



COLLECTIVISED LABOUR, INDUSTRIAL LEGAL SETTINGS AND PATHWAYS TO POST-SECONDARY EDUCATION: AN OCEANIC PERSPECTIVE¹

By Jack Kenchington-Evans, James Blaker and Candice Colman

ABSTRACT: In three parts, using Australian examples, this paper reviews the intersection between trade unions and vocational education and training (VET). Part one considers the global and Australian contexts of the union-VET relationship by explicating the economic and social interests that influence it. Part two identifies the three principal methods used by Australian unions to promote access to VET: political lobbying and affiliation; collective bargaining; and the direct provision of training services. Part three examines the impact that changes in Australia's industrial laws from the 1980s onwards have had on Australian unions' capacity to promote access to VET.²

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INTRODUCTION

Economic and political conditions permitting, trade unions can play a substantial role in the creation and maintenance of pathways to VET (*vocational education and training*). In keeping with the practical objectives of the Congress for which this paper is presented, the authors hope that commentators and practitioners will be able to utilise this paper's analysis of the union-VET relationship in Australia to promote union involvement in VET in other national contexts. For supporters of unions, a further lesson emerging from this paper is that unions' involvement in promoting VET can improve unions' relevancy in modern labour markets and society.

PART ONE: THE RELATIONSHIP BETWEEN TRADE UNIONS AND VET

In Australia, unions have increasingly engaged with issues pertaining to VET as part of their social and organisational agendas. This engagement has taken a number of forms, such as the hiring of union staff involved in advocating for and supporting the interests of trainees and apprentices, the direct provision of VET, and the traditional union role of bargaining and campaigning for training conditions.³ In addition to explaining the functions and characteristics of unions that have led to this increased interest in VET, this section explains the relationship between the union movements' search for renewed relevancy, and both the increase in, and further potential for, their involvement in bettering and broadening VET.

I) THE PRINCIPLES AND STRATEGY OF UNION INVOLVEMENT IN VET

VET is inherently relevant to unions because it is an important and consequential element of the industrial relations landscape, and because it is an element over which the powerful interests of employees and employers can be at odds. At a fundamental level, VET is linked to the individual's basic interests in first having access to the economy and to accumulate income and capital, and then their interest in upskilling and achieving economic mobility. Relevantly, the protection of these interests is at the core of the international union community's social agenda,⁴ and is a purpose enshrined in the constitution of all union movements whose origins can invariably be traced back to these core interests. However, VET does not attract intervention by unions only because they wish to further social and economic rights, but rather because the interests of employers in reducing training related expenses and outsourcing skilled labour has historically provided unions with the role of the 'protector' of economic and social rights related to VET.⁵

The union's natural interest in VET also emerges from an organising and recruitment perspective. Because of the proximity of the education sector to the workforce, and because the education sector concentrates a union's

³ John Philimore, 'Trade unions and the national training reform agenda in Australia' (1997) 1 *International Journal of Training and Development* 34.

⁴ Tony Dundon and David Eva 'Trade Unions and Bargaining for Skills' (1998) 20 *Employee Relations* 57, 57-72.

⁵ Richard Cooney, 'Australian Unions and Vocational Training' (2010) 21 *Labour and Industry* 529, 529-31.

potential constituency in industry-specific courses, the unionisation of trainees can be a significant way for unions to increase their membership and to gain brand awareness and loyalty by providing services at the early stages of employees' careers.⁶ The union's ability to bargain for better conditions is generally a service demanded among trainees, interns and apprentices who are often given poor working conditions and inferior safety net entitlements under legislation and awards.⁷ Furthermore, unions as direct service providers can tap into the general VET market, where they compete for demand with other private and public agencies providing similar services.⁸

A final, important element of the global relationship between unions and VET is the importance that industrial law has in supporting the relationship. As Cooney's important research shows, there is a direct positive correlation between the level of regulation in the employment market and the ability of unions to be relevant to and engage in VET.⁹ In more liberal market economies, the role of unions as the 'enforcer' is weakened by a lack of enforceable legislative standards in labour markets and training structures and unions themselves tend to be weaker. The result ultimately is that employers have greater discretion about the deployment of skills and the volume and form of training. Contrastingly, more regulated labour markets tend to incorporate stronger training and workplace standards and tend to structurally rely upon unions to help negotiate those conditions. While some EU countries could be considered the archetype of the regulated labour market,¹⁰ Australia leans closer to being an unregulated market.¹¹

