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Changes in Western Australian Industrial Relations

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Western Australia was the first jurisdiction in Australia to legislate for compulsory arbitration. The original legislation, which was modelled on the New Zealand Industrial Conciliation and Arbitration Act of 1894, was enacted in 1900, replaced by another Act in 1912, another in 1979, and amended on a number of occasions subsequently.

In 1993 a coalition Liberal/National Party campaigned in the State election with a proposal for radical reform of the industrial relations system as a central plank of its policy platform. In the event, the coalition won office and some priority was given to implementing the new industrial relations policy. Three pieces of legislation were enacted; the Workplace Agreements Act 1993, the Industrial Relations Amendment Act 1993 and the Minimum Conditions of Employment Act 1993.

In the first section of this paper we provide a synopsis of the legislative change which has been introduced. In the second section we offer a brief report on the take-up of workplace agreements and enterprise agreements, the extent to which employees have deserted the State jurisdiction in favour of the Federal one, and the extent to which the traditional award system is being chosen. In the third section we provide some examples which illustrate the way in which the reforms are being implemented. In the fourth section we offer n initial evaluation, and in the fifth section we draw some conclusions and offer our views on the progress of the reforms.

The legislation

The central thrust of the legislation is to permit mutually consenting employees and their employers to opt out of the award system and to enter into either collective or individual workplace agreements instead. Provision is also made for enterprise agreements, first introduced by the previous administration in 1992 (Section 41 agreements), to remain available. The government intends these reforms to enable enterprises to become more flexible and efficient and thus lead to higher growth and lower unemployment. The mechanisms by which industrial relations reform will translate into greater economic efficiency are, according to the government, to be found in improved co-operation between employers and employees at workplace level, greater flexibility at work and the devolution of decision-making and responsibility to the workplace.

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The Workplace Agreements Act 1993 provides for two kinds of workplace agreements: an individual agreement made between an employer and a single employee or a collective workplace agreement made between an employer and a number of employees who may comprise the whole workforce or only a part of it. Such agreements displace all awards and agreements which may exist in respect of the employees who are party to the agreement. Only employees, and not unions, may be party to individual workplace agreements. Generally the parties to collective workplace agreements are employees and employers but unions may be party to a collective workplace agreement in a limited capacity under circumstances which are described later.

A workplace agreement can only be entered into when both the employer and employee choose to do so. Either party may choose instead to remain covered by an award. The Act makes it an offence to use threats or intimidation to persuade or attempt to persuade another person to enter or not enter a workplace agreement so that employers may not use "sign or resign" tactics and unions may not pressure employees to enter or not to enter into agreements. Moreover, the Commissioner for Workplace Agreements is required to determine, as a prerequisite for registering an agreement, that the parties genuinely wish to have the agreement registered and that they understand their rights and obligations under the agreement.

Workplace agreements must be in writing, must specify the names of the contracting parties, must contain the date of commencement and the period of currency, which may not exceed five years, and must provide for a dispute resolution procedure which meets certain specified requirements. The agreement must be signed by each employee who is a party to it and each must be given a copy. The agreement may contain any terms and conditions which the parties wish to include so long as they do not fall below the minimum requirements set out in the Minimum Conditions of Employment Act 1993. Provisions requiring union membership or non-membership or preference for unionists may not be included in an agreement.

Private sector workplace agreements are confidential to the parties. Some limited provision is made for access to information for statistical purposes, but only where it does not lead to the identification of the parties. Agreements may not be varied, so that if the parties wish to vary an agreement they must make and register a new agreement. Employees may be added to an agreement after it has been registered.

Agreements become effective only when they have been registered with the Commissioner for Workplace Agreements, which is a newly created office and quite separate from the Western Australian Industrial Relations Commission (WAIRC). The Industrial Relations Amendment Act 1993 excludes the WAIRC from any role in relation to workplace agreements, other than to provide that it may deal with matters of interpretation of an agreement where the parties to that agreement agree in writing to refer a matter to the Commission, and hear matters of unfair dismissal where this is specified in the agreement. The only role which the Commission has in relation to a matter of interpretation of an agreement which is referred to it is to determine the meaning or effect of the agreement.

