

Stakeholders and the state in the initial phases of the Workchoices industrial relations reforms

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STAKEHOLDERS AND THE STATE IN THE INITIAL PHASES OF THE WORK CHOICES INDUSTRIAL RELATIONS REFORMS

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Australia is in the midst of far-reaching industrial relations reforms, which overturn a century of centralised conciliation and arbitration and traditions of a level playing field for players in the industrial relations arena. While the content of the legislation is perplexing, the process of its introduction is equally so. This paper focuses on the seven-month period from the federal election in October 2004 until 26th May 2005, when John Howard finally made a formal policy statement to Parliament on the next wave of industrial relations reform. First, the paper draws on some theories to examine policy processes, pressure groups and state intervention in industrial relations. Then it reviews the informal hints and announcements from Howard Government representatives and the resultant lobbying by interested parties. Information is drawn from a range of primary sources, including public announcements, media reports, and an independent industrial relations news service (Workplace Express). It concludes that the Howard Government had a set agenda of reform, and its direction did not appear to be altered in any manner amidst criticism from opponents (such as unions and opposition political parties) and occasionally from supporters, in the period up until the formal policy announcement.

Introduction

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THE AUSTRALIAN SYSTEM

There are some issues relating to Australian Government and the system of industrial that are important to understanding this paper. Australia is a federation. The six independent colonies joined together in 1901 to form the Commonwealth of Australia, recognising the need for national unity on some issues, but seeking to retain states' rights on other matters (Jaensch 1997). The Parliament of Australia is bi-cameral. The House of Representatives (lower house), is elected by the people of Australia. The Senate (upper house) is elected by the people of each state. It is designed to protect state interests through its representative basis (being equal for each state regardless of its size), and the requirement that no legislation could be passed without the agreement of a majority of the Senate.

There is a constitutional division of powers between the federal and state governments. One element is that the federal government could provide for "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State" (Australian Constitution s.51.xxxv). Deery et al (1997) note that "the power is a restrictive one. It does not allow parliament to legislate generally about the terms and conditions of employment, only to set up tribunals with conciliation and arbitration powers", and then with limited jurisdiction. A federal industrial tribunal was established in 1905, and each state also developed its own protections and wage-fixing systems. These tribunals have been responsible for extensive industrial relations laws. Any attempt to change federal standards could result in organisations seeking instead to conduct business in state tribunals. Through various powers, these tribunals have been a means to regulate the system in an orderly fashion, to contain inflation, produce decent minimum standards and provide some equity and fairness and a level playing field. Under this system, trade unions had an accepted role, but they were also heavily

regulated in relation to all their activities, from elections to finances.

In the last two decades, there has been a significant change in approach, from national or state level wage-fixing to an industry level focus in the late 1980s and to an enterprise focus in the early 1990s.

POLICY PROCESSES AND STAKEHOLDERS

This section draws together a number of ways of considering the policy process and the role of stakeholders in industrial relations policy formation.

The Public Policy Process

There are many schools of thought in regard to public policy processes. Early writers supported a rational approach, which emulated the scientific method of the physical sciences, with a rational and ordered process including specific goals, consideration of alternatives, and logical choices. Others declare this to be an inadequate description, given that many decisions in the political environment are rushed and “based on immediate electoral advantage, rather than a long term ‘national interest’” (Davis et al 1998:122). Alternative theories have included Simon’s model of *satisficing* with imperfect information, and Lindblom’s notion of *incrementalism*, which saw policy develop through a series of small steps and alterations. Lindblom saw this as being democratic due to the bargained nature of changes, but also as a safe way to avoid the larger mistakes that might arise from larger reforms (Lindblom 1959, 1965). Subsequent writers criticised this approach for its assumptions of a pluralist society, as it tended to perpetuate existing power relations and domination of policy processes by a privileged few (Davis et al 1988; Ham and Hill 1984). The debate tends to be around whether there is a common public interest in which a problem is a problem for everyone, and goals can be clearly identified.

