



Australian Education Union (SA Branch)

Submission to the

Industrial Relations Commission of South Australia

**INQUIRY INTO THE IMPACT OF WORK
CHOICES AND INDEPENDENT CONTRACTORS
LEGISLATION ON SOUTH AUSTRALIAN
WORKPLACES, EMPLOYEES AND
EMPLOYERS (1791/2007)**

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1 Introduction

- 1.1 The Australian Education Union (SA Branch) is a state registered industrial organisation of employees in South Australia and has been continuously registered as an industrial organisation of employees in this state since 1997. Previously the South Australian Institute of Teachers and its predecessor organisations have represented the interests of South Australian public education workers since 1896.
- 1.2 The AEU (SA Branch) has a membership of over 13,200 education workers who work in public preschools, schools and TAFE Institutes across South Australia. Members include teachers, leaders and support staff in government schools and lecturers, hourly paid instructors and educational managers in TAFE Institutes.
- 1.3 Some 66% of the membership of the AEU (SA Branch) is female and the AEU (SA Branch) has a long history of championing the right of women to equal status with males in the workplace.
- 1.4 The AEU (SA Branch) is party to the following state registered Awards, Enterprise Agreements and Industrial Agreements:
- South Australian Education Staff (Government Preschools, Schools and TAFE) Enterprise Agreement 2006;
 - Teachers (DECS) Award;
 - School Services Officers (Government Schools) Award;
 - Pre-school (Kindergarten) Teaching Staff Award;
 - Early Childhood Workers Award;
 - Aboriginal Education Workers (DETE) Award; and
 - TAFE (Educational Staff) Interim Award.
- 1.5 The AEU (SA Branch) is a branch of the Australian Education Union, a federally registered union. The AEU has a membership of over 172,000 educators and associated personnel who work in public schools, colleges, early childhood and vocational settings in all state and territories across Australia.
- 1.6 The AEU (SA Branch) is an affiliate of SA Unions and endorses the submissions made by SA Unions to this Inquiry.

- 1.7 This submission focuses on the potential negative impact of the Work Choices legislation on AEU (SA Branch) members, the operations of the AEU (SA Branch) as an education union and public sector union in South Australia and the potential negative impacts of aspects of the Legislation on students in South Australian schools.
- 1.8 This submission is authorised by the AEU (SA Branch) Executive. The AEU (SA Branch) consents to the publication of this submission on the Inquiry's website.

2 Collective Bargaining

- 2.1 The AEU (SA Branch) and its predecessor organisations have represented the interests of South Australian public education workers for a continuous period since 1896.
- 2.2 The AEU (SA Branch) has an exemplary reputation as the representative of public education workers in the industrial relations community, the education community and the community in general.
- 2.3 The AEU (SA Branch) represents a high union density of education workers in public settings in this state. Members exercise a choice to belong to the AEU (SA Branch) by virtue of the remittance of annual dues.
- 2.4 Members do not expect that they will have barriers to being represented by their chosen industrial organisation placed before them in order to satisfy the ideological agenda of the Prime Minister and his Government.
- 2.5 Collectivism and collective bargaining have been a central aspect of the Australian industrial relations system for the past one hundred years.
- 2.6 The Howard Government has manufactured a raft of legislative provisions beyond Work Choices that have a Work Choices flavour and impose significant limitations on the capacity of state-based employees, employee organisations and employers to freely bargain collectively.
- 2.7 The Skilling Australia's Workforce Act 2005 (the SAW Legislation) and the concomitant '2005-2008 Commonwealth-State Agreement for Skilling Australia's Workforce' impose industrial relations conditions on the ongoing funding of vocational education and training, and particularly public TAFE Institutes, in the order of 30% of total funding.

2.8 The SAW Legislation, specifically, Part 2 Division 2 Clauses 12(1)(b) and (g), provides:

“Part 2 Grants to State: capital expenditure and recurrent expenditure

Division 2 Statutory conditions

12 Condition of grant – workplace reforms

The State must implement workplace reforms in the vocational education and training sector, including the following:

ensuring that TAFE institutions introduce more flexible employment arrangements by offering Australian workplace agreements to staff, except where making such agreements under the Workplace Relations Act 1996 is not possible because of the corporate status of the TAFE institution, in which case other individual agreements should be offered;

ensuring that TAFE institutions’ workplace agreements, policies and practices are consistent with the freedom of association principles contained in the Workplace Relations Act 1996. In particular, TAFE institutions must neither encourage nor discourage trade union membership.”