When an agreement is lodged with the Commissioner for Workplace Agreements for registration, the Commissioner or his/her delegate must determine whether the agreement

meets the requirements of the Act, whether the parties genuinely wish to have the agreement registered, and whether the parties understand their rights and obligations. In order to carry out these functions the Commissioner may make various enquiries, including calling a meeting of the parties, talking to or corresponding with relevant persons etc., but will be entitled to accept the signature of a party as evidence that that party is a willing and informed participant in the absence of information to the contrary.

Where the Commissioner finds that the relevant conditions are met, the agreement must be registered and if they are not, it must not be registered. An agreement may be partially registered where the conditions are met for some employees but not for others. However, the Act itself does not specify the type of test or standard of proof that the Commissioner is to apply in order to make such a determination. Provision is made for parties who are unhappy with the Commissioner's or his/her delegate's decision to seek a review of a delegate's decision by the Commissioner or to appeal to the Supreme Court against a decision of the Commissioner.

After an agreement has expired, the relevant Award will then apply unless another agreement has been made or the agreement provides that some other arrangement apply, such as that the terms of the expired agreement rather than the award shall continue to apply.

Both employers and employees are entitled to be represented by bargaining agents in the process of negotiating a workplace agreement. Anyone can be a bargaining agent, including union officials. A bargaining agent must be authorised in writing and this authority automatically terminates when the agreement is registered.

While a union official may be appointed a bargaining agent, this is to be understood as a personal authority and does not give the union itself any status in the negotiation process for a workplace agreement. A union may be a party to a collective workplace agreement so long as it undertakes to conduct its affairs in a way that is consistent with the observance of the agreement and so as not to incite or encourage any breach of the agreement. In order for a union to be a party to a workplace agreement, the employer and employees who are parties to the agreement must have agreed in writing to the union becoming a party. Once a union has become a party to an agreement, an employer or employee may take action against the union for breach of its undertaking and the Industrial Magistrate has the power to award compensation for loss or injury so caused up to $5,000.

The Workplace Agreements Act 1993 provides for limited immunity for industrial action undertaken for the purpose of obtaining a new workplace agreement. Industrial action is immune from action for breach of contract or the industrial torts for a period of three months following the expiry of an existing workplace agreement. To be eligible for such immunity the party initiating industrial action must give seven days notice in writing of it's intention to undertake industrial action and limited immunity is then conferred on the employer, employee and any union party. Immunity does not extend to secondary boycotts or to picketing.

Some tensions have emerged in relation to workplace agreements as a result of decisions made by the Australian Industrial Relations Commission (AIRC) since the Federal Industrial

Relations Reform Act 1993 was enacted. Very recently, in at least two instances the AIRC has, on the application of a union, granted interim Federal award coverage in respect of employees who had already signed workplace agreements. This has had the effect of forcing such employees into coverage by a Federal award and out of the workplace agreements. Other tensions at the State/Federal interface have arisen in respect of unfair dismissals and these are discussed later.

While the role of the WAIRC remains substantially the same in respect to the award stream, several amendments were made to the Industrial Relations Act in order to accommodate the Workplace Agreements Act 1993. The Industrial Relations Amendment Act 1993 defines an "industrial matter" so as to exclude any matter arising out of the relationship between an employer and employee who are parties to a workplace agreement. Only when a workplace agreement has expired can a matter arising between an employer and employee be treated as an industrial matter. Moreover, compulsory conferences with respect to parties to a workplace agreement are excluded from the Act.

Provision for what, in effect, are enterprise agreements is made under Section 41 of the Act. Industrial agreements may be made with one or more enterprises and unions may be party to such agreements. The principles governing the registration of an industrial agreement under Section 41 of the principal Act were simplified (in the IR Amendment Act) to enable industrial agreements which apply only to a single enterprise to be registered without the need to be consistent with any General Order or the State Wage Fixing Principles. However, industrial agreements which apply to more than one organisation must still comply with the Principles or any General Order.

Amendments to the Act designed to remove the principle of comparative wage justice between workplace agreements and awards were made. These prevent the Commission from flowing-on any provisions of a workplace agreement to anyone who is not party to that agreement. This includes both employees of other employers and also employees of the same employer who are not party to the agreement. Moreover, workplace agreements may not be taken into account by the WAIRC when dealing with applications within the award stream.

