

Submission of the State of Victoria

In response to the:

**Senate Standing Committee on Employment, Workplace
Relations, and Education Inquiry into Workplace Agreements**

The Nature and Diversity of Workplace Industrial Relations Instruments in Victoria

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Executive Summary

Throughout the 1990s, the Victorian labour market was largely deregulated. Awards and agreements were significantly simplified. After the referral of industrial relations powers to the Commonwealth in 1996, workers who were not covered by federal awards and agreements were left with only five minimum conditions. This group was identified as Schedule 1A and 356,000 workers relied on the five minimum conditions.

The move towards the significant deregulation experienced in Victoria was based on a desire to facilitate enterprise level bargaining over wages and conditions. In order to encourage this, a safety net of minimum wages was determined on an industry sector level.

Workplace level bargaining for Schedule 1A workers did not eventuate due to the poor bargaining position of the majority these workers. As a result, two-thirds of Schedule 1A workers were paid at minimum levels. Over time, the gap between workers in a strong bargaining position or those who were covered by the award safety net of conditions and the workers that relied on the bare minimum continued to increase.

To overcome the disadvantage faced by Schedule 1A workers, the Victorian Government referred powers to the Commonwealth to enable the establishment of common rule Awards. This move indicates the confidence the Victorian Government has in the ability of the AIRC and the current award system to maintain an effective safety net of conditions. It is also an acknowledgement by the federal government that special arrangements were necessary to meet the needs of those vulnerable workers and that the central role performed by the AIRC and the award system.

The experience of the Victorian Schedule 1A workers needs to be considered in evaluating the federal proposals. The failure of the Victorian experiment to encourage workplace bargaining over other forms of arrangements stresses the need for an effective and responsive safety net system for all employees.

Victoria also possesses an extremely diverse coverage of industrial relations instruments. Comprehensive awards and registered enterprise bargaining agreements cover the largest proportion of Victorian workers.

A significant finding in the submission, based on the State of Victoria, is that a large proportion of workplaces operate on more than one form of industrial instrument depending on individual workplace characteristics. Furthermore, almost one-third of workers are already covered by individual or workplace specific arrangements.

In terms of the effectiveness of comprehensive arrangements, there is no evidence to suggest the need for an overhaul of IR instruments. Survey results indicate that almost two-thirds of Victorian workplaces are satisfied that their chosen industrial instrument meets their business needs either most or some of the time.

Furthermore, satisfaction with comprehensive arrangements is considerably high and varies across industries, with small and regional workplaces the most satisfied. A significant finding is that workplaces that did not have comprehensive arrangements expressed the most dissatisfaction with how well their chosen instrument met business performance.

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While a significant proportion of Victorian workers have their pay determined at market rates, for almost one-third of workers, pay is determined by direct or collective bargaining. In addition, a small but significant proportion of workers have their pay determined on a 'take it or leave it' basis of employer decision. This indicates a lack of genuine bargaining for those workers.

Workers who were casual, part-time, and female or those who worked in hospitality were most likely to have pay determined by employer decision. Furthermore, workplaces with pay determined in this manner are more likely to be low paid workplaces.

In terms of entitlements available at the workplace, workers on comprehensive arrangements have the largest access to entitlements. Workers on awards and EBAs are more likely to have access to paid overtime, RDOs, penalty rates and paid maternity and paternity leave. In contrast, workers on individual arrangements are more likely to work in a long hours workplace and have lower access to these entitlements.

It is misleading to suggest that the industrial relations system needs to be changed to facilitate employment, productivity, and investment. There was no evidence to suggest that the choice of instrument deterred workplaces from recruiting staff. Indeed, workplaces with a mix of industrial instruments were far more likely to increase staff. The experience of Victorian workplaces under the operation of a highly deregulated system (Schedule 1A) is also important to consider. In terms of employment and profit growth there was no significant difference between growth rates in Victoria or of the other States and Commonwealth.

The motivation behind the federal government's proposal to replace the current industrial relations system is based on the premise that by encouraging workplace level bargaining over conditions of employment will better suit the needs of that workplace. This situation is available now. The submission demonstrates that considerable diversity exists in industrial instrument coverage and, this diversity is the preferred option by employers. Reducing the choice of instruments available contradicts the objective to encourage workplaces to adopt forms of industrial coverage that best reflect their business needs.

Workplace level survey data collected for the Victorian Government and the Victorian experience with Schedule 1A workers identifies the many flaws underpinning the federal government's proposals. Significantly, the potential for a number of groups of workers to be considerably disadvantaged is a probable outcome.

Overall, Victorian workplaces are satisfied with their forms of industrial instrument, the use of comprehensive agreements does not deter workplaces from employing staff and these methods provide access to the greatest number of entitlements for workers. Furthermore, the extent of the use of multiple forms of industrial instruments at the workplace and the diversity of arrangements by workplace characteristics strongly suggest that it is misguided to suggest that individual negotiation and bargaining will suit all workplaces. Any form of regulation, to be effective, should reflect the needs and diversity of both employees and workplaces.

2 Introduction

Victoria welcomes this Senate Inquiry into Workplace Agreements (the Inquiry) as a positive step in developing a balanced picture of work and working arrangements in Australia. The Inquiry also provides an opportunity for Victoria to present a wide range of statistical information on workplace industrial relations performance. As a major stakeholder in the federal industrial relations system, it is vital that Victoria be given every opportunity to participate in debates and provide input to policy development on the nature of the federal system.

This submission reflects the industrial relations policies of the Victorian Government. The Victorian Government's policy since 1999 has been one of ensuring that all Victorian workers have access to fair conditions of employment. In this context, Victoria continues to support a unitary system of industrial relations.

This submission provides a wide range of statistical information on workplace industrial relations practices and performance for Victorian workplaces. This information has been gathered from a number of workplace industrial relations surveys conducted by the Victorian Government between 2000 and 2004.

This information will provide a basis for the Committee to evaluate federal government policy with information on actual practices and workplace performance operating in Victoria. In 2002, the Victorian Government undertook the State of Working Victoria Survey (SWVS). This survey provides the most detailed, comprehensive and recent information on workplace level industrial relations coverage and performance since Australian Workplace Industrial Relations Survey of 1995 (AWIRS95). This submission identifies the scope and coverage of comprehensive and non-comprehensive industrial instruments and, more importantly to estimate the impact of such policy on employers and employees.

The structure of the submission is as follows:

- Section 3** A summary of background to current Victorian working arrangements and the experience of Schedule 1A workers.
- Section 4** The scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive agreements.
- Section 5** The capacity for employers and employees to choose the form of agreement making which best suits their needs.
- Section 6** The parties' ability to genuinely bargain, focusing on groups such as women, youth, and casual employees.
- Section 7** The social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities.
- Appendix A** Summary of the key findings
- Appendix B** Background to the State of Working Victoria Survey 2002

The survey information presented in this submission addresses the key terms of reference for this Inquiry. Matters addressed are; industrial coverage, the ability for groups in the workforce to bargain, entitlements and how well the industrial instruments suit business needs. However, due

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to the limitations of the SWVS data, this submission does not address all the terms of reference. This does not mean the excluded issues are of any lesser importance, rather it simply reflects the absence of suitable information in the data sources used.

3 The Victorian Experience of Schedule 1A

The Victorian experience with Schedule 1A demonstrates how groups of vulnerable workers can be detrimentally affected by changes to the way wages and employment entitlements are determined.

In the early 1990s the Victorian employment system was deregulated through the simplification of the award and agreement process and, by default the introduction of Schedule 1A. The deregulation was done primarily to facilitate enterprise level negotiation and bargaining over wages and conditions.

The comprehensive Victorian system of wage determination was replaced in 1992 and in 1996 the majority of Victoria's industrial relations powers were referred to the Commonwealth. The group of Schedule 1A workers comprised those workers who were not covered by federal awards or agreements at the time of the referral. Between 1992 and 1996 18 industry sectors were created. These were used in place of comprehensive awards to determine minimum hourly rates of pay. These industry sectors were used as a reference point for wage determination under Schedule 1A.

