



INDEPENDENT EDUCATION UNION OF
AUSTRALIA

SUBMISSION TO THE
SENATE EMPLOYMENT,
WORKPLACE RELATIONS, AND
EDUCATION COMMITTEE

**Inquiry into the Workplace Relations Amendment
(Protection of the Low Paid) Bill 2003**

April, 2003

1.0 Introduction

- 1.1 The Independent Education Union of Australia (IEU) has prepared this submission for the Senate Employment, Workplace Relations, and Education Committee Inquiry into the Workplace Relations Amendment (Protecting the Low Paid) Bill 2003.
- 1.2 The IEU has read and supports the submission made by the ACTU to this Inquiry.
- 1.3 The IEU strongly opposes this Bill. Essentially, the intent of this Bill is to change the weighting of matters for consideration by the Australian Industrial Relations Commission when awarding adjustments to the safety net. The effect of this Bill will be to further widen the disparity experienced by award-only employees in Australia in comparison to those who have the bargaining capacity to achieve certified agreements. In Victoria in particular, a large proportion of all teaching and non-teaching staff in independent schools are reliant on the award only. A significant category of IEU members are also currently covered by awards, without the benefit of certified agreements, mainly in the ELICOS industry in Victoria, Queensland, Western Australia and South Australia.

1.4 The IEU and the Non Government Education Sector

The IEU is a federally registered organisation pursuant to the provisions of the *Workplace Relations Act 1996* and operates in the non government education industry which comprises Catholic and other independent schools, pre schools and kindergartens, English and Business Colleges. The union's membership of approximately 55,000 consists of teachers, principals, teacher aides, education support staff, clerical and administrative staff and other ancillary staff such as cleaners and grounds and maintenance staff.

- 1.5 The IEU and its Associated Bodies are party to numerous awards and certified agreements. The awards and agreements applying to schools in Victoria, the ACT and the Northern Territory are federal awards. Other federal awards to which the union is a party cover English and Business Colleges across most states and the ACT.

- 1.6 A substantial number of awards and certified agreements have been negotiated by the union under the present system of industrial relations. The changes to the Workplace Relations Act in 1996 with the introduction of award simplification and its consequent emphasis on enterprise bargaining, have however taken their toll. There are many IEU members who have now only the protection of “bare bones” awards for their conditions of employment and their wages. This is not due to a lack of willingness on their or the union’s part to achieve a certified agreement through bargaining. This submission will examine some of the factors that have contributed to this inequality.

2.0 Workplace Relations Amendment (Protecting the Low Paid) Bill 2003

- 2.1 The Bill seeks to amend the Workplace Relations Act by the following:
- (a) Amend the Objects of the Act so that the primary focus of the award safety net is to address the needs of the low-paid.
 - (b) When exercising any power or function in relation to awards, the Commission is to recognise that the primary role of awards is to address the needs of the low paid.
 - (c) In performing functions under Part VI of the WRA, the Commission would be required to have regard to *the needs of the low paid, including their need for employment, the employment prospects of the unemployed, and the capacity of employers to meet increased labour costs.*
- 2.2 The rationale for these changes is that the “quite highly paid workers have been able to receive safety net adjustments. This acts as a disincentive to bargaining at the local level”¹. There is little other evidence or argument mounted to support the amendments other than it being a policy position of the Commonwealth to support an effective minimum safety net, “whilst contributing to workplace bargaining above that safety net”.²
- 2.3 The IEU disagrees strongly with the proposed Bill for the following reasons:

¹ Explanatory Memorandum, Workplace Relations Amendment (Protecting the Low Paid) Bill, House of Representatives, p.1.

² Bills Digest No. 116, 2002-2003, Steve O’ Neill, Economics, Commerce and Industrial Relations Group, Feb. 2003

- (a) The Commission already has regard to the needs of the low-paid.
- (b) The Commission already has regard to the economic impact of awarding an increase to the safety net.
- (c) The Commission already has regard to the capacity of employers to pay through the Economic Incapacity Principle.
- (d) The effect of the Bill will be to further increase the gap between the haves and have-nots.
- (e) The rationale that these changes will somehow act as an incentive for award only-employees to move into enterprise bargaining is inaccurate.
- (f) The rationale that highly paid employees are somehow benefiting from award safety net adjustments is inaccurate.

