

#### **4-Yearly Review of Modern Awards**

#### **AM2014/96 – Part- time employment**

#### **AM2014/197- Casual employment**

### **Submission in Reply to AHEIA regarding**

### ***Higher Education (Academic Staff) Award 2010* [MA000006]**

1. This Submission is in response to that of the AHEIA on 2 August 2017, in view of the Full Bench decision to insert a 2 hour minimum engagement period in the above “Academic Staff Award”; ([2017] FWCFB 3541, 5 July 2017).
2. NTEU has exclusive coverage of academic staff in higher education, including across all Australian public and private universities.
3. NTEU has long been concerned about the growth in casual employment in our sector and the reliance on (often long-term) casual/sessional staff to provide a ‘flexible’ source of teaching labour.
4. These staff are relied on to be ‘job ready’; to have currency in their particular discipline and pedagogy, and to be reliable and compliant staff of universities, whilst having no job security.

#### **Characteristics of casual academic employment in the sector**

5. There is no single reliable source on casual staff numbers in higher education, but Department of Education and Training *Higher Education Statistics* lead us to an estimation of 60,000—70,000 casual academic staff covered by the Academic Staff Award. NTEU evidence as part of our applications to the 4-yearly review of this Award showed 11,045 EFT teaching-only and teaching and research casual employees in 2014; (witness statement of Ken McAlpine- Attachment C to Exhibit G).
6. In NTEU submissions to the 4 yearly review we stressed that:
  - casual employees are central to the academic workforce, not peripheral;
  - academic teaching is a highly skilled profession; and
  - that a large majority of casual staff are qualified to be employed as full time academic staff and many already hold a PhD.<sup>1</sup>

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<sup>1</sup> NTEU 4 yearly review of modern awards – Education Group, Submissions, witness statements and documentary material, 11 March 2016, Part B.

7. Importantly, most casuals are not engaged in an ad hoc fashion to meet occasional or short term needs. A 2 hour minimum engagement under the Academic Staff Award would apply to a very small number of casual staff but would provide certainty for those few casuals who engage in more sporadic work, for example those running a short laboratory demonstration, called in to an occasional meeting or consulting with students.

### **Casual rates under the Academic Staff Award**

8. NTEU and its predecessor unions were the instigators of the payment regime referred to by the AHEIA which continues under the Academic Staff Award and sector- wide enterprise agreements; (AHEIA 8).
9. NTEU agrees with the way in which the AHEIA have characterised payment of work for casual academic staff. Many staff are engaged on a 'sessional' basis – that is, for a teaching term and subsequent teaching terms. Indeed we agree that the casual academic rates at clause 18.2 of the rate *already meet a 2 hour minimum payment* in prescribing both delivery (of a lecture, tutorial or musical accompanying rate of one hour, plus at least one hour's associated working time).
10. However, many PhD students may have more ad hoc engagements as 'true casual' tutors or lecturers, and casual teachers may teach or provide marking for students, at more than one University at a time. The application of the 'Other required academic activity' rate does not have an in-built minimum payment of 2 hours, and this is problematic.
11. As noted by AHEIA (AHEIA 16.), "Other academic activity" is not defined in the Award, however it is defined in the majority of enterprise agreements. For example, the *University of Sydney Enterprise Agreement 2013-2017* defines "Other academic activity" as:

*"Hourly rate for demonstrations (including repeat demonstrations); practical classes; workshops; student field excursions; clinical sessions other than clinical nurse education; the conduct of performance and visual art studio sessions; development of teaching and subject material e.g. preparation of subject guides and reading lists and basic activities associated with subject coordination; consultation with students; supervision; attendance at departmental and/or faculty meetings as required; attendance at lectures and other teaching activities as required; preparation or marking associated with demonstrations, but performed outside the demonstration period"; (Schedule 1, 3).*

12. The *Curtin University Enterprise Agreement 2012-2016* defines "Other required academic activity" (our emphasis) as "*Demonstrations, workshops, field excursions, student*

