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Assessing the Impact of the Workplace Relations Act From 1996 to 2004: Increasing Flexibility or Decreasing Collectivism?

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Ann Hodgkinson and Raymond Markey

Abstract

This paper tests the impact of the Workplace Relations Act 1996 (WRA) by looking at changes in the behaviour of a panel of workplaces in the Illawarra Region of NSW between 1996 and 2004. The results support the proposition that the major impact has been on the level of unionisation and union density in these workplaces. There was virtually no expansion in the use of enterprise bargaining or AWAs, although there was a small but significant increase in non-union agreement making. Rather than encourage the use of single jurisdictions to register awards and collective agreements, in the Illawarra at least, there was a strong trend to dual State and Federal jurisdictions. Thus the WRA has been relatively ineffective in achieving flexibility and decentralised employee relations goals but has resulted in a high level of decollectivisation.

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Introduction

The Commonwealth Workplace Relations Act 1996, introduced by the incoming Liberal/National Party Coalition Government, became effective in 1997. Originally expected to involve a substantial shift in Australian industrial relations, Senate amendments greatly reduced the more radical elements in the new Act. Further attempts in 2000 and 2001 to amend the Act were also defeated in the Senate. Consequently, the industrial relations environment between 1997 and 2005 has only been a partial reflection of the directions intended by the Howard Coalition Government.

Perhaps because of this, there has been some debate as to the exact purpose of this Act. Vernon Winley from the Business Council of Australia writing in the *Australian Bulletin of Labour* (1997:82) saw it as a means of providing a more enterprise-focused approach to employee relations that would allow Australian businesses to respond more effectively to international competition, that is to foster increased and more innovative uses of enterprise bargaining. As well as this decentralisation of employee relations, it was to introduce decollectivisation in the form of individual contracts or Australian Workplace Agreements. Thirdly, it was hoped that it would enable workplaces to avoid the costs of operating in duplicate systems by moving entirely into either State or the Federal jurisdiction.

Others, such as Lee and Peetz (1998:5), had a more critical view, arguing that "the objective of the Act may be to provide a framework for cooperative workplace relations, but the purpose is to weaken unions …." Deery and Mitchell (1999), quoted in Riley (2003:151), reiterated this position arguing that the agenda since 1997 can be described as "individualism and union exclusion".

It is now some eight years since the Workplace Relations Act (WRA) became operative and the Coalition Government, now with control of the Senate, is at last in a position to introduce its preferred framework for industrial relations in Australia. New initiatives involving overriding State legislation to enforce a single Federal system, expand the use of individual agreements, and reduce the number of allowable conditions under awards have been mooted under its *WorkChoices* proposals. This is thus an opportune time to examine the extent to which competing objectives of the original Act have been achieved before the environment is affected by new amendments. As no full-scale industrial relations survey has been conducted since the Australian Workplace Industrial Relations Survey in 1995 (AWIRS95), a full testing of its impact is not possible.

However, in conjunction with AWIRS95, a regional study was conducted in the Illawarra region of NSW, the Illawarra Regional Workplace Industrial Relations Survey or IRWIRS96. A small scale follow-up of that study was undertaken in 2004, which duplicated some of the original questions. Using that data, and particularly results from a subset of those firms that were included in both the 1996 and 2004 samples, some indications of the impact of the WRA can be made in terms of the spread of enterprise bargaining, use of non-union and individual bargaining, union density and jurisdictional choice. The results of that panel study are presented below.

Changes in National and Regional Industrial Relations Environment, 1996 -2004

Two main features of the industrial relations environment require consideration: the regulatory environment created through legislation, and the economic environment. These are considered in turn below.

The WRA provided a framework that could facilitate a shift of industrial power towards employers, by encouraging more direct negotiation between employees and employers, bypassing union intermediaries. The main features of the WRA included:

- significant limitation of the matters about which the Australian Industrial Relations Commission may make awards to twenty 'allowable matters' under normal circumstances;
- certified agreements of a collective nature may be between a business or corporation and a union (S170LJ), or a non-union agreement between a corporation and its employees (170LK);
- introduction of Australian Workplace Agreements (AWAs) between individual employers and individual employees;
- lodgement of AWAs with the new Employment Advocate;
- no longer is there a need to be a federal award respondent to access any of the above agreements or otherwise participate in the Act ;
- exclusion of unions from the processes of AWA ratification;
- provision for registration of enterprise unions;
- some increased restrictions on right of entry of union officials to workplaces;
- introduction of protected industrial action by employers or employees during bargaining periods, whilst introducing penalties for 'unprotected' action during the period of agreements;
- strengthening of provisions against secondary boycotts; and
- abolition of the Australian Industrial Court.

