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EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE

**Reference: Higher Education Legislation Amendment (Workplace Relations
Requirements) Bill 2005**

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SENATE
EMPLOYMENT, WORKPLACE RELATIONS AND
EDUCATION LEGISLATION COMMITTEE

Friday, 23 September 2005

Members: Senator Troeth (*Chair*), Senator Marshall (*Deputy Chair*), Senators Barnett, George Campbell, Johnston and Stott Despoja

Substitute members: Senator Crossin for Senator George Campbell

Participating members: Senators Abetz, Bartlett, Boswell, Brandis, Bob Brown, George Campbell, Carr, Chapman, Colbeck, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fifield, Forshaw, Hogg, Humphries, Hutchins, Lightfoot, Ludwig, Lundy, Mason, McEwen, McGauran, Milne, Nettle, O'Brien, Payne, Robert Ray, Santoro, Sherry, Siewert, Stephens, Stott Despoja, Trood, Watson, Webber and Wong

Senators in attendance: Senators Crossin, Stott Despoja and Troeth

Terms of reference for the inquiry:

Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005

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Committee met at 8.59 am

CHAIR (Senator Troeth)—I declare open this public hearing of the Senate Employment, Workplace Relations and Education Legislation committee inquiry into the legislation to require increased flexibility in the remuneration agreements which universities make with members of their academic staff and general employees. On 10 August 2005 the Senate referred the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005 to this committee for inquiry. The committee is due to report on 10 October.

The policy objectives of this legislation have been clear since the issue of the government's Crossroads review in 2002. The committee's task is to consider, in particular, the likely effect of the legislation on the operations of current enterprise bargaining agreements. This includes the way universities will improve performance management and reward high-performing staff. Although the committee has received only seven submissions to this inquiry, these have come from representative parties with a vital interest in the operations of the legislation. We will be listening carefully to these and other views expressed here today.

Witnesses appearing before the committee are protected by parliamentary privilege. This gives them special rights and immunities, because people must be able to give evidence to committees without prejudice to themselves. Any act which disadvantages a witness as a result of evidence given before the Senate or any of its committees is treated as a breach of privilege.

[9.01 am]

KING, Mr Conor, Director, Policy and Analysis, Australian Vice-Chancellors Committee

LARKINS, Professor Richard Graeme, Vice-Chancellor and President, Monash University

CHAIR—I welcome our first witnesses, who are from the Australian Vice-Chancellors Committee. Thank you for your submission. Before we ask questions, you have an opportunity to make a brief statement for the record or to refer very briefly to your submission.

Prof. Larkins—Thank you for giving me the opportunity to make a statement in relation to this legislation. The Australian Vice-Chancellors Committee is opposed to the legislation in its present form. I will give seven reasons for that opposition. The first is that it is unnecessary; the second is that it is unprincipled; the third is that it is discriminatory; the fourth is that it is impractical; the fifth is that it has procedural unfairness associated with it; the sixth is that it is counterproductive; and the seventh is that it is rigid and micro-regulatory.

I will go through those reasons very briefly, since I do not have very much time. The legislation is unnecessary because, for several years now, the universities have actually been exercising considerable flexibility. Indeed, most staff on the higher level—the high-performing staff—are on performance contracts which reward good performance. In addition, through the performance management system, we have methods of dealing with unsatisfactory performance—which, although time consuming, are effective. Therefore, as there is current flexibility, the legislation is unnecessary.

Second, the legislation is unprincipled in that, at the time of the Higher Education Support Act and negotiations surrounding that prior to its passage in December 2003, there was considerable discussion about linking higher education workplace relations requirements to the Commonwealth Grants Scheme increases. The support of four independent senators, after negotiation with the AVCC, was very much around the decision by government to drop the requirement for linking the HEWRRs to the CGS increase. To go back on that agreement, which was one of the bases of the AVCC supporting the legislation at that time, would seem to be unprincipled.

The third is that it is discriminatory. The universities are perfectly willing to conform to workplace relations requirements that apply throughout the work force. We can see no reason for singling out the universities for particular legislation that applies exclusively to universities.

The fourth is that it is impractical. The component that is impractical is the requirement to offer AWAs to casual workers. Following a meeting with the two relevant ministers the legislation was amended to give a deferment until June 2006 of the requirement to offer AWAs to casual workers employed for less than a month. Universities employ many casual workers for periods of high demand such as invigilating at exams or demonstrating in practical classes and so on. These are very often students given the opportunity to work for a short period of time. To offer all of those AWAs is incredibly complex and would achieve nothing. We would suggest that, if the legislation were to go ahead, the requirement to offer

AWAs to casual workers be deferred indefinitely for casual workers employed for a period of less than six months.

The fifth is procedural unfairness for difference in requirements in terms of time for those universities who have not got a current EBA in operation. By and large, those universities would have been negotiating with the unions for a more productive type of EBA. To require them to implement the HEWRRS by 30 November this year and the other universities not until a comparable time towards the end of next year is an example of procedural unfairness.

The sixth reason is that it is counterproductive because the requirement to deliver a conforming EBA actually gives substantial bargaining power to the unions and acknowledgment that universities will lose substantial funding—in Monash's case, \$8 million—if this is not signed. It means that we have a gun at our head in negotiation. Unions do not have the same feeling that they need to have this because the old EBA is still in operation until we sign a new one.

The seventh is that it is rigid and microregulatory. Why do we have to have an EBA, for example? Why can't we have other ways of interacting with our work force? So it is really contrary to the governance of our philosophy of having a light-handed regulation. It is in fact another example of universities being subjected to rigid and microregulatory requirements of which we have had many examples over the last couple of years. Those are the seven reasons that the AVCC is not in favour of the legislation and certainly not in its current form.

CHAIR—It is understood that the universities may offer AWAs. They do not have to—that is true. Do you have any estimate of the likely demand for AWAs in universities?

Prof. Larkins—We have at the moment 150 of our staff employed on common-law contracts which are within the confines of the old EBA. We are allowed to do that in situations where we choose to, and it is by mutual consent. Many other staff are on limited term contracts of one sort or another which are also flexible, so we have a variety of employment conditions currently. In terms of the take-up of formal AWAs, I think it will depend to some extent on the new form of the AWAs. Up until now they have been fairly prohibitive in their complexity. If they are simple, there may be take-up. We will certainly be offering them as we are required to, given that the legislation is brought into effect. I cannot really estimate the extent of take-up but I would imagine it would at least be the 150 or so that we have on performance based contracts for the moment and probably additional staff over and above that. That is our university. I cannot really comment about other universities.

CHAIR—You would not have any idea of numbers, Mr King?

Mr King—I think the point Professor Larkins makes is that across the university sector most of the senior staff are on some sort of common-law contract and such people may or may not think that an AWA is advantageous to them. They may think that existing contracts are suitable. The broad data from the department suggests that roughly a third of staff are on some sort of limited term already. Again, each of those people would have to make up their minds whether the AWA offers something that the existing contracts did not have. Part of our point is that there are already arrangements between universities and their staff that are designed for that individual person.

CHAIR—Would you foresee that negotiating an AWA would be much different from negotiating a common-law employment contract?

Prof. Larkins—It really depends, I think, on the format of the AWA, but I would not imagine it would be hugely different.

Mr King—That is also our point. Universities already have in place these sorts of arrangements. The focus on the AWA seems to be distracting from effective negotiations of the university management with their staff. But in some cases it may be useful. There are various rules and requirements about the AWAs. The university would have to follow those a little more as they are requirements that may not apply to the present contracts. Again, the government also has its reform package due at some point—

CHAIR—Yes, we do.

Mr King—which may change those arrangements. We do not know what that is.

CHAIR—The whole point of the reform package is that it will make things simpler. I am assuming that that will in part apply to AWAs. Are there likely to be any practical difficulties, then, in running AWAs alongside the certified agreements?

Prof. Larkins—There would be if there was a requirement to offer them to all of the casual workers. There are a very large number of people, as I said, who are often in for a day or two at a time and it just seems farcical to be required to do that. There would be practical difficulties around that rather than just being able to sign them up for a contract that is explicit about how much they get paid per hour for the time of the employment.

CHAIR—With the type of employment you have that you mentioned as an example—that is, casual employment, such as students being employed as invigilators and that sort of thing—would you think that AWAs would suit them better in that many of them, for example, may have other jobs and it would be possible for them to get an employment contract which will suit their own individual circumstances quite well?

Prof. Larkins—Again, it depends on what the AWA template turns out to be. At the moment and at the time of introduction of this legislation, AWAs require individual certification, I believe. It just seems farcical to be doing that. Why make life so complicated? It is just much simpler to be able to sign them up for the work that you want them to do and that is it. It is just a common-law contract with the employee around a short-term arrangement to everyone's advantage. The requirement to conform to the AWA seems to be unnecessarily regulatory and interventionist.

CHAIR—Even if it suited the individual person better?

Prof. Larkins—How would it suit them better?

CHAIR—They may have particular circumstances for which they would like to have a different employment arrangement in terms of conditions than other people, for argument's sake.

Prof. Larkins—But that would just be negotiated. I cannot see the necessity for an AWA compared with just making the arrangements that you want and conforming to what the minimum requirements are. It is that sort of specific requirement. We are all for flexibility. We

think we have more flexibility in the current arrangement than is invoked by the new legislation.

CHAIR—Can you tell me the exact reason why you see more flexibility in the current arrangement?

Prof. Larkins—Because we can offer individual common-law contracts when we wish to. We can offer casual contracts when and how we want to provided they conform to the minimum requirements which are in legislation. To have specific workplace relations requirements for universities as opposed to a general community just makes life more complicated for us.

CHAIR—Could you explain the way in which common-law contract agreements are negotiated and how they have advantages over AWAs in your view?

Prof. Larkins—The requirement of enterprise based agreements is that they are not disadvantageous to the worker compared with the EB. For people at high levels, we are working in a highly competitive environment in terms of attracting good staff. We sit down and negotiate with staff the employment conditions that they have—the performance related bonus that they might get, the base rate of their pay and the other components of the employment package. It is a totally flexible arrangement. We would not envisage employing people as deans of faculty or deputy vice-chancellors or pro-vice-chancellors or heads of research institutes or other forms of star researchers on any form of contract other than that individually negotiated contract because we just would not get them. If we tried to employ them on a standard professor's package—as in the LEBA—we just would not get them.

Similarly, right through a number of high demand areas where the employment conditions in the general community are so far ahead of those offered in standard EB based university arrangements—such as in business law and taxation, the medical faculty or whatever—we have what we call market loadings, where we have additions to those standard arrangements. Again, they are entirely flexible from our point of view. We can arrange those as we want.

CHAIR—What about the reverse position—and we have heard about this in past inquiries—where vice-chancellors are sometimes frustrated about having to pay the going rate, negotiated through enterprise bargaining, to academics who are not up to the mark?

Prof. Larkins—I think that means that we have to operate well the performance management system we have. We do not want to employ people who are not performing up to the mark. It is not a matter of how much we pay them. We do not want them working for us if they are not performing at a competitive level. We have a process for negotiating with those staff about early retirement or dismissing them through a properly managed performance management system. It is tedious, but that is necessary for natural justice. We go through that process and we are perfectly able to dismiss staff. Monash is going through a renewal process of some magnitude, and we are certainly enticing a number of our inactive research staff into early retirement through packages. Alternatively, with people who really are underperforming, we can dismiss them through a properly managed performance management system, so we do not think that is any advantage to us.

CHAIR—That can be managed also through an AWA?

Prof. Larkins—Yes, it could be managed through an AWA, if a person had chosen an AWA, but it could be managed in the current system as well. We do not object to the opportunity for staff to choose whatever form of employment contract they want. We can do that essentially under the terms of the current arrangements and certainly with whatever the general work force is being asked to accept through the workplace relations changes which are occurring. We just cannot see the point for singling out the universities before the legislation is introduced into the general work force. It just creates another area of discord in the universities in a sector where we are trying to get the very best out of our work force in a mutually positive and supportive way. It is setting up an unnecessary adversarial situation for no returns, as far as we can see.

Senator STOTT DESPOJA—I will start with one of your last points, Professor—that is, the argument that already universities are dealing with workplace flexibility, different packages, performance based pay and that this legislation does not necessarily provide greater flexibility or greater opportunities for institutions. Do you think that perhaps some politicians, and maybe government, underestimate how much the university sector has changed in recent times in relation to dealing with its staff?

Prof. Larkins—I think there is very much the perception amongst the universities that there is no realisation of the extent to which universities have changed. It applies in this area; it also applies in the area of so-called voluntary student unionism, for example—which is not the topic for today's discussion. But I think there is the perception that universities are as they were when the various politicians or the bureaucrats responsible who are framing the legislation were at university. There has been a substantial change in workplace flexibility over the last decade in particular. I think being in a time warp, when various people went to university and assuming it is still the same, has been a cause of the implementation of legislation which is very unnecessary.

Senator STOTT DESPOJA—Like you, I am at a bit of a loss as to why this has been pursued. I genuinely do not want to sit here today asking you about the likely take-up rate of AWAs and a range of other things because I have a reasonably strong belief—maybe a somewhat romantic belief—in university autonomy. Can you tell me what impact this is having on institutional autonomy? Are we looking at unprecedented levels of interference in the autonomy of universities or is this something we may have seen previously?

Prof. Larkins—I think the combination of this legislation with a range of consequences from the implementation of the Higher Education Support Act—the degree of rigidity with respect to the numbers of subsidised students and in fact fee-paying students in each of the discipline clusters, for example—where there is a degree of minute regulation of our student intake is unprecedented, certainly in the last 15 years. There has been nothing like that degree of microregulation. The current legislation to forbid universities from charging service and amenity fees and the consequences that will have on the income of the university and the ability of the university to provide services for students, again, seems to be a degree of intervention that is totally unjustified. Whatever the perceptions about student unionism, conflating that with the issue of service and amenity fees is, again, an area of microregulation that is completely contrary to the stated philosophical position of the current government.

Senator STOTT DESPOJA—Recommendation 5 in your submission is on the discriminatory aspect of the legislation. You have put on record a number of times, both in your submission and here today, that this is different from other workplaces. This is singling out universities. Are you aware of other precedents of other workplaces that might have this level of intervention or government control or interference when it comes to their workplace relations policies?

Prof. Larkins—I can only speak of what I have read in the newspapers about the passage and progress towards the industrial relations changes. It seems that there is an omnibus set of regulations which are being required of the general work force. But, for some reason, before those are implemented, the universities are required to do additional things and to jump through additional hoops to get the Commonwealth Grants Scheme increases that were promised to be separated from those requirements at the time of the passage of the Higher Education Support Act. To put it simply, the universities feel they have been duded by the way this legislation has now been brought forward because the government apparently now has the power in the Senate to pass it, despite originally putting forward the legislation deliberately disassociating the requirements from the Commonwealth Grants Scheme increases.

