

FIT FOR THE WEST

The Western Australian Approach to Labour Market Regulation

BY MICHAEL WARBY

Given the importance of export markets—particularly for the capital-intensive mining industry—to the Western Australian economy, its labour market regulation needs to suit its export-focused economy.

In part because of its export focus, Western Australia has been a leader in labour market liberalization. Western Australia's current regulatory structure, now seven years old, provides a good basis for safeguarding and extending the prosperity of Western Australians. There is no good reason to re-regulate the Western Australian labour market, although it would be in the public interest to improve considerably its statistical information, so as to allow better public oversight.

Even before liberalization, WA had led the national trend of falling union coverage of employees. Unless one believes that workers are being irrational, this falling unionization—given that the right to join a union is legislatively protected—is itself a sign that labour market liberalization has not adversely affected the situation of workers.

The unions' loss of coverage (since 1976) and of membership (since 1992) is a result of:

- structural changes which have reduced the value of union membership by increasing the bargaining power of workers; and
- the failure by unions, suffering from 'capture' by officials, to provide adequate services for members.

The failure of unions to adapt flows, in part, from the consequences of past and present legislative privileges. It would be a very inappropriate use of regulation to attempt to restore or extend the legislative privileges of unions in order to shield them from the consequences of failing to provide services which workers want to buy at prices they are willing to pay.

INTRODUCTION

Since the election of the Hawke Government in 1983, Australia has been undergoing a profound change in public policy. The shift in direction has been a response to changes that the previous policy regime—a policy regime best described as ‘the Deakin System’ (see Appendix)—proved unable to manage.

The great hold-out in the reform process has been the labour market. This has occurred for a range of reasons:

- the link between unions and the ALP provided the union movement with a powerful political voice;
- ‘third party’ opponents of market reform, such as the Australian Democrats, have been able to restrict or block legislative changes;
- the interlocking interests of unions and some registered employer associations in maintaining the arbitration system; and
- the labour market is where most people derive most or all of their income and people are generally reluctant to embrace increased competition in a market where they are sellers.

There has, however, been some loosening up of aspects of labour market regulation from 1993 onwards, although expansion of unfair dismissal legislation provided major countervailing effects. The most complete labour market reform took place in Western Australia.

THE WESTERN AUSTRALIAN SYSTEM¹

In May 1990, 57 per cent of Western Australian employees were covered by a State award, 21 per cent by a Federal award and 21 per cent by no award. This made Western Australian workers the second most likely, after New South Wales workers, not to be covered by an award, with the lowest rate of use of Federal awards and equal highest (with Queensland) rate of use of State awards. Even under the previous industrial relations system, Western Australian workers were the most likely to have arrangements specific to their State.

Western Australian workers are also the workers least likely to be unionized; this has been a long-term trend. Western Australia was the first State

to show a significant decline in the proportion of employees who were union members. From 1982 to 1993, the Western Australian unionization rate was around 90 per cent of the national rate. By August 1999, that rate was about 80 per cent of the national rate. As the national rate of private-sector employee union membership is almost 20 per cent, that suggests that only about 16 per cent of private sector employees in WA are union members.² Either way, the union movement in Western Australia has become much less broadly representative of workers. Such a low rate of unionization also reduces the significance of any ‘free-riding’ by other workers on union action.

The Western Australian system of labour market regulation now operating was established on 1 December 1993 when the *Workplace Agreements*

Act, the *Minimum Conditions of Employment Act* and the *Industrial Relations Amendment Act* came into force. These three Acts created a system quite distinct from that operating in any other Australian State or federally. They have led to Western Australia being the State with the highest rate of use of workplace agreements.

The system that was set up created two independent streams of labour market arrangements: the conventional award structure and workplace agreements. The key Act is the *Workplace Agreements Act* which allows employers and employees to opt out of the award stream via simple requirements for establishing workplace agreements, requirements which are completely independent of the Western Australian Industrial Relations Commission (WAIRC). Workplace agreements can be individual or collective, although individual agreements override collective ones. About 85 per cent of workplace agreements are individual agreements;³ for the most part, the remainder are agreements covering a single enterprise. Unions may be party to an agreement, but have no right of veto.

Workplace agreements are required to include a dispute-resolution clause (which need only relate to the ‘meaning and effect’ of the agreement itself), the presence of names and signatures and an expiry date.

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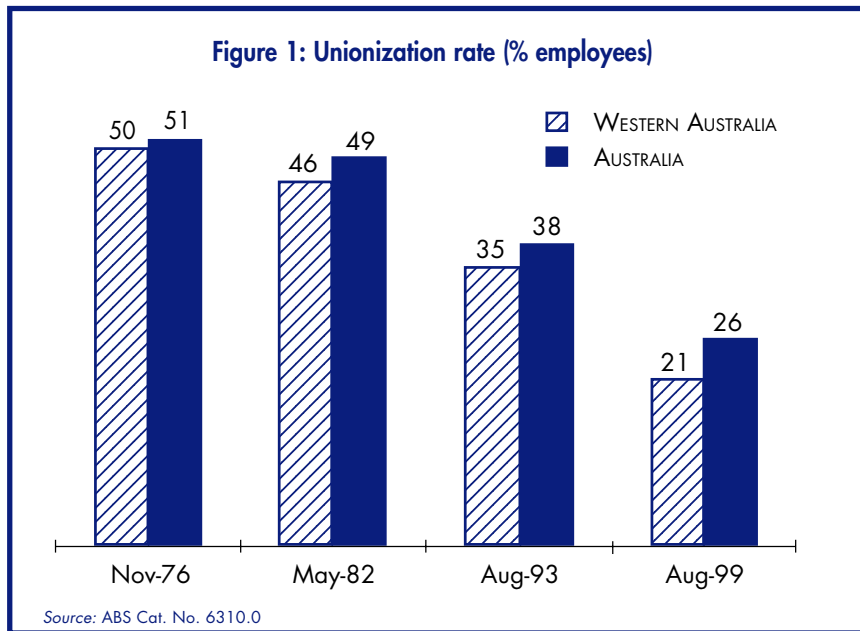
The *Minimum Conditions of Employment Act* overrides both the *Workplace Agreements Act* and the *Industrial Relations Act* in setting minimum standards to which workplace agreements must conform, such as annual leave, sick leave, minimum rates of pay plus a prohibition on terminating employment harshly, unfairly or oppressively.

Private-sector agreements are confidential, unless the parties agree otherwise. They have a maximum term of five years. Upon expiration, relevant award provisions are reinstated unless another agreement is registered or the agreement itself specifies some other arrangement.