In the late 1990s, Bridgman and Davis (1998) proposed an Australian policy process cycle. While this has been criticised as an attempt at restoring rational approaches to political decision-making, it is nonetheless useful as a normative description of good policy-making. The process

includes the following stages: identify issues, policy analysis, policy instruments, consultation, coordination, decision, implementation, evaluation. This paper focuses on the period of time before the formal policy announcement of WorkChoices, and therefore covers the earlier stages of the cycle, being issue identification, and possibly some informal and elementary policy analysis.

Issue identification is the first step. Each issue has many interest groups competing to gain attention for their cause, and much policy development occurs when a new problem emerges. While politicians are the decision-makers, they are “subject to an array of external influences – parliament and their colleagues, the party they represent, interest groups and political donors, the media and public opinion” (Bridgman and Davis 1998:30). Ideology plays a significant role, with extensive changes in policy direction often being evident immediately after a change of government, albeit after a period in power they may rely more on issue identification from the public service (Bridgman and Davis 1998:30-32). Policy analysis is the second step. While new issues may require research and reflection, usually by the public service, “with long standing problems, governments may be guided by their overall party philosophy and program” (Bridgman and Davis 1998:25). This was certainly the case with the industrial relations reform.

The role of groups in the issue identification stage deserves further discussion. In this paper the term pressure group will be used to describe the groups and stakeholders who attempt to influence public policy, even though there is a wide range of terms currently used (including interest groups, lobbyists, and more modern terms regarding policy communities and networks). Pressure groups are not a formal part of the policy process, and so must attract the attention of decision-makers (Cook 2004). Governments need support of the electorate. Pressure groups can be a valuable mechanism to gauge the concerns of citizens, their provision of information; their support which demonstrates the legitimacy of government decisions, and their role in ensuring the responsiveness of governments to issues (Cook 2004; Ryan et al 2003).

Government may engage in discussions with pressure groups, in order to gain their support. They may also recognise pressure groups for their specialist knowledge and expertise, which can be used to assist in policy-making and drafting of legislation. Much of the activity of pressure

groups may happen behind the scenes, particularly if they are being consulted by government and having success by appealing to political executives. However, if that private lobbying fails, pressure groups may come to the public notice, as they resort to campaigns, alliances with other groups and other strategies to capture broader public interest, and place pressure on policy-makers in that way. Each group may have to use different strategies at different times, particularly when less sympathetic governments are in power. While there is unquestionably a role for interest groups in society, as the voice of competing groups, if they have excessive influence within a policy community they can bias policy in favour of a minority. Governments should be wary of being seen “to constantly advantage one group over another or it will suffer the consequences through electoral defeat” (Cook 2004:139; Ryan et al 2003:213-4, 227). Cobb and Elder suggest that interest groups, officials and politicians will try to make a private problem be a concern of the public, if necessary re-badging it “as ambiguously as possible with implications for as many people as possible, involving issues other than the dispute in question” public opinion (Cobb and Elder 1972:161-2 cited in Bridgman and Davis 1998).

Ryan et al (2003:207) note that business and trade unions are arguably the “most influential interest groups in modern society” and possess those characteristics identified as leading to most success in influencing public policy. These include longer term goals, ability to attract media coverage, and a formalised relationship with government. They also “have ‘insider’ status when political parties favouring their interests are in government” (Marsh in Ryan et al 2003:210). Businesses groups are arguably the more powerful because of the resources at their disposal, although they lack the single voice that the ACTU has in the union movement (Ryan et al 2003). Lindblom (1977 in Ryan et al 2003) argues “that business has a privileged position in capitalist economies due to their expertise and ownership of economic resources, their ability to influence public opinion through their control of the media, and strong resourcing which makes it easier to mobilise and conduct research that will attract the attention of government. Governments and societies need business to prosper in order to create employment”.

The interest groups and others who influence policy may be referred to as a policy community. Ryan (1993 in Ryan et al 2003:223-224) identifies a variety of types of policy community in Australia, including the *pluralist policy community* where an agency balances the competing

interests of groups, and the *capture or clientele pluralism*, where certain elite groups have power over the actions of government.

