

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

A submission by the
Council of Australian
Postgraduate Associations
September 2005

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The logo for the Council of Australian Postgraduate Associations (CAPA) features the lowercase letters 'capa' in a bold, sans-serif font. The 'c' and 'a' are connected, and the 'p' has a vertical line extending downwards from its stem. Below the logo, the full name 'Council of Australian Postgraduate Associations Incorporated' is written in a smaller, sans-serif font.
Council of Australian Postgraduate Associations Incorporated

Introduction

The Council of Australian Postgraduate Associations (CAPA) is the national peak body representing Australia's 257,000 postgraduate students. These students are engaged in both coursework and research programs and include 84,600 international students.¹ The Annual Council Meeting, comprising delegates from 36 postgraduate organisations and covering 34 Australian public universities, sets CAPA policy and direction.

CAPA's concerns about the Higher Education Legislation Amendment [Workplace Relations Requirements] Bill 2005 relate to the likely impact on universities and students, on early career researchers and in particular on postgraduate students employed in universities.

Postgraduate students frequently combine study with work, many finding employment in universities. This is of course convenient, but most importantly it gives those who are considering an academic career valuable experience. Postgraduates are employed as tutors, demonstrators, lecturers, in IT help desk support, international student support, administration and as laboratory assistants. Their employment is often on a casual, part-time or fixed-term basis.

Proposed legislation

The first point that needs to be made is that this legislation is an attack on institutional autonomy as recognised by the United Nations Educational, Scientific and Cultural Organisation:

*Autonomy is that degree of self-governance 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.*²

The Higher Education Legislation Amendment [Workplace Relations Requirements] Bill 2005 amends the *Higher Education Support Act 2003* to incorporate the Higher Education Workplace Relations Requirements (HEWRRs) in the Commonwealth Grant Scheme (CGS) Guidelines. Compliance with the HEWRRs will be mandatory in order for a university to qualify for an increase in CGS funding.

The HEWRRs, while referred to in the Bill, are not a component of the actual legislation. This legislation therefore will give an unreasonable amount of power to the Minister responsible. While the current requirements have been made known, there is nothing to prevent the Minister amending the HEWRRs

¹ Department of Education Science and Training, *Students 2004 [full year]: selected higher education statistics*, available online at:

http://www.dest.gov.au/sectors/higher_education/publications_resources/profiles/students_2004_selected_higher_education_statistics.htm

² UNESCO, *Recommendation concerning the Status of Higher-Education Teaching Personnel*, November 1997, available online at: http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

in the future, as this does not require further legislation or any effective Parliamentary scrutiny.

Assessment of compliance with the HEWRRs is to be undertaken after the university has completed the processes it believes will result in approval. Until that point, a university will not know if it is eligible for funding. This leaves universities in a financially precarious position. The process is also likely to ensure that universities enforce the HEWRRs to the most extreme extent, to try to guarantee that compliance efforts meet with approval. In effect, the HEWRRs are a central yet disguised part of this Amendment.

Higher Education Workplace Relations Requirements (HEWRRs)

The dangers of amending legislation to accept requirements that can then be altered at the whim of the Minister can be seen from an analysis of the currently proposed HEWRRs. In the joint media release announcing the HEWRRs, Ministers Nelson and Andrews, claimed the intention is to:

*...provide staff with greater choice and institutions with more flexibility. This will improve the capacity of Australian institutions to be internationally competitive....will assist universities to become more productive, efficient, flexible and competitive.*³

CAPA argues that the consequences of this Amendment to implement the HEWRRs will be exactly the opposite of this stated intention.

1. Choice in agreement making

Choice has been a favourite Government rallying cry for some time now:

*'give them the choice', 'it should be their choice', 'give the students the choice', 'the HEWRRs cover choice', 'the HEP must provide employees with genuine choice', 'extremely important that all Australians have choice', 'to make sure that there is choice available', 'the Howard Government wants to give students choice', 'the Howard Government believes in choice'.*⁴

But the Government is using the word quite spuriously. Real choice only exists when there is no power imbalance, no coercion, and all information needed to make an informed decision is available. As will be outlined in this submission the proposed legislation, along with much other legislation currently before Federal Parliament including the Higher Education Support Amendment [Abolition of Compulsory Up-front Student Union Fees] Bill 2005, does nothing to enhance choice and will actually severely restrict choice.

