Submission

to

Senate Employment, Workplace Relations and Education References Committee

Inquiry into Workplace Agreements

Submitter: Loretta Cotter, Assistant Federal Secretary

Organisation: INDEPENDENT EDUCATION UNION OF AUSTRALIA (IEUA)

Address: PO Box 1301, South Melbourne 3205

Phone: 03 9254 1830

Fax: 03 9254 1835

Email: lcotter@ieu.org.au

INTRODUCTION

1. The Independent Education of Australia (the IEU) has prepared this submission for the Senate Employment, Workplace Relations and Education Reference Committee's Inquiry into Workplace Agreements.

2. The scope of this Inquiry is broad, and the IEU wishes to make some points specific to its experience of bargaining and agreement making under the auspices of the Workplace Relations Act.

3. The IEU is a federally registered organisation pursuant to the provisions of the *Workplace Relations Act 1996* and operates in the non government education industry which comprises Catholic and other independent schools, pre schools and kindergartens, English and Business Colleges. The union's membership of approximately 60,000 consists of teachers, principals, teacher aides, education support staff, clerical and administrative staff and other ancillary staff such as cleaners and grounds and maintenance staff.

4. The IEU and its branches and Associated Bodies are party to numerous awards and certified agreements. The awards and agreements applying to schools in Victoria, the ACT and the Northern Territory are federal awards. Other federal awards to which the union is a party cover English and Business Colleges across most states and the ACT.

5. The non government education sector is a significant and diverse one. In the schools area alone there are approximately 2,670 non government schools, of which approximately 1700 are Catholic Schools. There are approximately 1350 system and individual employing authorities. The sector employs approximately 80,000 staff (FTE). Non government schools are often affiliated with groups which have particular educational, ethnic or religious philosophies.

6. Approximately one third of schools in the non government schools sector operate in the federal jurisdiction. Colleges which provide English Language

Intensive Courses for Overseas Students (ELICOS) are respondent to federal awards. There are approximately 90 of such accredited institutions operating in the non government sector. Of the significant number of child care institutions in which the IEU has coverage approximately 65 are respondent to a federal award.

SUMMARY OF IEU POSITION

7. In short, the IEU believes that the experience of successful agreement making in the federal system relies predominantly on union strength in the workplace and an attitude on the part of the employer that it has a bona fide responsibility to negotiate fairly with the workers' representative, the union. The current Workplace Relations Act, which has been subject to numerous amendments and diminution of the balance afforded to employees, is not a sufficiently strong mechanism for all Australian employees. The non-unionised, employees from small workplaces, casual employees, and categories of staff such as clerical and administrative staff in non-government schools, are casualties of the current system. The proposed further weakening of the federal industrial relations system, through restrictions to agreement clauses, protected action, rights of entry for unions, allowable matters for awards, removal of the safety net function of awards, and further preference to non-collective agreement making are the last steps in a protracted and unrelenting campaign by the present government to remove most impediments to an employer controlled system of industrial relations.

8. The long term effect of this agenda within the non-government education profession will be to create a two-class system of wages and conditions for staff in our schools – those with the benefit of an orderly, open, understood and collective approach of adherence to a principle of consistent employment conditions, and those who will become part of a fragmented, individualistic collection of schools. This latter category already exists, and its expansion threatens to ghettoize aspects of the teaching profession. This should be of significant concern to this Inquiry. It would be expected, the IEU believes, that

regardless of the size or religious ethos of the school parents send their child to, the conditions that staff work under would be consistent.

SCOPE, COVERAGE AND CAPACITY OF AGREEMENTS TO MEET EMPLOYEE NEEDS

9. A substantial number of awards and certified agreements have been negotiated by the union under the present system of industrial relations. In the Catholic system, all teachers and most other categories of staff such as support staff and grounds and maintenance staff are covered by either comprehensive certified agreements or state awards. The system is large, with the capacity for members to exert strong bargaining capacity, and there is also the consistency of dealing with one or only a small number of employers or in the case of Victoria, one multi-employer agreement. In other major systems such as the Lutheran and Anglican systems, the IEU has also been successful in many states in achieving collective agreements on a system wide basis and is still working to achieve this on a national basis. For the majority of teaching members in non-government schools, particularly systemic schools, there is the protection of an agreement or a state award, achieving, quite appropriately, similar wages and conditions across the country. The picture varies however when examining schools that operate as stand alone employers.

