

<b>From:</b>	UoM-NTEU Core Bargaining Team
<b>To:</b>	Martin Bower
<b>Date:</b>	18 August 2023
<b>Subject:</b>	NTEU working hours and workload claims

## Introduction and scope

1. The NTEU's claims concerning working hours and workload are central to its bargaining claims because:

- All workers – including University staff – have a human right to ‘reasonable limitation of working hours’ (as stipulated in Article 24 of [Universal Declaration on Human Rights](#) and Article 7(d) of [International Covenant on Economic and Social Rights](#));
- Reasonable working hours are essential to safe workplaces (as recognised in the current Enterprise Agreement (cl 2.12.2.4 & cl 3.17.3.3) and by workplace safety regulators such as [Work Safe Victoria](#) and [Safe Work Australia](#) with long working hours a key source of psychosocial hazards);
- Excessive working hours can be a [source of discrimination](#); and
- Reasonable working hours are essential to providing quality work and service at the University.

2. The [Australian Universities Accord: Interim Report](#) stated that;

*“It is critical that workplace conditions, including employment security, workload, remuneration, appropriate funding for core activities, and engagement with staff, support psychosocial and physical safety (emphasis added).”*

3. This memorandum:

- lays out the evidence for excessive working hours and workloads at this University;
- explains the significance of workload creep;
- summarises the working hours and workload provisions under the current Enterprise Agreement;
- highlights the two major deficiencies of these provisions, specifically their failures to provide for:
  - 1) a proactive ‘whole of University’ approach to workload and working hours systems; and
  - 2) proper governance of working hours and workload and the relevant University’s legal obligations; and
- Sets out the NTEU claims on working hours and workload as remedies to these failures.

Hyper-links are provided for relevant references.

## The problem of excessive working hours and workloads

4. The feedback from NTEU members strongly point to excessive working hours being the norm across the University:
  - many staff employed full-time (36.25 ordinary hours per week) find themselves working 60-80 weekly hours;
  - part-time employees not uncommonly work full-time hours; and
  - unsocial working hours (night and weekend work) is pervasive in many Faculties and Divisions.

5. [An open letter sent by more than 100 members of the Melbourne Law School](#) to the Vice-Chancellor, Provost and Deputy Vice-Chancellor (People and Community) in April said that;

*“Under the Enterprise Agreement, full-time employees are to work a standard 36.25 hours per week. In our experience, however, many full-time employees work in excess of 50 hours per week and many part-time employees work full-time hours. Increasingly, we hear of colleagues working during annual and long service leave and not taking sick leave when ill.*

*After COVID-19 and enduring the University’s restructure, cynically called the “Pandemic Reset Program” (“PRP”), many of us are simply exhausted. Our workload has become crushing; some employees are “quiet quitting” (refusing to do as much work as they did before); others are leaving, either by going part time, or leaving altogether. Some of us have become physically ill, or mentally ill, or both, as a result of the demands that have been placed upon us. It is simply not sustainable to continue in this way.”*

6. In 2019, the NTEU notified a dispute under the Enterprise Agreement regarding academic workloads at the Melbourne Graduate School of Education (**MGSE**). While this dispute was overtaken by the changes in work practices due to the COVID pandemic, the survey of MGSE academic staff underpinning the dispute notification yielded confronting results with most participants reported suffering negative mental, physical and social effects as a result of working excessive hours; and both full-time and part-time academics reported an inability to maintain a work/life balance, viewing weekends as an opportunity to catch up with work requirements.
7. In 2022, elected Health and Safety Representatives issued a provisional improvement notice (**PIN**) under the *Occupational Health and Safety Act 2004* (Vic) to the University in relation to excessive workloads of staff in the Academic Programs team of the Arts Faculty. The PIN was lifted upon the University agreeing to a risk assessment and review of work systems. While still ongoing, this process has resulted in two fixed-term roles being extended for 12 months,

and the creation of an additional fixed-term role for 12 months to support process development and improvement in the Arts Faculty's Academic Programs team.

