

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**INQUIRY INTO HIGHER EDUCATION LEGISLATION AMENDMENT
(WORKPLACE RELATIONS REQUIREMENTS) BILL 2005**

**SUBMISSION BY CPSU, THE COMMUNITY AND PUBLIC
SECTOR UNION – STATE PUBLIC SERVICES FEDERATION
GROUP**

Introduction

The State Public Services Federation (SPSF) Group of CPSU, the Community and Public Sector Union, represents approximately 8,000 general staff employed in Australia's universities. We are the principal union for general staff employed by universities in New South Wales, Western Australia and Tasmania and have significant membership in universities in Queensland and South Australia.

Our members perform work in a range of professional, technical, administrative, clerical and other classifications. Without them, universities would not be able to perform their educational, teaching and research, functions.

Summary of Submission

It is our strong view that the Government's Higher Education Workplace Relations Requirements (**HEWRRs**), to which the Bill seeks to give legislative force, will lead to:

- Nepotism and favouritism in appointments and remuneration schemes,
- Pay Inequity for women and unfair employment practices,
- Worsened relations between Australia's universities and their staff;
- Lower staff morale;
- A lessened capacity for universities to attract the calibre both of academic and general staff they need; and consequently,
- Worse educational outcomes for students.

Outline of HEWRRs

1. A major plank of the raft of requirements is that, in order to be eligible for Commonwealth Grant Scheme (CGS) funding, worth 5% of the available funding for 2006 and 7.5% thereafter, universities will have to offer Australian Workplace Agreements (AWAs) to all staff.
2. If the offers of AWAs are accepted, the AWAs must operate to the exclusion of any certified (ie, collective) agreement that would otherwise apply.
3. Other requirements are that:
 - (a) A university's workplace agreements, policies and practices must provide for direct consultation with its employees and must limit any involvement by so-called "third parties", which this organisation believes is code for representative organisations of employees, to situations where an individual employee has requested such involvement;
 - (b) A university's workplace agreements, policies and practices must provide for maximum flexibility for the university in its employment arrangements.
 - (c) In particular, there must be no "limitations on the forms and mix of employment relationships".
 - (d) In other words, universities must be free to employ staff as casuals or on fixed term contracts, even though the work they perform may be of an ongoing nature; and
 - (e) A university's workplace agreements must be "simple, flexible and principle-based documents which avoid excessive detail and prescription; and
 - (f) A university's workplace agreements, policies and practices must "include a fair and transparent performance management scheme which rewards high performing individual staff" and must also include "efficient processes for managing poor performing staff"; and
 - (g) CGS funds must not be used to "pay union staff salaries, or fund union facilities and activities".

Analysis of the Effect of HEWRRs.

HEWRRs are Vague

4. One feature of the HEWRRs that leaps out immediately is their vagueness and lack of specificity at most points. It is not at all clear exactly what universities will have to do to comply and become eligible for the CGS funding.
5. The Government has refused to promulgate specific guidelines.

Advice is Contradictory

6. The Department of Education, Science and Training (DEST) has given often conflicting advice to individual universities who have sought feedback on whether or not a draft agreement would be HEWRR-compliant, leading to the suspicion that what advice is given depends on which officer of DEST is charged with responding to any particular enquiry.

HEWRRs likely to damage Institutions

7. The CPSU draws from this the conclusion that the Government intends at least some universities will fail to qualify for CGS funding for 2006 and possibly thereafter. To keep universities in this state of uncertainty, without any clear and specific guidelines, is not rational public administration.
8. The requirements themselves, so far as sense can be made of them, are flawed in any case and should not be imposed on the sector against the will of most universities.

Questions and Analysis of major components of HEWRRs.

Will Australian Workplace Agreements Improve Productivity of Universities or Their Workplace Relations?