In order to address demarcation issues, a new Section 72a, which is similar in operation to Section 118A of the Federal Industrial Relations Act 1988, was inserted into the Act. This section permits the Minister, an employer or a union to apply to the Full Bench for an order that a particular union has the exclusive right to represent or not represent a group of employees in an enterprise who are eligible for membership of the union.

Freedom of association provisions are changed and clarified in the Act and subsequent amendments. Awards, industrial agreements or orders may not require a person to join or leave an association of employers or employees or contain preference for unionists clauses. Moreover, it is unlawful for any person to discriminate against another person on the basis of their membership or non-membership of an industrial organisation.

While claims for unfair dismissal arising from employees covered by workplace agreements will normally be heard by the Industrial Magistrate, the WAIRC will continue to hear claims for unfair dismissal from employees covered by awards and from employees covered

by workplace agreements which specifically provide for such claims to be heard in the Commission. The Commission is now required to decide whether the dismissal was "harsh" and "oppressive" (rather than simply unfair) and is empowered to order the reinstatement of an employee and compensation equivalent to up to six months pay if the employer refuses to comply with the reinstatement order.

Since the Act became law there have been some instances of employees covered by State awards applying to have their case heard by the Federal Court. The Federal Court has agreed to hear these cases on the grounds that the remedies for unfair dismissal provided under State legislation are inadequate with reference to ILO Convention 158. In particular the Federal Court has held that the remedy provided by the State Act for unfair dismissal is inadequate in that it does not provide at first instance (as does the Federal Act) for compensation as an alternative to reinstatement where the latter is deemed inappropriate.

The Minimum Conditions of Employment Act 1993 provides for minimum conditions of employment for all employees in Western Australia (other than those employed in sheltered workshops and those remunerated solely on the basis of commission or piecework). Hence all state awards, workplace agreements and contracts of employment must provide for conditions which are not less favourable than those provided in the Act.

The particular conditions which were set out in the Act are:

i) a weekly rate of pay, set initially at the State Adult Minimum Wage of A$275.50 (adjusted for junior employees). This will be reviewed annually by the WAIRC which will make a recommendation to the Minister who will then set the new rate;

ii) 10 days or 80 hours sick leave per year for full-time employees. Part-time workers will get pro-rata sick leave based on a 40 hour week;

iii) four weeks annual leave per annum;

iv) 52 weeks unpaid parental leave for the birth or adoption of a child. This leave can be shared between the parents. There is an additional one week parental leave for fathers at the time of birth or adoption. An employee taking parental leave is entitled to return to the same or equivalent job;

v) two days per death of a relative bereavement leave;

vi) the standard 10 public holidays. There is no requirement to pay penalty rates for work performed on a public holiday.

The minimum wage rate was increased to $301.10 in August 1994 under the provision for its review and the Minister for Industrial Relations announced that a review of this mechanism would be conducted by an outside expert.

Developments to date

Although private sector workplace agreements themselves are confidential, certain statistical information concerning aggregates is available. In this section we present data on the main developments which have occurred since the legislation was enacted. The issues of most interest would appear to be the extent to which employers and employees are choosing to enter into workplace agreements and the characteristics of those workplace agreements. Another issue of interest is the extent of the shift away from the State and into the Federal jurisdiction but no data on this matter are available.

Table 1 shows details of workplace agreements lodged and entered into to date.

Table 1

Workplace Agreements in Western Australia to 30 September 1994

Agreement Type	Lodged	Registered	Employees Involved	Employers Involved
Individual	6017	5027	6017	246
Collective	129	98	2304	82
Agreement to Cancel	14		14	
Collective Additions	247	141	664	
Total	6407	5266	8999	328

Source: Commissioner of Workplace Agreements

A total of 91 agreements were refused registration in the period to 31 August 1994. Of the total number of agreements lodged, 38 were in the public sector and the remaining 6,369 were in the private sector. Of the public sector agreements, 31 were individual agreements, and seven were collective agreements (including two collective additions) covering 75 people and involving a total of eight employers.