*consultation etc.” (Schedule 2) and at Note E:*

*“other required academic activity includes, but is not limited to work that a person, acting as or on behalf of the University requires the Casual Staff Member to perform and that is performed in accordance with any such requirement, being work of the following nature: • the conduct of practical classes, demonstrations, workshops, student field excursions; • the conduct of performance and visual art studio sessions; • musical coaching, repititeurship and musical accompanying other than with special educational service; • development of teaching and subject materials such as preparation of subject guides and reading lists and basic activities associated with subject coordination; • consultation with students; • supervision; • attendance at departmental or faculty meetings, or both, as directed; and • attendance at any other activity associated with the Staff Member’s work, as directed. The above list is not intended to be exhaustive, but is provided by way of examples and guidance. The relevant other required activity rate will be paid for each hour of activity delivered as required and demonstrated to have been performed.”*

This is an extensive list and it would seem unwieldy and unfair if casuals were claiming for a payment of one hour (at a time) for any of these activities.

13. NTEU contends that if the 2 hour minimum engagement is applied to the Award, it will make no material difference for the bulk of the work carried out by casual academic staff but will provide protection for casual staff who are called in to attend short meetings, demonstrations, undertake a short period of marking and the like; (in the case of the latter, for example a PhD student who is asked to mark assignments related to a practical class). The application of a 2 hour minimum engagement will therefore ensure that the modern awards objective is met in relation to the award providing a fair and relevant minimum safety net, and in particular, to meet objective s.134 (a) of the *Fair Work Act*. By any measure casual academic staff engaged under the *Higher Education (Academic Staff) Award* are low paid workers.
14. The provision of a 2 hour minimum engagement for casual academic staff is in no way compromised by the AHEIA argument that casual workers are autonomous and perform their work in a flexible manner (i.e.: in terms of when and where they perform work that does not required face to face student engagement). In circumstances where casuals are directed to engage in work defined as ‘Other academic activity’, a minimum payment would seem necessary to ensure that this flexibility is maintained; casual staff should have as much certainty as possible in organising their work and its intersection with the rest of their lives

as they see fit, and to be guaranteed a decent wage in compensation for their work precarity.

### **The NTEU Award Review application: Payment for Policy Familiarisation and Professional and Discipline Currency**

15. The NTEU has an application before the Fair Work Commission as part of the 4-yearly review of the Academic Staff Award, to recognise the time that casual academics spend on maintaining discipline currency, professional currency and policy familiarisation. At present, these activities are not compensated – casual staff are meant to be ready to perform to a professional standard as they enter a new engagement. This is different from payment for *preparation for a lecture or tutorial* which is part of the minimum payment for these activities under the Award, (as ‘preparation’ or ‘associated working time’, clause 18.2).
16. The NTEU claim is for payment at the “Other required academic activity” rate following a minimum number of engagements.<sup>2</sup> Any payment is discounted by employer compensation for these activities, for example, payment to attend induction or for professional conferences. It would be rare if not impossible that the work contemplated by this payment was less than 2 hours’ work. By the time a casual has perused a volume of university policies, understood pedagogical criteria within an institution and ensured they have discipline currency, at least several hours of work will have been required.
17. Further, the NTEU claim is not payable until an employee has been engaged to deliver a series of 6 or more related lectures or tutorials in an academic unit of study, and payable only once for any length of employment with a single employer, unless the break between engagements is greater than 12 months. To this end, the NTEU claim for this payment does and should not affect the application of a 2 hour minimum engagement for casual academic staff.
18. The NTEU respectfully urges the Full Bench to view academic casual staff engaged under the *Higher Education (Academic Staff) Award 2010* in the same light as casual staff in other industries. That is, casual staff should be compensated for the inconvenience and unpredictability of casual engagements via a minimum period of engagement. The nature of

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<sup>2</sup> Refer NTEU AM2015/6 *Amended summary of proposed variations*, 18 September 2015; NTEU *4 yearly review of modern awards – Education Group, Submissions, witness statements and documentary material*, 11 March 2016; NTEU AM 2014/224; AM2014/229; AM2014/30 *Closing Submissions* 3 February 2017 & NTEU AM2015/6 *Final Submissions in Reply- AHEIA and others*, 24 March 2017.

See also submissions on the nature of academic hours of work in these submissions.

casual rates under the Award mean that this amendment will not materially affect the majority of work performed by academic casual staff. It will provide protection for staff who perform work categorised as 'Other academic activity' and to this end, will help to maintain the safety net of fair and relevant award conditions in the sector.

NTEU National Office

3 August 2017.