2.9 Fundamental to the conditions imposed through the SAW Legislation is the requirement that employees engaged in the provision of vocational education and training are offered Australian Workplace Agreements (AWAs) or individual contracts where AWAs are not possible. In South Australia TAFE employees are employed by authorities proclaimed under state legislation and are subject to state jurisdiction in industrial relations matters. During the life of the current South Australian Education Staff (Government Preschools, Schools and TAFE) Enterprise Agreement 2006 any AWA offered will be in terms not less favourable than that Agreement (clause 15).

2.10 The SAW Legislation ties Commonwealth funding in this crucial education sector to force implementation of the Howard Government’s industrial agenda. This is an unacceptable attempt to impose ideologically based requirements on institutions that are the province of state and territory governments, and by doing so, to undermine the parameters of Commonwealth-state relations within the federalist structure.

2.11 The SAW Legislation inhibits the right of education workers and state and territory governments to reach industrial agreements about a full range of matters in the

- collective mode of negotiation and to override such collective agreements with individual arrangements to the greatest extent possible.
- 2.12 The AEU (SA Branch) is a party to awards and enterprise agreements that have been negotiated between the Union and the employer and represent a mutually satisfactory resolution to the various claims made by both parties to the negotiations.
- 2.13 It is inconsistent with the stated objects of the Fair Work Act 1994 in that employee, union and employer parties will be prevented from including in future collective agreements, items of business that relate to proscribed content. Examples of such content include arrangements pertaining to workplace consultation, union involvement in dispute resolution and industrial relations education leave.
- 2.14 Employees, the relevant industrial organisations of employees and the employer oppose measures such as those imposed by the SAW Legislation but cannot resist in the face of the prospect of the loss of almost one-third of available Commonwealth funding.
- 2.15 The imposition of an ideologically driven and arbitrary industrial relations agenda on vocational education and training through conditional funding will not only undermine the industrial rights of employees but may well jeopardise the maintenance of a highly qualified TAFE teaching profession.
- 2.16 This development is for no other reason than because the Howard Government in Canberra has determined that it should not be in our agreement? The employees want it in. The employer wants them in. The union wants them in. How can this possibly be represented as choice?
- 2.17 The AEU (SA Branch) is also concerned that the Federal Government may amend the Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2005 to include provisions similar to those under the SAW Legislation. This would extend the imposition of the Federal Government’s industrial relations agenda onto all employees in the school education sector.
- 2.18 AEU (SA Branch) members have made conscious and informed choices about the industrial instruments that govern their working conditions because, under South Australian industrial relations legislation, they are genuinely allowed to do so. Being subjected to even a limited range of elements of the Howard Government’s industrial

relations system is not in the best interests of the employees, the teaching profession or vocational education and training programs.

3 School Based Apprenticeships and Traineeships

- 3.1 One overriding feature of the Work Choices Legislation is the extent of uncertainty and confusion created by the increased complexity of the Howard Government's 'simplified' industrial relations system. The impacts on arrangements for school based apprenticeships and traineeships are a case in point.
- 3.2 South Australia has had in place a scheme of school based apprenticeships and traineeships for many years. The fundamental legislative and policy provisions underpinning this scheme are subject to a three year life span as a consequence of the introduction of the Work Choices Legislation.
- 3.3 At the conclusion of the three year transition period this scheme will suffer a reduction in efficacy and appropriateness through the imposition of an inferior Federal framework thereafter.
- 3.4 A successful program is now subject to vagaries and uncertainty. No valid reason exists for creating such uncertainty, particularly in light of the alleged intentions of the Federal Government in respect of the enhancement of the vocational education and training sector as outlined in the Skilling Australia's Workforce program.
- 3.5 The only conclusion open in this matter is that the potential emasculation of the school based apprenticeship and traineeship program is collateral damage arising from the imposition of the Howard Government's ideological agenda for industrial relations.

