AMENDING THE INDUSTRIAL RELATIONS STATUTE: AN AUSTRALIAN PREOCCUPATION

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ABSTRACT

There is a popular perception that industrial relations as a public policy issue in Australia enjoys a prominence unparalleled in democratic states. The parliament is an important forum for the implementation of public policy. A study of federal parliamentary Bills concerned with industrial relations during the period 1956-1999 has identified 95 Bills linked to the Commonwealth's principal industrial relations statute. The findings include the fact that the high level of parliamentary activity is not the preoccupation of a particular political party. It is, rather, an Australian preoccupation, with the number of Bills introduced by Liberal-National governments and Labor governments being roughly proportional to their respective periods of office. Thirty-three per cent of Bills were either defeated, lapsed or withdrawn although about half the Bills in this category were private members' Bills. The database reveals industrial relations as predominantly a contested area of public policy with less than 30 per cent of Bills being bipartisan and most of these being minor Bills dealing with minor issues. The paper explores areas for further research including the need to examine the relationship between public resources invested in changes in industrial relations legislation and practice outcomes.

INTRODUCTION

The federal parliament made substantial changes to the industrial relations statute in 1996, following which the newly titled *Workplace Relations Act* was a weighty 517 pages. The original statute in 1904 contained 22 pages. In 1981, it was noted in the parliament by Andrew Peacock, Liberal MHR, that the *Conciliation and Arbitration Act* had been amended over 70 times since its enactment in 1904 and 14 times under the then government, the Fraser Liberal-National government:

> I have to say that this represents lack of direction and lack of consensus over many years ---------- and the fallibility of legislation. This Act has surely reached saturation point. The cumulative effect of legislation on industrial relations is largely a matter of conjecture and often ill-informed assumption. There is a need for the Act to be simplified into a useful tool for the practitioner in industrial relations - not complicated by further legislation. Proliferation of legislation is, after all, a form of so-called big government that must be reduced (Peacock, 1981:2829)

There is little evidence to suggest that parliament has taken these sentiments to heart. Eighteen years after the above comments, on 30 June 1999, the Minister for Employment, Workplace Relations and Small Business, Peter Reith, introduced a 299 page Bill, the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999. The Bill was introduced at the end of a decade in which 33 industrial relations Bills had already been introduced into the parliament.

Ironically, one of the objects of the raft of proposed amendments in 1999 was to "---- continue to remove unnecessary complexity from the system so that workers and employers get a real say, not just lawyers, management consultants and union officials" (Reith, 1999:7853). Similarly, in 1996, when introducing the 306 page Workplace Relations and Other Legislation Amendment Bill, the Minister said it promoted a legislative framework without unnecessary complexity (Reith 1996:1298). In the context of provision of advice and information to employers and employees by the then proposed Office of the Employment Advocate, the Minister claimed:

> This will enhance access to the system for thousands of individuals who have understandably steered clear of it, because they don't have time to waste interpreting complexities that have been generated over the years by the system (Reith 1996:1300)

Further, a key premise of the 1996 Bill was that simplification of industrial relations processes and formalities was an essential part of the government's aim to empower individual employers and employees (Reith 1996:1305).

All of the foregoing comments reveal an appreciation of the complexity of the Australian legislation. An important aspect of complexity is the extent of legislative change itself. The purpose of this paper is to provide data and analysis on the extent and nature of federal parliamentary activity in relation to industrial relations for the period 1956-1999. The paper will also identify some avenues for further research, *inter alia*, the need to explore the utility of this activity.

THE DATABASE

Bills presented to the federal parliament, and the associated debate within the legislature, are taken here as the primary measure of parliamentary activity. Focusing on legislation alone would only be a partial indicator of parliamentary activity. Therefore we focused on, and sought to identify, all Bills, whether they were enacted or not and whether they were sponsored by government or not. We developed a database of parliamentary Bills for the period 1956 to 1999. The database contains the main provisions for each Bill classified by issue and the outcome, that is, whether the provision was carried, with or without amendment, defeated, lapsed or withdrawn. It also indicates whether or not a provision was bipartisan, that is, supported by both the Liberal-National parties and the Labor Party. For each Bill, the database also identifies the government in office, the Minister and Shadow Minister. Finally, it distinguishes private members' Bills.

The time period : 1956 to 1999

The chosen time period begins with 1956, a time of threshold change in the legal framework. It marks the beginning of contemporary post-war industrial relations within Australia, with the division between two newly created court and tribunal structures, the Industrial Court on the one hand dealing with award enforcement and interpretation of awards as well as general questions of law and the Conciliation and Arbitration Commission, on the other hand, dealing with settlement of industrial disputes by conciliation and arbitration. This essential division of powers has remained in place, albeit that there have been changes to the names and the structures of the institutions which deal with judicial and arbitral matters within the system. The database concludes in December 1999, thus covering four and a half decades of parliamentary activity.

