

IN THE FAIR WORK COMMISSION

Fair Work Act 2009 (Cth)
s 156 – Four Yearly Review of Modern Awards
AM2014/229 – Higher Education Industry – Academic Staff Award 2010
AM2015/6 – Education Group

SUBMISSIONS ON BEHALF OF BOND UNIVERSITY

Summary

1. These submissions are made on behalf of Bond University in opposition to the amendment, sought by the Bond University Academic Staff Association (**BUASA**), to extend the operation of clause 10.2 of the *Higher Education Industry Academic Staff Award 2010 (2010 Award)* and clause 12 of the 2010 Award, provisions that derive from the *Higher Education Contract of Employment Award 1998 (HECE Award)* (collectively, **the HECE Provisions**) to Bond University.
2. The National Tertiary Education Union (**NTEU**) supports BUASA's application. Other universities, as variously represented, neither support nor oppose the variation, however it does not affect them directly.
3. If granted, BUASA's application to vary the 2010 Award would have (inter alia) the following implications:
 - (a) For the first time, Bond University would be restricted by the limitations on the use of fixed-term employment in clause 11.3 of the 2010 Award.
 - (b) Bond University would, for the first time, be bound to the notice and severance pay requirements of clause 12 of the 2010 Award in respect of employees engaged on fixed term contracts.
4. The application is therefore directed to decreasing the flexibility which Bond University (in common with the vast majority of private sector employers) now has in relation to its staff engagement strategy, and is also a significant monetary claim on behalf of members of academic staff.
5. The application should not be granted. The following are the reasons:
 - (a) The application is inconsistent with Modern Awards Objective, specifically as identified in s.134(b)(d)(f) and (h) of the *Fair Work Act 2009 (FW Act)* and at the least is not 'necessary' to the achievement of the Modern Awards Objective, as required by s. 138 of

the FW Act.

- (b) Bond University is not the only university currently excluded from the application of the HECE Provisions in the 2010 Award. Therefore BUASA's application (limited as it is in scope to Bond University) is not genuinely adapted to meeting the Modern Awards Objective, but instead to resolving an idiosyncratic industrial dispute between BUASA on behalf of its members and Bond University. It is inappropriate for the Modern Award review process to be used for this purpose.
- (c) In its original decision in 2008 to make the 2010 Award without extending the HECE Provisions to universities not previously bound, the Full Bench must be taken to have been satisfied that the Modern Awards Objective (including the requirements of s. 138 of the FW Act) were met by the 2010 Award as then made. BUASA has not advanced a merit case justifying a different conclusion. In particular, BUASA has not demonstrated that Bond University's use of limited or fixed term contracts is 'inappropriate' or 'unjustified', as it has submitted¹. To the contrary:
 - (i) Bond University's overall profile in relation to the use of fixed term contract versus casual and ongoing forms of engagement is unexceptional when compared against the public university sector.
 - (ii) The evidence which BUASA will call in support of its application, when closely examined, provides no support for its submission that Bond University has acted in an inappropriate or unjustified way. In each case there are objectively defensible reasons why the BUASA witnesses have not received an offer of ongoing employment, and would be most unlikely to receive one even if the application is granted.
 - (iii) Bond University's own witnesses establish a sound and rational basis for its current use of fixed term contracts, as well as a strong basis for the Full Bench, in pursuance of the Modern Awards Objective, to reject the BUASA application.
- (d) Finally, to grant the application would in fact be likely to have significantly adverse consequences for many of Bond University's academic staff members currently engaged

¹ For example at paragraph 11 of BUASA's Supplementary Submissions dated 9 August 2016.

on fixed term contracts. This is because the HECE Provisions would not **require** Bond University to offer ongoing employment in any circumstance where it does not wish to do so, and the granting of the application is unlikely to change Bond University's current strategy. Instead, the granting of the application would require Bond University to increase its use of casual or sessional engagement (as it appears has been the experience in the public university sector according to public research).²

6. These issues are expanded by reference to the evidence and relevant authority below.

Modern Awards Objective

7. The Modern Awards objective (**Modern Awards Objective**) in s.134 of the FW Act requires that Modern Awards provide a fair and relevant minimum safety net of terms and conditions taking into account (inter alia):

- (a) The need to encourage collective bargaining (s.134(B)).
- (b) The need to promote flexible modern work practices and the efficient and productive performance of work (s.134(d)).
- (c) The likely impact of any exercise of Modern Award powers on business, including on productivity, employment costs and the regulatory burden (s.134(f)).
- (d) The likely impact of any exercise of Modern Award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy (s.134(h)).

8. By s.138 of the FW Act, a Modern Award may include terms only to the extent necessary to achieve the Modern Awards Objective (and, although not relevant to this matter, the minimum wages objective).

9. As the Full Bench said in the *4 Yearly Review of Modern Award: Preliminary Jurisdictional Issues (Jurisdictional Issues Decision)*: *'The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on*

² See *Contingent Academic Employment in Australian Universities (2016)*, Stuart Andrews, Liz Bare, Peter Bentley, Leo Goedegebuure, Katherine Pugsley & Bianca Rance LH Martin Institute & AHEIA at page 12, annexed to the statement of Christopher Andrews at paragraph 36.

*the circumstances. Some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative variation. In conducting the Review the Commission will also have regard to the historical context applicable to each modern award and will take in account **previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so. The Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time it was made.**'³ (emphasis added).*

10. In the original decision pursuant to which a Full Bench made the 2010 Award⁴ chose not to extend the application of the HECE Provisions to Bond University (or to any of several other universities not then bound by the HECE Award), although the matter was squarely before the Full Bench, at least as far as Bond University is concerned.

11. The Full Bench must therefore have been satisfied that the Modern Awards Objective was met by the 2010 Award as made, and as the Full Bench said in the Jurisdictional Issues decision:

*'Previous Full Bench decisions would generally be followed, in the absence of cogent reasons for not doing so.'*⁵

12. Granting the BUASA application would be profoundly inconsistent with the Modern Awards Objective.

13. Firstly, the Modern Awards Objective as explained by s.134(b) and the FW Act includes the need to encourage collective bargaining. One implication of this is that it would generally be inappropriate to deal with matters of contention between industrial parties in a review of a Modern Award when the matter should more appropriately be the subject of collective bargaining at enterprise level. In fact since the making of the original HECE Award, all of the public universities have voluntarily agreed to include the HECE Provisions (often with significant variation to suit the needs of the operation) in enterprise agreements, and none of them are directly bound by the HECE Provisions as they appear in the 2010 Award.

³ 4 *Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at 60.

⁴ [2008] AIRCFB 1000

⁵ Preliminary Jurisdictional Issues decision at 27.

14. The term 'collective bargaining' in s .134(b) is not defined. It may be accepted that it primarily contemplates collective bargaining for one or other of the forms of enterprise agreement allowable by the FW Act itself. However the term is a general one.
15. Bond University has a unique industrial relations framework. BUASA is an industrial association created by the *Bond University Act 1997 (Bond University Act)*. It has the function of representing the industrial interests of Bond University Academic Staff, including via collective bargaining with Bond University. Since at least 1990 it has done so, and there is currently in place a Memorandum of Understanding (**MOU**) between BUASA and Bond University which deals with a number of industrial and employment matters. In the MOU and its predecessor agreements there is and has never been restriction on the use of fixed term contracts.
16. The MOU contains a form of "no further claims" commitment.
17. The attempt by BUASA to resolve an apparent industrial dispute between it and Bond University in relation to fixed term contracts by a variation of the 2010 Award is inconsistent with both the letter and the spirit of the 'no further claims' clause contained in the latest agreement reached through this process of collective negotiation between BUASA and Bond University. Therefore to grant the application would be inconsistent with this Modern Award Objective.
18. The FW Act framework, as informed by the Modern Awards Objective, plainly requires claims of the kind advanced by BUASA in this application to be progressed at enterprise level via enterprise bargaining, as has in fact been the case for all of the universities actually within the scope of the HECE provisions, and as is available at Bond University, including as between BUASA and Bond University via its unique bargaining framework. The Modern Awards Four Year Review, considered in the context of the Modern Awards Objective, is not a process which should be used to resolve idiosyncratic industrial disputes which have emerged between one employer and some of its staff.
19. The application is otherwise inconsistent with the Modern Awards Objective as explained in s. 134 (d), (f) and, potentially, (h) of the FW Act, in that it would decrease flexibility, increase employment cost and unjustifiably interfere with Bond University's capacity to manage its business prudently in accordance with its internal and external business imperatives. It also has the capacity to significantly disadvantage a large proportion of Bond University's current members of academic

staff who are engaged on fixed term contracts. These issues are dealt with in more detail under the separate headings below.

Application cannot achieve a consistent outcome

20. Although Bond University is the only University the subject of the application to vary the Modern Award, it is not the only Australian university bound by the 2010 Award which is currently excluded from the operation of the HECE Provisions. Other universities in a similar position including Notre Dame University, Carnegie Mellon University, Torrens University, The MCD University of Divinity and The Batchelor Institute of Indigenous Territory Education.
21. The BUASA application is therefore to be characterised as an application to deal with an industrial 'dispute' limited in its scope to BUASA and Bond University rather than an application properly adapted to achievement of the Modern Awards Objective. No consistency of approach could be achieved by the application even if a basis for consistency as between public or private universities existed. The making and review of Modern Awards should not proceed on a piecemeal basis.
22. In this regard, the current process can also be contrasted with the dispute settlement process which lead to the original decision to make the HECE Award in 1997. That process was not directed to setting minimum standards of employment in an industry sector in a way constrained by the Modern Awards Objective and the requirement of s.138 of the FW Act. Rather it was directed at resolving disputes between a union and a number of employers in a way consistent with the dispute settlement and award-making principles which then applied. It can be observed that the applicable principles were very different from those which inform the Modern Awards Objective.

No merit case in support of change

23. The BUASA application proceeds on the basis that Bond University's current use of fixed term contracts is 'inappropriate' and 'unjustified' (see BUASA's Supplementary Submission at p.11)⁶. Those assertions are not supported by the evidence.
24. The evidence of John Le Lievre, Ken Richardson and Chris Andrews demonstrate, to the contrary, that Bond University's academic staff engagement strategy utilises a balanced 'mix' of

⁶ For example at paragraph 11 of BUASA's Supplementary Submissions dated 9 August 2016.

casual, fixed term and ongoing employment to suit Bond University's academic, operational and financial imperatives. Bond University is managing its business responsibly and prudently, in the interests not only of the organisation (and its students) but also in the interests of its academic staff workforce.

25. To the extent the BUASA application proceeds on the basis of an assumption that there is anything unreasonable or inappropriate about Bond University's use of fixed term contracts, that rationale fails comprehensively on the evidence. BUASA's evidence consists of a mixture of hearsay and opinion (to which little weight ought be given) and a limited number of individual examples which, when examined, provide no support for a conclusion that Bond University has acted at all inappropriately.

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⁷ Witness statement of Nickolas James dated 30 August 2016 paragraphs 11-17.

⁸ Witness statement of Nickolas James dated 30 August 2016 paragraphs 18-21.

⁹ Witness statement of Cynthia D Fisher dated 30 August 2016 at paragraph 17-28.

(d)

27. As is also powerfully established by the evidence of Mr Le Lievre and Mr Richardson, there is no basis for the establishment of a 'level playing field' as between Bond University (as a private university) and the universities currently bound by the HECE Provisions, because they have a profoundly different funding model, and, necessarily, different approaches to the management of financial and operational risk. They also have distinctly different industrial history.
28. Bond University truly has no 'safety net', and cannot afford to make financially or operationally imprudent decisions in any circumstances. See in particular the evidence of Le Lievre at paragraphs 6 – 23 in relation to Bond University's financial model, funding framework and financial performance, including the critical necessity for Bond University to continue to manage its financial affairs prudently and to achieve a robust operating surplus in every year of operation.
29. See also the evidence of Le Lievre from 24 – 28 and the evidence of Richardson from 20 – 31 in relation to student volatility (another point of difference between public and private Universities) and the need to maintain the capacity to respond rapidly and efficiently to internal or external changes which affect Bond University's operation.
30. Mr Le Lievre's evidence also establishes that a reduction in Bond University's flexibility in relation to the use of fixed term contracts, if it led to a requirement to offer ongoing employment, might threaten Bond University's ability to commit to new programmes (see his statement at 31-37). However based on the evidence of Richardson and Andrews, the far greater likelihood in these circumstances is that offers would be made on a casual basis rather than an ongoing basis. In neither case would this lead to desirable outcomes for any stakeholder.
31. Nor should the Full Bench presume that the application of the Modern Awards Objective would lead to the inclusion of the HECE Provisions for any employer in any circumstances if the issue was considered afresh without reference to settled industrial history and award coverage.
32. HECE Provisions were made in settlement of an industrial dispute involving specific parties. The arbitrated dispute settlement process, and the principles which underpinned that process, were

¹⁰ Witness statement of Cynthia D Fisher at paragraph 16; Witness statement of Terry O'Neill dated 30 August 2016 at paragraph 8.

¹¹ Witness statement of Raoul Mortley dated 30 August 2016.

not akin to the current review of minimum terms and conditions in accordance with the Modern Awards Objective. The process took place in a different era, in respect of employers all of which enjoyed (and still enjoy) significant financial security via the public education funding system. The decision was made on the basis of evidence of practices which the then Full Bench found in the then applicable context to be unacceptable, but which were in many cases entirely different in character to the evidence now before the Full Bench.¹²

33. The HECE Provisions survived the 2008 Award Modernisation process because, as the Full Bench found, those universities respondent to the HECE Award had not provided a sufficient basis for them to be abandoned.
34. The universities who continue to be bound by the HECE Provisions did not subsequently challenge the then Full Bench's implicit finding that the inclusion of the HECE Provisions in the 2010 Award was consistent with the Modern Awards Objective. Nor have they made such a submission for the purposes of the four year review. One of the reasons for this may be that all of the universities so bound appear to have subsequently entrenched HECE Provisions (or variations of them) in their enterprise agreements.
35. However the fact that a number of public universities (with vastly different operational and financial imperatives and industrial history) have decided to voluntarily accept the continuation of the HECE Provisions in their enterprise agreements and in the 2010 Award does not mean that the extension of the HECE Provisions to Bond University would either be consistent with the Modern Awards Objective or an appropriate exercise of Award-making power having regard to the objective merits of the matter as between Bond University and BUASA.
36. The quest for a 'level playing field' is in fact an arid one, without rationale, and, if accepted, would lead to seriously adverse consequences for Bond University and its staff in relation to flexibility, efficiency and financial viability. That would be specifically contrary to the Modern Awards Objective.

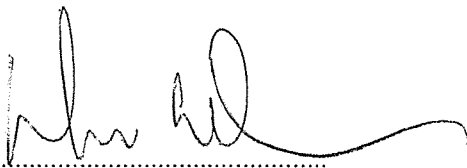
Granting application likely to disadvantage employees

37. As is apparent from the evidence of the Bond University executive witnesses, granting the

¹² See for example the evidence recorded as 'abuses' in *NTEU v AHEIA* (1997) 74 IR 326 at p.347, which included evidence of people being employed on 11 months contract and not offered employment over Christmas, the placing of employees on 364 day contracts for the employment to cease on 31 December to avoid a 12 month threshold for a high level of entitlements.

application would be likely to be disadvantageous for many of Bond University's academic staff who are currently engaged on fixed term contracts. This is because no aspect of the HECE Provisions would require Bond University to offer employment on an ongoing basis in any circumstances if it did not wish to do so, and nor do the HECE Provisions restrict the use of casual engagement.

38. See in particular the evidence of Andrews and the evidence of Richardson at paragraphs 43 – 44. Bond University would not be required to make an offer of ongoing employment in any circumstances where, as a consequence of its prudential, financial and operational requirements and its quality and qualifications standards it would not do so in the normal course.
39. If the BUASA application is granted, Bond University would be likely to increase its utilisation of casual engagement, which would not be to the advantage of many of its current and future potential academic staff employees who do not meet Bond University's requirements for an offer of ongoing employment.
40. Academic research suggests that the impact of the HECE Provisions in the public universities has also had the effect of increasing the level of usage of casual engagement in those universities. It appears from the research, which is Annexure 'CA-3' to the statement of Andrews, that public universities have in fact responded in the same way as Bond University would be forced to respond.
41. It would not be consistent either with the Modern Awards Objective, the interests of Bond University and its academic staff or the public interest for Bond University to be forced to change its current model of academic staff engagement in this way.



Minter Ellison
Solicitors for Bond University
30 August 2016

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – Four Yearly Review of Modern Awards

AM2014/229 Higher Education Industry-Academic Staff-Award 2010 [MA000006]

WITNESS STATEMENT OF PROFESSOR CYNTHIA D FISHER

I, Cynthia D Fisher, Professor of Management, Bond Business School, Bond University, 14 University Drive, Robina, in the state of Queensland, state as follows:

Background

1. I have been employed by Bond University Limited since August 2000. For a period of two and a half years from January 2014 until July 2016 I held the position of Associate Dean – Faculty in the Bond Business School and was responsible for staffing, development, and appraisal of academic staff.
2. Prior to and concurrent with this appointment I was the Head of the Department of Management in the Bond Business School. In May 2016 I also took on the Head of Department role for the Department of Entrepreneurship and Global Business, until all Head of Department roles were abolished in July 2016.
3. I received a PhD in Industrial/Organizational Psychology from Purdue University in 1978. I have previously held faculty posts at Texas A&M University, the University of Baltimore, and the National University of Singapore.
4. I have a combined total of 50 years service on A* international journal editorial boards in management and applied psychology. I served a three year term on the Australian Research Council's College of Experts for the Social, Economic and Behavioural Sciences. During my time there I assessed more than 500 grant proposals. I have also served on the Excellence in Research for Australia (ERA) Research Evaluation Committee for the Economics and Business Disciplines in 2015. This body assigned research quality ratings to all Australian universities after extensively reviewing their output.

Signed:



Staff appointments in the Bond Business School

5. Across the combined departments of Management plus Entrepreneurship and Global Business we have eight fulltime staff members. Five are on permanent contracts and three, the most recently hired, are on fixed term contracts. Six of these staff have PhDs, one is very close to completing her PhD from Griffith University, and one is a long-serving Senior Teaching Fellow who contributes via teaching and service without research expectations. All staff recently appointed throughout the Bond Business School have been selected following a competitive, open recruitment process based on their demonstrated performance or capacity in teaching, research and service.
6. As a general rule, better institutions (including Bond Business School) are very cautious about appointing their own PhD graduates to long-term roles on completion of their studies. This is not considered good practice for a number of reasons, including that we want to have a diverse rather than in-bred academic cohort, we would like to hire academics from top schools with established networks and strong international reputations, and it is more productive for recent graduates to forge their academic careers in new and challenging environments. At our 2015 EQUIS accreditation visit, the assessors highlighted the number of home-grown staff as a concern in the meeting on faculty composition and management.
7. I understand the University's position (which I agree with) is that longer term academic positions should be put to the open market to obtain the best candidate for the role. That said, it is not uncommon to provide teaching experience to doctoral candidates during their studies and perhaps for a year or two afterwards to provide a launching pad for their careers, should the School's teaching needs coincide with their skills.
8. Bond Business School has declined to give longer term contracts to two recent PhD graduates who were teaching on shorter term arrangements when they were out-competed in an open search. We have recently appointed one of our own PhD graduates following an open search in which he was the leading candidate. That student has since won an international award for his PhD thesis.
9. Sessional and fixed term staff appointments in Bond Business School are very much driven by fluctuating student demand or short term absences of permanent staff. Often our teaching needs cannot be finalised well in advance, as we cannot forecast whether we will need an extra tutorial or stream until enrolment numbers are firm. Much of the intense mode teaching in the BBT and EMBA programs is done on sessional or above load contracts.

