The Senate

Employment, Workplace Relations and Education Legislation Committee

Provisions of the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005

October 2005

ISBN 0 642 71583 1

This document was produced by the Senate Employment, Workplace Relations and Education Legislation Committee and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

Membership of the Committee

Members

Senator Judith Troeth	LP, Victoria	Chair
Senator Gavin Marshall	ALP, Victoria	Deputy Chair
Senator David Johnston	LP, Western Australia	
Senator Guy Barnett	LP, Tasmania	
Senator George Campbell*	ALP, New South Wales	
Senator Natasha Stott Despoja	AD, South Australia	

Substitute Member:

* Senator Trish Crossin — substituting for Senator George Campbell
ALP, Northern Territory

Secretariat

Senate Employment, Workplace Relations and Education
Legislation Committee Secretariat
Suite SG. 52
The Senate
Parliament House
Canberra ACT 2600
Phone: 02 6277 3520
Fax: 02 6277 5706
E-mail: eet.sen@aph.gov.au
Internet: www.aph.gov.au/senate_employment

Table of Contents

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.[1]

---

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.[2] 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 HEWWRS 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

2 DEST, *Submission 5,* Attachment A

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.[3] 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

3 DEST, *Submission* 5, p.4

of the legislation.[4] 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.[5]

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.[6]

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.[7]

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.[8] This is despite the assurances made

---

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

Chapter 2

Opposition and Democrat Senators' Report

2.1 There are now few aspects of university operations which are beyond the regulatory reach of the Government. This is a matter of considerable frustration to university vice-chancellors who face the challenges of running the equivalent of a large and prestigious corporation, and yet increasingly face a degree of regulation of their operations normally associated with government departments. State control of higher education in this country far exceeds that of any OECD member country. With the Higher Education Amendment (Workplace Relations Requirements) Bill 2005, we see a conjunction of higher education and industrial relations regulation, two areas of policy which have seen the most intense micro-management intervention of all the spheres of government.

2.2 The substance of this bill is that universities must offer Australian Workplace Agreements (AWAs) to employees, regardless of what other agreements are in effect or which are being negotiated. This is a condition which the Government imposes on universities in order that they become eligible for increases in assistance under the Commonwealth Grants Scheme (CGM). These increases are 5 per cent in 2005 and 7.5 per cent in 2007. As the DEST submission state, the $11 billion in additional support announced in the backing Australia's Future policy will only assist universities if it is accompanied by management changes, and the Government claims that the funding to be released by compliance with this act will be an incentive to stimulate workplace reform.[1]

2.3 Opposition senators believe that this appears to be purely a point of principle – an ideological gesture – rather than a response to need. Universities currently have the capacity to offer AWAs, though very few are taken up for the reason that common law contracts cover all of the contingencies that would be appropriate for an AWA, and cover them more efficiently.

2.4 Two beliefs underlie the Government's requirement that AWAs be offered. The first is that industrial relations in the higher education sector is marked by union-dominated negotiations aimed at achieving pattern agreements across all institutions. This results in what the Government refers to as 'inflexibilities' in the operation of universities. Allegations of pattern agreements across universities cannot be substantiated, and if comparative salary figures indicated this, they would have been produced by the Government. That there is comparability is hardly surprising because the same pattern could be seen across many different industries where employees do similar jobs. The salary differences would not be significantly different than those which exist across Commonwealth departments. It is not in the interests of any university to have its salary levels significantly below that of other institutions.

---

1 DEST, *Submission 5*, p.2

2.5 The second of the Government's essential claims is that because universities attract varying, but in all cases substantial, Commonwealth funding, it has the right to regulate their industrial relations for the purpose of ensuring efficiency and productivity value on behalf of taxpayers.

2.6 As will be noted further on, the Australian Vice Chancellors' Committee (AVCC) has rejects claims of inflexibility and believes that there are adequate provisions for remuneration rewards and performance management in current agreements and in established practices. Performance management in universities is under continued review, with general agreement on preserving principles of natural justice. Opposition senators would argue that these are matters for universities to determine without unhelpful regulatory constraints imposed by government. As will be noted at more length later, such micro-regulation is strongly resented by universities, as a reflection on their autonomy.

Objections to the legislation

2.7 The committee received seven submissions. All except the submission from the Department of Education, Science and Training (DEST) were opposed to the legislation.

2.8 The Australian Vice-Chancellors' Committee has given very explicit evidence to the committee describing the nature of the committee seven reasons for its opposition to the provisions of the bill in its present form. Evidence from Professor Richard Larkins, representing the AVCC, listed seven reasons for that opposition.

