



Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

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Organisation

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Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

Background

1. The National Tertiary Education Industry Union (**NTEU**) is the union that represents workers in the higher education sector.
2. Workers in the higher education sector are covered by two main awards, the *Higher Education Industry – Academic Staff - Award 2020 (Academic Staff Award)* and the *Higher Education Industry – General Staff -Award 2020 (General Staff Award)* (together the **HE Awards**).
3. The modern awards in which NTEU members have an interest are:
 - *The Higher Education Industry - Academic Staff – Award 2020 (MA000006)*
 - *The Higher Education Industry – General Staff – Award 2020 (MA000007)*
 - *The Education Services (Post-Secondary Education) Award 2020 (MA000075)*
 - *The Professional Employees Award 2020 (MA000065)*
4. NTEU notes that the 25 modern awards identified in the Discussion Paper have been selected to include the most commonly used awards, the awards referred to in the Work and Care Final Report, and additional awards to provide a diverse range of industries and roles. However, NTEU notes the President’s Statement concerning this review, and makes submissions in relation to both HE Awards, and reserves our right to make further submissions on all awards we have an interest in.
5. NTEU further notes that the ACTU and other unions are making submissions to this review, and that there will be more opportunities for parties to make further submissions during this review's consultation process.

Work, Care and Secure Work

Discussion Paper Question 19. Other variations to modern awards?

Are there any other specific variations to modern award provisions that would assist employees meet their caring responsibilities and are necessary to meet the modern awards objective?

6. Ensuring workers who care are able to participate in the workforce; and in a workforce that ensures equal remuneration, eliminating gender-based undervaluation of work and provides workplace conditions that facilitate women’s full economic participation, requires improved employee access to secure work across the economy.¹

¹ Fair Work Act 2009 (Cth) s 134(1).

7. The higher education sector is marked by high levels of insecure work, both casual and fixed-term.² As highlighted in NTEU's submission to the Job Security Award Review, since 2000, the number of fixed-term and casual staff in the sector has increased by 89 percent, while the number of continuing staff has increased by only 49 percent. In 2018, only just over one in three workers employed in the sector were engaged in continuing employment, with 43% of all workers employed on a casual basis and 22% employed on fixed-term contracts on a headcount basis.
8. The Literature Review³ notes: *"Over the two decades, there have been profound changes in the labour market context in which many employees both work and care. Firstly, there has been a significant increase in the employment participation of women, rising from 54.1% in 2001 to 62.4% in 2022. However strong gender differences remain in the patterns and forms of employment with women continuing to dominate part time and casual work and women with preschool children more likely to work part time than women without preschool children."*⁴
9. The Work and Care Discussion Paper identifies at paragraph 49 that: *"Women make up 71.8 per cent of those who identify as primary carers. 12.3 per cent of all women identify as informal carers, compared to 9.3 per cent of all men. Caring expectations can effectively impose a 'double day' or 'second shift' on top of existing paid work, with women bearing most of this additional labour."*
10. Working carers require improved access to secure work and secure hours of work. To ensure that the HE Awards together with the NES provide a *fair and relevant* minimum safety net of terms and conditions for higher education employees, HE Awards must improve access to secure work, as a critical step to meet the Modern Award Objective of s 134 [1] (ab).
11. NTEU has made submissions and proposals in the Job Security Award Review to ensure that higher education workers gain the benefit of the legislative changes to fixed term workers, and further that the HE Awards continue to effectively regulate fixed term and casual employment to meet the modern award objective.
12. NTEU observes the HE Awards will be amended to incorporate the new legislative casual employment provisions.⁵ NTEU notes it will be necessary to further amend casual employment

² See Department of Education [statistics](#) which show that 22% of employees in the sector are engaged on fixed-term contracts, while 40% of employees are engaged as casual employees on a headcount basis.

