

**OFFICE OF THE EMPLOYMENT
ADVOCATE**

**A REPORT ON
"COMMUNICATION STRATEGY"**

STUDY NO. 10497

JANUARY 1998

Table of Contents:

Background	i - viii
Interpretation of Findings	ix - x

SECTION ONE: AWAs

Synopsis	1
The Detailed Findings	
Workplace Issues	7
Sources of Information On IR/Workplace Issues	12
Attitudes to AWAs	15
OEA	22
Communications	24

SECTION TWO: FOA

Synopsis	1
The Detailed Findings	
A. Building & Construction	
Employers	10
Employees	19
B. Manufacturing	
Employers	26
Employees	32
C. Road Transport	
Employers	36
Employees	45

APPENDICES

Background

Last year important changes were made to federal workplace relations law through the *Workplace Relations Act 1996*. These changes were designed to give employees and employers new opportunities to make better, more flexible work arrangements for their mutual benefit. Under the Act, employers and their employees can make their workplace more competitive and improve both their living standards and quality of their working lives by providing more choice in reaching agreements in unionised and non-unionised workplaces.

There are a number of different types of workplace agreements which can be made under the Act to suit the needs of employees and employers in individual enterprises. These include, formal collective agreements, formal individual agreements and informal arrangements. The second, also known as an Australian Workplace Agreements, are made directly between employers and employees.

The Act also brings into play new rights relating to Freedom of Association, with workers, contractors or employers free to decide whether to join or not to join a union or employer association.

The Australian Industrial Relations Commission continues to play an important role in providing services and information on award wage rates and conditions, compliance with awards and certified agreements. However, within the Department of Workplace Relations and Small Business, a new public official, the Office of the Employment Advocate has been created under the new law to perform the primary functions of...

- providing assistance and advice to employers and employees on the *Workplace Relations Act 1996*, in particular the Australian Workplace Agreements (AWAs) and the Freedom of Association (FOA) provisions
- filing and approving AWAs
- handling alleged breaches of AWAs and the Freedom of Association provisions
- assisting employees in prosecuting alleged breaches of AWAs and the Freedom of Associations provisions where appropriate.

In order to administer these responsibilities, a comprehensive communications strategy for specific target audiences is planned by the OEA. The central objectives of this strategy are to...

Raise awareness and understanding about AWAs, Freedom of association (FOA) and the role of the OEA

and...

Motivate/encourage interest in AWA's, FOA and the function of the OEA

To this end, a draft communications strategy has been prepared for 1997-98. The strategy encompasses a number of key elements including:

- workshops, seminars and other presentations by OEA
- information and marketing strategies

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- a media strategy.

The latter component of the communications strategy involves a range of initiatives, namely:

- an **Internet home page** providing information and advice on AWAs, freedom of association and the services provided by the Office of the Employment Advocate
- **publications** for:
 - ... employees, employers and industrial associations regarding the Freedom of Association (FOA) provisions
 - ... employers and employees regarding AWAs
- **advertising campaigns** on AWAs and FOA
- **participation in events** such as Small Business Expos.

While no specific research has been conducted in relation to the communications strategy, previous research activities in the portfolio have suggested that communications activities used in the past have not been effective in reaching the target audiences. Consequently, the OEA has identified the need to ensure the effective delivery of salient messages to priority employer and employee target audiences through its communications strategy.

In light of this commitment to developing a strategy founded on target audience needs, Brian Sweeney and Associates was commissioned to conduct research designed to...

- assist in the development of the communications strategy

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- establish a benchmark against which the strategy implementation may be evaluated.

A **qualitative** research approach was adopted, with 21 groups and 9 depth interviews being conducted during December 1997.

These sessions included representation of key target segments, in metropolitan and regional markets, as identified in the research brief...

AWAs

Human Resource Managers/Proprietors
in small and medium sized businesses

FOA

Employees and Human Resource
Managers (or equivalent) across three
industries...

- ... Non-residential building &
construction
- ... Road transport
- ... Medium to large manufacturing

It was also stipulated that in designing the research, relatively greater emphasis was to be given to **FOA** issues. To date, FOA has received considerably less coverage in communication activity than AWAs.

Given the foregoing considerations, the research was structured as follows...

AUSTRALIAN WORKPLACE AGREEMENTS		
Person responsible for HR management (Proprietor or HR/Personnel Manager)		
	Small Business (< 20 employees)	Medium Business (Between 20 and 99 employees)
Sydney	1 group	1 group
Melbourne	1 group	1 group
Albury/Wodonga	1 group	1 group
TOTAL	3 groups	3 groups

FREEDOM OF ASSOCIATION						
	Non-residential Building and Construction		Road Transport Industry		Large Manufacturing Establishment	
	Employees	HR Managers	Employees	HR Managers	Employees	HR Managers
Sydney	1 group	1 group	1 group	1 group	1 group	1 group
Melbourne	1 group	1 group	1 group	1 group	1 group	1 group
Albury/Wodonga	1 group	3 depths	1 group	3 depths	1 group	3 depths
TOTAL	3 groups	2 groups/ 3 depths	3 groups	2 groups/ 3 depths	3 groups	2 groups/ 3 depths
<ul style="list-style-type: none"> • 9 group discussions with employees • 6 group discussions and 9 depth interviews with HR Managers 						

Participants in the Freedom of Association **employee** focus groups were recruited to ensure...

- they are currently employed for a minimum of 20 hours per week in the target industries

- representation from the disadvantaged bargaining position sub groups. Specifically, approximately two participants in each group will be from a non-English speaking background with a recruitment bias to be applied to the sectors as follows :
 - ... women in the manufacturing sector groups
 - ... apprentices in the building and construction sector groups
 - ... younger drivers (under 25 years) in the road transport sector groups

Within the **AWA groups** the topic guideline covered...

- knowledge of legislative changes in the past 12 months or so
- source of knowledge about industrial relations, practices/issues
- nature of workplace agreements currently used
- awareness and knowledge of AWA's and the OEA
- interest in and attitudes towards AWAs

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- responsiveness to a prompted series of "messages" about AWAs¹
- perceived value of various media¹ for outlining/promoting AWAs and providing information about the services of the OEA

The key issues addressed in the **FOA groups and depth interviews** were...

- knowledge of industrial relations/ workplace practices and issues
- source of knowledge
- membership of and attitudes toward employer associations
- attitudes to unions and employee membership of unions
- awareness of any legislative changes in the past 12 months relating to workplace relations
- awareness and knowledge of the Workplace Relations Act 1996 and FOA provisions
- perceived benefits, shortcomings and purpose of FOA provisions
- interest in and perceived relevance of FOA

¹Concepts provided by the OEA

- responsiveness to a prompted series of “messages” about FOA¹
- awareness and understanding of the role of the OEA in relation to FOA
- perceived value of various media¹ for explaining/promoting FOA and providing information about the services of the OEA

Copies of the prompt material used during the discussions are appended.

The forthcoming pages provide a detailed commentary of the research findings and their implications for communication strategy. The report has been divided into two sections. The first section focuses on Australian Workplace Agreements and the second, Freedom of Association.

Interpretation of Findings

In interpreting the findings, it should be borne in mind that...

- Group discussions evolve creative ideas and generate hypotheses. They are not intended to be a precise and definitive index of happenings in the marketplace.
- The discussion topics had union implications which caused some respondents to be very cautious about their comments despite assurance that their contribution would be treated confidentially.

The perceived sensitivity of union-related topics also meant that it was difficult to secure the participation of respondents, particularly employees, in some larger, more union influenced businesses.

Fear of possible reprisal from unions/union delegates is clearly very real.

It seems reasonable to conclude then, that some of the issues and concerns raised in the course of the qualitative research may, in some cases, have been understated.

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AN IMPORTANT NOTE:

Respondents were assured of confidentiality. It is, therefore, important that the information included in this report is not used to identify or contact any individual respondent or company quoted.

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Section One:
AWAs

Synopsis

The advent of the Workplace Relations Act has to date achieved little in terms of promoting interest in setting in place workplace agreements. AWAs are clouded with the same aura of misunderstanding as many other issues in the ever-changing diorama of industrial relations ... WorkCover, superannuation, penalty rates, unfair dismissal and so on. It is only at the most sophisticated level of IR management that the subtleties and nuances are understood.

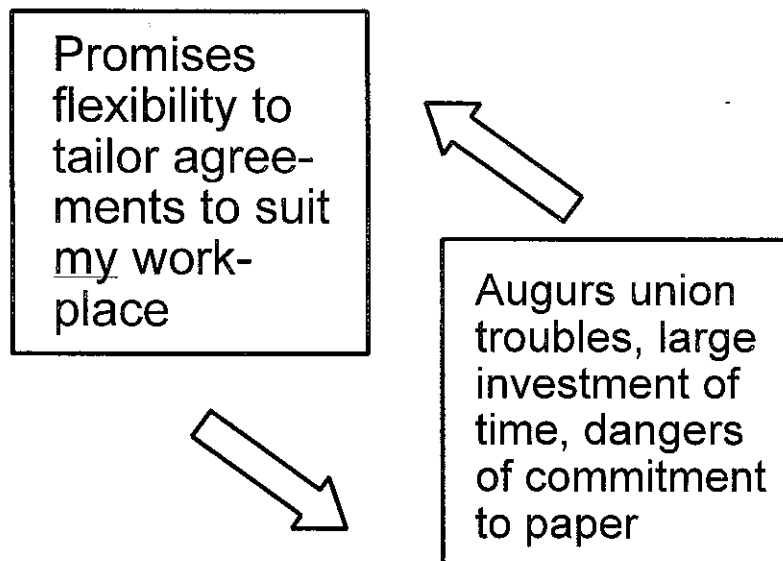
Unionism remains a "hot" topic, particularly in blue collar industries. Despite the view that their power is on the wane, unions continue to exert considerable sway in many industries. Those who have participated in the negotiation of certified agreements are only too aware of union demands and their ability to disrupt such negotiations. However, employers support unionism at a philosophical level - at least to some degree - as a means of providing a safety net for workers in the face of unscrupulous employers.

Only a few employers (in the medium-small segment) appear to take a proactive stance on IR issues; these are motivated by concerns about being left vulnerable, particularly in the face of unfair dismissal legislation. The more common approach is to address such problems when they arise.

Current methods of securing workplace wages and conditions vary between white and blue collar organisations. The former tend to rely on mutual trust or oral contracts, whereas the latter usually work within the framework of an award or negotiated certified agreement, although not all formally ratify such agreements. For this reason, attitudes to the negotiation of workplace agreements in the segments studied (medium and small companies, either white or blue collar) are often uninvolved.

White collar employers have difficulty understanding how firmer workplace arrangements would “fit” within their organisation; this view often results from the perceived association of productivity measurement with workplace agreements. Smaller blue collar proprietors-managers tend to opt for the simplest method, which usually means sticking with the award, at least in principle. Any experience they may have in negotiating certified agreements has left them wary of union intervention. Further, both white and blue collar employers are loath to commit such specific workplace conditions to paper, fearing they may be “held to ransom” should they fail to adhere to them, even on a relatively trivial point.

Broad employer attitudes to negotiated workplace agreements can be summarised as...



Each organisation has an idiosyncratic perspective when considering AWAs. Attitudes relate to industry segment (particularly white or blue collar), size, satisfaction with current arrangements, experience of IR-related problems and the knowledge level of the IR manager (if there is one). In purely intellectual terms AWAs suggest advances in workplace relations. In a conceptual sense they are *probably* beneficial in terms of...

- less awards
- fewer unions
- coverage for employees
- potential for job-sharing, extended shifts

To an extent AWAs are viewed as inevitable in view of the growing individuality of workers today. Employer opinion on whether this is a good or a bad thing mirrors their ambivalence about a range of AWA issues. They are undecided whether AWAs represent a move **away from** or **toward** such rudiments as...

WHITE COLLAR

- ▶ employment contracts
- ▶ performance rewards
- ▶ employer-employee trust
- ▶ multiskilling
- ▶ professional responsibility
- ▶ certainty
- ▶ flexibility

BLUE COLLAR

- ▶ rigid, inflexible awards
- ▶ customised group workplace agreements
- ▶ harmony in the workplace
- ▶ certainty
- ▶ flexibility
- ▶ union unrest

Flexibility is the great promise of AWAs, but also the stumbling block. Employers recognise that it provides an opportunity to tailor working hours, pay rates, etc., to better suit their industry and their workplace. However, flexibility also opens up a Pandora's box of scenarios ... never-ending demands, an end to multiskilling, many different AWAs in the one workplace, administration difficulties, and so on.

AWAs, in some minds, are seen as a Government attempt to disenfranchise unions, to eliminate the bottom rung safety net protecting employees. But, also, AWAs appear to be over-promising in terms of their potential to side-step unions, causing credibility problems. The single greatest fear is that the negotiation of AWAs will result in a union backlash. They could be inflammatory, particularly in the light of increasing union paranoia about declining memberships.

