

A New Framework for the Closed Shop in Australian Industrial Relations

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The issue of the closed shop is making its regular return to the debates of Parliament and the media (Henderson 1991; Zappala 1991). The Greiner government in New South Wales has recently proposed legislation which would ban the awarding of preference to unionists clauses in awards, yet would see the closed shop legalised in workplaces where 65 per cent of the relevant employees vote in favour of compulsory unionism (Industrial Arbitration (Voluntary Unionism) Bill 1990). It is likely that a Federal coalition government would introduce similar legislation if in power (Howard 1990). Despite the seemingly perennial and controversial nature of the closed shop, there has been little research on the matter by industrial relations scholars in Australia.

The closed shop is a generic term that can be defined as 'any employment situation in which particular jobs can only be filled, in practice, if the worker is willing to become and remain a member of a specified trade union or one of a number of specified trade unions' (Stevens et.al. 1989,616). The definition is clouded in Australia by the operation of preference clauses in awards. These are clauses which legally oblige employers to give preference to union members, or people willing to become union members, at the time of engagement. In themselves, preference clauses are not closed shops. Indeed, it has been illegal for industrial tribunals to prescribe compulsory unionism in awards. Nevertheless, it is argued in this paper that these clauses may have the effect of creating compulsory unionism, and that preference clauses should be seen as variants of the traditional closed shop. A framework is proposed merging two research traditions which have analysed the closed shop and preference clauses from different disciplinary perspectives.

Australian research on the closed shop has been polarised between two approaches. The first has been research from a legal perspective. This has mainly dealt with the issue of preference to unionists clauses and the attitudes of the Federal Commission to awarding preference (Martin 1966; Latimer 1981; Mitchell 1987,1988; Weeks 1987). Some of this work hinted at the possible relationship between preference clauses and informal closed shops but has largely focussed on issues of legal principle (Mitchell 1988; Weeks 1987,1990). The second approach has been research from an industrial relations perspective (Wright 1981;1983). This approach has two main problems. First, it does not adequately take into account the issue of preference clauses highlighted by the legal research noted above. Although the possibility of a relationship is noted it is not taken into account empirically (Wright 1981). Second, and partly as a consequence of this, the definitional constructs of the closed shop used have been inappropriate. The definitions used for Australia have been borrowed from the traditional distinctions made in the United Kingdom. These differentiate the pre-entry from the post-entry closed shop, the former being a situation where the union can influence what labour a firm can employ. In a pre-entry closed shop the union has some control over the labour supply, the post-entry closed shop being a situation where the union cannot influence labour supply, but union membership is a condition of employment after recruitment.

Is such a pre/post dichotomy, borrowed from the British literature, appropriate to the analysis of the closed shop in Australia, given the possibility of some type of formal regulation (preference clauses) as well as informal regulation (union-management agreements)? In some cases the Australian situation matches closely with the former

distinction, in others it lies along a continuum with distinct features. There is a need to outline and describe the form/s of the closed shop in Australia, given our unique form of regulation.

It is also important to understand the source of the pressures for the closed shop. The overseas literature has stressed the changes that have occurred in these pressures over time. It suggests that the closed shop has gone from being a union enforced practice to a management encouraged practice (Dunn & Gennard 1984; Stevens et.al 1989). Both of these pressures are primarily informal. That is, the source of regulation is either at an industry or workplace level, and conducted between the parties themselves. In Australia, formal regulation, through the operation of preference clauses should also be seen as an important factor in examining the pressures for the establishment of closed shop agreements.