The operation of a workplace agreement removes the parties from the jurisdiction of the *Industrial Relations Act*. No provisions of any awards or agreements made or registered under the Act have any effect during the term of a workplace agreement. The WAIRC has no jurisdiction over disputes between the parties to workplace agreements, unless the dispute-resolution clause permits it and the parties request to have an Industrial Commissioner to interpret the meaning and effect of the agreement.

The basic structure of the new system having been put into place, second and third 'wave' legislative changes followed in 1995 (*Industrial Relations Legislation Amendment and Appeal Act*) and 1997 (*Labour Relations Legislation Amendment Act*). These mainly focused on the role of unions and union officials. Under these Acts:

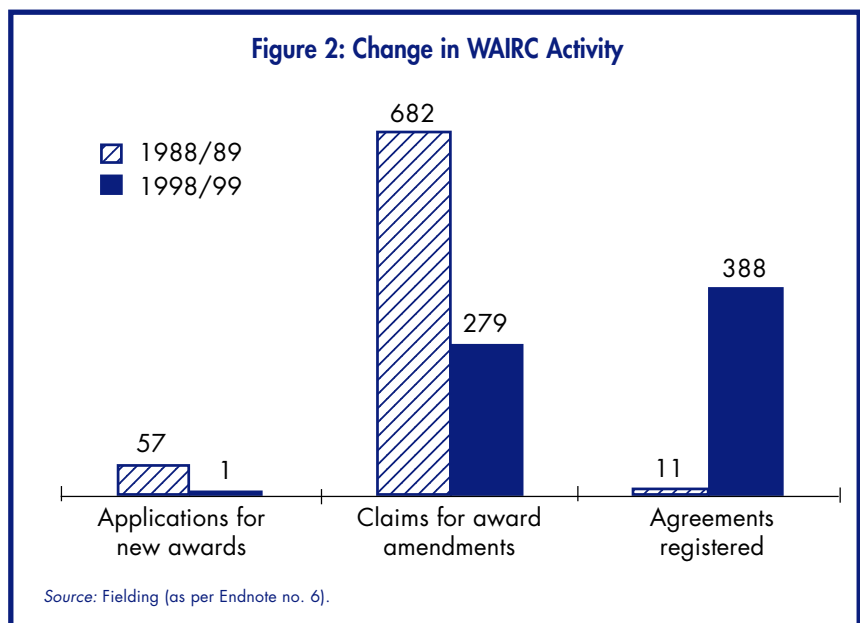
- political donations were regulated;
- union officials' access to employee time and wage records was restricted;
- the WAIRC was required to issue return-to-work orders in the event of industrial action;
- provisions allowing automatic deduction of union dues by employers were removed from awards;



- unions seeking to transfer to Federal jurisdiction could have their members re-assigned by the WAIRC;
- restrictions on union officials' right of entry to workplaces were increased; and
- compulsory State-controlled ballots were required prior to industrial action—a provision which has not been used or enforced: under much tougher provisions in the UK and in the Federal *Workplace Relations Act*, the holding of a secret ballot is a required step to avoid legal liability for industrial action.⁴

The second and third 'wave' changes to the Western Australian system have largely sought to reduce unions to a more ordinary legal status.⁵

One of the most striking changes in the indus-



trial relations system has been the decline in award activity before the WAIRC and the increase in registration of agreements.

Applications for new awards have effectively ceased, claims for award amendments have fallen almost 60 per cent, while registration of industrial agreements has increased more than thirty-fold. In October 1999, there were approximately 1,600 registered agreements in force compared with 374 awards.⁶

The operation of the new Western Australian system, with its creation of a competing stream to awards, has clearly been the main driver of these developments. Tribunal adherence (at both Federal and State levels) to various arrangements to promote efficiency had already, to some degree, discouraged award creation, but not award amendments.⁷ Flight to Federal awards was stymied, initially by an aggressive campaign by the main employer group, the Chamber of Commerce and Industry, and later by provisions in the Federal *Workplace Relations Act*:

- Section 111AAA(2), which required the views of employers and employees be taken into consideration; and
- Section 152, which gave the capacity for State employment agreements to override any Federal award.

Another dramatic change in recent times has been the surge in individual applications before Tribunals, particularly connected to unfair dismissal claims. In ten years, applications by individuals have grown from ten per cent of the matters dealt with by the WAIRC to 60 per cent.⁸ This upsurge in individual applications is an interesting manifestation of the increased individualism that legislative changes have both encouraged and manifested. In a real sense, private advocacy services have become competitors for unions in employee representation.

Workplace Agreements

The confidentiality provisions for private-sector workplace agreements, together with limitations in the published data, make it difficult to produce clear judgements about trends resulting from the introduction of the new system. Given the public interest in tracking the system's performance, the available statistical data on the system should be greatly expanded.

Workplace agreements are overwhelmingly individual rather than collective, and one study has found some concentration in industries with

weaker employee bargaining power.⁹ Take-up of workplace agreements has been relatively limited—only about ten per cent of WA employers have used workplace agreements, with the estimated coverage being only about six to seven per cent of employees.¹⁰

A study of agreements in the WA public sector found that the workplace agreements tended to set the pattern in wage levels by being higher than those in enterprise agreements, that such agreements were generic rather than individually tailored, that management prerogative tended to increase but that the nature and strength of effects were difficult to determine after only seven years of operation.¹¹

It is clear that workplace agreements have not radically transformed the Western Australian labour market, however significant they may be in particular workplaces. This is not surprising, as knowledge and application of awards and other regulations in workplaces have always been much less than is notionally applicable. This is particularly so in what might be called the 'flexi-wage' market: babysitting, gardening, housecleaning and similar one-to-one arrangements. This makes examining the effects of regulations and changes in regulations somewhat more complex. It also means that analysis has to make provision for the considerable inertia in labour market arrangements. More specifically, it makes comparing outcomes of workplace agreements with the award less revealing than might otherwise be the case: comparison with the *status quo ante* is much more informative. On that basis, workplace agreements seem to do quite well: a recent survey of employees under agreements found that 52 per cent were better paid than previously, only six per cent were worse paid, with the most common result on other conditions of employment being no change.¹² This is what one would generally expect from a process of mutual exchange: it would only be worth one's while if it improved one's situation over the alternative. It also indicates how smoother operation of workplaces is a prime benefit of a more flexible system (see Box). As one study notes, workplace

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REPRESENTATION

The State of Western Australia

Western Australia covers one-third of the land area of Australia, is home to a tenth of its population and produces over a quarter of its exports. Most of these exports are produced outside Perth, although Perth is where about three-quarters of the population resides. Of the \$23 billion in annual exports, over half is made up of five major commodities—iron ore, wool, wheat, gold bullion, and petroleum and related products.

