



Australian Vice-Chancellors' Committee
the council of Australia's university presidents

AVCC Submission
to Senate Employment,
Workplace Relations and
Education Legislation
Committee

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

September 2005

The Australian Vice-Chancellors' Committee

The Australian Vice-Chancellors' Committee (AVCC), the council of Australia's university presidents, advances higher education through voluntary, cooperative and coordinated action. The Committee is non-partisan and exists exclusively for educational purposes. Its continuing aim is to serve the best interests of the universities and, through them, the nation.

The AVCC welcomes the opportunity to provide a submission to the Senate Employment, Workplace Relations and Education Legislation Committee on the *Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005*.

Higher Education Workplace Relations Requirements

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 the Higher Education Workplace Relations Requirements (HEWRRs) on 29 April 2005. A number of Vice-Chancellors and representatives of the AVCC subsequently met with the two Ministers, at their invitation, to discuss the Vice-Chancellors' concerns with the proposals, in principle and in specific terms. As a result, a slight amendment to the requirements was announced by the Minister for Education, Science and Training on 20 June 2005. Subsequent references to the HEWRRs will refer to the amended requirements.

Reflecting the diversity of the higher education sector some universities believe that they already have the degree of flexibility for them to fulfill their mission and role, while others would like to see further changes at the structural level. The AVCC points out that, as indicated below, many individual contractual arrangements currently exist, especially in terms of performance related above enterprise agreement remuneration. The HEWRRs are very intrusive in terms of universities' capacity to manage their internal affairs. The HEWRRs proposal constitutes a 'one size fits all' approach, whereas the AVCC takes the view that the focus should be on desired outcomes, rather than specific industrial processes and particular industrial instruments.

Summary of recommendations:

The AVCC recommends that

- 1. all universities meet the same deadlines in applying for CGS funding increases. Thus, in order to qualify for CGS funding increases in the 2005 Grant year**
 - **universities must have in place by 30 November 2005 policies and practices that comply with the HEWRRs, unless this would directly breach their existing certified agreements;**
 - **but do not have to have new agreements in place until the later deadline of 31 August 2006.**
- 2. universities be able to offer employees a range of employment instruments, and not be required to offer AWAs to all employees.**

- 3. the AVCC recommends that the Committee recommend to the Parliament that the current temporary exclusion (until 30 June 2006) concerning the requirement to offer AWAs to all casual staff of less than one month's employment be extended to six months and made a permanent arrangement.**
- 4. the Committee recommend to the Parliament to allow further mechanisms under workplace relations law, to set aside expired agreements, or to open new negotiations.**
- 5. the Committee recommend to the Parliament not to pass the Bill, allowing universities to enjoy the same workplace laws as the wider community.**
- 6. the HEWRRs not be tied to increases in the Commonwealth Grant Scheme.**
- 7. If Recommendation 5 and 6 are not accepted, that universities continue receiving the 2005 funding increases of 2.5% even if they fail to meet the new requirements.**

The Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005

The Bill under consideration of this Committee amends the *Higher Education Support Act 2003* by repealing paragraphs 33-15 (1) (b) and (c) and substituting with new paragraphs that give effect to the HEWRRs. The HEWRRs themselves are not contained in the Bill, but will be contained in a revised Chapter 7 of the Commonwealth Grant Scheme Guidelines.

The draft Guidelines are expected to reflect the announcements made by 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. The Senate will have the opportunity to disallow the Guidelines once they are tabled, as they are a disallowable instrument under the *Higher Education Support Act 2003*.

There are differing timelines for universities to comply with the HEWRRs depending on when their existing certified agreements end. The HEWRRs apply to all certified agreements made or approved after 29 April 2005.

Universities, whose certified agreements expire before 30 September 2005, have to comply with all requirements in their new agreements, policies and practices by 30 November 2005.

Universities, whose agreements expire after 1 October 2005, must have in place by 30 November 2005 policies and practices that comply with the HEWRRs, unless this would directly breach their existing certified agreements.

In order to qualify for the 2007 increase to the Commonwealth Grant Scheme all providers have to comply with the HEWRRs by 31 August 2006. For later years, universities have to show their compliance by 31 August in the year prior to the Grant year.

Having different timelines apply to universities, and in some cases having different timelines apply within a single university, is problematic. A more sensible approach would be to allow all universities to meet the later deadline. That is, universities would meet the requirements in the policies and practices by 30 November 2005 unless this would directly breach their existing certified agreements, and would have in place new agreements by 31 August 2006. The AVCC put this argument to the Ministers who responded with the announcement by Minister Nelson on 20 June 2005 of a slight change in timing. If the AVCC proposal is accepted this would reduce the pressure on universities in negotiating new agreements within a short timeframe. There would still be pressure on some universities to open negotiations for new agreements next year, when they will require the agreement of employees and unions for the reopening of such negotiations.