Table 2

Coverage of Awards, Enterprise Agreements and Workplace Agreements in Western Australia at 31 August 1994

	Employees Covered	% of Workforce	No of Awards or Agreements
Federal Awards	116,813	20.8	211
Federal Enterprise Agreements	25,000	4.5	130
State Awards	321,797	57.3	673
State Enterprise Agreements	25,500	4.5	150
Individual Workplace Agreements	4161	0.7	4161
Collective Workplace Agreements	2189	0.4	82

The overall picture in terms of Federal and State award coverage, enterprise agreements and workplace agreements is set out in Table 2.

Data on the monthly pattern of lodgements, registrations and the number of employees and employers involved in workplace agreements (not reported here) show that there is some evidence that the momentum of agreements registered has gathered pace in the course of the ten months to 30 September 1994.

Workplace developments in Western Australia

On its introduction to Parliament, the legislation was commended to the House in that it would enable better co-operation and communication between employers and employees, it would provide a real choice for employers and employees as to the industrial relations system governing their relationship, and it was an opportunity for the restoration of

industrial relations to create healthy productivity and efficiency. To quote the Minister, "the focus of the new system will be on the workplace and the development of a workplace culture in which employees can take an active and responsible role in directly setting their own work conditions."

This suggests three criteria: better workplace relations, the extent of choice and greater efficiency. While these are the criteria by which the legislation might ultimately be assessed, the short passage of time and the confidentiality requirements preclude a close examination of the workplace co-operation and efficiency aspects. This review will focus on the aspect of choice as a means of demonstrating how employers, employees and unions are responding to the new legislation.

Different choices in the one industry

Over 300 employers have now concluded workplace agreements with their employees, with 9,000 employees involved. This general data does not indicate the size distribution and some large companies account for a significant proportion of the number of employees now covered by workplace agreements. Of these companies, two are in the iron ore mining industry and it is appropriate to start a case study review in that industry. The appropriateness is reinforced by the historical importance of that industry in Western Australia both in terms of economic contribution and industrial relations practice.

Hamersley Iron (HI) has consistently taken a long term approach to the integration of industrial relations into the broader context of organisational activity. In the early 1980s CRA, the parent group, embarked on a management review program which, inter alia, resulted in HI being structured around five levels of activity from managing director to operator. In addition to these changes in management structure, there was an emphasis on an enhanced management style focusing on leadership and the development of teamwork. Related to this was the primacy of the employer-employee relationship in contrast to having a third party as the primary conduit of communication. An extensive program of communication and training throughout the company was implemented.

While having negotiated reasonably successfully with the unions over the years, the company-union relationship was punctured by periodic major disputes, the last being a strike in 1992 over union attempts to enforce a closed shop. The unions were not successful and lost support from sectors of the workforce. Therefore, as a consequence of management's long term policy direction and the outcome of this dispute, the company was well placed to utilise the opportunities afforded by the new state industrial relations legislation to further pursue its strategy of emphasising the individual manager-employee relationship at the workplace.

The HI workplace agreements were some of the first to be offered to employees and over 95 percent of the award workers have accepted individual workplace agreements which moved them from award to salaried staff status. Classifications were slotted into the existing staff salary structure and employees were offered a salary from within the salary band for their classification. All the pay elements typically found in awards have been brought together into an annual salary and the other employment conditions in the

workplace agreements are those of all other salaried staff, including the staff superannuation and sickness benefit schemes. The agreements have a five year term with an arrangement contained within the agreement that the staff conditions will continue to apply, notwithstanding the expiry of the agreement. The agreements provided an initial pay increase and have provision for further annual increases (based on economic conditions and performance appraisal). The company is working towards a situation where the only differences in employment conditions are those which are strictly work related, and the focus is now in the area of developing appropriate supporting systems.

In many respects, the circumstances of BHP Iron Ore are similar to those of Hamersley Iron. Operating in the same market the company faces similar pressures to improve its competitiveness through increased labour productivity, to eliminate demarcations, establish new flexible work systems and promote co-operative workplace relations. It also negotiated with the unions over the years and faced major disputes, the latest being a complex and bitter dispute in 1988. One consequence of the resolution of this dispute was that some new senior managers were brought into the company and there was then a renewed emphasis on development of an effective strategic management approach. This involved leadership, the removal of a level in the management structure and extensive management training. The industrial relations emphasis was on the development of co-operative, productive workplace relationships.