Scope of Bills

The Bills identified are those dealing with the main machinery provisions relating to industrial relations. There are other pieces of legislation which have some impact on industrial relations. For example, anti-discrimination legislation, and regulation of trade union training and superannuation all have effects on employment. The focus here is on the principal industrial relations statute only : *Conciliation and Arbitration Act; Industrial Relations Act; Workplace Relations Act.* In Australia this has traditionally accounted for most of the legislation directed to collective and, more recently, individual employment relationships. Nonetheless, where a Bill is linked with the industrial relations legislation, it is included. For example, some Trade Practices Bills regulated secondary boycott conduct of unions and others. They were linked with the industrial legislation and affected the right to strike. These Bills have been included.

On the other hand, Bills dealing with industrial relations issues but not connected with the main industrial relations statute were not included. The Bills introduced in the 1980s by the Australian Democrats to encourage industrial democracy in Australian enterprises through reduction in company tax, are an example of such

exclusion. Similarly, Bills specific to the federal public service, such as those concerning employment security introduced by the Fraser government in the 1970s, have not been included. Yet another example of an exclusion is provided by the private members' Bills, introduced in 1998 and 1999, such as the Employment Protection (Wage Guarantee) Bill 1999. These Bills concerned protection of employees' wages and other entitlements in the event of employer insolvency. These Bills did not seek to amend the main statute. Finally, in the case of any portfolio Bill, that is, a Bill seeking to amend several Acts, only those provisions amending the principal industrial relations statute, or drawing directly upon it, have been included.

INCIDENCE OF BILLS: 1956 – 1999

The first and obvious measure of activity is the number of Bills. From the beginning of 1956 to December 1999, a period of four and a half decades, there were a total of 95 Bills relating to either the primary industrial relations statute, or linked to this statute. Forty-four were introduced by Liberal-National governments and 32 were introduced by Labor governments. The remaining 19 Bills were private members' Bills, that is, not introduced by a government. Since 1990, there have been 35 Bills introduced. The number of Bills by year is detailed in Table 1.

Table 1

INDUSTRIAL RELATIONS BILLS BY YEAR: 1956-1999

Year	Number of Bills	Year	Number of Bills
1956	2	1978	1
1957	0	1979	1
1958	1	1980	4
1959	1	1981	2
1960	1	1982	4
1961	1	1983	2
1962	0	1984	4
1963	1	1985	1
1964	1	1986	1
1965	1	1987	2
1966	1	1988	2
1967	1	1989	3
1968	1	1990	4
1969	2	1991	2
1970	1	1992	3
1971	0	1993	3
1972	1	1994	4
1973	2	1995	1
1974	5	1996	2
1975	2	1997	4
1976	4	1998	6
1977	4	1999	6
Total Bills (1956–1999) 95			

Table 2 shows the number of Bills per decade. The number of Bills was roughly comparable in the 1970s and 1980s but there was a doubling of activity between the 1960s, which produced 10 Bills, and the 1970s, which saw 21 Bills introduced. During the 1990s there was a significant increase on the preceding decade, 35 Bills compared with 25 Bills.

The number of Bills is only a limited indicator of complexity. A more complete indicator would include the size of the Bills and the volume of debate (see below).

Table 2

INDUSTRIAL RELATIONS BILLS BY DECADE

Decade	Number of Bills
1960s	10
1970s	21
1980s	25
1990s	35

GOVERNMENTS, MINISTERS AND SOURCE OF BILLS

During the 44 year period from 1956 to 1999, Liberal-National coalition governments were in office for three periods totalling 27 years and Labor governments were in office for two periods totalling 17 years. Minor parties and/or independents held the balance of power in the Senate during the years 1956-1957; 1961-1974; and 1980-1999. (Evans, 1997). There have been 16 ministers for industrial relations, however styled, during the period under consideration. They are listed, in chronological order, in Table 3.

The source of Bills in terms of Liberal-National versus Labor governments is roughly equal, taking into account relative years in office. Liberal-National governments were in office for 61 per cent of the time period and introduced 58 per cent of government Bills. Labor governments were in office for 39 per cent of the time period and introduced 42 per cent of government Bills. In other words, the high level

of parliamentary activity is not the preoccupation of a particular political party, it is rather, a national phenomenon.

Table 3

INDUSTRIAL RELATIONS MINISTERS
1956-1999

Liberal-National* Ministers	Labor Ministers
Harold Holt	Clyde Cameron
William McMahon	James McClelland
Leslie Bury	Ralph Willis
Billy Sneddon	Peter Morris
Phillip Lynch	Peter Cook
Tony Street	Laurie Brereton
Ian Viner	
Andrew Peacock	
Ian McPhee	
Peter Reith	

* National Country Party from 1975 to 1982; Country Party prior to 1975 (Costar and Woodward, 1985)

FREQUENCY OF MAJOR BILLS

Major changes to the legislation have occurred in 1956, in the early 1970s, in 1988, 1993 and 1996. In recent decades, frequency of major change has emerged as an issue. It is fair to say that in 1988 the system was overhauled and streamlined but there were not radical changes to the operation of conciliation, arbitration or bargaining, or the status of unions. This is evidenced in a statement by the then Minister for Industrial Relations, Ralph Willis, in the second reading debate on the Industrial Relations Bill 1988:

