



Australian Higher Education Industrial Association Submission to the Australian Universities Accord Panel Discussion Paper Consultation

April 2023

Executive Summary

The Australian Higher Education Industrial Association (AHEIA) welcomes the opportunity to provide a submission to the Australian Universities Accord Panel Discussion Paper Consultation (the Discussion Paper). As the employer association for the higher education sector, registered under the Federal *Fair Work (Registered Organisations) Act 2009*, we represent 32 universities, providing advice, assistance and representation to our members on workplace relations matters.

The Australian Higher Education sector is a good employer, having some of the most generous industrial conditions in Australia. This includes 17% superannuation, transferable long service leave, generous paid parental leave, flexible work arrangements, professional development/scholarships and other forms of paid leave above the National Employment Standards (NES). The sector also offers redundancy provisions that significantly exceed the NES.

The combination of relatively generous employment conditions with contingent forms of government funding, particularly in research, leads to difficulties in reducing the level of contingent employment in the sector. The current uncertainty and volatility in both domestic and international student numbers across the sector makes it difficult for universities working alone to deal with the concerns raised around precarious forms of employment and workloads. Greater job security across the sector, while protecting the financial viability of universities, therefore requires three key parties (universities, unions, and government) to be prepared to work together to ensure sustainable outcomes for the sector. At present, having only universities and unions engaged in this discussion leads to zero sum games in finite funding envelopes.

The current industrial relations framework is inflexible and outdated and creates disincentives for ongoing employment. Government funding does not take into account the additional costs of providing ongoing academic roles, smaller classes or longer periods of time for class preparation and marking. If employers are asked through processes of decasualisation and replacing contract staff



with ongoing positions, or making even more substantial improvements to working conditions, there will need to be movement from both unions and government.

While the Discussion Paper poses 49 questions, our submission focusses on workplace relations challenges most closely related to questions **38** and **47**¹. However, given the complexity of the higher education sector and therefore the complexity of the industrial conditions that are in place, our response has applicability across a range of other matters and hence is not solely directed at these questions. AHEIA is thus encouraging the Accord Panel to consider reform of the higher education sector as inextricably linked to the need for reform of the industrial settings that apply across the sector. The current model is not sustainable and further reforms of the sector without addressing the industrial settings are unlikely to yield any proposed benefit.

AHEIA recommends the immediate establishment of an *industrial relations element of the Accord*, specifically tasked with examining the industrial conditions that operate across the higher education landscape to be fed into the broader Universities Accord process. Membership of this group would include *employers, unions* (both the National Tertiary Education Union (NTEU) and unions representing professional staff) and *government representatives* from both the education and employment portfolios.

That a focus of the discussions under this heading be to undertake a three-way negotiation to ensure that additional employment obligations on employers (eg more permanent roles) are matched by appropriate forms of funding from government and/or genuine uplifts in flexibility and efficiency from unions.

¹ Q38 How can the Accord support higher education providers to adopt sector-leading employment practices?
Q47 What structure of Commonwealth funding is needed for the higher education sector for the system to be sustainable over the next two decades?



Higher Education Employment - context

The higher education sector has some of the most generous industrial conditions in the nation, with “wall to wall” Enterprise Agreements (EA) covering the vast majority of university staff. It is a complex environment with employees operating across a diverse range of fields including research and teaching, facilities management, health care, allied health including sport and recreation, business development, cleaning and hospitality, corporate services (legal, human resources, information and communications technology, marketing, events management, and finance), and in some cases, early childhood education.

Many employees in the sector enjoy 17% superannuation (this is for both permanent and fixed term employees), generous paid leave provisions, severance payments in excess of the National Employment Standards (NES), and flexible working arrangements. In the most recent bargaining round, several universities have agreed to additional benefits, such as leave for gender transition.

When compared to other sectors, universities also pay significantly more than other modern awards. Figures 1 and 2 show this comparison for both general and professional staff as well as academic staff.

