EMPLOYER MATTERS IN 2004

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In 2004, employers were active in arguing their cases in a number of important hearings of the Australian Industrial Relations Commission. However, despite a united position among employer ranks and the federal government, employers were generally disappointed with the Commission's safety net review decision. Both the Australian Industry Group and the Australian Chamber of Commerce and Industry found some common ground with the Australian Council of Trade Unions, in a consent position on extending carers leave, but overall employers presented a detailed argument opposing any extension of employee rights in the Commission's work and family test case. Employers in some sectors were able to reach collective agreements with unions with little industrial disruption, whereas others, such as banking, found the going tougher. Overall, employers, like unions, faced a great deal of uncertainty over what were or were not 'matters pertaining', as a number of decisions after the Electrolux case clarified or clouded the issue. Understandably, the year ended on a positive note for most employers, with the Howard Government re-elected with a majority in the Senate, enabling it to pass a further round of radical labour market reforms in 2005.

INTRODUCTION

The increasingly cyclical nature of modern industrial relations in Australia, with—despite the frustrations of the federal government—the key industrial sectors becoming subject to concerted industry-wide pattern bargaining roughly every 3 years, meant that as most of the metals and construction sectors had conducted their major negotiations/battles before 2004, this was likely to be less conflictual than previous years. Added to this, the electoral cycle also contributed to some hesitancy among the major parties, particularly employers, to engage in major disputes as they waited the outcome of the October 2004 election to provide some certainty as to the politico-legal environment.

In this regard, employers were ultimately overjoyed at the re-election of the conservative coalition Federal Government, and positively ecstatic at the surprising political bonus delivered to them by the Australian electorate, in granting the Howard Government majority control of the Senate for the first time. As the year came to a close, industrial relations radicals among employer ranks, began to look forward to 2005 as an opportunity to implement the full array of labour market reforms long cherished and advocated by the radical right, its most prominent voice being the HR Nicholls Society.

As was the case in last year's review, my choice of issues, disputes and cases was determined by an effort to emphasise important concerns and themes, involving both employer associations as well as individual employers. As well, I have

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attempted to cover matters in various parts of the country. Inevitably, there will be some issues or disputes, such as Blue Scope Steel's protracted enterprise bargaining disputation, or employer opposition to recent changes to NSW occupational health and safety laws, which some readers will have wished I had discussed. A review such as this cannot hope to cover all the issues of the year, and so my selection, as was the case last year, is partly driven by my own research interests.

Despite 2004 being notable for the absence of many 'big disputes', employers and their associations were nevertheless active in advocating their positions before a number of important hearings held by the Australian Industrial Relations Commission (the Commission), in particular, the now annual 'safety net adjustment' case, the work and family test case, and the long overdue redundancy case. In addition, employers were active in a number of cases, appeals and hearings related to the *Electrolux* case, which generated a great deal of uncertainty as to the efficacy of a significant proportion of enterprise agreements already certified as well as clouding the waters of current and pending negotiations, and raising some doubts as to the lawfulness or otherwise of much union sponsored industrial action.

In terms of enterprise bargaining, some employers in the finance sector were quite proactive in their negotiations, pushing forward with agendas for organisational reforms, despite facing stiff resistance from unions. The mining sector, subject of much industrial conflict in recent years, continued to exhibit the flexing of muscles by both employers and unions; yet finished the year relatively peacefully, as employers, by and large, sought to take advantage of high commodity prices, by locking in enterprise agreements with unions, so as to maximise their opportunities of getting their products to market.

As regards employer associations, it was interesting to note that 2004 saw the peak big business lobby group, the Business Council of Australia (BCA), re-enter the fray by declaring industrial relations to be one of its priority concerns for 2004 and 2005. The BCA had previously been criticised by other employer groups for its failure, over recent years, to advocate strongly enough for further industrial relations and labour market reforms.