These aspects of the WRA have been responsible for, or at least complemented, a major restructuring of the industrial relations system in Australia. Almost 40 per cent of the workforce now have their wages and conditions determined principally by collective enterprise agreements, with awards providing a minimum set of standards, which are the basis for the 'no disadvantage test' applied by the AIRC for certifying collective agreements. Awards also provide a 'social safety net' more broadly, as the sole basis of wages and conditions for about a fifth of the workforce, principally the low-paid and non-unionised (Watts and Mitchell 2004). On this basis, the ACTU periodically submits applications to the AIRC for increases in award minimum wages. AWAs have been vigorously promoted by the federal government and Employment Advocate. In some cases they have been used by employers as a means of undercutting union collective agreements, but they have only been taken up by employers employing 2 per cent of the workforce, with about 38 per cent of the workforce covered by unregistered individual agreements (ABS 2002; Sheldon and Thornthwaite 2001; Watts and Mitchell 2004). In terms of industrial relations processes, there has been a growth in litigation of disputes through ordinary courts (Frazer 1997, 1998 and 1999; Catanzariti and Shariff 2001 and 2002; Catanzariti, Shariff and Brown 2003; Sheldon and Thornthwaite 2001), and a rapid increase in employers' use of the lockout (Briggs 2004; Sheldon and Thornthwaite 2001, 2002).

The industrial relations actors also have been affected significantly by the WRA. Trade union membership, which accounted for over 50 per cent of the workforce in the mid 1970s and still 40 per cent in the early 1990s (Sadler and Fagan 2004), has continued to decline since 1996, to 23 per cent of the Australian workforce in 2004, and only 18 per cent of the private sector workforce (ABS 2004). Although this decline has been the result of a number of structural factors, David Peetz has demonstrated that the restrictions imposed by the WRA have contributed significantly to the continuing decline of union membership post-1996 (Peetz 1998). Recent statistics for membership of employer associations are less readily available. However, employer association membership fell between 1990 and 1995, particularly in the private sector, from 82 to 74 per cent of workplaces, according to AWIRS (Morehead *et al.* 1997: 89). Membership might be expected to have declined further because of the new regime of enterprise bargaining. In Britain after industrial relations reform during the 1980s encouraged a shift from industry level to enterprise bargaining, employer associations have 'suffered widespread decline' (Sheldon and Thornthwaite 1999: 213). In New Zealand after the 1991 Employment Contracts Act largely eliminated multi-employer bargaining, industry-based associations virtually disappeared. In Australia it seems that employer associations have declined since 1996, and that there is greater competition amongst them for employer support. At least some Australian organisations, such as the Association of Employers of Waterfront Labour, have disappeared altogether. There also is evidence that the role of employer associations, and the services they provide members, have changed since 1996. For example, many associations now offer enterprise bargaining support and a greater range of technical services to their members, often on a fee for service basis (Sheldon and Thornthwaite 1999: 73, 201, 218; Bell 1994).

At the same time, the NSW industrial relations legislation moved in the opposite direction to the federal WRA, in confirming the roles of awards, the NSW Industrial Relations Commission and unions. The NSW system, which retains significant coverage in that State, does not restrict industrial action in the way that the WRA does, and has no equivalent of AWAs. It might be expected that unions would favour remaining in the State system, whereas some employers would favour the WRA. This may impact upon the distribution of State and federal award and agreement coverage in the Illawarra.

The other major determinant of the industrial relations environment is the state of the economy, and particularly the labour market. At a national level the economic environment has not changed significantly since AWIRS95. Growth in national GDP slowed marginally while employment increased. However, there was a significant fall in interest rates whilst inflation and unemployment rates declined[1]. Generally this indicated a buoyant economy. At the regional level, the Illawarra economy was performing poorly compared to national conditions in 1996/7, when IRWIRS96 was conducted, with falling trade conditions for many firms, stagnation in key sectors, and declining employment and consumer spending. The rate of unemployment was significantly higher in the Illawarra, at 13.5 per cent (Markey *et al.* 2001: 11-12).

[1] Annual growth in real GDP slowed from 4.1% in 1994-95 to 3.6% in 2003-4. Unemployment fell to 5.8%, the lowest since 1976-77. The CPI increased by 3.2% in 1994-95 and 2.4% in 2003-04 (Treasury 2004(a), 2004(b)). Interest rates (90 day bill rate) declined from over seven percent in 1995 to just under five and half percent by the end of 2004 (Reserve Bank of Australia 2005).

Since 1997, the regional economy has become far more buoyant and unemployment has declined, to 6.4 per cent in the Wollongong Local Government Area (LGA) in March 2002. However, unemployment rose again, to 9.1 per cent in Wollongong, 8.6 per cent in Shellharbour, and 8.8 per cent in Shoalhaven LGAs in March 2004. Unemployment remains higher than the national average of 6.6 per cent, and for NSW at 6.0 per cent (IRIS Research 2004: 7-8).

Improvements in economic conditions at the national and regional level might be expected to lead to increased industrial action. However, as shown above, there has been steady economic growth over the past ten years without any major disruptions to the downward trend in industrial activity indicators. Thus, with strike indicators such as working days lost at historically low levels, it is clear that changes in the regulatory environment, as briefly outlined above, are more likely to produce the greatest impacts upon the pattern of industrial relations in the current era (Hodgkinson and Perera 2004).