4 Industrial Action

- 4.1 The provisions of the Work Choices Legislation relating to the capacity of the AIRC to intervene to order that non-federal system employees not take, organise or threaten industrial action in a state jurisdiction is potentially the most heinous provision contained in the Legislation.
- 4.2 The specific provisions of the Workplace Relations Act 1996 are:

“Part 9 Industrial action

Division 6 Orders and injunctions against industrial action

496 Orders and injunctions against industrial action – general

Orders relating to non-federal system employees and employers

(2) If it appears to the Commission that industrial action by a non-federal system employee or non-federal system employees, or by a non-federal system employer:

(a) is:

(i) happening; or

(ii) threatened, impending or probable; or

(iii) being organised; and

(b) will, or would, be likely to have the effect of causing substantial loss or damage to the business of a constitutional corporation;

the Commission must make an order that the relevant industrial action stop, not occur and not be organised.”

4.3 The attachment to the provisions authorising the AIRC to intervene in the affairs of a state industrial relations system, of a prohibition on the release of identifying information on the applicant for such an order from the AIRC, is also problematic.

4.4 While the jurisdiction of the AIRC in this regard is triggered by the alleged impact of industrial action on a ‘constitutional corporation’, this is no protection for a union such as the AEU (SA Branch), or any other union associated with an essential service. An argument on the issue of the incidental impact of legal industrial action by school teachers on ‘constitutional corporations’ as a third party, is entirely conceivable where parents might be prevented from attending work in order to care for their children.

5 Work Choices by Coercive Federalism

5.1 There are implications of conditional Commonwealth funding for school and TAFE teacher members of the AEU whose employment is regulated by awards and agreements in the Industrial Relations Commission of South Australia.

5.2 The Commonwealth Government has no specified Constitutional power to regulate education in schools or TAFE Institutes in South Australia. Nevertheless employees of

the public systems of education and training provided and operated by the South Australian Government are increasingly being subjected to mechanisms to achieve the implementation of Commonwealth policies in the fields of both education and employment.

- 5.3 Many of these policies have direct implications for industrial relations which intrude upon the rights of parties to collective bargaining conducted under the auspices of and industrial instruments of the Industrial Relations Commission of South Australia. (The Commission).
- 5.4 By the use of coercive federalism, the Commonwealth is seeking to impose the employment policy objectives of the Federal “WorkChoices” Amendments to parties to awards and agreements under the jurisdiction of the Industrial Relations Commission of South Australia. The present Inquiry in its “Issues Paper” of 24 April 2007 noted that the Commission had been directed to inquire into “the general impact” of “WorkChoices.”
- 5.5 In its Conclusion at paragraph 53, the Commission “repeats that parties should not feel constrained by the framework in which the Terms of Reference and this Issues Paper have been drafted. Any relevant issues...will be considered...”
- 5.6 It is submitted that it is relevant that in respect of employees of employing authorities of the South Australian Government providing education and training to students in South Australia the Commonwealth is intruding upon the constitutional role of the South Australian Government to influence to their detriment the industrial relations and rights of the parties to industrial instruments of the Commission.

The reach of the Corporations Power

- 5.7 The High Court of Australia rejected all the constitutional grounds for challenges mounted by the states and some unions to the Workplace Relations Act (Work Choices) Act 2005 in its decision of 14th November 2006.
- 5.8 In doing so the majority of the Court adopted the understanding of the legislative power given by Justice Gaudron in *Re Pacific Coal* where her Honour said that the Corporations power conferred by S51 (xx) upon the Commonwealth, “...*extends to laws prescribing the industrial rights and obligations of corporations and their employees and the means by which they are to conduct their industrial relations.*” (para 178)

