

Australia's Industrial Relations Reform Agenda

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Abstract

The institutional arrangements that underpin industrial relations in Australia today are markedly different than they were just 20 years ago. Nevertheless, the current federal government has long made it clear that its industrial relations reform agenda is incomplete, and now that it has a majority in the Senate has announced that it will introduce a new package of reforms. This paper describes the historical context in which these reforms have arisen, summarises the likely nature of the reforms, announced in broad terms by the Prime Minister in May 2005, and examines whether the reforms can be expected to produce the desirable outcomes claimed.

1. Introduction

It is widely recognized that the character of Australia's industrial relations systems and institutions have changed dramatically over the last two decades. Most obviously, wages and employment conditions are no longer so dependent on arbitrated industry- and occupation-based awards, and instead are much more likely to be the result of enterprise and workplace bargaining. Despite the major changes that have occurred, however, the current Coalition government has made it very clear that, in its view, the reform agenda is far from complete and that not for a hostile Senate, further change could have been expected. The opportunity to press ahead with this agenda was thus delivered at the 2004 federal election when the Coalition, rather unexpectedly, won control of the Senate (taking effect from 1 July 2005). The government is thus currently in the process of designing a range of new legislative measures intended to facilitate what it describes as a plan to modernize Australia's workplace relations system. While details of this legislative program have yet to be revealed, the broad outline of the plan is contained in a speech by the Prime Minister to the parliament on 26 May 2005. The primary aim of this paper is to draw out the key elements of this plan and to examine their likely effects, and more specifically, whether these initiatives can be expected to give rise to the desirable outcomes claimed. A full appreciation of the current reform agenda, however, is not possible without some understanding of the recent history of the reform process and thus it is there that this paper begins.

2. From Compulsory Arbitration to Enterprise Bargaining

For most of the last century, employment arrangements in Australia were underpinned by a relatively unique set of institutions. Unlike most other countries where the determination of wages and employment conditions has largely been the result of bargaining between employers and workers, in Australia the dominant paradigm was compulsory arbitration. That is, the wages and employment conditions of most Australian workers were, to varying degrees, the product of decisions made by legal tribunals and courts.

Stemming from a power included in Australia's constitution at federation, the primary intent of arbitration was to ensure that Australia would never again have to suffer the consequences of protracted and bitter labour disputes that were so prevalent during the 1890s. Use of the conciliation and arbitration power, however, went well beyond settlement of disputes to include the regulation of wages and employment conditions. Moreover, the vehicles for this regulation – industrial and occupational awards – were increasingly used to impose a relatively high degree of uniformity in wages and conditions across employers, particularly through the use of 'common rule' provisions which meant that the terms and conditions of awards could be extended to other parties even though they were not respondents to those awards.

The introduction and evolution of the arbitration systems, both federally and in the different States, also fostered the growth of the trade union movement and fundamentally shaped its structure. Indeed, encouraging the growth of representative bodies of employees and employers was an explicit object of the *Conciliation and Arbitration Act 1904*. Under this act, registered unions were given powers to enforce awards and to enter

employer premises. Perhaps most importantly, the ability to access conciliation and arbitration, and thereby seek variations in award conditions, was limited to registered organisations. High levels of unionisation were also directly promoted through use of union preference clauses in awards. Such clauses required employers to give preference to union members in hiring (and firing) decisions, and effectively led to the development of closed union shops in many firms and industries. Finally, once registered, legislative provisions, such as the 'conveniently belong to' clause, protected the jurisdiction of trade unions from competition from other potential rival organisations.

The extent to which these institutions have delivered outcomes that are different to that which might have been delivered by a different set of institutions based around collective bargaining has long been the subject of debate (see Mulvey 1986 for a review). Nevertheless, there were at least two outcomes we can be reasonably certain of. First, compulsory arbitration did not succeed in its stated aim of ensuring industrial peace. During the 1960s and 1970s, Australia was among the most strike-prone nations in the world (Creigh 1986), though typically these disputes were relatively short. Second, our systems of industrial relations helped foster a low-productivity working culture. With the exception of agriculture and mining, the performance of Australian industries lagged well behind world best-practice (Industry Commission 1997), and at least part of this differential was the result of restrictive work practices such as task-based demarcation and minimum staffing levels, which ultimately were rooted in the way industrial relations was conducted in this country.

But why did management allow this situation to come about? First, our relatively centralised systems of industrial relations were conducive to a high level of apathy on the part of management. As argued by Hilmer (1989), by creating a system where much of the responsibility for determining employment conditions and arrangements was handed to third parties (tribunals, unions and employer organisations), the minds of management became closed to the possibility of change. Managers took the system as a given and attempted to live with it or work around it. In other words, management reacted to employee relations issues as they arose but rarely did employee relations figure in strategic decision-making. Second, regulation in product markets meant that in many sectors the incentive to rein in costs and raise productivity was relatively low. Sheltered from competition by tariff walls and other anti-competition regulations, higher costs could simply be passed on to consumers.