Schedule 1A employees were entitled to five (seven since 1 January 2004) minimum conditions of employment, whilst other federally regulated employees had an entitlement to 20 minimum conditions. The safety net of employment conditions for Schedule 1A workers comprised of the minimum hourly wage rates and casual rates for each industry sector and:

- Four weeks annual leave;
- One week sick leave;
- Unpaid parental leave together with an entitlement to work part-time after the child is born; and
- Notice upon termination of employment.

When compared to standards and employment conditions applying under federal awards, Victorian employees who relied solely upon Schedule 1A received lesser conditions and entitlements than other employees. For instance:

- no personal and carer's leave or bereavement leave;
- no entitlement to be paid for hours worked in excess of 38 per week; and
- lower levels of sick leave benefits than in many federal awards.

In terms of operation, the system was extremely inflexible. There was very little ability to change the levels of minimum entitlements. Furthermore, the AIRC only had the power to vary minimum hourly wage rates and could not determine modes of pay for work in excess of 38 hours per week or vary the number of or the composition of industry sectors.

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Schedule 1A employees were also excluded from the benefits that other federally regulated employees have received through the operation of test cases in the AIRC as they were outside the operation of the award system. Thus, the gap between other federally regulated employees (those on awards and agreements) widened each time a test case decision affected minimum employment standards.

The creation of this group of disadvantaged workers was one outcome of the industrial deregulation in Victoria since 1992. Throughout this period in Victoria there were two forms of federal regulation. Firstly under federal awards, the 20 allowable matters represented the safety net, i.e. protection for award workers and a set of minimum terms and conditions that underpinned agreements made under the WR Act. The second form of regulation was Schedule 1A for workers outside of the award system. This “default” regulation provided minimum entitlements that led to significant disadvantage to those employees reliant on Schedule 1A for protection.

The disadvantage was also there for employers. Evidence submitted to the Victorian Industrial Relations Taskforce¹ (Taskforce) indicated that employers who only had to meet the minimum standards of Schedule 1A had a considerable advantage in terms of lower labour costs over employers with federal coverage (*Independent Report of the Victorian Industrial Relations Taskforce, 2000, Part 1 p.45*).

The deregulation of the Victorian system was based on the premise that employees and employers would negotiate for wages and conditions above the minimum rate. However, the ability to negotiate over and above these minima for many workers did not occur. As a result, the Taskforce found that a large proportion of Schedule 1A employees did not have an adequate safety net of entitlements (*IR Taskforce Report p.8*).

The effects of Schedule 1A on Victorian workers

Despite the significant impact on Victorian workers of the legislative change that had taken place during the 1990’s, there had not been a comprehensive study to determine the number of award-free employees, or their conditions of employment and entitlements.

To overcome this problem, the Victorian Government commissioned the independent Industrial Relations Taskforce in 2000 to conduct an inquiry into the system of industrial relations in Victoria. The Taskforce was directed to take into account the needs of the more vulnerable groups within the community, in particular Schedule 1A workers, the interests of employers and employees, and the requirement for jobs growth and investment confidence in the State.

In summary, the Taskforce report made the following conclusions:

“Research conducted for the Taskforce ... suggested that Victoria has, compared to other states, a disproportionately large low wage sector. Low-income earners also tend to be concentrated in small workplaces, in certain industries and in rural and regional parts of the State” (IR Taskforce Report p 40).

The Taskforce strongly identified links between this low wage sector and Victoria's dual system of industrial relations, namely, the large number of Schedule 1A workers.

¹ The comprehensive Industrial Relations Taskforce report of 2000 remains the principle source to determine the effects of Schedule 1A. This report, along with the related submissions and can be found at www.irv.vic.gov.au under publications.

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The Taskforce identified some 356,000 Victorian employees (approximately 21% of the Victorian labour force) that relied almost entirely on Schedule 1A for their minimum conditions of employment. Furthermore, approximately 235,000 Victorian employees (or two-thirds of Schedule 1A workers) received only the minimum rates under industry sector orders (*IR Taskforce Report p 37*).

There were also significant geographical differences in workplace minimum rates of pay. For instance in 2000, 22 per cent of non-metropolitan workplaces with predominant Schedule 1A coverage paid less than an average of \$10.50 per hour compared with only 8 per cent of workplaces with federal award coverage. In addition, the absence of an adequate safety net of terms and conditions of employment and a regular process of wage adjustment was not compensated by the ability to individually negotiate on a workplace basis.

The disadvantage faced by Schedule 1A workers was noted by the AIRC on a number of occasions. In its decision of 16 August 2001, the AIRC accepted the conclusions of the Taskforce in respect to the status of Schedule 1A employees:

“We accept that a significant proportion of Schedule 1A employees are low paid and that they do not enjoy the range of employment conditions commonly enjoyed by Federal Award employees ... (Paragraph 42 Minimum Wage Order – Victoria 1997: [PR907793](#))

In order to overcome the disadvantage faced by a large section of the Victorian labour force the Victoria Government referred the power for the AIRC to make common rule awards to the Commonwealth.

Federal Awards (Uniform System) Act 2003

The Federal Awards (Uniform System) Act brought a large section of the Victorian labour force, (former Schedule 1A workers), under the operation of the federal award system. This was achieved by a referral of further industrial relations power to the Commonwealth. Federal legislation (*Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003*) was passed to apply federal award standards (20 minimum conditions) to Victorian Schedule 1A workers. The amendments, which came into effect on 1 January 2004, and provided for the AIRC to make common rule awards for Victorian employees and provided for the minimum conditions in Schedule 1A to be improved, principally, to include a right to be paid for hours worked beyond 38 in any one week, two days bereavement leave and an increase in sick leave from five to eight days (to include carer's leave).

Summary

The Victorian experience with Schedule 1A workers is instructive at a number of levels. Importantly, it provides an example of how a number of policy proposals similar to that contemplated by the federal government may operate mirroring the experience of Victoria between 1992 and 2004.

Schedule 1A was designed as a minimum standard from which employees could bargain for improved conditions. Current information in relation to federal proposals indicate primarily that entitlements will be reduced to minimum standards and anything above will be achieved through workplace bargaining.

Evidence presented by the Taskforce from the Victorian experience with Schedule 1A demonstrated that this goal was never achieved. This was primarily because the minimum

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employment conditions were too limited in scope and the ability to change. In addition, the prospect of bargaining for many employees was too remote or unrealistic due to the poor bargaining position of specific groups of Schedule 1A workers.

Throughout the 1990s, Victoria operated under a dual system of minimum entitlements. The workforce was divided between those reliant on minimum entitlements and those in a strong individual or collective bargaining position. This division created unfairness and inequality even between groups of workers in the same industry or occupation.

Finally, the referral of the common rule power by Victoria and the passing of an amendment to the WR Act by the federal government indicates the confidence Victoria (and by default the federal government) has in the ability of the current system to provide a fair and equitable system minimum entitlements.

4 The Scope and Coverage of Agreements

The primary source of data presented in this submission is from the State of Working Victoria Survey (SWVS) in 2002 (for full details see appendix A). This survey was commissioned by Industrial Relations Victoria, and provides data on a range of industrial relations and human resource management practices, policies and outcomes in Victorian workplaces. Surveys like this provide authoritative data on what is actually happening at workplaces. Until the release of the SWVS, the most recent information about Victorian workplaces was contained in the AWIRS90 and AWIRS95 surveys.

It is important to note that the industry categories used throughout are based on a condensed version of standard ANZSIC categories. This was done as some industries had a very small number of workplaces (see Table 1).

