

What's different about Tasmanian enterprise bargaining? The rise and decline of Part IVA agreements?

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ABSTRACT

The number of Part IVA enterprise agreements approved in the State of Tasmania increased during 1993-1999 with the expectation this trend would continue. This has not been the case. There has been a decline in the number of applications received and approved and an increase in the numbers withdrawn. This trend reversal coincided with The Industrial Relations Amendment Act 2001 and the abolition of the Office of the Enterprise Commissioner. This paper is a preliminary exploratory study of the rise and decline of Part IVA enterprise agreements in Tasmania. It provides an historical overview of the legislative background to enterprise bargaining, reports empirical trends in Part IVA enterprise agreements and Australian Workplace Agreements (AWAs) in the State, and presents emerging qualitative themes based on depth interviews. We acknowledge our findings are preliminary and require further research investigation. However, our initial proposition is the use of a 'fairness test' has led to an increasing circumvention of the enterprise bargaining system. What's different about Tasmanian industrial relations may be the spurious nature of a system, which on the surface appears sound but which may have become increasingly weak.

Introduction

The details of Tasmanian industrial relations are not well known to commentators and researchers of mainland Australian or indeed to those internationally. This is, perhaps, due to the regional nature of industrial relations on an island and the assumption Tasmanian industrial relations is connected but somehow different to that on the mainland. Yet, the Tasmanian case has as much to offer on the subject of industrial relations bargaining structures and outcomes. This study is deliberately exploratory. If indeed, Tasmanian industrial relations is different then any a priori theoretical attempt to use the literature may cloud preliminary findings, which could later be tested against theoretical propositions.

During 2000-2002 the Tasmanian Industrial Commission (TIC) continued to fine-tune the procedures for registering Part IVA enterprise agreements. Despite this, the numbers of enterprise agreements received and approved declined.

The legislative background to Part IVA agreements in Tasmania is outlined and the major legislative developments examined. We present figures that demonstrate a strong growth in the number of Part IVA enterprise agreements, followed by a significant drop. These figures coincide with the abolition of the Office of the Enterprise Commissioner (OEC) in January 2001. We also present data available on agreements in the Federal arena, paying particular attention to changes in the composition or mix of Federal agreements, which are other than awards, i.e. certified agreements union and non-union and Australian Workplace Agreements (AWAs). Finally, we present a sampling of the viewpoints of the key parties to industrial relations in Tasmania. While these viewpoints are based on exploratory interviews they provide speculative themes for further investigation.

The legislative background outlines significant developments since *The Industrial Relations Act 1984*. We draw on published secondary documents of the Tasmanian Legislative Select Committee, Tasmanian Trades and Labour Council (now Unions Tasmania) and the Tasmanian Industrial Relations Commission. Our aim was to draw on documents, which record accounts of the establishment and subsequent abolition of the Office of the Enterprise Commissioner.

We use figures from the annual reports of the Office of the Employment Commission (OEC) and the TIC, for the period 1999-2002 to demonstrate not only a decrease in the number of agreements received but also an increase in the number of agreements withdrawn (after initial application). We use unpublished figures provided by the Office of Employment Advocate (OEA) to demonstrate the rapid growth of AWAs in Tasmania.

A small number of depth or exploratory interviews were held with Commissioners of the TIC, Unions Tasmania, Tasmanian Chamber of Commerce and Industry, and the major private consultant who assists employers with the lodgement of AWAs. These interviews were carried out during June and December of 2002.

Legislative background

This section outlines the legislative background to trends in Part IVA Enterprise Agreements in Tasmania. The decline in numbers received and approved coincides with changes to the enterprise bargaining system following the *Industrial Relations Amendment Bill 1999*, decisions of the Legislative Council Select Committee as specified in the document entitled 'Industrial Relations 2000', and the subsequent *Industrial Relations Amendment Act 2001*.

For the purposes of examining the legislative background to Part IVA enterprise agreements the key changes to *The Tasmanian Industrial Relations Act 1984* will be detailed. Following this we provide an overview of submissions by key parties prior to *The Tasmanian Industrial Relations Amendment Act 2001* and the abolition of the OEC.