Senator STOTT DESPOJA—I understand your concerns in relation to tying funding arrangements to workplace relations changes. I have some quick questions on your recommendations. I refer to the last three recommendations on page 10. Recommendation 5 is pretty clear. You recommend that parliament not pass the bill, obviously on the grounds of that so-called discriminatory aspect. Recommendation 6 is that it not be tied to increases in the CGS. I understand that point. Then you have this sort of backup recommendation, recommendation 7. I appreciate the fact that you are giving us a menu of recommendations, obviously in case the first two are unsupported. You say:

... that universities continue receiving the 2005 funding increases of 2.5% even if they fail to meet the new requirements.

Could you talk us through that recommendation?

Prof. Larkins—Yes, I think it is a reflection of the level of desperation that the universities have come to in relation to dealing with the government as regards some of the implementation of the Higher Education Support Act. Last year the universities were required to meet governance regulations in relation to getting the first tranche, the first 2.5 per cent increase, in the Commonwealth Grant Scheme. We should emphasise that this is in the face of university grants that have not been indexed over the last 10 years. The 2.5 per cent increase is a tiny fraction of the money that has been lost through the lack of realistic indexation over the last 10 years. Having received that 2.5 per cent, the threat is that, if we do not comply with the letter of the HEWRRs, we will lose that 2.5 per cent as well as the 2.5 per cent that was due to be phased in this year. It is a reflection of the fact that we are desperate to be able to provide an internationally competitive form of higher education and research in our sector. I think we are seeing a government that is complacently accepting of the fact that we are able to support the system through attracting international students because of the quality of what we are offering. The idea that we can continue to do that on the basis of the income from international students is a bit like a perpetual motion machine. We are really saying that the

quality of what we are doing is sufficient to attract the people who will pay for the quality of what we are doing, and it is just not sustainable in that way.

To say that universities are threatened with not only not getting the next tranche of the 2.5 per cent increase, which just holds the relative funding to a rate of increase in costs for a year, but also losing the 2.5 per cent we got last time is, again, something that would be totally unfair—it is in the current requirements. It would be quite disastrous to lose that as well. It is very much a fall-back situation.

Senator STOTT DESPOJA—Indeed, and I see the reasonableness of your position, but it does reek of desperation. Do you think the minister understands how desperate institutions are?

Prof. Larkins—I am not sure. I cannot answer for the minister.

Senator STOTT DESPOJA—Obviously you have touched on this and concerns have been expressed in other submissions too. Are you of the opinion that, in its current form, the legislation allows the minister to change the conditions on which universities receive their funding—even during the life of a certified agreement? Can you give us your perspective on that.

Prof. Larkins—The actual requirements are vague in a number of respects. Terms like ‘enterprise agreement’ should be principle based, and not detailed, and allow flexibility and whatever. But there is no detail in relation to what is actually required there, so we are going through and negotiating in good faith with the staff and the unions—separately—to come to an EA that we think and hope will conform to the minister’s interpretation of the vaguely stated requirements. We do not know what his whim and fancy will be in relation to the negotiated agreements, because of the vagueness of the requirements. We also have a situation where we have another 2.5 per cent due to come in next year, so even if we satisfy the requirements this year there is nothing to stop the minister saying that next year’s requirements are going to be different again. Certainly we have universities that have EBAs due to expire in 2008 that have been required to have a new EBA that conforms by next year. So, yes, there are all sorts of implications with respect to intervention in terms of what have been stable negotiated positions that have been worked through to the advantage of the employees and the advantage of the university.

We should remember that what we are trying to do is to get a win-win situation. The universities want the best employment conditions for their staff so that we can attract the best staff and have the staff totally committed to working for the university. Anything that comes from outside in terms of regulations, particularly such regulations as we have here, interferes with our ability to work with our work force to get the win-win situation we are all after.

Senator CROSSIN—Professor Larkins, could you tell me again what your sixth reason was?

Prof. Larkins—My sixth reason was that it is counterproductive in that giving a date by which we have to have not only compliant behaviour but also a certified EBA is giving a bargaining chip to the unions. We try to work cooperatively with the unions, so I am not saying that we are in an aggressive or antagonistic mood, but in those universities that do not have a positive relationship with unions it means that the union can hold out for more money,

for example, and unreasonable increases in salaries on the basis that the universities will lose funding—in our case, \$8 million—if they do not have a compliant certified agreement by that time. So it gives a bargaining chip to the unions.

We know that the agreement that is currently in place will continue if we do not sign a new one, so the unions are not at risk of losing the current situation and they know that the university is at risk of losing a substantial amount of increased money. They do not recognise the need for us to responsibly financially plan and deliver a surplus each year to be able to support our capital development and borrowing. They just see that we have money. They do not recognise that it is a real problem for the university to not get the extra \$8 million, and they can push very hard and aggressively for highly remunerative conditions on the basis that we have to sign something by then or we are sunk. That is what the counterproductive thing is; it is putting a loaded gun in the hands of a union.

Senator CROSSIN—Contrary to what might have been stated earlier, this is not a requirement that universities ‘may’ offer AWAs to all new staff. The ‘may offer AWAs’, as I understand it, was part of the workplace relations requirements under the previous two conditions of funding.

Prof. Larkins—Yes, it was. That was in the original—

Senator CROSSIN—This is a requirement that you now must offer them to all staff.

Prof. Larkins—We must offer them to all staff including, after June 2006, all casual staff, no matter how short the time of employment.

Senator CROSSIN—I want to ask you some questions that are a bit different to Senator Stott-Despoja’s approach. As you are here and you have Monash University in your charge, I think it is important to have a bit of a snapshot. What is the total number of equivalent full-time staff at Monash?

Prof. Larkins—The equivalent full-time staff is 5,000.

Senator CROSSIN—How many casuals would you have in that number?

Prof. Larkins—You have the statistics, Conor, but it would something like 20 per cent. Is that right? If you aggregate the number who are on individual contracts and time-limited contracts and who are casual staff, then it would come to about 20 per cent. Correct?

Mr King—Yes, on the figures you gave us, it would be about 18 per cent of the 5,000.

Senator CROSSIN—So we would be looking at around 1,000 people, do you think?

Prof. Larkins—Yes.

Senator CROSSIN—Does that include the people you might employ in the last couple of weeks of a semester and over the exam period to mark papers?

Prof. Larkins—I am not sure that they are in those numbers.

Mr King—They are counted, but the figures I was using were the FTEs. I am not sure how many casual FTEs we have.

Prof. Larkins—They are in very large numbers.

Senator CROSSIN—Technically though, Professor, under these new requirements, you must even offer markers an AWA. Is that correct?

Prof. Larkins—Absolutely. This is the crazy thing that we are objecting to. It is just so silly. We are deliberately trying—because of the difficulty that many students have in supporting themselves through university—as one of our big projects to provide short-term employment for students to help them to support themselves while they are at university. This provides such a cumbersome process.

Senator CROSSIN—I worked as a casual lecturer at the Northern Territory University for three hours a week for the period of a semester. Your experience may well provide some support or the contrary to this, but for a casual lecturer coming in for three hours a week over, say, only 16 weeks of an academic semester, what benefit is there for that person in accepting an AWA? I would have thought people in that situation would simply want their hourly rate plus the loading and thank you very much.

Prof. Larkins—Most likely the vast majority of people will continue to do that, but we have to go through this parody of offering an AWA. It will just cause bemusement. Some of the more obsessive ones will go off and talk to their solicitor friends about it. It just seems to add a level of complexity that is totally unnecessary and counterproductive. I cannot see the purpose of it.

Senator CROSSIN—An AWA in that situation will not have any leave specified in it because they are casuals and would have an hourly rate. Do you believe universities will use this as an opportunity to diminish the hourly rate and undermine the award?

Prof. Larkins—We have no reason to do that.

Senator CROSSIN—Why would you not do that?

Prof. Larkins—Because we have a statement of purpose that relates to social justice, for example. It is against everything we stand for.

Senator CROSSIN—How much time, energy and effort is it going to cost your human resources department to send out 1000 AWAs, even if they are only a page long or so, and lodge them with the Office of the Employment Advocate?

Prof. Larkins—Absolutely. It is everything that is required around the accountability processes and the recording processes relating to them. I cannot make an estimate of that. I can only express my general frustration on behalf of all university administration about the piling up of one thing after another in terms of accountability. The immediate requirements of HESA are quite separate. HEWRRs has added something like \$2 million to our administrative requirements per year. This will add something else, but I cannot estimate the amount.

Senator CROSSIN—Can I take you to the way in which the HEWRRs will operate. As I understand it, they will be disallowable instruments in the parliament—they will come as part of the regulations.

Prof. Larkins—Yes.

Senator CROSSIN—What percentage of funding would you receive from the Commonwealth for Monash? Would it be around 40 or 45 per cent?

Prof. Larkins—No. It is considerably less than that for Monash.

Senator CROSSIN—Less than that?

Prof. Larkins—Yes. That is for sector average. The Commonwealth Grant Scheme now gives us \$260 million out of an income of approximately \$1 billion, so it is about 26 per cent.

Senator CROSSIN—So why would the Commonwealth then want 100 per cent control over your employment relationships with your staff?

Prof. Larkins—There seems to have been a paradoxical trend in recent times to decrease the amount of funding in relative terms, and certainly allowing for costs in real terms, while at the same time inversely increase the degree of regulation.

Senator CROSSIN—So we decrease the funding but we want much more control over the micromanagement of the universities. Does that make any sense to the Australian Vice-Chancellors' Committee?

Prof. Larkins—It does not make any sense. I guess in a highly controlled society and a situation where government wants to be regulatory and microregulatory then it makes sense. Is it something which achieves a better outcome for the system? No.

Senator CROSSIN—Do you think this will achieve a better outcome for the system?

Prof. Larkins—No, I do not believe so.

Senator CROSSIN—Why not?

Prof. Larkins—Because of the seven reasons I gave. It is unnecessary, unprincipled, discriminatory and so on. I think it is interventionist. It ignores the fact that our success as a university depends on us getting on and doing well the things that the government is trying to impose. In other words, our motivation is exactly what the government is trying to achieve, but the government, with its heavy hand, is actually interfering with our ability to achieve what we want to achieve, which is the best outcomes in education and research.

Senator CROSSIN—Of course we have a situation where the HEWRRs may well change at any stage, year by year. The person in total control of that will be the minister.

Mr King—Subject to disallowance. But basically, yes, you are right.

Senator CROSSIN—Subject to disallowance, but given the performance last week, I do not hold much hope in that being achieved. Therefore, we now have a situation where not only do we have declining funds from the Commonwealth and micromanagement but the requirements for funding can change at the behest of a minister who—we have heard in evidence from you before—is perhaps not quite aware of the desperate situation that universities find themselves in these days.

Prof. Larkins—I think that 'desperate' is too strong a word. I would say that universities find themselves in a progressively less competitive situation. I have just been on a delegation to Europe and met the EU commissioners and the vice-chancellors committees in France and Germany, for example. I saw the extent to which increased funding is provided there, the extent of investment in research and development.

Early this year, I also went to the 100th anniversary of Korea University. I saw the level of investment in that university; their ambition to be an international university; the facilities that they are able to provide in their digital library, for example; and their international centre, which is accommodation for international students. Thirty per cent of their courses are now being taught in English, and that will be increasing. The ambition for the first 100 years of Korea University was national pride; for the next 100 years it will be global pride. We have been living in this fool's paradise where we think that we can support our universities through their ability to attract international students. We are putting them in a situation where they are becoming less and less competitive. We have seen a flattening of that demand. The investment in higher education in China is quite phenomenal, as you have probably seen yourself on your recent trip.

Senator CROSSIN—Yes, that is true.

Prof. Larkins—It is just going to be a situation where the engine that drives the development of the economy—that is, the education of our young people in research and innovation—is being severely threatened by underinvestment.

Senator CROSSIN—Professor Larkins, on another matter, the government are due to bring in legislation some time in the next couple of months that will totally change the industrial relations system in this country, based on a platform of flexibility and choice. On the other hand, we see here a government that want to micromanage the industrial relations in universities. You have given evidence today that, as far as you can see, this will be the only involvement of that type not only in the education sector but in any industry in this country. Why do you believe that universities are being chosen to be different to the rest of their industrial relations agenda?

Prof. Larkins—I can only speculate. Part of it is the perception that universities are unchanged compared with how they were decades ago when the various people responsible for making the decisions were at university. The people making the decisions also have not been involved in university administration and do not recognise what the real issues are. I am only speculating; I cannot get into the minds of the people making these decisions. We have certainly had the opportunity to talk to the two ministers involved and try to explain that it was not necessary to have this additional imposition on the university sector.

Senator CROSSIN—Does it seem hypocritical?

Prof. Larkins—I guess that is just an interpretation, but it seems paradoxical in terms of the stated rhetoric that small government allows flexibility and the freedom to compete when what is actually provided is a set of requirements and hoops to leap through which are quite a distraction, are counterintuitive in relation to the stated philosophy and are hindering competitiveness over time.

Senator CROSSIN—I have one last question. Is it your understanding that perhaps individual contracts can remain side-by-side with enterprise agreements and AWAs in this environment?

Prof. Larkins—Conor has more time to ponder the legislation in detail, but as I understand it, provided that Australian workplace agreements are offered, then that is a requirement—it does not proscribe having individual contracts outside AWAs.

Mr King—I would agree with that.

Senator CROSSIN—It has been put to me, though, and I have read in a number of articles that this move can actually threaten or even undermine conditions of employment for staff. It will take universities down-market, and that will impact on the quality of teaching and the retention of staff.

Prof. Larkins—I guess this is that slight issue that the AVCC has as a body—we are such a heterogeneous group of universities—so I cannot answer for the sector. What I can say is that, at Monash, with our ambition to be a leading international university, that would be entirely counterproductive for us. We want to have the best employment conditions for our staff that we can afford so we can attract the best possible staff. So we would have no ambition to do that. It is not so much about driving costs down to the nth degree; it is about developing our skills so we can attract income for research and can attract the best students. We have a greater priority of providing good staff conditions rather than cutting costs of employment for staff, but other universities aiming for a different market may have different attitudes. I do not know whether Conor wants to speak.

Mr King—I think what Professor Larkin has just said would broadly be true of all the universities. In endeavouring to maintain their role as a university, they would always be looking at competing with each other, and they do compete in a national and international market. Undoubtedly some would have some desire to also control cost, but they realise they need the staff who are able to provide the education and research that people are looking for and, if too great a disparity grows, they will not be able to get the staff that can provide those sorts of services. I think you have to expect that there will be some commonality maintained within the broad negotiations that go on. I think broadly everyone would be in Richard's position, but some may have more of a desire to also look at the cost issue.

Prof. Larkins—One of the requirements is that we do not have conditions outside community norms. One of the areas where we might be judged to do this is parental leave, which has been quite a deliberate decision for the universities. We are negotiating an arrangement where mothers—or it can be exchanged for the father—can have 40 weeks on full pay and 38 weeks on 60 per cent pay. But, at the same time, as an alternative and to provide incentive for people coming back to work—so that they do not have research careers compromised, for example—we have said they can have the same financial benefit given to them while back at work to pay for child care. This is something we negotiated in an old EB. It was not necessary to have the new requirements to get that flexibility. But there we are deliberately trying to provide an environment which encourages academic involvement by women and maintenance of their role during their childbearing stages of life and which also offers an ability for them to come back to work, continue to be productive in research and have child-care support if that is their choice.

