Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Inquiry into Workplace Agreements

Submitter: Mr Grahame McCulloch
General Secretary

Organisation: National Tertiary Education Union (NTEU)

Address: 120 Clarendon St
South Melbourne VIC 3205

Phone: (03) 9254 1910

Fax: (03) 9254 1915

Email: pkniest@nteu.org.au
Paul Kniest (Policy and Research Officer)

National Tertiary Education Union (NTEU)

Submission

Senate Employment, Workplace Relations and Education Committee

Inquiry into Workplace Agreements

1 Introduction

The NTEU represents approximately 28,000 staff employed at Australian Universities. NTEU welcomes the opportunity to make a submission in relation to the Government's proposed workplace relations reform agenda, especially since the Government has singled-out the higher education sector with the intended introduction of the Higher Education Workplace Relations Requirements (HEWRRs) legislation in the later half of 2005.

Agreement making is quite a different scenario in 2005 than that envisaged in the 1980's and 1990's at the time of the development of the Industrial Relations Act 1988 and the current Workplace Relations Act 1996. Although wages, allowances and basic conditions are still the matter of much contention, the current system has moved even further to denying employees the rights once assumed. These include matters such as the form of Agreement (collective or individual) and the plethora of issues that affect groups of workers, which can hardly be negotiated individually. In the higher education sector for example, it is nonsensical to think that individuals have the capacity to negotiate appropriate provisions for academic freedom and student to staff ratios, both of which are critical in maintaining the integrity and quality of Australian higher education.

This submission addresses a number of the aspects covered by the Inquiry's terms of reference, and where appropriate makes specific reference to the higher education sector.

2 Terms of Reference

Whether the objectives of various forms of industrial Agreement making, including Australian Workplace Agreements, are being met and whether the Agreement making system, including proposed federal government changes, meet the social and economic needs of all Australians, with particular reference to:

a. the scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive Agreements;

b. the capacity for employers and employees to choose the form of Agreement making which best suits their needs;
c. the parties' ability to genuinely bargain, focusing on groups such as women, youth and casual employees;
d. the social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities;
e. the capacity of the Agreement to contribute to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards; and
f. Australia's international obligations.

3 The Government's Workplace Relations Agenda

The Government's rhetoric in relation to the rationale for its workplace relation's reform agenda is:

> *to ensure high productivity, increased wages, choice and flexibility*[1]*.*

NTEU contends that this is not the Government's real agenda. It appears that the Government's real agenda in relation to agreement making is to reduce the rights and bargaining power of Australian workers and their unions. We believe this to be the case because the effect of the Government's legislation, proposed for October 2005, will be to:

- undermine the minimum wage safety net by replacing the Australian Industrial Relations Commission (AIRC) as the body with responsibility for setting minimum Award rates of pay with a Fair Pay Commission, which is to be headed by a Government appointed business leader,
- effectively make the current No-Disadvantage Test meaningless by replacing the already simplified set of minimum entitlements in Awards with five base minimum standards,
- allow employers to offer employees "take it or leave it" individual contracts without any obligation to negotiate their content and without the current No Disadvantage Test to ensure minimum standards, and
- deny employees the right to be covered by a union negotiated collective Agreement, even where this is wish of the majority of employees.

In a recent radio interview about the Government's Workplace Relations reforms, the Prime Minister specifically failed to rule out the possibility that some Australian workers would suffer from a loss of pay as a result of his Government's policy when he said:

> *I'm not going to make the mistake of purporting to guarantee the take-home pay of every single individual amongst the 10 million workforce in Australia is not going to change.*[2]

The proposed changes are based on the underlying rationale behind the introduction of the *Workplace Relations Act 1996,* which claimed to give employers and

[1] Department of Employment and Workplace Relations (26 May 2005) **Workplace Relations Reform** http://www.workplace.gov.au/workplace

[2] Transcript of the Prime Minister the Hon John Howard mp interview with Alan Jones radio 2GB, Sydney 4 August 2005

employees the freedom and choice to make Agreements, either collective or individual (including AWAs) that best suited both parties circumstances.

4 Agreement Making System

4.1 Form of Agreement

The Government argues that the needs of employers and employees are being met because they may freely enter into the Agreement form of their choice. The bargaining power relationship however, is not equal – while an employer may offer a job, an employee's rights are essentially limited to refusing to accept the job.

The 1997 decision to remove mechanisms such as the requirement to 'bargain in good faith' and the unilateral right of an employer not to enter into a particular form of Agreement, or any Agreement at all, has effectively strengthened employers' bargaining power considerably. The first hurdle employees must overcome is to convince their employer to have an Agreement, and only then consider what form that Agreement should be. It is not uncommon for employers to deny the right of its employees to have a collective Agreement. In some cases, even the independent mediator, the Australian Industrial Relations Commission, has observed that the only method employees have to achieve a collective Agreement is to 'force' the employer to negotiate a collective Agreement through the use of industrial action. Current examples such as the Boeing dispute in Williamtown, NSW provides a timely reminder of employers' powers under current arrangements. In essence Boeing has locked-out its employees at Williamtown Airbase because they refuse to enter into AWAs, who are seeking to negotiate a Collective Agreement instead.

It is a moot point that the right to bargain collectively cannot be exercised individually. As far as the NTEU can identify, Australia is the <u>only</u> country in the world where the employer can make it a condition of offer of employment that the employee give up his/her right to collectively bargain.

Australian Workplace Agreements (AWAs) are often used as a tool to undermine the collective capacity of employees to negotiate fairly and freely. Evidence shows that AWAs have been used as effective mechanisms:

a) To erode Award conditions providing a single wage or more flexible (employer-minded) working conditions. This has been primarily allowed through the ineffective application of the No-Disadvantage Test by the OEA. This is most often the case for the low-paid and marginalised employees who fall under general Award conditions and particularly those who recently fell under the common-rule Awards.

b) To undermine the capacity for employees to negotiate collectively, particularly within a union. There are examples in many industries where employers induce individual employees with higher salaries to sign AWAs where their union is not involved in the negotiations. This mechanism undermines the capacity of employees to negotiate collectively for common standards and ideals.

c) In instances where the Government directly links funding with its industrial relations and other policy agendas, to appease that rapacious Government attempting to achieve the goals of a) and b).

Point c) above is of particular concern to the NTEU, and potentially to other unions with an interest in industries that rely heavily on Commonwealth funding. The introduction of the 2005 HEWRRs has placed new and greater demands on universities, which includes the particular requirement to offer all current and new staff AWAs.

4.2 Higher Education Workplace Regulation Requirements (HEWRRs)

Further, there is a broad range of stipulations about what may or may not be included in HEWRR compliant Agreements. These are not mere recommendations but requirements and if they are not met, universities face the prospect of losing up to $280m of government funding over the next two years. As such, it is clear that the Government rhetoric that employers and employees should be able to enter freely into Agreements is patently untrue, particularly in the case of Australian universities. What is clear is that where the Commonwealth can impact upon the negotiation of actual Agreements, it has demonstrated a preparedness to extend its ambit beyond the 'free agreement making' rhetoric, to set about achieving its policy agendas.

A number of aspects of HEWRRs go beyond the scope of the current Workplace Relations Act 1996, and NTEU is concerned, that if implemented successfully in the higher education sector, they may be applied more broadly, through amendments to the Act. Under HEWRRs, where there is inconsistency between the provisions contained within an AWA and a collective Agreement, the AWA must prevail. In other words, the only reason employers would find it beneficial to offer an employee an AWA instead of coverage by an existing collective Agreement is because the AWA provides lesser pay and or conditions than the collective Agreement.