These doubts cause employers to shy away from AWAs at this point in time. While the flexibility afforded by these agreements can be a powerful incentive, there is aversion to the possibility of being a "test case". Medium and, especially, smaller sized companies are looking for larger corporations to pave the way.

Another barrier to interest is that employers, particularly in the white collar sector, have difficulty understanding the relevance of AWAs to their workplace. AWAs are very much perceived to be *the way of the future*, rather than current or immediate. When they are couched in terms of *the changing face of the workplace* or *managing change*, rather than *change for change's sake*, interest is provoked and attitudes become more positive.

These attitudes indicate the challenges faced by OEA in a communications sense. Ultimately, interest will only be enhanced when employers, and employees, have a greater understanding of their benefits and relevance. In **positioning** AWAs, communications must address clear guidelines...

- X** **DON'T TAKE A "THEM AND US" APPROACH**
acknowledge the relevance to employers and employees
- X** **USE EXTREME CAUTION WITH THE "NO UNWANTED UNION INTERVENTION" STANCE**
fears of union backlash are a strong disincentive
- ✓** **USE A FORWARD-LOOKING APPROACH**
"the management of change" rather than "change for change's sake" creates a more positive ambience
- ✓** **PROVIDE ADEQUATE SUPPORT FOR COMMUNICATIONS**
ensure the ability of OEA to service demand and reassure the market accordingly
- ✓** **MAKE IT SIMPLE**
employers expect the process to be time-consuming and difficult; convey simple messages in communications...
benefits, relevance, OEA's role, a short guide to the process
- ✓** **EMPHASISE THE WORKPLACE FOCUS**
scope for a workplace-specific agreement is not sufficiently understood
- ☞** **BE CAREFUL WITH "FLEXIBILITY"**
it's a double-edged sword

The **key messages** for communications suggested by employer comments are summarised below in terms of *the positives* and *reservations or concerns*.

THE POSITIVES

- ▶ Peace of mind, knowing where you stand
- ▶ Alleviating grey areas
- ▶ Ability to side-step unions
- ▶ Agreement, co-operation
- ▶ Profit through productivity
- ▶ Working together
- ▶ Managing change
- ▶ AWAs are the way of the future
- ▶ Harmony in the workplace
- ▶ A move forward in labour management
- ▶ Can lock in/retain your key people

RESERVATIONS, CONCERNS

- ▶ Will there be union involvement?
- ▶ If it's easy, demonstrate how easy
- ▶ Who initiates the process?
- ▶ What happens when the AWA expires?
- ▶ Is the agreement likely to be rejected by OEA?
- ▶ Are there avenues of appeal?
- ▶ Will there be an adequate support service?
- ▶ What is the relevance to white collar businesses, small business?
- ▶ "If I do it for one, do I have to do it for all?"
- ▶ Are any AWAs in place? Are they working?
- ▶ Have there been challenges?
- ▶ If the Award is the base, how can you get more flexibility?
- ▶ What is the cost?

Reactions to messages tested in the research are detailed in the body of the report. Those which contain elements that work include references to "choice", "workplace agreements", "profit through productivity", "flexibility" and "working together". Such messages strike the chord necessary to convey benefits and relevance to employers and, in their opinion, to employees. "**Working together with employees**" has a sense of industrial relations, harmony, putting the issues on the table. Employers know that AWAs will not be accepted if they are solely employer-driven or oriented.

A strong need is identified for a co-ordinated **media strategy**, concentrating on universal messages. However, information sources and retrieval methods are diverse and, therefore, different elements of the strategy - or vehicles - are required.

Mainstream advertising utilising press, radio, outdoor, perhaps TV, should concentrate on positioning and direct communication of key messages. Each form of media will feed into the other. Demand for more detailed information (information kit, direct mail, telephone hotline) will be driven in this way.

More targeted communications can then be achieved via industry associations, editorial - particularly in business and ethnic press - and workplace/DSS posters. Radio should be considered both a primary and secondary medium in the case of employees; that is first concentrate on key mainstream messages and then follow-up with information more targeted to blue collar industry segments.

Business and legal advisors, who are of considerable importance in these sectors, also need to be addressed in relevant ways. The former will benefit from seminars or workshops, targeted releases of blocks of information and articles for publication in newsletters. Legal advisors (some of whom were represented in the groups) express a requirement for case studies, their usual means of acquiring such information.

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The Detailed Findings AWAs

Workplace Issues

In 1997 employer attitudes toward workplace relations and IR issues in general were characterised by confusion. Despite the advent of the 1996 Workplace Relations Act, purporting to render such relations more flexible and mutually beneficial, employers continue to struggle with the implementation and consequences of ever-changing legislation. Superannuation, WorkCover, unfair dismissal (in particular), OH&S, penalty rates, etc., may be intelligible to some devoted IR Managers, but in other businesses - particularly smaller ones - they assume the characteristics of an administrative quagmire. The picture is further obscured by overlap and confusion between Federal and State legislation. AWAs, within this context, are clouded with the same aura of misunderstanding.

Another key feature of workplace relations is unionism. White collar employers in particular readily acknowledge the declining power of unions and growing disenchantment with unionism on the part of their employees. Notwithstanding this, unions continue to exert considerable sway in some industries; noteworthy are the shipping, transport, warehousing and construction areas. Operators in these industries, especially smaller ones, are forced to conform with union demands in order to remain viable. In any negotiation of workplace agreements, the relevant unions have been and are considered to remain very key players. They continue to be a thorn in the side of employers, particularly those who have attempted to negotiate certified agreements using awards as a base.

Philosophically, however, and in line with the findings in the employee groups, many employers continue to support unions as the last line of protection for workers...

"After all, I've been a worker."

"They'd still be putting children down chimneys if it hadn't been for unions..."

Just yesterday we had three tragedies here in the workplace because of sloppy practices."

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The level of IR complexity facing management today means that in some cases systems are instituted to circumvent problems before they arise, so as not to leave employers vulnerable. This stance is especially likely to be taken in the face of unfair dismissal legislation.

"We've had to employ a specialist company to advise on issues ... that is, how do you make someone redundant?"

Smaller companies often lean towards casual staffing in order to overcome the unfair dismissal problem...

"It's due to unfair dismissal that I've mostly got casual employees ... otherwise you can't get rid of them."

However, by far the more common approach is to "wing it", resorting to legal or other professional body advice only when problems arise. They rely on their own sense of fair-mindedness to get them through...

"If you work within the framework of the rules - whatever the hell they are supposed to be - and use a commonsense approach and treat people fairly, you rarely need to look at the handbook."

Predominantly **white collar** workplaces tend to base relations on one or a combination of...

- "gentleman's" agreements
- oral contracts
- formal "sign on" letters.

Such managers are often reactive rather than proactive in terms of IR issues like unfair dismissal, performance and pay disputes and so on. Certainly, there are mavericks out there...

"You may not be able to fire them but you can make it so God-damned uncomfortable for them to be around."

...but, for many, a large element of trust surrounds the employer-employee relationship.

It is unsurprising, therefore, that initial discussions in the area of workplace relations and negotiations and IR practices tend to distance them. These issues are viewed as more appropriate to blue collar workforces; few recognise their relevance in professional, particularly smaller, organisations...

"The smaller the business, the less relevant is IR."

Ultimately, their view is "you get what you pay for"...

"If you screw your workforce you end up with a second-class workforce."

...and white collar employers often have difficulty understanding how firmer workplace arrangements would "fit" with their businesses. Most view such arrangements as a means to achieving productivity gains in return for flexible conditions, yet this concept doesn't seem to hold water in an office environment...

"How do you get a secretary to type 60 letters a day instead of 40? It's not that simple. It's too hard to measure in paper based, service driven agencies."

"Fine if we're talking about putting sticks into ice-creams ... \$10 for two more."

It is this philosophy that has seen them successfully (or, perhaps, rashly) side-step the certified agreement/enterprise bargaining scenario.

The smaller **blue collar** workplaces tend to favour “sticking with the award” as the simplest method of operating. The relevant award provides a recognisable and acceptable baseline; they may opt to pay slightly above-award but, then, they are in control. When asked to consider more flexible workplace arrangements, these employers generally dismiss them in favour of more structured arrangements. To an extent this is a flow-on from experiences with industry negotiated agreements, relatively common in the blue collar sector...

“The award was very structured, so simple. Now it’s become tentacle-like ... you don’t know where the ends are.”

By negotiating a new/different arrangement, conditions are committed to paper and this is a concern to many...

“If you write everything down, it may come back one day to bite you on the bum.”

“I don’t think many people are game to write agreements down ... if you don’t hold to it, you’re liable.”

In many industries, appropriate industry bodies (for example, the Electrical Contractors Federation) have established certified agreements. While these may notionally be available for employees (and employers) to sign, at times they prefer to operate on trust and more or less in line with such agreements, than to formally adopt them. Despite these attitudes, however, the signs are that the negotiation and signing of certified agreements is widespread in the blue collar sector. Against this background of the drawbacks and difficulties of such negotiation - the experience they bring to the table when considering negotiated workplace agreements - employers can see some benefits inherent in them. The flexibility to structure an agreement to suit their business and their workers is the single greatest promise of negotiated workplace agreements. Of particular interest is the flexibility to negotiate extended shifts between specified hours which are paid at “normal” rates.

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Those who have been through the process (of negotiating certified agreements) describe it as “fun and games”; a steep learning curve is demanded. Such negotiations depend upon the goodwill of all concerned, as well as open communications. But, the apparent confusion and frustration employers have experienced in accessing information in a whole range of IR areas is often incentive enough to dismiss the relevance of any “higher order” negotiations that a company could possibly enter into.

This leads us into our next section ... just how do employers access information on IR issues?

Sources of Information On IR/Workplace Issues

Clearly, few are confident that they are sufficiently well informed or up-to-date with relevant IR issues. Initiatives such as the Workplace Relations Act are often known about in only the broadest of terms. All too often the information is trickled through or based on hearsay and rumours; as such it often rings alarm bells...

"Have I got it all?"

As stated, superannuation is a key focus of concern...

"You're not sure whether the bill has been passed."

Wage rates are another stumbling block...

"On Wageline you're on the phone for three years!"

And unfair dismissal regulations are a minefield.

Rapidly changing policy and fragmented communications channels create uneasiness and serve to work against an employer-driven quest for information and assistance in relation to AWAs. It is in this light that reactions to AWAs must be considered.

So, what are their regular sources of information? In the white collar workplaces there are a number of formal mechanisms in place to convey information. Professional bodies and business magazines, as well as accountancy, legal and management practices all have a role to play. The following were most commonly cited...

- VECCI
- AIM
- Freehill Hollingdale and Page

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- MTIA
- ACM
- Employers Federation
- Malleson Stephens Jacques
- Australian HR magazine
- Sydney Business, a weekly news-sheet
- accountants
- solicitors.

In addition to organisations like VECCI and some others, blue collar industry representatives also refer to the various industry associations, such as...

- Electrical Contractors Association
- Housing Industry Association
- Master Locksmiths Association
- and other industry bodies.

At times, however, the information provided via these various channels can be contradictory and conflicting. Importantly, the onus for determining what is important, relevant and needed usually rests on the appropriate body rather than on the member company.

Mainstream press and TV also inform employers about changes in IR regulation. Again, these reports can often conflict and confuse. As an example, one smaller employer remarked in relation to the Workplace Relations Act...

"I think there's been something in the newspapers about it but I haven't really bothered, because it just scares me."

However, the co-ordinated cut-through of key messages in relation to WorkCover presents an acceptable model of how such information could be disseminated. WorkCover is currently occupying the minds of employers; importantly, this is filtering through at a number of levels...

- industry associations
- press

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- TV
- “employer talk”.

The portents from this research are that for the benefits of AWAs and the role of OEA to impact widely, it will be essential to...

- base communications on messages that both attract attention and position it favourably in the minds of employers **and** employees
- utilise a co-ordinated multimedia approach

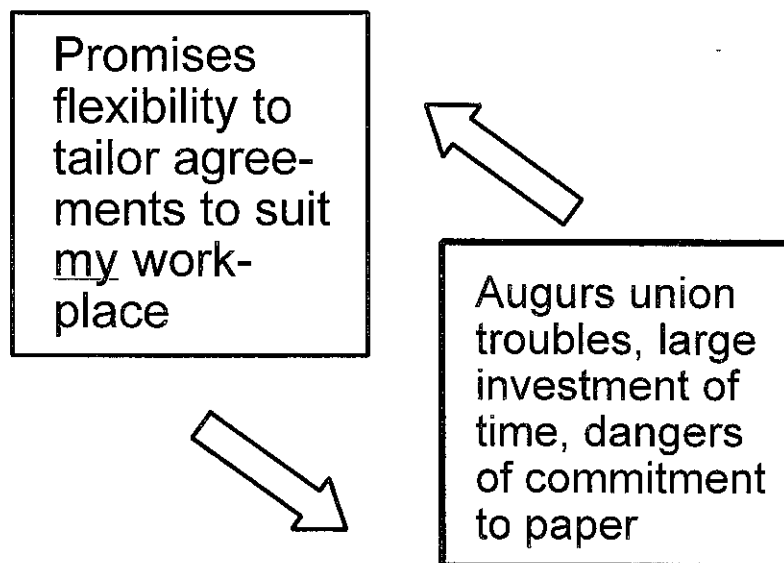
and...