Table 1 Industry aggregations used in SWVES

<i>Shorthand name</i>	<i>ANZSIC categories</i>
Manufacturing	C. Manufacturing
Construction	E. Construction
Infrastructure	D. Electricity, Gas and Water Supply I. Transport and Storage J. Communication Services
Wholesale & retail	F. Wholesale Trade G. Retail Trade
Hospitality	H. Accommodation, Cafes and Restaurants P. Cultural and Recreational Services Q. Personal and Other Services
Finance & business	K. Finance and Insurance L. Property and Business Services
Government	M. Government Administration and Defence
Human services	N. Education O. Health and Community Services
EXCLUDED	A. Agriculture, Forestry and Fishing B. Mining

This submission concentrates on several specific issues identified in the survey, namely the nature and extent of industrial instruments operating in Victorian workplaces, entitlements and the method of setting pay. Further in-depth analysis of the data generated by the survey has been released in a number of information papers regarding specific policy issues (and is available at www.irv.vic.gov.au under publications).

Coverage of types of industrial relations instruments

The 2002 SWVS asked workplace IR and HR managers to indicate what forms of industrial instrument were operating in the workplace, and more importantly, the level of coverage by number of employees. The results from the SWVS represents approximately 64 000 Victorian workplaces with more than 5 employees. These workplaces employ 2.2 million Victorian workers.

The survey results indicated a wide range of industrial instruments are operating in Victoria. Approximately 43 per cent of Victorian workplaces were covered by federal awards alone (the highest proportion of workplaces covered by a single instrument) with almost 23 per cent covered by 'own arrangements'. The proportion of workplaces covered by enterprise bargaining agreements (EBAs) was 9 per cent. The own arrangements category covers a wide range of instruments outside registered EBAs, Australian Workplace Agreements (AWAs) and federal awards. This category can also include unregistered collective agreements and also common law type employment contracts. Furthermore, this category would also cover those workplaces operating under Schedule 1A at the time.

Almost 26 per cent of Victorian workplaces operated a combination of industrial instruments to suit their operations and type of workforce. This diversity in instrument coverage is significant as it indicates that no specific type of agreement will suit all workplaces.

Table 2 Distribution of workplaces by IR coverage (%)

Type of instrument	Pattern of IR coverage at workplace	
	Freq.	%
Federal Awards alone	27 340	42.5
Registered Agreements alone	5 743	8.9
Own Arrangements alone	14 544	22.6
Federal Awards plus reg agreements	3 515	5.5
Federal Awards plus own arrangements	3 636	5.7
Other combinations	9 568	14.9
Total	64346	100.0

Source State of Working Victoria Survey 2002

Table 3 identifies the proportion and number of Victorian employees covered by those forms of instruments. A considerable proportion of Victorian workers are covered by comprehensive instruments (either, awards, agreements or some combination of the above). Approximately 12

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per cent or 256 078 are covered by own arrangements with a further 104 050 covered by own arrangements and federal awards.

Table 3 Distribution of employees by IR coverage (%)

Type of instrument	<i>Pattern of IR coverage at workplace</i>	
	Freq.	%
Federal Awards alone	721 605	32.8
Registered Agreements alone	493 023	22.4
Own Arrangements alone	238 113	10.8
Federal Awards plus reg agreements	256 078	11.6
Federal Awards plus own arrangements	104 050	4.7
Other combinations	387 801	17.6
Total	2 200 670	100.0

Source State of Working Victoria Survey 2002

From the information gathered in the SWVS, the dominant form of coverage for Victorian workplaces can be determined (see Table 4). This is defined as what instrument covered the majority of workers at that workplace. In terms of workplace coverage, the dominant form of coverage is federal awards (almost 49 per cent). The proportion of workplaces where AWAs were a dominant coverage was only 1.3 per cent. Also, a significant proportion of workplaces (25 per cent) indicated they were covered by own arrangements, or non-comprehensive industrial instruments.

Table 4 Distribution of workplaces by dominant form of IR coverage (%)

Type of instrument	<i>Pattern of IR coverage at workplace</i>	
	Freq.	%
Federal Awards	31296	48.6
Registered Agreements	7835	12.2
Own Arrangements	16115	25.0
AWAs	854	1.3

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More than one dominant	8246	12.8
Total	64346	100.0

Source State of Working Victoria Survey 2002

In terms of numbers of employees, just over 900 000 were covered by federal awards. Registered enterprise agreements covered 635 000 and own arrangements 305 602. These numbers indicate that registered agreements are far more prevalent in larger workplaces as 12.2 per cent of workplaces covered by this form of instrument represent almost 30 per cent of workers. In contrast, own arrangements cover almost a quarter of all workplaces but only represent 14 per cent of workers (see Table 5).

Table 5 Distribution of employees by dominant form of IR coverage (%)

Type of instrument	<i>Pattern of IR coverage at workplace</i>	
	Freq.	%
Federal Awards	901 642	41.0
Registered Agreements	635 377	28.9
Own Arrangements	305 602	13.9
AWAs	24 966	1.1
More than one dominant	333 083	15.1
Total	2 200 670	100.0

Source State of Working Victoria Survey 2002

Characteristics of workplaces by dominant form of industrial instrument

The diversity of industrial coverage has been outlined in the previous section. However, in order to determine the scope and coverage of comprehensive and non-comprehensive agreements it is important to assess coverage based on a number of workplace specific factors. These include industry coverage, workplace size and the dominant occupational group within the workplace.

Industry distribution

As stated earlier, 41 per cent of employees are covered by awards in Victoria. Industries with a high proportion of award covered employees are hospitality (62.3 per cent) and human services (59.1 per cent) (see Table 6). The industry with the lowest proportion of award covered employees is in construction. In terms of EBA coverage, government, construction, and finance and business wholesale and retail trade were all above the average of all workplaces. Approximately 40 per cent of employees in construction and 33 per cent in finance and business

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were regulated by own arrangements. Australian Workplace Agreements, while covering only 1.1 per cent of employees overall covered 2.1 per cent in manufacturing, 3.2 per cent in hospitality and 2 per cent in finance and business. The diversity of industrial coverage by industry is best demonstrated by the considerable range of industries that have a combination of types of agreements. For example, in the infrastructure industry group the majority of workers are covered by a combination of instruments.

Table 6 Form of workplace IR coverage by Industry (%)

<i>industry</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
Manufacturing	35.2	21.9	8.8	2.1	32.1	100.0
Construction	19.6	35.8	39.6	0.0	5.0	100.0
Infrastructure	26.1	21.5	19.8	0.0	32.5	100.0
Wholesale & retail	30.7	36.6	17.6	0.2	14.9	100.0
Hospitality	62.3	17.2	9.5	3.2	7.8	100.0
Finance & business	21.2	31.2	33.6	2.1	11.9	100.0
Government	27.2	55.1	2.5	0.0	15.2	100.0
Human services	59.1	27.8	5.4	0.6	7.1	100.0
Total	41.0	28.9	13.9	1.1	15.1	100.0

Source State of Working Victoria Survey 2002

The distribution within the industry groups by the type of instrument is also significant (see Table 7). Workers in wholesale and retail trade accounted for 30 per cent of award employees. Manufacturing and hospitality workers were both over represented. Workers in construction and human services were overrepresented in coverage by EBAs. However, for both these groups there was a wide distribution of industries operating these forms of agreements. The coverage by other forms of instrument was less diverse for other own arrangements and AWAs. Own arrangements were concentrated in wholesale and retail trade and finance and business, while AWAs were concentrated in manufacturing, hospitality and finance and business.