A NEW FRAMEWORK FOR THE CLOSED SHOP IN AUSTRALIA

What is proposed in Table 1 is a new framework for understanding the closed shop in Australia which builds upon the two strands of research noted above. As with most frameworks or typologies, it serves as a heuristic device rather than as an accurate depiction of reality. Table 1 identifies five types of closed shops in Australia. These types are distinguished by the form and level of regulation, the contents of closed shop agreements, and the possible impact these may have on a number of industrial relations and economic variables. The possible impact of the closed shop, as well as the extent of the phenomenon has been discussed in greater detail elsewhere (Gill & Zappala 1990; Zappala 1991a,b), therefore the extent of the practice is discussed below only for the three new categories. A brief summary of the traditional categories is perhaps warranted before we enlarge the spectrum.

The pre-entry and post-entry categories in Table 1 refer to agreements which have been reached between employers and employees without the intervention of industrial tribunals. Their level of regulation can be either at the industry or workplace level. They may come about as the result of a preference clause, but only indirectly. They may also be due to union pressure or management acquiescence (Gill & Zappala 1990; Zappala 1991b).

According to Wright's survey the pre-entry closed shop was not a widespread practice in Australia. It covered only 3 per cent of trade unionists covered by any form of the closed shop and was confined principally to the Mining and Quarrying and Transport and Storage industries (Wright 1981, 133-5). Despite its low coverage, research suggests that the pre-entry closed shop has the largest negative impact over and above unionisation on variables such as pay, productivity and employment (Zappala 1991a).

Estimates of the post-entry closed shop have varied, although most studies suggest that it is a widespread practice in Australia (Zappala 1991b). The figures given here are solely for estimates derived from an analysis of the Australian Workplace Industrial Relations Survey (AWIRS).¹ Secondary analysis of this data suggests that 66 per cent of unionised workplaces in Australia with 20 or more employees had at least one occupational group covered by a closed shop agreement. Twenty-two per cent of unionised workplaces in Australia with 5 or more employees had closed shop agreements covering all non-managerial occupations present in their workplace.²

Apart from the pre/post distinction another three dimensions can be added to the spectrum. These can be termed the modified pre-entry closed shop, the modified post-entry closed shop (strong and weak variant), and the marginal post-entry closed shop.

The Modified pre-entry closed shop: Wright has argued that judicial prohibition of compulsory unionism has led to an exclusive focus on informal arrangements to foster 100 per cent unionisation (Wright 1983,248). Yet there are some forms of formal regulation such as 'effective preference' clauses which in practice create 100 per cent unionisation, and in this case also give the union some control of the labour supply, hence its categorisation as a modified pre-entry closed shop. These arrangements are under the jurisdiction of the Industrial Relations Commission.

An effective preference clause requires the employer to notify the relevant union 21 days prior to advertising a particular vacancy. If a union member then presents him/herself for

the job, he/she must be employed, unless the employer can show 'reasonable grounds' not to. In effect, the union has a 3 week monopoly period over possible recruits. This type of preference clause has only existed in practice since 1973 as a result of a log of claims served on oil industry employers by the Federated Clerks Union (FCU). In this case effective preference applied not only to engagement, but in retention in case of redundancy, promotion, the taking of annual leave, overtime and training. That is, it also prescribes conditions for the allocation of labour, as is the function of the traditional pre-entry closed shop (see Mitchell 1988 for an analysis of the Oil Clerks case). As Weeks has noted, 'the Oil Clerks case left intact the ban on an award of compulsory unionism...but it allowed the Commission to consider disputes about the subject, and in sanctioning 'effective' preference, the High Court endorsed arrangements under which unions controlled the labour supply to employers' (Weeks 1987,7,emphasis added).

The impact of the effective preference clause seems to operate in an indirect fashion. This has been especially marked for white collar unions. Following the FCU victory in 1973 (employers had challenged the validity of the clause in the High Court), the oil companies agreed to establish an informal post-entry closed shop with the Clerks if they agreed not to activate the preference machinery. This was in order to simplify administrative procedures for employers, and presumably to maintain a form of internal rule regulation as opposed to external regulation by the Commission.

