
NOTES AND TOPICS

Western Australia's Labour Market Reforms

Brendan McCarthy

On 1 December 1993 three Acts of Parliament came into effect in Western Australia with the aim of significantly changing labour-market regulation: the Workplace Agreements Act, the Minimum Conditions of Employment Act, and the Industrial Relations Amendment Act. Not surprisingly the legislation was described by the Minister for Industrial Relations, Mr Graham Kierath, as the most significant reform in WA's labour laws in over 90 years. The Secretary of the Trades and Labour Council of Western Australia, Mr Rob Meecham, saw it differently. Speaking on ABC Television's *7.30 Report* on 8 July 1993, he described the Minister as a Pol Pot and the legislation as the 'killing fields' of workers' wages and conditions of employment in WA.

This note summarises the main elements of the legislation and the experience of it to date.

The Reforms Outlined

The linchpin of the legislation is the Workplace Agreements Act, which enables employers and employees to opt out of the award system.

The requirements for establishing an agreement are simple and do not involve the Western Australian Industrial Relations Commission (WAIRC). A newly established position of Commissioner for Workplace Agreements, which is legislatively and geographically separate from the WAIRC, is responsible for registering agreements. Agreements can be either collective or individual, but individual agreements override collective ones. Unions may be a party to an agreement, but enjoy no right of veto. The sole tests that the Commissioner must apply in registering agreements are that:

- the agreement complies with the Act;
- the parties understand their rights and obligations under the agreement;
- parties to the agreement were not persuaded by threats or intimidation to enter into the agreement; and

- each party 'genuinely wishes' to have the agreement registered.

The Commissioner has no public-interest role in determining whether an agreement should be registered. He has no conciliation nor arbitration role and is specifically precluded from engaging in either.

Workplace agreements are required to include a dispute resolution clause, the presence of names and signatures, and an expiry date. The dispute resolution clause need relate only to the 'meaning and effect' of the agreement itself; it need not provide for the resolution of disputes about the establishment of new rights and entitlements.

The Minimum Conditions of Employment Act overrides the Workplace Agreements Act (and also the Industrial Relations Act) to the effect that all agreements have implied into them a range of prescribed minimums, such as annual leave, sick leave and minimum rates of pay, and also a prohibition on terminating employment harshly, unfairly or oppressively.

All agreements are confidential to the parties themselves (except for public sector employees) unless they wish otherwise. The Commissioner of Workplace Agreements is thus prohibited from disclosing or publicising the content of any agreement.

The maximum term of the agreement is five years. However, relevant award provisions are reinstated unless another agreement is registered or the agreement itself provides for 'some other arrangement' between the parties upon the expiration of the agreement.

The critical effect of a workplace agreement is that it removes the parties to it from the jurisdiction of the Industrial Relations Act. No provisions of any awards or agreements made or registered under that Act have any effect during the term of a workplace agreement. Furthermore, the WAIRC has no jurisdiction over disputes between parties to workplace agreements, unless the parties wish an Industrial Commissioner to interpret the meaning and effect of the agreement and the dispute resolution clause in the agreement allows for such.

Experience with Workplace Agreements

Number of agreements. Data published in May 1990 show that WA's workforce totalled 561,600. Of these, 122,990 were not covered by any award, 116,183 were covered by federal awards, and 321,797 were covered by State awards (ABS, 1990).

Unpublished data from the Australian Bureau of Statistics dated September 1993 reveal that 25,500 of non-award employees were covered by s.41 Industrial Agreements under the WA Industrial Relations Act, 25,000 were covered by Federal Agreements, and 63,691 not covered by formal agreements.

Summary statistics from the Commissioner of Workplace Agreements dated 31 October 1994 reveal that a total of 8,799 non-award employees were covered by workplace agreements. Of these, 5,523 were under individual agreements; the remaining 3,276 employees came under collective agreements. A total of 203 collective agreements had been registered.

Nature of agreements. The content of agreements is confidential to the parties involved. But anecdotal evidence (derived from discussion with the Workplace Agreements Commissioner and with agents for employers who have registered agreements) suggests that many agreements are relatively simple and consist of only one or two pages. In many cases both employer and employee understand for the first time what their terms and conditions of employment actually are.

Most agreements are relatively short-term, generally of one or two years. Those of a one-year term often mirror key award provisions, suggesting that both employers and employees are adopting a cautious strategy and moving away from the traditional system one step at a time.

Almost all agreements have benefits greater than the award equivalent when taken as a whole. Common changes include greater flexibility of hours and annualised salaries and flat hourly rates of pay regardless of when they are worked.