SAFETY NET REVIEW

In response to the Australian Council of Trade Union's (ACTU's) $26.60 'Living Wage' claim, the Australian Chamber of Commerce and Industry (ACCI) and the Australian industry Group (AiG) joined the Federal Government in supporting only a $10 increase, in what may turn out to be the Commission's penultimate safety net review of wages.[1] The only difference between the positions of the two major employer groups was that the ACCI argued for a $10 increase up to the C10 tradesperson's classification, whereas the AiG backed a $10 increase for all awards. This broadly common position of the ACCI and AiG was in contrast to the previous year when the AiG supported an $11 increase, whereas the ACCI argued for no increase at all. In response to these positions, in 2004 the Commission awarded a record $19-a-week increase for all award classifications.[2]

The ACCI's director, workplace policy, Peter Anderson, argued that a moderate increase was justified in 2004 because of the improved stability of the international economy and a strong domestic economy.[3] However, the ACCI argued against any higher increase because of the substantial increases, well in excess of inflation, which had been awarded over the previous 4 years. The ACCI also unsuccessfully sought a month's notice period before employers are obliged to pass on any safety net rise. Peter Anderson stated that employers commonly had to back-pay the safety net increase in the first couple of pay periods after it became payable, because of the time it took for them to be notified of their award being varied.[4]

The AiG argued that the combination of declining global competitiveness of the economy, rise in the Australian dollar and recent poor labour productivity growth were the predominant factors in its decision to support only a $10 increase, down from the $11 it supported in its 2003 submission. The AiG's industrial relations director, Steve Smith, argued that the Commission should consider that after recent changes in tax rates and social security arrangements, transfer payments to workers had boosted their net incomes by up to $15 per week.[5]

In its submission, the AiG also sought a modification of the Commission's wage fixing principles, to require, alongside the commitment to absorb the safety net adjustment into over-award payments, a new commitment to continuous improvement in productivity and efficiency.

After the Commission handed down its decision, which amounted to a 4.2% increase in the minimum wage, the ACCI was critical of the size of the increase, arguing that it was 'clearly excessive' compared to the inflation rate of 2%, and coming after 7 years of increases totalling $118 per week, or 33% since 1997. After the Commission decision, the ACCI's Peter Anderson stated:

> This increase is double the benefit required to keep up with the cost of living and, when added to the increases in recent years and other increases such as the new hike in redundancy pay, is just not sustainable for small and medium businesses and ultimately not in the interests of the Australian economy.[6]

Re-stating an argument publicly rejected by the Commission, Anderson said that economic modelling had shown that up to 50 000 potential jobs could be lost through the 'lost opportunity' of increased labour costs imposed on small and medium businesses.

The AiG said that after the associated increases in superannuation, workers compensation and payroll tax were included, the $19 increase would actually cost employers an extra $25 per employee per week. In addition, the benefits to the low paid would be eroded by tax, with a single-income family with two children earning $450 per week receiving only $13 after tax. The AiG's chief executive, Heather Ridout, argued:

> That is, the employer will pay almost double what the employee will receive ... it is time for a concerted effort to find a better solution to address the needs of the low paid, rather than the annual safety net review process which has a high negative

> impact upon many employers while delivering a proportionally low benefit to low paid employees.[7]

Employer groups' dreams of an end to the annual safety net adjustments came a step closer to reality, with the coalition's election victory and unexpected success in the Senate at the October 2004 federal election.

WORK AND FAMILY TEST CASE

The Commission's work and family test case provided an opportunity for the Master Builders Association (MBA) to apply for the introduction of part-time work and the removal of the prohibition on engaging casuals for more than 6 weeks in the national construction award.[8] In the face of vigorous opposition from the Construction Mining Forestry and Energy Union (CFMEU), the Commission decided that the MBA's application would not be dealt with as part of the work and family test case, but would be adjourned to a later date, so as not to slow down the main test case.[9] Although the MBA would have preferred to have its application considered as part of the work and family test case, the decision by the Commission to hear their proposals separately at a later date, ensured that the issues remained alive.