Signed:



Dr Lars Isaksson

10. I have supervised Dr Isaksson for the past three years in half of his teaching load (Cross Cultural Management) and often liaised with his other supervisor, Dr Ingrid Bonn, about Dr Isaksson's load . Dr Bonn was Head of the Department of Entrepreneurship and Global Strategy and is no longer employed at Bond University.

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13. Since finishing , Dr Isaksson has been appointed on two fixed term appointments, the first for two years and the second for an additional year. His current appointment expires on 31 December 2016.

14. In 2013 Bond University advertised a three-year fixed term position for an Assistant Professor of Global Strategy. Dr Gary Bowman was appointed to the role because he was the top candidate. Dr Bowman has since been promoted by the University and has won several teaching awards.

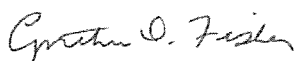
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Around that time Dr Isaksson was offered a two-year fixed term role as Assistant Professor because we needed a teacher in Core Strategic Management, which Dr Isaksson had been teaching. This subject has since been discontinued following a revision to the Core Curriculum.

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Signed by CYNTHIA D. FISHER

30 August 2016

Signed:



IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – Four Yearly Review of Modern Awards

AM2014/229 Higher Education Industry-Academic Staff-Award 2010 [MA000006]

WITNESS STATEMENT OF PROFESSOR TERRY O'NEILL

I, Terry O'Neill, Executive Dean, Bond Business School, Bond University, 14 University Drive, Robina, in the state of Queensland, state as follows:

Background

1. I have been employed by Bond University Limited since February 2014. Since May 2016 I have been the Executive Dean of the Bond Business School.
2. I previously worked at the Australian National University (ANU) for 37 years. At ANU I was the Director of a Research School (the Research School of Finance, Actuarial Studies and Applied Statistics). When I first came to Bond University in February 2014 I was the Head of Actuarial Sciences and Director of a research centre in Actuarial Sciences.

Dr Lars Isaksson

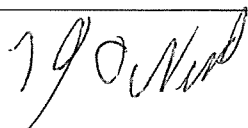
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Signed by TERRY O'NEILL

.....August 2016

Terry O'Neill 30/8/2016

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IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – Four Yearly Review of Modern Awards

AM2014/229 Higher Education Industry-Academic Staff-Award 2010 [MA000006]

WITNESS STATEMENT OF NICKOLAS JAMES

I, Nickolas John James, Professor and Executive Dean, Faculty of Law, Bond University, 14 University Drive, Robina, in the state of Queensland, state as follows:

Background

1. I have been employed by Bond University Limited in the role of Executive Dean of the Faculty of Law since 8 June 2015.
2. In my role as Executive Dean I carry out the responsibilities delegated to me by the Vice Chancellor for the management and strategic development of the academic and administrative affairs of the University at the Faculty level. I am responsible for the Faculty's performance, profitability, staffing, ethics, teaching, research, and general scholarship activities, and for establishing and furthering the Faculty's vision and mission.

Fixed term contracts in the Faculty of Law

3. In the Faculty of Law there is a general rule that academics will be employed on a sessional or fixed term contract until they have a Doctor of Philosophy (**PhD**) or Doctor of Juridical Science (**SJD**). Once an academic has attained their PhD or SJD it is much more likely that they will be employed on a continuing basis.
4. By way of example, the Faculty recently offered a fixed term Senior Teaching Fellow a continuing contract as an Assistant Professor B (following an open, merit-based application process) because she had completed her PhD and she was the strongest candidate.
5. Other Senior Teaching Fellows have recently been offered fixed term contracts as Assistant Professors (following an open, merit-based application process), and they were not engaged on a continuing basis because they had not yet completed their PhD or SJD.
6. The Faculty has recently appointed two new Professors and one Assistant Professor, all on fixed term 5 year contracts. The two Professors have PhDs, and were on continuing contracts with

Signed:



their previous employer. If the Faculty is satisfied with the performance of the new staff members at the end of their fixed term contracts, I expect that they will be considered for, and likely offered, continuing appointments (subject to the Vice-Chancellor's approval and the Assistant Professor completing her PhD prior to renewal).

7. I am aware that the Higher Education Industry Academic Staff Modern Award contains restrictions on the appointment of fixed term employees to certain categories, and that these restrictions do not apply to Bond University.
8. If Bond University and the Faculty of Law had to comply with the fixed term categories when appointing academics, I think it is unlikely that an academic who did not have a PhD would be granted a continuing contract. In the case of a renewal of an existing contract, I think it is likely that the continuing position would be advertised and filled following an open, merit-based application process. I think it is likely that an academic without a PhD or SJD would only be offered a casual sessional contract.
9. If the restrictions applied to Bond University I expect that we would maintain a core group of continuing staff and increase our use of sessional staff.

Joseph Crowley

10. I have reviewed the statement of Mr Joseph Crowley dated 9 August 2016.

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Laura Leigh Cameron-Dow

18. I have reviewed the statement of Laura-Leigh Cameron-Dow (undated).

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Signed by **NICKOLAS JAMES**

30 August 2016

Signed: 

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – Four Yearly Review of Modern Awards

AM2014/229 Higher Education Industry-Academic Staff-Award 2010 [MA000006]

WITNESS STATEMENT OF CHRISTOPHER ANDREWS

I, Dr Christopher Andrews, Director of Human Resources, Bond University, 14 University Drive, Robina, in the state of Queensland, state as follows:

Background

1. I have been employed by Bond University Limited in the role of Director of Human Resources since January 2003.
2. In my role at Bond University I am responsible for strategic and operational human resource management, including providing advice to Bond University.

Bond University's staff engagement model

3. Bond University's academic appointments may be casual, fixed term or through ongoing employment.
4. The Executive Deans have authority to commit the University to fixed term appointments of up to 12 months. For ongoing appointments and for fixed term appointments for longer than 12 months, the Vice Chancellor must approve the appointment.
5. Academic appointments at senior management levels, including Executive Deans, Pro-Vice-Chancellors and the Vice Chancellor are all fixed term.
6. The requirement that the Vice Chancellor must approve all appointments for more than 12 months reflects the importance which the University attributes to decisions to commit to the appointment of our academic staff, and the terms upon which they are appointed.
7. This is in large part of a function of Bond University's need to manage financial and operational risk. I understand other Bond University witnesses will comment on these matters.
8. Within my function, close attention is paid to the quality of the candidate (internal or external) in making appointment decisions, both of a fixed term and ongoing nature.
9. In accordance with our promotional guidelines and appointment standards, a candidate for a continuing appointment would generally need to have a doctoral qualification, a strong teaching



record including superior TEVALS (teaching evaluation scores) and positive teaching feedback recorded via his or her annual performance assessment and praise/complaint history. Also, the candidate would generally need to be able to demonstrate a research record commensurate with the level of appointment, including "research active" status; and a demonstrated research pipeline for the next twelve months/two years. We would also expect to see evidence of service contributions. In addition, evidence of grant income, research supervisions, and teaching innovation would be highly regarded.

10. Conversely, candidates who could not demonstrate compliance with these criteria would be unlikely to be shortlisted and most unlikely to be appointed.
11. I do not expect any significant variation to these quality criteria for ongoing appointments irrespective of the outcome of the Bond University Academic Staff Association (**BUASA**) application.
12. BUASA's application seeks to extend coverage of clause 10.2 and clause 12 of the Higher Education Industry Academic Staff Award 2010 (**the Award**) to Bond University (**HECE Provisions**). The HECE Provisions only apply to the employers who were bound to the Higher Education Contract of Employment Award 1998 (**HECE Award**). Bond University is one of a number of universities that are not bound to the HECE Award. Other universities that are similarly not bound by the HECE Provisions (because they are also not respondent to the HECE Award) are:
 - (a) The University of Notre Dame Australia;
 - (b) University of Divinity;
 - (c) Torrens University Australia;
 - (d) Batchelor Institute of Indigenous Tertiary Education;
 - (e) Carnegie Mellon University Australia.
13. Currently (and in the absence of any restriction), Bond University has engaged many members of academic staff on fixed term contracts in circumstances which would not be permitted if the HECE Provisions applied. The most common situation is where staff are engaged on a fixed term basis as Teaching and Research staff in roles which cannot be characterised as "project" roles and which do not meet any of the other permitted categories in the HECE Provisions. For these employees, if the BUASA application is successful, and presuming that existing fixed term contracts would be unaffected, Bond University would have to make a decision in relation to the future employment of each affected member of staff, upon expiry of their current contract.
14. I have reviewed the qualifications of Bond University's 131 fixed term teaching staff listed as at July 2016 and observe that the overwhelming majority (above 90%) do not have a doctoral qualification and are recorded as research inactive. Some would fit within the exempted



categories in the HECE Provisions (e.g. research funded positions), however of the 131 fixed term staff, above 90% will be affected by the outcome of the BUASA application being granted.

15. For reasons related to the qualifications of the individual staff members, and also as a function of Bond University's prudent management of its financial risk, I believe it is most unlikely that the University would appoint more than a small proportion of these employees on an ongoing basis.
16. It follows, therefore, that if offers of further employment were made to the incumbent staff members, the offers would be likely made on the basis of a casual engagement.
17. If a decision was made to appoint to the role on the basis of an ongoing appointment, the strong likelihood is that an open recruitment process would be followed, and there is no guarantee that the incumbent would be appointed on an ongoing basis even if that decision was made.
18. Therefore in my view, most members of academic staff currently on fixed term contracts would be left in a significantly more precarious position at the end of their current fixed term arrangements than currently applies.
19. I believe this would be a highly negative development for many of the members of academic staff concerned. It would also be a negative development for Bond University. We always prefer to make appointments on the most secure basis consistent with the prudent management of our operation and the qualities of the candidate.
20. Casual employment also brings with it issues of retention, lower morale, more limited opportunity for research and career development, increased recruitment and administration costs and more management time.

The representation of academic and general staff at Bond University

21. The *Bond University Act 1987* established two staff associations, each of which had the role of negotiating employment and industrial arrangements on behalf of its members. These were the BUASA, which is the applicant for an amendment to the Award. The other was the Bond University General Staff Association (**BUGSA**).
22. Since inception, BUASA has been consulted in relation to terms and conditions of employment for academic staff, and Bond University has also reached agreement with BUASA in relation to applicable terms and conditions.
23. The first formal agreement between Bond University and BUASA was an industrial agreement entered into between Bond University Services Pty Ltd (then the employer of academic staff) and BUASA on 25 January 1990 (a copy of the industrial agreement is attached and marked **CA-1**).
24. The industrial agreement did not take effect as an enterprise bargaining agreement under the State Industrial Relations Act or the then applicable predecessor to the *Fair Work 2009*, but rather



was an agreement between Bond University and BUASA as the statutory representative of Bond University's academic staff.

25. The industrial agreement did not restrict or qualify Bond University's ability to determine the basis upon which offers of employment would be made, and in fact records that Bond University and BUASA did not 'subscribe to or use' the concept of either tenured or fixed term appointments.
26. The industrial agreement also introduced the concept of a bonus scheme for members of academic staff, to be considered annually on an individual basis. The concept of a bonus scheme for academic staff has formed part of Bond University's reward strategy ever since.
27. More recently, Bond University Limited (now the employer of academic staff at Bond University) and BUASA have entered into a Memorandum of Understanding (**MOU**) dated 15 August 2012 (a copy of the MOU is attached and marked **CA-2**). The 1990 Industrial Agreement has been terminated in accordance with its terms and no longer applies.
28. The MOU records that the content of standard template employment contracts for academic staff have been agreed between the parties. Those templates include a template for fixed term employment. The MOU does not otherwise restrict or qualify Bond University's capacity to offer employment on a fixed term basis in any circumstances. I understand that this was an issue which was discussed between the negotiating parties, however the MOU as agreed does not contain any restriction or qualification.
29. The MOU continues the concept of a bonus arrangement for academic staff and employees (Schedule 5).
30. The MOU has a term expiring on 1 January 2018, however it will continue to apply unless formally terminated by one or other of the parties.
31. Finally, the MOU contains a 'no further claims' clause which records that the parties agreed that there would be no further claims in respect of the terms and conditions of employment dealt with in the MOU with a limited exception in relation to pay rises in year 4 and year 5.
32. The issue of restrictions on fixed term employment is not specifically a term which is 'dealt with' by the MOU, however the issue of employment on a fixed term basis is specifically contemplated by the template employment contract referred to in the MOU.
33. I am unaware that anybody representing BUASA consulted with anyone in a position of authority within Bond University prior to making an application for a variation of the Award to extend the HECE Provisions in the Award to Bond University.
34. I regard a claim by BUASA to have the fixed term restrictions apply to Bond University as a 'new claim' insofar as it would restrict Bond University's usage of fixed term contracts when previously there has never been such a restriction, because it would add to the cost of fixed term employment as a consequence of the application of clause 12 of the Award, and the consequent



requirement to pay severance payments to fixed term employees in some circumstances. Therefore in my view, BUASA's application to extend the HECE Provisions to Bond University is inconsistent with the commitment BUASA made in the MOU not to make further claims for the life of the MOU.

35. For the reasons identified in this statement, my belief is that if the BUASA application was successful it would be likely to have a significantly adverse impact on Bond University, because it would restrict our use of fixed term contracts in a way which would require a wholesale change to our recruitment model, and it would also have a significantly adverse impact on many of our current fixed term staff at the expiry of the term of their current arrangements. I do not believe that the University's stance on offering continuing appointments would be relaxed, due to the imperatives of prudent risk management and our requirements regarding academic qualifications, and so the only offer we could make for applicants in roles for which fixed term contracts would be unable would be casual employment.
36. In this regard, I have noted research which suggests that the application of the HECE Award restrictions in the public University sector has led to the increasing casualisation of the public sector academic workforce; see *Contingent Academic Employment in Australian Universities* (2016), Stuart Andrews, Liz Bare, Peter Bentley, Leo Goedegebuure, Catherine Pugsley & Bianca Rance, LH Martin Institute & AHEIA, at page 12 (a copy of this is attached and marked **CA-3**).



Signed by **CHRISTOPHER ANDREWS**

30 August 2016



**THIS INDUSTRIAL AGREEMENT IS MADE
THE 25TH DAY OF JANUARY, 1990
BETWEEN
BOND UNIVERSITY SERVICES PTY. LTD.
AND
BOND UNIVERSITY ACADEMIC STAFF ASSOCIATION**

A. PREAMBLE

1. Bond University Services Pty. Ltd. a company incorporated pursuant to the laws of Queensland, is the employer of academic staff engaged to perform teaching and associated services at Bond University.
2. Bond University Academic Staff Association is the association of members of academic staff formed pursuant to the provisions of the Bond University Act, 1987.
3. This Agreement is binding upon Bond University Services Pty. Ltd. and the Association with respect to all employees of the company who are members or eligible to be members of the Association.
4. Bond University strives to attract the best students, to set the highest standards of learning and research and to provide Australia and its region with graduates who have the intellectual and practical skills to meet the challenges of the 21st Century.
5. Bond University strives to encourage an ethos of dedication, corporate spirit and hard work by trust rather than regulation and supports the principles of academic freedom.
6. Bond University is dedicated to a policy of devolution of professional responsibility and accountability in preference to centralised control.
7. The Association and the University, desiring to achieve fair and reasonable terms and conditions of employment for academic staff at the University and recognising that the University has central to its Mission Statement and Objectives, the fostering, furthering and transmitting of knowledge through its teaching, research, consultancy activities and professional community service, HAVE AGREED AS FOLLOWS:-

B. DEFINITIONS

In this Agreement, unless the context otherwise requires:

- "The University" means Bond University Services Pty. Ltd. or Bond University, being the centre for education and learning established by Bond University Limited under the Bond University Act 1987.
- "The Association" means Bond University Academic Staff Association.

C. AGREEMENT

1. Appointment

1. The University and the Association do not subscribe to or use the concept of either tenured or fixed term appointments. Subject to Clause 3 all appointments to the University are viewed as continuing unless they are advertised as specified term appointments.
2. The only basis for appointment and promotion within the University will be competence and performance. All salaries will be set and reviewed having regard to the individual's

competence, performance and the separate professional and discipline based labour markets.

3. Any appointment shall be at an initial salary package negotiated between each individual and the Dean or Director from time to time.

2. Appraisal/Review

1. The University and the Association regard appraisal as a prime responsibility and tool of management. It is an essential basis for staff development and career planning and an essential prerequisite to the establishment of a credible reward system.
2. The major managerial and control system in the University will be the annual and triennial reviews.
3. The annual review will seek to achieve a consensus between the staff member and the immediate supervisor set objectives for the next twelve months appraise the achievements of the last twelve months against previously agreed objectives govern bonus payments, salary packaging arrangements and any further recommendations the supervisor may wish to make outside the normal procedures described in this agreement have regard to the separate professional and discipline based labour markets result in career advice, remedial activity and appropriate action in cases of evidence of continuing Incapacity to meet objectives or of poor performance.
4. At any review a staff member may claim that achievements exceed the minimum required level to such an extent that they warrant negotiations for a change in base salary level in addition to that provided by BEAF or a reclassification.
5. Salaries will normally be adjusted annually to give effect to BEAF but the University reserves the right not to pass on increases to an individual staff member in the case of less than satisfactory performance.
6. Subject to minimum acceptable performance, salary levels for individual academic staff will not fall below relevant salaries of public universities.
7. For disciplines or professional areas where Bond University competes in a real way with employment opportunities outside academe, the professional loadings inherent in those outside salaries are recognized. In these areas the Human Resources office will continuously monitor salary information for the use of Deans to monitor comparability so that salaries may be adjusted. In any case a review of these loadings will occur every five years.
8. The University's Schools or Offices will develop standard, brief and relatively non-intrusive assessment methods which will be communicated to the Association. These methods will include procedures agreed between BUASA and the University for customer input and particularly, where appropriate, student input.
9. The supervisor's recommendation and results of the annual review should be made known to the individual and shall be kept on central or School files and shall remain confidential unless the staff member otherwise agrees.

The review should cover the ability and intent of the individual to contribute to the following University activities:

- a) Undergraduate teaching and student performance
- b) Postgraduate teaching and student performance
- c) Presentation of Short courses and seminars
- d) Tactical research (usually under consultancy agreements)
- e) Strategic research (usually externally funded)
- f) Basic research (sometimes externally funded)
- g) Professional community service

h) University development and marketing activities in professional societies

i) Administrative and management duties

6. The University and the Association recognise that unforeseen events may render some planned achievements unattainable or alter the priority to be given to the agreed goals. Where such events require a major change to the goals and tasks agreed at the annual review, the staff member and immediate superior may agree to a revised set of goals and tasks. In cases of concern about performance levels more frequent reviews may occur. Unless otherwise agreed two weeks' notice of such a review shall be given to the individual concerned.
7. Objectives for each individual will be set in measurable terms so that a review of his or her performance is possible. Consistent with Total Quality Management it is a part of the review process to implement methods for all individuals to monitor their own performance regularly, and to encourage them to bring problems to their immediate superior's attention rapidly without fear of disciplinary action.
8. The annual review will precede the determination of salary and other elements of the reward structure for the coming year. Reviews will be carried out by the immediate superior of each individual staff member in consultation with others who from time to time in the relevant period may have been responsible for services to which the staff member contributed.
9. For practical management reasons and to encourage devolution of responsibility recommendations on individual reward structures will be made by the immediate superior. Recommendations may be made for a salary to be increased, decreased or left unchanged; these recommendations will normally be considered in the context of salary progression within the position.
10. The determination of salary and other elements of the reward structure will be the subject of approval by the Dean or Director. The Dean or Director may change the recommendation only after discussion with the immediate superior and in any case must discuss with the superior recommendations where one or more of the following have been recommended:
 - a) A reduction in salary be made
 - b) The economic adjustment factor not be applied
 - c) A title change be made
11. Every staff member within three months of joining the University should agree with the immediate superior to a long term set of goals, tasks and objectives.
12. Triennial Productivity and Achievement Review
Every three years the supervisor will appraise the staff member's integrated performance over the previous three years as a basis of significant salary progression within any classification. Under some circumstances these reviews could also lead to reclassification.
13. Six Yearly Reclassification Review
A staff member's performance over six years (two Productivity and Achievement Reviews) will be automatically considered against Bond University standards for appointment to the next classification level. Reclassification reviews will normally be carried out by the supervisor in conjunction with the Dean.
14. The economic ability of the University to pay salary increases beyond BEAF may be taken into account at the annual triennial and six yearly reviews.