The major development of *The Tasmanian Industrial Relations Amendment (Enterprise Agreements and Workplace Freedom) Act 1992* was the introduction of Part IVA, sections 61A-61ZE which provided for the establishment of the Office of the Enterprise Commissioner (OEC) and for a system of registration of enterprise agreements. These provisions were to exist alongside the continuing provisions for awards and industrial agreements (i.e. sect.55 agreements), with the Act specifying the OEC deal with enterprise agreements and the TIC with industrial agreements and awards.

The significant development of *The Tasmanian Industrial Relations Amendment Act 1997* was the introduction of a 'fairness test'. This amendment provided for the application of a test similar to the 'no disadvantage test' applied in other States and the federal arena, and section 61J(1)(f) stipulates, 'The Commissioner must approve an enterprise agreement unless satisfied that... the agreement is not fair in all circumstances'.

The principal change of *The Tasmanian Industrial Relations Amendment Act 2001* was the abolition of the OEC with the upshot being that Part IVA enterprise agreements are now dealt with by the TIC. The Commissioners of the TIC now approve enterprise agreements following a formalised set of procedures, which aim to establish clear guidelines for the parties.

INDUSTRIAL RELATIONS AMENDMENT BILL 1999: In 1999 the Tasmanian Government revealed a draft proposal of industrial relations legislation. There were a number of components to the proposal. First, there was a recommendation for the abolition of the OEC. Second a proposal for the transfer of the approval process to the TIC. Third, the provision that unions should be able to apply to be heard by the TIC in relation to agreements in which they had a direct or relevant interest, and the provision that the TIC would not register an agreement if a matter by a union justified refusal (Davis, 1999:3). Fourth, the *Industrial Relations Act 1984* only requires enterprise agreements be made available to the parties. This was consistent with agreements made under s.55 of the Act and based on the employer argument that agreements contain commercially sensitive information that may be of value to competitors (Garnham, 1998:169). While the Select Committee 1996 concluded that making agreements public would "demystify the system and boost public confidence in it" the practice remained (Garnham 1998). This matter was revisited in the *Industrial Relations Amendment Bill 1999*. Clause 24 of the 1999 Bill proposed that enterprise agreements be open to public scrutiny.

TASMANIAN TRADES AND LABOUR COUNCIL SUBMISSION 2000: The Tasmanian Trades and Labour Council (TTLC), now Unions Tasmania, presented a submission to the Legislative Council Select Committee in February 2000. This submission was entitled, 'Why we need to change the *Industrial Relations Act*'. The TTLC proposed the introduction of a no net detriment test, arguing there had been "numerous examples of workers being unaware of their actual entitlements and giving up conditions via the enterprise agreements system" (TTLC, 2000:11). The TTLC also supported the abolition of the OEC with the view the TIC could adequately deal with the

registration of enterprise agreements, and also give impartial advice to employers and workers on choices in the appropriate form of regulation (TTLC, 2000:10). Further, the TTLC refuted the employer argument that enterprise agreements should remain private documents, claiming the fact that enterprise agreements are dealt with separately and secretly has allowed workers to lose conditions they would otherwise be lawfully entitled to (TTLC: 10).

LEGISLATIVE COUNCIL SELECT COMMITTEE 2000: In April 2000, in response to concerns of the business community, the Legislative Council Select Committee produced a summary of recommendations for the Parliament of Tasmania. This report addressed issues surrounding the proposed *Industrial Relations Amendment Bill, 1999* and was entitled *Legislative Council Select Committee: Industrial Relations*. Members of the business community had expressed concern about a lack of consultation with employer representatives. The business community, were particularly concerned with the inclusion of a 'no net detriment test' and the likely comparison of the terms and conditions of enterprise agreements with previous award conditions. They claimed the *1999 Bill* was being rushed through Parliament without sufficient time for scrutiny and investigation.