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Table 7 Form of workplace IR coverage by Industry (%)

<i>industry</i>	<i>Dominant form of IR coverage at workplace</i>					<i>Total</i>
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	
Manufacturing	17.3	12.4	5.3	28.5	19.4	14.1
Construction	3.2	14.2	9.0	0.0	0.8	5.7
Infrastructure	5.6	10.2	2.9	0.0	1.6	4.9
Wholesale & retail	30.0	14.8	34.0	4.8	31.3	29.0
Hospitality	17.7	9.4	7.0	31.5	17.5	14.2
Finance & business	8.7	4.0	35.2	29.2	22.2	16.7
Government	0.5	6.3	1.6	0.0	0.9	1.5
Human services	16.9	28.8	5.0	6.0	6.2	13.9
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source State of Working Victoria Survey 2002

Workplace size

The information presented in Table 8 indicates that the distribution of forms of instrument by workplace size is also significant. Almost half of small workplaces under 20 employees are covered by awards and a further 25 per cent by own arrangements. Enterprise bargaining agreements are more common in larger workplaces and the proportion of workers covered by EBAs rises as workplaces get larger. AWAs appear over represented in small and medium workplaces. Finally, workplaces with a combination of instruments are well distributed across workplace size. Diversity within the industry groups by agreement is also significant. Workers in wholesale and retail trade accounted for 30 per cent of award employees. Manufacturing and hospitality workers were both over represented. Workers in construction and human services were overrepresented in coverage by EBAs.

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Table 8 Form of workplace IR coverage by workplace size (%)

<i>Workplace Size</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
under 20	49.0	10.3	25.5	1.7	13.5	100.0
20 to 99	48.6	15.9	20.9	2.3	12.4	100.0
100 to 199	35.2	27.4	22.9	0.4	14.2	100.0
200 plus	34.4	43.8	4.0	0.4	17.4	100.0
Total	41.0	28.9	13.9	1.1	15.1	100.0

Source *State of Working Victoria Survey 2002*

Occupational group

The distribution of coverage by major occupational group provides insight into how coverage relates to skills of workers (see Table 9 and 10). Professionals, tradespersons and sales people are overrepresented in terms of award coverage. Coverage by EBAs is quite diverse with approximately 30 percent of each occupational group covered by EBAs. The coverage by non-comprehensive agreements such as AWAs and own arrangements is interesting. As expected, a high proportion of managers, 47 per cent and high skilled workers are covered by own arrangements; however 17 per cent of clerical workers are also covered. For AWAs the proportion of manager and high skilled workers is extremely small, in contrast proportion of sales, machinery and labourers is surprisingly high indicating a preference by workplaces to engage these workers on AWAs.

Table 9 Form of workplace IR coverage by largest occupational group (%)

<i>Occupational group</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
Managers	17.4	2.9	47.2	0.0	32.5	100.0
Professionals	47.6	27.9	14.8	0.6	9.1	100.0
Para-professionals	33.0	36.2	14.9	0.5	15.4	100.0
Tradespersons	52.6	21.4	9.8	3.0	13.2	100.0
Clerical	31.5	33.4	16.9	0.9	17.4	100.0
Sales	50.5	38.8	3.5	1.1	6.1	100.0
Machine and plant	35.5	24.1	7.1	2.1	31.2	100.0
Labourer	35.6	39.0	5.2	4.2	16.0	100.0

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Total	40.9	29.0	14.0	1.1	15.0	100.0
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Source State of Working Victoria Survey 2002

Distribution within industrial instruments is also significant. For instance, for workplaces predominantly covered by awards approximately 31 percent of workers are sales persons with a fairly even distribution across other occupational groupings. A similar case is for workplaces predominantly covered by EBAs. However, for workplaces where non-comprehensive agreements are the prevalent, there is much less diversity. For own arrangements, these workplaces are clustered around the high skilled occupational groups (such as managers and professionals). In contrast, AWAs are overrepresented around the lower occupational groups (in particular labourers and sales workers).

Table 10 Form of workplace IR coverage by largest occupational group (%)

<i>industry</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
Managers	10.9	1.0	39.2	0.0	15.7	17.4
Professionals	14.8	20.6	29.4	17.4	10.6	18.7
Para-professionals	7.1	21.1	12.0	4.8	2.0	9.4
Tradespersons	10.7	4.3	5.3	10.1	5.5	7.9
Clerical	7.6	17.8	7.1	5.0	26.0	11.1
Sales	31.0	17.6	2.6	23.7	28.8	21.7
Machine and plant	13.6	13.6	3.1	20.7	7.5	10.2
Labourer	4.3	4.1	1.2	18.3	3.9	3.6
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source State of Working Victoria Survey 2002

Summary

The overwhelming majority of Victorian workers are covered by comprehensive agreements (either the award system or EBAs). The type of instrument used by workplaces and the coverage of workers varies considerably between type of workplace, size, industry and the dominant occupational group.

Despite the high level of award and EBA coverage, a significant proportion of the Victorian workforce is outside the scope of comprehensive agreements. Furthermore, a small but significant proportion of workplaces operate a combination of different instruments to meet their needs. These results indicate it is unrealistic to assume that one form of industrial instrument will suit all workplaces.

Key Findings

- **Considerable diversity exists in terms of the scope of industrial relations instrument coverage.**
- **Approximately, 34 per cent of Victorian workers are covered by a combination of industrial instruments within the workplace.**
- **In terms of dominant form of instrument in operation at the workplace, 14 per cent of Victorian workers are covered by non-comprehensive agreements.**
- **Non-comprehensive agreements are most likely to be found in small workplaces.**
- **For workplaces predominately covered by own arrangements the majority of workers are of high skilled occupational groups.**
- **For workplaces covered by AWAs the dominant occupational groups were low skilled.**

5 Agreement-making and Business Needs

Background

Section three provided broad information on the nature and extent of workplace industrial relations instrument coverage and the proportion of workers and workplaces not covered by comprehensive agreements. In the terms of reference, the Inquiry sought information on “the capacity for employers and employees to choose the form of agreement making which best suits their needs.” To achieve this aim, the Victorian government has gathered a wide range of workplace level survey information between 2000 and 2004.

It must be stressed that the information gathered in these surveys referred to the business or individual workplace only, and as such it was not possible to determine how these forms of agreement suited the needs of individual workers. In terms of instrument coverage meeting business needs, this is presented in a number of ways to provide a full picture of workplace operations and to account for the diversity of business types.

These types include workplaces by:

- Industry;
- Levels of casual employment;
- Workplaces that have either increased or reduced staff;
- By level of labour costs;
- Workplace size; and
- Location.

How well IR coverage meets business needs

Industry

In overall terms, almost 65 per cent of Victorian workplaces indicated that their chosen form of industrial instrument met their business needs most of the time and for 22 per cent of workplaces some of the time (see Table 11). Industries with the highest level of satisfaction for the chosen industrial instrument type were communication, finance, transport and business services.

Table 11 How well IR coverage meets business needs by Industry (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
Communication	79.5	10.3	10.3	100.0
Construction	45.5	28.0	26.6	100.0
Manufacturing	61.0	27.8	11.2	100.0

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Transport	75.0	15.9	9.1	100.0
Wholesale	62.9	21.4	15.7	100.0
Retail trade	62.9	21.4	15.7	100.0
Finance	68.6	14.3	17.1	100.0
Services	72.5	16.9	10.6	100.0
Total	64.8	21.7	13.5	100.0

Source *Victoria Employer Survey 2004*

Agreement type

High levels of satisfaction were indicated across all levels of coverage at Victorian workplaces (see Table 12). Only a very small proportion of workplaces were predominantly covered by AWAs. Due to the very small numbers of AWA covered enterprises, these workplaces were included in the group that indicated they did not have comprehensive industrial agreements preferring their own arrangements. By including AWA covered workplaces in this way, the 'none' group corresponds to the 'own arrangements' category of the previous section. Almost 87 per cent of Victorian workplaces indicated that their chosen form of industrial instrument met their business needs most or some of the time. However, there was considerable diversity in the responses. For instance, those workplaces without comprehensive industrial instruments were the highest reported reporting that the instrument met their needs both most of the time and hardly ever.

Table 12 How well IR coverage meets business needs by form of Industrial coverage (%)

<i>Coverage</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	63.9	22.3	13.8	100.0
Award	65.1	22.0	12.9	100.0
None	66.9	13.6	19.5	100.0
Mixed	61.4	27.5	11.1	100.0
Total	64.9	21.8	13.4	100.0

Source *Victoria Employer Survey 2004*

Casualised workplaces

Table 12 indicates that for workplaces with more than 50 per cent casual employees, they were far more likely to indicate that their form of agreement did not meet business needs than compared with workplaces with a low casual density.