HEWRRs also restricts the scope of what can be covered by collective Agreements. Collective Agreements will not be able to limit the nature of employment offered to employees. In the higher education sector, existing Enterprise Agreements place limits on levels of casual and fixed term employment. These limits afford some protection to relatively vulnerable employees, however they are explicitly prohibited under HEWRRs.

HEWRRs also remove a union's direct right to be a party to the workplace relations processes at the workplace. That is, the Government wants to exclude 'third parties' (for which you can read Unions) from any role in consultation. Union involvement would only occur at the request of an affected employee, not by right. Union representatives would also be removed from disciplinary, consultative and managing change committees.

AWAs create a much more burdensome administrative regime whereby employers must individually offer, negotiate, and lodge an industrial instrument. Large employers such as Australian universities will feel this administrative burden much more heavily than smaller employers.

The collective Enterprise Bargaining Agreements (EBAs) at universities are the only mechanisms by which issues such as academic freedom can be assured and enforced within the Australia higher education sector. The current agreement making system, the proposed Government changes and the recently announced HEWRRs, all undermine the capacity for university employees to ensure academic freedom and their autonomy to maintain the quality of their teaching and research.

4.3 Workplace Productivity Programme (WPP)

In addition to HEWRRs, the Government has also recently produced an issues paper in relation to guidelines for a Workplace Productivity Programme (WPP). The WPP has total funding of $83m over three years commencing in 2006 and will allow Australian universities to bid for funding to introduce programmes that review or reform management, financial or human resource practices.

A Government Issues Paper on the WPP[3] also identifies a substantial challenge for the higher education sector as being "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".

This is despite the Government having spent the past decade condemning outdated concepts such as comparative wage justice as relics of a centralised wage system. It is ironic to see the same Government invoking the very same concept (comparative wage justice) to suggest that conditions of employment in higher education are too high, simply because they are better than in some other industries, which is precisely the outcome that decentralised agreement making was intended to produce.

WPP will fund universities to introduce policies and procedures that will encourage:

- increased levels of casual employment at universities,
- teaching-only academic positions,
- making it easier for university management to hire and fire university staff through increased managerial prerogative,
- "automated systems" that make it easier for universities to offer AWAs; and
- increased levels of individual staff accountability through closer monitoring of staffing needs and workloads.

In addition the WPP will allow universities to engage external consultants to provide advice on rationalising course offerings and staffing needs.

4.4 Australia's International Obligations

Australia has a number of important international obligations covering not only workers rights and entitlements, but also the governance of and role of staff in higher education.

The UNESCO, ***Recommendation Concerning the Status of Higher-Education Teaching*** is highly relevant when considering Australia's international obligations with respect to the higher education sector. Academic freedom is a defining and essential characteristic of higher education staff. The recommendation says:

> *"…all Higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They*

[3] *Higher Education Workplace Productivity Programme Discussion Paper* [www.dest.gov.au]

should not suffer any penalties simply because of the exercise of such rights."[4]

Academic freedom is often associated with, and seen to be essential to, the concept of institutional autonomy. Clause 17 of the UNESCO Recommendation refers to institutional autonomy as:

> "*that degree of self-government 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, and respect for academic freedom and human rights*"[5] .

University autonomy shapes the relationship between government, society and the university. It upholds protection from arbitrary or politically motivated intervention.

Freedom to carry out research and the obligation to publish, lie at the heart of academic freedom. They constitute, at all levels - individual, departmental and institutional - the bedrock on which public recognition of excellence and scholarly achievement rest.

The introduction of the Government's workplace reform agenda, and in particular HEWRRs, threaten the process of Agreement making itself, and thus undermine both institutional autonomy and academic freedom. As such these reforms will devalue the role that Australian universities and their staff, play in our society.

In many countries, protections for individual academic freedom, as well as the role of universities as critic and conscience of society, are entrenched in the legislative arrangements of universities. In Australia, enforceable rights in relation to these matters only arise through collective EBAs. Most NTEU Agreements recognise and establish the right and obligation of staff to freely exercise their rights to be able to speak publicly, including to express controversial or unpopular views.

These rights are made real (rather than merely being declared) by procedures that recognise that staff may only be dismissed for proven misconduct or unsatisfactory performance, with a right for the employee to be heard. The use of AWAs which deny these rights, or the HEWRRs, which are being used as a pretext by some employers to seek to remove these rights, undermine the essential character of university employment.

NTEU also believes that some aspects of this legislation may also put Australia in breach of its international obligations and potentially be in contravention of Article 7 of the United Nation's ***International Covenant on Economic, Social and Cultural Rights***[6], which reads:

> *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*

---

[4] UNESCO, Recommendation concerning the Status of Higher-Education Teaching Personnel, adopted by the General Conference at its 29th session, Paris, 21 October-12 November 1997, pp 10-11.
[5] Ibid p 7
[6] http://www.ohchr.org/english/law/cescr.htm

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

We are also concerned that these criteria contravene existing International Labour Organisation (ILO) standards as outlined in Convention No. 87 (Freedom of Association and Protection of the Right to Organise), Convention No. 98 (Right to Organise and Collective Bargaining) and Convention No. 154 (Collective Bargaining). These international standards are important given Australia's prominent engagement with teaching and research in the global context.

Therefore, the NTEU is strongly opposed to the new legislation as foreshadowed, because the evidence shows that the introduction of individual contracts will allow employers to exploit those Australian workers and their families who are the most vulnerable and have the least bargaining power in our society and may well be in breach of Australia's international obligations.

5 The Higher Education Sector

5.1 Enterprise Agreements

According to the latest Department of Education, Science and Training[7] data, Australian universities had over 90,000 full-time equivalent employees in 2004 when casual employees are included. Individual Australian universities are large employers with the number of employees ranging from about 300 at the University of the Sunshine Coast to over 6,000 at the University of NSW. From the analysis of the overall pattern of coverage of the types of employment Agreements in the Australian economy in Attachment 1 it is not surprising that registered collective Agreements are predominant in the higher education sector which are typical amongst large employers and in the public sector.

The vast majority of Australian universities' employees are covered by registered Enterprise Bargaining Agreements (EBAs) that have been negotiated between employers, the NTEU and other unions representing employees in the sector. The NTEU argues that these Agreements have served our members and the sector well and the current push by the Government to have AWAs and other reforms introduced into the sector is both unnecessary and inappropriate.

[7] See DEST Selected Higher Education Statistics (www.dest.gov.au)

Much of the Government rhetoric in relation to AWA's is that they allow both employers and employees greater flexibility and choice in relation to working arrangements with a view to increasing productivity. The reality in higher education however, is that there is already a high degree of flexibility in employment arrangements and high rates of productivity growth. Significant numbers of employees at all university are covered by individual employment contracts consistent with, but providing specific conditions at variance from the collective registered Agreements. The important point to note here is that the vast majority of these individual contracts are underpinned by the terms and conditions of EBAs. Under these circumstances individual contracts effectively equate to above-EBA conditions. Universities therefore, already have the scope and opportunity to offer their staff individual contracts.

The point about the AWAs that the Government wishes to introduce into the sector is that they will specifically prevail over existing EBAs. Therefore, the only advantage employers will have in offering AWAs to higher education sector employees is where they could be used to undermine the pay and conditions contained in EBAs.

The Government seems keen to allow universities to be able to exercise more managerial prerogative in relation to managing under-performing staff. Clearly the Government is concerned about the notion of academic 'tenure'. Several points need to be made in relation to this issue. Firstly, all university Enterprise Agreements contain *managing-for-performance* clauses which set out procedures not only to identify but provide processes for managing under-performing staff, and therefore university management already has the capacity to deal with this issue. Secondly, as outlined in the previous section, the principle of academic freedom is a defining characteristic of universities and tenure is essential to guarantee academic freedom.