Figure 1

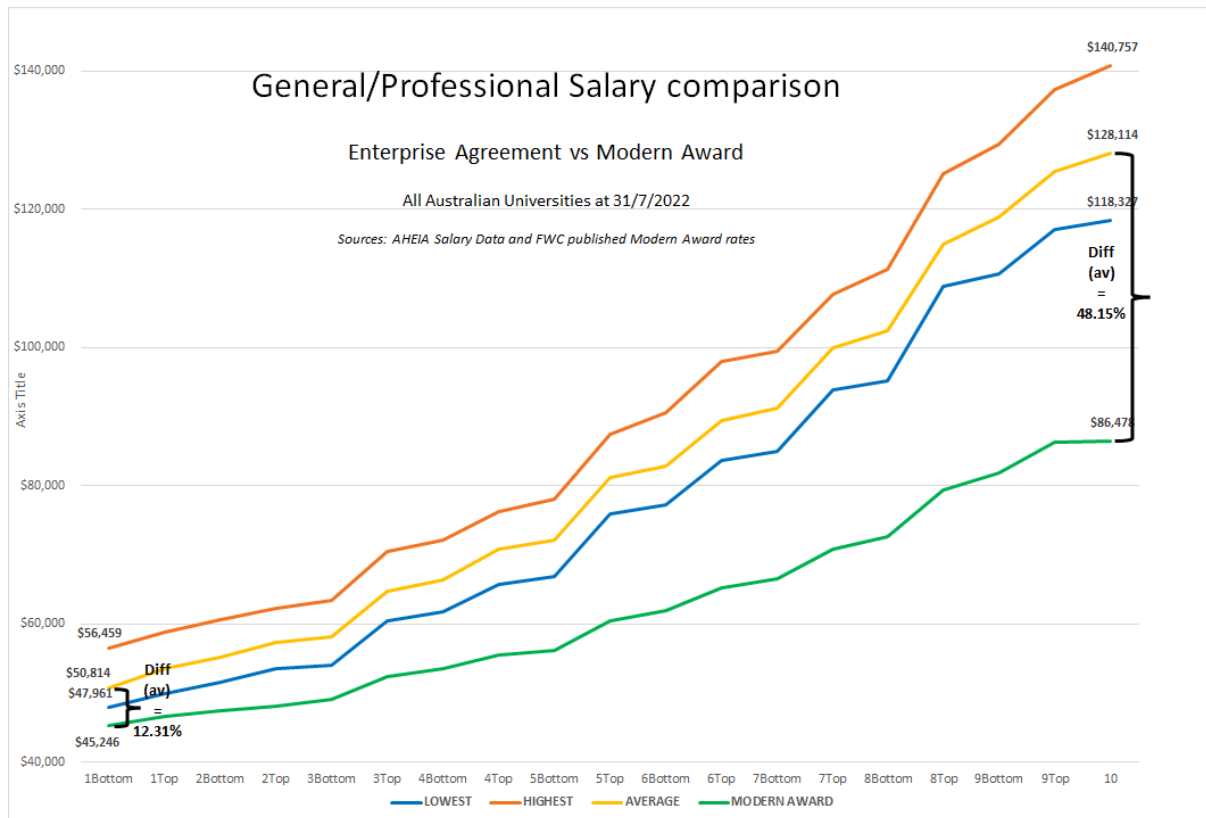
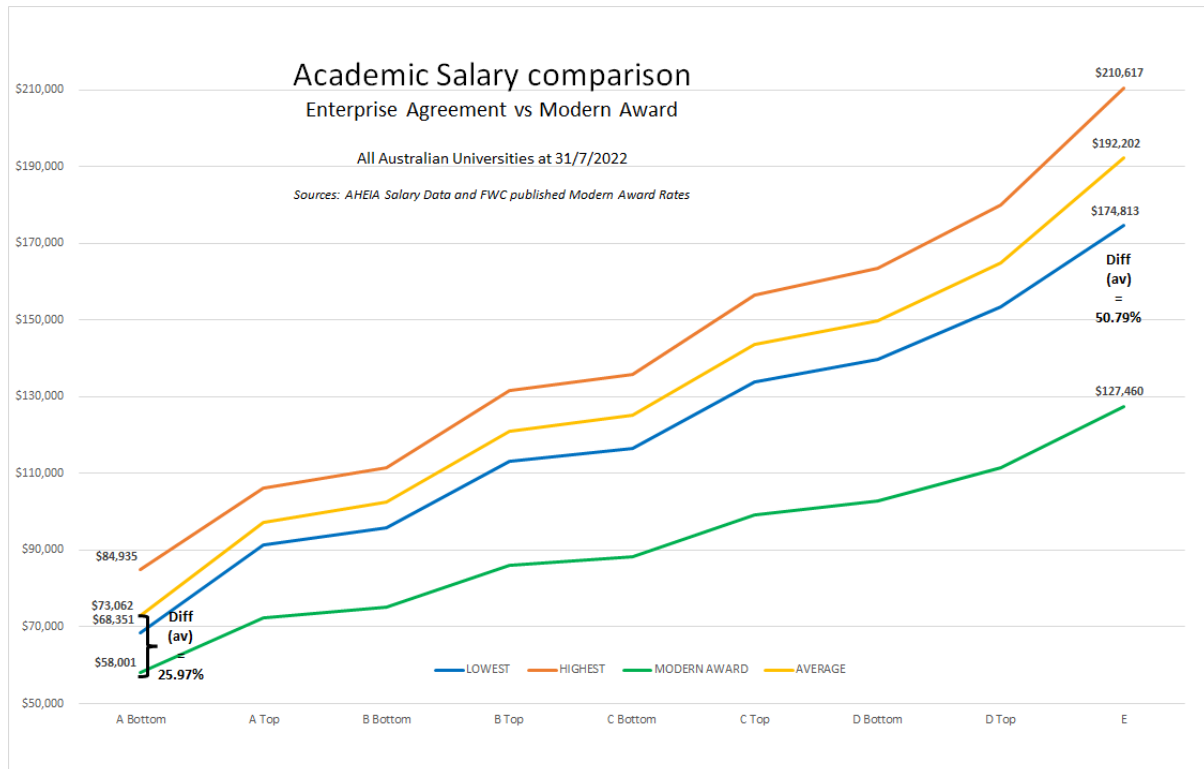


