CONTRASTING SYSTEMS? 100 YEARS OF ARBITRATION IN AUSTRALIA AND NEW ZEALAND

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Supporters of collective employment regulation in New Zealand would have celebrated a centenary of arbitration a full decade before Australia, in 1994. Yet fate intervened and New Zealand's arbitration system formally collapsed in 1991 following the introduction of the Employment Contracts Act. *Despite a series of challenges during different periods, the Australian arbitration system has survived, if badly scathed, to see its 100-year anniversary. The present paper traces the historical similarities and differences in the advent, development and decline of the Australian and New Zealand systems of compulsory arbitration. Given the many structural similarities between the two systems, the paper explores important differences in the economic and political interests that both underlay the introduction and development of the two systems, and contributed to the earlier demise of the New Zealand system. The experience of the more extensive labour market reform in New Zealand provides some salutary lessons for those seeking further changes to weaken the Australian arbitration system.*

INTRODUCTION

In terms of comparative method, Australia and New Zealand are examples of most similar cases. They are small, neighbouring, settler societies, with close cultural and sporting traditions, and histories of very similar labour market regulation. After European settlement both countries developed progressive forms of welfare capitalism that gave commentators of the time cause to regard them as unique social laboratories. By the end of the 1800s or very early 1900s, both countries had extended the franchise to the working class (universally in New Zealand in 1893), elected labour representatives to parliament, introduced forms of social security protection, enacted anti-sweating legislation, and introduced systems of compulsory arbitration to regulate industrial relations (Castles 1985; Ramia 1998). These important developments were not undertaken in isolation. For example, the 'great strikes' of the 1890s had an impact on both sides of the Tasman, and an important influence on the development of systems of compulsory arbitration (Macintyre & Mitchell 1989).

The advent of compulsory arbitration—which occurred first in New Zealand, from 1894—produced a uniquely 'Antipodean' pattern of labour market regulation. State agencies gained the authority to settle disputes and make binding

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agreements (known in both countries as awards) that prescribed wages and working conditions. While certainly never eliminating industrial action, the arbitration systems succeeded in producing a pattern of disputation that generally steered the parties away from protracted battles (Woods 1963). Importantly, the machinery originally designed to promote industrial harmony also became a mechanism to shape wages policy. In both countries, wage fixation principles rewarded differentially male and female, as well as skilled and unskilled workers, and thus shaped patterns of labour market participation, producing a dominant male 'breadwinner' model until at least the 1950s (Nolan 2003).

Despite having adopted unique systems of labour market regulation, research comparing Australian and New Zealand industrial relations has not been well developed. There is, however, a small body of research comparing industrial relations in both countries during the 1980s and early 1990s (Bray & Howarth 1993; Bray & Walsh 1995 and 1998; Bray & Neilson 1996). At this historical juncture, the two systems were considered most dissimilar. Those researching the period sought to explain the apparent differences, predominantly in terms of institutional factors, including Australia's federal system, which set limits on the power of the Commonwealth government to regulate industrial relations. By comparison, New Zealand produced what some referred to as 'elected dictatorships'. The difference in political systems, and the absence of constitutional restraint, allowed regulators in New Zealand to push forward reforms that were much more radical than those developed in Australia (Schwartz 1994).

The comparative research examining the period of the 1980s and early 1990s is limited by two related shortcomings. The research examines a relatively short period in which the regulation of the two countries' labour markets diverged dramatically. More recent research examining the period from the mid-1990s shows a much greater degree of similarity. Thus, if New Zealand reformers achieved dramatic change during the 1980s and early 1990s, Australian regulators did much to bridge the gap from the mid-1990s (Wailes 1997). Moreover, given their focus on the 1980s and 1990s, the researchers drew insufficient attention to the importance of earlier divergent trends. These included the weakening of arbitration and the consequent development of collective bargaining in New Zealand during the 1960s and 1970s (Boxall 1990). As has been pointed out (Wailes & Ramia 2002; Wailes *et al.* 2003), a second deficiency in the comparative research is the lack of attention paid to the underlying interests that drove the different policy responses on both sides of the Tasman. These differences of interest reflected the relative importance of manufacturing (in Australia) as opposed to farming (in New Zealand) concerns, the greater extent to which peak organised labour was embedded within the Australian arbitration system (Gardner 1995; Bray & Walsh 1995) and the degree to which arbitration itself operated alongside (as in New Zealand) or to the exclusion of (as in Australia) other mechanisms that provided social protection (Ramia 1998).

