

Public Sector Labour Relations in Western Australia — An Overview

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The election of a Liberal–National Coalition government in 1993 heralded a period of significant and sustained change in Western Australian public sector labour relations. As legislator, the Coalition government embarked upon a program to decentralise and deregulate the Western Australian industrial relations system; as an employer, the government has had to respond to the economic imperatives which have faced most employers in recent years. The result has been a period of major change in the public sector — employment levels have declined as services have been privatised or contracted out; the proportion of non-permanent and part-time employees has risen significantly. Individual workplace agreements have been introduced; individualised performance-related management and reward systems have increased; and the scope for union involvement has diminished, as has the level and density of union membership. The experience of the public sector therefore reflects many of the workplace changes that are also found in the private sector. It also brings the government's industrial relations policies into sharper focus.

The industrial relations policy of the incoming Coalition government was clear — the intention was to establish a system which allowed for employment conditions to be individually determined between the 'primary parties', the employer and employee, without the automatic involvement of third parties such as a union or an industrial tribunal (Kierath 1996). The intention was (and still is) that the Western Australian industrial relations system would be both decentralised and deregulated (Horstman 1999; Liberal Party 1992). Three recurring principles — choice, common interest and cooperation — provided the basis upon which the Coalition's policies were developed and promoted. It was recognised from the outset that there would be a succession of legislative changes. The first task would be to establish workplace agreements (Kierath 1993, 1995), the second would be to make changes in the way union activities are regulated. The latter initiative was justified as introducing 'long overdue rights for employees' in response to some union leaders' 'privileged position of influence' (Kierath 1997:730). Alongside these proposals, the government instituted a review of all employment-related legislation (Fielding 1995)

with the purpose of updating and simplifying the myriad of statutes which impacted on employer and employee relations. It was also envisaged that the Department of Productivity and Labour Relations (DOPLAR) (Western Australia's department dealing with industrial relations) would develop and promote supporting policies in areas such as employee consultation, pay systems and family-friendly workplaces (see DOPLAR 1998).

The outcome has been three 'waves' of legislation which are summarised in Table 1. The details of these 'reforms' have been reported fully elsewhere (Bailey and Horstman 2000; Fells and Mulvey 1994; Ford 1996; Wallace-Bruce 1998a, 1998b). The first wave was enabling rather than directive in approach, a key argument used by the advocates of the policy being that employees would not sign a workplace agreement if it was less favourable than their current award. The legislation established a dual system of industrial relations with workplace agreements alongside the awards/enterprise bargaining stream. The second and third waves of legislation, introduced in 1995 and 1997 respectively,¹ took a different approach. While workplace agreements had the

Table 1: A Summary of the Three 'Waves' of Industrial Relations Legislative Change in Western Australia

The First Wave (Workplace Agreements Act 1993, Minimum Conditions of Employment Act 1993, Industrial Relations Amendment Act 1993)

1. Provides for employer–employee agreements which override any relevant state award
2. Provides for 'safety net' of eight minimum conditions (that is, no award safety net)
3. Provides for a Commissioner of Workplace Agreements, thus sets up a dual system of workplace agreements and awards/enterprise agreements

The Second Wave (Industrial Relations Legislation Amendment and Repeal Act 1995)

1. Regulation of union affairs, including political donations
2. Restrictions on union officials' access to employee time and wage records
3. Many other provisions removed or watered down due to political considerations

The Third Wave (Labour Relations Legislation Amendment Act 1997)

1. Introduction of compulsory, state-controlled secret ballots prior to many forms of industrial action by union members (non-union members are not subject to similar restrictions)
 2. Industrial Commission required to issue return to work orders in the event of industrial action
 3. Removal of check-off provisions from awards
 4. Penalties on unions which seek to transfer to the federal jurisdiction
 5. Further restrictions on union officials' right of entry to workplaces
 6. Further regulation of political donations by unions
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effect of reducing demand for union services, the objective of the second and third waves was to focus on the activities of trade unions with the aim of restricting the unions' ability to supply union services. In other words the policy was one of reregulation of union activities to complement the deregulatory potential of workplace agreements. As will be shown later in the paper, this mixed strategy of encouraging workplace agreements while circumscribing the effectiveness of unions has been adopted with significant success by the government in its role as an employer.

