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The New Labour Market:
"How is Industrial Relations Reform Progressing in Australia?"

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Introduction

Perhaps the title of this paper should be "Is Industrial Relations Reform Progressing in Australia?". The signals are mixed. At a Federal Government level we have a Government that appears to be prevented from pursuing its reform agenda because of opposition from the Labor Party and minor parties in the senate (and a Federal Minister who appears on occasions to downplay the need for further legislative reform). At a State Government level there appears to be no appetite for constructive reform from the Labor Governments. In WA the State Government wants to wind reform back even prior to the modest Keating/Brereton reforms. At a business level there are unfortunately some mixed signals. While ACCI regards labour market reform as its highest priority, it is surprising that it did not feature in a recent list of the BCA's top priorities. And finally, and perhaps least surprisingly, the union movement still appears to be a fully paid up member of the industrial relations club.

The views of the major players are well known. What is less clear are the views of the general population, and in particular the views of those who have had the greater experience of labour market deregulation.

Industrial relations reform has gone further and for longer in Western Australia, although it now appears inevitable that it will be wound back – perhaps to the late '70s, early 80's. This paper looks at the experiences of Western Australians as illustrated in two community opinion surveys conducted in November 2000 and January 2002. The results suggest that there is no widespread community support for the changes proposed by the Gallop Government, indeed quite the reverse. The paper argues that the reforms have more to do with satisfying the industrial wing of the Labor Party than addressing a pressing community need. An examination of the proposed reforms adds weight to this suggestion.

The paper concludes by looking at the implications for further industrial relations reforms within Australia and makes some suggestions those reforms should take, assuming that there is an appetite for making the case for reforms that do more than fine-tune the existing system.

Background to the Western Australian Reforms

At the end of 1993, the so-called Kierath reforms were passed by the Western Australian parliament. They provided for a dual system – employers and employees could opt out of the existing system and remove themselves from the influence of the

Industrial Relations Commission through the use of individual WA Workplace Agreements, which were underpinned not by an award but by legislated minimums. This approach differed from the opt-in approach by the Kennet Government in Victoria making it both politically more saleable (no change unless you agreed) and also more difficult to shift to the Federal system. Employers saw WA Workplace Agreements as providing much greater flexibility and certainty and therefore the opportunity to increase productivity and to be more competitive.

Employers would argue that these changes produced considerable benefits to Western Australia, and in the vast majority of cases a win/win outcome for employees and employers. The economic benefits, both in terms of productivity and competitiveness, but also in terms of the State's reputation, were considerable. Industrial relations as an issue disappeared - both in existing employer discussions and as the first question asked by businesses considering investing in the State. Although the overall level of individual agreements was relatively low (less than 10% but widely used in some major WA industries, for example mining) the existence of the alternative system also had a modifying effect on the behaviour of both the unions and the Commission in the traditional system – they were both conscious that employers and their employees had alternatives. The Kierath changes also provided, for the first time in WA, access to non-union collective agreements.

The evidence in support of these propositions is really the topic for another paper. The question this paper looks at is what was the WA community's attitude to these changes.

Community Attitudes to Industrial Relations Reforms In Western Australia

In November 2000, the Chamber of Commerce and Industry in WA (CCI) and the Chamber of Minerals and Energy, WA commissioned Market Equity to undertake a community attitudes survey of industrial relations in Western Australia. In January 2002, CCI again commissioned Market Equity to repeat the survey. The methodology was unchanged. Both surveys were random stratified telephone surveys of individuals aged 18 and over who were permanent residents covering both metropolitan and country WA – all major WA regions were included in the survey. The results of the survey were then weighted to reflect the WA population. The first survey consisted of 651 interviews and the second, 408.

The purpose of the first survey was to establish the degree of support for the then Opposition (Labor) party's proposals to abolish workplace agreements. The survey was conducted in November prior to the State election in February 2001. The second survey was conducted to further test community attitudes just prior to the new Government's legislation being introduced into Parliament in February this year.

The results were a surprise and yet the two surveys were consistent with each other. They show a surprising degree of support for the current legislation and certainly show there is no widespread support for its repeal. The results are shown in the attachments – the results are for the second survey but the results for Nov. 2000 are shown in brackets.

