Awards, Certified Agreements and AWAs – Some Reflections

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David H Plowman

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David H. Plowman
The University of Western Australia

1. Introduction
Since the introduction of the Workplace Relations Act (WRA) in 1996, the traditional forms of employment regulation in the federal jurisdiction have been augmented by Australian Workplace Agreements (AWAs). Unlike awards and certified agreements, both of which are collective forms of regulation, AWAs may provide for individual forms of regulation, and thus mark a significant change to the federal system of employment relations. The first part of this paper describes the system of awards and collective agreements that operate in the federal industrial relations system. The second part of the paper examines the incidence of AWAs and makes a number of observations based on a previous study (Plowman, Watson and Kelly 2001). This second part is more a pointer for further research than an authoritative evaluation of the current experience.

2. Employment Regulation in The Federal System
Employees whose conditions of employment are governed by the federal jurisdiction may have these conditions regulated by one or more of three ways: awards of the Australian Industrial Relations Commission (AIRC); certified agreements of the AIRC; or AWAs which are overseen by the Office of the Employment Advocate (OEA). As outlined in a subsequent section of the paper, there is a complicated pattern of award and agreement coverage.

The AIRC’s database OSIRIS lists 1,145 awards. Not all of these are general conditions awards. Some are single-issue awards (long service leave, superannuation, plant closure etc) and are not relevant to the analysis of annual leave loadings. A number of single enterprise awards are auxiliary or supplementary awards. In these cases many of the substantive conditions of employment are determined by a parent multi-employer award. The database also contains the names of a number of awards that may be deemed to have ceased to exist under s151 of the WRA.

In an attempt to determine the number of general conditions awards, the contents of 370 awards (32 per cent of all awards) were examined. This suggests that 11.7 per cent of awards are single-issue awards; 49.7 per cent of awards are dependent awards; and 7.3 per cent of the listed awards have ceased to operate. In all 68.7 per cent of the awards examined were not general conditions awards. The exclusion of single issue and obsolete awards suggest that about 360 of the awards are general awards, that is, to the extent permitted by the Workplace Relations Act 1996, they attempt to regulate conditions generally.

OSIRIS lists over 30,000 certified agreements. Our analysis suggests that a number of these are agreements that have been superseded. For example, the Regency Electrical and Mechanical Services Pty Ltd Enterprise Agreements for 1994, 1997-2000, 1999-2000 and
2000-2003 are all to be found on the database. Only the last of these agreements is current.

Our analysis further suggests that between 60 per cent and 70 per cent of the agreements listed in OSIRIS are superseded agreements. In addition, a small number of agreements are single-issue agreements, or agreements that seek to clarify issues in existing agreements or awards. We concluded that about 10,000 of the listed agreements are current and not limited to one issue.

We analysed in depth the contents of 250 randomly chosen agreements. The agreements conform, in the main, to one of two principal types: either they supplement the parent awards, or they seek to prescribe conditions generally, and in so doing exclude recourse to an award.

The first group of certified agreements has multiplied in recent years as a result of the requirement for awards to be 'simplified' and limited to “allowable matters” (see note 4).

The second grouping of certified agreements can be further divided into two groups: those made before 1996 and those made after the introduction of the WRA. The significance of this divide is that the former agreements are, in effect, awards dating to a time when agreements reached by the parties could be ratified by the AIRC as either consent awards or certified agreements. The latter took on the form, structure and wording of awards. Though they were not necessarily limited to a single employer or enterprise in theory, in practice they were almost universally single employer agreements. Few, if any, of these pre-1996 certified agreements sought to change the generally accepted industrial standards.

Most certified agreements are post 1996 agreements. They do not seek to provide for general conditions of employment. In the main they are supplementary agreements that take up the award conditions that have had to be shed in the award simplification process. About 14 per cent of the agreements examined are general conditions agreements, and thus provide for conditions of employment to the exclusion of any award.

As already noted, unlike certified agreements which are collective agreements, AWAs are individual agreements. They are individually signed, even in cases where a company employs a large number of employees in terms of the same agreement.

The OEA provides a sample of 100 AWAs for examination. We have examined this sample of AWAs in relation to annual leave and annual leave loading provisions to see the extent to which they add flexibility compared to awards or collective agreements. We conclude that many AWAs indirectly affect annual leave loadings because they prescribe increased wages. In the absence of anything to the contrary, the increased wages translate into increased annual leave loadings.

