

ALTERNATIVE WORKPLACE BARGAINING FRAMEWORKS WITHIN THE WESTERN AUSTRALIAN PUBLIC SECTOR: IMPLICATIONS FOR ORGANIZATIONAL CHANGE

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ABSTRACT

Since 1991 the Australian Industrial Relations Commission has been prepared to recognize enterprise bargaining agreements. A phenomenal growth in enterprise agreements has occurred in recent years. In Western Australia a new framework for employment negotiations was introduced in 1993 in the form of workplace agreements. Using a case study approach, the implementation and relative effectiveness of the two frameworks has been researched in two key state government agencies considered to be models in enterprise bargaining and workplace bargaining, respectively. It is clear that both frameworks have been successful and need to remain in place, to provide employers and employees with appropriate employment regulation options. The framework chosen by the organization will depend on the type of relationship the organization has with its employees and the nature of the change occurring within it. Organizations with the ability to determine the appropriate bargaining framework will succeed in implementing change while others may be daunted by the task.

With the election in 1993 of the conservative Liberal and National Coalition government in Western Australia, a new phase of public sector industrial relations

reform was quickly put into place. The new government came into power with definite ideas about restructuring the public sector. It has used mechanisms such as industrial and workplace agreements to bring about the change it believes to be necessary. This article investigates how the government has gone about this task specifically through its industrial relations agenda.

In Western Australia, there now exist two distinct frameworks for wage determination for public sector employees. There are the traditional federal and state industrial relations commissions, which follow the national and state wage case decision and award across-the-board wage increases, and then there is the commissioner of workplace agreements, who, apart from being bound by the Workplace Agreements legislation, can approve individually tailored employment agreements within the provisions of the Minimum Conditions of Employment legislation.

The implementation and relative effectiveness of the two frameworks has been researched in two key state government agencies considered to be models in enterprise bargaining and workplace bargaining, respectively. The agencies selected are Main Roads Western Australia (MRWA) and the Building Management Authority (BMA). Data on MRWA was collected using a detailed structured interview format, comprising ten questions. The major participants involved in the negotiation process at MRWA, who also participated in the structured interviews, were representatives from management, unions, and employees. The structure of the process at the BMA did not allow for structured interviews because the BMA did not elect to follow the path of negotiations with their unions and employees in the manner of MRWA.

THE INDUSTRIAL RELATIONS COMMISSION FRAMEWORK

The development of the Australian industrial relations framework has been constrained by the legal framework operating in the country. The Australian Constitution was based on the United States model of federation. Specific legislative powers are conferred on the federal government, with residual powers exercised by the individual states of the federation. While Australian trade unionism was shaped out of Australia's British colonial origin, the evolution of the formal structure of conciliation and arbitration in Australia has had no resemblance to that of Great Britain [1]. Great Britain maintained a tradition of nonintervention by legal institutions in the collective relationships between employer and employee, while Australia established a system of compulsory arbitration, with the creation of industrial relations commissions in all six states and at the federal level. These commissions have wide-ranging powers covering both economic and dispute situations. These commissions operate on the basis of compulsory arbitration. In such a system, in the event that the disputing parties are not able to reach an agreement through conciliation, the commissions are able to arbitrate to resolve

disputes. The resulting employment regulation document is known as an arbitrated award. Even in the case of arbitrated awards imposed by the commissions, the vast majority of clauses are typically agreed between the disputants [2]. In recent years both state and federal governments have deregulated their industrial relations systems, restricting the powers these commissions traditionally enjoyed [3].

The major form of employment regulation in Australia prior to October 1991 was the arbitrated award. An arbitrated award is a ruling handed down by the Industrial Relations Commission that incorporates the terms of employment between employer and employee. The parties to an award include employers and unions but not employees. Thus, employees do not have the power to directly change an award and can do so only through their unions.

It was not until 1991 that an impetus was provided for major workplace reform in Australia. In October 1991 the full bench of the Australian Industrial Relations Commission, in handing down the National Wage Case decision, stated that the commission would be prepared to recognize collective bargaining through its guidelines on enterprise bargaining agreements. These agreements had to be negotiated through a single bargaining unit in an enterprise or section of an enterprise. Where the agreement would replace an existing award or awards, it had to express the enterprise bargaining wage increase as a separate amount from the standard rates of pay and state all efficiency measures agreed. The decision of the full bench of the Australian Industrial Relations Commission meant that bargaining on conditions of employment moved from a centralized bargaining approach to a decentralized enterprise bargaining approach.

