



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

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

Australian Higher Education Industrial Association (AHEIA)

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

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How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

Issues

1. [Using numbered paragraphs, outline the main issues you want the Fair Work Commission to consider as part of the Modern Award Review 2023-34 including your responses to any questions set out in Commission discussion papers. Include, if possible, references to any relevant sections of the *Fair Work Act 2009*, or other legislation or specific clauses in modern awards that apply].

Proposals

2. [Tell us your proposals to address the issues you have raised in the submission. If you are proposing that the Commission should consider varying an award, you should include draft wording for the proposed variation]

Please see attached submission in reply and reply to Literature Review.

Signature:



Name:

Craig Laughton

Date:

26 March 2024



Australian Higher Education Industrial Association

Submission in reply

Modern Awards Review – Work and Care Stream ('Review')

26 March 2024



Modern Awards Review – Work and Care Stream

AHEIA Submission in reply | 26 March 2024

Introduction

The Australian Higher Education Industrial Association (AHEIA) notes the National Tertiary Education Union (NTEU) 12 March submission and proposals therein and welcomes the opportunity to provide a response to that submission.

As the only registered employer association registered representing the higher education sector (**the sector**) under the Fair Work (Registered Organisation) Act 2009 AHEIA works with our 33 university members, governments, and other industry groups to influence policy and provide advice and representation on workplace relations to the sector.

The sector is not award dependent with its two main modern awards: The Higher Education Industry Academic Staff Award 2020 (**Academic Staff Award**) and the Higher Education General Staff Award 2020 (**General Staff Award**) (together **Sector Awards**), serving as a base comparator for the Better Off Overall Test (BOOT) in Enterprise Agreement (EA) bargaining only. When compared to other sectors, universities pay significantly more than their reference sector awards.

The sector's generous conditions include but are not limited to 17% superannuation for permanent and fixed term employees, transferable long service leave, substantial paid parental leave, flexible work arrangements, professional development/scholarships and other forms of paid leave that support employees with work and carer responsibilities above the National Employment Standards (NES), most of which are applicable to permanent and fixed term staff alike.

In addition to specific responses to the NTEU proposals in this reply submission, we seek to rely on our earlier submissions in this Review and where relevant, on submissions made in respect of the Modern Awards Review - Job Security.

AHEIA also notes the Western Sydney University Literature Review and provides a response to that paper separately (**see Appendix 1**).

AHEIA reserves the right to make further submissions and respond to matters raised during the scheduled consultation hearings of this review.

Requests for flexible working arrangements

AHEIA maintains its position that in the main Division 4 —*Requests for flexible working arrangements* of the National Employment Standard (NES) of the Act is the appropriate mechanism for employees with carer's responsibilities to seek and realise flexible working arrangements that meet their needs as carers and meet



the operational needs of the workplace.

Relevantly to this Review and a number of proposals put by the NTEU and in the Literature Review, the Explanatory Memorandum to *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* (SJBPA) notes the purpose of recent amendments to the National Employment Standards (NES) at Division 4 are to:

- *expand the circumstances in which an employee may request a flexible working arrangement where they, or a member of their immediate family or household, experiences family or domestic violence, to align the coverage of family violence with the entitlement to family and domestic violence leave;*
- *support employee access to flexible working arrangements by strengthening employer obligations when considering an employee's request, based on the model award term developed by the FWC; and*
- *introduce dispute resolution provisions enabling the FWC to make orders where an employer refused an employee's request or did not respond to the request within 21 days, including consideration of whether the employer has reasonable business grounds to refuse a request.*

AHEIA again notes the Commission's observation that:

"The SJBPA amendments provide, inter alia, that an employer can only refuse a request for flexible working arrangements on reasonable business grounds and only if it has first genuinely tried to reach agreement with the employee and has had regard to the consequences of the refusing the request for the employee. The new section 65A was based on the model award term developed by the Commission and inserted into modern awards during the 4 Yearly Review".ⁱ

In addition, if refusing a request, the employer must explain in writing, the grounds for refusal and inter alia:

"...set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the circumstances ... and that the employer would be willing to make." (emphasis added) or ... state that there are no such changes..."ⁱⁱ

The new section 65B of the Act provides a robust dispute resolution process which may be escalated from workplace level to the Commission for conciliation and arbitration (section 65C) if requiredⁱⁱⁱ.