AWAs have also sought to effect, in a direct way, annual leave and loadings provisions of awards. They have sought to do so in a number of ways: absorption of loadings into
annualised wages or “all-up” rates of pay; cashing out of accrued annual leave; increasing annual leave loading entitlements; increasing annual leave entitlements; increasing the period for annual leave at reduced pay; reducing annual leave loading entitlements; and eliminating annual leave loadings.

Table 2 gives details of the proportion of AWAs in the sample that included any of these provisions.

Table 2
Proportion of AWAs Directly Affecting Annual Leave and/or Annual Leave Loadings Provisions, January 2001

<table>
<thead>
<tr>
<th>Variation to Award Conditions</th>
<th>Proportion of Sample (per cent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absorption of annual leave loadings</td>
<td>17</td>
</tr>
<tr>
<td>Cashing out of accrued annual leave</td>
<td>9</td>
</tr>
<tr>
<td>Additional annual leave loading entitlements</td>
<td>3</td>
</tr>
<tr>
<td>Additional annual leave entitlements</td>
<td>2</td>
</tr>
<tr>
<td>Additional annual leave at reduced pay</td>
<td>2</td>
</tr>
<tr>
<td>Reduction in annual leave loadings</td>
<td>1</td>
</tr>
<tr>
<td>Elimination of Leave Loadings</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>33</strong></td>
</tr>
</tbody>
</table>

Source: Compiled from sample of AWAs publicly provided by OEA. Total does not sum as one AWA included two of the listed variations.

There are a small number of collective (certified) agreements that contain absorption of annual leave loadings provisions. Our analysis of AWAs suggests that a greater proportion of these agreements provide for the absorption of leave loadings into an all-up rate of pay or annualised pay. Absorption appears to be high in the mining sector (75 per cent of sample AWAs), construction and wholesale (50 per cent each), communications (40 per cent) and property services 20 per cent. The small number of AWAs for each sector in the sample, however, would suggest caution in interpreting this data.

One third of the sample AWAs provide for the cashing out of accrued leave. The major reason for this cashing out seems to be the regulation of untaken leave and limiting such leave to no more than 40 days. Provisions for cashing out accrued leave were most prevalent in the finance and insurance sector.

All of the AWAs providing for additional annual leave loadings were public sector agreements. The relevant award provides a ceiling for the amount of loadings payable (17.5 per cent of $51,378). The AWAs increase the threshold by 2.25 per cent. Additional leave on reduced pay is also found only in the public sector. The rationale of this provision is the better balancing of family and work responsibilities. Two AWAs increased annual leave entitlements by one week. One of these was in the health sector, the other in mining. One AWA, in property services, reduced annual leave loadings to
12.5 per cent. Another, in retail, removed annual leave loadings and provided that payment while on annual leave will be “based on the current ordinary hourly rate”.

Our investigation of AWAs suggest that though they apply to a very small proportion of the workforce, they provide for a greater degree of variation than awards or certified agreements in the area of annual leave loadings.

3. The AWA Experience: Evaluating the Evidence

In this part of the paper a number of observations concerning the AWA experience are offered. The following areas are addressed: enumerating AWAs; AWA take up; AWA exclusivity; AWAs and flexibility; AWA collectivism.

3.1 Enumerating AWAs

OEA data indicate that by January 2001 a total of 150,079 AWAs had been made. By the end of July 2001 this number had increased to 182,437. By the latter date some 3303 employers had entered into AWAs.

Figure 1 shows the cumulative growth in the number of AWAs. This suggests that there has been an increase in the rate of growth of AWAs over time, but that this rate has been relatively constant over the past five quarters. About 15,000 new agreements are added in each quarter.

![Fig. 1 Cummulative Growth in AWAs, Q4-94 -Q2-01](image)

At face value this appears to be a rapid rate of growth. In relative terms, however, the number of persons on AWAs remains small compared with other forms of regulation. Further, as awards and certified agreements are collective, their number understates their
coverage relative to AWAs. One award, the Metal Trades Award, continues to cover more employees than all AWAs made to date.