NTEU would argue that collective Agreements have served the higher education sector well since they were introduced in mid-1990's. Figure 1 shows that student:staff ratios at Australian universities increased by almost 40% between 1995 and 2003. Labour market economists would equate this to an increase in productivity and efficiency in the higher education sector. This has been achieved at a time when registered collective Agreements have been in place. Figure 2 shows that research outputs[8] per teaching and research staff member have increased by over 60% over the same period, another indicator of increasing productivity in the higher education sector.

These rapid increases in the number of students per staff member and research output have occurred in a period of real cuts in government expenditure per student in higher education. As a consequence staff are faced with increasing workloads and stress levels in order to maintain to the quality education and research undertaken at Australia's universities. These increasing workloads have been addressed in the latest round of enterprise bargaining, and NTEU fears that one reason universities may elect to offer AWAs to new employees is to circumvent these conditions. Clearly, workloads are a collective as well as individual issue and therefore, collective Agreements are needed if workloads are to be effectively regulated and as a consequence the quality of university education is to be maintained.

[8] Research outputs include books, book chapters, and refereed journal and conference articles or papers.

Figure 1: Student to Staff Ratio 1995 to 2003

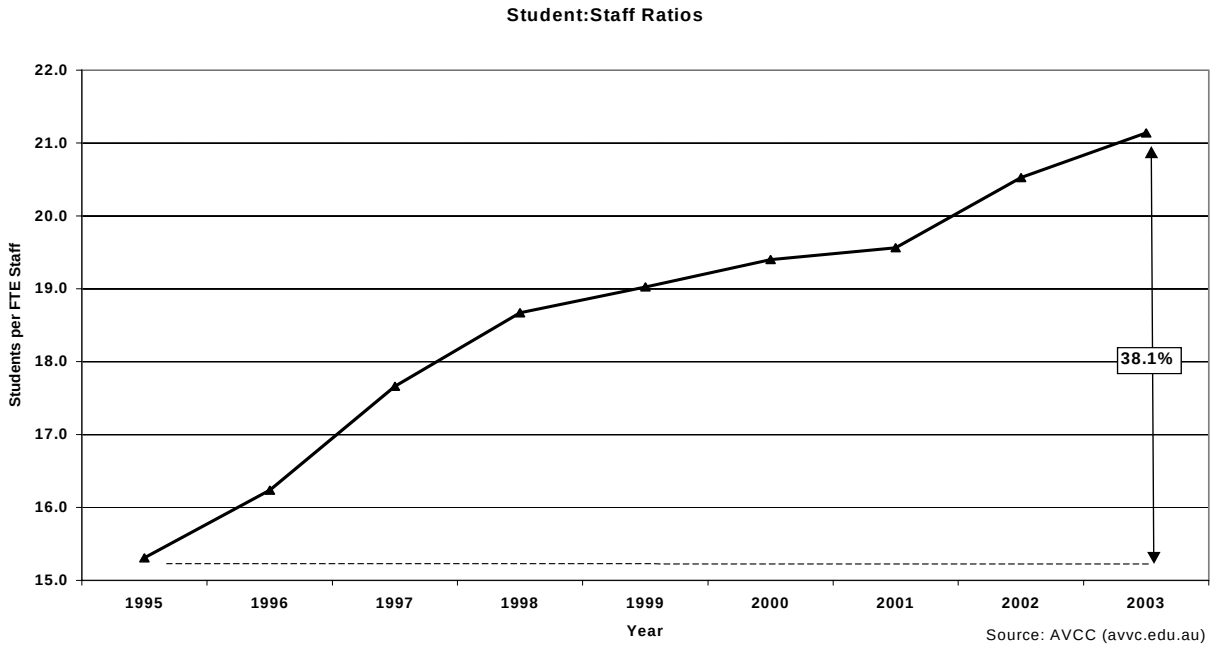
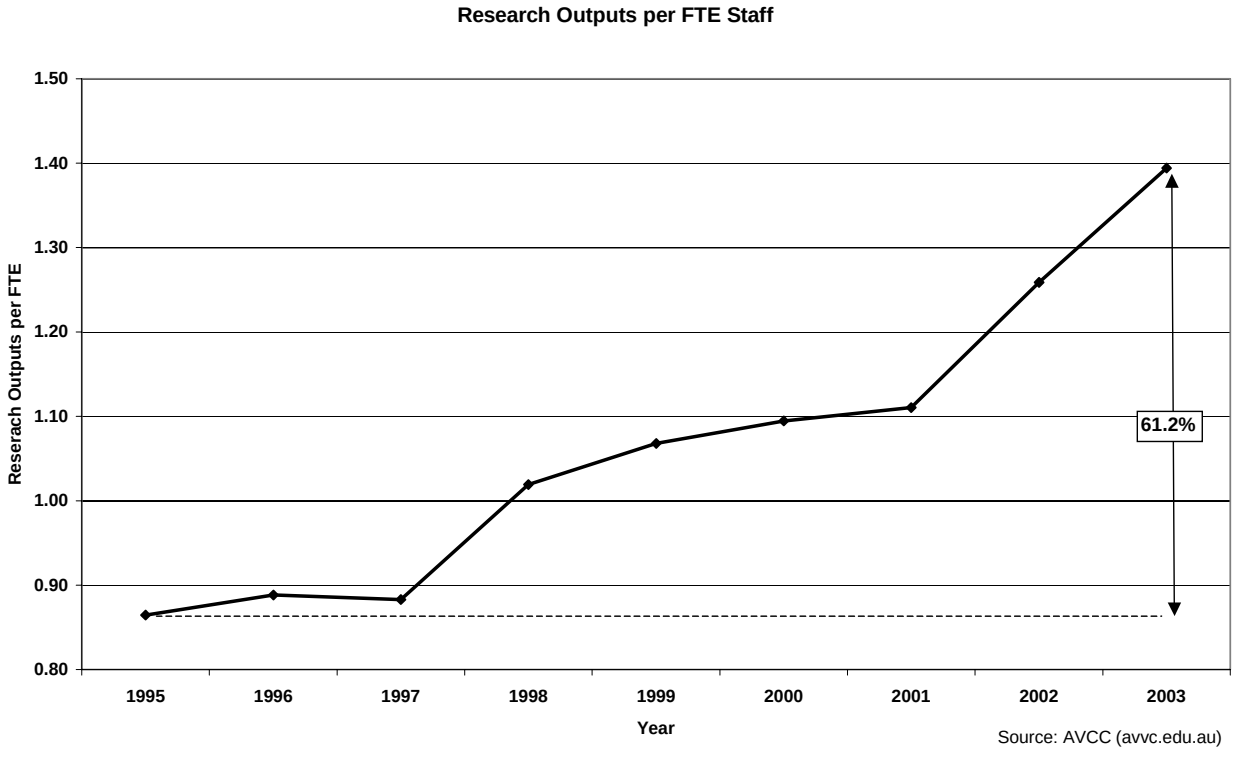


Figure 2: Research Outputs per Full-Time Equivalent Staff Member 1995 to 2003



5.2 Nature of Employment

NTEU is particularly concerned that university management will offer AWA's with reduced pay and conditions to university workers with the least bargaining power. There may be a common misapprehension that most university employees will be highly educated professionals with relatively strong bargaining power. The reality however, is that less than half university employees are classified as research and teaching staff (see Table 1) while the other half is comprised largely of support and administrative staff. The evidence presented in Attachment 1 shows that while professional and managerial employees might be in a position to benefit from individual Agreements, this not the case for other employees with less bargaining power.

