Australian
Higher
Education
Industrial
Association

16 June 2023

Senator Tony Sheldon
Chair
The Senate Education and Employment Legislation Committee
Australian Parliament House
Canberra ACT 2600

By email: eec.sen@aph.gov.au

Dear Senator Sheldon

Senate Budget Estimates 2023-24
Opportunity to respond to evidence provided at a public hearing

Thank you for your letter of 5 June 2023 in which you referred to the mention of the Australian Higher Education Industrial Association (AHEIA) during a recent Senate Budget Estimates hearing of the Senate Education and Employment Legislation Committee (the Committee). We welcome the opportunity to respond to the observations and sentiments made towards AHEIA and elements of the broader higher education system.

In reviewing the material referenced in your letter, as well as the video recordings of the Senate Estimates proceedings where AHEIA was mentioned, we wish to draw the Committee's attention to several key contextual points, respectfully challenging the assumption that higher education employers are systematically engaged in conduct that seeks to diminish the rights of workers or is a poor employer as well as specific allegations with respect to actions undertaken by AHEIA. We address both in this response.

Context of Universities as Employers

The focus of the Committee has been on one aspect of universities as employers – that is with respect to casual staff and particularly their payment. The term wage theft was used repeatedly during the hearing, which appears in its terms to be an allegation of criminal intent in underpayment. This is inaccurate and an unfair characterisation and not language used by the regulator.

AHEIA recognises that there has been underpayment of casual staff in many universities and our members fully accept their legal obligations. Many universities have voluntarily undertaken examinations of their historical payments and self-reported to the Fair Work Ombudsman (including the University of Newcastle which was discussed in the hearing). AHEIA has reached out to the FWO and is working constructively with her office around a set of guidelines that may assist universities to ensure better compliance into the future. Far from being indifferent to or even supporting systematic wage underpayment, universities are spending substantial time and money to try to ensure that very complex agreements are able to be complied with. We would welcome discussions with both government and unions about how the approach to casual wages could be modified and simplified to reduce compliance cost and decrease the likelihood

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of underpayments in the future.

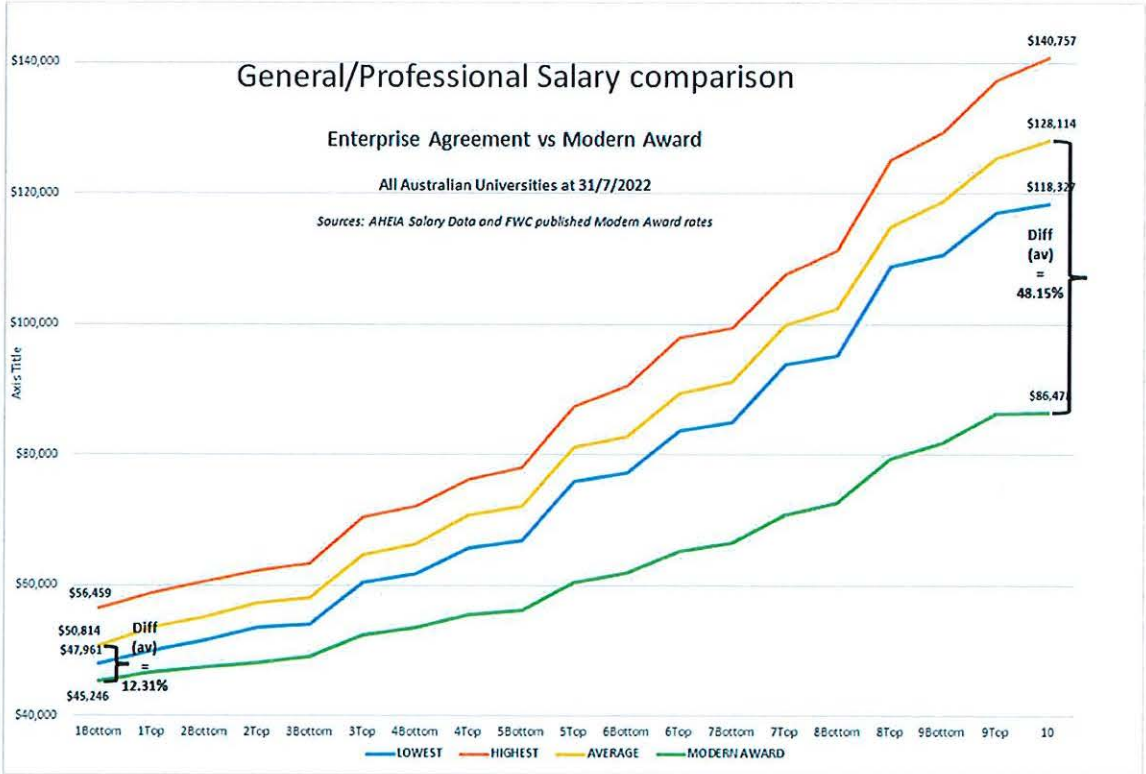
The Committee made further comments indicating that the Australian higher education sector was generally a poor employer even beyond the underpayment of casual staff issues. There is considerable evidence that this is not the case. It is particularly notable that the sector has continued to make generous offers in terms of both pay and conditions despite being in the middle of a very challenging period financially for universities and under-investment by government in university teaching.