We think we are leading the way in providing a female compatible and supportive work environment. That is outside community standards, but we think it is something that is compatible with community standards in other countries and is highly desirable. If that, for example, is judged to be outside the community norms and is unacceptable, I think that is another counterproductive outcome. But it is a demonstration of the flexibility of the types of arrangements we are able to negotiate. That is something we support, particularly the ability

to take the money as an option and therefore support child care rather than having an artificial incentive to stay away from work. Just giving women the choice seems to be a wonderful way to go, but it is not the community norm. The university sector has deliberately negotiated that—or we have, anyway.

Senator STOTT DESPOJA—It is not the parliamentary norm.

CHAIR—We will have to stop there, Senator Crossin. Thank you very much for appearing before us today.

[9.50 am]

CULLINAN, Mr Joshua James, National Industrial Officer, National Tertiary Education Industry Union

KNIEST, Mr Paul, Research Officer, National Tertiary Education Industry Union

MURPHY, Mr Ted, Assistant Secretary, National Tertiary Education Industry Union

CHAIR—Welcome. Thank you for your submission. Before we ask questions, would you like to make a brief statement for the record or refer briefly to your submission?

Mr Murphy—First of all, an editorial correction to a part near the end of our submission where a typo gave a wrong impression about one of the recommendations is being distributed. I will only make some brief overview comments.

Our view of the higher education workplace relations requirements is that they constitute a significant and inappropriate intrusion into the autonomy of universities. Universities historically in Australia have had autonomy to determine the employment conditions of their staff, subject to general industrial legislation that has applied to the entire work force. They have not been subject to either direction by Commonwealth or state ministers with respect to their employment conditions or to what I would call an indirect form of direction—making changes in employment conditions a requirement for the provision or the maintenance of a given level of funding. Our first point is that the impact of the requirements—which were announced some time ago, before the bill—and the bill, which is designed to give legal effect to the requirements, is an intrusion into university autonomy.

By way of illustration, the requirements expressly refer to any restriction in an industrial agreement that limits or regulates the use of fixed term employment, even if the provision in the agreement is identical to the 1998 award of the full bench of the Industrial Relations Commission that established regulation of fixed term employment. Although an enterprise agreement merely would reproduce an award, and although under the Workplace Relations Act an enterprise agreement, either by reproducing the award or by other means, can legally regulate the use of fixed term employment, the impact of the workplace relations requirements is that a university would lose or be at significant risk of losing funding if it maintained restrictions on the use of fixed term employment. Equally the impact is that a university that negotiated a percentage cap on the use of casual employment would also be at risk of losing funding. We have also had statements by the Department of Education, Science and Training that clauses on hours of work; meals, break and overtime; staff relocations and travel between campuses; allowances; intellectual freedom and intellectual property; and workplace bullying should be removed from enterprise agreements. That is an indication of the detail of what we regard as intrusion into the autonomy of universities.

I want to make a second brief point. We also have a difficulty as to the universities that, whilst the Department of Education, Science and Training and the Department of Employment and Workplace Relations are making extensive comments on draft agreements from universities—as I understand it, those comments are provided to universities in writing and sometimes by direct discussion—the departments have put out a disclaimer saying that none of their comments, even comments which give a clear bill of health to a draft agreement,

are in any way indicative of what position will be taken by the minister, as the requirements must be met to the satisfaction of the minister.

So from the university's perspective and, equally, from our perspective, negotiating on the basis of statements by a department which has a disclaimer that says, 'Ultimately, the minister makes this decision, so we can't really provide you with any significant assistance—we can only give you our suggestions,' gives industrial bargaining in the university a significant terrain of uncertainty for both employees and universities.

The third point we want to make, which was made in our submission, is that the requirements as announced under the bill could be varied at any time in its life over the next few years. Consequently, even if universities meet the requirements as they stand now to the satisfaction of the minister, under the bill at least it is possible for the minister to vary those requirements in 2006-07 et cetera. They are the main comments I wanted to make. As I said, the overall view is that this is not only intrusive but also, whilst I would not say it is designed this way, has the effect of making industrial relations within the university sector more complicated and dispute-ridden than otherwise would be the case.

CHAIR—Does your union believe there is much interest by university administrations in AWAs?

Mr Murphy—Our union believes there is very little interest in AWAs by university administrations. The reason why we say that is that under the Workplace Relations Act universities have been able to offer AWAs for many years. Some have not done this at all and others have done so on a very selective basis, mainly for very senior positions in the university administration. So they have had the legal right to offer AWAs for a long time. They have either not done so or done so on a highly selective basis.

I do not believe, frankly, that the reason why they have either not offered them or have offered them so selectively is some fear of industrial explosion at the universities. In fact, reasons that have been cited to me by university managers in the past are that the transaction costs of offering AWAs are quite high and there are morale costs also in offering AWAs. If a person says, 'I am interested in taking the AWA provided you increase the salary by another \$5,000 or \$10,000,' where the university's value of that person's worth to the university is not commensurate with that person's own belief, that can produce a morale cost as well. So they have shown little interest and they are the main reasons, in my view, why they have not.

I suspect the reason why the government has effectively said, 'You must offer all staff AWAs or be at risk of losing funding,' is precisely because the universities have chosen different ways of achieving flexibility in the past—in particular, by offering employment contracts alongside enterprise agreements that may provide, and do provide in many cases, either a merit loading or a bonus to a particular individual or a market loading based on the difficulty of recruiting academics or IT staff, for example. Those have been provided by universities for many years in preference to using Australian workplace agreements.

CHAIR—Conversely, if the administrations have offered them only selectively and now they must offer them, do you believe there will be much interest amongst staff in taking them up?

Mr Murphy—Not if staff are given a genuine choice between employment on the collective agreement or employment on an Australian workplace agreement. If a prospective employee is basically given an employment offer with an AWA and formal or informal advice to the effect that, if they want the job, they must take the AWA, then I suspect that a prospective employee may well consider an AWA as the only way of getting that particular position. But, if the AWAs are offered on the basis of saying, ‘No matter whether you take the AWA or the collective agreement, you will get employment,’ or if you are an existing employee who is up for promotion or reclassification and no matter which option you take—the AWA or the collective agreement—you will still get that promotion or reclassification, I will be surprised if there is an extensive take-up rate of AWAs.

CHAIR—I should point out that the department’s submission, which is on page 61 of the submissions, says:

... it is and will remain illegal to coerce employees into accepting an AWA ...

Mr Murphy—Unfortunately, the definition of ‘coercion’ does not include ‘it is the AWA or the job’. Under the Workplace Relations Act it is happening in the work force now, outside the university sector. As I understand it, it is even happening in some parts of the Commonwealth Public Service. ‘Coercion’ does not mean that they cannot make employment conditional upon acceptance of an AWA.

The Department of Education, Science and Training and the Department of Employment and Workplace Relations have indirectly confirmed that. The department has provided advice to universities on the subject of enterprise agreements. Where universities were contemplating including in enterprise agreements a clause to the effect that, if a prospective employee is offered employment they will be given that employment regardless of whether they take an AWA or employment on a certified agreement, the department has not said that that is contrary to the requirements. What the department has said is that such a provision may inhibit the flexibility of the university in future, such as its ability to make employment conditional upon acceptance of an AWA. So I am with the department on this. Unfortunately, the Workplace Relations Act does not prohibit making employment conditional upon an AWA.

CHAIR—I will take that up with the representatives of the department when we see them later this morning. If AWAs did become part of the employment experience at universities, is there a role for your union in assisting members and others in negotiating the processes?

Mr Murphy—There would be a role for us. We have certain rights. If a staff member appointed us as a bargaining agent, then we would have certain rights to be involved in those representations and negotiations; we would have that option.

CHAIR—Do you have that role at the moment?

Mr Murphy—No, because, as I have said, we have not had much experience of AWAs in the university sector. There has been the odd occasion, I believe, where a senior staffer who is a member of the union has been offered an AWA and we have provided them with advice but really, as I said earlier, this is not a widespread practice.

Senator CROSSIN—It is good to see you all here. On the first page of your submission, at the end of your introduction, you state:

The real agenda behind the introduction of the Bill is to give force to the government's objective to reduce conditions of employment and collective bargaining rights for university staff ...

Would you put it to us that you think some universities would use this as an opportunity to diminish conditions that already exist, say, in enterprise agreements?

Mr Murphy—Yes, I would say that. I would say it in this context: I have seen a range of draft enterprise agreements prepared by universities in the wake of the release of the requirements. Some of the proposed changes that they are making, in my view, do not relate to the requirements.

In enterprise bargaining there is always, on the part of the unions, some level of negotiation and claim, but in my experience there is also, on the part of the universities, some level of claim and negotiation which is designed to roll back or reduce conditions outlined in the existing award or enterprise agreement. It would surprise me if some universities were not encouraged by the current industrial climate, having regard to the workplace relations requirements, to make those sorts of claims. As I have said, my judgment is that a number of them have made those sorts of claims. To be fair, other universities have basically said, 'We are looking at this from the standpoint of negotiation for the purposes of compliance with the requirements in order to get the additional funding.' But some universities are, in my view, using this for other purposes, yes.

Senator CROSSIN—The Australian Vice-Chancellors Committee have been pretty strong today in their opposition to this legislation. In fact, in all the higher education inquiries I have participated in I have not known the AVCC to be as strong as they were today in opposing legislation. In fact, it was perhaps one of the only times when the AVCC and the union might have been singing from the same hymn sheet. Surely, since their resistance to this is so strong, might it perhaps convince you that they want to reserve the workplace relations arrangements to themselves—that they want themselves rather than the minister to have control over what happens in the universities?

Mr Murphy—I should make it clear that I think they are logically severable positions in this sense. I do not doubt that the universities regard this as an intrusion into their autonomy. Equally, it is quite possible that a university management that supports the Australian vice-chancellors' position that this should be resisted and is an intrusion into their autonomy, and that has that view itself, will not nevertheless use this for tactical purposes in bargaining. I do not think they are logically incompatible positions. My answer to your previous question was not designed to say that there is some dissent within the universities' ranks on the autonomy issue. I would also say that what happens at the level of the Australian Vice-Chancellors Committee is not necessarily what happens at the level of negotiating with the human resources director in the enterprise bargaining context.

Senator CROSSIN—Could you provide some comments about what was said this morning. One of their reasons for objecting to this legislation was that they felt it was counterproductive and that the link between the requirement to implement the HEWRRs and to offer AWAs—and the line in particular that 'all the staff must by X date'—was providing a bargaining chip to the union.

Mr Murphy—Unfortunately I did not hear Professor Larkins's full testimony. I think what they were alluding to was that we would certainly not regard ourselves as having a bargaining chip in this environment. We would be surprised if the intention of the workplace relations requirement were to provide us with any bargaining chip or leg-up whatsoever. We do not believe we are in that situation. But what the universities are referring to is that effectively there is a deadline that has been set by the Commonwealth. That deadline pertains to when agreements must be certified by the commission. The deadline is 30 November in the case of universities that do not have new enterprise agreements in place this year. It takes a couple of weeks from when you submit an agreement to the commission to when you get it certified. There is a period of a ballot of all staff on a certain part of the agreement before certification. That is usually held over a two-week period with about another fortnight of notice to all staff so that they can read the agreement they are voting on.

I think the universities believe that they are under pressure as a result of that time line. They are in a position where they want to reach agreement with us and we want to reach agreement with them, frankly, but the negotiation process is stressful in two respects. Firstly, the time line is very difficult for all parties to meet. Secondly, as I indicated earlier, there is immense ambiguity. Even if, having regard to the comments made by various departments, you craft an enterprise agreement and you get it certified, you will not know whether Minister Nelson believes that it is to his satisfaction and that you should maintain the additional funding until after certification and after 30 November. So, in that climate, from the universities' point of view, I suspect what they mean by a bargaining chip is that they do not have the time to try and wait out or shift our bargaining position on certain key matters because of that deadline. But I cannot speak for them; I am only speculating about what they mean.

Senator CROSSIN—Let us explore for a minute, then, the ministerial powers that exist under this legislation. How do you see the bill allowing the minister to set the terms and conditions for staff in universities? What are your concerns about the high level of ministerial intervention that exists in this bill?

Mr Murphy—The mechanism is quite simple. The places I am negotiating with simply say that there is \$5 million at risk, and they are quite right in terms of the figures. It does vary. A smaller university will say that there is \$3 million at risk. Another university will say that there is \$7 million or \$8 million at risk. They are significant sums of money for a university, particularly in a situation where, if you like, public funding as a proportion of their total budget is declining and non-government sources of funding, whilst they are increasingly important, are also somewhat more uncertain because of market conditions. There have been some major shifts in the overseas student enrolment market, if I can put it in those terms, which are worrying the universities. The universities are in a position where, because there are significant amounts of money involved, from their perspective they need—and, from our perspective, we understand their need in this regard—to try and get that additional funding.

It is not so much a matter of the minister sending out a direction to a vice-chancellor saying, 'You shall change your employment conditions this way because you are in effect and legally a statutory officeholder of the Commonwealth government.' But it is a matter of the vice-chancellor receiving a direction from the minister that says, 'If you want to maintain

your current level of funding then you will change the employment conditions with your staff in these nominated areas.’ That is the mechanism.

Senator CROSSIN—Isn’t there a problem there, because in fact those conditions may change and the requirement linked to university funding may change during the life of an enterprise agreement?

Mr Murphy—Yes, that is true. There is nothing in the bill that basically says that, once announced, the requirements cannot be varied for a three-year period, for example. There is nothing to that effect. So it is technically open to the minister to change the requirements and shift the goalposts. That, I think, is a poor legislative framework for universities to operate in. So that is the case, yes.

Senator CROSSIN—I want to put to you some questions that I put to the AVCC on this government’s industrial relations agenda. They have a mantle of flexibility and choice, yet this bill shows that, where they are actually funding a sector to less than 40 per cent, they want 100 per cent control over the conditions concerning bargaining position. Do you have any comments to make about that?

Mr Murphy—In response to the chair’s earlier question, I indicated that in my opinion the rhetoric of choice is not consistent with the reality of what is happening. We have not said to the universities that we will take industrial action if they start offering AWAs on the basis of the direction from the Commonwealth that they must offer AWAs to all existing staff and all new staff, including a casual who is only employed for a period of one month and one day. We have not threatened or said to the universities that we will take industrial action over that. What we have said to them is that the Commonwealth has talked about genuine choice in agreement making and it should not be one-way genuine choice—that is, the choice of the employer only. It also has to be the choice of an employee and a prospective employee. For that condition to be met, the prospective employee and the employee, particularly the prospective employee, need to have a guarantee that they will have the job regard regardless of whether they take the AWA or the collective agreement.

As I said earlier, the department has said, ‘This could inhibit future flexibility on the part of universities and we suggest that you do not commit to this in your enterprise agreements.’ So I do not believe that the statements about choice with respect to the universities aptly summarise what is happening. Beyond the university sector, given that the Workplace Relations Act does not give a right to a prospective employee of any employer in Australia to have the job if they choose the collective agreement—if there is one in existence—over the AWA, I do not think the choice scenario really applies to the work force generally. The rhetoric may be about choice, but the reality is not simply a degree of control using the funding mechanism. The reality also is that I do not think the choice is being applied.