Of the about 900,000 Western Australians in employment, nine per cent work in primary production, 17 per cent in manufacturing and construction, seven per cent in various network industries (electricity, gas, water, transport and storage, communications) and the remaining 67 per cent work in other service industries.

The share of Western Australian employment in primary production is notably higher than the national figure of six

per cent, because of the much greater role which mining plays in the Western Australian economy. Conversely, manufacturing and construction employ less than the national average of 20 per cent; otherwise the broad industry profile is almost identical.¹³

The mining industry is central to Western Australia's prosperity. In this capital-intensive industry, which employs about 30,000 workers and generates \$10 billion of exports in three commodities alone (iron ore, gold bullion and petroleum and petroleum products), the issue of wage levels is not nearly as important as flexibility of labour use and the maintenance of smooth flows of production. This is why miners can earn \$80,000-plus per year and why mining companies—facing the pressures of volatile export markets selling commodities whose real prices are in long-term decline—are at the forefront of workplace reform.

agreements are largely seen as ways to improve the operation of workplaces as 'a functional response to some perceived restrictions'.¹⁴ Employees gave up things they did not value (restrictions on workplace flexibility) for things they did (higher wages), while employers pay more for practices which improve the productivity of their capital: so both sides gain.

Awards inherently have what economists call an 'agency' problem. Even during the high point of unionization, about three-quarters of workplaces had no union members. Thus the ability of the structure to represent the interests of the people in such workplaces was clearly very limited—and the industrial commissions typically put considerable barriers in the way of such workplaces attempting to vary from the award.¹⁵ The award-and-tribunal structure also provides greater capacity for employers to end up trading provisions which union officials value more than employees.

While local agreement may be easier for the parties, they are more complex for unions to manage and make it harder for the union to provide value-adding services. This complexity is exacer-

bated by the affront to a collectivist ethic that such agreements can provide: for example, the Amalgamated Manufacturing Workers Union is apparently hostile even to the idea of representing casual workers¹⁶—the collectivist presumption is clear, the lack of a focus on what actual workers want is also clear.

In a recent survey of CEOs, unions were rated a bigger barrier to change than managers or workforces (who were rated about equally as barriers).¹⁷ This is hardly surprising, as unions have far less at stake in any given enterprise than the managers and workers, and diversity, which is the essence of a flexible labour market, is inherently difficult for unions to manage.

More to the point, complex regulatory arrangements are expensive, both in terms of compliance costs and restrictions on operations. Stepping around them (such as by moving to agreements, or otherwise changing the mode of engaging labour) frees up resources which can be shared between workers and employers—hence the ability of mining companies to offer individual contracts which increase the wages of miners.

Unionization

The most notable change in the Western Australian labour market since the 1993 changes has been the acceleration of the collapse in union coverage of the workforce. Even here, however, the change in Western Australia, though proportionately larger than in any other State since 1993, is part of a continuing and national trend. Nor was the *acceleration* in loss of market share by Western Australian unions as marked as it was in South Australia and Tasmania over the period.

Traditional blue-collar employment—concentrated in larger, easier-to-organize workplaces with a widespread ethos of collective action—has declined as a share of employment. This shift has complicated the situation of unions. Where blue-collar workers have become small businesspeople, the attitude can even become one of mutual hostility.

Membership

Not only has unions' share of their market dropped dramatically, their actual membership has dropped, with Western Australia showing an equivalent rate of fall to South Australia and Tasmania.

This is not something which started with the legislative changes of 1993—the WA and Victorian reforms and the Federal *Industrial Relations Act*, the so-called 'Brereton Act'. Indeed, numbers of union members actually peaked later in Western Australia than in the rest of the country and, in all States, union membership peaked prior to 1993.

Clearly, the fall in union coverage and membership has

Figure 3: Fall in Union Coverage of Employees (%)



Figure 4: Fall in Number of Union Members Since 1993 (%)

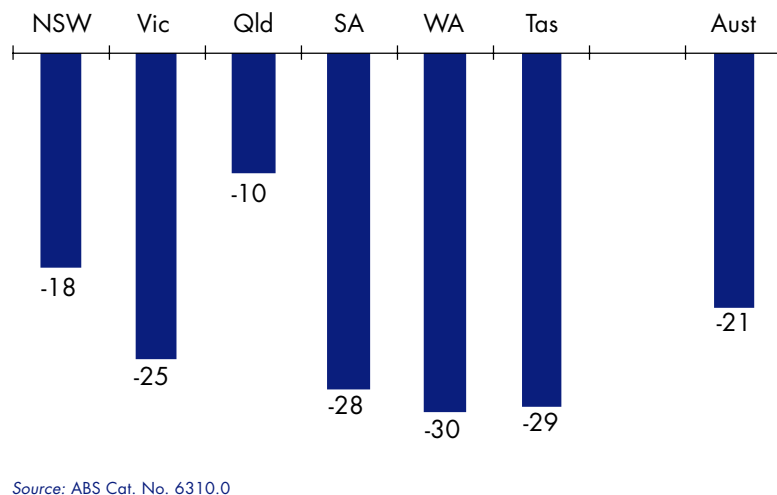
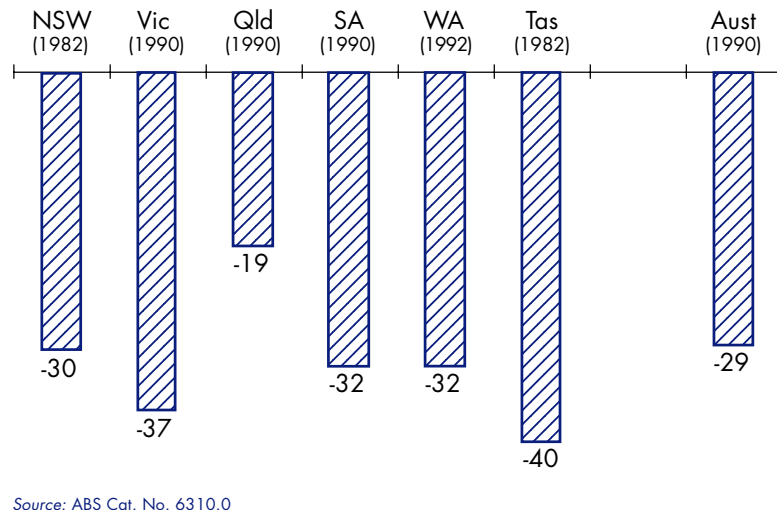


Figure 5: Fall in Number of Union Members Since Peak (%)



causes other than changes in Western Australian, or other, law. (The issue of the performance and situation of unions, as distinct from the labour market generally, is discussed further below.)