The Western Australian Industrial Relations Commission is governed by the Industrial Relations Act 1979 (WA), which came into effect in March 1980 under the title of the Industrial Arbitration Act 1979 (WA). On March 1, 1985, the Industrial Arbitration Act 1979 (WA) was substantially amended (including the name change) with an emphasis placed on the process of conciliation, as distinct from arbitration, as the preferred process of resolving disputes.

In January 1992 the Western Australian Industrial Relations Commission (WAIRC) in its State Wage Decision adopted the Enterprise Bargaining Principles set down by the Australian Industrial Relations Commission (AIRC) in its October 1991 National Wage Case Decision. Enterprise bargaining, which is governed by the Industrial Relations Act (WA) 1979, requires union involvement. The formal enterprise agreement (referred to in the act as an industrial agreement) is between an employer and a union or unions and therefore without a union there is no possibility of a formal agreement that can be ratified by the WAIRC.

It had been widely argued that enterprise bargaining under the Industrial Relations Act 1979 (WA) had excluded a large number of organizations that did not have a union presence. Currently, approximately 60 percent of private sector firms are nonunion [4]. In Western Australia the state government decided to address this problem by offering employers and employees the choice of remaining under

the jurisdiction of the Industrial Relations Act 1979 (WA) or following the path of workplace bargaining under the Workplace Agreements Act 1993 (WA). Workplace bargaining pursuant to this latter act does not require union participation.

THE COMMISSIONER OF WORKPLACE AGREEMENTS FRAMEWORK

The Workplace Agreements Act 1993 (WA) provides an alternative bargaining system. Where the parties choose to enter into a workplace agreement, they are no longer bound by any award, industrial agreement, or other determination of the WAIRC. Section 7A of the Industrial Relations Act 1979 (WA) provides that:

Without limiting the other provisions of this Part, this Act has effect subject to the Workplace Agreements Act 1993.

Provisions exist for the making of individual or collective workplace agreements. Individual workplace agreements are agreements between an employer and an individual employee. Collective workplace agreements are agreements between an employer and two or more employees.

The legislation provides for the appointment of bargaining agents by employers and employees. Any person or organization may be appointed as a bargaining agent. Thus the legislation allows employees to choose their own bargaining agents, who might not necessarily be trade unions.

The requirement that every workplace agreement must contain a dispute settling procedure is contained in section 21 of the act. There is an acceptance that some disputes will not be able to be resolved internally as the legislation requires that there be an arrangement to arbitrate on any dispute about the meaning or effect of the agreement. One of the clauses that must be contained in all workplace agreements must provide that the parties agree to accept the arbitrated decision. A means of appointing an arbitrator must be stated in the agreement and each party has the option of referring the dispute to the arbitrator. The parties may agree to appoint anyone as the arbitrator. The Industrial Relations Act 1979 (WA) allows an industrial relations commissioner to be appointed by the parties as an arbitrator to a workplace agreement. The agreement could be worded in such a way that the parties agree that the means of appointment would allow for organizations such as mediation associations to provide an arbitrator on request.

The legislation does not provide for a means of apportioning costs associated with arbitration. It would however be prudent for the parties to determine who should pay the cost of arbitration. As there is no provision in the legislation that makes it compulsory for employees to enter into a workplace agreement, employers wishing to encourage employees into workplace agreements should consider stipulating that they will pay the cost of arbitration unless the arbitration

was instituted without reasonable care on the part of the employee. The decision as to whether arbitration was instituted without reasonable care could be made by the arbitrator.

All workplace agreements must be registered with the commissioner of workplace agreements before they will be legally enforceable [5]. Variations and cancellations of agreements are possible, but only if registered by the Commissioner [6]. Upon registration of the agreement all employees subject to the agreement must be given copies of the agreement. Compulsory unionism and employment-preference-to-unionists clauses are prohibited. Also prohibited is industrial action during the period of the agreement. Industrial action may only take place during the negotiation of the workplace agreement, and then only for three months after the expiration of the agreement.

