

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

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1. Introduction

This is a submission from the RMIT Branch of the NTEU based upon the experiences and perspectives of the Branch at RMIT University.

The Royal Melbourne Institute of Technology (RMIT) currently has approximately 3 455 permanent staff, catering to over 58 000 students (2003 RMIT Statistics). It is one of Victoria's leading Universities, with higher than national averages on graduate outcomes and employment (see tables 1.1 and 1.2).

In addition, RMIT has one of the highest Union membership densities, with over 60% Union membership to National Tertiary Education union (NTEU), Australian Services Union (ASU) and other relevant Union bodies.

However, RMIT over the last several years has faced numerous challenges, including management changes, on-going reviews and restructures, workload issues and staff redundancies. Of significant note have been the financial difficulties faced by the institution and its staff, as the University has tried to adjust to the various sector changes brought about by government legislation, reduction of public income and marketplace fluctuations.

To date in dealing with the RMIT management we have not been able to locate any senior manager who agrees with the proposition that the HEWRRs will improve workplace relations, productivity or efficiency at RMIT.

2. Proposed Legislation

In April 2005, the NTEU and RMIT University reached in principle agreement on a new Enterprise Bargaining Agreement (EBA), which delivered a range of improvements to RMIT employees, including 22.5% salary increase over an effective 4 year period. These improvements included clauses such as targets for Indigenous employment and better parental leave entitlements.

However, on April 29, 2005 the Federal Government announced immediate effect of the Higher Education Workplace Relations Requirements (HEWRRs), which virtually invalidated the agreed RMIT document and necessitated a return to negotiations to produce a HEWRR compliant document.

The HEWRRs are part of the Higher Education Legislation Amendment [Workplace Relations Requirements] Bill 2005, which amends the current Higher Education Support Act 2003 to incorporate the HEWRRs in the Commonwealth Grant Scheme (CGS) Guidelines. Therefore, it will be mandatory for any institution seeking CGS funds to comply with the HEWRRs. The possible consequence for RMIT for failing to meet the HEWRRs legislation, in the time frames set by the Federal Government, could result in a reduction of funding of \$12 million over the next two years. This is funding that the University has stated it cannot afford to lose. Thus, in effect, this legislation is a direct attack on institutional autonomy, despite such autonomy being recognised by international bodies such as the United Nation's Educational, Scientific and Cultural Organisation.

However, aside from content and intent of the HEWRRs, it is of significant concern that the legislation is separate to the requirements, as this means that the requirements can be amended by the Minister for Education at any time in the future, with out undergoing further legislation. This authority is neither democratic nor transparent, prevents avenues for discussion and debate, and bypasses established parliamentary processes.

3. Staffing

Staff of RMIT University currently face very difficult circumstances, which will have significant consequences for their future working conditions. RMIT has stated that it is in the process of making staff redundant, with the projected loss of 180 identified, permanent positions. There is as yet a large number of casual and contract positions that are unlikely to be refilled.

However, RMIT student's numbers have continued to grow. In 2004, the Union conducted a survey on staff workloads, (see 'Bill for Goodwill' summary attached) in which it was confirmed that RMIT staff were under considerable stress due to high workloads. The further loss of permanent positions, due to pressures bought about by the HEWRRs and the provisions allowing for greater casualisation, will have a negative impact on the service provision and standards of research and teaching quality.

The requirement of 'increased flexibility' in particular, is likely to have a negative impact on the quality of teaching and administrative workloads. Whilst RMIT has already committed itself to reduce its staffing significantly; it is unlikely that workloads will decrease (in fact, if enrolment trends continue it is likely to increase). It is likely that much of the resulting workload will be taken up by casual and short term contract staffing, particularly in the academic areas. However, numerous recent studies (Kift 2002; Barrington 1999; McInnis and McNaughton 1995) have shown a correlation between increased casualisation and falling student satisfaction rates in teaching. This is due mainly to transitory nature of casual staff, (who are usually seeking permanent employment), and the difficulties in sourcing training and support for casual staff.

In addition, the HEWRRS directly affect basic workplace standards, such job security protections, and the right to arbitrate grievances and disputes. In effect, these Government measures directly threaten the autonomy and independence of Universities, academic freedom and the employment conditions of University staff.