Looking firstly at the political question – *Support for withdrawal of Workplace Agreements Legislation*. **(Attachment A)** 57 per cent do not support the withdrawal compared to only 26 per cent who do. The change since 2000 was a decline in support for withdrawal (down from 35 per cent), and an increase in Don't know (up from 10 per cent). That the opposition to any repeal could be twice the support for repeal in a climate where the Kierath legislation was almost demonised (the then Secretary of the TLC likened Kierath to Pol Pot and WA to the killing fields of Cambodia), was surprising and suggested that the benefits of reform were more widely understood and felt than was then thought to be the case. This is confirmed in other responses.

Respondents were asked whether different arrangements give workers the chance to earn more. The responses are shown in **Attachment B**. The results speak for themselves. 50 per cent thought an individual agreement provided them with an opportunity to earn more compared with only 13 per cent who thought the award.

Respondents were asked whether different arrangements give workers greater flexibility in working life. **Attachment C**. Again the results are positive for those who support reform. 52 per cent thought individual workplace agreements could give you greater flexibility compared to only 13 percent who thought that of awards and only 17 per cent who thought that of union negotiated agreements.

The results were more mixed when respondents were asked whether different arrangements could be considered fair for all concerned. **Attachment D**. What is interesting is that in all cases there are a greater number who think the arrangement concerned is not fair than it is fair. It seems all arrangements are viewed negatively. However it has to be said that in this case awards are viewed as fair by a greater percentage (33 per cent) than individual workplace agreements (25 per cent). On reflection this is perhaps not surprising. There has been a strong perception built up about the fairness of awards and there were strong public cases being argued about the unfairness of individual agreements. It is interesting to compare this with the next set of responses.

Respondents were asked what type of arrangement they personally would prefer to be on. **Attachment E**. While there may be a perception that individual agreements are unfair, they are overwhelmingly the most preferred arrangement – 50 percent favour an individual agreement compared to only 14 per cent the award. It appears that individuals favour an individual agreement for themselves but, for whatever reason, fear that others may be exploited and therefore individual agreements don't rate highly on the fair scale. In particular, older people were concerned about young people and yet young people were those strongly favouring individual agreements. As an aside it appears that those most resistant to change are males over 45 – probably a significant majority of this audience.

A positive view of choice is emphasised in responses to whether or not there were any arrangements that should not be offered. **Attachment F**. A large majority (70 per cent) indicated that all options should be available. No arrangement had more than 10 per cent of respondents saying it shouldn't be available. It appears people like choice, and therefore are unlikely to favour having that choice removed.

Finally, a more generic question was asked about people's attitude to the regulation of pay and conditions. **Attachment G**. Advocates for further reform take heart. A large majority (75 per cent) said that arrangements should be less regulated – 47 per cent who want details set at the workplace by employer/employees and 28 per cent who want details set at the workplace by union/staff groups. Only 21 per cent argue that pay and conditions should be strongly regulated by industrial courts. It is interesting to note in several of these responses the desire to avoid the interference by third parties be they industrial commissioners or unions.

What these results suggest is that the community is not opposed to change and welcomes choice. It is particularly interesting to note that those who have experienced a more deregulated environment are not keen to go back to the old highly regulated and centralised system. There is fertile ground here for the reform minded as well as lessons to be learnt by the union movement and perhaps warnings (at least let's hope so) for industrial commissions. There is one very clear message – there is no widespread community support for the proposed industrial relations law changes proposed by the Gallop Government in Western Australia. That begs the question – why is the Gallop Government so determined to turn back the clock?

Union Membership

While there is no widespread community demand for change to WA's industrial laws, there is certainly a demand, loudly expressed, by the trade union movement. While they will couch their arguments in terms of protection of their members, there is another more obvious driver – declining union membership.

Attachment H shows union membership as a percentage of the workforce for both Australia and Western Australia over the last nine years. While union membership has declined significantly for both Australia and Western Australia (from 39.6 per cent to 24.5 per cent in Australia and from 37.0 per cent to 19.5 per cent in WA), it is interesting to note that the decline in WA from Aug 1992 to Aug 1996 was much steeper in WA – a decline of 33.4 per cent for WA compared to 21.5 per cent for Australia.

Many reasons have been advanced for the decline in union membership over time – changes in the composition of the workforce, increased part time work, greater female participation, relevance of union services and so on – however, these are unlikely to provide sufficient explanation for such a significantly faster decline in W.A.