- provide strong baseline support via an adequately trained and staffed information and assistance service.

Later in this report we examine communications strategies in greater detail, but first we explore reactions to AWAs at both a top-of-mind and directed level.

Attitudes to AWAs

Perhaps unsurprisingly, at this point in time the definition of an AWA is vague at best. Considerable confusion and overlap occurs between enterprise bargaining and certified agreements, which (in their opinion) may or may not constitute an AWA. We have already discussed some employer attitudes to negotiated workplace agreements. Broadly, these can be summarised as...



In the absence of greater understanding, the scales are heavily weighted towards the negative end of the spectrum.

Each organisation approaches the prospect of AWAs from an idiosyncratic perspective. Attitudes are strongly dependent on a number of variables, the main ones being...

- whether the workplace is predominantly white or blue collar

- the industry within which the workplace operates and, importantly, the influence of unions within that industry
- the size of the organisation
- the knowledge level of the IR manager or, indeed, whether the organisation has personnel devoted solely to IR issues
- satisfaction with current workplace arrangements
- the experience of IR-related problems in the past.

Within this matrix of sometimes interlinking, sometimes discrete parameters, it is difficult to draw a line through attitudes. At a purely intellectual level, however, the advent of AWAs suggests advances in workplace relations. Some view them as offering a way around unfair dismissal problems and, as such, this can result in greater confidence in hiring staff or, alternatively, the facilitation of downsizing due to removal of restrictive practices. Others can see opportunities for tailoring working hours/pay rates to better suit their particular industries (particularly, for example, the hospitality industry). Despite their many concerns about negotiation, implementation and the long-term consequences of AWAs, in a conceptual sense they are *probably* beneficial in terms of...

- a lesser number of awards
- ultimately, fewer unions
- coverage for employees
- job-sharing or extended shifts (can keep the salon staffed, the truck on the road longer)

At a top-of-mind level, however, many concerns and negatives surround the topic. On a case-by-case basis, AWAs do not always make sense.

While flexibility is the promise of AWAs, it is also a stumbling block...

- flexible to the individual or the company?
- does that mean they will walk out of the office at 5.05 pm?
- may result in a reduction in multiskilling (i.e. will the receptionist be willing to perform other duties?)
- would you have two people doing the same job at different rates?
- will employees be sensitised to ask for pay increases should their job spill outside the traditional role?

Perceived as dependent upon an individual's negotiation skills, AWAs have the potential to eliminate the bottom rung ... the safety net protecting employees from unscrupulous employers.

*"If you were not as forceful personally
you could get trodden on."*

Is it a Government attempt to rid us of unions? While union control is often the scourge of employers and most would welcome relief from overly-demanding unions, they are very fearful of escalating union trouble in the face of AWA negotiation, rather than the opposite. Within their current (limited) understanding, AWAs appear to be over-promising in terms of the potential to side-step unions and, because of this, strong cynicism and credibility problems surround the issue. (Obviously, this attitude is most pronounced in heavily union controlled industries.)

WHAT IS AN AUSTRALIAN WORKPLACE AGREEMENT?

- ▶ A new type of workplace agreement introduced in the *Workplace Relations Act 1996*.
- ▶ Voluntary, individual written agreements between employers and their employees about terms and conditions of employment.
- ▶ While they can be negotiated individually or with a group of employees, an AWA must be signed by each individual employee who chooses to be a party to it.
- ▶ Negotiation doesn't necessarily involve a union (although employees can appoint a union as their bargaining agent if they wish).
- ▶ Allows employers and employees to tailor pay and employment conditions to the needs of their workplaces, and individual preferences.
- ▶ In order to have legal effect under the *Workplace Relations Act* they must be filed with and approved by the Office of the Employment Advocate.

Thus, top-of-mind, spontaneous knowledge about AWAs is fragmented and fraught with concerns. Employers who have heard of them have little understanding of their *modus operandi* and even less about OEA. They could be a positive for both employers and employees, but how stressful and convoluted will the process be? Will unions have the power to disrupt negotiations and reject agreements? Are they relevant to my industry, my workplace?

The purpose of this research was not only to gauge current knowledge levels, but also to elicit reactions to a formal presentation of the nature and scope of AWAs. Following exposure to the outline presented opposite, employer reactions were probed. Employers were also read information on the availability of an information kit, the processes involved in lodgement of agreements and the legality of AWAs.

The view that the negotiation of AWAs is akin to enterprise bargaining continues to shade reactions, even after the provision of this information. As such, it is understandable that employers relate the negotiation of AWAs with productivity. In cases where productivity is difficult to measure (i.e. service industries), they find it difficult to understand the relevance of AWAs. Moreover, the focus appears to have moved from a group to an individual approach and this signals danger to some...

"You could have 150 AWAs to administer ... That's the worst case scenario."

"It could be an administrative nightmare."

There is, however, acceptance of the growing inevitability of individuality in the workplace. As one commented...

"Fifty years ago if the king walked by, everybody saluted the king. But, today, everybody questions whether he should be the king. I think it is partly this mentality that is leading to workplace agreements... people are getting fed up being grouped as a herd."

These comments highlight employer uncertainty about the precise nature of AWAs, in that they are essentially tailored to a specific workplace, not an industry and not necessarily an individual.

The question of whether worker individuality is a good or a bad thing mirrors many of the other questions employers have about AWAs. Put simply, employers are as yet undecided as to whether AWAs represent a move **toward** or **away from** such rudiments as...

WHITE COLLAR

- ▶ employment contracts
- ▶ performance rewards
- ▶ employer-employee trust
- ▶ multiskilling
- ▶ professional responsibility
- ▶ certainty
- ▶ flexibility

BLUE COLLAR

- ▶ rigid, inflexible awards
- ▶ customised group workplace agreements
- ▶ harmony in the workplace
- ▶ certainty
- ▶ flexibility
- ▶ union unrest

And, the question that vexes them most is that of the potential for union unrest. There are those who regard the legislation as potentially inflammatory in terms of increasing union paranoia in the face of declining memberships.

"Unions will naturally become involved."

"There's no lock-out factor."

"With the TWU it would cause one of the biggest strikes Australia has ever had."

Indeed, two research participants pointed out that their companies had experienced pressure from unions to write into existing agreements that they would not seek AWAs.

The difficulties inherent in negotiations where unions are a key player cause many to side-step or postpone the issue...

"We would choose not to because it makes the whole of your workplace arrangements subject to negotiation ... the union becomes involved and they are looking to maintain all current conditions and every single item has to be negotiated ... you can't do anything different that is away from standard working hours."

There are doubts that unions understand their role in negotiations, or that AWAs are intended to reflect the needs of **both** employers and employees. Information on the "no disadvantage" test underlies the distaste for union-involved negotiations. This is viewed as an easy "out" for unions as well as the OEA (whose position is not clearly understood).

"You have to register the agreements with the Employment Advocate and they can dictate whether you can actually put that agreement through because of the no disadvantage test."

Moreover, there are concerns that by entering into an AWA employers may face the possibility of employees using this as a stepping stone to litigation...

"It just takes one false step."

This attitude is a real barrier to further interest. Others articulate it in the following terms...

"We don't want to be the test case."

"I like the flexibility of the agreements but I wouldn't stick my neck out to be a guinea pig ... there are not enough precedents. Unions would try to ruin it."

"The bigger companies can try it first ... we wouldn't be a test case because of the unions."

In summary, while the information presented to respondents was broadly informative and relatively clear, it is apparent that they are left with a whole host of questions. Further, the benefits of AWAs have not been clearly spelled out. There is little indication that employers will actively seek out answers to these questions in the absence of an external push for them to do so.

One of the greatest barriers to interest - and this holds true of both white collar and smaller blue collar workplaces - is the perceived lack of relevance of AWAs *at this point in time*. AWAs are very much perceived to be *the way of the future*, rather than current or immediate. When AWAs are couched in terms of *the changing face of the workplace* or *managing change*, rather than change for change's sake, interest is provoked and attitudes become more positive. In this light, AWAs can be viewed as a potentially valuable tool and a way forward for Australia. The proviso is that they are used effectively and innovatively...

"We could shoot ourselves in the foot if we don't do it properly. This is talking about getting Australia off its arse and the Government is giving us the tools to do that."

When employers can be brought to the point of considering the disadvantages of **not** having an AWA, then they will be given sufficient reason to act.

THE ROLE OF THE OFFICE OF THE EMPLOYMENT ADVOCATE

The Office of the Employment Advocate has been created under the *Workplace Relations Act* to...

- ▶ provide advice and assistance to employees and employers, especially small business, on their rights and obligations under the Act in relation to AWAs
- ▶ provide advice and information about how to prepare and lodge an AWA
- ▶ file and approve AWAs
- ▶ handle alleged breaches of AWAs.

OEA

As suggested by the foregoing, little if anything is known about the Office of the Employment Advocate. Familiarity was generally limited to those who had some specific reason for seeking out information ... lawyers, IR managers in larger (of the medium-sized) companies, a couple who were undergoing tertiary training, and so on. Even in these instances, familiarity with OEA appeared superficial. Few were able to elaborate on the roles and responsibilities of the organisation. Other than this, one or two had rung “someone in Canberra” after reading about the Workplace Relations Act. Nothing more specific was forthcoming on a spontaneous basis.

Exposure to a brief description of OEA and its role generally makes employers feel...

“No less comfortable, but not any more comfortable either.”

To date, OEA is not seen to have performed its *advice and assistance* function well, given the general lack of knowledge about AWAs.

The key words drawn from the OEA description shown opposite were “file”, “lodge”, “approve” and “breaches”. This terminology connotes a somewhat involved process, as well as legality. It results in reactions such as...

“Sounds like hard work.”

“If it’s not broke, why break it?”

A very real challenge in the positioning of OEA is to avoid any inference that the organisation somehow comprises a “government union”. Some elements of this perception are evident in such comments as...

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*"It's part of the Liberal mentality.
Labor and the unions are against
AWAs."*

*"Really, it's just the Government
substituting for the unions. The
Government becomes the union."*

Obviously, with their low level of knowledge, many questionmarks surround the procedural role of OEA, in particular its ultimate level of power...

*"What happens if the Advocate knocks
the agreement ... even if you and the
workers agreed to it?"*

Given the indication that OEA is a single-source of AWA ratification and in the light of the prospect of numerous applications, there are real concerns about the ability of the Office to deal with an influx of agreements...

*"Is there only one? Is it a court? Or a
board? How long would it take to get a
decision?"*

As touched on earlier, any hint of "bureaucracy" acts as an immediate turn-off. Employers are aware that each case will probably be unique and that the process will be lengthy and perhaps costly; for these reasons, they require reassurance that OEA will have the facilities available to actively service agreement applications throughout the process. Unless adequately staffed and trained telephone and mail assistance can be provided, disenchantment will quickly ensue. OEA is an unknown entity in this respect; employers currently base their judgements on other, perceived similar, bodies and these are generally unfavourable.

Communications

What all of the foregoing means is that OEA has a huge task on its hands in a communications sense. Ultimately, interest in AWAs will only be enhanced when employers, and employees, have a greater understanding of their benefits and relevance, and are reassured about perceived risks. Currently, most are prepared to sit back and take their lead from larger companies who are thought to be better equipped to pave the way.

Positioning

Integral to successful communications is the **positioning** of both AWAs and the OEA. The findings from this research highlighted some very clear guidelines...

DON'T TAKE A "THEM AND US" APPROACH

Communications must be based on a universal approach, rather than being aimed solely at employers. Employers are fearful that if the information comes only from them, workers may regard it as a kind of conspiracy and be looking for a hidden agenda.

AWAs must, of necessity, be based on mutual trust between employers and workforces.

Anything less undersells the concept and, worse, replaces one kind of unionism with another.

**USE EXTREME CAUTION WITH THE
"UNWANTED UNION INTERVENTION"
STANCE**

The greatest fear - particularly in blue collar industries
- is that of a union backlash.

Communications need to spell out the possible role of
unions in negotiation.

Do not position OEA as "simply another form of
unionism" . Do not suggest that workers' rights are
being eroded. Employers neither want this nor accept
that it will lead to improved workplace relations.

**USE A FORWARD RATHER THAN BACKWARD
LOOKING APPROACH**

When AWAs are viewed as the management of
change, rather than change for change's sake they
assume a more positive ambience.

When employers arrive at the point of considering the
disadvantages of **not** having an AWA, then they will
be given sufficient reason to act.

Highlight the potential for creating new and better
workplaces, where both employers and employees
are rewarded for their efforts.

**PROVIDE ADEQUATE SUPPORT FOR
COMMUNICATIONS**

Communications are aimed at inviting further enquiry. As such, success will hinge on the ability of the OEA to service this demand and convincingly communicate this ability.

