

The Labor Government's Industrial Relations Policy: Flexibility with Equity

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Abstract

The fundamental objective of the Government's industrial relations policy is to encourage and assist Australian companies and their employees to adopt work and management practices that will strengthen their capacity to compete successfully both in domestic and international markets. To this end we support co-operative and equitable workplace bargaining, with wage increases being linked to the reform of work practices and attitudes. Our support for decentralised bargaining is aimed at improving productivity by fostering a new workplace culture of striving for continuous improvement. We emphatically reject the view that such an outcome will be achieved by wholesale deregulation and reliance on unfettered market forces. The Government is committed, for both equity and efficiency reasons, to maintaining the Accord approach to wages policy. We are also committed to an independent Australian Industrial Relations Commission playing the vital role of protecting lower paid employees through the safety net of minimum award wages and conditions.

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Editor's Note: In a previous issue of the *ELRR* Mr John Howard, Shadow Minister for Industrial Relations, Employment & Training outlined the Coalition's industrial relations policy. In this article the Minister for Industrial Relations presents Labor's policy.

1. Introduction

There is general agreement that the rapid increase in the competitive forces faced by Australian companies - caused by the pace of technological developments, reductions in protection, increasingly competitive overseas sources of supply and rapidly changing consumer tastes - necessitates a fundamental overhaul of the way most Australian companies operate if we are to maintain and increase our living standards. Industrial relations at the workplace, covering work practices and organisation, management practices and the use and development of skills and training, is one vital area which must be reviewed and improved if Australian companies are to achieve world best standards of operation.

Disagreement arises over how such change and reform is best achieved. This Labor Government believes that our current institutional and cooperative framework, including the Accord, the Australian Industrial Relations Commission (AIRC), trade unions and employer groups, is an essential mechanism for achieving widespread and lasting reform. The significant changes that have been made in the way these bodies operate and inter-relate in recent years have markedly enhanced their ability to influence and facilitate the reform process.

The real barriers to reform lie in management and workers lacking the skills and incentive to undertake fundamental reforms. The problem is critically one of attitudes and 'know how'. No one should doubt that workplace reform is a difficult and lengthy process. The question is how can the Government, the award system, peak union and employer groups foster the necessary attitude changes and assist in developing the skills to ensure successful and widespread reform?

Unlike some we do not believe the answer lies in bypassing the AIRC, deregistering and weakening unions, abolishing Government programs which promote workplace reform and leaving the process completely to market forces. We believe that such an approach will be counterproductive, create industrial unrest and have unacceptable equity costs.

2. The Government's Approach to Industrial Relations Reform

The fundamental elements of our approach are:

- a flexible industrial relations system that enhances efficiency and equity at the workplace and assists in national macroeconomic management;
- the recognition of the legitimacy of democratic organisations of

employees and employers able to represent effectively the interests of their members, as in all truly democratic societies;

- a role for independent industrial tribunals to prevent and settle industrial disputes and to provide social protections through the safety net provided by minimum award wages and conditions;
- consultation and cooperation between workers, their unions and management/employers as essential ways to ensure workplace reform is implemented on a sustainable and equitable basis;
- a legitimate role for Government in the reform process through supportive and catalytic programs to promote desired outcomes at the national, industry and workplace levels.

This practical approach, founded on firm social democratic values, is directed toward delivering the best *and* fairest economic outcomes for Australia.

3. Achievements to Date

Since 1983 we have pursued this approach with notable success through the Accord between the Government and the union movement and by implementing substantial reforms to the institutional framework.

- The Accord approach to managing wages policy with its focus on broad living standards (ie. household income, taxes and the social wage) has resulted in more moderate aggregate wage outcomes, particularly in periods of strong demand growth (Lewis and Kirby 1987, Chapman and Gruen 1990, Lewis and Spiers 1990).
- Since 1983 there have been an extra 1.4 million jobs created. Chapman, Dowrick and Junanker (1991) estimate that a significant proportion of these jobs were directly created by the Accord's success in moderating aggregate wage outcomes.
- The moderation of wage outcomes was a major factor in the reduction and stabilisation of the inflation rate in the 1980s and contributed to the dramatic reduction in inflation in the past 18 months.
- There is overwhelming evidence that the cooperative approach which characterises the Accord has resulted in a marked reduction in industrial disputation (Beggs and Chapman 1987, Chapman and Gruen 1990). Chapman and Gruen (1990, p. 32) conclude,

There is now evidence that decreases in strike activity are a world-wide phenomenon for the 1983-87 period, as has been argued by some critics. But while the fall for the rest

of the world is about 40 per cent, the Australian diminution in strike activity, at around 70 per cent, is clearly much greater than this.

