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## **Industrial relations changes – the final demise of the ‘fair go’ society!**

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Australian society is one of monumental self delusion. In public discourse, we congratulate ourselves for our ‘fair-go’ dealings with each other. Our alleged egalitarianism and ‘mateship’ is perpetuated by the mass media as a representation of the glue that binds our society.

The myth – like all national legends has clearly been rough around the edges with notable contradictions evident. We venerate our soldiers as exemplars of this ‘help your mate’ attitude when times are tough yet conveniently overlook the fact that in conflict they have raped and murdered innocents. We confine our sense of mateship to ethnic divisions that we are comfortable with. Far from seeking to learn how the indigenous inhabitants survived in this hostile environment we (Europeans) systematically confiscated their children and destroyed their culture.

Despite these inconsistencies, the myth assumes totemic status. However, the myth is now about to lose any semblance of applicability. Far from egalitarianism, another ‘ism’ is looming, ugly and threatening, in our society.

I would argue that Australia is steadily becoming a totalitarian society with the same imprint of lawlessness that characterises such regimes. There are several manifestations of this slide from fairness where the rule of law has been subverted by (lying) politicians. For example, evidence was doctored by the Government to perpetuate a politically convenient but malevolent lie in the ‘children overboard’ scandal. Further, our national government allows a foreign state to imprison and torture two of our citizens in Cuba without charge or access to normal legal rights in violation of the Geneva Convention. Other examples include the internment of children and our own mentally ill citizens in detention camps; the deportation by an unaccountable bureaucracy of a mentally ill Australian; participating in the invasion of a sovereign state using false evidence; changing our national boundaries to create gulags in Pacific Islands.

Accompanying these trends has been the persistent government vilification of the economically disadvantaged. The Federal Government’s macroeconomic policy stance (budget surplus obsession) has meant the economy fails to produce enough jobs. Then they established pernicious compliance regimes to ensure the victims (the unemployed)

were blamed. Recently, single-parents and the disabled have been shoe-horned into the same compliance regime. The Government has been able to maintain these departures from fairness because they have constructed the victims as bludgers, cruisers, job snobs and all manner of other vile nomenclature.

The common thread running through these approaches to date is that they are bully-like in their application. They attack the marginalised – the weak, the sick, the mentally incapable, the homeless, the stateless, and the frightened.

However, with the Government's now stated intention to decimate one of the last symbols of our 'fair society' – the judicially determined conciliation and arbitration system and wage setting machinery - things are about to change. While the previous attacks on fairness have largely been concentrated on the marginalised and hence forgotten citizens, these changes will impact on a much wider cohort and the political consequences may be more uncertain as a result. They will clearly hurt the weak the most. But hardly anyone will be spared the impacts of the approaching radical transformation in the way in which we earn income, work, take leisure and relate to each other.

One business lobbyist with previous Government connections noted this week that we are finally abandoning the 'horse and cart' industrial relations system. However, by unwinding most of the gains that the trade unions and arbitral tribunals provided workers over the last 100 or so years – gains that were crucial to keeping the lowest paid workers in the productivity race – we are radically shifting power to the business sector and expunging fairness from our labour market policy framework. As we lose wage justice, we will also see a 'race to the bottom' with an underclass of working poor Australians emerging.

The current system dates back to the 1907 Harvester decision which legally defined a basic wage as a social minimum living wage. Irrespective of what the employers thought, they were legally bound to distribute at least this much production back to the workers. Market constructs such as the capacity to pay were subjugated by this social wage concept. It was a pillar of our fair society conception. The decision placed in our social psyche the notion that the market should not determine this wage. If we wanted a fair society which by definition would exclude the creation and perpetuation of an under class then the distributional system had to be legally regulated. The anarchy of the market driven by greed combined with the obvious asymmetry of power vested in the employers relative to the workers would never generate a fair wage distribution.

This is why labour relations were given a specialised judicial process. Unfettered capitalism would treat labour as a commodity like any other. Free market economics treats the labour exchange as indistinguishable to the exchange for lemons or any other inanimate object. Accordingly, the object is exchanged for money and use-values are transferred between worker and employer to be consumed outside the exchange. But labour is a special commodity because the employer consumes the use values of the exchange (in the work process), during rather than after the exchange. The worker also relies on employment for sustenance and social identity.

The development of labour-specific, union oriented arbitration and conciliation processes in Australia reflected a need for labour law to redress the power imbalance, which placed

workers in a subordinate position to employers.

The clear intent of proposed industrial relations changes is for wage and conditions to be determined by market forces with equity and social justice issues ignored. The question is whether the negotiation of individual contracts is appropriate for labour relations. Australian legal practice until recently has not regarded the labour market relations to being best regulated by commercial law. Contract law was not considered an appropriate means of accomplishing the relevant goals under a variety of international law models. Labour or employment law was seen as being distinct with certain rights and responsibilities that transcend commodity exchange. Common law, in particular, leaves unorganised labour vulnerable.

