

**Submission to the Senate Standing Committee on Education,  
Employment and Workplace Relations**

***Inquiry into the Fair Work Bill 2008***

This submission recommends that the Committee considers systems to maintain existing industrial relations data sources, develop them in more useable forms and extend the range of data gathered and published, for the purposes of research by industrial relations organisations, practitioners and academics and public and private research institutes.

Historically, such data has been used to research important industrial relations and related economic research questions which have policy, industrial relations system and practical implications. I am aware of the publication of a number of recent studies by some of my colleagues at several universities which have been criticised by members of the previous Government. My request is designed to ensure, as far as it is reasonably possible, that in the future industrial relations data from Fair Work Australia and other government departments and agencies would be made available to the range of people and organisations with a research role and interest in industrial relations.

I have listed below what seem to me to be the most important sources of data at present that would enable relevant industrial relations research to proceed in a manner as transparent as possible. This is probably not a comprehensive list and my colleagues in universities, government and practice may well have knowledge of other important sources. However, I offer it as a starting point for discussion and inclusion into legislation (possibly the regulations attached to the Fair Work Bill 2008), record collection, maintenance and access systems and publication of assembled data through government reports by all relevant government departments and agencies.

- ***Maintenance of the data gathered by the AIRC and published on its website when the functions are transferred to Fair Work Australia.*** In particular, these include extensive annual reports with aggregated data, AIRC and other tribunal decisions, search facility for specific aspects of decisions such as working conditions on a historical basis and individual applications by parties.
  
- ***Access to contemporary records and archives of State industrial relations tribunals when the powers have been transferred to Fair Work Australia.*** This is necessary for both historical and current research through the systems of awards and agreements. While this may appear straightforward, I'm told by one of my colleagues who is involved in researching changes in one particular industry in one State jurisdiction, that the relevant files which once contained information in original form (e.g. correspondence) have been replaced by a system of summaries of awards. This does not permit examination of relevant original source documentation which assists in evaluating the history of industrial relations in an industry or occupation. Moreover, it makes life just that little bit more difficult for practitioners who are trying to make sense of changes, additions and deletions of clauses and the rationale for them when engaged in necessary research processes in the course of their work.
  
- ***Publication (in electronic and hard copy forms) of downloadable award and agreement lists and copies of each individual award and agreement.*** While these are currently available and the lists enable industry, occupation, and longitudinal comparative analysis to be undertaken, a number of problems have emerged which constrain such research. These are:
  - A major research deficiency of the previous (WorkChoices) system was the lack of availability of individual bargaining instruments in whatever form they took (e.g. AWAs). There is the potential for this to be repeated in the new system with different bargaining instruments (i.e. common law contracts). Given the potential for shifting bargaining power within the system through the use (expansion and decline) of such instruments and the consequences for employers, workers and the operational effectiveness of the system as a whole, what is required is the publication of both aggregated statistics and all agreements in order to analyse changes in their content to be correlated with other variables. I realise that there are impediments to such a request because of the legal constraints. However,

maintenance of anonymity should be able to be guaranteed. In the early days of AWA use, examples of AWAs were available with the names of the parties 'blacked out'. At all events, with confidentiality and other legal issues addressed, promulgation of clauses in individual agreements remains crucial to the analysis of the system.

- The Workplace Authority's website stated that exemption from publication of a collective agreement was possible. There may be good reasons for this in theory (e.g. trade secret disclosure, previous AIRC decisions). However, if the reasons for non-publication are extended and the population of collective agreements is reduced from a cohort total (e.g. one industry) then the less certain the results of analysis become.
- Analysis of all instruments in terms of their content in the forms of categories of clauses enables comparisons to be made across industries, occupations and over time. This is useful because it can identify trends and causes of changes within the system and can enable the pinpointing of specific similarities and differences which can facilitate improvements in the system (e.g. types of working time flexibility between industries with different pay structures). It may be possible for software to be designed in the future (in addition to current statistical software packages) to enable faster comparisons to be made and further statistical analysis to be undertaken. So, rather than scrolling through large numbers of instruments in search of relevant and up-to-date clauses, the use of statistical data analysis software could provide a faster, more accessible (to practitioners and researchers) and more cost-effective basis for analysis and serve as a platform for further exercises in award simplification and rationalisation. Moreover, the trend towards on-line award summaries of the principal clauses which are most frequently being used by employers could become a more useful electronic form of applying awards to small business.
- ***Publication of more detailed findings of Workplace Ombudsman audits.*** These findings, particularly in some key industries (e.g. the accommodation and cleaning industries), could be provided in aggregated forms so as to maintain the confidentiality of parties. In addition, if there is a move towards a more extensive provision of bargaining processes and compliance of these in a

more regulated framework (e.g. what constitutes bargaining in ‘good faith’ in different contexts and to what extent a ‘community standard’ emerges in relation to the definition of key concepts such as ‘operational requirements’, ‘reasonable overtime’ and when ‘fair bargaining ends and ‘duress’ begins) such monitoring of trends would serve as a basis for amending legislation.

- ***The expansion of the work of the Parliamentary Library.*** This would seem important in providing papers, summaries and chronologies of decisions and events which can provide useful links to source documents (e.g. O’Neill and Kuruppu’s ‘Background Note’ on a chronology of responses to the previous workplace relations system changes).

The current significance of industrial relations data lies in the shift away from a system in which the orthodoxy was one of standardisation, particularly in terms of the process and operation of the award system in different jurisdictions which tended towards ‘paid rates’ as opposed to ‘minimum rates’ at an industry and occupational level. This system gradually gave way to a move towards fragmentation and is reflected in an expanding diversity of agreements (and types of clauses reflecting a variety of different conditions and a variety of quantum monetary and time amounts associated with them) which increasingly apply at workplace level. In addition, it appears that the emergence of new occupations within and across new industries (e.g. personal trainers working as contractors in the health and fitness industry) means that the industrial relations system has to accommodate extended diversity. To the extent that more open product, financial and labour markets influence the types of agreements and awards, the content of them and the bargaining processes used to arrive at them the more there will be an expansion of data. Beyond the usefulness of developing a knowledge of such changes, research is particularly confronted by what appears to be the pace at which industrial relations changes within the legislative processes of change and outside the system in practice (i.e. regardless of the efficacy of the system to operate in ways which regulate industrial relations, there remains the growing question of the extent to which compliance occurs).

Political beliefs aside, the terrain of industrial relations debate in recent years suggests that it is too easy to make decisions (including legislative ones) by sidestepping the usefulness of more informed

foundations by using data upon which to make those decisions. In other words, the problem is 'keeping up' in order to provide sufficiently sound analysis to inform available options prior to decision-making. Even if we can provide ourselves with more rational analysis as objectively as we can get it, without the timely and necessary data in forms which enable analysis, all analysis and ultimately rational decisions slip into superficiality and rhetoric. We can do a better job of industrial relations research and analysis but not without improved systems of data transmission from the industrial relations institutions within government to a wider constituency.

The generation of data on the industrial relations system and the access to it by practitioners and researchers is an important element in the effective functioning of the system for those involved in it. It is also ultimately important in the public interest because it enables monitoring and evaluation of the performance of the system for those outside the system but who are inevitably impacted by it.

Yours faithfully

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