> It is itself very largely agreed by the major parties, each of which recognises the need for the legislation framework which covers the system

> to be thoroughly overhauled and modernised. The Bill will consolidate the major achievements of the past few years and provide a firm basis on which the progress of the recent past can be continued in the years ahead (Willis, 1988:2334)

However, 1993 saw the Labor government enact the *Industrial Relations Reform Act* 1993 (Cth) to encourage parties to move to bargaining, to provide immunity for strikes and to provide for a new form of agreement, the enterprise flexibility agreement.[1] Before the full impact of this legislative induced move could be assessed, another major change to the system occurred with the enactment of the *Workplace Relations and Other Legislation Amendment Act* 1996 (Cth). This Act became operative on 1 January 1997, some three years after the move to bargaining which commence in 1994. However, the overall effect of the 1993 reforms were only just coming to light and there had not been a full assessment by either the participants in the system, or by the government, of these changes.

Two and a half years after the enactment of the 1996 Act, with its radical changes to awards and to bargaining, the government has embarked on another series of reforms with the introduction of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999. Again, this new proposal for reform of the system in the 1999 Bill was introduced into parliament before there was any full evaluation of the impact of the changes in 1996. It was left to a Senate committee to conduct a review in a compressed time frame.

It is recognised that the federal department of state produces progressive statistics, for example, numbers of agreements, and conducts internal evaluations, such as reports on enterprise bargaining. The only mandatory evaluation, and an evaluation confined to one aspect of the system namely, the impact of enterprise bargaining, particularly on women, part-time employees and immigrants, was the result of a Democrat amendment, and operated from 1994 to 1996 (Bell, 1993:4467; DIR 1995; IR Act 1988, as amended by IR Reform Act 1993, s.170RC). This evaluation, while commendable, needs to be distinguished from a comprehensive evaluation of the regulation as a whole.

A significant question relates to the costs and benefits of making continual legislative changes to the system of industrial relations. It can be argued that revising a system, streamlining it and endeavouring to provide a good workable legislative framework for the operation of Australian industrial relations is both desirable and necessary. However, such revisions do not come without a cost. First, there are costs in enacting the legislation, including parliamentary time, consultation with representatives of principal parties, departmental resources in the drafting of Bills and development of explanatory memoranda. Secondly, there are implementation costs associated with the parties being educated in the new legislative scheme. Thirdly, there are implications for whether reforms are being targetted clearly and precisely. There is a question as to whether there is adequate return on the investment of both public and private resources in effecting change in industrial relations. We suggest that this is an area for future research. A thorough evaluation of any issue would need to include an examination of outcomes vis-à-vis the express objectives identified at the time a Bill is introduced, where these objectives are measurable. The high level of parliamentary activity directed to union amalgamations and, in recent times to unfair dismissal, might suggest these as two areas (amongst others) which warrant such evaluation.

In the field of taxation law reform, there is an acute awareness of the problem of the extent of legislative change as the following comments indicate:

- the terms 'change' and 'tax' have almost become synonymous ... (Spence 1999:339)

- the draft GST legislation ..., particularly the transitional provisions has proved to be more complex than most commentators envisaged. A concern for all practitioners is that in order to secure the passage of the legislation through the Senate there may be compromises which introduce further complexities (Cooper 1999:451)

- ... of great concern is the widely held view that most practitioners will find it extremely difficult, if not close to impossible, to cope with all the proposed tax changes during the next year or so. Many complain that they are stretched now and cannot recruit suitable experienced staff (Cooper 1999a:115)

- as the nature of tax in Australia changes at an ever increasing rate, so will the demands on the (Taxation) Institute and its members (Spence, 1999a:395)

It appears that the potential for problems arising from frequent and under evaluated change in industrial relations are recognised by at least one party in the federal parliament. In late 1999, Andrew Murray, the Democrat spokesperson on industrial relations, in explaining the party's response to the 1999 Bill, concluded:

> We have had two major reform events in industrial relations, and we feel it is now time to sit back and see how it works. Now is a time for maintenance and improvement rather than a substantial rewrite of the Act (Murray cited in Robinson 1999)

Further, in a press release coinciding with the tabling of the report of the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, Andrew Murray stated:

> ... the 1996 law is not yet fully bedded down, with only half of awards fully modernised and the Commission and the Courts yet to resolve legal interpretations and key social issues like job security and work and family balance still needing attention. The 1996 reforms should be allowed to consolidate rather than launching another round of award re-writes, legal uncertainties and industrial upheaval (Murray 1999)

PRIVATE MEMBERS' BILLS

A Bill which is not sponsored by government is classified as a private member's Bill (Jaensch, 1997:112). It may be introduced by a member of parliament with or without the support of his or her party. Jaensch notes that despite the hurdles arising from governing party domination, there have been some notable successes. None of the successes cited concerned industrial relations. He sees potential for an increase in attempted private members' Bills in the Senate while neither major party holds a majority there (Jaensch, 1997:112).