CRITICISMS OF THE WESTERN AUSTRALIAN SYSTEM

Criticism of the Western Australian system appears to focus primarily on the issue of whether choice is really expanded for workers, this being one of the prime justifications for the liberalization of the Western Australian labour market.¹⁸ This liberalization is often rather grandly labelled ‘deregulation’, which is something of an overstatement. The Western Australian labour market remains subject to a considerable level of regulation—especially when ancillary matters such as employer liability for employee actions, anti-discrimination law, occupational health and safety law, superannuation and taxation law are taken

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into account—and the complex regulatory structures of the award system remain an option. The Western Australian labour market is patently not as deregulated as the New Zealand labour market was from the passing of the *Employment Contracts Act* in 1991 to its replacement by the

Employment Relations Act in August this year (during which period, New Zealand had one of the best job-creation performances in the OECD).¹⁹

There are other criticisms: ‘deregulation’ has, for example, been blamed for increasing the gap between male and female incomes.²⁰ This gap, however, actually started to widen before the reforms, and agreement coverage is too low to be a significant factor in Statewide outcomes.²¹ But the question of the reality of choice and the effect on workers’ bargaining positions seems to bear the brunt of criticism.

At one level, it is somewhat odd to criticize as displaying a lack of choice a system which creates and permits an alternative to one which explicitly gave no choice—compulsory awards. On the other hand, since unequal bargaining power is the fundamental justification for complex regulatory intrusion into the labour market, and expanding choice has been part of the basic rhetoric of justification for the changes, this line of criticism is both congenial to those advocating increased regulation and, if true, a telling blow against liberalization.

The strongest evidence against the proposition of restricted choice from unequal bargaining power is the decline in union membership itself. There is no evidence of widespread, systematic coercion against union membership (which is illegal anyway). Clearly, workers increasingly do not feel union membership is necessary to provide increased choice or to improve their bargaining power. One would have to postulate a startling degree of irrationality on the part of workers to make the proposition of increased unequal bargaining power stick. Indeed:

- the expansion of the welfare state (pensions and benefits effectively set the minimum wage);
- the expansion of personal grievance avenues;
- the increase in educational qualifications; and even
- the operation of investigative media have all worked to increase employee bargaining power. This is so despite entrenched unemployment, which is relatively narrow in its catchment group. (A key reason why elite opinion has tended to be uninterested in serious solutions is that unemployment is not much of a threat to the tertiary-educated.²²) Moreover, there has been a widespread trend of businesses putting more resources into managing employees. The legislative entrenchment of basic conditions has also reduced the value of union membership.

A KEY REASON WHY ELITE OPINION HAS TENDED TO BE UNINTERESTED IN SERIOUS SOLUTIONS IS THAT UNEMPLOYMENT IS NOT MUCH OF A THREAT TO THE TERTIARY-EDUCATED

REGULATION

As the market which generates more income than any other, and which has more people participating as sellers than any other, the labour market is the most important single market in any market economy. This is as true for Western Australia—about half of Western Australians are employed, another three per cent are unemployed—as it is of any other market economy. As with any market, the question is not whether there shall be rules, but what rules there shall be. A labour market which operates well creates jobs for those that want them and facilitates the expanding production of goods and services which constitutes rising prosperity.

Should Western Australians expand labour market regulation? The question is: how are regulators and third parties advantaged in terms of

incentives, information and feedback processes over market participants themselves? The answer is, they are not: in fact, they are systematically disadvantaged. Systematic and extensive intrusion by third parties therefore requires some overarching justification. In industrial relations, that justification is unequal bargaining power—in the case of the recent *Employment Relations Act* in New Zealand, that justification is even explicitly stated in the legislation. Moreover, the arbitration system's judgments cannot, without proclaiming its own lack of utility, be based on principles that deny its effectiveness or point. It thus ends up being committed to particular views of the labour market, whether or not these are accurate. (A similar point could be made about certain conceptions of unionism.)

It helps to understand Western Australia's situation if the underlying logic of recent trends is examined further.

Unequal Bargaining Power: The Necessary Myth

Employment is an exchange: if it is not in the interests of both parties, it does not take place. The question is, how equal are the parties? The answer is: it varies—no-one, for example, who has had to put up with the services of a semi-competent IT person because they or their organization cannot afford a competent one can doubt that the balance of advantage does not always lie with the buyers of labour.

What does it mean to say that there is unequal bargaining power? It may seem obvious that, in a situation of generalized mass unemployment, bargaining power would become systematically unequal. But, in such a case, business focus is also likely to be on bare survival: hardly a desirable circumstance for employers.

The perfectly competitive market of many buyers and many sellers provides the benchmark of equal bargaining power: so long as competitive alternatives are open to both parties, outcomes are likely to broadly approximate such a market. If there are concerns about people not receiving adequate incomes, then the tax-and-transfer system is a much more effective means of dealing with such issues—particularly given that many people on low wages live in high-income households and increased economic efficiency provides a larger pool of resources for redistribution. (Over the period of economic reform since 1982–83, the amount spent by government on health, education and welfare has increased, in real terms, by 50 per cent per Australian.)

While bargaining power varies, it is quite another thing to claim that it is so systematically one-sided that extensive regulatory intrusion is required. There is no evidence for such unequal bargaining power as a general principle: on

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the contrary, there is much evidence against it. For example, large corporations and industries with concentrated ownership structures tend to pay above-average returns to labour:²³ yet if any

group had such putative ‘unequal bargaining power’ it would be such firms. The highly deregulated Hong Kong labour market has been marked by high rates of employment and high rates of income growth: if systematically unequal bargaining was a genuine

problem, surely in such a labour market wages would be driven down to starvation levels? Patently, it is not so.²⁴ Nor are Australian labour market outcomes different from those of other developed nations in ways which suggest significant benefits from the arbitration system.

Apart from the difficulties that unions face in servicing small workplaces, one reason why such workplaces are generally not unionized is that employees often have considerable bargaining power in businesses typically operating on tight margins and reliant on their willing co-operation. Moreover, as ‘human capital’ is increasingly the basis of prosperity, employers generally have a vested interest in making its possessors as happy, and therefore as productive, as possible.