The sector is a comparatively good employer having some of the most generous industrial conditions in the nation. It is also 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.

With respect to conditions, many employees in the sector enjoy 17% superannuation (this is for both permanent and fixed term employees), generous paid leave provisions, severance payments substantially in excess of the National Employment Standards (NES), and flexible working arrangements. When compared to other sectors, universities also pay significantly more than other modern awards.

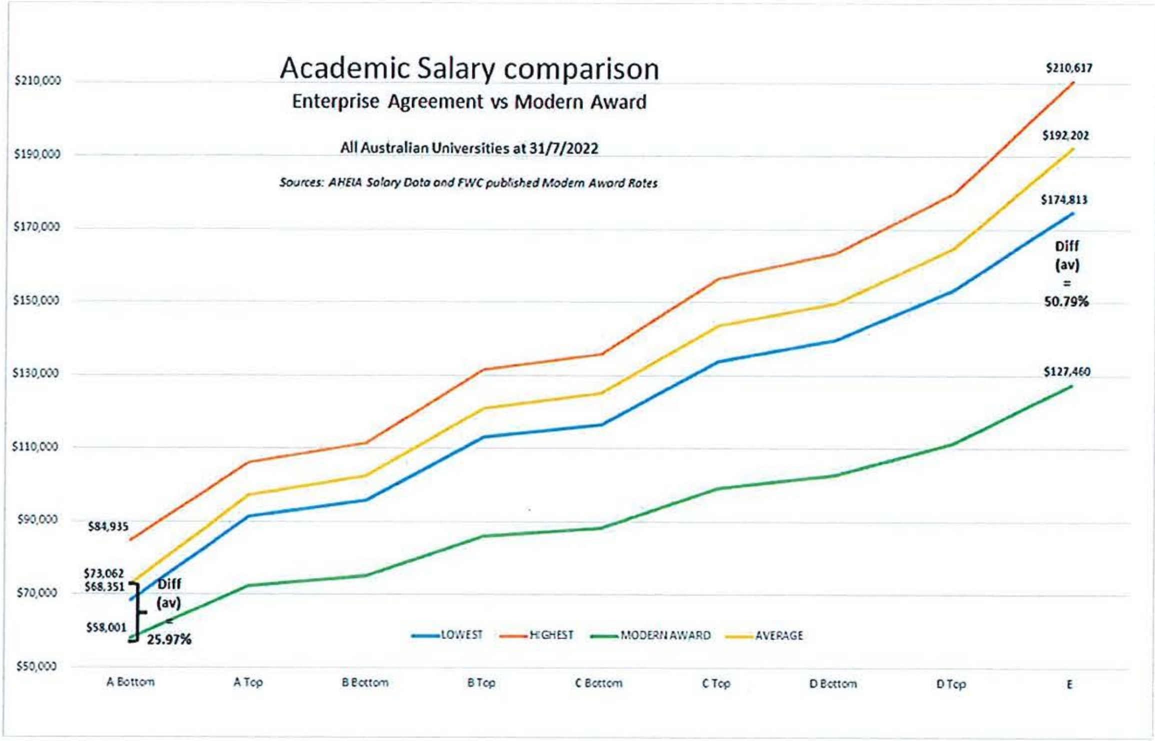
Figures 1 and 2 show this comparison for both general and professional staff as well as academic staff. It is worth noting that the pay for casual staff is also generous compared to most casualised work environments.

Figure 1



Australian Higher Education Industrial Association

Figure 2



Further, 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 weeks[2].