Figure 2



Severance payments and redundancy provisions for the sector are, in the main, considerably more generous than the NES. Under the NES, minimum redundancy notice periods range from 1 to 4 weeks, pending time served. For individuals who have served more than 5 years, the minimum notice period is 4 weeks while for individuals who have served between 1-2 years it is 1 week. The amount of redundancy pay for someone serving at least 9 years but less than ten is 16 weeks and for at least 10 years the pay is 12 weeks².

By contrast, many universities have such generous redundancy provisions that it acts as a disincentive to putting people onto permanent positions, as this very quickly leads to a significant financial impost if funding for those positions cannot be found. The notice period at many universities are months long, for example Charles Sturt University has a 16 week notice period, La Trobe 22 weeks, and Monash 26 weeks. The maximum redundancies payable can be very substantial at many universities, for example 18 months plus 8 weeks at Griffith, 70 weeks at Edith Cowan

² There is a reduction in redundancy pay from 16 weeks to 12 weeks for employees with at least 10 years continuous service. This is consistent with the 2004 Redundancy Case decision made by the Australian Industrial Relations Commission.



University and Federation University 74 weeks. Some university EAs have no requirement for time served before a redundancy payment is required, and a package that is substantially above the NES is available to most employees after a relatively short period of employment. The procedures under most EAs for triggering redundancies are relative complex and give significant voice to staff and unions.

For staff with permanent positions, the industrial settings for universities are thus generally generous. Many staff on contracts have the benefit of much of this protection, although of course not the same degree of job security.

Universities wish to be employers of choice and to offer competitive employment terms to staff. Yet the current settings, which include significant inflexibility in terms of work profiles and contingent funding in key areas such as research and teaching, have made it difficult to extend these conditions to as many permanent employees as might be desirable.

Fixed Term Employment

Fixed term employment in universities is significantly related to research activity. Universities use fixed-term contracts in other settings in a similar way to other employers (eg to backfill an employee on leave, to undertake a particular project) but what sets universities and research institutes apart is the use of such contracts for those who are predominantly research focused in their work.

Employees engaged on fixed term contracts enjoy generous entitlements, not usually available to fixed-term employees in other sectors. This includes 17% superannuation, transferable long service leave, paid parental leave, flexible work arrangements, professional development/scholarships and other forms of paid leave that are above the NES. Importantly, fixed term employees at universities also receive NES equivalent severance pay where they have been on consecutive contracts which are not renewed, and are employed under certain categories, including research.