8. The problem of excessive working hours and workload at this University is also demonstrated by:
  - the 2023 Staff Experience Survey's finding that less than half of respondents (42%) felt that there is usually sufficient staff in their team to handle workload (email from Vice-Chancellor to staff dated 13 July 2023); and
  - The Dean of the Arts Faculty reporting at length on the 2023 Staff Experience Survey at a faculty meeting on 15 August 2023 stating that he has 'been aware of workloads being a problem for a long time'.
  
9. The problem of excessive working hours and workload at this University is consistent with the call in the [Australian Universities Accord: Interim Report](#) for workforce arrangements relating to staff workloads to be examined for their appropriateness. It is also in line with the substantial body of research which has catalogued and examined the problem of excessive working hours and workload amongst academics at Australian universities:
  - Lee, Megan et al, 'Occupational Stress in University Academics in Australia and New Zealand' (2022) 44(1) *Journal of Higher Education Policy and Management* 57–7.
  - Kenny, John and Andrew Edward Fluck, 'Towards a Methodology to Determine Standard Time Allocations for Academic Work' (2017) 39(5) *Journal of Higher Education Policy and Management* 503–23 Cannizzo, Fabian and Nick Osbaldiston, 'Academic Work/Life Balance: A Brief Quantitative Analysis of the Australian Experience' (2016) 52(4) *Journal of Sociology* 890–906.
  - Dobeles, Angela R and Sharyn Rundle-Thiele, 'Shifting Sands: Observing Academic Workloads Over Time' in Michael W Obal, Nina Krey and Christian Bushardt (eds), [Let's Get Engaged! Crossing the Threshold of Marketing's Engagement Era](#) (Proceedings of the 2014 Academy of Marketing Science (AMS) Annual Conference, 2016).
  - Langford, P.H., (2010). Benchmarking work practices and outcomes in Australian universities using an employee survey. *Journal of Higher Education Policy and Management*, 32(1), 41–53.
  - Coates, H. & Goedegebuure, L. (2010). *The Real Academic Revolution*. Melbourne: LH Martin Institute for Higher Education Leadership and Management.
  - Altbach, P.G., Reisberg, L. & Rumbley, L.E. (2009). *Trends in global higher education: tracking an academic revolution*. A report prepared for the UNESCO 2009 World Conference on Higher Education.
  - Vardi, Iris, 'The Impacts of Different Types of Workload Allocation Models on Academic Satisfaction and Working Life' (2009) 57(4) *Higher Education* 499–508.

- Houston, Don, Luanna H Meyer and Shelley Paewai, 'Academic Staff Workloads and Job Satisfaction: Expectations and Values in Academe' (2006) 28(1) *Journal of Higher Education Policy and Management* 17–30.
- Gillespie, NA et al, 'Occupational Stress in Universities: Staff Perceptions of the Causes, Consequences and Moderators of Stress' (2001) 15(1) *Work & Stress* 53–72

10. The toll on staff working excessive hours is profound:

- their health and morale are damaged;
- time is taken from their personal lives, friends and family; and
- those with caring responsibilities are often disproportionately affected.

11. Quality of university work – including teaching and research – inevitably suffers with inadequate time for tasks, reflection and planning. Talent and experience are lost when staff fed-up with excessive working hours leave the University. Of concern here is the finding from the 2023 Staff Experience Survey that only around a third of respondents (35%) rated the University's capacity to retain its most talented people positively (email from Vice-Chancellor to staff dated 13 July 2023).

12. There are also regulatory risks with excessive working hours. ComCare [recently found](#) that an Australian Public Service agency was not meeting its duties under the *Work Health and Safety Act and Regulations 2011* (Cth) because of a '(f)ailure to provide and maintain a safe system of work relating to psychosocial risks associated with workload management'.

13. The Financial Sector Union has also brought an [application](#) against National Australia Bank for serious contraventions of [section 62 of the Fair Work Act 2009 \(Cth\)](#) that lay down the National Employment Standard relating to maximum weekly hours.

### **The significance of workload creep**

14. While there are various causes of excessive working hours and workload at the University, what seems clear is the importance of *workload creep* by which we mean practices that result in additional duties without a reduction of other duties.