Amended Division 4 —*Requests for flexible working arrangements* is likely to increase the alignment between the operational needs of the employer and the work and care needs of the employee.

AHEIA asserts that except where otherwise agreed in our submission and in this reply submission, the flexible work provisions of Division 4 obviate the need for many variations to the Modern Awards to accommodate the needs of employees with carer responsibilities.

In doing so, AHEIA notes s134 that the task of the Commission is to ensure that *"...modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions..."^{iv}* (emphasis added).



AHEIA notes that many of the items proposed by the NTEU, and others could be the tailored outcome of a request for flexible work arrangements with others being matters for enterprise bargaining and not as part of a safety net review.

Specific responses to NTEU proposals and comments

Employment cohorts

The NTEU discuss the various employee cohorts of permanent, fixed term and casual on a headcount basis. AHEIA submits that this provides a skewed picture of the true proportion of each cohort.

AHEIA maintains that the appropriate measure of employee cohort composition is on a full time equivalent (FTE) basis. Permanent employment comprises the majority of Sector full time equivalent (FTE). This is confirmed by the Department of Education in its data sets. These data sets also show for 2022 that casual employment represents approximately 15.7% of total FTE and has been relatively stable in the Sector.

Table 1.1 FTE for Full-time, Fractional Full-time and Estimated Casual Staff by Work Contract, 2013 to 2022

Year	Full-time		Fractional Full-time		Estimated Casual		Total	
	FTE	% change on previous year	FTE	% change on previous year	FTE	% change on previous year	FTE	% change on previous year
2013	86,059	1.2%	14,809	3.0%	19,268	-1.5%	120,136	1.0%
2014	87,296	1.4%	15,345	3.6%	19,780	2.7%	122,421	1.9%
2015	87,585	0.3%	15,407	0.4%	20,421	3.2%	123,414	0.8%
2016	88,453	1.0%	16,070	4.3%	21,553	5.5%	126,076	2.2%
2017	90,170	1.9%	16,118	0.3%	22,699	5.3%	128,986	2.3%
2018	92,692	2.8%	16,330	1.3%	25,091	10.5%	134,112	4.0%
2019	95,500	3.0%	17,205	5.4%	24,873	-0.9%	137,578	2.6%
2020	98,915	3.6%	17,943	4.3%	23,946	-3.7%	140,805	2.3%
2021	92,035	-7.0%	16,838	-6.2%	20,305	-15.2%	129,178	-8.3%
2022	93,848	2.0%	17,223	2.3%	20,664	1.8%	131,735	2.0%
% of total FTE in 2022	71.2%		13.1%		15.7%		100.0%	

Research into the profile of casual employment in the higher education sector conducted for AHEIA by the University of Melbourne Centre for Higher Education was previously provided in our earlier Submission to this Review. This research shows, inter alia, that most casual employees in the sector work less than 0.2 FTE per week.

Survey

NTEU cites a 2019 survey it carried out of casual workers in the higher education sector which it claims showed that only 18% of casual workers were happy with their mode of engagement and two-thirds preferring ongoing employment.^v

The survey and its data are not provided in their submission to this Review. However, we note that the survey in question appears to be referenced in a 2020 Issues Paper - *The Growth of Insecure Employment in Higher Education* filed with the Productivity Commission^{vi}. In that Issues Paper in response to the question “*what is your preferred mode of employment?*” the NTEU variously cite figures of 27% of respondents being “*..happy with casual employment*”^{vii} and “*the same survey suggests that 3 in 4 of all casual employees would prefer not to be employed on a casual basis...*”^{viii}.

By way of contrast, in support of casual employment being mostly supportive of employees with carer responsibilities AHEIA notes research carried out by HILDA and observations of Professor Wooden, of the Melbourne Institute of Applied Economic and Social Research including:



“Research on other outcomes using HILDA Survey data also mostly suggests little evidence of significant negative associations with casual or fixed-term contract employment.