There are a range of legislative restrictions in place for universities which define when fixed term arrangements can be used. The legislative constraints were first introduced in 1998 with the *Higher Education Contract of Employment (HECE) Award*. Since its inception, the sector experienced a decline in the use of fixed term contracts to a level that has remained relatively stable. Most notably, fixed term contracts have remained steady at approximately 30% across the sector for at least the last decade, which AHEIA believes is a consequence of continued restrictions on the use of fixed term contracts in university EAs and the way in which research is currently funded.

The HECE provisions, now included in the 2 higher education modern awards, stipulated that the use of fixed term contracts across the sector can only occur in certain circumstances including:

- Specific task or project
- Research



- Replacement employee (to fill a vacancy being advertised or where incumbent is on leave or higher duties)
- Recent professional practice required – (Where a professional or vocational education curriculum requires recent practical or commercial experience)
- Pre-retirement contract - Where an employee declares their intention to retire
- Fixed-term contract employment subsidiary to studentship

Further categories have been negotiated between unions and staff and are mostly absorbed in EAs across the sector.

It is common globally for those who seek a career in the competitive field of research to commence their employment as a post-doctoral fellow on a contract that might be anywhere from 2-5 years depending on the funding source. The Australian Research Council DECRA scheme, for example, is for three years of funding. In some disciplines two post-doctoral positions may be the norm. While this extended period without job security can create difficulties for junior researchers, it does give them time to establish themselves and demonstrate whether they are likely to be suited to research focused work. Many of these positions are funded by universities or industry and should institutions be required to guarantee ongoing employment to scholars before offering them post-doctoral positions, it would lead to a decline in the number of such positions offered to manage the financial risk.

After this initial period or contract based work, some transfer out of the sector, some into more permanent teaching and research roles, and some seek to stay in research focused positions. The challenge for the higher education sector is that research funding is not ongoing and many researchers are left to move from one contract to the next, sometimes for many years. Such contracts are usually several years in duration at a time, but this can lead to a prolonged period of uncertainty for researchers who play a significant role in Australia's research success.

An industrial relations element to the Accord could examine the various ways in which such contingency could be managed – there might be more flexibility in redundancy payments for research focused staff which minimises the risk of ongoing employment; or government funding might better support this element of the research mission; or it may be agreed that the conditions are sufficiently good and the contracts of sufficient length to justify this level of contingency for research.

A minimum basic grant model for universities that is guaranteed over five years, as recommended by several of the major submissions to this Accord, would play some role in creating the financial security that would assist universities in making decisions about longer-term employment. This would be unlikely to be sufficient in and of itself, unless it was linked to the provision of additional funding.



In the short term, or in the absence of a three-way agreement as proposed, there remains an issue with the ambiguous provisions relating to fixed-term employment brought in by the *Fair Work Legislation (Secure Jobs, Better Pay) Act 2022* ('the Act') that have the potential to adversely impact research in Australia's public universities. AHEIA has devised a set of draft Regulations that it has previously provided to the Department of Employment and Workplace Relations. These are included as an attachment to this submission (see Attachment A).

AHEIA recommends that the government accepts and implements the draft regulations to provide clarity and certainty for the higher education sector and then includes decreasing the number of academics on contracts as part of the discussions between employers, unions and the government.

Casual employment

Just as fixed term employment is a necessary feature of the research landscape in Australia, so is casual employment although casual employees tend to be used primarily for teaching. While casualisation of the academic workforce has drawn significant criticism of late, it should not be seen as inherently problematic at least when kept to a reasonable proportion of staff.

Underpayment of casual staff is a serious issue and one that universities have worked to rectify. Universities that have underpaid staff must take blame for doing so, and many have voluntarily undertaken an analysis of their systems to ensure that they rectify past problems and implement better systems into the future. It should be noted, however, that much academic casual work is unlike that of other sectors. Other than time in the classroom, casual academics tend to have a high degree of control over when and where they undertake their work (with flexibility in working hours often seen as a positive aspect of academic employment) with minimal supervision while working on tasks that can undertaken to very different standards. EAs are also complex in this area. Some types of tasks, including teaching tutorials and lectures, are paid with a single, rolled-up rate while other related tasks such as marking, have to be paid by the hour. This has led to confusion across the sector and it should be noted that almost every university that has examined underpayment has also discovered examples of overpayment, which, in this context, argues against the use of terms like 'wage theft'. Simplifying and potentially agreeing some standards in this area is another potential element for the industrial relations element of the Accord.

