

Fair Work Act 2009

s. 156 – 4 yearly review of modern awards

4- yearly review of modern awards – Casual employment and Part-time employment
(AM2014/196 and AM2014/197)

Re: Higher Education (General Staff) Award 2010 [MA000007]

Submission of National Tertiary Education Union (NTEU)

Further to the Decision of the Full Bench issued on 9 August 2018 [2018] FWCFB 4695 and draft determinations to vary modern awards, please accept this urgent submission from NTEU.

In original Submissions in 2014, the ACTU included a table of modern awards which set out the various components of their casuals claim as they were sought to apply to each Award; (see D No: 141/2014, 11 November 2014).

Though they were seeking a “Deeming clause” as part of the claim for casual conversion in respect to the ***Higher Education (General Staff) Award 2010*** (“the Award”), the document noted that variation to minimum engagement for casual staff **was** being sought to apply to this award.

Sub-clause 12.2 of the current Award provides a minimum engagement period for casual general staff working in higher education as follows:

- (i) employees who are students (including postgraduate students) who are expected to attend the university on that day in their capacity as students will have a minimum engagement period of one hour;
- (ii) 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;
- (iii) employees with a primary occupation elsewhere (or with the employer) have a minimum period of engagement of one hour; and
- (iv) all other casuals must have a minimum period of engagement of three hours.

The Commission has issued a Draft Determination for the ***Higher Education (Academic Staff) Award 2010*** which gives effect to the Full Bench decision in applying the 2 hours minimum engagement to *all* academic casual staff, including students; (refer Draft Determination MA000006- issued 30 August 2018).

However it seems that the decision has not been applied to the General Staff Award by virtue of the fact that the Award has a 3 hour minimum engagement for most casual staff. This means that casual staff in the categories of sub-clause 12.2 (i) – (iii)- students and those employees with a primary occupation elsewhere – will continue to receive the minimum engagement of one hour, unlike their counterparts covered by the Academic Staff Award who will now receive two hours.

Evidence from the Group of Eight (Go8) witnesses before the Full Bench in 2017 attested to the nexus between the academic calendar and the work of academic staff, and the requirement to engage casual general/professional staff; (refer [2017] FWCFB 3541 [251] ff).

In limiting the application of the Commission's decision to Awards without any minimum engagement period, the Full Bench will inadvertently provide students and those with a primary occupation elsewhere, working as casual *academic* staff, with a minimum engagement of 2 hours work on each occasion, whilst general staff will continue to receive just a one hour minimum engagement (clause 12.2). We do not believe that this was the intent of the Commission in relation to this matter.

We therefore submit that the Commission should issue a Draft Determination to apply to the *Higher Education (General Staff) Award 2010* in the same terms as that to apply to the Academic Staff Award.

In the alternative and if this submission is not accepted, we would seek to apply the 2 hour minimum engagement to students who are not expected to otherwise attend the university on that day and to those employees with a primary occupation elsewhere. This would recognise the requirement for such casual staff to travel to a university campus to attend work.

NTEU National Office
5 September 2018