There were two significant changes in the Kierath legislation that could have contributed to this. Workplace agreements could be either individual or collective and themselves made union involvement less relevant for many employees. For the first time non-union collective agreements were allowed. (While it is true that the Federal system had EFA's courtesy of Keating/Brereton reforms, the State collective agreements were regarded as administratively easier and user-friendlier. The take-up of EFA's was very slow.) Both individual and collective workplace agreements provided an opportunity for employers and employees to enter into their own arrangements without interference by third parties. Without a changed approach by the union movement to better market their services this was likely to lead to a loss of membership.

One of the big users of workplace agreements was the mining industry, which in the early nineties was highly unionised. In an environment where workplace agreements were likely to lead to improved conditions for employees by direct negotiation with their employer, many employees were likely to question the value of their union membership. This appears to be what happened. Membership in the mining industry fell rapidly in the one to two years following the introduction of workplace agreements. There is some evidence to suggest that membership may have recovered somewhat but nowhere near their previous levels. Similar experience occurred in other industries but mining was perhaps the most dramatic.

Union membership in the nine years to August 2001 in Western Australia fell from 37 per cent of the workforce to 19.5 per cent – a decline of 47.3%. Little wonder that what was happening in W.A. caused concern not just to WA trade union leaders but also nationally. No wonder there was so much pressure on the Beazley Opposition prior to the last election to rule out individual agreements. (It is true that there is provision for individual agreements – EEA's – in the Gallop proposals, but for a number of reasons these are impractical and unlikely to be widely used.)

A loss of nearly half your members in nine years is a great motivator to argue the case for turning back the clock. There is no need to look further for what is behind the Gallop Government proposals – the industrial arm of the Labor Party is flexing its muscles and calling in favours. This is legislation designed to put the unions back on centre stage of the industrial relations arena. This is not legislation by a Government that has the interests of the entire community at heart. Even if the union did speak for all their membership it would still only be for less than one in five employees. What the earlier survey results suggest is that this is not legislation that is wanted, nor will it be welcomed, by the broader community.

Unions and the Proposed Reforms

There is not time, and this is not the paper, to look at all of the WA proposals. However, there are some changes proposed which confirm what this paper argues is the real objective of the legislation – to facilitate the union's role in industrial relations.

This is not to question the legitimate right of unions to exist and look after their members' interests. Rather it is to question the right of unions to have a privileged position within the system that guarantees them a role rather than having to earn that role. This is no mere academic interest. The incentive to behave responsibly is likely to be related at least in part to the penalty that attaches to irresponsible behaviour. If there is no penalty, because a party has a legislated right or role, then behaviour is likely to be more extreme and irresponsible.

One of the interesting results found in community research in W.A. over the last ten years is that the percentage of the population that think unions have too much power has declined. One possible explanation is that community support for unions has grown in tandem with more responsible behaviour – working days lost due to industrial disputes are at an all time low. This paper would argue that the dual system that has operated in W.A. for the last eight years has played a part in modifying the

behaviour of unions because there was an alternative for both employees and employers that did not necessarily involve union representation.

The proposed W.A. legislation goes much further than is necessary to protect any workers likely to be suffering exploitation under the current system – while my CCI in Western Australia would oppose it, a no disadvantage test similar to the Federal system, applied to the current legislation would have satisfied that perceived need.

The legislation seeks to enhance the union role to a very considerable extent and beyond what would provide the union movement the fair opportunity to market itself to its members and prospective members. For example:

- Right of Entry. There will for practical purposes be unlimited right of entry at any time and to discuss any matter including the right to look at non-member records. (All that is necessary is that the workplace has a member or potential member.)
- No non-union collective agreement. Even Laurie Brereton thought this was a bit hard to justify. The Minister's response is that he is not opposed in principle but there wasn't time to include it. This legislation has been in preparation for 12 months. Perhaps more relevant are the earlier comments about the impact on union membership. For small, unincorporated businesses this means no choice – they cannot go to the Federal system, EEA's will not work – they either have a union collective agreement or the award.
- Broadening of the role of the Industrial Commission. The Commission will have the power to issue interim awards with the onus of proof now on employers to show cause as to why the award shouldn't issue. This will make it easier for union applications to bring award free occupations into the award system and the influence of the Commission and unions.
- Unfair Dismissals. Interim reinstatement before the case was heard was proposed originally (assumption – the employer must be guilty). Fortunately now removed unless you have your case handled by the union – in this case interim reinstatement still available. Twenty-eight day time limit for lodging unfair dismissal proceedings (can be extended in exceptional circumstances) unless the union is handling it for you in which case there is no time limit.
- Safety. Safety will now be included in the definition of an industrial matter. The Commission will now have jurisdiction even though safety is dealt with in separate legislation and by an independent safety magistrate. Double jeopardy for employers and an increased risk of safety being used for industrial relations purposes.
- Good Faith Bargaining. The legislation will allow the same claims to be made against multiple employers, that is, it encourages pattern bargaining. Further it obliges employers to negotiate as a collective unless as individual employer is granted the right to negotiate alone by the Commission. What does this say about flexibility, certainty and the ability to respond in a way which suits the particular needs of the organization?
- No practical individual agreements. The unions argued hard for no individual agreements. The Gallop Government is making much of the fact that it has provided for EEA's. The reality is the unions have achieved what they wanted because EEA's will not be practical and are unlikely to be used – the mining industry is already voting with its feet. Problems with EEA's include that they are tied to the award reducing flexibility and certainty, a new employee must

