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# A fork in the road for university enterprise bargaining?

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## Introduction

The enterprise bargaining round that is about to commence for Australian universities provides a unique and important opportunity to articulate changing workforce expectations within institutional strategy, and to strengthen staff commitment and engagement based on longer term thinking about workforce capacity. In this paper, we propose six approaches to how enterprise bargaining might be done differently.

## Background

Enterprise bargaining was introduced in 1991 as part of the Hawke/Keating Government's Prices and Income Accord in Australia. By overriding cross-industry awards, enterprise bargaining was designed to promote improvements at individual enterprise level in wages and conditions in return for efficiency gains or productivity offsets.

Every three years for the past 25 years, successive rounds of enterprise bargaining have dominated industrial relations and human resource management in Australian universities. Notwithstanding the promise of bespoke agreements, almost without fail, universities which gained agreement first in each successive bargaining round have *de facto* set the bar for the institutions that follow. Few agreements over that period have departed from whole of sector norms, in part because of the exercise of strong coordination and vigilance by unions, in particular the National Tertiary Education Union (NTEU).

A common criticism of current higher education enterprise bargain agreements (EBAs) is their length and complexity. This is in part driven by opportunistic measures to game the system and in part from union representatives in the belief that incremental detailed prescription will benefit staff. Nowhere is this better illustrated than in the development of complex academic workload clauses, which both create entirely new classes of teaching-focussed academic staff and purport to prescribe the number of hours academic staff are to allocate to teaching, research and the ambiguously defined service functions. The creation of teaching-focused categories of academic staff has been motivated to enable greater time allocation to teaching but also to exclude such staff from ratios of research active staff in the Excellence for Research in Australia (ERA) exercise. Development and implementation of career structures for such staff often lag the short-term gains achieved in the EBA.

Despite the adversarial mindset, manufactured drama, occasional strikes or more limited industrial action that have characterised bargaining, universities and unions have used the process to benefit continuing and fixed term staff in terms of wage increases and enhanced conditions of service that at least match if not exceed the most favourable benefits enjoyed for equivalent work across the Australian community.

These benefits have not, however, been shared equally by all workers in the sector. In particular casual academic staff with limited career opportunities and who carry, and will continue to carry, increasing amounts of responsibility for teaching are working in what often amounts to a second-class system with little employment certainty, blurred or diminished entitlement to pay and conditions, and infrequent access to career progression opportunities.

## The COVID challenge

All universities enter enterprise bargaining negotiations in good faith. This entails planning and costing changes in remuneration and conditions, consulting with stakeholders and staff as well as entering into detailed information sharing with unions. Despite this, university negotiators and unions have found it difficult

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<sup>1</sup> The authors have worked many years in higher education at senior levels and draw on their experience and knowledge of the sector in writing this paper.

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to build institution-wide interest in the process. This is possibly because in the past the new or contested proposals around conditions have impacted few staff and also because EBA negotiations are often viewed as an unavoidable but necessary administrative 'compliance' function rather than as a leadership opportunity for developing and implementing strategy.

The COVID-19 pandemic has significantly disrupted higher education delivery. As a result, widespread restructures and job losses have occurred. Contingent employment has been particularly impacted, in particular for casual staff. In February 2021, Universities Australia estimated that the sector had lost some 17,300 jobs in 2020. Several universities have since announced the need for further rounds of job losses as the return of international students continues to be pushed back into 2022 and beyond.

Facilitated by the sudden and pervasive onset of the digital revolution, enabling radical change to much of the delivery of teaching and learning, the nature of work and study practices, and the organisation and conduct of administrative functions, the world of work in higher education is changing rapidly at a time when institutional financial resources are scarce, and the investment required to achieve change is hard to find.

At best these changes have greatly strained the relationship staff have with their employer university.

However, amidst the disruption created by the COVID-19 pandemic, an opportunity emerges. The singular combination of scarcity of resources and technological change creates the possibility of being able to break out of past enterprise bargaining mindsets.

### **Doing things differently**

We propose that the 2021 round of enterprise bargaining must move from haggling around scarce dollars to reframing conditions which underpin long term benefit for staff and institutional sustainability. We propose six approaches which are elaborated in the following sections:

1. Build and maintain commitment of staff
2. Ensure fair treatment for casual academic staff
3. Retain existing staff talent by reducing wastage of talent and cost of redundancies
4. Equip staff to navigate current and future pedagogical, technical and management challenges
5. Ensure that career structures for academic and professional staff recognise emerging needs
6. Simplify enterprise bargain agreements

While many of these human resources strategies can and should be achieved outside the enterprise bargaining process, it is essential that the underpinning EBA is consistent with these strategies, prescriptive impediments are removed and incentives for change are implemented. The EBA negotiation process provides a valuable framework for their systematic consideration.

#### **1. Build and maintain commitment of staff**

##### *Proposal*

- ⇒ Offer institution-wide salary increases that are contingent on revenue growth
- ⇒ Offer periodic employment contracts for certain categories of teaching staff employed as casuals

As most universities are forecasting declining or minimal revenue growth over the coming period, any guaranteed pay increase comes at the expense of staff jobs. Universities might offer salary increases, but these would need to be contingent on revenue growth.