This paper argues that a carefully constructed comparison of Australia and New Zealand—the only two countries to have adopted compulsory conciliation and arbitration at a national level—offers important insights. In particular, such a comparison makes it possible to reflect on the significance of arbitration to

Australian industrial relations and labour market outcomes, and offers insights into the potential consequences of any further erosion of arbitration in Australia. The paper is set out as follows. The first section explores the early development of arbitration in Australia and New Zealand and reveals the importance of the context within which arbitration was introduced and operated in its early years. The second section explores the period from the 1960s to the 1980s, and focuses on the different ways emerging tensions within both systems of arbitration were resolved. The third section focuses on the recent convergence of industrial relations and labour market outcomes in Australia and New Zealand. This section examines how, following the adoption of the *Workplace Relations Act* (*WRA*), Australia has moved closer to the (post-arbitration) New Zealand model of industrial relations.

SIMILAR ORIGINS, DIVERGENT DEVELOPMENTS

There is a long tradition of attributing many of the characteristics of Australian and New Zealand industrial relations to the institutions of arbitration. One well known example of this tradition is Howard's (1977) trade union dependency thesis, which was first developed for and later applied to the New Zealand arbitration system (Hare 1946; Hince 1993). Plowman's (1989) employer association reactivity thesis is another example of the institutionalist interpretation of arbitration in Australia. While for Howard arbitration assisted union recovery and growth, for Plowman, it gave employers the impetus to form permanent associations. The union dependency thesis has been criticised on the grounds that union recovery was not solely a consequence of arbitration (see for example, Sheldon 1998) and that arbitration did not completely determine union behaviour (Gahan 1996; Cooper 1996). Similar criticisms have been made of the reactivity thesis in respect of the formation and development of employer associations (Barry 1995), their influence on the development of bargaining structures (Westcott 1999), and their initiatives during the Accord period (Sheldon & Thornthwaite 1999).

A comparison of the early development of arbitration in Australia and New Zealand reinforces the view that arbitration did not alone shape patterns of industrial relations. Although both countries adopted very similar systems, different political and economic interests shaped divergent outcomes. The comparison here supports Macintyre's (1987) reflections on arbitration in Australia and New Zealand. It focuses on four aspects of the early development of arbitration in the two countries: first, the common adoption of arbitration; second, the differences in timing of this adoption; third, differences in the wages policies that developed; and fourth, differences in the reaction of the labour movements to arbitration in the period leading up to World War I.

In the second half of nineteenth century, the colonies of Australia and New Zealand experienced rapid export-oriented development that Denoon (1983) refers to as 'settler capitalism'. Development of profitable agricultural export sectors in the Australasian colonies fostered the development of secondary and domestic industry. However, a decline in the price of wool from the mid-1880s threatened economic development in Australia and New Zealand, and unleashed a series of interlocking economic and political crises (Schwartz 1989).

The adoption of arbitration in both countries reflected the influence of 'new liberalism' on policy reactions to these economic and political crises. In particular, social liberals wished to prevent the re-emergence of widespread industrial conflict, and to address the evils of 'sweating' that had become pervasive in both societies since the economic downturn of the 1880s. The resulting institutions introduced by Kingston (South Australia), Pember Reeves (New Zealand) and Deakin (Commonwealth) were remarkably similar: the uniquely Australasian models of compulsory arbitration all established tribunals, provided for the registration of industrial associations of employers and employees, and had an administrative function (Mitchell 1989, p. 89).

For reasons associated with the pattern of economic development, there were, however, important differences in the timing and ease of adoption of arbitration. Arbitration formally commenced in New Zealand in 1894 and quickly began operating. The adoption of arbitration in Australia was more hesitant with some colonies (and states) 'settl[ing] for the less ambitious device of wage boards—and the central Commonwealth Arbitration Court ... was circumscribed by restrictions on the federal jurisdiction' (Macintyre 1987, p. 152). Indeed, the Commonwealth jurisdiction remained constrained until well into the twentieth century (Patmore 1991, p. 115).

The later adoption of arbitration in Australia thus reflected the more complicated political processes employed to resolve the crisis of settler capitalism. In Australia, the process of Federation created the conditions under which the interests of domestic manufacturing figured as strongly as the interests of agricultural or foreign financial interests (Fitzpatrick 1949), whereas in New Zealand, it was a coalition that drew support from small farms and urban labour that introduced arbitration (Sinclair 1976). According to Macintrye (1987, p. 152) 'In New Zealand the farmers matched the influence of the urban bourgeoisie, whereas in Australia they formed a resentful minority'.

