

## 1. Introduction

The University of Melbourne thanks the Senate Select Committee for the invitation to provide evidence to its Inquiry into job security.

We recognise and are in agreement as to the seriousness and the importance of the issues raised in the Committee's interim reports, and in submissions made by others.

The University has made public its commitment to addressing the issues of insecure employment and casualisation, and the Vice-Chancellor and Provost have both personally conveyed a conviction that this provides neither a sustainable nor a desirable model for the future of the University. As we consider the medium to long-term impacts of the Covid-19 pandemic, a centrepiece of our agenda is the question of how best to support a stable workforce underpinned by sustainable and fair workforce planning and employment practices that meet the needs of the University. We have declared a goal of significantly reducing our reliance on casual and short-term contracts, focusing in the near term on the employment of academic staff.

This is not altogether new. In the last Enterprise Bargaining Agreement (2018) we introduced provisions for strengthening job security. Matters emerging from the investigation by the Fair Work Ombudsman into casual underpayments (which commenced in 2020) and the remediation of historic underpayment of casual staff (which commenced in 2019) have strengthened our resolve. However, the University's primary motivation is the fact that the routine use of casual and short-term contracts carries significant consequences for individual staff, for our university culture and community, and for academic quality.

This submission will focus firstly on the nature of the University workforce and the basis for different types of employment.

Secondly, given the Committee's interest in this matter, it will outline work underway to remedy the historic underpayment of some casual staff, and to ensure that this does not occur in the future.

The University is deeply sorry that this underpayment has occurred, as reflected in the Vice-Chancellor's public apology to all affected staff. We are committed to prioritising repayment and correcting past errors, and ensuring we have systems and processes in place to prevent their recurrence.

Finally, we will outline some of the work which has been undertaken to address the broader, longer-term issue of reducing our use of insecure forms of employment, and how we might wish to build on this.

The strategies, circumstances and needs of Australian universities will differ. However, the challenge of supporting a high quality and sustainable workforce, where staff can flourish with good opportunities for progression and strong foundations for enhanced job satisfaction, is common to all institutions and is central to achieving the mission and purpose of Australian higher education. We would welcome opportunities to partner with Government and other stakeholders in further discussion of these matters.

## 2. The University workforce: an overview

Drawing on the peak month of May 2021 the University had a total employee headcount of 14,499 people (9,011 academic positions and 5,488 professional and administrative positions). These comprise academic and professional staff, and the vast majority are covered by the University of Melbourne Enterprise Agreement (2018).<sup>1</sup> The agreement stipulates the legal basis for employment: (i) continuing (ii) fixed term, (iii) continuing (research-contingent) (iv) casual.

The first two of these employment types cover positions which are required to carry out work on an ongoing basis. Research-contingent positions are funded primarily by external organisations to carry out research and research-related duties only.

Fixed term employees are appointed to carry out work that is not required on an ongoing basis for either:

- a specific task (e.g., to work on a discrete project);
- a position that is externally funded for a limited period of time; or
- a position required to temporarily backfill extended periods of absence (i.e. parental leave, long service leave, secondments).

Casual staff are employed to temporarily supplement University requirements throughout the academic year. Table 1 below shows the extent of changes in the University workforce by full-time equivalent utilisation over time.

**Table 1: FTE for Continuing, Fixed-term and Casual Staff by Work Contract, 2016 to 2021**

|      | Continuing Staff |                           | Fixed-term Staff |                           | Casual Staff |                           |
|------|------------------|---------------------------|------------------|---------------------------|--------------|---------------------------|
|      | FTE              | % change on previous year | FTE              | % change on previous year | FTE          | % change on previous year |
| 2016 | 3972.3           | -                         | 3018.9           | -                         | 1038.3       | -                         |
| 2017 | 4195.9           | 6%                        | 3092.0           | 2%                        | 1139.0       | 10%                       |
| 2018 | 4490.4           | 7%                        | 3176.6           | 3%                        | 1249.7       | 10%                       |
| 2019 | 4679.7           | 4%                        | 3427.6           | 8%                        | 1406.7       | 13%                       |
| 2020 | 4824.5           | 3%                        | 3269.4           | -5%                       | 1095.4       | -22%                      |
| 2021 | 5348.2           | 11%                       | 2814.0           | -14%                      | 1288.4       | 18%                       |