The Structure of the Western Australian Public Sector and its Employment Relations Arrangements The Government's Public Sector Management Policy

To the extent that a coherent public sector management policy can be identified, its origins can be found in the recommendations of the 1993 McCarrey Report² and the Royal Commission into Commercial Activities of Government and Other Matters. The McCarrey Report made a range of recommendations regarding the reform of public sector management. Ensuing legislation (the

Public Sector Management Act 1994) devolved management authority of public sector organisations to chief executive officers, including the responsibility to manage staff. The report also recommended that the public sector be exposed to more competition in the provision of services and stated that this would lead to greater efficiency and effectiveness. Recommendations were made regarding the need to reduce debt, to introduce contracting, competitive tendering and privatisation and to increase devolution to individual government agencies.

The government has acted on these recommendations to varying degrees. There has been an increase in the corporatisation of government trading enterprises such as Alinta Gas, the Water Corporation and Western Power. The metropolitan bus service, State Print (the government printer), the Rural and Industries Bank, the Dampier to Perth Gas Pipeline and the hospital linen and laundry supply have been privatised with Alinta Gas and the freight operation of Westrail about to join the list. The contracting out of cleaning and gardening services, information technology, road construction and general maintenance services has been extensive (see, for example, The Sunday Times, 21 February 1999).

The Employment Arrangements in the WA Public Sector

Although WA has approximately the same proportion of its total workforce in the public sector as other states, it has more public sector agencies than even the larger states such as Victoria — 141 in all (Fielding 1996; PSM 1998). However, the 10 largest agencies (Education, Health, Police, Justice, Western Power, Water Corporation, Westrail, Agriculture, Disability Services, Main Roads) employ approximately 77 percent of the WA public sector workforce. Of these, the Education Department with 24,859 full-time equivalents (FTEs) and the Health system with 21,287 FTEs are by far the biggest employers.

Approximately 16 percent of all WA wage and salary earners are employed by the state government, making the government the largest employer in the state (ABS 6248.0). However, any perception of a public servant as a full-time permanent employee with job security is no longer appropriate. As at 30 June 1998 the FTE numbers were 87,351, which translated into a head count of 110,241 persons (PSM 1998). These figures indicate the extent of non-full-time employment, and during the five years to 1998, part-time employment in the public sector increased by 35 percent. With regard to permanence, in 1993, 81 percent of the public sector workforce was in permanent employment whereas by 1998 this had decreased to 71 percent. (The remaining 29 percent are employed on fixed-term contracts or as casual or sessional employees.) These changes in the nature of the employment relationship have taken place in the context of a 10 percent decline in the size of the public sector. Between 1993 and 1998, over 11,000 employees took severance or transition payments to leave the public sector, with Westrail, the Health Department, Education Department and the Water Authority each losing over 1,000 employees (The West Australian 9 October 1999). Agencies such as the Building Management Authority and Metrobus saw the departure of virtually all their blue-collar employees. These changes reflect the government's implementation of the broad thrust of the McCarrey Report's recommendations.

Western Australian Public Sector Central Agencies

The state government's central agency for industrial and workplace relations is the

Department of Productivity and Labour Relations (DOPLAR). The department's mission statement has evolved over the years. It changed following the change of government in 1993 from 'to promote productive, cooperative and fair workplaces' to 'to promote productive, competitive and fair workplaces' and now is 'to promote productive, flexible and fair employment practices in Western Australian workplaces'. The common theme is the desire to promote productivity and fairness in the workplace, the means for achieving this evolving through cooperation, competitiveness and now flexibility. The department has a threefold role: to improve labour productivity in the public sector; to provide a labour relations framework in which WA workplaces become more efficient and competitive in a domestic and international context; and to ensure employers and employees have workplace arrangements that meet their needs and employment obligations (DOPLAR 1999b). In carrying out these roles, the department explores and develops policy options for consideration by the minister and cabinet. DOPLAR is also charged with the responsibility of promoting government policies in the private sector; it has a focus on work and family issues and provides labour market information. It operates a Wageline to provide employers and employees with award information and an inspectorate to ensure employer compliance with award conditions.

