

**THE IMPACT OF THE WORKPLACE
RELATIONS ACT 1996 (Cth.) – THE
VIEWS OF FIVE AUSTRALIAN
TRADE UNIONS**

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*Working Paper 42/00
October 2000*

Abstract

The Workplace Relations Act (WRA) constitutes a profound change in Australian workplace relations. As a result, the current legislative environment challenges trade unions in a myriad of ways, as does the continual decline in trade union density. However, comparatively few studies have investigated the relationship between the WRA and the decline in union density at the federal level in Australia. This paper examines the impact of the WRA on five Australian trade unions by investigating the relationship between the legislation and declining union density. The findings suggest that the WRA has not had a direct and immediate impact on trade union density, yet has impacted indirectly, on the union movement as a whole. This is demonstrated by a 'cultural shift' toward individualised workplace relations. The paper concludes that the relationship between the WRA and declining union density warrants further attention, given the emergence of an individualistic mindset at the broader societal level, and the continual challenges confronting Australian trade unions.

THE IMPACT OF THE WORKPLACE RELATIONS ACT 1996 (Cth.) – THE VIEWS OF FIVE AUSTRALIAN TRADE UNIONS

INTRODUCTION

The Workplace Relations Act 1996 (Cth.)

The *Workplace Relations Act 1996 (Cth.)* (WRA) has been a focal point of debate since parts of the legislation were proclaimed in 1996. Introduced by the Federal Coalition Government, the WRA represents a fundamental paradigm shift in Australian industrial relations with regard to trade unions. Potentially, trade unions now play a very different role in Australian workplaces, as the WRA questions the very foundation of collective labour relations.

The WRA is intended to promote and support individual rights by reducing the opportunity for third party intervention. The government's policies are fundamentally based on the principle of Freedom of Association (FOA), and thus, providing increased choice for employees in the form of union membership and union representation. The Act has a professed aim of giving individual employers and employees greater scope in regulating their relationship, thereby encouraging the establishment of more direct and cooperative relationships at the workplace level.

The WRA constitutes a profound change in Australian workplace relations, 'shifting the balance' against unions in an effort to marginalise union strength. The legislative changes directed against unions include: FOA, which focuses overwhelmingly on the 'right not to belong'; removal of the closed shop and preference clauses in agreements; the 'stripping back' of awards to twenty allowable matters; the extension of enterprise bargaining with an explicit focus on the individual workplace; limitations on union right of entry; restrictions on the capacity of union members to undertake industrial action; restrictions on the powers of the Australian Industrial Relations Commission (AIRC); and legislative encouragement of individual contracts; all of which place constraints on trade unions' abilities to organise (Ronfeldt 1997; Vickers 1997; Waring 1999; Weeks 1997).

Since the implementation of the WRA, trade union density has fallen by more than 4 per cent to 25.7 per cent (ABS Cat. 6310.0, 1999). Given that the WRA has been labelled 'anti-union' and the government is seen as fundamentally antagonistic toward the union movement, it is reasonably expected that the legislation will lead to a further decline in density. In addition, Australian trade unions have not been subject to such hostile industrial relations legislation since the Fraser government's amendments in the 1970s (Rimmer 1997: p. 56).

This paper comprises five sections. The first section reviews the literature, focusing on public policy as a determinant of union density, while the second section briefly describes the five trade unions included in this study. The results are presented in the third section of the paper. The final two sections discuss the findings and conclude the paper, highlighting the practical and theoretical implications of the findings and possible avenues for future research.

PUBLIC POLICY AND TRADE UNIONS

The legislative environment is recognised as one determinant of trade union density (Bean & Holden 1992; Griffin & Svensen 1996; Shister 1953; Visser 1988; Western 1995). The major empirical evidence in this area is drawn from research at a State level in Australia and in other OECD countries. The effect of public policy on union density at the federal level in Australia however, remains a neglected area in industrial relations and labour research.

The legislative environment affects union density in several ways: through the legal options offered to employers to withhold recognition or oppose unions; through the options employees are given to join/not

join trade unions; and the means through which legislation allows/disallows unions to pressure employers for recognition (Freeman & Pelletier 1990: p.147). Thus, changes in the level of union organisation as a component of density ultimately reflect changes in the propensity of workers to join unions (Alexander, Green & Wilson 1998: p.63). This is supported by empirical research at a State level in Australia, which has shown that an unfavourable legislative environment adversely affects individual unionisation decisions (Peetz 1990).

