

## 4 YEARLY REVIEW OF MODERN AWARDS

### AM2014/196 – PART-TIME EMPLOYMENT

### AM2014/197 – CASUAL EMPLOYMENT

## SUBMISSION BY AHEIA IN RELATION TO THE *HIGHER EDUCATION – ACADEMIC STAFF – AWARD 2010 (MA000006)*

1. At paragraph 408 of its decision of 5 July 2017 ([2017] FWCFB 3541) in Matter AM2014/196 and Matter AM2014/197 (“**the Decision**”), the Full Bench sets out its provisional view that modern awards which do not currently contain a minimum engagement period for casual employees should be varied to include a 2 hour minimum engagement period. The list of such modern awards is at Attachment G to the Decision and includes the *Higher Education – Academic Staff – Award 2010* (“**the AS Award**”).
2. The Australian Higher Education Industrial Association (“**AHEIA**”) is the employer association for the higher education industry. The majority(32 of 37) of public universities in Australia are members of AHEIA. AHEIA opposes the proposed variation of the AS Award as unnecessary and contrary to the modern awards objective.
3. At paragraph 399 of the Decision, the Full Bench stated the following in relation to minimum engagement periods in awards:

Minimum engagement periods in awards have developed in an ad hoc fashion rather than having any clear founding in a set of general principles. However their fundamental rationale has essentially been to ensure that the employee receives a sufficient amount of work, and income, for each attendance at the workplace to justify the expense and inconvenience associated with that attendance by way of transport time and cost, work clothing expenses, childcare expenses and the like. An employment arrangement may become exploitative if the income provided for the employee’s labour is, because of very short engagement periods, rendered negligible by the time and cost required to attend the employment. Minimum engagement periods are also important in respect of the incentives for persons to enter the labour market to take advantage of casual and part-time employment opportunities (and thus engage the consideration in paragraph (c) of the modern awards objective in s.134).

For the reasons set out below, the current provisions in the AS Award are adequate to ensure that casual academic employees receive sufficient work and income for each period of attendance, and do not act as a disincentive towards workforce participation.

### **Characteristics of casual academic employment**

4. Employment of casual academics is characterised by the following features:

- In respect of the majority of the work activities on which they are engaged, casual academic employees are paid a loaded rate that encompasses associated working time as well as actual delivery time (see further below).
- They are usually engaged on a semester basis; that is for a period of around 13 weeks. Consistent with Clause 14(1)(c) of the AS Award (replicated in enterprise agreements at all universities), casual academic employees are provided at the commencement of each semester of engagement with an instrument of appointment that sets out the terms of their engagement in relation to the number of hours required over the semester, the rate of pay for each class of duty and a statement that all additional hours will be paid for.
- Commensurate with the role of casual academic employees as skilled professionals, the hourly award rates of pay in the AS Award are high in comparison with rates in other awards. Actual rates as set out in enterprise agreements are considerably higher.
- Like other academic employees, casual academics have a very high degree of autonomy as to how, where and when they perform their work other than at the times when they are required to be on campus to deliver face-to-face teaching.
- Many casual academic employees are also enrolled as PhD students and therefore attend the University campus in their capacity as students as well as their capacity as casual employees.

- Many casual academic employees also have other employment. Clause 10.3 of the AS Award explicitly provides that a non-casual University employee may be engaged by the University to perform additional work as a casual employee in work unrelated to, or identifiably separate from, their normal duties. Universities also employ professionals such as accountants and lawyers to deliver guest lectures, or a series of lectures.

### **The scheme of remuneration for casual academic teaching**

5. The work activity for which casual academic staff are principally employed is teaching: that is, lecturing or tutoring. The AS Award sets out a scheme of remuneration for these activities that is tailored to the unique requirements of the higher education industry. This scheme is replicated in the enterprise agreements that provide the actual terms and conditions that apply at Australian universities.
6. For each hour of teaching delivery, casual academics are paid a “rate for the job” that includes a casual loading (currently 25%) and payment for associated working time for delivery (eg preparation, student contact and contemporaneous marking). Thus, for example, for delivering a one-hour “basic lecture” or a one hour “tutorial”, a casual academic employee is in fact paid for 3 hours’ work. They are therefore “engaged” and paid for 3 hours, notwithstanding that only one of those hours is actual delivery time.
7. The formula for calculating casual rates is set out at Clauses 13 and 18 of the AS Award (**Attachment A**).
8. This payment scheme is of extremely long standing. It has its origins in the determination of the Academic Salaries Tribunal dated 6 June 1980, pre-dating any award coverage for academic employees. The formula devised by the Academic Salaries Tribunal was included in the first academic salaries awards, made in the late 1980s, and has continued, with some minor changes, to appear in subsequent versions of the awards, including the modern AS Award. It is also included, with institutional variations as appropriate, in enterprise agreements covering academic employees at all Australian universities.
9. The literal effect of imposing a mandatory two-hour minimum engaged period for academic casual staff could result in:

- Employees being required to perform the paid associated work (preparation etc) for their teaching delivery on the university campus and immediately before the actual delivery. This would not suit the employees themselves. Aside from the actual times at which they are required to attend campus to teach, academic staff have autonomy as to where, when and how they perform their work. An academic casual employee might prefer to do the preparation for their teaching delivery well in advance of the day of delivery, and at a site other than the University campus. Many academics prefer to perform some work at home, for example.
- Programming of lectures and tutorials by Universities in such a manner as to provide each casual academic employee a minimum of two back to back hours of teaching delivery on each occasion on which they were engaged. This would be logistically impossible.

10. The above would clearly be inconsistent with the modern awards objective in that it would inhibit flexible modern work practices and the efficient and productive performance of work (s 134(d)).

### **Casual academic work other than teaching**

#### **Marking**

11. The AS Award provides for hourly rates for work other than teaching; that is for marking and “other academic activity”.
12. As set out in Attachment A, marking is paid at one of three rates depending on the level of expertise required and whether the casual academic employee holds a doctoral qualification. Current rates in enterprise agreements are set out at **Attachment B**.
13. A casual academic employee who undertakes marking makes their own autonomous decisions as to where, when, and for what period, they do that work. They are not directed to attend the University campus at a particular time to do this work, or to attend the campus at all, if they prefer to work from another location.
14. The University does not have control over when, where and how a casual academic employee elects to perform the work of marking. For example, if an employee chooses to do a single

hour of marking, the University would not know this. The University is only provided with information as to the total number of hours that the academic casual employee claims for payment in each pay period.

### **Other academic activity**

15. The AS Award provides for two rates of pay for “other academic activity”, again depending on whether the casual academic employee holds a doctoral qualification.

16. As with marking, the individual casual academic employee has considerable autonomy as to how, where and when they perform this work. “Other academic activity” is not defined in the AS Award, but is generally defined in enterprise agreements to include activities such as student consultation and development of teaching and subject materials. Casual academic employees are not directed to attend the University at particular times to do this work. It is a matter for their discretion as to how, when and where they do the work.

17. There could be circumstances in which a casual academic employee might be directed to undertake other academic activity – such as attending a Faculty or Department meeting – for a period of less than two hours on a day on which they are not otherwise attending the University campus, eg to teach or undertake associated activities, or in their capacity as a PhD student. In relation to such circumstances:

- There is no evidence before the Commission as to how often this might occur. There was no application to vary the AS Award in Matter AM2014/196 or Matter AM2014/197, and so there is no evidence at all before the Commission in relation to this award. While not determinative of the task before the Commission, the fact that no such application was made strongly suggests that all relevant parties take the view that the award in its current form is meeting the modern awards objective and does not require variation.
- The autonomous nature of academic work allows a casual academic employee to elect to undertake other work of their choosing when on campus, for which they would be entitled to claim payment. Some casual academic employees have their own office space. All have access to the means to perform work on campus, including access to libraries and computer labs, for example.

- Because of their multi-campus nature, Universities are particularly well set up to hold meetings remotely. A casual academic staff employee who considers that they would be particularly disadvantaged by travelling to the University campus on a day on which they would not normally do so would be likely to be able to attend a meeting by teleconference, Skype, or other remote means.
- It should also be noted that for each hour worked, the casual academic employee would be paid in the order of \$45-\$55 under current enterprise agreement rates (see **Attachment B**).

18. In summary, the current provisions for casual academic employees as set out in the AS Award are appropriate to the higher education industry, and continue to be well-suited to the nature of the work performed. There is no need to vary the award in the manner provisionally proposed by the Full Bench, and to do so would in fact be contrary to the modern awards principle.

### 13. Casual employment and loading

**13.1 Casual employment** is employment by the hour and paid a rate on an hourly basis that includes a loading related to award-based benefits for which a casual employee is not eligible. A casual employee will be paid per hour 1/38th of the weekly base rate derived from the relevant classification plus a loading of 25%.

#### 13.2 Formulae

The minimum salary paid to academic staff employed on a casual basis will be at the rates provided for in clause 0. These rates are derived from three base rates calculated using the following formulae:

**(a) Lecturing and higher marking rate**

The base rate applicable to lecturing or for purposes of the higher marking rate is determined by reference to the second step of the full-time Level B scale.

**(b) Rate applicable to performance of other duties involving full-time subject coordination or possession of a relevant doctoral qualification**

The base rate applicable where the duties include full subject coordination or where the academic possesses a relevant doctoral qualification is determined by reference to the sixth step of the full-time Level A scale.

**(c) Rate applicable to all other duties**

The base rate applicable to all other duties including tutoring rates not covered above is determined by reference to the second step of the full-time Level A scale.

