

## Win from ashes of TAFE EA



Maxine Sharkey  
Deputy Secretary (Post Schools)  
**May 20, 2020**

Despite the NSW Government walking away from the TAFE Enterprise Agreement in March, Federation has secured a commitment from TAFE NSW for certainty of ongoing employment for long-term temporary employees.

Federation is “appalled” at the behaviour of the Government in dropping the Enterprise Agreement (EA) in March but welcomed the TAFE Managing Director’s advice that TAFE NSW will work with Federation to uphold the commitment to the conversion of temporary employees, agreed to in the bargaining process.

Federation began bargaining with TAFE NSW for a new Teachers and Related Employees Enterprise Agreement late in 2019.



Federation and TAFE NSW held many meetings, at which we progressed toward finding agreement on key issues. Those key issues, identified by TAFE members who had undertaken a pre-bargaining survey distributed to all workplaces, included a 2.5 per cent pay rise with no loss of conditions, an increase in permanency, and access to genuine professional development to maintain vocational currency.

Mindful that TAFE teachers and related employees last received a pay rise in late November 2018, Federation worked with a view to finalising bargaining as soon as possible after the expiry date of the current EA on 3 February, 2020. This would have allowed TAFE teachers and related employees to complete a ballot period as required by Fair Work, and receive their first pay rise in the first quarter of 2020.

On 27 February, a [joint communiqué](#) signed by Federation President Angelo Gavrielatos and TAFE managing director Steffen Faurby was sent to TAFE members advising that bargaining had progressed to a point where very few matters required more detailed discussion.

On Wednesday, 11 March, TAFE NSW and Federation met for a marathon seven hours, where wording for a new EA was finalised.

TAFE NSW sent Federation correspondence late that night – a full copy of the proposed EA and all documentation that would sit alongside it (such as recommittal of the Administrative Agreement) – allowing the union to take a recommendation to our [TAFE TA Council on 13 March](#) and then to [Federation State Council the next day](#). At both councils, a recommendation to accept the EA was endorsed unanimously.

TAFE NSW had informed Federation that should we indicate a positive response from Council, TAFE would commence the Fair Work ballot on the following Monday or Tuesday, 16 or 17 March, with a view to close the

ballot on 1 April.

If this ballot of employees was affirmative, this timeline would have allowed the first pay rise to occur before the commencement of term 2.

However, on 18 March, Mr Faurby informed Federation the Berejiklian Government was no longer honouring the commitment it had made regarding the TAFE Teachers and Related Employees Enterprise Agreement ([correspondence](#)). This decision was ostensibly related to the impact of the global COVID-19 pandemic.

Federation immediately sought legal advice regarding this delay and responded to the TAFE Managing Director.

Further, Mr Gavrielatos petitioned the Premier to alter the decision and honour the agreement that was made in good faith.

This resulted in further [correspondence from TAFE](#), received by Federation on 30 March.

Federation is appalled at the behaviour of this government regarding this matter, and continues to canvas all legal, political and industrial options available to bring this matter to a swift and just conclusion.

Our EA determines our working conditions and, along with the National Employment Standards, contains all teachers and related employees' industrial entitlements. When bargaining for an EA, the union is concerned about more than just a pay rise; it is always looking to include wording to alleviate any ongoing workplace difficulties.

During this recent bargaining, Federation gained a commitment from TAFE NSW to include a clause in the EA that converted long-term temporary teachers to permanency.

Those who have been TAFE employees for some time may remember the Temporary Teacher Agreement before being moved into the federal Fair Work industrial system. This agreement outlined a process where part-time casual teachers, who had been merit-selected into a temporary teacher position and had held that position continuously for two years, were converted to permanency.

While this agreement had occasional hiccups in implementation, there were large numbers of teachers who benefitted from it. Unfortunately, once we were moved into the federal Fair Work Act, all policies and agreements that were not a part of the EA were disregarded by subsequent management.

Further, the Fair Work Act does not allow the commission to rule on issues outside an EA. Thus, even where a management decision is patently unfair, an employer cannot be instructed by Fair Work to implement a policy that is not in an EA or the National Employment Standards.

During this recent bargaining process, Federation was able to negotiate the introduction of a similar concept into the 2020 Enterprise Agreement. The (unimplemented) EA, as negotiated earlier this year, contains a discreet clause, Conversion of Temporary Employees to Permanent Employment.

Correspondence from the Managing Director on 1 May included a reference to TAFE NSW upholding these commitments.

"TAFE NSW is continuing to work with the NSW Teachers Federation to honour commitments that can be implemented outside of enterprise bargaining, including the conversion of temporary employees to permanent employment, and also establishing new consultation arrangements between the two organisations. We look forward to sharing more information about these commitments in due course."

Key concepts of this are:

*After completing two years of continuous service in the same temporary position, a temporary employee will be made permanent providing:*

- *there are no excess permanent employees who would match the position*

- *the initial appointment was on the basis of merit*
- *ongoing work is available as determined by the Regional General Manager and General Manager People and Safety*
- *the temporary employee has the relevant skills qualifications, experience and work performance standards to enable the employee to perform the duties of the position concerned.*

*Requests for conversion from temporary to permanent employment will not be unreasonably refused.*

While it is terribly disappointing the government chose to walk away from committing to this reasonable clause by enacting it as law, we welcome the TAFE Managing Director's advice that TAFE NSW will work with Federation to implement this clause before finalising the implementation of the new EA.

Up until now, teachers who have been long-term temporary employees had no certainty of ongoing employment, and often relied upon Federation advocating for their conversion to permanency with TAFE NSW.

This was never ideal and certainly not fair. Until this clause is formally included in the Teachers and Related Employees Enterprise Agreement, Federation will continue to monitor temporary employment. This is reliant upon those members who are long-term temporary employees contacting the union to advise us of their circumstances.

To assist this, we will be asking all temporary teachers and related employees to attend Federation meetings (currently being held using various video and teleconferencing platforms) to alert Federation Representatives and Organisers of the status of your employment, so you can work with us to ensure the smooth facilitation of this new process/clause.

While we are affected by physical isolation due to COVID-19, Federation will continue to make contact with members in different ways.

We are currently conducting meetings via Zoom, Teams and Skype, and some Organisers will be attending TAFE colleges for one-on-one discussions with members while following physical distancing protocols.

The union also relies on you, as a member, to pass this information on to colleagues who may not be members of Federation.

It is important they are aware of their working conditions and have an opportunity to join the union to assist us in our important work of supporting you at work. If an employee doesn't understand their entitlements, they are likely to undermine them. This can undermine everyone's working conditions.

It is important that every teacher in your workplace is a member of the NSW Teachers Federation.