



Australian Higher Education
Industrial Association

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AHEIA File Ref: 02/070

28 June 2002

Higher Education Review Secretariat
Department of Education, Science and Training
Location 701
GPO Box 9880
CANBERRA ACT 2601

Dear Sir

Please find attached a submission on behalf of the Australian Higher Education Industrial Association (AHEIA) in response to the paper entitled "Higher Education at the Crossroads: An Overview Paper". This submission has been the result of extensive consultation with AHEIA's 31 member higher education institutions, it was endorsed by AHEIA's Executive Committee on 24 June 2002 and the final version was approved by AHEIA's President, Professor Di Yerbury AO.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Argall', with a stylized flourish at the end.

Ian Argall
Executive Director

one attachment



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HIGHER EDUCATION AT THE CROSSROADS
A Review of Australian Higher Education

Submission by the Australian Higher Education
Industrial Association in response to the Overview
Paper – 28 June 2002

Information about AHEIA

The Australian Higher Education Industrial Association (AHEIA) is the employers' industrial organisation in the higher education sector and is registered as such under the federal *Workplace Relations Act 1996*. AHEIA represents the industrial relations interests of 31 member universities and colleges that are part of the Unified National System.

Scope of these submissions

These submissions are restricted to those aspects of the Overview Paper dealing with industrial and workplace relations. In particular they address those sections dealing with industrial or workplace relations issues referred to in Part 4 of the Overview Paper under the headings:

- e. efficiency and effectiveness; and
- f. governance, management and workplace relations.

The importance of these issues is considerable. As the Overview Paper points out:

134 ... The key resource of universities remains their staff, both general and academic. Human resource management practices, including performance management and the operation of enterprise bargaining are pivotal to the success of universities.

In addressing the industrial and workplace relations needs of universities and colleges in this submission, AHEIA has not just restricted itself to responding to the consultative questions and other points raised in Overview Paper, though it does comment on many of them. AHEIA understands that the Overview Paper is the first step in a process of consultation that will lead to specific issues papers, one of which will deal with industrial and workplace relations. This submission aims to inform the content of that anticipated issues paper.

Background - the problem of increasing regulation of university employment

Academic work in universities was previously (and remains) largely unregulated in an industrial sense. Overall, award processes and particularly enterprise bargaining have tended to result in an increase in regulation and a reduction in flexibility. Much of the activity of AHEIA over the past decade has been in resisting this trend.

The factors that have conspired to produce increased industrial regulation of employment matters include the intervention of the Australian Industrial Relations Commission, for example, in imposing the *Higher Education Contract of Employment Award 1998* (HECE Award) on the sector. They also include the pattern bargaining approach of the National Tertiary Education Industry Union (NTEU), the policies of previous federal Government policy and, ironically, of the current Government.

Regulation v deregulation

Academic staff in universities only came under industrial regulation in the late 1980s. Before that time academic conditions of employment were determined at the institutional level, largely through custom and practice. Academic salaries, on the other hand, were the subject of determination or recommendation (in most cases) by the Academic Salaries Tribunal, which had been set up by the Government and whose determinations were directly related to Commonwealth funding.

In general terms, academic employment was mostly unregulated in any formal industrial sense. While this was largely unexploited by universities, this regime already provided considerable flexibility at the institutional and at the individual level. The irony is that subsequent legislation has, paradoxically and unintentionally, acted to remove this potential for flexibility.

Entry into the Award system

The late 80s and early 90s saw the then Labor Government actively encourage universities under the new Unified National System to become subject to federal award regulation. These new federal awards and negotiated outcomes between unions (the ACTU and the newly registered NTEU) and AHEIA (which had been established primarily for this purpose) were the chief instruments by which the former College and the former University classification structures were merged.

There were important other Government sponsored agenda items that found expression through the new award system. Performance management, including procedures for dealing with individual academic performance problems or misconduct were a major focus. Progress toward the regulation of these matters through industrial awards was actively rewarded by supplementation of the university operating grants to provide salary increases to staff.