- The Accord and the centralised wage system moved from being an instrument of macroeconomic policy to also driving microeconomic reform in the labour market. Since 1987 wage increases have been linked to changes aimed at improving efficiency either at the award, industry or workplace level. As Green and MacDonald (1991, p. 566) state,

Certainly, the 1987 restructuring and efficiency principle provided a powerful catalyst for firms not just to include labour flexibility in their restructuring agenda, but to develop such an agenda in the first place.

- The process of award restructuring promoted by the AIRC and supported by the Accord partners has provided substantial gains in flexibility with particular emphasis on functional flexibility (ie. that kind of flexibility which involves the ability of employees to perform a wider range of tasks than was traditionally the case). Awards have become less prescriptive. The importance of this should not be underestimated. "For management, increased functional flexibility is an essential prerequisite for increased efficiency at the workplace, for without it labour and capital equipment would continue to be under utilised and the introduction of new forms of work organisation, particularly those based on teamwork, would be impossible" (*ibid*, p. 586)

The increased functional flexibility has also had benefits for employees, through the introduction of career paths based on accredited skills and competencies. These provide a strong incentive for skill acquisition.

- The more cooperative approach fostered under the Accord and the process of negotiation involved in accessing wage increases under the AIRC's wage fixing guidelines since 1987, coupled with pressure from underlying market forces started the process of transforming industrial attitudes and behaviour on a widespread basis. This process has been assisted by our funding of training programs and my Department's Workplace Reform Program and Best Practice Demonstration Program. The latter program has been particularly successful because it promotes a holistic approach to reform. The program recognises that industrial relations reform and improved labour flexibility are by no means the sole preconditions for success

in achieving best practice. Industrial relations reform can only be maximised in the wider context of up to date equipment and production techniques, competitive distribution and marketing and most importantly a properly resourced strategic and participative management role.

- The legislative framework governing the federal industrial relations system was thoroughly overhauled and modernised in 1988. The process included the introduction of a major new avenue of flexibility through a new kind of award, section 115 certified agreements. A certified agreement operates as a fixed term, 'closed' award for its agreed specified period which need not necessarily conform with the wage fixing principles.
- Union rationalisation has been encouraged by the Government, so that unions are moving closer to an industry basis of organisation and operation, rather than the craft and occupation-based system of the past. Since the mid-1980s the number of unions has fallen by 16 per cent (ABS Cat. No.6323.0) and there are currently around 50 amalgamations in train affecting over 100 unions. Where there are multiple unions at workplaces there is now a major move to negotiate with employers as a single bargaining unit. This will go a long way to deal with the problems of multiple union representation at the workplace (Hancock Report 1985, Pappas *et al* 1990).

4. The Move to Workplace Bargaining

The Government's support for workplace bargaining within the award system is based on a belief that this is the most effective way to accelerate the utilisation of the enhanced flexibility between and within the different award types. It became clear by 1990 that while substantial progress had been made in restructuring awards and some innovative and productive use had been made of section 115 certified agreements, not enough practical use had been made of them at the workplace level (DIR 1991). We recognise that it is only at the workplace level that the productivity gains from the ability to use labour more flexibly will be realised.

My Department's 1989-90 Australian Workplace Industrial Relations Survey (AWIRS) found that many workplaces do not have the infrastructure to underpin workplace negotiations. Some have argued that this means the move to workplace bargaining is premature. We believe, however, that the most effective way to accelerate change and develop the infrastructure is to push ahead with workplace bargaining and by so doing pressure laggard

companies and unions into make the necessary changes to their consultative and bargaining arrangements.

The AIRC, after initial reservations, accepted the tripartite push for workplace bargaining through the introduction of its Enterprise Bargaining Principle in the October 1991 National Wage Decision.

Since October there has been some excellent workplace agreements ratified by the AIRC but such agreements have not been widespread. While this is due in the main part to the complexity of fundamental and comprehensive reform there is also evidence that the current recession has slowed down the workplace bargaining process (Curtain, Gough and Rimmer 1992).

To ensure that there is no unnecessary complexity to workplace bargaining the Government is currently undertaking a further revision of the Industrial Relations Act 1988. The conditions relating to certified agreements will be reviewed to ensure that such awards are available as a real alternative to the mainstream award system and not reserved for exceptional circumstances. Parties should have greater confidence that their agreements, based on their expert knowledge of their own particular circumstances, will be accepted for certification.