> The first is that it is unnecessary; the second is that it is unprincipled; the third is that it is discriminatory; the fourth is that it is impractical; the fifth is that it has procedural unfairness associated with it; the sixth is that it is counterproductive; and the seventh is that it is rigid and micro-regulatory.[2]

2.9 Opposition senators believe that this list provides an appropriate framework in which to categorise objections to the bill from all sources.

The issue of flexibility

2.10 The Government has long argued that the operations of universities, particularly in regard to human resource management and academic course offerings, lack 'flexibility'. Commentators, and observers of government rhetoric, are familiar with the frequently repeated calls for 'flexibility' in a number of policy contexts. In an industrial relations context, 'flexibility' is demonstrated by the ability of employers to require or 'negotiate' work to be carried out at any time of the day or night without provision for overtime or annual leave or other encumbrances on the rights of employers. It is assumed that in a changing workplace culture such employment arrangements will be popular with employees, and only the continued existence of

2 Professor Richard Larkin, *Committee Hansard,* 23 September 2005, p.2

encumbering regulations and procedures prevents such positions from being created and filled. As witnesses reminded the committee at several points in the hearing, 'choice' and 'flexibility' are usually one-sided in the advantages they bring. Both words refer to casualisation.

2.11 In regard to Government claims that industrial relations in universities are inflexible, Professor Larkins told the committee that there was no realisation of the extent which universities have changed, and that there has been a substantial change in workplace flexibility over the past ten years. There are now also performance management procedures operating, which though time consuming, are effective in dealing with under-performance.[3] The committee was told of instances where under-performing staff were made redundant.

2.12 There is an implication in the policy underlying the bill that Enterprise Bargaining Agreements (EBAs) are 'inflexible' instruments which impose uniform salaries and conditions, regardless of the diverse nature of universities. The NTEU submission points out that:

> … existing collective agreements specify in detail the agreed performance management system, in particular how the institution will deal with unsatisfactory performance and serious misconduct. In addition, existing collective agreements in no way prohibit salary payments, bonuses, or loadings being paid above the rates contained in these agreements. Many institutions currently pay well above the minimum rates in order to reward high performing staff or to attract teaching and research staff in areas of labour shortage, such as certain professional areas, or to attract international appointments, particularly in research.[4]

2.13 Universities make wide use of common-law contract agreements, which have a degree of real flexibility which AWAs do not have. They involve minimal administrative time and can be drawn up expeditiously. It was notable that DEST officers appearing before the committee were unable to demonstrate that AWAs had practical advantages over common-law contracts, apart from the guarantee that AWAs were under the protection of the Employment Advocate. This is of little relevance in the case of university employment.

2.14 The AVCC contends that it makes no sense for university staff – permanent, contract, full-time or part-time, academic or administrative and general staff – to take up an AWA instead of an EBA or common-law agreement contract. There is no demonstrable evidence that AWAs will promote 'flexibility' in the university workplace, and there are no indications that employees are likely to request them in preference to either of the other agreements.

---

3 ibid, pp.4-5

4 NTEU, *Submission 4*, p.11

2.15 Implicit in the Government's policy is the hopeful expectation that the role of the NTEU in agreement negotiation will significantly diminish, but if this occurs it will not be because of AWAs. As has occurred at the Southern Cross University and Charles Sturt University, employees will simply move over to non-union EBAs.

2.16 In summary, the Government's optimistic hopes for beneficial effects of AWAs on productivity are assumed, rather than proven. Such assumptions underpin a number of the Government's industrial relations policies, most notably the unsubstantiated claims of a connection between unfair dismissal repeal and increased employment. In this case, the connection between AWAs and increased productivity is too remote even for the Government to promote as a doctrine.

Industry specific industrial relations laws

2.17 The third point made by Professor Larkins is that the legislation is discriminatory, in that it singles out universities for particular regulation of their industrial relations. Opposition senators could advise the AVCC that in this regard the higher education sector finds itself in the company of the building and construction industry, with likely extensions into manufacturing and transport industries as well. Like the universities, these industries would be perfectly willing to conform to fair workplace relations requirements that apply throughout the work force. There would be general agreement that it is extraordinary for particular legislation to be proposed directing universities on how they should conduct their industrial relations. The committee only makes the point that such discrimination is far broader than is generally realised.

2.18 Opposition senators on the committee argue that this legislation will not have the effect that the Government intends, if only because its scope is limited, and its provisions will be felt only on the margins. EBAs will continue, as will common-law agreements. Nonetheless, the legislation is objectionable for other reasons.

2.19 The submission from the Community and Public Sector Union (CPSU) points out that promotion of individual employment contracts has the potential to damage workplace relations by engendering fears of insecurity and opening the door to nepotism and patronage.[5] The CPSU is concerned that the introduction of AWAs will lead to the demise of transparent, merit-based processes for appointments and promotions, and their replacement by processes which will lead to a decline in efficiency and performance.