II) VET AS A MEANS OF UNION RENEWAL

Since the 1980's, as union membership has radically reduced, unions have become increasingly concerned about their survival into the future. While there are numerous and competing explanations for their decline, two major determinants have been, firstly, the elevation of the *individual's* power in the employment relationship through the upskilling and mobility of employees,¹² and, secondly, the very success of the union movement in improving the conditions of workers since the turn of the twentieth century, and, as such, the potential

⁶ McIlroy 'Ten Years of New Labour: workplace learning, social partnership and union revitalisation in Britain' *British Journal of Industrial Relations* (2008) 46.2, 283-313.

⁷ Ibid.

⁸ See section two of this paper.

⁹ Cooney, above n 3.

¹⁰ Pat Costine and Thomas Garavan, 'Trade union attitudes to training and development' 19 *Journal of European Industrial Training* 10.

¹¹ Cooney, above n 3, 37.

¹² 'Nick Bacon and John Storey, 'Individualism and Collectivism and the Changing Role of Trade Unions' in Peter Ackers, Chris Smith (ed) *The New Workplace and Trade Unionsism*, (1996, Routledge, London)

expenditure of their purpose. Other factors which vary in significance from locality to locality include the dissolution of strong barriers between social classes, and the proliferation of critical and ideological anti-union opinions among the former working class, now part of the middle class.¹³

It has been argued by numerous authors that, at least in modern developed economies, the redeployment of union resources toward training higher skilled workers will be vital for unions' reinvigoration and their development of a modern relevance.¹⁴ To begin, this strategy, which has been very purposefully enacted by some Australian unions, is reliant upon the growing importance of skills in rapidly diversifying and technologically advanced economies.¹⁵ Because the competitive advantage found by developed economies has been in innovation, highly skilled services and high value added manufacturing, training has not only become more vital to, and widespread in, these economies, but training has also become a growing industry in and of itself. Aside from simply creating a new market for unions as direct service providers, and perhaps raising numbers in what was previously a minor class of their constituency, the increase in VET also provides unique opportunities for unions to extend their traditional bargaining role into the new training sectors of various industries. As companies increasingly rely on training their employees in order to remain competitive, and as employees increasingly rely on training to advance their earnings and progress their careers, the trainee-trainer relationship creates a classic bargaining environment in which unions may function to represent employees in the mediation of interdependent interests.

III) COMMENTARY

Unions have powerful interests in the proliferation of their services into the training sector. As such, their role in creating pathways to post-secondary education is likely to be increasingly significant. It follows that a closer consideration of the policy settings that will affect union's capacity to engage with VET is a matter of importance for those concerned with growing access to post-secondary education.

PART TWO: AUSTRALIAN UNIONS ACTIVITIES PROMOTING ACCESS TO VET

Prior to the 1970s, Australian unions largely eschewed emphasising the need for, and were not involved in, the promotion of post-secondary education and training.¹⁶ Since then, unions' attitudes to VET have changed significantly. VET has taken on increased prominence in unions' campaigning and service agendas. This section

¹³ Geoff Eley and Kieth Nield, 'Farewell to the Working Class' (2000) 57 *International Labor and Working-Class History* 1.

¹⁴ J Matthews 'The Industrial Relations of Skill Formation' in J Niland, R Lansbury and C Verevis (eds.) *The Future of Industrial Relations. Global Change and Challenges* (1998, Sage Publications) 239-255; S Olney, *Unions in a Changing World. Problems and Prospects in Selected Industrialised Countries*, (1994, International Labour Office, Geneva); H Rainbird 'Assessing partnership approaches to lifelong learning: "a new and modern role for trade unions"' in Stuart, M. and Martinez-Lucio, M. (eds.), *Partnership and Modernisation in Employment Relations* (2005, Routledge, Abingdon) 46-62.

¹⁵ Cooney above n 3, 35-6

¹⁶ Gerry Voll, 'Time's Up for TUTA - a Corporatist Casualty', (1997) 8 *Labour & Industry* 85, 85.

will provide examples from the three main methods used by Australian unions to promote VET: legislative reform; collective bargaining; and direct service provision of VET.