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Table 13 IR coverage and business needs for workplaces with more than 50 per cent casual employees (%)

	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
Yes	51.5	21.1	27.4	100.0
No	68.5	22.7	8.8	100.0
Total	63.9	22.3	13.8	100.0

Source *Victoria Employer Survey 2004*

Reducing or increasing employment

For those workplaces that have intentionally reduced staff (see Table 14), over 80 per cent were satisfied with how the chosen industrial instrument met business needs either most of the time or some of the time. Workplaces with non-comprehensive instruments were the least satisfied with how their instrument met business needs. In contrast workplaces with EBAs were the most satisfied.

Table 14 Workplaces that have reduced employment (%)

<i>Coverage</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	51.2	32.5	16.3	100.0
Award	49.0	32.3	18.8	100.0
None	51.3	25.3	23.5	100.0
Mixed	49.1	32.7	18.2	100.0
Total	52.1	30.3	17.6	100.0

Source *Victoria Employer Survey 2004*

For workplaces that have recruited staff (see table 15), over 70 per cent were satisfied with how the chosen industrial instrument met business needs either most of the time or some of the time. Workplaces that were the most satisfied were those with mixed coverage or awards and the least satisfied were those with non-comprehensive instruments.

Table 15 Workplaces that have recruited new employees (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	64.0	23.8	12.2	100.0
Award	65.9	22.9	11.2	100.0
None	64.5	15.5	20.0	100.0

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Mixed	66.7	23.5	9.8	100.0
Total	65.9	21.5	12.7	100.0

Source *Victoria Employer Survey 2004*

Regional or metropolitan location

Regional workplaces with predominant award coverage were overwhelmingly satisfied with how well their chosen instrument met business needs most of the time (see Table 16). In common with the previous examples, those workplaces with non-comprehensive coverage were the least satisfied. In contrast, 68.5 per cent of metropolitan workplaces (see Table 17) with non comprehensive coverage responded that their chosen instrument met business needs most of the time.

Table 16 Workplaces in a regional location (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	66.2	21.9	11.9	100.0
Award	78.0	14.5	7.5	100.0
None	49.5	38.8	11.8	100.0
Mixed	63.9	19.9	16.2	100.0
Total	69.7	19.2	11.1	100.0

Source *Victoria Employer Survey 2004*

Table 17 Metropolitan workplaces (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	63.0	22.5	14.5	100.0
Award	59.9	25.1	15.1	100.0
None	68.5	11.2	20.3	100.0
Mixed	60.7	29.6	9.7	100.0
Total	63.4	22.6	14.1	100.0

Source *Victoria Employer Survey 2004*

Workplace size

Tables 18 to 20 demonstrate that the satisfaction with industrial instrument varies considerably by workplace size. A majority of small to medium workplaces (20 to 99 employees), find awards

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meet their needs either most or some of the times. In contrast, for workplaces with between 100 and 199 employees the highest level of satisfaction is with non-comprehensive industrial instruments.

Table 18 Workplaces with between 20 and 99 employees (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	62.2	18.7	19.1	100.0
Award	67.8	21.0	11.2	100.0
None	62.9	13.5	23.7	100.0
Mixed	59.0	27.9	13.1	100.0
Total	64.8	20.5	14.7	100.0

Source Victoria Employer Survey 2004

Table 19 Workplaces with between 100 and 199 employees (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	73.7	22.7	3.5	100.0
Award	64.6	21.7	13.7	100.0
None	86.1	13.9	0.0	100.0
Mixed	59.3	30.8	9.9	100.0
Total	67.8	22.9	9.3	100.0

Source Victoria Employer Survey 2004

Table 20 Workplaces with more than 200 employees (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	61.2	30.1	8.7	100.0
Award	44.0	30.3	25.7	100.0
None	85.3	14.7	0.0	100.0
Mixed	73.1	23.4	3.5	100.0
Total	62.7	26.9	10.4	100.0

Source Victoria Employer Survey 2004

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Labour costs

The relationship between the level of labour costs at workplaces and satisfaction with type of instrument also varies considerably (see Tables 21 to 24). For workplaces with low labour costs, satisfaction levels were similar for all forms of industrial instruments except awards. However, as workplace size increases, the relative satisfaction with different industrial instruments changes. For workplaces with between 25 and 49 per cent of labour costs EBAs suit their needs most of the time, for workplaces with labour costs between 50 and 74 per cent awards and EBAs have the highest level of satisfaction, finally with workplaces that have more than 75 per cent labour costs the highest level of satisfaction is with non-comprehensive agreements.

Table 21 Workplaces with a labour cost less than 25 per cent (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	66.4	15.9	17.7	100.0
Award	58.8	19.9	21.3	100.0
None	65.0	9.9	25.1	100.0
Mixed	66.3	24.5	9.2	100.0
Total	63.7	19.3	16.9	100.0

Source Victoria Employer Survey 2004

Table 22 Workplaces with a labour cost between 25 and 49 per cent (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	68.1	20.0	11.9	100.0
Award	61.1	32.0	6.9	100.0
None	58.7	15.5	25.8	100.0
Mixed	56.7	33.6	9.7	100.0
Total	62.0	26.6	11.4	100.0

Source Victoria Employer Survey 2004

Table 23 Workplaces with a labour cost between 50 and 74 per cent (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	63.0	25.8	11.2	100.0
Award	78.8	9.4	11.8	100.0

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None	66.6	21.5	11.9	100.0
Mixed	55.1	29.1	15.9	100.0
Total	68.9	19.3	11.9	100.0

Source Victoria Employer Survey 2004

Table 24 Workplaces with a labour cost above 75 per cent (%)

<i>industry</i>	<i>How often coverage meets business needs</i>			
	<i>Most times</i>	<i>Some times</i>	<i>Hardly ever</i>	<i>Total</i>
EBA	48.4	34.2	17.4	100.0
Award	60.0	28.1	11.9	100.0
None	77.5	12.2	10.3	100.0
Mixed	67.8	15.2	16.9	100.0
Total	61.8	25.2	13.1	100.0

Source Victoria Employer Survey 2004

Summary

The majority of Victorian workplaces appear satisfied that their chosen form of industrial instrument meets their business needs either some or most of the time. Only a small proportion of Victorian workplaces indicated that the form of instrument at that workplace met business needs hardly ever. Furthermore, the absence of a comprehensive industrial instrument in operation at the workplace (either an award, EBA or a combination of both) was consistently seen to be least likely to meet business needs.

In light of this analysis, there is nothing to suggest that the current, and in particular the award system is failing business needs. Workplaces with predominantly award coverage had consistently high or the highest levels of satisfaction with how well the instrument suited the needs of that business. This was particularly the case for businesses operating outside of the metropolitan area.

Furthermore, this analysis strongly indicates that:

- business are satisfied with operating within the current industrial relations framework,
- there is no demonstrated need to change the current system on the basis of business needs, and
- the proposed changes have no evidence to support their application.

In addition, workplaces with labour costs above 25 per cent of total business costs are more satisfied with awards than other forms of instruments. However, the award system does not seem popular with workplaces with more than 200 employees that prefer either own arrangements or a mixed system (see Table 20). While this is relevant, it should be noted that approximately 97 per cent of Victorian workplaces have less than 200 employees.

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In overall terms there is no evidence to suggest the current system of industrial arrangements is failing to meet business needs. On the contrary, the range and diversity of different instruments available to employers is should be seen as a strength of the current system.