Table 1: Full Time Equivalent (FTE) University Staff 1995 to 2004

Year	All Teaching and Research Staff	Other Staff	Total	Teaching and Research % Total
1995	33,675	37,829	71,504	47.1%
1996	34,059	38,644	72,703	46.8%
1997	33,017	37,664	70,681	46.7%
1998	32,157	37,417	69,574	46.2%
1999	31,873	37,379	69,252	46.0%
2000	31,848	37,693	69,541	45.8%
2001	32,343	38,281	70,624	45.8%
2002	32,953	39,987	72,940	45.2%
2003	33,851	41,704	75,555	44.8%
2004	35,124	43,065	78,189	44.9%

Source: DEST Higher Education Selected Statistics (www.dest.gov.au)

Also from the analysis of types of Agreements contained in Attachment 1 it is evident that individual Agreements are far more likely to be offered to part-time or casual employees. Table 2 shows that permanent part-time and casual employees make up about one-quarter of all university employees. The data in Table 2 actually under represents the importance of casual employees in the higher education sector because the data is for full-time equivalent employees and not the actual number of employees. While data on the actual number of casuals is not available, estimates have suggested that at least half of the actual numbers of people who work at Australian universities are engaged on a casual basis.

Table 2: Share of FTE Employees by Work Contract

Year	Full-Time %	Permanent Part-time %	Estimated Casual %	Total
1995	79.7%	8.9%	11.5%	100%
1996	78.7%	9.0%	12.3%	100%
1997	77.1%	9.7%	13.2%	100%
1998	76.3%	10.3%	13.3%	100%
1999	75.7%	10.0%	14.3%	100%
2000	74.8%	9.7%	15.5%	100%
2001	73.7%	10.6%	15.7%	100%
2002	73.5%	11.0%	15.5%	100%
2003	74.2%	10.4%	15.5%	100%
2004	74.4%	10.7%	14.9%	100%

Source: DEST Higher Education Selected Statistics (www.dest.gov.au)
Table 3 shows that females employees are over-represented amongst casual and permanent part-time employees. While about 80% of male university employees are full-time, less than 70% of female employees fit into this category.

Table 3: Share of FTE Employees by Work Contract by Gender 2003

	Males	Females	All
	Full-time		
No. FTE	**34,876**	**31,425**	**66,301**
% Share	80.9%	68.7%	74.6%
	Permanent Part-time		
No. FTE	**2,309**	**6,945**	**9,254**
% Share	5.4%	15.2%	10.4%
	Actual Casual		
No. FTE	**5,925**	**7,362**	**13,287**
% Share	13.7%	16.1%	15.0%
	Total		
No. FTE	**43,110**	**45,732**	**88,842**
% Share	100.0%	100.0%	100.0%

Source: DEST Higher Education Selected Statistics (www.dest.gov.au)

Table 4 shows that about one-third of all university employees are on fixed-term contracts. It also shows that this proportion has declined steadily since 1995, primarily as a result of the Higher Education Contract Employment (HECE) Award, which effectively restricts the categories of employees that can be covered by fixed-term contracts of employment. Table 5 shows that the impact on this has been greatest amongst female employees. In 1997 (the year before HECE was introduced) 41.7% of all female employees were on fixed-term contracts and this had fallen to 30.4% by 2004. The HEWRRs legislation will lift the restriction of the use of fixed-term contracts and NTEU is concerned that universities will be making increased use of fixed-term individual contracts to new employees, which based on past patterns is likely to have greatest impact on female employees.

NTEU is concerned that if AWA's are forced upon universities, it will be casual, part-time and employees on fixed-term contacts, that is those groups of relatively vulnerable staff, whom are most likely to be exploited and offered individual Agreements and as a result suffer from reduced pay and conditions. Based on the data this means females employees are likely to be over represented and a consequence the changes will further widen any gender gaps that currently exist.

Table 4: Proportion of Employees (FTE) by Term of Contract

Year	Tenure	Fixed Term Contract	Other
1995	63.6%	34.6%	1.8%
1996	62.4%	35.9%	1.7%
1997	60.4%	37.9%	1.7%
1998	58.8%	40.7%	0.5%
1999	65.5%	34.2%	0.3%
2000	69.4%	30.3%	0.3%
2001	70.3%	29.4%	0.3%
2002	70.5%	29.2%	0.3%
2003	70.5%	29.2%	0.3%
2004	70.1%	29.6%	0.3%

Source: DEST Higher Education Selected Statistics (www.dest.gov.au)

Table 5: Term of Contract by Gender 1997 and 2004

	Males	Females	All
Tenured			
1997	23,770	18,900	42,670
% Share	63.8%	56.5%	60.4%
2004	27,076	27,766	54,842
% Share	71.0%	69.3%	70.1%
Fixed Term			
1997	12,827	13,956	26,783
% Share	34.5%	41.7%	37.9%
2004	10,944	12,198	23,142
% Share	28.7%	30.4%	29.6%
Other Term			
1997	633	595	1,228
% Share	1.7%	1.8%	1.7%
2004	96	110	205
% Share	0.3%	0.3%	0.3%
TOTAL			
1997	37,230	33,451	70,681
% Share	100.0%	100.0%	100.0%
2004	38,116	40,074	78,189
% Share	100.0%	100.0%	100.0%

Source: DEST Higher Education Selected Statistics (www.dest.gov.au)

6. Conclusions and Recommendations

NTEU contends that the Government's proposed industrial relations changes are unnecessary and unwarranted both in the broader Australian community and within the higher education sector in particular through HEWRR. The NTEU is particularly concerned that the proposed changes will effectively:

- remove unfair dismissal laws for al employees working for organisations with fewer than 100 employees,
- undermine the minimum wage safety net,
- effectively make the current No-Disadvantage Test meaningless,
- allow employers to offer employees "take it or leave it" individual contracts, and
- deny employees the right to be covered by a union negotiated collective Agreement, even where this is wish of the majority of employees.

The reforms give employers unprecedented power in determining the type of employment Agreement governing their employees' wages and conditions. The changes will not give employees a genuine choice in determining the type of Agreement they would prefer to be covered by. The evidence on the coverage of and impact of individual Agreements to date (Attachment 1) provides a strong indication that employers will attempt to use individual contracts amongst workers with the least bargaining power including part-time and casual employees, workers employed by small employers, and female employees. The evidence also shows that for non-managerial employees, individual Agreements result in lower pay and worse conditions.

For the higher education sector, the Government's proposed changes go even further and have more severe implications. In the higher education sector the offering of individual employment Agreements or AWAs has the potential to undermine academic freedom and the ability of workers to regulate their workloads and as a consequence threaten the quality of learning, teaching and research undertaken at Australian universities. NTEU's recommendations in relation to the HEWRRs will be addressed in our submission into the Senate Inquiry addressing these issues specifically.

Finally the NTEU believes that the proposed reforms will be in breach of Australia's international obligations both in respect of workers rights but also in relation to the higher education sector.

The failure of the Prime Minister or the Minister for Employment to assure the Australian public that no Australian employee will be worse off under the new legislation provides further proof that these changes have the potential to have detrimental effects on the pay and conditions of Australian workers and their families.

NTEU is strongly opposed to the introduction of both HEWRRs and the proposed changes to the workplace relations legislation more generally. However, in the inevitable likelihood that these reforms are pushed through the Senate, NTEU recommends that the following minimum protections be included:

1. Employees are given a genuine choice in the type of Agreement covering their pay and conditions of employment.
2. Employees are given the choice of insisting on being covered by a collective Agreement.