In mid-2004, employer groups showed a willingness to cooperate with the union movement in finding common ground on some key issues central to the ACTU's claims in the Commission's work and family test case. The agreement reached between the ACCI, the AiG and the ACTU covered a range of matters and were put forward to the Commission as a consent position.[10] One of the most important of these matters was an agreement to double to 10 days a year employees' access to paid sick leave for carers' leave purposes.

The agreement did not increase the quantum of leave entitlement, but rather, allows workers to access 10 rather than 5 days a year of their federal award sick leave provisions, for carers' leave purposes. The agreement also provided casual workers the right to unpaid time off for caring purposes, births and bereavements, constituting the first formal leave provisions for casual employees. The consent position agreed to by the major employer groups and the ACTU provided casuals the right to 2 days off without pay for each emergency, and required that an employer must not fail to re-engage casuals who take such emergency leave.[11]

Despite the consent position regarding carers' leave, employer groups were united in their opposition to the major claims put to the Commission by the ACTU. The thrust of the ACCI and National Farmers Federation (NFF) position was that there should be no further regulation and imposition of further requirements and costs on employers. Instead, workplace agreements were the appropriate mechanisms for solutions to work and family balance issues. The position of the ACCI/NFF was expressed simply in the second paragraph of their reply submission to the Commission, where they argued:

> One size does not fit all. Meaningful solutions to balancing work and family can only be made at the workplace level and are found in making existing employment regulation more flexible. Meaningful solutions will not be found in new economy-wide employment rights and regulations.[12]

The ACCI/NFF also argued that the Commission should reject the ACTU's claims on jurisdictional and statutory grounds. In addition to creating a benefit to employees and a cost to employers, they argued that the claims would:

> (i) Reduce scope to agreed approaches; (ii) Overturn the consensual basis on which employers and employees in workplaces have successfully addressed these issues to date; (iii) Kill stone dead creativity, innovation and accommodation in many workplaces; and (iv) Replace a consensual focus in workplace relations with a compliance focus.[13]

The position of the AiG was couched in broadly similar terms, including the argument, summed up by the exact same words used by the ACCI/NFF, that 'one size does not fit all'.[14] The AiG based its position on the work and family test case, on the following two principles as outlined in its final submission to the Commission:

- While it is important for employers to endeavour to assist employees to balance their work and family responsibilities, it is vital that employers retain their right to manage their businesses in an efficient manner; and
- Work/family balance issues should be dealt with via education, leadership and facilitation—not prescription.[15]

The AiG did however, make some constructive proposals for a 'facilitative' rather than 'prescriptive' approach to generating better outcomes with regard to work and family balance issues. The AiG argued in its submission that the award safety net could include options for flexible hours, job sharing, the 'buying' of extra annual leave and more options available for taking long service leave. The main thrust of the AiG's position was that the award safety net could include clauses providing opportunities for flexible arrangements on all these issues, by mutual agreement between employers and employees.

Essentially, the major difference between the approaches of employer groups as opposed to the ACTU was that the former favoured a workplace approach to finding 'win–win' outcomes through agreements, whereas the ACTU sought the extension of workers 'rights' to flexible work arrangements. At the time of writing, the Commission was still considering the issues with a decision expected in the first half of 2005.

AiG WINS ELECTROLUX CASE

The AiG won an important victory for itself and the country's employers in the High Court on 2 September 2004 when a six-to-one majority declared that protected industrial action could only be taken in pursuit of matters pertaining to the employment relationship.[16] The High Court also declared that the Commission could not certify agreements that contained clauses covering matters lying outside those pertaining to the employment relationship.

The High Court decision is a crucial win for the AiG which had been pursuing the matter through the courts for 2 years. The decision overturns the 2002 ruling by the Full Bench of the Federal Court, thus reinstating the earlier decision by Justice Ron Merkel who had declared as invalid, the attempt by a number of

unions, from inserting a clause in their bargaining agreement with white goods manufacturer Elextrolux imposing a $500 bargaining fee on non-unionists.