The proposed changes dismantle this 'equity' machinery in several ways.

#### Unfair dismissal exemptions

Employers with less than 100 employees will be exempt from unfair dismissal laws. These firms will be able to summarily dismiss their workers with impunity. The incentive for capricious behaviour is compelling. Only workers on individual contracts - Australian Workplace Agreements (AWAs) - will be able to pursue unfair dismissal claims in tort. But in reality, the expense, legal complexity and time lags of common law claims, coupled with the fact that these actions do not offer reinstatement, means that few workers will achieve any reasonable recourse.

The Government will also tighten up access to the anti-discrimination tribunals to avoid these arenas clogging up with work related disputes.

Most firms will realise it is counterproductive to behave capriciously. But many will not. Further, while a tight labour market may discipline capricious employer behaviour, the real hell for many workers will arise next time the business cycle turns down. Then workers' rights will be trampled.

#### Award system undermined

The proposed changes will also destroy the award system, particularly the effectiveness of safety net wage, which provides some security to the most disadvantaged and organisationally weak workers. The Fair Pay Commission (FPC) will replace the Australian Industrial Relations Commission (AIRC) in setting the minimum wage. The Government will appoint a business person to head the FPC, and, maintain a distance from it. But clearly the appointees will be 'sympathetic' to the Government line that minimum wages should not rise at nearly the rate that they have under the annual AIRC reviews. The FPC will not cut nominal wages but they will allow the real wage to fall through infrequent adjustments.

#### Individual contracts to dominate

The fact that the AIRC is being sidelined and the union movement threatened (imposition of secret ballots, extend consultation prior to industrial action, lockouts) spells a death knell to collective bargaining. Employers simply do not have to negotiate. There will be massive disincentives for workers contemplating joining a union. With dismissal now a matter of the boss saying so – workers would be unlikely to associate with a union in a

workplace where the employer resents a union presence. The right to strike may continue but who would be game enough to risk summary dismissal.

Thus individual contracts will proliferate with an increasing number of workers being offered take-it-or-leave-it contracts with little recourse. A climate of employer intimidation will certainly appear. Some workers will be able to contract higher wages for higher intensity.

These changes expose the Government's claim that it is pro-family as a lie. The claim was always spurious given that their policies have kept around 2 million Australians unemployed or underemployed. But the proposed changes will detrimentally impact on most families. The premiums for working 'non-standard hours' (weekend penalties, over-award payments, loadings for overtime), which historically were obtained after struggle by workers who wanted time with families and weekend leisure activities, will go as AWAs proliferate.

It is also clear why the Government wants to make welfare less attractive. They plan to drive the low end of the labour market down towards poverty levels. Taking advantage of this will be low productivity, marginal employers who would not survive under the current wage setting standards. Instead, they will now be able to enforce AWAs which breach the award floor and stay in business. This is because the crucial 'no disadvantage test' will be scrapped.

#### No disadvantage test scrapped

In the present system (with collective bargaining and AWAs), the award structure provides the 'wages and conditions floor' because no-one can be made worse off by contracting directly with their employers.

But with the 'no disadvantage' test scrapped (and unfair dismissal protection gone) the 'race to the bottom' will be on with the limits defined by the 'Australian fair pay and conditions standards' set by the FPC. Given that the Government and business always consider the AIRC safety net decisions to be too generous, then a reasonable expectation is that this new 'floor' will be considerably lower than at present or grow at a considerably slower rate.

This means is that the most disadvantaged workers, who do not have bargaining power to ensure a satisfactory AWA outcome, will be forced to accept AWAs below the award. The employer has all the power and take-it-or-leave-it contracts will become the norm.

This is what happened in New Zealand in the late 1980s and 1990s which left their labour market and the poor in such a parlous state.

#### Spurious claims about employment growth

One of the most offensive aspects of these changes is the claim that around 70,000 jobs will be created as a consequence. The claims have been made by the Prime Minister and key employer lobbyists although all of them are vague when it comes to sourcing the underlying research. What these claims suggest is that Australian firms have ever increasing order books, and, presumably ever increasing consumer frustration. Why doesn't the data show that? Why hasn't some enterprising capitalist entered and taken the implied market share?

The reality is different. The reason firms hire is to produce goods they can sell. If they have 25 workers under current legislation, they would hire a 26<sup>th</sup> should they be able to sell the extra output. At the current wage levels, employment is a function of the demand for the output the workers produce. I predict no extra jobs arising from these changes.

### Conclusion

In evaluating public policy I choose to adopt a simple rule of thumb. We should judge a society and its governments by the way it treats its elderly, its poor, its sick, its disadvantaged, its children and its natural environment. Hubert Humphrey the US democrat characterised this sentiment in 1976 as “The moral test of a government is how it treats those who are at the dawn of life, the children; those who are in the twilight of life, the aged; and those who are in the shadow of life, the sick, the needy, and the handicapped.”

On that reckoning, with these proposed IR changes, Australia is now approaching the status of having a failed state.