3. The Bond University Economic Adjustment Factor (BEAF)

1. The determination of the annual level of salaries will take cognizance of BEAF. BEAF is derived from salary movements in relevant sections of the Australian and international markets, economic conditions, including changes in the cost of living and other relevant considerations. As a matter of policy the University will not take such economic factors including changes in the cost of living into account in setting salary levels save by this mechanism.
2. BEAF will be applied on much the same basis as the National Wage decisions of the Australian Industrial Relations Commission. The aim is to achieve a continuous adjustment of base salaries having regard to the matters set out in 3.1. BEAF will conform with the spirit and intent of principles laid down by the Commission from time to time. Inability to pay will not be an acceptable argument in determination of BEAF.
3. BEAF will be determined annually prior to the annual salary reviews at conferences between the Mediator/Arbitrator, the Association and the University. If the conference fails to reach agreement on the determination of BEAF the Mediator/Arbitrator shall decide the question. The decision shall be final and conclusive and accepted as such by the parties.

4. Bonus Payment

A bonus payment will be considered annually on an individual basis. The bonus, which is at the discretion of the University, is to recognise outstanding achievement which enhances the operation of a School, Office or the University as a whole. Bonuses will not be cumulative but at each triennial productivity and achievement review may be taken into account in resetting salary levels.

5. Termination

1. Termination by the University is justified:
 - a. If the Vice-Chancellor, having examined the efforts made by management and the staff member to improve performance, concludes that the staff member's performance fails to meet the standards of the University.
 - b. If it is apparent to the Vice-Chancellor that no return to productive work by the staff member is possible owing to illness.
 - c. Where decreases in funds occur beyond flexibilities built into the budgeting procedures or where there has been a shift in demand for courses and genuine attempts to retrain or deploy affected staff have failed. In such instances the amount of compensation, unless agreed between the University and the individual staff member, will be as determined by the Mediator/Arbitrator in consultation with the individual staff member, the Association and the University.
2. Six months' notice by either party, or payment or forfeiture in lieu as the case may be, shall be given unless otherwise agreed between the University and the individual staff member.
3. Recommendations to terminate may only be made to the Vice-Chancellor, by Deans or Directors.
4. Notwithstanding anything contained in this agreement the University reserves the right to terminate any appointment summarily in the event that the staff member becomes incapable of performing the duties of the position or for serious misconduct.

6. Leave

1. The University's teaching and research programmes will operate throughout the year. There will be three undergraduate teaching semesters.
2. Annual leave entitlements will accrue at the rate of four weeks per year on a pro-rata basis. The scheduling of leave is subject to the written approval of the immediate supervisor.
3. Untaken annual leave will accrue from year to year. Staff members are required to take at least five days leave whenever an accrual of over 35 days occurs, except by agreement with the Vice-Chancellor. Notice that leave exceeds 30 days shall be provided to the staff member by the Human Resources Office.
4. In the provision of paid sick leave, the University will be responsive to the needs of all staff. Sick leave will be monitored by a system of absence reporting.
5. Long Service Leave of 13 weeks following the completion of each 10 years of continuous service by staff members will be provided. with a pro-rata entitlement paid to staff members terminating after 8 years continuous service.
6. After twelve months continuous service any staff member will be entitled to a period of up to twelve months unpaid maternity leave. At the end of such a period the University will use its best endeavours to provide a position at the same level to that previously held. The minimum period of absence will be 12 weeks and staff returning in that time are entitled to payment in full for the period of absence. Twelve weeks salary would also be the maximum payment for any absence up to 12 months. Payment would be made in full on resumption of employment.

In respect to adoptions of infants up to 12 months of age, the same period of leave will apply but the maximum payment for such leave would be six weeks. Adoption leave for older children will only be granted at the discretion of the Vice-Chancellor.

Where maternity or adoption leave is approved, the University will use its best endeavours to assist staff in maintaining their professional standing during the period of absence.

7. Child Care

1. The University will provide child care facilities on campus at cost to staff members whilst they are discharging their employment responsibilities.

8. Superannuation

1. Continuing fulltime staff members shall unless exempted by agreement with the University, participate in the Bond University Executive Superannuation Fund or the Bond University Superannuation Fund.
2. Bond University Services Pty. Ltd. shall contribute to the Bond University Executive Superannuation Fund and the Bond University Superannuation fund. Such contributions shall be as agreed between the staff member and the University as part of the staff member's employment package and shall be no less than the national standard for occupational superannuation.

9. Consulting and Research

1. Staff shall carry out consulting and/or research in accordance with guidelines to be developed in consultation with relevant interested parties and BUASA.

10. Absences for Academic and Professional Purposes

1. As a matter of general principle any staff member will be able to use some or all of his or her third semester each year for academic or professional purposes outside the University. Such absences will only be approved if there is a demonstrated expectation of benefit to both the staff member and the University.

2. Normally, such absences will be proposed and approved as part of the annual review process. Approval will take into account all requirements for student needs at undergraduate and graduate levels, short course requirements and other professional obligations.

11. Organisational Structure

1. For each position there will be a position description, which should cover the following points:
 - a. Title of Position
 - b. Objectives (related to performance, accomplishments and contributions)
 - c. Measures of performance
 - d. Responsibilities
 - e. Requirement of travel
 - f. Relationships both internal and external
2. The position description is not intended to be exhaustive and may, as a position or person develops or as University objectives change, be subject to substantial variation. It is intended to be used as a management tool and as guide to the staff member and supervisor of their general obligations, expectations and responsibilities.

12. Mediator / Arbitrator

1. To assist the University, the Association, Bond University Services Pty. Ltd. and staff to maintain an harmonious relationship, an independent Mediator/Arbitrator shall be appointed.
2. The Mediator/Arbitrator shall be a person experienced in dispute resolution or industrial relations.
3. The Mediator/Arbitrator shall be nominated by either the Association or the University but shall not be appointed without the consent of the other party.
4. When a dispute arises between the Association and the University the Mediator/Arbitrator shall immediately be notified of the existence thereof by the Human Resources Office.
5. Where negotiations in relation to any dispute or industrial matter are proceeding between the Association and the University tire progress of such negotiations shall be reported to the Mediator/Arbitrator at regular intervals as specified by him/her.
6. Should a matter which has been notified to the Mediator/Arbitrator remain unresolved he/she shall resolve it by mediation or failing mediation by arbitration.
7. The decision of the Mediator/Arbitrator shall be final and conclusive and accepted as such by all parties.
8. The Mediator/Arbitrator if requested by any party or having regard to the nature or subject matter of any dispute may notify the parties that it is undesirable that he/she mediate prior to any arbitration taking place. In such a case the Mediator/Arbitrator, having sought the view of the Association and the University, shall appoint an alternative person to mediate (but not arbitrate) in the matter.
9. There shall be annual conferences between the Mediator/Arbitrator the Association and the University prior to the annual salary reviews to consider material relevant to the determination or an economic adjustment factor. If the conference fails to reach agreement on the determination of the economic adjustment factor the Mediator/Arbitrator shall decide the question. The decision shall be final and conclusive and accepted as such by all parties.
10. The inaugural Mediator/Arbitrator shall be the Honourable James Robinson, a former Judge and Deputy President of the Australian Conciliation and Arbitration Commission.

11. The Mediator/Arbitrator shall liaise with the Mediator of the General Staff Association and shall keep himself/herself abreast of relevant matters pertaining to general staff.

13. Settlement of Disputes

1. The parties recognise the unique position of Bond University in Australia and the consequent desirability of an appropriate settlement of disputes procedure.
2. When a dispute arises between a staff member and the University, the staff member shall in the first instance attempt to resolve the matter with his or her immediate superior.
3. If the matter is not settled or if it is inappropriate for the matter to be handled in accordance with Clause 11.2 the staff member shall report the matter to the Association which shall arrange a meeting with the immediate superior to enable participation by the Association.
4. If the matter is still not settled, the Association shall discuss the matter with the Human Resources Office which will inform the Mediator/Arbitrator of the existence of the dispute.
5. Should the matter remain unresolved a meeting shall take place between the staff member, the Association, the Human Resources Office and the Vice-Chancellor or his representative.
6. Should the matter remain unresolved it shall be referred by the Human Resources Office to the Mediator/Arbitrator who shall resolve the dispute by mediation or failing mediation, by arbitration.
7. The decision of the Mediator/Arbitrator shall be final and conclusive and accepted as such by all parties.
8. Until the matter is determined in accordance with the above procedure. Work shall continue normally at the instructions of the University. However, no party shall be prejudiced by the continuance of work.
9. Nothing in this clause shall prevent the Association or the University from contacting the Mediator/Arbitrator at any time.

14. Variations

This Agreement may be varied from time to time by agreement between the parties or by decision of the Mediator/Arbitrator following a conference of the University and the Association requested by either party.

15. Term

This Agreement (as varied from time to time) will operate for a period of five years from the date of its execution and shall continue in operation unless terminated by, either party on the giving of six months' notice to the other party and to the Mediator/Arbitrator.

The Common Seal of Bond University Services Pty. Ltd. was hereunto affixed in accordance with its Articles of Association

D.W WATTS - DIRECTOR

Signed for and on behalf

of Bond University Academic

Staff Association

R.D. TEASDALE - PRESIDENT



MEMORANDUM OF UNDERSTANDING ("MOU")

This MOU has been negotiated between **BOND UNIVERSITY LIMITED ("Bond")** and the **BOND UNIVERSITY ACADEMIC STAFF ASSOCIATION ("BUASA")**.

Background

Following consultation the parties have decided on enhancements to the terms and conditions of employment for all Bond academic staff employees from 1 January 2013. The enhancements are set out in this MOU and are intended to provide for terms and conditions of employment which supplement the terms and conditions of the individual contracts between Bond and Bond academic staff employees.

Application

The terms of this MOU will be applied to existing and future Bond academic staff employees.

Agreement

The following matters have been agreed by the parties.

Bond Employment Contracts (BECs)

The content of the standard templates for academic staff employment agreements have been agreed between the parties.

Academic Staff Policies

The University has consulted with BUASA in relation to specific University academic staff policies listed in **Schedule 1**.

These policies will now go through the appropriate internal staff consultation processes, and, subject to the outcome of that consultation, will be adopted as University policies.

When adopted the policies will be effective on and from 1 January 2013.

The University may make changes to these policies or add new policies only following a process of consultation with BUASA, and in those consultations must take into account in good faith issues raised.

Wage increases

Bond academic staff employees will receive wage increases from 1 January 2013 in accordance with **Schedule 2**.

Parity adjustment

Parity adjustments will be made in accordance with **Schedule 3**.

Fixed term superannuation

Bond academic staff employees with over two years of continuous service at 1 January 2015 will receive an adjustment to their fixed term superannuation entitlement in accordance with **Schedule 4**.

Bonus arrangement

A bonus arrangement will apply to eligible Bond academic staff employees in accordance with **Schedule 5**.

No further claims

The parties agree that during the term of this MOU there will be no further claims in respect of the terms and conditions of employment dealt with in this MOU, with the exception of claims made in the negotiation for economic increases in year 4 and year 5 of this MOU.

Term

This MOU has a term of five years from 1 January 2013 but will continue to operate after that date unless varied or terminated.

Termination

This MOU will terminate:

- (a) If the parties agree in writing.
- (b) If either party gives six months' notice to the other party of termination of the MOU on a date after 1 January 2016.

If, during the term of this MOU, a bargaining process for the introduction of an enterprise agreement is commenced, the parties agree that the University, BUASA and members of the academic staff will be at liberty to adopt a bargaining position which assumes the termination of this MOU.

Signatories

Signed as a Memorandum of Understanding.

Signed by Bond University Limited of University Drive, Robina, Gold Coast, Queensland 4229 by an authorised officer in the presence of



Signature of witness

JONATHAN JAMES FORSTER

Full name of witness

15/8/2012

Dated

Signed by the President of BUASA in the presence of:



Signature of witness

JOHN R. LELIEVRE

Full name of witness

15/8/2012

Dated



Signature

BRAILFORD

Name

VICE CHANCELLOR

Office held

15/8/2012

Dated



Signature

KULDIP SINGH BEDI

Name

BUASA President

Office Held

15/8/2012

Dated

Schedule 1 – MOU

University Academic Staff Policy Listing:

- Annual Leave
- Compassionate Leave
- Dispute Resolution
- Extended Research Leave
- Investigations
- Leave without pay
- Long Service Leave
- Non-teaching semester
- Parental Leave
- Performance Appraisal & Review
- Personal Leave
- Probation Review
- Redundancy
- Termination

Schedule 2 – MOU

Wage Increases

The parties are committed to economic adjustments on 1 January each year for the next three years.

- On and from 1 January 2013 the academic salary scale will be varied by a percentage amount equivalent to 3.0%.
- On and from 1 January 2014 the academic salary scale will be varied by a percentage amount equivalent to: the higher of 3.0% or CPI as defined*.
- On and from 1 January 2015 the academic salary scale will be varied by a percentage amount equivalent to: the higher of 3.0% or CPI as defined*.

* Source: ABS 6401.0 All Groups CPI, BNE, last financial year, percentage change.

The parties are committed to consultation commencing on or before 1 July 2015, in relation to the economic increases to apply in Year 4 and Year 5 of this agreement.

Schedule 3 - MOU

Parity adjustment

The parties agree that the University will conduct a parity adjustment of the academic salary scales during the first three years of this agreement.

Parity will be assessed against the GO 6*, at the same date, with an annual leave loading adjustment applied to the GO6 scales. The objective of the parity adjustment will be to ensure that members of academic staff should not receive a base minimum rate of pay less than the average base minimum rate of pay earned by genuinely comparable employees in the GO 6 Universities (ignoring the effect of bonuses and other individual arrangements).

Guidance Note: The GO6 equals the GO8 less the two GO8 universities located in New South Wales.

Schedule 4 - MOU

Fixed term superannuation

On 1 January 2015 fixed term academic staff who have served at least two years of continuous service* as at that date will move to a superannuation percentage inclusive of SGC of 17.5% of base salary.

* those with no more than a four week break.

Schedule 5 - MOU

Bonus arrangement

This section is a summary of the University's bonus arrangement which will apply to academic staff. Bonuses will continue to be applied on a discretionary basis (unless agreed otherwise) by agreement directly with individual staff members. This MOU does not create an obligation to pay any individual bonuses.

This arrangement is intended to replace all existing academic staff bonus arrangements in place at 1 January 2013.

This agreed arrangement is a *post-profit allocation of funds* toward a bonus pool.

To be eligible to participate in the pool staff must be continuously employed with a minimum of twelve month's service at the start of the calendar year to which the bonus pool arrangement applies. A staff member who works less than full-time will be eligible for a pro-rata amount based on annual hours worked in the relevant year.

The pool will be created by utilizing the following formula, applied to the statutory accounts:

Net profit adjusted for grants, donations, other restricted receipts and debt repayments.

The Academic Staff Bonus pool will be set at 15% of adjusted net profit.

The pool will be determined after the statutory accounts have been presented at the Annual General Meeting and staff who receive a bonus will be paid as soon as practicable.

Contingent academic employment in Australian universities

Stuart Andrews¹, Liz Bare², Peter Bentley², Leo Goedegebuure², Catherine Pugsley¹ & Bianca Rance¹

Introduction

As in many countries over the last 25 years or so, universities in Australia have been subject to substantial change and expansion. The Australian higher education student cohort has grown from 441,000 in 1989 to 1.4 million in 2014 (DETYA, 2001; Australian Government, 2015b). This has been accompanied by a progressive decline in direct government support per student and a substantial increase in the level and percentage of tied short-term funding flowing from national research granting bodies. Australia's universities have offset the decline in per student government funding by accessing the volatile international higher education student market. In 2013 there were 348,000 international students enrolled in Australian higher education institutions onshore and offshore (constituting 25% of the total student numbers) (Australian Government, 2015b). At the same time, the introduction of unrestricted competition between institutions for domestic students over the past 3 years has increased uncertainty and difficulty in forecasting enrolment numbers for some universities. Research performance is perceived as critical to student recruitment, with institutional research performance and world rankings being used as a measure of institutional status.

The apparent success and robustness of the Australian university system in an environment of short term funding and volatility in student numbers has been underpinned by significant changes in the composition of the academic workforce. Over the period from 1989 to 2013, the percentage of academic staff (full-time equivalent, FTE) employed on contingent contracts (fixed-term and casual/sessional) increased from 40% to 56%, with a corresponding decline in the percentage, but not the numbers, of academic staff holding continuing appointments. We can only estimate the headcount number of casual staff, but the best estimates based on superannuation data indicate there are more academic staff working on casual contracts than those on continuing contracts of employment (May, 2011).

While the higher education trend of increased casualisation mirrors similar trends across all Australian sectors, certain drivers are specific to universities. Reduced government funding and volatile student markets have already been mentioned. Since 1996 universities have also been subject to industrial regulation which restricts the circumstances where fixed-term appointments can be made. With the fixed-term employment option not being available, and complex and time-consuming exit procedures applying for staff holding continuing appointments, an incentive is created for greater use of casual and sessional teaching appointments, where simpler and speedier engagement and disengagement processes apply. This propensity towards casualisation is further heightened by the decentralisation of staffing and financial decision-making to schools and faculties.

¹ Australian Higher Education Industrial Association

² LH Martin Institute, Melbourne Graduate School of Education, The University of Melbourne

A major strategy of the national academic staff union, the National Tertiary Education Industry Union (NTEU), is to improve the security and conditions of employment for contingent staff. However, the solutions are not simple, and require balancing concerns over the quality of education, equitable and fair treatment of staff, equity between groups of staff, the financial viability of institutions, prudent risk management, and the implications for the future of the Australian academic workforce.

The purpose of this paper is to review current academic workforce flexibility practices in Australian universities. This includes the legal framework, types and prevalence of different contracts and practices, and the relative positions of unions and universities towards these practices. The paper will also discuss the implications of workforce flexibility for institutional management. These implications cannot be underemphasised, given that universities are Australia's largest services revenue generator through delivering higher education to international students, a service which has inherent volatility of demand and which is being increasingly delivered by contingently-employed staff.

Legal and Industrial framework

Although the majority of Australia's publicly-funded universities are established as statutory authorities under State (rather than federal) law, the vast majority of university public funding derives from the Commonwealth government, which also sets overall higher education policy for the nation.