Unequal bargaining power is typically taken as an axiom beyond the need for evidence or justification: there is little or no attempt to ask the questions: what would the world be like if it were true, and is that the case? The reality is that, with competitive factor and product markets, employees and employers do not compete with each other, they compete with other employees and other employers; something ordinary workers are well aware of, regularly using ‘exit’ as their response to jobs not up to scratch. (A recent international study rated Australian workers ‘the most disloyal’ in the world²⁵—they also exit from unions that do not provide value.) Indeed, the most important single power of unions is the ability to stop other workers competing for jobs: it is ‘scabs’ who threaten their power, not bosses. Union concern to stop com-

petition does much to explain the union interest in increasing, and ideally abolishing, youth wage rates, thereby making it harder for new labour market entrants lacking experience and a track-record to compete against union members for jobs. Unequal bargaining power is simply the required justification for permitting actions which, in any other market, would be in restraint of trade and illegal under the *Trades Practices Act*. (And any attempted collusion among employers should be dealt with directly by such mechanisms.)

The current Western Australian system provides an answer for variations in bargaining power: the award system is there if people wish to use it. If individual agreements do not work for workers, this then provides a recruitment opportunity for unions—if they are willing to take it on.

Regulatory Complexity: Who Benefits?

Increased regulatory complexity imposes significant costs on a society: it restricts people from doing things they would otherwise wish to do, it increases the costs in going about one’s activities, it can easily deaden innovation, and restrict competition and entry to markets as well as the choices available to buyers and sellers. Regulatory complexity can have the further invidious effect of allowing the exercise of power without responsibility for final outcomes. Western Australians need to consider very carefully the costs, for an export-focused economy, of increased regulatory complexity.

There are those who benefit from regulatory complexity. It is in the interest of those individuals who make their living from it: notably bureaucrats employed to administer the regulations—complex regulations can be a great basis for bureaucratic empire-building, as the widening empires of environmental intervention in developed nations demonstrate particularly well—and the lawyers, other advocates and professionals that

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businesses and ordinary folk become compelled to employ to deal with the regulations.

The traditional arbitration system provides a plethora of such opportunities:

- Officials from unions and employer organizations can look to appointment to the IR tribunals as a completion of their career.
- Employer organizations are given a service—handling complex IR regulations and advocacy before the tribunals—which they can then sell to their members.
- Unions are provided with an easy basis on which to recruit members: in particular, regulations can be used to discourage other modes of engaging labour that unions find uncongenial or difficult to deal with.
- Both unions and registered employer organizations are protected, by the ‘conveniently belong’ rule, from competition.
- Unions are also handed an arena—appearance before an IR tribunal—within which they can demonstrate their expertise. (Arguably, unions are necessary elements of an unnecessary system.)

Such a system has often proved to be very time-consuming. Nor, as was demonstrated particularly strongly in the recession of the early 1980s, is it

easily adaptable to suddenly changing circumstances. This is ironic, since regulatory complexity is often sold as providing ‘security’—that is, having good ‘risk management’ qualities. That the Asian crisis was the first time in over a century that Australia dealt with a major external economic shock better than comparable countries, and that protectionist Victoria handled the Depression of the

1890s notably worse than free-trade New South Wales—see Appendix—both indicate the superior risk-management qualities of flexibility.

It is not enough, however, that certain arrangements be favourable to the interests of particular individuals or groups. Naked self-interest is not

attractive, particularly to those that have to pay for the benefits. Plausible justifications are therefore required. Ideal justifications not only claim general benefits, they should also allow one to ignore any victims from the arrangements and obscure how much the cost is and who pays it. Claims of unequal bargaining power, and claims that wages will fall disastrously if the labour market is deregulated, both generate such benefits for the advocates and beneficiaries of regulation. And it is true that studies indicate that high rates of union membership are associated with

higher wages (good for employed workers); but they are also associated with lower employment growth and higher unemployment (not good for those seeking work). These are the normal results of monopoly and cartel arrangements. Such cartels need to be protected against outsiders (who might compete) and insiders (who might break ranks), which is something the award system does very well. Compulsory awards fostered union membership because they used state power to make unions effectively the only game allowed. But, by removing decisions from direct control, they also fostered the creation of complex and costly arrangements in which advocates could play their games and ‘prove’ their usefulness.

To put it another way, intrusively regulating the labour market is about restricting choice, and thereby restricting competition, in order to generate political ‘rents’ that can be redistributed to favoured groups. It is important to distinguish between what is good for workers in general, what is good for union members and what is good for union officials.

‘Capture’ of Unions by Officials

The claim that deregulation is necessarily bad for unions as institutions is not confirmed by the New Zealand experience, where deregulation seems to have forced unions to become much more focused on being active at the workplace level, becoming stronger at that level, particularly in smaller

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workplaces, than their Australian counterparts.²⁶ But such a strategy, and a focus on service-delivery generally, is not particularly good for union officials. It is hard work and it requires a certain other-focused humility. A politically-focused strategy is more naturally congenial for union officials, not least because of its reinforcement of their natural career paths (ALP politician, IR tribunal member, superannuation fund board member) which are politically focused and/or delivered. Many employer advocates may also find it congenial.

The implicit claim by the critics of economic liberalization—that workers are being irrational in eschewing union membership—is not supported by the evidence. On the contrary, there are good reasons why unions have decreasingly appealed to workers.

Union officials have increased their collective significance within unions—from 1968 to 1996, the ratio of full-time officials to union members trebled. Union membership fees also rose at a faster rate than wages (which would make union fees unusual amongst most services and would indicate definite ‘market power’ by unions in their market place), from 0.25 to 0.33 per cent of average wages in 1971 to 0.39 per cent in 1989.²⁷ Career paths within unions are limited, typically consisting of a large number of organizers, a smaller number of

industrial or other specialist officers and one national secretary. The natural career paths direct officials’ attention away from service delivery and the health of their union towards post-union jobs, while also leaching unions of experienced people. This institutional factor may do much to explain the failure of unions to retain

the loyalty of members in a context of changes in work, workplaces and social values. The Kelty Accord strategy encouraged a ‘top-down’ direction of action by union officials at the expense of a focus on, or involvement by, members; an orientation which the Combet–Burrows strategy of ‘campaigns’ and labour market re-regulation continues in new

forms. That the action plan at the end of the ACTU report *unions@work* assigns a higher priority to talking to journalists (priority number two) than to responding to members (priority number five) makes sense in terms of such a political focus, but not in terms of a customer-focus on service-delivery to current and future members.²⁸

The gap between the proportion of workers indicating a willingness to join a union and the number that actually do so²⁹ may at least as much represent a union failure to capture an available market as any alleged institutional bias against them—a point reinforced by a New South Wales poll commissioned by the Labour Council which found that 20 per cent of current union members would choose not to belong to the union if membership was effectively voluntary.³⁰ (That WA has long

had legislative rules against compulsory unionism may also help explain its lower rate of unionization.) Some unions have responded to the challenges—for example, the Shop, Distributive and Allied Employees Association has been able to increase its membership over the last ten years³¹ despite operating in an area with high rates of casual, young and female workers: all groups the union movement has been comparatively poor at appealing to.