- 5.9 The decision put beyond doubt that the regulation of the industrial relations of employers which were constitutional corporations and their employees was within the power of the Commonwealth.
- 5.10 The Court minority variously described the decision as, "...the apogee of federal constitutional power and a profound weakness in the legal checks and balances which the founders sought to provide to the Australian Commonwealth." (Kirby J at para 615) and that, "the consequences for the future integrity of the federation as a federation, and the existence and powers of the States will be far-reaching." (Callinan J at para 619).
- 5.11 The employees of the South Australian Department of Education and Children's Services, (DECS) and the Department of Further Education, Employment, Science and Technology, and specifically teachers, principals and support staff employed in the schools, pre-schools and TAFE Institutes of the state, are not employed by constitutional corporations for the purposes of S51 (xx) of the Australian Constitution.
- 5.12 The employing authorities of public education staff in South Australia are the Chief Executive of DECS and the Department of Further Education, Employment, Science and Technology. Under the Education Act 1972, the "employing authority" means—
- (a) unless paragraph (b) applies—the Director-General; or
 - (b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;
- 5.13 On the face of it, Justices Kirby and Callinan's concerns about the effect of the majority decision in the "Work Choices Case" would appear to be unfounded as far as employees of the South Australian government are concerned.

The use of S96 grants to for Coercive Federalism

- 5.14 However S96 of the Constitution provides for financial assistance to states in the following terms:

During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant

financial assistance to any State on such terms and conditions as the Parliament thinks fit.

5.15 This section has been the basis of requirements upon state and territory governments, including South Australia, to pursue policy objectives which affect the nature of the employment of employees of DECS. These include objectives for “workplace reform” which mirror the objectives of the 2005 “Work Choices” amendments to the Workplace Relations Act and in some respects go further. Much more significant intrusions on the employment arrangements by the Commonwealth have been foreshadowed in the Federal Budget in May 2007 to be included in the next Quadrennium Funding Agreement for 2009-2013.

The HEWRR Example

5.16 For the purposes of the Commission’s Inquiry a relevant predecessor to these requirements is the Higher Education Workplace Relations Requirements (HEWRR) and National Governance Protocols which apply to universities where increased funding is sought under the Commonwealth Grant Scheme (CGS).

5.17 The Higher Education Workplace Relations Requirements apply to all agreements made and certified after 22 September 2003 and informal workplace arrangements and practices operating on and after the CGS funding cut-off date. Existing agreements are not subject to these Requirements.

5.18 The Higher Education Workplace Relations Requirements are:

- i. All certified agreements made and certified after 22 September 2003 to which an institution is a party, must not preclude offering AWAs or individual contracts to any employee and are to include a clause to that effect. All certified agreements made and certified after 22 September 2003 to which an institution is a party, must expressly allow for AWAs to operate to the exclusion of the certified agreement or prevail over the terms of the certified agreement to the extent of any inconsistency. The following clause is recommended:*

“The university may enter into Australian Workplace Agreements (AWAs) with employees covered by this agreement. Those AWAs may either operate

to the exclusion of this certified agreement or prevail over those terms to the extent of any inconsistency, as specified in each AWA”

ii. *Institutions must manage their workplace relations consistent with the WR Act and promote workplace reform by ensuring all agreements, made and certified or approved after 22 September 2003, and informal workplace arrangements and practices operating on and after the CGS funding cut-off date reflect the following criteria:*

1. *workplace flexibility;*
2. *direct relationships with employees; and*
3. *individual arrangements.*

Institutions must comply with all elements of each criteria which are provided in detail as part of the requirements.

5.19 The Federal Minister for Education, Science and Training, Ms Bishop, addressed the Australian Higher Education Industrial Association Conference on the subject ‘HEWRRs 2, Workchoices 1’ 15 March 2007, to which industrial relations and human resources professionals employed by universities were delegates. The Minister said,

‘The chess scoreboard has HEWRRs in front but its opponent is not Work Choices. The opponent is entrenched, out-moded and inefficient work practices. That is where universities need to go in to bat so they are not lumbered with a deadweight dragging them down as they try to move forward.

Workplace reform in our universities is being advanced through HEWRRs but HEWRRs 2 has barely taken us out of the blocks.

This race is global and there is much to be done if our universities want a podium placing on the international scene.

