Senate Employment, Workplace Relations and Education References Committee

INQUIRY INTO THE PROVISIONS OF THE HIGHER EDUCATION LEGISLATION (WORKPLACE RELATIONS REQUIREMENTS) BILL 2005

ACTU SUBMISSION

Executive summary

- The Australian Council of Trade Unions (ACTU) strongly opposes both the passage of this Bill, and the introduction of the associated Commonwealth Grants Scheme Guidelines (Guidelines).

- The Bill and the Guidelines would give the federal government unprecedented and unwarranted capacity to interfere in the operation of Australia's higher education institutions. The aim of this interference is to further the government's anti-union and pro-individualist philosophical agenda. It will not assist Australia's higher education institutions, the quality of learning or research, or outcomes for employees. The absolute requirement to offer AWAs is inefficient and impractical in the higher education setting.

- The Bill and Guidelines show yet again how opposed the federal government is to the internationally recognised principle of the right to collective bargaining. Its overzealous promotion of Australian Workplace Agreements (AWAs) has not been in the interests of Australian workers or workplaces. There is no evidence to support the bullying of higher education providers to shift to AWAs.

- The government's interference not only offends the right of the negotiating parties to determine the form and content of their agreements, it also constitutes unprecedented intervention in the running of our universities. Australia has traditionally maintained a distance between government and the management of universities in the interests of academic freedom, which should not be eroded.

- These proposals expose the breathtaking hypocrisy of the federal government in respect of AWAs. The government falsely claims that workers on AWAs are better off – but in reality AWAs <u>are</u> used to lower pay and conditions of employment and decrease job security. These proposals show that the federal government is well aware that AWAs reduce conditions, as this forms part of its motivation to push AWAs into the chronically under-funded higher education sector.

- The Bill and Guidelines unreasonably discourage permanent employment by prohibiting arrangements that limit the use of fixed term and casual staff.

- The Guidelines also seek to curtail the role of unions in higher education, which is contrary to freedom of association principles and fails to accept that unions are representatives of employees, rather than third parties (unlike the government).

- This Bill and the associated Guidelines must be rejected by the Senate. They are an abuse of the federal government's funding of higher education providers.

Unwarranted interference in bargaining and operations of higher education providers

The *Workplace Relations Act 1996* has as part of its principal objects (section 3):

> *(b) ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and the employees at the workplace or enterprise level; and*
>
> *(c) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not the form is provided for in this Act;*

There is nothing in the objects of the Workplace Relations Act about ensuring that the federal government should decide what form of agreement making is most appropriate at each workplace, as it is seeking to do in this Bill and Guidelines.

This serious inconsistency should be remedied by the Senate refusing to pass this Bill.

The government's interference in the workplace bargaining arrangements of higher eduction providers is driven solely by its anti-union agenda and is not based on any public policy considerations.

The government is taking a similar anti-union stance in respect of its funding of building projects. This third party interference by the government in workplaces across different industries and sectors shows it is not concerned with the needs of employers and employees in each particular sector – it is simply applying its individualist philosophy holus-bolus.

Undermining collective bargaining

In announcing these changes the Minister (in a joint press release with the Workplace Relations Minister, 29 April 2005) claimed that they were *"designed to support a workplace relations system in the higher education sector focused on greater freedom, flexibility and individual choice".*

In fact, the Bill and Guidelines only reduce choice for higher education providers. For example, they no longer have choice of simply negotiating a collective agreement for three years (for example) and abiding by that agreement for its duration, applying it fairly to all staff.

Higher education providers would be compelled – with no freedom, choice, or flexibility – to offer AWAs throughout the life of the collective agreement. If they do not do so, they lose much needed funding.

International collective bargaining obligations do not require government to simply allow collective bargaining – governments are expected to actively encourage and support collective bargaining rights.

With measures such as this Bill and Guidelines, the Australian government is once again snubbing its international obligations and showing its complete disregard for international standards that it has agreed to uphold. The ACTU supports the submission of the NTEU, which outlines these international obligations in more detail.

No justification for pushing AWAs into higher education sector

Forcing higher education providers to offer AWAs will not benefit the providers or their employees.

There is no credible evidence to suggest that AWAs improve workplace performance or employees outcomes. In fact, studies have shown the opposite:

- AWAs are not used to foster highly productive workplaces[1].
- Employers use AWAs to reduce working conditions and to prevent unions from representing employees.[2]
- AWAs are not good for families. Only 7 per cent of private sector AWAs contain improved family friendly provisions,[3] and one in three (32 per cent) people on individual contracts are working more hours than they did two years prior[4].
- AWAs take away people's basic entitlements: there is no provision for penalty rates in more than half (54 per cent) of AWAs, no annual leave in one in three (34 per cent) AWAs, and no sick leave in one in four (28 per cent) AWAs.[5]
- Individual agreements provide lower wage rates to working people, in addition to taking away leave and other entitlements. According to ABS statistics, middle income earners on individual agreements are paid an average of $90 a week less than those on collective agreements.[6]

The claim that AWAs will lead to greater workplace flexibility than collective arrangements also has no legal foundation, given that certified collective agreements can be just as "flexible" in their terms as AWAs. The 'no disadvantage test' in section 170XA of the *Workplace Relations Act* should apply equally to both certified agreements and AWAs. In practice, however, it is true that AWAs can and are more readily used to reduce the wages and working conditions of employees. This is due to:

- the misapplication of the no disadvantage test and poor scrutiny of AWAs by the government's Office of the Employment Advocate, and
- the individual nature of AWAs, which greatly increase the capacity of employers to coerce employees into accepting conditions that are not in the employee's interests .