Determining the right mechanism for linking salary increases to revenue growth is not without complexity. One approach would be to designate a certain proportion of growth in discretionary income growth (for example domestic and international fee revenue) as being available to pay for salary increases. A more broadly based approach which extends beyond salary increases would be to designate that a specified proportion of

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revenue growth would be allocated towards employee entitlements more generally, thereby allowing for staffing growth, enhancement of conditions as well as for salary increases. Noting that employment related expenses account for some 53-58% of total expenditure across the sector, a commitment that some 50% of revenue increases should be applied towards staffing terms and conditions would appear a balanced starting point.

The large casual workforce carrying responsibilities for core teaching in Australian universities has been the subject of exhaustive debate<sup>2</sup>. The next round of enterprise bargaining might include:

- Development of a periodic employment contract on a fixed term or continuing basis e.g. appointments made over a year with variable hours throughout the year to reflect teaching periods. As well as providing more certainty for staff, such staff could carry more responsibilities than simply delivering classes and marking and thus greater productivity can be expected. A periodic employment contract would also eliminate the need for regular claims and approvals, thereby reducing administrative costs.
- Providing the first right of refusal for re-engagement to casual staff or staff engaged on a fixed term periodic employment contract subject to performance and the same or similar course being offered.
- Any additional cost associated with such employment contracts might be met from the portion of revenue growth earmarked for employee related benefits.

## **2. Ensure fair treatment for casual academic staff**

### *Proposal*

- ⇒ Ensure that casual academic staff who undertake teaching are fairly paid for the work that they do in a manner which reflects contemporary work expectations and requirements

One of the factors that appears to have contributed to recent instances within the sector of underpayment of casual staff and allegations of wage theft is that the nature of work required of teaching staff engaged as casual staff has changed significantly as a result of the advent of on-line learning and other changes to traditional teaching practice. This is making an increasingly historic method of pay calculation outmoded or excessively complex to administer.

One approach to making sure that casual academic staff who undertake teaching are fairly paid for the work that they do is to:

- Undertake a university-wide survey of the nature of work now required of casuals.
- Determine the extent to which the current payment structure results in a fair outcome for casuals.
- Develop new rates of pay where the current agreement is unclear or where appropriate categories for payment do not exist.

Agreement with the unions would be key to gaining support for the review and the implementation of any recommended payment framework.

## **3. Retain existing staff talent by reducing wastage of talent and cost of redundancies**

### *Proposal*

- ⇒ Introduce furlough provisions that allow staff to be stood down or employed for reduced hours during times of a major downturn

The COVID-19 pandemic has highlighted the bluntness and high cost of current conditions relating to employee expenditure cost containment. Under current enterprise agreement provisions the major tools available to management are to reduce casual employment, not renew fixed term employment, or proceed

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<sup>2</sup> Baré, E., Beard J. and Tjia T. (2020). Does the extent of casualisation of the Australian academic workforce provide flexibility to beat the COVID-19 hit? Fellow Voices, L.H. Martin Institute, Melbourne Centre for the Study of Higher Education.

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with very costly redundancy provisions in respect of staff on continuing appointments. Often it is the staff with least employment certainty who have the most to lose.

In the case of redundancy, the cost can be at least one year's salary and the permanent loss of significant capability as it is likely, given the preference for voluntary over forced redundancy, that longer serving staff with more to gain financially will be the ones most attracted to taking a redundancy package.

There is a clear alternative. This involves the introduction of limited furlough provisions that would result in saving redundancy payments. Furlough arrangements can be flexible to allow for staff to be stood down or work for reduced hours of employment and pay. They can include appropriate safeguards so that they can only be activated in cases where a return to work is likely to be required within a reasonable period.

Furlough arrangements occur in other sectors in Australia and elsewhere and are also part of the higher education employment framework in the USA. They have been used extensively during the COVID-19 period. Properly constructed, they would reduce the level of disruption, avoid large and at times unwarranted redundancy costs, reduce the need for permanent loss of vital human capital and, most importantly, provide greater employment certainty for a range of university employees.

#### **4. Equip staff to navigate current and future pedagogical, technical and management challenges**

##### *Proposal*

- ⇒ Provide properly structured policies and practices that reflect and support the future of 'flexible working'
- ⇒ Provide training in contemporary, digital and blended learning and teaching, management and professional skills for all staff

Working from home has become a new norm, but under current industrial legislation the employer is only required to give consideration to requests for demands for flexible hours or work locations in circumstances where there are family or carer responsibilities, the person is aged over 55, or from persons with a disability or experiencing domestic violence. The COVID-19 pandemic has demonstrated the possibility and benefits of blended working where staff are able to perform part of their duties working from home if operational requirements allow.

Universities can benefit in several ways through the adoption of a more systematic approach for flexible work arrangements. This will be an aid to recruitment, help nurture an engaged and committed workforce, and may increase productivity. It can also reduce costs where there is less need to provide for staff offices on campus.