But I do make one clear comment about the degree of control. I mentioned earlier the restrictions on the use of fixed term employment. They were introduced by a full bench of the arbitration commission in 1998 against the background of evidence that the full bench accepted as demonstrated that the universities were using insecure, short-term contracts for work of an ongoing nature. The worst example was the testimony of a person who was employed at a Queensland university on 23 consecutive rolling one-year contracts and, at the

end of the 23rd contract, was terminated without any severance pay whatsoever. Against that background, the full bench said: ‘We will make an award that first of all provides certain severance entitlements for fixed term employees in certain circumstances, but basically says that there are genuine grounds for the use of fixed term employment—replacing a staff member absent on leave or doing a specific task or project where you have funding which is not part of a government operating grant, student fee income or special limited term funding.’ There is a whole range of circumstances for the use of fixed term employment, the consequence being that fixed term employment was not to be used outside those categories.

Universities are now saying to us—and quite rightly, on the basis of the HEWRRs—that those restrictions on the use of fixed term employment will not survive. That, to our way of thinking, means that we are at a severe risk of going back to the days before 1998 when we had a growing and significant proportion of the work force on a fixed term employment basis, and a particularly high proportion of new female academics on fixed terms.

Senator CROSSIN—Has the union done any work about analysing what impact this will have? You have a large number of female employees in universities but a very small number of Indigenous employees in universities. Has there been a look at or analysis of what this will mean for either of those groups?

Mr Murphy—I have two comments on that. We have sought, through the current round of enterprise agreements, to get the universities to commit to Indigenous employment targets. Sometimes they are expressed numerically—that over a three-year period they will employ 10 new Indigenous staff. Many universities have Indigenous employment strategies, which we commend, but unfortunately many of those strategies, until this round of bargaining, did not actually specify a target for Indigenous employment.

The target, in my opinion, will survive the current round of enterprise bargaining with respect to the higher education workplace relations requirements. However, the risk is that, to the extent that the target is met, it will possibly be met by employing all of those 10 new Indigenous staff on short-term contracts rather than in ongoing work. That is the risk as a result of this.

Senator CROSSIN—Because the new system will encourage them to do that?

Mr Murphy—In a sense.

Senator CROSSIN—Or will it make it easier for them?

Mr Murphy—The new system will make it easier for a university to use fixed term employment and the severance standard for a fixed term employee will not be commensurate with the severance standard for a continuing employee who is made redundant. In addition, many of the Indigenous units in the university sector are living off relatively precarious funding sources: a combination of government grants and non-government grants. So you have a risk, for example, that if the targets are met, more of the Indigenous staff will be on a fixed term basis than otherwise would have been the case.

Senator STOTT DESPOJA—Can I go back to the issue of the ability of the minister to change the HEWRRs at any time, which I think you addressed adequately in your response to

Senator Crossin. But I did pick up your comments about it being ‘a poor drafting’ or ‘poor legislative drafting’—

Mr Murphy—A poor legislative framework; I did not say it was poor drafting.

Senator STOTT DESPOJA—That is what I want to check, because I thought you were being kind. I want to know whether you thought this was a mistake or intentional—that is, intentional to give the minister this degree of flexibility or discretion, in a way.

Mr Murphy—I was not referring to the drafting. I said it was a poor legislative framework. Probably the best contrast I could give you is that, in the case of the Skilling Australia’s Workforce Bill, which applies to employees in Australia’s TAFEs and to the state governments that fund those TAFEs, there are industrial workplace relations requirements which are set out in the legislation. In this case, the minister or the government has chosen to simply amend the existing bill, which prohibits the minister setting industrial conditions for the provision of Commonwealth grant funding to universities, to empower the minister to set those conditions. So, against the background of what has been done in the Skilling Australia’s Workforce Bill, I would say that this is intentional.

Senator STOTT DESPOJA—How do we deal with that? I am mindful of your primary recommendation, which is to reject this legislation, but you also offer some back-up provisions if—to use your wording—the Senate is not minded to reject the bill. I think you know how I am minded, but that is not the point at the moment. You mentioned in your submission that:

The legislation does not constrain the Minister in any way about how often, for what purpose, and in what manner, the HEWRRs can be altered.

Do you have any legislative or drafting suggestions, or even just a policy recommendation, as to what we should do to ensure that there are constraints on the minister in relation to that particular issue?

Mr Murphy—I think, in response to an earlier question, I alluded that it would be helpful from, I believe, the point of view of everyone in the university sector if it were clear that the requirements, once issued by the minister—though in this case they were issued before the bill—cannot be varied over a three-year period, for example. There would still be all the problems of interpretation of the requirements and what ‘to the minister’s satisfaction’ ultimately means, but it would at least mean that there was some restriction on the ability of the minister to change the goal posts over a three-year period. That would be one way of doing that.

Senator STOTT DESPOJA—In relation to parliamentary scrutiny and accountability, you make reference to the disallowance provisions and the fact that effectively by disallowing we are pretty much cutting the appropriations of the CGS to institutions. Do you have any recommendations on that front? The disallowance provisions seem a bit of a joke, really, don’t they?

Mr Murphy—There is a clear recommendation in our submission which is that, in the event that they are disallowed, funding would be maintained for the universities. We do not believe universities’ funding should be a casualty of a decision by parliament to disallow them. That is our submission.

Senator STOTT DESPOJA—On the issue of the time frame, I think Senator Crossin talked about the bargaining chip. I do not want to misrepresent the AVCC in any way—and I see Mr King in the audience—but I think the expression that was used was ‘a loaded gun in the hands of the unions’.

Senator CROSSIN—I do not think I would go that far.

Senator STOTT DESPOJA—I was wondering whether you trigger-happy unionists would like to check that *Hansard* reference at some point in the future. Again, I say that against the background that Professor Larkins was very strong in his opposition to the legislation.

Mr Murphy—As I walk around the campuses involving myself in enterprise bargaining, I do not feel that I am wandering around with a big loaded gun—but I will talk to my colleagues in the Australian Vice-Chancellors Committee about that, shall I?

Senator STOTT DESPOJA—Check that quote, so that I am not paraphrasing or misrepresenting, please. I did ask Professor Larkins whether he or the Australian Vice-Chancellors Committee thought maybe government or some politicians had a completely out-of-date view of how workplace relations work within university institutions today. I am wondering what your views are on that. I am wondering if the NTU feels that the minister or the government has a sense of how unions and employers work within the university environment and the fact that a great deal of flexibility is currently being provided—certainly contrary to some of the public perceptions.

Mr Murphy—I would agree in the sense that I do not think that there was an understanding of the extent to which there has been the use of bonus payments, performance pay, market loadings et cetera in the university sector. Given that part of the workplace relations requirements pertain to performance management, I doubt that people were familiar with the way that universities not only have an incremental progression scheme but also have provision for accelerated incremental progression due to excellence in performance for both academic and general staff. In addition, academic promotion schemes are based on merit. There are no quotas or classification criteria that will determine the number of people who make it to associate professor, professor or, for that matter, senior lecturer.

From the university’s perspective and from our perspective, I think we are quite in agreement that there was an extensive performance management system and that we never achieved—but we never even sought—a clause in the enterprise agreements that were negotiated before HEWRRs that would say that the university cannot pay higher than the rates set out in this agreement or that the university cannot offer a performance bonus or a market loading et cetera. They have been quite widespread at the institutional level. There has been no history of our seeking to remove that flexibility.

What this is really about is as follows. The flexible options which were available to the universities before the HEWRRs were on top of the conditions and on top of the salaries in the enterprise agreement. Whether this is the minister’s intention or not, legally the difference between those forms of flexibility and an Australian workplace agreement is that an Australian workplace agreement can reduce conditions of employment below those set out in an enterprise agreement or, indeed, it can reduce salary rates below those set out in an

enterprise agreement provided that they do not go below the award rate of pay, which tends to be well below the enterprise agreement. So, from our point of view, the purpose of an Australian workplace agreement is to offer a level of downward flexibility in terms of conditions and potentially in terms of salaries.

Obviously many existing staff know their bargaining rights; they know their market value to the university even if there is some difference about that. But what we are particularly worried about, which is why we have been emphasising the requirement for a new prospective employee to have genuine choice, is that someone who is offered a casual job in a university has very little bargaining power and very little knowledge of how a university works—the HR systems, the enterprise agreements and the rates of pay et cetera. We are worried that, unless they are offered a genuine choice and a copy, or access to a copy, of the collective agreement, there will be some new casuals, new short-term, fixed-term employees, employed in certain areas by some institutions—not by the vast majority I hope—on rates of pay below those which are in the enterprise agreement, because that is what an AWA can do.

Senator STOTT DESPOJA—Indeed. I will not chase up your other comments in relation to fixed-term contracts and casuals, because I think Senator Crossin has done that and also your submission is impressively detailed on that. But I do ask you, perhaps as my final question, to give us a bit of a run-down on your dealings with the government—in particular, your correspondence with the minister and DEST—in relation to compliance and the issue of being compliant with the spirit of the law as well as the letter of the law. There are some issues that you have raised there that I think the committee should be aware of.

Mr Murphy—We have corresponded with DEST. We sent a range of questions to the department about the meaning of the workplace relations requirements. We sought a meeting with the people involved in the requirements both from the Department of Education, Science and Training and the Department of Employment and Workplace Relations. We met with them on the issue of HEWRRs. It took us some time to get that meeting, but we finally did get it.

Senator STOTT DESPOJA—What is ‘some time’?

Mr Murphy—There was the usual problem of having a meeting date booked and then being advised that they could not go ahead with the meeting without one of the minister’s advisers being present, and the minister’s adviser was not able to meet at that particular time. So it had to be changed.

Senator STOTT DESPOJA—Minister Nelson’s adviser?

Mr Murphy—Minister Nelson’s adviser. The meeting we had included an adviser to Minister Nelson. We sought to discuss these matters with the relevant departments. We had a meeting with the relevant departments, and we posed our own questions in writing to the department as well.

Senator STOTT DESPOJA—So they have offered you advice but they were not prepared to give you information on whether or not an agreement is compliant?

Mr Murphy—In our submission is a copy of the disclaimer—which is on the DEST web site—to the effect that no matter what they say you cannot take that as necessarily indicating what the position of the minister is.

Senator STOTT DESPOJA—That is right: it in ‘in no way represents that the Minister will or will not make any particular decision in relation to the provider’s compliance with the HEWRRs’.

Mr Murphy—Exactly. As I said, those of us who have been involved in negotiations with the HEWRRs—us and the human resource people or the deputy vice-chancellor of staffing, whoever is involved in the management—are all asking: what are we supposed to do in this environment? That is the whole problem.

Senator STOTT DESPOJA—I will get back to my original point. Is it shoddy lawmaking or is it, again, deliberate in order to provide maximum flexibility for the minister and maximum ministerial discretion so that they can get out of any agreement or withhold the CGS funding? It seems as though we are dealing with quite an extraordinary piece of legislation, to be honest.

Mr Murphy—People who are more familiar with Commonwealth government departments and how they work can comment on this, but normally I would have expected that the implementation of a program would be delegated to the department and that, where the department is so uncertain about its own right to administer the program, it publishes a disclaimer. That would, I hope, be an unusual situation in the governance of the Commonwealth. But perhaps others who are in the parliament may be more familiar with that happening; I am not familiar with that happening elsewhere.

Senator STOTT DESPOJA—It seems a pretty huge caveat to me.

CHAIR—This is not an answer to your question but it may be indicative of the cycle which we are in at the moment, which is that the final draft of the industrial relations legislation is being drafted and it is probably caution on the part of both departments that they may not wish to put anything in print which may subsequently be changed by the final draft of the industrial relations legislation. I offer that as a comment more than anything else.

Mr Murphy—Thank you for that; and I understand you offer it as a comment. There are two rounds of ‘HEWRRing’, as we call it. This round is for those institutions that did not have in place a new enterprise agreement when the HEWRRs were announced. The next round is for institutions that do have an enterprise agreement in place, many of which are expiring in June 2006—but not all; some are going a bit later or expiring a bit earlier. It would seem to me that it would have been more appropriate, in the case of those due for HEWRRing next year, that they would at least know the background and details of the Workplace Relations Act and legislation and would have been negotiating, presumably, against the background, given the current Senate, of an act that has been passed. If your comment is accurate, it is a bit difficult for the department and for those who have been negotiating before the act has been introduced and must need a timeline before the act is passed to in any way have their negotiating role circumscribed by a department, which, if you are right, is cautious because of legislation that has yet to be introduced and will not be passed, I presume, until after the 30 November deadline. Your comment may be right, if that is the reason for the department being

so uncertain, there should have been a clarity on the part of the department or the minister that basically said, ‘We can’t take that into account for those who must meet this deadline but we can take into account the detail of the new legislation for those who must meet the deadline of 2006.’

CHAIR—Thank you for your appearance here today.

Proceedings suspended from 10.33 am to 10.49 am

HORTON, Mr Stephen, President, Council of Australian Postgraduate Associations

SKINNER, Ms Sally, Research Officer, Council of Australian Postgraduate Associations

CHAIR—Welcome. Thank you for your submission. You have an opportunity to make a brief statement or to refer briefly to your submission.

Mr Horton—CAPA welcome the opportunity to appear before this inquiry into the provisions of the Higher Education Legislation Amendment (Workplace Relations Requirements) Bill. From CAPA's perspective, we are concerned with two broad issues in this bill. One is the introduction of AWAs. We are concerned with the impact that this could have on postgraduate casuals working as tutors, demonstrators and research assistants and also with early career researchers, which is the next step for our many postgraduates who aspire to a career in academia or within the university sector. We are also concerned with the lack of accountability and effective parliamentary scrutiny. We think this legislation would give undue power to the minister to be able to alter aspects of the HEWRRs. We feel that without that effective public accountability or parliamentary scrutiny the door is open for abuse of this legislation. I will leave it there.

CHAIR—Thank you for that. You talked in your submission about the casual employment of research students in tutoring undergraduates and in certain other academic work. Can you give us an idea of the range of circumstances in which those jobs are offered to people and on what basis they are offered.

Mr Horton—Generally, the employment that postgraduate students get in tutoring and demonstrating for undergraduates is on a casual basis. It is semester by semester. It is often the case that employment is given to the student by the supervisor or within their school or department. It is seen in two ways. One is further income support, above and beyond the provision of scholarships. It is also seen as the gaining of experience for a student who may be aspiring to a career either as an academic or as a researcher, either at university or with a research agency. Those students are able to gain some experience within their period of candidature which helps make them more employable on completion of their degree.

CHAIR—When they are offered the job and when they take it up, is there much discussion about conditions and flexibility of employment to suit them? What you have just described—how is that termed? Is that termed an agreement, or what is the term for it?

Mr Horton—Generally, the agreements that are put in place with postgraduate students are based on an award, so there is a standard across the board. Gaining employment as a postgraduate can be quite cutthroat at times, because there is a lot of competition for very few jobs. So we feel that having a standard agreement on salary and employment conditions prevents more unscrupulous employers of postgraduates from lowering those conditions, given that competition. We also feel that, in general, postgraduates are quite powerless within the scheme of negotiating agreements that are not collectively bargained.