From 1956 to 1999, there were 19 private members' Bills introduced. Despite this significant number, none of these Bills was successful, although it is to be noted that 5 were introduced during 1999 and parliament may not yet have completed debating

these. Private members' Bills introduced to the end of 1998 are included in Table 4 in the following section.

It is interesting to note that 8 of these private members' Bills were introduced in the last 2 years. Thus 42 per cent of the private members' Bills introduced since 1956 have occurred in 1998 and 1999. Some of these Bills have actually been the same but have been introduced at different times in the House or the Senate (presumably for tactical reasons) so that the figure is slightly overstated. It is clear, however, that there is an increase in private members' initiatives in this direction. The concerns in these recent Bills have included matters of employment security and entitlements of employees in the context of insolvency.

BILLS: DEFEATED, LAPSED OR WITHDRAWN

Thirty-one of the 95 Bills introduced did not result in legislation, that is, thirty-three per cent were either defeated, lapsed or were withdrawn. Fourteen of these were private members' Bills. Of the remaining 17 Bills, 6 were introduced by Liberal-National governments; 2 were defeated, 3 lapsed and one was withdrawn. Eleven unsuccessful Bills were introduced by Labor governments: 7 were defeated and 4 lapsed. Labor government Bills accounted for two thirds of unsuccessful government Bills while Liberal-National government Bills accounted for only one third. The unsuccessful Bills are listed in Table 4. There are six Bills introduced in 1998 and 1999, 5 of them being private members' Bills, in respect of which there has been no activity in the parliament for some months. However they have not been formally withdrawn and, on this basis, they have not been included in this category.

Table 4

INDUSTRIAL RELATIONS BILLS: DEFEATED, LAPSED OR WITHDRAWN 1956-1999

Title of Bill	Government	Outcome
Conciliation and Arbitration Bill 1963	Menzies Liberal-Country Party	Withdrawn by government in House of Representatives.
Conciliation and Arbitration Bill 1973	Whitlam Labor	Defeated. Denied Second Reading in Senate.
Conciliation and Arbitration Bill 1974	Whitlam Labor	Defeated. Denied Second Reading in Senate.
Conciliation and Arbitration Bill (No.2) 1974	Whitlam Labor	Defeated. Denied Second Reading in Senate.
Conciliation and Arbitration Bill 1974 [No.2] (1975)	Whitlam Labor	Defeated. Denied Second Reading in Senate.
Conciliation and Arbitration Bill (No.2) 1974 [No.2] 1975	Whitlam Labor	Defeated. Denied Second Reading in Senate.
Conciliation and Arbitration Bill (No.2) 1975	Whitlam Labour	Passed in House of Representatives. Lapsed prior to Senate Second Reading due to election.
Conciliation and Arbitration Amendment Bill (No.2) 1981**	Fraser Liberal-National Country Party	Defeated. Introduced in the Senate and defeated in the Senate.
Conciliation and Arbitration Amendment Bill 1982	Fraser Liberal-National Country Party	Lapsed. Referred to Senate Select Committee April 1982. Committee reported October 1982.
Conciliation and Arbitration (Complementary Industrial Relations System) Amendment Bill 1982	Fraser Liberal-National	Lapsed in Senate.

Title of Bill	Government	Outcome
Conciliation and Arbitration (Government Service) Amendment Bill 1982	Fraser Liberal-National	Introduced in Senate. Lapsed in Senate.
Conciliation and Arbitration Amendment Bill 1984	Hawke Labor	Lapsed in Senate.
Trade Practices Amendment Bill 1984	Hawke Labor	Defeated in Senate on Second Reading.
Conciliation and Arbitration Amendment Bill (No.2) 1984	Hawke Labor	Defeated in Senate on Second Reading.
Arbitration (Contract Carriers and Bailee Drivers) Bill 1984**	Hawke Labor	Introduced in Senate. Lapsed prior to Second Reading debate.
Conciliation and Arbitration (Amendment) Bill 1986**	Hawke Labor	Introduced in Senate. Lapsed prior to Second Reading.
Industrial Relations Bill 1987	Hawke Labor	Lapsed prior to July 1987 election.
Industrial Relations (Consequential Provisions) Bill 1987	Hawke Labor	Lapsed prior to July 1987 election.
Industrial Relations (Directions to Stop Industrial Action) Amendment Bill 1989**	Hawke Labor	Introduced in Senate. Lapsed prior to Second Reading debate in House of Representatives.
Industrial Relation (Directions to Stop Industrial Action) Amendment Bill [No.2] 1989**	Hawke Labor	Lapsed in Senate.
Industrial Relations (Right to Strike) Amendment Bill 1989**	Hawke Labor	Introduced in Senate. Lapsed prior to Second Reading debate.
Industrial Relations Amendment Bill 1990**	Hawke Labor	Lapsed prior to Second Reading debate in House of Representatives.
Industrial Relations (Membership of Associations) Bill 1990**	Hawke Labor	Lapsed prior to Second Reading vote in House of Representatives.