The key recommendations of the Legislative Council Select Committee were based on the submissions from parties concerning the approval process of enterprise agreements. The recommendations were first, there should not be a 'no net detriment test' applied to enterprise agreements'. Second the OEC should be retained and therefore Part IVA of the Act retained. Third, enterprise agreements should not be available for public inspection but limited to the parties involved so as to protect matters of commercial confidentiality. The committee stressed that 'no person should be precluded from accepting employment conditions which may not meet a no net detriment test if that employee were aware of all the relevant provisions of Part IVA of the Act and the OEC Commissioner deemed the agreement fair in all the circumstances'. The committee highlighted the need for consistency in decisions relating to enterprise agreements and therefore the need to retain the OEC.

INDUSTRIAL RELATIONS AMENDMENT ACT 2001: The above events preceded the *Industrial Relations Amendment Act 2001*. At face value the Legislative Council Select Committee supported many of the concerns of business. By contrast, in support of workers the TTLC had sought the introduction of a no net detriment test. The TTLC also refuted the claim that enterprise agreements should be private documents, rejecting the employer argument enterprise agreements contain matters of commercial confidentiality (TTLC, 2000: 11).

The Industrial Relations Act 2001 repealed Division 3 of part IVA. This abolished the OEC and all applications for enterprise agreements have since been handled by the TIC. A further amendment directed the TIC to specify through formalised guidelines how it would apply the fairness test.

The substantive outcome of enterprise agreements is dependent on the procedural application of the fairness test. Although *The Tasmanian Industrial Relations Amendment Act of 1992* contained minimum conditions for enterprise agreements, and *The Tasmanian Amendment Act of 1997* introduced the 'fairness test', *The Tasmanian Industrial Relations Amendment Act of 2001* leaves the minimum conditions to be specified procedurally through the formalised guidelines for enterprise agreements.

Pursuant to Section 61J of The Tasmanian Industrial Relations Amendment Act 2001 a Commissioner must approve an enterprise agreement unless satisfied that:

- The agreement does not meet the minimum conditions specified in Section 61F;
- The matters referred to in Section 61E are not contained in the agreement;
- The bargaining process adopted by the parties to the agreement was not appropriate and fair;
- The agreement was made under duress;
- Any matter raised during the hearing by the Minister or an organisation intervening, justifies the refusal of the approval of the agreement;
- The agreement is not fair in all the circumstances;
- The requirements of Section 61I2(2A) & (2B) have not been met.

That is:

- i The parties to the agreement are aware of their entitlements and obligations under Part IVA of the Act and any changes to their existing conditions of employment resulting from the agreement taking place,
- ii That any secret ballot required to be conducted in relation to the agreement has been conducted in accordance with section 61ZB(1),
- iii The parties to the agreement were provided with a written statement at least two weeks before the ballot to approve the enterprise agreement specifying;
 - a) any changes to their entitlements and obligations resulting from the agreement taking effect; and
 - b) the nature of any changes to existing conditions of employment.

If the Commissioner finds any one, or some or all of the above requirements have not been met, it must follow that this would lead to a refusal to approve an enterprise agreement. A comparison of the fairness test with a no net detriment test appears favourable as the requirements of Section 61I2(2A) & (2B) ensure a comparison of the conditions of enterprise agreements with previous awards. However, employers have demonstrated a loss of faith in Part IVA agreements by opting for AWAs and other forms of regulation. The following sections present the data on trends in Part IVA agreements and AWAs.

Trends in Part IVA enterprise agreements Tasmania

Official numbers on Part IVA enterprise agreements are collected monthly. These numbers have been maintained by the OEC and TIC since March of 1993 and provide the basis for our discussion on trends in the numbers of enterprise agreements received, approved, and withdrawn. We draw on unpublished data provided by the OEC from March 1993 to June 2000 and by the TIC from June 2000 to June 2002. While the annual report of the TIC 2001/2002 provides published data on the number of agreements lodged, approved, withdrawn, refused, awaiting approval and not renewed the data is presented differently and not useful in demonstrating the rise and decline of Part IVA enterprise agreements.

The following material will identify some significant limitations to the figures we use and care must be taken when attempting to generalise from them. The figures on enterprise agreements are a record of agreements received, approved, and withdrawn in the registration process, for each year. There is no data readily available on the total sum of enterprise agreements active in any one year.