3. That employees have the right to negotiate the terms and conditions of their employment Agreement, whether that be a collective or individual Agreement, or in other words make it illegal for employers to make a “take it or leave it” offer of employment.
4. Employees maintain the right to be represented by their union in negotiating collective Agreements.
5. Unions’ direct right to be participate in workplace relations be protected.

At the very least, existing limitations on AWAs be preserved, that is an AWA cannot prevail over an existing collective Agreement during the normal life of that Agreement.

Also, where there is an existing collective Agreement, that all new employees must be given the choice of being covered by that Agreement.

Attachment 1

Coverage of Different Types of Employment Agreements in the Australian Economy

Note: Unless elsewhere specified the source of the data presented in this Attachment is ABS Cat No.6306.0 ***Employee Earnings and Hours, Australia.***

Despite the Howard Government's insistence that registered or certified individual contracts, including AWA's, are a superior form of employment contract between employers and employees, Australian Bureau of Statistics (ABS) data shows that as at May 2004 only 2.4% of all Australian employees had their conditions of employment and pay set by registered individual Agreements (Table A1). As at May 2004, the most common form of employment contract was a registered collective Agreement, which covered 38.3% of all employees and 91.8% of employees in the public sector. While individual contracts covered more employees in the private sector, the vast majority of these contracts were unregistered (38.5%) compared to registered individual contracts that only accounted for 2.6% of private sector employees.

The other telling statistic that Table A1 reveals is that while the vast majority of employees whose pay and conditions are covered by collective Agreements are registered (38.3%) compared to unregistered (2.6%), the opposite is true for individual Agreements where only 2.4% of employees are covered by registered Agreements compared to 31.2% covered by unregistered Agreements. Therefore, where employees and employers enter into individual Agreements, the data show that for over 90% of these employees their Agreement will not be registered. This might be problematic for these employees in the case of any disputes that may arise in relation to the terms and conditions of their employment contracts.

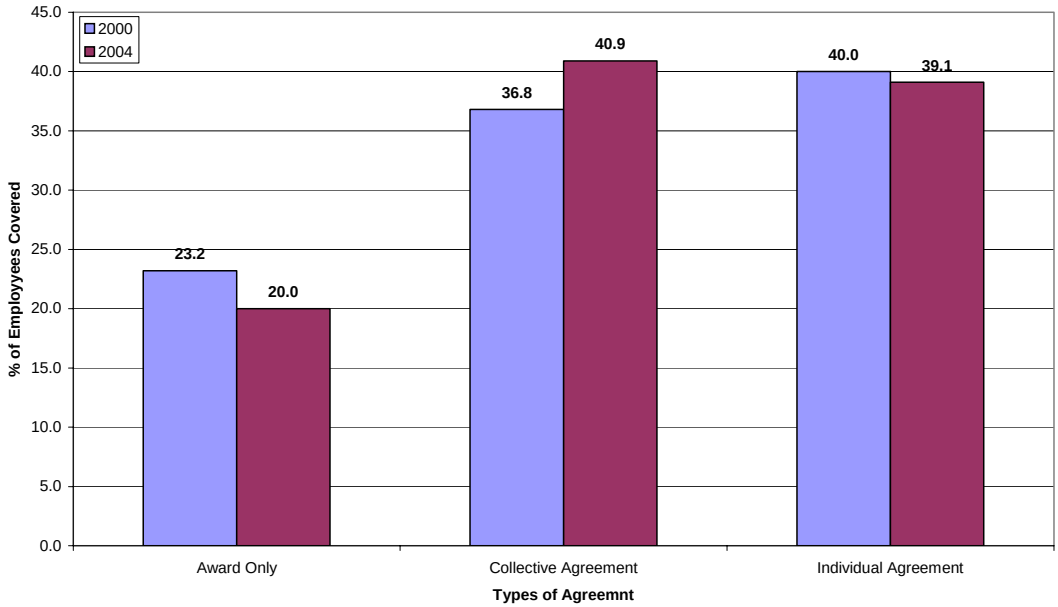
Table A1: Percentage of Australian Employees by Type of Employment Contract Private and Public Sectors, May 2004

	Award Only	COLLECTIVE AGREEMENTS		INDIVIDUAL AGREEMENTS		Working Proprietor	All Methods
		Reg	Unreg	Reg	Unreg		
Proportion of Employees Covered by Type of Agreement (%)							
Private Sector	24.7	24.2	3.2	2.6	38.5	6.9	100.0
Public Sector	2.3	91.8	0.4	1.8	3.7	n.a	100.0
Total	20.0	38.3	2.6	2.4	31.2	5.4	100.0

One way of gauging the popularity, from either employees or employers or both points of view, is by looking at changes to the proportion of employees covered by these different types of Agreements. Figure A1 shows the proportion of employees covered by Awards only, collective Agreements and individual Agreements for both May 2000 and May 2004. As Figure A1 shows while the proportion of employees covered by collective Agreements has increased, the proportion covered by Awards and individual Agreements declined over the same period. Therefore, it appears that as employees move from Award only conditions of employment they are more likely to be covered by a collective Agreement than move onto an individual Agreement. This might suggest that both employees and their employers prefer collective Agreements to individual Agreements.

Figure A2 shows the proportion of employees in various industry sectors covered by collective Agreements and individual Agreements for both May 2000 and May 2004. As the data shows, education has the second highest coverage of all industry sectors, second only to Government Administrational and Defence. Figure A2 is also interesting in that it shows that for the vast majority of industry sectors the proportion of employees covered by collective Agreement increased between 2000 and 2004 and this was certainly the case for education. The only two sectors to experience significant declines in the proportion of employees covered by collective Agreements were business and finance services, and communications.

Figure A1: Changes in proportion of employees covered by different types of Agreement.



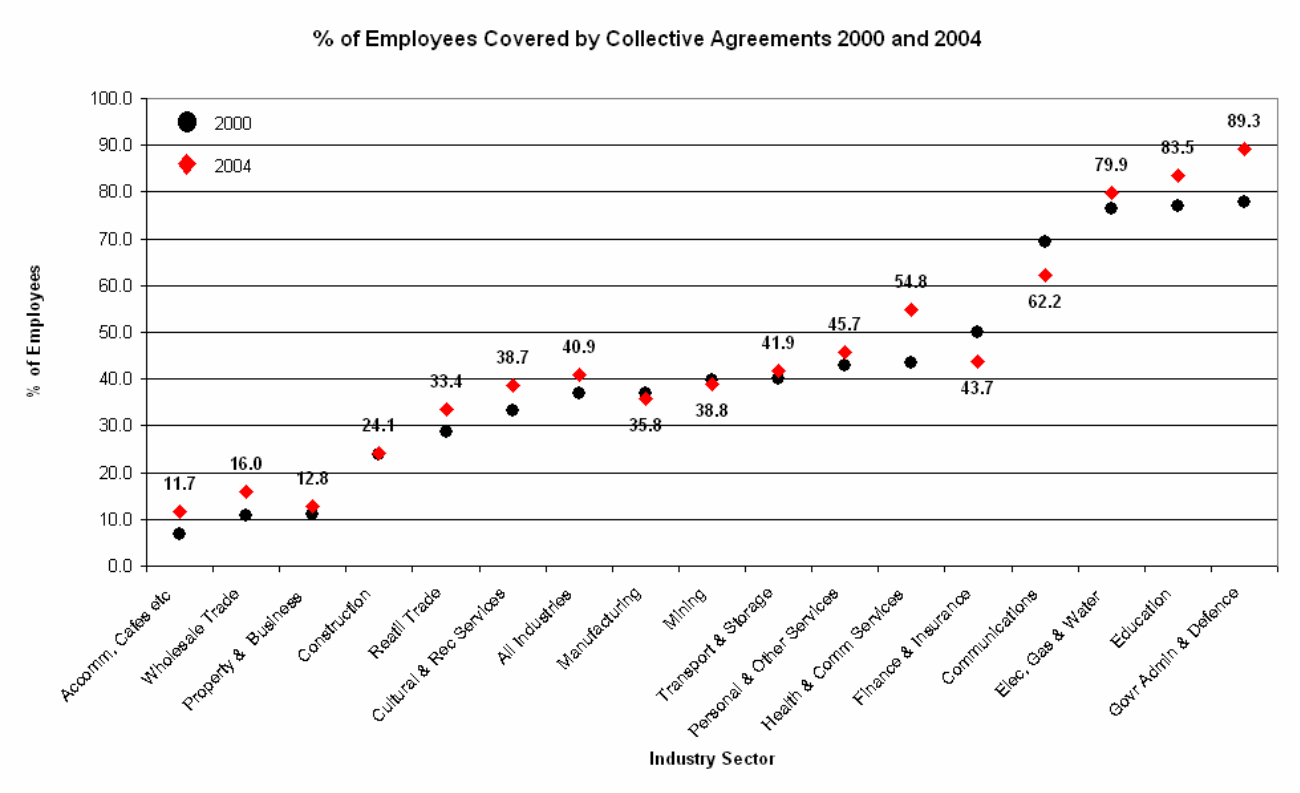
Likelihood of being covered by an individual Agreement