However, in contrast to HI, BHP has consistently sought to achieve workplace reform through union involvement. Through the structural efficiency negotiations, the company introduced annualised salaries and flexible working arrangements for loco drivers and introduced a wide range of other changes in the mining and processing operations. In addition, management and the unions negotiated a production based productivity bonus scheme covering all award employees. The company viewed the opportunity to negotiate a further enterprise agreement with the unions as part of the ongoing process of enhancing workplace efficiency and meeting organisational objectives. As a result of the enterprise negotiations, a two year agreement was reached. Through this agreement, further improvements in task flexibility were implemented, new shift arrangements were established and an aggregated salaries arrangement has been introduced for all employees.

The third of the major iron ore companies, Robe River, was already in an arms length relationship with the unions and was dealing with employees on the basis of contractual relationships before the advent of the new state industrial relations legislation. Like Hamersley Iron, the company also has offered individual workplace agreements to its employees and, as would be expected given the recent history, the bulk of employees have accepted. The agreements emphasise responsibility and accountability as well as an incentive for performance and the company is using them to continue its progress towards the ultimate objective of having common conditions for all employees.

The experience of the iron ore industry to date reflects one of the key elements of the approach taken by the Western Australian government in that a choice is available between remaining in the present award system or opting for workplace agreements. It is significant, however, that both companies opting to work within the new legislation chose the individual rather than the collective route. A further point to note is that all three companies were well established along their particular paths before the legislation was passed.

Different aspects of choice in other examples

The example of the iron ore industry seems to suggest that the major choice is with the employer, suggesting a development of workplace relations where management acts and workers and (perhaps) unions react. The significance of management choice is seen in the case of a new hospital which has been built in Perth and where the management made a deliberate choice to go the route of negotiating an enterprise agreement with the unions even when individual workplace contracts could be a workable alternative. Although the nurses union declined to be involved in developing a new agreement, the unions representing all other staff did sit down with management and conclude an agreement which is now being used as an example in negotiations in other hospitals. In another example, the management at Griffin Coal initiated a process by which proposals involving significant change were presented to employees and negotiated through with the unions, resulting in new salary arrangements and shift work patterns.

Other companies have also taken the approach of developing co-operative workplace relations through negotiation with the unions. However, companies are increasingly seeing the management-union negotiation as only one aspect of the development of workplace co-operation, and they are placing an increasing emphasis on management development and on manager-employee relations. For example, various companies within the Wesfarmers Group have concluded enterprise agreements in either the State or Federal jurisdiction. These agreements primarily form the instruments by which more flexible shift and overtime arrangements have been achieved and wage rises given; the relevant award continues to prevail in most other respects. However the Wesfarmers enterprise agreements also enshrine consultative processes and mechanisms established during the making of the agreement which will be the means for exploring future arrangements. The focus of consultation has been the workplace with shopfloor representatives (not necessarily union representatives); formal union involvement has tended to be limited to the "hard bargaining" on the wages issue and ratification of the draft documents.

At the same time there are examples of companies which, like Hamersley Iron and Robe River, have deliberately taken up the option of workplace agreements. For example, a wholesale food supplier has concluded individual workplace agreements with its 14 employees which recognises the annual hours which the company's operations involve. It also provides for a bonus based on net profit (25 percent of net profit is distributed) and individual performance, arrangements for employee vehicles and other benefits. In another company, employees now have a salary package (rather than the award based wages and allowances) and work a new roster which increases the flexibility to meet customer needs and yields additional holidays to employees.

