



DECISION

Fair Work Act 2009

s 157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Review of fixed-term contract provisions – Higher Education Awards

(AM2024/39)

Educational services

DEPUTY PRESIDENT SLEVIN
COMMISSIONER JOHNS
COMMISSIONER HARPER-GREENWELL
COMMISSIONER TRAN

SYDNEY, 17 MARCH 2025

Modern Awards Review 2023–24 – fixed-term contract provisions – Higher Education Industry—Academic Staff—Award 2020 – Higher Education Industry—General Staff—Award 2020 – parties consent to proposed variation – modern awards varied.

[1] Arising from the Modern Awards Review 2023–24 Final Report¹ (**Final Report**), the Commission initiated these proceedings to review fixed-term contract provisions in the *Higher Education Industry—Academic Staff—Award 2020*² and *Higher Education Industry—General Staff—Award 2020*³ (HE Awards).

The Modern Awards Review

[2] The background to the Modern Awards Review 2023–24 is explained in detail in the Final Report at paragraphs [1]–[8] and [160]–[167]. Among other priorities, the Final Report indicated that the Commission would initiate proceedings to review fixed-term contract provisions in the HE Awards in light of amendments made to the *Fair Work Act 2009* (Cth) (**FW Act**).

[3] The *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022* introduced new measures to regulate the use, extension, and renewal of certain fixed-term contracts. Notably, the amending Act inserted a new division into Part 2-9 of the FW Act (‘Division 5—Fixed term contracts’). The amendments took effect from 6 December 2023.

[4] The new division included section 333E(1) which prescribes circumstances where a person may not enter into a contract with a non-casual employee that provides for termination at the end of an identifiable period.⁴ Sections 333E(2)–(5) limit the use of fixed-term contracts for employees performing the same or substantially similar work to 2 consecutive contracts or a maximum period of 2 years.⁵

[5] Section 333F outlines exceptions to limits on fixed-term contracts, including at 333F(1)(h) excluding a contract of employment entered into where a modern award that covers the employee includes terms that permit any of the circumstances mentioned in subsections 333E(2) to (4) to occur.

[6] During the Modern Awards Review 2023–24 the National Tertiary Education Union (NTEU) raised concerns about the interaction between these new provisions and the HE Awards. In the Final Report, the Full Bench made the following conclusions (at [69]):

The fixed-term contract provisions of the HE Awards were developed against the backdrop of a different legislative scheme — one that did not regulate the use, extension and renewal of fixed-term contracts. For that reason, we are persuaded by the NTEU’s submission that the fixed-term contract provisions of the HE Awards require a review considering the modified legislative scheme in which they will operate.

[7] These proceedings constitute that review.

Procedural history

[8] These proceeding commenced with a statement issued on 30 September 2024 (September 2024 Statement)⁶ expressing a provisional view of the matters to be determined to in the review foreshadowed by the Full Bench in the Final Report.

[9] The matter was listed for a hearing on 25 October 2024 before Deputy President Slevin. Prior to the hearing, submissions were received from the Australian Higher Education Industrial Association (AHEIA)⁷ and from the Australian National University, La Trobe University, Monash University, Queensland University of Technology, the University of Sydney, University of Newcastle, University of New South Wales and University of Queensland (the **Universities**).⁸ It was proposed that the proper construction of ss 333E and 333F of the FW Act be dealt with as a preliminary issue.

[10] The matter was then the subject of conciliation. Conferences were held before Commissioner Tran on 14 November, 21 November, and 13 December 2024. A consensus emerged during those conferences that the HE Awards could be varied to clarify the interaction of the new fixed term contract provisions of the FW Act with the HE Awards. It was considered that such variation would address the matter raised in the Final Report.

[11] In a statement dated 14 February 2025 (February 2025 Statement),⁹ we expressed our view that the HE Awards should be varied. The proposed variations were to include a note in the HE Awards to clarify the operation of s 333F(1)(h) of the FW Act.

[12] The variations proposed in our February 2025 Statement were based on the consensus reached during the conferences and address the concerns raised during the Modern Awards Review 2023–24.¹⁰

Proposed variation

[13] In the February 2025 Statement, we proposed to vary the HE Awards by inserting a note under the respective “Fixed-term employment” clauses in the HE Awards. The statement

proposed draft determinations. Interested parties were invited to comment on the draft determinations. Submissions were received from the AHEIA,¹¹ NTEU,¹² the Universities,¹³ and the Community and Public Sector Union (State Public Services Federation Group) (CPSU-SPSF).¹⁴ All submissions received supported the variations in the terms proposed.

[14] We are satisfied that the proposed variations deal with the matters raised in the Final Report. The clarification of the operation of the Awards addresses the concern raised by the NTEU during the Modern Awards Review 2023–24. It also meets the modern award objective of maintaining a fair and relevant minimum safety net of terms and conditions. In forming that view we have taken into account the need to improve access to secure work and the need to ensure a simple and easy to understand, stable and sustainable modern award system.

[15] Consequently, we have determined to vary the HE Awards to include a note to clarify the operation of the fixed term provisions of the HE Awards following the amendments to the FW Act.

[16] Determinations varying the *Higher Education Industry—Academic Staff—Award 2020* and *Higher Education Industry—General Staff—Award 2020* are issued with this decision.



DEPUTY PRESIDENT

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¹ Fair Work Commission, Modern Awards Review 2023–24 (Final Report, 18 July 2024)

² MA000006.

³ MA000007.

⁴ *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) at sch 1, cl 441.

⁵ *Ibid.*

⁶ [\[2024\] FWCFB 389](#).

⁷ Australian Higher Education Industrial Association, *Correspondence*, dated 18 October 2024.

⁸ Australian National University and others, *Correspondence*, dated 18 October 2024.

⁹ [\[2025\] FWCFB 36](#).

¹⁰ Fair Work Commission, Modern Awards Review 2023–24 (Final Report, 18 July 2024).

¹¹ Australian Higher Education Industrial Association, *Correspondence*, dated 3 March 2025.

¹² National Tertiary Education Union, *Submission*, dated 4 March 2025.

¹³ Australian National University and others, *Correspondence*, dated 3 March 2025.

¹⁴ Community and Public Sector Union, *Submission*, dated 3 March 2025.