Alongside VET, Australian unions have a history of providing industrial training in workplace laws, union advocacy and organising skills. The Trade Union Training Authority, established in 1975, provided education in these areas, growing to the “equivalent of 46 full-time staff and a budget of \$8.7 million” before being wound up by the conservative Howard government in 1991.¹⁷ More recently, the Union Education Foundation, a union-controlled trust fund, received \$11 million to “establish a long term program of education and skills development to support cooperative and productive workplace relations”.¹⁸ However, this section will not further discuss the role that unions play in providing this kind of education. Instead it will focus on the three methods by which unions have sought to improve workers’ education insofar as it pertains to their profession or industry.

I) METHOD ONE: AUSTRALIAN LABOR PARTY AND LEGISLATIVE REFORM

Australian unions promote access to VET through their involvement in parliamentary politics and legislative reform. Similar to the labour movements of other nations, Australian trade unions are closely associated with the eponymous Australian Labor Party (ALP). Unions retain a large degree of control over the ALP by formally influencing party decision-making via caucus rules that guarantee union representation, and informally influence party policy through campaigning for the pre-selection of ALP’s parliamentary candidates.¹⁹

VET-promoting reforms made by federal Labor governments include the Whitlam government’s 1974 Tertiary Education Assistance Scheme, which abolished university tuition fees, greatly increasing equitable access to VET. The Whitlam government also established the National Apprentice Assistance Scheme, the nation’s first government apprenticeship subsidy laws. Following its implementation, the number of apprentices increased from 100 000 at the end of the 1960s to 130 000 in 1974.²⁰ In 1977, the scheme received the following endorsement from the Organisation for Economic Co-operation and Development:²¹ “the Australian

¹⁷ Tony Brown and Keiko Yasukawa, 'Education at the Centre? Australia's National Union Education Program' (2009) 29 *Australian Journal of Adult Learning*, 103-5.

¹⁸ Department of Education, Employment and Workplace Relations “Grants to Unions and Employee Organisations from 1 July 2011 to 30 June 2012” (2012) accessed 17 July 2013 online at http://www.aph.gov.au/parliamentary_business/committees/senate_committees?url=eet_ctte/estimates/bud_1213/answers/received4102012/.

¹⁹ Beth Cook, 'National, regional and local employment policies in Australia' (2008, Centre of Full Employment and Equity) accessed 17 July 2013 at <http://e1.newcastle.edu.au/coffee/pubs/wp/2008/08-06.pdf>.

²⁰ National Centre for Vocational Education Research “Australian Apprenticeships: Facts, Fiction and Future” (2001) xvii, accessed 7 July 2013 at <http://www.ncver.edu.au/publications/544.html>.

²¹ Organisation for Economic Co-operation and Development “Reviews of National Policies for Education, Australia: Transition from School to Work and Further Study” (1977, Paris, France).

apprenticeship system has served Australia well and it should not be swept away until something better has been put in its place".²²

The Hawke Labor government established the Committee of Inquiry into Labour Market Programs (CILMP). The CILMP proposed various reforms for modernising Australia's apprenticeship system, and introduced traineeships into occupations where apprenticeship-master vocational education models were not traditionally practiced. The successor to the Hawke government, the Keating Labor government, implemented various reforms arising from the recommendations of the CILMP. The reforms legitimised and promoted apprenticeships and traineeships, and fostered access to education, by recognising VET for the purposes of the Australian Qualifications Network, the national qualifications framework for secondary and post-secondary education credentials.²³

Finally, as discussed in part three of this paper, the union-endorsed *Fair Work Act 2009* (Cth) brought into law by the Rudd Labor government tangentially promotes VET by relaxing statutory limitations on collective bargaining content. Since the latter half of the twentieth century, Australian trade unions, via their involvement with the ALP, have been responsible for significant legislative reforms encouraging, and promoting equitable access to, vocational and tertiary education.

II) METHOD 2: COLLECTIVE BARGAINING

Australian collective agreements promote VET through various mechanisms. Some agreements incorporate financial incentives for workers based on the ascertainment of education and training qualifications. Other agreements require the employer to maintain workplace training committees which recommend to staff and management whether training should be undertaken.