There will be simple criteria for certification: no disadvantage to employees; the inclusion of dispute-settling provisions; and consultations by unions with their affected members about the agreement. If an agreement applies to a single business or single workplace there must be a single bargaining unit comprising all relevant unions, though in appropriate circumstances the Commission could permit exceptions. The broader public interest test will be removed for single businesses/workplaces but the Commission will still be able to refuse to certify an agreement, on broad public interests grounds, which applies more widely than a single business.

Nothing in the proposed legislative changes will in any way reduce the AIRC's role in protecting minimum wages and conditions of employment. The Commission will judge whether or not the workplace agreement taken as a whole will disadvantage employees. There will be scope, for example, for conditions such as penalty rates to be removed if the package as a whole leaves workers with no disadvantage. The legislation, however, is not intended to allow any reductions in conditions which apply across the community such as maternity leave, standard hours of work (although there is flexibility in how these are arranged), parental leave, minimum rates of pay, termination change and redundancy provisions and superannuation.

To complement the proposed legislative changes encouraging workplace reform, the Government is refocussing and more closely integrating its programs promoting reform. We are aware that countries such as Japan,

Germany and Sweden have strong government involvement in assisting companies to achieve world best practice standards of operation (DIR and AMC 1992). It is naive to assume that underlying market pressure, while important, is adequate for delivering the reform of the scope and urgency required. Such a presumption underestimates the extent of new skills required by all parties - managers, employees and union representatives. Although many organisations recognise the need to change they are hamstrung by not being able to identify what changes to make, how to make them, or where to start. The Government will be providing extra resources for a more concerted approach to educative and networking activities generating further impetus to change and providing a means of diffusing information on successful strategies and models.

The encouragement of workplace bargaining has been reflected in the shift away from an aggregate wage target agreed between the Accord partners to a more sophisticated commitment taking into account productivity and our trading competitors' rate of inflation. The Accord partners have agreed to work towards aggregate wage outcomes consistent with keeping Australia's inflation rate at levels comparable with those of our major trading partners. Wages policy will remain a vital tool for macroeconomic management.

We support a continuing role for National Wage Cases (and Test Cases such as that which established parental leave in 1990) subject to our objective of keeping our inflation rate comparable with those of our major trading partners. The role of such Full Bench hearings will be to protect the real living standards of those employees not able to obtain wage increases through workplace bargaining and to determine what improvements in the real wages of the lower paid and community standard conditions of employment are appropriate on the basis of productivity gains.

5. The Alternative - Labour Market Deregulation

There are some groups, including the Federal Opposition, who support labour market deregulation. While the term 'labour market deregulation' can mean different things to different people, the groups who espouse it appear to base their model on five fundamental premises:

- a deregulated labour market would operate in much the same way as any other market. If the price of labour was free to fluctuate to reflect underlying demand and supply, unemployment would be eliminated and labour would be efficiently allocated between industries and occupations;

- existing institutions - the AIRC, trade unions and government programs - hinder workplace reform;
- employees and their employer/management are on an equal footing in the bargaining process - hence only minimal legislative protections are required;
- labour flexibility equates with enterprise flexibility and that all forms of labour flexibility are desirable although downward flexibility in wages and conditions is particularly desirable; and
- it is appropriate that *all* wage rises are negotiated only at the enterprise level and are tied solely to productivity gains at each particular enterprise.

The labour market is inherently different from any other market. Covick (1985) identifies four key differences. To begin with, in the labour market it is not possible to separate the seller from what's being sold. It is not the workers who are being sold rather the services that they provide. Workers are not homogeneous and their productivity varies with their level of work satisfaction and usually, with the length of time spent in the job. Workers are able to combine to raise their bargaining power and they have attitudes towards the price at which their labour is exchanged based on notions of status and equity that have nothing to do with supply and demand. It is for these fundamental reasons that the labour market is unique and that treating it like any other market is naive and can be counterproductive.

My discussion above of the Government's policies explains adequately why we believe that the AIRC and well targeted government programs assist rather than impede reform and remain vital ingredients in accelerating further change.

