



AUSTRALIAN MANUFACTURING WORKERS' UNION

SUPPLEMENTARY SUBMISSION

TO:

**SENATE EMPLOYMENT WORKPLACE RELATIONS
AND EDUCATION REFERENCES COMMITTEE**

CURRENT AND FUTURE SKILLS NEEDS ENQUIRY

Wednesday, 9 April 2003



The AMWU seeks to make a supplementary submission to the formal submission that was made by the national office of the AMWU dated 20th February, 2003.

It is the submission of the AMWU that amendments to the Workplace Relations Act are necessary to restore to the States the right to make legislation in respect of vocational education and training and apprenticeships/traineeships.

It is particularly important that the right of the States to make legislation in respect of the conditions of employment of trainees, as distinct from apprentices, be restored, including but not necessarily limited to:

- Probationary periods associated with Contracts of Training;
- Minimum and maximum terms for Contracts of Training;
- Minimum and maximum hours of paid employment under Contracts of training;
- Termination of employment;
- Dispute and grievance resolution; and,
- Such other legislative provisions as states are empowered to make in respect of the Contract of Training System as it relates to apprentices.

Section 109 of the Australian Constitution makes provision for the precedence of Commonwealth legislation over legislation of the States as follows

Inconsistency of laws.

- 109.** When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Section 170VR of the Workplace Relations Act provides for Australian Workplace Agreements to take precedence over conditions of employment otherwise provided for in State legislation. Sub-section (2) of the same Section provides an exclusion in respect of State laws that deal with apprenticeships.

170VR Effect of AWA on other laws

- (1) Subject to this section, *an AWA prevails* over conditions of employment specified in a State law, to the extent of any inconsistency.
- (2) *Provisions in an AWA that deal with the following matters operate subject to the provisions of any State law that deals with the matter:*
 - (a) occupational health and safety;
 - (b) workers' compensation;
 - (c) *apprenticeship*;
 - (d) any other matter prescribed by the regulations.
- (3) If a State law provides a remedy for the termination of an employee's employment, subsection (1) is not intended to affect the provisions of the State law that relate to termination of employment, so far as those provisions are able to operate concurrently with the AWA.
- (4) To the extent of any inconsistency, an AWA prevails over prescribed conditions of employment specified in a Commonwealth law that is prescribed by the regulations.

Most states have legislation that recognises the unique employment relationship that exists under a Contract of Training (COT) and quarantines apprentices and trainees from the regular industrial relations dispute and grievance mechanisms.

It is the submission of the AMWU that the Workplace Relations Act recognises the unique employment circumstances of apprentices, and further recognises the right of the States to make legislation in relation to the regulation of apprenticeships including legislation in respect of matters pertaining to the employment conditions of apprentices.

The emergence of traineeships in areas beyond the structured traineeship schemes established by the industry parties including the Career Start and Australian Traineeship System traineeships, and the blurring of the distinction between traineeships and apprenticeships by the Commonwealth through the 'New Apprenticeship' system has not been recognised in the Workplace Relations Act provisions including, importantly, the exemption cited above (S170VR(2)).

The net effect of this in the view of the AMWU, is that it is now possible to construct an Australian Workplace Agreement with the express intention of avoiding otherwise binding obligations contained in the nationally agreed and mandated standard Contract of Training form and opens up the state dispute resolution mechanisms to challenges to its jurisdiction.

South Australia's Dispute Resolution Committee has confronted three such challenges in recent months.

The Commonwealth is a party to the agreement to establish and implement a nationally consistent COT form which contains otherwise binding obligations that reflect the requirements of the various state apprenticeship/traineeship jurisdictions.

The parties to Contracts of Training are often unaware that the contracts they sign are rendered unenforceable by conflicting provisions that may exist in an Australian Workplace Agreement.

The COT contains declarations, conditions and obligations in relation to:

- Employment
- Training
- Payment of wages
- Observance of conditions of employment
- Occupational Health & safety
- Termination
- Alteration to the contract

If an AWA contains provisions that conflict with these declarations, conditions and obligations the contract is rendered useless as a means by which the rights of the apprentice/trainee are protected.

This problem is compounded by the activities of New Apprenticeship Centres (NAC's) who are tasked with, and funded by the Commonwealth to, assist employers and apprentices/trainees with the administration and registration of Contracts of Training.

There are no structural impediments to a NAC being a Registered Training Organisation and an employer body at the same time, as is the case with Business SA in South Australia. The potential for conflicts of interest, added to the pressure to source and register COT's for profit, is of enormous concern to the AMWU.

AWA's are being promoted by some NAC's as a means of circumventing restrictions imposed by the states on the use of part time and/or casual traineeships in circumstances where the state regulatory body deems them to be inappropriate.

One recent South Australian example saw the nominal duration of a traineeship blow out from one year to over ten years because of the part time (4 hours per week) nature of the contract. When combined with an AWA, provisions such as those that the SA Accreditation and Registration Council have sought to impose on maximum durations for COT's become meaningless and the state loses its rights to regulate traineeships.

It was never the intention of the industry parties to expose apprentices and trainees to the general industrial environment. The special nature of the apprentice's/trainee's employment relationships has always been defended and encouraged by most employers and unions.

An amendment to Section 170VR (2)(c) to include Traineeships would give some consistency to the system and eliminate the practice of deliberately constructing AWA's to avoid state regulation of this important area of employment and skills development and the AMWU respectfully submits that such an amendment is both necessary and desirable.