

# Chapter 1

## Majority Report

1.1 The Senate has referred this bill to the Employment, Workplace Relations and Education Legislation Committee for report by 10 October 2005. The bill amends the *Higher Education Support Act 2003* to require that universities and other institutions covered by the act must provide their employees with the choice of negotiating an Australian Workplace Agreement (AWA) as an alternative to the current certified agreement. The committee has considered the merits of this policy and Government senators express their strong support for the bill in this majority report.

1.2 At its core, this bill aims to promote choice and flexibility in employment, through reform of the current workplace agreement arrangements in the sector. Reliance on certified agreements alone is inappropriate in institutions relying on the varied talents and diverse responsibilities of academics and administrators. So often, the success of universities depends on individual effort and achievement, and continued success will depend on appropriate recognition of that achievement. Despite the existence of remuneration variations outside the enterprise bargain agreements, there exists a culture of uniformity in working conditions and remuneration under Enterprise Bargaining Agreements (EBAs). There also remains the reality that EBAs inhibit management in relation to poor performance. The use of AWAs facilitates choice for employees, who are provided with added incentives geared to productivity, and with the opportunity to better balance their work with their personal lives.

### **The purpose of the bill and its provisions**

1.3 The Government's intentions in regard to workplace relations reform in the higher education sector were first outlined in the *Crossroads* paper issued by the minister in 2002. In particular, the ministerial paper notes criticism that rigidities in university staffing structures lead to the continuation of a supply-side approach to course offerings, rather than an approach which is responsive to student demand. The paper also notes that:

Traditional academic cultures and industrial structures can operate together to restrict the ability of universities to make the most of new opportunities. A culture of pattern-type union bargaining restricts management discretion and induces uniformity of conditions. Pattern-type bargaining is counterproductive when it results in pay increases that universities cannot afford without doing damage to their viability. When locally agreed enterprise bargaining outcomes can be over-ruled by the union's national office operating as a gatekeeper, the very basis of enterprise bargaining is undermined.<sup>1</sup>

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1 *Higher Education at the Crossroads: Ministerial Discussion Paper*, DEST, April 2002, para.141

1.4 Under current provisions of the act, universities are required to include a clause in their agreements stating they may offer AWAs. On 29 April 2005 the Minister for Education, Science and Training, the Hon Brendan Nelson MP, announced a set of Higher Education Workplace Relations Requirements (often abbreviated to HEWRRS) which considerably strengthen conditions providing for the availability of AWAs. The amendments in this bill require that universities must offer AWAs to all new employees after 29 April 2005 and to all other employees by 31 August 2006. Until 30 June 2006, universities are exempt from offering AWAs to casual employees engaged for a period of less than one month. The bill provides for the inclusion of the workplace relations requirements into the Commonwealth Grant Scheme Guidelines and for the Minister to require that the workplace relations requirements are being met prior to the approval of funding increments to universities.

1.5 All university workplace agreements certified or varied after 29 April 2005 must include a clause that expressly allows for AWAs to operate to the exclusion of the certified agreement or prevail over the agreement to the extent of any inconsistency.<sup>2</sup> In the event that employees elect to enter into an EBA, the principles contained in the HEWRRS must be embedded in the new Agreement.

1.6 The HEWRRS also usher in a new era of consultation between universities and their employees. Workplace agreements must provide for direct consultation between universities and employees on matters relating to human resources and workplace relations. Workplace relations consultative committees and associated processes must include employees, and such involvement must be substantive. It cannot simply comprise unions purporting to speak on behalf of all employees. The requirements accord universities and their employees the respect and primacy they deserve as the parties who are entering into contractual arrangements. This is why the involvement of third parties representing employees must occur only at the request of an employee.

1.7 This bill further serves to promote efficiency and productivity in universities through the exclusion in AWAs of policies and practices which inhibit the capacity of the university and its employees to adapt work to changing circumstances. The Government is concerned that course offerings in particular years are in some cases affected by constraints imposed by EBAs because staff cannot be allocated in a flexible way to meet changing demands. EBAs may also inhibit the offering of new courses and the maintaining of courses in declining demand. This means that staffing allocations become supply driven rather than demand driven. The HEWRRS require the inclusion of policies and practices designed to reward highly-performing staff, such as a transparent performance management scheme and efficient processes for managing poorly performing staff.

1.8 The Government believes the requirement that universities offer their staff an AWA will enable individuals the opportunity to bargain for greater flexibility in their

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employment conditions, potentially including the provision of bonuses and other rewards for high performance. The use of AWAs also assists employers to attract and retain the best employees. In this way, the new workplace relations requirements seek to engender a workplace relations system which will bring about the best situation for universities, employees and, most importantly, the students of the institution.

1.9 AWAs accommodate the provision of superior wages and conditions for staff compared to federal awards and collective agreements. Studies undertaken for the Office of the Employment Advocate found that workers on AWAs earn 13 per cent more than workers on collective agreements and 100 per cent more than workers on awards.<sup>3</sup> It is also important to note that AWAs are subject to the same safeguards as collective agreements, including the current no-disadvantage test, and that it is and will remain illegal to coerce employees into accepting an AWA.

1.10 Even the critics of AWAs concede that they provide appropriate (that is, increased) remuneration for higher skilled and qualified employees of that category likely to be employed by universities. Vice-chancellors have repeatedly assured the committee of their concern that university employees be well rewarded, and that is what the market currently demands. Objections to AWAs on the grounds that they represent a salary reduction strategy in universities have no substance.

