

Casual academic defeats university opposition: the first reported employee-choice order

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The reliance on casual employment within the Australian academic workforce is a defining feature of the contemporary university model. For decades, universities have utilised casual contracts to manage core teaching requirements.

On 12 August 2026, the Fair Work Commission put the new employee-choice provisions into practice. In the first reported arbitration under those provisions, a casual academic secured an order requiring his employer to treat him as a permanent part-time employee.

The statutory pathway: employee choice

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) introduced the employee-choice framework. The relevant provisions commenced on 26 August 2024.

Under these provisions, a casual employee who believes their working arrangements no longer meet the statutory definition of casual employment can give a formal notification to their employer. If the employer does not accept the notification and workplace discussions fail, either party may refer the dispute to the Fair Work Commission. The Commission must ordinarily deal with the dispute without arbitration first, but may subsequently arbitrate and make binding orders.

Genuine casual employment is defined under section 15A of the *Fair Work Act 2009* (Cth). The central test is whether there is an 'absence of a firm advance commitment to continuing and indefinite work'. Section 15A also requires entitlement to a casual loading or specific casual rate. That requirement was not disputed in Mr Baker's case.

Baker v Macquarie University

The decision is *Baker v Macquarie University* [2026] FWC 3054, delivered on 12 August 2026.

Mr Gregory Baker is an academic in Macquarie University's School of Computing who had performed teaching work since 2023. His application concentrated on COMP2200, a core subject he taught in both semesters of 2025 and was allocated to teach in both semesters of 2026.

On 5 November 2025, Mr Baker gave written notification to the University that his role no longer fit the legal definition of casual employment. The University did not accept the notification. Following an unsuccessful conciliation phase, the matter proceeded to arbitration before Commissioner Crawford.

Assessing the employment relationship

A regular pattern of work does not decide the question of casual employment by itself. Section 15A expressly says that no single consideration is determinative. Regular, predictable teaching in a core subject is powerful evidence of a firm advance commitment, but the real substance, practical reality and true nature of the entire employment relationship must be assessed.

In this case, the Commission found that Macquarie University was more reliant on Mr Baker performing regular and scheduled work than would normally be the case with a casual employee. On these facts, Commissioner Crawford said the work was 'potentially more akin to recurring fixed-term periods of part-time employment, rather than genuine casual employment': [33].

The enterprise agreement could not cut down the NES pathway

During the hearing, the University argued that the *Macquarie University Academic Staff Enterprise Agreement 2023* (the collective agreement setting workplace conditions) did not permit a 'teaching-only' part-time role.

Commissioner Crawford rejected this argument. He considered that clause 18 of the Enterprise Agreement probably accommodated Mr Baker's part-time employment. In any event, if the clause prevented him from accessing the National Employment Standards (NES) employee-choice provisions, it had no effect to that extent under sections 55 and 56 of the *Fair Work Act 2009* (Cth).

The order: a measured victory

Having found that Mr Baker did not meet the section 15A requirements when he gave the notification, the Commission ordered Macquarie University to treat him as a 0.1 full-time equivalent (FTE) part-time employee.

The 0.1 FTE figure was not imposed arbitrarily; the parties largely agreed that 0.1 FTE was appropriate if an order were made.

While Mr Baker estimated he worked more than 900 hours in 2025, the part-time order guarantees him 182 hours over a 12-month period. Any additional work attracts payments prescribed by the Enterprise Agreement, and separate genuinely casual engagements remain permitted. Commissioner Crawford also noted that the part-time arrangement presented a prospect of cost savings for the University, as the part-time rates were lower than the casual teaching rates.

Procedural guide: making an employee-choice notification

For other casual academics with comparable working arrangements who wish to change their employment status, the legislation dictates a specific procedure:

1. **Eligibility:** The employee must have been employed for at least 6 months (or 12 months for a small business employer). They cannot give a notification

while an employee-choice dispute is current, or within 6 months after an earlier notification was refused or such a dispute was resolved.

2. **Notification:** The employee gives a formal written notification stating they believe their arrangement no longer meets the definition of casual employment under section 15A. A complete legal argument is not required, though providing supporting evidence is prudent. A [notification checklist and template](#) is available from the Fair Work Ombudsman.
3. **Preserve evidence:** The Fair Work Commission fixes its assessment at the date the notification is given. Academics should preserve rosters, allocations, contracts, emails, and workload records showing the arrangements as at that date.
4. **Statutory protections:** An employer cannot reduce hours, alter the work pattern, or terminate employment simply to avoid their employee-choice obligations (section 66L).
5. **Employer response:** The employer must consult with the employee and provide a written response within 21 days, stating whether they accept or do not accept the notification. If the employer does not accept the notification, its response must give reasons based on one or more of the statutory grounds.
6. **Dispute resolution:** If the notification is not accepted, the parties must first attempt workplace discussions. If referred to the Fair Work Commission, the Commission must first deal with the dispute without arbitration, including through conciliation. If that process does not resolve the dispute, the Commission has power to arbitrate and make binding orders.

Conclusion

The *Macquarie University* decision provides a clear, tested statutory pathway for academic staff seeking to transition from casual to permanent employment. It demonstrates that the employee-choice provisions have practical legal effect, and that enterprise agreements cannot be used to block access to the National Employment Standards.

This is a single-member decision on its particular facts. It does not automatically convert every long-serving casual academic. It shows the evidence that gives the employee-choice provisions real force. In my view, this decision strengthens the dignity and security of academic work across Australia's university sector.