It did not, however, touch specifically on the role of trade unions in the reform process. There is strong evidence that unions in recent years have played a catalytic role in industrial relations reform and workplace reform in particular. Green and MacDonald (1991, p. 582) examine the data from the AWIRS to explore the hypothesis that the award system and trade unions "constitute significant barriers to flexibility". They concluded that:

The AWIRS evidence does not bear out the view that moves towards workplace flexibility are restricted by the arbitration system and trade unions. The evidence suggests instead that considerable change is taking place in Australia in the areas of functional, wages and procedural flexibility, and that change is especially apparent in large workplaces *with 'active' trade unions* and a 'structured' management approach. (emphasis added)

The *Australia Reconstructed* report in 1987 from the ACTU and the

Trade Development Council had an important role in promoting the consciousness that Australian companies needed to adopt world competitive standards of operation. In addition, the success of the Accord outlined above demonstrates the benefits of working co-operatively with the union movement.

The mistaken preoccupation with unions and the AIRC means that the real barriers to reform are often ignored. The AWIRS data confirms that one of the fundamental barriers to workplace reform is lack of management skills and lack of management autonomy at the workplace level in pursuing change. As Green and MacDonald state:

The problem of management inertia will not be resolved by dismantling compulsory arbitration and restricting the role of unions at the workplace, for as we have shown, revised wage principles and union initiatives have promoted flexibility as an important factor in making Australian industry efficient and competitive.

The implications of the third premise of the deregulationist's - that employees and employers/management have equal bargaining power - are: that there would be no role for the AIRC in vetting enterprise agreements for fairness, rather employees would be protected by legislative minimums; there would be a minimal role for trade unions; and common law would be used to settle disputes in the industrial arena but there is no need to provide even conditional immunity from common law damages for collective action by employees.

We strongly reject as dangerously naive and fundamentally unjust the belief that, in a free market, employees and employers negotiate on an equal footing. The inherent imbalance in the bargaining power of employees and employers is generally recognised. As a result all civilised societies recognise the rights of workers to form and join trade unions and to have their interests represented by them. As the ILO Governing Body's Committee of Experts on the application of ILO Conventions and Recommendations has stated, the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their social and economic interests.

Many employees who have low skills or skills in excess supply or who work in declining industries would be vulnerable to unjustifiable reductions in wages and conditions without the protection of the awards of the AIRC or membership of well resourced trade unions. Most employees would not have the time or resources required to take action against their employer in a civil court in circumstances where they felt their employer was taking advantage of them in respect to their employment contract.

I now turn to the fourth premise on which the labour market deregulation

model appears to be based. It equates labour flexibility with enterprise flexibility. Moreover, it has a narrow focus on a particular aspect of labour flexibility, namely downward flexibility in wages and conditions. It should be clear that enterprise flexibility and labour flexibility are not synonymous. The former is the ability of management in detecting and responding to changing market circumstances. As Frenkel and Peetz (1990, p. 581) point out, some elements of labour flexibility enhance enterprise flexibility, but some can hamper it:

A firm that is able to use multiskilled tradespeople to produce a wide variety of products can respond better to changing markets than a firm without such tradespeople. But in a firm that can reduce, unchallenged, the number of employees, their wages or the hours they work when markets change, management does not experience the same pressure to adapt products to consumer preferences as is felt by a firm with less unilateral control over employment and earnings. The first example of flexibility enhances enterprise adaptability to changing tastes but the second retards it.

Other researchers have highlighted the different types of labour flexibility and support the view that functional labour flexibility has the greatest potential to assist companies to achieve world competitive performance. Unhindered downward flexibility in wages and conditions can have the opposite effect in the longer run (Green and MacDonald (1991) and Anderson *et al* (1992)). Green and MacDonald point out the role the AIRC has had in promoting functional flexibility.

... the national wage principles have served to highlight the need to develop an approach to flexibility that emphasises long-term, dynamic efficiency gains rather than simple allocative efficiency through cost minimisation.

Thus the preoccupation with downward flexibility in wages and conditions over and above other forms of labour flexibility is likely to be counter productive to the aim of encouraging companies to adopt world best practice standards of operation.

The fifth and final premise on which labour market deregulation is based is that it is appropriate that *all* wage rises are negotiated only at the enterprise level and are tied solely to the productivity gains at each particular enterprise. We have argued that such an approach, in the absence of any Accord type co-ordination or National Wage Case consideration, not only will be inequitable; it will also have an inflationary bias. Layard (1991) confirms this view. He argues that proponents of uncoordinated enterprise bargaining believe that if a firm's wages rise only as fast as its productivity then the its unit labour costs will be constant and so will its prices - so productivity-based pay will eliminate inflation. He cautions against this view:

Unfortunately this argument is like the voice of the siren; it sounds sweet and reasonable but it leads to disaster. For there are huge differences in productivity growth between sectors, which are mainly due to technological factors and not to the effort of workers. Thus some sectors have inherently greater productivity growth than others. For example, in 1979-86 productivity growth in manufacturing varied hugely between industries - doubling in synthetic fibres while it was constant in brewing. If pay had been based on productivity, wages in synthetic fibres would have doubled relative to those in brewing.

