

## Chapter 9

### VET and Industrial Relations Issues

#### INTRODUCTION

Not all training arrangements have a direct link to employment, whether the training is formal, non-formal or informal. However, a dual relationship between training and employment exists in various widely used training arrangements such as apprenticeships where individuals enter into a contract of employment as well as a formal training plan.

All employment arrangements are governed by industrial relations and other employment laws. Where dual arrangements exist, the nature of the relationship should, as a general principle, be that training considerations drive industrial relations arrangements insofar as those arrangements apply to apprentices and trainees, not the other way around, which has become the norm in recent years.

#### BACKGROUND

Current training wage arrangements are patchy and complex. They have developed in an ad hoc manner and have not effectively supported education and training.

Historically there have been multiple legal frameworks for determining industrial relations arrangements for trainees, apprentices and juniors. Individuals working in the same occupation in the same industry can be subject to different industrial relations frameworks depending on the structure of the enterprise for which they work, and in some cases, depending on the often random or complex coverage of the industrial relations system.

For example, an individual's wage can be subject to the State or Federal industrial relations systems depending on whether or not the enterprise is incorporated, where the business conducts its activities or (even under current transitional arrangements) whether or not it has been found to be subject to an industrial dispute for regulatory purposes.

Prior to the commencement of the WorkChoices legislation in 2006, duplicate and overlapping Commonwealth and State industrial relations systems separately established minimum wages and conditions for the employment of apprentices and trainees, without any rational basis for

determining which employers or employees were covered by the laws of one jurisdiction or the other.

Notwithstanding the substantial improvements arising from the WorkChoices reforms, there is still no single system of industrial relations, minimum rights or obligations. Unincorporated small businesses in particular are vulnerable through their lack of accessibility to federal arrangements.

Further, while there is a general recognition of the importance of industrial relations arrangements, there is inertia in some industries in developing suitable industrial relations arrangements to support both the employment and training of trainees and apprentices.

Some opponents of education and training reform have used industrial relations processes to frustrate and block effective access to training, in particular through using the industrial relations system to block appropriate wage arrangements for trainees and apprentices.

The potential for the industrial relations system to be used to frustrate the employment of trainees and apprentices across all industries sectors has reflected badly on the system for many years. With the commencement of WorkChoices in 2006, Australia has moved closer to better supporting the training system through industrial relations. However, there remains a long way to go to deliver a simpler, more supportive approach to industrial relations for apprentices and trainees.

#### CONSIDERATION OF ISSUES

Under our industrial relations laws, apprenticeship and training contracts constitute employment relationships, and the ordinary mutual contractual rights and obligations between employers and employees apply.

This employment relationship should be governed by a single, nationally consistent framework for industrial relations regulation of trainees and apprentices, informed by the structures and requirements in the training system. Overlapping, dual industrial relations obligations for employers create undue regulatory burden and confusion for employers and employees equally. They also act as a disincentive for employers to take on apprentices and trainees.

Regulation, where it exists, needs to eliminate roadblocks stopping employers getting on with the job of employing, training and increasing the skills of Australians. There can be no justification for administrative or regulatory red-tape acting to deny employment and skills development to young people.

Dedicated minimum wage arrangements are required to support the entry of young people into training. Consistent with this approach should be the realisation of a single minimum wage for all apprentices and trainees, underpinned by a set of genuine safety net conditions and standards.

Additionally, minimum training wages must be capable of application to all emerging apprenticeships and traineeships, without the need for specific revision in the wake of each evolution in training reform. A simpler, single minimum wage would achieve this.

The underpinning principles for setting minimum wages should include the relative contribution to the business; time spent off and on the job, the investment of additional supervisory time for such employees and other relevant considerations. This is based on the well established and widely recognised principle that apprentices and trainees are not as skilled or productive as other members of the workforce, particularly during the earlier stages of their training.

Minimum wages for apprentices and trainees must also be genuine minima. Recruitment and retention in training should be based on compliance with minimum arrangements as a safety net, supplemented by individual or enterprise arrangements for wages or conditions beyond the minima. This is largely the WorkChoices schema.

Minimum wages should not be inflated in an attempt to attract and retain young people to training in particular industries, as this may exclude other young people from entering the labour market and act to the overall disadvantage.

There is no reason why apprentices and trainees should not aspire to enterprise-based reward or remuneration in excess of a safety net, or why their regulated wages should not be structured as genuine minima to properly support this outcome. Minimum wages should operate as a genuine safety net of minimum terms and conditions. Employers have paid, and do pay wages to apprentices and trainees above regulated wage minima where this is appropriate and as a result of the proper functioning of the labour market. More should have a genuine opportunity to do so.

Wage arrangements must reflect time spent both on and off the job. There should be no scope for ambiguity as to when wages are and are not applicable.

The current system of Australian School-based Apprentices (ASBAs) (including trainees) provides an employment pathway for secondary students that results in an industry recognised qualification. Wage arrangements for ASBAs should be an integral and important part of the industrial relations framework to allow employees to gain experience in vocational education and employment. Any future training reforms should also be properly supported.

Minimum wage arrangements for all apprentices and trainees should, to the extent possible, be simple and concise. In time there should be scope for a single schedule of minimum wages for all apprenticeships and traineeships underpinned by minimum conditions.

There should be no legally imposed obligation to provide ongoing employment at the completion of any agreed program of apprenticeship or training. Entry into an education or training arrangement with a young person should create legal obligations only for the life of that program, and not beyond. Doing so would interfere with basic contractual rights, and create a disincentive to offering employment to apprentices and trainees in the first place.