As enterprise agreements have a duration of between one to five years, they roll on from one year to the next, and an agreement registered in one year will not be recorded again, until it comes up for renewal in a subsequent year. This implies the numbers of active enterprise agreements may be more than the number recorded as approved for each year.

Nor do the official numbers identify which of the agreements approved in any one year are new as opposed to being renewals. This also distorts the numbers, but suggests the converse, a doubling up in the recording of some of the agreements.

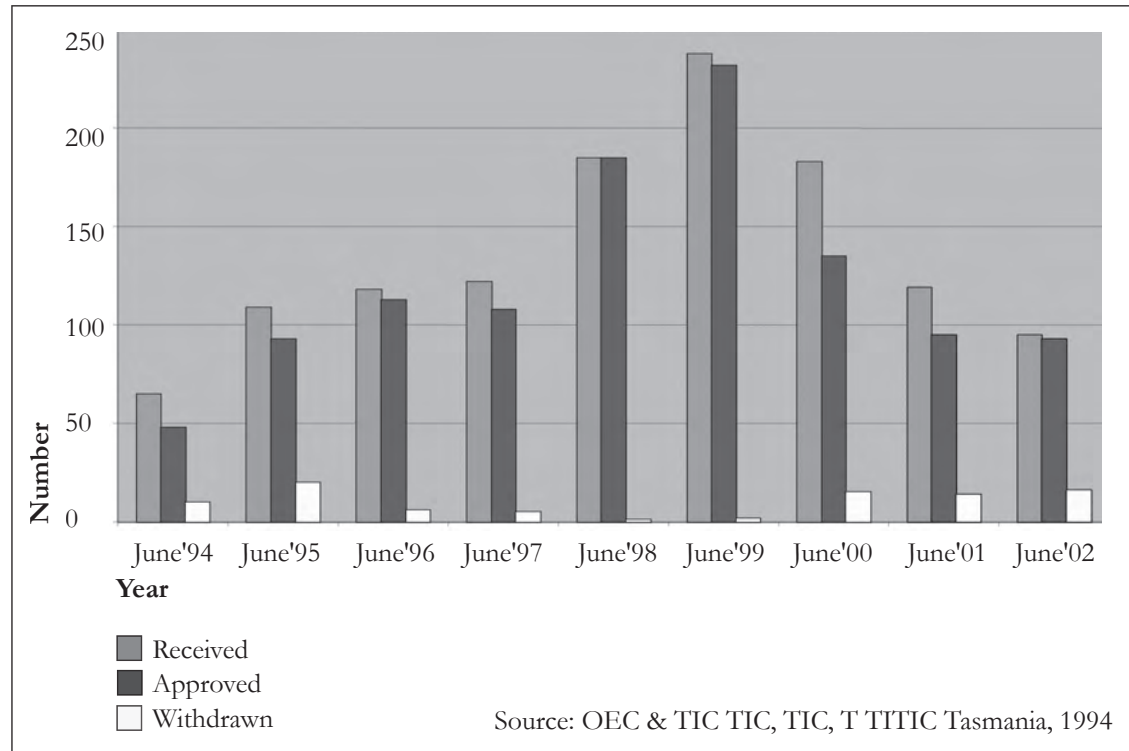
Recognition also needs to be given to the coverage of enterprise agreements. In Tasmania, enterprise agreements are largely adopted by small business and whilst the incidence of enterprise agreements appears high the agreements tend to cover small numbers of workers (Commissioner of the TIC: 2000). Based on the unpublished data provided by the OEC and TIC (1993-2002), the 917 agreements approved by June 2002 covered only 21,078 employees, an average of only 22 employees per organisation.

Finally, it may be the case that a level of saturation has been reached and the numbers will increase again when agreements come up for renewal. A number of these limitations are revisited in the following discussion.

Figure 1 illustrates the number of Part IVA agreements received by the OEC and TIC prior to approval, the number of agreements approved by the OEC and the TIC, and agreements withdrawn after the initial registration process, i.e. before a decision is made to approve or reject

the agreement. Of the total 1,034 agreements received by June 2000, 917 were approved, 68 withdrawn, and the 49 unaccounted for agreements recorded as 'awaiting hearing dates'. The total number of agreements 'awaiting hearing dates' relates to the whole of the period from March 1993 to June 2000. There is no data available to specify the number of agreements 'awaiting hearing dates' for each of those years.