A major difficulty (and nuisance) in interpreting OEA data is that it is cumulative and gives little indication of the number of extant AWAs. If the same approach was applied to awards and certified agreements it can be shown that there would be about 25,500 awards and over 250,000 certified agreements. These are interesting, but not altogether useful, data. The same can be said of the AWA data. The figure is an inflated one that does little to assist in determining trends in a meaningful way. It is unclear, for example, whether 15,000 new employees are being added to the AWA list, or whether a number of these inclusions represent AWA renewals. It would be useful for the OEA to complement the historical data with a proactive approach to determine extant data. Though it would be difficult for the OEA to account for those AWAs that lapse by virtue of labour turnover, it seems possible for the AWA data base to be adjusted to take account of those employers who move out of AWAs and for AWAs that are renewed and therefore replace existing agreements.

Figure 1 provides a schematic of AWA enumeration. The present system of enumeration adds new AWAs to existing ones without any consideration of any leakages that may occur. Leakages may occur for a number of reasons:

a) AWAs may not be renewed.

b) On the employer side, the company in question may go out of existence either through failure or takeover.

c) Also on the employer side, the company may seek to enter into collective forms of regulation or may seek to move out of the formal sector.

d) On the employee side, employees may leave their employer or the workforce.

It is evident from the above that the relevant number of extant AWAs is provided by the computation of de novo AWAs, renewed AWAs and “live” AWAs. The last named have to be discounted for leakages.

In attempting to quantify the number of extant AWAs the OEA data may be discounted in the following manner:

a) Six per cent of employers (198) no longer continue to be parties to AWAs. We have no evidence as to the numbers employed by these employers, nor of when they discontinued involvement with AWAs. Determining the number of defunct AWAs involves some guess work and assumptions. OEA data show that nearly 78% of employees with AWAs work in establishments employing 100 or more employees. The data also show that 70 per cent of employers with AWAs employ less than 100 employees. If we assume an average of 20 employees per AWA, the number of defunct AWAs by virtue of employers leaving the AWA fold would number nearly 4,000. This figure underestimates the attrition on this count since it does not enumerate employers moving out of AWAs because of business failure.
b) Under the provisions of the WRA, AWAs have a life of three years. Assuming that the signatories to AWAs have complied with this requirement of the Act, AWAs made before September 1998 can be considered to be obsolete. This would result in the omission of some 26,000 AWAs.

c) Account must also be taken of those employees who leave their employer, thus terminating any agreement. The ABS data on job mobility suggests that 16 per cent of employees change their employer or location in any one year (ABS 6209.0). If this rate of mobility is applied for those under AWAs made to January 2001, and half that rate applied to the agreements made in the half year to July 2001, then a further 26,600 AWAs can be discounted.

Taking all factors into account, and making some allowances for double counting, the above estimates would suggest that about 40 per cent of the AWAs made to date are obsolete. This presents a different view of the impact of AWAs than may be presented on the basis of cumulative data. The methodology used in arriving at the number of extant AWAs may be the subject of criticism. This only serves to highlight the need for a better approach by the OEA. If the present system of enumeration is maintained, the cumulative figure provided will increasingly be meaningless.

It is unclear how the above analysis affects the OEA’s own analysis of AWAs. The OEA provides details of AWAs classified by industry, industry penetration, gender, size of employer and other factors. If cumulative data continue to be used for these purposes, outcomes may be less and less reliable over time.

3.2 AWA Take Up

The number of employees working under AWAs represents a very small proportion of the 9 million members of the workforce and only between one and two per cent (depending on the number of extant AWAs) of federal jurisdiction employees. Since AWAs are not necessarily mutually exclusive of awards and agreements (a matter taken up below) the proportion of employees working exclusively under the provisions of AWAs cannot be determined. In order to ascertain this figure one would need to know whether or not the AWAs in question are supplementary to awards/certified agreements, or are general conditions agreements that exclude awards and certified agreements.

The factors inhibiting the take up of AWAs are worthy of investigation. Unions have opposed AWAs. They have not sought to use them as vehicles for improved conditions (see below). However, it is not clear from the information provided by the OEA whether AWAs are being taken up in the traditional union sectors of the economy or the non-unionised sectors. There is inferential evidence to suggest that AWAs are being taken up in the unionised sector as a means of union avoidance.

What should be a major concern for advocates of AWAs is their limited take up in sectors where unions are not capable of influencing whether or not employees enter into AWAs. In the absence of any research and empirical evidence it is only possible to hypothesis some of the reasons for employer/employee avoidance of AWAs. The first of these is
FIGURE 1: AWA COMPONENTS
that those operating in the informal sector (i.e. employers not bound by awards or agreements) see little value in formalising their relationships in the absence of union pressures or legislative requirements. By having good systems of human resource management employers may reduce employees’ demands for a formal approach to the employment relationship. I suspect that general satisfaction with an informal approach by both parties is a major factor in disinterest in AWAs.