10. In relation to the question posed by the Inquiry as to the actual scope and coverage of agreements, there are many independent schools covered by collective agreements in the federal system that do not extend the coverage of their agreement to all staff, for example grounds and maintenance, teaching assistants, clerical and administrative staff. There are a range of reasons for this. In Victoria, for example, the first round of agreements achieved by the union with independent schools focused on achieving agreements where union membership was high, and this was always found in the teaching section of the membership, a critical mass that could exert some pressure on their employers to achieve an agreement. The second major area of membership

was that of school support staff, particularly those directly connected to the classroom, and almost all certified agreements in Victoria include school assistants either in a comprehensive agreement or a separate one.

11. There are also now a number of independent schools that cover all staff in their agreement and many that have extended coverage to clerical and administrative staff now that the union has been able to negotiate a consent award for this category of staff. However there still remain independent schools who have not agreed to date to include school support staff in their agreements or indeed to enter into negotiations with the union to have any form of agreement. Non-teaching staff in schools do not often have the critical mass needed in terms of numbers to exert bargaining power, and where there is no employer goodwill or a culture of inclusiveness in a workplace, they can remain more vulnerable to lesser outcomes.

12. The changes to the Workplace Relations Act in 1996 with the introduction of award simplification and its consequent emphasis on individual workplace enterprise bargaining have taken their toll. There are many IEU members who have now only the protection of "bare bones" awards for their conditions of employment and their wages. This is not due to a lack of willingness on their or the union's part to achieve a certified agreement through bargaining. This submission will examine some of the factors that have contributed to this inequality. It will also examine how even where bargaining has been successful, not all agreements have been comprehensive in their coverage, due primarily to a lack of bargaining power of particular categories of employees.

PARTIES' ABILITY TO GENUINELY BARGAIN

13. The most critical weakness of the Act in relation to bargaining is that there is **no requirement** for employers to bargain in good faith with their employees and reach workplace agreements with them. It is the IEU's experience that

only some workplaces were able to recover from the first wave of award simplification, and convert to certified agreements, with the exception of systems such as the Catholic systems in Victoria, ACT and the NT. This exception is predominantly due to the bargaining power that can be exercised by, for example, all union members in catholic schools as opposed to members in a stand alone non-systemic school. Further, only a handful of employers in the non-government education sector have initiated a bargaining process aimed at achieving a certified agreement. In almost every case, certified agreements have only been achievable through the strenuous efforts and determination of staff, with union support. Consequently, there is still a large group of employees in our industry who earn significantly less that their counterparts elsewhere, for the sole reason that their employers will not bargain with them.

14. It is a myth that all employers want to make agreements with staff. The overwhelming experience of many of our members who are still reliant on an award only is a refusal by their employer to enter into any industrial arrangements above their legal minimum obligations. It is the IEU's belief that the following have been key factors in workplaces in our industry that do not have a collective agreement:

- A professional concern about taking industrial action rooted in the belief that any such action, no matter how marginal may affect educational outcomes for students.
- A lack of genuine bargaining power – employers can simply refuse to enter into negotiations
- Stand alone workplaces are more isolated and individuals are more vulnerable about standing up to their employer over key issues such as industrial rights

- For the education industry the current system is needlessly adversarial in nature, with no remedy for employees to advance their claims other than through the taking of protracted industrial action[1]

15. A strong example of the above took place at a large independent school in Victoria this year. Until 1 January 2005, the school was award and agreement free. Terms and conditions of employment were a matter of private negotiation with staff by the Principal representing the School Council.

16. In 2004, in anticipation of increased union influence in the school once the common ruling of Victorian awards took effect, the school decided to introduce Australian Workplace Agreements (AWAs). Over 50 staff signed a petition calling on the school to enter into negotiations with the union for a certified agreement. There was broad concern amongst staff members about the suitability of AWAs within a school setting. Staff saw such an approach as being counter collegial, moving to a more individualistic approach in dealing with staff, and setting up arrangements which would contribute to a competitive and secretive working environment.