Methodology

In order to identify elements of regional industrial relations change, a survey of Illawarra workplaces was conducted in May/June 2004, IRWIRS 2004, to compare with the earlier IRWIRS96. A range of questions were selected that could identify the impact of the regulatory system upon the nature of the industrial relations system and the state of the parties to it. The survey data sought for comparison between 1996 and 2004 related to the following issues:

- employer association membership and types of services used;
- trade union membership, number of unions, and delegate presence;
- incidence of direct forms of employee participation (such as teamwork and quality circles);
- incidence of indirect or representative forms of employee participation other than unions;
- payment systems, including incidence of awards, certified enterprise agreements, AWAs, and informal agreements;
- workforce reductions; and
- industrial action.

The 2004 questionnaire was directed towards employee relations managers, as with the main component of IRWIRS96, and the specific questions concerning the issues listed above were identical between the two surveys. However, the 2004 survey was shorter than IRWIRS96, and unlike the original survey the 2004 version was conducted by telephone rather than face-to-face interview. An initial comparison of the results from the two surveys was developed (Hodgkinson and Markey 2005).

The 2004 survey covered 212 workplaces drawn from the same population as the 1996 survey, which covered 194 workplaces representing 25 per cent of all workplaces in the region with 20 or more employees. The 2004 workplaces employed just under 20,000 people, with an average employment size of 92. Firms in the database from which the sample was drawn all employed 20 or more employees in 1996. However, some of the firms had downsized or restructured into separate units in the intervening eight years, such that 17 per cent are now classified as small (less

than 20 employees). In addition, the 2004 sample had a higher proportion of manufacturing firms than the 1996 sample. As a consequence, the 2004 sample contained more of the larger firms than in 1996.

These differences in the structures of the two samples raised some concerns that the reported changes in behaviour in the initial comparison might be due to sample characteristics rather than true responses to the elements of the Workplace Relations Act. Consequently, a panel data set of 89 firms was extracted from the two surveys comprising firms which were included in both surveys. A similar analysis of changes in behaviour since the introduction of this Act was conducted. In this case we can be confident that we are recording true changes, rather than structural sample differences. However, the behaviour changes shown by the panel dataset were in most cases similar to those found between the two whole samples, confirming the results originally presented. The only significant difference was that the firms in the panel dataset had a higher proportion of union presence in 2004, and a higher proportion of workplaces with union delegates in both 1996 and 2004, than the full sample dataset. The 1996 and 2004 mean results from the panel data set and the full samples for all 2004 variables are shown in Appendix A.

Results

Based on the foregoing discussion of the intentions of the Workplace Relations Act 1996, a number of hypotheses regarding expected firm behaviour have been developed. These are tested using statistical tests including a test of significant differences in proportions for matched variables, prior to and after the introduction of the WRA (two related samples McNemar Test or Matched samples T-test), and the Kolmogorov-Smirnov z – test or the Mann-Whitney test, which tests whether the panel dataset has similar characteristics to the full sample database. These results are presented in Table 1 and discussed below.

Hypothesis 1: That the use of awards declined after the introduction of the WRA.

As noted in Appendix A, the proportion of panel firms with awards was 96.6 per cent in 1996 and 95.7 per cent in 2004. In the sample as a whole, the proportion fell from 98 per cent to 94 per cent over the same time period. As shown in Table 1, there has been no significant decline in the number of panel workplaces with awards since the introduction of the WRA. Further, the z-test indicates that this result is typical of the sample as a whole. Awards remained the basis of the industrial relations system in the Illawarra under the WRA.

Hypothesis 2: That there has been a growth in the use of (a) certified collective enterprise agreements, and (b) non-certified enterprise agreements since the introduction of the WRA.

Both these hypotheses can be rejected. There has been no increase in the proportion of workplaces with collective enterprise agreements since the WRA. The percentage of workplaces with certified enterprise agreements in the panel dataset fell slightly from 43.8 per cent to 43.0 per cent. Thus it appears that by 1996, those firms which wanted enterprise agreements had already established them under the provisions of

the earlier Industrial Relations Reform Act of 1993. The changes to encourage enterprise bargaining in the WRA had no impact on the decision of firms to move to these agreements. Further, there was only a marginal increase in the proportion of workplaces in the panel dataset with non-certified collective agreements from 24 per cent to 26 percent. Neither of these changes was statistically significant, indicating that the WRA had no impact on the decision to move to enterprise agreements as a means of determining wages and conditions. The z – test results indicate that this was true of the sample as a whole. However, the average number of certified agreements in these workplaces rose from 2.9 to 5.7, although the high variability in the data indicated that this change was not significant.

The WRA encouraged firms to bargain directly with their employers, rather than through a union (Buchanan *et al*. 1998). There was some evidence that this strategy had been successful. In 1996, there was a significant difference between having a certified enterprise agreement if there was a union in the workplace (37% of all firms) and having one if there was no union (7% of all firms). By 2004, there was no significant difference with the proportion of unionised workplaces with enterprise agreements dropping to 29 per cent and the proportion of non-union workplaces with enterprise agreements rising to 14 per cent. There was no significant difference between having a non-certified collective agreement or not by union status of the workplace in either year. Thus there is some indication that workplaces using enterprise agreements have increased their usage under the WRA, and also that some non-union negotiated enterprise agreements are in place, although the proportion of workplaces where this is occurring is not high.