At another time, such an arrangement would have spelt economic disaster. But during much of the 20th century the earnings from our commodity-based export sectors effectively cross-subsidised the rest of Australian industry and financed rising living standards. During the 1970s, however, the world changed. Adverse movements in the terms of trade together with the oil price shocks greatly reduced the capacity of the Australian economy to sustain rising real living standards without incurring chronic balance of payments problems. This eventually forced successive governments to introduce a range of reforms intended to enhance the competitiveness of Australian industries in international markets. These reforms, which included reductions in tariffs, the floating of the Australian dollar, and the abolition of most foreign exchange controls, had the effect of increasing Australia's openness to foreign competition, a trend which received further impetus from the marked advances in information and communication

technology that have occurred since the 1970s. Faced with this much more competitive environment, it was inevitable that the pressure from business for changes to labour market institutions would mount.

In the 1980s the initial response of the newly elected federal Labor Government was to actually centralise further the determination of wages and employment conditions. Under its Accord policy, unions agreed not to seek additional wage increases outside those provided by the Conciliation and Arbitration Commission (soon to be renamed the Australian Industrial Relations Commission) in annual national wage cases and in return unions were provided guarantees that its members would benefit from improvements in the 'social wage' (for example, through increased government expenditure on health and welfare services). This highly centralized wages determination system had the immediate effect of curtailing industrial dispute levels. It also promoted employment growth as average wage levels gradually failed to keep pace with prices. However, the fall in real wages that occurred under the Accord was also its undoing. An explicit undertaking under the Accord was that real earnings levels would be maintained. By the late 1980s, however, the emerging consensus was that if real wages were not to fall further, something would need to be done to stimulate productivity growth. The Accord partners thus sought changes in the wage setting principles of the Australian Industrial Relations Commission (AIRC) that increasingly linked wage increases to productivity. The end result of this process, more detailed accounts of which can be found in Wooden (2000) and Wooden et al. (2002), was a set of industrial relations arrangements that, by the start of the 21st century, gave much greater primacy to bargaining at the enterprise and workplace level than it did to centrally-determined awards. Legislation today, for example, provides for legally enforceable enterprise-based collective agreements, with awards only providing a benchmark above which wages can and other conditions can be negotiated. There is also scope to use individually negotiated agreements to supplement or even replace awards.

Providing statistical evidence for this change, however, is complicated by the absence of good quality data. A much often cited source is the Australian Bureau of Statistics (ABS) Survey of Employee Earnings and Hours which has recently started asking its sample of employers about the use of different methods for paying workers. These data are summarised for May 2004 in Table 1. As shown there, just 20 per cent of Australian employees are now reliant on awards for pay rises. By comparison, it has been estimated that in 1990 the comparable figure was 68 per cent (see Joint Governments' Submission 2001). On the other hand, these same data also reveal that only 38 per cent of employees have their pay determined by collective agreements, and this figure drops to 24 per cent once the public sector is excluded. Further, individual agreements that are formalised under industrial legislation (such as the Australian Workplace Agreements available in the federal jurisdiction) remain relatively uncommon, with only 2.4 per cent of employees covered by such arrangements. The remaining 39 per cent of employees are apparently covered by unregistered agreements, most of which were negotiated on an individual basis. (Included in this fraction, however, are working proprietors or owner managers who arguably should not be defined as employees even though this is conventional ABS practice.)

Table 1
Methods of Setting Pay by Sector, May 2004 (% of employees)

<i>Method of setting pay</i>	<i>Private sector</i>	<i>Public sector</i>	<i>All employees</i>
Awards only	24.7	2.3	20.0
Registered collective agreements	24.2	91.8	38.3
Unregistered collective agreements	3.2	0.4	2.6
Registered individual agreements	2.6	1.8	2.4
Unregistered individual agreements	38.5	3.7	31.2

Note: The figures in the 'private sector' and 'all employees' columns do not sum to 100 due to the inclusion of working proprietors of incorporated businesses in the total. These owner managers account for 5.4 per cent of all employees.

Source: ABS, *Employee Earnings and Hours, May 2004* (cat. no. 6306.0), ABS, Canberra.

Strictly speaking, these data do not actually provide measures of coverage by agreements or awards. Instead, they only tell us how the 'main part of an employee's pay was set'. Further, there is considerable uncertainty about how respondents interpret the meaning of 'main'. For example, it is not clear how employers classify workers who are covered by awards and enterprise agreements but who are then paid at rates above those specified in these agreements.

The extent of coverage of employees by enterprise agreements vetted by the AIRC (and other tribunals) thus remains uncertain. Nevertheless, what we can be certain of is that the role for third parties in the determination of wages and employment is less than at almost any other time since the introduction of compulsory arbitration. The relatively high proportion of employees reported as being covered by informal (that is, unregistered) agreements is evidence of this. Critics, however, might argue that the potential for informal arrangements over and above awards has always existed. This is true. What, however, is different is the role awards play in constraining those arrangements. In the past, awards were highly prescriptive and hence most of these informal arrangements were nothing more than an agreement reached about over-award payments. Awards today, however, are generally less prescriptive and cover fewer matters. Under current federal legislation, for example, the AIRC can only make awards with respect to a relatively small number of 'allowable matters' (covering, for example, minimum rates of pay, hours of work, and leave). Further, non-allowable matters in existing awards ceased to have any effect after July 1998. That said, the award system is still important. Most agreements, for example, still need to be read in conjunction with awards, and unions have been using the awards system to pursue a raft of changes to employment conditions (e.g., with respect to working hours, use of different types of employment contracts, and redundancy and termination).

