

Restructuring, reviews and the management of change

A guide for TEU members



TERTIARY EDUCATION UNION
Te Hautū Kahurangi o Aotearoa

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1 Introduction

This guide has been prepared as a result of requests from members for a resource that outlines the process of what happens when a review or restructuring is proposed and in general, what members' rights are.

This is intended as a guide only and does not constitute a legal opinion or legal advice. Each review is different and may require a range of responses.

Each tertiary institution collective agreement (CA) and relevant tertiary institution policy and procedures will need to be applied. TEU organisers will be able to assist members with this.



While this guide covers the process from start to finish, it is not intended to be an actual step-by-step process as the steps and options vary. Discuss this with your organiser.

As members will be aware, many different terms have been used to describe what happens when the employer decides to change how the 'business' is managed. The terms review, restructuring, surplus staffing review and management of change have been used in this guide (See below for a sample definition).

2 About restructuring and reviews

Most tertiary education institutions are constantly reviewing, restructuring or making changes to some aspect of the workplace that affects TEU members. Changes in government policy, funding and student enrolments are all factors that drive the proposed changes. Some changes members may agree with and support, others members will oppose.

TEU recognises that restructuring and reviews, even when done very well make the work environment very difficult for members.

There is a significant effect on workplace morale, stress levels and perhaps ultimately the employment of some members.

TEU places a high priority on organising collectively as well as providing support and assistance for members affected by restructuring.

3 Employer and union rights

The Court has determined that an employer fundamentally has a right to determine how they will manage their business. However, it is not an unfettered right, and there are legal and contractual obligations that impact on the process and these are outlined below. In addition, in the tertiary education sector 'the right to manage' operates within the parameters of various statutes and the collective agreements.

TEU also has the right to organise collectively to oppose proposed change which TEU members do not support. This right can be exercised even when the employer is acting within the law.

4 A definition

Collective agreements and/or relevant tertiary institution policy and procedures may have a definition of a review or change management. One example of such a definition is:

Change Management: A proposal to significantly change the structure (including the roles performed by employees) or staffing level of any part, or parts, of the tertiary institution, including any merger of the whole or part of the tertiary institution with another organisation.

5 Finding out about a proposed review or restructuring

In the Institute of Technology and Polytechnic sector the collective agreements require the employer to advise the Union prior to initiating any Review. That said it isn't unusual for members to hear on the grapevine about the possibility of a Review being initiated.

The university collective agreements do not contain clauses placing the same requirement on the employer though the normal practice would be for employers to advise the union in advance.

» *TEU members can assist by making sure the organiser and/or the branch president is aware that a review is proposed.*

In some of TEU's CAs there is a requirement for the institution to notify the TEU national secretary of the intention to review.

6 Determining the TEU response to a proposed review

In all instances, an important role of TEU and the organiser will be to ensure that all statutory and contractual requirements and obligations are adhered to and that a proper and fair process is carried out.

In many instances it will be appropriate to organise collectively or campaign to oppose a review or restructuring proposal.

7 To campaign or not to campaign

Sometimes union members will feel strongly



about a proposed review e.g. that staff cuts are unnecessary; that it is not academically sound; that it is the wrong solution to a particular problem etc. In such cases the best approach is usually to campaign against the review or proposed changes.

» *Members are encouraged to discuss the issues fully amongst their colleagues and become actively involved in any campaign that is decided upon.*

In determining whether a campaign is the appropriate course of action and the type of campaign that should be organised, the organiser, the members concerned, and branch committee will take into account such things as the depth of feeling about the issue, the extent to which members are or will be affected, the advice from the TEU national secretary and TEU national council as well as any applicable TEU policy. Decisions will be made in accordance with TEU Rules.

Campaigns may include submissions and letters as well as more extensive campaigning and protest actions.

8 Industrial action

Members often ask whether or not they can take industrial action or “go on strike” around a proposed restructuring. The Employment Relations Act 2000 (ERA) is very specific about when it is legal and not legal to take industrial action. There is no provision to strike around a proposed restructuring.