A second factor is that many employers may find sufficient flexibility in awards and certified agreements. The issues of award fragmentation/flexibility are taken up in a subsequent section.

A third factor, particularly in the ‘informal’ sector, may be the ‘no disadvantage test’. By paying the award rate employers are able to maintain their workers. By not entering AWAs they are not opening up the possibility of added costs. This is particularly so if any employees seek to have a union act as their agent.

There would also appear to be reasons inhibiting employees from seeking AWAs. The major of these is the perception that AWAs are employer instruments of regulation. Despite Ministerial and OEA calls to the contrary, the operations of AWAs suggest good reasons for this view. Firstly, the limited evidence suggests that most AWAs are employer-initiated. There appear to be few cases of employee initiation. Secondly, there is evidence of a ‘take-it-or-leave-it’ approach by employers to employees, in particular at the point of engagement. Thirdly, despite the fact that AWAs are intended to be individual forms of contract, a common employee complaint identified by OEA case studies is their lack of involvement in the making of agreements.

At face value, AWAs could be a useful union method of sea-sawing improvements in conditions, particularly since they are, in practice, collective forms of regulation (see below). However, the fact that the same objective can be achieved by using certified agreements helps reinforce union opposition to AWAs. Employers may have a similar view, and may not consider the transaction costs involved in moving to AWAs to be warranted.

The reasons for AWA take up and avoidance remains a fruitful area for examination.

3.3 AWA Exclusivity
Since the 1980s there have been attempts, through industrial legislation, to reduce the effects of multi-enterprise awards and to have employment conditions governed by either collective workplace agreements or individual agreements. It is often assumed that AWAs are mutually exclusive of awards and certified agreements. This assumption is reinforced in those cases were AWAs are entered into with the intention of avoiding being roped into an award. In practice, life is more complicated than suggested by this neat dichotomy.
Multi-employer (parent) awards are being fragmented into sub-industry awards. These, in turn, are being fragmented into company awards and then into enterprise awards. Industry awards give rise to supplementary single employer awards. Prior to 1996 settlements reached by the parties could be ratified by the AIRC as either consent awards or certified agreements (CAs). Thus, for all practical purposes CAs were synonymous with awards. Few, if any of the CAs were industry level agreements. Under the WRA, CAs serve a major role in the award simplification process and most post 1996 CAs are in the nature of supplementary agreements. Similarly, a number of AWAs supplement awards or CAs. There are a number of stand along (general conditions) AWAs. These must satisfy the ‘no disadvantage’ test in relation to awards.
The three forms of federal regulation of employment relations are not mutually exclusive of each other (Figure 2). Many awards are dependent or supplementary awards that rely on a parent award. Similarly, most certified agreements (about 86 per cent) are supplementary to awards. AWAs, in turn, may be subordinate agreements to awards and/or certified agreements. Our study of annual leave loadings highlighted that employees could have access to all three forms of regulation simultaneously. It is now common, indeed the norm, for employees to be regulated by both awards and certified agreements. This situation has been forced on employers and employees by the “simplification” requirements of the WRA that reduce the content of awards to 20 “allowable matters”. Most certified agreements continue to complement awards. In our study we determined that about 14% of certified agreements were general conditions agreements. We also found that in at least one sector, the ‘non-allowable’ matters had been taken out of the award and applied in a uniform and consistent way to each of the employer respondents. The only variations in these “enterprise” agreements were the names of the respondents.

Our analysis suggests that the process of award simplification has given rise to a plethora of certified agreements – in excess of 10,000. This figure compares with the approximately 700 certified agreements in 1994. Large companies have a large number of agreements relating to either localities or working groups. BHP, for example, is the first named party to nearly 120 certified agreements. Unions are also the parties to many certified agreements. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia is the first-named party to over 450 agreements while the Construction, Forestry, Mining and Energy Union is the first-named party to over 1,640 agreements. Though the intent of the WRA is that workplace agreements better reflect local conditions, our analysis suggests that at this stage certified agreements often tend to provide uniform conditions around the parent award from which they were spun.