3.0 The needs of the low paid and economic impact

- 3.1 A review of the Commission's decisions when awarding safety net increases shows consistent recognition of the balance required between economic stability and the needs of the low paid. Further, they recognise the role that enterprise bargaining plays in reducing the impact of adjustments to the award rate. Nonetheless, the Commission has rightly upheld the need to ensure that all workers who are only covered by awards, and who have limited bargaining capacity, receive a moderate wage increase.
- 3.2 The Commission must currently have regard to three relevant factors in the Workplace Relations Act (Section 88B(2)) when adjusting the safety net – the likely effects on the state of the economy with particular reference to the impact on employment, the need to provide fair minimum standards for employees within the context of Australian living standards and with particular reference to the needs of the low paid, and the encouragement of the making of agreements between employers and employees.
- 3.3 No weighting is given to any of these three factors. It is the Commission's role to ensure that all are considered, that all available evidence is analysed, and to make its decisions. There is no rationale offered in this Bill for why the status quo should be skewed to give disproportionate

weighting to the needs of employers and more confusingly, the needs of the unemployed.

- 3.4 In relation to the “needs of the unemployed”, the Bill is premised on an assertion that it will “reduce the prospect of unemployment”³ for low skilled workers. Paragraphs 18 to 27 of the ACTU submission deal conclusively with this argument, and the IEU supports the statements made. There is no link between unemployment and the small wage rises afforded to Australian workers through the Safety Net Review.

4.0 The importance of a fair system for all

- 4.1 In 1998, the ACCIR (Australian Catholic Commission for Industrial Relations) argued that employers had a duty to pay a fair wage, not just the wage that the labour market demanded, and where employers reneged from that duty, the State should intervene to protect the rights of workers through maintaining the federal minimum wage and the award safety net. It also contended that the way to tackle unemployment was not through reducing the wages needed for a “decent standard of living”⁴. Similarly, in 1999 ACCIR stressed the importance of the Commission maintaining the award safety net both for the low paid and “the industrially weak”⁵ and in 2000, submitted that “the welfare system should not be a substitute for the payment of fair wages”⁶.
- 4.2 The IEU endorses the position that the ACCIR has maintained in their submissions regarding the award safety net. The IEU notes that the ACCIR is one of the largest employer groups in Australia, a major employer of our members and of employees in non-government schools and other institutions generally.
- 4.3 The IEU submits that the emphasis of the Safety Net Review must be on protecting the low paid, but correspondingly, protecting the rights of Australians to a fair wage that does not just blindly reflect what the market is or isn't willing to pay at a particular time in history to a particular group of people. The award system should protect the unprotected.

³ Second Reading Speech, Para 4.

⁴ ACCIR submission, Safety Net Review, April 1998.

⁵ 1999 Safety Net Review Decision, Para 8

⁶ 2000 Safety Net Review Decision, Para 88

5.0 Why the award safety net is necessary

- 5.1 There is no requirement for employers to bargain with their employees and reach workplace agreements with them. It is the IEU's experience that only a minority of workplaces was able to recover from the award simplification agenda, and convert to certified agreements. Further, only a handful of employers in the non-government education sector have initiated a bargaining process aimed at achieving a certified agreement. In almost every case, certified agreements have only been achievable through the efforts of staff, with union support. Consequently, there is now a large group of employees in our industry who earn significantly less than their counterparts elsewhere, for the sole reason that their employers will not bargain with them. They are totally reliant on the award system for their wages and conditions.
- 5.2 For example, a beginning teacher in a Victorian independent school where there is no certified agreement reached would earn \$33,940 a year, an experienced teacher \$47,336. A beginning teacher in an independent school covered by a certified agreement would earn on average \$38,789, an experienced teacher on average between \$57 – 59,000. The work is the same. The bargaining position is different. A library assistant in the award only school would earn approximately \$27,000⁷, depending on classification level. If she worked down the road at the certified agreement school, she would earn some \$7,000⁸ dollars more per annum.
- 5.3 In the ELICOS industry, a language teacher currently teaching, for example, in a South Australian ELICOS college would earn between \$31,706 and \$44,376, if they were reliant on the federal award only. If he or she were covered by a certified agreement (standard in NSW, rare elsewhere) they would earn approximately \$10,000 more per annum. The disparity is obvious. The majority of employees who work in the ELICOS industry are reliant on the award system only – with the exception of NSW. The majority of employees in this industry are casual or temporary and the turnover of staff is very high. One college surveyed by the IEU