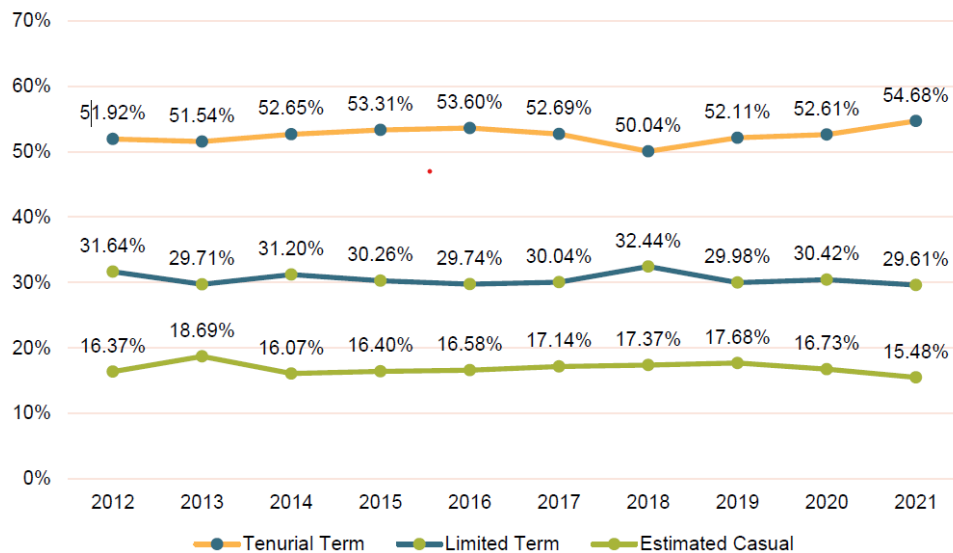
In addition to the concerns about under-payment, concerns have been raised in recent years about the over-use of casual staff in universities. Casual academic teaching staff are an important cohort for the delivery of teaching in Australia. They also represent the majority of casuals employed in the higher education sector. Our internal benchmarking data reveals that this employment type is both steady and a necessary part of the makeup of the higher education workforce. As seen in Figure 3, the rates of casualisation in universities and other educational institutions has been either steady or declining over the last decade. Use of casuals in the sector differs significantly between different universities.

The important role of casual employment within the higher education sector is also evident in the motivations of individuals who seek out casual employment. In an article by Coates and Goedegebuure³, several categories were said to apply to casual academics with the conclusion being that only a select few groups sought ongoing employment. The authors grouped casual academics into five categories which included:

- Industry specialists who undertake teaching or research to address specific knowledge needs -a group that have become even more important as universities are urged to engage better with industry;
- Academics who sustain multiple employment across different institutions to foster a critical mass of employment or for family/personal reasons;
- Academics who seek employment post full-time employment ie often those seeking work post retirement;
- Aspiring academics who are seeking future employment in permanent academic role; and
- Postgraduate research students who participate in formal teaching and research activities to supplement their stipends and gain experience – a group who would be badly impacted by any dramatic decrease in the availability of casual work.⁴

Figure 3

Staffing FTE Percentages at Universities from 2012-2021



Source: Department of Education, Skills and Employment – various reports.

³ Coates and Goedegebuure (2010) [The real academic revolution : why we need to reconceptualise Australia's future workforce, and eight possible strategies for how to go about this](#)

⁴ Coates and Goedegebuure (2010, p20)



Those wanting ongoing employment were those researchers who were qualified with research doctorates and aspired to academic employment and those who were aspiring to academic employment post completion of higher degree by research. So, it should not be assumed that everyone in casual employment wants to transfer to ongoing employment and it would not be healthy for the sector if that was the case, as it would limit employment opportunities for current students and industry partners.

Furthermore, while there may be a desire for some casuals to be converted to ongoing employment, there are structural impediments to this. Most casual staff are paid for teaching. Ongoing academic roles are limited by academic workload model clauses in university EAs which set maximum percentages for teaching. These maximum percentages apply for those roles described as “teaching focused” or “teaching scholar” roles. All require a set minimum and maximum component for research/scholarship, teaching and service/administrative activities. The traditional division in Australia for an academic is 40% of their time for each of teaching and research with 20% for service and administration. This is sometimes referred to as the 40/40/20 model.