The principal piece of legislation regulating employment in Australia, including university employment, is the *Fair Work Act 2009 (Cth)*. The Act contains a set of minimum National Employment Standards (covering leave and other entitlements), empowers the Fair Work Commission to arbitrate modern awards with industry-wide conditions, and enables individual employers to make enterprise agreements specific to the needs of the enterprise. Enterprise agreements cannot undercut the National Employment Standards in any way and, other than in exceptional circumstances, must result in all employees who are covered by the agreement being better off overall in comparison to the provisions of the relevant modern award. Enterprise agreements are made between the employer and its employees, with unions acting as the principal bargaining agents in negotiations.

The enterprise agreements in place at Australian universities are comprehensive in their content, and thus exclude the separate operation of the industry-wide modern awards for academic and other staff. There are also strong similarities in the content of these agreements, reflective of the provisions of arbitrated awards made by the predecessor federal industrial tribunal and the fact that universities are all negotiating with the same single academic staff union. The provisions in enterprise agreements relating to fixed-term and casual academic staff for the most part replicate provisions contained in the academic staff modern award, with the use of fixed-term employment thus being generally restricted to the following categories of permitted use:

- Specified task or project (which includes work funded by an external source)
- Research
- Replacement employee
- Recent professional practice required
- Pre-retirement contract (maximum 5 years)
- Subsidiary to studentship

These categories have been expanded upon in many enterprise agreements, with the most common additions being senior staff appointments and fixed-term appointments where a new area is being established or an area is being disestablished. It is also possible for an academic staff member to hold a

fixed-term managerial appointment, such as a Head of School or Dean, in conjunction with an underlying continuing academic appointment, to which the academic can revert at the end of the fixed-term appointment.

There are five level levels of academic appointment for continuing and fixed-term staff, ranging from Associate Lecturer (Level A) at the bottom, to Professor (Level E) at the top. Broadly speaking, universities employ staff at each of these levels in teaching and research (T&R), teaching only (TO), and research-only (RO) positions; with the vast majority of RO positions being funded by the two principal federal research funding bodies, the Australian Research Council (ARC) and the National Health and Medical Research Council (NHMRC).

Types and description of contingent employment and recruitment processes

Academic and other staff at Australian universities are employed under one of three broad modes of employment: continuing, fixed-term, and casual/sessional (with continuing and fixed-term staff being employed on either a full-time or part-time basis). Australian universities also engage independent contractors, who are typically professionals such as lawyers and accountants, to supplement their teaching workforce. Additionally, there is a well-established regime of unpaid “honorary” or “adjunct” appointments. These are often retired academics of significant standing, who provide expertise on a voluntary basis in return for benefits such as office space and use of equipment.

Academic staff employed on a continuing or fixed-term contract have significant procedural safeguards in their enterprise agreements covering disciplinary action and termination for unsatisfactory performance or misconduct. The enterprise agreements also provide for termination on account of redundancy, but again with significant procedural safeguards involved. Academic staff employed on a continuing basis are also typically subject to lengthy periods of probation of between two and five years. Unless this initial period of probation is extended, the probationary employment will either be confirmed or the employment terminated by the university at the end of the probationary term. Confirmation is usually regulated by university procedure, rather than by the enterprise agreement, and the incidence of non-confirmation is very low.

Fixed-term employment

Fixed-term employment is defined in the academic staff modern award as: *“employment for a specified term or ascertainable period, for which the instrument of engagement will specify the starting and finishing dates of that employment (or instead of a finishing date, will specify the circumstance(s) or contingency relating to a specific task or project, upon the occurrence of which the term of the employment will expire)”*. Thus, a fixed-term contract guarantees a certain period of employment, subject to agreed contingencies. Under enterprise agreement provisions, the contract cannot usually be foreshortened at will, even in a redundancy situation, but can usually be terminated during its term on the grounds of poor performance or serious misconduct.

Unique to universities, and deriving from a federal industrial tribunal decision creating the Higher Education Contract of Employment Award (HECE Award) in 1996, enterprise agreements also provide for severance payments upon termination of employment on contract expiry where the employee has been employed on a second or subsequent contract for a specified task or project, or to do research. The quantum ranges from

4 to 16 weeks, depending on length of service, but is not payable where the employee has been offered and has rejected a further contract.

Many university enterprise agreements also now provide for the possibility of conversion of a fixed-term academic staff member to continuing employment status at the conclusion of, or sometimes during, the fixed-term contract.

Casual/sessional employment

The employment of academic staff on a casual basis provides universities with flexibility in the form of a less costly form of engagement, and without the rigidities and safeguards pertaining to other forms of employment. Casual academics are normally engaged to teach or to mark, and are therefore not paid to conduct research. In 2013, more than 90% of casual academics were engaged only on the basis of teaching and associated tasks, with a further 5% of all casual academics engaged in neither teaching nor research. Therefore, less than 5% of casual academics are paid to do research. This is in contrast with 92% of FTE staff on continuing and fixed-term contracts having a paid research component to their role (Australian Government, 2015a).

Provisions for casual employment in enterprise agreements describe casual employment as being “by the hour”, with rates derived from full-time academic rates, inclusive of a loading of 25% (payable in lieu of annual recreation leave, sick leave and public holiday entitlements for which casual employees are not eligible). In practice, however, casual academics are often employed on a semester (usually a teaching block of 13 weeks), half year or one year “sessional contract”, with payment each fortnight following submission of a payment claim form for the work performed during that period. Casuals are also frequently re-employed by the same university in subsequent years. A survey of 3,000 casuals found a majority (62%) had been employed by their university for more than one year, and more than one third (46%) had been employed for more than three years (Strachan et al. 2012).

Recruitment processes

A competitive merit appointment process is generally required by university recruitment policies and procedures for continuing appointments and for fixed-term appointments of one year or more. Competitive processes are not the norm for fixed-term appointments of shorter duration and are invariably not used for casual appointments. Informal recruitment accounts for roughly 92% of all casual appointments, with only 8% gaining their position via formal advertisement (Strachan et al. 2012).

Casual appointments are normally made by the Head of Department or School, with these appointments being centrally-recorded for payment and reporting purposes but not otherwise centrally-managed. Problems sometimes arise with the appointment and cessation of casual employees, particularly where casuals have been engaged over a number of years on a regular and systematic basis.

Outsourcing / Independent Contractor arrangements

Some universities engage individuals or other entities to provide some teaching, without the university entering into an employment relationship with those individuals who do the teaching. This is not happening on any large scale, and is problematic in terms of the potential for the university to be subjected to subsequent legal claims that the supposed independent contractor relationship is in fact an employment relationship with the university.

Conditions of employment for contingent staff

Superannuation contributions

Superannuation is the most significant condition of employment where continuing employees enjoy higher benefits than casual employees and most fixed-term employees.

Federal legislation requires that Australian employers must contribute at least 9.5% of each employee's ordinary time earnings to superannuation if the employee earns more than \$450 in a calendar month. Notwithstanding the monthly threshold figure, most universities pay the 9.5% even if the threshold isn't met, as opposed to paying 3% or nothing as may otherwise be required. This minimum requirement represents the employer superannuation contribution that is paid by universities to casual employees and, as a generality, to fixed-term employees who have a discrete appointment of less than one or two years' duration.

In universities, continuing employees and employees with fixed-term contracts of longer duration (such as those employed under a two or three year research grant) receive university employer superannuation contributions equal to 17% of their salary. Some enterprise agreements also provide for fixed-term employees to move from 9.5% to 17% employer contributions after they have been employed on rolling fixed-term contracts for a number of years. The NTEU has also undertaken a campaign involving casual staff petitioning for universities to provide 17% superannuation contributions for all staff.

Paid Parental Leave

In comparison to the rest of the Australian workforce, university staff also enjoy very generous paid parental leave entitlements contained in enterprise agreements, typically providing 26 weeks paid leave at the employee's ordinary rate of pay. The enterprise agreements usually have an eligibility qualifying period, typically 12 months, and also exclude casual staff. Casual staff are also generally ineligible for separate paid parental leave entitlements under Commonwealth legislation due to the length of the break in continuous employment between the second semester of one year and the first semester of the following year.

A small number of university enterprise agreements also extend paid parental leave entitlements to "long-term casuals" within the meaning of the *Fair Work Act 2009* (being those employed on a regular and systematic basis for at least 12 months).

Unfair dismissal claim rights

Employees who have their employment terminated by their employer have a general right under the *Fair Work Act 2009* to contest the fairness of their dismissal, and can seek reinstatement if the termination is adjudged to be harsh, unjust or unreasonable.

This right is not available to a fixed-term employee upon expiry of their fixed-term contract, and is also not available to employees engaged on a casual basis, unless they have been employed as a long-term casual within the meaning of the Act.

Other entitlements

Casual employees (other than long-term casuals) are also excluded from other National Employment Standard entitlements provided by the Act, such as unpaid parental leave, the right to request flexible working arrangements, and paid carers' leave and compassionate leave.

Matters governed by university policy

Casual academics are also excluded from benefits governed by university policy, such as eligibility for promotion and sabbatical leave, support for further study, salary packaging and regular deductions from payroll. Mandated induction and participation in performance appraisal and professional development opportunities varies between universities, and casual academics are usually excluded from supervision of research higher degree students. Fixed-term academic staff have fewer exclusions, but are unlikely to be eligible for sabbatical leave or support for conference attendance that is not funded from a research grant.

Other intangible disadvantages

Whilst fixed-term academic staff may technically be eligible for certain benefits, such as the right to apply for promotion, the application of policy and criteria used in decision-making count against such staff. Supervisor support for promotion applications is also more problematic for a fixed-term staff member engaged in a research role under a grant of a finite duration. The heavy concentration of fixed-term staff holding Level A and B (Associate Lecturer and Lecturer) appointments (65%) compared to those holding continuing appointments (37%) points towards practical barriers for progression of junior staff employed on a fixed-term basis (Australian Government, 2014a). There is also a general reluctance for universities to invest in professional development for contingent staff due to the perceived lack of long term organisational benefit. These intangible disadvantages also result in early career academics being unable to gain security outside the work environment, such as seeking home loans, placing strain on social relationships due to the general insecurity factor.

Literature review

Given the importance of the academic workforce to the nation, there are surprisingly few studies of the impact of contingent academic employment. Work that has been done falls under three broad themes:

1. Establishing more details about the academic casual workforce. Despite having high-level national data on the casual workforce, there is limited data on the composition of the casual workforce, the duties they undertake, their qualifications and length of service.
2. Impact of the contingent workforce on the quality of education and research.
3. Implications of contingent employment practices for the future academic workforce, usually being commissioned by government or councils of learned bodies.

Establishing better information about the casual workforce

Assumptions about the nature and composition of the casual workforce range from a view that casual academics are predominantly research higher degree students gaining experience or people with other jobs whose contribution is essential to professional education, to a view that casual academics are an undervalued and exploited segment of the academic workforce relying on uncertain work for a living.

Much literature highlights concerns of casual academics. Kimber (2003) identified dissatisfaction of casual staff with large classes, lack of access to facilities and marginalisation from colleagues. Similar results were found by Brown and colleagues (2010), who interviewed 25 academic career focused-casuals in a metropolitan university. They found satisfaction with teaching but dissatisfaction with uncertainty of employment and remuneration. "Permanent casuals" had become second-class citizens and they

recommended their reintegration into the academy. Similarly, Rothengatter and Hill (2013) found that casuals are marginalised in academic departments, subject to high levels of uncertainty and arbitrary decisions over future work, and are not respected by their tenured colleagues.

More recently, there have been attempts to undertake more detailed analysis of who casual academics are and what they do. There have been several surveys of casual employment since 2004, with samples either drawn from individual universities or gathered across universities. Despite low survey response rates and differences in emphasis, approach and intent of the surveys, a remarkably similar picture emerges.

Because of mandatory superannuation contributions, the largest and most reliable source is the data in the national university superannuation scheme, UniSuper. Analysing the UniSuper database, May and colleagues (2011) found that 57% of the cohort identified as casual academics were female, and 52% of female respondents were aged 35 or younger. Junor (2004), reporting on a survey of 9000 casual and fixed-term staff across a range of universities, suggests that casual work was the preferred mode of employment for only 28% of the academic sample, that 27% had been employed in the sector for 2 to 5 years, and that 81% of the sample reported moderate to high levels of financial worry. Casuals who were satisfied tended to be retirees or those in other employment. The female respondents (54%) did not see that casual work assisted them to meet their care giving responsibilities. All casual academics reported significant time spent on unpaid work.

A study based in a leading research university with a comparatively small number of undergraduate students indicated that in 2009 casual academics were predominantly under 40 and female (Dover, 2010). Whilst the survey had a low response rate, 45% of the respondents were current students of the university, mainly research higher degree candidates, 12% were independent professionals, and 3.5% relied solely on casual academic work for a living. Three quarters of the respondents were seeking an academic career.

In a similar survey in 2012 of academic staff at the University of Tasmania, 199 academic respondents identified as casual. Of these 199 respondents, 66% were female, 81% had worked for more than 5 hours per fortnight, and 32% had been working regularly over 2 to 5 years (Brown, Kelder, Freeman, & Carr, 2013). Only one respondent saw casual teaching as a long-term career option.

In 2011 and 2012, the NTEU conducted a survey of academic casual employment with 1100 respondents. A similar picture emerged of a well-qualified casual cohort, with 30% holding a PhD and 50% holding a post graduate qualification other than a PhD. 67% of respondents were female and 63% were younger than 50. 70% of respondents had worked as a casual in one or more universities for more than 3 years, 63% were seeking academic careers, and 41% were enrolled in a research higher degree (NTEU, 2015).

Bexley, Arkoudis and James (2013) surveyed 5500 academic staff across 19 Australian universities, with 622 respondents identifying as academic sessional/casual. Two thirds (66%) of the casuals were females employed at Level A, with more than half aged over 40. Less than half were research higher degree students, and many indicated they were working as a sessional to prepare for an academic career or because no other academic jobs were available.

The results of Australian research are similar to the research in the Just in Time Professor report (US House of Representatives, 2014), which was the outcome of a major survey of contingent academic staff in the United States.

The similarity of outcomes allows preliminary conclusions to be drawn. Firstly, the casual academic workforce is heterogeneous, but the number of casual academics who see sessional teaching as a preferred career is minimal. Secondly, there is a significant number of well-qualified, predominantly younger female casuals, anxious but unable to embark on an academic career. Thirdly, while a substantial proportion of casual academic work is done by current research higher degree students, these casual employees

constitute less than half of the casual academic workforce. Therefore, casual academic employment cannot be viewed predominantly as an entry point into a secure academic career or a source of supplementary income for research higher degree students.

While the available data shakes the assumption that the majority of casual academic work is carried out by research higher degree students, considerably more work needs to be done to identify the full nature and patterns of employment of Australia's casual academic workforce.

Impact of casualisation on quality of education

Australian universities are actively engaged in research, and there is a widely-held assumption that research informs teaching, despite a significant body of research highlighting that this so-called teaching-research nexus is not so straightforward (Enders & de Weert, 2009; Hattie & Marsh, 1996; Jenkins, 2004; Marsh & Hattie, 2002; Qamar uz Zaman, 2004).

Given the large number of casual and sessional academic staff and their possible limited attachment to academe, there is an increasing focus on the quality of teaching and educational outcomes. This was an area investigated by the former Australian Universities Quality Agency³ in its institutional reviews, and successive reports detail concern over the level of integration and training of casual academics (Harvey, 2013). May, Gale and Campbell (2008) reflect the NTEU concerns over the impact of casualisation on the quality of education, with this concern being shared by many in the higher education sector.

Brown et al. (2013) and Higgins and Harreveld (2013) highlight demands by sessional academic staff for feedback on performance, induction, and professional development, though Brown notes that university-provided services that are available do not seem to be accessed by sessional academic staff.

Many universities either mandate or offer training for casual or sessional staff new to higher education. Successful programs designed to enhance skills and increase engagement of casual staff are described by Byers and Tani (2014), Hamilton and colleagues (2013) and Dover (2010).

While not finding that marking practices had an adverse impact on quality outcomes, Smith and Coombe (2006) report on a study of casual marking in two Australian universities, and raise a range of potential quality assurance concerns, including lack of supervision, limited time allocated for marking each paper, and lack of supervision and training of casual markers.

Others recommend improving quality assurance processes. Harvey (2013) advocates the establishment of standards at institutional level for casual teaching, including recruitment, induction, professional, career and administrative support, and appropriate remuneration, while Percy and colleagues (Percy and Beaumont, 2008; Percy et al., 2008) argue that placing the emphasis on individual development for casual teachers will not of itself improve quality outcomes, suggesting that in order to better manage risk, initiatives should be taken to integrate casual academics into the mainstream of teaching (e.g. by team teaching).

The fact that casual academics are rarely paid to conduct research implies that the growing casualisation of university teaching may negatively impact teaching quality if one subscribes to the underlying assumptions regarding the teaching-research nexus. However, at an aggregated level, there is little data to suggest that increasing casualisation or a lack of research engagement has contributed to a crisis in teaching quality. Based on the Course Experience Questionnaire, level of student satisfaction with teaching quality steadily increased from roughly one third of all students in 1995 to just over two thirds in 2014 (Norton, Sonnemann,

³ The Australian Universities Quality Agency was disestablished in 2011, with its responsibilities and those of state based higher education accreditation bodies being transferred to the Tertiary Education Quality and Standards Agency.

& Cherastidtham, 2013; GCA, 2014). Based on the Student Experience Survey, satisfaction with teaching quality is widespread, having increased slightly from 81% in 2012 to 82% in 2014 (SES, 2016, p. iv). Satisfaction across a range of measures is also mostly unrelated to the strength of the research environment, indicating little support for any positive relationship between research engagement and quality teaching (Norton et al., 2013). However, the lack of individual-level data means that it is not possible to examine whether there was any difference between casual and non-casual academic staff on any given measure.

Impact on staff on fixed-term contracts

Uncertainty over future employment also impacts job satisfaction and career aspirations for staff on fixed-term contracts, particularly where employment is contingent on grant funding. Junor (2004) reported that more than two-thirds of staff on fixed-term contracts of less than a year sought a long term career in a university. While noting the impact of uncertainty on fixed-term contract staff, these staff felt less marginalised than casual staff in the sample. Based on data derived from results of a major study of the academic workforce, Broadbent and colleagues (2013) examined the responses of 2488 research-focused academic staff, concluding that although aspirations for advancement are equivalent to staff in continuing roles, these staff see their career prospects as poor, and the nature of their employment contract dominates those prospects. They report that research staff on fixed-term contracts are less likely than research staff on continuing contracts to gain access to internal research funding, or to access a range of other intangible benefits, such as opportunities for leadership, performance appraisal and support for promotion. Unsurprisingly, the high job insecurity and expectations of mobility attached to post-doctoral positions are also associated with more pessimistic or uncertain views on career progression.

