

# Australian Education Union



**Submission**

**To**

**The Australian Industrial Relations Commission**

**On**

**AWARD MODERNISATION FULL BENCH (AM2008/1)**

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**Angelo Gavrielatos**  
Federal President

**Susan Hopgood**  
Federal Secretary

**Australian Education Union**  
Ground Floor  
120 Clarendon Street  
Southbank VIC 3006

Telephone: 61 3 9693 1800  
Facsimile: 61 3 9693 1805  
E-mail: [aeu@aeufederal.org.au](mailto:aeu@aeufederal.org.au)

1. The Australian Education Union (AEU) supports the general submissions of the Australian Council of Trade Unions (ACTU) regarding the priority list, the model award flexibility clause and the timetable. These will be dealt with seriatim, with particular reference to the education services industry and to the awards to which the AEU is a party. The AEU and its associated state bodies are parties to awards which apply to all school, preschool and TAFE teachers, and to varying degrees support staff, in public education settings in all states and territories.

### **The Priority List: Higher Education**

2. It is appropriate that of the sectors of the education services industry, Higher Education should be a priority. The status of university employers is agreed to be trading corporations in all states and territories in a sector which is funded by the Federal Government and where federal awards have prevailed for some years.
3. In contrast, the public school, including preschool, and TAFE sectors are currently largely regulated by State Awards, applying to employers which are not constitutional corporations. The scope of the Federal jurisdiction is a live issue at the Ministerial Council for Workplace Relations in relation to state employees. In Victoria and the federal territories, transitional awards and pre-reform awards apply. At least some of these have been classified as Enterprise Awards and are made with government departments as respondents.
4. Thus it is necessary to consider for example the relevance of State Awards in setting appropriate rates and conditions in a Modern Award for public sector teachers and support staff. This will undoubtedly be clarified while dealing with the priority areas, as per Clause 11 of the President's Statement of 29 April. In the AEU's view it is imperative that State Awards are considered, including those in NSW regardless of their nominal reclassification as preserved state enterprise agreements. It is the AEU's understanding that NSW awards have not changed their role or the terms on which they are created at all since that reclassification was made.

5. The AEU submits that the concept of an “enterprise award” has different meaning in practice according to the sector of employment to which the award applies. An award made by conciliation and/or arbitration with a government department after a strenuous bargaining dispute is a completely different proposition to an award made by consent between a multinational mining company and its workforce perhaps in a remote location of Australia where labour is difficult to attract. Similarly, it is entirely different to an award made by consent covering thousands of employees of a large retail organisation. One essential difference is that government is not an “enterprise” in the sense that it is not a trading corporation which operates in a competitive market to make profits and provide services or goods. Government tends to operate in areas where goods and services are not profitable, making attractive employment conditions in the market less likely.
6. In relation to the issue before the Commission, if so-called enterprise awards are not to be considered relevant in making a Modern Award, it is arguable that the Commission could not have regard to any relevant instrument governing the employment of public school teaching and support staff, as all awards are made with a single employer. That would be a self-defeating outcome.
7. The AEU submits that the Commission should have regard to any relevant instrument and that an appropriate weight should be given to them on the merits in establishing the standards in a Modern Award.
8. The public school and TAFE sectors in all states and territories are bargaining sectors which are effectively regulated by certified agreements derived from bargaining. No AWAs have been concluded in the entire public education sector to the knowledge of the AEU. Thus any need to consider schools and TAFE a priority is obviated.
9. Whether or not it is desirable to reduce the number of awards as per Clause 4 of the Request is also an issue: there are relatively few awards covering teachers and support staff in public schools, including preschools, and TAFE colleges which cover approximately 250,000 employees. However, in the event that awards are to be reduced the AEU does not oppose the making of Modern Awards on an industry basis for schools, preschools and TAFE employees, including teaching and support staff.

The ambiguity of this statement is deliberate and reflects the issues which require clarification before any clearer view can be put.

10. In accepting that Higher Education may be recognised as a priority area, there are still areas of overlap with other sectors which should be considered in the creation of a Modern Award. This is acknowledged by the NTEU draft scope clause in relation to TAFE in Victoria where some universities provide TAFE vocational education and training courses. As indicated by the NTEU, the AEU will consider the creation of one Modern Award in the education services industry covering all sectors, if that prospect is seriously contemplated, including by private school employers, which is highly unlikely. The education unions have and will continue to discuss the creation of Modern Awards in the educational services industry and will resolve any questions to reach agreed views.
11. However, if there is a stand-alone modern award for Higher Education as appears likely it should not include TAFE teachers and support staff in any state or territory, including Victoria. Currently there are awards for TAFE teaching and PACCT staff in Victoria which have more in common with TAFE awards in all other states and territories than they do with higher education awards. The funding, employment, qualifications and course content of TAFE courses in Victoria, whether provided by a TAFE institute or by a university, have more in common with TAFE provision in all other states and territories than with higher education provision.
12. The question of public and private providers will become relevant in the preschools and schools sector as well as the vocational education and training sector. The AEU does not express a view on that issue at this stage, but will consider how the process unfolds and the attitudes of other parties, including parties to private school awards and private providers of vocational education and training.

### **Model Flexibility Clause**

- 13 The AEU is completely opposed to the replication of the effect of an Australian Workplace Agreement by virtue of delegating to the AIRC and Fair Work Australia the task of respectively creating and implementing a modern award clause to achieve

the same end. The Work Choices provisions directly created the AWA...the ACCI submission to that the AIRC should allow individual agreements without “ifs and but fors” is a recipe for not only individual disadvantage but collective disadvantage as well.

Workplaces are collective institutions...particularly schools, preschools and TAFE colleges...where changes to the work of one may well affect all, so allowing “individual” agreements (which may well be sensible and popular) should be made subject to the approval of all. The ACTU submissions and draft Award Flexibility Clause are strongly endorsed for that reason.

### **The Timetable**

- 14 The timetable by all accounts will be tight but this should not prevent the Commission giving the parties adequate time to make submissions on the content of a Modern Award. There are a lot of issues to be resolved but once an approach is adopted the Commission should allow the parties to awards, which have often been hard-won, the maximum opportunity to make submissions in open hearings about the contents of Modern Awards. It is axiomatic that it is the parties who understand the detail and complexity of employment settings in their own industry and that hearing their views is the best way to establish a fair set of minimum standards.
  
- 15 The AEU submits that in the discharging its obligations under the Request, the AIRC should follow the course which was established for it over a century ago; that is to hear the parties and determine on their merits the (allowable) terms of modern awards to serve the goals of equity and fairness in Australian workplaces. The Commission, in its last major role on the stage, will thereby be doing justice to the faith which the founders of the Australian Constitution placed in it as machinery to prevent and settle industrial disputes.