There is more flexibility under some EAs now with a recognition of teaching focused positions to at least some degree, but unions have been vocal on the importance of the 40/40/20 model as the basic form of employment. In the most recent bargaining round, there has been a demand for substantial ‘decasualisation’, ie the conversion of people who are currently casual staff to permanent staff. Under most of the negotiated changes to EAs, staff in more permanent roles will now be required to have at least 20% and often 30% of their time in non-teaching activities (in a few cases there is a transition period where this will be only 10% but that is not a permanent change). That means to obtain the same amount of teaching, a significant increase in cost for the same amount of teaching will be required. This is a distinctive feature of higher education as compared to casual conversions in most sectors.

While the government has been strongly supportive of a shift to more permanent staff, this is an unfunded mandate and because of the different structure of casual and permanent roles has more significant implications than in other industries. This is exacerbated by additional costs of redundancies should the increase in permanent roles become unacceptable. The workload allocation model thus severely limits universities in their ability to adopt flexible models and thus necessitates retaining a degree of individuals in casual employment.

AHEIA recommends that the industrial relations element of the Accord consider what level of casualisation is appropriate in Australian universities and what changes to funding models and **more flexible workload allocation models** might support a modest reduction in casual staff.



Conclusion

Current EA negotiations across most the sector have featured substantial requests for pay rises (a reasonable request given the increasing cost of living in Australia), requirements to decasualise workforces and requests for additional leave types. The Maximum Base Grant Amount (MGBA) indexation does not match the amount required for salary increases to keep pace with inflation. The consequence is that any pay rise granted to staff under EAs places increased pressure on the overall sustainability of universities. Furthermore, the EA provisions for redundancy across the higher education sector are also very generous compared to other sectors resulting in high costs for institutions if they choose to enact workforce changes to better align with current and future demands. This will become increasingly necessary as novel disciplines begin to emerge to address the challenges that Australia faces and indeed will be a necessary consideration for the Accord panel as it tries to consider how the higher education sector can better align with the needs of the nation.

Increasing demands for expanding employment conditions, coupled with the new provisions of the *Fair Work Act 2009* concerning casual conversion (s66A – s66C), make it more difficult for universities to employ people in ways that meet the nature of the work and the nature of the funding envelope. Current moves to decasualise the workforce also shifts what is a cost-effective resourcing approach into a less flexible workload model without any consideration of how that is to be afforded by a sector that is already under financial strain.

There are a number of other issues that are not canvassed in detail in this paper which would benefit from a more comprehensive review of the industrial relations settings in higher education, including the complex HEW level system for professional staff, the increasingly unclear distinction between some professional and academic roles, the highly detailed and inflexible EAs as compared to sectors with more modern agreements, the ambiguity about voting rights when voting on EAs, and ensuring that additional government mandates that create workloads are appropriately resourced.

To create a model that is sustainable for the sector, AHEIA requests that the government adopt a funding model that provides more substantial funding that would equate to a minimum base amount plus inflation. This amount would give confidence to employers over the medium term to employ more people in permanent roles. However, a stable funding amount is not sufficient to meet the challenge and so a regulatory framework that provides for flexibility across the sector will also be needed to ensure that the sector is able to meet changing demands. As there are many different ways in which these ends may be met, AHEIA is recommending the three-way discussion of universities, unions and governments under the banner of the broader Accord process.

AHEIA wishes to advise the Accord panel that due to the important focus on casualisation within the sector, AHEIA is progressing a piece of work to examine the current makeup of academic casuals. As this data becomes available it will be shared with the Accord.