CHAIR—But AWAs cannot go below the rates offered in the award.

Mr Horton—AWAs can go below conditions that already exist. With pay rates for a student employed as a tutor, there are currently conditions as far as the hours they teach,

preparation for tutorials and marking. It has been our experience that already there can be pressure put on students to forgo some of those conditions, such as preparation time, marking time or consultation time with their students, and to get paid for only the actual teaching time.

CHAIR—Do you mean pressure put on students in the context of AWAs that operate at present?

Mr Horton—In terms of agreements that get signed. They are usually semester-by-semester agreements. They tend to be very short-term agreements. Once we start institutionalising the concept of AWAs and prevent any sort of collective bargaining or collective representation of those students, those students will be in a very weak position to be able to negotiate against any erosion of current conditions. CAPA, in its 26 years of existence, has fought long and hard to ensure that students are paid at a set rate for the work that they do. They do not have the same experience as a long-term academic career researcher and so there is a lot less bargaining. As I pointed out before, a lot of this work is done to pick up experience, and we see student workers as one of the more vulnerable elements within the university system. What currently protects them is the collective bargaining and collective representation that they are able to enjoy.

CHAIR—I would imagine that postgraduate students have a wide variety of life circumstances and ways they want to work. In that sense, wouldn't AWAs advantage them in terms of being able to get a deal on the sort of employment or hours and so on they would like. Isn't that what the universities are looking for too in terms of flexibility?

Mr Horton—I do not believe that would be the case. As far as the hours that those students work go, if it is attendance at a tutorial, those hours are set. As far as the marking of assignments goes, that is always flexible for the student who is being employed. The marking can take place either at university or, as was the case when I was involved in tutoring, it can be taken home and done at night. That suited me. I believe that flexibility already exists. Again, I stress the point that a postgraduate student is not in a very strong bargaining position as an individual to be able to say, 'I would like these employment conditions.' We feel it will be the employer saying, 'Take these employment conditions or don't accept employment.'

CHAIR—With an AWA?

Mr Horton—Yes.

CHAIR—I intend to take up the point of coercion with the department. I want to again reiterate that it is illegal to coerce someone into signing an AWA. Also, an AWA is part of a range of employment options that are on offer. It is simply that the AWA should be or will be offered along with everything else.

Mr Horton—In theory that works fine. In practice you have postgraduates sitting in a room without any other party to advise them. We are talking about people just entering into the academic work force, so their understanding of their rights and conditions may not be at the same level as a permanent employee who has been at the university for quite some time. If you are sitting in a room and you are handed a piece of paper and they say, 'If you want this job, sign this,' it is very hard to pin that down as coercion. If it is a case of, 'You either work under these conditions or you don't work at all,' that is a form of coercion.

This already can occur, but the students currently have stronger backing and a stronger ability to understand their rights insofar as there is a collective agreement. Once that student is made aware of the collective agreement they are able to ensure that their employment conditions are maintained, as the collective agreement ensures. However, a student just sitting in a room with the university hierarchy and given a piece of paper to sign is not in a position to make an informed choice. I think that is what we have to look at. It is not just a case of choice. Choice is only choice if it is informed choice.

CHAIR—Surely it is the role of the NTEU, who we heard from a moment ago, or a similar union to be with the student if that is what the student needs.

Mr Horton—Again, it is informed choice. A student who is just beginning may not be aware of their right, under this legislation, to bring a bargaining agent. We are publicising amongst postgraduates that they do have the right. However, where I think this legislation falls down is that we already have provisions for flexibility within academia. People can get paid more than the award rate. I see no need for this legislation. This legislation is bringing in an element of micromanagement of universities. It is interesting that we have opposition to this current bill from not just the NTEU, the CPSU and CAPA but also from the AVCC themselves. Again, as with other legislation that is on the table at the moment, we have the sector saying: ‘There is no need for this legislation. We already have a system in operation that allows for high-flyers to get paid more and protects those most vulnerable.’ This legislation actually threatens those who are most vulnerable.

CHAIR—Are any universities employing your members now on AWAs?

Mr Horton—I do not have figures for that, although I have heard that AWAs are being introduced at some universities.

CHAIR—But you do not have any figures.

Mr Horton—No.

Ms Skinner—You probably could get that information from the NTEU.

CHAIR—Thank you.

Senator STOTT DESPOJA—Mr Horton, we heard evidence from the NTEU that they had had a meeting with the department and the minister—or at least a departmental meeting with a ministerial adviser present. Have you sought to convey your views and the views of CAPA to the minister directly? Have you requested a meeting or have you had any?

Mr Horton—No, we have not. As this is very much an industrial relations issue, we felt it was more in the NTEU’s sphere. As you would be well aware, Senator, we have quite a lot on our plate at the moment with the VSU legislation and the RQF. We endorse the NTEU’s submission and actions. As far as industrial coverage of postgraduates is concerned, we would encourage those postgraduates to become members of the relevant union. We are not in a position to represent postgraduates on industrial matters. Our affiliates represent postgraduates in terms of academic matters. So we have left it for the NTEU to make any approach to the minister’s office in terms of VSU and the RQF. That is what we are devoting our energy to.

Senator STOTT DESPOJA—I was a bit tempted at the beginning of my questions to ask if you had a sense of the mood of postgraduates at the moment, because it seems that you are completely under attack from all fronts. I am not quite sure why postgraduates in Australia are not looking elsewhere—to other institutions overseas—given the conditions under which you are working and the threats with which you are confronted. Do you have a sense of the outlook of some of your members? I know that is hard to speculate on, but I am curious.

Mr Horton—I do get to speak to a range of postgraduates throughout the course of my duties. I have heard a lot of comments made by postgraduates that they feel there is no future in higher education in Australia and that they would be looking overseas, to the United States or Britain, to pursue a career.

We have also heard from academics and researchers who are based overseas that they would like to come back to Australia but they feel that the pay and the conditions that exist in Australian higher education prevent them from doing so. Even academics whom I have spoken to have said that they have seen a very steady erosion of opportunity for postgraduates to get further employment. This is at a time when the academic work force is the second most ageing work force in Australia, after the farmers.

So how are we looking at building a sustainable higher education system, when we are not offering opportunity for new blood and new ideas to come in? Once the cohort of 50-year-old-plus academics leaves the universities, we will have lost a whole generation of continuity. Now, by bringing in such legislation, we are further encouraging university graduates and postgraduates to look elsewhere for employment.

Senator STOTT DESPOJA—I think those points are really relevant when we address this legislation, and other changes, but specifically this bill in that context of postgraduates being the future of these institutions. Whether we have lifeblood in our universities will be determined by the willingness, interest and availability of our current crop of postgraduates. We are destroying you through VSU, in terms of your services, and taxing you through scholarships providing little or no income support. And now there are these conditions. I really despair.

I was going to ask you a number of questions, but I think you have probably pre-empted them, particularly taking up the chair's point of informed choice. I note in your submission you make a point about confidentiality, that direct negotiation between an employer and an employee in relation to an AWA. That is an important point. You do, however, make an interesting point about academic freedom. Could you explain further for the committee why you think the enshrining of academic freedom will be lost in AWAs and the consequence of that.

Mr Horton—Any AWA is able to put an employee in a very uncertain situation about how much they can speak up, whether that is about university practices or whether that is against a paradigm that the university hierarchy may not support. The employment of postgraduates is usually on a semester-by-semester basis. That puts a lot of pressure on anyone wishing to continue employment to conform to dominant ideas of their department and not to question. The whole idea of doing a PhD is to question. I know quite a few students do have run-ins

with their departments on questioning established ideas. Ideas advance through rigorous questioning of established norms.

It would be very easy for that situation to cease to exist, for a student is going to be a lot more vulnerable in their opportunity to gain employment. I would say that would even go for early career researchers or some established academics who may be seen as a bit maverick or questioning too much. It would be easy to offer them employment conditions that were unacceptable. This is, again, where I come to the issue of coercion. There are ways to force an issue without actually having to directly coerce someone into accepting it, and that is to offer something that is unacceptable to them so they do not take it.

The government is attaching a lot of funding conditions to a whole range of reforms that they are attempting to bring in in higher education. By attaching funding conditions it is very easy for a government, if they so wish, to push a particular agenda, reward those who support that agenda and punish those who question it. To my mind, the role of universities is to encourage that sort of debate on society in general. What advances society is having these debates. Otherwise we get locked into accepting the established ideas. It becomes like a very medieval system, where the established ideas last for centuries because no-one is able to question them without being burned at the stake.

Senator STOTT DESPOJA—I can see our future. Thank you for that. I might lodge a further question on notice if it is not covered.

Senator CROSSIN—It may well be against the law to coerce someone into signing an AWA. But if you are a postgraduate student and you believe you have been coerced how will you prove that?

Mr Horton—I think that would be very difficult in the current framework. The university could offer certain employment conditions and those conditions could be below the current conditions. Again, I would like to refer to the issue that the HEWRRs can get changed at any time. What is currently on the table may not be on the table in a year's time, so we could see a huge erosion of conditions. A university could quite easily say, 'We offered employment under these conditions and the student chose not to take it.' They would not be saying, 'Would you like the current enterprise agreement or the AWA?' They would be saying, 'You can sign this AWA but there are other students who are prepared to sign it.' How do you determine how the university made the decision to employ that student? Was it because they were the best student for that position or because the student was prepared to accept a lowering of their working conditions?

Ms Skinner—There is another facet to that. The student is more than likely potentially employed in the same department in which they are studying. So even if they felt they had been coerced it would be fairly hard for them to take any kind of action because they might think that not only their job but also their qualification was at stake.

Senator CROSSIN—Are you putting to us that one of the ways that coercion could be minimised would be by providing the full meaning of choice to potential employees? The NTEU put to us this morning that the choice was one way. If we are going to be genuine about throwing around these words 'choice' and 'flexibility', employees should be offered an

AWA or an enterprise agreement. They should have a choice about which mode of employment they come under.

Mr Horton—I would agree with that. That then becomes choice. It would become informed choice if any potential employee was offered the choice of an enterprise agreement or an AWA and given the time to read the conditions of both and get expert advice on the benefits prior to signing either of them.

Senator CROSSIN—In your submission you talk about the fact that the legislation is an attack on institutional autonomy as recognised by UNESCO. Do you want to provide us with some comments about why you have come to that conclusion?

Mr Horton—I will read out that section:

Autonomy is that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights.

We feel that there is not a system of public accountability within the framework of this legislation. It is all at the whim of the minister. It is directly related to CGS grant increases.

This is coercion by the government to ensure compliance by linking it in to funding agreements. If the government is truly advocating choice, surely it should be the choice of the individual institution and the community within that institution to decide what the most appropriate form of working conditions and other aspects of a university are. This centralised system of having a one-size-fits-all model is not offering choice to individual universities. We felt, because of the threat of decreased funding, the lack of public accountability and, as I outlined previously, the threats to academic freedom, that this would violate UNESCO's statement.

Senator CROSSIN—Under the HEWR requirements, we know that enterprise agreements may well be stripped back of anything other than the safety net. We had some examples given to us today about conditions that may well not be allowed in enterprise agreements. I think, if DEST were going to be honest with us, they probably have draft enterprise agreements or draft AWAs they can provide to universities to use. Do you think that any clause relating to academic freedom may well be on the blacklist and not allowed? Is there a potential that this could happen?

Mr Horton—I think that there is a huge potential, particularly with regard to the issue of intellectual property rights. This is an issue that is currently confronting many postgraduates in terms of accepting scholarships. There are often clauses of giving up degrees of intellectual property rights. If we are going to start offering an open slather with AWAs and what can get traded away, that would be a very easy one to trade away. That does impact on academic freedom and impacts on the rights of those who produce the work to actually have ownership over that work. We could see a situation where postgraduates or early-career researchers, in order to get employment, could be induced to sign away aspects of their rights regarding academic freedom and intellectual property.

Senator CROSSIN—Finally, in your conclusion you say:

The outcome of this legislation will ensure that the Australian higher education sector will lose quality and international competitiveness ...

How will that occur, from CAPA's point of view? What is the link between international competitiveness and this legislation?

Mr Horton—The standard of university education is not just based on the brand name of that university or how many years it has been in existence; it is also about the current quality of the educational experience. That includes the quality of teaching and learning. Universities are already cash strapped as a result of no real increases in public funding over the last period. To take a short cut, it could be quite easy to employ people who are prepared to accept certain conditions. That does not necessarily mean that they are quality teachers or quality researchers. Again, we see a nexus between research and teaching.

Many of those who possess a high degree of quality in those pursuits will take better conditions if offered overseas. It is already occurring. There has been talk about the 'brain drain'. It is not a term I particularly like, but there is an element of truth in the proposition that some of our best teachers and best researchers have been attracted overseas. They are then adding to the status of those institutions overseas.

When students are looking at somewhere to study, why would they choose to study in Australia if we have a situation where we cannot offer quality teaching, quality research or any service provision on campuses? If we are talking about being internationally competitive, we need to be attracting people to pursue careers in academia, not trying to drive them out, and we need to be attracting students by offering a very positive educational experience. Merely trying to save money does not help quality at all and therefore does not help competitiveness at all. Australia is only one of about a dozen countries that offer English-speaking degrees. Britain, New Zealand, Canada and the United States are all vying for that market of overseas students wishing to undertake an English-speaking degree. I see a huge problem in Australia thinking it can compete against these countries and attract people to actually pursue careers in Australia while it is trying to erode conditions.

CHAIR—Thank you very much.

[11.28 am]

MENDELSSOHN, Mr David Martin, Senior Federal Industrial Officer, Community and Public Sector Union-State Public Services Federation Group

CHAIR—I welcome the witness from the CPSU-SPSF Group. Thank you for your submission. I invite you to make a brief opening statement for the record or to refer briefly to your submission.

Mr Mendelsohn—We represent a significant number of general staff in universities around the country, but particularly in New South Wales, Western Australia and Tasmania, and we also have some significant membership in South Australia and Queensland. I appear before the committee as a representative of what outside Victoria is probably the major union for general staff employed by universities.

This includes non-teaching staff employed in a large variety of classifications, professional staff such as librarians and scientific officers, quite a few research staff who are not appointed as academic staff, administrative and clerical staff at all levels, and technical staff such as technical officers and technical assistants. We also cover quite a few maintenance, security and cleaning staff at various universities, although at other universities they may be covered by the Liquor, Hospitality and Miscellaneous Union. That is the capacity in which I appear before the committee this morning and those are the interests which I represent.

I will make a brief opening statement. The legislation that the committee is considering is to give effect to the requirement that in order to qualify for Commonwealth Grants Scheme funding—which is worth five per cent of available funds in 2006 and 7.5 per cent thereafter—universities must comply with what has been described as the higher education workplace relations requirements. These are very far reaching in their implications and, because they are so far reaching and represent such a root-and-branch approach to changing the shape of workplace relations in the sector generally and not just for any particular category of staff, we would invite the committee to look at the higher education workplace relations requirements from the point of view of what the mischief is that they are designed to cure and where the rigidities or inflexibilities are in the system that require such a global and radical approach.