It should not be assumed that AWAs provide a substantially different regime to single employer certified agreements. That is matter that needs to be tested. In doing so, an understanding of the non-exclusive nature of the three forms of regulation is important in understanding current trends. This is particularly important for statistical analysis where there is a tendency to place data in one or another mechanism compartment, without taking account of the complementary nature of regulatory mechanisms. Figure 2 indicates the intricate and tortuous paths that need negotiating before the exclusivity and therefore independence of AWAs can be established. This may be less daunting than supposed. Since AWAs are essentially collective instruments of regulation (despite the fact that they are individually signed) an examination of the 3000 or so employer respondents would provide a useful vehicle for streamlining the search.

3.4 AWAs and Flexibility
A major benefit alleged for AWAs is their flexibility, relative to other forms of regulation. There is some support for this. Our study on annual leave loadings, for example, suggests that parent awards are the least flexible of the regulatory instruments, and AWAs the most flexible. The flexibility continuum may be represented by Figure 3.
The above finding should be treated as an interim one pending further evaluation. As noted in an earlier part of the paper, the sample of awards was biased in favour of multi-employer, parent awards. The comparison of AWAs with parent, multi-employer awards necessarily means that they are more flexible. What is less evident is whether or not they are more flexible than single company/enterprise awards and certified agreements. That audit is still to be undertaken.

It is well to remember that the quest for employment flexibility has been an ongoing one for a long time. AWAs have added a variant to that search; they have not initiated it. Export-oriented enterprises, or those that compete with imports, have had to be concerned with employment flexibility since the 25% reduction in tariffs in 1974. As the system of tariff protection has increasingly been removed, the impetus for employment flexibility has grown.

Trends in this regard are evident from an examination of awards over the past four decades (Figure 4) and from the fragmentation of awards (Figures 2 and 5). Figure 4 gives details of the growth in the number of federal awards between 1954 and 2000. It will be seen that the number of awards has grown steadily over the period, registering a five-fold increase. Multi-employer awards also increased, but by only half the general rate. By contrast, single employer awards grew by six times the general rate. As with certified agreements and AWAs, care must be exercised in interpreting this data. Many of the single employer awards are supplementary awards that rely on parent awards for many of the substantive conditions of employment. Nevertheless, a large number of single employer awards and certified agreements are general conditions documents. These are the relevant awards and agreements for comparison with AWAs. That comparison has not as yet been made. The issue of flexibility cannot be unambiguously determined until there is such a comparison. Though intuitively one may suspect that AWAs are the most flexible, it may be that single employer awards and certified agreements provide similar scope for flexibility as AWAs (see section 3.4).
The award fragmentation process is shown in Figure 5. This process has resulted in import competing industries (such as car manufacturing) and export oriented industries (such as the aluminum industry) developing industry, company and enterprise awards in rapid succession. The Metal Industry Award, for many decades both the benchmark and the pace-setting award, was fragmented in 1972 to give rise to the private sector Metal Trades Award. The rationale for this divide was to reduce public sector inhibitions on changes to employment standard in the MIA that still applies to public employers. Since that time a number of “sub-industry” awards have been spun off, not all of which are depicted. Ironically, the Metal Trades (Construction) Award was spun off to prevent flow-ons from the construction industry to the metal trades industry that by now had been opened up to import competition. It will be seen that industries such as car manufacturing and aluminum refining further fragmented into company specific awards, and in many cases further into site or enterprise specific awards.

3.4 AWA Collectivism

AWAs must be individually signed. As a result of such signing they may constitute individual statutory agreements. In most other respects, however, they remain a collective form of regulation. It is evident from OAE data that many enterprises have a large number of AWAs that are similarly or identically worded. Thus, the notion that AWAs are individually negotiated and agreed upon is questionable.