Proposed Draft Regulations
For the purpose of subsection 333F(1)(i) of the Fair Work Act 2009
As amended by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

Title	Regulation 2.XX Fixed term contracts – Higher Education	AHEIA drafting note
<p>Prescription as excepted kind of contract</p>	<p>(1) For subsection 333F(1)(i), a kind of contract to which the limitations in section 333E to not apply includes a contract of employment in which:</p> <ul style="list-style-type: none"> (a) the employer is in the higher education industry; and (b) the employee is or will be employed either: <ul style="list-style-type: none"> (i) for one or more specified purposes; or (ii) in one or more specified circumstances. 	
<p>Higher education industry</p>	<p><i>Higher education industry</i></p> <p>(2) In subregulation (1)(a), an employer is in the higher education industry if it is:</p> <ul style="list-style-type: none"> (a) an educational institution providing undergraduate and postgraduate teaching leading to the conferring of accredited degrees and performing research to support and inform the curriculum; or (b) covered by either of the following awards (including as varied or superseded from time to time): <ul style="list-style-type: none"> (i) the <i>Higher Education Industry—Academic Staff—Award 2020</i>; or (ii) the <i>Higher Education Industry—General Staff—Award 2020</i>. 	<p>We have included the awards, as varied or superseded from time to time, as a catch all to ensure that if the award coverage becomes broader the Regs will expand to capture it.</p> <p>We have used the phrase "covered" within its meaning in the Act. An employee remains "covered" by a modern award even if an enterprise agreement applies to that employee. However, for the avoidance of doubt we have also included subregulation (3).</p>

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	(3) In subregulation (2)(b), an employer is taken to be covered by an award even if an enterprise agreement, workplace determination, or agreement-based transitional instrument within the meaning of the Transitional Act applies to the employer.	
Specified purpose	<p><i>Specified purposes and circumstances</i></p> <p>(4) In subregulation (1)(b)(i), a specified purpose includes any of the following:</p> <p>(a) the completion of a specified task or project which is expected to be completed within an anticipated timeframe; or</p>	<p>Award 11.2(b)(i)</p> <p>We have separated cl 11.2(b)(i) of the Award into (4)(a) and 5(a).</p> <p>We note that this exception is very similar to the exception in the Act at s 333F(1)(a) – "a distinct and identifiable task involving specialised skills".</p>
	(b) engagement in research only functions; or	<p>Award 11.2(b)(ii)</p> <p>While the Awards provide for time limits for research only contracts, we consider it may be unnecessarily complex to introduce such time limitations in the Regulations.</p> <p>Those limits in the award will continue to have effect but by virtue of this sub-regulation an EBA could be broader.</p>
	(c) to replace a full-time or part-time employee (the "replaced employee") for a definable period for which the replaced employee either on an authorised leave of absence or is temporarily seconded from their usual duties; or	<p>Award 11.2(b)(iii)(A)</p>

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	<p>(d) to perform the duties of a position which:</p> <p style="padding-left: 40px;">(i) is vacant and for which the employer has made a definite decision to fill and has commenced recruitment action; or</p> <p style="padding-left: 40px;">(ii) the normal occupant is currently performing higher duties pending the outcome of recruitment action for that vacant higher duties position,</p> <p>until a full-time or part-time employee is engaged for the relevant vacant position; or</p>	<p><i>Award 11.2(b)(iii)(B)</i></p>
	<p>(e) to deliver a curriculum in professional or vocational education, where such curriculum requires that work be undertaken by a person who has recent practical or commercial experience; or</p>	<p><i>Award 11.2(b)(iv)</i></p> <p><i>While the Awards provide for time limits for recent professional practice contracts, we note that certain enterprise agreements provide for greater lengths of time. Those longer arrangements would be prohibited if the regulations specified the Award time limit and so we have not included these time limits so as to provide a provision that represents operational practices within the sector.</i></p> <p><i>Limits in the award will continue to have effect in respect of any employees only covered by a higher education award and not also by an EBA (if any).</i></p>
	<p>(f) to provide experience and career development opportunities (including internships) to students enrolled in</p>	<p><i>Consolidated from various enterprise agreements</i></p>

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	<p>year 12 or tertiary studies (whether for a degree, apprenticeship, traineeship or vocational qualification); or</p>	<p>This exception may overlap with s 333F(1)(b) of the Act relating to "training arrangements".</p>
	<p>(g) to provide a developmental fellowship (howsoever described) for early career academics (whether predominantly engaged in teaching, research or both) including:</p> <ul style="list-style-type: none"> (i) students who are studying a PhD, have submitted a PhD thesis for examination or who have enrolled to study a PhD; or (ii) graduates who have been awarded a PhD within the previous 6 months; or (iii) academics who have only casual teaching experience; or 	<p>Consolidated from various enterprise agreements</p> <p>We have referred to both research and teaching as various enterprise agreements referred to developmental fellowships for one or the other.</p>
	<p>(h) to provide a tenure track for academic employees, in which:</p> <ul style="list-style-type: none"> (i) the employee is predominantly engaged for research activities other than teaching on an occasional basis; and (ii) it is reasonably expected that, subject to performance and work demand, at the end date of the contract, the employee will be engaged on an ongoing full-time or part-time basis; or 	<p>Consolidated from various sector enterprise agreements</p>