9 Contractual and legislative framework

When looking at a proposed review, there are a number of matters which have to be considered. to determine what action can be taken. These include the collective agreement, tertiary institution policy and procedures, applicable legislation and court decisions. A brief summary of each of these follows.

Collective agreements (CAs)

All TEU CAs have some provisions relating to how change will be managed. The relevant clause may be titled *Management of Change*, such as in the Lincoln University Academic collective agreement or *Organisational Change*, such as in the NMIT collective agreement or *Surplus Staffing Provisions* as in the Aoraki Polytechnic collective agreement . In most cases. In some cases the requirements are included in the redundancy clauses in collective agreements. For example, the Massey University CA has a Section titled *Restructuring/Redundancy Provisions* or in attached schedules or appendices to the agreement, such as in the University of Auckland General Staff CA Appendix E.

Typically, management of change provisions include:

- That the union as well as employees will be notified of the scope of any review or restructuring
- That there will be consultation with affected members before any final decisions are made
- That sufficient information will be provided in order to enable proper submissions
- That reasonable time will be allowed for submissions or recommendations
- An indication of the decision making process

» *TEU members are encouraged to find out what their CA says. Follow this link to find out what your CA says:*

» teu.ac.nz/collective-agreements/



Tertiary institution policy and procedures

In most of the collective agreements in that TEU negotiates there are detailed clauses about the process to be followed in the case for Reviews/ Restructuring/Surplus Staffing. Clauses in the collective agreements take precedence over organisational policy and procedures. In all cases, there will also be applicable tertiary institution policy and procedures. This may be referred to in the CA.

» *TEU members should be able to obtain a copy of the policy via the tertiary institution website or intranet. For example, follow this link to the Victoria University policy on employment matters:*

» <http://policy.vuw.ac.nz/>

In a case where the policy may appear to conflict with the CA, the CA will take precedence. Check with your organiser.

The Employment Relations Act 2000 (ERA)

The [Employment Relations Act](#) is the current legislation which guides employment relations practice in New Zealand. An important object of the ERA is “to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and the employment relationship...”

The Act provides that a duty of good faith exists between the parties which is wider than just the implied mutual obligations of trust and confidence, and wider than that required specifically during bargaining. The Act requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect

on the continuation of employment of one or more of his or her employees to provide to the employees affected-

- (i) access to information, relevant to the continuation of the employee’s employment, about the decision, and
- (ii) an opportunity to comment on the information to their employer before the decision is made.”

Additionally, the Act states that good faith obligations apply to consultation; a proposal that might impact on employees, including contracting out; and making employees redundant

These provisions of the ERA support the requirement to consult about proposed changes.

Court decisions – the requirement to consult

The Court has also considered what consultation does and does not mean. The most relevant information is provided with this guide as Appendix 1.

In brief, the view says that, while consultation does not require agreement, it requires more than prior notification of a proposal and it requires genuine effort to accommodate the views of those being consulted.

TEU legal advice

All TEU organisers are required to have an understanding of the legislative framework and legal decisions, and the advice they provide to members is informed by this.

TEU also has an internal process for obtaining additional legal advice from TEU organisers and

the national secretary.

On rare occasions it may be necessary to seek further legal advice or a formal opinion, and there are established processes for this.

» *As a TEU member, you are encouraged to attend the meetings if at all possible and put forward your views. If you are able to take on a small task, discuss this with your organiser.*

10 The change proposal/review process

A change proposal document should set out the purpose or objectives of the review as well as the process and timeframe for the review and explain how decisions will be made.

Initial meeting called by management

Typically management will call a meeting of all staff in the affected area to announce the proposal and explain the process, terms of reference, timeframes etc

» *TEU members should make sure they attend the meeting if at all possible and obtain a copy of the change proposal/review document.*

TEU meetings of members

Meetings of members will be called, either for those from the area under review or a wider group of members. The purpose of such meetings is to provide information, and an opportunity to discuss the issues and to endorse what action will be taken.

Encouraging colleagues to join TEU

Often a review process offers an opportunity to encourage colleagues to join TEU. Some younger members of staff may not have been a member of a union before.

