



Fair Work  
Commission

## Modern Awards Review 2023-24 (AM2023/21)

### Submission cover sheet

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(Please provide the name of the person lodging the submission)

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21 February 2024

**IN THE FAIR WORK COMMISSION**

***Fair Work Act 2009***

**Modern Awards Review 2023-2024 – Job Security**

**(AM2023/21)**

**NTEU REPLY SUBMISSIONS**

1. The National Tertiary Education Industry Union (**NTEU**) makes these submissions in reply to the submissions of the Australian Higher Education Industry Association (**AHEIA**) dated 5 February 2024 (**AHEIA Submissions**). Save for the additional defined terms in these submissions, we adopt the defined terms in our submissions dated 5 February 2024. In respect of the other aspects of the review, NTEU has read a preliminary version of the Australian Council of Trade Unions submission in reply and agrees with the submissions contained therein.
2. At [3] of the AHEIA Submissions, AHEIA outlines what it asserts are generous conditions in the higher education sector (**HE sector**). NTEU notes that these conditions largely do not apply to casual workers. Particularly in respect of the entitlement to 17% employer superannuation contributions for fixed-term and continuing staff, this means that the 25% casual loading has less impact in compensating casual workers in the higher education sector for the disadvantages experienced by that category of employment when compared to workers in the broader economy.
3. At [5] of the AHEIA Submissions, AHEIA states that permanent employment makes up the majority of staff on an FTE basis. The basis of this submission is unclear, however NTEU contests that it is relevant. Instead, a more useful analysis of the staff profile of the HE sector uses headcount. This is more useful because FTE numbers tend to disguise the true number of casual workers in the sector. It is also more useful because the undercounting of casual staff hours (both legal and illegal) is endemic in higher education, with around 40% of sessional academic work being unpaid and therefore uncounted.<sup>1</sup> In Victoria, the only state that requires reporting

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<sup>1</sup> McCarron and Mac Donald, *2020 Special State of the University Sector Survey*, p33.

Filed on behalf of (name & role of party)

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on casual employment numbers, 68.74% of university staff are employed on casual or short-term contracts and casual employment is estimated to be around double that of the broader economy.<sup>2</sup> NTEU therefore submits that the AHEIA submission at [5] is incorrect and should not be accepted.

4. NTEU agrees with the statement at [7] of the AHEIA Submissions that permanent academic workers have their workload divided according to enterprise agreement terms, but strongly disagrees that this inhibits the conversion of academic casual workers. Many HE sector enterprise agreements allow for ‘education focused’ or ‘teaching focused’ roles and/or positions, where between 70-90% of the work allocated to a staff member can be teaching duties or teaching-related (‘education focused’) duties such as preparation for lectures and tutorials, marking, and student consultation.<sup>3</sup> This is all work that is currently routinely performed by casual workers. Indeed, in many instances this work is performed by a majority of casual employees in a School, Faculty or University.
5. Academic workload clauses in enterprise agreements also commonly prescribe time to be allocated to the essential task of maintaining discipline currency and engaging in the scholarship of teaching. Casuals are required to do this work in order to ensure that they remain qualified to do their jobs, however are often not paid by their employer for doing so.
6. Further, the submission at [8] that casual academic staff lack experience and skills in research and administration is both incorrect and circular. It is incorrect because many long-term casual academic workers possess PhD qualifications which require a high level of research expertise and administrative skill, and circular because this argument, taken to its logical conclusion, means that no new academic staff member could be hired in a continuing position because they haven’t had the opportunity to develop experience in administration or research. With regard to research experience, many casual academic workers are forced to engage in research work in their own time in the hopes of getting the results of that research published in an attempt to secure ongoing employment.<sup>4</sup>
7. Further, the classification descriptors (the minimum standards of academic levels in Schedule 1 of the Academic Staff Award and substantially reproduced in every

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<sup>2</sup> Smithers, Spina, Harris, and Gurr, “Working every weekend: the paradox of time for insecurely employed academics”, *Time and Society*, 32(1), 2022, 2.

<sup>3</sup> See for example, *University of Tasmania Staff Agreement 2021-2025*, cl 23.1; *University of Canberra Enterprise Agreement 2023-2026*, cl 46.7; *James Cook University Enterprise Agreement 2022*, cl 15.3(g).

<sup>4</sup> Above n2, 14.

university enterprise agreement, **MSALs**) state that administration work for a Level A academic will ‘primarily relate to their activities at the institution’ [emphasis added]. This is a low bar and almost all casual academics are already performing this work (largely unpaid or underpaid) in their casual engagements.

8. Similarly the MSALs only require that a Level A academic be able to ‘work with support and guidance from more senior academic staff’ while they ‘develop their expertise in... research with an increasing degree of autonomy’. A casual academic with a PhD qualification (or who is working towards their PhD qualification) should already be able to do this work.
9. Rather than ‘set[ting] up individuals for failure’,<sup>5</sup> converting casual academic workers to more secure employment is setting these individuals up for the opportunity of a long and fulfilling career in their chosen field, and to the benefit of the community in which they teach and research

#### *Reply to Fixed Term Employment Context*

10. The submission at [9], that most fixed term academic staff are engaged on research only contracts is unclear and NTEU does not have the data that informs it. NTEU has prepared an analysis of fixed-term employment in the HE sector, which is Attachment 1 to this submission and estimates that only 30% of the 46,000 fixed-term workers (by headcount) are engaged in research-only positions.<sup>6</sup>
11. There is significant divergence in the usage of fixed-term employment at universities, with fixed-term employment generally replacing ongoing employment rather than casual employment. That is, institutions with higher levels of fixed-term employment tend to have lower levels of continuing employment rather than lower levels of casual employment. There are only six universities in which the number of staff engaged in research only positions (across both continuing and fixed term) is more than 50% of the total number of fixed term contracts in that university.<sup>7</sup> Further, it is likely that only around 25 percent of these research only staff are continuing (see Attachment 1). This leaves the vast majority of fixed term employment unexplained by research contracts, even at institutions with high research outputs. In other words, while it might be the case that many fixed-term positions are funded from research grants, it is not the case that most fixed-term positions are research only contracts. In 2022 there were 38,202 fixed-term

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<sup>5</sup> AHIEA submission [8].