Key Findings

- **The overwhelming majority of Victorian workplaces indicated their form of industrial coverage meets business needs most of the time.**
- **The diverse nature of industrial instrument coverage is extremely apparent. The type and form of industrial instrument varies considerably between workplaces.**
- **Workplaces that have either a mixture of different types of instrument or award coverage are least likely to indicate their instrument hardly ever meets business needs.**
- **Workplaces that do not have comprehensive coverage are more likely to indicate that that form of agreement either meets business needs most of the time or hardly ever.**
- **Regional workplaces are most satisfied with awards.**
- **The satisfaction with instrument type varies considerably between workplace size, industry and the level of labour costs.**

6 The Ability to Genuinely Bargain

The terms of reference for the Inquiry sought information on the ability for certain groups in the labour force to genuinely bargain. While it is difficult to provide a precise indicator of bargaining activity, this section uses a number of key indicators (such as union density and working arrangements) that relate to the bargaining ability of workers.

Survey information gathered by the Victorian Government provides information on both instrument coverage and the method of setting pay at the workplace. For just over 46 per cent of workers, the level of pay is determined on a market rate. For the others, wages could be determined by either a contractual rate, direct negotiation, employer decision or other method. The focus of this section is to compare those workers whose pay is set by methods that provide a proxy or bargaining ability.

Method of setting pay by workplace characteristics

Union density

One measure of the ability of certain groups of workers to genuinely bargain is the relationship between level of unionisation and the form of industrial instrument. This is illustrated in Table 25. Workplaces predominantly covered by awards, EBAs or a mixture of instruments, have a considerably higher proportion of union members in the workplace. In contrast unionisation levels are considerably lower in workplaces covered by non-comprehensive agreements (own arrangements or AWAs).

Table 25 Dominant form of workplace IR coverage and union density (%)

<i>Union density</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
<i>Per cent of workforce</i>						
Under 10	16.8	8.1	16.5	33.5	23.9	15.5
10 to 24	35.4	21.3	57.9	66.5	16.3	31.1
25 to 49	26.4	29.5	23.9	0.0	22.4	26.3
50 to 74	8.9	18.0	1.7	0.0	23.2	12.7
Over 75	12.6	23.1	0.0	0.0	14.2	14.5
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source *State of Working Victoria Survey 2002*

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The relationship between union density and ability to bargain is also reflected in the method of setting pay (see Table 26). The workplaces that have a high level of workers whose pay is determined by employer decision have between 10 and 49 per cent of union members. In contrast workplaces with between 50 and 75 per cent of union members are more likely to have contract rates or pay determined by negotiation. In overall terms, the determination of pay and level of unionisation is likely to vary considerably between workplace types based on industry, dominant employment group and workplace size.

Table 26 Method of setting pay and union density (%)

<i>Union density</i>	<i>In house method of setting pay</i>					
	<i>Market rates</i>	<i>Contract</i>	<i>Negotiation</i>	<i>Employer Decision</i>	<i>Other</i>	<i>Total</i>
Under 10	50.6	19.4	7.4	4.3	18.3	100.0
10 to 24	34.4	37.4	4.8	18.0	5.4	100.0
25 to 49	59.9	8.7	7.0	16.4	8.0	100.0
50 to 74	25.1	55.1	14.6	0.3	4.9	100.0
Over 75%	49.1	14.9	4.6	0.9	30.6	100.0
Total	41.0	31.8	8.8	8.3	10.1	100.0

Source *State of Working Victoria Survey 2002*

Workplace size

The size of the individual workplace has a significant effect on how pay is determined (see Table 27). Small workplaces are far more likely to have pay determined by employer decision or other methods than larger workplaces. These workplaces are also the least likely to have pay determined at market rates. Pay determined by contract negotiation is more likely in larger workplaces. Negotiation over the levels of pay and pay being set by other methods also declines as workplaces get larger.

Table 27 Method of setting pay and workplace size (%)

<i>Wp Size</i>	<i>In house method of setting pay</i>					
	<i>Market rates</i>	<i>Contract</i>	<i>Negotiation</i>	<i>Employer Decision</i>	<i>Other</i>	<i>Total</i>
Under 20	31.6	5.9	12.5	19.6	30.5	100.0
20 to 99	51.4	7.2	10.8	6.4	24.1	100.0
100 to 199	48.4	19.0	10.2	8.1	13.9	100.0
200 plus	48.6	32.8	6.8	7.6	4.2	100.0
Total	46.1	19.8	9.1	9.7	15.4	100.0

Source *State of Working Victoria Survey 2002*

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Industry

Table 27 indicates that workplaces in manufacturing, construction, finance and human services have a higher proportion of workplaces that determine pay at market rates. For infrastructure, wholesale and retail trade and government, these workplaces are more likely to set pay by contract negotiation. Only 9 per cent of workers have their pay determined by direct negotiation with their employer, industries with a higher than average form of negotiation are manufacturing and wholesale and retail trade. For 9.7 per cent of workers pay is by employer decision. Almost double those proportions (18.9 per cent) of workers in hospitality have their pay determined in this manner. Other industries where a significant proportion of pay is determined by employer decision are in government and human services.

While this analysis provides some insight into the way pay is determined by industry (and also union and workplace size) the ability of individual groups of workers to bargain effectively is difficult to determine. What can be stated is that for almost 10 per cent of all Victorian workers pay is determined not by bargaining but employer decision alone (Table 28).

Table 28 Method of setting pay and industry (%)

<i>Industry</i>	<i>In house method of setting pay</i>					<i>Total</i>
	<i>Market rates</i>	<i>Contract</i>	<i>Negotiation</i>	<i>Employer Decision</i>	<i>Other</i>	
Manufacturing	63.8	6.3	9.2	1.8	18.9	100.0
Construction	54.2	15.9	4.1	3.4	22.4	100.0
Infrastructure	26.5	51.3	4.2	7.2	10.8	100.0
Wholesale & retail	27.1	37.1	15.3	9.1	11.3	100.0
Hospitality	49.3	9.7	9.0	18.4	13.7	100.0
Finance & business	56.8	4.8	5.5	8.2	24.7	100.0
Government	24.1	20.7	6.1	33.6	15.5	100.0
Human services	58.0	12.1	5.1	14.9	9.9	100.0
Total	46.1	19.8	9.1	9.7	15.4	100.0

Source *State of Working Victoria Survey 2002*

Part-time workers

In order to determine the proportion of effective bargaining by different groups of workers a number of characteristics relating to working arrangements can be taken into account. Table 29 describes the distribution methods of setting pay in workplaces with a high proportion of female, part-time and casual workers. Workplaces with more than 50 per cent of employees working part-time are more likely to have pay determined by market rates than workplaces that don't have such high part-time density. However, a significant proportion of part-time workers in

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these workplaces (22 per cent) have pay determined by employer decision. Furthermore, contract negotiation is far less likely to occur in workplaces with a high proportion of part time workers.

Casual workers

For workplaces with a high proportion of casual employees, pay is far more likely to be determined by employer decision than workplaces with a lower proportion of casual employees. Furthermore, the proportion of income determined by market rates is much lower than all other workplaces. Casuals are less likely to have pay determined by contract negotiation but slightly more likely to have pay determined by direct negotiation with their employer.

Female workers

Workplaces with a high proportion of female workers have the lowest proportion of wages determined by market rates (less than a quarter) and almost 41 per cent determined by employer decision. Significantly, pay determined by direct negotiation is less than half the average of all other workplaces.

Table 29 Method of setting pay and proportion of part-time workers (%)

<i>More than 50% of workers</i>	<i>In house method of setting pay</i>					<i>Total</i>
	<i>Market rates</i>	<i>Contract</i>	<i>Negotiation</i>	<i>Employer Decision</i>	<i>Other</i>	
Part-time	57.9	2.5	6.9	22.1	10.6	100.0
Casual	34.5	7.9	8.9	29.6	19.2	100.0
Female	24.4	7.7	4.5	40.8	22.6	100.0
Total	46.1	19.8	9.1	9.7	15.4	100.0

Source *State of Working Victoria Survey 2002*

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Wage rates

In terms of actual hourly wage rates, workplaces with a high proportion of wages determined by contract negotiation tend to have higher average wage rates for the largest occupational group within the workplace (see Table 30). Workplaces where wage determination is based on market rates and, more significantly employer decision, average hourly pay is at the lower end of the wage distribution. It is possible to surmise that, as a high proportion of the groups identified in the terms of reference (female, casual and part-time workers) have wages determined significantly by employer decision, these workers would have a lower level of income. In contrast, wages determined by contract negotiation have, on average, higher levels of hourly pay. All of the vulnerable groups of workers identified in the terms of reference have low levels of wages determined by contract negotiation.