15. Workload creep at this University has occurred in diverse ways including the following:

- (a) Restructures that abolish jobs but don't abolish duties. Work is then necessarily redistributed to existing staff: professional staff find themselves having to contend with a workload that is greater than 1.0 FTE; and academics are having to perform tasks previously undertaken by expert professional staff. This trend encompasses the broader issue of "administration creep" as more systems, processes and tasks are expected to be completed by academic staff in a 'self-service' model in place of expert professional staff who have been made redundant.

- (b) New duties being imposed without properly being taken into account in workload allocation. Examples include:
- Increased compliance tasks such as completion of training modules and obtaining a Working with Children Check; and
  - [Academic Advising](#) which involve 20-40 hours per year (including meetings, noting attendance, attention to changes in policy, practice or schedules).
- (c) Increases in teaching workload that are not properly accounted for. For instance, when workload allocation is based on the number of subjects but:
- Number of students increase;
  - Assessment requirements increase; and
  - Increases in [Academic Adjustment Plans](#) due to increases in student difficulties – particularly during COVID but also ongoing.
- (d) Increases in workload due to the University's insecure workforce model, for instance, increases in relation to:
- Teaching workload with continuing staff taking on more work to avoid burdening their colleagues in insecure employment;
  - Teaching coordination especially with subjects taught by a high proportion of staff in insecure employment; and
  - Research grant advice to staff in insecure employment to assist them in obtaining grants to fund their employment.
- (e) Huge and sudden increases in academic integrity cases due to the rise of AI tools such as Chat GPT.
- (f) Introduction of new automated systems (such as "Service Now") which are meant to [make matters more efficient but often suffer from design flaws](#) that result in greater workload.
- (g) Increases in workload in dealing with inadequate response times sometimes resulting from the centralisation of services.

16. These examples highlight a paradoxical characteristic of workload creep at the University: incremental increases in working hours and workload are often occurring through systemic changes in the University.

17. To be clear, our examples are not intended to challenge the merit of the additional duties resulting from workload creep – the point is that these additional duties are being imposed without a corresponding reduction of workload.

### **Working hours and workload provisions under current Enterprise Agreement**

18. Broadly speaking, the current Enterprise Agreement regulates working hours and workloads through a system of workload allocation and review based on:

- Discussions between individual employees and their supervisors grounded in broad principles (clauses 2.12 and 3.17);
- Broad principles including
  - ‘not routinely or unreasonably requir(ing) the Academic to carry out their duties beyond the allocated work of 1,725 hours per annum’ (cl 2.12.2.2);
  - ‘not routinely or unreasonably requir(ing) the PASO Employee to carry out their duties beyond their ordinary hours of work’ (cl 3.17.3.1);
- Access to Grievance and Dispute Settlement Procedures under clause 1.38 in the event of individual workloads not being able to be settled or following review of these workloads (cl 2.12.8 and 3.17.8); and
- Overtime and time off in lieu for professional staff working in excess of their ordinary hours of work (cl 3.20).

### **Deficiencies of current provisions in the Enterprise Agreement**

19. There are two main deficiencies with the current Enterprise Agreement provisions. They fail to provide for:
- 1) a proactive ‘whole of University’ approach to workload and working hours systems;
  - 2) proper governance of workload and working hours and the relevant University’s legal obligations.

These issues are examined in detail below.

*(1) The current Enterprise Agreement fails to provide for a proactive ‘whole of University’ approach to workload and working hours systems*

20. This is apparent from the individualised system of workload allocation and review at the core of the current provisions which places the obligation in relation to working hours principally on individual supervisors.
21. This individualised system is out of sync with the positive duty on the University under the [Occupational Health and Safety Act 2005](#) (Vic) to establish a *safe working environment* (including [safe systems of work](#) in relation to workload and working hours). This disjuncture is compounded by the failure of current provisions to provide for [regular monitoring](#) of working hours and workload, transparency in terms of workload allocation policies and the involvement of staff in their development. The last is crucial as consultation with workers is [a key imperative of safe workplaces](#).
22. We note here that while effective reviews of individual workload allocations are essential, it is highly problematic to rely upon individual reviews as the principal or sole form of employee feedback because of:

- the systemic causes of workload creep;
- the systemic significance of the problem of excessive working hours and workload in terms of fair and safe workplaces and the academic mission of the University; and
- the understandable reluctance of staff to risk being characterised as a performance problem by raising workload issues (this reluctance is especially acute for staff in insecure employment).