<sup>6</sup> McCarron, Fixed Term Employment in Higher Education, *NTEU*, 20 February 2024, p 7.

<sup>7</sup> Those universities are Macquarie University, RMIT University, the University of Melbourne, the University of Queensland, the University of New South Wales, and the University of Wollongong.

contracts on an FTE basis, and only 16,255 research only positions in total including continuing positions.<sup>8</sup> Lastly, many of these fixed term research positions are doing generic work that is not unique to a specific project (such as statistical data analysis) across many projects and there is certainty around the need for that work indefinitely.

12. AHEIA Submission at [10] states that fixed-term employment in the HE sector has been steady over the last decade. While NTEU agrees that universities have made no progress in reducing their reliance on fixed-term employment over the last ten years, departmental data shows that fixed-term employment remains more than ten times more prevalent than in the broader economy. Fixed-term employment stands at around 30% of FTE employment and 37% of non-casual employment compared to the economy-wide figure of just 2.9%.<sup>9</sup> This is despite the restrictions on the use of fixed-term employment in the HE Awards. It is clear that while these restrictions are critical, they are not operating to provide access to more secure employment to fixed term staff in the HE sector. It is critical that the Awards are amended as outlined in the NTEU submission of 5 February 2024, in order to provide HE fixed term staff with access to more secure work in line with the new awards objective.
13. NTEU disagrees with the submission at [17] of the AHEIA submission that fixed-term staff have comparable job security to employees in other sectors. That is so because fixed-term severance entitlements are not equivalent to the redundancy payments provided for in s 119 of the FW Act.
14. In respect of Award entitlements, entitlement to severance only applies where an employee is engaged on a second or subsequent contract, or the work that the employee has been performing continues but another employee has been appointed to perform that work. This latter condition explicitly contemplates that an employer can decline to renew a contract in circumstances where the work that the employee has been performing continues, which would not be a genuine redundancy within the meaning of s 389 of the FW Act which provides that a redundancy is not genuine if the employer fails to redeploy a staff member where that would have been reasonable in all the circumstances.

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<sup>8</sup> Above n 6, p 7.

<sup>9</sup> ABS, December 2023, *Working Arrangements*, <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release>.

15. Further, that entitlement only applies to employees engaged in two of the six fixed-term employment categories allowed under those Awards. This restriction is mirrored in many HE sector enterprise agreements.
16. Further, many enterprise agreements provide for less generous severance payments than are provided for in the Awards.<sup>10</sup> This is possible because in contrast to the position of continuing employees who have the protection of ss 55 and 56 of the FW Act, fixed-term staff entitlements in enterprise agreements are subject only to the better-off-overall test in s 193. While it may be the case that those workers are better off overall when compared to the HE Awards, it is not the case that they have comparable job security with the rest of the workforce outside of the HE sector based on severance entitlements.
17. Lastly and importantly, workers engaged on fixed-term contracts largely do not have the protection of the unfair dismissal regime.<sup>11</sup> These factors mean that the submission at [17] of the AHEIA submission should not be accepted.

#### *Reply to Casual Context*

18. Paragraph [21] of the AHIEA submission submits that HE sector casual employment is lower as a proportion of total FTE is lower than the wider labour market. While this may be the case, NTEU submits that a better metric of determining casual employment in the sector is on a headcount basis. The reason that is so is explained at [3] above. When the numbers are counted in this way, casual employment is much higher than in the broader economy. Further, if actual hours for casuals were accounted properly, it is likely that the FTE number would increase significantly.
19. At [23] of the AHEIA submission it is stated that casual academic employees are entitled to penalties/loadings for out of hours and weekend engagements. This submission has no footnotes, and the basis of this submission is unclear as casual academic staff are not entitled to penalties/loadings for work outside of hours or on weekends. The Academic Staff Award does not provide for ordinary hours of work and does not contain the words ‘weekend’, ‘Saturday’, or ‘Sunday’, and the three references to penalty rates do not provide an entitlement to casual academic workers.

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<sup>10</sup> See for example *University of Queensland Enterprise Agreement 2021-2026*, cl 67.1(d); *Charles Darwin University and Union Enterprise Agreement 2022*, cl 67.5; *University of Adelaide Enterprise Agreement 2023-2025*, cl 6.4.2 which each provide for a maximum severance payment of 8 weeks’ pay.

<sup>11</sup> *FW Act*, s 386(2)(a); *Murphy v University of Southern Queensland* [2021] FWCFB 3603.