The powers of the AIRC have also been curtailed in other ways. Most importantly, the power of the AIRC to refuse to certify collective agreements on public interest grounds has been removed. Effectively, the parties now need to only demonstrate that the agreement was reached by mutual consent. Furthermore, the AIRC also has a more limited role in dispute settling, effectively confined to disputes relating to allowable matters in awards or where the provision of essential services are threatened.

Another important change has been the greater opportunities provided to employers to bargain collectively with their employees without the involvement of unions. Within the federal system, for example, certified non-union agreements first became possible following the enactment of the *Industrial Relations Reform Act 1993* (which came into effect in March 1994). The *Workplace Relations Act 1996* subsequently strengthened the non-union bargaining stream. Specifically, the requirement to notify relevant trade unions that negotiations were being undertaken as part of the agreement-making process was removed and non-union agreements were made subject to the same compliance tests as the union agreements. By 30 September 2000, 2276 agreements had been made under section 170LK of the Act (the non-union bargaining stream), and in total covered just over 202,000 employees. More recent data on the certification of new agreements for 2002 and 2003 reveal that non-union agreements continue to account for about 15 per cent of all agreements being certified (DEWR / OEA 2004, Table 2.1.6, p. 24).

Recent decades have also seen marked changes in both the relative size and structure of the trade union movement. Union members represented close to, or in excess of, half the total employee workforce during the mid-1970s. Since then, the proportion has more than halved and in the most recent figures, for August 2004, stood at just under 23 per cent. While the causes of this decline are many and varied, arguably the most significant factor has been the collapse of compulsory unionism (Peetz 1998). According to some sources around half of all union members in 1980 had to join a union in order to be employed, and by the mid-1990s this figure had fallen to somewhere between 20 and 33 per cent (Wooden 2000, p. 14). This decline reflected a number of factors including the removal of union preference from key awards, the proscription of closed shop provisions in most State jurisdictions and, most importantly of all, the withdrawal of management support for arrangements that gave rise to compulsory union membership requirements. With the proscription of closed shop provisions from federal awards and agreements in 1996, there is now no jurisdiction where it is not unlawful to discriminate against employees on the basis of whether or not they are a union member. The incidence of compulsory union membership has thus undoubtedly fallen further.

Finally, the structure of the union movement has undergone a radical transformation. Faced with declining union membership rates during the 1980s, the key response of the union movement was not to attempt to find new ways of retaining and attracting members, but to consolidate the organisational base through amalgamation. Indeed, the explicit objective of the Australian Council of Trade Unions (ACTU) was to create a system of around 20 'super unions' structured broadly along industry lines. Assisted by legislative changes that removed impediments to amalgamations and made small unions less viable, the number of active trade unions fell from almost 300 in 1990 to just 132 six years later (Wooden 2000, p. 16). Moreover, most of these were small State-based unions. In the federal jurisdiction there were just 46 trade unions, with the 24 largest

accounting for 88 per cent of all union members. Subsequently, the federal Government has attempted to reverse this trend including provisions for the reconstitution of previously amalgamated unions and the registration of enterprise unions in its *Workplace Relations Act 1996*. Subtle changes to the criteria for registration also provide, in theory, for more contestable unionism. Previously, new unions seeking registration needed to establish that there was no other existing organisation to which their members ‘might conveniently belong’. Under the *Workplace Relations Act* the conveniently to belong criterion is secondary to a requirement that the alternative organisation ‘would more effectively represent those members’. Nevertheless, the effect of these changes to date appears to have been relatively modest.

3. The Howard Plan to Modernise Australian Workplace Relations

Hopefully it should be very clear from the foregoing that change in the structures and processes that underpin industrial relations arrangements in Australia has been considerable. Indeed, it could be argued that our industrial relations systems have already been ‘modernised’. They are certainly more compatible with the global nature of product markets, with the changed composition of employment, which is now both much more skill and service sector intensive, and perhaps most importantly of all, with the value systems that citizens of modern societies hold. Nevertheless, it is no secret that the Coalition would prefer a system which gave even greater primacy to enterprise bargaining and which reduced further the role of the AIRC. Indeed, many would argue that the Government ultimately favours a system where individual agreements would come to dominate enterprise agreements (e.g., Briggs et al. 2005, Peetz 2005). However, since the introduction of the *Workplace Relations Act 1996* soon after coming to office the Coalition has been singularly unsuccessful in pushing its reform agenda any further. As noted in the introduction, this all changed in July 2005 when the Coalition Government assumed control of the Senate. The Government has thus been busily preparing legislation that will usher in the next wave of reforms.

Based on a speech the Prime Minister delivered to parliament on 26 May, key elements of this reform package include:

- (i) establishing a single national labour law system;
- (ii) creation of a new body – the Australian Fair Pay Commission – responsible for establishing and varying award wages;
- (iii) new unfair dismissal laws, and most noticeably the exemption of all firms with up to 100 employees from the operation of unfair dismissal laws;
- (iv) introduction of new legislation intended to protect and enhance the freedom to contract;
- (v) abolition of the no-disadvantage test and its replacement with a new ‘fair pay and conditions standard’;
- (vi) further simplification of awards;
- (vii) a more ‘streamlined, simpler and less costly agreement-making process’;
- (viii) ‘stronger laws in relation to industrial action’ (and in particular the requirement for secret ballots); and
- (ix) tighter rules governing rights of entry by trade unions to workplaces.