be given the choice of the award or the EEA even though the EEA has satisfied the award no disadvantage test and even though the business' operations may be structured around the EEA, and finally, where there is a collective (union) agreement there can be no EEA.

This represents a cumulative package of measures that goes well beyond the election commitments of the then State Opposition and does everything it can to ensure that workplace relations in Western Australia return to the centralised, bureaucratic, once size fits all system which employers hoped we had seen the last of – but not just employers according to the community research. What is surprising is the extent to which attitudes have changed in Western Australia. Who would have believed ten years ago that in 2002 nearly four times as many employees would prefer to work under an individual agreement as they would under an award?

Implications for Industrial Relations Reform in Australia

There will always be opposition to change. However, those who believe that further reform of industrial relations legislation is needed in order to ensure a prosperous future for all Australians need to continue to make the case as objectively and as openly as we can. The Western Australian experience suggests that employers and employees are mature enough to accept responsibility for their own affairs and not rely on the intervention of third parties. Reform advocates should be encouraged by this experience.

There is also a warning both for unions and for Governments (like the W.A. Government) who want to try and wind back the clock. The view of this paper is that there is likely to be a backlash from the community to the current W.A. proposals given the community's experience with greater choice and increased flexibility. The backlash will be even greater if there is a diminution of job opportunities and/or a return to the bad old days of the late 70's and early 80's when strikes were common and the State's reputation as a reliable supplier was questioned. The challenge for the W.A. union movement will be to use its new influence positively and the challenge for the Gallop Government will be to respond appropriately if it doesn't.

There should also be encouragement for the current Federal Government in the Western Australian experience. Reform is about forcing employers to accept responsibility for their own industrial relations and not regard it as something that is for the various industrial commissions to resolve, as has too often been the case in the past. Given the right tools, and a competitive product market, employers in W.A. in many cases have shown that they are up to the challenge and can deliver win/win outcomes. The 'right tools' in the view of this paper does mean further legislative change and if the case is articulated vigorously and clearly then a constituency for change can be built despite the Senate. There was a time when tax reform looked even more unlikely than further substantive industrial relations reform. After all it would be a pity, at least from the perspective of the proponents of reform, if in 2004, after three terms of a government with a stated commitment to industrial relations reform, all we were left with was the compromised, but useful, reforms of 1996.

What might those further fundamental reforms be? That is a topic for a much longer paper but perhaps two thought starters. The Western Australian experience is instructive and appeared to be growing in acceptance by the community despite the fact W.A. is about to take a large step backwards. A dual, opt-out system where the alternative was not based on awards would be a significant reform for Australia. Alternatively, or even at the same time, steps could be taken to separate the adjustment of the 'safety net' from adversarial industrial relations. A separate tribunal to deal with minimum conditions but which doesn't have the capacity to generate general wage increases together with the removal of compulsory arbitration from the Australian Industrial Relations Commission, but providing the opportunity for voluntary arbitration for those parties who because of a lack of maturity, or other more justifiable reasons, need third party intervention could be a useful start.

That there is a need for further reform to ensure that industrial relations is dealt with at the workplace where the needs of the business (shareholders and employees) can be dealt with in a way that suits the needs of the particular enterprise is a view strongly held by ACCI. This means more fundamental change that reduces the role played by third parties and takes away constraints on the ability of enterprises to respond quickly to ever changing circumstances. ACCI will continue to argue the case for change in the interests of all Australians.