The enforcement of workplace agreements is carried out by the industrial magistrates' court. The WAIRC adopts a similar method of enforcement of awards and industrial agreements. Unfair dismissal claims are dealt with by the industrial magistrates' court unless the agreement provides that the WAIRC should deal with the matter. Employees who are not a party to a workplace agreement have recourse only to the WAIRC.

It is possible, on the expiration of a workplace agreement, that the terms of the agreement shall continue rather than the award.

MINIMUM CONDITIONS OF EMPLOYMENT IN THE PUBLIC SECTOR

The Minimum Condition of Employment Act 1993 (WA) prescribes the minimum conditions for all employees in Western Australia who are covered by either a workplace agreement; an award; an industrial agreement; or by a common law contract of employment. The act sets minimum wage rates for adult, junior, and casual workers. It provides for leave entitlements for illness or injury, annual leave, bereavement leave, and parental leave. The act also provides for ten public holidays [7].

A workplace agreement must not only provide for all the minimum conditions prescribed by the Minimum Conditions of Employment Act 1993 (WA), but it must comply with various other enactments affecting the employment conditions [8].

MAIN ROADS WESTERN AUSTRALIA

Under the Main Roads Act, MRWA is responsible for providing and managing highways, main roads, secondary roads, and other roads. In addition it has control of road signs, traffic control signals, and road markings, with the objectives of road safety improvement, road asset preservation, road use efficiency, road network expansion, and environmental management [9]. MRWA road

network customers range from road train drivers to pedestrians and cyclists, requiring the organization to assess and provide for the diverse needs of its customers. These needs are met by balancing responsibilities with local governments, while at the same time ensuring economic, social, and environmental objectives are met [9].

Main Roads Western Australia is a large, highly decentralized organization with approximately 2,000 employees. These employees have a wide range of technical; professional; clerical; trade, and unskilled backgrounds and are engaged in diverse activities. They are based from Kununurra in the north of the state to Albany in the south, with approximately 50 percent of the workforce based in the metropolitan area. While some employees are on periodic transfers to the country areas, others have lived there all their lives. It was against this background that the complex task of information dissemination and consultation in relation to enterprise bargaining negotiations took place.

The MRWA Enterprise Agreement was ratified in October 1994 by a joint sitting of the Australian Industrial Relations Commission, the Western Australian Industrial Relations Commission, and the public services arbitrator. This agreement was somewhat unique in that it was the culmination of two years of complex negotiations among senior management in MRWA, senior union officials, and employee representatives.

The critical outcome from a strategic industrial relations perspective was not the fact that an agreement was able to be developed and approved by the Industrial Relations Commissions, but that the majority of the negotiating parties clearly indicated they would not have entered into the enterprise bargaining negotiations if they had any indication of how protracted and frustrating the process was going to be. This reaction by the parties has serious implications for the future of collective bargaining in Australia and seriously undermines the federal government's agenda for workplace reform through microeconomic restructuring. If employers and unions push for a return to macronegotiations, the parties will be forced into common award provisions irrespective of their individual requirements. Thus, if parties do not believe that negotiations can succeed at the workplace level, there will be serious economic issues for Australian industry and its capacity to compete in the international arena.

If any organization had the potential to successfully undertake enterprise bargaining it was MRWA. The organization had a long tradition of good working relationships with its unions and associations. It also had a progressive management who appreciated the inevitable change environment and recognized the unique ability of enterprise bargaining to provide a vehicle to undertake the workplace reform that would ensure the organization's long-term competitiveness and survival.

Enterprise bargaining negotiations commenced in MRWA in 1992 when negotiations at the enterprise level were at their infancy in the public sector in Western Australia. Main Roads Western Australia took a strategic decision to give total

commitment to the process, and the commissioner of MRWA allocated a second level executive officer with considerable negotiation discretion to head the organization's negotiation team. The unions and associations also provided officials with decision-making powers to negotiate on their behalf.

There are a number of the larger, more powerful unions with members in MRWA. They include the Australian Workers' Union; Building Trades; Metal Trades; Community and Public Sector, and Professional Engineers and Scientists unions [10]. Some of these unions had already negotiated enterprise agreements in private sector organizations but did not believe these agreements were effective or negotiated in the proper manner. The unions were coming to terms with the inevitability of collective bargaining in Australia. They agreed among themselves that with the commitment of MRWA to the process, and the good relationship between the unions and the organization, it was a golden opportunity not only to develop an agreement that could be held up as a shining example of successful enterprise bargaining, but also a negotiation process that would ensure the unions' role and long-term survival in a difficult and changing environment.