All government departments are tarred with the "disappearing phone call", "never arriving information kit", "impossible to understand" brush. This is employers' expectation.

Surprise them!

BE CAREFUL WITH "FLEXIBILITY"

While flexibility is the strongest selling point for AWAs, it also opens up a Pandora's box of scenarios.

It can suggest never-ending demands, an end to multiskilling, many different AWAs in the one workplace, administration problems, and so on.

It is probably dangerous to use the word without qualifying it, i.e. "flexibility to work together to tailor agreements".

MAKE IT SIMPLE

The negotiation and ratification of AWAs is complex and employers are quick to detect this.

Within the context of rapidly changing regulation of superannuation, WorkCover, unfair dismissal, etc., few look positively at yet another complication.

Strategic communications need to convey simple messages only ... benefits, relevance, OEA's role, a short guide to the process, etc.

The task of customising information comes later in the process.

EMPHASISE THE WORKPLACE FOCUS

Despite their accurately descriptive name, AWAs tend to be confused with either industry-wide or, alternately, individual agreements.

The scope for a workplace-specific agreement should be emphasised in communications.

Key Messages

This study was very much concerned with teasing out the key messages required to promote interest. In some respects, there are as many messages as there are workplaces. Each is unique and has its own way of managing industrial relations issues (even if this is simply ignoring them and hoping they'll go away).

Notwithstanding this, employers have very clear ideas on the important aspects of AWAs. These are summarised below in terms of *the positives* and *reservations or concerns*.

THE POSITIVES

- ▶ Peace of mind, knowing where you stand
- ▶ Alleviating grey areas
- ▶ Ability to side-step unions
- ▶ Agreement, co-operation
- ▶ Profit through productivity
- ▶ Working together
- ▶ Managing change
- ▶ AWAs are the way of the future
- ▶ Harmony in the workplace
- ▶ A move forward in labour management
- ▶ Can lock in/retain your key people

RESERVATIONS, CONCERNS

- ▶ Will there be union involvement?
- ▶ If it's easy, demonstrate how easy
- ▶ Who initiates the process?
- ▶ What happens when the AWA expires?
- ▶ Is the agreement likely to be rejected by OEA?
- ▶ Are there avenues of appeal?
- ▶ Will there be an adequate support service?
- ▶ What is the relevance to white collar businesses, small business?
- ▶ *"If I do it for one, do I have to do it for all?"*
- ▶ Are any AWAs in place? Are they working?
- ▶ Have there been challenges?
- ▶ If the Award is the base, how can you get more flexibility?
- ▶ What is the cost?
- ▶ Could AWAs be a stepping stone for employees to litigation?
- ▶ Is it just the Government substituting for the unions?

Further guidance on appropriate messages was gained by exploring employers' reactions to a range of possible themes or slogans. Those that do not work, for many reasons, are...

- **Tailor arrangements for each employee:** The over-concentration on individual agreements conveys potential disharmony in the workplace as well as “an administrative nightmare”
- **Individual contracts with employees:** for the same reasons, this approach fails. It implies too much negotiation, unrest
- **Simpler workplace arrangements:** this claim is “over the top” and unrealistic
- **Is your award too complicated?** cynicism works against this and, besides, it would only be relevant to small businesses; in larger businesses, IR managers know their awards
- **Would you like to reduce the number of awards applying to your workforce?** in the case of white collar companies, this is simply not applicable; moreover, it's clumsy
- **Would you like to clarify workplace arrangements?** invites too many questions, open-ended, suggests complication

- **Arrangements to meet the needs of your business and employees:** this statement is long-winded; most reject the word 'arrangements', preferring 'agreements'
- **Are penalty rates a problem for you?** yes they are, especially in small business; but too directed at employers
- **Would you like to reduce your wages bill?** yes, but how? Again too employer-oriented, suggests somebody is being taken advantage of. The problem is not wages, but add-ons such as WorkCover. Misleading
- **Make arrangements which suit the particular features of your business:** again, this approach invites cynicism ... *"we've already done that"*
- **No third party intervention:** again, few would believe this claim ... *"it's kicking the proverbial up-hill!"*; inaccurate because there would be a third party, either the company's solicitor, the union, someone to negotiate on behalf of employees (particularly NESBs).
- **Cutting red tape:** unbelievable, ridiculous

- **Working better with employees:** too broad, general, doesn't really say anything except that you may already have a bad working relationship

Messages which contain elements that work include...

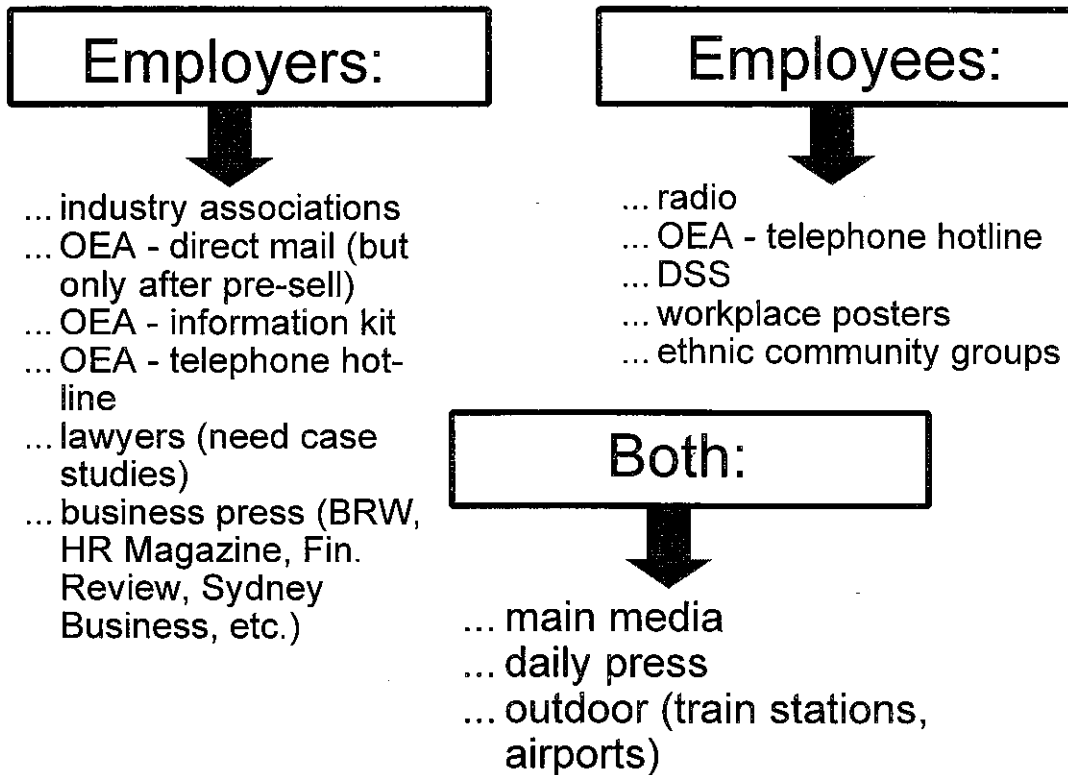
- **A new choice for your workplace:** says an option is available, a different way of doing things, an opportunity. Maybe too employer-oriented
- **Individual workplace agreements:** depends whether 'individual' applies to the workplace or the worker; those who take it to mean the workplace understand that it acknowledges the uniqueness of each organisation
- **Profit through productivity:** this statement is interesting, may attract both workers and employers ... *"it's a bit of both", "that's where the unions fall down, by not giving incentives for productivity, they encourage slackers"*. One must question its currency with employees, however
- **Greater flexibility:** as touched on earlier, flexibility is a message with promising connotations; it suggests plenty of room to move, good for organisations employing casual or part-time staff, says more from the employer's point of view. However, flexibility is a double-edged sword and it can also suggest too much flexibility in favour of the employee

- **Working together with employees:** the 'together' aspect strikes a chord. Employees know that AWAs will not be accepted if they are solely employer-driven or employer oriented. This statement has a sense of industrial relations, harmony, putting the issues on the table.

Media Strategy

The importance of a finely tuned and targeted communications campaign is well recognised by employers. For AWAs to succeed, both employers and employees must be able to grasp the benefits of them. A campaign which is regarded as concentrating on either party rather than both will raise suspicions. A strong need is identified for a co-ordinated campaign, concentrating on universal messages. However, information sources and retrieval methods are diverse and, therefore, different elements of the strategy (or vehicles) will be required.

In order to address the needs of employers and employees, the following media mix is required...



Each form of media will feed into the other. The demand for further, more detailed information (information kit, direct mail, telephone hotline) will be driven by mainstream advertising ... press, radio, outdoor, perhaps TV. Such mainstream advertising should concentrate on positioning and direct communication of key messages (as outlined earlier).

More targeted communications can then be achieved via industry associations, editorial - particularly in business and ethnic press - and workplace/DSS posters. Radio should be considered both a primary and secondary medium in the case of employees; that is first concentrate on key mainstream messages and then follow-up with information more targeted to blue collar industry segments.

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BRIAN SWEENEY
& associates

The importance of business and legal advisors to employers should not be underestimated. The campaign needs to address these in relevant ways. Note that the legal profession usually acquires information of this kind via case studies. In the case of industry associations seminars/workshops, targeted releases of information blocks and articles for publication in newsletters appear most appropriate.

Other elements of the draft communications strategy - women's magazines, merchandise and, interestingly, the Internet generally excite little appeal. The expectation among Internet users is that information will be available on the Internet should they be motivated to seek it out. This is considered a tertiary mode of information dissemination, not a means of creating awareness.

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Section Two:
FOA

Synopsis

There is an inverse relationship between the preparedness of any particular industry segment to embrace Freedom Of Association (FOA) and the degree of unionisation in that sector. The more unionised, the less likely FOA is to be viewed as a viable concept. For this reason, our study could not identify a universal attitude to FOA, indeed discussions elicited a range of convoluted and complex considerations, specific to industry groups, employers, employees and businesses of different size.

Discussions with the above groups yielded more information that will assist the OEA tailor communications for particular segments, than information which will build a broad approach to communications. Notwithstanding this, the common issues identified across each group are naturally a starting point for the OEA to develop a communications campaign. The following insights would appear the most useful to guide where to begin with this challenging task.

The OEA has quite a low profile especially amongst **employees**. Even industrial specialists in large firms had not necessarily linked the OEA with FOA, although its work with AWAs was much more prominent. All groups were interested in finding out more about the mission and status of the OEA, particularly with respect to determining its position (presumably, but not definitely, neutral) on workplace issues.

It is reasonable to suggest the Office to date has little "*clout*" as an information provider and, moreover, can in some circumstances be viewed with suspicion. Its status is open to interpretation; some are inclined to suggest it must be another union body. It is, therefore, no giant leap to suggest that the Office needs to introduce **itself** in communications as much as the other issues it plans to communicate.

FOA is not a difficult concept to convey. Unions are part of the day-to-day work environments of many workers and, if not, media exposure generally fills in the information gaps. Therefore, it does not take a great deal of explanation to communicate the principles it entails. The main point is that **FOA, while understood, is not accepted** by workers and employers alike. It is viewed as dogma, idealistic or

even ideology, and quite a contradiction to workplaces where...

- organisations are known for the strength of particular habitant unions
- employees are quietly coerced to join preferred unions
- employees cite union membership as a survival mechanism
- financial viability for smaller contractors often hinges on an openness to a range of union demands from a range of unions
- employers are candid about preferring a union monopoly rather than dealing with multiple unions
- the trade-off between closed shops and a "*smooth running business*" is so entrenched, large employers have ceased to view their dealings with unions as a compromise, when it is clearly in their favour to encourage the practice.

As foreshadowed, the extent of unionisation, as illustrated by the above practices, appears to dictate how accepting or rejecting, representatives were of FOA. A sliding scale of acceptance was evident...

<i>Nigh Impossible</i>	→	Larger Building and Construction firms/larger transport companies with intrastate contracts
<hr/>		
<i>Site and factory dependent</i>	→	Manufacturing
<hr/>		
<i>Client dependent</i>	→	Across sectors
<hr/>		
<i>Neutral</i>	→	Apprentices, small isolated operators
<hr/>		
<i>Irrelevant</i>	→	Small and Regional Operators across segments

The reluctance to accept FOA was not only based on its lack of credibility in the current context, but, more critically, it stemmed from major concerns about the ramifications of implementing FOA. "*Commercial suicide*" was a common cry of employers, while employees feared job losses if they dared upset the practice of "*closed shops*", which are very well entrenched in the **building industry**, in particular. In this instance, no-one is prepared to take a stand on FOA, fearing they will lose their livelihood, jeopardise the industrial environment they work within and, importantly, have no reprisal to recover any losses suffered. The following quotes demonstrate the difficulty of implementation...

Employers

"It sounds simple but realistically it's not practical in a lot of industries. To be a hero is a one way trip to the bankruptcy courts"

"The problem is that big clients are union shops. Yes, you could sue them but they would never give you another job. Plus, word would travel and you'd be blackbanned."