The Australian Services Union (ASU) and Australian Nursing Foundation (ANF), for example, successfully bargained for the creation of a training committee in the *City of Yarra Enterprise Agreement 2010* (the Yarra Agreement) (see Attachment One). The Yarra Agreement requires the committee to formulate a training program tailored to the needs of the employer and industry, to generally promote identify and recommend specific employee involvement in the program. Employees participating in training are provided with paid leave, and their expenses reimbursed, by the employer. Specific to nurses, the attainment of graduate and post-graduate qualifications entitles the employee to a percentage-increase allowance on top of their classification's salary (see Attachment Two).

The *Lend Lease Project Management & Construction/CFMEU Joint Development Agreement Mark 8 2012-6* negotiated by the Construction, Forestry, Mining and Energy Union (CFMEU), mandates that, for every five tradespersons engaged by the employer, an apprentice of that trade must also be engaged (see Attachment

²² Ibid 54.

²³ NCVET above n 4, xvii.

Three). The agreement reflects the belief that post-secondary vocational education produces positive results for employers and the broader industry, as well as workers: “the parties [employer and the CFMEU] recognise that in order to increase the efficiency and productivity of the company a significant commitment to structured training and skill development is required. They also recognise the importance of the apprenticeship system to the construction industry” (see Attachment Three).

III) METHOD 3: DIRECT SERVICE PROVISION OF VET

Australian unions directly deliver VET within the private education sector, but are unique from their competitors in the market due to unions' industry-involved, membership-controlled organisational model. Both white and blue-collar unions have established divisions of their organisations that directly provide education to workers. For example, the Australian Nursing & Midwifery Federation (ANMF), a relatively new professionals' union, and the CFMEU, a more traditional and longstanding 'labour' union, have both created divisions within their organisations that are accredited training and education providers. The ANMF, which is also the peak professional body for Australian nurses and midwives, is the principal provider of compulsory professional development to the labour market. Likewise, the CFMEU's Construction Skills Training Centre (CSTC) runs state and federal government-endorsed safety practitioner accreditation and refresher courses. Unlike other private training businesses, the CSTC is a registered not-for-profit organisation

The Association of Professional Engineers, Scientists and Managers, Australia (APESMA) similarly promoted workers' equitable access to education by founding, and until recently operating, the Chifley Business School (CBS), a training organisation that provided post-graduate management courses to engineers. The CBS increased access to VET via its delivery of online Master of Business Administration (MBA) programs, which allowed working professionals to access management training without exiting the workforce. The CBS was ranked number one in this category by the *Australian Financial Review Boss Magazine 2011 MBA Survey*, and number three for the MBA's value for money. APESMA sold the CBS in 2012.

Australian unions also participate in cross-organisational post-secondary education programs - working alongside business, education institutions, community groups, and various levels of government. Examples include union participation in the New South Wales government's Corporate Partners for Change program, introduced in 2008, where socio-economically disadvantaged urban job-seekers are provided with free pre-vocational training for disadvantaged job seeker, and the Queensland government's 1998 'Breaking the Unemployment Cycle' program, in which unemployment rates were addressed via increasing apprenticeship quotas in the public sector, and further subsidising apprenticeships in the private sector.²⁴

²⁴ Cook above n 19, 19.

IV) COMMENTARY

As demonstrated, Australian unions continue to diversify their services beyond the traditional union functions of industrial and political advocacy. This has positive outcomes for unions, and for Australians' access to VET. Through their involvement with the ALP, Australian unions have been responsible for significant legislative reform promoting access to post-secondary education, and equitable access to VET is promoted when unions bargain for, and compel, employers to provide, and reward the attainment of, training qualifications. Finally, the not-for-profit, member-controlled organisational model of unions suggests that, when acting as direct service providers of VET, unions' institutional focus may differ from public and private training providers. Unions' presence on multi-party training initiatives, including in programs targeting marginalised communities, reflects unions' cooperative role in facilitating greater participation in post-secondary education.

PART THREE: INDUSTRIAL LAW'S IMPACT ON VET-PROMOTION

This section outlines the recent history of Australia's industrial laws, discussing how they have assisted or impeded unions' ability to use collective bargaining to promote access to VET, and how unions have responded to different legal settings. Additionally, this section will discuss how, under Australia's distinctive arbitration system,²⁵ unions have advocated for VET within the industry-wide minimum employment condition decisions, or 'awards', that are made by the industrial tribunal. It will conclude that, although the conservative Liberal Party's *Workplace Relations Amendment Acts (Work Choices) Act 2005* (Cth) radically limited the ability to promote access to VET via collective bargaining and awards, the current Labor government-implemented *Fair Work Act 2009* (Cth) has re-established unions' ability to bargain for terms in collective agreements, and advocate for terms in awards, that increase Australians' access to VET.