FIGURE 1
State Enterprise
Agreements,
OEC & TIC



There was a steady increase in Part IVA enterprise agreements received and approved over the period March 1993 through to June 1999 (238 received, 232 approved, 2 withdrawn). This peaked during the periods 1997-1998 & 1998-1999, with a proportionately high number (97%-99%) of agreements approved, and very few (<1%) withdrawn. This trend was reversed in 1999-2000, with a 23% reduction in the number of agreements received, only 74% of those agreements approved, 8% withdrawn, and the 33 unaccounted for agreements presumably 'awaiting hearing dates' (183 received, 135 approved, 15 withdrawn). Data employing the same method of data collection but provided by the TIC demonstrates a continued trend reversal for June 2000-June 2002.

The overall scope of enterprise agreements in Tasmania was relatively high prior to the trend reversal. As a rough estimate, Part IVA enterprise agreements may have been as high as 45.5% of the total of collective agreements by 2001. Although the numbers for actively registered agreements are not available for specific years, we did obtain TIC (2000) data showing there were 494 registered Part IVA enterprise agreements (excluding expired) as at 30th June 2000. Those (494) registered Part IVA agreements roughly represent 45.5% of the total (1,084) collective enterprise agreements in the Tasmanian State jurisdiction in 2000.

Our figure for the scope of enterprise agreements compares well with other data sources. For instance ACIRRT (2001) report 69% of award-based employees in Tasmania were covered by a collective agreement in the State jurisdiction in 2000. ACIRRT (2001) also report the number of collective enterprise agreements in the State jurisdiction for Tasmania was 1,084 at September 2000, with that figure representing a composite of industrial agreements (s.55) and Part IVA enterprise agreements under the *Industrial Relations Act 1984* (TAS).

A further important consideration is the ratio of Part IVA enterprise agreements to employees covered. The 494 enterprise agreements active and registered in Tasmania in 2000 covered 7,657 employees (TIC, 2000), on average only 15-16 employees per agreement.

These figures demonstrate the relatively high number of Part IVA enterprise agreements were from small business defined by the ABS as those businesses with fewer than 20 employees (Cat 3201, 2001). Employing small businesses in Tasmania numbered 10,000 during 2000-2001 (40.5% of the total 24,700 businesses in the private sector in Tasmania). Those 10,000 employing small businesses employed 48,700 people during 2000-2001.

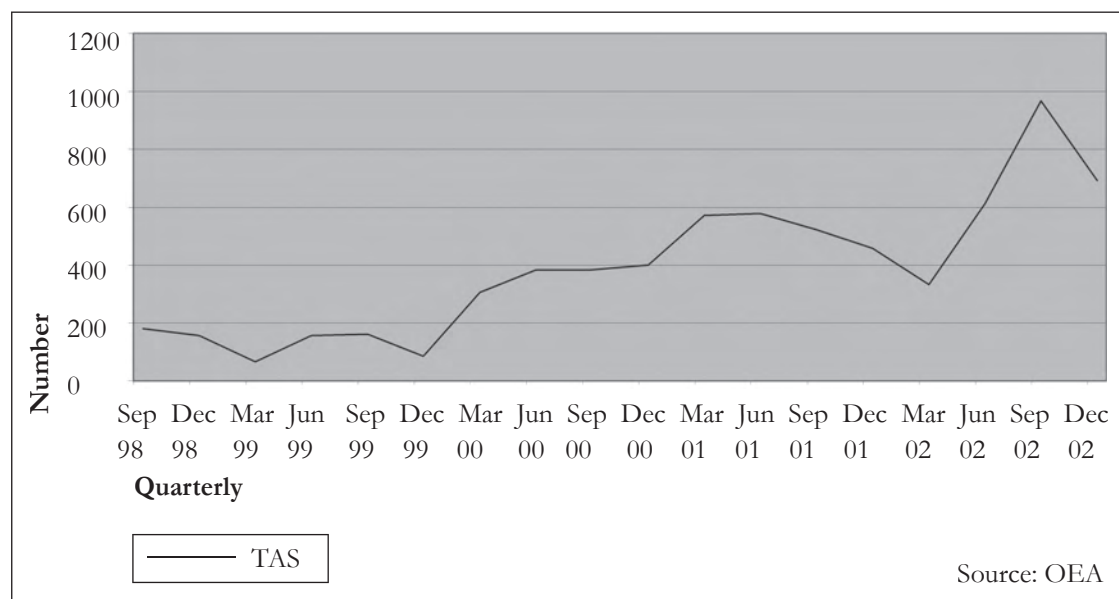
While the decreasing number of Part IVA enterprise agreements being registered in Tasmania can be related to the growth of AWAs, consideration also needs to be given to the mix of State agreements. Our data on this is patchy. In June 2001 the number of industrial agreements (section 55) registered was 68, and in June 2002 the number was 83. An explanation of this trend is difficult. In the context of the uncertainty surrounding Part IVA agreements it could be attributed to the parties falling back on the clearer legislative base of this type of agreement. It could also be taken as evidence of a weaker trend towards AWAs. However, without comprehensive data it is impossible to confirm either speculative claim.

