

## HE Modern Awards Casual Terms Review - Award variations

AHEIA advice to members (22.9.21):

In line with variations to be made to other modern awards, the FWC Full Bench undertaking the Casual Terms Award Review of the three Higher Education sector awards has determined that the *Higher Education Industry Academic Staff Award 2020* will be varied to contain a “sign-post” that notes that offers and requests for conversion from casual employment to full-time or part-time employment are governed by the Fair Work Act’s National Employment Standards. This is in accord with the Full Bench’s provisional views, which were supported by the AHEIA submissions in these proceedings. The Determination will be formally issued on 27 September 2021 in the form set out in the [Draft Determination](#) on the FWC website.

The Draft Determinations for the *Higher Education Industry General Staff Award 2020* and the *Educational Services (Post-Secondary Education) Award 2020* can both be accessed from [Group 3 schedule](#) of uncontested matters

## HE Modern Awards Casual Terms Review - AHEIA response to FB Statement

AHEIA advice to members (31.8.21):

Thank you for your feedback in support of the AHEIA submission, subsequently filed with the FWC, that made no objection to the award amendments being proposed by the Full Bench. This included support for the view that all three awards be varied to address casual conversion as set out in my email of 23 August (below).

Clayton Utz, on behalf of the Group of Eight universities, made a submission that differed slightly by suggesting that the *Higher Education Industry Academic Staff Award 2020* should remain silent altogether as to casual conversion.

The practical effect of these two positions is, however, exactly the same:

- (i) disputes over the application of the FW Act casual conversion provisions are governed by the award dispute resolution clause; and
- (ii) casual conversion is otherwise governed by the FW Act, not the award.

No adverse implications for enterprise agreement (EA) approvals with respect to the Better Off Overall Test (BOOT) arise from the award being amended as proposed by the Full Bench, and new EAs could also simply recite the fact that offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the National Employment Standards (NES).

AHEIA will therefore refrain from making any submissions in reply.

It is also interesting to note that the NTEU has not, to date, made any submissions in these Full Bench award proceedings.

For employees covered by a university EA, disputes in relation to the application of the FW Act’s NES casual conversion provisions are governed by the EA dispute resolution clause.

## HE Modern Awards Casual Terms Review - AHEIA response to FB Statement

AHEIA advice to members (23.8.21):

The FWC Full Bench conducting the Casual Terms Review of the “Group 3” awards issued a [Statement](#) on 18 August 2021 that outlined its provisional views on proposed amendments to that group of awards, that includes the three awards that apply to the Higher Education sector - the [Educational Services \(Post-Secondary Education\) Award 2020](#); the [Higher Education Industry General Staff Award 2020](#); and the [Higher Education Industry Academic Staff Award 2020](#).

With respect to the first two of those awards, the Full Bench has rightfully concluded that the casual conversion provisions in the awards are less beneficial than the new legislative provisions that govern casual conversion. The Full Bench is therefore proposing to amend these two awards by replacing the existing award conversion provisions with a reference to the National Employment Standards (“NES”) that contain the new legislative provisions. In this respect, it would be expected that in line with the draft determination for the *Manufacturing and Associated Industries and Occupations Act 2020*, the new casual conversion award provisions would simply state as follows:

### *Offers and requests for casual conversion*

*Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES.*

*NOTE: Disputes about offers and requests for casual conversion under the NES are to be dealt with under [clause X] - Dispute resolution.*

The Full Bench is proposing that the *Higher Education Industry Academic Staff Award 2020*, that does not contain any casual conversion provisions, also be amended to refer to the NES in this manner. A note referring to the award dispute resolution clause as above would also not constitute an expansion of the award to now deal with casual conversion disputes, as the clause already applies to disputes in relation to the NES.

Finally, the Full Bench is proposing a further minor amendment at [37] to the *Educational Services (Post-Secondary Education) Award 2020* that appears logical and non-controversial.

AHEIA is therefore intending to advise the Full Bench that it has no objection to the three awards being amended as outlined above. Please let me know by Noon on Wednesday, 25 August if you have any differing view regarding the proposed amendments to the three awards.