I) OVERVIEW

Over most of the twentieth century, Australia's industrial relations regime revolved around centralised, arbitrated minimum industry standards.²⁶ Under Labor governments in the 1980s and 1990s, decentralised collective bargaining became the cornerstone of Australian industrial law,²⁷ encouraging unions and employers to negotiate, with limited tribunal supervision, employees' conditions of work, and allowing for more diverse, and tailored, VET-promoting terms in collective agreements.²⁸ Following the Liberal Party's victory in the 1996 election, the law was amended to promote individual bargaining, and to restrict the content of awards and

25 Breen Creighton and Andrew Stewart *Labour Law*, 5th Ed., (2010, Federation Press, Sydney) 29.

26 Russell Lansbury "Workplace Change and Employment Relations Reform in Australia: Prospects for a New Social Partnership?" 1 *The Drawing Board: An Australian Review of Public Affairs* 1 (July, 2000) p 33.

27 Ibid, 38.

28 John Phillimore "Trade unions and the national training reform agenda in Australia, 1983–1996" 1 *International Journal of Training and Development* 1, 34-5.

collective agreements, thereby limiting the ability to promote VET by including terms in these instruments.²⁹

Significant campaigning against the Liberal Party's industrial relations agenda by trade unions and the Labor Party led to the election of the Rudd Labor government in 2007, and the passing of the *Fair Work Act*, which, via a liberalising of content rules, increased the capacity for VET-promoting terms to be inserted into collective bargaining agreements and awards.³⁰

II) 1901 – 1987: COMPULSORY CONCILIATION AND ARBITRATION

Australia's early industrial law settings had the potential to promote VET via agreement and award-making. Awards were the principal instruments covering Australians' workplace conditions. The awards' prominence was due to the broad-ranging conciliation and arbitration powers of the industrial court over industrial disputes.³¹ The industrial court played an activist role, considering public policy in its award-making, and often improved and standardised working conditions across industries with each award issued.³² By 'manufacturing' disputes, unions were able to create and improve minimum workplace laws and standards. Regarding collective agreements, Part IV of the *Conciliation and Arbitration Act 1904* (Cth) provided collective bargaining mechanisms, with limitations on content of agreements governed by common law principles.

Despite these positive industrial law settings, the Australia (and its labour movement) did not prioritise VET during the early and middle twentieth century, and there were few VET-promoting terms in industrial instruments.³³

III) 1983-1996: INDUSTRIAL REFORM AND VET PROMOTION

By the 1980s, Australia's industrial laws, particularly their emphasis on centralised awards as the principal means of determining conditions, was outdated, and no longer aligned with the needs of a modern, liberal labour market.³⁴ The Hawke Labor government commissioned extensive research on how to reform Australia's industrial laws. One of the most emphasised deficiencies of the existing industrial laws was that the collective bargaining provisions were not utilised effectively in practice, with a corollary impact being that the desired

29 Joellen Riley and Kathryn Peterson *Work Choices: A guide to the 2005 Changes* (2006, Thomson Press, Sydney) 488.

30 Rosemary Owens, Joellen Riley and Jill Murray *The Law of Work*, 2nd Ed (2011, Oxford University Press, Sydney) 562.

31 Part 1 *Conciliation and Arbitration Act 1904* (Cth).

32 Phillimore above n 28 at 36.

33 *Ibid* at 37.

34 *Ibid*.

modern conditions of work, including VET and VET-promoting terms, were not being implemented.³⁵

Over these decades, unions embraced VET and other non-monetary 'social' benefits for workers. This modernising of the Labor movement's attitudes was first evinced in the 1983 Prices and Incomes Accord between the unions and the Labor Party – a 'social exchange' in which the Party would promote social benefits, including promoting VET, in return for the unions exercising restraint in their wage claims.³⁶ This trend towards unions prioritising VET was similarly articulated in the ACTU's 1987 *Australia Reconstructed* report, which placed an emphasis upon the provision of education and other 'social conditions' in collective agreements.