Employees

"Sounds good. But the word will be out... don't employ this guy... he had a whinge to the Government"

"If you do in an employer, you might get protected. Fine. But you'll never work again."

These concerns are not sufficiently addressed by outlining the functions of the OEA, as few can envisage **how** the OEA could assist implementing FOA. In fact, the absence of industry specific examples of where and how FOA has been initiated, leads many to believe the task is fraught with difficulties.

Understandably, a communications campaign for employers and employees does not immediately strike either group as a worthwhile venture. Not because the topic matter is unpalatable, but because many workplace environments are quite volatile and would not react favourably, especially to any **employers** enforcing or openly supporting FOA.

Employees have more interest in communications, even if they are unlikely to abide by the principles. They simply recognise that legislation and, therefore, **information** should be made available. In contrast, employers feel they have much to lose if they were to invite confrontation from unions by espousing FOA in the workplace. However, they are supportive of an employee information campaign where they could supply employees with information in a low-key manner.

The idea of a mainstream **employer** information campaign received a mixed response but generally was assessed as **less necessary**. While there were employers who would like indirect communications such as: an information kit to keep on file about FOA; Internet access: BRW articles; trade association materials; and so on, others were not very receptive to being "*used*" to get the FOA "*ball rolling*". It was clear that a sizeable proportion were much more comfortable at a **distance** and would most probably increase their level of support, once they could assess how the implementation process was faring.

The suggested focus on a **mainstream employee** communication campaign is a soft option for employers who prefer a role as the secondary target audience within this approach.

Given the focus, which messages and media will achieve this?

As we stated, the subtle and not so subtle differences in experience and opinions detailed over the following sections insist that, to some degree, information must be **tailored** to segments. Yet, there are some important guidelines to apply to **all** sectors.

Communications Guidelines

Most of the communications concepts explored, failed in one important aspect...

*They did not acknowledge that FOA
is quite an ambitious proposition in
some sectors.*

Consequently, those representatives with a background in the most unionised arenas were immediately alienated by messages, which nonchalantly stated...

**You don't have to be in a
union**

or

No ticket, no start, no way

or

Closed shops are unlawful

or

**No-one can force you to join
a union**

In deference to these propositions, the subtle and less politically sensitive ideas were more acceptable...

Freedom of Choice

OR

Union membership is not compulsory

However, even these examples did not necessarily place the issue in **perspective**.

Extrapolating from these reactions, it would appear important for messages devised by the OEA to take a more **frank** approach to the campaign, the tone of which must...

- Indicate that FOA is a **goal** to aim for
- Concede that some industries represent **greater challenges** than others do
- Promote a **starting point** to achieve FOA, not a panacea
- Provide some gradual **steps** to achieving FOA over a reasonable **timeframe**

We suggest the campaign communications derived from the above, while also short and simple, will not be effective if they skirt the issues. The headlines could be as straightforward as the following suggestions...

YOU SHOULD BE ABLE TO CHOOSE YOUR OWN UNION	UNION CHOICE, WE'RE GETTING THERE	AIMING FOR FREEDOM OF CHOICE	IF YOU CHOOSE A UNION, IT'S ALL UP TO YOU	NEED SOME HELP IN CHOOSING A UNION?
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The execution of such campaigns needs to factor in...

- ✓ *Introducing the OEA and **avoiding** overly politicising the issue*
- ✓ *Contextualising the OEA, making it clear it is **not a union***
- ✓ *Advocating the OEA as representing employees **and employers***
- ✓ *Advising how to **access the OEA***

The DONT'S would appear to be messages, which imply either directly or indirectly...

- union bashing or emotive statements
- OEA is yet another adversarial body
- OEA is complex and bureaucratic.

All of the above would be to the detriment of getting across the FOA message.

As indicated, these messages will be best delivered in a mainstream communications campaign, though this is not to deny the added benefit of designing some sector-specific tactical activity.

To address the pervasive belief by employees, in most groups, that FOA had not yet "*arrived*" on the scene as a "*hot*" workplace issue, a combination of newspaper and radio advertising seem appropriate channels. It cannot be ignored that **radio**, in particular, fits neatly into factory workers', road transport drivers' and building site workers' practices of "*all day radio*". Newspapers could complement this, not only through advertising but also as a vehicle for free publicity. A common sentiment was the FOA had not "*made it into the papers*", the interpretation being it was **not important**.

Other channels to reach employees such as office pamphlets, noticeboards etc. were seen as vulnerable to "*employer sabotage*". Information kits were also likely to be censored or distributed arbitrarily. An information line was thought to be useful, if it was confidential and obligation-free, though it would seem more appropriate to

implement this phase once the momentum in the FOA campaign had been established. Otherwise, it is likely that the information line could potentially come across as a premature development and misrepresent the little progress made on FOA, to date.

Employers welcomed some low-key printed materials into the workplace but, as stated, did not want to be personally involved in a blaze of publicity about FOA. Clearly, they view their role as possible **information providers** but not accomplices of the OEA.

Employees raised the idea of TAFE courses and Industry Training bodies covering the topic during apprenticeship training.

Billboards were contentious inclusions to the campaign, partly a function of the messages discussed, some of which could be viewed as inflammatory to union relations. Promotional merchandise also did not receive a warm reception as they trivialised the issue.

Other subtle but impactful employee directed vehicles suggested by this research included...

Payslip messages

Notices in the Yellow Pages

An induction kit pamphlet

...all of which will assist the "*drip feed*" of information about FOA, making it newsworthy, relevant and placing it firmly on the agenda as something to move towards.

As far as reaching **employers** is concerned, apart from main media channels, access may be achieved through...

- BRW
 - The Internet
 - An Information Kit (to keep on file)
 - HR/IR newsletters and magazines
 - Industry Association Material
 - Direct Mail (if it looks important and authoritative)
 - Accountants
 - Solicitors
- } *can be called on for advice*

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**The Detailed Findings
FOA**

Employers

Attitudes to Unions

A degree of tolerance is exhibited towards unions, their role and responsibilities which is not directly translatable into support from employers in the building industry. A more accurate description of the union relationship is "*a necessary evil*" which is omnipresent, often frustrating to deal with though imperative to lift the workplace practices of "*dodgy employers*"...

- the concept of a union is good
- it keeps employers honest
- it protects them from themselves and outlaws bad practices.

Union issues are so much part of the day-to-day existence for HR specialists, consuming much of their time and energies. Infrastructure has been designed around the need to service union issues; the specialists working around the clock to avoid industrial shutdown at any point have long since ceased to ask themselves about how much unions impact the workplace. Unions are simply unavoidable, pervasive and taken very seriously. Employers now think of their own role as ongoing strategic management of the pressure point tactics which unions use.

There appears to be a sliding scale of union activity and worksite interruption according to the size of building contracts and location. The rule of thumb appears to be if projects are worth over one million dollars, they are targeted by unions. While such scrutiny by the unions is acknowledged to spill over into work practices which in reality benefit employees and possibly protect employers from prosecution, their constant surveillance transforms many worksites into "*cat and mouse*" games.

Bigger employers felt quite in control of their own industrial issues, despite the pull unions continue to have, despite the insistence on ticketed entry to sites.

Most have accepted the rigidity and restrictive practices endemic to their sector and with some relish relate that although the level of union power has not actually diminished, they feel more in control than in the past.

Smaller employers feel the presence of unions more from an anecdotal perspective. Their subcontractors are provided with "tickets" to be accepted on site as a matter of course. This practice is an institution, the building industry being the benchmark for the most tenacious adherence to this stipulation. Only a foolish operator would try and circumvent the practice.

No consensus could be achieved on whether unions across the board are more powerful these days. Confidence in the organisations ability to deal with union issues appears to be a much more important measuring stick. Where opinions did converge was on the **timing** of any change to the stranglehold unions exert on the building and construction sector. Employers were adamant that unions would be less important in the next decade and that any efforts to change the industrial dynamics of the construction site would be small gradual chips...

"If we get anywhere near this (FOA) in ten years time, I think we are probably doing very well. The unions are still very strong organisations and they are going to cause a lot of unrest and a lot of pain for both small and big contractors over that period of time"

Critically, despite some decline in unionisation in some industries, the building industry is perceived to be running against this trend. Employers identify their unions as unique, more problematic, more entrenched . This fuels the perception that unions are a hot issue and will continue to be ...

"...there are some industries that are consistently holding their numbers, construction is one, waterfront is another, meat industry's another, and these industries that are targeted as needing some sort of reform, but the participants that need to effect that

reform aren't particularly interested in paying for the grief that they are going to get along the way and we're a real example of that"

Understanding & Reactions to FOA

At the larger end of the spectrum, employers are extremely well versed in IR issues, FOA is not a new concept. It needs no explanation and is clearly part of the vocabulary, but it is regarded as a fledgling "*ideal*" out of touch with reality.

Interestingly, FOA is only seen to represent the employee perspective as employers felt no coercion to join an employer association. Consequently, references to the latter aspect were confusing.

The established "*no ticket no start*" motto of the building industry makes it an acid test of the concept of Freedom of Association. There is possibly no better example of a segment where union affiliation not only matters, but perceived contraventions have the potential to hold major corporations to ransom and result in heavy losses.

Against this backdrop, the well intentioned FOA premise is readily dismissed ..

*"It is commercial suicide to follow
FOA"*

Notwithstanding this, some employers can appreciate the "*political correctness*" of FOA and why governments would need to promote it. But, it has a decidedly hollow ring to it, it conveniently leaves out implementation which suggests few could ever envisage it coming into effect. While the principles behind FOA are admirable, at the core of the rejection are a number of problems...

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A. Building & Construction

- **Sounds superficial...** FOA is perceived as a whitewash with little substance, a catch phrase which sounds good but isn't translatable into the building industry
- **Promotes "union bashing"...** it appears to be just one more arm of an anti-union government program
- **No implementation...** it avoids raising the difficulty of implementation by almost pretending that if you ignore the problems they will go away...

*"It doesn't work for employers. I think that people would be surprised to hear an employer say that, but it doesn't work because a lot of employers take the view that it is just too much **hassle** to try and manage these issues on a non-collective basis. Then add into the equation, the fact that you've got trade unions who in the larger cities are very organised. They have the power of us not wanting to lose hundreds and thousand of dollar"*

"I think it is designed to make more of a point about the freedom to choose how you're going to be represented in the workplace. And I really don't think there'd be an employer or a union that would seriously argue that that's not a realistic objective to have. The difficulty is in the implementation"

A further consideration is that FOA appears to have severely minimised the time frame for such an "about turn" in the role of unions...

"I think it looks great on paper and I think most employees would probably agree that the ideology is where they want to end, but the path from here to there is two steps forward and one step back, it's rocky and muddy and you're going to get dirty along the way"

This misperception creates a problem should vulnerable smaller employers accept FOA at face value and try and implement it from day one...

*"You've got someone telling you you're not allowed to start on site until you've got an enterprise agreement. It's like, is that true or not? But are you going to get your options, are you going to get some advice, **are you going to get an answer that's going to bankrupt you.** If the advice is 'you don't have to sign', there are going to be people who will nail you to the wall and you will go out of business and that's not fair. **The role of the legislation is not to use up people to bring about change.** It comes back to that time frame"*

Ironically, the perceived futility of the FOA legislation was most vividly illustrated by the Federal Government's apparent side-stepping of its own proclamation ..

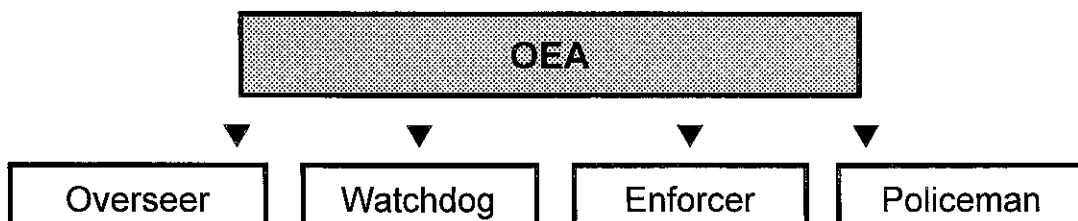
“Take a look at some of the federal projects in Canberra which aren’t administering the legislation themselves, we question that, its a mockery for us to be looked at as the ones who have to implement it. ”

*“We do a lot of federal work and I can guarantee that if I took a stand that delayed us handing over one of those projects, the Federal Government would not pat me on the back and say well done- they would say **why isn’t our building ready on time?** If all the divisions of the government could coordinate themselves just as the divisions of the construction industry could, then the game would change overnight”*

Perceptions About the Office of Employment Advocate

“Policing the implementation of the Workplace Relations Act” is the most succinct explanation provided for the role of the Office of the Employment Advocate.

It is described accordingly...



Employers in this sector were **most aware** of the Office of Employment Advocate, though a detailed understanding of the mechanics of the organisation was lacking. While Freedom of Association was confidently assigned under the umbrella of the OEA, it was not seen to represent one of its **major** strategies.