Redundancy provisions were introduced into federal academic awards, but only after serious and prolonged controversy about whether such provisions were inconsistent with concepts of academic tenure.

While they might arguably have represented some improvement in terms of institutional flexibility over what existed previously, the performance management and redundancy provisions that were introduced into federal academic awards involved very complicated procedures and very long timeframes. AHEIA was strongly involved in the early and mid-1990s in building up a body of case law in which these provisions were used by universities.

AHEIA also pursued changes to these elaborate provisions through award variation applications, which in the end led to an arbitrated outcome in 1995 commonly known as the "Bryant Award". Those Bryant Award provisions generally represented a diminution of the complexity of the processes to be followed, though they still remained complex when compared to award provisions in other industries.

Enterprise Bargaining

Having been actively encouraged by federal Government policy to enter the federal Award system, from the mid 1990s the universities have been equally encouraged to move from that award system to having their employment relations governed by enterprise agreements. That too has led to increased regulation of those employment relations.

Enterprise bargaining accorded with Labor Government policy at the time, and the first steps into enterprise bargaining were driven by specific funding incentives provided by that Government. Fully funded salary increases of 1.3% and 1.4% were provided for the industry entering into National Framework Agreements which established the ground rules for enterprise bargaining in the mid 1990s.

Universities were willing participants in this movement, not only because of the associated funding, but also because the emphasis on institutional arrangements accorded with their desire to move away from what had proven to be restrictive national award regulation. The fact that this has not happened has largely been the result of the stance adopted by the NTEU.

The Workplace Reform Program

In late 1999 the federal Coalition Government introduced the Workplace Reform Program which was ostensibly designed to encourage universities to pursue the sorts of workplace and management reforms the Government thought desirable. According to the Program Guidelines issued at the time:

This programme is intended to provide funding for higher education institutions upon the adoption of flexible and more efficient governance and management structures. It will enable institutions to respond to the emerging student, employer and community demands.

The Guidelines also say:

The aims of the programme are to foster arrangements which reflect the needs of individual institutions and more direct relations between employers and employees, and to improve the efficiency of management and administration processes.

Grants will be provided to enable higher education institutions to develop more flexible management practices and to utilise resources in a more efficient way. Institutions will be required to apply for the grants and additional funding will only be provided where institutions commit to, and implement, significant reform in workplace relations arrangements and management and administration.

Although these were very desirable aims, much of the focus of the Program was and remains on their achievement through enterprise agreements. The first 10 of the 14 criteria for assessment are assessed against the content of university enterprise agreements.

This emphasis seems to be based on an assumption that universities, like some other industries and the Australian Public Service, were already restricted in their employment relations by industry-wide awards, and that it would be easier for them to deal with these matters through comprehensive enterprise agreements. In fact, many of the criteria under the Program were quite inappropriate under the circumstances.

Requirements aimed at encouraging universities to allow for the possibility of agreements made directly with staff that bypassed unions were simply impractical given the long-standing high levels of union membership in the industry. Given that all major agreements in the industry were inevitably going to be with unions (with the exception of minority agreements such as the QUT senior staff agreement) other aspects of the Workplace Reform Program took on an entirely different aspect.

The requirement to provide for Australian Workplace Agreements (AWAs) to prevail over the collective agreement, meant that universities had to seek the agreement of unions to arrangements that offended their deepest principles. The amount of controversy this caused at those universities that tried it effectively distracted them from the positive uses they might have made of AWAs. Instead of just using AWAs as appropriate to their circumstances and outside the term or application of collective agreements (which some did in a fairly limited way), the capacity to do so became subject to union agreement. Unwittingly, the Government has effectively reduced areas that should remain within management prerogative.

The requirement under the Workplace Reform Program that enterprise agreements be "closed and comprehensive" has led universities that might not otherwise have done so to incorporate a wide range of employment matters - many previously not governed by industrial instruments - into new agreements. Of particular significance in that regard was the requirement to align university strategic goals with enterprise agreements, in which case the means of achieving those strategic goals becomes a matter for negotiation with unions.