Impact on the academic profession

With more than one quarter of the academic workforce aged over 55, constituting an opportunity barrier to the progression of younger staff, many of the above studies reference the implications for the future of the academic profession. In particular, they highlight the difficulty of obtaining full-time or part-time academic appointments, the perception of sessional staff that secure positions are not available (Edwards, Bexley, & Richardson, 2011), the impact of uncertainty over future employment on staff engagement and commitment, and concerns over quality. Concerns over the availability of full-time and part-time academic roles are well founded. Gottschalk and McEarchern (2010) report on a study of casual academics in a regional university and found that many held multiple casual positions in the hope, often unrealisable, of entering an academic career. Coates and Goedegebuure (2010) demonstrate that the increase in student numbers in Australian universities since 1989 had not been matched by increases in the number of continuing and fixed-term staff. Like Percy and colleagues (Percy and Beaumont, 2008; Percy et al., 2008), they advocate bringing casual academic staff into the heart of the academy and make nine recommendations for improvement:

- 1. Create more entry-level early career positions to fast-track people into academic roles;*
- 2. Convert sessional staff onto fixed-term appointments;*
- 3. Develop the capacity of existing managers, and employ specialist managers to coordinate and support sessional academics;*
- 4. Find opportunities to engage sessional academics in the broader life of the academy;*
- 5. Implement management arrangements for sessional staff;*
- 6. Involve sessional academic staff in professional learning activities;*

7. *Develop quality assurance and risk-management procedures for sessional academic work;*
8. *Provide adequate on-campus flexible-office spaces so that sessional staff can interact with students*
9. *Create better data sources and models for understanding the sessional workforce.*⁴

Prevalence of contingent employment

Australia maintains national data on university staff and students which is reported publicly in Higher Education Statistics (HES) (Australian Government, 2015a, 2015b). Universities report the number of staff on a headcount and full-time equivalent basis annually to the Australian government. Student data is also reported annually across all universities and non-university higher education providers, generally with high rates of accuracy due to the funding tied to enrolments. Over the period from 1989 to 2013, full-time equivalent (FTE) university staff in academic ranks and functions (teaching and/or research) almost doubled from 28,000 to 53,000 (Australian Government, 2015a). Over the same period, the full-time equivalent student teaching load increased from close to 350,000 to 940,000 (Australian Government, 2015b; Coates and Goedegebuure, 2010). However, whereas student numbers have generally increased at a steady rate year-upon-year, staff growth is divided into three distinct periods.

Firstly, the period from 1989 to 1996 included the integration of staff from formerly teaching-focused colleges of advanced education (CAEs) into a “unified national system” of higher education between 1989 and 1991. This coincided with a relatively rapid growth in academic staff by 9,000 FTEs, an increase of 31% over the eight-year period. This growth reflected increases in student numbers (44% increase over the same period) (DETYA, 2001) and was centred on T&R roles. While there was an overall increase in academic staff, there was a decrease in the numbers of TO staff (from 10,000 to 7,000 FTE), most likely as a result of the greater emphasis on research for staff previously employed by CAEs.

A Commonwealth government decision in 1996 not to factor salary increases for staff into university salary funding allocations and, until 2000, not to index other funding in line with CPI, marked a period between 1996 and 2000 of relative stagnation in staff growth. This period also saw the beginnings of greater role specialisation, particularly in RO positions. The total FTE academic staffing figures did not increase over this period, but on an FTE basis, RO staff grew by 20% and T&R staff declined by 6%.

The period from 2001 to 2013 saw the FTE academic workforce expand by 43%, with a corresponding 59% increase in FTE student numbers. Increased funding flowed to the higher education system as a result of an influx of full-fee paying international students and increases in the level of Higher Education Contribution Scheme, the mechanism by which Australian students contribute to the cost of their education. A clear divergence in academic roles also emerged. RO FTE staff increased by 121% between 2001 and 2013, and TO FTE staff by 66%. This compared with 17% growth in T&R FTE staff. The growth in FTE staff by function is shown in Figure 1 for the 1989 to 2013 period.

⁴ Coates and Goedegebuure (2010) p.31

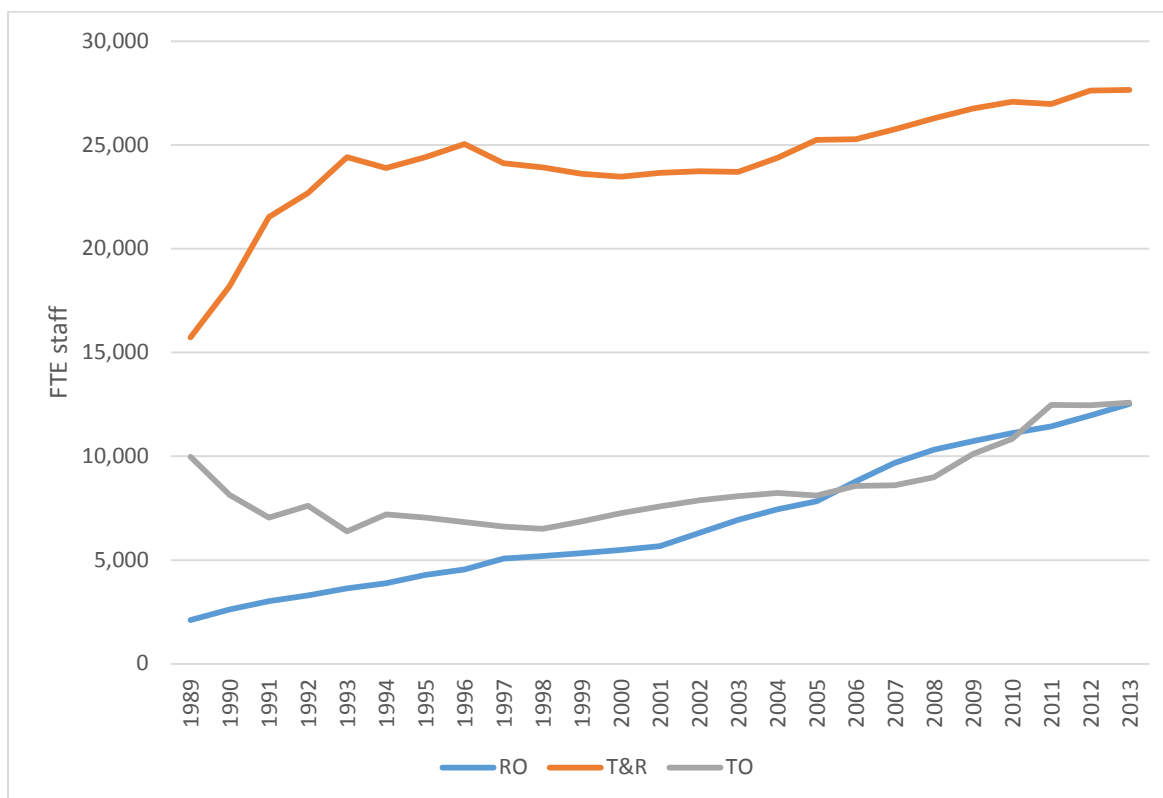


Figure 1. Number of FTE academic staff by function, 1989-2013 (Source: Australian Government, 2015a)

The past two and a half decades have also seen a significant increase in the proportion of academic staff employed on a casual or fixed-term basis. This trend is known to all universities, but it is difficult to ascertain the actual headcount size of the contingent workforce because headcount data for casuals is not collected as part of the HES collection.⁵ Based on headcount, the period from 1989 to 2013 saw continuing positions increase by 57% from 17,000 to 26,000, while fixed-term numbers increased by 174% from 9,000 to 24,000. On an FTE basis, with casual data included, casual employment grew by 221% over the same period, constituting 21% of all academic employment by 2013 (11,000 out of 54,000 FTE). This compared with a growth rate of 144% for fixed-term staff and 43% for continuing staff over the same period, with each constituting 35% and 44% of academic employment respectively in 2013. The share of the FTE academic workforce by contract type is shown for the 1989 to 2013 period in Figure 2 below.

⁵ National data on academic staff is collected as FTE and headcount basis on the number of full and part-time staff. Casual data is only recorded in a FTE basis. Therefore, the total number (headcount) of academic staff across all contracts (ongoing, fixed-term and casual) can only be estimated.

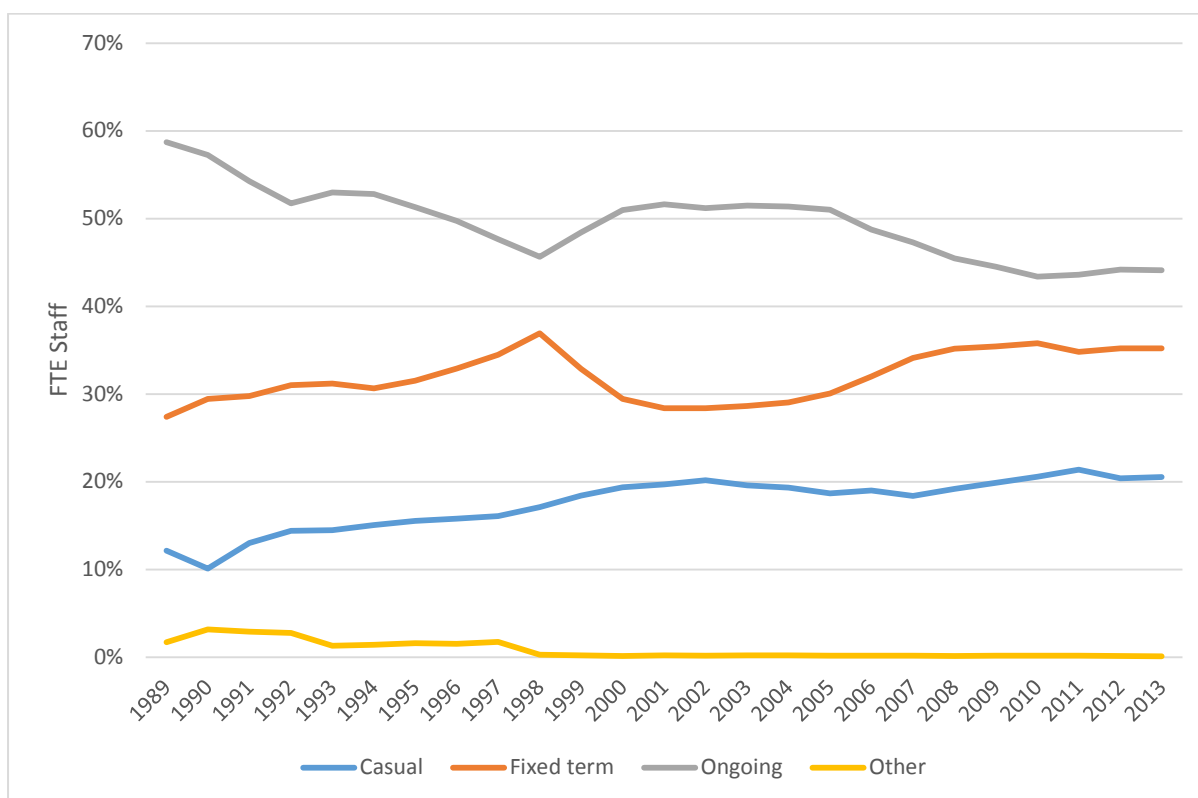


Figure 2. FTE academic staff by contract type (%), 1989-2013 (Source: Australian Government, 2015a)

The HECE Award introduced restrictions on the circumstances where universities could use fixed-term employment, and these restrictions flowed into subsequent awards and university enterprise agreements. Their introduction led to a sharp decline in fixed-term employment from 1998 to 2000 and an associated increase in continuing employment. However, these changes had no direct impact on the RO or TO workforce. The restrictions also led to an increase in the use of casual employment in areas where fixed-term employment was no longer possible. These restrictions were effectively removed by the Commonwealth government's Higher Education Workplace Relations Requirements ("the HEWRRs") announced in May 2005, which required enterprise agreements made after that time to be devoid of any restrictions on the use of fixed-term staff by universities. The removal of the restrictions was accompanied by a proportional increase in the use of fixed-term appointments between 2005 and 2009. Other factors, however, including increases in the allocations of research funding from the national granting agencies, also led to an increase in the number of fixed-term research only staff during that period. The HEWRRs were abolished in January 2008 and restrictions on the use of fixed-term employment then started to re-emerge in enterprise agreements made after that time.

The type of academic work is highly correlated with contract type. Just under 82% of all TO staff are employed on a casual basis, whereas almost no RO staff (2%) or T&R staff (1%) are employed on a casual basis (not including RO staff employed outside academic classifications). The vast majority of RO staff (85%) are employed on a fixed-term basis, and roughly three quarters of T&R staff (74%) are employed on a continuing basis. The share by contract type and category is shown below in Figure 3.

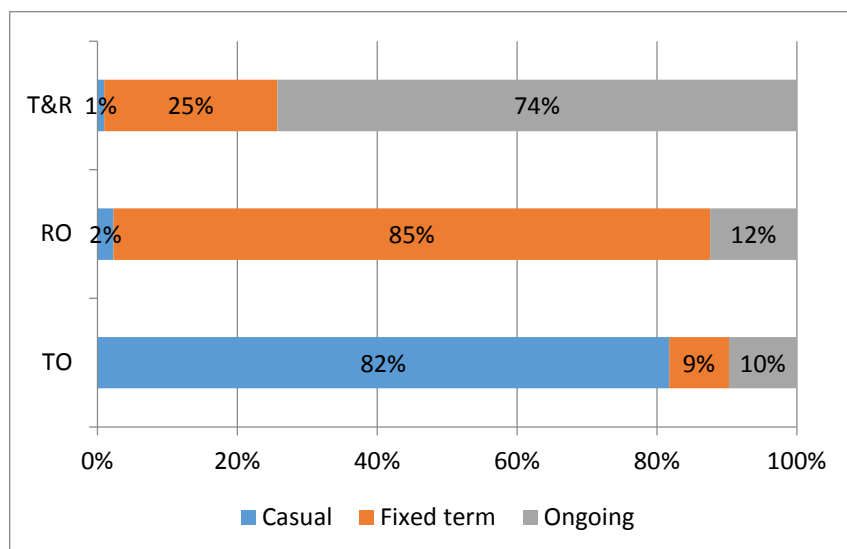


Figure 3. FTE academic staff by function and contract type (%) in 2013 (Australian Government, 2015a)

Although TO staff constituted only 24% of the FTE academic workforce in 2013, this does not give a good indication of the size of the casual teaching workforce and the share of teaching that they undertake. One FTE casual employee may involve work performed by many casual staff. One estimate, based on superannuation data, is that there were 67,000 casually employed persons in academic roles in 2010 (May, 2011), outnumbering those employed on a continuing or fixed-term basis (46,000 based on headcount in 2010) (Australian Government, 2015a). Contrasting the 67,000 estimated casuals from the superannuation data with the 8,000 FTE casuals in the government data for the same year, there were roughly 8 casuals for every FTE employee. More recently, headcount data collected by the Workplace Gender Equality Agency (WGEA) for all university employees (including professional staff) indicated there were 85,000 casual university employees in 2015. Compared to an FTE casual university workforce of 20,000 based on the government data, this indicates a ratio of roughly 4.2 casual employees per FTE (NTEU, 2016). However, due to the difficulties of recording casual data for academic employees, this is likely an underestimation of the total casual university workforce, as well as the ratio of casuals to FTE. Nevertheless, even on this conservative estimate casual academics outnumber ongoing university academic staff in universities.

Universities are heavily reliant on casual staff to perform the bulk of university teaching. Coates and Goedegebuure (2010) estimate that casual academics undertake 50% to 70% of undergraduate teaching. Academics in T&R positions may be nominally engaged in teaching for about 40% of their workload (e.g. with another 40% dedicated to research and 20% for other duties), while RO academics may have few formal teaching hours. Although in practice many T&R staff will be engaged in teaching beyond the nominal 40%, teaching time for these staff often includes paid hours for associated duties such as curriculum development and staff meetings. On the other hand, casual staff are only paid for a limited range of duties and only during the teaching semester. Casuals may be engaged in other collegial and teaching development activities, but are unlikely to be paid for this time (Strachan et al., 2012). Due to this narrow specialisation, an annualised FTE casual teaching workload constitutes a much greater share of direct teaching duties than the equivalent teaching load of staff employed in combined T&R positions.

In attempting to estimate the extent of teaching undertaken by contingent staff in Australian universities, we have assumed that T&R staff, employed either on a continuing or a fixed-term basis, are 40% engaged in direct teaching and associated activities compared to 100% for TO staff. Applying this assumption to 2013 figures, staff with continuing appointments are responsible for 40% of the teaching workload, casuals are responsible for 44%, with a further 16% undertaken by fixed-term staff. Using this modelling, it is only in recent years that casual employment has become the main contract type for teaching staff, with Figure 4

showing change over the period from 1989 to 2013 in the share of contract types for FTE teaching staff weighted for workload (0.4 weighting for T&R staff).

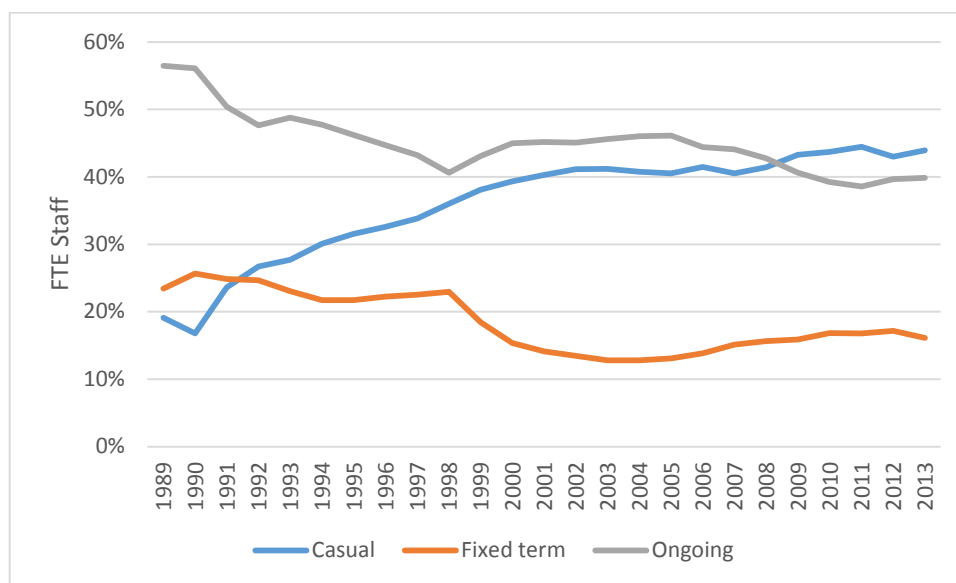


Figure 4. FTE teaching staff weighted for teaching workload (TO+0.4*T&R) by contract type (%), 1989-2013 (Source: Australian Government, 2015a)

The union position on contingent employment

The NTEU has for many years been focused on achieving greater security of employment for contingent academic and other staff, with its most significant achievement being the introduction of restrictions on the use of fixed-term employment referred to above. The NTEU has also been successful in negotiating caps on the use of casual staff in various enterprise agreements and the inclusion of conversion provisions for contingent staff in many agreements. The NTEU argues that contingent employment:

- is inimical to intellectual freedom;
- is bad for the individuals involved; and
- impacts adversely on the quality of education.

For many years, the NTEU strongly opposed the proposition that universities should be able to employ continuing staff on a teaching only basis, regarding this as an erosion of the academic right to research. However, since 2010, and as a means to provide greater job security for casual staff, the NTEU and universities have negotiated enterprise agreements which specifically allow for the creation of a limited number of fixed-term teaching positions in replacement of casual work, and to allow for other fixed-term teaching-focused positions for early career academics. Over the past 5-10 years, universities have recruited up to 1,000 scholarly teaching fellows with dedicated non-teaching workloads (NTEU, 2014). New enterprise agreement clauses have also created teaching specialist pathways to full professor for academics in T&R positions, and some “contingent continuing employment” for RO academics on rolling fixed-term contracts.

The university position on contingent employment

There is no one employer view on contingent appointments, and the attitude of individual universities towards contingent employment is likely to vary considerably on various issues relating to the use of casual and fixed-term academic staff. At the most senior levels, universities are concerned about managing financial risk and providing programs within a cost envelope, and casual employment allows flexibility. Most decisions on academic casual hires are made at department or school level, where Heads of School or Deans hold financial and hiring delegations. Here the benefits of flexibility are complemented by ease and speed of engagement and termination of employment. At the same time, the potential impact of casualisation is cause for concern, and almost all universities provide facilities and offer training in teaching to casuals, although the level and extent of this varies considerably.