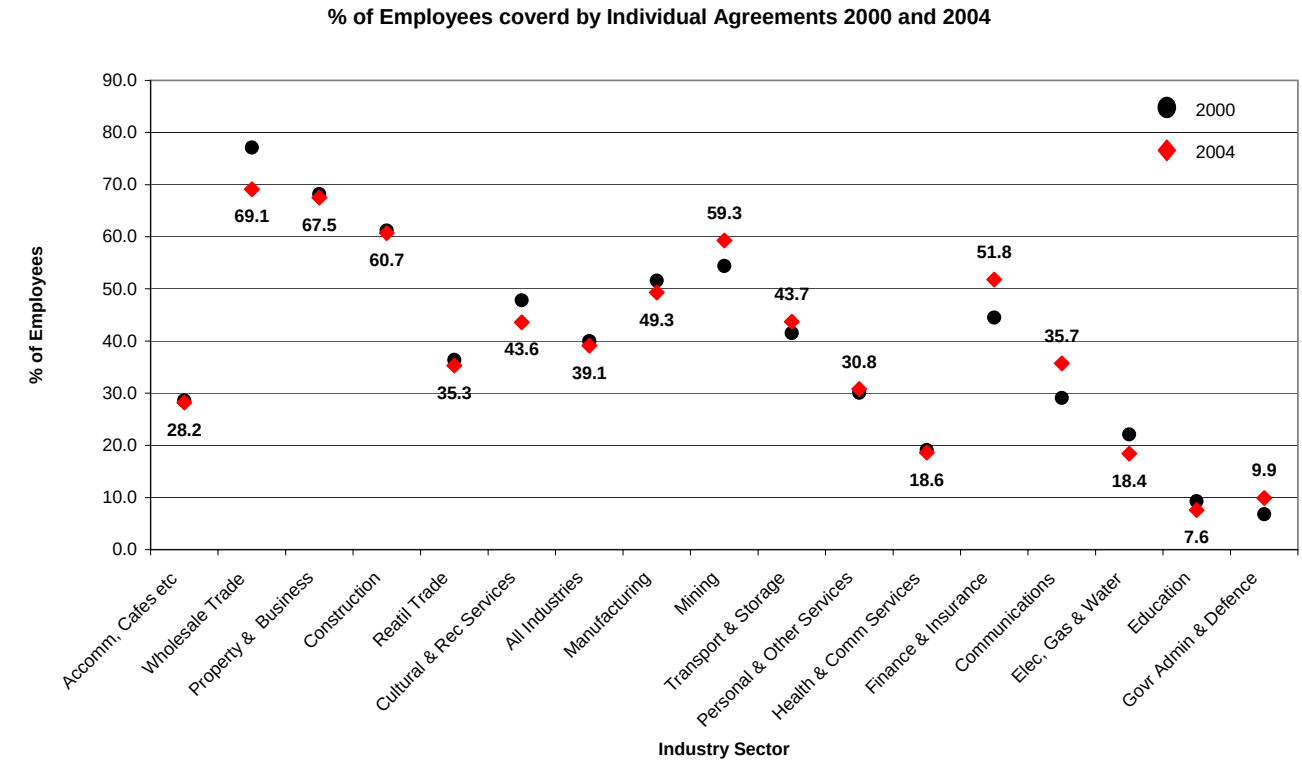
As the data below shows, the likelihood of whether or not employment conditions will be covered by and individual Agreement or a collective Agreement is determined by:

- the industry you are employed in,
- the size of your employer,
- your occupational status,
- the nature of your employment, and
- your gender.

In terms of the proportion of employees covered by individual Agreements, the data presented in Figure A2 show that they are most important in the wholesale trade, property and business services, construction, mining and finance and insurance industry sectors, where they cover more than 50% of the workforce. The reason they are not important in hospitality (accommodation and cafes etc) and retail trade is because the predominance of employees on Award only pay and conditions. It is also interesting to note that over the period May 2000 to May 2004 only six of the industry sectors actually saw an increase in the proportion of employees covered by individual Agreements.

Figure A2: Proportion of Employees covered by Collective Agreements by Industry





As Figure A3 shows, the size of the employer has a strong influence on whether its employees are likely to be on an individual contract or covered by a collective Agreement. Figure A3 shows that there is a strong negative relationship between the size of the employer and the proportion of employees covered by individual Agreements. While 60% of employees working for employers with less than 20 employees are covered by individual Agreements, just over 10% of people working for employers with more than 1000 staff fall into this category. This may reflect the nature of the relationship between small employers and their staff or may simply reflect a pragmatic approach in relation to the costs and/or benefits associated with negotiating individual contracts. While it might be highly feasible to negotiate individual contracts with 10 or 15 employees, this will not necessarily be the case if there are 2000 or 2500 employees.

