

## **INDUSTRIAL RELATIONS: EMPLOYEE RIGHTS AND THE ECONOMY**

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On the 26<sup>th</sup> of May 2005 John Howard announced the Government's plans to rewrite Australia's industrial relations laws, arguing that this was "*one of the great pieces of unfinished business in the structural transformation of the Australian economy*". The Prime Minister would have us believe that industrial relations is the most pressing economic issue facing the nation. He argues that the changes will create more jobs, lift productivity and boost wages. This is an exceptionally feeble argument, lacking substance and credibility. It is mere assertion, little more than media spin. The Prime Minister gave a more honest assessment of the industrial relations plans when he said to the Coalition party room that they are "*an article of faith for the Coalition parties*".

Australia is currently in its fourteenth consecutive year of economic growth - a historically significant period of economic expansion, low inflation, productivity growth and low unemployment. Industrial disputes are at record lows. Since its inception in 1994, decentralised collective workplace bargaining, underpinned by the award safety net, has unleashed enormous productive potential. The industrial relations system is not holding the economy back. In fact it is part of our success. There are far more important economic priorities.

The Government's workplace agenda is not a plan to address the real economic priorities facing Australia. It is a radical plan to deliver workplace power to business and diminish the rights of every Australian employee. It is a reckless plan that will increase the pressure on working families. It is an irresponsible plan undermining democratic values and fairness in the workplace. It is a biased plan reflecting long-standing

prejudice on the Coalition side of politics. And it is a plan the ACTU and the unions will fight with determination, discipline and endurance. Unions have stood-up for the rights and living standards of working people for over 150 years in Australia. We believe worker's rights to be worth fighting for – and fight we will. In this fight our commitment to democratic values, and our belief in fairness, will guide us.

### **Democracy and Employee Rights**

Recently I read an engrossing biography of US President Franklin Delano Roosevelt. Roosevelt believed respect for the rights of workers to be a foundation of a successful and sustainable democracy. During the early 1930s Roosevelt recognised that people in Europe and the US were turning to organisations at the extreme right and left of politics in the search for solutions to the despair of the Great Depression. He realised that democracy was under threat. His principal response was targeted government expenditure to create jobs and lift economic activity – the New Deal. But the introduction of labour laws was also a pillar of the New Deal and the defence of democracy. The minimum wage and other important workers rights were legislated in the US at this time. Roosevelt aimed to engender confidence in liberal democratic values by ensuring that workers had rights which would act as a check on the power held by business, and help achieve a fairer distribution of wealth.

This philosophy found its way into the post-war settlement through the International Labor Organisation, which in 1948 and 1949 promulgated international conventions recognising the right of workers to freely associate in unions and to collectively bargain.

The labour movement had achieved these rights in Australia well before Roosevelt and the inception of the ILO. Throughout the 20<sup>th</sup> century the award system of minimum wages and employment conditions, collective bargaining, rights of union representation, and access to an independent tribunal to ensure a fair balance between employee and employer interests, have been underpinnings of Australian values of fairness – of the 'fair go'. These labour rights, and these values, have served Australia well. We have a strong economy and a solid record of respect for

workers rights, both of which have contributed to the success and international recognition of our democracy.

It is these rights, these democratic traditions, and our ethos of fairness, are threatened by the industrial relations changes announced by the Howard Government. The changes will massively benefit business at the expense of workers and their families. They open the door to exploitation of working people and the abuse of power by business. They will deepen inequality in our society. They are in breach of the ILO conventions. They will undermine the role of unions in our democracy.

### **The Industrial Relations Changes**

So what are the changes and how will they affect people? For a start the Government is proposing to remove from more than 3.6 million workers any protection from unfair dismissal. They can be sacked unfairly without an effective remedy. The Government's unfair dismissal exemptions will apply to all businesses with 100 or less staff. That is 99% of Australian companies. To the extent that there are legitimate problems with the current unfair dismissal system they could and should be addressed. But to abolish this protection for employees altogether is unwarranted. It will worsen job security and not surprisingly is overwhelmingly unpopular.

The Government is also proposing to fundamentally change the rules for agreement making and bargaining in every Australian workplace. The current industrial relations laws prohibit an employer reducing pay or employment conditions below the level of the award safety net. The awards contain minimum pay structures based on skill levels, and a simple but comprehensive set of minimum employment conditions.