9. The evidence from other sectors of the Australian economy clearly points to AWAs being ineffectual as a means of increasing the productivity of labour. Further, a system of individual employment contracts will not deliver workplace reform but rather will damage relations by engendering fears of insecurity within the workforce, as well as opening the door to nepotism and patronage.
10. An examination of the evidence by Prof. David Plowman "*Awards, Certified Agreements and AWAs – Some Reflections*" April 2002, ACIRRT Working Paper, indicates that:

employers interest in AWAs may be based upon an assumed rather than proven notion of flexibility. Their interest is more likely to arise out in a reduced role for unions and the capacity to formalise relation in the increasing non-union sectors of the economy.
11. The paper concludes that, although AWAs are more flexible than multi-employer awards, their flexibility relative to single employer awards or agreements is unproven. It is argued that the frequent practice of offering identical or near identical AWAs to all or most employees of the enterprise diminishes their relative capacity for flexibility (Plowman 2002).
12. In "*Do individual and collective agreement make a difference: a longitudinal study of agreement making and their effect on workplaces*" ACIRRT Working Paper, Dick Crozier, from Australian Business Ltd, found that managements' responses were that 35 per cent reported improved profitability and 40 per cent reported improved productivity.
13. However, changes to the organisation, work culture, products or services, improved skills and motivated workforce were considered to be more influential.
14. The form of agreement does not usually cause productivity or profitability improvements – these improvements arise from a multiplicity of factors. A majority of respondents were unable to

confirm that their agreement had a positive impact on the achievement of various goals (Crozier 2002).

15. Professor Peetz has studied the effect on national productivity growth of the move to a more individualised system in "*Is Individual Contracting More Productive?*" He finds that under the traditional award system, national productivity was higher than in the period since the introduction of the Workplace Relations Act. (Peetz 2005, p5).
16. Productivity growth since 1996 has been below the average during the traditional award period.
17. New Zealand evidence does not support the argument that individual contracts improve productivity in the workplace. Gilson and Wagar who examined workplaces and organisations at a micro level found that:

we cannot find a single statistically significant or reliable relationship between organisations pursuing individual contracts and our exhaustive measures of firm performance (Peetz 2005, p8).

18. In fact, Tseng and Wooden, who looked at productivity levels in Australian firms, found that the combined effects of union membership and collective agreements produced higher productivity levels than the combined effect of individual contracting and non-unionism. (Peetz 2005, p8). Wooden found that:

Unions apparently are good for productivity, but only at workplaces where unions are active.

17. A BCA funded study, "*The Impact of Enterprise and Workplace Focused Industrial Relations and Employee Attitudes and Enterprise Performance*", found that:

There was no negative relationship between unionism and productivity, but collective bargaining coverage was associated with higher levels of self-claimed productivity (Peetz 2005).

19. Peetz's analysis of Access Economics' report into productivity and flexibility found that industries which had a higher penetration of AWAs had less labour productivity growth than industries with the fewest AWAs (Peetz 2005, p13).
20. Peetz argues that:

In short, there is no compelling evidence presented by or on behalf of the BCA to support the claim that individual contracting leads to higher productivity. In fact, there is barely any evidence at all and what evidence is presented is shallow and dependent on either misrepresentation or failure to use current data that had been available for some time (Peetz 2005, p15).

19. British case studies by Brown show that firms that ceased recognising unions for collective bargaining and pursued procedural individualisation:

"...did not gain any advantage in terms of either functional flexibility or temporal flexibility of labour over firms that retained collective bargaining (Peetz 2005, p16).

Peetz concludes that there is no positive relationship between individual contracting and productivity...Workplace data shows no gains in terms of productivity for individual contracting over union collective bargaining.