At the commencement of negotiations MRWA and the unions met and agreed on the establishment of a negotiation committee (NC). The NC would be the negotiating body for the MRWA enterprise agreement and would consist of representatives of MRWA and the unions. Main Roads Western Australia would be represented by three employees, including the director human resources as chairperson, the manager industrial relations, and a project manager. The unions were represented by one union official and one union representative from each of the unions and associations involved with MRWA. These representatives were mainly experienced negotiators who had a good grasp of both the process of negotiating and the issues involved in reaching an enterprise agreement.

The NC met on a regular basis and underwent a rigorous process of negotiation and settlement. Main Roads Western Australia allocated all the resources and gave all the commitment necessary for its success. Arrangements were made for employees throughout the organization to be consulted on the content and implications of the agreement, which were very detailed and contained a considerable amount of legal terminology, and was constructed in an award form, with technical provisions.

The research on the negotiations from both the unions and management perspective provided some remarkably consistent results. Even though the process was stretched out over a period of some two years, by and large the negotiators did not change. At the beginning all had had some background in enterprise bargaining. The management representatives were well-versed in the theoretical aspects while the union officials had some practical appreciation through negotiations in other areas. Nevertheless, due to the infancy of such negotiations all parties at the table had considerable input into the development of the first draft of the enterprise document. An added advantage at this stage was that none of the parties professed to be under instructions to achieve any particular outcome, and so

progress was relatively smooth. This did not mean that management was able to operate outside of government policy and directives, or that the unions were free of the encumbrances of their philosophy or ideology. Nevertheless, the spirit of bargaining in good faith and the aim of mutually beneficial outcomes was present in the negotiations.

When the parties first commenced discussions, there was some skepticism on both sides. Management had doubts as to the commitment of the unions to a document that sat outside their awards and agreements, while the unions were suspicious of any hidden agenda of management. This apprehension did not last long and within a couple of meetings there was an amicable atmosphere even when contentious issues were under negotiations. Both sides put this down to the fact that the chief negotiators were senior members of their organizations and had considerable decision-making power. The often-used tactic of negotiators who have reached agreement on various items leaving the table to seek instructions from their principals, who then reject the agreements, seeking better deals, was largely absent in this case.

Initially the task of achieving an enterprise agreement seemed most insurmountable. The parties were attempting to pull together awards and agreements from both the wages and salaries areas, the policies and ideologies of the different unions and associations, and the requirements of MRWA, together with those of their political masters. It was only as a result of the negotiators' belief in each other's genuineness that the situation developed where they began to perform almost as a problem-solving team, assisting each other in overcoming obstacles in their respective areas. The parties were not far apart in their respective positions, no one was particularly dogmatic, and people were prepared to listen to proposals other than their own. There was movement in initial demands, and a number of concessions were being made.

It was only when the decision making was taken out of the hands of the negotiators at MRWA and placed into the government decision-making machinery that the negotiations became confrontational and bordered on stalemate. The government approval process involved clearance from such bodies as the Department of Productivity and Labour Relations, Treasury, and the cabinet subcommittee, and each had its own requirements that were at times inconsistent with the negotiations undertaken.

The MRWA negotiators maintained they were required to go through this process because of directives by government. However, the unions believed this to be a weak excuse, and that the minister for transport could have taken the decision and approved the agreement as other ministers had supposedly done in other departments. The negotiators attempted to persuade the senior negotiator from MRWA to approach the minister and seek his assistance. It was commonly believed by the unions that the minister for transport did have the power to directly approach the minister for labour and force the issue but chose not to do so.

The relationship between the parties deteriorated from this point as the unions began to view the delays in the approval of the agreement as a bureaucratic mechanism for obtaining other concessions unrelated to the current negotiations, in an underhanded manner. There now appeared to be a significant number of management initiatives in MRWA such as quality management, productivity improvement, and workforce management. All of these initiatives were being project managed, but not, according to the unions, in a coordinated manner. The unions believed the workforce was now paying the price of the government's overall bad management as it attempted to force agencies to operate in environments that were not conducive to effective management. They saw as ridiculous the manner in which the wage increase was handled. They were negotiating on conditions, but were not able to consider any dollar amount to relate back to those conditions [10]. This was the result of the government directive that no wage increase was to be discussed by MRWA until the cabinet subcommittee had seen and approved the agreement.