We submit that the requirements would have a negative effect on general staff employment in a number of ways that are not justified by any problems that universities are experiencing in relation to the employment or management of general staff. For example, the requirement that the workplace agreements policies and practices of universities must not place any restriction on the form and mix of employment types means that universities will be free to go back to the situation where they could employ people in continuing jobs year after year on short-term, one-year contracts. This was quite a rampant practice in the sector, amongst both academic and general staff, until the late 1990s when the Australian Industrial Relations Commission made an award—the Higher Education Contract of Employment Award—which put a stop to that particular type of practice and ensured that, if staff were to be employed on fixed-term contracts, they were in employment circumstances appropriate to the use of a fixed-term contract. Now, as a result of the workplace relations requirements, universities will be able to go back to the practice of employing staff on a series of short-term contracts, even though the job is ongoing, or as casuals in ongoing positions.

Certainly, there is one particular area where I would submit that there is a longstanding problem—that is, the inability of universities under existing prescriptions to employ what might be described as teaching-only academics on continuing contracts of employment. As a result, those sorts of people are employed widely as casuals. That is a particular problem. It is not necessarily a problem created—solely, anyway—by the union that represents academic staff, the NTEU. When I once asked an officer of the Australian Higher Education Industrial Association, the main employer body for universities, why universities do not press for that, he said that quite a few of the universities themselves do not want that type of employment. That is arguably a problem in the academic area of employment. But we submit that the job security of general staff should not be reduced in order to try to secure greater flexibility in certain areas of academic employment. I might leave my opening statement at that and invite questions from the committee.

CHAIR—Thank you. Have any of your members been offered AWAs by the universities employing them as part of a suite of employment agreements they may take up?

Mr Mendelssohn—Not at this stage. The higher education workplace relations requirements require that that be done for all staff employed after 29 April this year. For all existing staff it requires that it be done by I think 30 June next year. But most universities have relatively small human resources sections. Other work pressures have meant that many of them, particularly those universities that have still been engaged in enterprise bargaining through this year, have not been able to devise draft AWAs to put to employees. We are anticipating that this will happen over the next nine months, but to my knowledge it has not happened yet. The only systematic offering of AWAs that I am aware of is to casual academic staff at the University of Technology Sydney.

CHAIR—Has your organisation had a role to play in advising those casual academics as to how they should go about negotiating those?

Mr Mendelssohn—No, because we do not have any eligibility to enrol academic staff as members.

CHAIR—In the future when the offer of an AWA will become the norm, what sort of take-up do you imagine there would be amongst your membership?

Mr Mendelssohn—That is very hard to estimate. I would differentiate between our membership and general staff as a whole, because we have variable membership density. At some universities it is 50 or 60 per cent and at others it is much lower. Our membership tends on the whole to be amongst general staff who have been employed for lengthy periods of time by the university in question. I would think that very few of them would be interested in AWAs. One of the problems for universities and also for us as a union is that a lot of our members are going to be retiring over the next decade. For universities, that is going to lead to a problem as to how they replace relatively senior and middle-level administrative and professional and technical staff. For us as a union, of course, it poses the problem of how we are going to recruit the next generation of members. But I would think that, amongst those long-serving staff who are in the middle to lower senior levels of management, if I could put it that way, and who are perhaps five or 10 years away from retirement, I would think that AWAs would be of little interest to them.

CHAIR—If they did want to look at it, would you see a role for your union in negotiating with and for them?

Mr Mendelssohn—Yes. We have put out to our membership forms to encourage them to appoint us as their bargaining agent in the event that the university offers them an AWA.

CHAIR—What would you say would be the level of knowledge by them that you offer that service and that it is available?

Mr Mendelssohn—It would vary according to the extent to which our organisers get out and are active in the places they are supposed to be organising in.

CHAIR—You would hope that that is so. One of the submissions we have had, from RMIT, comments on the lack of credibility of the no disadvantage test, which is applied by the Office of the Employment Advocate as a reason to be wary of AWAs. Do you hold the same fears?

Mr Mendelssohn—I do, but I would have to qualify that in one sense. I do in that there have been some recent occurrences where it would seem that the Office of the Employment Advocate has, not in the higher education sector but in another area, approved AWAs which the South Australian industrial court found to pay grossly below the relevant award rates. The qualification I would make is that my understanding of the package of industrial relations proposals that were announced by the Prime Minister earlier this year—and of course any final comment would have to await the presentation of the legislation to parliament—is that the no disadvantage test will in effect be done away with and that there will be a number—at the moment the proposal is five, including the minimum wage—of legislative minimum standards and, rather than a no disadvantage test against which an AWA or a collective agreement has to be assessed, any agreement which contained provisions less than the legislative minima would be with respect to those provisions void and the legislative minima would apply. So, while I would concur with RMIT's concern under the system as it is now, given what we understand it is going to be, it is going to become irrelevant.

CHAIR—Yes, that is my understanding also.

Senator CROSSIN—You state on page 3 of your submission that DEST has often given conflicting advice to individual universities. Can you provide us with some examples of that?

Mr Mendelssohn—Yes, an example of that relates to the issue that we also canvass in our submission on the problems that may be created if classification descriptors are removed from certified agreements. That is canvassed on pages 16 and 17 of the submission. On the feedback we are getting from universities, some universities have told us that the DEST feedback is that the descriptors have to be removed from the agreement and put into policy because it would be noncompliant if they were in, and other universities have had feedback from DEST saying, 'You may wish to consider moving the classification descriptors from the agreement into policy in order to aid HEWRR compliance.' So that is an example of where some advice has been, 'You must take them out,' and where other advice has been 'You may wish to consider taking them out.' There are some other examples like that.

Senator CROSSIN—Looking back at what Minister Andrews has said in relation to the proposed industrial relations legislation, my understanding is that there have been suggestions

reported through the media that job classifications would be removed from awards. Do you get a feeling that perhaps DEST are a bit confused about two similar themes running here?

Mr Mendelssohn—It is hard for me to say because universities with whom we have been in negotiation for enterprise bargaining tell us what the feedback is that they have gotten from DEST, but I have not had any conversations with relevant officers at DEST which would give me any insight into how they have arrived at that view, whether they are perhaps confusing what is appropriate to be in a safety net award compared with what can be in an enterprise agreement or whether they simply misconstrue what the purpose and nature of the classification descriptors is. We say it is the method by which work value is determined and therefore there needs to be a degree of enforceability about it, whereas the feedback we have seen suggests that some of the DEST officers seem to think it is mere process and procedural stuff.

Senator CROSSIN—DEST, of course, will put to us that it is against the law or it is prohibited to coerce someone into signing an AWA—that you are not allowed to do it. But if you are a general staff member and you have been asked to sign on the line—‘Here’s your contract of employment. It’s an AWA. Sign this or don’t take the job’—how do you prove you have been coerced?

Mr Mendelssohn—There is some case law around this and there is a Federal Court case known as Schanka. It was a case in which staff of the Commonwealth Employment Service were being transferred to the successor body to that, and their continued employment was made contingent upon signing an AWA. The Federal Court found that that was unlawful coercion. But it has also been found not to be unlawful coercion to offer initial employment contingent upon accepting an AWA.

Senator CROSSIN—Sorry—that is not coercion, you are saying?

Mr Mendelssohn—It has been found by the Federal Court not to be unlawful coercion if there is not an existing employment relationship and the offer of employment is made contingent upon entering into an AWA.

Senator CROSSIN—So in that instance it would be difficult to prove.

Mr Mendelssohn—The Federal Court has found that it is not coercion if the person is not already employed; they have applied for the job, they are offered the job but they are told, ‘Your employment will be contingent upon entering into an AWA.’ That, I understand, is the basis on which the federal Department of Employment and Workplace Relations engages new staff now. It is unlawful coercion, according to the Federal Court, to make continued employment conditional upon entering into an AWA. But that leaves open the question of: if you are an existing employee, you apply for a promotion and you are offered the promotion on the basis of entering into an AWA, would that be unlawful coercion? I suspect, on the basis of the case law so far, that that would be held not to be unlawful coercion because you are not being told, ‘Enter into the AWA or you will be sacked.’ You are being told, ‘Enter into the AWA or you don’t get this promotion,’ which is different thing. If universities were under pressure to get a certain take-up rate for AWAs, I would expect they would do that in the areas of initial employment and perhaps promotional positions.

Senator CROSSIN—The sorts of workers you cover at the HEWRR levels, the higher education worker levels, are not predominantly earning what we would call significant salaries in this country, and these jobs are predominantly held by women. Have you had a look at what impact these changes might have on that sector of the work force?

Mr Mendelssohn—Yes. The bulk of our membership would be about the level 4 to 7 or 8 range in the 10-level higher education worker structure, so they would be earning roughly between \$40,000 to \$45,000 and \$65,000 to \$70,000 a year. I think that would be the bulk of our membership. This goes back to my point about the classification descriptors: one of the things that was achieved when the present classification structure for general staff was arrived at was that it led to a lot of employees in what had traditionally been female dominated occupations, including librarians and people in secretarial-type administrative jobs, being upgraded and more appropriately aligned with their work value in terms of their skills and experiences. If the end result is that the descriptors are relegated to policy, which can be changed by management without necessarily even any consultation, I would be concerned that we could go back to a situation where the classification of jobs did not properly reflect work value. That, historically, has tended to impact more on women in the work force than on men, so that is one concern.

The other area of concern is that over recent decades, particularly the last decade, there have been considerable advances in making universities more family friendly as workplaces. That is reflected in areas like what are, by Australian standards, fairly generous levels of paid maternity leave. That has also become an important factor in enabling universities to retain staff. But if universities were under pressure, not as a result of the workplace relations requirements as they are at the moment but as a result of future versions of it, to downgrade conditions of employment that were seen to be more generous than community standards that could have an impact of an adverse kind. I raise that because in late 2003 there was a set of workplace relations requirements promulgated, which was not successful in being passed by the Senate, in which one of the requirements would have been to bring university conditions more into line with what were described as 'community standards'. Certainly, university paid maternity leave is, by Australian standards, well above community standards.

Senator STOTT DESPOJA—I know that Senator Crossin has referred to the lack of specificity and the vagueness that you feel the HEWRRs have. You said that you had no relevant conversations with DEST on some of those issues. Can I just clarify: have you met with the department and/or the minister or ministers on the legislation?

Mr Mendelssohn—No, we have not. We have taken the view that they are unlikely—to put it bluntly—to take very much notice of that, and we have been mainly trying to press our views through the universities themselves and the employer association, on the basis that we think they are more likely to be taken notice of in those quarters than we are, to be quite pragmatic about it.

Senator STOTT DESPOJA—It seems that, as a consequence of meeting with DEST, the NTEU have found that there is contradictory advice. You refer, in point 6 of your submission, to the fact that—and we have also heard this today—the web site information from DEST gives a different opinion as to the role of ministers. Have you found that you cannot get a

clear idea of what the minister can and cannot do—or, indeed, what merits a compliant agreement and what does not?

Mr Mendelssohn—This is one of the problems we have with the whole scheme: DEST makes it clear in any feedback it gives, particularly to universities and in the answers they give to questions on the web site, that what they are saying is indicative only and is for the guidance of the parties, and that the ultimate decision will be made by the minister. While the minister obviously will be guided by advice from his department, ultimately the decision will be, in any particular case, the minister's.

Senator CROSSIN—Like a cat chasing its tail, really.

Mr Mendelssohn—What the workplace relations requirements require is that, by the relevant date, the university's agreements, policies and practices must be compliant. So, even if a certified agreement is said by DEST to be compliant, whether all that particular university's policies and practices are compliant is another matter. And, ultimately, we will not know whether any university has complied until the minister makes his announcement after 30 November this year.

Senator STOTT DESPOJA—Is that a precedent that you are used to dealing with? Is that something you have encountered before?

Mr Mendelssohn—No. To the extent that governments in the past have been prescriptive in what universities can and cannot do, they have often been prescriptive in non-industrial relations areas—going back to the eighties, when governments used to try to dictate the size of carpets people could have in their offices and things like that. But even more recently, with the contingent funding when Dr Kemp was the minister, there were two tranches of such funding, each of two per cent, and universities were given fairly specific guidelines as to what they needed to do to qualify for that funding.

Senator STOTT DESPOJA—Flowing on from that, the minister can change the HEWRRs at any time. Is that something that the CPSU has difficulty with as well?

Mr Mendelssohn—It is something we view with concern because there is no reason why, in 12 months or two years time, further requirements may not be promulgated which, as I said in answer to a question from Senator Crossin, may for example require actual changes to the entitlements of staff, which the present requirements do not.

Senator STOTT DESPOJA—What about the disallowance provisions? It has been put to us today that it is a bit of a paradox in a way that, theoretically, you have the opportunity for parliamentary scrutiny and indeed disallowance, depending on Senate numbers, but in doing so you compromise the appropriations or CGS funding to institutions. Are disallowance and those provisions acceptable to the CPSU as a form of accountability and parliamentary scrutiny?

Mr Mendelssohn—I suppose what I would say to that is that any parliamentary scrutiny is better than none. Even so, I do not think that it overcomes the very wide discretion it gives to the minister of the day—whether that continues to be Dr Nelson or whether it becomes somebody else—to promulgate requirements that suit their particular view of life.

Senator STOTT DESPOJA—The issue of ministerial discretion is one of the key areas for debate. Evidence from a number of groups—including witnesses from the AVCC, NTEU and CAPA this morning—is that this is unprecedented. This is an intrusion on institutional autonomy that is quite astounding. Does the CPSU have a view on institutional autonomy or academic freedom per se, recognising the ambit of your membership? I am wondering whether you have a general view on the issue, given that it is part of the inquiry.

Mr Mendelsohn—I certainly agree that, while I think Australian governments of all political colours have had something of a history of meddling in various ways in universities, in terms of an attempt to have hands-on control over how they run their day-to-day staffing affairs, this is certainly unprecedented. The history of universities in the English-speaking world has very much been one of institutions which are substantially autonomous. This is particularly because of the value that has been placed on the concept of academic freedom. In my view—and I am not certain whether any other presentations to the committee have touched on this—there is an entirely new range of potential threats to academic freedom that have not previously existed. In the past, threats to academic freedom tended to be calls from people outside universities to sack this or that academic because they were promulgating atheism or communism or free love or something that the critics thought was terrible and scandalous.

But these days it is more likely, in my perception, to come from where the university has a commercial relationship and is receiving funding to carry out certain research for a commercial organisation and where another academic elsewhere in the university has done research, the results of which are adverse to the commercial interests of the university's funder, and where they then publish that and are held to be in breach of their duty of fidelity to their employer under their contract of employment. That is a new type of threat to academic freedom and it is one which I think is going to become the predominant threat in the coming period, rather than the old threat of, 'This person should be sacked because they are promulgating unpopular views.'

Senator STOTT DESPOJA—I have a final quick question. Point 100 of your submission is fairly strong in that you ask us to simply reject the legislation.

Mr Mendelsohn—Yes.

Senator STOTT DESPOJA—Can I just clarify that that is the view of the CPSU and that any suggestions to ameliorate the legislation are backup suggestions.

