Howard's Way

INDUSTRIAL RELATIONS

Ron Callus

On 23 May 1996 Peter Reith, the Minister for Industrial Relations, introduced into Parliament the Workplace Relations and Other Legislation Amendment Bill 1996. A benign view of the changes contained in the Bill is that they merely represent a continuation of the decentralisation of Australian industrial relations that began with the Labor Government's move to enterprise bargaining. This view, however, understates the legislation's potential for radically changing our system of industrial relations and, more importantly, the system of altering wages and conditions for many workers.

At the heart of the proposed changes is an attempt to fundamentally alter the basic tenets of our industrial relations system through the provision of Australian Workplace Agreements (AWA) or individual employment contracts. While individual contracts have always been available in our system, covering up to about 30% of the workforce that tend not to be covered by awards, these have traditionally been for professional or managerial workers. The significance of the new AWA stream is that they give management the ability to move award workers such as labourers, cleaners, clerks, hotel worker and sales staff to individual contracts. The wages and conditions of award employees have always been by definition determined collectively, workers being represented by unions in hearings before the industrial commission or when negotiating directly with employers.

Our system of industrial relations has always recognised that, for the purposes of bargaining over changes to wages and conditions, most individual employees are in a relatively powerless position vis-a-vis their employer and that there is an asymmetry of power in the employment relationship. Individual employees have never been respondents to

awards: they are negotiated on their behalf by unions or, in the case of non-union agreements, employees collectively. For this reason a key feature of our system of industrial relations has been that traditionally legislation has explicitly encouraged the formation and recognition of collective organisations for the purposes of bargaining.

While the Bill provides that certain minimum conditions must be contained in AWAs, such as pay being no less than that prescribed in the award, there is no requirement that the AWAs will be scrutinised by the Australian Industrial Relations Commission or the newly created Office of the Employee Advocate. All AWA's will be secret and will merely be filed with the Office of the Employment Advocate. If individuals feel that the AWA is unfair or does not provide for the minimum condition they must lodge a complaint against their employer with the Employee Advocate who can assist employees in prosecuting breaches through the courts.

The Government claims that introducing AWA's into our formal system increases the choices of regulatory systems under which employees can work. In reality the increased choice will be for employers, not employees who have no real choice as to what regulatory system covers them. It will be employers that will decide if their employees work under an award, a collective agreement or an individual contract. Where unions are active the choice may be the subject of negotiations.

In effect, for workers with no real market power or recognised skills there will be no meaningful negotiations under a system of AWA's. Employers wishing to implement AWA's for their employees will offer contracts on a take it or leave it basis. How and when contracts would be renegotiated under this system remains unclear. The proposed Act effectively opens up the real possibility that for some workers at the bottom end of the labour market many aspects of their working conditions will be unilaterally determined and changed by management. The supremacy of collective bargaining for the majority of employees may no longer be the case under the proposed legislation.

Another proposed change that will fundamentally alter our unique system of industrial relations is the role of third party intervention. Australia's unique arbitration system has always been supported by the

belief that there is a need to develop principles and rules that ensure that there is fairness in outcomes and that the broader social goals of equity in wages and conditions are recognised. In addition, our system has always recognised that there is the possibility of disagreement and conflict in any industrial relations system. For this reason a key objective in previous federal industrial legislation has always been the prevention and settlement of industrial disputes. This is no longer the case. The principal object of the new Act will be to "provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia...". This reflects the view of the Government that industrial relations is not conflictual.

While cooperation is indeed the preference of most players in the system, industrial disputation and disagreement are an inevitable and unavoidable feature of any mature industrial relations system. Australia has always had a unique institutional mechanism for dealing with this - compulsory arbitration. This has proved to be an effective means of preventing industrial disputes by means of a neutral umpire resolving differences and ensuring fairness in outcomes. The Federal Government is now proposing that the powers of the Industrial Relations Commission to settle and prevent future disputes be redefined and restricted.

One way in which the powers of the Commission will be limited is the proposal to reduce the types of issues that will be able to be included in awards. Awards will be stripped back or 'simplified and will no longer be able to regulate a wide range of issues such as disciplinary issues, occupational health and safety, training and superannuation. Awards will only be able to deal with 18 specific issues relating to wages and conditions. The Act, for the first time, leaves the determination of important employment conditions unregulated. It is possible that over time, awards will merely provide a safety net level of wages similar to the role of minimum wage legislation in the USA. Currently award rates of pay represent "fair" wages based on the value of the work and level of responsibility and skills needed to do a job. Under the proposed legislation wages may increasingly reflect the lowest rate that the worst employer would pay.

Finally, consistent with the Government's desire to limit the role of parties outside the employer - employee relationship, unions will have

restrictions placed on their ability to recruit and visit members, take industrial action and effectively represent the interests of their members.

The new industrial relations environment the Government wishes to foster is based on the primacy of secret, individual contracts of employment. For the Government, outcomes would ideally no longer be collectively determined in many cases. Individualism as a basis of our industrial relations system with only a minimalist role for external forms of regulation is a radical departure with the past. It is a stark break with the unique Australian approach to industrial relations which saw an important role for unions and independent industrial relations tribunals to redress the power imbalances inherent in the employment relationship. Concepts such as "public interest test", "comparative wage justice' and "no disadvantage" have been the hallmarks of a wage determination system that accepts that the market will not necessarily deliver fair or equitable outcomes.

To what extent the new model of industrial relations individualism will take a hold in Australia remains to be seen. In large organisations that have strong union presence little is likely to change with awards and certified collective agreements determining wages and conditions. It is in the non-unionised service sector workplaces that employers might be tempted to move employers from awards to AWA. Even if the minimum conditions offer some protection for vulnerable employees in terms of wage rates and sick leave entitlements, recent Victorian and Western Australian experiences with individual contracts show that changes to working hours are where employees are likely to be most at risk. Changing working hours are less likely to promote flexibility in balancing work and family responsibilities for employees and more likely to be determined on the basis of the organisation's needs.