

# Submission

to

Senate Employment, Workplace Relations and Education  
References Committee

## Inquiry into Workplace Agreements

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**AUSTRALIAN EDUCATION UNION**

**SUBMISSION TO THE**

**SENATE EMPLOYMENT, WORKPLACE  
RELATIONS AND EDUCATION REFERENCES  
COMMITTEE**

**INQUIRY INTO WORKPLACE AGREEMENTS**

**August 2005**

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## **Introduction**

The Australian Education Union has a membership of over 165,000 educators who work in public schools, colleges, early childhood and vocational settings in all states and territories of Australia. Members include teachers and allied educational staff, principals and administrators mainly in government school and TAFE systems.

The core business of the AEU is the maintenance of comprehensive industrial protection and effective representation on professional issues as they affect AEU members as employees. The AEU is also concerned about developments in the wider community which impact on our members' work through the intersection between education workers and the students, families and communities they work with.

The AEU endorses and supports the submission of the ACTU to this Inquiry. This submission is supplementary to the ACTU submission and focuses in particular on the experience of collective bargaining and individual Workplace Agreements in education.

## **Individual Workplace Agreements are bad for education**

The large majority of AEU members work for large state government departments and have traditionally had their conditions of employment regulated by enterprise-specific awards and collective agreements.

There are good reasons why the industrial parties in education have by and large preferred collective bargaining to the use of individual workplace agreements:

### **1. Education depends on teamwork and collegiality.**

In a school, for example, the teachers, support staff, administration, school leadership, parents and students all work closely together in the provision of quality education. An open and cooperative work culture is essential to this enterprise. People work together in teams to develop methodology, prepare curriculum materials, deliver rich learning experiences and ensure special needs are met.

For that culture of workplace collaboration to work at its best, it is essential that staff do not feel either that they are competing individually with their colleagues for a share of a limited pool of resources, nor that they may achieve individual advantage over their colleagues by keeping some good idea to themselves or claiming the work of a team as their own personal achievement. Performance development can and is better achieved by mechanisms other than the contract of employment either in its common law or statutory context.

## **2. The work of education professionals is complex and varied, and not amenable to simplistic measures of performance**

The philosophy underlying proposals for individual workplace bargaining is that each worker should be rewarded for their productivity compared with other workers in the enterprise. One might argue that a measure of the number of widgets produced by a worker is a proper basis for wage fixation. That proposition is unsound even in relation to the average production line, where the interconnectedness of effort, and the effect of factors beyond the control of anyone on the production line, contribute to widget output variations. How much shakier, when the production line is an educational institution and the output is not widgets but the educational, cultural, and psycho-social development of students.

The “enterprise” of education is subject to a plethora of external factors at a macro and a micro level. In addition, there is no single best way to undertake the work of an education professional. The performance of work varies from person to person, from year to year, and from class to class. What works with one student will not work with another, and educators engage in a constant revision and reinvention of their work to achieve the best that is possible in the context of constantly shifting circumstances.

Thus best practice, far from being an easy thing to ascertain or to measure, is usually characterised by variability.

This is not a bad thing. In fact, the AEU asserts that this is typical of a highly skilled workforce willing to bring professional judgement to bear in each situation, rather than relying on a rigid set of pre-determined procedures. If education were not characterised by a high degree of variation in technique and style, it would not be quality education, since each student is a new challenge demanding new approaches.

Nevertheless, one consequence of the fact that education relies on the professional flexibility of its workforce is that comparative assessments of staff performance can be highly subjective. Unless considerable time is taken to understand the particular factors in each case – those over which the staff member and their colleagues had control and those which were imposed externally – such judgements will tend to be arbitrary and inaccurate. As a result, individualised assessments of performance, such as those reflected in individually negotiated wage outcomes, are distrusted and resented by the very staff they are meant to encourage.

The degree of subjectivity of the assessment of productivity among education workers also leaves the door open to favouritism, discrimination and corruption. It is easy to disguise an improper motive in an employment decision when each decision is taken in isolation. Similarly, it is easy to slip into lazy habits, allowing subconscious prejudices to operate, in an environment where the outcomes of employment practices are treated as individual events rather than as patterns of employer behaviour.

### **3. The size of the workforce makes collective bargaining the most efficient choice.**

The administrative burden (and therefore cost burden on the taxpayer) involved in state employers developing, negotiating, settling, registering, monitoring, applying and renewing terms and conditions of employment on an individual basis for hundreds of thousands of individual employees, would be immense. Whole new bureaucracies would be required simply to keep the machinery of individual agreements rolling.

Even if, as would likely be the case, a state education department decided to offer identical terms and conditions to all staff (ie. to pattern bargain), the administrative burden would be huge.

This 'transaction cost' is a significant factor for all education employers. The burden would be huge on a large state employer, but at least they would have substantial resources available with which to meet that burden. The burden of administering individual agreements for staff would be smaller in magnitude, but even larger in impact, for smaller employers of AEU members, such as those in disability and in

early childhood services. In most cases the administrative burden on such employers would be intolerable, and lead to job cuts and reductions in services to the community.