As a result of the proposed legislation, Australian Workplace Agreements (AWA) must be offered to all employees. Employees are not compelled to accept the offered conditions, but in reality most will have no choice. Many will be fearful that they will not be employed or reemployed if they do not sign.

³ Department of Education Science and Training, "Modernising workplace relations in our universities," Media Release, 29 April 2005, available online at: <http://www.dest.gov.au/Ministers/Media/Nelson/2005/04/n1102290405.asp>

⁴ Various media releases and interview transcripts available online at: <http://www.dest.gov.au/Ministers/Media/Nelson/>

Casual positions suitable for postgraduate students are in high demand. A student who is offered such work is at a distinct disadvantage to refuse an AWA, as the offer simply can be transferred to another student. Postgraduate research students already face a similar experience, with many scholarships contingent on the student signing an Intellectual Property agreement. If employees do not sign an AWA, the alternative Award conditions offer much less than the conditions currently provided in Enterprise Bargaining Agreements (EBA).

Each employee accepting an AWA must negotiate this directly with his or her university. This process is confidential, so individual employees will not know what terms and conditions others have negotiated. Without this information, the employee is at a disadvantage in negotiations, since they will be without collective bargaining power. This disadvantage will become evident when they do not receive the overtime rate of others, or the workloads are not spread evenly within a team. This will inevitably undermine collegiality at a time when all staff need to be working together and trusting their colleagues.

Postgraduate students already face tenuous employment. Casual and short-term positions are often not advertised or selected according to normal HR procedures. Many postgraduates study in the same departments in which they are employed, a difficult enough scenario without having to individually negotiate employment contracts with people who may be directly responsible for their supervision or for marking their assignments.

Specific groups of postgraduates and early career researchers will be particularly affected by these changes. For example, women in higher education earn on average much less than their male counterparts. While there are multiple causes for this, it is apparent they are under-represented at senior levels of the academic and general staff workforce and more likely to be employed on a casual or short-term contract.⁵ If this legislation is passed, the relative situation of women in higher education can only deteriorate.

Academic freedom, central to the independence of universities and staff, is under threat from this legislation. Most EBAs protect academic freedom by ensuring that dismissal or discipline procedures are only invoked for misconduct or negligence. EBAs ensure that formal procedures and appeal processes adhere to principles of natural justice.

...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 should not suffer any penalties simply because of the exercise of such rights.⁶

⁵ Probert, Belinda et al, 'Gender pay equity study', May 1998, available online at: <http://www.nteu.org.au/getinvolved/equal/women/archive/2073>

⁶ UNESCO, *Recommendation concerning the Status of Higher-Education Teaching Personnel*, November 1997, available online at: http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

Academic freedom is also protected by permanent employment. Those who are on short-term contracts or casual employment have much less liberty to speak out and write freely, for fear of their employment not being continued.

2. Direct relationship

The requirement that the university negotiate through a direct relationship with the employee removes the collective power of employees. It also removes external, informed scrutiny of any agreement. Without scrutiny by the union and by other staff, the ramifications of the agreement are more likely to be missed.

The direct relationship requirement means that representation by the union is no longer an automatic right. The onus is on the employee to request union involvement. But this requires that the employee be well informed and not afraid to request union involvement. In other words, there is a power issue, with parallels to the loss of independent advocacy under the proposed Higher Education Support Amendment [Abolition of Compulsory Up-front Student Union Fees] Bill 2005.

3. Workplace flexibility

Workplace flexibility is a euphemism for casualisation and a lowering of existing conditions. The HEWRRs require that the AWAs contain only minimal detail and avoid prescription. In other words, they will not include many of the employee protection clauses currently in EBAs. This exposes the sector to increased casualisation and to more individual long-term casualisation.

Casualisation has many deleterious consequences. With fewer ongoing staff, there will be less peer support available to assist and encourage early career researchers and employed postgraduate students. Less job security will also discourage the next generation of university academics and administrative staff from pursuing a university career. This is at a time when there is an aging of the academic workforce. Postgraduate students planning on an academic career may well have to look overseas for their future employment.

Increased casualisation also affects current students. If tutors are only employed to deliver classes, they are not likely to be available for student consultations during semester. Already there is a problem in many universities with tutors finishing employment immediately after semester classes end. They are then not available to assist with reviews of marks and other post-semester issues.