20. All of these studies show the instrument of regulation of the workplace appears to have little impact on workplace flexibility or work practices. Awards, agreements and AWAs all have the ability to cater for particular work arrangements and AWAs do not improve labour productivity.
21. We submit, therefore, that there is no reason to believe that any productivity or efficiency gains for universities will come from the widespread use of AWAs in the sector. There are no rational grounds for believing that the experience of AWAs in higher education will lead to any different results to what has happened elsewhere in the economy.
22. Indeed, it is blindingly obvious, in our submission, that the great bulk of AWAs offered to middle to lower level general staff will be identical or near identical for employees in any given classification. Meaningful differences will only arise at the senior levels, above the highest classification in the existing collective agreements, where most general staff are already on individual contracts anyway.
23. It appears to us that the desire to institute AWAs and further decentralise is more directed to de-unionising the workforce and eroding wages and conditions of workers, rather than improving workplace relations.
24. Proponents of AWAs argue that individual contracts and low unionization rates improve worker commitment and trust relations

at the workplace. These assumptions are unfounded and in fact there is much evidence to suggest otherwise. We submit, in fact, that AWAs work to the contrary of good workplace relations. Again, available research supports our view that AWAs will not improve workplace relations at Universities.

25. When examining the banking industry, Deery and Iverson found that:

bank branch performance was clearly higher when employees displayed loyalty to their union, were satisfied with its performance and believed that the industrial relations climate between the two parties was trustful and cooperative. A collectivist work orientation was also associated with better performance outcomes. (Peetz 2005, p18).

26. Kristin van Barneveld, in her doctoral thesis, "*Equity and Efficiency: The Case of Australian Workplace Agreements*", found that management:

hoped that the introduction of AWAs would result in closer ties between them and employees. However interviews with some employees suggested the opposite. A significant number of the non-managerial AWA employees...indicated that they felt they had been 'blackmailed' into signing an AWA, and an 'us and them' attitude was evident between both AWA and non-AWA employees and management (p19).

Specific effects of AWAs in Universities

26. A further and serious problem with the widespread introduction of AWAs is that, almost certainly, it will open the door to nepotism and patronage.
27. At present, under the terms of collective, union-negotiated agreements, underpinned by the provisions of awards, the work value of each employee, whether academic or general staff, is appraised against a set of classification standards or position descriptors.
28. These descriptors or standards ensure that what the employee is paid is appropriate to the level of skills and aptitudes that he or she utilises.
29. Promotion to positions carrying higher levels of pay, or in the case of academics progression through the levels, is achieved after undergoing a merit selection process, carried out according to transparent processes.

30. AWAs will allow these transparent, merit-based processes to be subverted and for appointments and/or promotions to be made on the basis of favouritism on the part of managers.
28. We therefore submit that the attempt to force AWAs on the higher education sector will neither increase productivity nor will it help build better workplace relationships between university employers and their general staff.
29. We do not represent the industrial interests of academic staff, but we cannot see that the outcomes in this respect would be any different for academic staff than they are likely to be for general staff.

What Effect Will Increase Use of AWAs Have on Gender Equality?

30. We would argue that any movement away from awards and collective agreements will reverse and endanger greater gender equality in the workplace.
30. Awards and agreements negotiated collectively in the sector have put in place flexible part-time work arrangements, paid maternity leave, family and carer's leave and superannuation provisions. For many workers these collectively bargained arrangements are a significant factor in choosing to remain working in the sector.
31. Studies indicate that AWAs are detrimental to women workers and therefore will not attract women workers to the sector. Australian Bureau of Statistics data shows us that women on AWAs have hourly earnings 11% less than women on collective agreements.
32. Peetz's analysis finds that the gender pay gap was worse on AWAs. While under registered collective agreements, women received 90% of the hourly pay of men on such agreements, women on AWAs received only 80% of the hourly pay of men on AWAs. (Peetz 2, p11).
33. The gap also widens significantly when we consider part-time employees on AWAs, where men are paid 24% more than women. (Peetz 2, p12).
34. The recent Report of the Taskforce on Pay and Employment Equity in the Public Service and the Public Health and Public Education Sectors in New Zealand found that the gender wage gap was smallest in highly collectivised departments and that decentralised bargaining disadvantaged women. They found that individualised pay setting processes were based on subjective judgments and may be discriminatory. (NZ Department of Labour 2004).