17. Members of staff both wrote and spoke with members of the School Council expressing their desire that the school enter into negotiations with the union for a collective agreement. This approach was rejected outright by the school. The union, with member support, sought the assistance of the AIRC at conciliation in order to advance negotiations. It was agreed that the union serve a proposal on the employer which it did, and which was again rejected outright by the employer.

18. Pressure was subsequently exerted on staff to sign AWAs - for example, staff who agreed to sign an AWA were offered far higher fee discounts for their children attending the school than those who wished the school to negotiate a Certified Agreement. The only way forward for the majority of employees who wanted a collective Agreement was for them to take industrial action because

[1] In any event the proposed public interest test for the taking of industrial action will effectively remove the only recourse many employees have to advancing a claim.

it was clear that the employer was not willing to bargain in good faith with the union for a collective agreement. The Workplace Relations Act provides for no remedy through the Commission for an employer to be required to enter negotiations – they can be currently encouraged to do so by the compulsory setting of dates but they can not be ordered to engage in the process of bargaining itself. This is an inherent weakness of the system.

19. The Federal Court has held that neither the offering of AWAs that were superior to the collective instrument, nor refusal to negotiate a collective agreement constituted prejudicial treatment on the grounds of trade union membership[2]. In the IEU's view, this clearly demonstrates the fact that the Workplace Relations Act is skewed disproportionately to the wishes of employers, and not to the expressed wishes of employees. It is not a fair go all round. Similarly, the Act allows employers to use lock-outs against employees in order to effectively "starve" them of their bargaining capacity and to accept only their conditions, in the form prescribed by them. This is clearly not good law, and is in contravention of international law.

20. In Victoria, the ACT and NT, where all employees are covered by the federal industrial system, there are now years of experience of how this system has not been able to comprehensively deliver fair outcomes for all employees. A reasonable comparator for example is NSW where the state award system is comprehensive for most of our sector. In NSW, non-government schools are all covered by state awards. Improvements to wages and conditions in most independent schools, for example, are negotiated centrally with the Association of Independent Schools, and the benefits won flow on to all schools. An employee can be confident working in an independent school that should she move, for example, to a small Steiner school in the country that her wages and conditions will be consistent. This confidence is vital for ensuring that rural and remote schools, special or small schools can continue to attract the best staff.

[2] BHP Iron Ore v AWU

21. By contrast, in the federal system, individual agreements must be negotiated with each school, and whilst the IEU has been successful in most large independent school and system settings of achieving agreements, there remain a number of independent schools where staff conditions are based on the federal award, and wages and conditions are considerably inferior. This is, in the IEU's view, an indictment on the failure to date of the federal industrial system in a profession whose hallmark is collective work and collegiality. It is the IEU's belief that the further changes to the industrial relations system will continue to widen the gap between the conditions and wages for employees who are covered by collective agreements, and employees who are not. Further, it is clear that the proposed changes seek to dismantle more generous, state based industrial systems and reduce the majority of Australian employees over time to little or no legislative protection or advancement in relation to their working lives.

22. A group of employees who remain substantially disadvantaged in comparison to their teaching counterparts are teachers in private ELICOS Colleges. This is a large, profitable, and growing industry in Australia that provides English language and bridging courses to overseas students yet has no peak employer body or consistent approach to wages and conditions for the teachers employed in it. In the ELICOS industry, a language teacher currently teaching, for example, in a South Australian ELICOS college would earn between $34,471 and $47,037, if they were reliant on the federal award only. If he or she were covered by a certified agreement (standard in NSW, rare elsewhere) they would earn approximately $10,000 more per annum. The disparity is obvious. The majority of employees who work in the ELICOS industry are reliant on the award system only. The majority of employees are casual or temporary and the turnover of staff is very high. One college surveyed by the IEU recently found that of the 19 staff, all but three were casually employed. This is not unusual.

23. The experience of many casual teachers in the ELICOS industry is that of a non-union workplace, a high turnover of staff, and very little control over

working conditions, in particular hours of work. The IEU made application in 2004 to vary the federal awards that that apply to this area of teaching in an effort to increase employment security and entitlements for casual and fixed term staff. The lack of union density in this area of our coverage would have made it impossible to achieve any outcome through bargaining as the majority of employers are openly resistant, if not hostile, to collective agreement making.