Figure A3: Type of Agreement by Size of Employer

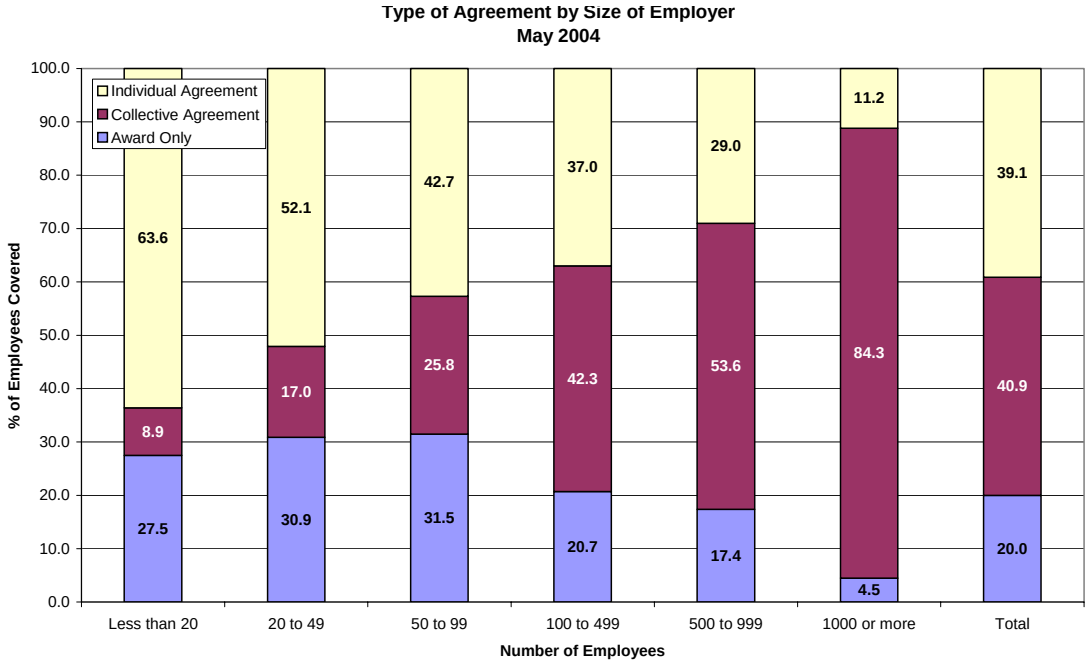
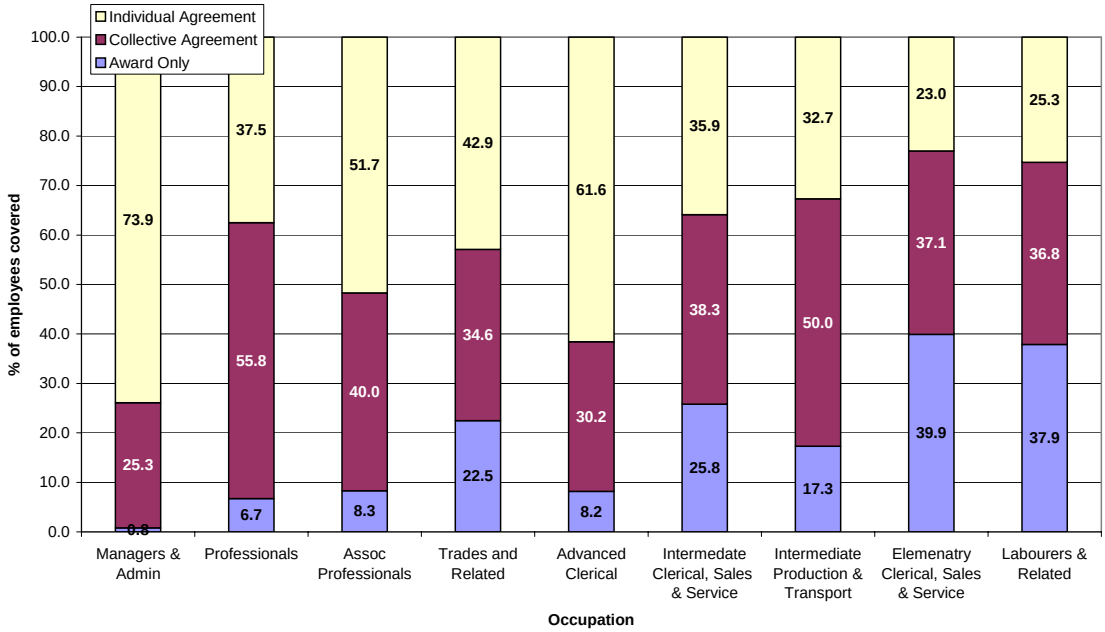


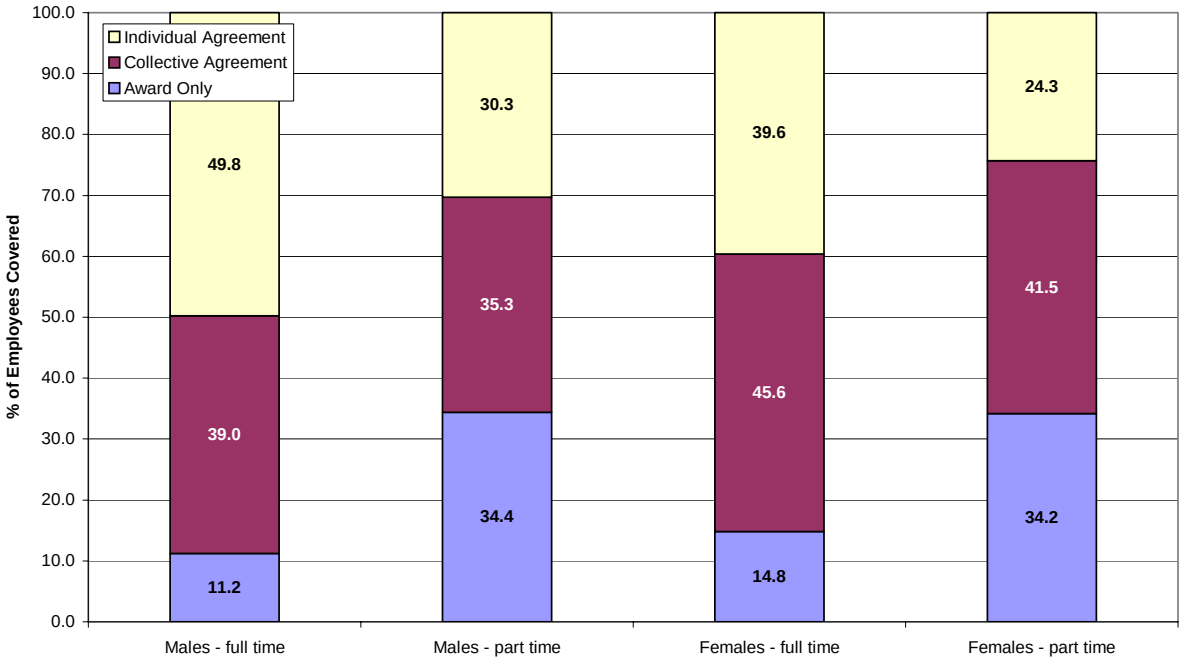
Figure A4: Type of Agreement by Occupation



Individual contracts of employment are most common amongst managers and administrators and advanced clerical workers (presumably covering people who might be considered middle managers) as shown in Figure A4. Professionals on the other hand are the occupation group with the highest coverage of collective Agreements. The chances of an employee's pay and conditions being covered by an individual Agreement are greatly increased if employees are part-time or casual.

Figure A5 shows the breakdown of the proportion of employees covered by different types of Agreement for full-time and part-time male and female employees. For both males and females the chances of being employed by Award-only conditions are significantly higher for part-time employees than for full-time employees. There are a significantly higher proportion of part-time males (30.3%) on individual Agreements than part-time males (24.3%).