A number of reasons may be given for the low level of individual input in AWA negotiations. Firstly, for new employees existing AWAs may be a condition of employment. For these there are no negotiations. Secondly, the transaction costs involved in individual negotiations would be beyond the resources of most organisations. Thirdly, comparative wage (and conditions) justice is still alive despite intentions to the contrary. The primary method by which workers negotiating individual contracts of employment can be assured that the rate they are being paid is reasonable is by

![Fig. 4: Federal Awards, by Type, 1954 - 2000](image)
Fig. 5 Award Fragmentation: Metal Industry Award 1952 – 1998

- Metal Industry Award 1954
- Metal Trades Award 1972
- Metal Trades (Con. Ind.) Award) 1989
- Retail Motor Ind. (Metals) Award 1993 etc
- Vehicle Industry Award 1974
- Alumium Industry Award 1974

- Nissan Australia VI Award 1976
- Toyota Australia VU Award 1976
- Vehicle Assemblers (Renault Aust) Award 1976
- Mitsubishi Motors VI Award 1976
- Ford Australia VI Award 1978
- Ford Australia Plant Supervisors Award 1987
- Ford Aust Long Service Leave (QLD) Award 1988
- Kenworth Trucks Award 1988
- General Motors Automotive Gen. Award 1978
- International Trucks (VI) Award 1980
- Kenwick Trucks VI Award 1981
- VI – Repair, Services and Retail Award 1983
- Mack Trucks Australia VI Award 1989
- VI (Volvo Aust – Truck & Bus Factory) Aw. 1990
- Mercedes Benz Enterprise. Barg. Award 1992
- Isuzu General Motors Award 1992
- Daimler Chrysler Aust/Pacific Award 1993
- Holden's Engine Co. Long S. Leave Award. 1993
- Holden's Engine Co. Award 1993
- Henderson's Automotive (SA) Trim Plant Aw. 1996
- Henderson's (Vic) Foam Plant Award 1996
- Mitsubishi Motors Aust. (Clerks) Award 1998
- Mitsubishi Motors Aust. (W'house) Award 1998
- Mitsubishi Motors Aust. (Supervisors) Award. 1998
- Nissan Motor Co. Australia (Clerks) Award 1998
- Nissan Casting Australia Award 1998
- VI (Austral Pacific Group) Award 1998
- VI (BTR Engineering ) Award 1998
- VI (Clyde Engineering) Award 1998

- Alum Ind. Alcoa (Vic.) Award 1975
- Alcoa of Aust (WA) Award 1982
- Alcoa (Clerks) Award 1985
- Alcoa Rolled Products Award 1990
- Alcoa Kwinana Refinery Award 1992
- Alcoa Pinjarra Refinery Award 1992
- Alcoa Wagerup Award 1992
- Alcoa Bauxite Mining (WA) Aw. 1992
- Alcoa Point Henry Award 1993
- Alcoa Anglesea Open Cut Aw. 1993

- Alum. Ind. Alcan Award 1978
- Alcan Kurri Kurri Award 1982
- Alcan Evaporator Pds Award 1990
- Alcan Clerks Award 1992
- Alcan Printers (Ent Barg) Award 1992

- Alum. Ind. Comalco Award 1981
- Comalco (Weipa) Award 1982
- Comalco (Clerks) Award 1985
- Comalco (Bell Bay) Award 1991

- Alum. Ind. Nabalco Award 1981
- Tomago Alum. Company Award 1983
- Alum. Extrusions (Huntingdale) Aw. 1992
- G. James Extrusion Ent Barg. Award 1993
- Alum Ind Worseley Alum Award 1996
- Alum Ind Kaal Aust P & M Award 1998

- Capral Alum. Ltd Award 1998
- Capral Alum (Kurri Kurri) Award 1998
- Capral Clerks Award 1998
comparison with rates paid for similar classifications of employees. Though an employer has the opportunity to pay a higher rate, that employer’s capacity to reduce the rate would be limited, a matter supported by the ‘no disadvantage test’. Under these circumstances there is merit in paying like classifications the same rate. The same applies to other conditions of employment.

Collectivism has an important bearing on flexibility. Three forms of flexibility may be identified for present purposes: ‘range flexibility’ (the degree to which employment standards may depart from award norms); ‘within flexibility’ (flexibility within an organisation in respect of employment conditions); and ‘without flexibility’ (employment flexibility relative to other organisations). The tentative conclusions that may be arrived at based on the foregoing analyses is that collectivism reduces the scope for ‘within flexibility’. There appears to be little desire to attempt flexibility in employment conditions on an individual basis within an organisation. In this respect, AWAs may be no more flexible than other collective forms of employment. As noted in section 3.3, AWAs may, or may not, provide greater ‘without flexibility’ than single employer awards and certified agreements. AWAs may provide for greater ‘range flexibility’ than awards. Union interest in uniformity and consistency would suggest this might be so in the case of multi-employer awards, but the case is not proven in respect of single employer awards and certified agreements.