International Experience

In European countries, there appears to be an association between the political orientation of the government and union density, and the rate of union density change (Griffin & Svensen 1996: p.241). In the U.K., empirical studies have shown that the introduction of 'anti-union' legislation under a conservative government has a negative impact on trade union density. For example, Freeman and Pelletier's analysis (1990) explains the majority of the decline in density in the 1980s in terms of legislative changes; particularly those affecting union recognition, bargaining rights and rights of association. Similarly, Towers (1989) found the major reason for the decline in density in the U.K. since 1979 was the hostile labour laws imposed by the conservative Thatcher government. The findings of Towers (1989) are reinforced by Carruth and Disney (1988) who found that the existence of a conservative government in the U.K. during this period also had a downward impact on union density.

Other OECD countries exhibit similar experiences. For example, Bruce (1989) found that different political climates accounted for the contrasting fortunes of the labour movement in the U.S.A. and Canada. Similarly, in New Zealand, the most noticeable effect of decentralisation has been on union density (Teicher & Svensen 1997). The dramatic decline in density from 41.5 per cent to 21.7 per cent, between May 1991 and December 1995, has been attributed to 'anti-union' legislation (Teicher & Svensen 1998).

Australian Experience

Empirical research at a State level in Australia has also shown that a hostile regulatory environment has a negative impact on union density. A pertinent example is Queensland; between 1982 and 1988 a series of legislative changes introduced were directed against unions. During this period, density fell from 48.8 per cent to 39.2 per cent (Peetz 1990). It has been advanced that the introduction of 'anti-union' legislation in a State reduces union density by about 3.8 per cent over two years (Lee & Peetz 1998). Thus, the WRA could be expected to have a similar effect at the Federal level (Lee & Peetz 1998).

The introduction of legislation prohibiting compulsory unionism also tends to have an adverse effect on union density (Peetz 1998; Weeks 1997). For example, following the enactment of legislation outlawing compulsory unionism in Western Australia in 1979, there was a drop of more than 10 per cent in membership of state unions within two years, at a time when the national level of union membership was rising (Weeks 1997: p.125). New South Wales, Victoria and Tasmania exhibit a similar pattern; a sharp decline in union density upon the introduction of voluntary unionism legislation (Hamberger 1998). It is expected unions will suffer membership losses under the WRA, as a consequence of the prohibition on 'closed shops'; there is no doubt that this is the deliberate intention of this aspect of the legislation (Vickers 1997: p.134).

Voluntary unionism laws are synonymous with a decentralised regulatory environment (Weeks 1997). Union density tends to be higher in centralised environments and those that permit union preference (Griffin & Svensen 1996). As the WRA prohibits compulsory unionism and union preference, the legislation could be reasonably expected to lead to a further decline in union density. Voluntary unionism laws, apart from their direct and immediate effects, indirectly build a case against union power, championing individual freedom against union monopoly power (Weeks 1997: p.126). They may encourage employers to pursue antagonistic deunionisation strategies (Ronfeldt 1997). As anti-union attitudes spread, voluntary unionism laws become more effective; employers become more assertive and unions more defensive (Weeks 1997: p.126). Voluntary unionism laws therefore, also have indirect, ideological and symbolic dimensions which affect and change political and community opinion, contributing to fundamental cultural change (Weeks 1997: p.126). It is anticipated that the voluntary unionism laws introduced under the WRA will succeed in

accordance with the government's desired intentions; a cultural shift away from centralised, collectivised, tribunal-centred workplace relations towards decentralised, individualised bargaining relationships (Weeks 1997).

The empirical research relating to the effects of 'anti-union' legislation at a State level in Australia can be criticised on the basis that the trends in union membership were inconsistent across industries and time; there were other factors involved both generally and sectorally (Weeks 1997). Nevertheless, one clear pattern to emerge in all States was that membership dropped where unions were weak, that is, where they had been relying on 'closed shops' rather than on their industrial and organisational strength (Weeks 1997: p.125). Unions of this nature can be expected to suffer membership losses under the WRA (Vickers 1997).