Hypothesis 3: Increased use of Australian Workplace Agreements (AWAs).

AWAs were intended to be the main mechanism within the WRA to achieve non-union agreements (Rimmer 1997). This hypothesis cannot be tested statistically as there were no provisions for individual registered agreements prior to the WRA. However, only 1.1 per cent of workplaces in the panel dataset had AWAs in 2004. This is below the national average of 2 per cent (ABS 2002). Thus this proposition can be rejected, in that eight years after the operation of the WRA, little use was being made of AWAs in the Illawarra. The z – test results indicate that this finding was true of the sample as a whole.

Hypothesis 4: That there has been a decline in (a) number of unionised workplaces[2] and in (b) union density.

It has been argued that the real purpose of the WRA was to weaken unions through a range of provisions that lessened their powers to operate and affect their financial viability (Lee and Peetz 1998). However, another perspective is that the decline in membership is a response to members' dissatisfaction with the performance of unions (Costa 1997). Whatever the reason, the decline in union membership within the Australian workforce has been repeated in the Illawarra. Thus, both these hypotheses are accepted.

[2] Defined as in AWIRS95 as workplaces with at least one union member.

There was a decline in union density in the workforces of firms in the panel dataset from 66 per cent in 1996 to 43 per cent in 2004, compared with a decline to 39 per cent for the total sample. Average employment in these firms remained relatively constant at 91-92 employees. However, the average number of unionists fell from 84 to 39 in these workplaces. This decline in union density, which reflects the trend throughout the Australian workforce, was associated with a decline in the proportion of unionised workplaces from 74 per cent in 1996 to 61 per cent in 2004. Moreover, an even larger decline occurred in the sample as a whole from 74 per cent in 1996 to 51 per cent in 2004. The average number of unions per workplace fell from 2.3 to 1.9 over the same period. These differences indicate that the panel dataset firms were significantly different from the others in the sample, containing a higher proportion of union workplaces and members. The relevance of this finding is discussed below.

Further analysis of this fall in union density demonstrates that the majority of the decline in union membership occurred in the private sector. Average union membership fell from 49 to 30 per cent in private workplaces, and from 65 to 53 per cent in public workplaces. There was no significant change in the proportion of union members in mining and manufacturing workplaces, although it did fall from 51 to 43 per cent. The fall in public service workplaces from 62 to 48 per cent was also not significant. However, there was a highly significant drop in union density in private sector service industry workplaces from 50 per cent in 1996 to 29 per cent in 2004.

Hypothesis 5: That there has been a decline in union delegate presence and in the number of delegates in workplaces.

The proportion of workplaces with a union delegate presence decreased very marginally from 53 per cent to 52 per cent in the panel dataset firms. For the samples as a whole, it dropped from 47 per cent to 39 per cent of workplaces. However, the average number of delegates in workplaces that did have delegates rose from 2.5 in 1996 to 3.3 in 2004, although this change was not statistically significant. Thus this hypothesis is rejected. The incidence of union delegates in workplaces remained generally stable in the panel dataset between 1996 and 2004. However, the z – test results indicate that this finding was not true of the full survey database. There the drop in union presence was paralleled by a drop in union delegate presence.

Table 1: Results of Hypotheses Tests

Hypothesis	Panel Data only (*p* value[1] And Outcome)	Test of Independence between Panel and Rest of sample[2] and Outcome
1. Decline in use of awards	.254 Not supported	.557 No difference in results
2(a). Growth in certified enterprise agreements	.500 Not supported	.254 No difference in results
2(b). Growth in non-certified enterprise agreements	.430 Not supported	.409 No difference in results
3. Increased use of AWAs	n.a. Not supported	1.00 No difference in results
4(a). Decline in proportion of unionised workplaces	.002** Supported	.009** Panel results different
4 (b). Decline in union density	.000*** [see note 1] Supported	.001*** [see note 2] Panel results different
5(a). Decline in delegate presence	1.000 Not supported	.004** Panel results different
5(b) decline in number of delegates	.795 [see note 1] Not supported	.120 [see note 2] No difference in results
6. Decline in industrial action past twelve months	.000*** Supported	.463 No difference in results
7. Increased use of lock-out powers	n.a. Not supported	1.000 No difference in results
8. Decline in membership of employer associations	.008** Supported	1.00 No difference in results
9(a). Drop in State Award jurisdiction	.054** Supported	.203 No difference in results
9(b). Increase in Federal Award jurisdiction	.593 Not supported	.690 No difference in results
9(c). Increase of awards in both jurisdictions	.054** Supported	.101 No difference in results
9(d). Decline in agreements in State jurisdiction	.084 Not supported [wrong sign, agreements in State jurisdiction increased]	.824 No difference in results
9(e). Iincrease in agreements in Federal jurisdiction	.006** Not supported [wrong sign, agreements in Federal jurisdiction decreased]	.781 No difference in results
9(f). Increase in agreements in both jurisdictions	.133 Not supported	1.000 No difference in results