Space and time prevent a detailed discussion of all of these proposals, and so the focus here is on the first four. In addition, consideration is also given to one important missing element from the plan that has received considerable attention from the ACTU – protecting the right to bargain collectively.

(a) A Unified National System

While the direction of industrial relations reform over the last two decades has been towards diversity and away from uniformity, it is perhaps ironic that the Government now proposes to progress its reform agenda within a ‘unified national system’. How it might achieve this is discussed at length by Ford (2005). Politically, the only viable option would appear to be to extend the operation of the federal workplace relations laws to all corporations by invoking the corporations power in the constitution. While such an approach is unlikely to go unchallenged, Ford’s analysis suggests that a new corporations-based unitary system would be constitutionally feasible. While this would not eliminate a role for the State systems – the States would still have responsibility for employees of unincorporated businesses and, presumably, State public sector employees – it would effectively eliminate overlapping jurisdictions.

The question, however, remains as to why the federal government would want to pursue this option. It is sometimes argued that there are clear efficiency gains from eliminating the wasteful duplication of activity that arises when employers have to deal with both federal and State systems (e.g., Ryan 2005). Nevertheless, as argued by Ford (2005), proponents of reform often oversell the benefits. The proportion of businesses affected by multiple systems of regulation is almost certainly quite small, and restricted mainly to the well-resourced large multi-state businesses. Very differently, Briggs and Buchanan (2005) highlight the much greater complexity of the federal system compared with that of the States; a single unified system could thus actually create more problems for employers, especially small employers, than it solves. Further, there would have to be concerns about the potential political fall-out from Canberra flexing its muscle in this way. This is not the first time that a federal government has sought to centralise responsibility for industrial relations law, and on those previous occasions it often ended in disaster for the government.

There is, however, one obvious and important reason why the current government is seriously pursuing this option. A unified single system ensures that its reforms will extend to cover employees of all businesses (or at least all incorporated businesses) and not just employees of larger organizations. The earlier reform agenda of the 1990s, with its emphasis on promoting the spread of enterprise agreements, was targeted at large and medium-sized business. According to ABS data, for example, less than 10 per cent of employees in small businesses (i.e., businesses with less than 20 employees) in 2004 were covered by collective agreements (ABS 2005, p. 32). Instead, conditions of small business employees tend to be much more closely tied to awards (though the majority of small business employees are still paid at rates above the award rate). But as has been repeatedly emphasized, the majority of small business (with the notable exception of those based in Victoria) currently operate under State jurisdictions. While the Government can use piecemeal approaches to ensure its federal laws override State laws, there is obviously considerable attraction in having a system where its laws apply to all employers, large and small.

In theory then the biggest beneficiary from this reform should be those small incorporated businesses currently operating under the State systems. Such businesses will now be able to benefit from the various reforms promised to small business at the last election, most notably exemption from both unfair dismissal laws (see below) and having to make redundancy payments. On the other hand these businesses would now have to deal with the greater complexity of the federal system, which the new reforms are doing nothing to address. Ultimately, though I suspect the average small business will be better off; the aspects of the legislation they do not understand or do not like will simply be ignored!

(b) Minimum Wage Setting

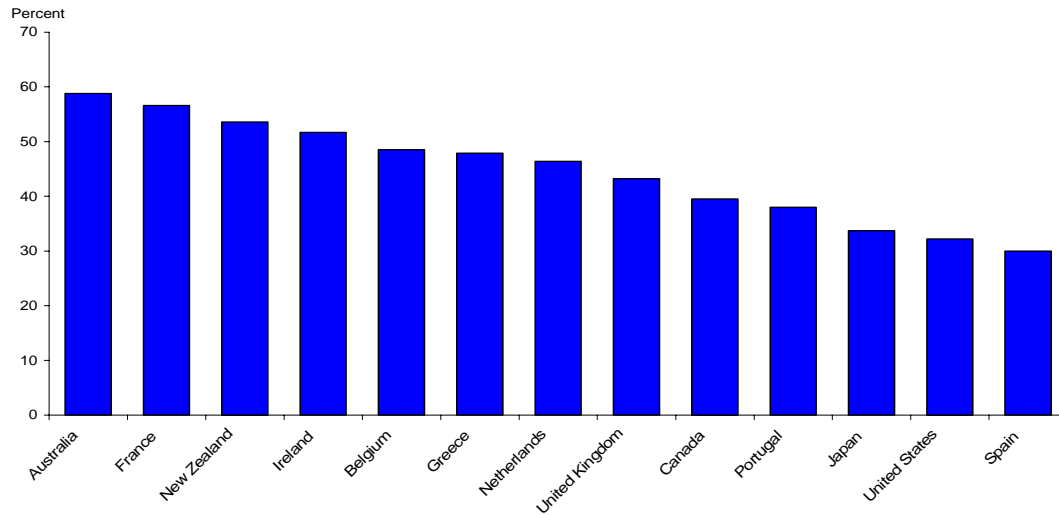
The key proposal here is to remove from the AIRC the responsibility for setting award wages and hand it to a new body – the Australian Fair Pay Commission (AFPC). The expectation is that it would be modeled on the Low Pay Commission established by the Blair Labor Government in the UK, and thus would comprise economic experts and industry representatives appointed by the Government. Unlike the UK Low Pay Commission, however, the AFPC will be more than an advisory body and will, like the current AIRC, have the power to directly set and vary wages in awards.