With the development of refrigeration and the shift to intensive farming to service the British protein market, New Zealand had, by the 1880s, begun to enter a phase of 're-colonisation' (Belich 2001). The economy experienced a rapid return to growth in the late 1890s, although this growth stagnated in the period after 1906 (Condliffe 1959). In contrast, Australia had to wait until well into the first decade of the twentieth century to see a return to positive economic growth. However, unlike New Zealand, Australia experienced buoyant economic conditions in the period leading up to the World War I (Meredith & Dyster 1999).

Economic and political differences also came to be reflected in the development of divergent wages policies and wage outcomes. For example, Sandlant (1989, p. 39) observed that while the intention of the New Zealand system was that the majority of disputes would be settled in conciliation,

> the New Zealand Arbitration Court quickly made a clear disposition to make rather restrictive and conservative decisions. These decisions moreover were entirely predictable for the unions and employers and so ... most of the teeth were taken out of bargaining in conciliation.

Centralisation of authority was accompanied by an increasingly restrictive wages policy. Thus, while the Court issued awards setting minimum wages across industries and occupations, after 1906, it strongly resisted increases in award wages on the basis of cost of living or capacity to pay arguments, or for the purposes of resolving specific disputes (Holt 1986, p. 65). The modest economic growth path provided by reliance on meat and dairy exports created a strong perception that there were tight limits on wages growth in New Zealand (Schwartz 1989, p. 184). According to Olssen (1988, p. 96) 'most workers experienced no real income growth between 1901 and 1914'.

The early development of wages policy in Australia was not nearly so restrictive because economic growth provided scope for increases in award wages and the growth of real wages (Forster 1989). While the basic wage was set at seven shillings a day until 1912 when the first price index became available, the Australian Court displayed a much greater flexibility towards the setting of margins in awards before the end World War One. This was often associated with the greater use of wage policy to settle specific disputes (Hancock 1979, p. 65). The Australian Court lifted award wages through cost of living adjustments and the establishment of margins principles. Prior to 1919, there were no provisions in New Zealand for wage adjustments during the currency of awards (Woods 1963, p. 98).

In New Zealand, agricultural interests also placed direct constraints on the operation of the arbitration system. In 1908, the Court of Arbitration refused to make an award for rural labourers while across the Tasman, the Australian Workers Union obtained a federal award for shedhands as early as 1907. Because of the restrictions placed on the scope of operation of arbitration in New Zealand, the relationship of agricultural export capital to the arbitration system was largely indirect. As a result, high levels of state intervention were required to ensure that developments within the arbitration system remained consistent with the demands of the export sector. In Australia, domestic manufacturing capital was directly involved in the workings of the arbitration system. In these circumstances, there was far less need for the state to intervene on behalf of business interests. Differences in state intervention in the operation of the respective arbitration systems reflected more than just the often-cited lack of constitutional impediments to such involvement in New Zealand.

Finally, differences in the attitudes of the union movements to compulsory arbitration shaped the development of the respective systems. In particular, key elements of the New Zealand union movement historically regarded arbitration as a mechanism for restraining wages, and sought to use direct bargaining to escape its confines (Roth 1973). The stronger 'anti-arbitrationist' tendencies of New Zealand unions reflected material differences in the benefits that workers derived under the two systems since their inception rather than a more radical ideology, as some have suggested (see Bray & Neilson 1996). After 1908, New Zealand witnessed a widespread increase in industrial conflict and the formation of a strongly anti-arbitration trade union federation—the 'Red' Federation of Labor (Olssen 1986). While the Red Feds preached a revolutionary doctrine, Olssen argues it was the combination of declining economic growth after 1907 and the lack of movement in award wages that saw a revolt against arbitration. Paradoxically,

the most anti-arbitrationist elements—the freezing workers, watersiders, seamen and coalminers—had become strategically important following New Zealand's transition to become an offshore British farm (Belich 2001, p. 138). In Australia, during the same period, the economy continued to expand rapidly. In these conditions, and in the context of the election of the first Federal labour government in 1910 (compared to 1935 in New Zealand), there was more scope for unions in Australia to seek wage increases through the arbitration system, and arbitration was not forced to play the same role in constraining domestic costs as it did in New Zealand.

FATE OF ARBITRATION FROM THE 1960S

If similarities in institutional structures masked differences of interest that drove the introduction and early development of compulsory arbitration in Australia and New Zealand, these differences continued to play an important role in shaping industrial relations outcomes. Most obviously in New Zealand, anti-arbitrationist unions struggled to assert their independence against the will of the system, government and the conservative union majority. The most famous expression of this contest was the 1951 maritime dispute. Yet, the direct outcome of this dispute was to reinforce the legitimacy of the arbitration system. However, by the 1960s, tensions had begun to emerge that signalled a departure in the fate of the Australian and New Zealand arbitration systems.