23. The individualised system together with the lack of transparency opens the way for opaque and fragmented workload allocation practices. This may increase the regulatory risks of the University. We note concerning parallels with the Fair Work Ombudsman (FWO)'s [observation](#) on how '(I)ack of centralised human resources functions across faculties/schools' contributed to pervasive underpayments in the university sector. In FWO's words:

- Human resource functions are devolved to the schools/faculties, including many that have operated independent of any overarching oversight and without any expertise in managing employees and ensuring entitlements and workplace relations compliance (for example, often academic staff are responsible for HR and pay-related issues).
- The adoption of a decentralised approach has led to schools/faculties adopting different recruitment and remuneration practices within the same university, resulting in noncompliance with applicable enterprise agreements.
- Low awareness among managers of new or changed obligations in new enterprise agreements.

24. The individualised system also explains workload creep through incremental increases in working hours and workload often occurring through systemic changes in the University. The failure to provide for a proactive 'whole of University' approach to workload and working hours systems strongly risk *splintering* decision-making with:

- decisions regarding policy changes and restructures being made centrally without proper regard to workload and working hours; and
- individual employees and their supervisors who have typically have little influence over university policy changes having to deal with workload implications through workload creep.

*(2) The current Enterprise Agreement fails to provide for proper governance of workload and working hours and the relevant University's legal obligations*

25. The [FWO](#) and the [Australian Universities Accord: Interim Report](#) have emphasised the essential importance of proper governance of working conditions. Priority Action 5 of the Interim Report (extracted below) is of particular importance.

### Priority Action 5

Through National Cabinet, immediately engage with state and territory governments and universities to improve university governance, particularly focusing on:

- universities being good employers
- student and staff safety
- membership of governing bodies, including ensuring additional involvement of people with expertise in the business of universities.

*Australian governments should work together to strengthen university governing boards by rebalancing their composition to put greater emphasis on higher education expertise. Governing bodies must as a priority do more to improve student and staff wellbeing and become exemplary employers.*

26. Many of the same elements which found a failure to provide a proactive 'whole of University' approach to workload and working hours systems also result in a failure to provide for proper governance:

- lack of transparency of workload allocation policies and practices;
- lack of consultation with staff on these policies and practices;
- lack of effective mechanisms of staff feedback on working hours and workload; and
- lack of regular monitoring of workload and working hours.

27. Given these elements, it is unclear how University Council is properly discharging its oversight duties in relation to the University's duties relating to working hours under the *Occupational Health and Safety Act 2004* (Vic) and section 62 of the *Fair Work Act 2009* (Cth). Sections 8(3)(d) and 8(3)(f) of the *University of Melbourne Act 2009* (Vic) respectively include within the primary responsibilities of University Council:

(d) establishing policy and procedural principles for the operation of the University consistent with legal requirements and community expectations;

...

(f) overseeing and monitoring the assessment and management of risk across the University, including university commercial activities;

28. Again, the parallels with systemic underpayment in the university sector are instructive, with the FWO [highlighting](#) '(p)oor governance and management oversight practices' as a key contributing factor to these illegal practices. In FWO's words:

- Corporate governance arrangements that do not prioritise or consider workplace relations risks or compliance, often with little or no line of sight over how work is undertaken at the business level. For instance, inadequate reporting to and oversight by governing boards including audit and risk committees, resulting in a single point of failure.



- No systems for identifying compliance risk, such as reporting on payroll issues or complaints to identify red flags, areas for audit or trends.

### **The NTEU claims on working hours and workload**

29. The NTEU claims seek to address the failures of the current Enterprise Agreement provisions in terms of a proactive 'whole of University' approach and proper governance; and in doing so, strongly combat workload creep.