Table 30 Method of setting pay and average wage rates (%)

<i>Wages per hour</i>	<i>In house method of setting pay</i>					<i>Total</i>
	<i>Market rates</i>	<i>Contract</i>	<i>Negotiation</i>	<i>Employer Decision</i>	<i>Other</i>	
under \$12.50	58.3	9.2	6.5	16.2	9.8	100.0
\$12.50 to \$17.99	42.7	20.5	11.1	9.9	15.8	100.0
\$18 or more	50.7	26.4	2.0	2.3	18.5	100.0
Total	46.1	19.8	9.1	9.7	15.4	100.0

Source *State of Working Victoria Survey 2002*

Summary

The analysis presented above clearly indicates that wages are determined by a wide range of methods at the individual workplace. In light of this, there can be no suggestion that current industrial instruments are causing a lack of wage flexibility at Victorian workplaces. Furthermore, a significant proportion of Victorian workers already negotiates and bargains over their level of wages.

However, one of the terms of reference for this Inquiry was to provide information on the bargaining position of vulnerable workers in the labour force. The results of the above analysis indicate that workers who are part-time, female or casual are less likely to be able to bargain over the level of their wages. Furthermore, a number of industry and workplace groups also have low incidence of direct bargaining with employees.

From the past research on the effects of Schedule 1A regulation on Victorian workers (*IR Taskforce p.46*), a number of groups was identified that had wages at or near the minimum levels. In particular these were workers in hospitality, casual, part-time and female workers. The analysis outlined above reinforces the concerns for the bargaining ability for these vulnerable

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workers. In addition, the evidence identified other groups such as, those without union representation and those in small workplaces.

The current federal proposal is for a system strongly reliant on a high degree of workplace level individual bargaining. Information presented here indicates that some groups of workers are already in a poor bargaining position reliant on a ‘take it or leave it’ method of wage negotiation. Evidence from the operation of the Schedule 1A system in Victoria indicated that vulnerable workers benefited very little from the bargaining over and above the minimum rates. Any changes to the operation of the federal industrial relations system needs to ensure that vulnerable workers in a poor bargaining position are not disadvantaged.

Key findings

- **Workers with wages determined by employer decision are more likely to be low paid and workers with wages determined by contract negotiation are more likely to be high paid.**
- **Workplaces with a high density of trade union members are more likely to have pay determined at market rates, by contract or direct negotiation.**
- **Wages determined by employer decision are less likely to be made in unionised workplaces.**
- **A considerable proportion of wages in hospitality and government are determined by employer decision.**
- **Wages determined by employer decision are more likely to be small workplaces with wages in large workplaces determined by contract negotiation or direct negotiation.**
- **The setting of pay for casual, female and part-time workers is far more likely to be determined by employer decision than other groups of workers.**

7 Workplace Provision of Entitlements

The Inquiry also requested information on “*the social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities*”. Workplace level information enables an assessment to be made of how well different forms of industrial instrument meet this objective. This can be done with reference to the proportion of workplaces that provide entitlements to support work and family objectives and also in the pattern of their operation (such as long hours or weekend work).

Once again, this information is based on workplace level analysis, thus, it is difficult to provide a comprehensive assessment of the effect of different forms of agreements on individual workers. Unfortunately, there is not at present a comprehensive data source available to assess industrial coverage and entitlements of individual workers. Therefore, only broad statements can be made with reference to workplace level data. Furthermore, each characteristic is assessed individually.

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As has been demonstrated in the previous sections, further analysis based on the interaction of workplace characteristics would provide valuable information.

Long hours

Only 5.4 per cent of Victorian workplaces operate outside normal hours of operation (see Table 31). Workplaces predominately covered by AWAs are more likely to be long hours workplaces; this is followed by workplaces covered by awards. Working outside normal hours is a matter for genuine negotiation with the provision that workers are adequately compensated in the form of allowances. The evidence suggests that workers on AWAs are far less likely to be paid shift and other allowances to compensate them for working outside normal hours.

Table 31 Workplaces that operate more than 60 hours per week (%)

<i>Long hours</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
No	92.4	97.3	97.6	90.1	95.4	94.6
Yes	7.6	2.7	2.4	9.9	4.6	5.4
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source State of Working Victoria Survey 2002

Rostered Days Off (RDOs)

About a quarter of all workplaces offer rostered days off (RDOs) to their employees. Workplaces covered by awards and EBAs are far more likely to have RDOs than those operating under AWAs and own arrangements (Table 32).

Table 32 Workplaces that offer rostered days off (%)

<i>RDOs</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
No	66.84	68.48	87.69	91.71	74.03	73.51
Yes	33.16	31.52	12.31	8.286	25.97	26.49
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source State of Working Victoria Survey 2002

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Banking of hours worked

The banking of hours worked is present in about 20 per cent of workplaces (see Table 33). Workplaces covered by EBAs or own arrangements are slightly more likely to offer this benefit with those on awards. Workplaces with a combination of instruments are the least likely. Workplaces covered by AWAs are significantly more likely than other types of instruments to have banked hours, however only one-third of AWA workplaces offer this benefit.

Table 33 Workplaces that allow banking of hours worked (%)

<i>Banking hours</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
No	80.4	77.37	79.8	64.88	82.09	79.88
Yes	19.6	22.63	20.2	35.12	17.91	20.12
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source *State of Working Victoria Survey 2002*

Time off for personal matters

The majority of workplaces allow the taking of time off for personal matters (see Table 34). More than 70 per cent of workplaces covered by EBAs, own arrangements and AWAs have this benefit. The proportion is slightly less for workplaces predominantly covered by awards and a combination of instruments.

Table 34 Workplaces that permit time off for personal matters (%)

<i>Personal time off</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
No	33.34	27.26	27.76	22.42	36.01	31.39
Yes	66.66	72.74	72.24	77.58	63.99	68.61
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source *State of Working Victoria Survey 2002*

Paid maternity leave and Paid or unpaid paternity leave

For the majority of entitlements mentioned earlier in this section (RDOs, personal time off, banking of hours), the difference in the proportion of workplaces covered either by comprehensive or non-comprehensive agreements was similar. However, for paid maternity leave and paternity leave (see Table 35 and 36); there are significant differences between comprehensive and non-comprehensive instruments. Only 22 per cent of all workplaces offer paid maternity leave, however for those workplaces covered by an EBA this proportion increases to 42 per cent. Less than 20 per cent of workplaces covered by awards or own arrangements have

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access to paid maternity leave. Significantly, only 5.6 per cent of workplaces covered by AWAs indicate that paid maternity leave was available to their employees.

Table 35 Workplaces that have paid maternity leave (%)

<i>Paid maternity leave</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
No	80.05	57.86	81.66	94.38	75.66	77.52
Yes	19.95	42.14	18.34	5.623	24.34	22.48
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source *State of Working Victoria Survey 2002*

As with paid maternity leave there is considerable variation between workplace coverage and the access to paid or unpaid paternity leave (Table 36). Workplaces covered by own arrangements and EBAs appear to be well served for access to paternity leave. In contrast, workplaces covered by AWAs have a much lower proportion with access to this entitlement.

Table 36 Workplaces that have paid or unpaid paternity leave (%)

<i>Unpaid or paid paternity leave</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
No	69.92	52.16	53.74	75.67	63.68	63.02
Yes	30.08	47.84	46.26	24.33	36.32	36.98
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source *State of Working Victoria Survey 2002*

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Weekend rates of pay

The majority of workplaces do not offer higher rates of pay for work on the weekends (Table 37). Despite this, just over half of all workplaces covered by awards offer higher rates for work on the weekend, this is followed by those on EBAs, AWAs and a combination of entitlements. The vast majority of workplaces operating on own arrangements do not offer higher rates for weekend work.