We noted earlier that comparative analysis of Australian and New Zealand industrial relations remains underdeveloped despite what amounted to an explosion of interest surrounding the period of the late 1980s and 1990s from scholars seeking the exploit the advantages of a most similar case research design (for an overview see Wailes 1999). This literature examined why two countries that faced similar international economic pressures and had similar employment institutions pursued what seemed to be radically different paths to labour market reform. While the comparative literature took as its point of departure the election of labour governments in the mid 1980s, developments in labour market regulation in both countries during the 1980s had their origins in an earlier period.

As Boxall (1990) noted, the introduction of the *Employment Contracts Act* (*ECA*) in New Zealand was the culmination of a period of uncertainty in industrial relations that began with the 'nil wage' order in 1968. Even prior to this point cracks began to emerge as the arbitration system failed to respond to developments in industry and in the economy. In the post War period, until the late 1960s, the New Zealand economy was prosperous and yet the Arbitration Court was parsimonious in its wage decisions. Given labour shortages, new trends in management, the emergence of new industries and the conservative reputation of the Court, employers and unions sought greater pay flexibility through the practice of 'second tier' (or as it became known in Australia, over-award) bargaining (Brosnan *et al.* 1990, pp. 192–3).

Following this trend, the 'nil wage' order became a symbolic watershed in New Zealand industrial relations. In response to a dramatic deterioration in the terms of trade for primary products, the Arbitration Court refused to issue an increase in award wages in response to a relatively modest union claim. This

decision unleashed a dramatic increase in industrial conflict and direct bargaining as workers sought to preserve real wages. In an unprecedented move, the employer and employee representatives then joined together to force (by majority decision) the Arbitration Court to issue a five per cent general wage order. The increase signalled that employers and the union movement had lost faith in the system, and arbitration fell into some disorder (Walsh 1994; 1997). The result was a long-term shift in government policy away from relying on arbitration to ensure economic stabilisation toward direct government intervention in the setting of wages and conditions. In the period 1971 to 1984 there were only 11 months when wages were not controlled by statutory incomes policy (Boston 1984). From 1977 the National government allowed the occupational relativities established by the Arbitration Court to remain in place, but the government retained the right to intervene directly in the pace-setting agreement in each bargaining round (Walsh 1997, p. 192). Further experimentation followed, including the imposition of a wage and price freeze from 1982 to 1984. Meanwhile, for its own employees, government wage fixation continued to operate, as it had since the 1940s, under a centralised system that ensured public sector workers' wages were set in 'fair relativity' with their private sector counterparts.

New Zealand's fourth Labour government came to office in 1984 and zealously set about reforming the economy by, among other things, deregulating financial markets, floating the dollar, abolishing agricultural subsidies, and privatising or corporatising state services. The government's reform of industrial relations commenced in the same year when it abolished compulsory arbitration of private sector interest disputes. The *Labour Relations Act* (*LRA*) *1987* then curtailed the possibility of second tier bargaining as it forced the parties to choose between an award or an establishment agreement. Although the *LRA* retained the pillars of compulsion that related to unions, a new minimum membership requirement of 1000 made restructuring, through amalgamations or simple 'marriages of convenience', an immediate requirement for a very large number of small unions. Labor enforced the same membership requirement in Australia in 1988, and for a short time later raised the requirement to 10 000, but the process of restructuring differed in one important respect. As Gardner (1995, p. 48) observed, in the few years leading up to the introduction of the *ECA*, the number of New Zealand unions declined dramatically in response to a government-imposed rather than a union-orchestrated restructuring process. Changes to the private sector also engulfed employees in the state sector whose employment became subject to the provisions of the *LRA*, and more directly, under the *State Sector Act 1988*, to the determination of their departmental or agency Chief Executive (Boston *et al.* 1998). If the government's labour market reforms did not go as far as those imposed upon other areas of the economy, the changes themselves fuelled the industrial relations policy debate and confirmed for many within the political and business community the need for further regulatory changes.

Australia's arbitration system suffered similar difficulties to those encountered in New Zealand during the 1960s, but the Commission succeeded in re-establishing authority in wage determination. In the 1966 National Wage Case, in response to pressure from the government and employers, the Commission

accepted the concept of a 'total wage' and in subsequent margins cases attempted to absorb over award pay. Metals unions led a campaign of direct action against this decision. While the government sought to control the situation through the use of penal powers, in the face of union opposition and the unwillingness of employers to hold the line, it was forced to back down (Hutson 1971). With less than 40 per cent of wage increases coming from national wage case decisions in the first half of the 1970s, the Commission had effectively lost control of wage setting (Dabsheck 1994).