Most importantly, for our purposes, the department plays a major role in the industrial relations management of the public sector. It is responsible for developing policies and ensuring that agencies take these policies into account and follow them when developing their own workplace relations arrangements. DOPLAR provides strong direct leadership in industrial relations and human resource management matters and also provides comprehensive technical advice and advocacy services for most agencies in the public sector. However, this functional activity has declined, as would be expected where broad policies of management decentralisation have been adopted, leaving DOPLAR primarily with a policy/leadership role so far as the larger agencies are concerned. However, those smaller agencies without specialist human resource and industrial relations staff still rely on DOPLAR for technical industrial relations advice and advocacy.

Prior to 1994 the human resource aspects of the employment of public servants in WA were the responsibility of the Public Service Commission. As a result of the Public Sector Management Act 1994, this commission was abolished with the human resource functions being delegated to individual agencies. At the same time the new Public Sector Management Office (located within the Ministry of Premier and Cabinet) was established. This office has developed a Strategic Human Resource Management Framework that seeks to link business outcomes with human resource strategies although the ensuing guidelines are not mandatory upon individual agencies. In addition, the 1994 Act also created the new position of Commissioner for Public Sector Standards, who is required to establish and monitor standards on issues such as recruitment and selection and performance management.

Bargaining arrangements are the responsibility of two types of statutory bodies, in accordance with the 'dual model' of industrial relations established by the first wave of legislative change. The Australian Industrial Relations Commission and WA Industrial Relations Commission, and in particular the Public Service Arbitrator, continue their roles with respect to the maintenance of awards and enterprise bargaining and the settlement of collective public sector disputes. The Commissioner of Workplace Agreements vets and registers workplace agreements and provides an advisory role to private sector employers and employees. DOPLAR advises public sector agencies and employees about the substantive and procedural requirements in negotiating workplace agreements, with the result that the Commissioner of Workplace Agreements simply tends to ratify public sector workplace agreements and has little input into the process of developing those agreements.

As a consequence of the government's industrial relations and public sector management policies we can identify the emergence of a new model of public sector employment. The traditional model of the government as a good employer was broadly characterised by mutually supporting elements such as the pursuit of demonstrable fair treatment, sector-wide systems of personnel administration and the encouragement of collective representation. These, and similar aspects of public sector

employment, were held to be a model or example for other employers to follow (Beaumont 1992; Gardner and Palmer 1997). In contrast, both the industrial relations and public sector management policies place a focus on freeing up the present arrangements to allow for greater flexibility and innovation (DOPLAR 1999b). Again there are mutually supporting elements in the emerging model of public sector employment such as the pursuit of efficiency outcomes; the devolution of personnel management to individual agencies and the active encouragement of individualised employment relationships. The traditional model of public sector employment sought to achieve cooperation through providing job security, consistent treatment and a reliance on consultative processes. The emerging model envisages that greater productivity and mutual benefit will be achieved through devolved responsibility and predominantly individualised employment relationships (see Bailey et al. 2000).

Public Sector Unionism in Western Australia

The major unions operating in the WA public sector are listed in Table 2. With the exception of the Police Union, these unions are all affiliated to the Trades and Labor Council of WA (TLC). Other unions also have some membership in the public sector and will generally endeavour to work together on issues of common interest (such as superannuation, wages policy, redundancy and redeployment, and workplace agreements) at state government union meetings convened through the TLC. The majority of the unions still operate in the state industrial system although some have always had federal awards, the Australian Services Union being an example.