Fixed-term employment is almost invariably used for academic staff funded by research grants, although larger research-based universities have recognised the negative impact of contingent employment on researchers, and have introduced a “contingent continuing” employment category that provides continuing employment but with easier termination arrangements in the event that the researcher misses out on being engaged under a subsequent grant. The severance payments for this form of employment are also lower than the standard academic redundancy payment entitlements.

Discussion

Our research has confirmed what we already knew; that there is an escalating trend in the number and percentage of academic staff on contingent appointments, and a declining trend in the percentage of academic staff with continuing appointments who undertake both teaching and research. The Australian higher education system is heavily reliant on the use of contingent academic employment to deliver outcomes and manage risk. The question remains whether a continuation of the trend to use an increasing proportion of contingent employment is sustainable, and whether it benefits higher education in Australia.

For many Australians, excessive use of casual employment is seen as exploitation. This is particularly the case for young people engaged predominantly as casuals in service sector industries, leading to uncertainty of employment and lesser benefits and career prospects. However, casual jobs in the service sector and university sector share little in common besides employment status (see: Nadolny & Ryan, 2013). Paradoxically within universities, the NTEU’s success in negotiating enterprise agreement provisions which impose restrictions on the use of fixed-term employment has led to greater reliance by universities on casual employment. Attempts by the NTEU over many years to place caps on the use of casual employment have been relatively unsuccessful, as have been provisions in enterprise agreement to convert casuals to more secure forms of employment. It is against this backdrop that the NTEU has more recently sought the establishment of large numbers of low-level teaching-only positions, with eligibility restricted to existing casual academics and some existing fixed-term academic staff.

From a university management perspective, the complex “tenure-type” protections that apply to academic staff mean that a high-risk cost applies to any appointment made on a continuing basis, exacerbated by generous academic redundancy provisions. This situation acts as a deterrent to the use of continuing employment in cases where it is possible to make a fixed-term appointment instead. While the use of fixed-term employment for staff on research grants is prudent risk management, given limited funding and low success rates for grant applications, it is also recognised that contingent employment has a major downside in terms of attraction and retention of quality staff, and that insecurity of employment can detract from productivity. It is therefore not surprising that universities have engaged with the NTEU in looking at various measures to provide increased security of employment for casual academic staff.

The operation and supervision of the casual labour force (including hiring, firing, management and quality assurance) involves costs and a level of activity largely hidden from senior university managers, given the devolution of budgetary and hiring responsibilities to academic units. It is important to gain a better understanding of the direct and indirect costs of casual employment, as well as the impact of casualization on the quality and productivity of the Australian academic workforce.

As one Vice-Chancellor wrote in the CASA (Casual, Adjunct, Sessional staff and Allies in Australian Higher Education) blog on the use of casual employment by universities:

I think we do have a problem and it is time to take a pause. Firstly, we do need to question whether the system overall is delivering outcomes that work for the participants. We need to stop and remember that casual staff are human beings. We need systems that allow them to plan their lives and get some certainty about career direction. We need to make sure that schools don't only discover their requirements at the last minute and we need to ensure we communicate effectively and make casual staff feel a genuine part of the academic community...⁶

Certainly, the solutions are neither clear nor easy. Although it is too early to tell if appointments of existing casuals to fixed-term early career academic or TO positions will actually occur, based on past performance, it is likely that such measures will have limited impact. Even if solutions which increase security of employment were evident, universities still need to manage ever-increasing countervailing forces, in particular a projected reduction in research and other government funding, increased competition for student numbers, and the volatility of the international education revenue stream.

Part of the solution lies in better understanding the Australian casual academic workforce and providing greater support for individual career development. It will be important to find out more about:

- The impact of the casual labour force on the quality of educational outcomes in Australia.
- The extent to which the casual workforce comprises aspirant or treadmill academics, research higher degree students and professionals contributing to the development of the profession.
- The extent to which the attitude of and the nature of work undertaken by casual staff teaching in professional disciplines differs from that of other casuals.
- The extent to which independent contractor arrangements are being utilised by universities, with the implication of lower control over quality and outcomes than occurs with direct employee engagement.

In looking to the future, we question whether an incremental approach based on responding to union initiatives in industrial negotiations around casual employment conditions will develop an optimal future academic workforce able to sustain Australia's universities, and wonder whether a fundamental rethink to employment structures is needed. Certainly, there is a need to identify ways in which greater security of employment can be afforded to persons currently engaged as casuals, to examine the job roles undertaken by casuals to explore ways to better integrate their employment with their academic colleagues, and to develop processes which ensure improved quality assurance. It is important that casual staff are fairly treated.

For fixed-term academics, we need to examine employment practices to ensure that fixed-term employment is not a default mode when such employment is permitted by enterprise agreements. The practice of employing staff on "rolling" end-on-end fixed-term contracts over many years without competitive processes raises many questions about quality, let alone the impact on morale and other impacts that insecurity of employment can bring. In looking to change current practices, it will be important to examine patterns of contract renewal at institutional level to determine the number and types and discipline areas of

⁶ <http://actualcasuals.wordpress.com/2014/04/08/the-arrogance-of-wizards-or-a-view-from-dumbledores-office/>

academic staff engaged on rolling contracts with a view to creating longer term engagements or appointments as may be permitted by enterprise agreements similar to the “contingent continuing” employment category.

None of the proposed actions of themselves will result in a lock step change, and new issues and approaches may emerge. Any radical departure from the current employment structures will be difficult, and indeed industrial negotiations surrounding any proposed changes may be fraught. But to continue the earlier quote from the Vice-Chancellor in relation to casual employment on the need to tread carefully:

“... The solutions will not be simple and there will be trade-offs. But, as with most things in life, the fact that the path is uncertain should not stop us from walking it.”

References

- Australian Government. (2014a). Staff: Selected Higher Education Statistics (Department of Education and Training, Trans.). Canberra: Australian Government.
- Australian Government. (2014b). Students: Selected Higher Education Statistics (Department of Education and Training, Trans.). Canberra: Australian Government.
- Bexley, E., Arkoudis, S., & James, R. (2013). The motivations, values and future plans of Australian academics. *Higher Education, 65*(3), 385-400. doi: DOI: 10.1007/s10734-012-9550-3
- Broadbent, K., Troup, C., & Strachan, G. (2013). Research staff in Australian universities: is there a career path? *Labour & Industry: a journal of the social and economic relations of work, 23*(3), 276-295.
- Brown, N. R., Kelder, J.-A., Freeman, B., & Carr, A. R. (2013). A Message From The Chalk Face—What Casual Teaching Staff Tell Us They Want To Know, Access and Experience. *Journal of University Teaching & Learning Practice, 10*(3), 1-16.
- Brown, T., Goodman, J., & Yasukawa, K. (2010). Academic casualization in Australia: Class divisions in the university. *Journal of Industrial Relations, 52*(2), 169-182.
- Byers, P., & Tani, M. (2014). Engaging or Training Sessional Staff: Evidence from an Australian Case of Enhanced Engagement and Motivation in Teaching Delivery. *Australian Universities' Review, 56*(1), 13-21.
- Coates, H., & Goedegebuure, L. (2010). *The real academic revolution: why we need to reconceptualise Australia's future academic workforce, and eight possible strategies for how to go about this*. Melbourne: LH Martin Institute.
- Department of Education, Training and Youth Affairs (2001). Higher education students time series tables, 2000. Canberra: Commonwealth of Australia.
- Dover, S. (2010). *Engaging Early Career Sessional Academic Staff: Master of Tertiary Education Management Project*. The University of Melbourne. Melbourne.
- Edwards, D., Bexley, E., & Richardson, S. (2011). *Regenerating the academic workforce: the careers, intentions and motivations of higher degree research students in Australia: findings of the National Research Student Survey (NRSS)*. Melbourne: Centre for the Study of Higher Education & ACER.

- Enders, J., & de Weert, E. (2009). *The changing face of academic life: Analytical and comparative perspectives*. Basingstoke: Palgrave Macmillan.
- GCA (2014). *Graduate course experience questionnaire report*, Graduate Careers Australia.
- Gottschalk, L., & McEachern, S. (2010). The Frustrated Career: Casual Employment in Higher Education. *Australian Universities' Review*, 52(1), 37-50.
- Hamilton, J., Fox, M., & McEwan, M. (2013). Sessional Academic Success: A Distributed Framework for Academic Support and Development. *Journal of University Teaching & Learning Practice*, 10(3), 1-16.
- Harvey, M. (2013). Setting the standards for sessional staff: quality learning and teaching. *Journal of University Teaching & Learning Practice*, 10(3), 1-16.
- Hattie, J., & Marsh, H. W. (1996). The Relationship between Research and Teaching: A Meta-Analysis. *Review of Educational Research*, 66(4), 507-542.
- Higgins, K., & Harreveld, R. (2013). Professional development and the university casual academic: integration and support strategies for distance education. *Distance Education*, 34(2), 189-200.
- Jenkins, A. (2004). *A guide to the research evidence on teaching-research relations*: Higher Education Academy York.
- Junor, A. (2004). Casual university work: choice, risk, inequity and the case for regulation. *Economic and Labour Relations Review*, 14(2), 276-304.
- Kimber, M. (2003). The Tenured 'Core' and the Tenuous 'Periphery': the casualisation of academic work in Australian universities. *Journal of Higher Education Policy and Management*, 25(1), 41-50.
- Marsh, H. W., & Hattie, J. (2002). The relation between research productivity and teaching effectiveness: Complementary, antagonistic, or independent constructs? *Journal of Higher Education*, 73(5), 603-641.
- May, R. (2011). Casualisation here to stay? The modern university and its divided workforce. In R. Markey (Ed.), *Dialogue Downunder, Refereed Proceedings of the 25th Conference of AIRAANZ*. Auckland: AIRAANZ.
- May, R., Gale, L., & Campbell, I. (2008). *Casually appointed, permanently exploited: How is NTEU responding to the casualisation of academia in the current climate*. Paper presented at the Workers, corporations and community, proceedings of the 22nd conference of AIRAANZ. AIRAANZ: Melbourne.
- May, R., Strachan, G., Broadbent, K., & Peetz, D. (2011, 4 – 7 July 2011.). *The Casual Approach to University Teaching; Time for a Re-Think?* Paper presented at the Research and Development in Higher Education: Reshaping Higher Education, Gold Coast.
- Nadolny, A., & Ryan, S. (2013). McUniversities revisited: a comparison of university and McDonald's casual employee experiences in Australia. *Studies in Higher Education*, 40(1), 142-157. doi: 10.1080/03075079.2013.818642
- National Tertiary Education Union. (2014). Scholarly Teaching Fellows. *Connect*, 7 no. 2
- National Tertiary Education Union. (2015). Overview - National Tertiary Education Union. Retrieved 3/12/15, from http://www.nteu.org.au/policy/workforce_issues/insecure_work/overview

- National Tertiary Education Union. (2016). The rising tide of insecure employment at Australian universities. Retrieved 3/3/16, from <http://www.nteu.org.au/article/The-rising-tide-of-insecure-employment-at-Australian-universities-18365>
- Norton, A., Sonnemann, J., & Cherastidtham, I. (2013). Taking university teaching seriously. Carlton: Grattan Institute.
- Percy, A., & Beaumont, R. (2008). The casualisation of teaching and the subject at risk. *Studies in Continuing Education*, 30(2), 145-157.
- Percy, A., Scoufis, M., Parry, S., Goody, A., Hicks, M., Macdonald, I., . . . Wills, S. (2008). The RED Resource, Recognition-Enhancement-Development: The contribution of sessional teachers to higher education Sydney Australian Learning and Teaching Council.
- Qamar uz Zaman, M. (2004). *Review of the academic evidence on the relationship between teaching and research in Higher Education*: Department for Education and Skills London.
- Rothengatter, M. R., & Hil, R. (2013). A precarious presence: some realities and challenges of academic casualisation in Australian universities. *Australian Universities Review*, 55(2), 51-59.
- SES (2016). 2015 Student Experience Survey National Report, Retrieved 9/3/16, from <https://www.qilt.edu.au/docs/default-source/default-document-library/2015-student-experience-survey-national-report.pdf?sfvrsn=0>
- Smith, E., & Coombe, K. (2006). Quality and qualms in the marking of university assignments by sessional staff: An exploratory study. *Higher Education*, 51(1), 45-69.
- Strachan, G., Troup, C., Peetz, D., Whitehouse, G., Broadbent, K., & Bailey, J. (2012). Work and Careers in Australian Universities: Report on Employee Survey: Centre for Work, Organisation and Wellbeing, Griffith University.
- US House of Representatives. (2014). THE JUST-IN-TIME PROFESSOR: A Staff Report Summarizing eForum Responses on the Working Conditions of Contingent Faculty in Higher Education. Wahington DC: House Committee on Education and the Workforce Democratic Staff.

WITNESS STATEMENT OF KENNETH RICHARDSON

I, Kenneth Richardson, Executive Director, People, Planning and Strategy, Bond University, 14 University Drive, Robina, in the state of Queensland, state as follows:

Background

1. I have been employed by Bond University Limited in the role of Executive Director, People Planning and Strategy since November 2012. I previously worked at the University of Queensland as Director, Planning. I have 18 years' experience working in the Australian Higher Education Industry including in executive roles in both public and private universities.
2. In my role I have the following functions and accountabilities:
 - (a) Human Resources, Information and Planning, and Quality.
 - (b) Development and implementation of the University's strategic planning and key performance reporting frameworks.
 - (c) Business analysis to support the University's pursuit of strategic objectives.
 - (d) Policy advice and liaison with Government.
3. Bond University is a private, not for profit, university established in 1988. It is granted university status pursuant to the *Bond University Act 1987* (Qld). Unlike at public universities, domestic student places at Bond University are not subsidised by the Government. Full tuition fees are charged each semester on a subject by subject basis.

Bond University: incomparable to public universities

4. I understand that part of the rationale for the Bond University Academic Staff Association (**BUASA**) application to extend the clauses of the Higher Education Industry Academic Staff Award 2010 (**the Award**) which would restrict and qualify Bond University's capacity to offer employment based on fixed term contracts is based in part on a view that Bond University is in the same industry as the public universities (all or most of whom are already bound by the provisions) and it is therefore appropriate that Bond University should be also bound. I characterise this as an argument based on establishing a 'level playing field'.
5. To the contrary, the circumstances do not exist for any kind of 'level playing field' between Bond University and the public university sector.

Signed: 

6. Bond University has funding, financial and operational structures and imperatives which are vastly different from those of the public universities.
7. I have presented data below to illustrate why, in my view, there are very significant differences between Bond University and the public university sector from a scale, funding model, financial and operational perspective.

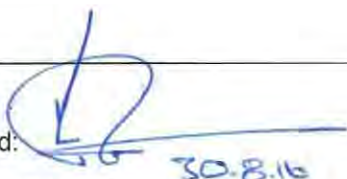
Scale of operation

8. Chart 1 (Total Revenues from Continuing Operations 2014 (\$M)) reveals that Bond University recorded the smallest operating revenue of all Australian universities in 2014, which are the most recent publicly available data from the Australian Government Department of Education and Training (**Department of Education and Training**) website (a copy of Chart 1 is attached and marked **KR-1**). The average revenue from continuing operations for the rest of the sector was 3.6 times Bond University's revenue. The largest university (University of Melbourne) had revenue from continuing operations which was 14 times Bond University's revenue.
9. The other private university for which statistics are maintained in this table (the University of Notre Dame Australia) has revenue which is above Bond University's, although not by a large margin. Notre Dame is also not bound by the Higher Education Contract of Employment Award 1998 provisions (**HECE provisions**). However Notre Dame, unlike Bond University, does receive government supported student places and is in that sense a hybrid between public and private models.

Public funding for domestic tuition fees

10. Bond University is unique in the Australian sector in that it is the only not for profit university which receives no government contribution toward the cost of domestic student tuition. Notre Dame is a private university, but does receive government contributions.
11. Chart 2 deals specifically with the extent of public funding (a copy of Chart 2 is attached and marked **KR-2**). Chart 2 is based on the most recent publicly available data from the Department of Education and Training and demonstrates the following:
 - (a) Bond received just \$3.3M from government sources in 2014, which was much less than any other university.
 - (b) The second smallest recipient of government funds was the University of Notre Dame, which received over 23 times as much as Bond University. The average government funding for the rest of the sector was 95 times that of Bond University's.
 - (c) Bond University's tuition (both for domestic students and for national students) is exclusively provided from student fees funded, one way or another, by the students themselves.

Signed:



30.8.16

No ongoing financial support

12. As an associated but critical issue, Bond University does not have the medium-long term revenue certainty that the publicly funded universities have, which necessarily affects its approach to investment and the management of its financial risk. Most government assistance received by universities other than Bond University is delivered through Commonwealth Grant Scheme Funding Agreements (**CGSFAs**). CGSFA income is guaranteed by legislation and certainty for each institution is provided through multi-year agreements with the Commonwealth. The current funding agreements are publicly available on the Department of Education and Training website.

Proportion of revenue provided by government assistance

13. Another important measure in understanding the financial certainty and security that this core government funding provides for those institutions who receive it (excluding Bond University), is the proportion of an institution's total revenue from continuing operations provided from government sources. Again from the Department of Education and Training data I have compiled Chart 3 (a copy of Chart 3 is attached and marked **KR-3**). Chart 3 shows that:
- (a) Bond University received only 2% of its operational revenue from government in 2014, predominantly through competitive research grant schemes.
 - (b) Universities other than Bond University received between 28% and 61% of their operating revenue from government assistance, predominantly through the multi-year CGSFAs.

Proportion of operating costs attributable to staff costs

14. Another difference which has a significant impact on Bond University's approach to the management of financial risk is the proportion of Bond University's total costs which is represented by its staff costs.
15. As a consequence of its educational model, the cost of delivery for its programs are generally significantly greater than similar programs in the public universities.
16. Bond University differentiates itself on the basis of the quality and efficiency of its programs. Its focus is on delivering an intensive, high quality, transformational learning experience to its students. Bond University has succeeded in this regard, and according to data published on the government's quality indicators for teaching and learning (**QILT**) website (www.qilt.edu.au) Bond University is ranked first in Australia for the Overall Quality of the Student Experience.
17. To achieve this point of differentiation, Bond University invests heavily in small class sizes, high staff-to-student ratios and high levels of student services. As a consequence, a high proportion of Bond University's operational revenue is invested in its staff. Bond University employs more staff per student than most or all other universities. This can be seen from Chart 4 which shows the ratio of Employee Benefits and On-costs to Revenue from Continuing Operations for all universities in 2014 (a copy of Chart 4 is attached and marked **KR-4**). As demonstrated by this chart, Bond University directed 63% of

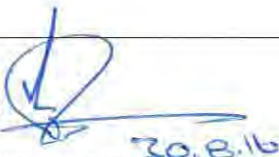


its operational revenue towards employee benefits and on-costs. Chart 4 is based on data from the Department of Education and Training.

18. This is a large percentage by comparison to most Australian universities. The two universities which spent a higher proportion of revenue on staff than Bond University in 2014 have arguably delivered weak net operating results. Victoria University recorded a loss of \$16M, and Flinders University delivered a surplus of \$16M, which was less than half of its average performance over the preceding 6 years.
19. Therefore while the high proportion at Bond University is a consequence of a deliberate strategy by Bond University linked to its 'value proposition' for students, a similarly high proportion may well be regarded as a sign of stress in a public university. Whether a sign of success or stress, a high proportion does mean that it is critical to carefully manage the financial risk associated with our staffing costs, because staff cost is by far the largest component of our operating cost structure.