- *There is no evidence that either casual or fixed-term contract employment is associated with worse health outcomes. Indeed, if anything, health outcomes tend to be slightly superior for workers in these types of jobs.*
- **Among women, work-life balance is slightly better for casual workers.** *Among men, however, this advantage disappears once working hours are controlled for.*
- *Casual employment is associated with significantly lower household incomes, but the major factor driving this is relatively fewer working hours^{ix} (emphasis added).*

While the question for the Commission in this Review is not whether casual employees would prefer other modes of employment of itself, other HILDA findings (see Table 1 below) include that for women, overall job satisfaction was higher amongst those who were casual employees compared with women who were permanently employed. Interestingly, fixed term employment gave slightly greater job satisfaction for women than both permanent and casual employment.^x

Table 1: Mean overall job satisfaction scores (0-10 scale: 0 = Totally dissatisfied, 10 = Totally satisfied) by employment type, 2018

	Permanent	Fixed-term	Casual	Self-employed	All employed
Men					
Total	7.58	7.65	7.56	7.87	7.63
Excluding full-time students	7.58	7.65	7.44	7.87	7.62
Prime age (25-54 years)	7.53	7.73	7.19	7.84	7.57
Women					
Total	7.66	7.77	7.76	8.18	7.74
Excluding full-time students	7.67	7.77	7.65	8.16	7.73
Prime age (25-54 years)	7.63	7.69	7.58	8.08	7.67

Notes: All estimates are population weighted. Estimates for prime age workers also excludes any full-time students. Source: HILDA Survey General Release 18 (doi:10.26193/1YBXHM).

In any event, AHEIA notes that casual employees who believe their roles have become permanent have a legislative right to seek to be converted to permanent employment under the NES as recently amended.

Working from home

AHEIA notes that the NTEU is supportive of an “...individual employee and collective employee right to right to request flexible work arrangements generally, and an individual employee and collective employee right to request working from home arrangements.”

AHEIA maintains that no specific variations are required to Sector Awards to provide for the ability of employees with carers responsibilities to request work from home arrangements, including hybrid combinations of work from home/work in the office.



This is because as noted previously amendments to Division 4 – *Requests for flexible working arrangements* of the National Employment Standards already provides a robust framework for pursuing flexible requests including, but not limited to, working from home.

With the exception of a proposed 10 day turnaround time for a response (which AHEIA deems as insufficient time for employers to consider requests and less than the 21 days provided for requests under Division 4 requests), much of what the NTEU seeks could be accommodated by a request for flexible working arrangements under Division 4.

AHEIA assesses that there is no utility in producing a specialised clause when the NES is already fit for purpose.

AHEIA does not agree with the following specific proposals:

- At NTEU Paragraph 22 *“the employer will not direct employees to work from home except for a public health directive”*.

This is not necessary and may run contrary to directions to work from home as part of a misconduct investigation, reasonable workplace adjustment or for occupational health and safety or other operational reasons.

- At Paragraph 23 *“...the employer will ensure home based work setting is to the required ...standards including work health and safety considerations”*.

This is not required given Work, Health and Safety legislative obligations owed by employers and employees.

- At Paragraph 25. While many of the items (a) – (m) would likely be matters to be included in a flexible work arrangement the list is too prescriptive and rigid.

AHEIA has concerns with the following specific items:

e. *Entitlement to breaks in accordance with the award*

AHEIA believes it is not necessary to provide itemised details as to entitlements that already exist in the Award. These are already made available to employees at the start of their employment.

f. *Work health and safety measures, including a work from home risk assessment checklist, method for reporting work related incidents, and workers compensation processes*

AHEIA believes this is not necessary to include these in an award term as these obligations are already required by Work, Health and Safety legislation.

g. *Work/life balance measures, including any Flexible Working Arrangement*

It is unclear what is proposed by the NTEU here.

i. *Privacy, surveillance, and performance issues in accordance with this clause*



It is unclear what is proposed by the NTEU here.

j. *Employee support, including union access*

It is unclear what is proposed by the NTEU in regard to this section.