By the mid-1970s, however, the Commission was in a position to reintroduce indexation and re-establish its role in wage setting (Lansbury 1978). Thus, while under decentralised bargaining, well organised, militant unions were able to secure wage increases, they became increasingly concerned about the economic impact of inflation. These concerns increased as the Whitlam government decided in 1975 to cut tariff protection by 25 per cent across the board. At the same time, poorly organised unions faced the prospect of being left behind. Employers too, especially in the manufacturing sector, came to appreciate the ability of the arbitration system to combat wage militancy. Under these conditions the Commission agreed to government proposals for the reintroduction of wage indexation. As a number of authors, including Rimmer (1987) and Briggs (1999), have argued these experiences of decentralised bargaining and the introduction of wage indexation in the 1970s laid the foundations for the Accord in the mid-1980s. The Accord served to incorporate the union movement within the Labor government's management of the economy while it further embedded the union movement within the formal arbitration system.

Thus, the differing fates of arbitration in Australia and New Zealand in the late 1980s and early 1990s clearly had their origins in an earlier divergence between the two. The loss of confidence in arbitration in New Zealand from the 1960s, coupled with direct efforts by governments to manage wages and dismantle key planks of the institutional and bargaining framework in the 1970s and 80s, made the eventual abolition of the system an easier prospect for the National government when it entered office in 1990. Seen in this light, the *ECA* was not so much a watershed in industrial relations, but a continuation of past trends. Yet the developments of the 1960s and 70s were themselves a product of the reconciliation of different interests in the introduction and early development of arbitration in both countries. For example, the New Zealand union movement, as it was traditionally less embedded in arbitration, had more to gain by pursuing its claims outside the formal system and less capacity and reason later to fight to preserve its traditional institutional supports.

A NEW CONVERGENCE? ARBITRATION AND INDUSTRIAL RELATIONS REFORM IN AUSTRALIA AND NEW ZEALAND DURING THE 1990S

If the differences that emerged between the two countries during the late 1980s and early 1990s look less significant when set against the context of earlier divergent trends, they also appear to have been diminished significantly during the course of the 1990s. Starting with the introduction of the *Industrial Relations Reform Act* in 1993, changes in Australian industrial regulation have brought it much

closer to New Zealand. The 1993 Act began a series of interconnected developments that included the process of turning awards into 'safety nets' (MacDermott 1995), limiting the ability of the AIRC to intervene in the terms and conditions of bargaining (Naughton 1994), recasting unions in the role of bargaining agents (Frazer 1995), and the possibility of legally sanctioned non-union agreements in the federal jurisdiction for the first time (Bennett 1995). Indeed, Gardner and Ronfeldt (1996) questioned the extent to which it was still possible to speak of an arbitral model in Australia in the aftermath of these changes. The *Workplace Relations Act* (*WRA*) *1996* further eroded the traditional features of the Australian arbitration system. While the *WRA* retained arbitration and the Commission, by limiting awards to 20 allowable matters, it dramatically constrained the scope for the application of arbitral powers by the Commission (Pittard 1997). Other significant changes included a substantial reduction in the Commission's oversight of non-union collective agreements (Waring & Lewer 2001); a series of measures which made union action more difficult and increased the risks associated with industrial action (Naughton 1997; Peetz 1997) and; the introduction of non-union individual agreements administered by a separate set of institutions (McCallum 1997).

While there are important differences between the regulatory regimes created by the *ECA* and *WRA*, they also share some strong similarities. Both the *WRA* and *ECA* were informed by a set of neo-liberal arguments associated with Hayek and others and championed by the New Zealand Business Roundtable and the Business Council of Australia (BCA). Underpinning both sets of legislation was the view that a centralised system of labour market regulation was damaging to economic performance and the notion that private contractual arrangements are economically superior (see Wailes 1997, pp. 35–8).

A focus on industrial relations and labour market outcomes in the two countries illustrates the extent of convergence between the two countries during the 1990s. This can be seen in relation to collective bargaining coverage, trade union membership, changes in the content of bargaining, and the growth in use of casual forms of employment (Campbell & Burgess 2001). During the 1990s, there has been a dramatic decline in collective bargaining coverage in both Australia and New Zealand. Table 1 provides data on changes in collective bargaining coverage in Australia during the 1990s. It demonstrates that in 1990 approximately 80 per cent of employees in the federal jurisdiction in Australia enjoyed award or agreement coverage. By 2000, award only coverage had fallen to 23.2 per cent, registered collective agreements covered 35.2 per cent and unregistered collective agreements covered another 1.5 per cent of employees. This left over 40 per cent of the workforce with individual agreements, the vast bulk of whom (38.2 per cent) had unregistered individual contracts while registered individual contracts, like AWAs, covered less than two per cent of the workforce (Campbell 2001, pp. 15–6).