But what difference will simply transferring powers from one body to another make? The case for a change of this type can be made on at least four grounds. First, Australia's minimum wage is relatively high compared with most other developed countries. The recent report of the UK Low Pay Commission (2005, pp. 233-241), for example, reported on data for 13 OECD countries for 2004 which showed that relative to full-time median earnings, the adult minimum wage in Australia was higher than for any other country in their list. These figures are reproduced in Figure 1.¹ For most economists, minimum wage to median earnings ratios of close to 60 per cent are indicative of a system that prices many of the unemployed out of the labour market. The actions of the AIRC, however, in persistently raising the federal minimum wage over time indicates that either it does not care about the jobless or that it believes there is no relation between the price of labour and the quantity demanded.

Second, the AIRC does not have the expertise that would enable it to make sound decisions which take account of the economic effects of minimum wage increases. Many would contest this. Briggs and Buchanan (2005, p. 188), for example, have argued that the application of “exacting standards of evidentiary proof” ensure that the AIRC's decisions are economically sound and as a result their decisions have been “broadly in line with other international institutions”. The latter conclusion, however, flies in the face of the figures reported in Figure 1. While the AIRC may have been handing down similar rates of increase in minimum wages as in other OECD countries, Australia is starting from a very different base, and as recognized by Card and Kruger (1995, p. 393), who ignited the global debate about minimum wages and jobs in the 1990s, the finding that minimum wage increases do not harm employment only apply to the levels of minimum wages that existed in the USA, and beyond some point, minimum wage increases must harm employment. As Figure 1 reveals, the minimum wage in the USA is still well below that in Australia.

¹ The Australian figure reported here uses earnings data from the Labour Force Survey. If data from the Survey of Employee Earnings and Hours are used instead, the ratio declines to 55.1 per cent.

Figure 1 Adult Minimum Wages Relative to Full-time Median Earnings, Mid-2004: OECD Countries



Source: UK Low Pay Commission (2005, Table A4.2, p. 237).

Third, the AIRC is a legally based tribunal, meaning that it operates like a court of law. Indeed, it is a requirement that the President of the AIRC have been admitted to legal practice for at least five years and many of the Commissioners have legal training. A highly adversarial judicial system, however, is exactly the wrong type of environment for making deliberations about wages policy. The parties to the proceedings have strong incentives to adopt extreme positions and then to present their evidence in as favourable a light as possible, while doing their best to undermine the evidence presented by the opposition. Further, in this environment it is even more critical that the Commissioners have the skills and expertise to make sense of the evidence presented before them and to be able to determine what is irrelevant or misleading, since it is often good legal strategy to present evidence that is designed to confuse and mislead.

Fourth, the setting of minimum wages by the AIRC continues to be heavily influenced by the notion of the living wage even though minimum wages are no longer an effective tool for assisting low-income households. As discussed by Freebairn (2005), the belief that industrial tribunals play an important role in assisting low-income households in Australia is usually traced back to the *Harvester* decision of 1907 when Justice Higgins expounded the notion of a ‘fair and reasonable wage’. This concept has survived over the years and continues to be reflected in the objects of the *Workplace Relations Act 1996*. Specifically, the Act effectively directs the Commission when making its deliberations to maintain an “effective award safety net of fair and enforceable minimum wages and conditions”. Determining what is meant by ‘fair’ is obviously highly subjective, but the decisions of the AIRC have made it very clear that they believe that protecting the needs of the low paid means, at a minimum, ensuring the real value of the minimum wage is not eroded over time.

But while minimum wages may have been an effective device for dealing with the income needs of Australian households 100 years ago when most households had just one income source, the male wage, it should be obvious that this is no longer the case. For a start, minimum wages cannot help improve the living standards of those without jobs. Further, income data have consistently shown that minimum wage workers are not concentrated in low-income households and can be found dispersed throughout the income distribution (Harding and Richardson 1999, Tsumori 2004). Finally, the nature of our tax-transfer system, and especially the means-testing of eligibility for payments, mean that many low-income families face relatively high effective marginal tax rates and as a result receive very little from any additional increase in the minimum wage. In fact, in the most extreme case, a full-time minimum-wage worker with a non-working spouse and two young children would actually earn less income after a wage increase, not more. Income taxation (at the marginal rate of 30%) together with the withdrawal of both Parenting Payment (at 70%) and the Low Income Tax Offset (4%) more than counteract the increase in gross wage income. Not surprisingly, relatively few parents in single-earner couple households are on the minimum wage – if they cannot secure jobs paying much higher wages either the non-working partner moves into the workforce or they gravitate towards a life of welfare dependence. Increases in minimum wages are thus very ineffective in redistributing income from the rich to the poor (see also Freebairn 2005).