While our universities are autonomous institutions they are also the recipients of \$8.2 billion of taxpayer funding this year alone, and as such have to be accountable for how they spend that money, and demonstrate that administrative and workplace practices are efficient and flexible and that there is genuine choice in agreement making.

Yes, universities might be autonomous but while they continue to rely on public funding as a major source of income, they cannot abrogate public accountability. Students, staff and taxpayers expect that our universities will be well managed, flexible and efficient institutions where funds are going where they are most needed.

HEWRRs is all about providing genuine choice in agreement making. I wrote to all Vice-Chancellors last year asking them to follow up on specific aspects of agreements because I remain concerned that the sector is still not embracing HEWRRs as it should.

Sure, I found all universities compliant with the letter but it is the spirit of the HEWRRs that I want, and expect, universities to embrace. This is not a proforma exercise where universities can continue to do the bare minimum to get their extra 7.5% in funding. HEWRRs is designed to drive a more flexible and productive university workplace.

No-one is forcing staff on to AWAs – freedom of association remains a key pillar provided by the Government’s workplace relations reforms.

But universities’ work practices must come into the 21st century.

The HEWRRs delivered an additional \$151 million to the sector in 2006 and a further \$240 million in 2007.

Progress has been made – I do want to acknowledge that – but much more needs to be done.

It is the depth of that change after HEWRRs that we need to pursue.’

5.20 The thinly veiled threat by the Federal Minister to further pursue workplace change through the HEWRR mechanism to achieve employment under Australian Workplace Agreements (AWAs) as provided for in the Work Choices provisions is patently clear. It is submitted that the reference by the Minister to universities lacking the “spirit” of compliance rather than just the “letter” reflects similar attitudes to the employment of teaching and allied staff in TAFE Institutes and potentially to public schools in South Australia.

The Skilling Australia's Workforce Act

5.21 While the South Australian government does not employ university staff, it does employ TAFE teachers in Institutes providing technical and further education in South Australia. The Commonwealth passed the Skilling Australia's Workforce Act 2005 (SAW Act) which contained the following requirements as conditions upon which the State of South Australia received funds for the operation of TAFE Institutes.

- (1) *The State must implement workplace reforms in the vocational education and training sector, including the following:*
 - (a) *giving technical and further education institutions (TAFE institutions) greater flexibility and capacity to respond to local industry and community needs within the context of the national requirements of the Skilling Australia's Workforce Agreement;*
 - (b) *ensuring that TAFE institutions introduce more flexible employment arrangements by offering Australian workplace agreements to staff, except where making such agreements under the Workplace Relations Act 1996 is not possible because of the corporate status of the TAFE institution, in which case other individual agreements should be offered;*
 - (c) *supporting stronger leadership and authority for directors (however described) of TAFE institutions, including in relation to recruitment and remuneration of employees;*
 - (d) *implementing a fair and transparent performance management scheme in TAFE institutions that rewards high performance by employees (including through performance pay) and manages underperformance;*
 - (e) *providing capacity for TAFE institutions to retain revenue and generate increased revenue through partnerships with industry and sponsorship arrangements;*
 - (f) *providing capacity for TAFE institutions to develop entrepreneurial and commercially oriented business plans;*
 - (g) *ensuring that TAFE institutions' workplace agreements, policies and practices are consistent with the freedom of association principles contained in the Workplace Relations Act 1996. In particular, TAFE*

institutions must neither encourage nor discourage trade union membership.

- (2) *Subsection (1) does not require the amendment or variation of certified agreements or other industrial instruments in force on the day on which this Act commences.*
- (3) *However, all certified agreements or other industrial instruments made, approved or certified on or after the day on which this Act commences must be consistent with the workplace reforms referred to in subsection (1).*
- (4) *All workplace policies and practices in effect on the day on which this Act commences must be amended or varied to be consistent with those workplace reforms, except to the extent that to do so would be directly inconsistent with a certified agreement or other industrial instrument in force on that day.*

5.22 In a number of states, the government has clarified the status of TAFE institutions so that they do not qualify as trading corporations for the purpose of the High Court decision and the reach of the Federal Corporations power, or alternatively the employment of staff who work in TAFE institutions has been clarified to be with the relevant Minister. Nevertheless the requirements of the Skilling Australia's Workforce Act apply by virtue of the acceptance by the state of funds and the operation of S96.