30. The key elements of its claims in clauses 1.22 and 1.23 of the NTEU's proposed Enterprise Agreement (tabled 30 September 2022) (**NTEU Proposed EA**) are:

- A duty on the University to do what is reasonably practicable to ensure reasonable working hours (working hours not exceeding ordinary hours of work) (the positive duty to ensure reasonable working hours);
- As part of the positive duty to ensure reasonable working hours, the University to conduct surveys on working hours;
  - every two years for each Faculty and Division; and
  - a year after workplace change within the meaning of clause 1.49 of the NTEU Proposed EA;
- A positive duty on the University to do what is reasonably practicable to ensure its workload allocation policies and practices ensure reasonable working hours;
- A requirement on the University to publish workload allocation policies for each Faculty, Division, School, Department and other organisational units with these policies setting out:
  - (a) how workload is allocated;
  - (b) how the relevant policy ensures reasonable working hours; and
  - (c) estimates of the time taken for major tasks that accurately and empirically reflect the time taken to perform these tasks in a professional and competent manner (having regard to employees' classification level).
- A requirement that workload allocation policies are developed and reviewed in consultation with relevant Employees with formal consultations conducted at least every two years;
- Obligations on the University to make reasonable efforts in relation to temporary 'backfills' and filling vacant positions.

31. The positive duties in relation to working hours and workload allocation policies are in line with the University's positive duties under [section 21](#) of the *Occupational Health and Safety Act 2004* (Vic) and [section 15](#) of the *Equal Opportunity Act 2010* (Vic). Given the discussion at the negotiation table concerning surveys of working hours, we append a note by Dr Iain

Campbell, Honorary Senior Fellow at the Centre for Employment and Labour Relations Law, Melbourne Law School, on this topic.

32. As in our response to University's memorandum on NTEU's job security provisions, we conclude by echoing the call from the [\*Australian Universities Accord: Interim Report\*](#) for universities to be exemplary employers by addressing widespread staff concerns regarding excessive working hours and workload.

**APPENDIX: NOTE ON SURVEYS OF WORKING HOURS BY DR IAIN CAMPBELL,  
HONORARY SENIOR FELLOW, CENTRE FOR EMPLOYMENT AND LABOUR RELATIONS  
LAW, MELBOURNE LAW SCHOOL**

There is a huge volume of survey-based research, in Australia and in other countries, on workers' working hours, mainly concentrating on duration (daily, weekly, annual hours) but also looking at important issues such as distribution, regularity, and worker preferences. Feminist research may contextualise hours of paid labour with hours of unpaid labour. The many surveys often start with objective patterns and then extend into data on worker responses (e.g. preferences for change) and the impact of hours on other outcome measures.

Working hours have been a central topic in official labour force surveys for over a hundred years, including our own Australian Bureau of Statistics labour force survey. Such official surveys are conducted under widely-accepted protocols for definitions, sampling and measurement, which are regularly reviewed and updated by the regular International Conference of Labour Statisticians operating in association with the International Labour Organization in Geneva. The widespread consensus on definitions, etc. fuels the progress of research and provides the basis for rich international comparisons (e.g. Lee, McCann and Messenger 2007). Cross-national data were extensively considered and used by both employers and unions in the Reasonable Hours Test Case in Australia which concluded in 2002.

Independent labour surveys at international, national or sub-national levels often seek to explore new aspects of working hour patterns and might introduce new methods. The pandemic has thrown up new questions that are well researched through surveys (Craig and Churchill 2021). Surveys may incorporate time diaries as well as questionnaires. It is sometimes possible to mix survey data with follow-up qualitative interviews in order to deepen the analysis (see e.g. Campbell and van Wanrooy 2013). Most independent surveys aim to conform to the internationally-accepted measures and definitions.

Because surveys can be expensive to set up and run, research on working hours at a sectoral or organizational level is most often pursued through qualitative interviews or focus groups (for recent examples in universities see Sang et al. 2015; Smyth et al. 2021). Nevertheless, representative surveys at a sectoral or organizational level on working hours are not difficult; they need careful attention to research design, including research questions and a good sampling frame, but they don't present any major conceptual difficulties. A good introduction to research design, including surveys is Blaikie (2010; see also for research at an organizational level Edwards et al. 2014).

## **References**

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