A Shift from state (Tasmania) to federal jurisdiction agreements

At face value, data provided by the Office of Employment Advocate (OEA, 2002abc) confirms a shift from State (Tasmanian) to Federal jurisdiction agreements, particularly to AWAs.

The figures indicate a rapid growth of AWAs in Tasmania from 1999 on and a steady increase in agreements registered in each quarter (the exception being the periods June 2001 - March 2002 and September 2002 - December 2002)(OEA, 2002a). By December 2002 AWAs had grown by approximately 380% (see figure 2.). However, the numbers are low, they may cover a low base, and it is not possible to determine whether they are live or repeats.

FIGURE 2
AWAs Tasmania
September 1998
- December 2002



A second set of OEA data relates to trends for AWAs in Australia. The figure for 'live' AWAs, that is, those approved in the two years prior to December 2002, was 150,000 Australia wide (OEA, 2002b). However, as the OEA is not notified when people either move jobs or take on other agreements there is no way of knowing how many AWAs are still active. The AWA data gives no account of which agreements are new as opposed to re-newed, or which agreements have expired (AWAs have a duration of three years). Consequently, while the figure for 'live' AWAs is 150,000 Australia wide, this figure is only a proxy.

A third set of OEA data (see Table 1) compares the shares of AWAs with the shares of working population, for each State or Territory (OEA, 2002c). The data shows the share of AWAs coming from NSW, VIC and Qld is below the percentage share of their working population, whilst the share of AWAs coming from WA, SA, TAS, ACT and NT is higher than the percentage share of their working population. That is to say, the share of AWAs in the latter States (Tasmania

included) is relatively high given the smaller size or proportion of the working population. This data was compiled by the OEA from ABS data (Cat No. 6203.0).

TABLE 1
Population shares by State and Territory: AWAs and the Australian working population

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT
% Share of Australian working population	34%	26%	18%	10%	7%	2%	2%	1%
% Share of AWA approvals last 2 years	27%	17%	13%	*20%	*11%	*3%	*6%	*2%

Sourced by OEA from ABS Cat. 6203.0

Data on trends in the composition or mix of Federal agreements indicate a significant growth in 'other than federal awards', i.e. certified agreements and AWAs (based on data from *Trends in Federal Enterprise Bargaining, Report of 27 Nov 2002, OEA: 2002c*). However, the overlap of forms of employment regulation makes it difficult to ascertain the exact change. As noted by Plowman (ACIRRT working paper 2002) many awards are supplementary awards, and many certified agreements are supplementary to awards. AWAs can therefore exist along side awards and certified agreements in any one organisation.

Emerging Themes

The following section presents themes drawn from the in-depth exploratory interviews held with officials of the key Tasmanian Industrial Relations organisations during June of 2002. Tasmanian Industrial Commission (TIC), Unions Tasmania (UT), Tasmanian Chamber of Commerce and Industry (TCCI). Further interviews occurred during December of 2002 involving officials of the Office of the Employment Advocate, and an authorised agent for the lodgement of AWAs in Tasmania. These themes are descriptive but are used to provide a speculative account of the rise and decline of Part IVA enterprise agreements. We treat these as emerging themes from an exploratory study, open to more rigorous investigation and testing in the future.