The choice which a company makes between industrial relations approaches is conditional on the extent to which it believes it is already achieving its goals through its current practices. The impetus for change is typically that continuation of the current strategy will not achieve optimum results. The change strategy can be pro-active and long term or it can be rather more reactive in response to a particular situation. The mining industry examples are cases of the former and indicate that an effective employee relations strategy, including one which involves a move to individual contracts, requires due planning, otherwise the

realisation of sustainable benefits is problematic. Whereas many of the cases already referred to have not been contingent on a specific event, there have been examples where companies have reacted to what they view as a failure to achieve desired results in a particular negotiation and as a result exercise a change of strategy mid-negotiation. As an example, CSBP and Farmers engaged in negotiation with the unions over an enterprise bargain but then switched to offering individual workplace agreements to "overcome non-productive conflict with some unions" in the enterprise bargaining process. In such cases, the introduction of workplace agreements would be viewed by the company as creating a new opportunity to develop trust and co-operation once a new set of workplace regulation is in place.

In summary, developments in workplace relations in Western Australia appear to be such that similar changes are being found in enterprise bargains and in workplace agreements. For every example of changes in work organisation, in rewards and co-operation levels being achieved in a company through one agreement process there seems to be an example of similar outcomes being achieved through use of the alternative process. The overall pattern is one of greater management initiative as organisations seek to improve efficiency and competitiveness, with the result that management proposals rather than union claims tend to form the basis of the agenda for change.

The choice between individual and collective agreements

The data indicate that about one quarter of the enterprises with workplace agreements have collective agreements. The Workplace Commissioner's preferred process for establishing a workplace agreement involves an emphasis on workplace consultation prior to the agreement rather than introducing an agreement as the basis for developing new workplace relations. Such consultation is an integral part of developing a collective agreement. The process of establishing individual agreements can also involve collective consultation but here the result is that the final outcomes are individual agreements rather than a collective one. Collective agreements may be harder to achieve but easier to maintain. However, a telling point in the choice of agreement is that individual agreements have effect from the day they are struck while collective agreements take effect from the date of registration. The clear impression of the Workplace Commissioner is that, within an enterprise, terms and conditions are generally common to all individual agreements.

The experience of the public sector

As would be anticipated, the preferred model for public sector industrial relations reform is the workplace agreement rather than an industrial agreement processed through the Industrial Commission. The government monitors the industrial relations policies and practices of departments and organisations through a Cabinet sub-committee which at present is vetting all proposed agreements, and through the Department of Productivity and Labour Relations which is actively promoting the preference for workplace agreements. However, in the public sector there are other imperatives which are promoting the adoption of reform initiatives, not the least of which are the financial constraints on organisations and new approaches to service delivery.

At the time of writing, 22 industrial or enterprise agreements (covering approximately 15 percent of the public sector) have been reached, approved and registered with either the State or Federal Commission. These are principally in the State instrumentalities - the ports, the water authority, the energy commission and so on - rather than public service departments. These organisations are generally the larger government bodies with their own industrial relations expertise and strategies. They were already well progressed down the path of enterprise bargaining when the workplace legislation was introduced and have been able to achieve the required level of workplace reform through negotiation with the unions. The typical agreement includes an up-front payment with further payments conditional upon the achievement of enhanced performance through the various quality and performance mechanisms which formed part of the agreement.

An argument can be made that the threat of privatisation and progress on enterprise bargaining are related. The prison officers union concluded an agreement with the Justice Ministry which introduced salary packaging for prison officers (expected to yield savings of the order of eight million dollars) in the face of active consideration of a plan to privatise the State's prisons. The bus operator, Transperth, will also become subject to private sector competition. It concluded an agreement with the unions, but the agreement then proved unacceptable to the workforce. The matter is expected to be put before the WAIRC. In other areas in the public sector, contracting out and purchaser-provider models are on the managerial agenda and the consequences of these policies are flowing through into the approach to labour relations.

Where negotiations to establish enterprise agreements are not seen as having the prospect of delivering sufficient workplace reform and savings, there is an increasing move towards the implementation of workplace agreements, though at present the number of employees covered by such agreements is small. In some areas, discrete work groups reach a collective workplace agreement to meet the circumstances of their work requirements, particularly where the work activity fluctuates or is seasonal. In other areas, such as in further education, the nature of the work is changing and new individual agreements can be put on the table for existing employees to adopt if they so choose. New employees would be appointed on individual agreements rather than the award. Further, it is anticipated that where enterprise agreements have been reached there would still be opportunity to make further reforms in the work arrangements of particular groups of workers and collective or individual workplace agreements can be developed.