The AiG funded the High Court appeal, because of its fear that the Federal Court full bench decision would open the floodgates to lawful industrial action being pursued by unions in support of a wide range of social and political issues and causes, lying well outside the employment relationship. The AiG's industrial relations director Steve Smith said the decision was important in that it covered industrial action in pursuit of employer payments into various union-established funds unrelated to the employment relationship, such as for environmental or political causes.[17]

The AiG's victory in the High Court did, however, create some uncertainty surrounding the validity of a large number of existing certified agreements that contained matters not pertaining to the employment relationship. The AiG made it clear, however, that it was unlikely to re-visit existing agreements when the AiG's Smith stated that it was 'not in unions' or employers' interest to re-open agreements that have already been settled'.[18]

Despite the High Court's decision, the year ended with continuing uncertainty as to what matters were or were not those pertaining to the employment relationship, and whether industrial action taken in pursuit of such claims could therefore constitute 'protected' action.

AT THE COAL-FACE

Often the scene of intense industrial conflict and turmoil, as powerful employers battled militant unions, the coal sector in 2004 witnessed certified agreements being reached between major companies and unions, in stark contrast to the situation of the late 1990s, which saw the Commission describe a dispute between Rio Tinto and the CFMEU as 'the battle of the Titans'. More recently, coal industry employers have been preoccupied with shoring up productivity improvements achieved in recent years, and securing certainty of production, so as to take full advantage of the current (and expected medium term) high prices for coal. With ships lined up at coal ports on Australia's eastern seaboard waiting to load coal for export at record high prices, employers were in no mood to provoke lengthy disputes with unions in 2004.

The two largest miners, BHP Billiton (BHPB) and Rio Tinto ended 2004 with a number of important certified agreements settled with the CFMEU. Management at BHPB initially faced off with the CFMEU; which conducted an 8-week strike at the company's Eloura mine in the Illawarra region of NSW, over the company's decision to terminate the site's previous enterprise agreement. At stake was the manner in which workers' hourly rate was calculated, because of its ramifications for redundancy payouts, with the mine due for closure mid-2005. As well, the unions were pressuring the company to follow local custom and practice in offering employment to these workers at the company's new Dendrobium mine located next door to the Eloura mine. Ultimately, after lengthy conciliation by Commissioner Ken Bacon, management largely conceded to the union's wage demands, with a new agreement with the CFMEU being certified on 25 November. The company, however, would not budge on its recruitment and

employment practices, refusing to provide first offers of employment at the new Dendrobium mine to its soon to be redundant Eloura mine workforce. The company maintained that, like other mining companies, it would continue to select workers on merit alone.[19]

At BHPB's nearby Westcliff mine, management settled a new certified agreement with the unions without any industrial action being taken. Meanwhile, a 3-year agreement with the unions was certified at BHPB's Mt Arthur mine in the Hunter Valley region of NSW, which will take production workers (who work a 43-hour week) salary to over $120 000 in its final year.

Rio Tinto management was successful in introducing annualised salaries—common to arrangements at other Rio Tinto sites—into a certified agreement with the CFMEU, covering workers at a Hunter Valley coal loader. The facility, although managed by Rio Tinto, is owned by a consortium of Excel Coal, Xstrata and Rio Tinto, who each operate one of the three mines serviced by the loader. Many of the employment practices initially resisted by unions, including annualised salaries, are now becoming increasingly widespread in the coal industry. The CFMEU's Peter Jordan said the move to annualised salaries was popular with the workforce, and would lead to loader/operators (who work a 35-hour week) earning over $105 000.[20]

With record coal prices, the focus of mine employers in 2004 was clearly on guaranteeing production, rather than cost minimisation, which was a stronger focus during the mid to late 1990s. Whether this apparent détente between the major coal mining employers and the CFMEU is anything more than a temporary truce is difficult to ascertain, but as long as coal prices remain high and there is strong demand for Australian coal exports, it would seem to be in most employers interests to 'maintain the peace'.