A major criticism underlying legislation as an explanation of declining union density concerns the fact that there are countries wherein union density has declined in a relatively union-friendly regulatory environment (Griffin & Svensen 1996). In the Australian case, density fell continuously during the late 1980s and early 1990s, despite the fact that the Australian Labor Party (ALP) was in government.

Furthermore, it is unclear whether the relationship between political parties and unionisation is linear (Griffin & Svensen 1996). If a linear relationship does not exist, it is arguable that the union movement and density suffer if the leadership is seen as being too close to the government (Griffin & Svensen 1996). This argument has been advocated as one explanation for the dramatic decline in union density in Australia during the 1980s and early 1990s; the union movement enjoyed a close and cooperative relationship with the ALP (Hampson 1996).

Government policies traditionally supported by the labour movement can also have an unintended adverse effect on union density in some instances (Griffin & Svensen 1996, p.243). This is an additional explanation for the decline in Australia. It is argued that the Accord actually contributed to the decline in density during the 1980s and early 1990s (Hampson 1996), despite unparalleled union influence on microeconomic policy (Peetz 1998).

This paper, in examining the potential link between the WRA and the decline in union density, contributes to the current body of knowledge by addressing a lacuna in the existing literature. The study is of interest to both academics and practitioners, given the continuing decline in trade union density and the government's ongoing hostility toward trade unions, illustrated by their relentless push to continue with the 'second wave reforms', despite limited success to date.

METHOD

This paper utilizes primary data obtained from structured interviews conducted with full time union officials in August 1999. The five unions represented in this paper comprise the following industries: manufacturing, health and community services, electricity/gas/water, education and professional services. In order to respect confidentiality, the five unions are herein referred to as follows: MU, HCSU, EGWU, EU and PSU respectively. The purpose of the structured interviews was to ascertain, from a common viewpoint, the impact of four specific elements of the WRA: FOA, Australian Workplace Agreements (AWAs), enterprise bargaining and industrial action, on trade unions.

RESULTS

The results are presented in four sections. Each section analyses the impact of a specific element of the WRA on the five trade unions, facilitating comparisons and the identification of similarities and differences. A summary of the research findings is shown in Table 1.

Freedom of Association & the elimination of compulsory unionism

All five trade unions maintain that the introduction of the FOA provisions and the outlawing of compulsory unionism have not impacted on trade union density, because not all have 'closed shops'. Given that two of the unions represent blue-collar employees, this information appears to contradict a recent study on compulsory unionism which found blue collar employees are most likely to be affected by compulsory unionism, and closed shops are most prevalent in the manufacturing and construction industries (Wallis 1999). However, the MU claimed that compulsory unionism did not exist. This seems surprising given the size of this union and its membership base¹.

The MU and PSU officials made explicit mention of the fact that it has never been lawful to have a 'closed shop', and that the former Act allowed for *preference*, rather than *compulsory unionism*. Despite the fact that the WRA has made the inclusion of preference clauses in agreements illegal, the Office of the Employment Advocate (OEA) has still referred 735 applications to the AIRC for the removal of objectionable clauses from agreements (Reith 1999). The PSU official did acknowledge however, that unofficial closed shops still exist. In this regard, the PSU believes that "*if a union needs a closed shop to survive, it doesn't deserve to survive. If a union effectively services existing members, then they will be successful in retaining existing members as well as recruiting new members*". This union's success and growth in membership figures every year since 1992 is testimony to this philosophy. While recognising that the WRA and an interventionist federal government have made the union's job significantly harder, the PSU official simply believes unions have to respond to these changes.

