

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## ***Inquiry into the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005***

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**Australian Government**

**Department of Education, Science and Training**

**Submission to the Senate Employment, Workplace Relations and  
Education Legislation Committee**

**Inquiry into the *Higher Education Legislation Amendment (Workplace  
Relations Requirements) Bill 2005***

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## **Introduction**

The purpose of this submission is to provide information on the implications of the *Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005* ("the Bill") on Australia's higher education sector.

On 29 April 2005, the Minister for Education, Science and Training, the Hon Dr Brendan Nelson MP and the Minister for Employment and Workplace Relations, the Hon Kevin Andrews MP, announced new workplace relations requirements for universities to provide staff with greater choice and institutions with more flexibility.

The Higher Education Workplace Relations Requirements (HEWRRs) form part of the Australian Government's broader workplace reform agenda. This policy has been outlined in the Second Reading Speech given in the House of Representatives by the Hon Dr Brendan Nelson MP, Minister for Education, Science and Training.

This submission provides the Committee with:

- an overview of the need for workplace reform in Australia's higher education sector;
- a summary of the provisions of the Bill; and
- an overview of the HEWRRs.

## **The need for change**

Substantial challenges for workplace reform in the higher education sector were canvassed in the *2002 Higher Education at the Crossroads - Ministerial Discussion Paper (Crossroads Review)* and have been identified since then in other forums. These challenges include:

- achieving increased flexibility in the employment profile of universities, including not limiting restrictions on categories of staff (full-time, part-time, fixed-term and casual);
- allowing scope for new forms of work to evolve where the jobs do not require the traditional mix of teaching, research and administration or individual interests vary;
- preserving the capacity to respond to new market demands and to shift resources as demand changes through more flexible deployment of staff;
- more flexible remuneration arrangements, including the ability to tailor packages to individual needs;
- the imbalance created where working conditions are above private sector norms in some areas (e.g. superannuation, intellectual property rights, leave, professional development), while salaries at the highest levels tend to be lower than in the private sector;
- continuing to develop better ways of managing variety in workloads, especially in the balance between teaching, research and administration;
- strengthening the existing capacity to reward high performing staff whose achievements make a significant contribution to achieving institutional objectives;
- better management of under-performing staff and more effective mechanisms for dealing with cases of misconduct;
- the ageing of the university workforce and the need to plan for its renewal as existing workers near retirement;
- building a positive workplace culture which values the common interests of management and staff in achievement of university goals and motivates high performance;
- increasing direct relationships by streamlining the use of committees in areas such as selection, promotion, appeals and job design, which reduce the capacity of universities to respond to change;
- the persistence of strong pattern bargaining where individual arrangements would allow institutions to meet their particular needs;
- better protection for vulnerable third parties during industrial disputes; and
- a more efficient and less confrontational enterprise bargaining process.

The Australian Government has committed more than \$11 billion in additional support for higher education through *Our Universities: Backing Australia's Future*. However, this funding will only assist the sector if it is accompanied by changes in the way universities are managed. The Government believes the HEWRRs will provide higher education institutions with the impetus to make the necessary changes.

Linking reform requirements to the provision of Australian Government funding has proven to be a legal and effective mechanism for change. In 2002, the Federal Court of Australia upheld the legality of the Government providing funding incentives to stimulate reform in higher education workplaces.<sup>1</sup>

### **Overview of the Bill**

Currently section 33-15 of the *Higher Education Support Act 2003* ("the Act") requires universities to comply with both the National Governance Protocols (NGPs) and include a clause in their agreements stating they may offer AWAs, in order to be eligible for the increase in assistance funding under the Commonwealth Grant Scheme (CGS) (5% in 2006 and 7.5% in later years).

This Bill, introduced by the Government into the House of Representatives on 23 June 2005 amends the Act to make provision for guidelines to be made that will give effect to the HEWRRs. A copy of the HEWRRs is at Attachment A.

Subject to passage of the Bill, eligibility for the increase in CGS assistance funding in 2006 and later years, will be dependent on universities' workplace agreements, policies and practices complying with the HEWRRs and the National Governance Protocols.

In response to issues raised by the sector, the Australian Government made two amendments to the requirements announced in April 2005. Firstly, the time available for higher education providers to comply with the requirements in 2005 has been extended from 30 September to 30 November 2005. Secondly, the requirement of offering AWAs to all casual staff has been relaxed so it only applies to casuals who are engaged for a period of more than one month. This exemption will only apply until 30 June 2006 by which time the simplified agreement lodgement processes announced by the Prime Minister on 26 May 2005 are anticipated to be in effect.