Figure A5: Full-Time and Part-Time Employees by Type of Agreement



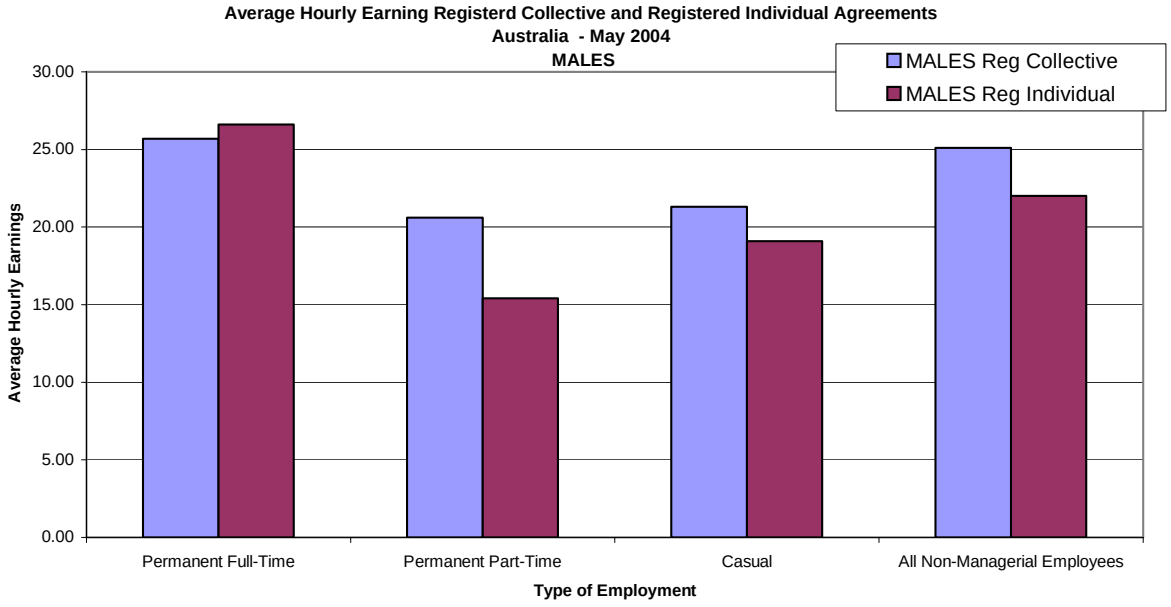
Pay and Conditions of Employees on Different Types of Contracts

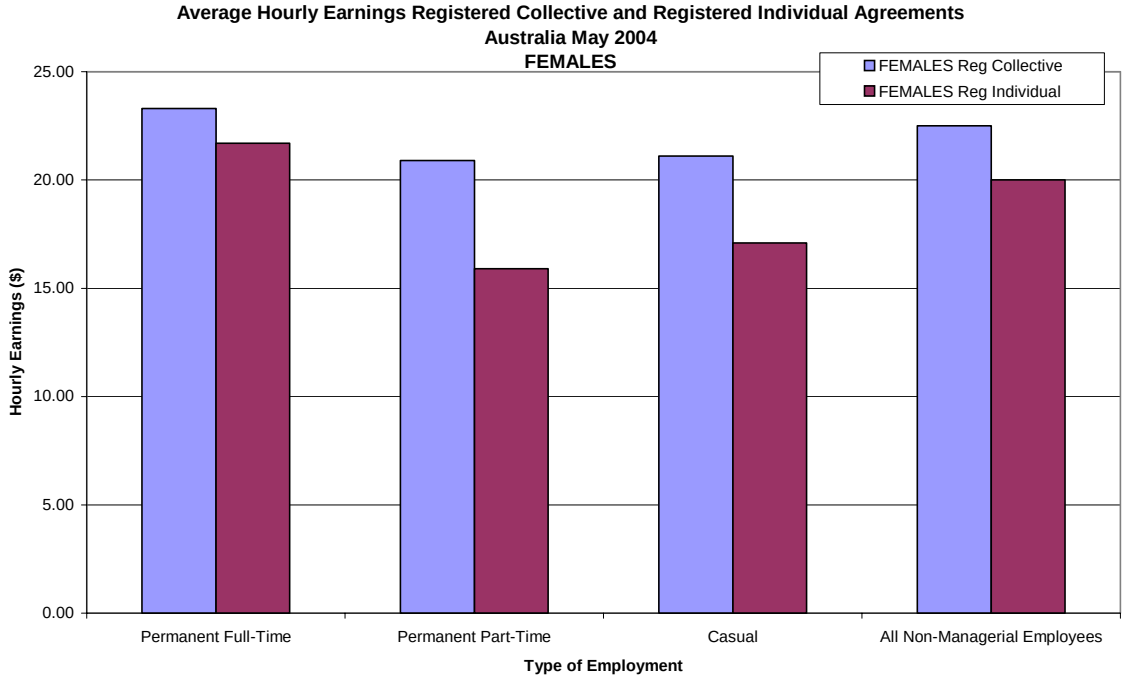
When comparing the pay and conditions of employees covered by collective and individual employment Agreements, it is clear from the evidence presented above that you are not comparing like with like. Employees covered by individual contracts are far more likely to be male full-time employees who are managers or administrators employed by relatively small firms. Therefore, any data that compares pay and conditions between employees covered by individual Agreements and collective Agreements must take this into account.

The Government and the Office of the Employment Advocate (OEA) claims that employees covered by individual Agreements receive higher pay and are more satisfied with their conditions of employment compared to those covered by collective Agreements. However, these claims are not supported by the latest data, especially when you exclude managerial employees.

Figure A6 shows the average hourly earnings for different types of non-managerial employees as at May 2004. The data shows that the only group of employees covered by registered individual Agreements who have higher hourly earnings than employees covered by registered collective Agreements are full-time males. Permanent part-time employees covered by registered collective Agreements earn as much as 25% more per hour than their counterparts on registered individual Agreements. A similar difference is seen within casual employees where females on registered collective Agreements earn 20% more and males earn 10% more.

Figure A6: Average Hourly Earnings Registered Collective and Registered Individual Contracts





The gender equity gap can also be calculated from the data presented in Figure A6. For permanent employees, females covered by registered collective Agreements earn 90% of their male counterparts whereas for employees covered by registered individual Agreements females only earn 80% of that of their male counterparts.

The OEA has made much of a survey it conducted on employees covered by both collective Agreements and those on AWAs and has claimed that employees on AWA's are generally more satisfied with their pay and working conditions. However, Table A2 shows the analysis of the same survey responses undertaken by David Peetz, which disaggregates the responses into those classified as managerial or professional employees and all other employees, which refers to as ordinary employees. The results for the two groups are quite distinct and clearly indicate that ordinary employees are generally less satisfied if they are covered by an AWA compared to those covered by AWAs.

Table A2: How well off are employees under AWAs?

OEA Questions / Responses	Managerial / Professional		Other (Ordinary) Employees	
	AWA	Collective	AWA	Collective
% satisfied with pay	51	45	**43**	**53**
% satisfied with pay + conditions	53	49	**46**	**52**
% satisfied with control over hours	67	53	**49**	**52**
% working longer hours	40	42	**36**	**25**
% work is more difficult	56	59	**53**	**47**
% work-life balance more difficult	44	56	**39**	**34**
% unaware of pregnancy leave	12	9	**33**	**32**
% unaware of maternity leave	14	13	**24**	**24**
Source: David Peetz (2003) How well off are employees under AWA's?				

Conditions of Employment

The ACTU's[1] analysis of the Department of Employment and Workplace Relations report entitled Agreement Making 2002-2003 shows that:

- 8 per cent of AWAs provided paid maternity leave; (collective Agreements 10 percent)
- 5 per cent paid paternity leave; (collective Agreements 7 per cent)
- 1 per cent for additional maternity leave; and
- 4 per cent unpaid purchased leave.

And in addition the report showed that for AWAs one or more of the following conditions was traded-off or absorbed into the Agreements:

- penalty rates were lost in 54 per cent of AWAs,
- annual leave loading (41 per cent)
- annual leave (34 per cent),
- allowances (41 per cent),
- sick leave (28 per cent),
- overtime (25 per cent) ,and
- other payments including bereavement leave, retrenchment pay and long service leave (32 per cent).

[1] Sharan Burrow, ACTU President 2 August 2005 *Balancing Work and Family* ACTU Supplementary Submission to the Standing Committee on Family and Human Services