CHAMBER OF COMMERCE & INDUSTRY
WESTERN AUSTRALIA

Industrial Relations in Western Australia

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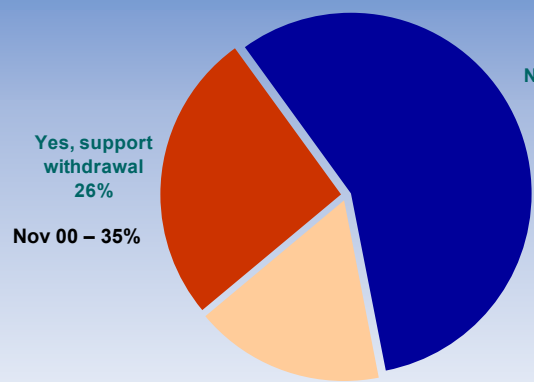
Support for Withdrawal of Workplace Agreements Legislation



< % of Western Australians >

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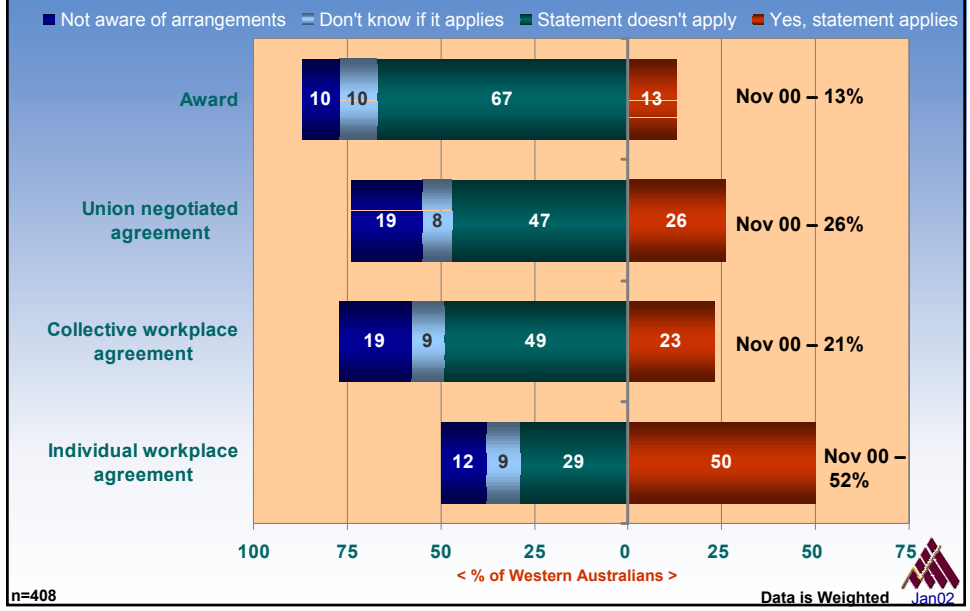
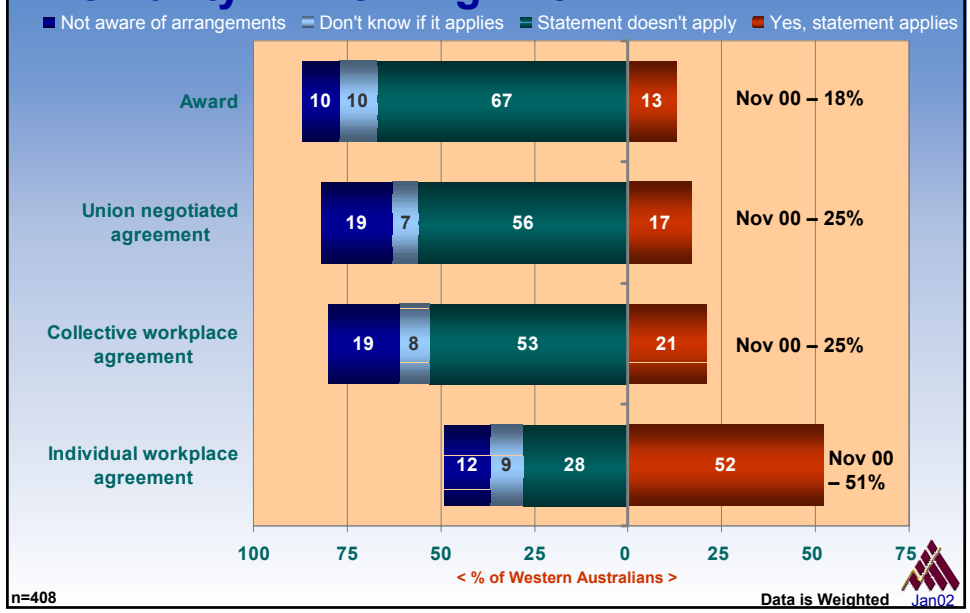
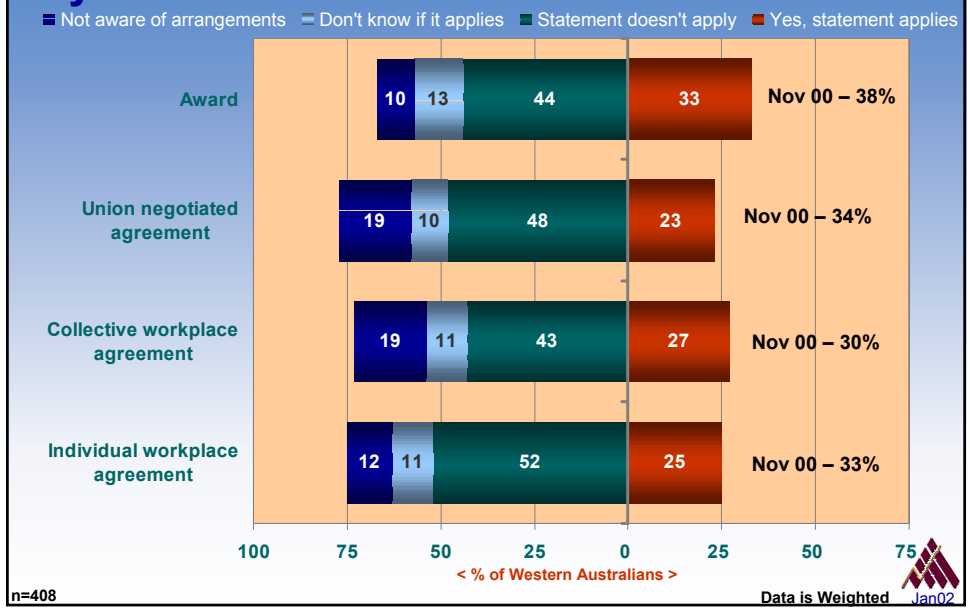
Arrangements Which Give Workers the Chance to Earn More