In fact, a number of pre-entry closed shops were established for clerks in Queensland Alumina Ltd, the Comalco group of companies and Avis Rent-a-Car, with post-entry agreements being established in many other industries (Weeks 1990,94). As the Federal Secretary of the FCU stated at the time, the effective preference clause 'created a climate, in a number of industries, where employers were willing to enter an agreement with the clerks' union regarding membership for their employees' (quoted in Lansbury 1977,45).

The impact also spread beyond the clerical industry. Employers in the banking and insurance industries, previously hostile to any form of union security provisions, reached private informal agreements for closed shop arrangements after the relevant unions threatened to apply for an effective preference clause. The bank employers were particularly concerned about preference provisions in terms of promotion, as this went against the traditional merit principle which operated in the industry. They were therefore prepared to operate with a fully unionised workforce in order to retain managerial prerogative in terms of labour allocation (Hill 1982,268).

A useful way of analysing the impact of this clause is to use an analogy economists have applied in the analysis of unions. Economists refer to the 'threat' and 'spillover' effects of unions (Hirsch & Addison 1986). The 'threat' effect refers to the possibility that employers of non-union labour may pay their employees more than they otherwise would have in order to avoid possible unionisation. That is, unions have indirect as well as direct effects. So too we can refer to the effective preference clauses 'threat effect'. In this case, employers without an informal closed shop agreement may be forced to agree to one in order to avoid the union filing for such a claim.

The impact of the effective preference clause is further illustrated by a 1979 survey of recruitment agencies in NSW. The agencies were asked the positions for which union membership was a prerequisite for securing a job. The top four responses were for positions in the Clerical, Shipping, Insurance and Banking industries (ADB 1983,286).

With the possible exception of shipping where informal agreements have a long history, the other three were all directly or indirectly affected by the effective preference clause.

From available evidence, the most tangible impact of effective preference or the modified pre-entry closed shop appears to be on union membership through the operation of a 'threat effect' (Zappala 1991a). The other obvious area of impact would be the effect on employer recruitment and allocation policies. Presumably, if the effect is to enable 100 per cent unionisation, then preference to union members in terms of promotion, leave, retention and so on becomes a nonsense, so employers could return to using criteria such as merit or seniority without breaching the preference guidelines.

Modified post-entry: There are two variants of the modified post-entry closed shop. The first and strongest variant is that brought about by clauses in awards that state that preference in employment must be given to unionists or persons who undertake to join the union within a specified time after engagement. In 1982, there were 42 such awards and agreements in place at the Federal level, despite a 1978 High Court decision stating that the Commission had no such power to direct such preference (Weeks 1990). The modified post-entry closed shop should be distinguished from the strict post-entry as the form and level of regulation differ. The modified post-entry case is a form of external rule regulation, while the post-entry is an example of internal rule regulation. The distinction may seem pedantic, but has important implications for how we conceptualise workplace industrial relations (Zappala 1990).

A strict post-entry closed shop can and presumably does exist irrespective of whether preference clauses exist, as it can come about through a private bargaining arrangement between the parties at either industry or workplace level. In practice however, the effect of such clauses may be to create 100 per cent unionisation and strengthen the union's bargaining position to strike a plant level closed shop agreement with management which will be regulated and enforced at that level. This is not so much a 'threat' effect as operated earlier but a 'jig-saw puzzle' effect (Dunn & Gennard 1984). That is, given that total union membership has been achieved in a plant through the clause, striking a private closed shop agreement is merely the last piece of the jig-saw puzzle. It is merely cementing what already exists. This would be one case where there would be overlap between the categories in Table 1, as a workplace or industry may have a preference clause in an award but also have reached a private closed shop agreement. Management may nevertheless use this concession as a bargaining tool, or a quid pro quo for workers agreeing to relax or adopt a particular practice. This form of bargaining relationship using the closed shop as a quid pro quo has been practised in Australian industrial relations in the past (Riach & Howard 1973,22).