³ Smith, M and Charlesworth, S (2024) *Literature Review for the Modern Awards Review 2023-24 Relating to the Workplace Relations Settings Within Modern Awards That Impact People When Balancing Work and Care*, Western Sydney University.

⁴ *Ibid*, at page 13.

⁵ *Closing the Loopholes Bill No 2*

regulation in the HE Awards to provide casual higher education employees with improved access to secure employment, and NTEU will provide further submissions during this review and the Job Security Review.

13. NTEU notes that any assertion that insecure work is the product of casual workers' desire for flexibility can be safely disregarded in the higher education sector. A 2019 survey of 6000 casual workers in the higher education sector showed that only 18% of casual workers were happy with their mode of engagement and two-thirds preferring ongoing employment.⁶
14. The Literature Review observes in respect of working carers in casual employment, citing the work of Laß and Wooden: '*.. any positive link between casual status and work-life balance may be a weak one as it is 'almost entirely traceable to the reduced working hours attached to such jobs. Temporary workers thus miss out on many of the protections and benefits afforded by a permanent contract, while in most cases not being compensated for these disadvantages by a better fit between their work and their private lives.*⁷ Further, Smith and Charlesworth observe: '*Where worker-carers engage in casual work to manage work and care there is evidence that the penalties they may face lie not only in job and working time insecurity but also in limited opportunities for career progression, given the insecurity attached to casual work*'.⁸
15. While improved employee access to secure work is critical to ensure HE Awards meet modern award objectives, NTEU makes further submissions below on required HE Awards amendments to ensure these Awards meet modern award objectives and assist working carers.

Working carers – terms and conditions to meet modern award objectives

Discussion Paper Q1. Part-time - discussion question

Are there any specific variations to part-time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

16. Most casual employees covered by the General Staff Award have a three-hour minimum engagement period (an exception exists for student casuals, who have a minimum engagement period of one hour).

⁶ NTEU State of the University Sector, 2019

⁷ Ibid at page 22.

⁸ Ibid at page 14

17. To improve access to secure work and access to regular hour of work, part time employees covered by the General Staff Award should be provided with a minimum period of engagement of three hours, unless otherwise proposed by a General Staff part time employee via an employee initiated flexible work arrangement.

Discussion Paper Q4. Working from home - discussion question:

Are there any specific variations needed in modern awards regarding working from home arrangements that are necessary to ensure they continue to meet the modern awards objective?

18. NTEU notes the limitations of individual rights mechanisms and the Literature Review observes in respect of right to request options that, '*..recognising the construction of section 65 as an individual rather than a collective flexibility, it has been argued that by ensuring 'new collective benchmarks', working from home /telecommuting provisions could be generalised to regulate working from home. Presumably, as during the pandemic in some awards, this could be achieved through modern award provisions that would collectivise entitlements to working from home for employees.*'⁹
19. NTEU supports the introduction 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.
20. NTEU recommends that the General Staff Award is amended to provide employees with an individual employee right to request to work from home, and the right of employees to collectively request working from home. To provide a fair and relevant safety net, the General Staff Award should ensure that employers will make best endeavours to accommodate any request to work at home and/or remotely. The employer should discuss the request with the employee/s and genuinely try to reach agreement on a Work from Home Arrangement or remote work arrangement that will reasonably accommodate the employee's circumstances.
21. The General Staff Award should provide that applications for working from arrangements may only be refused on the grounds that the application is unreasonable, and the employer is unable to accommodate the request. If the request is refused, the employer must provide detailed reasons to the employee/s, within 10 working days.
22. The General Staff Award should ensure an employer will not direct an employee or employees to work from home, unless required to do so by a public health directive.