There is no independent data on the level of union membership within the WA public sector. Unionisation in WA as a whole (as measured by density) is the lowest of all states at 20.7 percent and is almost five percentage points lower than the national figure (August 1999; ABS 6310.0). It would be reasonable to assume that union membership in the WA public sector would also be among the lowest in Australia with the possible exception of Victoria. Public sector union density in WA declined faster than in any other state during the 1990s; between 1990 and 1996, union density in 'government adminis-

Table 2: WA Unions with Large Public Sector Memberships

Union	Principal Areas of Membership
Association of Professional Engineers Scientists and Managers, Australia*	Professional engineers and scientists
Australian Liquor, Hospitality and Miscellaneous Workers Union*	Health workers, enrolled nurses, cleaning, catering, community services, schools, children's services, disability services, laundry workers
Australian Nursing Federation (ANF)*	Registered nurses
Australian Services Union*	Professional, administrative, technical and clerical staff in Alinta Gas, Western Power and Westrail
Community and Public Sector Union/Civil Service Association (CPSU/CSA)	Professional, administrative, technical and clerical staff
Hospital Salaried Officers Association (HSOA)	Professional, administrative and technical staff in hospitals and health services
Police Union	Police officers
State School Teachers Union of WA/ Australian Education Union (SSTUWA/AEU)	Teacher, principals and TAFE lecturers
Western Australian Prison Officers' Union	Prison officers

* Unions with significant membership outside of the public sector

tration and defence' (includes local and federal government) decreased from 58 percent to 38 percent in WA, a decline of 20 percentage points or 34 percent, whereas the corresponding Australian figure was 60 percent to 47 percent, a decline of 13 percentage points or 22 percent (unpublished ABS figures for 1990 and 1996 from the Trade Union Members survey, which is reported in ABS 6325.0). Self-reported data by the unions themselves (found in Western Australian Industrial Gazettes) supports the picture of declining membership. For example, across the period 1993–99, the SSTUWA reported a 15 percent drop in membership, the Miscellaneous Workers' Union a 26 percent reduction and the membership of both the CPSU/CSA and the HSOA declined by 40 percent and 34 percent respectively. The ANF went against the trend by reporting a 3 percent increase.

It is difficult to identify the extent to which these reductions in membership and density levels have been influenced by government management and employment policies (for example, privatisation, contracting out, more part time and casual labour) as opposed to their industrial relations policies. In addition to the

promotion of workplace agreements, the government's industrial relations policies have included abolishing the practice of deduction of union dues from public sector salaries in January 1998 and withdrawing in 1994 from a public-sector-wide facilities agreement with the CSA.

In the early 1990s many WA public sector unions such as the CSA and the Miscellaneous Workers Union were initially opposed to the concept of enterprise bargaining, preferring to maintain a 'whole-of-government' approach to substantive and procedural negotiations. By the middle of the 1990s the CSA recognised that its centralised decision-making and representative structure was increasingly inappropriate in an era of agency-level bargaining and consequently placed greater emphasis on agency-level representation structures including greater involvement and decision making by members. In a number of unions initial total opposition to the concept of workplace agreements has given way to a policy change (CSA/CPSU) or pragmatic acceptance (Miscellaneous Workers Union) that members should have access to union advice and representation if they are entering a workplace agreement.

The SSTUWA moved from the state into the

federal jurisdiction at least in part to avoid the WA workplace agreement regime and other unions such as the ANF were already in the federal jurisdiction and hence were able to avoid the issue of WA workplace agreements.

Labour Relations Strategies and Outcomes in the Public Sector The Implementation of Policy

Different public sector agencies have implemented government policy in different ways. From our initial review, it would appear that a range of factors has been at work. The extent of internally generated organisational change in individual agencies has influenced how rapidly they adopt the government's labour relations framework. In the Building Management Authority significant organisational change was accompanied by the widespread introduction of workplace agreements, whereas the Police Service 'Delta' change management process met with resistance, and the adoption of workplace agreements particularly among uniformed staff has been slow. This has been the result of a number of issues specific to uniformed officers in the Police Service including discontent over discipline and dismissal processes, exclusion from statutory health and safety protection and a union with 97 percent membership density campaigning against workplace agreements.

Other factors in the public sector have included the predilections of individual CEOs towards workplace agreements and the stances of individual ministers. The occupational composition of the workforce has also had an impact. Generally, agencies with large blue-collar workforces have been less inclined to introduce workplace agreements, and where they have been introduced the take-up rate among blue-collar workers has been lower than in other occupations, for example in the power utilities, the Department of Main Roads and the Department of Conservation and Land Management. This may in turn be linked to differences in union density, solidarity within the union leadership and the degree and effectiveness of workplace organisation.