As noted in the Second Interim Report of the Committee, the nature of casual work in universities is diverse, as is the profile of individuals employed on casual contracts, and the hours worked by individuals vary greatly. The extent of casual employment will vary month to month depending on teaching periods and the nature of work that is required. That creates a difficulty in extracting meaning from annualised data in terms of how much work is performed by different categories of employee.

To illustrate, focusing on the peak month of May 2021, the University's academic casual workforce represented 47% of total headcount but delivered 18% of the overall full-time equivalent hours of the entire workforce.

<sup>1</sup> Executives and non-academic Senior Managers are not covered by an enterprise agreement.

The fact that a large number of individual academics employed on casual contracts are undertaking very little work is also evident when considering casual paid hours across 2021, when 97% of casual academic staff worked less than 0.4 FTE and 74% worked less than 0.1 FTE.

Not surprisingly, casual academic employment at the University of Melbourne often forms just part of an individual's employment profile. For example, only 53% of casual academic staff engaged throughout 2021 nominated the University as their primary employer for taxation purposes. (The number falls to 49%, if casual academic staff who are also students of the University are excluded.)

These data points illustrate the diverse experience of casual employment (as noted in the Committee's Second Interim Report) but also the potential it creates for fragmentation of academic careers and engagement with the life of the University. While we recognise that a 'portfolio' of casual academic positions may suit some academics well at different points in their career, in the long term it is not a sustainable way to build and secure an academic career and does not readily foster engagement with the life of the University. For these reasons, among others, the University wishes to reduce its reliance on casual academic work in the future.

The University also notes the comments in the Second Interim Report of the Committee relating to the variety of reporting frameworks for university employment. The University is required to report data relating to workforce composition in a range of formats and utilising different specifications to different agencies including the Victorian Government, the Federal Department of Education, the Federal Workplace Gender Equality Agency and the Victorian Gender Equality Commission.

The University supports transparent and meaningful reporting of workforce data and would welcome initiatives to develop agreement on reporting forms and greater information sharing across agencies to reduce red tape and increase the usefulness of this information.

### **3. Casual employment matters**

#### **3.1 Background**

In mid-2019 the National Tertiary Education Union (NTEU) raised a dispute about practices for determining time and attendance of casual sessional lecturers and tutorials that did not accord with the provisions of the University's EA. The NTEU disputed the payment of casual tutors observing lectures, marking, and the characterisation of casual tutorial work. The Union's dispute focused on the Faculty of Engineering & Information Technology, Faculty of Arts, and the Faculty of Science. Following inquiries with other faculties, the University identified that the Faculty of Fine Arts & Music's marking practices would also fall within the scope of the disputed matters and disclosed this to the NTEU.

The dispute was resolved in late 2019 with regards to clarifying future employment practices.

#### **3.2 Actions Arising from Resolution of the Dispute**

Following resolution of the disputed matters, the parties focused on remedying past payments made to employees which did not accord with the EA.

It was agreed that casual sessional lecturers and tutors previously engaged in one of the above faculties, and who might be affected by one or more of the disputed matters, would have an opportunity to seek review of their attendance and, where verified as a genuine claim, receive any applicable correction to any previous wage payments by the University (**Review**).

To facilitate the Review, the Union and the University formed a joint working group convened by the University's Workplace Relations department. The Working Group has met fortnightly since 21 April 2020.

Through the working group, the University and the NTEU agreed on the:

- method for identifying the respective cohorts;
- criteria for making a claim;
- appropriate supporting evidence for making a claim (including a pro forma statutory declaration);
- method for calculating back payments, superannuation and tax;
- draft template letter to be sent to affected individuals; and
- programme of work whereby current and past casual employees were contacted through agreed tranches of communication.