No employee can presently be put on an individual or collective agreement that disadvantages them compared to their award. That is the current 'no disadvantage test'. The Government proposes to abolish this test and replace it with just five minimum conditions:

- minimum wages starting at \$12.75 per hour
- annual leave (two weeks of which may be 'cashed out')

- sick leave
- hours of work, and
- unpaid parental leave.

These are the only minimum standards that will underpin workplace bargaining. It means that a host of employment rights will be at risk - redundancy pay, overtime, shift work penalty rates, weekend and public holiday pay rates, work rosters, work and family rights, annual leave loading, casual loading, allowances, skill based pay increases, and a host of other award standards will be able to be removed from employees without compensation.

The dramatic reduction in the safety net will impact most harshly on the most vulnerable. Employees in a weak bargaining position will lose take-home pay. The greatest threat to take-home pay will be individual contracts – what the Government innocently calls Australian Workplace Agreements or AWAs.

Peter Costello says that he wants individual contracts to become the “*predominant*” form of workplace bargaining, and that is what the laws clearly aim to achieve. However, the inherent problem with AWAs is that individual employees do not have equal bargaining power with their employer. Individual contracts can be used by employers to dictate the terms of employment and exercise unilateral decision making. That is why collective bargaining is an internationally recognised right. It provides a balance of power in the workplace and ensures fair treatment. It facilitates a fairer share of profits and benefits from productivity gains for employees, thereby improving living standards. It enables employees to have a genuine democratic voice, to be treated with respect and dignity.

In recent years individual contracts have often been used to destroy collective bargaining, undermine union representation, and cut pay and employment conditions. All of this will get worse when the Government's laws are passed. Under the new laws cutting pay and employment conditions will be simple – the employer need only offer employment on the basis of an AWA containing the five minimum standards. If an employee doesn't like it they can look elsewhere. Where

existing employees refuse an AWA and hold out for a collectively bargained agreement the laws will make it easy to punish them. The employer need simply refuse or deliberately frustrate collective bargaining and insist that employees accept an AWA. There will be no obligation on the employer to collectively bargain with anyone. It will be lawful to victimise those seeking to collectively bargain by only providing benefits to those prepared to sign the AWA – even though the work performed by all employees may be identical.

This aspect of the laws amounts to systematic, legalised discrimination against employees wishing to associate in a union and collectively bargain. The suggestion that individual contracts are sought by employees and negotiated individually is absurd. AWAs are presented almost always in identical terms for every employee in a workplace – terms established by the employer.

To further help employers there are to be even more severe sanctions against industrial action by those seeking collective agreements. These sanctions will be enforced by third-party agencies set up by the Government, such as the Office of Employment Advocate or the ACCC, just in case the employer lacks the necessary conviction.

In a competitive commercial environment, employers will take advantage of the dramatic reduction in safety net protection to drive down costs wherever they can. It will only take one company in a particular market and the others will follow in order to stay in business. The ability of employees to resist the downward pressure on their pay and conditions will depend on their relative bargaining power – the weak will be more vulnerable than ever. That is why we can expect to see over time the growth of a US-style working poor under these changes.

Overall, Australian workers will have worse collective bargaining rights than in any other advanced economy I can think of. But there are many more changes which will drive home the advantage for business. Minimum wages will fall in value. This is the obvious reason the Government is emasculating the independent industrial tribunals and setting up the deceitfully titled Fair Pay Commission. The living standards of millions of people will be adversely affected by this measure over time.

The Government has already announced that its new pay commission will not consider any increase for the low paid until at least September or October next year. This amounts to an instantaneous wage freeze and a real pay cut for 1.6 million award workers who under the existing system would have received a pay increase next April or May. Had the Government had its way over recent years in the annual national wage case minimum wages would be \$50 per week less. The new system will make sure the Government gets its way in the future.

There will also be new laws to make it even more difficult for unions to represent and help people, including new restrictions on accessing workplaces. And in the construction industry employees will be treated like suspected terrorists. A \$22 million watchdog will carry out surveillance of union activity. Investigators will have the power in secret interrogations to demand that employees answer any questions and produce any documents – with no right to silence. There will be no protection against self-incrimination, an important foundation of human rights and our justice system. Failure to comply will lead to criminal offences. In the construction industry many ordinary, day-to-day and legitimate aspects of union representation will potentially be unlawful.

To round things off the Government aims to rely upon the corporations power in the Constitution to establish centralised control over industrial relations and knock out the State systems. That's to try and make sure there is no 'safe haven' for worker's rights.