5.23 Thus employees in TAFE in all states and territories under the SAW Act have been required to be offered the alternative of either an Australian Workplace Agreement, where the Work Choices provisions apply, or an individual employment contract under whatever title applies. Thus far the "take-up" of individual contract employment in South Australia and other states has been negligible, but the example of the HEWRR requirements shows that the Federal Minister may well pursue the "spirit" of the SAW requirements rather than just the "letter" in future funding rounds to require their application to what otherwise are institutions "autonomous" of the Federal Government.

School and Pre-School Sector Employees

5.24 In the schools and preschools sector, the previous Federal Minister Brendan Nelson placed requirements upon public education systems for changes to reporting methods, the provision of flagpoles and flags, posters advertising "Australian Values" featuring Simpson and his donkey, boards in schools showing the qualifications and days on leave which teachers had taken, and the post-school fortunes of students.

5.25 In a paper for the AEU entitled “The Great School Fraud; Howard Government School Education Policy 1996-2006”, Canberra academic Trevor Cobbald listed the following requirements under the Schools Assistance (Learning Together-Achievement Through Choice and Opportunity) Act 2004.

- Greater consistency in schooling across Australia
- Performance targets and reporting against performance measures
- Requirements for reporting on student progress to parents
- Reporting of school outcomes
- Expanded national reporting of student outcomes
- All children being taught Australian values and the dangers of drug use
- National curriculum standards in numeracy, literacy, civics and citizenship, science and information technology
- Common national testing in numeracy, literacy, civics and citizenship, science and information technology’
- Providing information on expenditure on teacher professional learning
- More autonomy for school principals over teaching appointments
- Safer school environments
- Participation in national system of transmitting student information between schools for students moving interstate; and
- Minimum time for physical education.

5.26 Some of these requirements were implemented but others seem to have disappeared without trace. However, Minister Bishop and the Prime Minister have subsequently indicated that they have developed quite an appetite for such measures, some of which have direct and radical implications for the ways and means that teachers and support staff will be employed in South Australian public schools and preschools, if carried into effect.

5.27 The Federal Minister listed an item entitled ‘Performance-based pay for Teachers’ for the 21st Ministerial Council on Education, Employment, Training and Youth Affairs

(MCEETYA) meeting on 12-13 April 2007 in Darwin. Item 7 sought the Council's agreement agree on four principles relating to teacher employment, namely,

- quality teaching should be recognised as the single most important school-based factor in improving student learning;
- teacher salaries should reflect specified performance measures rather than the length of tenure;
- principals are best placed to determine teacher performance, drawing on a range of criteria and evidentiary sources; and
- principals should have the authority to determine the remuneration band to which each teacher at their school should be appointed under relevant industrial agreements.

5.28 Ministers from the states and territories rejected the Commonwealth proposal but agreed to list the matter following further consultation for a future meeting.

5.29 The AEU submits that the Federal Minister's proposals, if effected, would have the effect of radically restructuring the employment of school teachers and their careers to reflect a competitive individual performance model of teaching which is inappropriate to educational systems and institutions which are essentially collegial in their mode of operation. Further it would reorganise schools so that they reflected an industrial management model of operation, with site managers (principals) empowered to monitor individual performance and allocate reward.

5.30 Current Awards and Agreements of the Industrial Relations Commission of South Australia to which the AEU (SA Branch) is a party apply to the classifications and roles of education staff in South Australian schools, including principals. These collective instruments will require radical surgery if the Federal Minister's proposals are to be effected, yet no communication has been received by the AEU (SA Branch) from the Commonwealth about these proposals, nor any indication that the AEU (SA Branch) will be consulted about them.

2007 Federal Budget package

5.31 In the Federal Budget on May 8 2007 a package of measures entitled "Realising Our Potential" the Federal Government announced that in order for the states and non-government school authorities to receive more than \$42 billion in federal schools

funding, they must adhere to a number of Commonwealth policy initiatives. This applies to the Quadrennium Funding Schools Assistance Act 2008-2012. These included giving principals greater power to hire and fire, providing more information to parents on school performance, bullying and discipline, and introducing performance pay. The Minister later announced that non-government schools would be required to meet the same conditions for funding.