⁹ Ibid at p36, citing Williamson and Pearce

23. The General Staff Award should provide that there a working from home arrangement is agreed, the employer will ensure employees home-based work setting is to the required employer standards including Work health and safety considerations.
24. The employer will meet any reasonable costs associated with working from home.
25. The General Staff Award should provide that a record of the working from home arrangement will be kept by the employer and should include:
- a. The days (or part days) on which the employee/s will work from home.
 - b. The date the Work from Home arrangement will commence.
 - c. Whether the Work from Home arrangement will be on-going or for a specified period.
 - d. Starting and finishing times or the span of ordinary hours in which work is to be performed.
 - e. Entitlement to breaks in accordance with the award.
 - f. Reimbursement for equipment and expenses.
 - g. Work health and safety measures, including a work from home risk assessment checklist, method for reporting work related incidents, and workers compensation processes.
 - h. Work/life balance measures, including any Flexible Working Arrangement.
 - i. Processes to ensure effective and regular communication.
 - j. Privacy, surveillance, and performance issues in accordance with this clause.
 - k. Employee support, including union access.
 - l. The process for an annual review of the arrangement.
 - m. Any other relevant matter agreed between the employer and employee.
26. The General Staff Award should ensure that variations to a working from home arrangement must be by mutual agreement.
27. The General Staff Award should require that termination of the working from home arrangement may be sought by employee/s at any stage. Employee/s in this circumstance would be, if practicable, re-assigned to the conventional workplace. To facilitate the smooth transition from working from home, the employee/s should give at least 10 working days' notice.
28. Employers are encouraged to advertise positions which feature the opportunity to work from home. However, the General Staff Award should stipulate that for the avoidance of doubt, while an appointment may be made by an employer on the basis that employee/s shall commence employment working from home, such an appointment does not mean that the employee is not

entitled to terminate such an arrangement and a term of a contract of employment providing for working from home will not be a reason to refuse a request by employee/s to cease working from home.

Discussion Paper Q8. Notice of rosters - discussion question

Noting the Work and Care Senate Committee Recommendation 21 that all employees should have at least 2 weeks' notice of their roster except in exceptional circumstances, are there any specific variations to rostering provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

29. NTEU recommends that the General Staff Award be amended to provide at least 28 days' notice of a roster change.
30. In the alternative, NTEU proposes that 15.2 (b) (iii) of the General Staff Award should be amended to provide a minimum period of at least 2 weeks as proposed by the Senate Committee.

Discussion Paper Q18. Ceremonial leave – discussion question:

Are there any specific variations to ceremonial leave provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

31. All university enterprise agreements in the higher education sector contain provisions for Aboriginal and Torres Strait Islander employees to access a form of paid cultural leave.
32. In order to provide a fair and relevant minimum safety net, NTEU recommends that both HE Awards be amended to ensure that employees who identify and are accepted as members of the Aboriginal or Torres Strait Islander communities be entitled to 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.
33. HE Awards should provide that Ceremonial obligations may be “traditional” or “urban” in nature and may include initiation, birthing and naming, funerals, smoking or cleansing and sacred site or land ceremonies.
34. Further, HE Award provisions should ensure that employers will approve 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. An

employee may elect to use annual leave in lieu of any unpaid leave granted in accordance with these provisions.

Discussion Paper Q19. Other variations to modern awards?

Are there any other specific variations to modern award provisions that would assist employees meet their caring responsibilities and are necessary to meet the modern awards objective?

Right to flexible work – a universal right for individual employees and collectives

35. Smith and Charlesworth note: *'Many work and care policy advocates have proposed that extending the right to request to all workers, as in the United Kingdom and the Netherlands, would assist to normalise flexible work requests while challenging gendered stereotypes of the ideal worker'*¹⁰
36. NTEU recommends both HE Awards provide an individual rights for all employees, and a collective right for groups of employees, to request flexible work. 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.

Improved minimum safety net leave entitlements to paid leave.

37. NTEU recommends that to provide a fair and relevant modern award safety net, the HE Awards should also provide improved minimum paid leave entitlements to accommodate employees.
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.
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.
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.

¹⁰ Ibid at page 31.

41. NTEU reserves our right to make further submissions in this Review.



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