The flexibility requirement is unnecessary, as appropriate workplace flexibility already exists within the EBA structure. In fact, universities already have extremely flexible employment arrangements. EBAs allow universities to respond to changing circumstances and to implement change, but they must do so in a way that considers the needs of staff. EBAs outline processes to be followed before any changes that affect staff employment can be undertaken.

AWAs are likely to result in cuts to salaries and conditions for many staff and will affect the most vulnerable. The Government claims to be interested in enhancing quality in research, teaching and learning, yet this legislation will only serve to diminish the quality of research and education available in

Australian universities. The use of AWAs will reduce quality, as universities find it harder to attract and retain high-quality staff.

Student-staff ratios are already unacceptably high.⁷ As international students become disillusioned with the quality of Australian education, they are more than likely to look at enrolling in other countries. If universities cannot sustain enrolments they will have to reduce staff and salaries, risking a loss of status and further market share.

Working hours in the university sector are escalating, with many universities now teaching classes at night and on weekends. It will be the part-time and casual postgraduate employees who are most likely to be required to work these inhospitable hours. Casual workers in the higher education sector have already experienced exploitation,⁸ this can only get worse under the HEWRRs. Rising staff stress levels, induced by increased overtime, student-staff ratios, and burdensome administrative requirements can only have a negative affect on quality, productivity and performance.

4. Productivity and performance

The HEWRRs place a stress on performance management, advocating rewards for productivity and emphasising better management of poor performance. Strategies are likely to include the removal of salary increments, to be replaced by pay increases based on performance. This will affect staff moral and lead to competition among those who should be working together as a team.

EBA's already accommodate individual contracts that include performance rewards for senior staff. These contracts are consistent with the EBA and offer more than minimum conditions. AWAs, on the other hand, will override any conditions set in EBA's. The impact of this will fall heavily on early career researchers, casuals and general staff. It is unclear how performance will be assessed. For example, CAPA is concerned that 'quick service' might replace 'better service' as a performance measure. CAPA does not equate increased student/staff ratios with increased productivity or quality.

The Department of Education Science and Training *Review of Indexation Arrangements in the Higher Education Sector* cited the AVCC submission statement that universities had achieved productivity gains despite funding cuts. This statement was used to justify the recommendation, accepted by the Government, not to alter indexation arrangements.⁹ If the Government acknowledged only last April that productivity has been achieved, why is it now claiming that HEWRRs are needed to achieve productivity?

⁷ Rood, David, 'Uni head warns of rise in class sizes' *The Age*, 17 May 2005, available online at: <http://www.theage.com.au/news/National/Uni-head-warns-of-rise-in-class-sizes/2005/05/16/1116095908445.html>

⁸ NTEU, *Smart Casuals*, 2004, 2nd Ed, National Tertiary Education Union

⁹ Department of Education, Science and Training, 2005, *Review of Indexation Arrangements in the Higher Education Sector*, p11, available online at: http://www.dest.gov.au/sectors/higher_education/policy_issues_reviews/reviews/index_arrange_in_highered_sector/

5. Freedom of association

The HEWRRs require that universities not encourage or discourage union membership. However, universities will not be allowed to use CGS funds to provide union facilities. This has led to some confusion over the provision of union office space at some universities. There are many advantages to having the union office located on campus. This provides ease of access for staff needing advice and makes the voluntary involvement of staff, so crucial to university decision-making processes, more feasible.

It is the right of all staff, including postgraduate students employed as casual employees, to take up union membership. Recent awareness campaigns by both the NTEU and postgraduate student organisations have resulted in increased union membership of postgraduates employed as casuals. This has led to better representation of casual staff interests and some improvements in conditions. The visible presence on campus increases the likelihood that postgraduates will drop into the union office for advice. If the union is not located on campus, it will be less visible to staff, its role will be less understood, and staff will be less likely to request union involvement in any agreement negotiations. This makes a mockery of the provision that universities not encourage or discourage union membership.

Conclusion

The outcome of this legislation will ensure that the Australian higher education sector will lose quality and international competitiveness, with staff choice and career prospects further undermined. The legislation exacerbates the issues facing Australian institutions, issues that can only be addressed by significant increases in public funding, not by increases in Government intrusion into institutional autonomy. It will create more problems than it will solve, and as such must be deemed to be detrimental for the sector as a whole.

Recommendation: That the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005 be rejected.

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