The Government chose to give those higher education providers with existing agreements, that is, collective agreements that have been subject to a concluded ballot as at 29 April 2005 and certified by the Australian Industrial Relations Commission, with a nominal expiry date on or after 1 October 2005, until 31 August 2006 to be compliant with the requirements in their workplace agreements. These providers will, however, still be required to amend their workplace policies and practices to comply with the HEWRRs by 30 November 2005.

### **The Higher Education Workplace Relations Requirements**

The HEWRRs are designed to support a workplace relations system in universities focused on choice in agreement making, direct relationships with employees, workplace flexibility, productivity and performance, and freedom of association.

The HEWRRs enable staff and higher education providers to negotiate mutually beneficial work arrangements through whatever mutually agreed form of agreement they choose. The HEWRRs do not restrict the use of collective agreements, either made directly between the University and its employees or between the University and employee unions. Similarly the HEWRRs do not allow for restrictions to be placed on the use of AWAs. The HEWRRs merely require universities to provide their employees with the choice of accepting or declining an offer of an AWA.

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<sup>1</sup> *National Tertiary Education Industry Union v Commonwealth of Australia and Another* [2002] FCA 441

The Government believes the requirement that universities make such an offer is important as AWAs allow individuals the opportunity to bargain greater flexibility in their employment conditions, potentially including the provision of bonuses and other rewards for high performance. The use of AWAs assists employers to offer incentives to attract and retain the best employees.

AWAs have the ability to provide 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% more than workers on collective agreements and 100% more than workers on awards. It is also important to note that:

- AWAs are subject to the same safeguards as collective agreements, including the current no-disadvantage test;
- it is and will remain illegal to coerce employees into accepting an AWA; and
- employees may appoint a bargaining agent to represent them in negotiations for a workplace agreement, including an AWA.

The AWA will still need to be made in accordance with the *Workplace Relations Act 1996* which provides a mechanism to facilitate individual bargaining as a valid alternative to collective bargaining.

The HEWRRs will have no impact on academic freedom and universities will still be able to make their own decisions about the appointment of staff and other academic activities.

The requirements will encourage universities to develop a culture of direct communication with their staff. They will promote freedom of choice of representation regardless of union membership or non-membership. Similarly, the requirements do not exclude unions from involvement in the bargaining process at universities. However, the HEWRRs do not allow for the uninvited involvement of third parties representing employees, including unions, unless they are at the request of an affected employee.

The HEWRRs will enhance workplace flexibility which will assist institutions to respond to changing requirements and challenges and develop a diverse and adaptable workforce. The reforms will assist institutions to encourage individual and organisation performance, including rewarding high performing individuals, efficiently managing underperformance and strengthening management and leadership capability.

Through the HEWRRs, the Government has established a set of principles within which universities can customise workplace relations arrangements tailored to the requirements of their business and their employees. These principles provide scope for universities and their employees to negotiate pay and conditions which suit their particular needs and circumstances rather than being locked into a "one-size-fits-all" approach.

## **Conclusion**

The Australian Government believes these reforms are necessary if the long-term sustainability and quality of Australian higher education is to be assured.

The need for workplace reform in the higher education sector which has been characterised by inflexible industrial and practical restrictions has been proven, and furthermore it has been supported by universities in various forums.

The HEWRRs are consistent with the bargaining provisions of the *Workplace Relations Act 1996*. They provide incentives for universities to further progress workplace reform. This reflects the Government's commitment to encouraging a more productive and internationally competitive higher education sector. By using the flexibilities available under the WR Act, universities will 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.

## **Proposed Higher Education Workplace Relations Requirements (HEWRRs) under the Commonwealth Grant Scheme (CGS)**

Higher education providers eligible for grants under the Commonwealth Grant Scheme (CGS) will need to satisfy the Higher Education Workplace Relations Requirements (HEWRRs) under section 33-15(1)(b) of the Act as part of the requirements for receiving an increase in the basic grant amount for a year under section 33-15(1)(c) of the Act (5% if the grant year is 2006, and 7.5% in later years).

Higher education providers must meet the following requirements to the satisfaction of the Minister for Education, Science and Training.

The HEWRRs apply to all workplace agreements made and approved or certified after 29 April 2005.

Access to increased CGS funding is determined annually. For 2006, an important consideration will be the nominal expiry date of a higher education provider's Existing Agreement(s)<sup>[1]</sup> as at 29 April 2005.

### **CGS Funding Increase – 2006**

*Higher education providers Existing Agreement(s)<sup>[1]</sup> as at 29 April 2005 with nominal expiry date on or before 30 September 2005*

The HEP must have in place, by 30 November 2005, a certified agreement(s) and workplace policies and practices that comply with the HEWRRs.