» *You can talk with them about the importance of a united approach as well as the benefits of the collective agreement. Ask the organiser for some membership recruitment packs.*

Terms of reference

There are likely to be terms of reference or objectives.

» *TEU members can look at these and assess whether they are sufficiently broad – are there aspects that you think should be considered that have not been included?*

Timeline

The timeline must be realistic and take into account other work priorities which may have to be met.

» *TEU members should ensure that sufficient time been allowed to make submissions.*



Submissions

Submissions are the formal opportunity for members to have their say. Although sometimes members may feel that the situation is a '*fait accompli*', employers are required to genuinely consider employees views prior to making their final decision, as explained above.

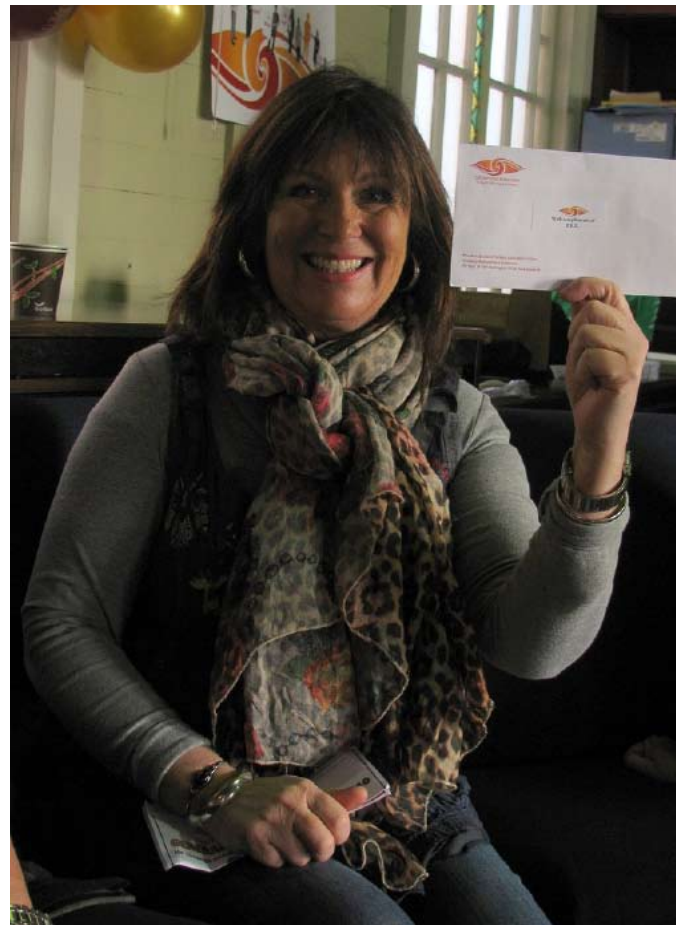
There are a range of possibilities for making submissions. Written submissions will be called for and there may also be provision for making an oral submission as well or instead of a written one.

- » *A combined TEU submission is advisable. Individual submissions may also be part of the process.*
- » *A detailed submission will be made. These should be clear and specific and it may be helpful to address the proposal point by point. A guide for TEU members on preparing and presenting submissions is attached as Appendix 2.*
- » *Individuals may just wish to make a brief submission addressing a single point. Submissions do not have to be long. In many cases an email submission will be acceptable.*
- » *It is a good idea to have the TEU organiser check their submission. In this case it is important to ensure that plenty of time is left for this to happen and for feedback to be provided well before the date when submissions close. Members are requested to send a copy of their final submission to their organiser.*

Information

You have a right to sufficient information in order to enable you to make a considered submission.

- » *If there is specific information you think is necessary, but not provided, liaise with your organiser who can email the appropriate person and request the information which they will then ensure is made available to all affected members. The review proposal should identify who to contact – most probably it will be Human Resources personnel.*
- » *If you have difficulty obtaining information, contact the organiser for assistance.*
- » *In some situations it may be appropriate to request information under the Official Information Act. TEU has a standard letter for this purpose.*



Job analysis

In some cases, staff may be asked to complete a job analysis/role clarification as part of the review process. There have been examples where members have been told that all that is required is an outline not a detailed analysis. However, one of the difficulties of this is that in many cases job descriptions may be well out of date. Therefore, it can be important to ensure that what you actually do is clearly identified. For example, perhaps your job description originally said that you would do student enrolments for a course as well as the financial administration for the course. Over time you may have ceased doing the enrolments, and increased the financial component of your job. In this case it would be important that management is made aware of the extent of the financial administration you were now undertaking.