The figures in Table 2 illustrate the extent to which collective bargaining collapsed in New Zealand during the 1990s, falling by 41 per cent between 1989/90 and 1993. Furthermore, the data indicate that in addition to an absolute decline in collective bargaining coverage there was an almost complete collapse of

Table 1 *Changes in collective bargaining coverage, Australia 1990–2000*

Year	Percentage of employees covered			Common law contracts[c]
	Industrial award	Collective agreements[a]	Registered individual contracts[b]	
1990	80	N/A	N/A	20
Mid-1990s	33	33	N/A	33
2000	23.2	35.2	>2	38.2

Source: Figures for 1990 and 2000 from Campbell (2001) using ABS data. Estimates for mid-1990s from ACCIRT 1999: 43. *Notes:* (a) Registered federal collective agreement which adjusts or replaces an industrial award; (b) individual employment contract registered under state or federal legislation; (c) employees not covered by federal or state industrial relations legislation.

Table 2 *Changes in collective bargaining coverage, New Zealand 1989–1993*

Type of settlement	1989/90 employees covered (000s)	1993 employees covered (000)	Percentage change (%)
Multi-employer	553.9	90.0	−84
Private sector	384.6	38.2	−90
Public sector	162.3	51.8	−69
Single employer	167.5	337.1	+101
Private sector	29.0	238.3	+722
Public sector	138.5	98.8	−29
Total coverage	721.4	428.7	−41

Source: Harbridge and Crawford 1998: 212. These figures, and other sources of New Zealand data, need to be treated with caution, and viewed as indicative of general trends rather than as reliable labour market data (see McLaughlin *et al.* 2000: 187–8).

multi-employer bargaining, especially in the private sector which Harbridge and Honeybone (1996) argue reflects the impact of the dismantling of the Award system under the *ECA*. Estimates for the period 1993 to 1996 suggest there was a further 40 per cent decline in collective bargaining coverage during this period (Harbridge & Crawford 1997, p. 24).

Another area of major change in Australian and New Zealand industrial relations during the 1990s has been the reduction in the percentage of workers who are members of trade unions and are represented by a union in negotiations with their employers. Table 3 shows the decline of trade union membership and density in Australia and New Zealand from 1990 to 1999.

The decline in unionisation during the 1990s was more dramatic in New Zealand than Australia. However, as with collective bargaining coverage, in

Table 3 *Trade union membership and density, Australia and New Zealand 1990–1999*

Year	Australia		New Zealand	
	Members (millions)	Density (%)	Members (millions)	Density (%)
1990	2.66	40.5	0.65	44.7
1991			0.51	35.4
1992	2.51	39.6	0.43	28.8
1993	2.38	37.6	0.41	26.8
1994	2.28	35.0	0.38	23.4
1995	2.25	32.7	0.36	21.7
1996	2.19	31.1	0.34	19.9
1997	2.11	30.3	0.33	19.2
1998	2.04	28.0	0.31	17.7
1999	1.88	25.7	0.30	17.0

Sources: Australia: 1990–1997 Peetz 1997: 6; 1999 ABS Cat. no. 6310.0 *Employee Earnings, Benefits and Trade Union Membership*. New Zealand: 1990–1997 Crawford *et al.* 1998: 194; 1998–1999 Crawford *et al.* 2000: 294.

comparative terms the speed and extent of the decline of union membership and density in the two countries during the 1990s makes them exceptional amongst developed market economies. In both countries it has been argued that this exceptionalism is closely related to the impact of legislative change on the ability of unions to retain and recruit members (see Peetz 1997; and Harbridge & Crawford 1997).

Related to the decline of collective bargaining and trade union membership has been a notable shift in the content of bargaining, and particularly the spread of wage settlements, in two countries during the 1990s. As Campbell and Brosnan (1999, p. 357) put it, in Australia the 'fragmentation of channels of wage determination ... produc[ed] fragmentation of wage outcomes' during the 1990s. In 1996, for example, employees covered by enterprise agreements had average annual wage increases of between four and six per cent, whereas employees covered solely by awards received only a 1.3 percentage increase (Australian Centre for Industrial Relations Research and Training [ACIRRT] 1999, p. 77). Research has also identified a dramatic shift in the structure of working time in agreements during the 1990s (Buchanan & Bearfield 1997).

