

Australian Council of Trade Unions



Submission

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into Australian Technical Colleges (Flexibility in
Achieving Australia's Skills needs) Bill 2005

July 2005

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Australian Technical Colleges Submission

Overview

1. The ACTU supports the injection of additional funding specified in the Bill into vocational education and training. The direction of funding into pre-apprenticeship and apprenticeship training in schools is welcome as are the increased options for VET in schools. This funding will assist in addressing one aspect of the array of contributors to the skill shortage.
2. The ACTU is concerned however that the particular use of the funding – on the establishment of specialised technical colleges – does not optimise the use of the funding. We are also concerned that there is no allocation of funding to other aspects of need in the VET system – such as growth funding to TAFEs.
3. The establishment of special technical colleges is, in our submission, an inefficient use of funds and not the most appropriate allocation of funds given other areas of need.
4. In addition the ACTU is concerned that the Bill fails to address any issues with respect to equity of access and outcomes of the colleges. It is possible that the technical colleges, because of their emphasis on traditional trades, will become schools that attract boys and, as such, disenfranchise young women in regional centres considering careers in the traditional trades areas. Moreover the Bill fails to mention equity in the achievement of its object.

Funding

5. The funding provided in the legislation over a five year period is \$343.6 million. For this it is anticipated the colleges will train up to 7,200 students in years 11 and 12 over that five year period. This provides for an average funding per student of approximately \$48,000.
6. This funding is in addition to that already provided for students through normal funding arrangements and is provided *in recognition of the additional cost of providing specialised vocational training*.¹
7. It is the submission of the ACTU that such funding could be better directed to areas such as TAFE and other strategies to alleviate the skill shortage that will have a more direct and immediate effect than the colleges.
8. It is of concern to the ACTU that the level of funding provided to the colleges will result in two tiers of educational institutions offering access to VET in schools. The effect of non-college educational institutions not being able to match the level of funding provided to the colleges may well result in schools withdrawing from the VET in schools programs as they are unable to compete on an equitable basis without the level of funding being provided to the colleges.
9. The allocation of the funding would, in our view, be better used by supporting an expansion of VET in schools/pre-apprenticeship training in schools generally, thereby increasing access and participation.

¹ Department of Education, Science and Training, Request for Proposal for Establishment and Operation of Australian Technical Colleges

Industry-led or employer controlled?

10. The Bill seeks to achieve its objective of the establishment and operation of the colleges through an industry-led approach to the provision of education. But that is a misnomer – the provision of education will not be industry led but employer led.
11. The term “industry-led” has always been taken to mean the industry partners – employers and employee representatives – working together within a framework designed to improve the vocational education and training system for all users – employers and employees – of that system. The use of the term “industry-led” in the context of the object of the Bill is misleading and implies a level of involvement by parties in the system that does not exist.
12. This is not just some minor argument about language by the ACTU. If the establishment of the colleges is, as claimed, *a vital step in addressing the skills needs that Australia is experiencing in a number of traditional nation building trades*² then it is vital that all the industry partners are involved in the process. The representatives of workers, along with employer representatives, have a vital contribution to make in addressing Australia’s skill shortage. It is not some fluke of nature that the ACTU and affiliated unions were, and remain, a driving force in the on-going development of the vocational education and training system in Australia.
13. By the same reasoning the use of the description “industry-led” to describe the governing council may also be misleading. It is difficult to be definitive on this as there is no mandatory membership of the governing councils of the colleges. Whilst the Bill may claim they are “industry-led” there is nothing in the Bill that gives confidence that this is the case.

² Australian Technical Colleges (Flexibility in Achieving Australia’s Skill Needs) Bill 2005, Explanatory Memorandum

Given the misuse of the term (as set out above) it is probably fair to claim that the governing council will not be “industry-led”.