METALLIFEROUS MINING

The metalliferous sector, which covers all non-coal mining, remains largely non-unionised, a legacy of the collapse of the Australian Workers Union (AWU) membership base, which occurred in the late 1980s and early 1990s. In recent years, employers in this sector have faced efforts by the CFMEU to fill the union void. The year 2004 was yet another where employers found themselves shoring up the membership rights of the more compliant AWU fend off the encroaching CFMEU. From Western Australia to Tasmania, employers, facing worker resistance to non-union arrangements, found themselves assisting the AWU rather than allowing the CFMEU to gain a foothold in their industry.

In Tasmania, the CFMEU's attempt at registering an enterprise award at PlacerDome Asia Pacific's Henty gold mine was undermined (no pun intended) by management's decision to, instead, certify a collective deal with the AWU. The industry's main employer body, the Australian Mines and Metals Association (AMMA), arguably the nation's most proactive union-busting employer association, helped broker the deal between the company and the AWU. Fearing the CFMEU would be successful in it's quest for an enterprise award, after witnessing a significant growth in CFMEU membership after the company's decision earlier in the year to replace the existing non-union collective agreement with common law contracts, the AWU approached both the AMMA and the company

to reach a deal which would freeze out the CFMEU. The agreement struck with the AWU essentially maintains the arrangements under the previous non-union agreement, but guarantees the workforce annual minimum pay rises (the State wage increase).[21]

According to Bill Fitzgerald from the AMMA, the Commission's decision to register the company's agreement 'reinforces the AWU as the appropriate union in the industry'.[22] In a revealing statement, Commissioner Tim Abey, although certifying the AWU agreement, said he had 'some difficulty in accepting [that the agreement between the company and the AWU] ... was not motivated, at least in part, by a desire to keep the CFMEU off the site.'.[23]

Despite this move by the AMMA to support a collective agreement, the association remained firmly at the forefront of efforts to de-unionise the sector through the use of individual contracts. At its annual conference in March, the AMMA went on the political front foot in the lead up to the federal election, when a 16-page paper was released by its president, BHPB's Graeme Hunt, stating that employers in the resource sector were concerned that the legislative pendulum does not swing back to a more highly regulated labour relations system that restricts direct employer–employee arrangements'.[24]

Although the national take-up of Australian Workplace Agreements (AWAs) was approximately 3%, the paper claimed that 50% of all federally covered resources sector employees are on AWAs. Furthermore, it claimed that the figure for non-coal mining employees in Western Australia's resource sector was over 80%. Extolling the benefits of individualised employment arrangements for employers, the AMMA paper stated: 'companies that have individual agreements in use do report improved industrial dispute records since the inception of individual agreements.'

In early August, on the eve of the Australian Labor Party's industrial relations policy launch, the AMMA released a paper proclaiming the virtues of individual contracts, and arguing that AWAs were superior to common law contracts, chiefly because of their ability to override and displace award terms and conditions.[25] The AMMA argued for changes to awards (state and federal) to make it easier for common law contracts to be effective and for a legislative provision that expressly allows for opting out of an award or collective agreement by entering into an individual contract or agreement. Reflecting the success of employers in the metalliferous sector, particularly in Western Australia, to de-collectivise (and de-unionise) their employment relations, it is hardly surprising that the AMMA remains the most militant of the country's employer associations, vying only with the HR Nicholls Society for the vigour with which it continues to push its union-busting agenda.

The year 2004 also saw the AMMA become the country's first national employer association to be awarded ISO9001 accreditation. Demonstrating the increasing professional focus of employer associations as service providers, across a number of areas, the AMMA's South Australian state manager Chris Platt reported that the association's 'five ticks would allow it to help a growing number of companies that require service providers to be quality certified'.[26]

The Pilbara region of Western Australia, the site of ferocious industrial disputation in the 1980s and early 1990s, continues to attract the focus of industrial

relations attention by the main employers, Rio Tinto and BHPB, in the face of renewed attempts by the union movement to regain lost ground in terms of membership and organisational effectiveness.