There are thus very good reasons to believe that the AIRC is not the most appropriate body for setting minimum wages. Nevertheless, it is also not obvious that handing this power to another body would lead to better outcomes. The key reason for this, as should be evident from the foregoing, is that effective incomes policy requires decisions about minimum wages be made in conjunction with income support and tax policy, and there is only one body in Australia that can do this – the federal government.

Assume for the moment that the new AFPC decides that it would be economically responsible to reduce the real level of the minimum wage to bring it more in line with the levels in most other OECD countries, say something around 45 to 48 per cent of median earnings. Since the Prime Minister has told us that the AFPC will not be able to reduce any nominal wage rates below their current level, this would effectively mean holding the minimum weekly wage at its current level and let inflation erode the real value. The idea here of course is that by letting the real value of the minimum wage fall, demand for low-wage workers will be stimulated. The employment outcome, however, also depends on supply-side responses, and the AFPC is likely to discover that the income replacement rates for some people out of work are such that it would not be long before the benefits from not working, which are indexed to either prices or average earnings, will exceed the benefits from working.

Some crude evidence for this is shown in Table 2. This table reports figures constructed by my colleague Guyonne Kalb on in-work and out-of-work incomes for four types of households. In all cases it has been assumed that the potential earned income is the national minimum wage – currently \$484.40 per week before tax – and that there is 100 per cent uptake of all benefit entitlements.² If we focus on the first row we can see that a

² We have also assumed that none of our households are receiving rent assistance.

single person in receipt of unemployment benefits (Newstart Allowance) would be receiving just \$202 per week. If that person were able to secure a minimum wage job, their after-tax income would more than double to \$478. For this group, and indeed all persons without children, there is a sizeable economic return from employment in a minimum wage job. For people with children the story is quite different. If we take a couple with two children, out-of-work disposable income per week is calculated to be \$566 per week. If one adult in the household were then to obtain a full-time minimum wage job their income would rise by just 22 per cent to \$692.12. Once we factor in the costs of working (such as transport costs), the loss of in-kind benefits associated with any loss of concession card entitlements,³ and the psychic disutility from working, the incentive to work, at least in a short-run static sense, may already be quite low. Holding the real wage constant while allowing benefits to increase in line with the CPI will obviously only further reduce the incentive to work. Given the current structure of the tax transfer system, the AFPC may well find that unless it desires to reduce the incentive to work among low-wage workers with children, it will at some time be forced to effectively index the minimum wage to benefit levels (or in other words, to the CPI).

Table 2: Income Replacement for Minimum Wage Workers, July 2005

<i>Household type</i>	<i>Weekly out of work after tax-income (\$)</i>	<i>Weekly in-work after-tax income (\$)</i>	<i>Income replacement rate (%)</i>
Single adult	202.55	478.30	42.3
Couple with 2 children – one earner	566.40	692.10	81.8
Couple with 2 children – one and a half earners	566.40	806.40	70.0
Sole parent with 2 children	485.90	721.20	67.4

Source: Guyonne Kalb. Figures derived using the Melbourne Institute Tax and Transfer Simulator.

(c) Unfair Dismissal Laws

The access to the jobs market by the unemployed is also hindered by legislation that protects workers from unfair dismissal by employers. Legislation along these lines is common in most Western countries and appears to generally have widespread social acceptance. Nevertheless, such laws have a number of unintended consequences. Most obviously, by reducing the discretion employers have to dismiss unwanted or

³ Concession card entitlements are complicated, but most low income earners who are also parents, and thus receiving Parenting Payment, maintain their concession card entitlements after securing a minimum wage job. This is generally not true of people without children.

unproductive employees, such laws will affect recruitment and selection procedures and decisions. Supporters of employment protection will argue that this is a good thing, with employers encouraged to adopt fairer and more transparent policies for dealing with poor performers. However, for many employers, and especially small employers which lack the resources necessary to both effectively screen and select new employees and to 'manage' employees who fit the business poorly, both the number and type of workers hired are likely to be affected. For example, in the presence of laws that make firing more difficult, small businesses might choose to employ greater numbers of workers who would be outside the coverage of these laws or less likely to resort to them in the event of dismissal. This might involve hiring family members or personal friends. Alternatively, it might encourage businesses to use agencies to meet their labour needs or to hire workers on a casual basis – while casual workers are covered by unfair dismissal laws, casual employees are less likely to be aware of their rights or to seek legal redress. Very differently, many may simply choose not to employ any workers at all. According to ABS data for 2000-01, half of all private sector businesses employed no one (ABS 2002), yet many of these self-employed business managers and owners regularly work very long hours and seemingly could benefit from hiring.