Will De-Unionising the Sector Improve Universities' Productivity or Workplace Relations

35. **HEWRR 2**, which requires direct relationships with employees, is designed in reality to decrease the influence of unions and thereby, ultimately, to provide a disincentive for university employees to belong to a union.
36. Much of this is to with the perceived excessive power of the National Tertiary Education Industry Union (NTEU), as most of the Government decision-makers and their advisers are ignorant of the reality of industrial relations in the sector and are therefore unaware that, outside Victoria, unions other than the NTEU represent most unionised general staff. Of these, the CPSU is the largest.
37. The Government, in imposing this **HEWRR**, seems unable to come to grips with the nature of unions as representative organisations of employees. No-one working for a university in Australia is compelled to join a union or is put under any pressure to do so.
38. Many university employees choose not to be members of a union, yet union density, ie, the percentage of employees who do belong to unions, is higher in the higher education sector, both among academic and general staff, than in most other industries.
39. This shows that a high percentage of university staff, both academic and general, want to be represented by one or other of the unions in the sector in their dealings with university management.
40. Yet the Government seems to want to deny the logical consequence of this, by seeking through the **HEWRRs** to marginalise the representative organisations of employees and even denying them the normal rights of parties to an agreement certified under the *Workplace Relationships Act 1996*, such as the right to initiate disputes under dispute settling provisions.
41. Indeed, the perversity of the **HEWRRs** is shown by their effect on dispute settling procedures in collective agreements in the sector, all but two of which (both for senior, executive-level staff) are agreements with unions.

42. In more than one university, there is at present a bifurcated set of procedures, a disputes procedure and a grievance procedure. A dispute, which ultimately can go to the Australian Industrial Relations Commission for resolution by conciliation or arbitration pursuant to Section 170LW of the *Workplace Relationships Act 1996*, can be initiated by a party to the agreement, normally one of the union parties.
43. In order to be able to take his or her individual matter to the Commission, in other words, an individual employee must obtain the support of his or her union. On the other hand, an individual employee can initiate a grievance, which cannot be taken to the Commission for resolution under Section 170LW.
44. It was the university, in these cases, not the unions, which insisted on having these parallel dispute and grievance procedures. This is because their previous experience has been that generally union-initiated disputes have some substance to them, even if they do not agree with the position taken by the union or unions concerned.
45. On the other hand, they find that a significant number of disputes raised by staff not represented by their union are frivolous or vexatious. In other words, those universities have insisted on those parallel procedures for sound management reasons of their own. The HEWRRs will not let them do that any more.
46. The changes to dispute settling procedures that will be required are also irrational, in that disputes often are not individual matters but affect a group of employees or staff generally.
47. It is just plainly irrational in these cases to impose a situation in which one or two of the larger group must put their hands up to be the nominal disputants and then nominate the union or unions of which they are members to represent them in the dispute.
48. It is much more sensible in such situations to allow one or more unions to notify the dispute on behalf of their affected members, as is the case at present.
49. The effort being put into de-unionising the higher education sector will not increase productivity of or promote better workplace relations in universities.

50. By strong-arming universities into adopting positions antagonistic to unions, it will instead worsen workplace relations with a consequent negative effect on staff morale and therefore lower productivity.

Will Removing Restrictions on the Use of Casual or Fixed-Term Employees Improve Productivity or Workplace Relations?

51. **HEWRR 3** requires, inter alia, that a university's agreements, policies and practices not place "any limitations on the forms and mix of employment arrangements".
52. What this requires, in practice, is that there be no limitation in industrial instruments applying to universities, or in their policies and practices, on the employment of any category of staff in any circumstances as casuals or on fixed-term contracts.
53. This means that, even if work is of an ongoing nature, universities will be able to employ casuals to do it or employ staff to do the work on a series of rolling fixed-term contracts.
54. It was because of the widespread and systematic abuse of fixed-term contract employment by universities that a Full Bench of the Australian Industrial Relations Commission in 1998 made the *Higher Education Contract of Employment Award* ("the HECE Award"). The evidence was voluminous and sector-wide and cut across all categories of staff, both academic and general.
55. The situation disclosed by the evidence was that fixed-term employment was widely used to employ staff to perform ongoing work of a kind that, in almost any other industry, would be performed by continuing employees.
56. Evidence was given by staff who had been employed continuously on one-year contracts for periods of twenty or more years. These employees were denied access to the superannuation scheme enjoyed by continuing employees and had the same sorts of difficulties obtaining loans experienced by long-term casuals.
57. The **HECE Award** limited the use of fixed-term contracts to situations that demonstrably were appropriate circumstances in which to use that mode of employment.