Australian Workplace Agreements (AWAs), in contrast, were higher profile within this segment and much more immediately identifiable as an area belonging to the Office, which tended to place FOA somewhat in the shade.

Given the preoccupation with AWAs, discussions about the role of the Office with respect to FOA were stilted. Employers are circumspect in their comments about how the Office was performing this role. In a nutshell ...

*The Office is known for
AWAs not FOA*

Having to forcibly link the OEA with FOA legislation, many employers doubt the credentials of the organisation to uphold the ideal FOA espouses. The Office is deemed a new organisation, yet to build a strong identity, and fundamentally focussing on implementation of AWAs.

Industry expertise of the OEA is unknown, and to date, employers have no indications that the Office is experienced in the construction sector..

*"They need to know about the vagaries
'of each industry... show familiarity with
the nuances"*

Combine the above insecurities with the concerns about the impracticalities of FOA, and it is not difficult to fathom why FOA may not be taken seriously at this point in time.

It was apparent that personal contact with the Office, which again revolved around AWAs as opposed to FOA, was the exception rather than the rule. Only one respondent had significant experience with the Office and was reluctant to be critical, though was certainly not complementary. Even this respondent was still testing out the OEA and had not yet been convinced that processes in place were functioning smoothly. Clearly, the OEA will be under the microscope for some period with regard to AWAs which

creates a problem for getting across the FOA message. No doubt, the success factor assigned to its progress with AWAs will set the scene for the acceptance of the subsidiary activities centred on FOA ...

"We've only had some low level discussion about AWAs because there hasn't been many, just about 160 employees who've gone to the OEA"

Media & Messages

It would appear overly simplistic that messages touting the benefits of FOA could reverse union holds overnight. Thus, in some respects the ideas for lifting the profile and interest in adopting FOA put the cart before the horse. Advertising FOA assumes a simple attitude change is required but, basically, everyone is on side already they just don't know where to **start**. The missing piece in the puzzle revolves around the inevitable headaches with...

IMPLEMENTATION

With no implementation strategy, well chosen words about FOA are indeed cold comfort. They also appear to be very ambitious for this sector and potentially inflammatory at an industrial level.

Primarily, a high profile **implementation** program with mainstream media needs to complement a communications program about FOA. Without this adjunct, the communications strategy is decidedly weakened. Naturally the implementation publicity program must involve specific progress on building sites rather than unrelated industries.

Of all the messages run past this group, the most neutral and broadest received the best response...

Freedom of Choice

This seemed generic enough to cover both AWAs and FOA, but subtle enough to get the ball rolling without aggravating relationships with unions. Other statements appeared very much out of touch with the commercial risks associated with taking a stance.

As this segment represented employers who "*walked and talked IR*", higher level media options were particularly appealing as a starting point to filter across messages about the OEA and FOA ...

- **The Internet** is already a reference point and would seem a suitable source for the implementation strategy updates
- **Public information lines** were one of the least appealing avenues, representing a premature step should smaller subcontractors place their livelihoods at stake on the receiving advice that FOA law is in effect. There is no expectation that the Office will actually prosecute such cases successfully in the building industry without incurring financial consequences for the companies involved.
- **Mainstream approaches** such as TV radio and newspapers do not appear to be the most successful avenues for **this audience**. One exception, BRW, stimulated great interest particularly because the inclusion of the OEA in this forum would suggest that adherence to FOA is a serious offensive from the government and not just policy without practice.

Employees

Attitudes to Unions

The attitudes of employees representing the building industry, parallel that of employers. Both decry the practice of unions in theory, but are happy to comply to get on with things. Tolerance for mandatory unionisation on sites is evident, something that workers oblige without deeper consideration. It stems from a general belief that unions are a good thing, existing to protect worker's rights even if the entree is somewhat tainted by standover tactics.

The bottom line is that...

*Being in a union is probably better than
not being in one*

...especially should a dispute with an employer arise. Thus, the full spectrum of benefits of being in **some** unions are acknowledged...

- safety
- compensation
- overtime and other allowances
- appropriate salary
- flexible working conditions

Though, not all unions are seen as effective, union membership is not an insurance policy by any means...

"Everyone went home in the heat last week, except us, we even had to dig a hole where it was five degrees hotter. If someone rang the union to complain and our employer found out, we'd be in

trouble ... its a Clayton 's union."

Despite some muttering that unions perhaps have been stripped of their past powers, the general consensus is that union membership still holds the building industry to ransom in certain jobs, in certain locations, for certain issues.

Smaller operations felt a little differently, as union membership tended to mean little more than **site entry**, consequently they were hardly knowing of the day-to-day benefits of membership. Operators in regional locations also tended to distance themselves from unions, feeling that they had little influence on the local scene.

Younger apprentices were the most confused about unions and the possible relevance they had to their jobs. Evidently little information is forthcoming during their training and though many speculated that they may require a union one day, not one spoke confidently about their rights with respect to union membership.

Yet, for the bulk of employees in building and construction, unions have secured strength and power. By default you become a member if you want to survive in the industry

"Technically, you don't need union membership, but practically you do"

"A site is not supposed to ask but the details are requested and if you aren't in the union it's tough"

"You 'll be squeezed to get off the job"

Understanding & Reactions to FOA

The term "*Freedom of Association*" is unfamiliar and very formal sounding though the concept is generally accepted as something worth striving for. The origins of FOA are not immediately obvious, though thought to be related to State Government changes to workplace legislation ...

"Is that covered in the laws brought in after Jeff got in?"

Once again, FOA suffers a credibility problem as employees try and match the intentions of FOA against the realities of the work environment. While the benefits of FOA are self explanatory some proffer a hidden agenda similar to their employer counterparts...

*FOA is there to beat
down Unions*

Perceptions About the Office of Employment Advocate

The Office of the Employment Advocate did not strike a chord with employees, most of whom presumed it was a government instrumentality with designs on undermining the unions. For some, despite knowing little about the OEA, this is the natural deduction about its mission...

*"OEA (probably) uses you as pawns to get its own ends; its **not for the battlers** like us; it's to break down union conditions"*

"They'll use your misfortune to pull powers away from the unions"

Under this philosophy, at a glance, the OEA appears to be instituted for **employers** not employees, reducing the immediate interest in its availability.

Provision of further information about the protective aspects of the Office, in particular...

Gives advice and help to employees on matters that affect a person's right to freedom of association

...creates, for some, immediate intrigue and curiosity about the personal relevance of the Office. It opens up positive contemplation...

Key Information Needs

<i>Could I access the office instead of a union?</i>	<i>Will someone personally represent me in a dispute?</i>	<i>Will they come to the workplace and be on site during a problem?</i>
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But more fundamentally, one of the most pressing questions centres on...

Can I trust the office to come to my aid when I need it?

Without “*proof*” of immediate backup, the Office is regarded as a paper tiger...

“Fine... weeks later it will all be resolved. I want to be there tomorrow!”

Regardless of OEA support, taking a stance may well be a risk few would actually take...

“If you want to do b in an employer you might be protected. Fine! But you’ll never work again.”

"Sounds good. But the word would be out... don't employ this guy... he had a whinge to the Government."

"It won't do much good after you're sacked. I'm only interested in what feeds me now."

Media & Messages

Suspicion about the "hidden agenda" and bone fide status of the OEA markedly reduces the impact of messages intended to communicate FOA. If the OEA is to embark on a communications program, it should recognise that employees will be reluctant to approach it and that communications, in the first instance, need to be...

- **clearly addressed** to employees as opposed to employers (for some people it was evident if communications refer to both targets, they are, infact, meant for employers)
- **explanatory** about its role
- able to diffuse the pressure surrounding the issue

The most simple and direct messages have most merit...

Union membership is your choice

Do you want to be in a Union?

No one can force you to be in a union

Simple approaches are also the most fruitful to convey FOA to the up-and-coming apprentices who have vague notions about their rights with respect to unions

Some of the more provocative alternative messages which referred to "unlawful closed shops" and "No ticket, no start, no way" did little to engender support. Employees viewed these as "over the top" and aimed at antagonising unions, rather than educating employees. A consensus emerged that this group of messages belong to an era that has since passed.

It could backfire on the OEA should it pursue a "more aggressive" campaign. A **balanced** approach is sought. Just as...

We have the right to choose

...so too should...

Unions have the right to exist.

In addition to promoting FOA, which employees agree is necessary though difficult to achieve in practice, there is an expectation that the OEA needs to clarify its **own role** in the process.

The guidelines offered by employees are directly borne from the insecurities about the Office's "guardian" role...

1. **Neutrality** from Government, unions and employers must be demonstrable...

"They need to get across they are no puppet"

2. **Protection** should be there regardless of business size...

"They should also be for the little person not just the 3000 person site"

3. **One-to-one services**, "on the ground" must be available...

"I'd expect for them to come here to this site"

4. **Immediacy** of follow up is expected...

"You shouldn't surrender your rights and then be left to sink or swim"

The above pre-requisite conditions may, in fact, be outside the Office's mandate, roles and responsibilities.

If the Office is not intending to offer such a personalised service and naturally displace some of the functions a union is normally responsible for, it needs to **reformulate its positioning** to dispel this assumption recognising that without such commitment it will clearly undermine its perceived value.

Otherwise it will be viewed as a union or, at minimum, a relatively comprehensive employee support service.

Subsequently, a key thrust of the communication needs to clear the air and literally state... "*we are not a union, but we offer you x, y, z in situations a, b, c*".

A host of media options are palatable to this market as the more widespread the information, the better, despite an overall belief that the "*battle is uphill*". An **Information Kit** is a logical starting point which could be suitably backed up with radio, the most direct route to building workers. An Information Line to "*check whether its kosher*" is also warranted.

On site or near site billboards run the risk of walking the razor edge between being communicative and inflammatory. They could easily poison the process before it had really started.

On the opposite side of the coin, a light hearted gimmicky approach in the guise of T-shirts, coasters and so on, trivialises the issue. These definitely received the "*thumbs down*".

Apprentices favoured receiving communications about FOA during their TAFE courses, nominating pamphlets, noticeboards, posters or guest speakers. Other government channels such as Industry training bodies were also suitable vehicles. Importantly, all felt that they would be more open to communications **during** their study than they would be at the completion.

Prepared for:
OFFICE OF THE EMPLOYMENT ADVOCATE



B. Manufacturing

Employers

Attitudes to Unions

As with the construction segment, fairly stringent ties to one union are not uncommon in manufacturing...

"The companies we work for are unionised factories. For example, Australian Newspaper Mills is a union shop, so any of our employees who work on the site must be in unions. We've tried to get out of it, but, really, we can't...we've said to our workers that it is not compulsory, but we want them to stay in, if possible"

However, this is not the only manifestation of unionisation, as many employer representatives, in a range of manufacturing environments, adopt an intermediate position in terms of their progressiveness with dealing with unions and have good relationships with several "competing" unions.

The degree of progress, no doubt reflects the unions in question and the area of manufacturing it is related to...

"In the automotive industry it is hard to see how the scenario (described as difficult) would change in the immediate future"

It was not uncommon for large multi-national groups to particularise their views on unions to the factory level, regional level or business group

"The retail side of the business is the most progressive, there are no union sites"

The complex strands of union relationships experienced by the larger employer dictates that there is no global, neat view of unions. A continuum of opinion exists depending on which facet of the business is considered.

Many were "towing the line" and working in partnership with the unions, and were proud to have created an environment of relative harmony.

Consultation which was well established with unions, at most levels of the organisations, probably reflected unions becoming more conciliatory with recent reported downturns in membership.

As with other sectors, unions, while still a "problem", appear more under control than in the past. The degree of control varies by union, as some unions are described as very militant and others as reasonable. They can sometimes be a good buffer between employer and employee but don't always understand employer issues or concerns and can breakdown communication channels.

There was evidence of employers adopting an open and honest approach to communication with employees, and unions progressively losing strength as employees' trust with the companies' management grows. Employers were keen to highlight the limitations of some unions...

"Unions are extremely slack about giving out information to members and only do it when it is politically advantageous e.g. WorkCover. They play on people's insecurity"

Understanding & Reactions to FOA

Not all employers have a good grasp of FOA, benefiting from some prompting about what it means.

After digesting basic information about FOA, it triggers more discussion and interest. But, FOA is not taken too seriously and many only pay "lip service" to its principles regarding individual rights...

"That's right, yeah! I'm aware of these things...The choice of being in a union or not. That choice is now made for our employees we can't make them join a union. It (FOA) doesn't work in our field because the client is a union site... it's made clear that "it's in your interest" to stay in it (union) if you want to work here (on the big projects). It's fine in theory but not in practice"

"The first thing the client..... (Uncle Ben's, Rice Growers etc.) asks is "are all your members part of a union? '... then "are you willing to pay them on site allowance? ' If you say no to these you won't get the job. Yes, you could sue them but they would never give you another job....plus, word would travel and you'd be black banned. The problem is that big clients are union shops. Their maintenance crews are part of a union"

In practice, FOA is not a barrow these employers push too strongly, indeed many take a deliberately **passive** role in providing the information to employees ...