Title of Bill	Government	Outcome
Industrial Relations Amendment Bill 1991**	Keating Labor	Lapsed prior to Second Reading debate in House of Representatives.
Industrial Relations Amendment Bill 1992**	Keating Labor	Lapsed prior to Second Reading debate in House of Representatives.
Industrial Relations (Membership of Associations) Bill 1993**	Keating Labor	Lapsed prior to Second Reading debate in House of Representatives.
Workplace Relations (Unjust State Legislation) Amendment Bill 1997**	Howard Liberal-National	Lapsed prior to Second Reading debate in the House of Representatives.
Workplace Relations Amendment Bill 1997	Howard Liberal-National	Defeated in Senate.
Workplace Relations Legislation Amendment (Youth Employment) Bill 1998	Howard Liberal-National	Defeated in Senate.
Employment Security Bill 1998**	Howard Liberal-National	Introduced Senate. Debate adjourned. Lapsed when Senate prorogued.
Employment Security Bill 1998 (No.2)**	Howard Liberal-National	Introduced Senate. Debate adjourned. Lapsed when Senate prorogued.

Note: In May 1975 the name 'Country Party' was changed to 'National Country Party' and in October 1982 the name 'National Country Party' was changed to 'National Party', (Costar and Woodward,1985).

** Private member's Bill.

BILLS 1990-1999 BY SIZE

As noted above, during the current decade there have been 35 Bills introduced. These are detailed in Table 5. The Table also provides another measure of the level of activity by detailing the size of each Bill. While the majority of Bills, about 60 per cent, are less than twenty pages, there are 10 Bills in the range 21-100 pages and 3 Bills in excess of 100 pages. The largest Bill is the 299 page Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999.

Table 5

INDUSTRIAL RELATIONS BILLS 1990-1999 BY SIZE OF BILL

Title of Bill	Government	Number of pages*
Industrial Relations Legislation Amendment Bill (No.1) 1990	Hawke Labor	39
Industrial Relations Legislation Amendment Bill (No.2) 1990	Hawke Labor	11
Industrial Relations Amendment Bill 1990**	Hawke Labor	27
Industrial Relations (Membership of Associations) Bill 1990**	Hawke Labor	17
Industrial Relations Legislation Amendment Bill (No.2) 1991	Hawke Labor	20
Industrial Relations Amendment Bill 1991**	Keating Labor	27
Industrial Relations Legislation Amendment Bill 1992	Keating Labor	25
Industrial Relations Amendment Bill 1992**	Keating Labor	27
Industrial Relations Legislation Amendment Bill (No.2) 1992	Keating Labor	15
Industrial Relations Reform Bill 1993	Keating Labor	193

Title of Bill	Government	Number of pages*
Industrial Relations and Other Legislation Amendment Bill 1993	Keating Labor	22
Industrial Relations (Membership of Associations) Bill 1993**	Keating Labor	23
Industrial Relations Amendment Bill 1994	Keating Labor	3
Industrial Relations Legislation Amendment Bill 1994	Keating Labor	11
Industrial Relations Amendment Bill (No.2) 1994	Keating Labor	7
Industrial Relations Legislation Amendment Bill (No.2) 1994	Keating Labor	28
Industrial Relations and Other Legislation Amendment Bill 1995	Keating Labor	19
Workplace Relations and Other Legislation Amendment Bill 1996	Howard Liberal-National	306
Workplace Relations and Other Legislation Amendment Bill (No.2) 1996	Howard Liberal-National	82
Workplace Relations (Unjust State Legislation) Amendment Bill 1997**	Howard Liberal-National	7
Workplace Relations Amendment Bill 1997	Howard Liberal-National	10
Workplace Relations and Other Legislation Amendment Bill 1997	Howard Liberal-National	65
Workplace Relations Amendment (Superannuation) Bill 1997	Howard Liberal-National	9
Workplace Relations Amendment (Unfair Dismissals) Bill 1998	Howard Liberal-National	4
Workplace Relations and Other Legislation Amendment (Superannuation) Bill 1998	Howard Liberal-National	6
Employment Security Bill 1998**	Howard Liberal-National	8

Title of Bill	Government	Number of pages*
Employment Security Bill 1998 (No.2)**	Howard Liberal-National	8
Workplace Relations Legislation Amendment (Youth Employment) Bill 1998	Howard Liberal-National	5
Workplace Relations Legislation Amendment (Youth Employment) Bill 1998 (No.2)***	Howard Liberal-National	6
Employment Security Bill 1999** (introduced H of R 29/3/99)	Howard Liberal-National	8
Workplace Relations Amendment (Defence Purposes Leave) Bill 1999**	Howard Liberal-National	2
Workplace Relations Amendment (Australian Defence Force Service and Training) Bill 1999**	Howard Liberal-National	2
Workplace Relations Amendment (Australian Defence Force Service and Training) Bill 1999 (No.2)**	Howard Liberal-National	3
Employment Security Bill 1999** (introduced Senate 13/5/99)	Howard Liberal-National	8
Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999	Howard Liberal-National	299

* Bill as presented and read a first time. Page numbers are exclusive of indexes.
** Private member's Bill.
*** Renamed Workplace Relations Legislation Amendment (Youth Employment) Bill 1999 (No.2).