Concentration in the Workplace Reform Program on traditional university agenda items of performance management and redundancy brought these within the scope of industrial negotiations even for those universities that had preferred previously to deal with such matters outside of the agreement context. The need to reach agreement with unions over this, now wider, range of subject matters meant that universities were now dependant on the consent of the unions for matters which they previously could have implemented without that consent.

The process by which universities have been required to apply for what really amounted to 1.5% of their operating grant has also been extremely onerous and drawn out. The amount of money, while very welcome, is very small when compared to the increase in the staffing bill of universities since the decision to stop fully indexing salary rises. Various AHEIA members have suggested that significant incentives for particular changes would receive a positive response at their universities. As one example, it has been suggested by one Director of Human Resources that specific funding to assist in voluntary early retirement schemes would be of value.

Reforms outside industrial negotiations

As a result of these forces, many of the achievements of universities in workplace reform have necessarily taken place outside the context of industrial negotiations.

For instance, available statistics show falling sectoral staff levels (from a high point in 1996) despite increasing student numbers resulting in increasing student/staff ratios. The result is often presented negatively, and indeed there are many negative aspects of this trend. However, it is also a clear indicator of increased productivity. Similarly, these changes have been accompanied in many cases by changes in staffing profiles in terms of academic and other levels and in areas of academic specialisation.

"Flexible work practices" are exemplified by the increase in on-line or flexible delivery and the introduction of other new technologies, out of hours and out of term teaching. At this stage in the sector, these technologies are requiring large up-front investments in hardware, courseware and staff development before many associated productivity gains can be realised. Changing student/staff ratios and new technology are, in turn, having flow on effects on the ways we think about good quality teaching outcomes for students.

With regards to general staff (which make up at least half of the staff in the sector), universities are putting in place a variety of productivity gains, for example:

- outsourcing of areas outside core business such as security, cleaning, gardening and grounds, maintenance, printing, etc.
- increased use of private sector customer based modes such as service level agreements and account manager models
- exploration of increased use of shared services.

It is significant that many of the strongest achievements in these areas have taken place outside the context of industrial negotiations or of industrial regulation. For

higher education institutions, it has often been inappropriate to use industrial negotiations as a means of achieving workplace change.

Although Universities have in the main supported the broad direction of industrial relations reform being enacted by successive Governments they have found that the interaction between the reform agendas of Education and Industrial Relations portfolios has resulted in increased restriction of academic employment matters not the converse. A positive step in the right direction will be to reverse this trend starting with the unintended consequences of the Workforce Reform Programme.

Questions for the Review might include the following:

- *What aspects of university employment are appropriate for regulation through industrial awards or agreements, and what aspects are better left unregulated in this way?*
- *What employment aspects currently regulated by industrial award or agreement would be better unregulated, and how can this be achieved?*

Reforms under enterprise bargaining

Nevertheless, universities have sought to operate within enterprise agreements and have also achieved significant reforms in that way. Common achievements in enterprise agreements include:

- regulation of individual academic workloads leading to greater accountability
- the introduction of performance management schemes
- modifications to redundancy provisions to encourage voluntary redundancy.

These reforms have been particularly important in a context that prohibits compulsory age-based retirement.

In addition, individual universities can point to significant achievements in flexibility through agreement provisions they have negotiated locally (and other universities could also point to examples):

- the ability for staff to opt to take some part of their superannuation entitlement as salary (University of Tasmania)
- the option of cashing out Long Service Leave entitlement (Macquarie University)
- part of salary increase contingent on institutional goals being met (Australian Catholic University, Edith Cowan University, University of Melbourne, University of New England)
- extension of types of fixed-term contracts (Edith Cowan University)
- expanded ordinary hours for general staff (Macquarie University, Edith Cowan University)

Many universities also now have requirements in their agreements about union cooperation in the generation of additional funds from sources other than the Government operating grant.