To the end of 2021, the University had repaid 1,241 individuals a total of \$10,375,614. This work is continuing, and the University is expecting to make additional payments in 2022.

### **3.3 Fair Work Ombudsman Investigation**

On 5<sup>th</sup> August 2020 the Fair Work Ombudsman (FWO) advised the University that it had commenced formal investigation into the allegations of underpayments. On 11<sup>th</sup> August the Vice-Chancellor responded to the FWO confirming that the University of Melbourne would co-operate fully with the FWO's investigation.

The University established a dedicated team comprising senior internal and external subject matter experts and led by senior University executives with the purpose of ensuring all potentially impacted employees are identified, and that all amounts owing are paid, responding to requests from the FWO and identifying and acting upon any further issues which are identified across the University. The University is also voluntarily providing the FWO with regular updates on remediation payments and progress on other corrective action in train.

## **4 Corrective actions underway**

In 2021 the University launched a dedicated, confidential Casual Contact Line as an additional communication channel to encourage past and current casual employees to make contact with the University where they believe they have not been paid correctly.

In launching the Casual Contact Line on 9<sup>th</sup> September 2021, the Vice-Chancellor apologised to every past and present casual employee of the University who had been paid less than they were due for work they had performed. In his apology he stated that:

*"Where these errors have occurred over a number of years, they represent a systemic failure of respect from this institution for those valued, indeed vital employees. This failure should not, and will not, be tolerated by our institution."*

The University has also initiated and committed to a range of additional corrective actions with a view to strengthening its overall compliance approach and preventing issues of further non-compliance with the EA. They include:

- **Diagnostic Payroll Review** – The University engaged external experts to conduct a diagnostic review of payroll data over a one-year period for the purposes of identifying any potential errors and potential underpayments for current and former employees covered by the Agreement. The

diagnostic review commenced in December 2020 and was completed in August 2021. The review has identified areas for further investigation which is currently underway.

- **Detailed whole of University Practices Review** – The University (with the support of external subject matter experts) is proactively reviewing all of its practices in place regarding the engagement and payment of employees covered by the Agreement and its predecessor, the *University of Melbourne Enterprise Agreement 2013*. The focus to date has been on casual employees covered by the Agreement. Where any issues are identified which require remediation, the University will address these matters as soon as possible, and where appropriate this may occur separately from the broader payroll review referred to above.
- **Training and education** – The University has issued a Workplace Relations Guidance Note to all Faculty and Divisional leaders. The Guidance Note supplements the EA by providing advice and instruction on how compliance is to be achieved in respect to casual academic terms of employment. A supporting presentation pack was also provided as a resource for Faculty leaders to brief all Faculty staff who engage, roster and/or manage casual academic employment. In a letter to Deans on 26 February 2021, the Provost made it clear that:

*“...the University has a legal obligation to comply with our Enterprise Agreement (EA), and employment laws under the Fair Work Act more generally. More importantly though, as employers, managers, and supervisors, we all have a responsibility to ensure that the people who work for us are treated with respect, are remunerated correctly, and have a clear understanding of the expectations the University has for the work they are asked to perform.”*

Staff identified as having responsibility for the engagement, rostering, management and/or payment of casual academic employees, were also required to attend mandatory Workplace Relations briefings on ‘Casual Employment Obligations & Compliance’. From July 2021 to December 2021 the Workplace Relations team delivered 54 sessions to 2,079 Faculty staff and issued further guidance based on questions which arose in the sessions. This work will continue in 2022 and advice incorporated into induction and onboarding practices.

- **Establishing clear accountabilities for employment practice** – In late 2021 the University has completed work on a project to map current casual employment processes and workflows across the University, with a view to a consistent and compliant approach to the oversight and management of casual employment. This work is also informing developing of a new Employee Records System and is expected to be complete in Q2 2022.

## **5. Reducing reliance on insecure employment: current and future directions**

As indicated above, the University takes the view that workforce structures which rely heavily on fixed-term and casual employment are neither desirable nor sustainable and is unequivocally committed to positively addressing this issue. These practices, both within our University and across the sector, have been years in the making, and as such require extensive review and engagement to change. This is not confined to a technical review of employment and conversion: it requires a comprehensive shift in our institutional and academic culture, and in our teaching, learning, research, and administrative practices.