The *National Wages Case*³⁷ was a pivotal moment in promoting VET via the making of an award in the industrial tribunal. The decision called for 'action to... advance multi-skilling, training and retraining',³⁸ creating a legally binding award with national scope that emphasised the need for industry-based training conditions. This was shortly followed by the *Structural Efficiency Principle* decision of 1988, which provided that employers and unions would now have to include training and skill recognition in their bargaining agendas.³⁹ This prioritising of VET in the making of awards culminated in the *Metal Industry (Superannuation) Award 1990*, which was based primarily upon skills classification levels and the recognition of industry-based training as the primary source of pay rate categorisation.

Regarding legislative change, the Hawke government's *Industrial Relations Act 1988* (Cth) provided few substantial changes to the existing system, balancing the familiarity to the old regime with suggestions made by reformists.⁴⁰ However, by 1992, under the Keating Labor government, the broad consensus was that the collective bargaining regime needed to be amended to limit bargaining to single enterprises, rather than across whole industries. The Keating government passed the *Industrial Relations Reform Act 1993* (Cth), which built upon the *National Wages Case* to provide for a wage system contingent upon provision of educational conditions.⁴¹ With this reform, Australia's industrial laws reached a high water mark in their promotion of unions ability to increase access to VET through enterprise-based collective bargaining agreements reached a high water mark.

IV) 1996-2007: WORK CHOICES AND NEOLIBERAL LIMITATIONS ON UNIONS' VET ACTIVITIES

35 Ibid.

36 Phillimore above n 28, 38-9.

37 Australian Conciliation and Arbitration Commission *National Wage Case* August 1988, ACAC, Melbourne, 1988.

38 Ibid.

39 Ibid, 6.

40 Creighton above n 25, 38.

41 Part 5 *Industrial Relations Reform Act 1993* (Cth).

The conservative Howard Liberal government was elected in 1996. The *Workplace Relations Act 1996* (Cth), adopted the neoliberal industrial relations ideology of employer groups, limited the role of the industrial tribunal, and emphasised agreement-making between individual employees and employers.⁴² Under the new laws, the industrial tribunal's award-making powers were constrained: only twenty 'allowable matters' were permitted to be adjudicated upon. As a result, awards made under the Howard government's 1996 laws limited the scope of VET-promoting conditions. Under this legislation, the percentage of Australian workers whose conditions were governed by collective agreements or awards declined from 80% at the beginning of the 1990s to only 60% by 1999.⁴³

The Howard Government, re-elected in 2004, further reformed industrial laws with the 2005 (*Work Choices*) amendment to the *Workplace Relations Act*. The reforms further curtailed workers rights, union rights, and collective bargaining agreements, and substantially limited the scope of collective bargaining agreements. Under *Work Choices*, collective agreements were precluded from including VET-promoting terms.⁴⁴

Under *Work Choices*, as individual contracts were promoted in lieu of collective bargaining, unions were increasingly marginalised. Whereas under the 1996 laws a condition could only be incorporated into an individual or collective agreement if it provided no disadvantage to employees, under *Work Choices*, an employee could be disadvantaged by a new agreement if the disadvantage was determined as a 'fair' one.⁴⁵ This 'fairness' ambiguity, coupled with the diminished powers of unions and tribunals to hold employers to account, was exploited by some employers.⁴⁶ In this legislative environment, unions were severely limited in their ability to ability to promote access to VET via collective bargaining, or via the industrial tribunal.

V) 2007 – CURRENT: FAIR WORK AND INCREASED UNION ABILITY TO PROMOTE VET

The Rudd Labor government, with the significant assistance of the union movement's campaign against *Work Choices*, was elected in 2007 with a mandate to dismantle the *Work Choices* legislation. The ensuing *Fair Work Act* abolished the *Work Choices* individual contract system, introduced good faith bargaining obligations for parties engaged in collective bargaining, significantly increased the scope of content in industrial awards, and

42 Lansbury above n 26, 37.

43 Ibid, 40.

44 Riley and Peterson above n 29, 488.

45 Ibid.

46 Kelly Burke "Same Work, \$40 less: take it or leave it." *Sydney Morning Herald* (10 April 2006) accessed online at <http://www.smh.com.au/news/national/same-work-40-less-take-it-or-leave-it/2006/04/09/1144521210927.html> on 28 July 2013.

returned primacy to the collective bargaining system over individual contracts.⁴⁷ Limited individual bargaining mechanisms were maintained, and certain union powers remained curtailed, representing a half-way point between employee-protective and neoliberal labour policy. As such, the *Fair Work Act* permits unions – both formally and in substance – to bargain for VET in their collective agreements, and advocate for VET in the commission.