1.11 Nor will the workplace relations requirements affect academic freedom. Universities will continue to make their own decisions about the appointment of staff and the determination of academic courses.

1.12 Finally, in response to arguments that the bill represents an exercise in 'micro-management' of the higher education sector, and undue interference in university autonomy, the committee majority argues that the role of Government is to ensure that there is a legislative basis for fair dealing in employment matters, and that public utilities, funded by the taxpayer, should not be constrained in their employment negotiations. There is strong reason to believe that this is currently the case. It is not widely or publicly commented on by vice-chancellors. The Australian Vice-Chancellors' Committee (AVCC) is almost certainly divided on many issues, including matters to do with academic salaries, as would be expected of any organisation representing such a diversity of institutions. With this legislation, the Government is clearing a path for universities to evolve their own changes to the way they manage performance and reward their valued and productive employees.

### **The evidence from universities and unions**

1.13 In evidence received through submissions and at a public hearing held in Melbourne, the committee has heard that universities have found the timetable set by the Minister for the offering of AWAs or the negotiation of new EBAs unreasonable. The AVCC has requested that provision for AWAs for casual employees be struck out

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3 DEST, *Submission 5*, p.4

of the legislation.<sup>4</sup> The AVCC has also criticised the Government for linking funding to the successful and speedy negotiation of an EBA consistent with the workplace relations requirements. The Government responded to these criticisms, a number of which had been made prior to the committee commencing its inquiry, in two ways. First, the time available for universities to comply with the requirements in 2005 has been extended from 30 September to 30 November. Second, the requirement of offering AWAs to all casual staff has been relaxed so it only applies to casuals who are employed for a period of more than one month.<sup>5</sup>

1.14 Universities with current EBAs, specifically those registered with the Australian Industrial Relations Commission by 29 April 2005 and with an expiry date after 1 October 2005, have been given until 31 August 2006 to comply with the new arrangements. Contrary to the claims of the AVCC, this further signals the Government's fair and reasonable approach to the implementation of its policies.

1.15 The AVCC has recognised that delays in reaching EBAs by the due date have been frustrated by the National Tertiary Education Union (NTEU):

...the requirement to deliver a conforming EBA actually gives substantial bargaining power to the unions and acknowledgment that universities will lose substantial funding—in Monash's case, \$8 million—if this is not signed. It means that we have a gun at our head in negotiation. Unions do not have the same feeling that they need to have this because the old EBA is still in operation until we sign a new one.<sup>6</sup>

1.16 Professor Larkin's comments on NTEU tactics accord with those of the executive director of the Higher Education Industrial Association, who has written that the union is putting negotiations at several universities on the 'back burner' until it can reach more union-friendly agreements at a handful of institutions and use these to advance its pattern bargaining strategy. This delay is planned so as to make it too late for universities to do other than comply with NTEU demands unless they are prepared to forgo much needed supplementary funding.<sup>7</sup>

1.17 While these matters are not directly relevant to the question of AWAs, they do highlight the frustrations of an industrial relations regime which is focused on uniform national agreements rather than individual workplaces. It is also reported that the NTEU is frustrating negotiations in some universities for streamlining procedures to deal with the management of under-performance.<sup>8</sup> This is despite the assurances made

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4 See, for example, Professor Richard Larkins, *Committee Hansard*, Melbourne, 23 September 2005, p.2; Australian Vice-Chancellors' Committee, *Submission 6*, p.2

5 This exemption will apply only until 30 June 2006, by which time other lodgement arrangements, announced by the Prime Minister on 26 May 2005, are anticipated to be in effect.

6 Professor Richard Larkins, *Committee Hansard*, *ibid.*, p.3

7 Ian Argall, 'The real workplace fight has yet to begin', *Australian*, 21 September 2005, p.27

8 *ibid.*

by vice-chancellors, including by Professor Larkins at the committee's Melbourne hearing, that a process to ensure the application of natural justice must be protected in all circumstances.

1.18 Much of the criticism levelled at the Government's proposals by the NTEU goes to its need to preserve a power base through retention of its role as employee representative in the agreement negotiation process. The NTEU is also committed to salary parity as near as possible, across all universities, although it accepts the realities of above award salaries and individual contracts. However, it is national in its focus at a time when the emphasis must be on the individual workplace, and when the sector is likely to become far more diversified. The committee majority believes that the introduction of AWAs will be a catalyst for the creation of correspondingly diverse employment arrangements in the sector, and that even where EBAs continue, their negotiation will see less involvement from nationally-based unions.

## **Conclusion**

1.19 The committee majority believes these reforms are necessary for the long-term sustainability and quality of Australian higher education. The need for workplace reform in the higher education sector, which has been characterised by inflexible industrial and practical restrictions, has been well established. Universities must be able to attract and retain high performing staff, recognise and reward performance and innovation, and develop flexible working arrangements that allow institutions and employees to quickly respond to change. The workplace relations requirements reflect the Government's commitment to encouraging a more productive and internationally competitive higher education sector, for the good of universities, their staff, and their students.

## **Recommendation**

**The committee majority commends this bill to the Senate and urges its passage without amendment.**

**Senator Judith Troeth  
Chair**