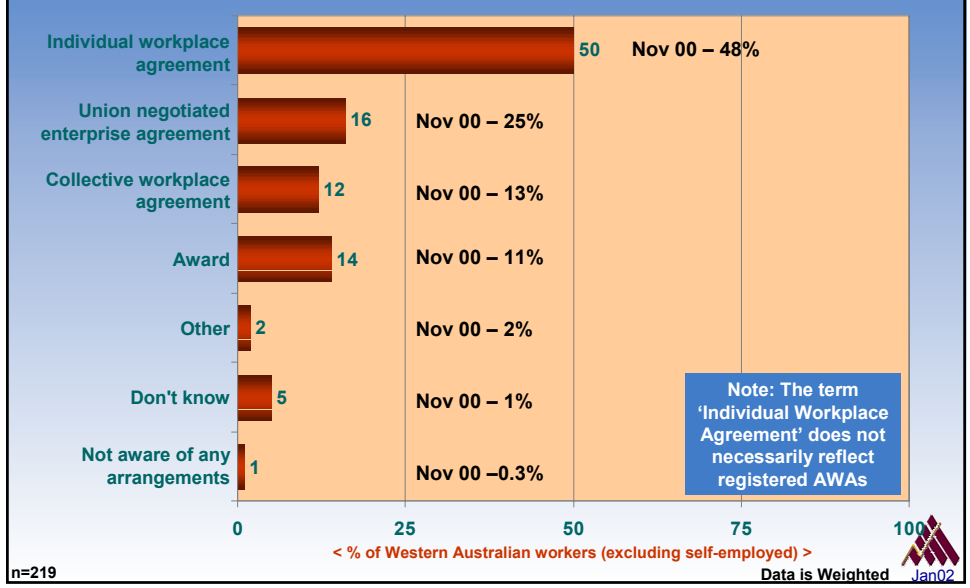
Arrangements that Give Workers Flexibility in Working Life