### **5.1 Fixed-term conversion provisions**

A number of initiatives were introduced through the University’s 2018 enterprise agreement to address reliance on fixed-term employment, particularly in the teaching and research areas of work. In summary, these require that:

- A. A single fixed-term appointment cannot exceed five years in duration;
- B. Where an employee engaged on successive fixed-term agreements for more than five continuous years is offered further employment with the University, that employment must be on a continuing basis;
- C. The category of *Continuing (Research Contingent)* was introduced to provide secure employment for those working on consecutive externally-funded research projects.

In 2021, 263 fixed-term employees (75 Academic and 188 Professional) accepted offers to transfer to continuing employment.

### 5.2 Casual employment conversion provisions

A number of initiatives were also introduced through the University's 2018 EA to address reliance on casual employment, particularly in relation to teaching. In summary:

- A. As an alternative to engaging academic casuals on a seasonal basis, a variation of part-time work was introduced, referred to as Periodic Employment, whereby casual seasonal work over discrete teaching periods is paid over a calendar year on a full-time equivalent basis.
- B. For the professional workforce, a part-time flex arrangement was introduced whereby additional hours worked by a part-time employee is paid at the equivalent casual rate of pay up to the full-time weekly equivalent of 37.5 hours (where standard overtime rates apply thereafter) – it was anticipated that this would provide a viable alternative to engaging a casual.
- C. Ahead of the amendments to the National Employment Standards, the University's enterprise agreement set out transition arrangements for an annual review of the University workforce for the purpose of identifying opportunities to convert eligible casual academic staff to a periodic teaching position.

In 2021, **130** casual employees (**18** Academic and **112** Professional) accepted offers to transfer to continuing employment. Although compliant with the technical application of the conversion arrangements in our enterprise agreement and more recently with the casual conversion provisions in the *Fair Work Act 2009* (Cth), we consider the rate of conversion remains too low and needs to improve. The section below elaborates on potential improvements under active consideration.

### 5.3 Future Directions

At present we are actively discussing the shape of a comprehensive programme of work to reduce our reliance on casual, short-term employment, and to move towards a new workforce model for our University. Our goal should not be to eliminate all use of casual or fixed-term contracts, as they are in some instances and for some people entirely appropriate, but rather to make sure that their use is confined to very well-defined circumstances, and that we achieve a significant shift of practice and culture such that our predominant contractual basis for employment rests on continuing and longer fixed-term arrangements.

This matter has been prioritised for attention in 2022 and beyond. In addition to the work underway to strengthen our overall approach to compliance, and building on provisions of our current EA, the

points below are offered here as examples of directions under active consideration, noting that they would all require internal discussion, as well as our intent to explore these and other potential improvements with our staff, the NTEU, and other bargaining representatives through the next round of bargaining.

- A. Requirements for conversion in our Enterprise Agreement and the Fair Work Act might be viewed as a threshold or base line, rather than constraint on action. In discussion with the NTEU, we might consider building on provisions in the current Agreement to provide more expansive opportunities for conversion where the employee has had a long association with the University and where it is appropriate to the nature of the work undertaken.
- B. Much clearer and more specifically defined terms for describing the circumstances where it is appropriate to engage staff on a fixed-term and casual basis will be a priority, as will establishing clear parameters and expectations in relation to such matters as the minimum length of contracts and the terms of engagement.
- C. Our employment of graduate students might be differentiated through a new, tailored framework which is appropriate to their circumstances of enrolment as students in the University, their current employment requirements, opportunities for career development and the distinctive nature of their work.

While wishing to illustrate some of our own early and evolving thinking, we caution against an assumption that any sectoral 'one size fits all' approach to these issues is appropriate or viable. Nevertheless, this remains a sector-wide issue, and it would be helpful for Government to consider ways in which incentives could be provided and systemic impediments could be reduced for increasing job security in the higher education sector.