⁷ Based on Classification Level 2, 4 weeks annual leave in the Victorian Independent Schools – School Assistants Award

⁸ Based on Classification Level 2, 4 weeks annual leave in the Victorian Catholic Schools and Catholic Education Officers Award.

recently found that of the 19 staff, all but three were casually employed. This is not unusual.

- 5.4 Adjusting the safety net currently allows all classification levels to receive an increase, albeit weighted towards the lowest paid. It is the IEU's contention that this is appropriate and essential to preserve some element of wage security for our members. It is also glaringly obvious that our members who are award reliant, many of them above the C10 classification, do not have a vested interest in staying in this position, whilst their employers do. It seems to be the Commonwealth's position that less emphasis on their needs would "encourage" them to bargain more effectively at the workplace. This is perhaps the most misinformed aspect of the rationale communicated about the intent of this Bill. Enterprise bargaining as an industrial instrument has failed to address the needs of many vulnerable employees. Removing their access to safety net award increases is a punishment, not an incentive.

6.0 IEU members reliant on the safety net

- 6.1 It is clear that income equality in Australia is widening. One significant factor in this disparity is the gap between income levels as a result of bargaining and those determined at the award level. The ACTU's submission to the 2003 Minimum Wage case provides compelling evidence of the profile of employees who are award reliant. They are employees who are more likely to be in casual or temporary employment, overwhelmingly in the private sector and in non-managerial positions, and predominantly women. This profile is accurate for ELICOS teachers in our industry.
- 6.2 ELICOS colleges are reliant on overseas students for their operations. They fluctuate widely in terms of employment stability, as they are prone to sudden drops in clientele – for example recently mooted changes by the Department of Immigration to processing student visa applications will certainly have a negative impact, as well as events outside the control of governments such as the SARS health crisis. There is generally a very high turnover of staff, many of whom experience no security at all regarding the nature of their employment contract. These factors militate against achieving a workplace agreement – such negotiations take time, commitment, willingness on behalf of employers, and a generally stable

group of employees to educate and work with about the importance of such industrial instruments. The income gap experienced by these teachers is steadily increasing.

- 6.3 In a different context, even where there is employment security, there are many staff in, for example, Victorian independent schools who have not been “encouraged to bargain” and are award reliant. The factors are more complex – they are a combination of school culture, religious and/or cultural issues, employer refusal to bargain, lack of industrial strength, and fear of confronting employers. The legislative changes proposed in this Bill will not act in any way as an incentive for these staff to bargain – they will simply further entrench the income disparity experienced.
- 6.4 It is also the IEU’s experience that where enterprise bargaining does not occur, notwithstanding the fact that staff shortages may arise because of the low wages, employers will not increase the wages offered to employees. For example, in non-government child care centres in the ACT, federal award rates are paid to teachers in child care centres up to 15,000 dollars per annum below agreement rates applying to teachers elsewhere. As a consequence, many centres are unable to attract highly qualified staff and do not have the industrial knowledge, experience or willingness to negotiate better rates of pay.
- 6.5 The IEU submits that workers who are employed on higher levels in the award system, are still significantly disadvantaged financially in comparison to colleagues undertaking identical work, but with the collective strength of an enterprise agreement. It is clear that the current policy position of the Commonwealth is that such employees be ineligible for safety net increases, and that the award system over time be made obsolete, effectively dismantling its role in underpinning enterprise bargaining, and reducing wage classifications and relativities to a “bare minimum” wage. This position is evident not just in this Bill, but in the raft of other legislation currently before Parliament. All have a common intention – to reduce the relevance and value of the award system.⁹

⁹ Award Simplification Bill, Choice in Award Coverage Bill, Simplifying Agreement-making Bill