In a nutshell, the industrial relations changes are profoundly biased towards business. The Government says that business can be trusted to do the right thing with this power. But workers' rights are not charity to be granted at the discretion of business – they must be enforceable legal rights.

The Government's industrial relations package is a tawdry, distasteful affair. It lacks humanity and it will set Australia on a path of widening inequality and exploitation. It is in truth a package designed by big business for big business, a strategy pioneered by mining companies and their lawyers in the 1980s, a strategy first legislated at the State level by the Kennett Government in Victoria and the Court Government in Western Australia. Neither of those Governments lasted.

Our opposition to the laws is not just about unions and it is wrong for anybody to portray it as such. Our opposition is about all working people, their democratic rights and living standards, and the future direction of our country.

### **The Economy**

But what about the Government's economic argument – the assertion that the changes will deliver more jobs and better pay, unleashing hitherto unforeseen productive potential? No case has been made to support this argument. There is no economic evidence. Seventeen labour market academics recently confirmed that there is no economic case.

It cannot credibly be argued that industrial relations rigidities are holding the economy back. There have been fourteen consecutive years of economic expansion with growth averaging 3.7% a year, low inflation, and average annual productivity and employment growth of 2%. This is a record performance. Australia's growth has outperformed the US and the OECD average. Profits have soared, increasing by 136% since 1991 – by 70% in real terms. Average adult full-time earnings have increased by 4.1% a year and Australia has risen to 11<sup>th</sup> in the OECD for GDP *per capita*. These are some of the positive features of the engagement of the Australian economy with the world. They have been achieved with our present set of workplace rights. We've even done well in the construction industry.

Industrial relations is undeniably important to the economy, but it is not the pressing economic issue. The fact is that this Government is using industrial relations to draw attention away from its failure to develop and modernise the Australian economy. For this Government industrial relations is the dog that ate their homework – the work it should have been doing preparing Australia for the 21<sup>st</sup> century.

Skills shortages have been neglected. This is now not just a headache for business but one of the most serious capacity constraints to GDP growth. It will have significant long-term consequences. A recent study of 2,500 US firms reported that, for those firms experiencing skills shortages, 63% said it reduced productivity and output, 56% said it reduced quality,

and 36% said it stopped investment in expansion. It's the same in Australia. A survey last year identified the availability of skilled employees as the number one constraint on business investment. We have significant deficits in traditional trades and in science and engineering.

Instead of a considered policy response, the Government's priorities in education and training have been an attack on student unionism and on collective bargaining in TAFEs and universities. Funding to TAFEs and universities is to be withheld unless every employee is given an individual contract. How will that help overcome the skills crisis? Like skills and education, investment in research and development and our national infrastructure are a down-payment on our future productivity.

Since 1996 business investment in research and development has been growing at only 2.6% per annum. In the previous decade it grew at 11.4%. In manufacturing the fall has been even sharper - from 10.5% for the decade to '96, down to just 0.8% a year since then. To achieve a more sustainable competitive advantage internationally Australia needs to lift the growth in R&D investment back up to pre-1996 levels - to around 10% a year in real terms. Without this the consequences are clear - slow growth in high value exports, under-performance in the generation of highly skilled jobs, and sluggish productivity in the tradeable goods sector. But there is no cogent Government policy response to this issue.

Under-investment in social and economic infrastructure is also a monumental looming capacity constraint on the economy. The only recent study to model our under-investment in economic infrastructure was undertaken by the Australian Council of Infrastructure Development and Econtech Pty Ltd. The study found that to clear the back-log of under-investment in electricity, gas, road, rail and water infrastructure would require \$24.8 billion of capital expenditure. It also found that this investment would result in a long-term increase in GDP of nearly 1% and of exports by nearly 2%. That is without consideration of the urgent need for investment in social infrastructure such as hospitals, schools and child care centres or the environment. The Government has found billions for election handouts and regional pork-barrelling but continues to deny that infrastructure investment is a critical issue. Yet it is a key



driver of growth and productivity, and builds capacity for economic expansion.

Australia's trade performance is also worrying. Exports have flat-lined for the past 4 years. Our trade deficit last year was \$26 billion and we have just recorded our 43rd successive monthly trade deficit. Despite significant improvement in our terms of trade, Australia's current account deficit is stuck at 5% - 7% of GDP. It should be far lower given the boom in demand and prices for commodities. Faltering manufacturing and services exports are partly to blame. In both areas Australia's export share has fallen sharply across a wide range of overseas markets, particularly East Asia. Australia's lousy current account and trading performance has seen foreign debt rise to a record \$425 billion (or nearly \$21,000 of foreign debt for every Australian). That's a 195% increase over the period of the economic boom. John Howard's 1996 'debt truck' has become a convoy.