**18.2** The following will apply to casual academics for work performed:

[18.2 varied by [PR997886](#), [PR509037](#), [PR522868](#), [PR536671](#), [PR551594](#), [PR566672](#), [PR579751](#), [PR592101](#) ppc 01Jul17]

	<b>Per hour (including the casual loading) \$</b>
<b>Lecturing</b>	
Basic lecture (1 hour of delivery and 2 hours of associated working time)	125.77
Developed lecture (1 hour of delivery and 3 hours associated working time)	167.72

	<b>Per hour (including the casual loading) \$</b>
Specialised lecture (1 hour of delivery and 4 hours associated working time)	209.64
Repeat lecture (1 hour of delivery and 1 hour associated working time)	83.84
<b>Tutoring</b>	
Tutorial (1 hour of delivery and 2 hours associated working time)	98.14
Repeat tutorial (1 hour of delivery and 1 hour associated working time)	65.41
Tutorial (1 hour of delivery and 2 hours associated working time) (where academic holds Doctorate)	111.38
Repeat tutorial (1 hour of delivery and 1 hour associated working time) (where academic holds Doctorate)	74.23
<b>Musical accompanying</b>	
Musical accompanying (1 hour of delivery and 1 hour preparation time)	65.41
Musical accompanying (1 hour of delivery and 1 hour preparation time) (where academic holds Doctorate)	74.23
<b>Undergraduate clinical nurse education</b>	
Little preparation required (1 hour of delivery and 0.5 hours associated working time)	49.07
Normal preparation time (1 hour of delivery and 1 hour associated working time)	65.41
Little preparation required (1 hour of delivery and 0.5 hours associated working time) (where academic holds Doctorate)	55.68
Normal preparation time (1 hour of delivery and 1 hour associated working time) (where academic holds Doctorate)	74.23
<b>Marking rate</b>	
Standard marking	32.69
Marking as a supervising examiner, or marking requiring a significant exercise of academic judgment appropriate to an academic at level B status	41.93

	<b>Per hour (including the casual loading) \$</b>
Standard marking (where academic holds Doctorate)	37.13
Marking as a supervising examiner, or marking requiring a significant exercise of academic judgment appropriate to an academic at level B status (where academic holds Doctorate)	41.93
 <b>Other required academic activity</b>	
If academic does not hold doctoral qualification or perform full subject coordination duties	32.69
If academic holds doctoral qualification or performs full subject coordination duties	37.13

**CURRENT HOURLY ENTERPRISE AGREEMENT RATES FOR MARKING & OTHER ACADEMIC  
ACTIVITY FOR ACADEMIC CASUAL EMPLOYEES**

<b>University</b>	<b>Rate for standard marking /other required academic activity \$ per hour</b>	<b>Rate for standard marking/other required academic activity where academic holds doctorate or performs full subject co-ordination duties \$ per hour</b>	<b>Rate for marking as a supervising examiner or requiring significant exercise of judgment \$ per hour</b>
Australian Catholic University	44.11	52.75	64.08
Australian National University	43.78	51.91	60.44
Central Queensland University	40.82	48.69	57.09
Charles Darwin University	43.40	55.94	64.98
Charles Sturt University	43.55	52.08	61.05
Curtin University	46.08	55.08	64.56
Deakin University	45.92	52.24	60.98
Edith Cowan University	43.58	54.50	63.84
Federation University Australia	41.39	49.49	58.02
Flinders University	43.72	51.00	61.23
Griffith University	42.38	50.69	59.43
James Cook University	42.34	50.38	58.85
La Trobe University	43.06	51.48	60.36
Macquarie University	47.61	56.68	66.37
Monash University	45.21	54.06	63.38
Murdoch University	41.54	49.66	58.17

Queensland University of Technology	43.55	52.04	61.05
Royal Melbourne Institute of Technology	44.03	52.66	61.72
Southern Cross University	43.50	43.50	51.88
Swinburne University of Technology	38.64	46.15	54.05
University of Adelaide	44.66	53.40	62.61
University of Canberra	43.95	52.45	61.36
University of Melbourne	47.32	56.59	66.34
University of New England	44.47	53.04	62.04
University of New South Wales	48.92	57.93	67.41
University of Newcastle	45.23	54.09	63.43
University of Queensland	43.70	52.22	61.28
University of South Australia	45.93	54.92	62.57
University of Southern Queensland	43.80	52.04	60.71
University of the Sunshine Coast	43.89	52.43	61.40
University of Sydney	48.43	57.90	67.88
University of Tasmania	43.20	51.19	59.60
University of Technology Sydney	45.69	54.64	64.06
University of Western Australia	45.64	54.58	63.99
University of Wollongong	44.15	52.80	61.90
Western Sydney University	46.89	55.64	64.85
Victoria University	42.19	50.45	59.15