The second and weaker variant of the modified post-entry closed shop is the provision of absolute preference clauses in awards. It has been argued by some that there is little difference in practice between absolute preference and compulsory unionism (Martin 1966), although absolute preference clauses place no legal obligation on employees to become and remain union members, unlike our first variant. Weeks has described absolute preference as requiring an employer 'to engage (or promote or retain) a union member who is suitable, ahead of a non-unionist, so that the employer's discretion is controlled when, but only when, a union member and a non-unionist are competing' (Weeks 1987,3). Therefore it may be advantageous to be a union member in order to be recruited, but for non-union members there is no requirement to join a union after a

specified time. It is feasible that if a non-unionist applies for a job, she/he can remain a non-unionist even though an absolute preference clause may apply. If the preference clause is of the first variety, however, and two non-unionists apply, the one prepared to join the union will receive preference. So although it is possible to conceive of a workplace/industry which is covered by an absolute preference clause and yet not have a closed shop, it is unlikely that a workplace/industry covered by a clause giving preference to those willing to join the union (strong variant) after engagement, will not have a closed shop.

Marginal post-entry (qualified preference): This form appears to be the weakest variant of compulsory unionism, and perhaps should not be included as a form of closed shop. Nevertheless, it has the potential to facilitate a strict post-entry closed shop and should therefore be examined. Qualified preference 'requires the employer to choose a union member over a non-unionist, but only when they are equally qualified on all grounds considered relevant by the employer' (Weeks 1987,3). As the definition implies, it is the weakest form because an employer could quite easily manipulate this criteria in order to avoid employing a union member.

Despite this apparent weakness, there is evidence which indicates that a 'jig-saw puzzle' effect may also be operating. In 1982, 30 Federal awards which contained a qualified preference clause also prescribed a post-entry closed shop; that is, an informal closed shop provision had been inserted by 'consent' between employers and employees and not by the Commission (Weeks 1987,12).

The extent of Preference Clauses in Australia

Federal Awards

Table 2 summarises the findings of eight studies on the extent of preference clauses in awards (mainly at the Federal level). The studies are not strictly comparable as different methodologies and samples have been used. It is difficult therefore to know the precise extent of the three types of closed shops discussed above. The total number of awards with some form of preference clause has remained relatively constant however, ranging from a quarter to a third of all awards.

Looking at trends in the different forms of preference clauses, only a small number of awards contain effective preference clauses (modified pre-entry). A 1982 survey suggested that only 16 awards contained such clauses, most of which covered a small proportion of employees. Five of these 16 covered approximately 80 000 employees in total (Weeks 1990,88). A more recent survey by the Department of Industrial Relations (DIR) does not break down the incidence of these types of clauses by industry, although it does give industry breakdowns for absolute and qualified preference (DIR 1988). One estimate suggests that the five awards mentioned above cover the clothing and dry cleaning industries, retail and wholesale (ACT only), cattle industry (NT only) and the oil company clerks (Weeks 1990).

There was an almost 100 per cent increase in the number of 'willing to join' clauses (strong modified post-entry) according to the most recent DIR survey. In 1988 there were 81 awards at the Federal level which contained such clauses. This represented about 15 per cent of all Federal awards which contained some type of preference clause (DIR 1988,11). In terms of their industry coverage, four major industry groups accounted for three quarters of all such awards. In rank order, these were, manufacturing, transport-storage and communications, entertainment-recreation-restaurants-hotels and personal services and mining. Nineteen per cent of these awards also contained preference for union members in case of redundancy (10 per cent of all redundancy clauses), 9 per cent contained preference in promotion for union members (30 per cent of all promotion preference clauses), while 6 per cent of the above contained provisions for both (DIR 1988,A3). It is interesting to note that these four broad industry groups all had close to, if not, 100 per cent of their plants in post-entry closed shops according to Wright's survey (Wright 1981,134). This may be a broad indication that the 'jig-saw puzzle' effect has been operating, although one would need to determine the direction of causality. That is, were the clauses inserted into awards prior to the establishment of post-entry closed shops at plant level (the jig-saw puzzle effect) or did unions which had already achieved private closed shop deals seek to buttress their position legally by the insertion of such clauses (generally by consent) in awards? To answer such a question would require a detailed examination of when such preference clauses were inserted into the relevant awards and determine if post-entry coverage existed ex-ante or ex-post the dates of insertion. This would be a complex if not impossible task, yet it is an issue which should be kept in mind when trying to determine the impact of the closed shop in Australia.