Questions for the review might include the following:

- *How can universities build on the gains achieved at some institutions in enterprise bargaining?*
- *What other areas for reform of workplace relations are appropriate for the next enterprise bargaining round?*

Issues about the form of enterprise bargaining

The Overview paper asks:

- Qf2 How can enterprise bargaining or the registration of individual agreements be made more effective in higher education?*
- *should enterprise bargaining occur at Faculty/Entity levels?*

In general, issues about the form of agreements are less important to universities than those about their content. Emphasis on the form of agreements (such as the requirements about allowing for future non-union agreements and Australian Workplace Agreements in the Workplace Reform Program) have not been particularly useful to universities. There have been various well publicised attempts by universities to make non-union collective agreements directly with their staff, but the staff themselves have rejected such options.

The reality is that higher education is a highly unionised industry and that for the foreseeable future it is likely that all major agreements will be collective agreements with unions as parties. While this is the case, expected union opposition to Faculty based agreements is likely to be significant and it is not clear that they are advantageous to universities either. The problem for universities is more often the need for flexibility at the institutional and individual, not the Faculty, level in employment arrangements.

Questions for the Review might include:

- *What is to be considered a positive outcome from the enterprise bargaining process for universities?*
- *Are Faculty/Entity level enterprise agreements a practical consideration for universities?*
- *In what other ways can universities achieve beneficial outcomes in enterprise bargaining?*

Pattern bargaining and industrial vulnerability

Comment is made in the Overview Paper about "pattern bargaining" in higher education, its effect in restricting management discretion and inducing uniformity of conditions and on the "gatekeeper" role adopted by the head offices of unions (para 141).

Although universities complain about union pattern bargaining and union gatekeeping, the question is what can be done about it. Unions will continue to be interested in maintaining high levels of uniform industrial regulation across the sector, even if that is antithetical to employer needs, and will organise themselves in ways that favour the attainment of these goals. While they have to deal with unions, that will be a problem for universities.

The Government has reintroduced its anti-pattern bargaining legislation into Parliament, but it seems unlikely to pass the Senate at least on this occasion. Unfortunately for universities, the definition of pattern bargaining has now been narrowed significantly from the version in the previous Bill rejected by the Senate. It is now extremely unlikely that the activities engaged in by higher education unions would fall within the definition of "pattern bargaining". Nor is it clear just how provision for "cooling off periods" would be of benefit to universities.

Furthermore, the issue of union "gatekeeping" does not seem to be one that could be solved by legislative means without offending against principles of freedom of association. A more productive area for exploration would seem to be why universities are so vulnerable to the types of industrial action they have experienced in recent enterprise bargaining rounds.

Universities have experienced great difficulties in the face of industrial action by staff. The crucial factor in this regard is the necessarily fixed timetabling of the academic year, and the vulnerability of universities to threats to it. Students have to know in advance when classes and examinations are to be held, and when results will be available, and this schedule is consequently very exposed to any threat of disruption.

A number of universities suffered industrial action in the last round of enterprise bargaining, mostly in the form of bans on the transmission of examination results. This is an area where they are particularly vulnerable and this was exploited by the NTEU in particular. In many cases, continued resistance to union demands by universities meant exposure to potential legal action from students or failure in their obligations under their enabling Statutes. The effect of these consequences on their reputations in an increasingly market reliant industry was not lost on universities faced with this choice.

The inability of the Australian Industrial Relations Commission to deal effectively with this situation was demonstrated in late 2000. A member of the AIRC described exams bans at the University of Western Sydney as "morally and ethically wrong" but held that the law required he not interfere in the matter. This is only one of a number of cases where AHEIA members have explored the limits of the *Workplace Relations Act 1996* in this regard.

Public support from the Government in such circumstances would be of great use to universities. In terms of legislative reform, a strengthening of the provisions about suspension or cancellation of bargaining periods on the basis of harm to the public in the *Workplace Relations Act 1996* would be of greater practical use than that addressed to pattern bargaining. Consideration might also be given by Government to legislative remedies in the face of possible damage to an important

part of the Australian economy by action that deters foreign students from enrolling in Australian universities.