1 Significance measured by McNemar test due to qualitative (binary) data.
2 Significance measured by Two Sample Kolmogorov-Smirnov z-test
Note 1: Significance measured by Matched Samples T-test method as quantitative data available.
Note 2: Independence of samples measured by Mann-Whitney test as quantitative data available.
*** Significant at 99 per cent confidence level
** Significant at 95 per cent confidence level

This observation generates a further hypothesis that union presence did not decline in workplaces which had delegates in 1996. This hypothesis can be accepted, with a highly significant relationship between having a delegate in the workplace in 1996 and still having a trade union in that workplace in 2004. Of those workplaces that did have a trade union in 1996, 86 per cent that also had delegates in 1996 still had a trade union in 2004. Of workplaces which had a union in 1996 but no delegate, only 59 per cent still had a union, while 41 per cent no longer had a union. Thus the decline in union presence in the firms in the panel dataset is clearly more prevalent in workplaces with no delegate structure in place. This result clearly supports the 'organising strategy' approach of the trade union movement to the pressures against unionism in the WRA (ACTU 2003) and confirms previously recognised patterns (Peetz 1998:48-9, 115-16)

Hypothesis 6: That there has been a decline in industrial action.

This hypothesis is accepted. The proportion of workplaces in the panel dataset that had industrial action in the twelve months prior to each survey fell from 27 per cent in 1996 to 19 per cent in 2004. For the complete survey database, the decline was very similar being from 26 per cent to 17 per cent. As shown in Appendix A, declines occurred in strikes, stop-work meetings and picketing. However, there was an increased incidence of over-time bans, work-to-rule and go-slow actions. The decline in industrial disputes would appear to reflect the influence of the provisions in the WRA constraining standard strike action to 'protected periods' during enterprise bargaining, although even work-to-rule and go-slow actions are covered by the general constraints on industrial action under the WRA. Their increase may reflect the influence of the State jurisdiction, discussed below, since there are fewer restraints on industrial action in the State jurisdiction. An analysis of types of industrial action by whether or not the workplace had a certified enterprise agreement, did not show significant differences in the incidence of each type of industrial action. This indicates that industrial action can occur regardless of the type of payments system in place. A further analysis did find significant relationships between all forms of industrial action except 'go-slows' with whether the workplace was unionised or not. No industrial action occurred in any non-unionised workplace in the 2004 panel dataset firms.

Hypothesis 7: That there was an increased use of 'lock-outs'.

The WRA allowed firms to lock-out workers during protected bargaining periods, as well as permitting strike action. However, no lock-outs occurred in the panel dataset workplaces in the twelve months before the 2004 survey, nor were any recorded in the 1996 survey. Thus this hypothesis is rejected indicating that lock-outs are not a normally negotiating mechanism in the Illawarra. The z–test indicates that this finding was also true of the full survey database. Nevertheless, they have been used in the past, the Joy Manufacturing case being a celebrated early use of this device in the Illawarra (Ellem, 2001).

Hypothesis 8: That membership of employer associations declined.

This hypothesis is accepted. The proportion of workplaces that were members of employer associations was 76 per cent in 1996, and this dropped to 59 per cent by 2004. For the sample as a whole, membership dropped from 73 per cent to 59 per cent in these years. This drop in membership was statistically significant. The drop in membership does not seem to be associated with trade union presence in the workplace. In 1996 firms were significantly more likely to be a member of an employer association if there was no union in their workplace. In 2004 no significant relationship existed between the two. The z–test result indicates that the drop in employer association membership was also found in the sample as a whole.

As shown in Appendix A, the only employer association service to experience a relative drop in usage was advice on awards and agreements, although this change was not statistically significant. Usage of other services increased. Those where there was a significant change were: advice when management negotiating with unions; representation when negotiating with unions; representation at industrial tribunals; advice on EEO/AA issues; advice on OH&S issues; and legal advice. This indicates that employer association services are being used relatively more often for complex union negotiations and regulated matters.

Hypothesis 9: That there has been a movement towards Federal jurisdiction for awards and collective agreements.

The introduction of enterprise bargaining, which was argued in terms of the need to provide flexibility to meet the pressures of global competition, was associated with an increase in the role of federal bargaining structures. This role was strengthened with the introduction of individual bargaining structures in the WRA (Sadler and Fagan 2004, Winley 1997). Given this strengthening of the role of federal institutions over time, a shift from state to federal jurisdiction for both awards and collective agreements could be expected. There was a drop from 1996 to 2004 in the proportion of workplaces that only had State awards from 60 per cent to 54 per cent in the panel dataset firms. The corresponding drop for the samples as a whole was from 63 per cent to 51 per cent. This change was statistically significant. There was no change in the proportion of panel dataset firms having awards only in the federal jurisdiction. The proportion of workplaces with only federal awards in the samples as a whole declined from 22 per cent in 1996 to 15 per cent in 2004. However, there was a significant increase in the proportion of firms in the panel dataset with awards in both jurisdictions, rising from 17 per cent in 1996 to 27 per cent in 2004. The corresponding movement in the samples as a whole was from 13 per cent to 35 per cent over these years. Thus, while the state jurisdiction remained the dominant area for registration of awards, a movement to also register awards in the federal jurisdiction can be seen, indicating that the WRA has had an influence in this area, and the hypothesis can be accepted.