2.20 These concerns are shared by representatives of the next generation of academics, the Council of Australian Postgraduate Associations (CAPA). Its submission points out that postgraduate students already face tenuous employment. They fear that they will be forced to sign AWAs, irrespective of assurances to the contrary, for the sake of employment. Opposition senators found it depressing to hear

5 CPSU, *Submission 1*, para.9

from future career academics such pessimistic comments on the issue of AWAs and coercion:

> The university could offer certain employment conditions and those conditions could be below the current conditions. …What is currently on the table may not be on the table in a year's time, so we could see a huge erosion of conditions. A university could quite easily say, 'We offered employment under these conditions and the student chose not to take it.' They would not be saying, 'Would you like the current enterprise agreement or the AWA?' They would be saying, 'You can sign this AWA but there are other students who are prepared to sign it.' How do you determine how the university made the decision to employ that student? Was it because they were the best student for that position or because the student was prepared to accept a lowering of their working conditions?[6]

2.21 And on a related point:

> There is another facet to that. The student is more than likely potentially employed in the same department in which they are studying. So even if they felt they had been coerced it would be fairly hard for them to take any kind of action because they might think that not only their job but also their qualification was at stake.[7]

2.22 As the committee found during the course of its inquiry into higher education in 2000, universities appear especially vulnerable to lowered morale in times of stress induced by fears of employment insecurity. Collegiate trust is often a casualty of this. Opposition senators can discern how Government intervention in the affairs of universities has created tensions in relations between administrators and academic staff, and exacerbated fears about job security and academic freedom. When aspiring academics give evidence in this vein there must be some fears about what the future will bring.

Collateral damage

2.23 The committee also heard evidence of the possibility that non-teaching staff including librarians, technicians, administrative and clerical staff, may suffer indirect disadvantage as a consequence of the Government's focus on what it sees as problems in the employment of academic staff. It was common, until an AIRC decision in 1998, for academics to be employed continuously, on short-term contacts. As a CPSU industrial officer explained:

> … the [new] requirement that the workplace agreements policies and practices of universities must not place any restriction on the form and mix of employment types means that universities will be free to go back to the situation where they could employ people in continuing jobs year after year on short-term, one-year contracts. …. Now, as a result of the workplace

6 Mr Stephen Horton, *Committee Hansard* , op.cit., p.22

7 Ms Sally Skinner, op.cit.

> relations requirements, universities will be able to go back to the practice of employing staff on a series of short-term contracts, even though the job is ongoing, or as casuals in ongoing positions. …But we submit that the job security of general staff should not be reduced in order to try to secure greater flexibility in certain areas of academic employment.[8]

2.24 Opposition members of the committee suspect that the CPSU may be concerned that administrative and other non-academic staff may be targeted for a 'trial' of AWAs. In the light of evidence from Professor Larkins, this likelihood may appear remote in view of the onerous administrative costs involved with AWAs. Nonetheless, this concern is indicative of the stress placed on institutions which suffer interference from governments in matters which are best left to the institutions themselves to look after. The current government has long dispelled any illusion that it may be labelled 'conservative' in any traditional meaning of that term. This is Big Government writ large, determined to set its footprint in places where previous governments have not seen fit to tread.

2.25 This bill is clearly an attempt at industry-specific industrial legislation for a particular purpose, and having particular villains in mind, without regard for unforeseen consequences. That is why proper law-making proceeds from clear principles and refrains from undue prescription.

Ministerial powers

2.26 While the bill sets out the intent of the legislation and is broad application, as is nearly always the case with education grants legislation, the detail is in the regulations. The Minister has very wide discretion (within the ambit of the Higher Education Support Act) to alter the workplace relations requirements by amending the CGS Guidelines. The Guideline are subject to disallowance, but as the NTEU submission points out, there is no practical means by which Parliament can disallow the Guidelines, or any part of them, without threatening the viability of universities.[9]

Reining in the universities

2.27 The Government's attitude to universities has been ambivalent. Universities are unquestionably important to the nation as the spring from which all professional training flows, and therefore indispensable to every aspect of the country's future. On the other hand they are the source of the most informed criticism and commentary on public life, including the government of the day. There is a barely veiled hostility to universities evident in the more unguarded comments of the current minister. There is a further ambivalence in the policy of forcing universities to make their own way in the world with minimal public funding (which not only the more prestigious and wealthy are happy to do) and on the other hand binding them to regulations which

8 Mr David Mendelssohn, *Committee Hansard,* 23 September 2005, p.24

9 NTEU*, Submission 4*, p.16

frustrate this process of self-reliance. The committee has dealt with these issues in the past. In this brief report, Opposition senators make the point that this continued tendency is illustrated in the provisions of the current bill.