20. NTEU disagrees with the submission at [25], which posits that ‘complex/restrictive EA workload provisions... act to limit conversion of casual staff to permanent employment opportunities’. NTEU submits that these important protections in enterprise agreements are designed to act as a protection against over-work in an industry with no award-derived hours of work, ensuring that some time is provided for continuing staff to engage in essential administrative and scholarship work, much of which is done by casual academic workers for free. To the extent that these protections may ‘limit’ conversion of casual academic workers, it is only because the employer would be required to pay those workers for work that they are currently getting for no or little pay. It is unconscionable that the cost of such work (in the form of labour) is borne by those least able to do so.

21. In reply to [26] of the AHEIA submission, NTEU says that fluctuating student demand does account for some justifiable casual academic employment. However, the experience of many casual academic workers is that they are teaching core units in undergraduate degree programs which the employer accredited some time ago and will be required over a long period of time.

22. NTEU notes the submission at [27] and in reply says that the findings in the Discussion Paper are in relation to the beneficial effects of casual employment in relation to enhancing job market access for women, young people, and those entering the labour market are less apposite in relation to the HE sector than they may be in the broader economy. That is so because of the nature of academic work in the HE sector, which requires a high level of education to be qualified for that work.<sup>12</sup>

*Reply to AHEIA responses to specific questions raised*

23. NTEU relies on its submission dated 5 February 2024 in respect of the specific questions raised in the Discussion Paper.

*Reply to Characteristics of Casual Academic Staff in Selected Universities Report*

24. The *Characteristics of Casual Academic Staff in Selected Universities* **report** is attached to the AHEIA submission. NTEU has a number of concerns about the

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<sup>12</sup> The *Higher Education Standards Framework (Threshold Standards) 2015* require that a registered higher education provider must ensure that academic workers appointed to teach students have a qualification at least one Australian Qualifications Framework level higher than the course of study being taught, or equivalent relevant academic, professional, or practice-based experience and expertise. This means that in order to be qualified to teach into a bachelor (level 7) course, a casual academic worker must have at least a bachelor honours degree or graduate certificate or diploma (level 8), or equivalent experience (which is likely to take significantly longer than a level 8 qualification to achieve).



methodology and reporting of data in that report, and submits that these concerns may mean that the findings are likely to either conceal the true nature of casual academic employment in the HE sector, or apt to mislead.

25. *First*, there are a number of assertions made about the number of hours worked by casual academics in the data sample used. Nowhere in the report is it stated how this data was counted. Under the Academic Staff Award, where a casual academic worker is engaged to deliver a lecture or tutorial (other than a repeat lecture or tutorial), each hour of delivery includes payment for two additional hours of associated working time.<sup>13</sup> Even if this two hours of associated time is sufficient to capture the work that is required (which NTEU denies) it is unclear whether this associated working time is counted in the report. Therefore with respect to lecture and tutorial delivery, it is possible that these working hours are being undercounted in the report by up to two-thirds. Even if these data do account for that additional time, they do not account for any additional time worked beyond what a casual academic worker is entitled to be paid for under the Academic Staff Award or HE sector enterprise agreements.

26. *Second*, the report does not disclose which universities were subject to the analysis. Many universities use illegal piece-rates to deem hours of work for marking performed by casuals,<sup>14</sup> often only allowing casual staff to submit timesheets for as little as ten minutes for marking student assessments, giving casual academics the choice ‘between shortchanging yourself on pay or shortchanging the student’.<sup>15</sup> If data from such an institution was used to calculate marking hours performed by casuals academic workers, it is likely to significantly underestimate the actual time worked. We note that the data used in the report was taken from 2021, a time in which institutions like the University of Melbourne (the university at which the authors of the report are based) were engaged in this form of wage theft. That practice meant that at that university staff were being paid ‘for 35 hours (a semester) but [the work] might take 70, 80, 90 hours’.<sup>16</sup> Other casual academic workers have reported that ‘on paper you might only be employed four to

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<sup>13</sup> Academic Staff Award, cl 16.4.

<sup>14</sup> More than half of Australian universities have faced allegations of wage theft, predominantly based on the use of piece-rates

<sup>15</sup> Schneiders, “Inside Australia’s university wage theft machine”, *Sydney Morning Herald*, 2023, accessed online <<https://www.smh.com.au/business/workplace/inside-australia-s-university-wage-theft-machine-20230411-p5czn6.html>> 14 February 2023.

<sup>16</sup> *Ibid*.

eight hours a week, but you might be working close to full time hours and unable to take on other paid work'.<sup>17</sup>

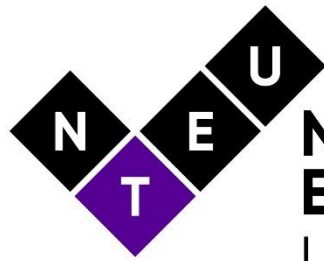
27. For the reasons outlined above, NTEU submits that the report contains significant flaws which likely result in the significant underestimation of casual working time and means that it should not be relied on in order to gain an understanding of how casual academic workers are engaged in the higher education sector. To the contrary, the findings of the report are likely only reflect the disadvantage and exploitation experienced by casual academics in the HE sector.

**NTEU**

**21 February 2024**

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<sup>17</sup> Ibid.