Would this have been reasonable? Of course not. And in fact, the wage increase was identical for both industries (70%). *Competition for labour will always produce a going rate.* But this rate will be unreasonably high if high-productivity growth enterprises are encouraged to pay large pay increases, while other industries end up paying the same in order to retain labour (Layard 1991, p. 20).

It is for this reason that we believe that the commitment of the Accord partners to achieve moderate aggregate wage outcomes is in fact more important in the world of workplace bargaining than it was in the centralised system of the 1980s.

It is worth examining the constitutional constraints on the model of labour market deregulation, without the full co-operation of *all* the States. There is only a limited constitutional foundation at the Federal level for the model of deregulated enterprise level bargaining supported only by a safety net of statutory minimum protections for workers.

The Commonwealth's powers to make laws in relation to industrial relations in the private sector have traditionally relied on the conciliation and arbitration power [s.51(xxxv)] which relates to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of one state. There is, of course, an intriguing contradiction in the idea of pure labour market deregulation and the process of legislating to make it work. If the Commonwealth simply abandoned the field (for example, by repealing the compulsory conciliation and arbitration powers of the AIRC and terminating its awards), the result would be the unfettered application of State and, where applicable, Territory industrial relations laws. Thus, employers and workers whose relationship was previously covered by federal awards could find themselves bound by State common rule awards.

Accordingly, a Commonwealth Government committed to enabling parties to engage in deregulated collective bargaining would need to establish a system supported by federal laws which overrode inconsistent State laws.

For this purpose, a Federal Government, although having complete legislative power in relation to the Territories, would have to rely on the corporations power [s.51(xx)] and the interstate and overseas trade and commerce power [s.51(i)] under the Constitution.

The result must inevitably be a curious patchwork. Any legislation, if it came into being, might provide for direct bargaining between:

- employees and employers, if those employers are foreign, trading or financial corporations: or
- employees who are performing work in relation to those of their employers' activities which involve interstate or overseas trade and commerce.

As a consequence, the scheme, including any requirements for a minimum wage or conditions of employment, can only have relatively limited application. For example, many small businesses would not be covered either because they are unincorporated and/or are not involved in interstate or overseas trade and commerce. It is interesting to note that 1986-87 small employers accounted for 48 per cent of private sector employment (ABS Cat. No. 1321). In 1986 77 per cent of small businesses were unincorporated (House of Reps. Standing Committee 1990).

Thus for many employers and employees a deregulated system will not be available. Its effects may be felt by them, nonetheless, if other employers are able to use employment contracts to undercut awards, giving the employers concerned a short term competitive advantage.

6. Conclusion

The model of labour market deregulation is based on false premises. As a result it does not contain adequate safeguards to protect vulnerable employees. It would weaken or remove the very institutions which have been driving the reform process while leaving to market forces the real constraints to reform. It puts more emphasis on achieving cost cutting flexibility than the more dynamic and beneficial types of labour flexibility. It champions a system with an inherent inflationary bias, leaving the economy particularly vulnerable to a wages blow-out in periods of strong economic growth.

In contrast, our policies of labour market reform are based on a clear understanding of how the labour market works in practice. We recognise that employees and management need skills and incentives to undertake productive reforms at the workplace level. We understand that employees

must feel their rights and interests will be protected if they are to cooperate fully in workplace reform. To this end, we support co-operative and equitable workplace bargaining within the coordinated framework of the Accord and the AIRC. We support and fund training programs and catalytic reform programs to assist both management and employees to develop the required skills and provide them with practical examples of how to go about reform. At the same time we seek ongoing improvements to the system. Our proposed legislative changes, further rationalisation of trade union and award structures and the refocussing and expansion of our workplace reform programs will all enhance the system's ability to influence and facilitate reform

The fundamental objective of the Government's industrial relations policy is to encourage Australian companies to adopt work and management practices which are the best *and* the fairest. We believe that being the best and being the fairest are complementary goals - an exclusive focus on efficiency without taking into account equity considerations is likely to be counterproductive in achieving our aim of a high wage/high productivity society.

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