However, there was an increase in the proportion of firms which had their certified collective agreements only registered in the State jurisdiction, rising from 36 per cent in 1996 to 58 per cent in 2004. This change was statistically significant. There was also a substantial drop in the proportion of firms who had their certified agreements

only registered in the federal jurisdiction, from 46 per cent to 18 per cent in 2004. Again, this change was statistically significant. The proportion of firms which had agreements registered in both jurisdictions rose from 18 per cent to 25 per cent. However, this change was not statistically significant. All these results are applicable to both sets of firms. Thus, not only has the WRA not been associated with a change of jurisdiction in the registration of agreements towards the federal system, but there has actually been a significant movement away from the federal jurisdiction to the NSW State system. Thus this hypothesis is rejected.

Hypothesis 10: That there has been an increase in the use of direct participation methods (team building, semi-autonomous work groups, total quality management and quality circles) but no increase in the use of indirect participation methods (JCCs, taskforces and ad hoc committees).

Direct involvement or participation entails the employee in job or task-orientated decision making in the production process or other business activities. These techniques have been associated with increased flexibility and organisational efficiency, and consequently they have become popular in recent years (Markey 2001). Teamwork is the most rudimentary form of direct participation. Semi or fully autonomous work groups refer to the degree of decision-making undertaken by teams, and total quality management (TQM) refers to workplaces organised entirely on a team basis. Quality circles are problem-solving groups. IRWIRS96 found that the incidence of these techniques was similar to Australia generally, except that semi or fully autonomous work groups were less common in the Illawarra, and TQM and quality circles were a little more common than for Australia as a whole (Markey *et al.* 2001: 211-12; Morehead *et al*. 1997: 187-90).

Indirect involvement relates to mechanisms where employees participate in decision making through elected or appointed representatives on committees or boards. Generally, consultative committees do not bargain over wages, but may have jurisdiction over a wide range of conditions. Committees tend to be more common in public sector workplaces, those that are unionised, larger workplaces and those in the manufacturing, transport and storage and education sectors (Markey *et al.* 2001: 215).

As shown in Appendix A, there was increased use of all direct participation methods in the panel dataset firms. This was paralleled by similar increases in all methods in the samples as a whole between 1996 and 2004. These changes were strongly significant for team building, semi-autonomous working groups and quality circles. The change was not significant for Total Quality Management. However, again as shown in Appendix A, the use of indirect participation methods also increased over the 1996 – 2004 time period. These changes were equally as significant as those occurring in the direct methods. These results are shown in Table 2. Thus while there has been an increased usage of participation methods in the Illawarra, there is no evidence of a movement towards direct methods away from indirect methods, which are more often associated with union participation (Markey *et al*. 2001:215*)*. Further, the z – test results indicate that these findings are also applicable to the full survey database firms.

Table 2: Changes in Use of Direct and Indirect Participation Methods in Illawarra

Hypothesis 10	Panel Data only (*p* value[1] And Outcome)	Test of Independence between Panel and Rest of sample[2] and Outcome
Direct Participation Methods		
Use of Team Building increased	.000*** Supported	1.000 No difference in results
Use of Semi-autonomous Work Groups increased	.000*** Supported	1.000 No difference in results
Use of Total Quality Management increased	.212 Not supported	.401 No difference in results
Use of Quality Circles increased	.000*** Supported	.889 No difference in results
Indirect Participation Methods		
No significant increase in use of Joint Consultative Committees(JCC)	.000*** Not supported	.124 No difference in results
No significant increase in use of Taskforces and Ad Hoc Committees	.022** Not supported	.566 No difference in results

1 Significance measured by McNemar Test
2 Significance measured by two sample Kolmogorov-Smirnov z–test.
*** Significant at 99 per cent confidence level
** Significant at 95 per cent confidence level

Broader Application of Panel Results

The results from the Kolmogorov-Smirnov z–tests indicate that the panel dataset firms only differed from the rest of the sample in one particular set of characteristics. They had a higher proportion of workplaces with a union presence, higher union density and higher union delegate presence in their workplaces than the rest of the sample. This stronger union presence may have eventuated from the situation where the panel firms are possibly older than those in the full sample, having all been in existence in 1996. As such, they may be more representative of the 'old' industrial environment of the Illawarra (Markey *et al*. 2001:9).

