

University enterprise bargaining - It's time to remove the shackles

Australian universities contribute a significantly to the nation's economy, yet are hamstrung in their operation by enterprise agreements which are lengthy and complex documents. They are typically of between 100 and 200 pages, and full of detailed prescription as to how things are to be done or not done. They are a far cry from being a modern set of flexible and efficient workplace arrangements suited to the challenging and evolving environment in which universities need to operate now and into the future.

Why is this the case? Why do these 40-odd enterprise agreements at Australia's 37 public universities look so remarkably similar? Why do these agreements contain various provisions largely unaltered from when they were first inserted in federal awards some 25-30 years ago?

The *Fair Work Act 2009* provides specific protections against unfair and unlawful dismissal, against unlawful adverse action including discrimination, against workplace bullying. This federal legislation also provides for a range of leave and other entitlements under the National Employment Standards which were not found in federal legislation 25-30 years ago. The higher education sector has advanced considerably over this time, but the industrial instruments have lagged well behind the required pace of change and are struggling for relevance in a very different world.

Various "protections" which are contained in university enterprise agreements now effectively duplicate or complicate processes which are regulated by the *Fair Work Act*. Unfair dismissal claims are a classic example, where the Fair Work Commission needs to hear witness evidence itself as to whether there was a valid reason for dismissal. There is no need for university enterprise agreements to have court-like processes where university staff need to appear as witnesses before 3-member internal Misconduct Investigation Committees; only to re-appear to give the same evidence when a decision to dismiss the offending person is challenged before the Commission. No longer does "misconduct" and "serious misconduct" need to be defined by university enterprise agreements; and nor should those definitions be in conflict with how those terms are defined by the *Fair Work Act*. Nor should a member of academic staff be able to escape dismissal for misconduct of a type that any other employee in the Australian workforce can be dismissed for.

Complex change management provisions, and disputation in the Fair Work Commission or the Federal Court over their application, stymie university attempts to implement organisational change to improve university offerings in a timely manner for the benefit of their students.

The time has arrived to remove the shackles. The time has arrived for all parties involved in enterprise bargaining in Australian universities to draw a deep breath, to reflect on the drain on time and resources that these unnecessary complexities create, and to put in place simplified provisions, either in the agreements themselves or in university policy, depending on the subject-matter: simplified provisions which are easy for employees, their supervisors and managers to understand and to apply, and which don't end up in messy litigation, which has too often been the case in recent years.

The *Australian Higher Education Workforce of the Future Report*, commissioned by the Australian Higher Education Industrial Association and published by PricewaterhouseCoopers in January 2016, pointed to the increasing external pressures on Australian universities to be able to continue to

operate in a sustainable manner into the future. Ever-increasing student expectations as to what and how learning is to be delivered to them, employer demands for work-ready graduates, the need for far greater interaction between universities and industry, significant constraints on government funding, and the speed of change of the ever-evolving digital environment constitute a landscape quite foreign to the landscape of 25-30 years ago where the pace of change and the external pressures on universities were far more modest. In this digital age, the other side of the world is now right on our doorstep (or in our In Box almost instantaneously), and Australian universities need to be able to compete in the international marketplace for students and for staff, as well as for status. This includes a requirement for modes of teaching delivery to our students, and consequent flexibility in staffing arrangements to accommodate such delivery, that out-dated industrial arrangements, including the so-called “40/40/20” teaching/research/service workload norm at some universities for the majority of their academic staff, do not fit. Similarly, universities with large international off-shore programs need contemporary enterprise agreements that reflect a changing work profile. Australian universities possess staff of the highest quality, and they should be able to play to their strengths for the benefit of their students, for the university as a whole, and for their own professional satisfaction.

The University of Canberra set the scene last year in achieving a streamlined plain-English enterprise agreement, which is largely principle-based, devoid of a lot of prescription that previously existed, and which has a focus on achieving and rewarding excellent performance. In similar vein, the Vice-Chancellors of the four public universities in Western Australia jointly announced to their staff in April last year that they would be seeking to replace their existing enterprise agreements with new agreements which contain provisions which are simple, contemporary and fair. Bargaining at those four universities is still continuing some eight months after it commenced, with apparent little headway having been made in trying to convince union negotiators that the time has arrived to remove out-dated industrial provisions which are a relic of the past. Other universities and their many important stakeholders are looking on with interest.

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Opinion piece
Stuart Andrews
Executive Director, AHEIA

The Australian Higher Education Industrial Association (AHEIA) is the employer association for the higher education sector, registered under the federal *Fair Work (Registered Organisations) Act 2009*.