It is more difficult to identify the consequences of changes in industrial relations reform for the content of bargaining in New Zealand than in Australia. Because they were regarded as private contracts between the parties, there was no publicly available information on the terms of the individual contracts that covered the vast majority of workers under the *ECA*. However, there is limited information available on the content of collective employment contracts and, as in the Australian case, it demonstrates that there has been a growth in the spread of the wage settlements (Harbridge & Crawford 1997). At an aggregate level,

Dalziel (2002, p. 44) reports that during the period 1983 to 1996 there was a substantial shift in New Zealand's income distribution with the lower four deciles experiencing three per cent or greater reduction in average per capita real income. While this change cannot be attributed solely to the *ECA*, deregulation of the labour market contributed to making changes in income distribution in New Zealand more extreme than any other developed market economy, including Australia (Quiggin 1998). What is clear is that most workers, including those who retained collective agreements, negotiated new contracts at the cost of important protections, such as penalty rates for extended hours of work.

There are two conclusions that can be drawn from a comparison of industrial and labour market outcomes in the two countries during the 1990s. First, in comparison to other developed market economies, Australia and New Zealand have experienced a dramatic decline in collective bargaining coverage, trade union membership and density and an increasing spread of wage settlements. This suggests that there has been a convergence between the two countries since the early 1990s. As Campbell and Brosnan (1999, p. 354) put it:

> . . . in international comparison Australia presents a radical example of labour market deregulation, paralleled only by the more abrupt shift of its geographic neighbour, New Zealand. As such it offers another useful test of the effects of neo-liberal policies on labour markets and labour.

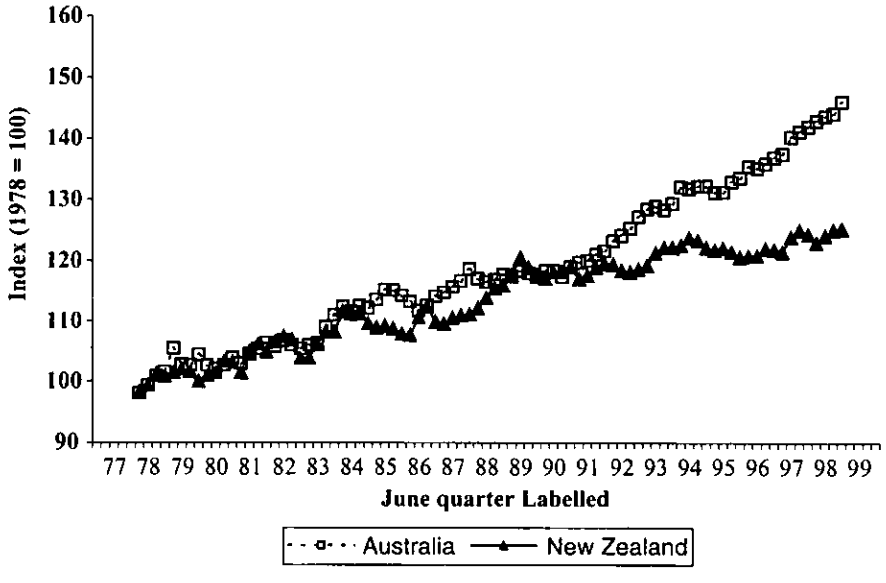
Nevertheless, as Campbell and Brosnan imply, a comparison of industrial and labour market outcomes in the two countries also reveals that, in relative terms, the decline of union membership and collective bargaining coverage and the increase in income inequality was both more rapid and more severe in the New Zealand case. It would not be unreasonable to attribute this difference to the continued role played by arbitration in Australia. Thus, the New Zealand experience during the 1990s provides some insight into the likely consequences of further labour market deregulation in Australia.

While the absence of arbitration in New Zealand produced a significant deterioration in the circumstances faced by workers, there is little evidence to suggest, as proponents of further labour market deregulation in Australia have claimed, that the removal of arbitration will lead to dramatic increases labour productivity or, as John Howard, then the Coalition's industrial relations spokesperson, described it, a 'productivity breakout' (Howard 1990; see also Kasper 1996). The New Zealand experience under the *ECA* provides no evidence to support this claim. Figure 1 compares increases in labour productivity in Australia and New Zealand since the late 1970s. The main point to note is that since the introduction of the *ECA* there has not been a dramatic increase in labour productivity in New Zealand. Indeed, some have argued that there has been a decline in the growth of labour productivity in New Zealand since the early 1990s (Maloney 1994). At the same time during the course of the 1990s Australia's labour productivity performance has been far superior to that of New Zealand despite the continued role played by arbitration (Quiggin 1998). These findings suggests either that labour market regulation is not the only factor which determines labour productivity or that

neo-liberal arguments about the relationship between individual contracting and productivity are flawed. In any event, the New Zealand case demonstrates that further erosion of arbitration in Australia is unlikely to produce the productivity breakout that the government and groups like the BCA have predicted.