INDUSTRIAL RELATIONS ISSUES

The database contains the main provisions for each Bill classified by issue. We selected ten main categories of industrial relations issues with a number of sub-categories and identified the frequency with which they constitute at least one provision in a Bill. Table 6 lists the selected issues, together with the number of Bills in which each issue featured.

Subject matter of Bills

The category 'arbitration and awards' represents a foundation feature of federal public regulation of industrial relations for most of the four and a half decades. The recent phenomenon of statute-based individual contracts is dealt with under 'bargaining and agreements' in the sub-categories 'individual bargaining' and 'agreements' rather than under 'individuals and employment'. The more accurate description for the category 'right to strike' is of course 'immunity from legal action for industrial action in the context only of the negotiation of agreements'. Nonetheless, the everyday usage term is 'right to strike'. This issue has been grouped with bargaining because in practice it is a corollary of this dispute resolution process in democratic states.

The category 'tribunal and court structure' concerns changes in the composition, functions and structures of institutions which exercise arbitral and judicial powers. In the category of 'unions: status & rights', the issues of freedom of association, union preference and conscientious objection are grouped together because of the inter-relationship between them.

The category 'regulation of industrial action' overlaps with our category 'right to strike' in the context of bargaining but extends well beyond it to cover all provisions which regulate any form of industrial action by employees, by employers and unions. 'Regulation of industrial action' has been separately identified from the category 'enforcement' so that the latter embraces enforcement of awards and other compliance provisions.

In the category 'unions: structure & government', structure is regarded as external structure (Clegg, 1979:165) or organising base (occupational, industry, etc). This, together with union size, is affected by provisions concerning amalgamations and registration. In relation to the internal government of unions, two important aspects were selected, namely, financial controls and elections.

'Individuals and employment' selects the relatively new protection from unfair dismissal and the entitlement of women to equal pay for work of equal value. The

'Commission as economic manager' category refers to the taking into account of macro-economic indicators and effects in Commission decisions. This function emerged first in tribunal decisions and with the consent of the major parties appearing in national wages cases. It was not an initiative of the parliament. Nonetheless, since the 1970s there have been statutory provisions giving the legislature's endorsement to the consideration of macro-economic factors.

The category 'constitutional heads of power' refers to the source of the power to legislate in respect of industrial relations but has been identified as an issue only where there is a controversy about a particular head of power for example, the external affairs power.

Frequency of issue

Most Bills covered a range of issues but in some cases a Bill was concerned exclusively with a particular issue, for example, the 39 page Industrial Relations Legislation Amendment Bill (No.1) 1990 was concerned only with union structure and almost entirely with amalgamations (Catanzariti and Youl, 1991).

The issues with the highest frequency of inclusion in Bills are 'arbitration and awards', 'regulation of industrial action' and 'tribunal and court structure'. Those with the lowest frequency of inclusion are 'collective bargaining', 'individual bargaining', 'protection for union activity', 'union right of entry', 'constitutional heads of power' and 'equal pay'. The low incidence of Bills dealing with the bargaining process simply reflects the *de facto* status of this process until 1993.

High frequency does not necessarily mean major change. In the high frequency category 'tribunal and court structure' there were significant changes. For example, since 1956 the structure of the tribunal settling industrial disputes and the court enforcing and interpreting awards has been a significant issue on a number of occasions with the transfer of the Industrial Court's jurisdiction to the Federal Court of Australia in 1976, proposals for a separate industrial court in 1987, the establishment of a separate Australian Industrial Australian Relations Court in 1993, and in 1996 the transfer of that specialist court's jurisdiction back to the Federal

Court. In addition, however, there have been many relatively minor changes, for example, changes to the internal structure of the commission and to the number of judges on the court, thereby adding to the frequency of this category.

In the category 'unions: structure and government', the frequency of three sub-categories is the same, but the issue of amalgamations occupied the greatest parliamentary time. This issue first arose in 1972 and last arose in 1990. A party-political reaction to the 1990 changes, which had strongly promoted amalgamations, was the new provision for disamalgamations in 1996. Many of the 1972 provisions remain today, together with other provisions directed to goals for union structure which are very different from those of 1972. In the 1980s, many of the provisions dealing with the issue of registration related to the provisions concerning amalgamations. The issue of financial controls arose almost entirely during a limited time period, 1972 to 1983, and once again, in 1996. A distinctive feature of these provisions is that they typically represent a reaction to events, such as disclosures of deficiencies by Royal Commissions, rather than implementation of a particular ideology, or coherent plan of desired reforms. The issue of union elections arose only during the period 1972 to 1983, except for some minor provisions in 1959. Since 1956, the level of bipartisanship on this issue has been relatively high.