The DIR survey referred to above indicated that 280 federal awards contained absolute preference clauses (weak modified post-entry), representing 54 per cent of all Federal awards which contained some form of preference clause (DIR 1988). 3 It appears that preference clauses of the modified post entry variety (both strong and weak variants) represent an increasing number of total awards with some form of preference at the Federal level. Martin's 1954 survey suggested that 20 per cent of federal awards

contained an absolute preference clause (Martin 1966,114), whereas they now constitute 54 per cent.

Five major industry groups accounted for almost 80 per cent of absolute preference clauses; in rank order they were: manufacturing, transport-storage and communications, entertainment-recreation-restaurants-hotels-personal services, construction and mining (DIR 1988,A3). The first three industries match those for the stronger variant of the modified post-entry closed shop, while construction is the newcomer. Once again this could be an indication of the 'jig-saw puzzle' effect. Industries which had achieved an absolute preference clause may have allowed unions to pressure management into conceding an informal closed shop. Although the industries overlap for both variants of the modified post-entry, it should be noted that the weaker variant (absolute preference) is much more prevalent (54 per cent) than the stronger variant ('willing to join') (15 per cent).

Nevertheless, from the 1988 DIR survey it can be calculated that approximately 50 per cent of all absolute preference clauses (weak modified post-entry) also contained preference to union members in cases of redundancy (this represented 70 per cent of all redundancy preference clauses). The industry coverage of these redundancy preference provisions was: manufacturing (29 per cent), entertainment etc (18 per cent), transport and storage (14 per cent), construction (8 per cent), wholesale and retail (8 per cent). A small number of the above also contained preference to unionists clauses with respect to promotion, as well as retention. There were 24 awards in total containing preference to unionists in promotion and absolute preference clauses accounted for 71 per cent of these. The two main industries covered were manufacturing and transport and storage.

Of all Federal awards containing some form of preference clause in 1982, 34 per cent were of the qualified variety (marginal post-entry) (Weeks 1987). In 1988, the proportion had dropped to 31 per cent (161 out of 522 awards containing preference provisions). Almost 80 per cent of qualified preference clauses were in awards covering manufacturing, entertainment and recreation, transport and storage and mining (rank order). Apart from some slight difference in rank order, the industries still correspond closely to those covered by the absolute category. Where a stronger difference with the absolute category is revealed is in provisions of preference to unionists in areas other than engagement. Only 23 per cent of all awards with qualified preference contained preference to union members in case of redundancy (19 per cent of all redundancy preference clauses), while they contained no provisions for preference in promotion.

State Awards

The above figures refer to Federal awards only. State tribunals have varying attitudes and policies toward preference clauses, so the particular jurisdiction a workplace is in must also be taken into account. Some states have been able to escape the Commonwealth ban on awarding strict compulsory unionism provisions in awards. The most interesting case in this respect is Western Australia, where in 1964 the Industrial Commission confirmed it had the power to award compulsory unionism. In effect this was a form of the strong variant of the modified post-entry closed shop in Table 1. Preference was to be given unconditionally to union members as well as non-unionists having to join the appropriate union after being engaged. In addition, preference was to extend to cases of dismissal (Weeks 1987,20). These provisions, which had become common place by the mid 1970s, were revoked by the Court government in 1979.