Mr Mendelsohn—No, we do not see the problems that the workplace relations requirements potentially create to be remediable by amendment.

Senator STOTT DESPOJA—Thank you.

CHAIR—Thank you very much for appearing before us today.

[12.08 pm]

BALY, Ms Anne Miriam, Branch Manager, Teaching Equity and Collaboration, Department of Education, Science and Training

NOLAN, Mr Peter Gordon, Acting Director, Collaboration and Workplace Productivity Unit, Higher Education Group, Department of Education, Science and Training

CHAIR—Welcome. Thank you for your submission. You have an opportunity to make a brief statement for the record or to refer briefly to your submission. Do you have any comments to make about the capacity in which you appear?

Ms Baly—I am appearing here as Acting Group Manager of the Higher Education Group.

CHAIR—Do you wish to make a statement?

Ms Baly—No. I think the issues are sufficiently covered in our submission. We are happy to just take questions.

CHAIR—That is fine. Some issues have come up in other submissions, which I am sure you have read, and I would like to ask you about some of them. This may be beyond your personal experience, but I am thinking more about department experiences: have there been any concerns expressed by vice-chancellors about their inability to package attractive salaries for deserving academics and to penalise underperformers through less generous salaries? In other words, has there been a rationale for the production of this legislation from the concerns of universities?

Ms Baly—There has been some research that has been commissioned by the department, and it is on our web site, that shows some evidence that academic salaries have lagged in recent years. In that respect, yes, there is a rationale in terms of the salary levels. I am not sure that vice-chancellors specifically have brought to our attention any inability to make attractive packages available for their staff. I am not familiar with anything specific on those lines.

CHAIR—We now have AWAs being offered as part of a suite of employment arrangements. What would you say are the particular characteristics of AWAs which lend themselves to operations in universities and higher education workplaces?

Ms Baly—AWAs have the ability to provide for more flexible arrangements for individuals than collective agreements do. Also, some evidence provided to us from the Office of the Employment Advocate is that in fact people on AWAs are better off in salary terms than people on collective agreements are. There are some safeguards for people on AWAs that are not necessarily there for people who are on similar arrangements under individual agreements. The appeal mechanisms are more difficult if you are on a common law contract than on an AWA. If you are on an AWA, there is a right to dispute resolution arrangements through the Office of the Employment Advocate rather than lengthy and expensive court litigation. The main benefits are about being able to tailor flexible arrangements and for individuals to be able to negotiate terms and conditions that suit their own needs. It is not about providing inferior conditions.

CHAIR—The unions in their various forms have claimed to the committee that there is flexibility now in terms of employers being able to offer market loadings, performance bonuses and the opportunity to reward excellence and not reward non-productive work. Are

you saying that there is more flexibility in the AWAs compared with other forms of employment agreements?

Ms Baly—Generally speaking, although individual agreements can provide that degree of flexibility; but, as I just mentioned, they do not provide the same protection for individuals as an AWA does. They could certainly provide for loadings and those sorts of things.

CHAIR—We have also heard a great deal about coercion and the claims that it will be the case that, if an employee is in a room with his or her prospective employer, the point will be put to the employee that they need to sign this AWA or they will not get a job, and that there is very little way that the employee can prove that there has been coercion when they come out of the room. Would you like to comment on that?

Ms Baly—As I understand the Workplace Relations Act—which is an instrument administered by the Department of Employment and Workplace Relations, not us—

CHAIR—I understand that.

Ms Baly—Our very strong understanding is that coercion is prohibited under the Workplace Relations Act and there is nothing in these requirements that would attempt to go in any way to that issue. In fact, the requirements say that—

CHAIR—I have quoted those.

Mr Nolan—It is in fact illegal to coerce employees. Also, employees may appoint a bargaining agent during the negotiation process.

CHAIR—Is it so that AWAs can reduce existing salaries below the level of those in enterprise bargaining agreements?

Ms Baly—AWAs are flexible documents and, theoretically, that would be the case. But no-one is forced to accept an AWA. All these requirements are requiring that universities make an offer of an AWA to their employees. Given a choice between an AWA with a lower salary and a collective bargain that has a higher salary, why would anyone take the AWA?

CHAIR—To be more specific about the conditions which are offered as part of the job, it was put to us, for example, by the Council of Australian Postgraduate Associations that competition among postgraduate students for available jobs at universities is so keen that they would be likely to trade away their rights, such as intellectual property and so on, in order to get a specific position. What would be your comment on that?

Ms Baly—I am not sure that I am in a position to comment on that.

CHAIR—Right. I can probably direct that somewhere else.

Senator STOTT DESPOJA—I will begin by raising a point that the witness before you, Mr Mendelssohn, raised—that is, what specific deficiencies or problems existed at universities in relation to agreements for staff, conditions for staff, wages for staff, lack of flexibility or whatever it may have been. What were those problems that the government was responding to, so much so that it felt it needed sector specific legislation in this form? What was the problem that we required the legislation before us for?

Ms Baly—There are restrictions on the part of universities as regards how they can adapt to change built into some certified and collective agreements that inhibit the ability of the

university to make changes. They go to the issue of flexibility. There are also issues that have come up about very cumbersome processes for dealing with performance issues and other forms of dispute that are built into the agreements, which inhibit the capacity of the management of the university to respond to changing circumstances.

The other issue that I will just touch on, which we have already mentioned, is that of AWAs and the flexibility that they are able to provide to individuals and to the university in tailoring conditions. They have been available in universities, as they have been available in the workplace generally, for quite some time but in the case of universities the use of them has been very limited to date. I think that is one of the reasons why the government is now seeking to require that all staff be offered an AWA.

Senator STOTT DESPOJA—Given these three points—the inhibitions and the restrictions, the cumbersome process and the difficulties in relation to performance issues—who identified these problems in the sector? Did that come from the vice-chancellors, from the unions or from other representative bodies? Who in the sector identified these particular issues?

Ms Baly—They were issues that were raised, among other things, in the crossroads review. The 2002 crossroads review discussion paper canvassed those issues as ones that needed to be addressed in the sector.

Senator STOTT DESPOJA—But today we have heard quite strong words from the Vice-Chancellors' Committee—and, as Senator Crossin pointed out, maybe some of the strongest words we have heard from the vice-chancellors—on seven very discrete and specific points as to why they oppose, outright, the legislation before them. If they feel that the legislation does not meet their needs or those of their workplaces, why has the legislation got to this point and at whose motivation or momentum? It seems very much one way: from a government direction.

Ms Baly—Some of these issues have been raised by the sector but, at the end of the day, the introduction of these requirements was a policy decision of the government and we are not really in a position to respond to that particular issue.

Senator STOTT DESPOJA—I totally respect that when it comes to a policy decision. We have had a couple of issues raised today that I would like to get some clarification on. One is this notion—and it seems pretty clear to me but I stand to be corrected—that the minister can change the HEWRRs at any time and, in doing so, create a degree of uncertainty that the sector finds very hard to contend with. Every witness has indicated that this is an issue. Can one of you outline to me why this is the case and if that flexibility for the minister or ministerial discretion is intended?

Ms Baly—I do not think that is the case. The details of the requirements will be set out in Commonwealth Grant Scheme guidelines. All of the guidelines are disallowable instruments. They are subject to the scrutiny of parliament, which means that the minister cannot just change them on a whim.

Senator STOTT DESPOJA—‘Whim’ and ‘fancy’ were the two words referred to today by Professor Larkins. Let us go to the issue of disallowable instruments. Is the NTEIU advice

correct that if parliament chooses to disallow the guidelines it will effectively mean ‘a cut in existing appropriations for 2006 and/or 2007’? In their submission they state:

The consequence of the disallowance however, would be that institutions lose their CGS funding, which is the same outcome as having a noncompliant Agreement.

Is it your understanding that if we as members of parliament were to choose to disallow these particular instruments the impact would be that CGS funding would be lost, and thus the effect of our intention of trying to examine and presumably improve something that we found unacceptable would be to remove or reduce the funding?

Ms Baly—I do not think that statement is correct. If the parliament chose to disallow these guidelines then the guidelines and requirements would not be made. It would mean that the legislation would be as it is or as amended. The amendment to the act is to allow for guidelines to be made. If those guidelines are not made then these requirements will not come into force.

Senator CROSSIN—Can you take that on notice and find out for sure?

Ms Baly—Yes, certainly.

Senator STOTT DESPOJA—I was going to request that as well because, as you know, there is this perennial debate about the impact of disallowing guidelines and regulations. Government often tries to spook legislators by saying, ‘If you do this then you will cut the funding source,’ and I am not sure if that is right in this instance. So I would appreciate your advice on that.

Ms Baly—If the act is not amended then the guidelines cannot be made either. If the act is amended I assume that the guidelines would end up being made, because the numbers in the parliament would be the same on both processes.

Senator STOTT DESPOJA—I take that point, but may I respectfully suggest it is presumptuous in the sense that, yes, the legislation may pass—that is, the act may be amended—but that does not necessarily mean those same members of parliament will not take a different view. I suspect that sometimes with guidelines it is the opposite—that people are more willing to consider disallowing them. If by some chance in the future, if not during the life of this parliament, guidelines are disallowed, what will the impact be on CGS funding? This relates to my other question about contradictory advice in relation to whether or not an agreement is compliant. Have you had an opportunity to look at the NTEIU submission?

Ms Baly—Yes, we have.

Senator STOTT DESPOJA—I asked the NTEIU about the notion that the department is prepared to give advice on which provisions are not likely to comply with HEWRRs and yet is not prepared to indicate whether or not an agreement is likely to be compliant. Does that ring true to you? The DEST web site says:

The decision on whether a higher education provider has complied with the HEWRRs (so as to be eligible for increased Commonwealth Grant Scheme funds) will be made by the Minister for Education, Science and Training. In providing these Questions and Answers, DEST in no way represents that the

Minister will or will not make any particular decision in relation to the provider's compliance with the HEWRRs.

That has been described as an unacceptable arrangement by the NTEIU. What is the department's response to that?

Ms Baly—The department's response to that is that the minister is the sole decision maker when it comes to assessing compliance, and that is quite clear. I think that we would be misleading the sector if we were to say that we were able to provide advice on an agreement with any sort of definitive view about whether it was going to comply. We have offered to provide comments on draft agreements to universities as a service to universities and we are quite prepared to say whether we think that it will or will not comply, with the proviso that that no way indicates whether or not the minister will make the decision that way when it comes to the time when he needs to give that advice.

The other point is that this advice that universities and other parties to these negotiations get on whether clauses or whole draft agreements are compliant is not the only source of advice; universities are quite able to seek advice from their own workplace relations advisers and also from lawyers if they want to do that—and, indeed, I hope they are. They should really see the advice that we provide as being in the form of advice and guidance in terms of whether, in our view, it is likely to be compliant or not—it is not a definitive response.

Senator STOTT DESPOJA—You have mentioned lawyers, which made me think of money. Can you assure the vice-chancellors and others that the government is giving some consideration to additional moneys with which the university can deal with some of the additional costs as a consequence of negotiations and additional advice? Is that something that the government or department considered?

Ms Baly—This whole process is about additional money. Universities that comply are eligible to have a five per cent increase on their base grant in 2006, and a 7.5 per cent increase on their base grant in later years. So that is the additional funding.

Senator STOTT DESPOJA—Hopefully to spend on core university activities, not lawyers—with all due respect to any lawyers present. Seriously, are we talking about a specific line item to deal with the administrative costs of this new scheme?

Ms Baly—No, there is no additional funding over and above what has already been appropriated.

Senator STOTT DESPOJA—Has the department done any inquiring as to the additional expense that this may cause universities? The vice-chancellor this morning was unable to give us a specific figure. I might even double-check the *Hansard* on that because I think that there was a figure of a couple of million dollars to which Professor Larkins referred—but I think that it was in relation to the institution of the other new laws. Does the department know whether universities have a figure as to how much this will cost them?

Ms Baly—We have not been given a figure by universities and we would not be in a position to speak with any authority on what the additional cost might be. In fact we would hope that there would not necessarily be any additional cost.

Senator STOTT DESPOJA—How could there not be?

Ms Baly—Universities need to negotiate agreements anyway.

Senator STOTT DESPOJA—I will put any further questions on notice. Can we have tabled any information from the Office of Employment Advocate in relation to the comparisons of AWAs? Is there a gender breakdown on that too?

Ms Baly—We would have to get that from them; we do not have it to hand. But we can certainly—

Senator STOTT DESPOJA—Thank you.

Senator CROSSIN—I would like to continue on the point that Senator Stott Despoja raised. We heard this morning that at Monash University alone there are 5,000 equivalent full-time staff and around 1,000 of them are casuals. Each of those will be required under this legislation to be offered an AWA. You understand, of course, that currently casual academics might come in for three hours a week over a 16-week period. They are not entitled to any leave because they are casuals—they get their pay plus a loading. If the university is now required to offer an AWA to each of those 1,000 casuals alone—let alone the other 4,000 staff—how could there not be an additional cost to the university in doing that?

Ms Baly—There is likely to be an additional resource requirement, at least initially, in developing templates for offering AWAs, but over time I would think that the resource implications would start to even out.

Senator CROSSIN—So now there will be a template for an AWA? I thought the whole purpose of this legislation was to provide flexibility.

Ms Baly—It is, but most universities are responding to that by having a core template for different classes of employees, and there is no reason why they cannot do that as the basis for the initial offer.

Senator CROSSIN—What if each of these 1,000 casuals wants something unique or different in each of the 1,000 AWAs?

Ms Baly—That will be an issue for the university to respond to.

Senator CROSSIN—No doubt there would be a cost implication for the university, though.

Ms Baly—There will be some resourcing issues, certainly, in terms of the time for negotiating.

Senator CROSSIN—In your submission you mentioned—and I think that Senator Stott Despoja has asked you to provide us with the information from the Office of the Employment Advocate—that workers on AWAs earn 13 per cent more than workers on collective agreements. Have you actually seen that breakdown from the Office of the Employment Advocate?

Ms Baly—I have not seen the detail of the breakdown, no.

Senator CROSSIN—Do you know how they arrive at those figures?

Ms Baly—No, but we can take it on notice and find out.

Senator CROSSIN—Perhaps you can take it on notice and provide that to the committee. They actually average across all people on AWAs, including, for example, the CEO of the Commonwealth Bank. Sol Trujillo's AWA would be included in that. So if you took 10 people on a \$3 million AWA package, as opposed to 10 people on \$30,000, wouldn't you also be able to come to the conclusion that people would earn more on AWAs if that is the way you are averaging your figures?

Ms Baly—I would have to look at the detail to be able to respond to that.

Senator CROSSIN—So in your submission you quote some figures about the benefits of AWAs but you cannot tell us how those figures were arrived at?

Ms Baly—At this point in time I cannot give you the details of that breakdown. They were figures that were provided to us by the Department of Employment and Workplace Relations. We have asked them to verify those figures and they are figures that they stand by. They are not figures that we have calculated ourselves, so we cannot justify them any further.

Senator CROSSIN—Going back to something that Senator Stott Despoja raised with you, you identified a number of areas where you believe there needs to be improvements in the system. You said that they were outlined in the crossroads discussion paper. The discussion paper was written by DEST, though, wasn't it?