EMPLOYER'S CHOICE OF REGULATION: The major private consultant (Ireland Consulting) assisting small business employers with the lodgement of AWAs in Tasmania reports business owners complain of the ongoing inconsistency in the approach of Commissioners of the TIC. This inconsistency led employers to fear unpredictable outcomes. Compared with Part IVA enterprise agreements, when lodged with private consultants AWAs can be processed within sixteen days and the outcome is certain. Indeed, since the introduction of electronic lodgement and the centralisation of processing in the Sydney office of the OEA, AWAs have undergone a consistent annual growth Australia wide (Department of Employment, Workplace Relations and Education, 2001).

The choice of regulation seems to have been guided by a number of factors. While 'some' guidelines were in place for registering enterprise agreements prior to the abolition of the OEC, the newer and more formal guidelines of the TIC aim to increase the awareness of parties to changes in the terms and conditions of employment. These guidelines contain a statutory declaration that must be signed by the parties, guidelines for the conduct of secret ballots, a summary of Part IV of the Industrial Relations Act 1984, and a draft statement of awareness that must be signed by the parties. In essence, the aim of the guidelines is to produce a more rigorous process of approval. The reaction of small business employers appears to have been negative.

The major private consultant reports the introduction of Part IVA enterprise agreements was a boon for employing small businesses. The tendency of unions and employer associations to focus on the needs of larger employers meant the needs of employing small businesses were 'dealt out', i.e. locked into the monopoly arrangement of Unions, Employer Associations and an award system that failed to meet the needs of small business. The advent of enterprise bargaining fragmented the monopoly arrangements, providing an avenue for small businesses to obtain more flexible agreements.

Indeed, from an employer perspective, the early years of the enterprise bargaining system were such that the OEC and employers were able to reach 'reasonable understandings' without too much concern for procedural fine-tuning. It is clear this is not the position of the unions, who report dissatisfaction with the quality of those early agreements.

For employing small businesses, the turn around position came with *The Industrial Relations Amendment Act of 2001*. Since then the TIC approach has been viewed as inconsistent in approach and unpredictable in outcome. There have been reports of a wane in employer enthusiasm since the enactment of that Act. Indeed, records of Ireland Consulting show AWAs have dominated since 2001 with 80% of clients now seeking AWAs.

At State level (Tasmania), regional offices of the OEA undertake the marketing of AWAs, promoting the 'big four' areas of flexibility and innovation; casual work, flexible hours, work and family, and performance pay. More generally, some of the proposed merits of AWAs include improved employee relations, and more flexibility with manning levels, demarcation boundaries, and the use of contractors. With the restructuring of the OEA in 2002 there was the further development of a policy and research unit in Sydney and an expansive client services network (cns) for the States. CNS provides face-to-face support to industry partners, employers and employees.

INDUSTRY PARTNERS AND EMPLOYER ASSOCIATIONS : By contrast, the larger employer associations look set to support both Part IVA agreements and AWAs. The Tasmanian Chamber of Commerce and Industry report an interest in maintaining Part IVA agreements, at least for the benefit of small businesses where there is no representation. At the same time, they look set to follow the trend towards AWAs. This is reflected in the development of their partnership with the OEA. These partnerships aim to smooth the process of registering AWAs.

Other employer associations in partnership with the OEA are the Australian Hotels Association, Tasmanian Logging Association, Australian Mines and Metals Association, and the Tasmanian Chamber of Commerce and Industry (TCCI). The private consultants are Ireland Consulting Services Pty Ltd, and James Graham and Associates.

THE UNION POSITION : The union position (ILLC now Unions Tasmania) has always been that Part IVA agreements allow State award conditions to be undercut (Unions Tasmania). As it stands the test applied to enterprise agreements is 'the fairness test', as legislated in 1997. This test was maintained as part of a compromise package imposed on labour through the *Industrial Relations Amendment Act 2001*, but it reflects the continuance of a test that labour opposes. That said the impact of the more recent formalised guidelines, including the recommendation of a comparison of Part IVA and s.55 (industrial agreements) conditions, is seen to go some way towards improving the situation.