Notwithstanding these variations, the broad thrust of management strategy is clear — it follows the dual approach found in the legislative framework resulting in the mixed strategy of encouraging individual workplace agreements

while at the same time constraining the role of the unions.

As might be expected the introduction of individualised employment relationships based on workplace agreements has been high on the government's agenda as far as its own employees are concerned. Government policy is that all new white-collar employees covered by state awards are offered only a workplace agreement, although existing employees have a choice between the enterprise bargaining agreement or workplace agreement.³

The Wages Policy and Workplace Bargaining Guidelines (DOPLAR 1997, 1999a) state 'government policy on choice places an onus on agencies to ensure that existing employees are able to negotiate their own agreement'. All agencies have now developed workplace agreements. An initial attempt in the TAFE college sector to convert large sections of the award-based workforce to workplace agreements was countered by the SSTUWA through a dispute finding in the Australian Industrial Relations Commission (although such a strategy would not be possible with the passage of the Workplace Relations Act 1996). Since that dispute in 1994 the government has tended to offer incentives rather than threats or penalties. For example, many employees have accepted higher pay for a move from a 37.5 hour to a 40 hour week on the basis that they might as well be paid for the hours they were already working. In many cases agencies have registered their workplace agreements before the corresponding enterprise agreement which has also provided an incentive for employees, frustrated by delays in finalising collective agreements, to sign a workplace agreement (Berger 2000).

A further 'individualisation' strategy has been to offer to those signing workplace agreements terms and conditions of employment not available to those covered by enterprise agreements. Examples include the incentives (estimated at over \$10,000 per annum; The West Australian 2 July 1996) offered only to remote area teachers who signed workplace agreements. Similarly the option of salary packaging was initially made available only to those state government employees who signed workplace agreements.

The use of this particular public-sector-wide incentive was successfully challenged in the WA Industrial Relations Commission by the CPSU/CSA and the HSOA. The commission found that

salary packaging should not be unreasonably withheld from any (award-covered) employee ([1998] 78 Western Australian Industrial Gazette (WAIG) 2346–2350, upheld on appeal at [1998] 78 WAIG 3629–3635).

In addition to these strategies to encourage the adoption of workplace agreements, there have also been two actions in particular to circumscribe the effectiveness of unions. The abolition of 'check-off' facilities in the public sector has already been mentioned. Additionally in 1994 the government withdrew from a facilities agreement with the CSA (an agreement which had been registered in the last days of the previous Labor government). The CSA lay representatives now no longer have automatic access to time off for union business and office facilities. It will be noted that both these actions were sector-wide, not initiated or implemented on an agency by agency basis.

The Outcomes of Management Policy and Strategy

Space does not permit a detailed examination of the outcomes of the policies of government in its role as an employer. However, some general points can be made. Over 98 percent of all public sector employees are now covered by some form of agreement rather than an award and in this respect the policy of having agreement-based employment relationships in the public sector has been successful. Twenty-one percent of these employees are party to a workplace agreement; this increases to 34 percent for those employees who are employed in areas where state (rather than federal) awards would apply.⁴ In this regard, although the government has succeeded in individualising the employment relationships of a significant minority of its employees, the majority remain party to collective employment arrangements. As a consequence, it is quite possible that employees working side by side will be covered by workplace agreements and enterprise agreements with different wages and conditions, which require administrative adjustments and differing management practices. For example, in one government agency employing less than 2,000 employees, there are more than 40 different industrial instruments determining the pay of six broad occupational groups through federal and state awards, enterprise agreements and workplace agreements.

The government emphasises the importance of public sector employees being able to negotiate their own individual employment agreements but the reality appears to be that this does not happen. From her analysis of workplace agreements in five WA government agencies Berger (2000) concludes that 'workplace agreements were, without fail, developed by the management and not subject to negotiation with individuals or groups'. New public sector employees in most WA agencies have no option but to sign a management-developed workplace agreement as acceptance of the agreement can lawfully be made a condition of the job offer. In other words the management-driven process of developing workplace agreements can be interpreted as increasing managerial prerogative in the determination of pay and conditions.