Western Australians, who—along with Tasmanian and South Australian workers—have defected with notable speed from the amalgamated ‘super unions’, might well recognize the following comments made about the New Zealand system before the introduction of the *Employment Contracts Act*:

The reasons being cited for disaffection include a belief that unions have done too little for their membership fees in the past, a feeling of alienation from wider trade union politics, the belief that they will get better bargaining outcomes than those recommended to them by their union officials or a fundamental agreement with the employer that certain changes which the unions have opposed are in fact sensible and fair in the specific company context.³²

THE IMPLICIT CLAIM BY THE CRITICS OF ECONOMIC LIBERALIZATION—THAT WORKERS ARE BEING IRRATIONAL IN ESCHEWING UNION MEMBERSHIP—IS NOT SUPPORTED BY THE EVIDENCE

WESTERN AUSTRALIANS—ALONG WITH TASMANIAN AND SOUTH AUSTRALIAN WORKERS—HAVE DEFECTED WITH NOTABLE SPEED FROM THE AMALGAMATED ‘SUPER UNIONS’

Lack of competition between unions generated by the ‘conveniently belong’ rule leaves exit as the only effective strategy for workers dissatisfied by their service.

If workers find that they have bargaining power without union fees, then that reduces the attractiveness of union membership. If union membership increases bargaining power, that will add to the attractiveness. As noted, however, the award and arbitration structure encourages costly complexities that cause workers to employ advocates they would not otherwise need, who can then ‘prove’ what a good job they are doing. The claim by union boosters that they are primarily responsible for the living standards of Australian workers is nonsense—rising prosperity is based on increased labour productivity. Or, to put it another way, the increased scarcity of people compared with the capital (physical, financial, institutional, human, social) supporting them and the efficiency with which both labour and capital are used. The complex arrangements of employee ‘benefits’ produced by arbitration and regulation simply re-arrange the returns to labour—employers make hiring judgements on the basis of the total cost of labour (including holidays, holiday pay, penalty rates, workers’ compensation, allowances, payroll

tax, superannuation payments, occupational health and safety costs, etc) regardless of how that is made up. In a situation of full employment, it is possible for unions to make short-term gains, but the market then adjusts for them—if the demands are

sufficiently unrealistic, the adjustment may take the form of lower employment, worsened conditions and substitution of capital for labour.

Agreement structures and customary practice can be expected to foster somewhat simpler arrangements, as these are easier for both parties to manage and allow mutual division of the extra resources thereby released (a recent survey of CEOs rated the time taken to service the IR system as a major cost).³³

The costs of regulatory complexity and the capture of unions by officials (as suggested by the ris-

ing ratio of officials to members, rising union fees and a political rather than a service focus), exacerbated by an East Coast focus for ‘super unions’, may well—either individually or in combination—weigh the advantage against union membership. And it is conspicuous that mining and construction have both seen large falls in union membership in Western Australia: between 1989 and 1996, union membership in mining fell from 48 to 20 per cent of employees (the largest fall in the country), and from 43 to 22 per cent in the construction industry.³⁴

Consequences of Legislative Privilege

What is the social benefit that makes granting special privileges for unions worth the costs? Any free-rider problem on benefits gained by unions for their members can be dealt with directly by member-specific arrangements: unions would thereby also be forced to provide benefits in excess of their costs. Indeed, that union amalgamations resulted in no efficiencies from reduction in officials is a function of the lack of competitive pressure between unions. This, and the fact that the fall in union membership since 1990 has resulted in cuts in clerical and administrative staff but a small increase in the number of officials,³⁵ are both indications of the lack of responsiveness, of a customer-service focus, that a culture of legislative privilege has created. Extending unions’ ability to exclude competitors allows them to impose costs in excess of their benefits.³⁶ As has been noted:

The system of union recognition adopted in Australia does have negative consequences for trade unions and their members. The system can devalue the importance of a wide and committed membership. Unions can gain recognition and widespread coverage through the processes of the system. When this is combined with the closed shop and procedural devices such as the check-off system it removes even the financial incentives to recruit and retain membership. This can create the indirect problem of union complacency.³⁷

But, the problem is rather worse than that:

An alternative way to state the issue is ... to point out that the current system places a level of trust in the union delegates that would be preposterous in any other business context: no contractual obligations, no auditors, no creditors, no fiduciary duties, and

THE COMPLEX ARRANGEMENTS OF EMPLOYEE ‘BENEFITS’ PRODUCED BY ARBITRATION AND REGULATION SIMPLY RE-ARRANGE THE RETURNS TO LABOUR

no competition for members either in the form of recruitment or in the form of alternative unions being able to attract away one's members.³⁸

To which one can add that, on past experience, any legislative privileges granted to unions are real, while legislative sanctions opened up against them rarely are.

If the re-regulation strategy is successful, it will also make unions even more politically-focused, since that will have proved to have been the path to increased membership. By contrast, a more clearly voluntary union movement is also a more legitimate union movement, and a union movement forced to be more responsive to its members. That re-regulation can be expected to retard employment growth and increase unemployment—thus increasing fiscal pressure on governments (see Appendix)—is also likely to reduce its long-term political attractiveness.

ism. Recent research into contemporary consumers found them to be fickle, unpredictable, anarchic and attention-deficient, Do It Yourself, self-willed and suspicious.³⁹ Anyone in business today can recognize that reality; former Victorian Premier Jeff Kennett can tell you about the political reality of it. The decline in union membership is another manifestation of it. It is not an appropriate use of regulation to attempt to find ways to herd self-willed consumers back into unions. The real point of the labour market re-regulation agenda (starting with the *Queensland Industrial Relations Act 1999*, recent attempted amendments to the New South Wales Act and the *Fair Employment Bill* in Victoria) that is now working its way around the States seems, nevertheless, to be just that: a political attempt to deliver protection to unions which are failing to provide adequate services for their cost. (The New Zealand *Employment Relations Act 2000* is part of the same agenda.)