As a means of thwarting the emergence of the unregistered Pilbara Mineworkers Union (PMU), which had been supported by the ACTU and other mining unions, through a concerted community-based organisational drive, Rio Tinto reached a secret deal with the AWU on a consent federal award in mid-2003. This deal was immediately subject to legal challenges, as the unions locked out of the agreement, the CFMEU, the Australian Manufacturing Workers Union (AMWU) and the Communications Electrical and Plumbing Union, sought to stop the Commission from registering the Rio Tinto/AWU consent award. The state-based mining unions sought to have Rio Tinto's iron ore operations subject to Western Australian (WA) industrial regulation.[27]

In June 2004, a full bench of the Commission rejected the unions' arguments to have industrial regulation at Rio Tinto's Hamersley Iron operations determined by the WA Industrial Relations Commission.[28] The effect of this decision, while providing the AWU an opportunity to re-establish a presence among the Hamersley Iron workforce, is a body blow to the rank and file supported PMU, which had been steadily building a new home-grown organisational base for its community-based form of unionism.

In a strange twist, the full bench, while agreeing to make a new AWU/Hamersley Iron award, conceded that the unions locked out of the agreement could reasonably describe the AWU's conduct as 'duplicitous and untrustworthy'. Furthermore, they accused the AWU of failing to act in the interests of award employees, and of 'acting through officers effectively aloof' from the rank and file activists, especially those from the PMU, 'who had invested heavily their time and involvement to achieve a revival of effective collective representation in the Pilbara'.[29] Regardless of these harsh words, the full bench of the Commission effectively rewarded this duplicitous behaviour.

Rio Tinto has once again been able to out manoeuvre the ACTU, and in particular the CFMEU—which had strongly backed the formation of the PMU—by effectively driving a wedge between them and the AWU. Rio Tinto management have made the strategic choice to protect the AWU, as a means of keeping out more militant unions.

Elsewhere in the Pilbara, other employers are continuing their de-unionisation agenda. The contractor responsible for operating BHPB's giant Yandi iron ore mine, Henry Walker Eltin (HWE), locked out its workforce for 24 hours on 1 August as part of the company's battle with the AWU and AMWU over the introduction of AWAs.[30] The company was standing firm on its decision to have part of its workforce on AWAs and the other subject to a collective agreement. Of the 240 odd workforce, by October 2004, the company claimed to have signed 80 on to AWAs, although this figure was disputed by the unions.[31] Given the history of BHPB's attempt, over recent years, to emulate Rio Tinto's earlier successful de-unionisation push at Hamersley Iron, in all probability HWE would not be proceeding with its promotion of AWA's if it did not have the support for such a move from BHPB. However, if HWE fails to generate a much larger take-up rate

for their AWAs, they may find that BHPBs patience wears out, as their current contract was up for renewal at the end of 2004.

Overall, employer strategies in the metalliferous sector continue to reflect an opportunistic approach, favouring non-union arrangements, where at all possible, but failing that, ensuring that the more compliant AWU is enabled to secure principal union coverage, in order to exclude the more militant CFMEU. Thus far, employers in this sector have been enormously successful in securing these outcomes.

WHICH BANK?

Despite some differences in approach, 2004 witnessed the emergence of (seemingly) pattern bargaining by several of the major banks with the Commonwealth Bank (CBA), the ANZ and Westpac all deciding to unilaterally award 4% pay rises to their employees after failing or choosing not to reach enterprise bargaining agreements with the Finance Sector Union (FSU).

The ANZ announced in May that it would introduce a 4% pay rise in July, but would continue with its policy of refusing to negotiate a new union enterprise agreement.[32] Some months later, Westpac followed the ANZ and CBA in announcing a unilateral 4% pay rise for its employees, after failing to reach a settlement with the FSU.[33]

The CBA, which has been pursuing a series of organisational and structural reforms in recent years, spent much of 2004 engaged in conflict with the FSU. CBA management, including the Bank's chair, John Ralph, and its head of human resources, Les Cupper (both formerly from CRA), have been attempting to transform what they perceive to be an outdated public sector culture within CBA, so as to increase the individual accountability of its staff, thereby improving the bank's overall level of performance. In following such a transformational path, CBA's management has succeeded along the way in convincing many of its employees, and their union, that the bank's ultimate objective is to de-collectivise its employment relations, thereby de-unionising its workforce.

