

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

4 yearly review of modern awards – Education group (AM2015/6)

AM2014/229 Higher Education (Academic Staff) Award 2010 [MA000006]

AM2014/230 Higher Education (General Staff) Award 2010 [MA000007]

AHEIA Response to NTEU Reply submissions

1. These submissions are made by the Australian Higher Education Industrial Association (AHEIA) in reply to the National Tertiary Education Union (NTEU) response submissions filed on 8 March 2017.
2. AHEIA continues to rely on its submissions in support of proposed variations, filed on 3 February 2017.

A. Addition of a further category of fixed-term employment

3. AHEIA has proposed to vary clause 11.3 of the *Higher Education (Academic Staff) Award 2010* and clause 10.3 of the *Higher Education (General Staff) Award 2010* to include a further circumstance in which fixed-term employment may be used.
4. Both of the higher education modern awards already contain provisions in respect of fixed-term employment, including six permitted circumstances under which fixed-term employment may be offered.
5. The NTEU attack the AHEIA proposal by asserting that the effect of this new sub-clause would be to allow “any and every” position at a University to be filled on a fixed-term basis. This assertion is unfounded.
6. The proposed new sub-clause will not alter the overall architecture of the fixed-term provisions of the higher education modern awards. Clause 11.3 of the Academic Staff

Award precedes the description of the six permitted categories of fixed-term employment with the following words:

“The use of fixed-term employment must be limited to the employment of an employee engaged in work activity that comes within the description of one or more of the following circumstances”.

The same words appear at Clause 10.3 of the General Staff Award.

7. Further, both awards provide as follows:

14. Requirement to state terms of engagement

14.1 Upon engagement, the employer must provide to the employee an instrument of appointment which stipulates the type of employment and informs the employee of the terms of engagement at the time of the appointment in relation to:

...

(b) for a fixed-term employee, the term of the employment, the length and terms of any period of probation, and the circumstance(s) by reference to which the use of fixed-term contract for the type of employment has been decided for that employment;

...

8. Thus, the modern awards require that each fixed-term engagement must fall within one of the specified circumstances provided by the award. That is so, notwithstanding that the first listed circumstance, “specified task or project” makes no reference to “a person” or “an employee”. The addition of a further circumstance of fixed-term employment would not disturb this. The employer would still be required, for each fixed-term appointment, to limit the **employment of the employee** to work activity that comes within a circumstance described by the award, and, further, to advise **the employee** of the circumstance that relates to **that employment**.

9. This also disposes of the NTEU’s claim (Paragraph 5.9) that the sub-clause is unclear as to what is meant by “work activity”. Obviously, when read with 14.1 and 11.3 or 10.3, the

“work activity” must mean the work activity engaged in by the employee to whom the fixed-term appointment is being offered. So, for example, if the University library services were under review, this would not justify the offering of fixed-term employment in Human Resources under the proposed sub-clause; likewise, if the French department was under review, this would not justify the offering of fixed-term employment on this basis in the German department.

10. The NTEU asserts (Paragraph 5.11) that it is “at a loss” to understand why AHEIA has proposed that “to cater for a sudden and unanticipated increase or decrease in student enrolments” should be a circumstance under which fixed-term employment may be offered.
11. The NTEU has been prepared to agree to either an unanticipated increase or decrease in enrolments (or both) as a circumstance allowing fixed-term employment in enterprise agreements applying at a number of universities. The NTEU clearly therefore understands the need for such a clause and has been prepared to include it in instruments that actually apply to large numbers of university staff.
12. The NTEU submits (Paragraph 5.14) that the circumstance of “specific task or project”, currently in the award, encompasses the circumstance of a “disestablished organisational area”. We reiterate that the evidence of Diana Chegwidde (PN 9400 and PN 9403) was that the NTEU had taken a contradictory view in the “real world” circumstances in which Australian Catholic University had a need to make fixed-term appointments for this purpose, and this had led to the need for explicit reference in the enterprise agreement to provide “clarity” and “flexibility”.

B. Deletion of severance payments upon expiry of fixed-term employment

13. AHEIA makes no additional submissions to those previously filed in this matter.

C. Deletion of industry specific redundancy provisions

14. Clause 17 applies to most, but not all, employers to whom the Academic Staff Award applies. It is not necessary to provide evidence to demonstrate that this imposes a cost and regulatory burden on the employers to whom it applies. It clearly does so by providing for onerous provisions involving long periods of notice that are out of step with

other modern awards. There is no logical basis for there not to be a “level playing field” amongst all employers to whom an award applies, and we submit that this inequity should not continue to exist.

Australian Higher Education Industrial Association

24 March 2017