

**SENATE INQUIRY INTO UNLAWFUL UNDERPAYMENT OF EMPLOYEES' REMUNERATION  
SUBMISSION BY THE AUSTRALIAN HIGHER EDUCATION INDUSTRIAL ASSOCIATION**

**15 September 2020**

The Australian Higher Education Industrial Association (**AHEIA**) is the employer body for Australia's higher education sector. AHEIA currently has 33 member universities, being 32 of Australia's 37 public universities, and one of Australia's three private universities.

AHEIA, of course, supports the Inquiry on the basis that Australian workers should be paid their proper entitlements under industrial awards and agreements. We understand the necessity for the Inquiry following very high-profile cases in some industrial sectors, where successful prosecutions have resulted in orders of significant backpay. At the same time, however, it is also fundamentally important to differentiate the concept of "wage theft", which implies deliberate and systemic underpayment, from inadvertent underpayment of employees.

The Australian higher education sector encompasses 40 universities which collectively employ over 130,000 academic and general/professional staff. It is not a sector that has been subject to prosecutions for underpayment of employees. It is also a sector characterised by high union support of employees in ensuring that enterprise agreement (**EA**) provisions are properly implemented.

University staff are paid in accordance with rates and classification regimes that have been negotiated at enterprise level between universities and their staff and union representatives, with EA rates of pay for both academic and general/professional staff that significantly exceed the minimum safety-nets provided by the modern awards.

Payment errors can occur as a result of complexities associated with payment regimes, as indicated below, or with complexities associated with the interaction of superannuation entitlements under EAs, superannuation fund trust deed provisions and ATO rulings regarding ordinary time earnings of employees. As in any large organisation, there are occasions where underpayments - or indeed overpayments - may occur in error. Where such issues are identified, they are properly addressed by employees or their representatives raising these directly with universities, with any underpayments being rectified as soon as practicable.

We note that the principal union in the sector, the National Tertiary Education Industry Union (**NTEU**) has made a submission to the Inquiry (Number 105), and we make the following general comments in relation to the NTEU submission:

- It provides no data about alleged underpayments, but rather makes a sweeping statement that "wage theft" is rife across the whole Australian university sector, and perversely, and without any evidence in support, that this is a "business model" deliberately adopted by universities.
- It gives examples of disputes at only three universities, being the University of Melbourne, the University of Western Australia, and Macquarie University. The latter two universities are members of AHEIA. The University of Western Australia has already filed a submission in which it strongly refutes what is asserted about it in the NTEU submission, and we understand that Macquarie University will be doing likewise.

- It conflates the exploitation, or alleged exploitation, of international students who are employed outside the higher education sector, with employment within the higher education sector. This gives a false impression that universities are somehow responsible for actions of employers outside the sector.
- The assertions relate only to casual academic staff, whereas universities employ both academic and general/professional staff on a continuing, fixed-term or casual basis. The EA provisions for casual academic staff, which are considered in more detail below, are unique to the higher education sector with payment regimes that have been negotiated and agreed with university staff and the NTEU.
- It essentially mirrors/supports the recommendations in the ACTU submission (Number 38) but seeks to impose further reporting requirements on the higher education sector alone without proper foundation.
- It does not specifically address the Inquiry's Terms of Reference but appears to address Term (a) by implying that casualisation and wage theft are inextricably linked.

AHEIA's response to the NTEU's assertions about alleged underpayment of casual academic staff is as follows.

Rates of pay for casual academic staff are governed by EAs that have been negotiated between individual universities and the NTEU. The casual rates of pay for various modes of delivery of teaching (eg. lectures, tutorials, demonstrations) are based on actual time taken for delivery and notional (not actual) time assumed for associated activities - preparation, student consultation, and reasonably contemporaneous marking. So, for example, the delivery of a standard lecture may take up to one hour, but the casual academic is paid for a notional 3 hours of academic activity, irrespective of whether the actual total time taken is in fact 2.5 hours or 3.5 hours. Rates for marking not undertaken contemporaneously with delivery of teaching are hourly based, not per the piece of work being marked. This casual employment payment regime originates from determinations made by the Academic Salaries Tribunal in 1976 and 1980, subsequently included in federal awards, including the current Higher Education - Academic Staff - Award 2020 [MA000006], which forms the safety net for EAs in the sector.

Given the way that casual academic work is regulated by the EAs, it is possible for disputes relating to alleged underpayments to arise as to (i) whether the mode of delivery undertaken constitutes a "lecture" or "tutorial" or other type of delivery, (ii) whether marking is reasonably contemporaneous with such delivery, and (iii) whether time allocated for non-contemporaneous marking done in isolation is reasonable in the circumstances. With the advent of different forms of delivery of teaching, including on-line modes of delivery, it is not surprising that disputes might arise about the correctness of the rates paid in specific circumstances. Notwithstanding this, disputes or complaints about underpayment of casual academic staff are rare. Where issues do arise, they are most appropriately and effectively dealt with by the matter being raised with the university to review and rectify where necessary.

As noted above, the NTEU submission refers to disputes at only three universities. All other assertions made by the NTEU alleging underpayments are anecdotal in nature and provide no detail. There is no foundation for the assertion that there is widespread underpayment of casual academic staff and that these claimed underpayments relate to the number of casual staff employed by universities. The extent of casualisation in the higher education sector is a

separate issue, with structural reasons for this which relate to EA restrictions on the use of fixed-term employment and the high costs associated with continuing employment.

With regard to the NTEU submissions regarding Right of Entry, we note that section 483AA of the *Fair Work Act 2009* already enables a permit-holder to make an application to the Fair Work Commission for access to non-member records. We regard the current legislative regime as appropriate, balancing compliance issues and an individual's right to privacy of their own employment details. Universities also provide unions with every opportunity to organise and assist University staff, going as far as hosting union offices on campus.

In summary, AHEIA takes exception to the NTEU's unsubstantiated assertions that Australian universities operate under a "business model" that involves the deliberate underpayment of their staff. To the contrary, universities are earnest in their endeavours to ensure that their staff are paid correctly and are active in investigating payment issues and taking necessary remedial action to rectify any underpayment that might occur.

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