Senior officials from the EU and EGWU believe that the FOA provisions have been a hurdle to overcome, because the provisions make things more difficult for unions in regard to right of entry, and the recruitment and organisation of new members. The MU official takes a different view believing that "*the FOA provisions have made things more difficult for employers who have sought to do things such as sack shop stewards and take action against unions and union membership in a highly discriminatory manner*". As a result, the MU official asserts that the WRA has been used successfully by unions against hostile employer agendas, such as Patrick's in the 1998 Maritime dispute. However, all three officials from the EU, EGWU and the MU concur that the FOA provisions focus overwhelmingly on the freedom to dissociate. Policy documents confirm that the FOA provisions have been selectively deployed to protect non-unionists (Weeks 1997). Consequently, the MU official believes that the government views individual rights as a mechanism for undermining collectivism, demonstrated by their ideological focus on the 'right not to belong'. This belief is consistent with the extant literature that classifies the Federal government as 'anti-union', and assumes that their ideological position favours individual liberties at the expense of collective rights and responsibilities (Lee & Peetz 1998; Naughton 1997; Rimmer 1997; Ronfeldt 1997; Vickers 1997). Given the ideological focus of the government, the MU official believes the objectives of the FOA provisions are precisely targeted at decreasing union density.

Australian Workplace Agreements

All five unions perceive AWAs as an ever-present threat, yet the HCSU, EGWU and PSU officials believe these agreements are rare. Senior officials from the HCSU and the EU however, both acknowledge the outbreak of AWAs in certain sectors within their respective industries. This result is consistent with recent research that shows health and community services and education are two industries where AWAs are relatively common (Wooden 1999). One important point remains. AWAs are also common in public utilities, including: gas, electricity, communication services and water supply with 20 per cent of employees covered by such agreements (Wooden 1999). However, the EGWU official maintained that AWAs have not affected their members. This result is surprising, given the size of this union and the size of their membership base².

¹ It is acknowledged that information pertaining to closed shops may be classified as 'sensitive' information. This is a likely explanation for this discrepancy; the prevalence of closed shops in the manufacturing industry and the conflicting view of the MU official.

² It is acknowledged that information pertaining to AWAs may also be classified as 'sensitive information'. This is a likely explanation for this discrepancy; the prevalence of AWAs in the public utilities industry and the conflicting view of the EGWU official.

Four of the five unions are vehemently opposed to AWAs, the exception being the PSU. The stated position of these four unions with regard to AWAs is symptomatic of the broader union movement's view. This view strongly opposes the introduction of AWAs and is committed to collective bargaining as the only effective means by which there can be some equalisation of the power relationship between employers and employees (Pallas 1998: p.75). The notable exception, the PSU, readily accept the fact that some members will sign AWAs and actively and willingly act as a bargaining agent. In fact, the PSU *"already has members who are parties to such agreements"*. Given the steady growth in AWAs since the introduction of the WRA, the PSU's outlook seems far more realistic than the broader union movement's view. There are already 52,961 AWAs in existence in Australia, covering more than one thousand employers (Reith 1999). AWAs are likely to continually increase, as Australian employers seek to adopt innovative human resource management strategies as a primary method of regulating the employment relationship, in an effort to provide better terms and working conditions for employees in an increasingly globalised marketplace.

The HCSU official believes workers in traditionally low unionised industries have been most affected by individual contracts, as these are the areas where individual agreements are most easily introduced. The senior official from the MU however, asserts that *"the OEA is biased in the approval of AWAs and is simply there to attack unions"*. This rests on the belief that *"appointments within the OEA are political rather than independent, meaning there is no credibility to the organisation or the activities of the organisation, which concern following union officials around and giving them a hard time"*. This is consistent with the broader perspective of the trade union movement and critics of the WRA who assert that there is not a functioning 'no disadvantage' test in the approval of AWAs, because unions are unable to intervene in agreement proceedings to which they are not a party, or where there has been no request by an employee for union representation (Lee 1997; Pallas 1998). In addition, the limiting of awards to twenty allowable matters curtails the effectiveness of the no-disadvantage test, because awards become less and less representative of paid wages and conditions (Lee 1997).

Enterprise Bargaining

Four of the five union officials believe that enterprise bargaining has resulted in a marked disparity in wages and conditions between union and non-union members. This is consistent with the extant literature which suggests the decentralisation of bargaining produces differential outcomes for union and non-union members (ACIRRT 1999; Pallas 1998). The MU official estimates *"there is a difference of some thirty per cent between union and non-union members, which can work for and against unions. It works for unions in the sense that people in unionised shops know they're better off, but against unions, because people in non-unionised shops don't necessarily know why they are worse off"*. As a result, enterprise bargaining benefits well organised workplaces that have a large membership base, but is detrimental in those workplaces that lack a strong union presence (Vickers 1997).

