THE INDUSTRIAL RELATIONS 'REFORMS': AN INTRODUCTION

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This issue of the *Journal of Australian Political Economy* considers the implications of the dramatic changes to industrial relations and wage-fixing arrangements introduced in November 2005 by the Coalition Government led by John Howard. These 'reforms' need to be understood in the context of history, class relationships and the exercise of political power. They require political economic analysis.

Before 1993 almost all Australian employees were covered by awards, handed down by state and federal arbitration tribunals and regulating the conditions of their employment in considerable detail. In 1993 the then Labor government's *Industrial Relations Reform Act* established a legal right to strike, albeit subject to severe restrictions; introduced a federal system of protection against unfair dismissal, administered by the Australian Industrial Relations Commission (AIRC); and allowed for (indeed, encouraged) enterprise bargaining (EB) as an alternative to awards. The term 'enterprise bargaining' has been widely misunderstood, often being used to refer to almost any agreement, individual or collective, reached at the workplace. In fact EB should be restricted to processes of formal *collective* bargaining that result in a certified agreement (CA) which, when approved by the AIRC, becomes legally binding in place of the relevant award. Although non-union EB was possible in principle under the 1993 Act, in practice almost all CAs involved one or more unions. The AIRC was required to certify that they did not put workers at a net disadvantage, compared to the award, but this was usually guaranteed by the mere fact of union involvement. Only in those cases when an employer failed to reach agreement with the

union and put its final offer to the workforce in a ballot was there any question of EB undercutting award terms and conditions without compensation in the form of significant pay increases; and these were rare. Employers did gain important concessions in the course of EB, in particular on hours of work and penalty rates, but they invariably had to pay for them.

It would be wrong to paint too rosy a picture of industrial relations under the Keating Labor government. Employers did very well out of the newly decentralised system, with labour productivity increasing more rapidly than real wages, leading to a consequent steady increase in the profit share in GDP. Hours of work rose, so that part of the increase in the average hourly real wage came at the expense of a reduction in leisure time and increased pressure on family and other relationships. The unfair dismissal provisions in the 1993 Act relied heavily on financial compensation, and undermined the emphasis that had been given to reinstatement as a remedy under state law. For all this, the pre-1996 industrial relations regime did make it impossible for Australian business to follow the 'Walmart route' to higher profits: keep unions out, cut wages, strip entitlements and employ the working poor. This is the spectre that we now face.

The election of an anti-union federal government in 1996 initially made less difference than many of its supporters had hoped. For its first nine years the Howard government had no Senate majority, and was forced to negotiate with independents and minority parties (usually the Democrats) to secure the passage of contested legislation. Thus the *1996 Workplace Relations Act* was a compromise that did not satisfy those who were campaigning for more comprehensive deregulation of the labour market. But the Act that the Australian Democrats agreed to support did make two critical changes: the 'stripping back' of awards and the introduction of Australian Workplace Agreements (AWAs). Awards, which had been quite comprehensive in the issues that were prescribed, were now limited to 20 'allowable matters'; and AWAs, which were formal individual contracts, could override both awards and CAs. The government's intention was for AWAs gradually to replace both awards and collective agreements, but it was forced by the Democrats to accept a new version of the 'no-disadvantage test', making it difficult for employers to use

AWAs to undercut award (or, where relevant, CA) conditions. This made them unattractive to employers. It seems that little more than 2% of the workforce have been employed under AWAs at any time since 1996.

Table 1: Methods of Setting Pay by Sector, May 2004 (% of employees)

Methods of Setting Pay	Private Sector	Public Sector	All Employees
Awards Only	24.7	2.3	20.0
Registered Collective Agreements	24.2	91.8	38.3
Unregistered Collective Agreements	3.2	0.4	2.6
Registered Individual Agreements	2.6	1.8	2.4
Unregistered Individual Agreements	38.5	3.7	31.2

Note: The figures in the 'private sector' and 'all employees' columns do not sum to 100 due to the inclusion of working proprietors of incorporated businesses in the total. These owner managers account for 5.4 per cent of all employees.

Source: ABS, *Employee Earnings and Hours, May 2004* (cat. no. 6306.0), ABS, Canberra

This table shows the forms that wage determination took in May 2004, the latest date for which data are available. A fifth of the Australian labour force still had their pay (and, by implication, other conditions of employment) determined by awards; nearly two-fifths were covered by CAs, almost all reached through negotiation with unions; only 2.4% were on AWAs; and, remarkably, nearly a third were employed under 'unregistered individual arrangements'. The remaining 2.6% were covered by 'unregistered CAs', which may well have been non-union. The importance of awards is greater than this data suggests, because they continue to determine non-pay conditions of employment for many workers covered by CAs and (at least in principle) for many of those on 'unregistered individual arrangements'. These awards have been determined by both federal and state jurisdictions. Five states retained their own award systems, operating alongside and in at least potential tension with the AIRC. The exception was Victoria, where the Liberal government led by Jeff Kennett abolished the State's arbitration tribunals in 1996 and 'referred' the relevant powers to the Commonwealth. Victoria remains the only state without its own award system, although the Bracks Labor government did manage to extract some minor concessions from Canberra in 2003.