4. HEWRRs and the EBA

The enforced delay on an EBA that was, in principle, agreed upon, has had a negative effect on staff moral, already under pressure due to RMIT's internal redundancies and reviews. When coupled with the effects of the HEWRRs, (such as the likely increase in casualisation, and conditions imposed by Australian Workplace Agreements), these pressures increase substantially, and as a result, the Union has considerable concerns for both the short and long term effects of increased workloads and stress, on both staff and students.

The NTEU has been trying to negotiate a new Enterprise Agreement for RMIT University staff which is HEWRR compliant, but the generalised nature of the legislation, and often conflicting advice from the various bodies offering advice on HEWRRs, has complicated

these processes. The NTEU is of the view that earlier versions of many parts of the RMIT Management document did not meet HEWRRs, due to excessive verbiage and process eg: Academic Discipline. The Union has advised the RMIT Management on these clauses, and has been working with them on editing to comply.

More importantly, however, the earlier, agreed EBA was peppered with references to the role of the NTEU or union throughout the document. However, it would appear that the aim of the HEWRRs is to directly target Unions in the workplace, and thus “deunionise” the EBA as far legally possible. Other clauses that required notification or consultation with the NTEU directly have either been removed entirely or altered to state “employees concerned”.

This attempt by the HEWRRs to reduce Union references in the EBA is in conflict with the United Nation’s and International Labour Organisation (ILO) *Convention 87 Freedom of Relations and Protection of the Right to Organise* (1948), which specifically allows for employees to form or join a Union, and have their entitlements and wages collectively bargained for. Furthermore, *Convention 98 on the Right to Organise* (1949) sets out the rights of employees to collective bargaining, and encourages governments to adopt mechanisms that allow for equitable and transparent processes, and prevents anti-Union activities by employers. However, the HEWRRs directly undermine these conventions, despite their ratification by the Australian Government in 1973.

5. Effect of the HEWRRs Clauses on RMIT

- **Institutions must offer AWAs to all new staff employed after 29 April 2005, and to all existing staff by 31 August 2006.**

RMIT’s existing EBA enabled university management to offer AWAs to staff (in accordance with the Workplace Relations Act). However, this new requirement goes far beyond the existing position, and actively promotes the issuing of AWAs to university staff.

NTEU and the union movement as a whole has resisted the promotion of AWAs because they are the only type of employment contract which can reduce minimum standards as set by the collective agreement. They are secret and generally cannot be scrutinised by unions or the public.

Further, academic studies have shown that the “no disadvantage test” applied to the certification of AWAs by the Office of the Employment Advocate is simply a rubber stamping exercise: there is little real comparison or evaluation of the underlying conditions of employment in the award, even when the AWA would drastically undercut award conditions. One survey of AWAs concluded that they tend to give employers a right to vary working hours (88%) and to change duties (50%). Other studies have shown that employees on AWAs are less satisfied with their pay and working conditions than employees covered by other agreements (Biggs, Cooper and Ellem 2005). They report higher workloads and longer hours, and less time for family and other commitments. Coupled with the existing workload issues at RMIT, this could potentially have detrimental effects on the health and moral of staff, and quality of teaching and research.

- **Institutions must include a clause in Agreements that expressly allows AWAs to operate to the exclusion of the Enterprise Agreement.**

A provision like this has only one purpose: allowing AWAs to undercut Agreement conditions. As mentioned above, currently AWAs cannot operate to the exclusion of

Agreement conditions before the nominal expiry date of the Agreement. Under the HEWRRs this protection would be lost, meaning that AWAs could include conditions significantly inferior to those in the Agreement.

The Government has argued that AWAs are necessary to reward “high flyers”. However, individual contracts can already be offered under current Enterprise Agreements *provided that these contracts do not provide for conditions below the Enterprise Agreement minima*. Existing Agreements currently provide for performance-based contracts for senior managers under which certain provisions of the Enterprise Agreement (eg. tenure) do not apply. Around 30% of staff are already employed on an individual contract of some sort and the payment of market and merit allowances is widespread. In this environment, AWAs are clearly unnecessary.

Any link whatsoever between funding and AWAs will foster division rather than cooperation. This will ultimately detract from the professional character of academic work that is necessary to deliver quality higher education in a domestic and international market.