Choice from the employee perspective

Ensuring that the employee signatory to a workplace agreement has signed willingly is a central function of the Commissioner for Workplace Agreements. When an agreement is lodged for registration it is first checked to ensure that it contains the required elements of an agreement. If so, the procedure is for letters of explanation to be sent to the individual employees and notices displayed at the worksite. These are followed up by the Commissioner or delegated liaison officers with an on-site visit and interview of employees. The emphasis of the whole procedure is to give maximum opportunity to anyone who may have signed an agreement and subsequently has concerns about it to raise those concerns with the Commissioner.

Notwithstanding the guardian role of the Commissioner, unions continue to argue that workplace agreements are inherently flawed in rendering workers vulnerable to employer exploitation since employees are not faced with a genuine choice. They argue that particularly for prospective employees, there is no practical choice at all but to sign the offered workplace agreement. The counter position is that for prospective employees the position is no different from previously except that what is on offer is determined by a workplace agreement rather than an award. To overcome a situation where some employees had taken an offer of employment under a workplace agreement but then informed the Workplace Commissioner that they wanted to have award conditions, it is now the general practice for employers to make offers of employment conditional on the agreement being registered by the Commissioner.

There have been press reports of alleged instances where workers not signing workplace agreements have been sacked and replaced with new employees who do comply. The government has responded to its critics by pointing to provisions of the Act which safeguard against the actions of exploitative employers, and the first prosecution for unfair dismissal under the new legislation was well-publicised and highly commended by the Minister. (The employer was fined and the employee received compensation.) Although they are now finding their way into the newspapers, poor employment practices are not creations of the new system; claims for unfair dismissal or underpayment of wages are also a feature of the existing award system. However the employee choice of agreement also determines the process by which differences (and in particular issues arising out of dismissals) will be handled. The relative merits of the Magistrate Court and the Industrial Relations Commission will become clear over time. However, with the incursion of law into all forms of redress, the options do not give the impression of becoming increasingly user-friendly.

Union choice

The examples of what is happening in Western Australian workplaces indicate that it is the companies which have the opportunity to develop preferred options, putting the unions in a more reactive role. There are no known examples of unions becoming party to workplace agreements; unions are retaining an influence through their membership and through their negotiating efforts with employers.

The area in which unions can seek to exercise unilateral choice with respect to the preferred approach to workplace bargaining is their choice between the state and federal jurisdictions. Several unions are actively engaged in making applications for federal awards on behalf of their members in both the private and public sectors. These include applications covering employees in the health industry, in education, in retail and in printing, while in other industries such as construction and transport, the unions are attempting to rope employers into existing federal awards. (Two major Western Australian unions, the Australian Workers and the Metalworkers Unions are not actively involved in this process at present; there is evidence to suggest that the latter union is establishing pattern bargaining through enterprise agreements with the "going rate" in agreements slowly increasing as economic activity in the industry picks up). There are about 50 applications for federal awards, about one third of which are in respect of public sector employees. These applications are facing

a stiff challenge, particularly those in the public sector, and the unions can expect a long and costly process in order to achieve their goals, notwithstanding the welcoming disposition of the AIRC.

An initial evaluation

This paper is primarily descriptive rather than evaluative. Sound judgements cannot be made after such a short period of time since the introduction of the workplace agreements legislation. However, some preliminary observations can be made.

It is clear that the new workplace legislation has opened up the choices for employers and employees and that the work of the Commissioner is directed towards the genuineness of that choice as far as employees signing workplace agreements are concerned. Further, the policy of encouraging workplace agreements is being actively pursued, as would be expected. The Department of Productivity and Labour Relations (DOPLR) is promoting the benefits of workplace agreements through a range of publications, television and newspaper advertisements. (The first newspaper advertisement describes how one group of employees receive 100 percent of any productivity gains for the first 12 months of their agreement.) However, this advertising is having to compete with the dollars on offer under the federal government's workplace bargaining program. The Commissioner for Workplace Agreements has adopted an educative role in that staff are willing to visit work sites to explain what would be involved in setting up a workplace agreement. It would be reasonable to conclude that the long term outcome will be a product of two factors. On the one hand is the effectiveness of the encouragement being offered by DOPLR, and on the other is the effectiveness of union moves to secure federal award coverage. The future for the WAIRC does not look encouraging; the wild card for the unions is the next federal election.