This stronger union presence in the panel dataset could result in these firms being less able to move in the ways intended by the WRA due to organised workforce resistance. Thus, for example, the increase in enterprise agreements registered in the State jurisdiction, and the decline in registration in the federal jurisdiction may be the result of union power forcing employers to agree to move into a judicial system that is considered to be more supportive of union negotiations. The low take-up of AWAs could be similarly explained. However, the z – test results indicate that these findings are common for the rest of the sample database firms, which have lower union presence, lower union density and lower delegate presence in their workplaces. Thus

the choice of State jurisdiction for the registration of enterprise agreements does not seem to be influenced by union presence in the workplace. This result is confirmed through cross-tabulation analysis. For both the panel dataset and the full survey database firms, there was no significant difference on whether firms used only the state jurisdiction for enterprise agreements as to whether they had a trade union or not. Indeed, those firms with no union in both sets had a higher propensity to use only the State system, while those with unions had a slightly higher use of either the federal only or registration in both systems.[3]

Overall, it has been demonstrated that the trends shown in the panel dataset firms are typical of those of the 2004 survey firms as a whole, and by inference, of the population of Illawarra medium and large sized firms as a whole. The question of whether the Illawarra findings can be extended to the rest of New South Wales and Australia can only be speculated upon, as no comparable database of post-AWIRS behaviours are available for these larger geographic areas. Markey *et al*. (2001:394-397) concluded that the Illawarra had a distinctive regional industrial relations environment in 1996. However, Hodgkinson and Markey (2005) argued, based on a comparison of the full 2004 survey database outcomes with those of IRWIRS96 and AWIRS95, that much of this distinctiveness had now diminished. If this is the case, then these results at least provide some indications of how state and national behaviours have moved in response to the Workplace Relations Act.

Conclusion

The results from this study tend to support the hypothesis that the main impact of the Workplace Relations Act 1996 to date has been on union presence and density rather than on any change in the payments systems towards either enterprise bargaining or individual contracts or a movement to single jurisdictions for the registration of awards or agreements.

Substantial declines in the proportion of unionised workplaces and union workforce density were recorded in the Illawarra, which parallels declines in the rest of Australia. This occurred even though the Illawarra can be considered a traditional industrial region and hence a stronghold for union activity. Much of this decline occurred in private service sector workplaces. Encouragingly for unions perhaps, the results support their 'organising strategy' approach with workplaces that had a delegate presence in 1996 much less likely to lose their union presence than those that did not. There was some indication that the protected action restrictions of the WRA had affected the type of industrial actions that were occurring with a move to less overt methods.

There was no significant move towards enterprise bargaining and away from Award based systems to determine pay and conditions with the operation of the WRA. This suggests that if the intention of further reducing the number of issues that can be

[3] Of workplaces with agreements, for the panel dataset, 69% of firms with no trade union registered agreements only in the NSW State system, while for those with a trade union 52% registered agreements only in the State system. For the rest of the survey firms, 57% of firms with no trade union registered agreements only in the NSW State system, while for those with a trade union 52% registered agreements only in the State system.

covered by awards is introduced, a large proportion of workers in the Illawarra now predominantly reliant on awards to determine working conditions would be significantly more vulnerable than under the current regime. In 2004, significantly more workplaces, whether with agreements or not, made overaward payments than in 1996. This reflected the more buoyant economic and workforce conditions operating in the second survey period. There was only a small increase in the use of non-union agreements and virtually no uptake of AWAs. Thus, if the intention of the 1996 Act was to encourage enterprise or individual bargaining, it was ineffective in this objective. These results could be used either to argue that there was no need to introduce such provisions beyond those already incorporated in the previous Labor Government's Industrial Relations Reform Act 1993, or alternatively that they demonstrate the need to strengthen the WRA as proposed in the 2000-2001 Amendments and in the current Government proposals.

Finally, the results show that the intention to encourage businesses to move into a single jurisdiction and specifically the Federal jurisdiction for awards and collective agreements has not been achieved. Rather, the movement has been towards multiple jurisdictions and, in the case of agreements, towards the NSW State jurisdiction. The current proposals to override the State jurisdiction and force workplaces into a single Federal system would thus appear to be contrary to the choices currently being made by workplaces, regardless of union status.

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APPENDIX A

COMPARISON OF INDUSTRIAL RELATIONS OUTCOMES IN ILLAWARRA - 2004 AND 1996 (% of workplaces)

	Panel Dataset		***Total Sample***	
VARIABLE	***2004***	***1996***	**2004**	**1996**
EMPLOYER ASSOCIATIONS				
Affiliated to Employer Association	59.1	76.4	59	73
Belong to:				
Illawarra Business Chamber	19.4	n.a.	20	n.a.
Australian Industry Group	12.9	n.a.	16	n.a.
Chamber of Commerce	12.9	n.a.	13	n.a.
Club or Association	5.4	n.a.	19	n.a.
Other	23.7	n.a.	6	n.a.
Services Used:				
Advice on awards or agreements	47.3	66.2	49	60
Represent in negotiation with unions/employees	25.8	15.1	27	22
Advice when management negotiate	32.3	22.1	34	20
Represent in industrial tribunals	33.3	18.3	28	26
Prepare model contracts / agreements	19.6	10.8	21	15
Advise on dismissals	40.9	38.7	42	49
Provision of employment relations training	30.1	20.4	29	25
Advice on EEO/AA	30.1	9.7	29	16
Advice on OH&S	38.7	22.6	33	28
Legal advice	36.6	24.7	35	37
Other services	8.6	n.a.	7	19
PARTICIAPTION PRACTICES				
Team building	72.0	40.9	72	41
Semi-autonomous work groups	53.8	28.0	54	34
TQM	61.3	51.6	58	50
Quality Circles	58.1	23.7	57	21
JCC	64.5	32.3	59	28
Taskforces	38.7	26.9	36	27
UNION PRESENCE				
Trade Union present in workforce	61.3	74.2	51	74
Average number of unions	1.9	2.3	1.0	1.3
Delegate present	51.6	52.7	39	47
Average number of delegates	3.3	2.5	2.7	n.a.