The Western Australian experience is an interesting case study of the impact of preference clauses on unions. Union membership in Western Australia decreased by 4 per cent following the 1979 legislation, while state registered unions (72 per cent of all W.A. unions) suffered a decline of 10.4 per cent between 1979 and 1981 (Hill 1984,449; Weeks 1987,28). A more recent study of West Australian unions showed that a significant proportion of state registered unions had sought Federal coverage since 1979. The primary reason was in order to attain preference clauses under the Federal arena as they had experienced serious recruiting problems since the 1979 legislation had removed preference (Blain 1985,27).

New South Wales (NSW) has had the longest history and highest incidence of preference clauses, although this is presently under threat by the Voluntary Unionism Bill. A 1979 study revealed that almost 88 per cent of NSW awards contained preference clauses (ADB 1983). A large proportion of these were of the modified post-entry variety, generally extending to retrenchment and engagement.

Queensland offers another interesting example. Most awards contained strong preference provisions. According to one estimate, 89 per cent of all awards containing preference provisions in 1954 led to de-facto closed shops; that is, they fell into the strong variant of the modified post-entry closed shop (Martin 1966). However a change of heart by the tribunal in 1967 saw a weakening in the form of preference granted. The impact on union membership followed the pattern observed in Western Australia (Weeks 1987,16; Crean & Rimmer 1990,16).

Victoria has never had any formal (tribunal) union security arrangements, so all existing closed shops in that state (with the exception of workplaces under Federal jurisdiction) must fit into the traditional pre and post-entry categories. Since 1972, South Australia has only allowed qualified preferences. Tasmanian awards with preference clauses have mostly been inserted by consent. This may also be a good example of the jig-saw puzzle effect at work. At the end of 1986, approximately half of all private sector awards in Tasmania contained some form of modified closed shop clauses (Weeks 1987,18).

DO PREFERENCE CLAUSES HAVE ANY IMPACT?

The direct and indirect impact of preference clauses on union membership were noted above. This latter impact was termed the 'threat' effect of preference clauses. The possible operation of a 'jig-saw puzzle' effect was also noted. This is where the operation of a preference clause may enable union density to increase to the point where an informal closed shop arrangement is merely the last piece of the jig-saw puzzle. It may also operate in the reverse order. A union may seek a preference clause in an award after an informal closed shop agreement has been reached in order to legally buttress their position in the future. Such relationships are purely hypotheses upon which future research may shed some light. The possible effects on employer recruitment and internal allocation were also noted. Indeed the primary reason why many white collar employers such as the banks entered into an informal closed shop agreement was the fear of a preference clause interfering with traditional policies on promotion by merit (Hill 1982,268).

The evidence regarding the impact of preference clauses, although slim, appears to be contradictory. The first point concerns the impact on union membership. Having reviewed the Federal union preference clauses, Weeks concluded 'that the direct effect of preference...on union membership is unlikely to be substantial' (Weeks 1990). This conclusion was based on three main observations. First, the fact that many of the strongest preference clauses operated in the small labour markets of the ACT and NT, and hence did not affect a large number of employees. Second, there was little evidence that unions 'activated' or relied on their preference clauses (ADB 1983,78). Third, was the fact that few unions had attempted to gain the effective preference type clauses (Weeks 1990). Weeks argues that these clauses may merely serve a psychological function for the union, acting as a symbol of unionism's goals and strength. As was noted above, however, the 'threat' effect and 'jig-saw puzzle' effect would seem to suggest that preference clauses may have a much greater impact than is suggested by Weeks. Indeed, in a recent review of the impact of various forms of union security on unions, Zappala concluded: 'It would seem that the closed shop, in whatever form, does impact upon the level of union membership' (Zappala 1991a,9).

The second issue is that of activation. That is, we must distinguish between the existence of a clause on paper, and its impact in practice at the workplace. For instance, an award may contain some form of preference clause, but due to other union methods, a lack of employee awareness, or employer diligence, is not activated by the union. For example, a survey of NSW employers revealed that 58 per cent of respondents noted disadvantages in having preference provisions (ADB 1983,85). The major disadvantages noted were restrictions in the ability to recruit and/or promote the best person for the job. If this relies on practical experience, and not merely on ideological disposition, then it would suggest that preference provisions have been effectively activated at the workplace level.