Toward the end of the negotiations the trust the unions had in MRWA became so poor that there was little acceptance of anything that was being put forward by the organization. While the union negotiators acknowledged the MRWA negotiators were attempting to conduct their dealings in good faith, they believed there was a greater power preventing them from doing so. This power sat in a ministry that made no conscious effort to hide its real agenda of replacing awards with workplace agreements and in doing so remove the unions from the employer/employee equation.

There appeared to be common agreement among the parties that if such negotiations were to take place again at some stage in the future, definite ground rules would have to be clearly identified at the outset. The agenda for the negotiations would need to be placed on the table and the wage increase range also provided at an early stage. Finally, the decision-making power of the parties must be up front, for the unions maintained that if they had to go through the same process as with the current agreement they would simply reject any enterprise negotiations and take their chances with any wage increase through the National Wage Case decisions.

None of the above should detract from the fact that the MRWA Enterprise Agreement was a forward-looking agreement that addressed the real issues in the organization. It was focused toward conditions of employment that met employees' needs in a manner that also ensured the long-term well-being of MRWA. At the same time strategic objectives were identified and programmed in such a manner that all parties were clearly aware of just what their respective roles and obligations were. In doing so MRWA was attempting to put in place mechanisms of efficiency, competitiveness, and organizational survival [11].

While the negotiations were being finalized the Western Australian government was beginning to implement its workplace agreements policy. At the time there was considerable friction between the government and the unions as the latter

believed they were being removed from the negotiation process. Both were producing literature and using the media wherever possible to discredit each other's position. One of the state's largest unions, the Community and Public Sector Union (CPSU) initially distributed a document to government agencies entitled "Industrial Agreements-Benefits," which compared enterprise agreements to workplace agreements. The government's industrial relations agency, the Department of Productivity and Labour Relations, then wrote to the government agencies rejecting the document as inaccurate and misleading. The CPSU wrote again to the agencies refuting the criticisms by the government of its document, and so on it went.

The reality of the situation was that in accepting the MRWA enterprise agreement the government did require the organization to develop workplace agreements as part of the next stage. The government believed that as the ultimate employer of the employees in the organization it had a right to offer a "choice" of employment arrangements. In the MRWA workplace, as in most other workplaces throughout the state, there was a very negative connotation to workplace agreements. Most employees were not fully aware of their benefits, disadvantages, and implications, and had only heard of the rejections of agreements in other agencies, which were well publicized by the unions. This, in itself, was unfortunate, for whether one agrees with or opposes workplace agreements, employees should be in possession of all the pros and cons so that they can make informed decisions on their future.

MRWA has a long tradition of striving for excellence and tends to pride itself on its achievements. The chief executive officers in the past have managed to successfully achieve that delicate balance between serving their political masters and meeting the expectations of the community, while at the same time ensuring the well-being of employees in the organization. Sometimes the two have been at odds, but to date MRWA had not experienced the type of disruption seen in other government agencies. Main Roads Western Australia is now in the process of developing workplace agreements and, as is its culture, is attempting to ensure that the end product will in fact achieve its objectives and not simply result in change that is less productive than what was previously in place. The challenge for the organization is maintaining the good relationship and obtaining the commitment of the unions and associations to the agreements.

THE BUILDING MANAGEMENT AUTHORITY

The BMA came into being on October 15, 1984 replacing the public works department, which was considered to be an obsolete nineteenth-century organization. Governed by the Public Works Act, the new organization is responsible for managing the design, procurement, and construction of all government buildings, as well as the maintenance and improvement of existing buildings. In addition, the BMA provides advice on building industry matters to the minister for works and

the government. The Western Australian government is the BMA's main customer. The BMA has sixteen offices around Western Australia, located from Kununurra to Albany. Fourteen of the offices are located in regional areas, with the other two located in the metropolitan area.

In 1994, government pushes for productivity improvements in the building and construction industry meant it was necessary for the BMA to take on a more flexible and strategic approach to the provision of its services [12]. This strategy was for greater decentralization and a more "managing" rather than "doing" role, and as a result the workforce was reduced by 25 percent from over 1400 to 1100 employees. More than 80 percent of BMA services are now provided by the private sector in an attempt to improve the efficiency of service provided by the BMA [12].