5.32 The Federal Government announced that all school education authorities would be required to focus on improving school standards through:

- introducing national teacher training and registration standards to improve the skills of new teachers
- introducing core national standards for curricula in key subjects including English, maths, science and Australian history for Year 10
- including external assessment as part of Year 12 certificates
- introducing greater principal autonomy in school management and teacher employment arrangements (including the ability for principals to appoint and dismiss teachers)
- introducing performance-based pay for teachers
- reporting school and student performance against national benchmarks

5.33 Prime Minister John Howard addressed the Centre for Independent Studies on 14 May 2007 in a speech entitled, “Australia Rising to the Education Challenge”, one of his “Australia Rising” addresses on important issues.

5.34 In the speech he drew attention to the budgetary measures announced in the previous week which would form the new tranche of requirements upon state and territory education authorities which must be met for the purpose of funding in the next quadriennium.

5.35 The Prime Minister’s speech included the following in a section headed ‘Schools’;

‘From 2009, Australian Government funding will be tied directly to quality reforms.

This builds on the reforms Brendan Nelson advanced in the last funding agreement and is consistent with what Julie Bishop has proposed to the states and territories in a spirit of co-operation.

In the case of principal autonomy, for example, the Commonwealth has proposed that all jurisdictions agree that principals should be provided with a statutory right to:

- *veto the transfer to their school of a new staff member*
- *appoint any registered teacher to the staff of their school, and*
- *terminate a staff member from their school on prescribed grounds, including for a lack of performance*

We also believe that principals should be given greater control over school budgets. Whilst some of these are in place to varying degrees, there is a need for greater consistency to empower principals to make decisions at the school level.'

5.36 The Prime Minister also spoke about reforms the Commonwealth supported to the employment of teachers in the interests of improving teacher quality.

'School teachers are an important but undervalued profession. In their crucial work shaping the lives of future generations, teachers and principals deserve strong community support.

We need to create better incentives for good teachers to what they do best. Current teacher salary arrangements are largely based on annual incremental progress through a number of salary bands and teachers hit salary peaks relatively early in their careers. Promotion unfortunately often means taking an administrative role.

It's clear that pay dispersion in teaching has stayed the same, or declined, over the past thirty years, while wages and dispersion have increased in alternative occupations. And OECD evidence suggests that lack of financial recognition of teaching performance is a contributor to teachers leaving the profession.

Performance-based pay for teachers is an idea whose time has come. But the Australian Government is not prepared to wait for the states to reward teachers who put in extra effort."

5.37 The Federal Minister for Education, Julie Bishop was reported in the Sydney Morning Herald on May 11, 2007, by John Garnaut and Anna Patty in announcing a \$53 million "reward" programme for outstanding teachers who improved the academic results of their students. The Minister is quoted as saying,

“It will go to the principal of a school to use in ways to enhance literacy and numeracy in the school and that will include rewarding teachers who are responsible for that.

Principals will decide how the \$50,000 will be spent, but performance pay is an option. The program will also include a \$5,000 bonus – plus travel and accommodation expenses – for teachers who are selected to attend a 10-day summer school.

I’ve been signposting (performance pay) for quite some time. If people wanted to join the dots it’s all there.”

5.38 The report said that “The rewards will be delivered through state and private schools, with or without the co-operation of state governments.”

Coercive federalism in place of constitutional power

5.39 The AEU invites the Inquiry to observe that coercive federalism has been used by the Federal Government and has been foreshadowed to be used in future to influence the educational policies and programmes of the states, including South Australia. This includes policy relating to the employment of teachers and support staff in schools, preschools and TAFE Institutes to which the “Work Choices” Amendments to the Workplace Relations Act do not otherwise apply.

5.40 The AEU submits that such coercive federalism is antithetical to the interests and rights of education employees of the South Australian Government and to the rights of the parties to the industrial processes and instruments of the Industrial Relations Commission of South Australia.