- A fact sheet on induction
 - ... a caveat that the company will not discriminate on the basis of union membership - on the very same application form which asks if the employee is prepared to join a union

" They must indicate on the form if they are prepared to join a union and we encourage them to "

- Subtle referrals to union representatives during the induction process.

Reading between the lines, there are employers who favour collective membership and are not likely to promote FOA.

It is easier to deal with fewer unions, than having many relationships. Most prefer to deal with *"the devil you know"*.

As a consequence, employers in these industries fail to recognise themselves as a target audience for a FOA campaign, but respect the **rights** of their employees to obtaining this information. Accordingly, they would not envisage themselves as the messengers, leaving communications to a more **mainstream** approach.

There is no problem with a targeted campaign, as long as it is an employee information campaign which does not compromise the politics of employers.

Perceptions about the Office of Employment Advocate

Again, knowledge of the OEA was overshadowed by the advent of AWAs rather than FOA. Few had come to grips with its role and suggested there was a mystique surrounding the office despite...:

- the receipt of printed material
- having recently attended workshops.

No consensus could be reached about ...

- the activities of the Office
- nor its achievements.

Importantly, the conversation continually drifted back to AWAs and speculation was evident that few inroads have been made in this area. For some this coloured perceptions of the Office and decreased the potential interest in its activities.

Some surmised that if the Office has evolved to help employers, they have come across few examples of where the Office has been successful.

This was underscored by an apparent absence of PR activity and media coverage ...

*"When its happening in industry, it hits
the papers"*

*"You see WorkCare, unfair dismissals
etc. but where is FOA?"*

Given the perceived lack of relevance of the FOA legislation to employers, the low profile of the OEA was probably seen as appropriate.

Media & Messages

As foreshadowed, employers were not interested in **direct** information about FOA. Such information could be politically insensitive and irritating to their relationships with unions....

"Well yoū wouldn't be putting it on the noticeboards"

"You'd be creating havoc."

If forced to consider communications, the better information channels were the subtle ones...

- An **Information Kit** to read or keep on file .
- **Billboards** around town to generate a momentum.
- **CCH updates** which followed legal developments regarding FOA (this was particularly important to give FOA credibility as a practice worth instituting).

During discussions about communications, it kept brimming to the surface that FOA risked employers losing control, losing some of the ground they had regained from unions. Accordingly, while accepting of the FOA philosophy, few would like to be instrumental in delivering communications for employees. However, most accepted the role of providing the opportunity for employees to access information.

Employees

Attitudes to Unions

Many of these employees came from environments where downsizing, enterprise bargaining, individual contracts and proliferation of part timers is second nature. Union membership is a comfort factor in these situations, while it is hardly visible in smaller organisations or those with no union heritage.

As a source of information, unions can be important and few employees in unionised zones feel they have a choice. The cajoling to join is almost subliminal as they ponder how to answer carefully worded but coercive job application questions about union membership.

While no one felt **forced** to join a union, many viewed membership as pure and simple self preservation....

"If you're not in it, your support group disintegrates"

Being out on a limb is an unattractive concept, regardless of one's convictions.

Without other options or alternatives, union membership can become a **default** position.

Understanding & Reactions to FOA

In an environment where union membership is the exception, FOA is naturally not a tremendous issue though useful knowledge to store for the future.

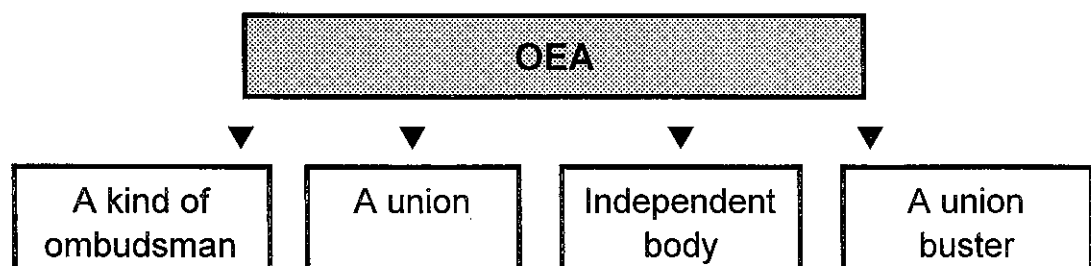
The most appealing and interesting aspects of FOA were "*protection of employment against both discrimination and victimisation*" and the availability of "*support from OEA*".

Given that few employees found themselves in volatile situations which could "*test out*" FOA, they were content at this level of examination. Unlike the construction sector which teased apart the veracity of FOA, it tended to go unquestioned.

This attitude was one of welcoming information about FOA and looking forward to more detail. And for some, wondering why the issue has risen to prominence.

Perceptions about the Office of Employment Advocate

As a title, OEA is not self explanatory and many are confused about its status. Reactions are spread across the spectrum...



The functions of OEA are not an immediately interesting source of information. Yet, they elicit some consistent reactions about its status and importance.

The **authenticity** of the office was questioned. There was a feeling that the OEA did not want to promote its government link, should this discourage interest. The lack of publicity received by the Office also posed a question mark.

As with previous employee groups, there was a tendency to crossover the role of the Office with that of unions, creating high expectations for support and breadth of services.

Uncertainty was also evident about...

- cost of consultation
- confidentiality
- nature of staff expertise.

Most assume it would...

- investigate complaints
- help you go to court
- assist with discrimination issues

At this level there is interest in **more information** about **who** the OEA is, and in examples of its achievements.

Media & Messages

Employees have bigger issues on their plates other than union membership so FOA receives a limited appraisal. Many of the drivers in this industry appeared dissatisfied with a range of workplace conditions and practices...

- pay rates
- truck safety
- WorkCover
- contracts

...and so on.

Of all the messages, those reinforcing "**Choice**" were most positively received. The others seemed too hard edged and out of proportion with the magnitude of the issue.

Personalised approaches to media such as employee directed letters and faxes were not favoured as there is no urgent need for the information.

Radio could be quite successful...

"Factories have the radio on all day"

"I'd listen in the car as well"

Noticeboards or posters had a place for some, as did billboards, if a short succinct message is used. Others sided with the overriding view from this research that billboards are fraught with difficulties ...

"It's a touchy subject"

"Union supporters would burn down the billboard"

Different approaches suggested by employees included..

- a **householder** letter to avoid employer censorship
- a rotating **pay slip** message to keep the issue turning over in their minds.

Prepared for:
OFFICE OF THE EMPLOYMENT ADVOCATE



C. Road Transport

Employers

Attitudes to Unions

There is no clear cut attitude to unions that applies to **all** road transport organisation representatives.

Small operators were open about avoiding hiring union members, fearing the consequences should a litigious incident arise. Some big companies were laissez-faire in their attitudes, confident that unions "*had their days*" and that on most occasions they could strike a bargain with the unions they preferred, and alienate those who were troublesome to work with...

"No benefits. Today, to get the best out of your staff you have to treat them well. Maybe 50 years ago they had a use, but now to allow your staff to be most productive you have to look after them and unions are just looking after themselves now and they are not for the members."

"They are an antique, belonging to the 19th Century. There is a tremendous place for them if they were motivated by 21st Century attitudes and values. They don't have people of much ability in there and they have a real 'work against the boss attitude', real chip on the shoulder stuff. they are just like a bit of glue, holding you back."

But, examples also existed where employers were indeed hamstrung by union power...

"What the Act says and what actually happens can be two different things...there would still be places we can't go if we don't have union members.... for Tooheys in Sydney, we paid for one worker to have a union ticket to go on site"

"If you have six pallets to deliver... you wouldn't run the gauntlet..it could jeopardise the company you're delivering for...their contract"

"It depends on the stance you want to take...whether its worth it or not. We could go through a picket line but not with our name on the truck because we don't want unions to see we're defying it"

Transport industry representatives also express the feeling that unions are becoming more dogged in certain areas such as the wharves...

"The general public hasn't got a clue about what goes on at the wharves... long delays even though you book spots to offload. The wharfies go on smoke-o and cause long delays."

"The difficulties getting paperwork passed (on the wharves)... you've got to be very polite. I don't know how the drivers contain themselves."

For others, the relationship with unions is pragmatic....

"We retain the unions we need for our core business and remove those who aren't needed"

"Dealings with the unions now are more reasonable and relaxed because their power has been shifted to lawyers"

"In the past they could just rock up, now they need rights of entry- its no longer power, they need a search warrant"

A sentiment of needing fewer unions for workplace harmony also exists, as several employers were exceedingly frustrated with small numbers of employees who prefer not to join favoured unions, while the rest of the workforce abides.

Understanding & Reactions to FOA

At first mention, this is described as *"an old term"*, *"40-50 years old"*. Younger respondents said they were unfamiliar with it. They questioned the translation of the term... *"what does it mean?"* and posited...

"Groups of people getting together for some sort of particular outcome."

More experienced employers were au fait with the concept of FOA, but did not hold it close to their heart. Many were uncomfortable with distilling any benefits from the employer perspective. The company's capacity to **officially meet** any guideline that FOA implied was the most important issue for this segment. The fact that, in reality, a freed up workforce was highly undesirable in some instances, severely limits the motivation to push out the message to employees.

While most met their obligation to the legislation, they worked around the guidelines to create a situation which suited their needs. There was no evidence that employers believe they are disregarding legislation, most had a belief that business objectives need to drive their particular mode of dealing with union issues.

Some ignore FOA, believing it is a political tactic to breakdown the "closed shop syndrome". This segment can only envisage benefits for employees not employers.

Opinions about the prospects of FOA becoming a reality were consistent - there is much cynicism...

"That's rubbish! There might be legislation on it, but in practice, no way."

"If you aren't a member, you basically can't work at the wharf."

"It doesn't matter what the law is, or human rights... we're talking about the real world!"

One remarked that it was understood in his business that somebody can't be forced to be a union member, but things are made very difficult for non-union members in the workplace. Pressure is placed both on the individual - by people refusing to work with him - and on the organisation. For example...

"If that person is in a certain sort of activity, the steps leading up to that stage just won't get done"

"The union delegate will just hassle those that aren't members"

Despite the doubts about FOA, employers, again, felt that information needed to be passed on to workers directly rather than through employers...

"Otherwise they will just think you are feeding them a line"

"They'll smell a rat"

But, there are difficulties with this in the transport industry, due to the fact that many are illiterate or poorly literate. (Indeed, one said a lot become drivers for this very reason.) In this case, **word of mouth** is vital but can be both a positive and a negative...

"People believe what they hear because they have no way of checking up on it. A lot of inaccurate information gets around."

Their ideas on communication encompass...

- short and to the point
- aiming the messages at both workers and employers

"You've got to get really basic"

They could see the need for a two-pronged campaign, the above directed at workers and another directed at employers. One suggested BRW. In any case, two different levels of media would be required.

Perceptions about the Office of Employment Advocate

Employers in this sector tended to balance workplace relations issues with "*a hundred and one*" other tasks including...

- occupational health
- pay roll
- other personnel issues.

Currently, they are feeling bombarded about a range of topics and point out that they have scant knowledge about most of them.

The Office has not caught their attention so far, although there was a single report that an employer had been investigated by the OEA with respect to an unfair dismissal case. This was reportedly initiated by the employee and the employer was left quite confused about who she was dealing with and what her rights were with respect to the case.

As employers have had to lift their game on a number of levels, EEO, unfair dismissal and so on, some are more than a little uncertain of which organisation fits with which issue. Accordingly, the division between the OEA and EEO organisations is fuzzy.

It would be correct to state that the OEA has made little impression on this segment as both the origins and purpose of the OEA were unknown.

FOA has never been stapled to any particular organisation, in spite of the fact that some clearly understood it though kept low key when it was expedient to do so.

Employers have no intention of "testing out" whether FOA works, and are incredulous that it would be expected of them...

"We are a service company. If we argue with unions we'll be replaced by another transport company. There is nothing to protect us. Sellers can do it because they can still sell their product. We're a service company...we can't buck the unions"

"Transport companies have enormous debts to meet each month... it would be financial suicide... there's no compensation.... they (OEA) won't say 'we'll bankroll you for two to three million dollars (while trucks are off the road)' There's not enough cash flow to last, yet we're fairly solid as a transport company"

"It sounds simple but realistically it's not practical in a lot of industries. To be a hero is a one-way trip to the bankruptcy court. You might win against unions but go bankrupt! It's a highly geared industry... employees, trucks... you can't do it"

One employer offered some solution....

"If the OEA could postpone your payments to the finance company while you're in dispute and can't work, then you might start to think about the possibility of standing up to unions"

Obviously, the task of overcoming such cynicism is huge...

"Most advocates seem to get a very quick reputation for being just another government department - like Consumer Affairs - it's one of those 'follow the phone number' tricks."

What they need to know is...

- that OEA exists
- its scope.

It's very important, most say, to be made aware of the above, particularly for smaller employers who may not have an association or access to legal advice. Legal advice in this area would invariably be specialised and thus costly.

Media & Messages

At face value, main messages about FOA are seen to be more appropriate to promote to **employees** rather than employers. In fact, most employers in this segment jumped to the conclusion that the communications campaign would be slanted this way.