Market volatility

20. External influences (whether financial, economic, social or by public policy) can have a significant impact on Bond University's student enrolment numbers, often within rapid timeframes.
21. One example related to the economic factors was the Global Financial Crisis (**GFC**) which, in 2011/2012 caused a significant reduction in numbers of international students coming to Australia.
22. An example related to public policy was the Demand Driven System (**DDS**), first introduced in 2010 and fully implemented in 2012. Under the DDS, all caps were removed from the number of government subsidised places for domestic undergraduate students that could be offered by public universities. The public sector grew aggressively, which led to oversupply and a more competitive market place.
23. I joined Bond University from the University of Queensland in 2012, and therefore saw the impact of this policy initiative to some extent from both perspectives. From Bond University's perspective, the DDS began to have a significant impact on growth in 2011 when aggressive competition for student placements led to a decline in our commencing student enrolments.
24. With the lingering effect of the GFC also continuing to have effect in that year, there was a drop in revenue in 2012 and 2013 (and a net loss in 2012) which forced Bond University into a program of organisational change.
25. Through prudent management, Bond University has regained a positive bottom line in 2013 (albeit narrowly) despite a further decline in revenues. The following table plots Bond University's operational revenues against our net operating result (surplus/deficit):

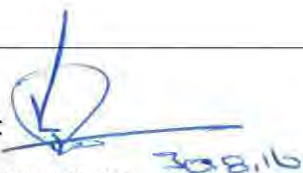


20.8.16

TABLE 1: Operational Revenues and Net Result

	2010	2011	2012	2013	2014	2015
Total Revenues from Continuing Operations (\$M)	170	178	169	156	155	160
Net Operating Result for the Year (\$M)	20	15	-4	1	5	7
Net Operating Result as a % of Revenues from Continuing Operations	12%	8%	-2%	1%	3%	4%


26. From this it can be seen that our revenues remain below our 2011 total revenues from continuing operations. However, through cost reduction and prudent financial management in the interim, we have managed to arrest the decline in net operating result. In my view, the surpluses are still thin and we remain vulnerable to any external disruption which impacts on our capacity to attract students on viable terms.
27. I am certain that Bond University will face future influences of this kind and will have to respond accordingly. In 2014 the Commonwealth Government proposed a significant suite of policy reforms (which have not yet passed the Senate but remain the current Government's formal policy for the sector) which would deregulate prices in the public universities and open the sector up to a much greater level of competition. If that occurs the public universities will respond to take advantage of the reforms as they see opportunity, or to defend against them as they believe they must. This will see different competitive behaviour that will all have an effect on our business, and we will have to respond.
28. My expectation is that the stronger universities with better 'brands' would lift their fees and go into market with an offering based on quality and exclusivity. Other universities would be forced to respond by reducing costs and increasing student numbers. Either way, there would be a different competitive position and Bond University would need to adapt and respond.
29. Alternatively, other policy initiatives may emerge which have different implications. In my view it is critical for Bond University to prepare itself for those possibilities, and then to respond to the challenges when they do come, in a flexible, agile way and in a way which does not financially damage the university.
30. A very significant part of our risk management in this regard involves the astute use of a 'mix' of casual, fixed term and ongoing appointments in the areas and in the circumstances which best facilitates the overall management of our financial risk, balanced against our need to deliver on our educational mission.
31. For this reason, although we certainly have no inclination against the use of ongoing employment (and in fact, a proportion of our academic staff who have ongoing appointments is not low by sector standards) it is imperative that Bond University make astute decisions about ongoing appointments, and only do so where it is academically, operationally and financially appropriate.



308.16

Bond University's current balance between different models of employment

32. I understand that witnesses who will give evidence for BUASA in relation to this application have suggested that Bond University has unacceptable practices in relation to its use of fixed term contracts. I strongly disagree with this proposition.
33. Firstly, even if it was inherently 'unacceptable' to have a high proportion of fixed term contracts, Bond University does not have a high proportion of fixed term contracts (or a low proportion of ongoing employment) when compared to the public sector. Benchmarking data prepared by the Australian Higher Education Industrial Association states that Bond University's profile in respect of the proportion of academic staff on fixed term contracts is below average, and in respect of ongoing contracts is above average, in comparison with Australian Universities and the Group of Eight.
34. Table 1.9 as annexed to Ken McAlpine's statement dated 9 August 2016, itself shows that Bond University does not have a particularly high proportion of 'limited term' contracts. Those data show our proportion to be 41% which places Bond University at the 3rd quartile. Ten of the 40 listed universities have higher proportions of limited term staff than Bond.
35. Another way to view these data is to look at the total percentage of academic staff (Teaching Only, Research Only, and Teaching and Research staff) who have ongoing appointments (or 'tenurial terms').
36. Chart 5 shows data which Bond University has sourced through a data sharing agreement (a copy of Chart 5 is attached and marked **KR-5**). Data at this level of disaggregation are not published by the Government but are shared by universities for benchmarking purposes, with 2013 being the most recent data available. For that reason I have not identified the particular universities in the table by name, but rather have identified them by university type as follows:
- (a) GO8 – Group of Eight (www.go8.edu.au)
 - (b) RUN – Regional Universities Network (www.run.edu.au)
 - (c) IRU - Innovative Research Universities (www.iru.edu.au)
 - (d) ATN – Australian Technology Network (www.atn.edu.au)
 - (e) Bond – Bond University.
37. These data demonstrate that 46% of Bond academic staff have tenurial (or ongoing) terms. This places us at the median position (ranked 20th) and equal to the average (45%). Bond University's proportion is in fact higher than all other South East Queensland based universities.
38. The key difference between Bond University and the public universities is that because Bond University is not and has never been, bound to the HECE restrictions on our use of fixed term contracts, we use them in any circumstances where it is operationally appropriate or financially astute. I believe it would be exceedingly poor management practice if we did anything else.



308.16

39. In context, all or most of the public universities are bound by the HECE restrictions, initially as a result of an arbitrated decision but now as agreed terms in their enterprise agreements. Because they have voluntarily accepted the restrictions in that way, I must assume that those universities have adapted to the restrictions, and do not believe them to be unworkable for them.
40. However the restrictions which would apply if the award variation is made (which to my understanding would mean that Bond University would uniquely be bound to the HECE restrictions directly by the Modern Award not having ever agreed to be bound by them) would be severely limiting for Bond University.
41. For all the reasons I have described above, Bond University uses fixed term contracts as a method of engagement in circumstances other than those permitted by the HECE restrictions. The most common example is the staffing of programs which are continuing, not project based, but where as a consequence of the qualities or experience of the staff or our overall risk management practices, Bond University has not made a decision to make the appointment on an ongoing basis. I understand that we have many members of academic staff engaged on fixed term contracts in circumstances where those contracts would not be permissible if the HECE restrictions applied to us.
42. The HECE restrictions would therefore be entirely inconsistent with our business model as I have explained it in this statement.

How Bond University would respond

43. Ongoing academic appointments are made by Bond University with a view to not only the financial risk, but on an assessment of the broad contribution that the individual can bring to the teaching, research, engagement and service objectives of the institution. Staff appointed to ongoing positions will generally have higher academic qualifications, stronger track-records in research and greater experience in academia than those appointed on fixed term contracts. I am confident that Bond University would **not** respond by widening the circumstances under which ongoing appointments would be made. That would be fundamentally inconsistent with our strategies for managing financial risk which in my view are essential to the long-term viability of the university.
44. Presuming that the introduction of the proposed restrictions would not immediately affect existing fixed term contracts, a decision would need to be made for each current staff member as to whether to offer further employment at the end of their existing contract and, if so, on what terms. In each case, we would firstly determine whether the Award conditions would allow us to offer a further fixed term contract. In circumstances where a fixed term contract was not available to us and we were not prepared to commit to ongoing employment, any further engagement would be on a casual basis.

Signed by KENNETH RICHARDSON

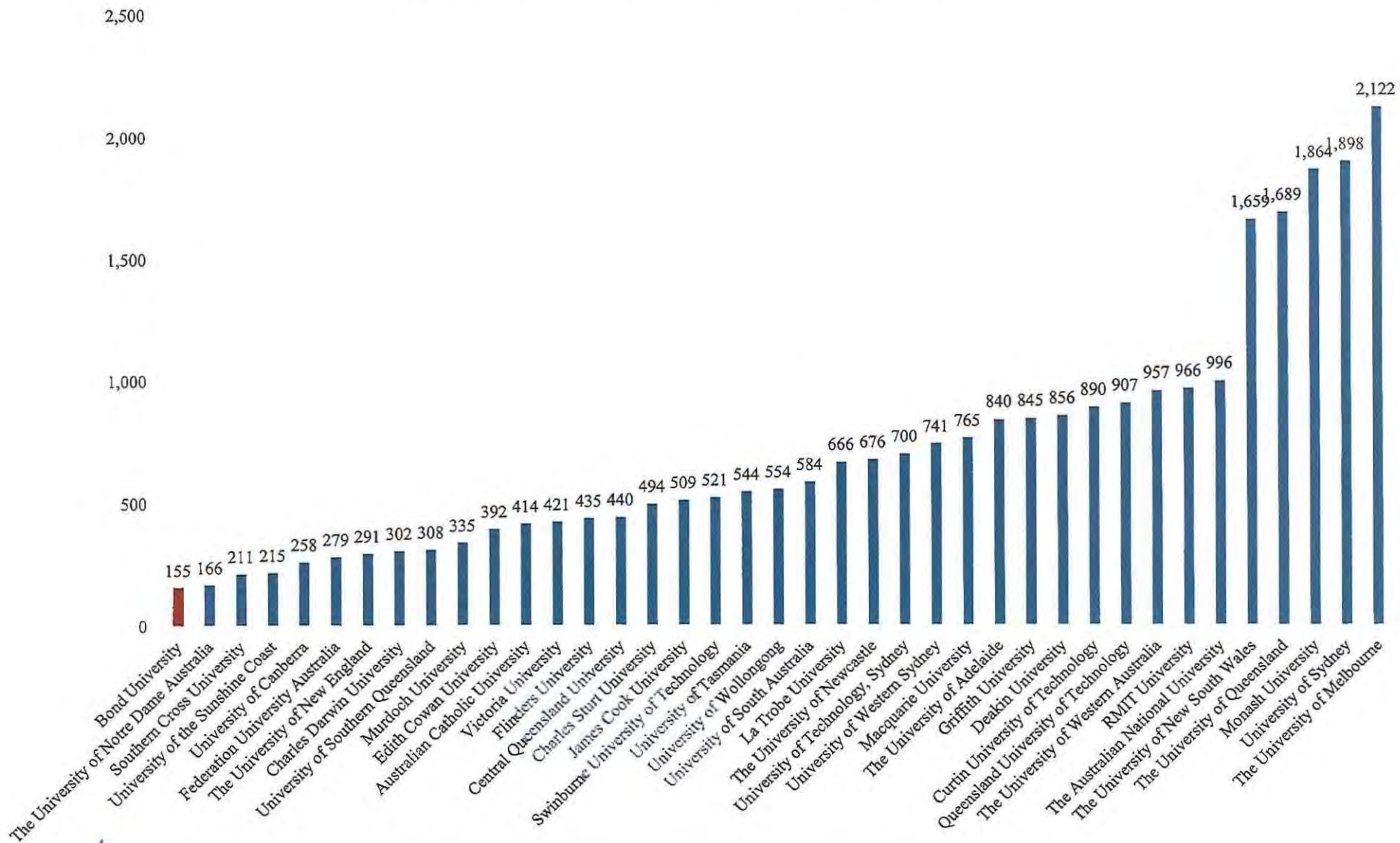
30 August 2016

Signed:



ME_132361573_4 (W2007)

CHART 1: Total Revenues from Continuing Operations 2014 (\$M)

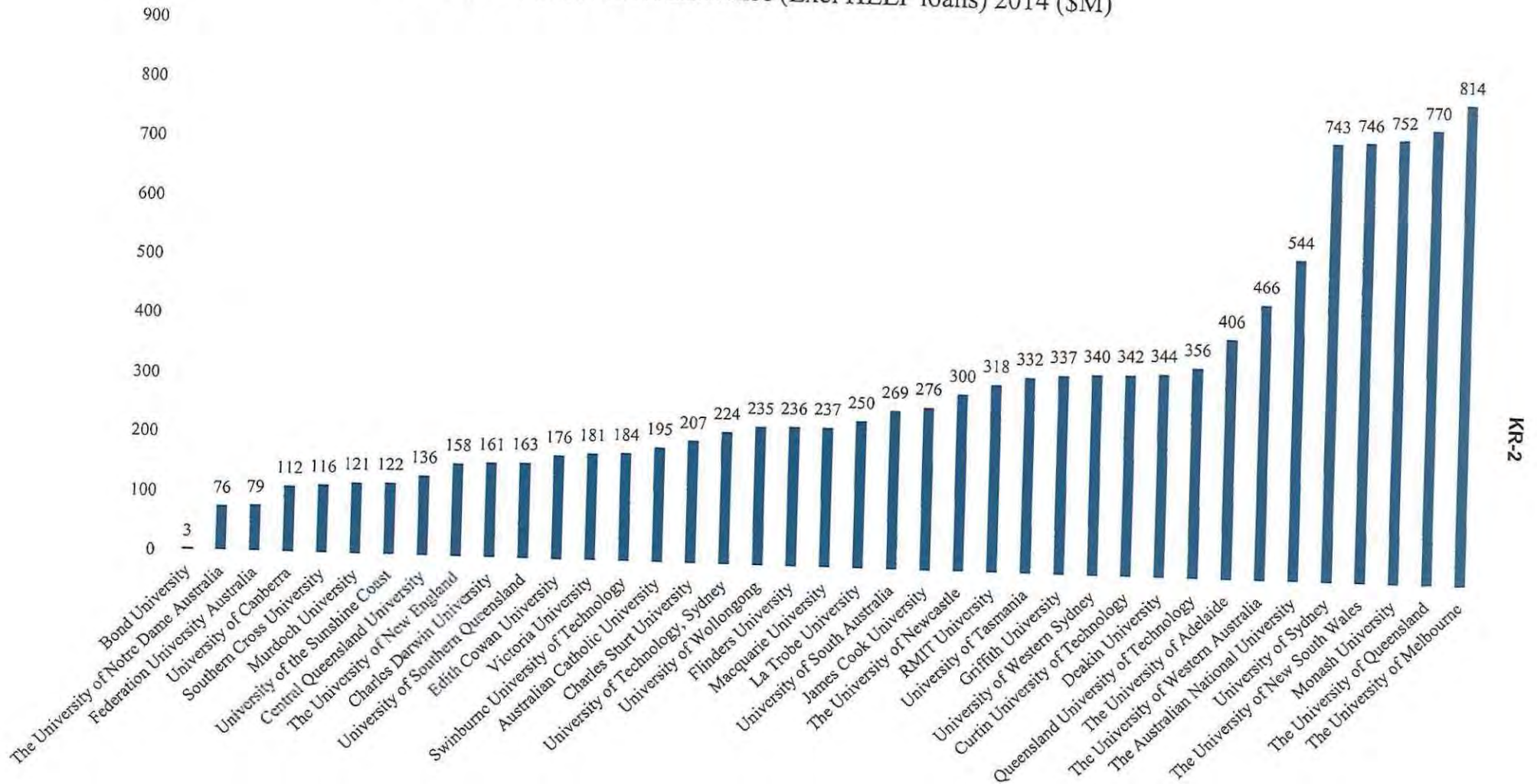


KR-1

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CHART 2: Total Govt Assistance (Excl HELP loans) 2014 (\$M)



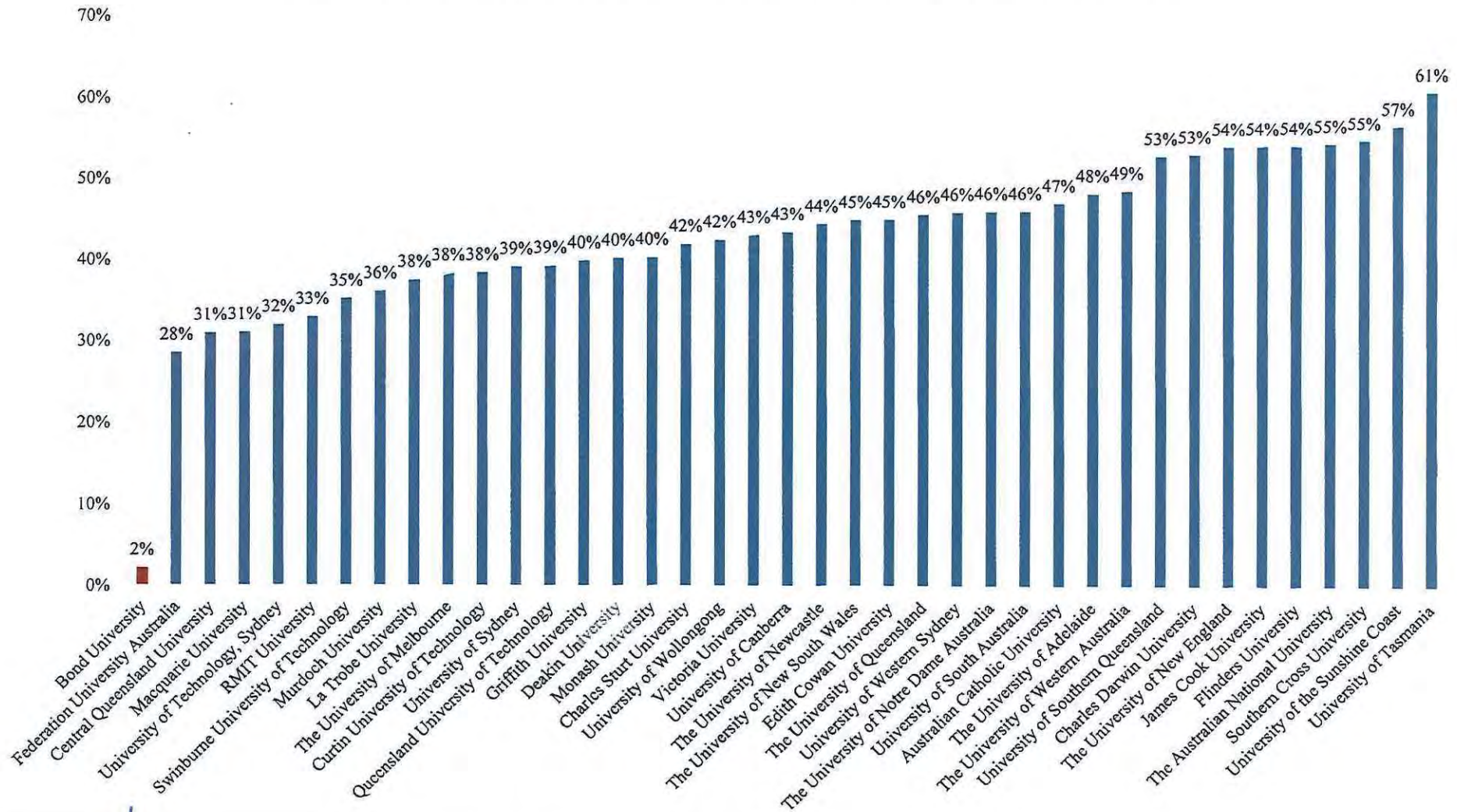
KR-2

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ME_132361573_3 (W2007)

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CHART 3: % of Operating Revenue from Govt Assistance (excl. HELP) 2014