Senior officials from the HCSU & EU are opposed to enterprise bargaining, in light of the disparity it produces. Over time, both believe that *"enterprise bargaining produces different results for people doing the same work in the same industry; unions have the same negotiations at different workplaces, but the process results in fundamentally different outcomes"*. Despite this, the HCSU official acknowledges that enterprise bargaining has been a "positive" for the union because *"the union has been able to achieve things for members via enterprise bargaining, that they would not have been able to achieve in an award situation"*. The PSU have used enterprise bargaining as a recruitment tool and reinforce this view. The PSU official believes *"enterprise bargaining has been a positive because being visible is a good way of recruiting people and as a result, members have a greater understanding of the union's role, which in turn, strengthens their commitment"*. As a result, the PSU official claims they *"are more effective in achieving outcomes for individual workplaces"*.

The above findings are compatible with the enterprise bargaining literature, which suggests that a decentralised bargaining system makes unions extremely relevant at the workplace level; unions have an opportunity to widen the bargaining agenda and members see results achieved 'on the ground' (ACIRRT 1999: p.58). Notwithstanding, the findings appear to contradict the 1995 AWIRS data that suggests enterprise bargaining has adversely affected unions because they have underestimated the required resources

necessary to bargain effectively in a deregulated system (ACIRRT 1999). In reference to this contradiction, it appears that while enterprise bargaining has proved beneficial for the HCSU and the PSU, this is not necessarily the case for the broader union movement, given the success of these two individual unions since the implementation of the WRA.

Industrial Action

The MU official believes that *"the WRA has created a different political mood amongst employers and that it is more combative because the government influences employers and the political environment now focuses on worker versus boss and boss versus worker, rather than seeking to find common ground."* As a result, the MU recognise that many of their *"disputes in the last eighteen months have been defensive campaigns"* and believe *"employers now go to court a lot more quickly than they used to"*. Consequently, the MU official believes *"there is more industrial action present"*, but argues *"this is an inevitable consequence of deregulation"*. In comparison, the EU official claims they have run more campaigns under the WRA, and *"the most successful campaigns have been those linking recruitment and industrial issues"*. The EU official believes that the *"WRA and the hostile political environment have unified the union movement, with unions' banding together despite their political differences, for example, in the MUA dispute"*. This unity is still evident today; the Australian Workers Union (AWU) and the Construction, Forestry, Mining and Energy Union (CFMEU) recently uniting in Victoria in a fight over shorter working hours, despite their radically different ideological beliefs.

Table 1. Summary of research findings

| Elements of the WRA | Union Response |
|---|--|
| Freedom of Association and the elimination of compulsory unionism | All five union officials believe that these provisions have had no impact on union density. Three of the five officials believe the FOA provisions focus on the freedom to dissociate. |
| Australian Workplace Agreements | All five union officials perceive AWAs as a threat. Four of the five officials are vehemently opposed to AWAs. |
| Enterprise Bargaining | Four of the five union officials believe that enterprise bargaining has resulted in a marked disparity of wages and conditions between union and non-union members. |
| Industrial Action | Two of the five union officials believe that the WRA has impacted on their industrial campaigns; one positively, one negatively. |

DISCUSSION

Based on the experiences of the five trade unions represented in this paper, it appears that the WRA has had a negligible impact on union density. However, no claims are made about the generalisability of these findings to the broader trade union movement for three reasons. Firstly, the bulk of the legislation did not come into operation until 1 January 1997. Therefore, in evaluating the impact of the WRA on union density it is acknowledged that repercussions may take time to surface due to the possibility of a lag effect. In addition, union density is a function of an array of interacting forces (Peetz 1997), including structural changes, macroeconomic variables, institutional factors and individual decisions (Griffin & Svensen 1996).

Secondly, it is difficult to pinpoint and subsequently quantify the impact of the WRA on union density, using a qualitative research design. A study of the relationship between the WRA and declining union density

would benefit from the use of a quantitative research design, in the form of a longitudinal study. This is particularly important in light of the continuing decline in trade union density and the federal government's relentless push with the 'second wave' reforms.