**National Tertiary  
Education Union**  
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## **Fixed Term Employment in Higher Education**

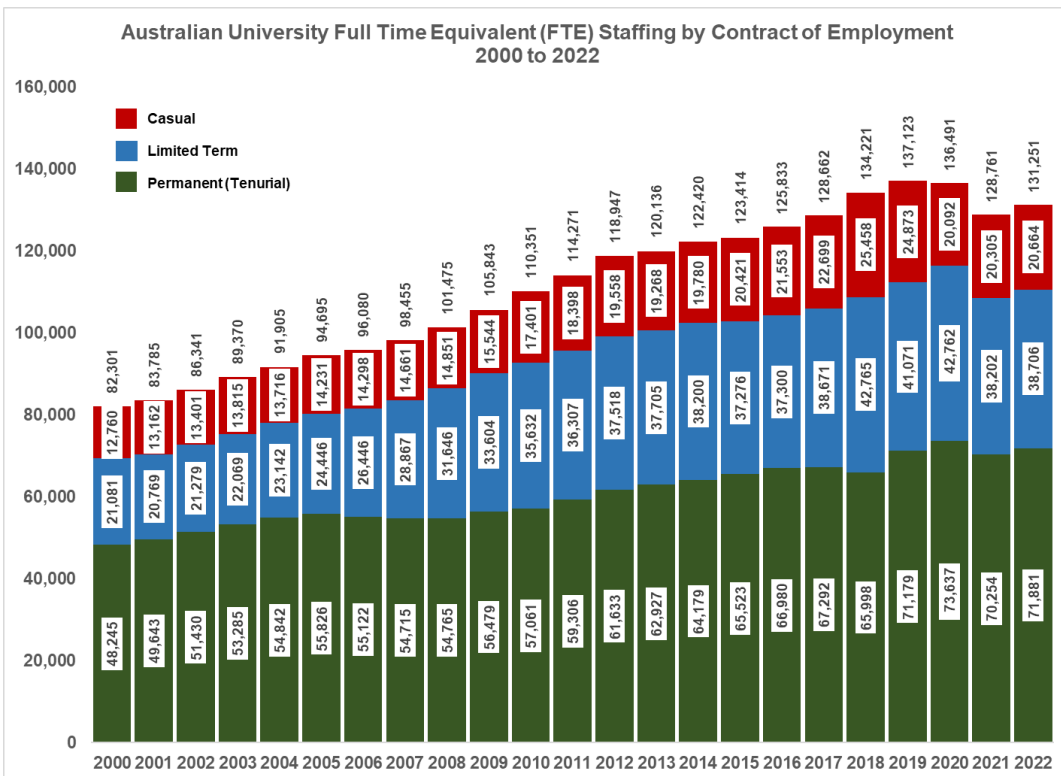
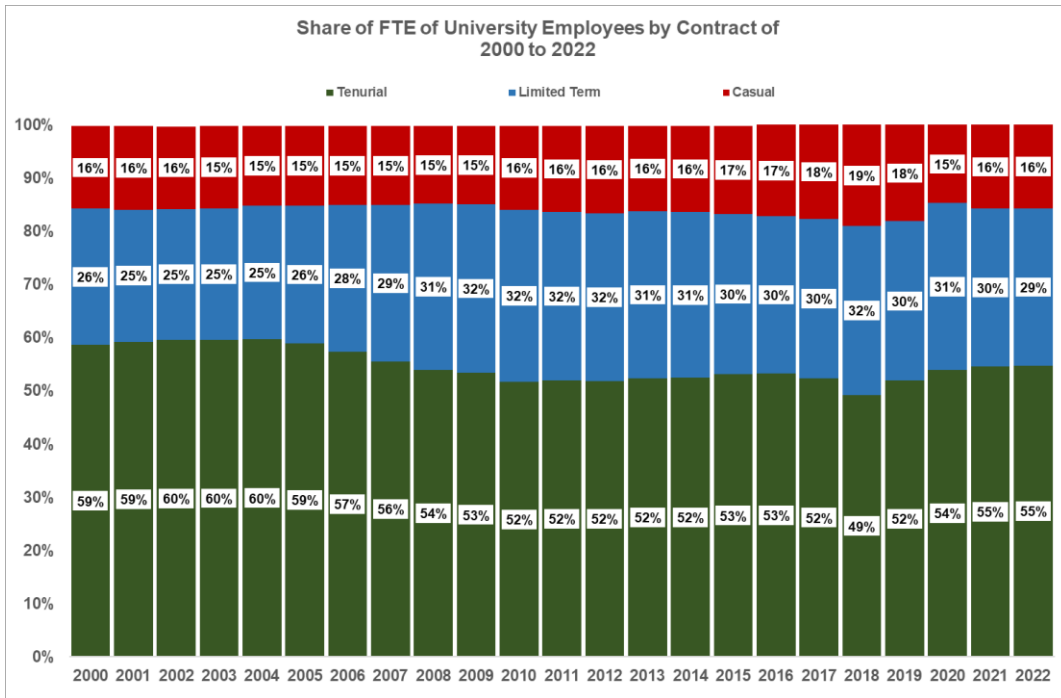
20 February 2024