14. In addition, the Bill fails to clarify the governance arrangements and accountabilities of the colleges and their governing councils as an employer. This potentially leaves employees in a precarious position in protecting their rights as employees as the status of the employer may not be clear.

Local community

15. The ACTU is concerned by the potential effect the establishment of the colleges will have on the local school system.
16. The establishment of the colleges is premised on students in the local area shifting from their current education stream into that offered by the college. The college will therefore draw students away from existing schools and programs. This will result in alterations to funding to those existing schools with the consequential effects that may be felt from such a reduction in funding and student numbers, including an ability to continue to offer the maximum range of curriculum.
17. The ACTU is not aware of any evaluation undertaken on the potential effects of the colleges on schools in the regional areas marked for the colleges but believe that this is a matter that should be examined as a matter of priority.
18. That none of this has been done is evidence of the rushed and ill-considered nature of the proposal.

Flexible employment arrangements

19. While the Bill says little of the governance arrangements for the colleges, it does determine some of the employment arrangements – not as might be thought with respect to guaranteed terms and conditions of employment but through the nature of the employment contract.
20. The principle object of the Bill is also to be achieved through *encouraging an environment of freedom and reward for effort...through flexible employment* arrangements. If this is code for ensuring that staff of colleges are to be employed on individual contracts as we believe, without genuine choice of collective bargaining, then this is in breach of ILO Convention 98³.
21. This Bill links the funding of the colleges to the offering of AWAs to staff. Subclause 6(2) enables the Minister to specify conditions for payment to be made in the case of colleges operating as State schools and subclause 7(5) of the Bill makes it clear that, in determining criteria for the funding of non-government colleges, the minister must have regard to the objects of the Act.
22. The wording of the Bill makes it clear that the government will, where it has the capacity to do so, impose AWAs as a condition of funding.
23. The imposition of such a requirement takes away from the “industry-led” governing council the capacity to determine, with their employees, the most effective form of agreement making for them at their workplace. The “industry-led” governing council is, it would appear, government controlled.
24. The Minister claims that the choices confronting workers with respect to their wages and conditions are to work for *the award wage* if they so

³ ILO Convention 98 on the Right to Organize and Collective Bargaining.

want or if they are *a teacher of quality* then they can *negotiate a higher wage and a better wage*.⁴ He then claims that the relevant union is arguing for lower wages for teachers⁵. The Minister, as so many other do, assumes that AWAs deliver a *higher wage and a better wage*. The underlying assumptions of this statement of course are that individual contracts necessarily deliver higher and better wages than collective agreements and that collective bargaining somehow suppresses the wages that would otherwise be paid to workers. Public school teachers are paid well above the rates of pay in the federal teachers awards through improvements negotiated by their union representatives in collective agreements. This is true, with few exceptions, for employees in the private sector as well.

25. The ACTU has made an extensive submission on the effect of AWAs in our submission to the Committee with respect to the *Skilling Australia's Workforce Bill 2005*. Relevant excerpts from that submission are at Attachment 1 to this submission.
26. While the Bill seeks to impose individual contracts it does not allow workers to choose their preferred form of agreement making and have that accepted or enforced in any way. The Bill places no requirement on the employer (whether that is the governing council or the principle of the college) to respect the wishes of employees should they seek a collective agreement. In fact it requires that this preference be overridden.
27. As we stated in our submission to the *Skilling Australia's Workforce Bill 2005* it is improper for the government to use legislation designed to address a skills issue to achieve their ideological obsession with individual workplace agreements.