The minister for labour is also the minister in charge of the BMA and so perhaps it is no surprise that part of the BMA strategy is the introduction of workplace agreements in the organization. This is seen by management as a further indication of the BMA's commitment to greater flexibility in responding to customer needs [12]. Conditions of employment such as hours of work, overtime, annual leave, sick leave, and public holidays have all been renegotiated. For example, hours of work are calculated over a period of four weeks and change from week to week to fit in with operational requirements, customer requirements, and seasonal fluctuations [13]. The conditions in the workplace agreements replace those previously covered by the award, and operate in conjunction with the Public Sector Management Act and the Minimum Conditions of Employment Act [14].

The Workplace Agreement has also seen the introduction of work teams. These have been set up with the aim of increased productivity, increased involvement, and providing the best service to customers [13]. The concept of "Quality Pay" was introduced with the work teams when employee opinion surveys revealed that employees wanted to be paid and rewarded for good performance. Bonuses are paid to teams that achieve a certain standard of performance. There are four areas in which a team can qualify for a bonus, and each of these areas has a certain set of criteria. Independent panels of employees in conjunction with the team manager and the executive director are involved in determining what bonuses will be paid to teams through the measurement of performance against the relevant criteria [13]. The BMA's Workplace Agreement is valid until June 30, 1996, when it is expected a new agreement will have been developed and will come into operation as a replacement [13].

CONCLUSION

It is evident that the Western Australian government was dissatisfied with the previous wage determination mechanisms operating in the state. The government came into office with definite intentions of reforming the system and immediately started to legislate and implement policy in the area.

However, enterprise bargaining had already been in place for some time, and a number of public sector agencies were well into negotiations for enterprise agreements. The government believed it had an obligation to ensure that the agreements were consistent with its agenda and was not reluctant to interfere and influence the process wherever it could. Such was the case in MRWA. The BMA, on the other hand, was a prime candidate for workplace agreements for two reasons: it is the minister for labour's agency; and there is other major restructuring taking place that lends itself to employment arrangements of this type.

There have been some recent setbacks for the Western Australian government such as the successful bid by unions to gain federal award coverage for some state government employees. Nevertheless, it is still early days, and clearly there are significant numbers of employees interested in workplace agreements. One scenario is employees working side by side, doing the same work, yet under different arrangements and entitlements. This is alien to the Australian employment culture, and while it may be accepted in the long term, the more immediate consequences could be dissatisfaction and disruption.

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ENDNOTES

1. B. Brooks, Worker's Participation in Decision-Making in Australia, *University of Tasmania Review*, 12:1, pp. 57-74, 1993.
2. K. Hancock and D. Rawson, The Metamorphosis of Australian Industrial Relations, *British Journal of Industrial Relations*, 13:4, pp. 489-513, 1993.
3. The State of Victoria has gone further than any other state in the process of industrial relations deregulation. The Employee Relations Act 1992 (Vic) abolished the system of compulsory arbitration in Victoria. The Employee Relations Act 1992 (Vic) promotes the use of collective and individual agreements between employers and employees without any involvement of or supervision by a third party.
4. In the second reading speech of the Workplace Agreements Bill 1993, Western Australian Labour Relations Minister Graham Kierath used this figure to justify the introduction of workplace agreements.

5. Section 27 of the Workplace Agreements Act 1993 (WA) provides that if an individual workplace agreement is not lodged for registration within the period of twenty-one days from the day on which it took effect then the agreement ceases to have effect.
6. Section 24 of the Workplace Agreements Act 1993 (WA) provides that on the cancellation of a workplace agreement the contract of employment then becomes subject to the relevant award provisions unless it becomes subject to another workplace agreement.
7. These leave entitlements are provided for in sections 19; 23; 27; and 33 of the Minimum Conditions of Employment Act 1993 (WA).
8. These enactments include the Occupational Health and Safety Welfare Act 1984 (WA); Workers' Compensation and Rehabilitation Act 1981 (WA); and the Equal Opportunity Act 1984 (WA).
9. Main Roads Western Australia, *Corporate Plan*, Main Roads, Perth, Western Australia, 1994.
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