Kieran McCarron, Public Policy and Strategic Research Officer

## Overview

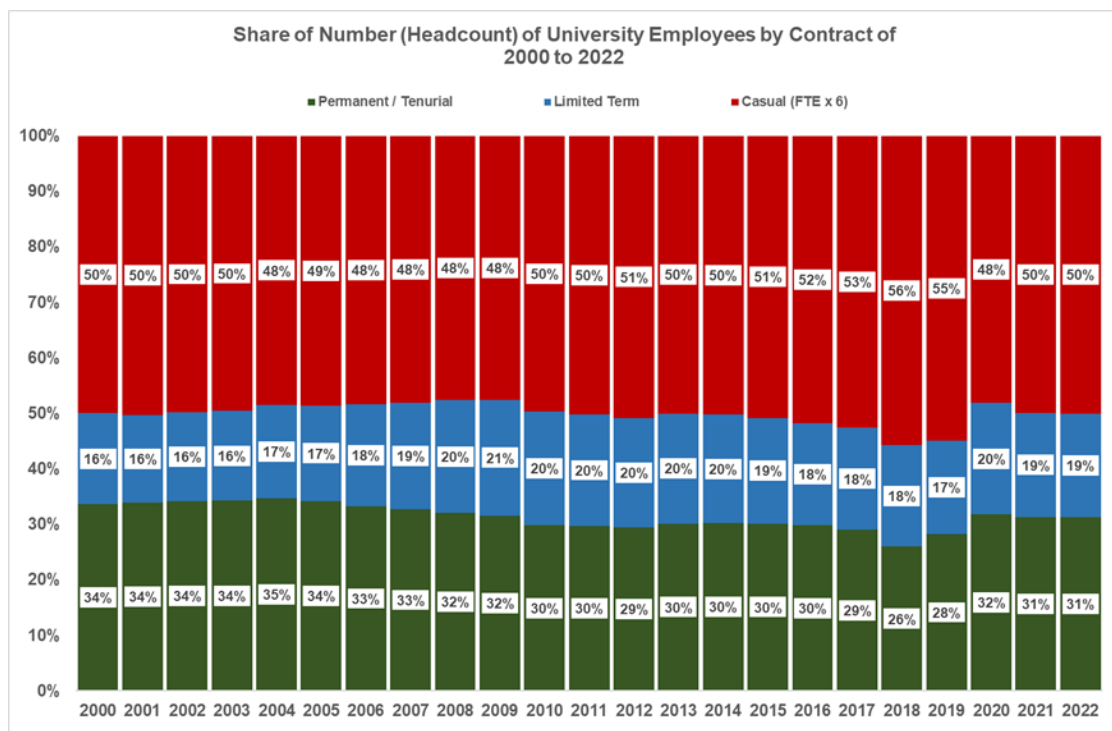
The most reliable data on fixed term employment comes from the Department of Education Selected Higher Education Statistics series, with the most recent release being October 2023 with data for 2022.

This shows that 46,311 people, or 38,706 Full Time Equivalents (FTEs) were employed in the sector using fixed term contracts on the census date in 2022. This fixed term employment comprised 29 percent of all Full Time Equivalent (FTE) employment in 2022, up from 25 per cent in 2001-2004.

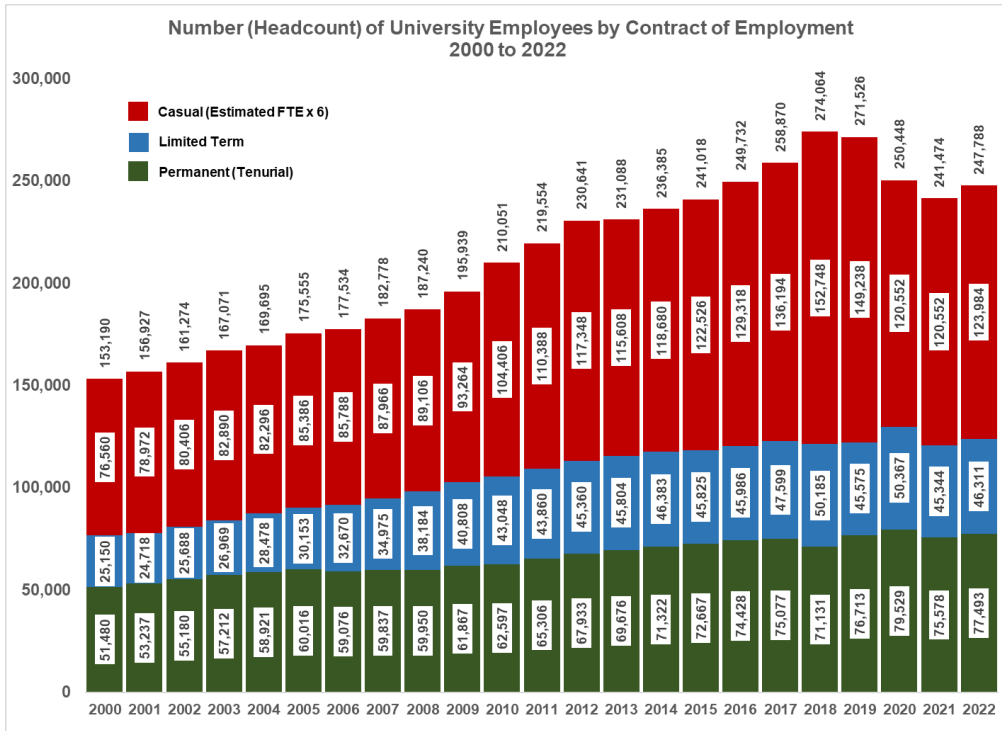


**This is an extremely high level of fixed term employment, and compares to only 3.4 percent in the broader economy in August 2022, and 2.9 percent in August 2023.<sup>1</sup>** This is also much higher than the 8 percent share that fixed term employment made up of the broader ABS defined “Education and Training” category. Higher education disproportionately contributes to the high level of fixed term employment in the category, with the ABS recording 89,000 out of 1.07m Education and Training employees as fixed term. If we are to roughly mix data sources, it becomes apparent that **over half of fixed term workers in Education and training come from the small higher education sub-sector**, which only makes up around 10-20 percent of the overall category (depending on how casuals are counted).