⁴ Minister for Vocational and Technical Education, Gary Hardgrave, *Meet the Press*, Channel Ten, 17 July 2005

⁵ *ibid*

The skills shortage

28. The causes of, and solutions to, Australia's current skill shortage in the trades, and in the area of child care (which is not addressed by the colleges) are complex and not open to single, simplified solutions. And yet this is what the colleges suggest.
29. The colleges will not cause a skilled tradesperson to come into the labour market until 2010 (year 12 completed in 2007 at the earliest respectively with the finalisation of the apprenticeship to occur after that time). This will do nothing to assist industry now.
30. The ACTU has consistently identified some of the reasons for the skills shortage and sought to contribute to solutions through a range of measures we believe form the first steps in addressing the shortage. These include: an examination within each industry sector where a skills shortage has been identified and the development of plans specific to that industry to address that shortage; additional funding from governments for additional TAFE places and to better match apprentices to vacancies; and additional employer subsidies to recognise increased investment in apprenticeships in areas of skill shortage. These proposals do not rely on high infrastructure costs or the duplication of existing education and training resources. What they will do however is deliver skilled workers to industry in the shortest possible time.
31. The contrast with the proposition put forward in the Bill is clear.

The effect of individual contracts

- 1.1 Australian workers have not taken up with vigour the Government's preferred individual contracts so the Government instead will use this legislation to have such individual contracts forced on the workforce wherever it can.
- 1.2 Individual contracts do not lead to greater productivity, higher wages outcomes or better and improved conditions of employment for workers who sign those AWAs.
- 1.3 Claims by the Government that individual contracts offer better pay and conditions⁶ and the BCA that they boost productivity⁷ are not based on any sound or rigorous analysis of individual contracts and other forms of determining pay and conditions of employment.
- 1.4 In analysing AWAs and comparing outcomes to workers who are on collective agreements and awards it is necessary to ensure that the comparison made is valid. Many employees on individual contracts occupy professional and managerial positions on higher than average incomes.⁸ This is, of course, not the profile of workers on collective agreements. This profile of workers on AWAs therefore distorts any comparison between workers on AWAs and workers on collective agreements or awards.

⁶ Advertisements by Government in newspapers on 9-10 July 2005 – *The Weekend Australian* page 6

⁷ Business Council of Australia (BCA) (2005), *Workplace Relations Action Plan: For Future Prosperity*, BCA Melbourne

⁸ Peetz, D., (2004) *How well off are employees under AWAs? Reanalysing the OEA's employee survey* Association of Industrial Relations Academics of Australia and New Zealand Conference Papers, Volume 1

- 1.5 The capacity to analyse the effect of AWAs is compromised by the secret nature of those AWAs. Unlike collective agreements they are not open to public scrutiny and therefore public analysis.
- 1.6 The patterns of experiences of managerial and professional employees on AWAs compared to 'ordinary' workers are explored by Peetz.⁹ Whilst he does not compare the Professional/managerial group to the 'ordinary' group of workers but rather examines the issues for the 'ordinary' workers on AWAs compared to a control group, the separation of the AWA employees into two distinct categories does provide some insight and support for the conclusion that managerial and professional workers have a different view and experience with AWAs to 'ordinary' workers. This difference is driven in part by the earning capacity and bargaining power held by managerial and professional workers compared to 'ordinary' workers.
- 1.7 This differing profile helps explain why the earnings of workers on individual contracts may appear to be higher than those on collective agreements – in fact up to 35 per cent higher¹⁰ in some cases. If just the private sector is considered the earnings of workers on AWAs is actually around two per cent less than those on collective agreements and, for female workers are 10 per cent less than for those on collective agreements.¹¹
- 1.8 Recent ABS data confirms that, when non-managerial workers are considered, AWAs provide a lower average hourly rate of pay than collective agreements.¹²
- 1.9 Peetz, in a further study, shows that productivity was in fact higher during the highly regulated pre-accord period¹³. In examining the

⁹ *ibid*

¹⁰ ABS Employment, Earnings and Hours survey as reported in Peetz (2004), see note 4.

¹¹ Peetz, D. 2004 *How well off are employees under AWAs? Reanalysing the OEA's employee survey* Association of Industrial Relations Academics of Australia and New Zealand Conference Papers, Volume 1

¹² ABS, *Employee Earnings and Hours* Cat. No. 6306.0

mining industry – who claim a high industrial contract density – productivity has been very low since 1996. Peetz does not say that AWAs cause high or low productivity, what he does show is that there is no link between deregulation of the labour market and productivity.