IMPORTANCE OF THE SAFETY NET

24. Adjusting the safety net through the current mechanism of the annual safety net review allows all classification levels to receive an increase, albeit weighted towards the lowest paid. It is the IEU's contention that this is appropriate and essential to preserve some element of wage security for our members who do not have the benefit of a collective agreement. It is also obvious that our members who are award reliant, many of them above the C10 classification, do not have a vested interest in staying in this position, whilst their employers do. It seems to be the Commonwealth's position that less emphasis on their needs would "encourage" them to bargain more effectively at the workplace. This is perhaps the most misinformed aspect of the much of the debate and rhetoric about bargaining and making agreements. Enterprise bargaining as an industrial instrument has failed to address the needs of many vulnerable employees. Removing their access to the award as a safety net, as proposed by the government, is a further punishment not an incentive.

25. It is also the IEU's experience that where enterprise bargaining does not occur, notwithstanding the fact that staff shortages may arise because of the low wages, employers will not increase the wages offered to employees. For example, in non-government child care centres in the ACT, federal award rates are paid to teachers in child care centres up to $15,000 per annum below agreement rates applying to teachers elsewhere. As a consequence, many centres are unable to attract highly qualified staff and do not have the industrial knowledge, experience or willingness to negotiate better rates of pay.

26. It is clear that income inequality in Australia is widening. One significant factor in this disparity is the gap between income levels as a result of bargaining and those determined at the award level. The ACTU's submission to this Inquiry provides detailed evidence of the profile of employees who are award reliant. They are employees who are more likely to be in casual or temporary employment, overwhelmingly in the private sector and in non-managerial positions, and predominantly women. This profile is accurate for casual ELICOS teachers and early childhood teachers in our industry.

27. It is of great concern to the union that the government's proposed review of awards will continue to weaken the rights of award-reliant employees in Australia. The people most in need of a safety net are categorized as somehow being better off as long as their conditions conform to the most minimal criteria. The relationship between further simplification of awards and the new, minimum standards that will be addressed through the appositely named Fair Pay Commission has also not been clearly addressed by any government spokesperson. If, as the IEU believes, the emphasis on Australian Workplace Agreements continues to be both promoted and legislated, it is clear that it is envisaged that awards are destined for the scrap heap. This will affect millions of Australian employees, and should be a source of shame rather than promotion.

28. The IEU reminds the Inquiry that there are a number of Bills lined up to be passed by Senate that have been rightly rejected, some several times. Some of them will be rolled into the omnibus legislation, some will stay as separate Bills. Despite the rhetoric of encouraging more flexibility, most of these Bill seek to weaken even further the bargaining capacity of employees – for example to be represented by their union[3], to take industrial action in support of their claims[4] . There is urgent need to halt the proposed industrial relations reforms and to critically examine how they will actually impact on the day to day lives of working Australians. As this submission has indicated, there is

[3] Workplace Relations Amendment (Right of Entry) Bill 2004
[4] Workplace Relations Amendment (Better Bargaining) Bill 2005

clear evidence already about how the current federal industrial relations system is producing divisions and inequities within the teaching profession.

SOCIAL OBJECTIVES – WORK AND FAMILY BALANCE

29. The Inquiry seeks to investigate whether the agreement making system has enabled employees to better balance their work and family responsibilities. It is clear from the preceding points made in this submission that where the IEU has the benefit of a collective approach to improving conditions, it has certainly campaigned effectively and achieved more equitable outcomes for its members. Paid parental leave is a feature of most agreements, as is more extended periods of unpaid parental leave than the existing federal award test case standard.

30. Test case standards contained in awards, however, have been critical in ensuring that for award-reliant employees there is underpinning legislation in respect to public holidays, parental leave, personal leave, redundancy entitlements, and carers' leave provisions. It is the IEU's belief that the proposed dismantling of awards, the abolition of the no-disadvantage test for agreements in Australia and the establishment of only five minimal standards is a retrograde step. It is difficult to imagine how Australian employees, particularly those in non-professional occupations, could possibly be any better off.