2.28 The AVCC submission and testimony repeats the complaint that this bill (as were so many others) is rigid and micro-regulatory. The committee is unaware of any equivalent government preoccupation with university industrial relations in any other country. In the context of global competition in university places this is an alarming phenomenon. There has not been any serious discussion in any paper (including *Crossroads*) which properly explains this preoccupation.

2.29 The committee has been told that the legislation is unprincipled in that, at the time of the negotiations between the AVCC and the Government over the passage of the Higher Education Support Act in December 2003, there was considerable discussion about linking higher education industrial relations requirements to the Commonwealth Grants Scheme increases. It was agreed that the Government would drop the requirement for linking industrial relations regulation to the CGS increase. This bill reneges on that agreement and for that reason is unprincipled. Opposition senators concur with this view, making the point that with a clear Senate majority the Government could not be expected to resist an opportunity to legislate its original intentions.

2.30 The micro-management objectives of the Government take no heed of matters of practicability in university administration, considerations of which are limited by what the Minister considers to be within the supervisory capacity of DEST. The component that the AVCC finds most impractical is the requirement to offer AWAs to casual workers employed for less than a month after June 2006. Universities employ many casual workers for periods of high demand such as invigilating at exams or demonstrating in practical classes. This gives students the opportunity to work for a short period of time. The AVCC finds it a mystery as to why people employed for such a short length of time would require to be employed under a relatively cumbersome instrument, to no possible advantage to the students so employed, and to the considerable inconvenience of university human resource management sections. The AVCC has suggested that, if the legislation were to go ahead, the requirement to offer AWAs to casual workers be deferred indefinitely for casual workers employed for a period of less than six months. In making this suggestion, however, the AVCC would be aware that once legislation is introduced it is amended on grounds of political expediency alone. Universities have few friends in the ranks of the government parties.

Conclusion

2.31 It is difficult to assess what effects this legislation will have in promoting the Government's policy to achieve what it calls 'flexibility' in university course offerings. The micro-regulatory regime administered by DEST can reach a long way, and is a very effective irritant, but short of directly assuming control of universities as agencies of the state, the Government cannot force universities or their employees to

accept AWAs or even gradually wean them away from EBAs. To the extent that performance management is an issue for some universities, it can only be managed from within. It is difficult to imagine what further regulatory steps the Government could take to influence this process.

2.32 That said, any legislation which has as its real purpose the creation of a basis for 'cultural change' in a process remote from the proper concerns of government is scarcely worth the time of Parliament to debate. This micro-regulatory legislation serves only to make the task of running universities more difficult for vice-chancellors. It threatens to promote disharmony, it affects morale, may involve cost and inconvenience to administrators, and is an irritating distraction to those who are otherwise more than fully engaged in teaching and research.

Recommendation

Opposition and Democrat senators recommend that this legislation is rejected.

Senator Gavin Marshall
Deputy Chair

Senator Natasha Stott Despoja

Appendix 1

List of submissions

Sub No.	From:
1	CPSU, Community and Public Sector Union State Public Services Federation Group
2	Council of Australian Postgraduate Associations
3	Mr Daney Faddoul, NSW
4	National Tertiary Education Industry Union
5	Department of Education, Science and Training
6	Australian Vice-Chancellors' Committee
7	National Tertiary Education Union, RMIT Branch
8	ACTU

Appendix 2

Hearings and witnesses

Australian Vice-Chancellors Committee
Professor Richard Larkins, *Vice-Chancellor, Monash University*
Mr Conor King, *Director, Education, Policy and Coordination, AVCC*

National Tertiary Education Union
Mr Ted Murphy, *Assistant Secretary*
Mr Josh Cullinan, *Industrial Office*
Mr Paul Kniest, *Policy Officer*

Council of Australian Postgraduate Associations
Mr Stephen Horton, *President*
Ms Sally Skinner, *Research Officer*

Community and Public Sector Union – State Public Services Federation Group
Mr David Mendelssohn, *Senior Industrial Officer*

Department of Education, Science and Training
Ms Anne Baly, Branch Manager, *Higher Education Group*
Mr Peter Nolan, *Collaboration and Workplace Productivity Unit*

Appendix 3

Tabled documents and answers to questions on notice

Melbourne, Friday, 23 September 2005

National Tertiary Education Union – Amendment to submission 4

Answers to questions on notice

Melbourne, Friday, 23 September 2005

Department of Education, Science and Training
received: 6 October 2005