» *TEU members having difficulty completing the job analysis should seek support and assistance from HR and if necessary speak to their organiser about it.*

11 Implementation of decisions

Results of consultation

The timeline for the proposal should indicate when staff will be advised of the results of the consultation process. In all likelihood a meeting of staff will be called for this purpose and a final document made available.

Prior notification of positions to be disestablished or declared surplus

If there are positions to be disestablished, and consequently individuals who may potentially be made redundant, it is good practice that these individual staff members are informed of this prior to the meeting to inform other staff.

» *If you are requested to attend a meeting, you have a right to have a support person or a union representative present. It is appropriate to advise HR/ your manager that you intend to bring someone to the meeting. That person should ensure they take clear notes of what is said.*

Process to determine reconfirmation, contestability or disestablishment

Your CA, institution policy or agreed procedures should specify the basis on which positions will be reconfirmed, determined contestable or disestablished.

Reconfirmation

In general, where a position in a revised structure is substantially the same position as previously – the work is the same, the salary and terms and conditions are the same - and there is one clear candidate, this individual should be confirmed in the position.

Some area of debate can arise around the issue of whether the position is substantially



the same. The CA may have specific wording which will need to be checked. There is also an informal guideline which is sometimes applied ie that where the job is 80 percent the same, the individual may be confirmed. Obviously disputes may also arise as to what constitutes 80 percent.

Contestable positions

Under some university collective agreements where there is more than one potential candidate for a restructured position, then it is likely that the position will be contestable, that is, candidates will compete for the position.

An example of this could be where three administrative positions are condensed into two positions and all three staff members can identify part of their previous job in the two new positions. In this case, to ensure a fair process, staff are usually invited to apply for the positions.

This is never an easy situation – it may seem like “applying for my own job”. TEU does the very best it can to ensure that such processes are as fair and transparent as possible.

Selection criteria

In most ITP collective agreement reviews are managed by selection criteria ie If the positions are the same but there are fewer of them then the employer must establish selection criteria in consultation with the Union. Employees will then be matched against the criteria. This process must be transparent. Employees are entitled to see how the employer has measured them against the criteria.

Disestablished positions

If a position is disestablished through a

restructuring process the provisions in the CA relating to redundancy apply. These will include a period of notice and may include options such as redeployment and retraining.

Ultimately, if none of the options provided for are possible then redundancy and redundancy compensation or severance payments, where provided for, will apply.

Notice period

In the tertiary institution context, three months is a typical notice period. Your CA will specify the notice period. What happens during this notice period is to an extent determined by the individual member’s wishes. For example, if the member in fact wishes to accept the redundancy, then the options of redeployment are unlikely to be pursued. Instead, it may be possible to negotiate time and support to update curriculum vitae (CVs), attend job interviews etc. It may also be possible to negotiate a reduced notice period which may or may not be paid out. All these options should be discussed with your organiser.

Redeployment options

Most CAs have redeployment options. For example, Eastern Institute of Technology CA states that “the employer recognises the serious consequences of the loss of employment for employees and seeks to minimise those consequences” and that “employees may be redeployed to a new job at the same or lower salary within the polytechnic”.

However, it should be noted that while redeployment can be strongly pursued when this is what a member wants, the achievement of this option depends on a number of factors. For instance, there has to be an available position for which the member has the necessary skills and experience.

There may be a provision for redeployment to a lesser position with an equalisation allowance or a lump sum payment in compensation. In TEU organisers' experience, this option is rarely used.

Retraining

Again, most CA's have this provision. It may be used to assist a member obtain an alternative position outside the institution, or maybe used in conjunction with redeployment.

Options other than redundancy

In some cases, it may be possible and appropriate to consider alternatives to redundancy such as retirement. Members would need to meet the requirements relating to retirement as provided for in the collective agreement.