While individual departments may have control over the process of developing agreements, they have far less control over the substance of the agreements and in this respect the implementation of policy is not what would be expected in the decentralised environment provided by the Public Sector Management Act. In terms of the substantive content of workplace agreements Berger (2000) identifies significant evidence of employer-driven pattern bargaining across her sample of agencies. Identical or very similar changes have been introduced with respect to hours of work, overtime, cashing in of annual and long-service leave, annual leave loading, accrual of long-service leave and union representation.

From a limited comparison with public sector outcomes elsewhere,⁵ WA agreements have more provisions for performance-based pay increases, a greater percentage of agreements where employees work more than 38 hours per week, a greater use of arrangements to pay out annual leave, and fewer union representation clauses, but are consistent with regard to employee consultation clauses. Pay increases have been broadly consistent with increases in other states and, importantly, consistent with the WA government's own wage guidelines. There is some indication from the data that WA public sector workplace agreements provide greater percentage increases than enterprise agreements and more evidence that public sector workplace agreement increases are received at an earlier date than those in enterprise agreements (Berger 2000).

Conclusion

The period since 1993 has seen major changes in the public sector in Western Australia and these changes, together with the Liberal–National government's program of industrial relations legislative change have impacted strongly on public sector labour relations. In practice, the government, in its role as the employer, has encouraged individualised, agreement-based employment relationships and particularly has sought to achieve the adoption of workplace agreements. In broad terms, the traditional 'good employer' model of public sector employment based on collective relations, fair treatment and an emphasis on a whole-of-government approach has given way to a new model based on individualised 'choice' and a focus on outcomes.

Several different approaches have been used to promote workplace agreements, with varying degrees of success across different agencies. More consistent across the whole public sector is the diminution of the role of the union in labour relations matters. Finally, the labour relations policy and processes are delivering the government's desired wages outcomes.

The tensions between centralisation/regulation and decentralisation/deregulation remain. The government's need to maintain some control over bargaining outcomes may be understandable even though it would be more consistent with the policy of devolution to have individual agency bargaining autonomy subject only to budgetary control. The reality is that while there has been a procedural decentralisation of responsibility for negotiations to the level of the individual government agency, there remains a centralised regulation exercised by DOPLAR and the Cabinet Standing Committee on Labour Relations over the substantive outcomes. This is true for issues ranging from the clear preference for workplace agreements and the decision to cease union payroll deductions through to the trading off of conditions of employment. The WA government, perhaps like governments elsewhere (O'Brien 2000; van Gramberg and Teicher 2000), wants its agencies individually to decide to act in a way that is consistent with government policy.

Notes

- 1 For reasons that are explained in Bailey and Horstman (2000), the second wave was largely

aborted but resurfaced about 18 months later.

2. Following its election in February 1993 the Court Coalition government appointed a commission to report on the finances of the Western Australian public sector. In this respect WA was no different from other states where governments of all political persuasions have undertaken extensive reviews of the role and functioning of the public sector. The WA Commission's report, *Agenda for Reform*, is commonly referred to as the McCarrey Report after the commissioner.
3. However, a WA Industrial Appeal Court decision (unpublished at the time of writing) suggests that the WA Industrial Relations Commission has the jurisdiction to deal with applications by unions for provisions in awards or agreements, overturning an employer's 'No workplace agreement, no start' policy (RGC Mineral Sands Ltd and Westralian Sands Ltd v CMETSWU & others. WA Industrial Appeal Court decision 9 June 2000. IAC files 10 and 11 of 1999). The implications of this decision are currently being reviewed by public sector unions.
4. These data are drawn from a near-final draft of *Directions*, a review of public sector labour relations to be published by DOPLAR but which was still in preparation at the time of writing this paper. Unofficial data estimates that almost 50 percent of clerical and administrative employees (that is the typical public servants with continuing positions) are now employed on workplace agreements.
5. Again found in *Directions*.

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