Recent evidence that preference clauses do lead to 100 per cent unionisation comes from a secondary analysis of AWIRS. Table 3 suggests that at least 11 per cent of unionised workplaces in Australia with a closed shop, were due to a preference clause in an award. These workplaces employed just over 50 000 employees at the time of the survey. Moreover the nature of the question from which Table 3 is derived means that the 11 per cent is a minimum figure only, so that the real effect of preference clauses is in fact understated. 4

Further disaggregation of the AWIRS data on the reason for the closed shop by workplace size, industry and sector was conducted. With the exception of sector, however, cell frequencies tended to be low so these tables should be interpreted with caution. Focussing only on the impact of preference clauses, the main variation seems to be sectoral. Table 4 suggests that 14 per cent of closed shop workplaces in the public sector have the practice due to an award provision. This contrasts with only 6 per cent of workplaces in the private sector. This may be a reflection of present Federal government policy of enforcing preference clauses in public sector awards.

Table 5 shows the reason for the closed shop by industry groups. Excluding the Mining and Public Administration industries where poor cell frequencies make estimates unreliable, preference clauses seem to be important in Community Services, Electricity, Gas and Water, and in Finance, Property and Business. Given the low cell frequencies, little can be hypothesised. This would seem to explain the sectoral effect in Table 4 as these industries would constitute the bulk of the public sector sample.

Table 6 suggests that there seems to be very little variation in the use of preference clauses by workplace size. The smallest size band (5-19 employees) does have the lowest per centage of closed shop workplaces due to preference clauses, possibly reflecting the ability of smaller workplaces to avoid the award system, although low cell frequencies hinder any further speculation. The low variation in the effectiveness of preference clauses across size should not be overly surprising given the broad coverage of federal and state awards in the Australian industrial relations system.

Examining the extent of the closed shop by occupational group, however, provides much stronger support for the hypothesis that preference clauses do have an important impact. Table 7 shows the percentage of closed shop workplaces which had a particular occupation in a closed shop. It is clear from this table that Clerks were most likely to be in a closed shop, with this being the case in 69 per cent of closed shop workplaces. It was not possible to disaggregate occupational groups by reason for the closed shop, due to the nature of the question and low cell frequencies. Nevertheless, such a high figure, especially when compared to the more traditional manual occupations, would tend to suggest the activation of the effective preference clause by the FCU.

As was noted above, preference clauses may also be activated by employers. Some employers have come to closed shop agreements with particular 'moderate' unions in the past in order to keep out more militant rivals. Employers have found the use of preference clauses extremely useful in such cases. 5 Implicit recognition of this is suggested in the proposed Voluntary Unionism Bill of the Greiner Government in NSW. Although the Bill proposes the removal of preference clauses in awards and agreements which favour union members over non-union members, awards and agreements may still allow for preference of employment to members of a particular union over members of other unions (Industrial Arbitration (Voluntary Unionism) Bill 1990). The retention of such a clause in the proposed legislation seems to suggest previous use of preference clauses.

A final piece of evidence, albeit based on casual empiricism at this stage, is preliminary case study work by the author. This also suggests that preference provisions are activated and relied upon by some unions. The important explanatory variables seem to be industry and occupational factors. 6

Although somewhat tentative and preliminary, the evidence is in favour of the hypothesis that preference clauses do play a significant role within the workplace, rather than being a symbolic or psychological weapon as suggested by Weeks. They seem to impact strongly on union membership; they can explain the existence of a significant number of closed shops in Australian workplaces; and they do seem to be used by both unions and employers.