- 6.5 Historically this position runs counter to statements made as recently as 2000 when the then Minister for Employment, Workplace Relations and Small Business stated in regard to legislative reform:

“The reforms implemented by the Government through the WR Act have helped Australia become stronger They have helped Australian families improve their living standards and enjoy greater flexibility in their working lives. They have also protected the low paid with substantial real wage increase delivered through a series of safety net increases”.¹⁰

7.0 Maintaining the integrity of the Safety Net Review

- 7.1 There have been various attempts made by employer and Joint Government submissions to the Safety Net Review to weaken the Principles in relation to employer capacity to pay, yet conversely make it harder for employees to access wage increases. The ACTU submission outlines in detail the Commission’s position on such attempts.¹¹ In 1998, the employers proposed four amendments to the Statement of Principles intended to make it clear that difficulties in achieving a result in enterprise bargaining are not a valid reason for increasing award wages or conditions. The Commission declined to make such a decision. In particular, the employers argued that Principle 3.3 should contain an additional two additional sentences so that the paragraph would read as follows:

An application to make or vary an award for wages or conditions above or below the safety net will be referred to the President for consideration as a special case. Applications based on difficulties in achieving results from enterprise or workplace level bargaining will not be recognised as constituting a special case for wage increases above the safety net regardless of whether such wage increases are associated with award level productivity trade-offs. Employees unable to achieve an agreement are instead protected by an award safety net as maintained by the Commission.”

¹⁰ The Hon. Peter Reith, Address to Year 2000 Annual Joint Management Lecture, May 18, 2000.

¹¹ ACTU submission to the Inquiry into the Workplace Relations Amendment (Protection of the Low Paid) Bill, Paras 34-40.

7.2 The Commission response demonstrated the inequity of such a proposal.

“Fourth, the Joint Governments' proposed variation of paragraph 3.3 of the current Statement of Principles is, in our view, inequitable. The proposal would effectively prohibit employees from putting a case for an award wage increase on that basis. However there is no reciprocal prohibition on employers. An employer who is unable to achieve an agreement to, for example, reduce penalty rates, would still be able to pursue an application to vary the award to achieve the same objective”.

7.3 In 1999, the Joint Governments (Commonwealth and Liberal states) argued that the unemployed should be included in the definition of “low paid”. Both the 1999 and subsequent 2000 decisions of the Commission rejected this as not relevant to the statutory role provisions within Section 88B(2)(c) of the Act and the definition of low paid as being people in employment. The changes sought in this legislation forcing the Commission to consider “the employment prospects of the unemployed” is illogical within the context of the Commission’s role in determining an increase to employed persons. The Commission already must consider the levels of employment in making its judgement, and this is clearly outlined in Section 88B(2)(b) of the Act. It should not be forced to assign a priority on any one factor for the sake of political expediency.

8.0 No benefit to higher paid employees

8.1 Finally, the rationale that highly paid employees in Australia are somehow benefiting from an annual decision that increases award rates by a small amount is inaccurate. In the first instance, award safety net adjustments are offset by any above-award payments, certified agreements and AWAs which are higher than the rates specified. Unions committed to this principle, and there is no evidence at all that this is not adhered to.

8.2 Secondly, it is clear from the evidence that employees reliant solely on the award are paid less than their counterparts who have achieved workplace agreements. Since 1984, the C10 classification is now worth about 73% of the value of Average Weekly Ordinary Time earnings (AWOTE), and the C14 rate has now fallen below 50% of AWOTE for the first time¹².

¹² ACTU Submission, Safety Net Review, 2003, p.42

The IEU can state with certainty that no employee in our sector reliant solely on the award is somehow benefiting financially. As demonstrated in this submission, such entrenched disadvantage is a direct result of the gap between strong, unionised workplaces, and those that are not. It is essential that this gap is not allowed to widen, yet it will if this Bill is passed, and there is a weakening of the Commission's discretion to assess and balance all needs, and continue to provide an increase to **all** workers that are dependent on such modest increases for their wages growth.

9.0 Conclusion

This Bill will further weaken the entitlements of many IEU members who are reliant on the award system. It will not act as an incentive to bargaining, and will further entrench the financial disadvantage they experience.

The IEU urges the Committee to reject this Bill.