These are:

- where the job is to perform a specific task or project and, once that is done, there will be no further need for the position;

- where the position is funded by research grants of limited duration or other funding, external to the university, that is uncertain;
 - where the employee is close to retirement and enters into a pre-retirement contract;
 - where the work is closely related to studies being undertaken by the employee in his or her capacity as a student of the university;
 - where the employee is replacing another employee who is on leave; and
 - where a professional or vocational educational course requires teaching by persons with recent practical or commercial experience.
58. How can it possibly make universities more productive or improve the morale of staff and therefore workplace relations if universities are free to go back to the bad old days of unrestricted use of fixed-term or casual employment to fill jobs, the work of which is ongoing?
59. The only result will be lower morale, greater levels of dissatisfaction and higher staff turnover.
60. The likely increased use of casual employment also raises a host of problems, especially in this sector. Casual work arrangements are typified by insecure, low paid work that lacks access to many work benefits such as training and promotion, various forms of leave and entitlements and conditions enjoyed by the permanent workforce.
61. Greater use of casual workers will cause division in workplace relations and result in a dual workforce, some workers having one set of rights and entitlements and another sector of the workforce having inferior rights and conditions.
62. The Report of the Senate Inquiry, *Hacking Australia's Future*, found that the employment of large numbers of casual staff places a considerable burden on the shoulders of a diminishing number of tenured staff, who are responsible for mentoring and supervision.
63. Most academic and many general staff casuals are employed in continuing 'permanent' work and most would prefer not to be

casual. The committee strongly opposed to the offering of AWAs to university employees and the removal of current limitations on the numbers of casual staff (p104).

64. A study by Dr. Ann Junor into casual employment in universities, *What Explains the employment Mode Preferences of Casual University Employees?*, found that only a minority of casual academic and general staff actually prefer this mode of employment.
65. Permanency was the first preference for the majority of casual and part-time workers. She found that workplace marginalisation, lack of representation, and limited staff development were significant issues for casual respondents both academic and general.
66. Junor also found that for casual general staff the convenience of on campus employment was insufficient to offset experiences of insecurity or risk associated even with long-term casual employment.
67. It is difficult to understand how the increase in the casual workforce will improve workplace relations and improve productivity. It does nothing to attract a committed productive workforce in times of labour shortages.
68. Increased casualisation will be the inevitable consequence of removing the present caps on the use of casuals, either in the form of an upper limit on the percentage of staff who can be casual or on the percentage of the salary bill that can be spent on employing casuals.

What Are “Simple, Flexible Principle-based” Agreements?

69. **HEWRR 3** also requires that a university’s “workplace agreements be simple, flexible and principle-based documents which avoid excessive detail and prescription”. What will such documents look like in practice?
70. Feedback to universities from DEST so far indicates that it will mean the deletion of entitlements from agreements and their removal to policy.
71. This means, in practice, that they will be removed from an enforceable industrial instrument, which can only be changed by agreement, to legally unenforceable documents that can be changed at the whim of management.
72. The most serious example of this so far is that there appears to be a view among DEST officers that classification descriptors, which in reality are work value descriptors, are excessive detail and prescription and should be removed to policy.
73. If this view prevails, it will open the door to nepotism, favouritism and patronage in the employment and promotion of university staff, both general and academic.
74. Further, it will create the possibility of widely discrepant rates of pay for work of similar value within the same university or even within the same department or unit of a university.
75. The general staff classification descriptors are the means by which the work value of general staff positions is evaluated and positions are graded within the salary structure.
76. They are not perfect but they provide a reasonably objective measure so that, broadly speaking, university general staff performing work of roughly equivalent value will be paid roughly equivalent salaries.
77. They were introduced in the early 1990s, when all general staff positions were brought under a unified 10-level classification structure. They have been in collective bargaining agreements since enterprise bargaining came into the sector about that time.