CONCLUSIONS

From this brief review it is clear that a simple pre/post dichotomy of the closed shop in Australia is not useful. The intervention of preference clauses seems to add shades of grey to these extremes, and needs to be examined when looking at the phenomenon of the closed shop. This paper has proposed a more comprehensive framework, as well as presenting evidence on the impact of preference clauses in leading to closed shops.

From a union perspective, Table 2 suggests that unions have not taken full advantage of preference provisions in the last few decades. A lack of concern about membership in an era of union growth may explain this apathy, as well as the changing policy of the Commission to awarding preference provisions (Mitchell 1988). This may now be changing as unions look more closely at ways of buttressing membership in a period of decline. A recent ACTU discussion paper indicates that comprehensive preference clauses may become part of a wider strategy towards union organising and membership recruitment (ACTU 1990). If preference provisions do have the direct and indirect effects outlined above, then such a strategy would be sensible if the legal environment were favourable. 7

From a policy perspective, this paper would suggest that the banning of preference clauses from awards may impact on the extent of the closed shop, and hence on union membership and density. A significant number of workplaces presently rely on preference clauses to enforce or sustain their closed shops. If preference clauses were banned unions would still be able to rely upon informal practices to ensure a closed shop agreement. In industries and occupations where unions strongly rely on preference provisions to enforce closed shops, however, it may become more difficult to sustain this situation without a change in union strategy.

From a research perspective, it has been suggested that an approach informed by legal, economic and industrial relations concerns is needed when examining the closed shop in Australia. Several areas for future research have been suggested. Given the perennial and controversial nature of the closed shop, their examination is warranted for a more informed and intelligent debate.

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1 See Callus et.al. 1991 for details of the survey's methodology. The survey only asked whether any occupational group at each workplace had 100 per cent unionisation. If respondents indicated that this was the case, they were asked to indicate what reason best explained this situation. From the nature of the reasons it was assumed that these were workplaces where some form of closed shop operated. These figures will therefore not capture the true extent of the closed shop as such as 100 per cent unionisation does not necessarily mean a closed shop exists. A workplace may have a union density below 100 per cent and still have a closed shop. This may arise in cases where non-union members at the time the agreement was reached were excluded. Such cases would therefore not appear in the figures. On the other hand a workplace may have 100 per cent density but not a closed shop. Membership may have occurred voluntarily. These cases would tend to inflate the closed shop figures. Given that there is no way of distinguishing the two from the AWIRS data set, the two influences are assumed to cancel each other out. The term closed shop has been used when referring to the AWIRS data however.

2 See Zappala (1991b) for figures on the extent of the closed shop by workplace size, industry, sector and number of occupations. Callus et.al arrive at slightly different figures for the closed shop. Apart from some definitional differences this is due to the inclusion of 'don't know' and 'not applicable' responses in their tabulations.

3 The DIR survey had made an error in categorising the various types of preference clauses. I am grateful to Phillipa Weeks, Faculty of Law, ANU, for pointing this out to me.

4 This is because managers were asked to give the main reason that explained the 100 per cent union membership at their workplace for some occupational groups. For instance, a manager may have indicated that both Clerks and Labourers had 100 per cent union density. They then may have circled custom and practice as the main reason for the 100 per cent density with labourers in mind, as they may have been the dominant group, rather than say a preference clause, which may have explained 100 per cent unionisation for clerks.

5 The establishment of the Retail Industry Closed Shop agreement is a good example of such a case. Employer desire to stop the organising efforts of the militant Storeman & Packers Union led to a closed shop deal with the moderate Shop Distributive & Allied Trades Union in the early 1970s to become what is now Australia's largest closed shop agreement.

6 The difficulty of organising employees in the entertainment industry has led to an almost exclusive reliance on preference clauses by unions such as Actors' Equity and the Australian Theatrical & Amusement Employees Union for a membership base. Effective activation and enforcement has led to an effective modified post-entry closed shop in this industry.

7 See Zappala (1991a) for an argument against the closed shop from a union perspective.