- **University Agreements, policies and practices must provide for “direct relationships with employees”.**

Specifically, this means that the HEWRRs aim to reduce the Union from having a role in consultative processes to do with staff. “Third party” involvement must only occur at the request of an affected employee, not by right. This would simply have the effect of reducing staff members’ entitlement to representation on disciplinary committees and the like - staff may feel pressured to forego union representation in the name of expediency. Again, this is in contradiction to the ILO Conventions on employees *Freedom of Association*.

Furthermore, the Government wants to make sure that any consultative committees or workplace committee processes involve employees directly: that is, if the union is represented, an employee representative (ie non-union) must also participate. This would be a shift from a democratic system to one where staff self-nominate to “represent” others without having been elected.

- **University Agreements, policies and practices must not place limitations on the forms and mix of employment arrangements.**

This appears to be a direct attack on the Higher Education Contract of Employment (HECE) award, which the NTEU achieved in 1998. That award regulates fixed term employment by restricting the circumstances in which fixed term employment may be used, and was made by the Industrial Relations Commission in response to the widespread abuse of fixed term contract and casualised employment in universities. Industrial regulation of this kind simply does not fit with the Government’s ideological view of “workplace flexibility”, yet such employment has a detrimental effect on overall teaching and research standards.

For the same reason, the Government also wants to dismantle the important restrictions on casual employment that the union has achieved in the current round of enterprise bargaining. Casual employment, the most insecure form of employment, has risen dramatically in universities over the last ten years: the level of casualisation in universities is second only to hospitality and tourism and threatens to erode the ongoing quality of teaching and research. In response to this, the union has sought to cap casual employment in Enterprise Agreements. Without these caps much existing permanent

work will eventually end up being casualised. This has the potential to diminish the attraction for graduates and people from industry considering the academic profession as a career.

- **University Agreements must be simple, flexible and principle-based, avoiding “excessive detail and prescription”.**

This requirement probably means that the Government wants many of the detailed consultative and committee procedures relating to redundancy, unsatisfactory performance, misconduct and termination to be deleted from Agreements. These procedures originate from awards of the Industrial Relations Commission, which were made taking into account the unique nature of academic work and the need to protect intellectual freedom as an industrial entitlement.

- **University Agreements, policies and practices must include performance management systems which reward high performing staff and “efficiently manage” poor performing staff.**

All universities are already able to, and do, reward high-performing staff through the use of salary loadings and the like. All universities also already have satisfactory performance management arrangements in place. Hence this element of the HEWRRs must mean something more: it could mean, for instance, an expansion of punitive measures that can be taken against what Management considered to be under performing staff, with reductions in their rights for representation and appeal. This is also likely to be linked to other legislation, which will have a detrimental effect on research output and funding.

- **University Agreements, policies and practices must be consistent with the freedom of association principles contained in the Workplace Relations Act 1996.**

The HEWRRs elaborate that “freedom of association” in this context means two things: first, universities may neither encourage nor discourage union membership; and second, CGS funds may not be used to fund union staff salaries, or fund union facilities and activities. Again, this is in conflict with the ILO’s Conventions, and would appear to reveal a direct anti-Union stance by the Federal Government.

6. The broader context

The HEWRRs are part of a broader package of interventionist measures that the Government is attempting to implement across the public university system. At the same time as implementing the HEWRRs, the Government is also implementing the following initiatives:

- **Amendments to the National Protocols for Higher Education Approval Processes.**

The National Protocols are the key regulatory mechanism for higher education. However, proposed changes would appear to weaken the stipulation in the Protocols that universities must undertake research and provide a broad range of disciplines.

- **The implementation of a Research Quality Framework (RQF) to “measure the quality and impact of publicly funded research at universities.”**

It would appear that there are plans to use the RQF to reallocate to other areas a portion of the current research funding going to universities. The RQF could also result in a

concentration of research funding towards some universities at the expense of others, particularly regional campuses, with significant industrial implications for many of our members and their students, and result in the creation of 'teaching only' institutions – a situation which would not be beneficial to RMIT, nor the majority of other Universities in this country. It would also have a devastating impact on the quality, and quantity, of Australian research.

In NTEU's view, universities are already accountable through a range of processes which ensure the quality of their research, including Research Management Training reports, the Australian University Quality Agency, the processes adopted by ARC and NHMRC and, most importantly, peer review.

The Union is also concerned over the possible use of RQF outcomes in AWA's, and the impacts this would have on employees rights and entitlements.