Lastly, while the findings fail to show a direct relationship between the WRA and the decline in union density, there is evidence that the legislation has impacted on the trade union movement generally, as a manifestation of the broader socio-political environment. Legislative changes under the WRA, particularly those concerned with union recognition and rights of association have indirectly impacted on trade unions in an ideological and symbolic sense. This is most clearly demonstrated by the findings associated with AWAs and FOA.

AWAs seek to limit union influence and undermine union strength, and as a result, many employers perceive these agreements as union avoidance devices (Bray & Waring 1998; Halfpenny 1998). Thus, the move toward AWAs poses a significant threat to trade unions, as illustrated in the interviews, because employers have every opportunity, and in fact are encouraged, to withhold union recognition in this stream of bargaining. Theoretically, while there is scope for trade union involvement in individual bargaining, there are both legal and practical limitations to the role that unions can play (Ronfeldt 1997). In practical terms, trade unions can only become involved in the negotiation of AWAs when an employee makes a written request for a union to act as their bargaining agent (Ronfeldt 1997: p.67). Legally however, trade unions, unless appointed as a bargaining agent have no power in relation to the approval, variation or enforcement of an AWA (Ronfeldt 1997: p.67). Unions have been given an invidious choice: they can participate in individual contracts, undermining the collectivist nature of workplace relations or alternatively, be excluded from their operation and lose all capacity to influence outcomes (Ronfeldt 1997: p.67).

The findings indicate at a broader level, signs of a cultural shift away from collectivist workplace relations towards individualised, decentralised workplace relations (Weeks 1997; Wooden 1999). This is confirmed by the growth in the role of individual bargaining and a subsequent growth in employer preference for individual contracts (Bray & Waring 1998; Waring 1999). Recent high profile anti-union campaigns by employers in the mining and maritime industries are pertinent examples (Bennett 1999).

A recent study on the role and significance of individual agreements in Australia is congruent with the above notion. This study showed that only twenty per cent of workplaces believe the increased use of individual agreements is due to changes in government legislation, which facilitate the use of such agreements (Wooden 1999: p.26). In addition, Wooden (1999: p.26) found that the increased use of individual agreements was most pronounced in workplaces with a strong union presence, and it was these workplaces that were most likely to report a decline in union activity, coverage and power at the workplace. While these findings do not establish causation, they do suggest that individual contracts are synonymous with a reduced role for trade unions (Wooden 1999: p.26), and are indicative of the shift towards individualism.

Legislative changes associated with the FOA provisions have also contributed to a cultural shift. These provisions, in combination with a ban on preference clauses and compulsory unionism, clearly detract from the freedom of workers to associate (Bray & Waring 1998; Ronfeldt 1997; Vickers 1997; Weeks 1997). This was recognised by three of the five trade unions in the interviews. This negative right of FOA promotes individualised employment arrangements (Bray & Waring 1998: p.68), and has induced the move towards decentralised negotiations at the workplace level.

It is clear that while the WRA has not had a direct and immediate impact on union density, legislative changes concerned with union recognition and rights of association have had indirect, ideological effects on the trade union movement. Unsurprisingly, this has impacted on union density. These findings reinforce the seminal work of Shister (1953) who recognises the socio-legal framework as one determinant of trade union growth. Legislation is largely determined by political and community opinion; a change in legislation induces a change in social values and consequently, a change in culture.

CONCLUSION

The WRA poses enormous challenges for Australian trade unions. Given that the downward spiral in union density shows no sign of abating, and in fact, appears set to continue, the future of the Australian trade union movement hangs in the balance (Halfpenny 1998). The relationship between the WRA and declining union density warrants further attention, given the emergence of an individualistic mindset at the broader societal level. Clearly, this cultural shift in Australian industrial relations may be a plausible explanation for the decline in density, given that 'individualism' is associated with a 'unitarist' view of work, whereby the objectives of employers and employees coincide and therefore, are in opposition to those of unionisation (Lyons 1998: p.179). Despite the ongoing challenges ahead, the union movement must recognise that new challenges create new opportunities (Pallas 1998). It is in this way that the union movement must operate in the future. The fortunes of Australian trade unions will be determined to a large extent by two things: whether they perceive the WRA as a threat or an opportunity; and whether they perceive declining union density as an irreparable condition or a challenge to address.

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