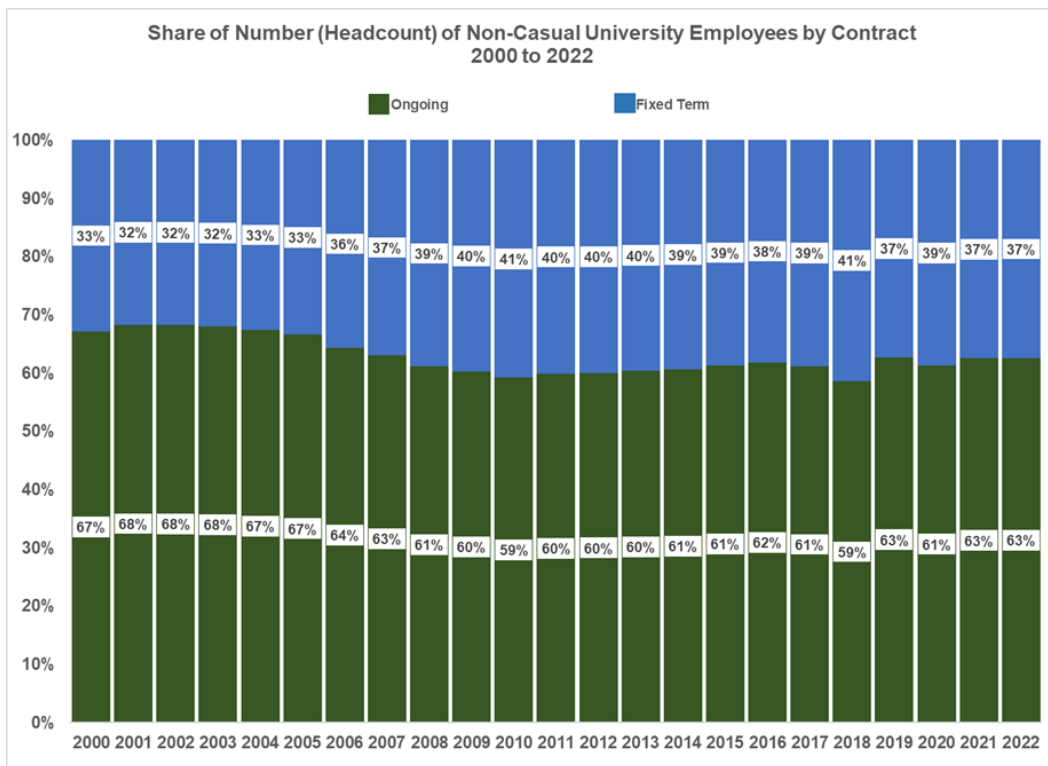
If we are to look at the share of headcount consumed by fixed term employment, this initially decreases because (we estimate) there are so many casually employed workers in the sector working small fractions of full-time jobs. Notably, continuing employment falls to only 31 per cent using this measure (below).



<sup>1</sup> <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release#fixed-term-contracts>

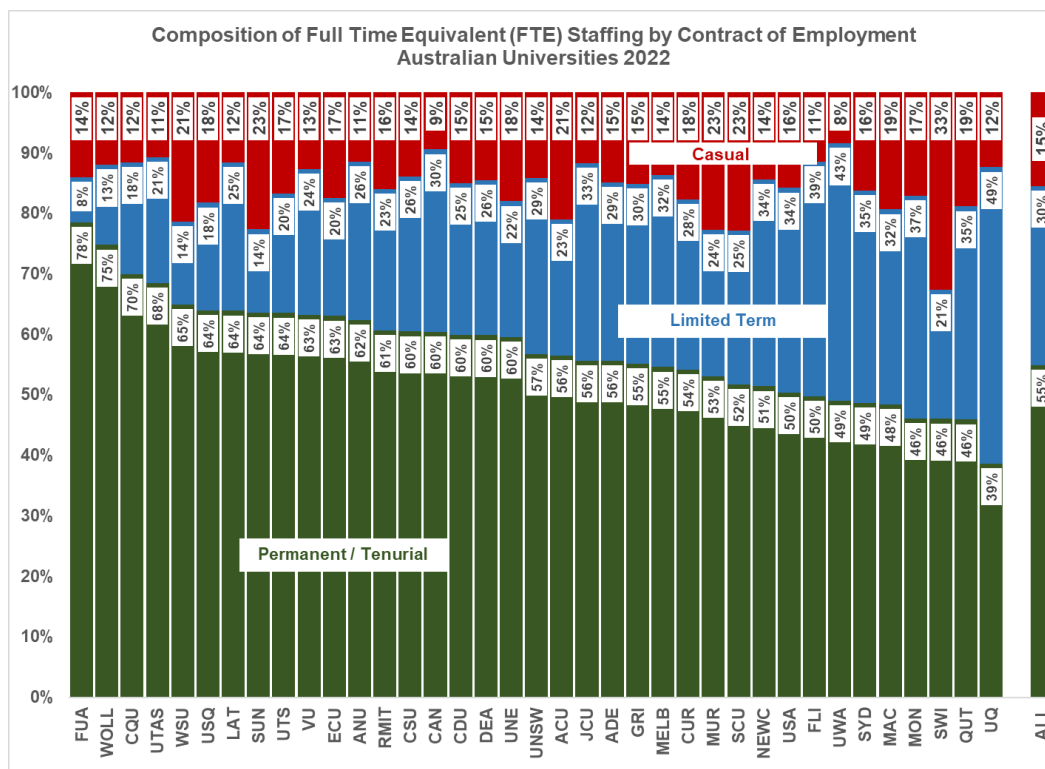


If we are to exclude casuals (for which we do not have exact headcount data) fixed term employment grows to 37 percent of the sector (below).