Table 37 Workplaces that have offer higher rates for weekend work (%)

<i>Penalty rates for weekend</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
no	49.84	58.07	83.99	67.41	74.43	62.27
yes	50.16	41.93	16.01	32.59	25.57	37.73
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source *State of Working Victoria Survey 2002*

Paid overtime

The results in Table 38 indicate that the majority of workplaces do provide for paid overtime. Workplaces operating under EBAs had the highest proportion of paid overtime with award dominant workplaces second and then those operating under AWAs. Less than one-third of workplaces covered by own arrangements offered paid overtime.

Table 38 Workplaces that have paid overtime (%)

<i>Overtime</i>	<i>Dominant form of IR coverage at workplace</i>					
	<i>Awards</i>	<i>EBAs</i>	<i>Own Arrangement</i>	<i>AWA</i>	<i>Combination</i>	<i>Total</i>
No	35.35	32.52	70.13	42.23	45.47	45.45
Yes	64.65	67.48	29.87	57.77	54.53	54.55
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source *State of Working Victoria Survey 2002*

Summary

The findings show there is a strong relationship between the type of industrial instrument at the workplace and provision of entitlements. Workplaces predominantly covered by EBAs appear to be the most family friendly in terms of levels of entitlements with almost half of all workplaces covered by EBAs offering paid paternity and maternity leave.

Award covered workplaces appear to have the highest level of entitlement for compensation for work undertaken outside normal hours (e.g. paid overtime and penalty rates). In contrast workplaces with AWAs and own arrangements are far less likely to offer similar levels of entitlements to those workplaces covered by comprehensive agreements.

These results are consistent with research released by the OEA that indicates that workers on AWAs are less likely to receive paid maternity leave and other entitlements. Furthermore, workplaces covered by AWAs are far more likely to offer an annualised salary, thus incorporating, or, 'cashing-out' entitlements into the total wage rate. Despite this, SWVS data indicates that AWA workplaces are not significantly more likely to be high wage workplaces.

Key findings

- **The access to entitlements available at the workplace varies considerably between the types of industrial instrument.**
- **Workplaces covered by awards are more likely to have paid overtime and penalty rates than workplaces covered by other forms of industrial instruments.**
- **Workplaces covered by EBAs have greater access to entitlements for their employees than all other workplaces.**
- **Workplaces covered by AWAs are significantly less likely to offer paternity and maternity leave, penalty rates and RDOs.**
- **Workplaces covered by own arrangements are far less likely to offer higher rates of pay for overtime and weekend work.**

APPENDIX A

KEY FINDINGS

The Victorian Experience with Schedule 1A

- Throughout the 1990s the Victorian labour market was largely deregulated. Awards and agreements were significantly simplified and a default group of workers with only 5 minimum conditions was created (Schedule 1A).
- The deregulation of the labour market was designed to facilitate enterprise level bargaining over wages and conditions.
- Workplace level bargaining for Schedule 1A workers did not eventuate due to their poor bargaining position, and as a result a large proportion of workers were paid at minimum levels.
- To overcome this disadvantage the Victorian Government referred the common rule power to the Commonwealth to enable the establishment of common rule awards.

The nature and scope of industrial coverage

- The nature of industrial relations instrument coverage in Victoria is diverse.
- The largest proportion of Victorian workers is covered by comprehensive awards and registered enterprise bargaining agreements.
- A considerable proportion (almost one-quarter) of workers are covered by own arrangements or terms and conditions of employment determined at the individual workplace.
- A significant finding is that a large proportion of workplaces operate on more than one form of industrial instrument depending on individual workplace characteristics.

How well the industrial instrument meets business needs

- Almost two-thirds of Victorian workplaces are satisfied that their chosen industrial instrument meets their business needs most or some of the time.
- Satisfaction with comprehensive arrangements varies across industries, with small and regional workplaces the most satisfied.
- There was not evidence to suggest that the choice of instrument deterred workplaces from recruiting staff.
- Workplaces that did not have comprehensive arrangements expressed the most dissatisfaction with how well their chosen instrument met business performance.

The level of genuine bargaining

- A significant proportion of Victorian workers have their pay determined at market rates.
- There is evidence that, for almost one-third of workers, pay is determined by direct

or collective bargaining.

- A small but significant proportion of workers have their pay determined on a 'take it or leave it' basis of employer decision. This indicates a lack of genuine bargaining for these workers.
- Workers who were casual, part-time, and female or those who worked in hospitality were most likely to have pay determined by their employers' decision. Workplaces with pay determined in this manner were more likely to be low paid workplaces.

Workplace entitlements

- In terms of entitlements available at the workplace, workers on comprehensive arrangements had the largest access to entitlements.
- Workers on awards and EBAs were more likely to have access to paid overtime, RDOs, penalty rates and paid maternity and paternity leave.
- Workers on individual arrangements were more likely to work in a long hour's workplace and have banked hours to compensate for this type of work.

APPENDIX B Background to the State of Working Victoria Survey 2002

The information gathered by the SWVS is designed to assist policy makers develop and assess regulations, government initiatives and priorities, and gives an overview of current practices. Finally, the survey provides a source of accurate data which may challenge common stereotypes, misconceptions and generalisations about aspects of industrial relations and the role of regulatory institutions in a modern economy.

The SWVS was conducted during July 2002 and asked Victorian employers a range of questions related to their workplaces. All workplaces with 5 or more employees which were not part of the agricultural or mining industries were eligible for inclusion and a final sample of 800 workplaces was achieved. The sample of 800 workplaces is representative of 64,000 workplaces in Victoria. However, the vast majority of very small workplaces – some 200,000 workplaces with less than 5 employees – were outside the scope of this survey.

In order to maintain adequate sample numbers when presenting the industry data we have collapsed the standard ANZSIC divisional categories into more aggregated categories. These names, and the aggregations, are shown in Table 42.

Table 39 Industry aggregations used in SWVES

<i>Shorthand name</i>	<i>ANZSIC categories</i>
Manufacturing	C. Manufacturing
Construction	E. Construction
Infrastructure	D. Electricity, Gas and Water Supply I. Transport and Storage J. Communication Services
Wholesale & retail	F. Wholesale Trade G. Retail Trade
Hospitality	H. Accommodation, Cafes and Restaurants P. Cultural and Recreational Services Q. Personal and Other Services
Finance & business	K. Finance and Insurance L. Property and Business Services
Government	M. Government Administration and Defence
Human services	N. Education O. Health and Community Services
EXCLUDED	A. Agriculture, Forestry and Fishing B. Mining

One of the key categories in this report is the ‘largest occupational group’ in the workplace. SWVS sought to establish which occupational group had the largest number of employees in the workplace and this group was then deemed the ‘largest occupational group’ for a series of subsequent questions concerning wages and hours. The reason for this approach is that comparisons between workplaces based on the ‘average’ employee can be meaningless. Both

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wages and hours can be very occupationally specific and therefore it was essential that an occupational reference group was used to collect this sort of data.

Finally, it must be kept in mind that the basic unit of analysis in the SWVS is the workplace, not the 'organisation, the 'business', nor the 'company'. Nearly all tables present findings on workplaces, though a small number of tables deal with estimates of employee numbers. For these tables the number of employees in each workplace is multiplied by the weight for that workplace in order to produce workforce estimates. All of the other tables present estimates weighted solely by the workplace weights. Most of the time unit of analysis is reported as 'Victorian workplaces with 5 or more employees excluding agriculture, forestry and fishing; and mining'. For ease of expression, the phrase 'all Victorian workplaces' is used in the text to refer to this particular population of workplaces. Unless otherwise indicated, all tables refer to this population. Where a sub-set of workplaces is involved, this is indicated. The data for all tables, unless otherwise indicated, comes from the SWVS.