However, the federal government does not concede that either of these points are valid – in which case it has no leg to stand on in claiming that AWAs allow for more flexibility.

This is not the only aspect of the federal government's hypocrisy on AWAs. On the one hand, the government's Workplace Relations Minister, Kevin Andrews, repeatedly misrepresents statistics to claim that people on AWAs earn more than those on collective agreements. Yet in the Second Reading speech for this Bill, the Minister for Science, Education and Training, Brendan Nelson, claims that the purpose of this Bill is to ensure that universities *"compete with international universities"* and become

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[1] Mitchell, R and Fetter, J, *The Individualisation of Employment Relationships and the Adoption of High Performance Work Practices,* University of Melbourne 2002;

[2] Van Barneveld and Nassif, *Motivations for the Introduction of Australian Workplace Agreements,* Labour and Industry, Dec 2003

[3] Whitehouse, Australian Workplace Agreements and Work/Family Provisions, ACIRRT conference paper, 2001, p 8

[4] Office of the Employment Advocate, *AWA Employee Attitude Survey Report,* September 2001

[5] DEWR, *Agreement Making in Australia under the Workplace Relations Act 2002-3*

[6] ABS, *Employee Earnings and Hours*, Cat 6306.0, May 2004. Median weekly total earnings for non-managerial employees on collective agreements - $904, on individual agreements - $814.

"even more productive", taking account of students' choices *"on the basis of cost"*. The implication is clearly that AWAs will allow higher education providers to curb their labour costs – which is hardly consistent with higher overall pay rates, as claimed by the Workplace Relations Minister.

The government's proposals in respect of AWAs are also highly inefficient. The guidelines specify that AWAs must be offered to all employees (except casuals for less than one month). This substantially increases the amount of regulation and paperwork attached to employing staff. Previously, short term or casual staff could simply be employed under the prevailing conditions of the current collective agreement. If this Bill passes, each employee will have to be presented with an AWA, that AWA will have to be lodged with the Employment Advocate, and so on.

If each employee appointed a bargaining agent and sought to individually negotiate their terms of their AWA (which is highly unlikely but technically possible) this would create a massive burden on universities' administrative resources. Of course, the reality is that AWAs are almost always presented to employees on a "take it or leave it basis" with no scope for any real negotiation. At Telstra, for example, its 'Information Kit for Employees and Managers' states:

> *"Can I vary the wording of my AWA? No, the wording of the AWA must not be changed in any way."*

Encouraging casual and contract employment

Many higher education providers include provisions limiting the use of fixed term and casual staff in their collective agreements. This has benefits for the quality of teaching and research, as well as the obvious benefits to employees in providing job security. This mutually beneficial arrangement would be prohibited by the Guidelines, which prohibit *"placing limitations of the forms and mix of employment arrangements".*

This is another example of blatant third party interference by the federal government, preventing the efficient operation of agreements which are preferred by the employer and employees directly involved. As well as defying logic, this approach is contrary to the objects of the *Workplace Relations Act*, as already discussed above. The basic principle offended by this aspect of the Guidelines is that parties should be able to decide the form and content of their workplace agreements.

Australia's workforce is now made up of almost one-third casuals (28 per cent[7]). The difficulties of being casual for employees, as well as the resulting decrease in skills and training, are well documented. It is the responsibility of government to reverse this worrying trend towards widespread insecure, low skilled casual employment – not to encourage such insecurity, as it is doing with these proposals.

Role of unions

As well as forcing higher education providers to offer AWAs, the Guidelines also seek to reduce the capacity of unions to fully represent the interests of their members.

The Guidelines aim to overturn any current arrangements, based on cooperation and

[7] ABS Cat No 6310.0, March 2005

recognition of unions' ongoing role in representing employee interests. The Guidelines only concede that unions can have involvement in workplace matters on the request of an employee in each particular situation, for example:

> *"The involvement of third parties representing employees must only occur at the request of the affected employees."*

The government fails to acknowledge that unions are not third parties – they speak for their members. It is not practicable for employees to have to ask for union involvement at every separate occasion, and employees can be intimidated by their employer to not do so.

Proper freedom of association can only be satisfied by acknowledging the ongoing right of unions to represent the interests of relevant employees.

CONCLUSION

There is nothing to commend any part of this Bill or the associated Guidelines. These proposals lack any foundation in good public policy or good government and should be rejected entirely.