The operation of the Western Australian labour market system is, more nearly than that in any other State, in tune with the realities of an increasingly knowledge-based economy and expanding individualism. As Gerald Garvey has written:

The alternative to an imperfect market is *not* an ideal set of 'centralised' arrangements. Rather, [a centralised system] is an imperfect system administered by people who do not and cannot fully comprehend particular circumstances that individual employers and employees face. Worse still, they do not, like the individuals involved, foot the bill for any errors they commit. The 'free choice' perspective does *not* need to maintain that employees are omniscient. All that is required is that they are better aware of their own interests and situation than the average IRC member ... collective representation can be appointed if parties feel they would gain from their expertise.⁴⁰

New Zealand Business Roundtable Executive Director Roger Kerr said recently in Canberra that 'geographically peripheral economies need to have better policy regimes than those that are at the centre of world markets',⁴¹ something that Western Australia, whose capital is the world's most isolated metropolis, needs particularly to keep in mind. Western Australia should not import another bad idea from the East Coast which, like the Deakin System itself and the union amalgamation strategy, serves East Coast interests more than Western Australian ones. Labour market re-regulation is just such a bad idea and should not be imported.

A PATH NOT TO BE TAKEN

Western Australia is the only State to legislate to ensure that people retain choice of superannuation funds. This is not only sound public policy—making it easier for

people to shift between superannuation funds is the most powerful single barrier against misuse of the capital accumulated in such funds (for example, to aid industrial campaigns)—but very much in tune with contemporary attitudes. The shift to individualism is not some ideological delusion, it is a broad social movement

founded in rising prosperity, expanding technological possibility and the shift to a services economy, aided by the patent failures of collectiv-

**THE SHIFT TO INDIVIDUALISM IS
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APPENDIX: THE RISE AND FALL OF THE DEAKIN SYSTEM⁴²

In the first Commonwealth elections of 1901, Western Australia was one of the half of the newly federating States—along with Tasmania and South Australia—that returned a majority of free trade supporters. The overwhelming success of the protectionists in Victoria, that the free traders failed to gain a majority of the vote in New South Wales, and the success of the anti-Kanak Labor vote in Queensland, meant that the protectionists were the largest force in the first Commonwealth Parliaments (though George Reid's free traders were to prove more able to maintain their electoral support than Barton and Deakin's protectionists, until the two groups eventually merged). Because of the Deakin Government's welfare agenda, and the natural linkage between protection and arbitration, the minority Labor Party supported the Deakin Government of 1905–08 which completed the formation of the 'Deakin system' of Trade Protection, Wage Arbitration, White Australia, State Paternalism (use of state provision) and Imperial Benevolence (reliance on 'great and powerful friends').

This public policy system—based on that operating in protectionist Victoria, even though Victoria had handled the economic depression of the 1890s much worse than free trade New South Wales⁴³—dominated Australian policy until the Whitlam Government of 1972–75 completed the formal abolition of the White Australia policy, cut tariffs by 25 per cent and, by greatly expanding the Australian welfare state, fatally undermined the Deakin structure.

Western Australia had developed a local arbitration system based on the New Zealand model in the late 1890s, but, unlike the Eastern colonies, had done so during a period of economic boom created from the gold rush of the period⁴⁴—the Western Australian workforce more than quadrupled from 1891 to 1901.⁴⁵ As a State with a small manufacturing sector and a comparatively large export-based mining sector, Western Australia was systematically disadvantaged by the Deakin system, which relied on transferring income from exporters (via regressive trade protection) to manufacturers and thence, via wage arbitration, to manufacturing workers, unions and employer associations.

Except for the period from 1945 to 1973, when full employment was common throughout the developed world, the Deakin system did not prove

conducive to full employment—unemployment frequently being around the five to six per cent level, and much higher during the Depression, when Australia had one of the highest unemployment rates in the world. Nor did it maximize economic growth—Australia fell steadily down the ranks of developed countries in income per head, despite, for example, having had a higher income per head than the US throughout the nineteenth century. Nor did it insulate Australia effectively from economic shocks—Australia suffered a deeper downturn during the Depression than almost any other developed economy, it performed poorly during and after the economic crisis triggered by the 1973 oil shock and was to suffer worse than comparable countries in the recessions of the early 1980s and early 1990s. The Deakin system did, however, have a strong set of interlocking interest groups supporting it and it did provide a clear framework for policy.

The combination of asset crash, oil shock and wage surge which hit during the Whitlam Government led to a steady decline in the employment/population ratio from 1974 to 1983. Unemployment became entrenched and mounted as Australia's policy settings and labour market institutions proved unable to adjust to the stresses.

The continuing expansion of the Australian welfare state, exacerbated by rising unemployment, led directly to a collapse in government saving, and was accompanied by a steady fall in private saving. This slide in national saving led to increased importing of capital to maintain investment—and even to fund welfare expenditure—leading to rising current account deficits, foreign ownership and foreign debt. The loss of government saving also led to more reliance on debt-funding of government business enterprises (GBEs).

The fiscal pressure resulting from the expanding welfare state (despite rising taxes) has been a major driver, arguably *the* major driver, of economic reform. As fiscal pressure mounted, seeking increased revenues from increased economic efficiency became more urgent. Political tolerance for mendicant industries waned. The role of industry increasingly became to generate the tax and other revenues to sustain the growing welfare state. High-cost government business enterprises could no longer be allowed to provide infrastructure or other services inefficiently. As expenditure and debt

liabilities mounted, the reduction of such liabilities through asset sales became far more attractive, particularly after various disasters in government (mis)management, such as Tricontinental and VEDC in Victoria, the State Bank (and other dud ventures) in South Australia, government tourism ventures in Northern Territory, and WA Inc. The result was the familiar range of microeconomic reform: corporatization and privatization (to increase income from GBEs; to reduce debt, other liabilities and costs, and to increase efficiency) and

deregulation and reductions in trade barriers (to increase economic efficiency).

Economic reform was the pragmatic response of policy makers to pressure unleashed by these changes after various alternatives—the Fraser Government's strategy of relying on resources booms to avoid hard decisions; the Cain–Kirner strategy of government as pump-primer; the aforementioned cases of using GBEs and public–private partnerships as drivers of economic activity—had failed disastrously.