AHEIA asserts that the new Workplace Delegates Rights provisions and new Workplace Delegates' Rights Award term to be determined by 1 July 2024 obviate the need for this section.

l. *The process for an annual review of the arrangement*

AHEIA notes that this may need to be less than annual review depending on the proposed length of an arrangement.

- At NTEU Paragraph 26 “...variations to a working from home arrangement must be by mutual agreement”.

Changing operational requirements may mean that a working from home arrangement must be revisited, amended or terminated. If an employee were to withhold their agreement to vary or cease an unviable work from home arrangement this may leave the employer with no choice but to commence redundancy processes. This may result in less job security for employees and run counter to other MAO considerations including those relating to flexibility and productivity.

- At Paragraph 27 “termination of the working from home arrangement may be sought by employee/s at any stage... the employee/s should give at least 10 working days’ notice”.

This may be insufficient notice depending on the enterprise and operational circumstances and is not required to be prescribed for the purposes of a safety net award in any event.

AHEIA would seek that termination or variation of the arrangement by the employer for operational reasons would also need to be built into any procedure.

Part time employees - minimum daily engagement

We note that AHEIA and the NTEU agree to the need for a daily minimum engagement period.

AHEIA has a minor point of difference with the NTEU who seeks a three-hour minimum engagement for all part time employees. AHEIA consistent with the causal minimum engagement provisions proposes a one-hour minimum engagement for students and others as follows:

- (a) *employees who are students (including postgraduate students) who are expected to attend the university on that day in their capacity as students;*
- (b) *a student will be taken as being expected for attendance on any Monday to Friday during the main teaching weeks of the university, other than public holidays as applied at the relevant university;*
- (c) *employees with a primary occupation elsewhere (or with the employer)*



with all other part time employees to have a minimum daily engagement of three hours.

Notice of rosters

AHEIA supports the Senate Committee recommendation and the NTEU's alternative proposal that 15.2 (b) (iii) of the General Staff Award be amended to provide a minimum period of at least 2 weeks.

Ceremonial Leave:

The NTEU seeks:

1. *paid leave of at least five (5) working days, and leave without pay of at least ten (10) working days per calendar year for the purpose of fulfilling ceremonial obligations.*
2. *Plus at least five (5) paid working days per calendar year, for employees who are members of the Aboriginal and Torres Strait communities to prepare for or attend community organisation business, National Aboriginal and Islander Day Observation Committee Week functions, or other relevant cultural events.*

AHEIA remains supportive of a safety net term for First Nations employees for paid ceremonial leave.

In response to the NTEU proposal, AHEIA would be supportive of a safety net term setting out a maximum of 5 working days of paid ceremonial leave per year.

Other variations to modern awards?

The NTEU at para 36 states:

“Flexible work provisions should include the right of an employee or employees to request moving between permanent part time and permanent full-time work, to change the location of work, to change starting and finishing times, and other forms of flexible work arrangements. An employer should not be able to refuse a request for flexible work unless it is unreasonable and would place unjustifiable hardship on the employer to accommodate the request”.

AHEIA notes that there is an existing implied right for an employee to request more hours or an increase to their time fraction and this does not require an award variation.

The other matters raised in NTEU paragraph 36 above can all be part of a request under Division 4 Right to Request Flexible Work Arrangements.

AHEIA notes the President Justice Hatcher's statement of 9 May 2023 where he observes that “[a]n employer may only refuse a request on reasonable business grounds, and must have had regards to the consequences of the refusal for the employee”^{xi}. AHEIA believe it is not necessary as the NTEU proposes to require the threshold to rise to a test of “unjustifiable hardship”. In amending Division 4 the Government did not seek to adopt that threshold.



Proposed ‘improved minimum safety net leave entitlements to paid leave’

AHEIA opposes the proposals set out at NTEU paragraphs 38-40:

*38. NTEU recommends that HE Awards provide for a minimum entitlement to employees needing to access **paid family and domestic violence leave** of at least 20 days per annum.*

No rationale is provided by the NTEU for this proposal.

AHEIA notes that Division 7 of the NES as recently amended already provides 10 days of paid family and domestic violence leave each year for all employees including casuals.