Employers should have scope to terminate the employment of persons undertaking contracts of training in line with prevailing employment law. Training authorities should not be able to block or delay employers exercising their proper capacities to discipline and terminate employment where this is necessary or justified.

Where employment protection applies (for example in relation to unlawful termination), relief should be limited by the agreed term of employment (only until the scheduled expiration of the training contract/term). Any awards of employee reinstatement should strictly apply only for the completion of scheduled training, and any damages or other relief should reflect the non-ongoing nature of the training contract.

Employers and employees undertaking training should be free to negotiate agreements, whether collective or individual, which include additional conditions in excess of minimum wages and conditions which may be tailored to suit different industries or sectors which have their own unique considerations.

Employers and employees undertaking training should

not be impeded from formulating their own employment arrangements by industrial relations laws or education/training frameworks. Industry is best placed to implement workable training frameworks which address industry considerations, and ultimately to help address skills shortages where they may apply.

Reforms to industrial relations frameworks for training is not an aspiration, it is an imperative. It requires bi-partisan support of industry and all levels of government. Unions can play an effective role in the consultation and development of such frameworks where they act in a truly representative and constructive manner. To this end, appropriate bi-partite and tri-partite consultation is a necessary part of the overall policy framework.

Wages and conditions should reflect training reform, including how those reforms are reflected in training packages. They should not impede training initiatives and vice versa. The extent to which skills can be recognised and portable within an industry should be an outcome of the education/training framework and not the industrial relations framework.

In addition to minimum wage arrangements for apprentices and trainees, the industrial relations system must also provide separate arrangements for the employment of young people under the age of 21 years not in apprenticeships or traineeships, including through the continued (and expanded) provision of universal and simple junior aged-based wage rates. The concessional junior wages should be based on a continuing recognition that they are an effective and legitimate proxy for maturation factors. This system of age-based junior wages for those young people who are not apprentices or trainees is essential if industrial relations arrangements are to effectively encourage, promote and provide employment and job skill opportunities for young Australians, particularly at the entry levels of the labour market.

### **Interface between the Industrial Relations and Training Sectors**

In addition to the fundamental concepts outlined above, there are very immediate critical blockages and delays in the Industrial Relations system that are inhibiting training arrangements. It is important that the Federal Government becomes directive to the industrial relations system so that these pressing industrial relations blockages are eliminated.

Appendix outlines a road map for more immediate changes and directions to ensure employers are not inhibited from

employing trainees and apprentices, particularly at a time of skills shortages across a wide range of sectors and industries.

### **CONCLUSION**

In order to support the evolving system of VET, Australia needs employment regulation that:

- is flexible;
- is capable of supporting the full range of current and future range of training arrangements, including new evolutions and developments as they emerge; and
- provides proper incentives to employ apprentices, trainees and other employees undertaking vocational training.

This system should, aside from the separate minimum wage arrangements for young people not in apprenticeships or traineeships, be universal and predicated on the premise that concessional wage rates reflect the fact that persons undertaking training make an increasing contribution to production based on the amount of training and experience gained. While the initial return on investment in training may be low, over time the returns increase as skills and experience add increasing value to the productive capacity of the enterprise and the productive well-being of the individual and society.

### **ACCI PROPOSALS**

ACCI proposes:

- a dedicated system of concessional minimum wages and conditions for both adults and juniors, which:
  - recognises the nature of apprentice and trainee employment;
  - provides appropriate recognition of the dual training and employment functions of training arrangements; and
  - provides incentive for employers to engage employees under training arrangements.

## APPENDIX

The Federal Government should direct that the Australian Industrial Relations Commission (AIRC) and the Australian Fair Pay Commission (AFPC) recognise all existing Training Packages and new Training Packages as soon as they are operational. Failing to do so for all current and future Training Packages, effectively means that employers cannot provide jobs to prospective trainees as there is no appropriate trainee rate and employees undertaking the traineeships will not be competitive in the labour market.

Currently there is no default wage structure for any new Training Package generated by the training system. The AFPC should immediately address this issue and investigate options to ensure there are no lags in fully implementing changes and no gaps in minimum wages.

Additionally, the Federal Government should ensure that wage guarantees in WorkChoices do not stop new wage structures for new Training Packages, or age based structures in industries that don't have junior wages. Gaps in coverage should be filled to ensure that junior trainee rates are provided across all industries.

There should be no restrictions or impediments on the availability of part-time apprentice and training arrangements.

The Federal Government should not allow state and territory governments to prevent apprentices/trainees being employed on any legally available industrial instrument under federal law (e.g. AWAs).

There should not be dual regulation for employing persons under 18 years. The Federal Government should not allow state and territory governments to impose wage and condition regulation on the employment of persons under 18 years where employed by corporations (i.e. NSW child labour laws)

The Federal Government should ensure that junior rates continue to be recognised as appropriate concessional wage arrangements and should be permanently enshrined in law. The AFPC should not require industry to justify their continuance.

The Federal Government should not allow State and Territory Training Authorities to impede the registration of training contracts by virtue of industrial arrangements. Any impediments should be identified and removed to allow for all industrial and employment arrangements to exist outside

of the registration system.

School-based apprenticeship and traineeships are an important stepping-stone into full-time skilled employment and should continue to have default wage arrangements. The Federal Government should ensure the ability to pay concession wage rates to school-based trainees/apprentices is not impeded by the State and Territory Training Registration system.