## Fixed term usage - by university

It is notable that there is significant divergence in the usage of fixed term employment at different institutions. This fixed term employment appears to replace ongoing employment rather than casual employment, with the largest users of fixed term employment generally using a below average proportion of continuing employment.



It is also notable that the number of research only staff in many institutions is far below the number of fixed term contract employees – dispelling the myth that most fixed term employees are research academics. Of course, some professional staff are also employed on research projects which would not be reflected in the number of research only contracts. Nevertheless, it would not be possible that this number be multiples of the RO number, and therefore cannot explain the huge discrepancies in the red coloured cells below.

**In all but six universities the number of fixed term FTEs is over double the number of research only staff** (and not all research only staff are fixed term).

(Chart below)

Research only employment versus total fixed term employment by university, FTE, 2022

Institution	Research Only FTE (inc continuing)	Min Non-RO Fixed Term FTEs	Fixed Term Total FTE	Max Share RO%
Flinders University	62	864	926	7%
Bond University	24	328	352	7%
Charles Sturt University	48	552	600	8%
The University of Notre Dame Australia	16	157	173	9%
Western Sydney University	39	363	402	10%
Australian Catholic University	75	449	524	14%
Southern Cross University	44	180	224	20%
University of Southern Queensland	92	355	447	21%
University of Canberra	74	236	310	24%
Edith Cowan University	100	315	415	24%
Griffith University	306	837	1,143	27%
Murdoch University	121	311	432	28%
University of Divinity	27	69	96	28%
Victoria University	109	271	380	29%
James Cook University	202	476	678	30%
The University of New England	94	213	307	31%
CQUniversity	95	207	302	31%
Queensland University of Technology	524	1,104	1,628	32%
University of the Sunshine Coast	59	122	181	33%
La Trobe University	242	465	707	34%
University of Tasmania	275	525	800	34%
University of South Australia	424	696	1,120	38%
Charles Darwin University	57	93	150	38%
Swinburne University of Technology	194	302	496	39%
The University of Newcastle	476	656	1,132	42%
Deakin University	524	709	1,233	42%
Monash University	1,349	1,816	3,165	43%
The University of Sydney	1,323	1,766	3,089	43%
Curtin University	418	549	967	43%
The University of Western Australia	656	848	1,504	44%
Federation University Australia	33	41	74	45%
University of Technology Sydney	415	460	875	47%
The Australian National University	572	586	1,158	49%
The University of Adelaide	582	585	1,167	50%
Macquarie University	430	424	854	50%
RMIT University	438	416	854	51%
The University of Melbourne	1,700	1,211	2,911	58%
The University of Queensland	2,246	1,472	3,718	60%
University of New South Wales	1,500	789	2,289	66%
University of Wollongong	275	91	366	75%
<b>TOTAL</b>	<b>16,255</b>	<b>21,947</b>	<b>38,202</b>	<b>43%</b>

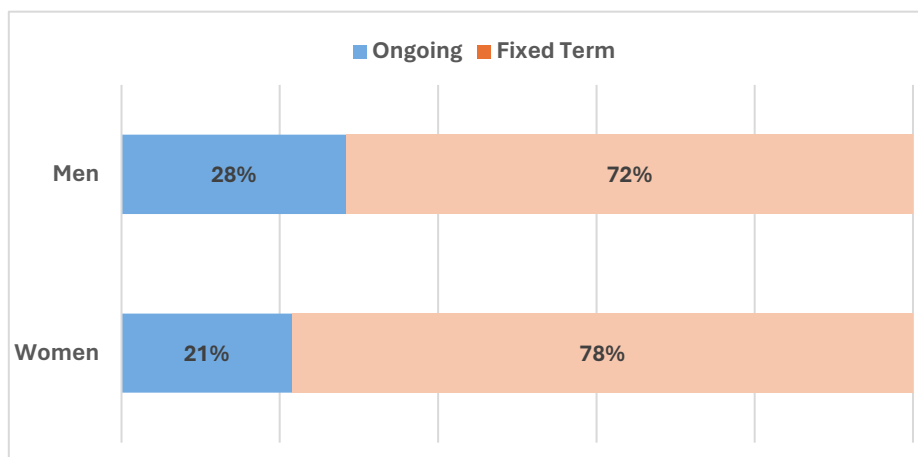
\* Headcount data is unavailable by university



## Research Only Staff

The Department of Education shows that there were 18,936 non-casual research only staff in 2022, however does not publish data on their mode of employment (even though this is likely collected). NTEU has conducted two surveys to fill the gap in knowledge on the working lives of researchers. Our 2019 survey found that **only around 1 in 4** researchers were employed on a continuing basis (excluding casuals), with the rest being employed on fixed term contracts (chart below). Our results also found that women were less likely to have continuing employment than men.