Frequency versus operational significance

Frequency of issues in the parliament needs to be distinguished from operational significance. Thus, many of the provisions concerning 'arbitration and awards' involved minor adjustments with little impact on day by day industrial relations practice. In the main, the parties have been content with arbitration and this remained largely so until 1996. In contrast, 'collective bargaining' and 'the right to strike', that is, immunity from industrial action, has a low frequency in terms of consideration by the parliament but these provisions have heralded a major shift in operational terms.

The 'Commission as economic manager' was an issue twice in the 1970s and twice in the 1980s. Therefore, in terms of parliamentary activity, this is a low frequency issue. This function has, however, constituted a centre-piece of Australian industrial

relations practice for all of the time period under consideration and indeed also for some time prior to the 1950s. The provisions survive in the statute but, in terms of practice, the issue has been overtaken by the preoccupation with micro-economic reform and the linking of enterprise bargaining to such reform.

Table 6

INDUSTRIAL RELATIONS BILLS BY FREQUENCY OF SELECTED ISSUES: 1956-1999

Issue	Frequency
1. arbitration and awards	32
2. bargaining and agreements	
• collective bargaining	2
• individual bargaining	2
• the right to strike	4
• agreements	11
3. tribunal and court structure	19
4. unions: status & rights	
• freedom of association, preference, conscientious objection	10
• protection for union activity	2
• union right of entry	4
5. regulation of industrial action	20
6. enforcement	13
7. unions: structure & government	
• amalgamations & disamalgamations	12
• registration & deregistration	12
• financial controls	6
• elections	12
8. individuals and employment	
• protection from unfair dismissal	12
• equal pay	3
9. the Commission as 'economic manager'	4
10. constitutional heads of power	2

THE PARLIAMENTARY DEBATE

Duration of debate

Table 7 shows the volume of parliamentary debate for major Bills in 1956, 1988, 1993 and 1996 as measured by the number of pages in the parliamentary debates.

Table 7

MAJOR INDUSTRIAL RELATIONS BILLS (1956, 1988, 1993, 1996) BY DURATION OF DEBATE

Title and size of Bill	House of Representatives Debates (pages)	Senate Debates (pages)
Conciliation and Arbitration Bill 1956	323	161
Industrial Relations Bill 1988 (198 pp)	74*	279*
Industrial Relations Reform Bill 1993 (193 pp)	208	303
Workplace Relations and Other Legislation Amendment Bill 1996 (306 pp)	338	676

* Stackpool,1989:93

The presence of minority parties with the balance of power in the Senate explains the greater duration of debate in this forum in recent decades. In 1956 however, even though a minority party, the Democratic Labor Party, held the balance of power in the Senate (Evans,1997:25), it was the lower house debate which dominated. The typically lengthier debate in the Senate may be viewed positively as an illustration of the upper house behaving as a genuine house of review (Lovell in Kukathas 1990:13). The reference of Bills to parliamentary committees is another dimension of this review function (see below).

A possible matter for further research is to explore the relationship between the size

of Bills and the volume of debate. The limited data in Table 7 suggests a positive relationship between complexity of legislation and parliamentary resources invested. In the first instance, the popular perception that the volume of legislative activity generally is increasing proportional to the length of parliamentary sittings needs to be tested. If this is occurring, then it would be of interest to see whether, in the case of industrial relations, the length of parliamentary debate for Bills of a given size is also reducing over the decades. In other words, research could be directed to establishing the nature of the relationship between the complexity of the legislation and the amount of parliamentary time devoted to the consideration of it. This issue is relevant, *inter alia*, to the status of the legislature within a democratic state and to the impact of change upon the parties who are required to live with that change.

One factor in any shifts over time in the relationship between parliamentary debate and the complexity of Bills may be changes in the relative importance of parliamentary committees. These represent another aspect of parliamentary activity, distinguishable from parliamentary debate.

Parliamentary committees

Parliamentary time includes the work of parliamentary committees. These are multi-party in composition and they provide an opportunity for the legislature to scrutinise Bills. The three major Bills in the 1990s, that is, in 1993, 1996 and 1999, were each referred to Senate committees: in 1993 to the Senate Standing Committee on Employment, Education and Training; in 1996 to the Senate Economics References Committee; and in 1999 to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee. An indication of the workload of such parliamentary committees can be seen in the context of the Workplace Relations and Other Legislation Amendment Bill 1996:

> The WR Bill was introduced into the House of Representatives on 23 May 1996 and passed by the House. However the Senate referred the WR Bill to the Senate Economics References Committee for review and recommendations. The Committee received a total of 1431 written submissions and held 18 public hearings over 21 days. Its report [was] tabled on 22 August 1996 (Pittard,1997:63)

Eventually, subsequent government-Democrat negotiations between Peter Reith and Cheryl Kernot determined the final form of the legislation.