- **Attempts by the Commonwealth to take over the State and Territory responsibilities for higher education.**

This could open up significant changes to existing arrangements, including further corporatising university governance arrangements and weakening universities' objects and defining purposes.

These initiatives, together with the HEWRRs, show that that Government is not satisfied with its existing level of control over universities. Instead, it wishes to indelibly stamp its mark on the Australian university system.

On one hand, the Government is encouraging universities to generate a private income base, through up-front fees, bequests and the like. The Government's strategy in this regard has been very successful: the current national average of Government funding only represents approximately 40% of total university funding, with 60% coming from other sources. At RMIT, this federally funded figure is around 38% (see table 6.1)

However the Government wants to exert 100% of the control over our universities, taking interventionist measures to crush university independence.

The Government's approach flies in the face of international practice: UNESCO recommends the defence of university autonomy and self-governance on the grounds it is "*necessary for effective decision-making by institutions of higher education regarding their academic work, standards, management, and related activities consistent with systems of public accountability, especially in respect of funding provided by the state.*"

RECOMMENDATION:

1. That the Higher Education Workplace Relations Requirements Legislation be rejected.

2. That the Federal Government review all current and proposed Industrial Relations legislation in order to ensure it complies with the International Labour Organisation (ILO) Convention 87 on *Freedom of Association and Protection of the Right to Organise* (1948) and Convention 98 *Right to Organise and Collective Bargaining* (1949), of which Australia has ratified agreement to (1973).

Graduate Destinations 2004 - VET

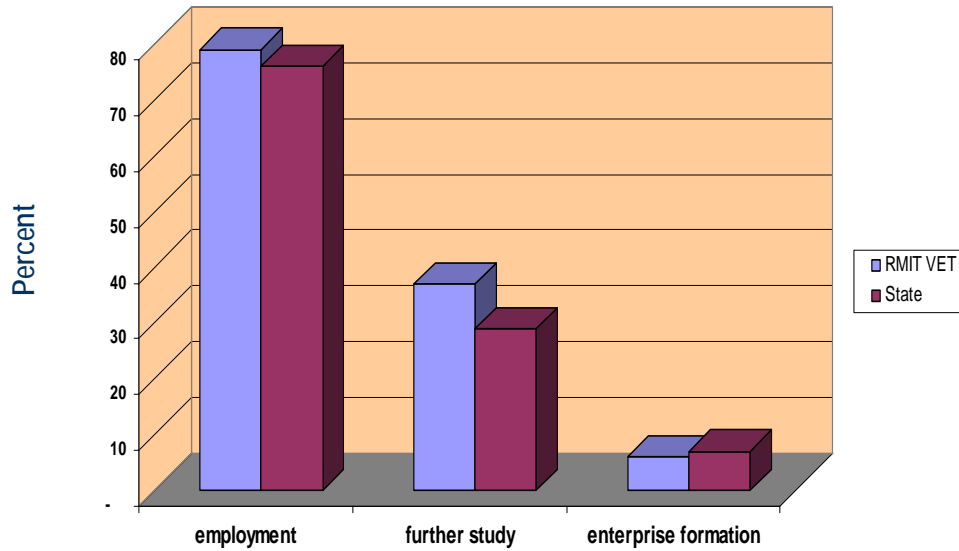


Table 1.1

Source: RMIT Website ([http://www2.rmit.edu.au/departments/planning/ircu/docs/welcome2004.ppt#266,8,How do we perform?](http://www2.rmit.edu.au/departments/planning/ircu/docs/welcome2004.ppt#266,8,How%20do%20we%20perform?))02.09.05