Non-compliance with ILO Convention 98

5.41 Further, such coercive federalism would constitute non-compliance with Australia’s international obligations pursuant to Conventions of the International Labour Organisation (ILO). The Committee of Experts of the ILO in 2005 asked the Australian government to report measures taken to address its concerns that Australian law gave primacy to individual over collective employment agreements. Since that time the “Work Choices” amendments have further elevated Australian Workplace Agreements in legal terms over collective agreements.

5.42 Convention 98 of the ILO, which was ratified by the Australian Government on 28 February 1973 provides at Article 4:

“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”

5.43 Far from addressing the concerns of the Committee of Experts of the ILO, the Australian Government amended the Workplace Relations Act such that a collective agreement has no effect if any AWA is in place, irrespective of whether the AWA was made before or after the collective agreement and irrespective of the period of operation of the collective agreement.

5.44 The effect is that an employer is free to offer AWAs to employees the day after concluding a collective agreement with a union on behalf of all employees and which is expressed to apply to current and future employees until a specified expiry date. In the case of new employees, an AWA substantially inferior to the collective agreement can be required as a condition of employment, rendering the collective agreement increasingly irrelevant over time.

“Fairness Test” Amendments, May 2007

5.45 Amendments to the Workplace Relations Act 1996 were introduced in the Workplace Relations Amendments (A Stronger Safety Net) Bill 2007 on 28 May 2007. Under the amendments the Workplace Authority would be required to apply a “fairness test” to all AWAs and Collective Agreements made after May 7, 2007 which applied to employees receiving a “gross basic salary” of less than \$75,000. The standard of “protected award conditions” in an appropriate award relevant to the individual would be required to be considered by the Workplace Authority to see whether adequate monetary and non-monetary compensation had been gained to compensate for trading away such conditions.

5.46 While these amendments provide a measure of protection over certain matters, they do not include others, such as redundancy pay, ceremonial leave, leave to seek alternative employment or the type of employment undertaken. Significantly, continued

employment itself may be considered adequate compensation in a depressed labour market area, as would the opportunity to carry out family responsibilities during work time in lieu of penalty rates.

5.47 More importantly, the amendments do not address the disparity in bargaining power and access to union representation which lies at the heart of the “Workchoices” provisions of the Workplace Relations Act as it displaces collective bargaining from the central organising principle of industrial relations in favour of individual employment contracts (AWAs).

5.48 It is submitted that policies being pursued through coercive federalism to change the employment conditions of South Australian teachers and allied staff in schools and TAFE Institutes do not comply with Australia’s obligations under Article 4 of ILO Convention 98.

6 Conclusion

6.1 The pre-Work Choices Workplace Relations Act 1996 was over 850 pages long and contains some of the most complex legislative provisions to be found in the Australian legislative catalogue.

6.2 The post-Work Choices Act contains hundreds more pages of provisions that are completely incomprehensible to the average citizen and problematic for experienced legal practitioners.

6.3 The Regulations to the Work Choices Legislation add hundreds more pages to the industrial relations legislation at the federal level.

6.4 The Work Choices Legislation has resulted in uncertainty, fear and disharmony in workplaces where the opposite attributes once existed.

6.5 This Work Choices Legislation will result in the demise of the South Australian Industrial Relations system, a system that is accessible and much simpler than the current federal system. This is not an outcome that is either desirable or in the best interests of the political and economic future of this country.

6.6 The Work Choices Legislation will result in the hard won position of women workers being dramatically eroded.

- 6.7 The Work Choices Legislation has resulted in the loss of the current working conditions of workers.
- 6.8 The Work Choices Legislation has removed the real safety net for workers by rendering the role of the 'independent umpire' nugatory.
- 6.9 It is an embarrassment to Australia internationally that our nation is considering perpetrating such an act of treachery on its workers. The Work Choices Legislation is contrary to Australia's obligations to the international community as embodied in International Labour Organisation Conventions.
- 6.10 The AEU (SA Branch) rejects the content and intent of the Work Choices Legislation absolutely and repudiates the ideological agenda that has brought it into being.