If appropriate, it may be possible to negotiate some flexible arrangements such as continued part-time work or interim work pending an expected vacancy.

Support systems

Throughout all this process, the employer may provide and/or TEU may negotiate a range of support systems for members affected by restructuring.

These may include access to the Employee Assistance Programme (EAP). This is a confidential service and usually free for the first two to three sessions. If necessary, the organiser may be able to assist with negotiating additional free sessions.

In some cases, access to specialised services such as career counseling, preparation of CVs, training for job interviews or financial planning may be available.



Determining redundancy payments/entitlements

When a member is potentially being made redundant, they can request an estimate of their redundancy or severance payment which can assist with clarifying options. This request would most likely be made through HR who would then confirm the necessary authorisation through payroll. You should at the same time ask for an explanation of how the estimate is arrived at. This will then enable you to check that all your entitlements have been included. Your organiser can help you with this.

Entitlements to check include the correct calculation of your service, that is, how many years you have worked for the institution and whether this has been correctly included in the calculation. Areas of difference in the calculation of service may arise for example, when staff have worked on a fixed term basis and in some CAs on a casual basis prior to being made permanent.

» *TEU members should check annual and discretionary leave and any long service leave entitlements. In some cases, members may also have an applicable 'grand parented' entitlement.*



There may be options provided for how the payment will be made – either in a lump sum or through fortnightly payments. There may be advantages and disadvantages that members should seek professional financial advice about.

Tax implications

There may also be personal tax implications. The organiser is unlikely to be able to provide advice about this matter and members should seek professional advice. Note: the tertiary institution will have obligations under Inland Revenue regulations and is unlikely to be able to 'do a deal'.

Superannuation

Members may have questions around superannuation and how this is affected by redundancy. In the first instance, there is likely to be a staff member in HR who may be able to provide information. If this is insufficient, you may need to contact the relevant superannuation scheme for details of their regulations.

» *Members can check information on NZ Universities Superannuation Scheme by following this link:*

» <https://www.superfacts.co.nz/nzuss/>

» *Members can check information on the Government Superannuation Fund (GSF) at this link:*

» <http://www.datacomgsf.co.nz/>

» *Your organiser should be able to provide you with further contacts.*

Intellectual property

Members may have queries regarding what academic papers they are entitled to take and what may belong to the tertiary institution.

» *Members should check with their organiser on this issue*

Additional negotiations

Sometimes it is possible for the organiser to assist



the member with negotiating additional matters. These may include such things as continued use of an office, telephone, access to email and the library. In some circumstances such things as the purchase of a computer may also be possible. All these possibilities can be discussed with the organiser.

Leaving arrangements

When everything has finally been determined, it may be useful to consider what leaving arrangements are appropriate. On occasions, members may have something specific which they want said about their departure e.g. in a staff newsletter and this may be able to be negotiated. Similarly members may or may not wish a departmental farewell. These matters can all be discussed.

12 Employment Relationship Problems

The TEU policy on assisting members with employment relationship problems will apply where such problems, as defined in the ERA, arise as a result of restructuring or change. Collective agreements are required to have a process for resolving employment relationship problems.

13 Addendum

It must be restated that this is intended as a **Guide only**. In all cases the relevant CA must be consulted and advice sought from TEU organisers and, if necessary, other staff.



Appendix 1 - Consultation

A guide for TEU members on the view of the Court

Introduction

The following propositions relating to consultation were extracted from a 1993 Court of Appeal judgement adopted by Goddard CJ as a guide to employers and employees.