Before the Coalition gained control of the Senate on 1 July 2005 it had already announced the broad outlines of what are intended to be the most radical changes to Australian industrial relations since federation. The government introduced the new legislation in November 2005, following the wide distribution of its *WorkChoices* booklet and an intensive, and expensive, publicity campaign. The broad outlines of the government's intentions for market and industrial relations reform are clear.

The no-disadvantage test for AWAs is to disappear, and will be replaced by the most minimal of safety nets covering only basic pay, personal/carers' leave, parental leave and maximum ordinary hours of work. AWAs will last for 5 years, and will override both CAs and awards. This will make them very much more attractive to employers. Awards will remain, further stripped of another four of the 20 'allowable matters' (jury service, notice of termination, long service leave and superannuation). Crucially, however, award rates of pay will now be set not by the AIRC but by a new Australian Fair Pay Commission, with a mandate to promote employment by reducing real wages over time. There are also plans to simplify awards by greatly reducing the number of job classifications and, with them, the number of award rates that are set. Award rates of pay have already fallen a long way behind those paid to workers covered by CAs; under the new regime, awards will be like fossils, still observable but reflecting conditions in an increasingly remote and distant past. Access to the AIRC in unfair dismissal cases will be withdrawn from all workers in companies with less than 100 employees; and it does not take much imagination to see that creative corporate restructuring may extend this to a great majority of the workforce. (The National Party Senator Barnaby Joyce, an accountant by trade, has mused publicly on the ease with which he could arrange this for his corporate clients.) An exception for dismissals made on 'operational grounds' will in any case effectively neuter the protection afforded to workers in large companies. Finally, there are severe threats to union rights, including much tougher restrictions on industrial action, limiting union officials' right of entry to the workplace, and stamping out the process of pattern bargaining (whereby an enterprise agreement established in one workplace becomes the model for enterprise agreements in others).

The two most important consequences are likely to be a substantial growth in the use of AWAs, at the expense of both CAs and 'informal individual arrangements', and an increasing move towards non-union CAs. It might be thought that formalising existing informal arrangements is no bad thing: AWAs might be better than nothing. But, from an employer's point of view, under the previous laws informal agreements were insecure, being open to challenge in a way that AWAs will not be. Formalisation will therefore benefit employers, not workers, who will lose their legal entitlement to the remaining award conditions once they have signed an AWA. It will not be possible to force existing employees onto AWAs (though it is not clear whether this will also apply to workers offered internal promotion), but employers will be able, as they are now, to offer jobs to new recruits on an 'AWA-or-nothing' basis. People move between jobs, in and out of unemployment and in and out of the labour force, at a very high rate, and after (say) five years we can anticipate that a large minority of those in employment will have been forced onto AWAs in this way. Young people and migrants from non-English speaking backgrounds will be especially vulnerable. The growth of AWAs will inevitably fragment the workforce and seriously weaken union influence, even in what are today union strongholds. As already noted, AWAs will override CAs, and they will all expire at different dates (normally their fifth anniversary), none of these dates bearing any relation to the life of any CA. Workers who have signed AWAs will not be free-riders, as are those non-members are who currently work under CAs that unions have negotiated for them. AWA workers will have little to gain personally from union membership for the entire duration of their AWA, and will not be able to strike legally even if they wish to.

It is likely that there will also be an increase in the incidence of non-union CAs, both where there is no union involvement at all and where the employer takes part in token 'negotiations' on what is actually a take-it-or leave-it offer and then puts the 'agreement' to the workforce in a ballot against the opposition of the union. Since a 'no' vote will also be a vote for a lengthy pay freeze, union members and non-members alike may well decide to give up rights and conditions that they value. The connections with AWAs are threefold. First, employers will presumably attempt to eliminate from CAs any clauses preventing them from offering (insisting on, in effect) AWAs. Second, the threat of moving to

AWAs will be used as a bargaining weapon. Third, as AWA employees are most unlikely to become union members, union density will continue to decline and the credibility of unions in EB will decline with it.