The Explanatory Memorandum to the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022* states:

“The provision of ten days’ paid family and domestic violence leave would also bring the NES into alignment with the practices of many Australian employers who already provide paid family and domestic violence leave through enterprise agreements or workplace policies^{xii}

AHEIA regards the current leave entitlement sufficient as a safety net and no variation is required.

39. NTEU recommends that HE Awards are amended to provide a minimum entitlement of at least twenty (20) days of paid gender affirmation leave per annum.

AHEIA assesses it is not required to vary the Sector Awards to include a term for paid gender affirmation leave.

No rationale is provided by the NTEU for this proposal.

AHEIA regards discussion of proposed gender affirmation leave is outside the scope of this Review and that this proposed leave type is more suited for discussions during enterprise bargaining.

40. NTEU recommends that HE Awards are amended to provide a minimum entitlement of at least twenty (20) days paid menopause and menstrual leave per annum, in addition to existing personal leave entitlements.

AHEIA assesses it is not required to vary the Sector Awards to include a term for paid menopause and menstrual leave.

No rationale is provided by the NTEU for this proposal.

AHEIA regards that discussion on menopause and menstrual leave is outside the scope of this Review and that this proposed leave is more suited for discussions during enterprise bargaining.

[Appendix 1 - **AHEIA responses to Literature Review** follows]



Appendix 1 AHEIA responses to Literature Review

Key Areas for Change	Indicative proposals to improve work care outcomes for employees	AHEIA Response
National Employment Standards and Modern Awards Framework		
The use of casual employment, where work is ongoing and regular, may create working time insecurity and limits access to paid leave for casual worker-carers.	A new definition of casual employment restricted to work which is intermittent, seasonal or unpredictable.	The definition of casual employment was changed on Closing Loopholes No. 2 Act 2024. The new provisions including conversion pathway are to commence on 26 August 2024. AHEIA's position is that no further changes are required.
The gendered assumption in many FW Act provisions of the normative worker employed on a full time, continuing basis does not adequately support most worker-carers.	Re-design the industrial relations system so that shorter hours employment is no longer seen as a deviation from that norm, subject to inferior employment protections, conditions, training and career paths. Rights to family-friendly working time arrangements and stable work for all employees should be minimum standards in NES.	AHEIA will respond to specific proposals during consultation
The limits in some NES on eligibility for employees with less than 12 months of service excludes worker-carers who do not meet this service requirement from accessing provisions supportive of work and care.	Eligibility requirements for several NES, such as in the right to request flexible work arrangements, should be widened to include those with less than 12 months of service.	AHEIA would be supportive of shortening the 12 month service requirement to 6 months. This would bring this in line with the statutory minimum employment period.
Paid and Unpaid Carer's leave		
Restrictive definitions of caring relationships and types of care in the NES exclude relationships outside family/household members, particular types of care and the arrangement of both formal and informal care.	Eligibility for paid and unpaid carer leave entitlements should be in line with the Carer Recognition Act 2010 definition. Eligibility for carer's leave should include those with extended family members and friends and the provision of routine care such as support with the activities of daily living or attending appointments. Paid and unpaid carer's should be available to those caring for immediate and extended family members and close friends and community members Carer's leave should support shared care within families, households and the community. Unpaid carer's leave should be available to all carers.	See AHEIA submission of 12 March 2024