78. They are also in the general staff salaries award made by the Australian Industrial Relations Commission in 2002.
79. Some universities, with the agreement of the CPSU and other general staff unions, have modified the descriptors to suit the circumstances at their institution and some also have developed, again with union agreement, "secondary" or "enhanced" descriptors, which expand the primary ones.
80. All general staff agreements to which the CPSU is a party have procedures enabling general staff to apply for reclassifications if they feel their positions have not been correctly graded within the classification structure.
81. Not only does this ensure a measure of objectivity, transparency and fairness in how general staff will be paid for the work they do, but it is legally enforceable because it is in the collective agreement.

What will “Simplified” or “Flexible” Agreements mean for Pay Equity?

82. The removal of work value descriptors from the Enterprise Agreement, as required by the **HEWRRs** to make Agreements “HEWRR compliant”, will have the effect of removing the protection for pay equality for women, which now exists, through the objective job “descriptors”.
83. Those “descriptors” set the pay rate or value of the work to be performed in general staff occupations, based on the required skill, or level of qualifications, or size of the job. They are part of the contingent pay structure and are the foundation of current university general Staff Agreements.
84. General staff occupations were assessed in the 1990s on those descriptors. In that process many historically “Female” dominated general staff occupations in universities were assessed through the application of these descriptors, at a higher pay relativity point and transferred accordingly.
85. The existence of the work value descriptors in the enterprise Agreements ensured that the application of the same equal pay continues for the following years for all new women staff.
86. The existence of the descriptors meant that those women general staff could continue to seek the “enforcement” of those standards as they were a part of a legally binding Enterprise Agreement.
87. Their absence from a Certified Agreement would mean that there would be no enforceable avenue to remedy an unequal pay outcome for a female dominated occupation.
88. Leaving the work value descriptors to University “policy” as the **HEWRRs** require, would be to invite the Universities to revert to their historical practice.
89. That practice resulted in many thousands of “female dominated” jobs being greatly underpaid by comparison to male dominated positions requiring the similar skill or qualification level.
90. The examples of those occupations were in the “professional” and the para-professional levels greatly in evidence in

Information Science – (“librarians”), Research Assistants and - Faculty and Department Administration – (“secretaries”) to cite but a couple of outstanding examples.

91. The negotiated Certified Agreements, with their work value descriptors, in early 1990's rectified the effect previous universities' "Policy" .
92. The academic position classification standards operate in a different way to the general staff classification descriptors but, again, they are standards against which work value is assessed and set the ground rules for academic staff in knowing what they have to do and what standards they have to reach to advance.
93. The push from DEST officers to remove these work value standards from certified agreements and push them into policy demonstrates that the funding decisions will effectively be made by people who have no real life experience of industrial relations and no idea of how universities actually operate.
94. The Minister will obviously be guided by advice from his Department in making his decisions on which universities will get the CGS funding and which will not.

What Really Is Needed to Make Universities More Productive and to Promote Better Workplace Relations?

95. The demographic profile of the Australian workforce indicates a looming shortage of labour over the next few decades. Labour supply will be affected by the retirement of the so-called “baby boomers”. The problems with the supply of labour will also be reflected in the university sector. Many non-teaching staff at universities will enter retirement over the next decade.
96. In order to replace these workers, universities will have to offer wages and conditions that attract and maintain productive, skilled and efficient staff, both academic and general.
97. An important policy consideration will be allowing workers to balance work and family arrangements and to improve and encourage the participation of women workers in the sector.
98. The workplace practices that have developed over a number of decades and given force in certified collective agreements in the sector, meet these objectives. The **HEWRRs** will not.
99. Universities should be allowed to go about their business without having Federal Government funding made dependant on their conforming to an industrial relations agenda that is a mere *a priori* prescription, not based on any analysis of what happens on a day-to-day basis in universities.
100. We urge the Senate to reject the Bill.

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