Recommendation:

1. The AVCC recommends that all universities meet the same deadlines in applying for CGS funding increases. Thus, in order to qualify for CGS funding increases in the 2006 Grant year

- **universities must have in place by 30 November 2005 policies and practices that comply with the HEWRRs, unless this would directly breach their existing certified agreements;**
- **but do not have to have new agreements in place until the later deadline of 31 August 2006.**

Specific Requirements

Apart from the comments on the HEWRRs as a whole above, the AVCC has a number of specific comments to make on some of the requirements.

- **Australian Workplace Agreements**

The HEWRRs require all universities to offer all new staff employed after 29 April 2005 to be offered Australian Workplace Agreements (AWAs). All existing staff need to be offered AWAs by 31 August 2006. Casual staff of less than one month's employment have been excluded from this provision temporarily until 30 June 2006.

Under current workplace law universities are singled out as employers in the requirements to offer AWAs. No other employer in the Australian community is required to offer AWAs to all staff.

Universities employ staff in a variety of ways. Table 1 shows that in 2004 universities employed approximately 15% of their staff under casual staffing arrangements.

Table 1 Full-Time Equivalent (FTE) for all Staff by Work Contract, 1998-2004							
	1998	1999	2000	2001	2002	2003	2004
Work Contract							
Full-Time	76%	76%	75%	74%	74%	74%	74%
Fractional Full-Time	10%	10%	10%	11%	11%	10%	11%
Estimated Casual	13%	14%	15%	16%	16%	15%	15%
Total	80,285	80,832	82,233	83,809	86,342	89,370	91,905

Source: DEST Selected Higher Education Staff Statistics

Table 2 shows that of the remaining (non-casual) staff a further third is employed on limited term contracts. This has been achieved notwithstanding the restrictions on fixed term contracts imposed by the Australian Industrial Relations Commission in the Higher Education Contract of Employment Award at the request of the NTEU, and reflects subsequent negotiations at enterprise level with the Union to accommodate the changing needs and circumstances of individual institutions.

Table 2 Staff characteristics (excluding casuals), 1998-2004							
	1998	1999	2000	2001	2002	2003	2004
Basis of Position							
Ongoing term	57%	64%	67%	68%	68%	68%	67%
Limited term	43%	36%	33%	32%	32%	32%	33%
Other term	0%	0%	0%	0%	0%	0%	0%
Total Number of Staff	76,272	76,040	76,903	78,228	81,145	84,435	87,658

Source: DEST Selected Higher Education Staff Statistics

Note: (a) Full-time and Fractional Full-time staff (head count) and excluding casuals

In addition, universities have long paid performance-dependent market loadings for specified jobs and disciplines where they need to attract staff in certain fields, such as professional areas, or to meet competitive pressures. It is certainly not the case that, in the absence of AWAs, university staff in a particular classification are paid the same rate,

regardless of contribution and standard of performance. Indeed, flexible remuneration packages related to performance have been in place for many years, and are widespread in many universities. Such arrangements generally operate as individual common law contracts which provide for over-agreement payments, the quantum of which may vary from year on the basis of reviewed performance.

Universities are concerned about the increased *inflexibility* and workload imposed by the new requirement that all staff would have to be offered an AWA rather than the parties being able to choose for themselves, as in other industries, from the full range of industrial or private contractual instruments available. The HEWRRs would decrease the flexibility and autonomy of university employers and staff to choose the forms of employment arrangements that best suit them.

Recommendation:

2. The AVCC recommends that universities be able to offer employees a range of employment instruments, and not be required to offer AWAs to all employees.

- **Requirements applying to casual staff**

Universities are particularly concerned about the requirement to offer an AWA to all casual staff. The temporary exclusion (until 30 June 2006) of casual staff of less than one month's employment was therefore welcomed. While this change was welcomed the AVCC had argued that the change in the provision should apply where casual staff are employed for less than 6 months. Universities do, however, believe that any exclusion should be made permanent.

In order to determine the impact of the requirement to offer casual staff AWAs once the exclusion expires, the AVCC conducted a survey of member universities in July and August 2005.