It is also clear that there are changes taking place in the nature of employer-employee relations. The focus is clearly on management. This is placing an obligation on managers to ensure their competency, and on unions to maintain a sustainable negotiating role. As has been shown above, the changes which are being made in organisations are not conditional upon the particular form of agreement (workplace or enterprise, state or federal). This suggests that an outcome focus is, prima facie, more significant than a process orientation. That is, the choice of process is a strategic consideration rather than the process being an objective in itself. In due course, events will reveal the extent to which employers are pursuing a union free environment as an objective in its own right, whether they are successful in this, and whether such a strategy contributes to or detracts from other organisational objectives. It should be noted that the current industrial relations context is dominated not only by the need for product market competitiveness, but also by the relatively high levels of unemployment. A tightening of the labour market will bring a different set of pressures, particularly on employers.

This paper has focused principally on the issue of choice; the other two suggested evaluative criteria were improved workplace relations and greater efficiency. There is nothing inherent in either the workplace agreement process or the enterprise bargaining

process which necessarily guarantees enhanced co-operation and improved workplace relations. An employer can unilaterally develop a workplace agreement for an employee to accept just as the award system can develop terms and conditions for an employer to accept. Both agreement processes are facilitative and it is the extent to which there is genuine manager-employee interaction and decision making which, we would suggest, is the key determinant of workplace relations. Similarly, the desired outcomes of improved efficiency and competitiveness lie with the *implementation* of the agreement rather than within the agreement itself. In the present round of agreements, the general pattern is for some form of salary packaging and for a removal of cost impediments to flexible working hours to meet the particular needs of the organisation. To date, there is not a lot of evidence to suggest that there are fundamental changes in *the work itself* being done, though such task-related changes would not necessarily be revealed in agreements. This is clearly an area for further research.

Further evaluative criteria can be suggested, particularly those which bring an equity dimension to the issue of employment relations. In the workplace, as elsewhere in society, an emphasis on the individual tends to subsume the question of equity; an individual's decision is an equitable one for that individual otherwise she or he would not make it. For as long as the agreements offered to individual workers contain the promise of better and more immediate benefits, philosophical or ideological questions about collective solidarity and long term protection are not part of the equation. Others would argue from the collective perspective and contend that individual decision making between parties who have unequal bargaining power does not produce a demonstrably fair outcome, whether in society as a whole or in the workplace. Whatever the formal structures of the industrial relations system, we can anticipate that these contrasting perspectives will continue to provide a dynamic of change. The passage of time will reveal whether current union strategies to maintain a negotiating role will provide the foundation for union involvement in an industrial relations system which appears to be heading in the direction of minimal institutional involvement.

Conclusion

This paper has outlined the principal elements of the State Liberal Government's reform of the Western Australian Industrial Relations System. The package of legislation was designed to provide an alternative process through which employers and employees can reach agreement on terms and conditions of employment. The data suggests an increasing number of such agreements are being concluded. At the same time the unions are active in seeking to negotiate enterprise bargains with employers and are increasingly looking to the federal jurisdiction.

Tensions have arisen at the interface of the state and federal jurisdictions in respect of unfair dismissals and the extension of federal award coverage to workers who have signed workplace agreements under state legislation. These tensions reflect the different philosophies and approaches to industrial relations reform which have been developed by the federal (Labour) government and the state (Coalition) government. There is a view amongst many Western Australian industrial relations practitioners that the Federal

Industrial Relations Reform Act 1993 has facilitated the extension of the federal jurisdiction into the traditional state jurisdiction and that the AIRC has been enthusiastic in capitalising on the opportunities offered by that legislation.

Further changes can be anticipated in the Western Australian industrial relations framework. The Minister is planning a second wave of legislation, some elements of which will address technical issues on the operation of the two systems. Some will no doubt deal with the recommendations of the review of industrial relations laws which is being currently undertaken. Other more policy oriented proposals are being considered which would have the effect of further strengthening the workplace agreements processes. We can, therefore, anticipate a period of ongoing change in workplaces in Western Australia.