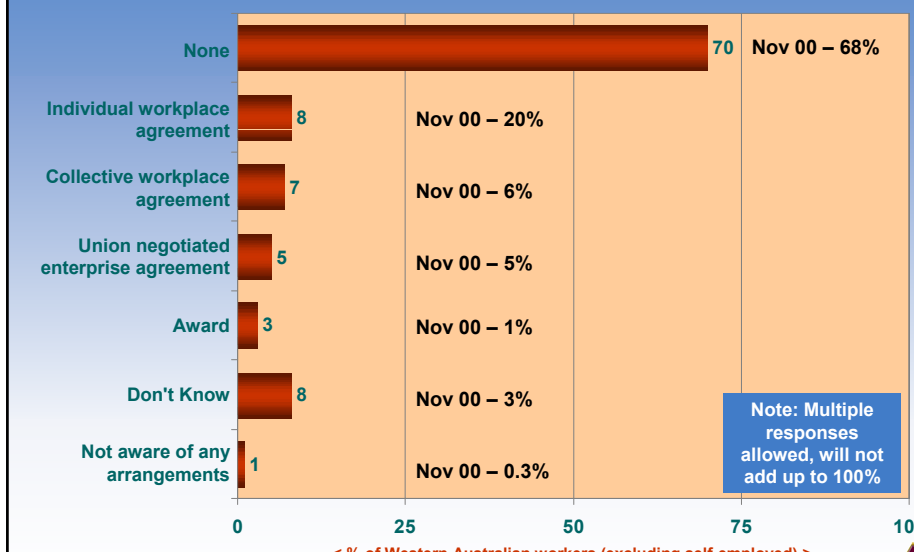
Arrangements Considered to be a Fair System for all Concerned



Preferred Working Arrangement to Be On



Working Arrangements that Should NOT be Offered



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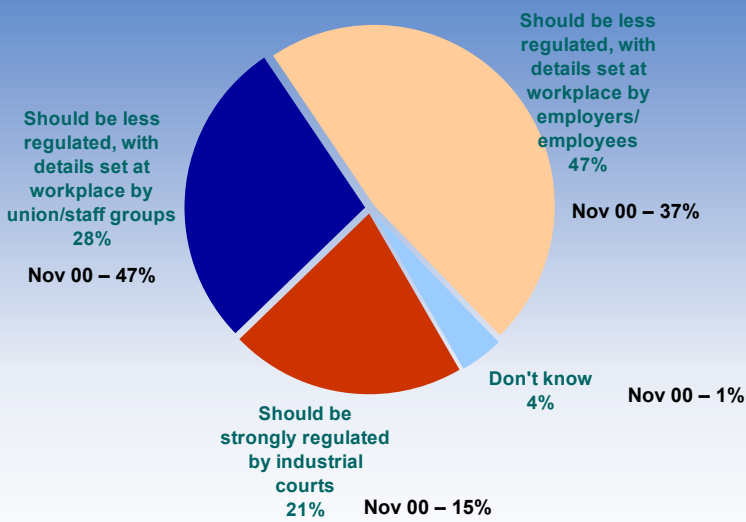
Regulation of Pay and Conditions



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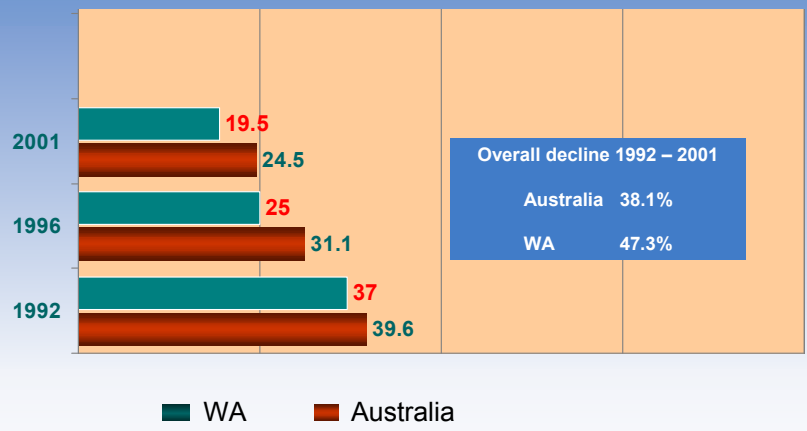
Union Membership (% of workforce)



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