On 1 July 2004, in response to a 24-hour strike by staff, the CBA unilaterally began paying its employees a 4% pay rise, while refusing to accede to the FSU's demands for a 5.5% increase.[34] The National Australia Bank, which has become the industry's pace-setter for wages, had already agreed to a 4.5% increase for its staff. As well as resisting the union's wage demands, CBA management was determined to retain issues surrounding staffing levels as matters for management policy, rather than allow them to become subject to a certified agreement.

At year's end, the enterprise bargaining negotiations were still unresolved, and the bank went on the offensive by using the *Electrolux* decision (see above) to challenge the legality of the union's industrial action on 5 November, when approximately 150 workers stopped work to attend and demonstrate at the CBA's annual general meeting.

Management's challenge to its employees' 'right to strike', found them taking the FSU to the Federal court, claiming that the FSU's industrial action had been unprotected, because some of the claims in the union's bargaining notice were matters outside those pertaining to the employment relationship.

CBA spokesperson Bryan Fitzgerald claimed that the union had been warned in advance by the bank that its proposed industrial action was unlawful, in light of the *Electrolux* decision, but that the FSU had proceeded with its industrial action regardless.[35] In taking its case to the Federal Court, the bank sought penalties of up to $10 000 under s.190NC of the *Workplace Relations Act*.

One bank which successfully reached an enterprise agreement with its staff was St George, which agreed to a 12% rise over 3 years and an additional 4.3% to its lowest paid staff. Interestingly, St George has never suffered industrial action during enterprise bargaining negotiations.[36]

ON THE WATERFRONT

In keeping with every year since the epic 1998 waterfront dispute, 2004 also passed by with not a single day lost through industrial action on the wharves operated by the Patrick Corporation. The remarkably changed industrial relations environment on the waterfront is testament to the changed power relations now operating there since the re-establishment of managerial prerogatives in the aftermath of the 1998 dispute. Having achieved a considerable downsizing of the workforce (total stevedoring employment has declined by over 20% since 1996), and considerable increases in productivity, Patrick's management in 2004 saw value in locking in certified agreements with the Maritime Union of Australia (MUA), virtually bringing to an end the use of casual labour at the company's container terminals and greatly reducing their use in the company's bulk and general stevedoring operations.

Patrick's boss, Chris Corrigan, explained that the new rostering flexibility introduced with the new deal made it viable for the company to offer more permanent jobs.[37] No doubt, facing an increasingly tight labour market, Patrick's management have taken a strategic move to secure its workforce, now well drilled in the work methods and practices established in recent years under the direction of Corrigan's management team.

Stevedoring employers (chiefly Patrick's and P&O) have enjoyed significant increases in productivity in their operations, particularly since the 1998 waterfront dispute. Figures compiled by the Federal Department of Transport and Regional Services reported that in the June quarter 2004, the five big Australian ports (Melbourne, Sydney, Brisbane, Adelaide and Fremantle) moved an average 28.2 containers an hour, compared with approximately 16 containers an hour a decade ago.[38] More importantly, the level has now been above 25 containers per hour for over 4 years. While management can claim that most of these results directly flow from the new work systems introduced by the company after the 1998 dispute the MUA can equally boast that these dramatic productivity improvements have been achieved by a virtually 100% unionised workforce!

BCA RE-ENTERS THE FRAY

During the early lead up to last year's federal election, the BCA re-entered the industrial relations policy debate by declaring industrial relations to be one of its five priorities for the coming year. Having been at the forefront of the push for enterprise bargaining in the mid-1980s, the BCA had in more recent years othe

priorities on its national agenda. The last time the BCA took a strong position on industrial relations was back in 2000 when its (then) industrial relations policy director Colin Thatcher (who went to become the secretary of the Cole Royal Commission before becoming a member of the AIRC in Western Australia), led a strong push for the establishment of a unitary industrial relations system.