- 1.10 Workers forced on to AWAs through this legislation will be further disadvantaged should the government's proposed workplace reforms be implemented. The proposed legislation will allow for a real reduction in terms and conditions of employment for workers on AWAs compared to their terms and conditions today. Under the regime set out in the Workplace Relations Act 1996 as at July 2005 AWAs must pass a no disadvantage test as measured against the relevant award. The relevant award currently contains 20 allowable matters including skilled based career paths, redundancy pay, holiday loading, public holidays, additional payment for work on weekends, public holidays etc¹⁴. An AWA cannot disadvantage a person – on an overall basis – as compared to the award.
- 1.11 Under the government's new proposals the AWA cannot disadvantage a person compared only to four specified minima and the minimum rate of pay. Even without detailed analysis it is obvious that an AWA under the new proposals can reduce a raft of conditions of employment and pass the proposed new no disadvantage test as compared to the current test.
- 1.12 In addition, the proposed industrial relations legislation will enable an employer to require a future employee to sign an AWA as a condition of employment. Pronouncements of the 'voluntary' nature of AWAs and the right of employees to choose their preferred form of employment regulation without discrimination are meaningless to these workers.

¹³ Peetz, D., (2005) *Is individual contracting more productive?* University of Sydney, <http://www.econ.usyd.edu.au/wos/IRchangesreportcard/>, June 2005.

¹⁴ Allowable award matters are set out in s. 89A of the *Workplace Relations Act 1996*

- 1.13 The legislation provides no rights for workers who chose to enter into a collective agreement and have their union negotiate that agreement on their behalf. Nor does it require, should the employees so choose, that the employer respect these wishes of the employees to bargain collectively or to be represented by their union in that bargaining.

The AWA provisions breach ILO conventions

- 1.14 Article 4 of ILO Convention 98¹⁵ requires that Australia take appropriate measures to encourage and promote collective bargaining. The requirement that AWAs be offered to staff undermines the right to collective bargaining as it fails to encourage collective bargaining.
- 1.15 In 2000 the Committee of Experts on the Applications of Conventions and Recommendations, having heard from the Australian Government called on the Government to take measures to ensure that workers in Australia are adequately protected against discrimination based on negotiating a collective agreement and that the Government take steps to amend the WRA to ensure that collective bargaining not only be allowed but be encouraged at a level determined by the bargaining parties.¹⁶ These views were re-iterated in the 2005 Country Observations of the Committee.
- 1.16 In no sense can this legislation be seen to effectively address the concerns expressed by the Committee of Experts. In fact the legislation does the opposite of that sought by the Committee of Experts. It does not encourage collective bargaining nor does it protect workers from discrimination if they participate in collective bargaining. This legislation in fact penalises workers who participate

¹⁵ ILO Convention on the Right To Organize And Collective Bargaining

¹⁶ ILO, Report of the Committee of Experts on the Application of Standards and Recommendations, ILC 88th Session 2000, Report III (Part 1A), pp 222-5

in collective bargaining by removing funding from their State TAFE system.

- 1.17 As recently as June 2005 the Australian Government has been asked by the Committee of the Application of Standards and Recommendations to provide a detailed report to the Committee of Experts *on all elements relating to the application of the Convention, in both law and practice, including the discussion held in the present Committee, taking into account all matters relating to the impact of the legislation on the effective recognition of the right to collective bargaining.*¹⁷
- 1.18 Whilst this requirement may be seen to be directed at the *Workplace Relations Act 1996* in particular, the inclusion in funding legislation of the requirement to offer AWAs is an example where the practice in Australia is contrary to the Convention requirements.

¹⁷ International Labour Conference, Provisional Record, Ninety-third Session, Geneva, 2005