31. For many of our members and not just those with children, there remains an unmet need for more flexible yet enforceable provisions in respect to part-time work. Traditionally, primary schools have a better record of part-time and job-share provisions but it is the IEU's experience that many employers, particularly in the secondary school sector, remain opposed to more flexible work arrangements, citing administrative or timetabling complexities. In secondary school environments, the spread of hours offered to many employees seeking part-time work can make it financially not worth their while

to pursue. It is not unusual for employers to offer a 0.4 to 0.6 contract over 4 days, requiring 4 days of paid child care for the employee involved. The IEU regularly assists members whose employers have agreed to their request for part-time work, but offered it in an unmanageable and unreasonable structure. It is clear that the only legislative standard that the government intends to establish regarding hours of work is that of a 38 hour week. This will not assist any Australian employee in balancing work and family responsibilities.

32. As our profession ages, increasingly the IEU is aware of older members who need more time to care for, for example, aged or ill parents, and to work in lesser blocks of time for particular periods but still have the capacity to return to their full time work when the crisis is over. There is still not enough protection either in legislation or in agreements for such situations. The proposed five new minima for use in determining whether an agreement "passes the test" will clearly over time have a significant impact on the rights of employees in this area, as well as a host of others. The IEU believes that the proposed legislation could not pass any test of fairness and could never be classified as family-friendly. Employees in many workplaces will be exempt from any legislative redress if they are unfairly dismissed, or from redundancy payments if they are retrenched. Low income employees, who rely on shift allowances and penalty rates, face removal of these conditions. Casual employees are already afforded few rights under the federal system. The majority of casual employees are women.

33. The IEU made an extensive submission to the Standing Committee on Family and Human Services Inquiry into Balancing Work and Family, and refers this Inquiry to the key recommendations in relation to strengthening the Workplace Relations Act and improving the capacity of the Commission to actually require awards and agreements to contain effective and innovative provisions to assist workers to combine work with family responsibilities, including provisions relating to hours of work as well as broader policy recommendations that could be pursued by government.[5]

[5] Paras 13, 14 and 17, IEU Submission, Balancing Work and Family.

AUSTRALIA'S INTERNATIONAL OBLIGATIONS

34. The ACTU has detailed extensively in its submission to this Inquiry how Australia is currently breaching its obligations under ILO Conventions 87 and 98. These breaches generally are our nation's continued failure to:

- Promote collective bargaining, instead favouring individual bargaining over collective bargaining
- Allow the proper exercise of the fundamental right of a worker to strike
- Allow agreements to actually contain what has been negotiated by the parties, restricting them to "matters pertaining".
- Allow agreements to be negotiated at an industry level
- Create a level playing field and allow real choice in agreements, opting instead to favour one level of agreement making, Australian Workplace Agreements, over every other form.

35. Education International (EI), an international trade union federation of more than 29 million teachers and education staff across 166 countries, wrote to the Prime Minister on July 18, 2005 expressing its condemnation of the fact that collective contracts in universities and proposed Australian Technical Colleges would now have to contain a clause giving precedence to individual bargaining, a clear breach of ILO Convention 98. That such conditions are a condition of funding is deplorable.

36. It should be a source of serious concern to this Inquiry that a democratic country such as ours has for nearly ten years now been flagrantly breaching international labor conventions with no expressed commitment to changing its position.

CONCLUSION

37. In conclusion, the IEU urges this Inquiry to consider how the proposed industrial “reforms” will actually impact on Australian employees’ day to day lives. The proposed reforms will not give employees any capacity to balance work and family commitments, to negotiate agreements collectively, to have a fair safety net underpinning their work conditions, to have legislative redress if they are unfairly dismissed, and to have any power in pursuing valid and reasonable work claims through the taking of industrial action. The concept of a “fair go all round” which has already been significantly weakened in the last 10 years of changes to the Workplace Relations Act, is on the verge of being dismantled totally. This should be of concern to every Australian, but of most concern to those elected and charged to responsibly lead our nation. The IEU urges you to reject legislation which further undermines the collective bargaining rights of Australian workers.