Many, however, would dispute the link between unfair dismissal laws and employment assumed here. Indeed, since an increase in dismissal costs can be expected to reduce both the rate of separations and new hires, it is not obvious that aggregate employment would decline. Waring and de Ruyter (1999), for example, pointed to the continued rise in the small business share of employment during the 1990s following the introduction of unfair dismissal laws in the federal jurisdiction in the early 1990s as evidence that such laws have not been a barrier to employment growth. Such evidence, however, demonstrates nothing. Most obviously, most small businesses are covered by State laws and not the federal system, and the existence of unfair dismissal laws in most State jurisdictions dates back to the 1970s. In any case, before and after comparisons reveal very little; what we need to know is how employment would have changed in the absence of such laws. In the absence of a natural experiment we thus have to rely on survey data collected from businesses about the impact on business costs. The most often cited example here is Harding (2002) who used results from the responses of a sample of managers at 1800 businesses with fewer than 200 employees to generate an estimate of the cost impost on the Australian economy of unfair dismissal laws. His lower bound estimate is that these laws add an amount equivalent to about 0.2 per cent of the annual Gross Domestic Product to business costs. The impact on jobs is harder to estimate, but based on an assumed elasticity of demand of 0.7 (the assumed long-run wage elasticity of demand in the Treasury Macroeconomic Model), Harding concludes that employment levels are at least about 0.5 per cent lower than they would otherwise be.

It is essentially because of this possible positive employment impact that the Federal Coalition Government has repeatedly, but unsuccessfully, sought exemptions for small businesses from the unfair dismissal law provisions of the Act. Now that it has the mandate to effect change, however, the government has decided to extend this exemption to all businesses employing up to 100 workers. The case for this is much weaker. As should be clear from the arguments set out above, laws prohibiting "harsh, unjust or unreasonable" termination are unlikely to have as much impact on large firms. They typically have the resources and personnel to both avoid recruitment and selection

mistakes and to ensure termination is preceded by due process. It is my view that restrictions on hiring are only likely to have a sizeable impact on employment decisions in the very small firms. For firms that currently employ no one the direction of effect is clear – reducing employment protection costs can only cause employment to increase. The magnitude of the positive employment effect will then gradually decline with size, but spike in the negative direction near or at the size threshold given there is now an economic disincentive to grow beyond the 100 employee threshold. We can also expect some opportunistic behaviour on the part of firms, engaging in organizational restructuring in an effort to avoid the unfair dismissal provisions. Further, and as argued by Peetz (2005, p. 100), the opportunity to engage in such behaviour is almost certainly much greater when the size threshold is 100 employees as compared with 20 employees.

(d) Independent Contractors Act

A reform measure that the Government committed itself to prior to the 2004 election, and which is of potentially large significance, especially for small business, is the introduction of legislation – a new Independent Contractors Act – designed to protect and enhance the freedom to contract and to encourage independent contracting. What this might involve has been discussed in more detail in a recent government discussion paper (DEWRS 2005). At a minimum we can expect the introductions of legislative amendments to prevent awards and agreements from containing clauses that restrict engaging independent contractors and labour hire workers or impose conditions on their engagement. More importantly, serious consideration is being given to ensuring that this new act will over-ride state laws on deeming (that is, laws that deem that contractors within particular sectors or industries are employees and therefore subject to the same workplace regulations as employees) and unfair contracts.

The main critique of this type of reform is the potential for employers to take advantage of this legislation to establish ‘bogus’ contractor arrangements with some or all of their employees (see Briggs and Buchanan 2005). The government, on the other hand, has indicated that it will consider the introduction of civil penalties for employers that deliberately avoid employer responsibilities through establishing false independent contracting arrangements. Of course, how effective those penalties are will depend on their size. More importantly, the courts have long wrestled with the issue of how to determine employment status, and it is generally now believed that determinations can only be made on a case-by-case basis and that it is impossible to apply tests of employment status on a consistent basis. Preventing sham arrangements is thus likely to be difficult and costly, with only the legal fraternity guaranteed to come out ahead.

(e) Promoting Choice

A key theme in the Prime Minister’s speech in May was that their reform package was designed to enhance choices. Most specifically, people would be provided “with the choice of remaining under the existing award system or entering into workplace agreements”. The emphasis on choices and freedom to contract was further emphasized recently by Andrew Robb, a key figure in the Liberal Party’s industrial relations reform taskforce. Writing in the Australian Financial Review, he argued that the Government’s reforms will ensure employers and employees will be “free to agree on terms and conditions that best suit their mutual needs”. In contrast, Greg Combet, Secretary of the

ACTU, in an opinion piece published alongside the Robb article, argued that the proposed reforms do not guarantee that worker preferences will be realized.⁴ Indeed, it has been argued by others (Briggs et al. 2005) that the direction of change is towards providing workers with less choice. Specifically, the proposals fail to protect the ability of workers to bargain collectively. If a group of workers decide that they would like to bargain collectively, there is nothing in the current legislation or in the proposed reforms that will require employers to bargain in good faith. Instead, the fear is that many employers will offer their workers individual agreements (i.e., AWAs) on a take it or leave it basis. In this scenario the choice is between the conditions offered via the AWA or reverting to the award, and for new employees there may be no choice at all – signing an AWA could be made a condition of employment.

To date few employees have found themselves in this situation. As we observed earlier (see Table 1), relatively few Australian employees are covered by registered individual agreements (just 2.4 per cent), and many of these will be satisfied with their employment arrangement.⁵ Nevertheless, it is just as clear that there are numerous obstacles that discourage the use of AWAs by employers. Further streamlining of the agreement-making process together with the effective abolition of the no-disadvantage test should increase the attractiveness of AWAs to at least some employers.