It seems the valuable process of committee review may be thwarted by eleventh hour amendments to Bills. This allegedly occurred in 1993 with the Industrial Relations Reform Bill. The Liberal-National Opposition tried unsuccessfully in the Senate to have the Bill referred back to the Committee because the government had introduced a large number of amendments to the Bill after it had been considered by the Committee. Liberal Senator Robert Hill claimed the value of the committee review process had been totally defeated by the government amending its own legislation. He continued:

> It is a total abuse of process that they now expect this Senate to debate a bill with over 200 amendments when the committee was not given the opportunity to consider even one of those amendments. ----- [I] hope that the legislation can go back to the committee, the committee can do its job and then we can have a proper debate on the legislation in this place (Hill, 1993:4188)

In response, the government noted there were in fact 177 amendments, they had been debated in the House two weeks earlier and no new issue of principle was involved (McMullan, 1993: 4188-9). Late amendments were not unique to 1993. In the case of the 1999 Bill, the Howard government successfully moved some 52 amendments, albeit many of them technical, in the House of Representatives after the Senate committee had begun deliberating (Reith, 1999a : 10965-10968).

While there is virtue in the committee review system, some limitations are worth noting. The inquiries are conducted in a very limited time frame and, in the case of the 1993 and 1996 Bills, the terms of reference are concerned overwhelmingly with the prospective impact of the Bill's provisions, rather than with the operation of the legislation as a whole.

Failure of the debate: a consequence of complexity

One consequence of large Bills, in conjunction with a heavy legislative program generally, is that some aspects may not be aired in the debate. In 1993, for

example, when the threshold change of express provision for collective bargaining was introduced, there was no debate on the special provisions for dealing with essential services and the right to strike (Fox 1998:282).

Complexity unlimited: amending the amending Bills

It is to be expected that Bills will be amended during the parliamentary process. This is, after all, an aspect of democracy in action. Also amendments will be greater when the government does not control the Senate. Another source of amendments, however, is those introduced by the government in the House of Representatives. Such amendments may reflect a lack of thoroughness on the part of the government in preparing the Bill. As noted above, in the case of the Industrial Relations Reform Bill 1993, for example, the Keating government introduced extensive amendments at the committee stage in the House of Representatives (Brereton, 1993:3331-3333; 3335-3354).

BIPARTISAN BILLS

The database for 1956 to 1999 shows that industrial relations is predominantly a contested area of public policy. Of the 76 government Bills, 22 Bills, or 29 per cent, were bipartisan, that is, agreed between the Liberal-National parties and the Labor Party. Significantly, however all of these were minor Bills, many of them dealing with only one minor issue, such as changes to the number of Industrial Court judges and salaries of Commissioners, or attempting to correct the problems of dual registration of unions known as '*Moore v Doyle* problems'. There were also instances of particular provisions in Bills being bipartisan, but again these were typically minor.

The few areas of substantial change which have been bipartisan include (1) changes to the regulation of union government, specifically union elections and some aspects of financial controls; (2) provisions concerning union amalgamations in the early 1980s; (3) opposition to private members' Bills such as the 1989 Bill seeking immunity from legal action for industrial action associated with the negotiation of

collective agreements, that is, the 'right to strike', in terms of the categories in Table 6.

AREAS FOR FURTHER RESEARCH

Some areas for further research have already been identified. These were (1) analyses of the impact of major changes, in effect, a cost/benefit analysis of legislative change including assessing performance against promise; and (2) the relationship between the complexity of proposed legislation and the amount of parliamentary time devoted to the proposed changes.

The discussion to date has concerned the incidence and complexity of legislative change in industrial relations in absolute terms. Comparative measures are also of interest. While in absolute terms the investment of parliamentary resources in the area of industrial relations appears massive, a matter for further research could be establishing whether industrial relations is unique in terms of the parliamentary process. Any comparative analysis could extend to the matter of policy reversals, in other words, the degree to which legislative change involves new provisions as opposed to the revival of pre-existing provisions.

Other possible areas for research are (1) shifts in political party positions over time and areas of convergence between the major parties; (2) the impact of parliamentary committees on the resultant legislation; and (3) the impact on the final form of legislation of minor parties with the balance of power.

CONCLUSION

This paper has provided some findings drawn from a developing database concerning parliamentary activity in industrial relations in the federal jurisdiction. A number of measures of activity were applied to the period 1956-1999. A primary measure of activity was the incidence and size of relevant Bills. Another measure of activity was the extent of parliamentary debate for major Bills in recent decades.

Another aspect, which concerns the complexity dimension of parliamentary activity, is the frequency of change. Frequency here has referred to the time period between changes, rather than the incidence of change. A distinction was drawn between the level of parliamentary activity, on any measure of activity, and the operational impact of that activity on industrial relations practice. The paper also documented the incidence of unsuccessful Bills, that is, those defeated, lapsed or withdrawn. A number of possible areas for further research were identified. The material compiled confirms the popular perception of industrial relations as a policy area with high levels of activity and reveals that the major political parties have shown equal enthusiasm for changing the statute. It is planned in due course to extend the database to earlier decades.

ENDNOTES

[1] The Australian Industrial Relations Commission had of course adopted a policy of encouraging enterprise bargaining since 1991. See C. Fox, W. Howard and M. Pittard, Industrial Relations in Australia: Development, Law and Operation, Longman, Melbourne, 1995:604-619.

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