*Employment type of non-casual Australian researchers by gender*



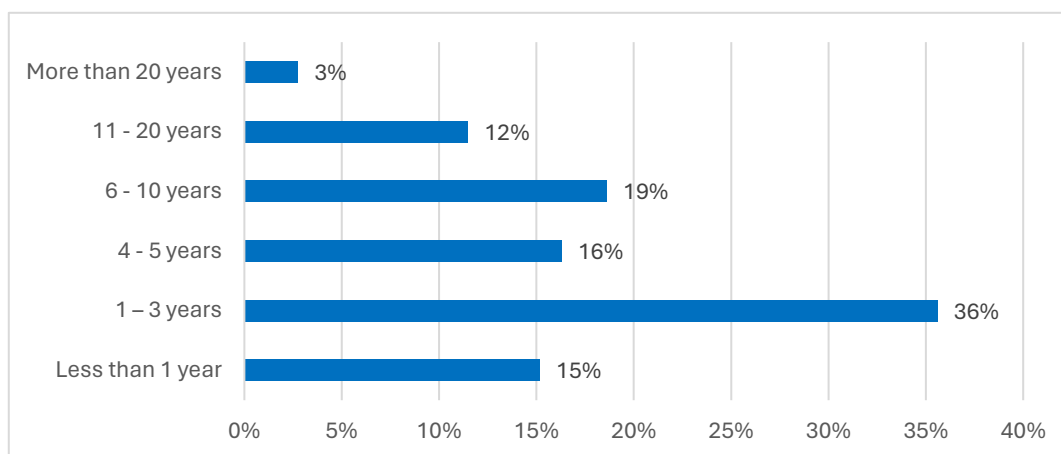
N=4037

If we apply this 75 percent share to the total number of research only staff in the sector (headcount not FTE) it would mean that around 14,250 (or 30 percent of the total) of the 46,000 fixed term staff are research only. This would leave 32,000 additional staff on fixed term contracts who are not research only academics.

## Length of time spent as fixed term

A third of respondents to our 2019 survey (below) had been on rolling fixed term contracts for more than 6 years and two thirds of respondents said the length of their current contract was two years or less, placing the average contract length between one and two years. This is consistent with our most recent survey (November 2022) which showed that 80% of *contracts* were under 3 years in length – although not necessarily total periods of employment.

*Years continuously employed on fixed term contracts*



N=4037

This translates to an extremely precarious but often ongoing working environment for researchers.

Unsurprisingly, only 2% of fixed term researchers reported that they were happy with their current arrangements, with 85% preferring continuing employment.

## Professional Staff

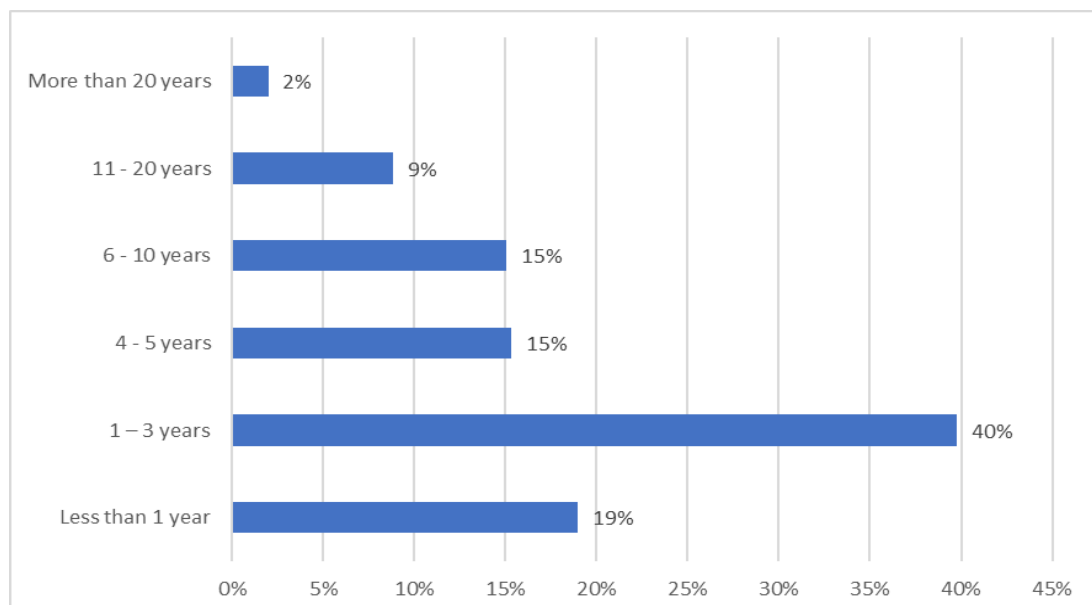
The Department does not publish data on the mode of employment of professional staff. Of professional staff responding to our 2019 SOTUS survey 25 per cent were fixed term. Taking the department's number of 69,528 non casual professional staff in the sector, this would equate to 17,375 fixed term professional staff (or 37 percent of the total).

Combining this with our estimated figure for fixed term research staff only accounts for 31,625, of the 46,000 total – this seems to imply either that these estimates are quite low, or that there are a large number of fixed term teaching only and teaching-research staff in the sector.

## Length of time spent as fixed term

The majority of professional fixed term staff surveyed, 81 percent, had been employed for over a year, while a large number, 41 percent, had been employed continuously on fixed term contracts for over three years, 53% of staff had held more than 3 consecutive contracts, and 20% had held 5 or more. These figures indicate non-genuine usage of fixed term categories such as “specific project” to employ people are clearly undertaking ongoing work.

*How many years have you been continuously employed on fixed term contracts (without breaks of greater than 3 months)?*



In addition, it was rare for a fixed term professional staff member to only hold a single fixed term contract (as might apply to a specific project, for example):

*Number of consecutive contracts held*

1	25.85%
2	20.84%
3	16.06%
4	11.09%
5	6.73%
6	4.45%
7	2.37%
More than 7	12.62%