VARIABLE	Panel Dataset 2004	Panel Dataset 1996	Total Sample 2004	Total Sample 1996
Characteristics of management – union relations:				
Cooperative and positive	50.9		53	
Adversarial and positive	5.3		7	
Adversarial and negative	1.8		2	
Depends on the issue	42.1		38	
Very good		34.6		44
Good		53.8		51
Neither good nor bad		7.7		5
Poor		1.1		1
Very poor		0.0		0
WORKPLACE REDUCTIONS				
Average number of employees terminated for reasons other than redundancies	1.3	n.a.	1.6	n.a.
Reduced workplace in last 12 months	20.4	25.8	22	30
Reasons for reducing workforce:				
Lack of demand	3.2	12.9	10	14
Technological change	2.2	1.1	2	0
Organisational restructuring	8.6	5.4	11	10
Decrease costs / increase efficiency	1.1	2.2	1	3
Other	5.4	3.3	4	2
Method used to reduce workforce:				
Natural wastage / attrition	10.8	10.8	14	14
Compulsory reductions / retrenchments	4.3	9.7	6	10
Voluntary reductions	3.2	4.3	4	6
Early retirements	1.1	0.0	2	3
Other	2.2	4.3	2	4
INDUSTRIAL ACTIVITY				
Experience any industrial activity in last 12 months	19.4	27.0	17	26
Type of industrial activity:				
Stop work meetings	17.2	27.0	11	23
Strikes	12.9	13.5	7	18
Overtime bans	7.5	5.6	4	7
Work to rule	7.5	0.0	4	4
Go slow	2.2	0.0	1	3
Picketing	1.1	2.2	1	3
Lockouts	0.0	n.a.	0	n.a.
Other	2.2	4.5	5	7

VARIABLE	Panel Dataset 2004	Panel Dataset 1996	Total Sample 2004	Total Sample 1996
PAYMENT SYSTEMS				
Award coverage of employees	95.7	96.6	94	98
Average number of awards in workplace	2.3	2.4	2.5	n.a.
Jurisdiction of Awards				
State only	53.8	60.2	51	63
Federal only	15.1	15.1	15	22
Both	26.9	17.2	35	13
Make over award payments	70.8	56.2	76	54
Certified enterprise agreement in workplace	43.0	43.8	38	41
Average number of agreements	4.7	3.4	3.5	n.a.
Jurisdiction of agreements:				
State only	57.5	35.7	21	n.a.
Federal only	17.5	46.4	8	n.a.
Both	25.0	17.9	9	n.a.
Non-certified collective agreement in workplace	25.8	23.7	16	n.a.
Type:				
AWA	1.1	n.a.	1.4	n.a.
Verbal agreement	6.5	16.1	5	12
Other Written	18.3	n.a.	22	n.a.
WORKPLACE CHARACTERISTICS				
Average number of employees:				
Average number full time employees	63.1	n.a.	65.9	n.a.
Average number part time employees	27.8	n.a.	26.2	n.a.
Average number of employees in total	90.9	92.0	92	n.a.
Total employment in these workplaces	8449	8277	19533	n.a.
Unionised workforce – total members	3642	5433	7601	n.a.
Average number of unionists	39.2	83.6	35.9	n.a.
Union density	43.1	65.6	39	65
Size of firms:				
Small firms - Less than 20 employees	14	0	17	0
Small medium firms – 20 to 49 employees	30	42	42	64
Medium firms – 50 – 99 employees	22	23	17	21
Large medium firms– 100 to 199 employees	18	13	{25	{16
Large firms – 200 or more employees	9	12	{	{

CHARACTERISTICS OF SAMPLES	***Panel Dataset 2004/1996***	***Total Sample*** **2004**	**1996**
Industry Sector			
Mining and manufacturing	22.6	23	15
Utilities	1.1	1	3
Construction	6.5	7	6
Wholesale trade	5.4	{20	{19
Retail trade	10.8	{	{
Hospitality	4.3	4	11
Transport and storage	5.4	4	6
Communications	4.3	2	3
Finance and insurance	3.2	{11	{10
Property and business services	10.8	{	{
Government administration and defence	2.2	2	7
Education	5.4	4	8
Health and community services	8.6	8	9
Cultural and personal services	9.7	15	4
Sector:			
Private	80.6	85	69
Public	19.4	15	31
Exporter	20.4	19	18