At a minimum, consideration might be given to widening the scope of reasons when staff members can request to work flexible hours or reduce requirements for attendance at the workplace. A more enlightened approach would involve the redesign of working requirements that allows for staff to have flexible work arrangements, including working from home.

Ensuring staff also have the equipment, knowledge and skills to be able to work effectively from home (or elsewhere) will be an important part of any revised framework. At the same time, it will be important to invest and innovate in new ways to build communities, teamwork and collaboration for students and staff, including a truly engaged digital campus experience that complements the face to face and on-campus experience.

Mandated programs aimed at developing professional staff analytical and consulting skills and academic staff skills in the digital environment might facilitate this. Such programs might help in building the capabilities needed for innovative and agile responses to the opportunities for improving pedagogical and business practices.

#### **5. Ensure that career structures for academic and professional staff recognise emerging needs**

##### *Proposal*

- ⇒ Review the classification structures and standards for academic and professional staff

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Introduced as a stop gap measure and drafted over 25 years ago, the Minimum Standards for Academic Levels (MSALS)<sup>3</sup> are embedded in enterprise agreements and are part of most academic promotion policies. They reflect the narrow scope of academic work of the 1990s and need revision to cater for current and future demands on academic staff. They operate so as to limit and hold back much needed redesign of academic work.

The 30 plus year-old higher education worker professional staff classification structure appears to have better stood the test of time, although the occupational examples are wildly out of date, and the ten-level structure is now outmoded with little need for the lowest levels and highly questionable distinctions between the mid-level classifications. More significantly, we question whether it caters adequately for the increasingly prominent group of workers who require skills in professional and academic work (known as ‘third space’ professionals). This group of staff which includes librarians and educational technologists is essential to developing new modes of pedagogy. Their retention is essential, particularly in the short term as universities adjust to a COVID-19 ‘new normal’ mode of teaching and learning. In this area especially a binary divide between academic and non-academic is unwarranted and no longer fit for purpose.

A major overhaul of these standards and classifications is highly desirable. Such an undertaking is beyond the capability of individual institutions and enterprise agreements. This will require concerted and coordinated joint endeavour on the part of the university employer entities and the unions.

## **6. Simplify enterprise agreements**

### *Proposal*

- ⇒ Review current enterprise agreements with a view to simplifying and strengthening their strategic intent

University agreements are typically some 100 pages in length, although some are considerably longer. Over 25 years of enterprise bargaining, they have incrementally been added to, in part to provide for conditions no longer applicable in awards, but also just progressively expanded. One of the most egregious examples of this occurs in relation to the ‘regulation’ of academic workloads where an initial clause about the need for consultation and expectation of reasonable workloads has evolved in some instances into some seven pages of detailed prescription around process and standards. As well as posing a risk to genuine innovation or agility, such detailed provisioning diminishes the capability of enterprise agreements to serve as vehicles that support institutional strategy and broader union expectations.

A joint review of enterprise agreements, their purpose, the principles that most usefully underpin them and their content, with a view to some simplification and streamlining of excessively detailed prescription may be beneficial to all parties and help refocus on important contemporary conditions of employment.

## **Conclusion**

Understandably, the initial reaction of most universities to the disruption caused by the COVID-19 pandemic was in the ‘response’ mode. Generally, this resulted in significant cost containment, organisational restructuring and a loss of large numbers of employees. Now that the full implications of the disruption are becoming more apparent – a sustained period of revenue loss, the acceleration of the digital revolution and changes to the mode of working – universities are now moving to the ‘rebuild’ phase. This necessarily involves a re-appraisal of strategic plans and significant reforms potentially to almost everything that occurs within higher education. There will be a need to articulate and communicate to staff the nature of the rebuild and to use various means for implementing necessary change.

Enterprise agreements can play a key role in driving the focus on a renewed strategy provided that staff and their union representatives are sufficiently consulted and feel engaged. Agreements can also act as an impediment to achieving reform if management somehow chooses to ‘go it alone’.

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<sup>3</sup> Higher Education - Academic Staff - Award 2020. Schedule A – Minimum Standards for Academic Levels (MSAL).  
[http://awardviewer.fwo.gov.au/award/show/MA000006#P756\\_67173](http://awardviewer.fwo.gov.au/award/show/MA000006#P756_67173)

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Our proposed change to the approach to enterprise bargaining may be seen as anathema to hardened industrial relations practitioners well-versed in adversarial industrial relations tactics. However, we consider that in times of low inflation and reduced higher education employment opportunities, the imperative is to retain and build staff capacity and commitment. The enterprise bargaining process and the agreements that emerge from that process can serve as important vehicles for building capacity and commitment.

We have proposed a broad agenda for sectoral reform of its workforce relations. We believe that this agenda is central to the rebuild of Australian higher education in a new COVID-19 normal world.

To effect such an agenda and secure a radical shift in approach will require exceptional leadership on the part of university vice-chancellors, their executive teams, and union leaders. Extensive staff engagement and willingness to try new and flexible solutions is vital.

The forthcoming round of enterprise bargaining is probably the most important for the sector over the past twenty-five years. If it is not successful in embracing reform and reshaping the nature of university work, others may in the future look back with regret and reflect on the consequences of an opportunity missed.