Graduate Destinations 2004 – Higher Education

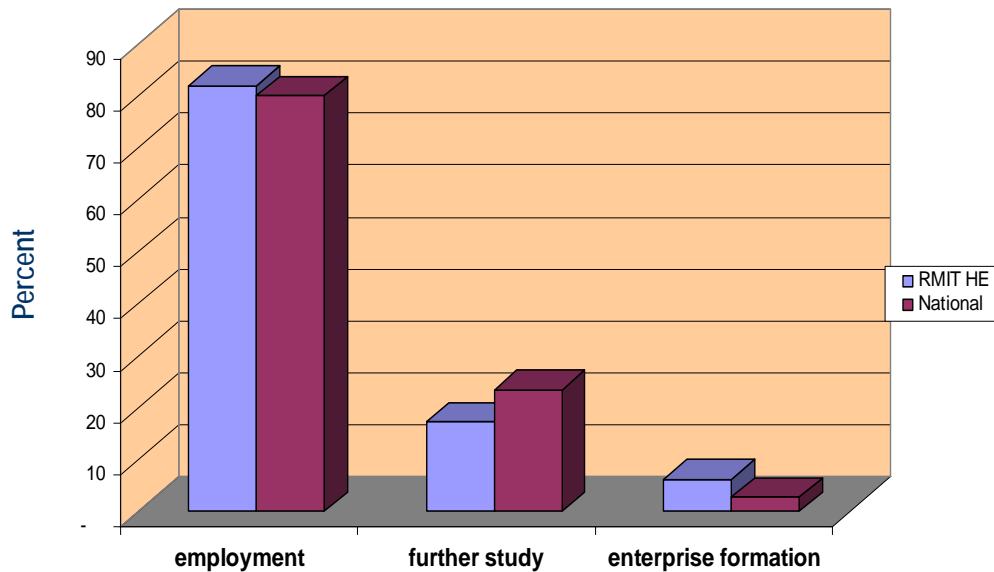


Table 1.2

Source: <http://www2.rmit.edu.au/departments/planning/ircu/docs/welcome2004.ppt#272,9,Slide 9>

Revenue Source 2004 (Proportion of Load)

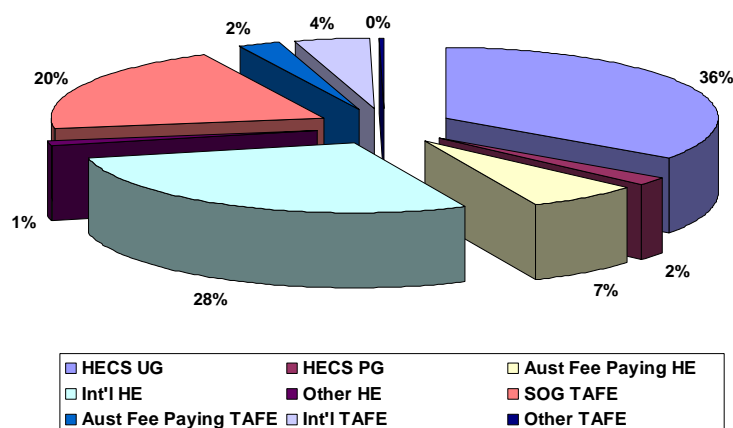
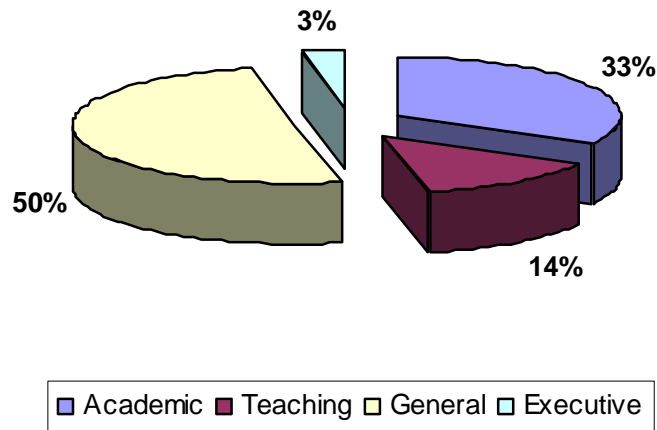


Table 6.1 Source: <http://www2.rmit.edu.au/departments/planning/ircu/docs/welcome2004.ppt#271,3,Who are our students?>

Full-Time Equivalent (FTE) Staff by Employment Category, Sept 2004



*NB this does not include casual staff percentages/

Source: [http://www2.rmit.edu.au/departments/planning/ircu/docs/welcome2004.ppt#259,7,Who are our staff?](http://www2.rmit.edu.au/departments/planning/ircu/docs/welcome2004.ppt#259,7,Who%20are%20our%20staff?)

References:

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May, Campbell and Burgess *The Rise and Rise of Casual Work In Australia: Who Benefits, who loses?* (conference paper) 2005

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NTEU *Smart Casuals*, 2nd Ed, National Tertiary Education Union, 2004.

RMIT Online Statistics 2005, available at

<http://www2.rmit.edu.au/departments/planning/ircu/docs/welcome2004>.