There would have to be capacity to respond to any employee who sought to negotiate over the terms and conditions. If any such negotiations led to variation from the “pattern agreement”, there would need to be monitoring and compliance mechanisms to ensure that each variation was kept track of and adhered to. Variations in the terms of accrued entitlements would need to be tracked from one agreement to the next, and over time the resulting complexity would increase in extent and degree. Instances of non-compliance would increase in number, leaving the employer open to penalties and grievances, and leaving employees open to being short-changed in their entitlements, with legal action the only avenue for redress.

On the other hand, if employers insured themselves against a mushrooming complexity of industrial arrangements by rigidly adhering to a pattern agreement, the whole edifice of “individual” bargaining would be revealed as a sham. In complying with demands to move to individual industrial bargaining, the employers would in fact be maintaining a collective set of terms and conditions, while depriving employees of the opportunity to negotiate collectively.

#### **4. The imbalance of bargaining power is extreme.**

The structure of the public education systems ensure that there is no possibility of an equality of bargaining power between an individual employee and the employer. Teachers undertake four to five years of tertiary study and commence their teaching careers with substantial HECS debts. To work in the career for which they have trained, they must gain employment either with a private school or with one of the state and territory education departments. For teachers already in the public education system, they are largely dependant on a single employer for opportunities for relocation or promotion. Even with systemic shortages of teachers in some regions and some subject areas, each teacher taken individually has vastly inferior bargaining power to the large employers within which they negotiate their careers.

In this context, a system of individual bargaining would greatly disadvantage education employees, whose negotiating capacity depends on their ability to join together in collective bargaining.

This conclusion is consistent with the report of the Senate Economic Committee's Consideration of the Workplace Relations and Other Legislation Amendment Bill 1996, which said at paragraph 4.2:

*"Firstly, there is a recognition that, in general, employers have stronger bargaining power than employees. Except in the most exceptional circumstances, the competition for vacancies will generally be higher than competition for applicants; the individual needs the job more than the employer needs that particular individual. In addition, employers are likely to have more experience of negotiation than employees and greater resources to commit to it. The inequality of bargaining power is shown clearly by situations where a contract is offered on a 'take it or leave it' basis, without any intention on the employer's part of entering genuine negotiation:*

*It is clear from our experience in Victoria that legislation designed to promote workplace negotiations does not lead to genuine negotiation - individual employees are powerless when dealing with large employers in general and with government employers in particular. Negotiation becomes a 'take it or leave it' option which is really no option at all. [1]"*

##### **5. Many industrial rights for education workers apply individually but depend upon system consistency of application**

Education departments are large systems. Many conditions of employment relate to movement within and around the system. For example, each state and territory education department has employment conditions which establish rights and responsibilities in relation to the cost of teacher registration, the transfer of teachers

between schools, and the provision of relief teacher funding to enable staff to undertake professional development.

These arrangements impact directly on teachers' working lives, and have often been the subject of industrial bargaining. These systemic arrangements are amenable to collective bargaining, but could not be sensibly varied on an individual basis. For example, a variation to one individual teacher's transfer entitlements would affect the transfer entitlements of each other teacher in the system.

Similarly, it is currently the right of every education worker to work in a school, pre-school or college where they are working with other staff who are properly-qualified for their roles, and will have regular access to professional development to maintain and update their skills. The cooperative team nature of their work makes this an important condition. Education workers at all levels must be able to rely on their colleagues' training and expertise. The right to work with qualified colleagues cannot be traded on an individual basis. If one person accepts terms of employment which expect them to perform a role they are not qualified for, or where ongoing professional development is compromised, that has an impact on the employment conditions of all staff, not just the individual signing the contract.

A move to individual workplace agreements would inevitably remove these legitimate areas of industrial bargaining into the realm of unilateral management policy. Education workers would be left with no viable avenue to pursue changes to employment conditions which can only be addressed on a collective basis.

**6. Important improvements in public education have only been achieved through collective bargaining, and could not be addressed through individual workplace agreements.**

As a professional workforce, education workers have often combined demands about their own industrial interests (such as controlling excessive workload) with proposed solutions which deliver benefit to the community through improved quality of education (such as reduced class sizes). When bargaining as a collective voice it has been possible for education workers to propose systemic solutions, and to address system-wide problems. Reductions in school class size have rarely originated from benevolent state governments. Rather they tend to occur in

response, directly or indirectly, to the collective demands made by teachers in the industrial context.

Similarly, increased availability of support staff, better resourcing of special needs, the encouragement of women to take up leadership positions, the expansion of teacher training in Aboriginal and Torres Strait Islander education, the introduction of classifications to encourage high skill teachers to stay in the classroom, and a wide variety of other initiatives which have improved the quality of education delivered to Australia's public education students, have originated in the collective industrial demands of education workers.

If bargaining were conducted individually, it would be completely impractical for a single teacher or teacher's aide to (for example) achieve a state-wide commitment to reduce class sizes in the early years.

The Australian community has benefited and continues to benefit from the fact that education workers bargain collectively to improve the quality of public education. These benefits could not be achieved through individual bargaining.