Paid and Unpaid Carer's leave continued		
The requirement for part-time and full-time employees to use their paid personal/carer's leave entitlement before they can access unpaid carer's leave reduces worker-carer access to personal leave for their own illness and their autonomy about the use of their care entitlements	Remove requirement that unpaid carers leave can only be accessed when paid personal/carer's leave is exhausted.	AHEIA is supportive of this proposal.
Inadequacy of both paid and unpaid carer's leave.	Entitlement should be available to carers of people of all ages. Entitlement to request an extended period of unpaid carers leave. Increase the current duration of both paid and unpaid carer's leave. Review the model entitlement to an extended period of unpaid leave proposed by the Productivity Commission.	AHEIA does not support these changes to the safety net. AHEIA asserts that Division 4 —Requests for flexible working arrangements of the National Employment Standard (NES) of the Act are the appropriate mechanism for employees with carer's responsibilities to seek and realise flexible working arrangements that meet their needs as carers and the operational needs of the workplace.
Personal/carer's leave		
Inadequacy of annual quantum (10 days) of joint paid personal/carer's leave entitlement especially for workers-carers who may also be living with a disability or illness and/or have insufficient leave for their own well-being.	Increase the personal/carer's leave standard from 10 to 20 days per annum with 10 days to be non-cumulative and accessible for paid carer's leave. Review the adequacy of the current quantum of 10 days leave in recognition that the current entitlement is inadequate to address care needs.	AHEIA does not support these changes to the safety net. AHEIA asserts that Division 4 —Requests for flexible working arrangements of the National Employment Standard (NES) of the Act are the appropriate mechanism for employees with carer's responsibilities to seek and realise flexible working arrangements that meet their needs as carers and the operational needs of the workplace.
Casual workers do not have access to paid personal/ carer's leave, an exclusion that negatively impacts their work and care outcomes.	Extend paid personal/carer's leave to casual workers. Investigate options for providing personal leave to all casual workers. Assess the adequacy of paid and unpaid carer's leave including for carers in insecure or precarious employment.	AHEIA does not support these changes to the safety net. Casuals receive a 25% loading in lieu of leave entitlements. In addition, AHEIA notes: <ul style="list-style-type: none"> • Casuals are entitled to decline offers of casual work. • Casuals are entitled to take unpaid personal/carers leave. • Casuals who believe their role has become permanent may seek conversion to permanent employment.



Personal/carer's leave continued		
The current practice of combining personal and carer's leave into a single provision, alongside the current quantum of leave, means some worker-carers may exhaust the provisions to address care needs with insufficient leave for their own well-being.	Review the current practice of combining personal and carer's leave into a single provision. Review whether personal/carer's leave should be part of same entitlement and the quantum of leave.	AHEIA does not support these changes to the safety net. See responses with respect to Right to Request Flexible Work Arrangements and unpaid carers leave above.
Annual leave		
Casual worker-carers ineligible for paid annual leave	Extend paid annual leave provisions to casual workers.	AHEIA does not support this proposal. (see also AHEIA Job Security Submission). Casuals receive a 25% loading in lieu of leave entitlements. In addition, AHEIA notes: <ul style="list-style-type: none"> • Casuals are entitled to decline offers of casual work. • Casuals are entitled to take unpaid personal/carers leave. • Casuals who believe their role has become permanent may seek conversion to permanent employment.
Right to request flexible work arrangements		
Limits on eligibility for casual workers.	Extend right to all casual employees.	AHEIA does not support these changes to the safety net.
Limits on groups of workers who are eligible .	Extend right to all workers.	AHEIA does not support the right being extended to all employees. AHEIA does not believe this would address purported stigma and may lead to adverse results for employees with carer responsibilities. This is because the needs of currently listed employees including those with carer responsibilities would still in many cases need to be ranked over the needs of other employees (without carer responsibilities).

<p>The current construction of the RTR places the onus on the worker-career to make the request.</p>	<p>Reframe right to request as a positive duty for employers and to increase capacity to access right to request arrangements.</p> <p>Strengthen provisions and requirements to provide a more supportive environment for flexibility requesting.</p>	<p>AHEIA does not support this proposal.</p> <p>AHEIA notes that the recently amended Division 4 Right to request flexible work arrangements have dispute resolution provisions enabling the FWC to make orders including consideration of whether the employer has reasonable business grounds to refuse a request.</p> <p>While the Commission notes that two recent cases have recently tested these provisions and upheld employer decisions to not approve requested flexible work arrangements it notes: <i>"[g]iven the recency of amendments commencing operation, the impact of the new amendments are not yet known"</i>.</p>
<p>Unpaid parental leave</p>		
<p>The differences in the eligibility provisions between the <i>Parental Leave Act 2010</i> (Cth) and the unpaid parental leave standard results in inconsistencies in access to these provisions most notably for employees in fragmented employment</p>	<p>Review the eligibility requirement concerning 12 months continuous employment in the unpaid parental leave standard.</p>	<p>AHEIA is supportive of this proposal.</p>