Developments in New Zealand since the end of the 1990s may also provide some lessons for the future of the Australian system, as they demonstrate the difficulties of a return to a system of collective employment regulation. In 1999 a Labour-Alliance coalition formed government in New Zealand with a mandate to wind back the *ECA*. The *Employment Relations Act* (*ERA*) *2000* provides an example of one approach to re-regulating the labour market after a decade of market liberalisation. While not re-instituting the arbitration framework, a key objective of this new legislation is to encourage productive employment relationships that are based on mutual trust and confidence. The legislation is underpinned by an assumption that an inequality of power exists within the employment relationship that can only be redressed by encouraging unionisation and collective bargaining. Key provisions in the *ERA* then include allowing unions greater access to workplaces to organise members or provide information to employees, a rule that requires new employees working in areas of union coverage to be employed on the same terms and conditions as union members for their first 30 days of employment, and a requirement that only unions can negotiate collective agreements. The Act also includes procedural rules designed to encourage the parties to negotiate collective agreements in good faith. These protections were written into the *ERA* to prevent the types of contracting behaviour that became common under the *ECA* including the offer of standard form contracts to new employees on a

Figure 1 Labour productivity, Australia and New Zealand 1978–1998.



Source: Dalziel 2002, p. 41 Figure 7.

'take it or leave it' basis, and the rolling over of collective agreements into individual contracts following the refusal of an employer to negotiate (Oxenbridge 1999).

Despite much promise, early evidence indicates the *ERA* has had a modest, and in some respects unintended, impact especially in respect of unionisation and collective bargaining (Barry & Reveley 2002). While there is evidence to suggest the new legislation may have reduced existing levels of 'free riding' under the *ECA* by encouraging collective bargaining through unionisation (Wilkinson *et al.* 2003) proponents of this argument must also concede that the *ERA* also encourages informal free riding. For example, after 30 days of employment new employees can elect to maintain their existing (collective) terms and conditions by accepting those terms, without unionisation, in an identical individual agreement (Blumenfeld *et al.* 2004). Despite a sharp increase in numbers of unions, growth in unionisation and collective bargaining coverage has so far been modest. Many of the *ERA*'s new unions are artefacts of informal varieties of workplace representation that emerged to facilitate collective bargaining under the *ECA*. The impact of the *ERA* was simply to force these loose associations to become unions. Meanwhile, a small but significant number of the new 'enterprise' unions have very close ties with employers and operate so as to exclude from the workplace established, independent unions (Barry & May 2004).

CONCLUSION

If the purpose of comparison is to understand more about one's own environment, then the experience of industrial relations change in New Zealand is particularly important for understanding the past, current and future role of arbitration in Australia. The bulk of the Australian and New Zealand comparative literature—which examines the period from the mid-1980s to mid-1990s—focuses on institutional structures to explain the more rapid transition of New Zealand's industrial relations system. Viewed over the life of the two arbitration systems, the divergence that developed between the two countries in the late 1980s and early 1990s is not as surprising as the comparative literature implies. Moreover, more recent developments suggest that the stark differences that developed between the two countries were not sustained during the course of the 1990s.

Taking a longer historical view this paper illustrates how the different economic and political interests of institutional actors shaped the introduction, pattern of development, and recent changes to the Australian and New Zealand systems of arbitration. The outcome of these differences of interest was that compulsory arbitration became more deeply embedded in Australian industrial relations, explaining why arbitration was abolished in New Zealand rather than weakened as in Australia. In one sense, because arbitration was less embedded in New Zealand, other regulatory mechanisms—such as statutory wage intervention—served to complement the functions of the arbitral framework.

Understood in this way, the experience of the abolition of arbitration in New Zealand offers troubling insights in respect of any further weakening of the Federal arbitration system. Thus, despite their recourse to extra-arbitration protection, most New Zealand employees suffered badly from exposure to the forces of

market liberalisation during the *ECA* period. While the Labour government has re-regulated the employment relationship, the *ERA* has not led to the reconstruction of the multi-employer bargaining structure that prevailed during the arbitration era. Neither have substantial renewal and organising efforts, backed by new statutory support mechanisms, served to substantially re-invigorate a union movement demoralised following the abolition of the New Zealand arbitration system.

While efforts to re-collectivise New Zealand industrial relations have been put in place, they now exist without arbitral mechanisms that might either extend widely the gains won by workers in key sectors of the economy or contain wage increases to control inflation. Meanwhile, in Australia, the traditional pillars of the arbitration system continue to suffer erosion. A continued focus on enterprise bargaining coupled with provisions that support the extension of individualisation will likely bring the two systems closer together before other pressures draw them further apart.

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