Whether there will be an en masse rush by employers to take up AWAs is difficult to predict. In theory the transaction costs associated with negotiating individual agreements should, especially in large enterprises and workplaces, be much higher than negotiating a single collective agreement. Firms can get around this by offering standardised individual arrangements that are the same for all employees, but then why opt for individual agreements over a collective agreement? Peetz (2005, p. 97) suggests one answer – AWAs will become incredibly short and simple documents that actually contain very little other than specify a wage and basic leave entitlements. Whether this will be good for business is not at all obvious. It might reduce the paper work, but if it promotes competitive behaviour within workplaces, and fosters non-cooperative relationships and greater uncertainty for workers, then business performance may actually suffer. Simple economics tells us that the profit-maximising firm would not pursue this route if this were so, but we should not under-estimate the capacity of individuals to choose the ‘easy route’. Many managers will undoubtedly be attracted to AWAs if it means not having to deal with unions and not having to worry about employee relations. In effect, the use of AWAs could be used by some managers to avoid management responsibilities.

On balance therefore the position advanced by Greg Combet seems a reasonable one – workers should be offered the right to enter into a collective agreement and employers should be obligated to bargain in good faith. But unlike Combet, I see no reason why individual agreements cannot co-exist with collective agreements. Indeed, they always have in the sense that all workers are covered by common law contracts. However, even if we ignore ‘over-agreement’ arrangements, I can see no reason why within workplaces

⁴ *The Australian Financial Review*, Wednesday 24 August 2005, p. 63.

⁵ A survey of approximately 1000 AWA employees and approximately 1000 other randomly selected employees reported by Gollan (2001) found that 48 per cent of AWA employees were satisfied with their pay and conditions and only 20 per cent were dissatisfied. The comparable proportions among other employees were similar – 51 per cent and 20 per cent.

some workers could not be covered by individual agreements while others are covered by a collective agreement.

4. Concluding Remarks

Industrial relations arrangements at the start of the 21st century are very different from what prevailed just two to three decades earlier, with the fundamental difference being that employers and workers are generally expected to determine their own employment arrangements with far less involvement from industrial tribunals and commissions. Nevertheless, the system is still one that is in transition and many of the key features of the old system, such as industry awards and third party powers of compulsory conciliation, persist. Considerable room for further change remains.

But is the Howard Plan the way to move forward? Business groups clearly think so, but most others do not. The union movement and a good number of industrial relations academics see the reform agenda as blatantly partisan in favour of employers, undermining people's rights at work, and promoting the proliferation of low-paid, sub-standard forms of employment (e.g., Briggs and Buchanan 2005, Lansbury et al. 2005, Peetz 2005). Very differently, Des Moore (2005), a staunch advocate of labour market deregulation, is extremely critical of the proposed reforms because they essentially leave in place a "a centralised system of extensive regulation of the labour market".

My own view is that the Howard plan is disappointing because of the absence of a strong guiding ideological framework. This may come as a surprise to the many who describe the reform agenda as one driven by ideology. In contrast, I don't think there is enough ideology driving this agenda. Instead, the plan appears to reflect the usual political compromises.

A stated objective of the reform agenda is to provide more jobs, but then is unable to deliver any proposal that will fundamentally help the unemployed to secure employment. Removing wage setting powers from the AIRC to a new Australian Fair Pay Commission is very unlikely to make much difference. Ultimately, creating more competitive wage structures for low-wage workers without damaging the incentive to work requires a fusion of welfare, tax and labour market policies. Simply changing the way minimum and award wages are set will, on their own, make little difference.

Exempting small businesses from the operation of the unfair dismissal provisions of the Act seems more promising, but why include firms employing up to 100 employees which on most sensible definitions are a long way from being small? Quantifying the employment effects of unfair dismissal laws is extremely difficult given such laws reduce both new hires and fires. A priori, however, there are very good reasons to expect that most of the employment gains will be concentrated on very small businesses. Among larger businesses the employment gains are likely to be small and could even be negative. The cost on the other hand is greater uncertainty and insecurity for some Australian families, directly contrary to the aims of the reform agenda.

Very differently, the Prime Minister and his Government has consistently stated that an objective of its reform agenda is to increase the choices provided to Australian workers. Some of the rhetoric here is clearly 'political speak'; for example, the reference to

workers having “the choice of remaining under the existing award system or entering into workplace agreements”. Surely this is not much of a choice given the Government intends to continue to undermine awards, both through further restriction on the types of matters that can be considered in awards, and through the abolition of the no disadvantage test. This, however, can be expected to encourage further growth in the coverage of both collective and individual agreements (which I strongly support) given the widening gap between awards and agreements in terms of both the range of employment conditions covered and the level of pay and benefits provided. Far more worrying though, it is not at all clear that the reform agenda is one which is particularly interested in promoting collective agreements. The Government has been concerned with the low level of coverage by AWAs and thus intends drafting legislation to encourage further interest in them by employers. But what if AWAs are not desired by workers? Currently, there do not appear to be measures that ensure that workers have the ability to choose between individual agreements and collective agreements. If the aim is to provide employees with real choices, then I am on Greg Combet’s side – the right to bargain collectively needs to be protected. Further, the Government should have a vested interest in ensuring collective bargaining continues to flourish if it believes, as it is stated so often in the past, that enterprise bargaining has been fundamental to the productivity gains of the 1990s.

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