As Table 3 shows a survey of AVCC member universities found that in 2004 universities employed 43,569 different people in casual positions of less than one month's employment. This would mean that universities would have to offer at least 43,000 AWAs for jobs of less than one month's duration every year.

Table 3. Headcount of casual employees of less than one month's employment, 2004

Length of employment	Less than one pay period	More than one pay period, less than one month	All
Number	28,038	15,531	43,569

Source: AVCC Survey of member universities

However, the figure would likely be larger, as Table 4 shows. The individuals which were counted in Table 1, were in some cases employed to do different jobs under

different contracts in the one year. Table 2 shows that 61,393 different casual jobs were filled in 2004.

Table 4. Casual employment contracts of less than one month's employment, 2004

Length of employment	Less than one pay period	More than one pay period, less than one month	All
Number	39,019	22,374	61,393

Source: AVCC Survey of member universities

The administrative burden of the requirement would thus be extreme, with no benefit to the university or the employee through the offering of an AWA. The AVCC therefore argues that the exclusion of casuals of less than six month's employment from the requirement to offer an AWA should be made permanent.

Recommendation:

3. The AVCC recommends that the Committee recommend to the Parliament that the current temporary exclusion (until 30 June 2006) concerning the requirement to offer AWAs to all casual staff of less than one month's employment be extended to six months and made a permanent arrangement.

- **Certified agreements**

The HEWRRS, as they currently stand, will require universities to develop new certified agreements. While there is also the requirement, discussed above, to offer AWAs to all staff, primacy is given to certified agreements at the enterprise level. This gives the NTEU's pattern bargaining approach more support.

Under current workplace relations law, certified agreements that have reached their nominal expiry date, continue in force until a new agreement is in place. This places employees and unions in a position where they may prefer to stay under the old agreement, rather than sign up to a new one which complies with the HEWRRs.

There would be benefit in framing the HEWRRs in such a way that they do not force all universities to replace existing but expired certified agreements with new ones; and which recognise a variety of other industrial instruments, not merely AWAs. Each university could be assessed for compliance in terms of how well it addressed and achieved the desired outcomes.

Recommendation:

4. The AVCC recommends that the Committee recommend to the Parliament to allow further mechanisms under workplace relations law, to set aside expired agreements, or to open new negotiations.

The HEWRRs Bill in the context of the Commonwealth Grant Scheme

The HEWRRs introduce special arrangements to apply only to higher education providers, which under current law will not apply to other employment sectors. The Government has not made a case as to the necessity of these reforms and the AVCC does not see the need for universities to be singled out this way. Rather, universities should be treated in the same way as the rest of the community. Universities operate under current workplace relations laws, making use of the full range of provisions as useful for each university.

The HEWRRs are proposed to be tied to funding increases for universities through the Commonwealth Grant Scheme (CGS).

These funding increases represented the following incremental increases to the CGS:

Year	CGS Increase
2005	2.5%
2006	5%
2007	7.5%

These funding increases were subject to universities meeting requirements as set out in section 33-15 of the *Higher Education Support Act 2003*. These requirements covered two elements:

1. national Governance Protocols as set out in Chapter 7 of the Commonwealth Grant Scheme Guidelines (s33-15 (1)(a)); and
2. that universities include in their certified agreements the clause “The provider may offer AWAs in accordance with the *Workplace Relations Act 1996*” (s33-15 (1)(b)).

The AVCC was very disappointed that the HEWRRs represented a retrospective change by the Government, without consultation, on the agreement reached when the AVCC supported the passage of the *Higher Education Support Act 2003* through Parliament at the end of 2003. Vice-Chancellors supported the legislation, in good faith, only when the Minister, Dr Nelson, offered a compromise clause in place of the HEWRRs proposed at that time as a condition for funding increases. Now the HEWRR Bill fundamentally changes the conditions for accessing the extra funding and imposes new requirements on universities in order for them to gain access to the CGS increases in 2006 and 2007.

Further, universities will not continue to receive the 2.5% CGS increase that they gained by meeting the requirements for the year 2005 if they fail to meet the new requirements from 2006. Universities have justifiably already budgeted for these funds for 2006 and 2007 since they met the current requirements of the Act in 2005.

Recommendation:

5. The AVCC recommends that the Committee recommend to the Parliament not to pass the Bill, allowing universities to enjoy the same workplace laws as the wider community.

6. The AVCC recommends that the HEWRRs not be tied to increases in the Commonwealth Grant Scheme.

7. If Recommendation 5 and 6 are not accepted, the AVCC recommends that universities continue receiving the 2005 funding increases of 2.5% even if they fail to meet the new requirements.