Behaviour of parties remaining in the award system. An interesting result of the reform has been its effects on the behaviour of those remaining in the award system. First, annual reports of the Chief Commissioner of the WAIRC show that the number of claims substantially to amend awards has fallen dramatically: from 570 in 1990/91 to 261 in 1993/94. Twelve new awards were applied for in 1990/91, but only five in 1993/94. In November 1994 only five out of the original ten State Commissioners were still performing Commission duties (though the government is expected to make two temporary appointments). This could partly reflect reduced activity on the award front generally or union concentration on other activities, such as moving to federal coverage.

Second, the number of registered industrial agreements under the traditional system has significantly increased: up from five in 1990 to 106 in 1993/94. Some industrial agreements are in fact the result of proposed workplace agreements being acceptable to unions on condition that the union is a party to the agreement and therefore continues to be involved at the workplace. To most employers the instrument is not as important as the outcome.

Third, advocates who regularly appear at the WAIRC claim to have noticed a distinctly less arrogant and authoritarian approach by at least some of the Commissioners themselves.

None of these factors is conclusive, but together they suggest that the mere availability of an alternative system does induce behavioural change even for those who do not avail themselves of it.

Federal Award Logs

There is no doubt that the availability of workplace agreements has brought about a large number of federal logs of claims as unions seek refuge in the Australian Industrial Relations Commission (AIRC). Approximately 50 federal logs have been served for new or extended federal award coverage in 1993 and 1994 in a range of industries.

The AIRC's response and behaviour have been more than a little disturbing. It has not availed itself of the counsel of any of the WA Commissioners who hold a dual role as federal Commissioners. It appears to be administratively hostile to the State legislation; for example, it has set down hearings in Sydney or Melbourne for matters relating solely to WA with as little as two days notice. Some of its members are also apparently ignorant (possibly by choice) of the provisions of the WA legislation when deciding to find disputes, issue interim awards, or bring employers under the scope of existing awards. In my view it is inevitable that some of these AIRC actions and decisions will be overturned.

The unions may be pursuing federal coverage for a number of reasons not all related to avoiding the Workplace Agreements legislation. Perhaps they are merely seeking access to provisions of the federal Act that grant immunity from actions for damages, or simply keeping their options open and 'lining up the ducks' for possible later movement to federal awards.

The WA legislation enables the Minister to react to movement to federal coverage by cancelling State award coverage (most unions use the State system's common rule provisions to mop up smaller employers who are not respondents to federal awards). Although this provision has not yet been used, it is also not without its problems. Its use could indeed be quite counterproductive if the WA government's aim is to stem the flow by its use, since it could have the effect of expanding and increasing the flow to federal award coverage. Cancelling a common rule State award would make the unions even more inclined to seek federal coverage and the AIRC more justified in granting it.

The unions' tactics are also not without their risks. First, those that move to the federal system could at some later stage find themselves subject to legislation that is less hostile to employers, since the federal system will inevitably become less and less reliant on awards and unions regardless of the party in government. Second, forcing employers into an environment against their will would not improve a union's relationship with an employer. That in turn would make it more difficult for unions to participate effectively in enterprise bargaining. Third, workers themselves may increasingly react against union intervention against their agreements. Just as employers must win the support of workers in order to move to workplace agreements, unions must win the support of workers to persuade them not to. At a time when union membership is declining, authoritarian behaviour is hardly likely to reverse union membership trends. To cite a recent example,¹ five workers who wanted a workplace agreement had their affidavit evidence and wishes ignored by the AIRC and the union. The AIRC issued an interim award, but neglected even to interview the workers, who then served the employer with a letter stating their refusal to work under the federal award.

The real irony is that the WA legislation delivers what Prime Minister Paul Keating promised. In his speech to the Institute of Directors on 21 April 1993, Mr

¹ Australian Liquor, Hospitality and Miscellaneous Workers Union and RSL War Veterans Homes WA, 13 September 1994 Print L5228.

Keating said that awards would be less relevant and would set out only basic core provisions, and that non-union agreements would be available. Not even the most enthusiastic supporters of the Prime Minister could honestly say what was promised was delivered (see McCarthy, 1994).

Conclusion

The WA legislation is far from ideal; it leads to slower reform of the labour market than more vigorous legislation might have done. However with the existence of a federal system and the ability of unions to forum shop (that is, to play the AIRC off against a State tribunal and vice versa), the legislation probably goes as far as it realistically could have.

Present indications are that the spread of workplace agreements will gradually increase. On the other hand, federal intervention is also likely gradually to increase.

Finally, given that the legislation has induced behavioural change even on the part of those remaining in the award system, its availability may prove to be a bigger influence on reform than its actual usage.

References

- Australian Bureau of Statistics (ABS) (1990), *Award Coverage in Australia*, AGPS, Canberra (Cat. No. 6315.0).
- McCarthy, B. (1994), 'Reform Retreat: The Industrial Relations Reform Act 1993', *Policy* 10(2): 13-17.

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