1. The word 'consultation' does not require that there be agreement.
2. On the other hand it clearly requires more than mere prior notification.
3. If there is a proposal to make a change, and such change requires to be preceded by consultation, it must not be made until after consultation with those required to be consulted. They must know what is proposed before they can be expected to give their views' (see Port Louis Corporation).
4. This does not involve a right to demand assurances but there must be sufficiently precise information given to enable the person to be consulted to state a view together with a reasonable opportunity to do so. This may include an opportunity to state views in writing or orally.
5. The requirement for consultation is never to be treated perfunctorily or as a mere formality. The person or body to be consulted must be given a reasonably ample and sufficient opportunity to express views or to point to problems or difficulties (see Port Louis Corporation).
6. Consultation must be allowed sufficient time (McGechan J).
7. Genuine effort must be made to accommodate the views of those being consulted; consultation is to be a reality, not a charade (McGechan J).
8. Consultation does not necessarily involve negotiation towards an agreement although this not uncommonly can follow as the tendency in consultation is to seek at least consensus; (McGechan J).
9. Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses, and then deciding what will be done (McGechan J).
10. The party obliged to consult, while quite entitled to have a working plan already in mind, must keep its mind open and be ready to change and even start afresh (McGechan J).
11. There are no universal requirements as to form or as to duration of consultation.
12. Consultation cannot be equated with negotiation in the sense of a process which has, as its object, arriving at agreement.

(It should be noted that the position of the Court was arrived at prior to the introduction of the Employment Relations Act. This guide should be considered in conjunction with legislative entitlements).

Appendix 2 - Submissions

A guide for TEU members on preparing and presenting submissions

What is a submission?

Essentially, a submission is a presentation of your views and opinions about the proposed restructuring or review. When making a submission you are providing the review panel with a range of views and insights that they may not have considered or be aware of.

Usually a submission is in written form, although there may be an opportunity to reinforce it through an oral presentation as well. In some instances, written submissions may simply be contained in an email message. In other situations a slightly more formal approach may be warranted. It may relate to the whole proposal or to only some section(s) of the proposal.

If you suggest changes to a proposal, or make recommendations, you should provide the reasons for your views. Any submission, therefore, should provide alternative suggestions where appropriate to what ever objective the review is attempting to achieve.

Who can make a submission?

A submission may be made by an individual member or it may represent the views of a group of members.

The TEU branch may also make a submission.

Why make a submission?

Making a submission, either written or oral, is your formal opportunity to have your say. When members make submissions, this helps ensure that the review panel is aware of all the effects of the proposals on members and their working conditions.

Some aspects of the proposal or indeed the whole proposal may be changed by the nature and level of submissions received.

What happens to a submission?

The employers are required to give genuine consideration to any matters raised in a submission. There is no requirement to implement the recommendations or suggestions.

Preparation for making a submission

Prior to making a submission, you should ensure you have a copy of the proposal and any other documents or information you may need.



Writing the submission

There are no set rules about how this should be done but there are some useful guidelines to follow:

- The submission should be easy to read (probably typed), clear and each point briefly stated
- Lengthy narrative should be avoided
- Each point should be ordered or numbered
- It is useful to include a heading. If possible, name the restructuring document e.g. Submission on proposal to restructure ITS department
- It should state who is making the submission – if it is on behalf of a group of members, you may wish to include all the names of those members
- Often you will be commenting on various points of a proposal. It is helpful to identify these points as they are numbered in the proposal.

The content of your submission

You may wish to make an overall statement about the proposal followed by detailed comments. You should provide background information where necessary.

- Make your comments as relevant as possible
- Ensure your views are clearly expressed with the reasons for them
- Be concise. Simple and direct is good
- Make sure your comments are accurate. Avoid including statements that you cannot verify
- Make sure your conclusions or recommendations are clearly identified

Submitting your submission

- Make sure you send the submission in by the due date
- If there are good reasons why this is not possible, advise the panel of any late submission before the due date
- Where possible, send a copy of your submission to the TEU organiser
- Ask to be heard if there are points you feel would be better made in person to the review panel

Making an oral submission

- Ensure you are prepared
- Take along a colleague if you want or need support. This can be helpful if the panel asks questions or wishes to discuss your submission in detail
- Don't feel intimidated by the formality of making an oral submission
- Check how much time has been allocated and keep within this. Allow some time at the end for questions, clarifications
- Check who will be on the panel.
- Make sure you introduce yourself or are introduced
- If you are supporting an earlier written submission, prioritise which points you wish to speak to and or strengthen
- Avoid simply reading your submission
- Before leaving it would be courteous to thank the panel for the opportunity to speak

Contact TEU

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