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For all these reasons, the use of collective bargaining in the education industry is of benefit to the workforce, to the employers, to the public as taxpayers, and most importantly to the public as the beneficiaries of a high quality public education system.

The public interest is served by a public education system that rewards its professional, highly skilled and dedicated workforce, at the same time finding ways to improve the conditions for teaching and learning. This can be done using collective industrial instruments. It cannot be done through individual Workplace Agreements, and is endangered by the uncertainty that such arrangements would introduce.

These conclusions are not abstract conjectures based on hypothetical considerations, but reflect the hard-won knowledge of the AEU resulting from our experience with attempts to impose individual workplace agreements on our members by the Kennett and Court state governments, and from our investigation of

the experience of education workers in comparable systems when such experiments have been undertaken elsewhere.

## **Individual Workplace Agreements in education have been uniformly bad**

Whenever employers have sought, for ideological reasons, to move education staff onto individual workplace agreements, the result has been counter-productive.

In some sectors and in some states from time to time, AEU members have encountered employers who have decided to offer individual employment arrangements comparable to Australian Workplace Agreements.

### **WA and Victoria**

In Western Australia and Victoria in the mid 1990s the State Governments pursued a policy of not concluding collective agreements with unions but instead encouraging employees to move on to individual workplace agreements. By refusing to negotiate wage increases through collective agreements, the governments were in a position where they could make individual agreements appear comparatively attractive simply by granting a minimal wage increase to those who signed up.

Other pressures were also brought to bear. New teachers were largely employed on insecure short-term appointments, and led to believe that both their first and future appointments would be contingent on accepting individual agreements. Teachers in remote localities were threatened with being disadvantaged in access to transfer opportunities.

School principals were directly targeted with salary packaging arrangements and other enticements to move to individual contracts. In Western Australia, for example, a 20% pay rise was offered to school principals to entice them to sign Workplace Agreements. This offer was 5% higher than the 15% claim then being pursued by the Union through collective bargaining. Many school principals signed Workplace Agreements, only to find that the increased workload impact of the changes imposed through those Agreements far outweighed the salary gain. Within five years, the

majority of principals had reverted to the collective agreement, but the damage to principal workload has been long term.

There was in fact no illusion of individual bargaining – the “agreements” offered by the employers were on a non-negotiable basis, with one-size-fits-all conditions. Rather than being an opportunity for employment conditions to be tailored to the particular needs or interests of different workers, they were in fact a tool for the employer to avoid collective bargaining in order to introduce changes to conditions which it would not otherwise be able to achieve. What education workers would never accept in a context where their bargaining power was expressed collectively could easily be imposed on a one-by-one basis.

In both states the experience of AEU members was that the use of individual workplace agreements was damaging to the collegial and cooperative workplace environment so necessary to education work. Anxiety, resentment and suspicion were common reactions to the governments’ individual agreement demands.

## **NZ**

A similar lesson is available from the experience of education workers in New Zealand under the Employment Contracts Act, introduced in 1991. Although most education workers resisted offers to take up individual contracts rather than have their employment regulated through collective agreements, new staff were presented with contracts to sign on appointment. Without experience in the workforce or an understanding of the differences between the individual and the collective terms, new staff often signed the agreements only to find themselves working on inferior conditions to the people they were working alongside.

In New Zealand, school principals were also a particular target of pressure to sign individual contracts. The employer recognised the industrial advantage to be gained by separating the industrial interests of principals from those of the colleagues they work with.

Rights were eroded: in particular those conditions which accumulate over time, such as sick leave entitlements. There was no wage increase for teachers for three years, and large numbers of New Zealand teachers looked for work in Australia, Britain or elsewhere. New Zealand now faces a teacher shortage.

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Clearly, despite the fine rhetoric of the various governments involved in these events, the actual impact of individualised employment arrangements in public education has been disruptive, demoralising and counterproductive.

It is an experiment that has been tried and failed. The education of Australia's youth is too important to be put at risk by repeating a failed experiment.

In education, as in other industries, individual workplace "agreements" are a fig leaf which attempts to disguise the true nature of a system where industrial conditions imposed individually rather than bargained collectively: an unfair system that disempowers workers, breaks up collaborative work cultures, and damages productivity. The proposition that they promote individual choice is nothing more than an empty illusion. AWAs certainly provide employers with greater opportunity to impose unilateral changes to conditions, and that opportunity will be expanded if the no disadvantage test is lowered to the proposed new statutory test. But they provide employees with no choice at all.

It should be borne in mind by the Senate that corporate employers are not individuals, but corporate entities. Their "personality" is a legal fiction. Their "rights" should not be considered in the same category as the fundamental human rights, recognised in international treaties, that should be protected for employees. Those human rights include the right to bargain collectively. The inclusion of AWAs within Australia's industrial relations system directly undermines that right.

The Australian Education Union urges the Senate to ensure that any legislation relating to Industrial Relations (or, indeed, to education funding conditions) promotes collective bargaining as the principal tool for the regulation of terms and conditions of employment.