



**AEU SUBMISSION TO THE
SENATE EDUCATION, EMPLOYMENT AND WORKPLACE
RELATIONS COMMITTEE
INQUIRY INTO THE WORKPLACE RELATIONS
AMENDMENT (TRANSITION TO FORWARD WITH
FAIRNESS) BILL 2008**

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Susan Hopgood
Federal Secretary

Angelo Gavrielatos
Federal President

Australian Education Union
Ground Floor
120 Clarendon Street
Southbank VIC 3006

Telephone: 61 3 9693 1800
Facsimile: 61 3 9693 1805
Email: aeu@aeufederal.org.au

The Australian Education Union (AEU) welcomes the opportunity to submit views to the Committee's consideration of the Workplace Relations Act (Transition to Forward with Fairness) Bill 2008 and in particular:

- 1 The AEU endorses the submission of the ACTU in general support of the Bill as an essential first step in the re-establishment of a balanced federal system of industrial relations in the interests of employees, employers and the public interest in general. The changes introduced by the Bill apply to more than 40,000 members of the AEU in Victoria, the ACT and the NT.
- 2 The Work Choices legislation of the Howard government was not only rejected as unfair by most employees but introduced an excessively complex and intrusive regime upon employers and employee organisations alike. Far from being deregulatory, it involved compulsory and excessive government interference in the relations between the parties to employment arrangements and their representatives.
- 3 The Transition Bill establishes a process to end Work Choices' statutory individual contracts which displaced collective industrial instruments to the disadvantage of the employee. This was at the core of the Howard Government's Work Choices policy and so the transition is welcomed by the AEU.
- 4 While a minority of AEU members were directly subject to the Work Choices provisions, the overwhelming majority of members were opposed to their effect on the industrial rights and social equity of employees and their families generally.

- 5 The Transition Bill under consideration provides for the establishment of Modern Awards by industry or occupation and a process of consultation with major employer and employee representatives.

- 6 The AEU draws attention to the need for any Award Modernisation Request and the processes of the Commission to take account of the conditions in each industry. In “building on” entitlements in the NES to determine standards in a Modern Award without creating inconsistency with the NES, the Commission will need to take into account employment standards and conditions across an industry, not just those employers and employees who will be bound by the Modern Award. This is because of the scope of the requirements the Commission is required to consider in the Objects (S576A) and the factors to which the Commission must have regard in performing its function (S 576B.) For example in the education industry it will be necessary to consider the employment standards and conditions applying to government department employees in all states and territories, not just the state and the territories in which the Modern Award would currently apply.

- 7 The Commission must also take into account the specifics of the industry in deciding who is to be bound by a Modern Award. In doing so the Commission pursuant to S576V needs to determine the “specified class” of employees by reference to the industry or a particular kind of work, for example “teaching.” The sectoral nature of the industry and history of regulation, including by the nature of employer and organisational rules will be relevant. For example it would be undesirable to make a Modern Award which regulated the Higher Education and Schools/TAFE sectors of education because they provide quite different forms of education with different qualifications and are organised and funded quite differently. The same may well be true of government and non-government school education given the demarcation which exists and the nature of the employers concerned.

- 8 The Request and the Commission's processes will also need to consider the possible evolution of the national system subsequent to the passage of the Transition Bill. For example in the case of the education services industry, as it is described, the requirement to consider only the relevant rates of pay in APCS scales and transitional awards would not adequately allow the Commission to fulfil other requirements in relation to establishing salaries in a Modern Award. In relation to school, pre-school and TAFE teachers for example, consultation with relevant organisations of employers and employees and state industrial authorities and instruments made by them would be necessary to properly fulfil the range of requirements of the section.
- 9 In so doing, the Commission would be creating a Modern Award which would be capable of incorporating relevant national standards in the event that referral of state industrial powers in addition to those of Victoria should occur. Alternatively, should the substantive reform legislation to which the current Bill is a transition be based on powers to provide for the regulation of the industrial relations of state governments and their employees then the Modern Award could apply nationally should that be necessary.
- 10 For this reason the AEU will submit at an appropriate time that the substantive reform legislation should be underpinned by powers which would allow the national system to regulate non-corporations such as state government departments in the event that there is a denial of employment rights by a state which is not only the employer but is also the guarantor of the employment rights of its employees through a state industrial authority. The scope for such regulation was recognised by the High Court in Re AEU in 1994 subject to the limitations imposed therein.

- 11 To fail to provide the processes and institutions established by the substantive reform act with the powers underpinning the transitional arrangements which the Australian Industrial Relations Commission has currently pursuant to Schedule 6 of the Workplace Relations Act would potentially expose teachers who are state government employees to discriminatory treatment and the denial of their employment rights in a national system of industrial relations. Such a denial was at the core of the rejection by the community of the Work Choices laws.

- 12 For this reason and in these terms, the AEU supports the Transition Bill as a step towards restoring employment rights in the federal industrial jurisdiction and creating a national system of industrial relations for the private sector as well as AEU members in Victoria, the ACT and the NT.