, the supervisor advises PREOD on the appropriate form and PREOD

For subsequent AWAs, process begins again from Step 2 above (Sect 6).
For variations to an existing AWA, refer to Section 6.11 of Policy.
To terminate an existing AWA, refer to Section 6.12 of Policy.
Q. I’m considering whether or not to choose the ACU National offer of an AWA, does it provide any potential benefits not otherwise available to a staff member?

A. Yes. A staff member who chooses to accept the offer of an AWA may potentially access any or all of a number of benefits that would otherwise not be available to her or him. Because of the newness of regulation of higher education sector employment through AWAs and its present regulation at ACU National, their number is currently small. However, it is expected that the range of benefits will expand over time, introducing greater flexibility and, where benefits can be accommodated, the potential for personal tailoring to a staff member’s needs by agreement making.

Currently the following benefits are available:

- **Salary averaging** - a staff member who works for less than 52 weeks a year (say, on a semester basis) may elect to average salary earned over a whole year to provide a predictable and consistent level of income. Please access the Interim Policy on Salary Averaging for General Staff for further details.

- **Merging annual leave loading into salary** - a staff member’s annual leave loading is paid as a component of fortnightly earnings across the whole year to marginally enhance take-home pay and superannuation contributions.

- **Encashment of long service leave** - a staff member may encash the value of all or part of her or his long service leave entitlement. Please access Interim Policy on Encashment of Long Service Leave for General Staff for further details.

- **“Purchase” of additional recreation leave** - a staff member with personal needs (eg: for child or elder care) may be permitted up to 10 days additional recreation leave over the year by foregoing an equivalent amount of salary. Please access the Interim Policy on the Purchase of Additional Annual Leave for Staff for further details.

- **Extended working hours - general staff member** - a general staff member may elect to work a 37.5 hours week - an extra 30 minutes a day - with annual workload, income and superannuation contributions increased by 7.14%. Access to expanded working hours is limited to those staff members working in Student Administration, the University Library, the Research Office and the Information Technology and Communication Directorate. Please access the Interim Policy on Expanded Working Hours for General Staff for further details.

- **Deferred salary scheme** – a staff member may receive 80% of annual salary for 4 years to fund a fifth year of leave using the foregone salary. Please access the Interim Policy on the Deferred Salary Scheme for Staff for further details.

- **Choosing a pathway to retirement** – a staff member may wish to fix a definite retirement date and to arrange conditions of employment which will provide a transitional arrangement tailored to their personal circumstances. Please access the Interim Pre-Retirement Contract, Fixed-Term Retirement Transition Contract and Post-Retirement Contract Policies for further details.

Notwithstanding the benefits and flexibilities of these options, the needs and capacities of local work areas will determine the conditions required to sustain them. However, their benefits and flexibilities will not be declined unreasonably wherever options can be implemented.

If you are interested in exploring the available options, there would be value in first privately discussing any that may interest you with your nominated supervisor or manager when considering whether or not to choose the ACU National offer of an AWA.