The background to the union position is as follows. The *Industrial Relations Amendment (Enterprise Agreements and Workplace Freedom) Act 1992* introduced Part IVA agreements and set the minimum conditions that were to be applied. From labour's perspective, the enterprise agreements approved during the early 1990s's resulted in agreements with low conditions of employment. The subsequent *Industrial Relations Amendment Act 1997* introduced a 'fairness test', but Unions Tasmania spokesperson reports a continued failure to lift the low benchmark of conditions. Indeed, in the Industrial Relations Amendment Bill of 1999, labour proposed a 'no net detriment test' with the explicit aim of reflecting the 'no disadvantage test' that applies to certified agreements and AWAs, federally. Their aim was to introduce a mechanism of protection such that 'on balance' Part IVA agreements did not provide a net detriment if comparing the conditions set in industrial agreements (s.55) or awards.

The turn around for the unions came with *The Industrial Relations Amendment Act 2001*. Unions Tasmania report, when the legislation was drafted the minimum conditions for Part IVA agreements were not specified. On that basis, there was nothing to safeguard workers. Irrespective of whether the change was intended or a legislative oversight, the TIC has had to determine 'in detail' how the fairness test is to be applied. The formalised guidelines (2001) are viewed as a means of achieving that protection, and for labour may be a small move in the right direction.

Discussion

The declining number of Part IVA enterprise agreements being registered in Tasmania corresponds with legislative changes. The legislative silence over the minimum conditions of s.61(F) has been a strong incentive for the TIC to develop formalised guidelines for Part IVA agreements. While there is some merit to the argument the tougher approach of the TIC has had a negative impact on the number of these agreements being registered and approved, other factors have also played a role.

The response of employers has been pragmatic. Prior to the *Industrial Relations Amendment Act 2001*, employers were less attracted to AWAs. As an individual form of regulation AWAs have to be registered for each employee. By and large this has been a disincentive for both small and larger organisations, particularly given the need to register multiple individual contracts. However, following the 2001 amendments, and the more stringent procedural rules for enterprise agreements, AWAs may appear to employers an attractive alternative.

It appears AWAs have a promising future with respect to the State of Tasmania. Industrial relations commentators of the mainland may well see this as unsurprising. Yet, the decline of Part IVA enterprise agreements and the rise of AWAs in Tasmanian is neither confined to employer pragmatism or limited to employees who have the skills and abilities to negotiate a contract, or to employees with little bargaining power.

We believe the more significant findings of this exploratory research concern the procedural and substantive implications of Part IVA enterprise agreements. Employers may avoid the application of the 'fairness test' by the TIC by opting for the AWA system. For labour or employees generally the threat of a decline in employment conditions rests with the procedural and substantive outcomes of the fairness test in Part IVA enterprise agreements and or with the no disadvantage test in AWAs. However, the more significant consequences have to do with the declining use of enterprise bargaining structures and the limit on parties to the bargaining process. While the TIC is under increasing pressured to ensure procedural and substantive fairness, the TCCI and Unions Tasmania have been increasingly dealt out of the bargaining processes of enterprise bargaining. What's different about Tasmanian industrial relations may be the spurious nature of enterprise bargaining structures, which on the surface appear sound but which have become increasingly weak.

In the context of the growing employer preference for AWAs and the increased use of private consultants, it is possible to speculate party pragmatism may at some time urge the TIC, the TCCI and Unions Tasmania to adopt a consensual approach to the management of enterprise agreements. This is a matter of conjecture, but it is one possible avenue. The upshot could be more involvement by traditional employer and labour representatives, arguably a good thing given the tendency of employers to circumvent bargaining structures and processes. However, AWAs do not have direct union involvement and the impact on unionism could be a further decline in membership.

The findings of this study are of course exploratory and we acknowledge the themes from respondents anecdotal. The proposition of spurious enterprise bargaining structures in Tasmania requires a more rigorous investigation. We look forward to further research and to comments on this paper.

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