How these industrial relations 'reforms' will affect future employment relations will depend on ongoing struggles between capital and labour, industrially and politically, as well as the state of the macroeconomy. One possible scenario is that by 2010 some 50% of Australian employees might have signed AWAs, with another 20% still subject to informal individual arrangements; this would leave 20% regulated by union and non-union CAs and the remaining 10% on awards. In those circumstances union density might have fallen from the current 23% to the low teens. When the next recession occurs, with recorded unemployment rising to perhaps 10% (and with actual unemployment possibly twice as high as this), the twin processes of de-collectivisation and de-unionisation would presumably accelerate. All this would have substantive consequences. Hours of work will be further extended, at the employer's discretion; employment will become yet more precarious; managerial prerogatives will be greatly strengthened; and wage inequalities will increase.

Why are we facing this prospect? Is this indeed a likely scenario? And what could be done to steer a different course? The subsequent articles in this journal explore the issues. The first cluster of contributions looks at specific aspects of the current IR reforms. The scene is set in the opening paper by industrial relations researchers from the University of Sydney, reviewing all the evidence to show that, beyond the rhetoric, there is no sound foundation for the current 'reforms' in terms of improved labour market outcomes. The article by David Peetz then takes up the productivity issue in particular, providing a devastating critique of the claims that AWAs will produce a productivity surge. Benoit Freyens and Paul Oslington use neoclassical economic reasoning, in conjunction with the results of a direct survey of businessmen, to support their conclusion that the changes to unfair dismissal laws are unlikely to have the positive effect on employment that the government has claimed. Chris White explores the implications for the right to strike, showing that the 'reforms' significantly constrain the capacity of organised labour to protect and advance workers' interests.

The following cluster of contributions looks at minimum wages and fair pay. Mark Wooden argues that to push minimum wages down is unlikely to increase employment unless accompanied by major changes to the welfare system. Robyn May compares the Australia Fair Pay Commission with its British equivalent, drawing some deeply troubling inferences about the prospects for low-paid workers. The following paper by labour market and industrial relations researchers from the University of Newcastle focuses on the equally worrying implications of replacing the former 'no disadvantage test' in wage bargaining with the new Australian Fair Pay and Conditions Standard.

Next come articles on particular sectors of the workforce, particular industries and particular state experiences. Barbara Pocock and Helen Masterman Smith look at the 'reforms' from a gender perspective, arguing that women are likely to be particularly vulnerable to the institutional changes and power relationships in the markets for labour. The vulnerability of young workers, many of whom are in casual and insecure employment, is explored by Richard Denniss, based on 'focus groups' held with young workers themselves. Andrew Mack's contribution takes a class perspective, situating the current 'reforms' in the historical context of capital–labour relations and the influence of 'economic rationalism'. Then come two articles dealing with specific features of sectors of employment where particular problems are either already occurring or anticipated. Liz Ross looks at the building and construction sector, which the government has already singled out for punitive treatment of the workforce. Stuart Rosewarne looks at universities, where changing employment conditions for staff are also linked to radical changes in education policy and funding. Two more articles draw from the experience of the different states. Margaret Lee writes about the attack on the State tribunals, which have been an integral part of the industrial relations system, and the implications for working life in Queensland. David Plowman and Alison Preston draw some important lessons from the Western Australian experience, which in certain respects has been a fore-runner of the national 'reforms', showing strong evidence of the tendency to generate greater wage disparities.

The focus then shifts to political responses and the all-important question of 'what is to be done?' ACTU General Secretary, Greg Combet's

powerful address to the National Press Club is followed by other articles by Tom Bramble and Neale Towart, respectively criticising and defending the responses by trade unions to date. John King's contribution emphasises the important role that State governments can play as bulwarks against the class-motivated assault on labour. Then comes Shaun Wilson's review of how the public has responded to the 'reforms', marshalling the evidence from opinion polls to show their widespread unpopularity to date. These articles show that there is no shortage of support and strategies for charting a different direction, although much remains to be done in developing a vision of what alternative industrial relations arrangements are worth struggling for.

Finally, a wry 'endnote' to this journal is provided by two articles on the incomes of company executives and politicians. John Shields presents a wealth of evidence on the prodigious payments to senior executives, who do not 'practice what they preach' when it comes to wage restraint. Then Peter Lewer and John Waring document the institutional arrangements that politicians retain to protect their own incomes while stripping back comparable protections for the rest of the workforce.

What the 2005 industrial relations 'reforms' signal is an attempt to shift the balance of power between employers and employees. As economic journalist Ross Gittins put it, '*WorkChoices* [is] more about class war than economics' (*Sydney Morning Herald* 21.11.05). The 'reforms' seem to have arrived like an avalanche, but their full impact will be felt for many years. Political economic analysis can usefully contribute to the development of strategic responses during this period. Indeed, This is a time when the application of political economic analysis to contemporary events is of particularly critical importance.

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