



AEU BRIEFING PAPER - MARCH 2007

Rationale for a Multi-Business Agreement covering TAFE Teaching Staff in Victorian TAFE Institutes & Universities with TAFE Divisions.

Purpose

1. To provide an AEU rationale for why there should be a Multi Business Agreement ['MBA'] covering TAFE Teaching Staff in Victorian TAFE Institutes and Universities with TAFE divisions.

Background

2. An MBA is one of some six types of workplace agreements provided for by the *Workplace Relations Act 2006 (Cth)* ['the Act'] – the others are Australian Workplace Agreements, Employee Collective Agreements, Union Collective Agreements, Union Greenfields Agreements and Employer Greenfields Agreements. Victorian State Government policy supports the primacy of collective bargaining for non-executive staff and their union representatives but shows no preference between an MBA or a Union or Employee Collective Agreements (see IRV, *Industrial Relations Policy Statements 2006*).
3. Currently the terms and conditions of employment of Victorian TAFE teachers are regulated by the *TAFE Teachers' Conditions of Employment (Victoria) Award 2002* ('the Award') and the *Victorian TAFE Teaching Staff Multi-Employer Certified Agreement 2003* ['MECA']. The MECA is an MBA. Both are pre-reform federal industrial instruments made and/or certified by the Australian Industrial Relations Commission prior to the coming into effect of the federal government's WorkCoices legislation on 27 March 2006.
4. The MECA reached its Nominal Expiry Date on 1 September 2006 however both it and the Award continue to have effect under the provisions of the Act until, in the case of the Award, it is revoked by order of the Commission and, in the case of the MECA, it is superseded by a new workplace agreement made under the Act. It should be noted that under s 349 of the Act, an Award will cease to have any effect in relation to an employee while a workplace agreement operates to cover that person. Thus, from the AEU stance, any new workplace agreement will cover as comprehensively as is possible and agreed the full range of employee terms and conditions of employment.

The period of single employer certified agreements

5. Between 2001 and 2003, Victorian TAFE teaching staff were covered by single employer/individual Institute certified agreements in addition to the Award. These agreements were Union Collective Agreements ['UCAs']. Other than for multi-union UCAs covering Swinburne & RMIT Universities, no enterprise or workplace agreements operated prior to 2001, although several TAFE Institutes had unsuccessfully sought to negotiate non-union collective or individual agreements during the period of the Kennet Government.
6. The practical reality was that UCAs only became possible following the election of the Bracks Labor government in 1999. However the reality also was that those agreements took considerable time to negotiate – approximately 1- 1.5 years. The AEU experience was that the negotiation process was hugely time consuming and expensive to run. This view was supported by the TAFE Institutes themselves. The process also became quite divisive as it

required teaching staff and managers at each institute seeking to obtain advantages over each other.

7. Although some productivity savings in labour costs were achieved through extension of the span of ordinary hours with the consequent reduction in payment of penalty rates for 'night work', the reduction in certain Time Allowances with the consequent increase in time available for teaching, and in differing casual teacher rates of pay, there remained considerable consistency between the various Institutes in the agreed outcomes.

The MECA period

8. A MECA was achieved because there was a view shared by the AEU, TAFE employers and Government (OTTE) that the processes and costs involved in negotiating 18 separate workplace agreements were not worth the benefits that were ultimately achieved. MECA accommodated the productivity savings contained in the previous single employer agreements through their incorporation into schedules appended to the MECA.
9. More importantly, the AEU, the TAFE employers and Government also shared a view that in the context of a state created, owned and funded training system, it was a nonsense for TAFE Institutes, as public providers of TAFE/VET, to seek to try and achieve competitive and other operational advantages through enterprise bargaining in which trade-offs in conditions of work and other matters at one Institute were not similarly achieved at the others. MECA did achieve further efficiency gains and productivity savings but these applied at all Institutes.

An MBA 2007-2010?

10. As a matter of law, each TAFE Institute is the employer of its teaching staff. It is also a matter of law, that TAFE institutes and universities with TAFE divisions are created and owned by the State of Victoria. As a matter of public policy, the state has a vested interest in ensuring that the education and training outcomes it desires are achieved in as an efficient use of taxpayer funds as possible.
11. In the context of the Act, it is also a matter of fact that the the state Government has enacted its own legislation such as the *Victorian Workplace Rights Advocate Act*, the *Victorian Public Sector (Award Entitlements) Act* and the *Victorian Public Sector Acts (Further Workplace Protection and Other Matters) Act* which is designed to protect Victorian Public Sector employees, including TAFE teachers from the worst elements of the federal government's WorkChoices legislation.
12. The state Government is also trying to achieve similar protections for the non-government but publically funded sector by imposing ethical purchasing obligations in funding and service agreements with the relevant agencies. The Government is also canvassing its options in relation to economic tort law reform.
13. An MBA is more consistent with those public policy and legislative objectives of Government than individual Institute collective bargaining for the following reasons:
 - Individual Institute bargaining is time consuming and expensive and undermines those cooperative workplace relations which are a prerequisite for high performing TAFE institutes;
 - An MBA can accommodate individual Institute differences while at the same time providing greater consistency in terms and conditions of employment for teaching staff;
 - Individual Institute bargaining will force the AEU into use of bargaining periods and protected industrial action not otherwise available for bargaining for an MBA. Not only is such action itself disruptive but it also risks exposing teaching staff and the AEU to penalties under the Act if pattern bargaining claims are pursued;

- Individual Institute bargaining creates incentives for employers to achieve efficiency gains and productivity savings at their Institute that may not be reflected at other Institutes. The AEU would resist agreeing to any such outcome. In any case, such a result in so-called competitive advantages would be in labour cost savings rather than improved training outcomes for the student and industry clients of the Institute.

Recommendation

That State Government endorse an approach to enterprise bargaining in the TAFE sector that favours the making of a multi business agreement covering teaching staff;

That the State Government through its Office of Training and Tertiary Education initiate a process to bring the industrial parties to the bargaining table with a view to achieving an MBA.