ENDNOTES

- 1 The first part of this section is largely derived from Brendan McCarthy, 'Western Australia's Labour Market Reforms', *Agenda*, Vol. 2, No. 1, 1995, pages 105–112.
- 2 ABS Cat. No. 6310.0, various.
- 3 Commissioner for Workplace Agreements, *Annual Report 1998/99*, page 22.
- 4 Bailey, J., Berger, K., Horstman, R., and Fells, R., *The Management of Public Sector Labour Relations in Western Australia—an Overview*, AIRAANZ conference paper, 2000.
- 5 Unions should also not be surprised if attachment to one side of politics leads to advantages when that side is in power, and disadvantages when their thereby-designated 'enemies' are in power.
- 6 Fielding, G.L., *The Evolving Role of Institutions—Institutional Reform: Gimmickry or a Necessity?*, paper delivered to the Industrial Relations Society of Australia, 1999 National Convention, Fremantle, Western Australia, 22 October 1999, pages 5–6.
- 7 *Ibid.*, page 6.
- 8 *Ibid.*, page 4.
- 9 Bailey, J., and Horstman, B., 'Life Is Full of Choices': *Industrial Relations 'Reform' in Western Australia since 1993*, AIRAANZ conference paper, 2000.
- 10 *Ibid.*
- 11 Berger, K., *Workplace and Enterprise Agreements in the Western Australian Public Sector: Some Preliminary Findings*, AIRAANZ conference paper, 2000.
- 12 Mulvey, C., *Workplace Agreements*, unpublished paper.
- 13 ABS, *Australia at a Glance, 2000*; *Labour Statistics at a Glance, 2000*; *Western Australia at a Glance, 1999*.
- 14 Mulvey, *op. cit.*, 1995–96 Survey of 16 employers, Centre for Labour Market Research.
- 15 *Ibid.*
- 16 Information from private discussions.
- 17 *Managerial leadership in the workplace*, World Competitive Practices report for the BCA, September 2000.
- 18 See, for example, Bailey, J., and Horstman, B., 'Life Is Full of Choices': *Industrial Relations 'Reform' in Western Australia since 1993*, AIRAANZ conference paper, 2000.
- 19 Garibaldi, P., and Mauro, P., *Deconstructing Job Creation*, IMF Working Paper, August 1999.
- 20 Preston, A.C., *The Hayekian Paradigm: Some Distributional Consequences*, AIRAANZ conference paper, 2000.
- 21 Mulvey, *op. cit.*
- 22 A comment made particularly forcefully by Helen Hughes in her speaking and writing on unemployment.
- 23 Garvey, G., in *Working Relations: A Fresh Start for Australian Business*, BCA, 1993, page 283.
- 24 This, coupled with the fact that registered vacancies are outnumbered by jobseekers, is strong evidence that there is no implicit or explicit 'bidders' cartel' of employers (since a real bidders' cartel would have more vacancies than job seekers, as the cartel would 'ration' access to work) (Garvey, page 267). For further discussion of the problems with the theory of general unequal bargaining power, see Business Roundtable of New Zealand, *Submission on Employment Relations Act*, paragraphs 5.8 to 5.19 available at http://www.nzbr.org.nz/documents/submissions/submissions-2000/submission_on_the_employment_relations.doc.htm.

- 25 Patrick, Aaron, "Australian workers 'least loyal on earth'", *Australian Financial Review*, 20 September 2000, page 3.
- 26 Brosnan, P., and Walsh, P., *Why Are New Zealand Unions Stronger at the Workplace under the Employment Contracts Act than Australian Unions under the Accord?*, AIRAANZ conference paper, 1997.
- 27 Bramble, T., and Sparrow, J., *Explaining the Growth of Australia's Trade Union Officialdom since the 1960s*, AIRAANZ conference paper, 2000.
- 28 Campaign activity (number one), wages policy (number three) and dealing with a changing labour market (number four) also come before maintaining relevance with members, which is followed by 'international unity'. This is not an ordering which grasps unions' essential problem—ordinary workers don't think the cost of union membership is worth the benefits received. It is an ordering which makes sense in terms of 'official capture' of unions, however.
- 29 Bailey and Horstmann, *op. cit.*
- 30 Mulvey, *op. cit.*
- 31 'Warning of fall in union numbers', *The Australian*, 31 July 2000.
- 32 Boxall and Haynes, quoted in Garvey, *op. cit.*, page 326. The *Employment Contracts Act* has since been replaced by the *Employment Relations Act*: New Zealand Finance Minister Michael Cullen claimed recently that 'the Employment Relations Act maintains a labour market which is lightly regulated by the standards of the developed world, and by Australian standards' (*Financial Review*, 21 September 2000). The claim is highly debatable: that the Minister thought it apposite to make it is revealing.
- 33 World Competitive Practices, *op. cit.*
- 34 Bailey and Horstmann, *op. cit.*, using unpublished ABS statistics.
- 35 Brambles and Sparrow, *op. cit.*
- 36 Garvey, *op. cit.*, page 325.
- 37 Bennett, quoted in *ibid.*, page 326.
- 38 *Ibid.*, page 326.
- 39 Research by Susan Stancombe quoted by Greg Daniel in an address to National Party Federal Convention 2000.
- 40 Garvey, *op. cit.*, page 343.
- 41 Speech to the Society of Modest Members, 29 June 2000 available at http://www.nzbr.org.nz/documents/speeches/speeches-2000/chequered_path_of_economic_reform_aus.doc.htm.
- 42 Warby, M., and Nahan, M., *From Workfare State to Transfer State: Where We Were and Why We've Changed*, IPA Backgrounder, August 1998. Warby, M., *After Whitlam: George Reid's revenge and the Fall of the Deakinite Settlement*, an address to the 20th H.R. Nicholls Conference, 28 August 1999 available at <http://www.hrnicholls.com.au/nicholls/nichvo20/Warby99.html>.
- 43 From 1891 to 1901, the Australian workforce grew by 23 per cent, the New South Wales by 24 per cent while the Victorian grew only by eight per cent, with the Victorian male workforce actually declining by one per cent. Vamplew, W., (ed.), *Australians: Historical Statistics*, Fairfax, Syme and Weldon Associates, 1987, page 147.
- 44 Treuren, G., *Establishing Arbitration During Prosperity: Western Australia's Different Path to Employment Regulation, 1893–1900*, AIRAANZ conference paper, 2000.
- 45 Vamplew, *op. cit.*, page 147. Many of the new arrivals came from Depression-devastated Victoria.

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