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 University and Federation University 74 weeks. Some university Enterprise Agreements (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.

In order to continue to offer current conditions and then expand conditions into the future, universities require a stable funding source. To date this has not been a feature of the higher education system as the Maximum Base Grant Amount (MGBA) indexation does not match the amount required for salary increases to keep pace with inflation, and a high proportion of the workforce is contingent funded through both industry and Australian Government research grants.

The tension that this creates has become evident during the most recent round of bargaining negotiations. 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 the workforces and requests for additional leave types. 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.

Against this context, AHEIA is of the view that's the statements made within the Committee's recent Senate Estimates deliberations against the higher education sector paint a disproportionately negative picture that is not representative of the industrial landscape for higher education. While it is accepted that there are major issues with respect to the underpayment of casual staff, issues that are and must continue to be resolved, the sector continues to offer significantly generous conditions with many universities expanding those conditions in recent EAs.

Allegations Specific to AHEIA

With respect to the discussion referencing AHEIA drawn from The Guardian's article of 1 March 2023, specifically the implication that the internal advice given to our member organisations was evidence of universities using a dedicated strategy to drive down wages and attack worker's conditions, we make the following observations.

Both employer groups and unions routinely inform their members of changes to legislation and make recommendations with respect to how they may wish to respond. The NTEU and other unions representing university workers clearly work collectively to achieve certain goals and to utilise various aspects of the industrial system that are legally open to them. There is nothing untoward about this. Nor is there anything surprising or untoward about an industrial organisation such as AHEIA providing advice and guidance to its members. Far from being a 'secret document', the document referred to was on the AHEIA intranet which was open to a large number of people – which no doubt explains how it made its way into the public realm.

The newspaper reports give a distorted view of what is proposed in the document. Recognising that both employers and unions may wish to conclude an agreement before the changes to the workplace laws come into effect in the middle of 2023, one option was to offer the same terms and conditions (which, as outlined above, are already generous) as well as a 'reasonable salary offer.' This is expressly said to be likely to lead to a great chance of a good outcome with the union. As it happens, no members of AHEIA took this option as it was clear after a time that it would not be acceptable to representatives. The only partial exception was Charles Sturt University which went directly to staff for a one year extension of the existing Agreement with a reasonable pay rise, which was accepted by a staff vote.

After that, the advice considers ways that employers who have concerns about being brought into multi-employer agreements might try to ensure that this does not occur. Our members believe that this would not be optimal for a sector with high levels of Enterprise Agreements. The NTEU has subsequently and publicly made clear that they also take the view that such arrangements would be not be appropriate and thus the issues that were raised in that part of the document have become moot.

At no point does the document say that employers should not bargain in good faith, but it does let employers know of their right to put agreements directly to staff and also to seek conciliation under section 240. These are both lawful options. They are not entered into lightly by employers but to suggest that informing employers of these options is illegitimate is rejected by AHEIA. The government itself has recognised that industrial disputes may become intractable and created options under the new provisions of the Fair Work Act to give parties options when this occurs. AHEIA has made sure that its members are aware of these provisions and what they need to consider if this might be a possibility.

Universities have bargained in good faith, adding substantial new benefits for employees in the most recent bargaining round on top of the already generous conditions outlined in this letter. Despite the criticism of the University of Newcastle in the hearing, it had been involved in good faith negotiations for over two years, and was offering considerable additional benefits under the proposed agreement, which has now been agreed in-principle by union representatives.

The Role of the Accord

As suggested in AHEIA's submission to the Universities Accord panel, we believe that it is necessary to establish a Higher Education Industrial Relations 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 the Community and Public Sector Union (CPSU) at least) and *government representatives* from both the education and employment portfolios. We are not aware if this recommendation will be adopted by the Accord Panel in its interim report, but we note that the missing piece in the discussion to date has been the role of government in providing a stable and sufficient source of funding to enable universities to feel confident in offering more ongoing employment.

AHEIA shares the Committee's desire for a strong and productive higher education sector and believes that the sector is a crucial part for achieving Australia's prosperity now and in the future. We look forward to engaging positively with the Government in the future to achieve this.

Should you wish to discuss any matter raised in this letter, please contact me: Mr Craig Laughton, Executive Director AHEIA

Yours sincerely

Craig Laughton
Executive Director
Australian Higher Education Industrial Association