VI) COMMENTARY

The current legislative regime provides an industrial law framework for unions to promote access to VET via awards and collective agreements, and more broadly, allows unions to organise and advocate with less restrictions than under *Work Choices*. However, employer groups, closely affiliated with the Liberal Party, are concerned over the broad scope of collective bargaining agreements, including the ability for unions to include terms requiring employers to provide VET.⁴⁸ The upcoming federal election on 7 September 2013 will likely see the Liberal Party form government, and, influenced by pro-employer lobbyists, they may substantially amend the legislation. Thus, while unions are currently able to effectively promote VET under by the *Fair Work* legislation, the current legislative regime may be subject to substantial changes in the coming years.

CONCLUSION

This paper has demonstrated that, in Australia, there are numerous reasons for unions' engagement with VET, and many factors impacting their ability to promote access to VET. Section one has identified the economic, organisational and social bases for increased union involvement in promoting VET, and the positive consequences of increased involvement for both unions and VET-consumers.

Section two of this paper has reviewed the political and industrial activities engaged in by Australian unions that promote VET. It has noted that unions are increasingly incorporating direct service provision of VET into their member service models, and are often involved in multi-partner training programs. These examples represent Australian unions' willingness to modernise and diversify their service models, and increase their industrial and professional relevance into the twenty-first century. This new model of unionism - as an engaged industrial actor, increasing labour market skills and productivity - is consistent with the core union values and interests discussed in section one.

Section three of the paper has demonstrated that industrial laws have a significant impact on unions' ability to promote access to VET. Australian unions have influenced the Labor Party's legislative agenda in order to increase the ability of industrial tribunals to make orders for, and unions to bargain for, VET-promoting terms in

47 CCH Editors, *Understanding the Fair Work Act*, 3rd Ed (2011, CCH Australia, Sydney) 1.

48 Stephen Smith *Paper to the 21st Labour Law Conference*, Workplace Research Centre & Law School, Sydney University, 22 July 2013.

industrial instruments. However, due to the politicisation of this area, unions are vulnerable to anti-union and anti-tribunal legislative reforms initiated by conservative governments.

The authors hope that unions, and stakeholders in unions' activities, are mindful of the considerations articulated in section one of this paper, and draw on the examples in section two, to further modernise the union movement, and promote access to post-secondary education. Furthermore, for policy makers concerned about issues of access to VET, consideration should be had to whether industrial laws support the potential for unions to campaign and bargain for promoting equitable access to VET.

ATTACHMENTS

Attachment One - First excerpt from City of Yarra Enterprise Agreement 2010-2013

PART 8 - TRAINING AND RELATED MATTERS AWARD

43. TRAINING

43.1 The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of industry, a greater commitment to training and skill development is required.

43.1.1 Accordingly the parties commit themselves to:

- developing a more highly skilled and flexible workforce;
- providing employees with career opportunities through appropriate training to acquire additional skills; and
- removing barriers to the utilisation of skills required.

43.2 Following consultation, in accordance with the consultative mechanism and dispute settling procedures clause of this award, or through the establishment of a training committee, the respondent will develop a training program consistent with:

- the current and future skill needs of the authority;
- the size, structure and nature of the operations of the authority;
- the need to develop vocational skills relevant to the authority and the local government industry

43.5 Where training or education is undertaken outside of working hours an employer, at their discretion, may grant:

- time off in lieu for attendance at classes associated with the course of study;
- time off without loss of pay for attendance at study schools;
- time off without loss of pay for studying prior to examination.

43.6 Any costs associated with standard fees for courses approved by the respondent and prescribed text books (excluding those textbooks which are available in the respondent's library), incurred in connection with the undertaking of training will be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement will also be on an annual basis subject to the presentation of reports of satisfactory progress.

