

7 September 2021

Ms Louise Clarke  
HR Business Partner  
UniSuper

By email

Dear Ms Clarke,

## **RE: CONTRACT CHANGES AT UNISUPER**

We refer to previous discussions on the above matter and write to raise a number of concerns regarding the process that UniSuper is undertaking, and the conduct of the Fund in relation to this matter.

FSU has met with members about the proposed new contract and there is significant concern amongst our members about the proposed new contracts. Our members do not accept that this is required, nor that UniSuper should have undertaken this process without first consulting with staff.

You have failed to provide any serious justification for this process of changing contracts of employment and to the extent that there has been any justification provided you have failed to support this with any argument or evidence. The email to staff introducing the proposed contracts on 20 August 2021, UniSuper Management describes the need to ensure that legislative changes and that contemporary industry standards are reflected in the new contract. However, there is no description of what those legislative changes are and what contemporary industry standards you have adopted.

It is mentioned in that email that UniSuper management mention that the “Conditions of Employment” document will no longer be used, however offer no explanation of the effect that this change will have on the rights of affected staff. Nor is it discussed what the effect of putting the leave and redundancy entitlements into a co-lateral policy will be on those clauses.

In the first group of dot points in that email, there are a number of matters identified as being noticeable changes, however, the change is not described or even identified.

### **Misrepresentation**

We are concerned that you have misrepresented the workplace rights of our members by not explaining the effects of the change, the source of the industry standards or explaining the legislative changes you say have been adopted in the contract.

It is our belief that you have done this knowingly or recklessly and that you have failed to provide full context of changes that you are intending to make.

This is an offence under section 345 of the *Fair Work Act 2009* (Cth) (the Act).

### **Consultation**

In our meeting with you on 27 August 2021, you indicated that the period of time from providing the draft agreement until they are produced is to allow staff to provide their feedback, or to negotiate clauses into the contract.

We find this to be a disingenuous position as nowhere in any of the material that has been provided has UniSuper indicated that feedback is being sought or that it is possible to negotiate the terms of the contracts.

In fact, in the email introducing the change on 20 August 2021, staff are invited to read the document carefully. UniSuper does not even say to staff that they should seek advice about the matter.

This is, in our view, a bad faith action and one that is deliberately designed to obscure the truth of the matter, which is to further alienate staff from one another and to reserve enormous power to UniSuper.

We consider that this is a further exacerbation of your actions to misrepresent the rights of our members, contrary to section 345 of the Act.

### **Coercion**

Linked within the email, was an FAQ that made several deeply concerning points.

Firstly, that employees who do not sign the contract will no longer be eligible for annual remuneration reviews.

In discussions with you, it was noted that this would be an incentive for people to sign the contract.

In our view, it is clear then that you intended this comment to influence the way employees engage with the proposed contracts.

We consider that in doing this, you have offended section 343 of the Act. UniSuper intentionally made the comment about annual remuneration reviews with the intention of depriving staff of a choice about entering the contract.

The proposed contract is unnecessary as our members already have valid employment contracts.

Secondly, within the FAQ it was made clear that employees who do not sign the proposed contract will not be eligible for promotions or mobility into other roles within the fund, unless they sign a new proposed contract.

UniSuper appears to have made this comment for the reason of incentivizing staff to sign the proposed contracts.

We allege that this is also contrary to section 343 of the Act as it is a comment made with the intention of pressuring our members into signing the proposed contracts.

### **Outcomes**

To remedy this behavior, we require UniSuper to do the following:

1. Provide all staff with the following information:
  - a. A full and complete description of all the changes to their existing contracts.
  - b. The reasoning for the changes;
  - c. The method and any evidence relied upon to determine “industry standards”; and
  - d. The precision legislation that has informed any changes and the reasons for those changes.
2. Publicly withdraw the threats made to staff about withholding remuneration reviews and promotion opportunities unless they sign the proposed contract.
3. Publicly confirm that regardless of whether an employee signs the new contract or remains on their current, valid contract, that they will be eligible for remuneration reviews and promotion opportunities.
4. Openly invite feedback from all staff about the terms of the contract and inform staff that they are entitled to negotiate the terms of their contract.

We await your response no later than 4pm on Thursday 9 September 2021.

If you would like to discuss this further, please do not hesitate to contact Alex Cousner on 0491469961 or [alex.cousner@funion.org.au](mailto:alex.cousner@funion.org.au).

Sincerely

A handwritten signature in black ink, appearing to read 'Alex Cousner', written in a cursive style.

Alex Cousner  
Finance Sector Union