Questions for the Review include:

- *What are the best ways of assisting universities in resisting unwanted "pattern bargaining"?*
- *How can universities be assisted to avoid harm to students when industrial action is in the form of "examination bans"?*
- *How can Government assist universities to avoid damage being done to a significant part of the Australian economy by industrial action?*

Workforce/staffing flexibility

The Overview paper asks:

Qf1 What forms of staffing flexibility do different universities need?

and points out that:

139 ... Inflexible operating arrangements fail to meet the changing needs and circumstances of students and impede the efficient use of campus facilities.

140 Workplace flexibility is increasingly necessary to enable universities to compete in the education marketplace. For universities to be innovative, responsive and able to differentiate their services they have to be able to make timely decisions, deploy their resources as required to meet the circumstances and, where necessary, forge alliances with others to fill capability gaps.

Universities need to be able to respond quickly to changing student demand and to opportunities for entry into new areas of teaching or research as they arise. This will often involve the need to quickly engage and sometimes disengage staff as skill requirements change. Necessarily, the high degree of specialisation of academic staff often militates against their simply being redeployed as might be able to be the case with other types of staff.

Ongoing or tenured employment, while it may have other benefits for universities, does not deliver this flexibility. It is important though, to recognise that tenured employment is only one of the forms of employment used by universities. Only about 60% of university staff are ongoing employees, the remainder being engaged either on a fixed-term, casual or sessional basis. Sessional employment of academics is sometimes lumped in with the more usual forms of casual employment, but is a mode of employment unique to higher education involving semester long contracts and a specific focus on teaching duties. It has sometimes in the past been called "part-time", "part-time teaching" or "part-time non-fractional" employment, and has often been a primary means by which universities adjust their staffing profiles in the short term.

High levels of fixed-term and sessional employment have long been a characteristic of the sector and it is through these forms of employment that universities have sought the staffing flexibility they need.

Fixed-term employment is now highly constrained by the *Higher Education Contract of Employment Award 1998* (the HECE Award), which limits the circumstances in which such an employment type can be used. Since the passage of that Award, staffing statistics suggest a significant drop in its use in many institutions, with an overall reduction from about 31.5% to 24.5% in FTE terms across the sector.¹

Casual employment is currently the subject of a dispute notification by the National Tertiary Education Industry Union (NTEU). It is the NTEU's declared aim to limit the use of casual and sessional employment in universities. This matter is currently before the Australian Industrial Relations Commission. Universities are most concerned at the prospect of an outcome that either restricts or increases the cost of this mode of employment.

In many cases, for example, professional associates are most appropriately employed as casual or sessional staff. The benefit of such an arrangement is that it allows professional staff who keep their place in the non educational sector to participate in university teaching, to the great benefit of students. Examples of such arrangements include practicing professionals in psychology, medicine and other health related fields, high quality professional musicians and other creative artists, and business, management and applied finance professionals. Universities (and students) gain immeasurably in being able to engage successful professionals who would otherwise be unable to pass on these benefits of their professional experience. It is important that unions' opposition to casual employment not impinge on these valuable arrangements.

For universities the priority is not to reduce the industrial or other protections of ongoing or tenured staff, but to ensure that they are able to utilise an appropriate mix of different employment types that retain or enhance the staffing flexibility they require. If there are to be further restrictions on existing employment modes (or if they are to be made significantly more expensive for universities to employ – which will effectively amount to the same thing), either staffing flexibility will suffer, changes will be necessary to existing modes, or new modes of employment may need to be introduced.

The Overview Paper quotes Coaldrake and Stedman, 1999 on the possibility of Australian universities adopting "the semester-based appointment model from the United States" (para 129). Australian Universities have tended to use casual academic staff to fill this niche and further restriction of that type of employment will raise this question as it will the issue of teaching only staff in universities or the possibility of forms of ongoing but non-tenured staff.

The issue of tenure is often raised in the context of discussions about "quality" in higher education and it is sometimes claimed that increasing casualisation is detrimental to quality. However, little serious attention is paid to the benefits in

¹ Source: DEST Staffing statistics – 1997 to 2001

terms of quality of a differentiated workforce in which staff specialise in those areas in which they excel.