43.7 Travel costs incurred by an employee undertaking training in accordance with this clause which exceed those normally incurred in travelling to and from work will be reimbursed by the employer.

44. SUPPORTED WAGE SYSTEM

44.1 This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this agreement/award. In the context of this clause, the following definitions will apply:

44.1.1 **Supported wage system** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in *Supported Wage System: Guidelines and Assessment Process*.



- industry through courses conducted by accredited educational institutions and providers.
- 43.3 Where it is agreed a training committee be established, that training committee should be constituted by equal numbers of employer and employee representatives and have a charter which clearly states its role and responsibilities, for example:
 - formulation of a training program and availability of training courses and career opportunities to employees;
 - dissemination of information on the training program and availability of career opportunities to employees;
 - the recommendation of individual employees for training;
 - monitoring and advising of management and employees on the ongoing effectiveness of the training.
- 43.4 Where as a result of consultation, in accordance with the consultative mechanism and dispute settling procedures clause of this award, or through the training committee and with the employee concerned, it is agreed that additional training in accordance with the program developed pursuant to 43.2 above, should be undertaken by an employee, that training may be undertaken either on or off the job. Provided that if training is undertaken during ordinary working hours, the employee concerned will not suffer any loss of pay. The employer will not unreasonably withhold paid training leave.

Attachment Two - Second excerpt from City of Yarra Enterprise Agreement 2010-

5. QUALIFICATIONS ALLOWANCE

Nurses shall be paid a higher qualifications allowance calculated on the M&CH Rate outlined in Clause 1 above.

- Graduate Certificate – 4%
- Post Graduate Diploma/Degree – 6.5%
- Masters or Doctorate – 7.5%

2013

Attachment Three - Excerpt from Lend Lease Project Management & Construction/CFMEU Joint Development Agreement Mark 8 2012-6

- any other fund, the Company shall pay contributions to that fund on behalf of each employee on a weekly basis and in accordance with the constituting documents of that other fund.
- 9.1.3 References in this clause to "Incolink PSL Scheme" include a reference to another fund for comparable purposes nominated by Incolink, as a fund which supersedes the Incolink Number 1 Fund.
10. **Building Industry Picnic Day**
 The parties agree that Building Industry Picnic Day will continue to apply during the life of this Agreement in accordance with the following:
 The first Monday in December of each year shall be the building industry picnic day, except in MidYura. The second Monday in December shall be the building industry picnic day within an area of 25 kilometres from MidYura.
 All employees shall, as far as practicable, be given and shall take this day as picnic day without deduction of pay.
 Any employee required to work on this day shall be paid at the rate of double time and a half, provided that an employee who attends for work as required on this day shall be paid for not less than four hours work.
 The company may require from an employee evidence of his/her attendance at the picnic and the production of the butt of a ticket issued for the picnic shall be sufficient evidence of such attendance. Where such evidence is requested by the company payment need not be made unless the evidence is produced.
 Where the company holds a regular picnic for his/her employees on some other working day during the year such day may be given and may be taken as a picnic day in lieu of the picnic day here fixed.
11. **Long Service Leave**
 Long Service Leave benefits will be as provided by Co-Invest.
12. **Training and Related Matters**
 The parties recognise that in order to increase the efficiency and productivity of the company a significant commitment to structured training and skill development is required. They also recognise the importance of the apprenticeship system to the construction industry. Therefore the parties agree:
 12.1.1 If the Company employs five (5) or more tradespersons in any one classification it undertakes to employ at least one (1) apprentice or make arrangements to host an apprentice from an agreed accredited group apprenticeship scheme.
 12.1.2 If the Company does not currently have an apprentice as provided for in paragraph a), reasonable time shall be allowed to enable the Company to comply with this clause. Further, the parties are committed to a strong ratio of apprentices in the industry.
 12.1.3 All apprentices must attend their official off-site apprenticeship training at a Registered Training Organisation ("RTO") that is acceptable to the apprentice and the Company. The preferred RTOs are the established TAFE college network, but private RTOs may be used if agreed to by the parties.
 12.1.4 The Company is committed to providing employees with the opportunity to acquire additional skills within relevant career path structures through appropriate structured training based on nationally endorsed (i.e. Construction Training Australia CPSISC endorsed) competency standards and curriculum.

JDA 8 August 2012

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