



Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005

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Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005

Date Introduced: 23 June 2005

House: House of Representatives

Portfolio: Education, Science and Training

Commencement: The day after Royal Assent

Purpose

To enforce the Commonwealth Government's workplace relations requirements for higher education providers (HEPs).

Background

The Commonwealth provides assistance for higher education through the provisions of the *Higher Education Support Act 2003* (the HESA). Part 2-2 of the HESA sets out the conditions for the Commonwealth Grant Scheme (CGS), which provides grants to HEPs on the basis of the number of places they have been allocated in specified funding clusters. These clusters are based on broad fields of study such as Law, Humanities, Agriculture and Mathematics. The twelve clusters with their respective Commonwealth contributions per place are set out in section 33-10. A HEP's "basic grant" is the total amount it receives through this process, together with special loadings for medical students and regional campuses.

Under section 33-15 a HEP's basic grant can be increased if it meets certain requirements. The increments are set out in section 33-15(2): they are 2.5 per cent in 2005, 5 per cent in 2006 and 7.5 per cent in later years. The current requirements for these increments were that providers implement the National Governance Protocols (which relate to the membership and role of governing authorities such as university councils) and that they offer Australian Workplace Agreements (AWAs) in their certified agreements with staff.

The detailed funding conditions for providers are contained in the CGS Guidelines, which are disallowable instruments under section 238-10 (2) of the HESA.¹

On 29 April 2005 the Minister for Education, Science and Training (the Hon Brendan Nelson MP) and the Minister for Employment and Workplace Relations (the Hon Kevin Andrews MP) announced a set of Higher Education Workplace Relations Requirements (HEWRRs) for higher education providers.² These are as follows:

Warning:

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

1. Choice in Agreement Making

The HEP must provide employees with genuine choice and flexibility in agreement making by offering AWAs to all new employees employed after 29 April 2005 and to all other employees by 31 August 2006. Until 30 June 2006, HEPs are exempt from offering AWAs to casual employees engaged for a period of less than one month.

The HEP's certified agreements, made (or varied) and certified after 29 April 2005, are to include a clause that expressly allows for AWAs to operate to the exclusion of the certified agreement or prevail over the certified agreement to the extent of any inconsistency. The following clause is recommended:

The [insert HEP name] may enter into AWAs with its employees. Those AWAs may either operate to the exclusion of this certified agreement or prevail over the terms of this certified agreement to the extent of any inconsistency, as specified in each AWA.

2. Direct relationships with employees

The HEP's workplace agreements, policies and practices must provide for direct consultation between employees and the HEP on workplace relations and human resources matters. The involvement of third parties representing employees must only occur at the request of an affected employee.

Workplace relations consultative committees and associated committee processes must include direct employee involvement. Employee involvement in negotiations and discussions on workplace relations and human resources issues must not be restricted to third party representation only.

3. Workplace Flexibility

The HEP's workplace agreements, policies and practices are to facilitate and promote fair and flexible arrangements. The HEP must have working arrangements and conditions of employment which are tailored to the circumstances of the HEP and which benefit both the HEP and its employees.

The HEP's workplace agreements should expressly displace previous workplace agreements and relevant awards.

The HEP's workplace agreements, policies and practices are not to inhibit the capacity of the HEP and its employees to respond to changing circumstances. The HEP's workplace agreements, policies and practices must not limit or restrict the HEP's ability to make decisions and implement change in respect of course offering and associated staffing requirements, including not placing limitations on the forms and mix of employment arrangements.

The HEP's workplace agreements must be simple, flexible and principle-based documents which avoid excessive detail and prescription.

4. Productivity and Performance

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The HEP's workplace agreements, policies and practices must support organisational productivity and performance.

The HEP's workplace agreements, policies and practices must include a fair and transparent performance management scheme which rewards high performing individual staff. Consistent with this, the HEP's workplace agreements, policies and practices must also include efficient processes for managing poor performing staff.

5. Freedom of Association

The HEP's workplace agreements, policies and practices must be consistent with freedom of association principles contained in the *Workplace Relations Act 1996*. HEPs must neither encourage nor discourage union membership.

The HEP must not use CGS funds to pay union staff salaries, or fund union facilities and activities.³

This Bill will provide for the HEWRRs to be included in the CGS Guidelines and require the Minister to be satisfied that they have been met if HEPs are to receive the funding increments specified in section 33-15(2).

Main Provisions

Item 1 of Schedule 1 substitutes 33-15(1)(b) and (c) of the HESA with new subsections which provide that the CGS Guidelines impose the HEWRRs on higher education providers.

Endnotes

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- 1 See: http://www.backingaustraliasfuture.gov.au/guidelines/cgs_guide.htm, for copies of the CGS guidelines and associated documents.
 - 2 See: <http://www.dest.gov.au/Ministers/Media/Nelson/2005/04/n1102290405.asp>
 - 3 Taken from: http://www.dest.gov.au/sectors/higher_education/programmes_funding/programme_categories/professional_skills/hewrrs/default.htm. Other information relating to workplace reform in higher education can be obtained from: http://www.dest.gov.au/sectors/higher_education/programmes_funding/programme_categories/professional_skills/workplace_reform.htm

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