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	(i) to deliver or support the delivery of Vocational Education and Training; or	<i>Consolidated from various sector enterprise agreements</i>
	(j) to act in a senior leadership or senior management position, including a Head of School, Dean of Faculty or similar positions howsoever described.	<i>Consolidated from various sector enterprise agreements</i> This exception appears in the EA for Curtin and Edith Cowan Universities. Federation University’s EA takes the approach of referencing the earnings of the employee rather than their seniority or title. It is likely that these roles will be exempt in any case due to the high-income threshold exemption at s 333F(e).
Specified circumstances	(4) In subregulation (1)(b)(ii), a <i>specified circumstance</i> includes any of the following: (a) the employment is provided for from identifiable funding external to the employer other than an operating grant from government or payments of fees made by or on behalf of students, and the period of the contract is for the reasonably expected period of the funding; or	<i>Award 11.2(b)(i)</i> We have separated cl 11.2(b)(i) of the Award into (4)(a) and 5(a). We note that this exception is distinct from the government funding exception at s 333F(1)(f) of the Act.
	(b) the employee has declared an intention to retire within the next 5 years and the end date of the contract is on or around the declared retirement date; or	<i>Award 11.2(b)(v)</i>

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	(c) the employee has formally retired from the employer and is engaged on a "post-retirement" contract (howsoever described)	<i>Consolidated from various sector enterprise agreements</i>
	(d) the employee is an enrolled student of the employer and engaging in work generally related to a degree course the student is undertaking with the employer (including for the balance of an academic year in which the employee ceases to be a student, including any period that the employee is not enrolled as a student but is still completing postgraduate work or awaiting results); or	<i>Award 11.2(b)(vi)</i> We have simplified the provision that appears in the Award but do not consider this significantly alters its effect.
	(e) the employment is for a newly established position or part of a new organisational arrangement and there is genuine uncertainty as to whether the position or organisational area will continue; or	<i>Consolidated from various sector enterprise agreements</i> This may be found to be too uncertain and may benefit from further definition eg within last 6 months.
	(f) the employment is in a work area which it has been determined will be disestablished or reduced in size within 36 months; or	<i>Consolidated from various sector enterprise agreements</i>
	(g) there is significant growth in student enrolment which: (i) is expected to exceed 5 Equivalent Full-Time Student Load (EFTSL) (within the meaning of the <i>Higher Education Support Act 2003</i>); and (ii) exceeds current staffing capacity; and	<i>Consolidated from various sector enterprise agreements</i> The benchmark of 5 EFTSL appears in the CQU EBA. Query whether this is a sufficiently high benchmark for the purposes of the regulations.

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	(iii) there is genuine uncertainty as to whether the work will continue; or	
	(h) there is a reasonable basis to expect a significant risk of a decrease in enrolments: (i) which is likely to require a reduction in future staff numbers; and (ii) there is a need, in the period leading up to the decrease in enrolments, to cover work of a type that could reasonably be expected to be affected by the decrease in enrolments; or	<i>Consolidated from various sector enterprise agreements</i>
	(i) the employee is a secondee from another employer and is expected to return to that employer at the conclusion of the contract; or	<i>Consolidated from various sector enterprise agreements</i>
Not overriding Award/EBA	(5) For the avoidance of doubt, this regulation 2.XX does not operate to permit any contract between an employer and employee which would otherwise contravene the terms of any modern award or enterprise agreement that applies to such employer and employee.	<p>The regulations will not override any restrictions that exist in the awards or enterprise agreements – ie, if an institution's EBA does not permit a form of fixed term contract that is specified in the above draft regulations, the regulations will not override the restriction in the EBA. Similarly, if the Award applies to an institution (ie if there was no EBA in place) the regulations would not expand the scope of the award exemptions.</p> <p>We note that changes to the Award could permit additional exceptions in future (s 333F(h) of the Act).</p>



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