<p>Maximum working hours</p>		
<p>The incidence and impact on work and care of long working hours over the NES on maximum hours of work of 38 hours</p>	<p>Cap full-time hours to 38 hours per week to address the gendered pattern of long working hours</p> <p>Adopting a shorter working week to facilitate more equal sharing of paid and unpaid work</p>	<p>AHEIA does not support these proposals.</p> <p>AHEIA notes new right to disconnect provisions.</p> <p>AHEIA refers to its comments on the Right to Request Flexible Arrangements.</p>
<p>Working Time</p>		
<p>Inferior conditions under modern awards for part-time employees relative to full-time workers and for casual workers employees relative to permanent employees.</p>	<p>Ensure part-time employees receive the same minimum hours, penalty and overtime rates as full-time employees in their awards, and that casual employees workers receive the same base rates of pay for the same job as ongoing workers.</p>	<p>AHEIA supports a minimum daily engagement for part time employees on the same terms as the arrangements for casual employees in the <i>Higher Education General Staff Award 2020 (General Staff Award)</i></p>



The 'casualisation' of on-demand part-time work over guaranteed minimum hours	Provide non-negotiable working time standards for part-time employees Reinstate the distinction between casual and permanent employment.	AHEIA does not support these proposals. General Staff Award already provides terms of engagement be provided to employees.
Insecure working time and working time arrangements for part-time worker-carers facilitated by modern award working time provisions	Review full range of award changes in care sector that have widened the scope for using permanent part-time employment as casual work without the necessity for a casual loading, and often without overtime rates.	Not applicable to Higher Education Sector.
The use of low guaranteed minimum hours part-time contracts where additional hours worked do not attract overtime premia	Review whether such practices breach the principle of equal treatment between full-time and part-time employees as contained in <i>ILO Convention 175 Concerning Part-time Work</i> . Review whether shorter hours workers receive the same penalty rates and overtime rates of pay as longer hours workers in their industry.	Not applicable to Higher Education Sector. Overtime is already payable in the General Staff Award where part-time employees work more hours than their engagement/contracted hours
Minimum engagement periods are too low for casuals and part-time worker-carers in some modern awards in feminised sectors	Increase minimum engagements in line with those in male-dominated awards such as the Manufacturing Award (currently set at 4 hours)	AHEIA does not support this proposal. Both Higher Education Awards provide sufficient and industry specific minimum engagement periods for casuals

Rostering		
Poor working time security in changes to rosters for with little notice or consultation for worker-carers	Changes to NES and awards to improve rostering protections for permanent and casual workers, to ensure they have levels of certainty and predictability of working hours and income needed to organise their care responsibilities and other aspects of their lives. Improved rostering rights in modern awards for to provide for greater predictability in rosters, advanced notice of roster changes and genuine consultation regarding changes to rosters. Improved regulation of working hours and rosters to support the creation of better quality jobs in the care economy	AHEIA supports amending the notice period for notice of rosters from 7 days to two weeks in line with Senate Select Committee recommendation. No other changes to the General Staff Award Provision would be required.



ⁱ Page 59, Fair Work Commission - Modern Awards Review 2023-24 Discussion Paper - Work and Care

ⁱⁱ Section 65A(6)(c), Fair Work Act 2009

ⁱⁱⁱ AHEIA notes [Justice Hatcher's 9 May 2023 President Statement on Requests for flexible working arrangements and extending unpaid parental leave](#)

^{iv} Section 134, Fair Work Act 2009

^v Paragraph 13 of [NTEU Submission to Review, 12 March 2024](#).

^{vi} [Issues Paper: The Growth of Insecure Employment in Higher Education: NTEU August 2020](#)

^{vii} Ibid, page 6, figure 7

^{viii} Ibid, page 6

^{ix} Page 3, [Insecure forms of employment : how pressing a problem is it in Australia? / \[Professor Mark Wooden\]](#)

^x Ibid page 4

^{xi} Paragraph 7, page 5, Justice Hatcher's 9 May 2023 President Statement on Requests for flexible working arrangements and extending unpaid parental leave

^{xii} Page 3, Explanatory Memorandum - [Fair Work Amendment \(Paid Family and Domestic Violence Leave\) Bill](#)