There are also cost implications associated with the mix of different modes of employment. One of the NTEU's stated aims is to remove any cost benefit incentive to the use of casual employment by universities. For universities aiming to "increase their output and to reduce the costs of their inputs while maintaining quality" (para 122) the utilisation of the most cost effective employment forms will continue to be an important consideration, along with that of quality.

Important questions for the Review are:

- *What is the proper purpose and value of ongoing or tenured staff and where should such decisions be made?*
- *What are other appropriate employment modes, including other existing modes, in universities?*
- *What is the appropriate mix at each institution of such modes given the need for workplace flexibility and the need for efficient use of resources?*

Remuneration flexibility

The Overview Paper refers to "a serious 'lock-in' of the salaries budgets of many institutions for senior staff" (para 143). Much of this is inevitably due to the age profile of university staff which, it must be remembered, echoes the age profile of the general Australian community. It seems unlikely, and even undesirable, that this be remedied entirely either by restructuring leading to redundancies or by an increased attention on performance management, important as that is. On the other hand, time will certainly have its effect on this problem, provided that universities are not required to increase the proportion of tenured staff they hire.

For universities, the important question is how they will be able to appeal to the next generation of academics, and here the issue of remuneration flexibility becomes important. Overall salary levels will be important, but so will an increased capacity to tailor remuneration packages to individuals, many of them perhaps increasingly participating in a global labour market for academic staff.

There is already a need for universities to have greater flexibility in negotiating "at risk" bonuses dependent upon specified performance targets than are generally possible under present industrial regulation. There will be a need to take such arrangements outside the collective industrial relations context if they are going to be workable.

Although universities have explored salary packaging arrangements they are presently constrained in terms of how they can tailor total employment packages to the needs of individual employees. It needs to be emphasised, both to Government and to university staff, that the flexibility universities need in this respect is not aimed at cost savings or reducing overall remuneration. Indeed, in many cases, universities have trouble providing total remuneration packages sufficient to attract the "new blood" they need to revitalise their institutions.

Instead, what is needed is a greater capacity to maximise the limited benefits universities can currently afford to provide by enabling individuals to tailor remuneration packages to their own particular circumstances. A major impediment to this has been the "one size fits all" approach to remuneration insisted on by unions and, at this stage, limited success on the part of universities in convincing staff that they have more to gain than to lose by more flexible arrangements.

Questions for the Review include:

- *How can universities maximise the attractiveness of the employment packages they can offer?*

Staffing productivity/ performance management and accountability

The Overview Paper asks:

Qe2 How can staffing productivity (both general and academic) be increased and monitored?

and

Qf3 How can performance management, and the recognition or reward of individual team achievement, be improved?

It is important that this issue be seen in the context of the very significant productivity increases that have occurred in the sector over the past decade or so. In that time, university staff have adopted new ways of teaching through the growth of flexible learning modes, have taught more students and have assisted in the expansion of Australia's higher education market overseas. Enterprise bargaining has played a part in this by its emphasis on productivity bargaining and, as explained above, many universities can point to important productivity initiatives in their enterprise agreements.

The point is made earlier in these submissions that it is often more effective for universities to deal with staff productivity and performance issues outside of the context of industrial regulation. The issue of deregulation of these aspects is raised elsewhere.

However, it is also important to recognise the very important advances that many higher education institutions have made through the introduction of performance management programs whether or not those initiatives have been related to enterprise bargaining. These performance management schemes have been particularly important since the abolition of compulsory age-based retirement.

In other instances though, some universities have met with resistance both from unions and from some university managers when it comes to implementing those programs. In the latter case, it may be that encouraging specific management training may be of value in overcoming such impediments.

The Review might ask:

- *How can universities consolidate and build upon the productivity improvements and performance management programs they have introduced?*
- *How can management training in areas of performance management and accountability be encouraged?*

Concluding comments

These submissions are designed as an initial airing of issues of concern to AHEIA and its members. A number of questions will no doubt be raised by these comments and AHEIA is available to elucidate on them and to participate in further aspects of the Review.

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