Their disinterest stems from ..

- some feeling they have adequate information and wanting to keep the issue low key
- some believing they have done their duty.

On this basis, few were interested enough to comment on all the messages in detail, but offered some advice on an alternative strategy...

A **subtle approach** involving...

- provision of a pamphlet on induction
- phasing out of mandatory deduction slips
- bypassing the traditional union meeting with the "union rep" on a new employee's first day

...is the common thread which appeals to most employers.

Having said this, there are other employers in this segment who would like to be better equipped.

For these people, who tended to be from larger concerns, a two-pronged campaign is necessary. Employers would like...

- updatable information manuals
- a directory pointing to avenues of assistance, etc.
- the IR Newsletter (which comes out monthly)
- press advertising and editorial
- perhaps direct mail.

One suggested the provision of a "Q&A" type manual, i.e. "What do you do if...?" However, note the concept of a manual does not appeal to all... some say they wouldn't read it unless the need arose.

A more mainstream and less "word" based campaign would be more appropriate for workers in the transport industry. Radio is especially relevant, as they usually have the radio on when driving.

Employees

Attitudes to Unions

Road Transport employees were the **least informed** group about unions and workplace issues in general. While most participants belonged to a union, they did so for peace of mind and expected no tangible benefits as little information seems to be forthcoming from the relevant unions.

There is an impression that regardless of your own attitudes to unions and their personal value *"you had to join the union that covers your industry"*.

Indeed...

"To supply anything at all to places like Australian Paper Mills and Uncle Ben's, you have to be in a union...I've been told about it"

Some think themselves fortunate that they have been able to bypass this requirement...

"I drove a concrete truck to Australian Paper Mills and was asked if I was in a union or not...I told them I was (even though I wasn't)"

Their isolation leads to a sketchy view about how they regard unions. Some are relatively ignorant about the topic...

"Where do you find out about this stuff?...do you look it up in the Yellow Pages?"

There is also a degree of suspicion and uncertainty...

"On job application forms, they ask you if you are prepared or willing to join a union. You don't know if you're shooting yourself for saying yes or no ... you're not sure what the employers are after... you do what ever it takes to get a job"

Some believe unions are becoming more important to workers like themselves , others just as strongly argue that unions have left the scene. There is a belief that unions are only interested in workers who are employed in large concerns.

Most were preoccupied with WorkCover and the union backlash against the changes, little else had made an impact strong enough to shape their opinions about unions.

Some were quite despondent about their lack of information...

"The average Joe Blow doesn't know their rights or who to ask"

Understanding and Reactions to FOA

Drivers tend to come across little information in their roles and cite themselves as "last" to find out about "everything".

They are pleasantly surprised that the OEA is taking the initiative to reach them in a campaign, but believe that its efforts may be thwarted by management that wishes to tow the line to avoid upsetting the unions. Obviously, information targeted at this group will have to be pitched to address low literacy levels and language barriers. FOA has a chance of making an impression if it can make a "splash" in the news, but will not be taken on board if it appears convoluted and difficult to apply to their situation.

While understanding FOA and agreeing with the sentiment, FOA also does not appear to be in force in this industry

*"If I need to get my truck through, it's
(having a ticket) par for the course"*

*"But, you do need a ticket to get on site
when you deliver timber"*

In this context, FOA is regarded as "*wishful thinking*" thwarted by huge barriers to change. But fortunately, it doesn't appear to detract from the interest about the topic.

Perceptions about the Office of Employment Advocate

The OEA has little meaning, its mission is unclear, as is its relevance. It doesn't strike these employees as an organisation designed for their needs, it feels remote, impersonal and bureaucratic. Given their working conditions on the road, they seriously doubt whether an OEA could ever really **relate** to them and, more importantly, ever **access** them.

Imbuing the Office with powers regarding FOA does not totally clarify its role. It seems a little over the top that an organisation has been installed to oversee the implementation of FÓA, when the issue itself does not seem to be a huge one as measured against the Workcover giant. So the most basic question is asked..

Why all the fuss now?

At a more personal level, the OEA stimulates some interest, if it is prepared to show its human face and step out into the workplace to demonstrate

- it will visit you
- negotiate for you
- speak to your boss.

In a sense, if the OEA fashioned itself as a **union surrogate** for this largely abandoned group of workers, it could be positively embraced.

Media & Messages

Recognising the opportunity to target workers like themselves as transient, this segment favours the direct approaches to communication. Messages which were wordy or use metaphors did not click with this audience. The WorkCover example was bandied about as a comparison point that the OEA should model itself upon.

The most suitable message was ...

Union membership... your choice

It stood out because it is pointed, simple and unambiguous.

Less direct communications such as...

Freedom of Choice

...were dismissed as soft, unconvincing in tone, and too vague or general.

*"That one could relate to anything, it
could relate to ordering a beer"*

Above all, people agreed that messages from the OEA should be precise and create an environment which minimised pressure which could mount should it choose to take a more confrontational approach.

Most of the media vehicles did not receive an enthusiastic reaction with the exception of one - **Radio**. This is the optimum choice for grabbing the attention of drivers ...

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"3AW"

"Community Radio"

"They should get into the news stories"

Naturally, workers commented that these approaches would fall on deaf ears over time if the OEA does not *"have the balls"* to follow through the queries and demands such advertising will generate.

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APPENDIX ONE:

Prompt Material...

- ... AWA Employers**
- ... FOA Employers**
- ... FOA Employees**

AWA EMPLOYERS

What is an Australian Workplace Agreement?

- A new type of workplace agreement introduced in the *Workplace Relations Act 1996*.
- Voluntary, individual written agreements between employers and their employees about terms and conditions of employment.
- While they can be negotiated individually or with a group of employees, an AWA must be signed by each individual employee who chooses to be a party to it.
- Negotiation doesn't necessarily involve a union (although employees can appoint a union as their bargaining agent if they wish).
- Allow employers and employees to tailor pay and employment conditions to the needs of their workplaces, and individual preferences.
- in order to have legal effect under the *Workplace Relations Act* they must be filed with and approved by the Office of the Employment Advocate.

How is an AWA Established?

Lodgement involves a two-part form...

1. The employer's business and the steps which the employer took in making the AWA.
2. The employees covered by the AWA and the contents of the AWAs themselves.

An information kit is available for people interested in making an AWA which includes...

- An Employer Guide to AWAs incorporating...
 - ... information on the main features of AWAs
 - ... a step-by-step guide on how to make an AWA
 - ... model clauses for anti-discrimination and dispute resolution procedures
 - ... contact information for further advice and assistance.
- An information statement for employees.
- A filing application form to be used by employers when lodging AWAs.

Once submitted for approval, AWAs are assessed to ensure they meet the Act's legal requirements...

- Against a "*no disadvantage against award test*" - i.e. agreement is to be no less favourable **overall** to the employees concerned than the relevant award and laws.
- To confirm that the AWA meets additional approval requirements including that employees have genuinely given consent.

The approval process is conducted via direct consultation with those lodging the agreements, rather than through a formal hearing.

Once approved, the agreement...

- Legally binds the employers and workers who signed it.
- Displaces awards that would otherwise apply.
- Does not allow right to strike or lock out during the term of an agreement.
- Continues to apply after expiry, until replaced by another AWA, or terminated through a written agreement by the employee and employer.

The Role of the Office of the Employment Advocate

The Office of the Employment Advocate has been created under the *Workplace Relations Act* to...

- Provide advice and assistance to employees and employers, especially small business, on their rights and obligations under the Act in relation to AWAs.
- Provide advice and information about how to prepare and lodge an AWA.
- File and approve AWAs.
- Handle alleged breaches of AWAs.

FOA EMPLOYERS

What is Freedom of Association?

- Is the choice to be, or not to be, in a union or employer association?
- Allows greater choice in relation to which employer association or union to join.
- Guaranteed to everyone by provisions of the *Workplace Relations Act 1996*.
- Protects employees, independent contractors and employers against discrimination and victimisation because they have or have not joined a union or employer association.
- Makes invalid any agreements requiring compulsory unionism or a "closed shop" or "no ticket - no start" policy at a workplace, or any form of union preference.

What do the “Freedom of Association” Provisions Mean for Employers?

Employers’ Obligations and Rights

An employer must not (and must not threaten to)...

- dismiss
- refuse to employ/engage, or
- offer less favourable conditions

...to an employee/independent contractor because they are or are not a member of a union or...

Employers have the right to...

- choose whether or not they join an employer association
- resign from an employer association (provided they give two week’s written notice, and may remain liable to outstanding fees).

An officer/member of a union must not put pressure of any sort (e.g. through bans, limitations, and restrictions) on the performance of work to...

- influence an employer to take action against an employee or independent contractor because the employee or contractor is not a member of a union; or
- force an independent contractor to join a union.

The Role of the Office of the Employment Advocate

Under the freedom of association provisions of the Act, the Office of the Employment Advocate...

- gives advice and help to employees, independent contractors, employers and unions on a person's right to freedom of association; and
- investigates breaches of the Act and complaints by individuals that may have been discriminated against or victimised because they exercised their freedom to join, or not join, a union or employer association.

What does "Freedom of Association" Mean to Employees?

"Freedom of Association"...

- protects you from discrimination or victimisation whether you are a union member or non-member
- prohibits compulsory unionism or "*closed shop*" or "*no ticket - no start*" arrangements, and compulsory non-unionism.

This means that you cannot be...

- sacked
- refused employment or given preference in employment
- employed on less money than someone else doing the same job
- put onto less favourable shifts; or
- given fewer opportunities for overtime

...simply because you are, or are not, a member of a union.

The new law also means that...

- these rights cannot be taken away from you by any award or agreement
- if you are eligible under the union's rules to become a member, you are entitled to membership of that union provided you pay the fees
- if you want to resign from a union, you can (as long as you give at least 2 weeks written notice to the union and pay any outstanding fees if the union asks for them).

The Role of the Office of the Employment Advocate

The Office of the Employment Advocate has been set up to...

- give advice and help to employees on matters that affect a person's right to freedom of association; and
- investigate complaints by employees of breaches of the Act and their rights.

The Employment Advocate can...

- take breaches of the Act to the Federal Court; or
- give you help to go to court yourself.

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APPENDIX TWO:
Messages Presented

EMPLOYER AWA MESSAGES

- **A new choice for your workplace**
- **Tailor arrangements for each employee**
- **Individual contracts with employees**
- **Individual workplace agreements**
- **Greater flexibility**
- **Simpler workplace arrangements**
- **Is your award too complicated?**
- **Would you like to reduce the number of awards applying to your workforce?**
- **Would you like to clarify workplace arrangements?**
- **Arrangements to meet the needs of your business and employees**
- **Make arrangements which suit the particular features of your business**
- **Working better with employees**
- **Workplace agreement tailored to your business**
- **Workplace arrangements reached directly with employees**
- **Cooperation with employees**
- **Direct agreements with employees**
- **Working together with employees**
- **Cutting red tape**
- **No third party intervention**
- **Ability to access assistance, while maintaining control of the process**
- **Profit through productivity**
- **Are penalty rates a problem for you?**
- **Would you like to reduce your wages bill?**
- **Would you like more control over labour costs?**
- **Are unpredictable labour costs a problem for you?**

EMPLOYER FOA MESSAGES

- **Freedom of choice**
- **Preference clauses cannot be enforced**
- **Membership of an employer association is your choice**
- **Your right to choose**
- **Closed shops are unlawful**
- **Union membership is an individual choice**
- **Employees' right to choose**

EMPLOYEE FOA MESSAGES

- **Closed shops are unlawful**
- **Freedom of choice**
- **Union membership is your choice**
- **Do you want to be in the union?**
- **Your right to choose**
- **Are you being forced to join a union?
(You can't be forced to join a union)**
- **No ticket, no start, no way!**
- **Preference for union members is not on**

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APPENDIX THREE:
Media Suggestions Presented...

... AWAs

... FOA

AWAs

- An information kit, which can be accessed by calling a mailing house from anywhere in Australia for the cost of a local call.
- ✓ National telephone enquiry services - setting up a hotline.
- Newspaper ads, industry reference to the mailing house for the Information Kit and phone number for National Telephone Enquiry Services.
- Newspaper articles (major/local/ethnic).
- Articles in industry newsletters.
- Seminars, conferences, workshops.
- Internet home page (possibly interactive Q&A forms/up to date).
- Participation in events such as Small Business Expo.
- Outdoor advertising - posters, backs of taxis, buses, etc.
- Advertising/advertorial/editorial in women's magazines.
- Coupons in print media for reply paid response.
- Promotional merchandise - beer coolers, magnets, coasters, stationery, coffee mugs, calendars, etc.
- Direct mail.
- Faxes.

FOA

- National telephone enquiry services - setting up a hotline.
- Newspaper ads, including phone number for National Telephone Enquiry Services.
- Newspaper articles (major/local/ethnic).
- Articles in industry newsletters.
- Seminars, conferences, workshops.
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