Ms Baly—Yes, the paper was written as a discussion paper, but they were issues that had been raised by a range of people that had input to that review process.

Senator CROSSIN—This is 2005 now: you don't believe that some of those issues have been resolved in three years?

Ms Baly—Some of them have not been resolved.

Senator CROSSIN—Which ones?

Ms Baly—There are still issues about flexibility in a number of the agreements that we have seen to date. There are still very cumbersome processes for dealing with disputes—

Senator CROSSIN—Can you give us an example of that?

Ms Baly—No, but we have looked at a number of agreements and it is quite a common problem. I would not want to point to any one particular university on that score but it is quite an extensive problem.

Senator CROSSIN—Without pointing to one particular university, could you just give us a broad example of a problem.

Ms Baly—There are issues about inflexibilities built into some agreements—there are limits within the agreements themselves—that mean that the management of a university is not able to respond to changing circumstances.

Senator CROSSIN—But this morning the Australian Vice-Chancellors Committee refuted that categorically. In fact in my seven years of sitting on this committee I do not think that I have ever seen the Australian Vice-Chancellors Committee so opposed to any piece of legislation. They actually said that the legislation was unnecessary because the current system does provide that flexibility.

Ms Baly—There are others among them that have privately raised issues with particular parts of it—

Senator CROSSIN—So you are saying that the Australian Vice-Chancellors Committee are not speaking with one voice here?

CHAIR—Senator Crossin, could you just let the witness answer the question, please.

Ms Baly—I am not making any comments about the Australian Vice-Chancellors Committee and what they might or might not have said. All I am saying is that there are people in the sector who have expressed concern with some of the inflexibilities. One of the examples that come up frequently is about the process for managing disputes. Some of the universities' agreements that we have seen have very cumbersome processes for managing disputes, which means that it will be very time consuming and very hard to come to any sort of resolution. That is one of the areas that still seem to be built into a lot of the agreements.

Senator CROSSIN—If that is the case—and all 38 vice-chancellors and universities belong to the AVCC—why was that not raised this morning with us? They said this morning categorically that they felt there was enough flexibility in the current system. Can you provide us with evidence?

Ms Baly—Might I suggest that there is quite a lot of money at stake in what is being asked of universities in these requirements. Five per cent of their base operating grants will be at stake next year if they do not meet them. For a lot of universities, the negotiating process is proving to be not necessarily an easy one. It does not surprise me at all that they would be opposed to the legislation. But that does not mean that all aspects of what is being asked for in these reforms are necessarily things that they would not support.

Senator CROSSIN—To back up your assertion, can you provide evidence to this committee?

Ms Baly—Evidence of what?

Senator CROSSIN—Your assertion that there is still inflexibility in the way in which, say, disputes are managed.

Ms Baly—We could certainly provide you with some examples of those inflexibilities. In fact, I think there are some examples on our web site of clauses that have come to us as questions and answers that we have given.

Senator CROSSIN—I could probably put it to you that there might be a number of tourist operators in the Northern Territory who perhaps have difficulty managing poor performance or have inflexible work practices. Why are universities being singled out and not other industries or businesses in this country?

Ms Baly—Universities get quite a lot of government funding and the tourist industry in the Northern Territory probably does not so much.

Senator CROSSIN—Professor Larkins put to us this morning that his university gets less than 40 per cent of its funding from the Commonwealth, so the Commonwealth is not even a major shareholder in that university. Why do you believe that he now does not have the right to supervise his own human resources management?

Ms Baly—It might only be 40 per cent, but for a large university like Monash that 40 per cent is nevertheless still a considerable amount of money.

Senator CROSSIN—In fact, I think the figure he said this morning was 26 per cent. So less than a third of their funding comes from the Commonwealth, yet this legislation will ensure 100 per cent control of their industrial conditions. Why is it not being applied to other sectors of the education industry then?

Ms Baly—I cannot comment on where it is not being applied, but these reforms are broadly in line with workplace relations reforms that are happening across a range of other sectors.

Senator CROSSIN—You talk about the need for choice and flexibility. When a new employee is joining a university, will the university be required to offer that employee an enterprise agreement and a workplace agreement?

Ms Baly—If a university wanted to offer an AWA as a condition of employment, there would be nothing in these requirements that would prevent that happening, because that is allowed under the Workplace Relations Act.

Senator CROSSIN—But that is not my question.

Ms Baly—But most universities have enterprise agreements in place and, where there is an enterprise agreement in place, an employee is able to choose.

Senator CROSSIN—But this legislation does not require the university to provide a new employee with both. It simply says they must offer an AWA to a new employee.

Ms Baly—That is correct.

Senator CROSSIN—So, if I am a postgraduate student and I am going to be working, say, only three hours a week as a casual, what chance do you think I have of rejecting an AWA if the university says to me: ‘Here are your conditions of employment and, if you want the job, sign on the line’?

Ms Baly—If that is put to you as a condition of employment then I think the university is able to make that the case.

Senator CROSSIN—You do not believe that that would be in some way an unfair balance of power if they are not also required to say, ‘If you’d like the job, here’s your choice: you can have either a certified agreement or this AWA’?

Ms Baly—My understanding of the Workplace Relations Act is that that is acceptable. Offering an AWA as a condition of employment would not be inconsistent with the act. That is the advice we have been given. There is nothing in the requirements that have been announced that will change that.

Senator CROSSIN—We had evidence this morning of the Federal Court ruling that shows that if you are offered an AWA and you are an existing employee it could be construed as coercion but that it is not coercion for a new employee.

Ms Baly—I am sorry, I am not sure that I follow.

Senator CROSSIN—I am going to the issue of coercion.

Ms Baly—Coercion is not lawful.

Senator CROSSIN—Correct. But, if I am a casual employee at a university, what measures can I avail myself of to prove that that was or was not the case?

Ms Baly—If you are offered a job and it is clear up front what the conditions of employment are then it is not something that, after you have accepted the job, is suddenly changed.

Senator CROSSIN—I do not think you are getting what I am coming at. Suppose I am offered a position at a university and I am told: ‘Here is your offer of employment. If you want the job you will have to sign this AWA.’

Ms Baly—That was the comment that I made. You know up front, before you take the job, that that is a condition of your employment.

Senator CROSSIN—What power do I have, though, as a casual postgraduate student, to do anything other than accept that condition?

Ms Baly—If that is offered to you as a condition of employment then that is a condition. But you would be able to appoint somebody to bargain for you. That is quite clear in these requirements. It is also quite clear in the Workplace Relations Act.

Senator CROSSIN—I want to go back to something you said earlier, which was that you believe that AWAs provide additional protection for employees. On what basis do you make that statement?

Ms Baly—On the basis that AWAs are registered as industrial agreements with the Office of the Employment Advocate and there are appeal mechanisms through that, in the subject of any dispute, which are not available to someone who is on a common-law contract, who would have to take any dispute through a legal process, through the courts.

Senator CROSSIN—If I believe my AWA has been breached, do you understand what the process is for me to prove that?

Ms Baly—You would be able to take that complaint to the Office of the Employment Advocate for that to be investigated.

Senator CROSSIN—They would simply say to me that they had a view that perhaps the AWA had been breached. But if I wanted to do anything about it, do you know what I would need to do then?

Ms Baly—No.

Senator CROSSIN—I would need to go to a common court, just as I would need to if I had an individual contract.

Ms Baly—Yes, but you do not have to go there in the first instance.

Senator CROSSIN—But if I want to actually rectify the breach of my AWA—that is, if I believe I have been underpaid or that I have not been awarded some conditions that are in my AWA—in order to get the university to comply with my AWA I need to go to court. So again I say to you: I believe your statement that an AWA affords better protection for workers is an assertion rather than based on any factual evidence.

Ms Baly—You are asking me to go beyond my area of expertise. Workplace relations policy and the operation of AWAs is an issue for the Department of Employment and Workplace Relations. I am really not in a position to respond in any sort of detail.

CHAIR—That is correct.

Senator CROSSIN—Then why make those statements in your submission to us?

Ms Baly—We provided those comments on the basis of advice that was provided to us by the department.

Senator CROSSIN—Are you aware of the 1998 decision that the NTU and a number of unions won in relation to the employment of casual and contract employees in universities?

Ms Baly—I have some knowledge of it, yes.

Senator CROSSIN—What is there in this legislation that would prevent staff at universities from going back to the pre-1998 days? You know the outcome of that decision. There were staff employed on rolling contracts for years after years, and that industrial decision deemed that they were permanent employees. You can have a situation now under this legislation where people may well be offered AWAs year after year, maybe with no choice—maybe without the power to prove there has been no choice. How does this legislation improve the decision of 1998?

Ms Baly—It will have the effect of changing the decision, because these requirements will limit restrictions on the type of employment that universities can offer. They will not be able to have agreements that have limits on the type of employment, and that is quite clear in the requirements that have been announced. As I understand that decision, there were limits put on the employment of casual employees.

Senator CROSSIN—Do you know why?

Ms Baly—I am not familiar enough with that case in 1998 to be able to talk with any degree of certainty about why those decisions were made.

Senator CROSSIN—This legislation then has the effect of perhaps taking workers in universities back to pre-1998 conditions.

Ms Baly—I am not in a position to comment on that. I can comment on what the provisions and requirements are that have been announced.

Senator CROSSIN—The CPSU, on page 3 of their submission, say that ‘advice is contradictory’. They say that you often provide ‘conflicting advice to individual universities who have sought feedback’. One example was given to us of the descriptors of HEWRRs, the Higher Education Workplace Relations Requirements, where DEST might be advising some universities that having the descriptors must be considered and other sections of your department are suggesting it might be desirable that they are considered. Why is that occurring?

Ms Baly—I do not think that comment is quite right. The requirements as announced require that agreements be simple, flexible and principle based. A lot of the agreements that we have seen to date have been anything but simple and flexible. In the comments that we have been providing to universities, we have been giving some suggestions about the sorts of

things that could be taken out of agreements and put into policies and practices to make the agreements simpler.

One of the suggestions has been around the nature of work level descriptors. We have not said to universities that they must take all of this detail out of their agreements. We have just said that the agreements need to be simple and we have made some suggestions about areas where some of the detail might be taken out. The descriptors have been one of those areas that we have suggested could be taken out. A number of universities have come back to us and said that they really want to keep the descriptors in. We have had a look at their descriptors and do not believe that they are excessively detailed. We have said that, if they leave them in, provided the rest of the agreement is simple, then we think that that would probably be acceptable. I do not think that that is conflicting advice.

Senator CROSSIN—On page 16 of their submission, they say there has been a suggestion that descriptors should be removed to policy or where they are allowed in. What is the go? Is it not that all descriptors should be taken out, some out and some in, or is it the quality or the detail of the descriptors that is now the marker?

Ms Baly—The requirements that have been announced are basically a set of principles. They are deliberately not prescriptive. They are deliberately not saying, ‘This is what your agreement must have in it; it must be this many pages.’ They have quite deliberately been drafted as not being prescriptive. Now universities and others are coming and saying that they want a level of prescription, which seems to be a bit at odds with other comments about micromanagement and that sort of thing. We have not said, one way or the other, that the descriptors should always definitely be out.

Senator CROSSIN—The evidence that was given to us today—

Ms Baly—We have suggested—

Senator CROSSIN—was that there is conflicting advice.

Ms Baly—I am not sure where the conflicting advice is in that, though. We have suggested that that is the level of detail that could come out as one way of universities being able to get their agreements to simple documents. But if they are able to reduce the detail in other areas and leave the descriptors in, and if the descriptors are not excessively detailed, they would probably be acceptable.

Senator CROSSIN—They would probably be acceptable?

Ms Baly—We cannot speak for the minister.

Mr Nolan—I might add that some agreements were in excess of 180 pages or so. That is quite difficult for a staff member, I would say, to sift through and understand. By making it a more simple document, bringing those page numbers down and still having those requirements in policy documents outside of the agreement, it makes it a lot easier for someone to be able to understand the agreement, I believe.

Senator CROSSIN—That is your belief, not perhaps based on any evidence or research?

CHAIR—Mr Nolan can only say what he believes.

Senator CROSSIN—Ms Baly, you just said you cannot speak for the minister. Isn't that one of the reasons, perhaps, why universities are asking for more prescriptive guidance? Isn't it because there is so much money at stake here? Isn't it because, as you suggest, the minister at the end of the day is going to sign off, or not, on these? The AVCC put it to us quite clearly this morning that they believe the minister is micromanaging to a degree that they do not believe is suitable for a minister, nor do they want it, but they want to cross all the Is and dot all the Ts to ensure they get the funding. Isn't that the bizarre nature of this legislation?

Ms Baly—I can understand universities wanting to have certainty about whether they are going to be eligible for the funding, but that does not mean that, in providing our advice, we can make the decision on the minister's behalf. We would be misleading the sector if we said that a particular agreement is compliant or not compliant. We are clearly not in a position to be able to do that.

Senator CROSSIN—Do you have any idea when the guidelines will be released?

Ms Baly—The guidelines have been released in draft form already.

Senator CROSSIN—Are they on the web site?

Ms Baly—Yes. They were in effect released on 29 April, when the media release was announced. The requirements that were attached to that media release—the HEWRRs, as they are commonly known—are what will become the guidelines.

Senator CROSSIN—So these draft guidelines are attached to the media release—

Ms Baly—They have been amended since 29 April, but—

Senator CROSSIN—Can you provide the amended version to this committee?

Ms Baly—That is on the web site as well, but we can certainly do that.

Senator CROSSIN—So you are saying there will now be no changes? Once the legislation goes through, what is on the web site will become the guidelines for disallowance?

Ms Baly—That is correct. They will form part of the guidelines with the national governance protocols.

Senator CROSSIN—It is just that, in one of your earlier answers, you talked about the guidelines 'when they are released'. But they are actually—

Ms Baly—When they are made, I probably meant to say—my apologies.

Senator CROSSIN—Can you provide us with a list of all of the universities in this country and the amount of CGS funding they could expect for 2006 and 2007?

Ms Baly—Not at this point in time because the base grants for 2006 and 2007 have not as yet been determined. That is the subject of funding agreement negotiations that are still to happen.

Senator CROSSIN—When is that likely to happen?

Ms Baly—I could not give you a date, but the 2007 money certainly would not be available until some time next year.

Senator CROSSIN—When Monash University say to us that there is \$8 million at stake, what are they basing that on—their 2005 base?

Ms Baly—Probably.

Senator CROSSIN—Could you work out the CGS funding based on 2005?

Ms Baly—I can give you the ballpark figures. The 2½ per cent increase this year was just under \$75 million—about \$73 million. I have got the exact figure somewhere.

Senator CROSSIN—Just take it on notice, but I would like it broken down by each of the universities.

Ms Baly—My guess is that \$8 million would be about right for 2006.

CHAIR—So you will provide it to the committee.

Ms Baly—I can give you a breakdown for 2½ per cent for 2005.

CHAIR—Good.

Ms Baly—I may be able to give you the 2006 breakdown, depending on whether those base grants have been determined. I do not know at what point this year they will be determined.

CHAIR—Thank you very much, and thank you very much for appearing before the committee.

Committee adjourned at 12.55 pm