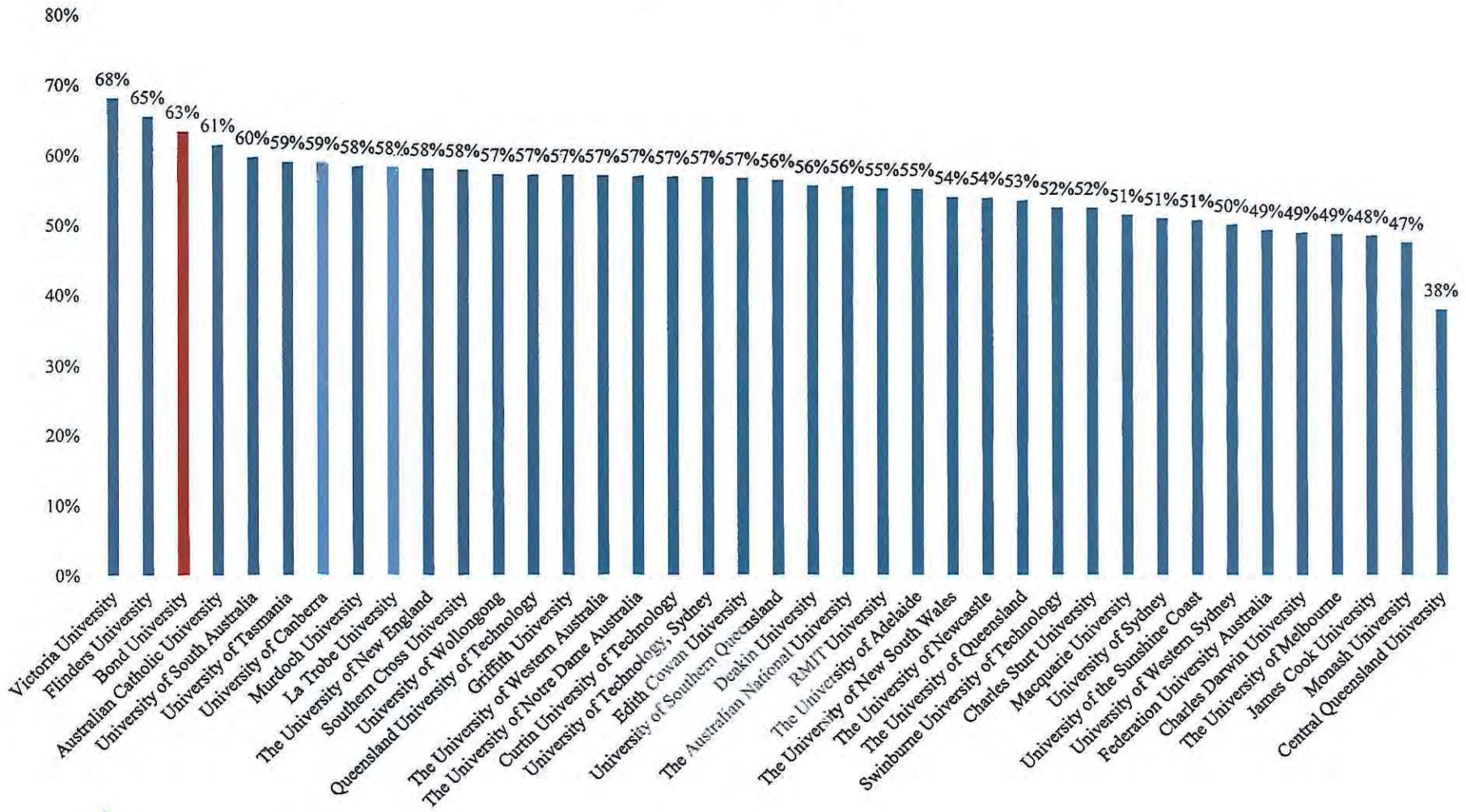


KR-3

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CHART 4: Employee Benefits and On-Costs as a proportion of Total Revenues from Continuing Operations (2014)

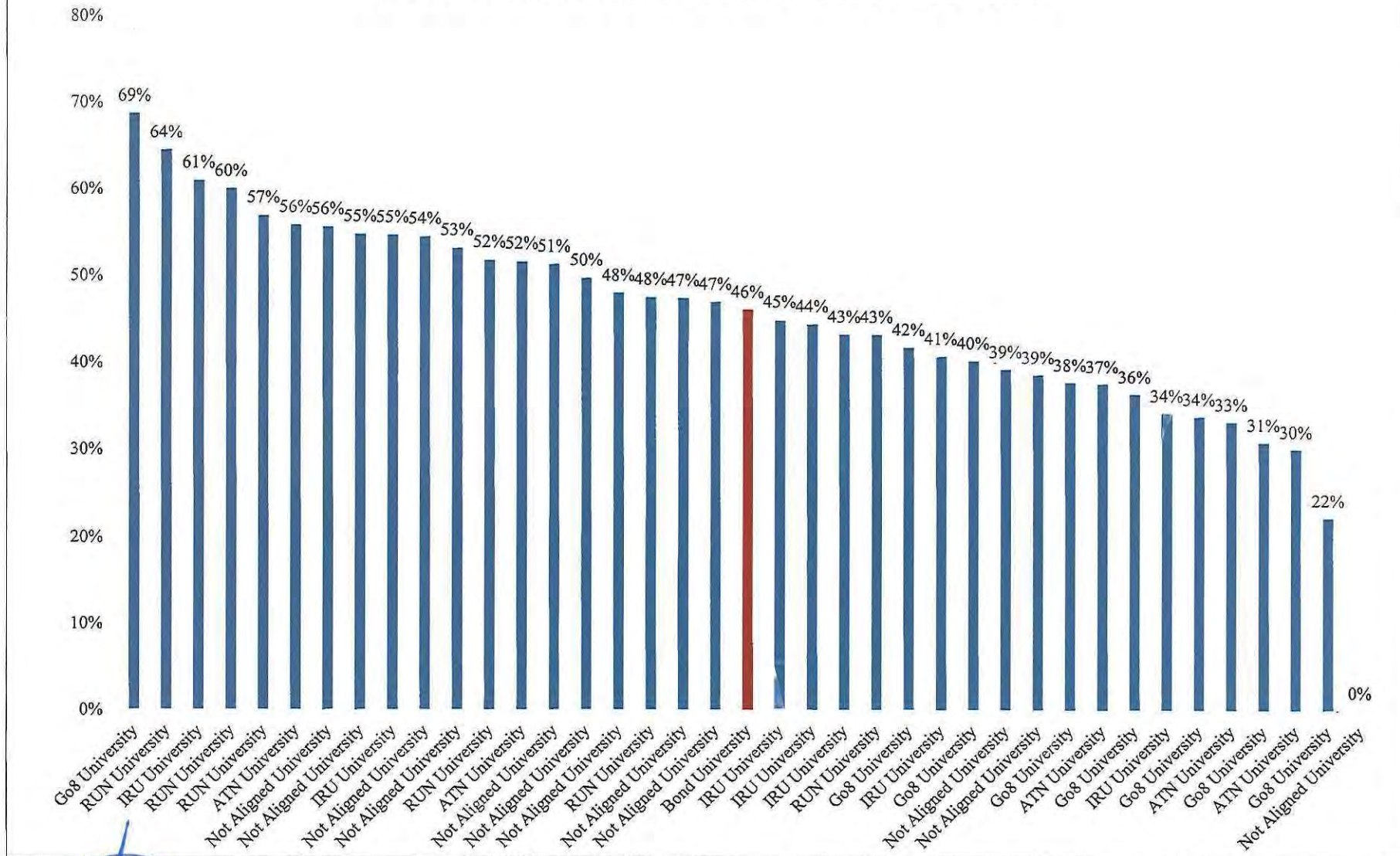


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CHART 5: Limited Term Staff FTE as % of Total FTE 2015



KR-5

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IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – Four Yearly Review of Modern Awards

AM2014/229 Higher Education Industry-Academic Staff-Award 2010 [MA000006]

WITNESS STATEMENT OF JOHN LE LIEVRE

I, John Le Lievre, Vice President Administration, Bond University, 14 University Drive, Robina, in the state of Queensland, state as follows:

Background

1. I have been employed by Bond University Limited in the role of Vice President Administration since April 2012. Previously I was employed as Chief Financial Officer and Director of Major Projects.
2. I have been employed by Bond University in executive roles for almost 20 years, however I have been associated with Bond University since inception in 1988 initially as a representative of EIE International and from 1996 through to 2003 as a member of the Bond University Council and, from 2003 to the present, attend Council meetings in an executive capacity.
3. In my role as Vice President – Administration, I am responsible for all University administration, grouped under the following divisions:
 - (a) People, Planning and Strategy;
 - (b) Marketing and Recruitment;
 - (c) Development and Alumni;
 - (d) Financial Services;
 - (e) Information and Technology Services;
 - (f) Facilities Management.
4. In my role as the leader of the University's Financial and Commercial Services function, I have the following accountabilities:
 - (a) I provide leadership for the commercial and financial functioning of the University, including strategic and operational planning, financial and management accounting (including budgeting), capital and asset management, credit management, procurement, payroll and treasury management.
 - (b) I oversee the development of policy, systems and processes relating to the financial operations of the University, ensuring compliance with the relevant financial legislation and the University policy.

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- (c) I provide oversight and support to management staff responsible for financial management and operations, including a strategic focus in terms of fit within the overall University strategic plan and objectives.
- (d) I provide advice including the preparation of feasibility studies, business plans and business cases in respect to new academic and business initiatives, building and/or capital projects and investment initiatives.
- (e) Facilitation of communication between operational areas eg finance, credit management, payroll, faculties and offices; both in planning for specific events, circumstances, and in resolving operational problems.

Bond University's Funding Model

5. Bond University is a private, not for profit university. This has a number of important implications.
6. Bond University is a 'Table B' provider for the purposes of the *Higher Education Support Act 2003* (Cth). Bond University is eligible for very little Commonwealth Government funding and for no funding to support the academic tuition of students.
7. Bond University students receive no financial support through Commonwealth Supported Places or the HECS-HELP scheme (although our students are eligible to participate in the FEE-HELP scheme as I explain below).
8. Bond University has no guarantee of financial support from the Commonwealth Government. The public universities ('Table A' universities) enter into 3 year funding agreements with the Commonwealth Government which provide certainty of funding for the period of the agreement. Although these agreements are generally for a three year term, it is only in extraordinary circumstances that they would not be renewed. The Commonwealth Government has not allowed an Australian public university to fail since it assumed responsibility for their funding in 1974 (or, indeed, prior to that) and it is most unlikely that any Table A public university would be left to fail in the future.
9. Conversely, Bond University's capacity to survive depends entirely on its ability to remain financially viable through prudent management and by responding quickly to opportunities and challenges presented by the market.
10. As a new university (Bond University commenced operation in 1988), Bond University also has less capacity to raise money through philanthropic donations than older universities that have, over a longer period, graduated larger, multi-generational cohorts of alumni who are generally more established within their communities.
11. Bond University's funding therefore comes from the following sources:
 - (a) as to the vast majority – from student fees paid by domestic and international students;
 - (b) research grants, expenditure of which are tied to the purposes of the grants;

- (c) donations (although these are not a significant proportion of our funding);
 - (d) limited access to ad-hoc Commonwealth Government funding in the categories where we are eligible for funding, for example grants to support capital development projects (although these are rarely granted to Bond University);
 - (e) commercial services compromising student accommodation, food and beverage and external functions.
12. Like any private organisation, Bond University has the capacity to borrow money from external financiers, and it does so when appropriate and available. However, because Bond University is a not for profit organisation and has assets which are not readily saleable, Bond University has limited capacity to raise significant finance. When we do raise finance, it is invariably subject to stringent covenants in relation to our cash flow, debt levels and earnings required to service debt.
13. As a private, not for profit organisation, without significant external support, Bond University must necessarily manage its business conservatively and prudently. If Bond University was unable to produce consistent cash positive results, with a sufficient surplus to service debt obligations and fund its capital and maintenance requirements, it would cease to exist.
14. Bond University has therefore always been very careful to ensure the following:
- (a) It commits to recurring expenditure in any area (including in particular labour costs, which are in excess of 67% of our fixed operating costs and by far the biggest component of them) only when the business and operational circumstances are such that we can be confident that the assumption of ongoing viability is sustainable.
 - (b) It maintains maximum flexibility in all of its business arrangements (including its staff engagement model) so that it has the capacity to scale up and down when required rapidly, efficiently and with minimum cost to the University.
15. I have been advised that a witness for Bond University Academic Staff Association (**BUASA**) has extracted Bond University's published profit/surplus results for the financial years from 2005 – 2015; as follows:

Year	Profit/Surplus (000)
2015	6,611
2014	5,294
2013	1,095
2012	(3,929)
2011	14,785
2010	19,664
2009	25,460
2008	27,256
2007	14,326
2006	15,466
2005	3,594

16. I make the following comments in relation to these data:
- (a) Firstly, it is critical for Bond University to make an operating surplus in **every** financial year, otherwise the existence of the University will be threatened. Financial institutions would have no interest in supporting the University if it should show any pattern of operational losses. Nor would existing or potential staff feel confident in accepting employment with the University if it was apparent we were not or might not be financially viable.
 - (b) Students would not be easily attracted if it appeared to them that there was a threat to the long-term and continuing capacity of the University to provide high quality education. More so than in other Australian universities, Bond University students make a significant personal investment in their degree, and the value of that degree beyond graduation depends, in large part, on the University's ongoing ability to maintain its reputation for superior outcomes. The potential for perceived financial pressures to have a direct impact on the public's perception of the institution was well demonstrated by the media interest in Bond's responsible organisational restructures during 2012 and 2013.
 - (c) Secondly, the great majority of Bond University's capital investment in major infrastructure and maintenance programs are funded from the surpluses which are detailed in the table. Unless we make surpluses we will be unable to invest in infrastructure and future programs. We would also be unable to properly maintain the infrastructure which we currently have.
17. Without the capacity to fund infrastructure and improvements from operating surpluses, the following recent initiatives could not have occurred:
- (a) expansion into medicine;
 - (b) expansion of the library;
 - (c) the establishment of the school sustainable development;
 - (d) the expansion of law school buildings to support their program;
 - (e) essential refurbishment of student accommodation and facilities;
 - (f) the establishment of the school of architecture in 2013;
 - (g) construction of a multimedia learning centre and refurbishment of teaching and learning spaces;
 - (h) the opening of a new sports centre and upgrade of student sporting fields and facilities.
18. The operating deficit of almost \$4 million which is demonstrated in FY2012 was of great concern to the University and its Council, and led to significant restructuring including both voluntary and involuntary redundancies in 2012 and 2013.
19. If we had not been able to arrest the declining trend in surplus which began in 2008 and culminated in the significant operating loss in 2012, I do not believe the University would still exist in its current form.
20. We made a very modest operating surplus in 2013 (just in excess of \$1 million) and the trend since has been cautiously positive. However for an organisation of the scale of Bond University, an operating surplus of \$6.6 million in 2015 is by no means a robust result, and it is essential, in my view, that the upward trend in operating surplus continues in future years.

Student number volatility

21. Bond University's student numbers are significantly more volatile and more vulnerable to external "shocks" than the public universities. As a result of our educational model and without public funding, our courses are significantly more expensive (sometimes 2 to 3 times more expensive) to students than similar degrees provided by public universities. As one of very few private universities in Australia, the 'pool' of potential students (both domestic and international) who would consider preferring Bond University over a public university is limited.
22. The years in which Bond University achieved the highest operating surpluses were 2008, 2009 and 2010 which were years in which Bond University was significantly assisted in its student enrolments by the decision by the Commonwealth Government to allow Bond University students to participate in the FEE-HELP program. The FEE-HELP program was a scheme similar to the HECS-HELP scheme which is available to public education providers. It allowed students to borrow a capped amount from the Government on subsidised terms to pay tuition fees for eligible undergraduate or postgraduate degrees. The availability of this scheme to our 'pool' of potential students (limited to domestic students) significantly increased Bond University's enrolments for those years.
23. However in order to accommodate and educate the influx of students, Bond University had to invest in new facilities and new infrastructure, including educational infrastructure and accommodation for students. Therefore the public policy initiative was very positive for Bond University's enrolments, but did require us to make significant investments, which now form part of our capital base and which must be utilised and maintained.
24. By 2011/2012, the growth in numbers which occurred as a result of the FEE-HELP scheme had plateaued. At the same time, the Global Financial Crisis (**GFC**) had a further significant negative effect on Bond University's enrolments, particularly international enrolments. We were also affected by competitive pressures unleashed by the significant deregulation of course fees which was fully in effect by 2012.
25. Consequently, Bond University's enrolments declined sharply from 2011 to 2012, and our revenues reduced proportionately. This required Bond to rapidly respond by reducing its costs in all areas of operation, including the restructure and closure of some of our program offerings.

New programs and new infrastructure

26. In order to be sustainable in the long term, Bond University (like all universities) has to continually challenge its structure (eg whether its current educational programs remain relevant and commercially sustainable and whether it needs to develop new programs to take into account changes in the environment for higher education). However, unlike larger public universities, the risk associated with start-up costs for new programs is not offset by guaranteed Government funding or large existing infrastructure. We are more exposed to

market forces and, consequently, we are forced to move decisively to introduce or discontinue academic programs.

27. In my role, I have accountability for ensuring that when Bond University commits to new programs, it does so in a viable, sustainable, and financially prudent way.

Evaluation prior to financial commitment by the Council

28. The Council would be most unlikely to approve a new program unless it was confident that it would succeed in the long term. I, and subsequently the Council, would also want to be assured that if that assumption proved to be wrong, the University had an 'exit strategy' which would not be financially damaging for the University.
29. This has direct significance to the flexibility of our staffing labour model.
30. When a program commences, we have to commit to the cost of engagement of academic staff before the student numbers 'catch up' to the revenue associated with those costs. Most programs lose money in the early years, and very few break even in the first 2-3 years of operation. Bond University would be very reluctant to commit to a significant number of continuing staff appointments in a program at least until it has broken even and has demonstrated that it is likely to do so on a sustainable basis.
31. In my analysis, and the Council's evaluation, what we would need to see is a limited commitment to continuing staffing (where there might be a potentially significant redundancy cost if a position is not continued) until we can have reasonable assurance that the program and the discipline specialisations within the program will indeed be financially viable and sustainable, and that the opportunity exists to build a focussed and internationally relevant research capacity in the area.
32. A new program, therefore, will be unlikely to get a 'green light' if the proposal involves a significant commitment, on an ongoing basis, to academic or general staff at least in the early years of the program. What would be much more typical is the appointment of a 'key' leader (for example at professor level) to give the program academic leadership and to attract staff and students, who might well be employed on an ongoing basis assuming that was required to secure his or her services, but otherwise for all or most other staff to be engaged either on fixed term (and in most cases short fixed term) contracts or casual employment.
33. If Bond University was unable to manage its risk in the early years of a program in this way, the program would be unlikely to be approved. Between 60% and 70% of our fixed costs associated with our programs are labour costs, and it represents by far the most significant financial commitment and therefore substantial risk associated with a new (or in fact existing) program.

34. A very good example of this in recent years is our Health Sciences and Medicine programs, which were developed from feasibility stage to approval and implementation in this way. Those programs are now successful and employ significant numbers of academic staff. The program has now 'earned the right' to appoint good academic staff members on the terms and conditions which are appropriate to them, and the programs now support a higher proportion of ongoing appointments.

Signed by JOHN LE LIEVRE
30 August 2016

Signed:

 31 August 2016