If the foregoing has any merit, it would suggest that employers’ interest in AWAs may be based upon an assumed rather than proven notion of flexibility. Their interest is more likely to arise out an interest in a reduced role for unions and the capacity to formalise relations in the increasing non-union sectors of the economy.

4. Conclusion
This paper has provided details of the forms of regulation in the federal system, with particular emphasis on AWAs, the only form of individual agreement making in that system. It has highlighted a number of areas of potential study in evaluating the AWA experience. These impinge on the enumeration of AWAs, the rate of take up or avoidance, AWA exclusivity, and AWA flexibility. The paper concludes that though AWAs are more flexible than multi-employer awards, their flexibility relative to single employer awards/agreements is unproven. It is proposed that the collectivist nature of AWAs diminishes their relative capacity for flexibility.

NOTES
1. This paper is based on a paper presented at “The AWA Experience: Evaluating the Evidence” Conference, Sydney, 7/9/01.


3. The AIRC’s Annual Report for 2000/2001 suggests that there has been an increase in the number of awards was 1689. (AIRC, Annual Report 2000/2001, www.Airc.gov.au

4. The Act restricts the contents of awards to 20 “allowable matters”.

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5. The sample “is representative of agreements which have been approved by the Employment Advocate over the past three years. The sampling methodology ensures that the number of sample AWAs in any given industry is directly proportional to the distribution of employees with AWAs by industry” (OEA, 2001).

6. Illustrative of this approach is the AWA coded FIN01 in the sample AWAs: ‘…You are entitled to twenty working days paid annual leave after each completed year of service. Annual leave may only be accrued beyond twenty days for a specific purpose and with your manager’s approval. You cannot accrue more than forty days annual leave… If you have previous service and have in excess of forty days accrued annual leave at the commencement date of this AWA, you must provide your manager with a plan showing how you will reduce the level of accrual below forty days within the term of this AWA.’


8. The reach of AWAs is greater than those under federal awards by virtue of Division 2 agreements. These apply to those areas of commerce and industry coming under the corporations power of the Commonwealth.

9. Under the WRA, AWAs may over-ride awards and certified agreements. This does not give them exclusivity over employment matters unless that is the intent of the agreement in question.

10. See, for example, the OEA case study on Peabody Resources, Ravenswood.

11. OEA data indicate that a high proportion of employers making AWAs are in manufacturing (9.7% of employers with AWAs), retail (15.3%), transport (9.5%), construction (5%), wholesale (65), health and community services (8%), government (7%) and mining (3%). These are unionised industries. Further evidence is provided by the OEA case studies on D&S Concreting and Peabody Resources.

12. Illustrative of this is the OEA’s case study of Telstra. The AWA currently only applies to Level 5 employees. The case study notes that “It is Telstra’s intention to offer AWAs to employees in Level 6 roles”.

13. Three of the five OEA case studies suggest this: the D&S Concreting case, the Medical Transport Services case, the Pharmacia & Upjohn case.

14. See, for example, the OEA case studies on Pharmacia & Upjohn and D&S Concreting.

15. In practice, there is a significant degree of overlap between awards, certified agreements and Australian Workplace Agreements. Some awards not only prescribe substantive conditions of employment, but also make provision for additional regulation by way of both certified agreements and Australian Workplace Agreements (see, for example 100 Per Cent Pty Ltd [sic] Collective Bargaining Agreement 1997-1999, clauses 4 and 7). Many of the Australian Workplace Agreements approved to January 2001 were supplementary agreements to awards. The latter specified most of the substantive conditions of employment. Our study suggested that over 80 per cent of certified agreements are supplementary agreements to awards. Thus, in identifying conditions of employment, the three forms of regulation are not mutually exclusive.

16. The industry in question related to private nursing homes.

17. For example, in its July 2000 publication Award and Agreement Coverage 1999: A Summary of the Main Findings, DEWRSB suggests a shift away from awards to agreements. It concludes that 44 per cent of employees were covered by registered or informal agreements in 1995, and that this had increased to 64 per cent in 1999. The evidence is based on a survey of wage rates, with award
employees being those who are paid only the award rate. The major conclusion does not recognise that overaward agreements, by definition, apply to award employees, nor the complementary nature of awards and agreements. Since these are not mutually exclusive vehicles for determining employees conditions, the conclusion arrived at is not justified.