The renewed attention given to industrial relations follows the ascension of former Western Mining CEO Hugh Morgan, to the presidency of the BCA the previous year. In declaring industrial relations an important priority for the coming year, Morgan stated that 'reforms to employer–employee relations have played a major part in Australia's economic success, particularly in providing more jobs and other employment opportunities. We want to see that progress not only maintained but enhanced, so Australia has the levels of workplace innovation and productivity needed to keep our country in top gear'.[39]

Under the BCA's policy and work program used at its national council meeting on 16 March 2004, Wesfarmers managing director, Michael Chaney, was appointed as chair of the taskforce on employment and participation, with a brief to focus on four key areas: increasing labour force participation; boosting labour market flexibility; harmonising state and federal industrial relations systems and increasing skilled migration.

These themes, along with many others, emerged out of the 'scenarios project', a large document produced by the BCA outlining issues and challenges likely to face Australia over the next 20 years.[40] The document consists of wide-ranging environmental scanning of the opportunities and threats facing Australian society, particularly the economy, up until the year 2025. Utilising the expertise of a panel of people drawn from industry, welfare, government, environment and youth, the project was managed by Shell International's Planning and Scenario Unit, based in the UK. Although industrial relations concerns formed only a small part of the whole document, the report made it clear that coming years would see the BCA continue its campaign against what it perceives as the over-regulation of the Australian economy, including the labour market.

As the Howard government prepares in 2005 to begin implementing its legislative agenda for industrial relations, the BCA is likely to be a strong advocate of further reforms aimed at further 'freeing' up the labour market, reducing the power and influence of 'outside third parties' (both unions and the Commission), and for generally providing greater opportunities for employers to unilaterally determine the terms and conditions of employment, constrained only by a much reduced and simplified safety net.

CONCLUSION: BUSINESS SETS THE AGENDA

Towards the end of 2004, shortly after the Howard Government was returned to office with the conservative parties set to assume majority control in the Senate, a 'group of 20' current and former business leaders released an open letter addressed to the Prime Minister, asking him to hold a high-level inquiry into options for further reform of Australia's industrial relations system, with a view to ending the special 'privileges' enjoyed by trade unions.[41] Among the signatories to the letter were Chris Corrigan, chair of Patrick's, Len Buckeridge,

chair of BGC, Ian Webber, managing director Mayne Nickless, Charles Copeman, former head of Peko Wallsend and Arvi Parbo, former head of WMC. In addition to influential individuals from a number of businesses, the list of signatories also included Steve Knott, director of the AMMA, Ray Evans, President of the HR Nicholls Society and Des Moore, director of the Institute of Private Enterprise. This group from the hard right of the business community, called on the Howard government to consider a number of key matters requiring radical reform, including:

- legislation to extend the principles of 'freedom of choice' for employers and employees to enable them to determine terms and conditions of employment, free from 'regulation imposed by outsiders';
- ending the 'legal privileges' enjoyed by trade unions; and
- implications of Australia's past ratification of International Labor Organisation conventions on parliament's sovereignty over labour market laws.

Arguing for a radical re-regulation of the labour market the authors stated that '... it is the system of detailed labour market regulation which raises the most serious concerns about our capacity to compete as a prosperous, sovereign and influential nation in the world at large, and within our region particularly.'[42]

For employers, 2004 was a year of considerable uncertainty, with confusion surrounding the *Electrolux* case and what were or were not 'matters pertaining', combined with a great deal of political uncertainty dominating most of the year until the October federal election. With the Howard Government re-elected with a majority in the Senate, putting it in its strongest political position ever, radical labour market de-regulation was back on the agenda at the end of the year. The hard right among the employer ranks were salivating at the promise of having their dreams fulfilled in 2005. Looking into the future, one thing is certain, a dream for some will be a nightmare for others!

ENDNOTES

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