*Higher education providers Existing Agreement(s)<sup>[1]</sup> as at 29 April 2005 with nominal expiry date on or after 1 October 2005*

The HEP must have in place, by 30 November 2005, workplace policies and practices that comply with the HEWRRs, except where compliance with the HEWRRs would be directly inconsistent with the higher education provider's obligations under its Existing Agreement(s)<sup>[1]</sup> as at 29 April 2005.

### **CGS Funding Increase – later years**

To qualify for the increase in CGS funding available in later years, higher education providers must by 31 August of the year prior have in place certified agreement(s), individual agreements and workplace policies and practices that comply with the HEWRRs.

### **Private Providers**

Higher education providers which operate as approved private providers with funding for National Priority Places who employ all staff on individual arrangements will be assessed on the content of their workplace policies and practices, including the template for and/or common elements of their individual agreements, for compliance with the HEWRRs. Higher education providers will be required to comply with the HEWRRs by 30 November 2005, and by 31 August in later years, to qualify for the increase in CGS funding available in 2006, and later years respectively.

### **Qualifying for Increases**

In order to qualify for any given year's increase in CGS funding, submissions must be supported by a statement signed by the Vice-Chancellor of the relevant HEP at the relevant time outlining their compliance status with each of the requirements. The submission must include reference to all relevant clauses and sections in workplace agreements and in other relevant documents, such as

workplace policies, practices and guidelines. Higher education providers must provide the Department of Education, Science and Training with access to the relevant documents as requested.

If a HEP succeeds in meeting the HEWRRs in 2005 and receives the increase in CGS funding in 2006 but then cannot, for whatever reason, continue to meet the criteria as at the CGS funding date for 2006, the increase in CGS funding will not be approved for 2007. The same principle will apply with respect to later years. There will be no backdating of the additional funding.

Any statement found to be false and misleading relating to the higher education provider's compliance with the requirements may result in the requirement to repay the CGS increase, or a reduction of future CGS funding, at the discretion of the Minister for Education, Science and Training.

## **Higher Education Workplace Relations Requirements**

### **1. Choice in Agreement Making**

The HEP must provide employees with genuine choice and flexibility in agreement making by offering AWAs to all new employees employed after 29 April 2005 and to all other employees by 31 August 2006. Until 30 June 2006, higher education providers are exempt from offering AWAs to casual employees engaged for a period of less than one month.

The higher education provider's certified agreements, made (or varied) and certified after 29 April 2005, are to include a clause that expressly allows for AWAs to operate to the exclusion of the certified agreement or prevail over the certified agreement to the extent of any inconsistency. The following clause is recommended:

*The [insert HEP name] may enter into AWAs with its employees. Those AWAs may either operate to the exclusion of this certified agreement or prevail over the terms of this certified agreement to the extent of any inconsistency, as specified in each AWA.*

### **2. Direct relationships with employees**

The higher education provider's workplace agreements, policies and practices must provide for direct consultation between employees and the HEP on workplace relations and human resources matters. The involvement of third parties representing employees must only occur at the request of an affected employee.

Workplace relations consultative committees and associated committee processes must include direct employee involvement. Employee involvement in negotiations and discussions on workplace relations and human resources issues must not be restricted to third party representation only.

### **3. Workplace Flexibility**

The higher education provider's workplace agreements, policies and practices are to facilitate and promote fair and flexible arrangements. The HEP must have working arrangements and conditions of employment which are tailored to the circumstances of the HEP and which benefit both the HEP and its employees.

The higher education provider's workplace agreements should expressly displace previous workplace agreements and relevant awards.

The higher education provider's workplace agreements, policies and practices are not to inhibit the capacity of the HEP and its employees to respond to changing circumstances, nor limit or restrict the higher education provider's ability to make decisions and implement change in respect of

course offering and associated staffing requirements, including not placing limitations on the forms and mix of employment arrangements.

The higher education provider's workplace agreements must be simple, flexible and principle-based documents which avoid excessive detail and prescription.

#### **4. Productivity and Performance**

The higher education provider's workplace agreements, policies and practices must support organisational productivity and performance.

The higher education provider's workplace agreements, policies and practices must include a fair and transparent performance management scheme which rewards high performing individual staff. Consistent with this, the higher education provider's workplace agreements, policies and practices must also include efficient processes for managing poor performing staff.

#### **5. Freedom of Association**

The higher education provider's workplace agreements, policies and practices must be consistent with freedom of association principles contained in the *Workplace Relations Act 1996*. Higher education providers must neither encourage nor discourage union membership.

The HEP must not use CGS funds to pay union staff salaries, or fund union facilities and activities.

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<sup>[1]</sup> "Existing Agreement(s)" are collective agreement(s) that have been subject to a concluded ballot as at 29 April 2005 and have subsequently been certified by the AIRC.