The seeds of long-term economic problems are evident in these trends, and yet there is no apparent policy discussion in the Government. In fact if there was someone at home in our economic headquarters there would be alarm that our record period of expansion is unsustainable. There has been an over-reliance on household debt and consumption to drive economic growth. The ratio of household debt to disposable income doubled from 70% to 148% between 1997 and 2003. The household savings ratio has gone negative, from 7% to -0.5% over the same period. People are not saving, they are borrowing and spending, and this has been the engine of growth. It cannot be sustained. Even a modest rise in interest rates will bite and bite very hard.

Finding more sustainable drivers of growth is the most important economic challenge for Australia in the medium term. And for this purpose building savings and planning for an ageing population is vital too. Over the next 40 years the proportion of Australians over the age 65 will double to 25%. Without appropriate action the workforce participation rate could fall from 64% to 56% over the same period. Health and aged care expenditure will have to multiply. How are we preparing for this? Where is the investment for the future – the strategy to build retirement savings?

I have stated on previous occasions that the level of contributions to superannuation must be increased to 15% from the current 9%, and the sooner we start on this strategy the better for the country. These savings would provide a substantial pool of capital for investment as well as providing for health and living costs in retirement.

Simply put, Australia needs an investment-led reform agenda focussed on the supply side of the economy. That is what will produce the next productivity revolution. Instead John Howard is offering the realisation of long-held industrial relations prejudice. His is a backward-looking agenda to cut labour costs, to find our economic way in the world by preying on the weak and vulnerable, by attacking fairness and democratic principles. The lack of vision, the scarcity of decency, and the absence of confidence in a better way forward is both astonishing and depressing.

### **Looking to the Future**

But this will not dent the optimism of the union movement. While opposing the Government's industrial relations changes, the ACTU is also looking to the future. Like Franklin Roosevelt our belief is that fair labour rights are a core element of a successful democracy. In the future it is our view that labour rights must be firmly and democratically rooted in the workplace – giving people genuine choices.

Currently we are considering the collective bargaining rights in other advanced economies as potential models for future ACTU and possibly Labor Party policy. In each of the UK, Canada and the US, employees have an enforceable democratic right to collectively bargain. This right arises if a majority of employees vote in favour of collective bargaining, in which event the employer must negotiate in good faith. In Europe employees have not only collective bargaining rights but also the ability to elect workplace consultation committees with a legally-mandated role which must be recognised by employers. These democratic rights are not part of John Howard's plans, but they are certainly part of ours.

Our campaign is designed to make the Government think again. And if it doesn't we intend to keep campaigning for the rights of workers for as long as it takes. We will take our argument to the High Court to test the

validity of the laws. We will campaign in the workplace to protect people's pay, employment conditions and bargaining rights. And we will campaign in the wider community to build political support for workers' rights all the way up to the next election and beyond.

The Labor Party's performance is obviously important in this context. Unions will do whatever is in our power to help ensure that Labor is a strong and credible alternative Government. On this point it is sufficient for me to say two things. I have confidence in Kim Beazley, and I want all Labor politicians to focus on the main game - not internal bickering. As opinion polls confirm, the Government's industrial relations plans offer Labor the opportunity to stand up for fairness and to gain support for doing so.

Unions will not only stand for fairness and fight for workers' rights, we will also argue an alternative and positive economic agenda – an agenda that addresses the real economic issues. Union membership numbers 2 million people. We have widespread community support and respect. In recent years we have demonstrated our values and our capacity in large campaigns, including the waterfront dispute, the Ansett collapse and in making asbestos-manufacturer James Hardie face its responsibility to thousands of Australians. And we are proven stayers. With over 150 years of history we are older than the nation itself, and we have a great record of achievement. We have seen off bad laws and arrogant Governments before.

This period is, in a sense, a new phase in the history of the labour movement. Times like this bring out the best in us - the unity, determination and character to fight for a better future, for the dignity and respect of working people. And that is my commitment on behalf of unions to the Australian people, a commitment from which we will not resale.

*Greg Combet is Secretary of the Australian Council of Trade Unions. This is a slightly edited version of the speech he gave on 6 July 2005 to the National Press Club.*