Industrial Relations and public policy

The role of the state and employer/employee relationships can be seen in the variety of approaches to industrial relations - unitarism, pluralism, elite and class. The unitarist model is based on harmony of interests between employers and employees, where industrial conflict is an aberration. Management is the “single source of authority and a single focus of loyalty”. State intervention is on behalf of a public interest which assumes the legitimate authority of management. The pluralist model accepts the legitimacy of conflict and divergent interests, and other sources of leadership and loyalty (such as unions). Power is diffused among groups, and everybody partially achieves their goals. State intervention is to reflect the variety of pressures faced, including protecting the weak. Critics of this model question assumptions of equal power between groups. Elite theories view the state as serving the interests of particular leaders, often business leaders. Class theories see employee-employer conflict as one aspect of class relations, with the state protecting capital through the institutionalisation and control of conflict, to maintain stability and avoid revolution (Cook 2004; Deery et al 1997; Gardner and Palmer 1997).

Each model sees state intervention being in the pursuit of particular interests. Crouch (1977 in Gardner and Palmer 1997) categorises the main processes of state intervention along two dimensions, being coercion/non-coercion and active/passive. Under *market individualism*, the state is passive but coercive, relying on laws to uphold property and individual rights and ensure the free operation of the labour market, as well as to suppress collectivism and resistance by workers. Individual contacts are the preferred approach. It serves the interests of employers. Under *liberal collectivism*, there is a non-coercive and passive state, with state intervention to support collective bargaining and the organisation of employees and employers. *Corporatism* sees an active state (coercive or non-coercive) with direct state intervention in the economy, supported by cooperative social consensus and representation of employers, employees and the state in policy making. This approach can be seen in the Accord of the 1980s, to some extent in the arbitration system. The Australian experience has involved a combination of approaches.

There has always been active and sometimes coercive state intervention through the maintenance of the conciliation and arbitration system, and in the regulation of trade unions, albeit favouring collective rather than individual agreements. In more recent years, market liberalism has been more evident with the increasing focus on individual contracts and restriction on union activity.

INDUSTRIAL RELATIONS UNDER THE HOWARD GOVERNMENT

Background up to October 2004

Liberal policy can be characterised as unitarist (seeking a harmonious relationship between employer and employee and seeing unions as having too much power) and market individualist (seeking individual contracts, and free operation of the labour market). During his career as a parliamentarian, John Howard frequently identified the need for reform along these lines. In more recent years, his position has become more extreme under the influence of the New Right in Australia, and their sustained ideological campaign.

Upon attaining government, Howard quickly changed the direction of industrial relations in line with Liberal Party Policy. The new Workplace Relations Act 1996 reduced the powers and functions of the Australian Industrial Relations Commission's (AIRC), and introduced a competitor institution, the Office of the Employment Advocate, to endorse agreements and offer advice to employers (Dabscheck 2001). Further attempts at significant change were rejected by the Senate, so Howard tried to achieve reform incrementally to gradually chip away at the existing power balance. Numerous single issue bills were introduced into Parliament, with most rejected by the Democrats in the Senate. The Bills had highly ideological titles, both those passed (such as the Fair Termination Bill; Prohibition of Compulsory Union Fees Bill; and Genuine Bargaining Bill), and those stalled (such as Secret ballots for protected action Bill; More Jobs, Better Pay Bill; Award Simplification Bill; Better Bargaining Bill; Fair Dismissal Bill; Protecting Small Business Bill). In most cases, the Howard Government has been well ahead of public perceptions of the need for reform (as demonstrated in major disputes such as the Patrick's waterfront dispute in 1998; and in the Government's disappointment in employers failing to prosecute unions who breached strike laws).

The lobbying begins – October 2004 – mid-February 2005

Notwithstanding these blocked attempts at reform, there had been an ominous silence on industrial relations issues in the October 2004 federal election. Liberal Party Policy made some mild re-statements of past initiatives - the Coalition would encourage agreement making and “investigate ways to reduce the duplication and complexity” arising from six separate industrial relations systems (Liberal Party 2004). The Howard Government was not only returned for a fourth term, but it appeared that the coalition of Liberal and National Party would also control the Senate, giving them unfettered rights to pass legislation from 1 July 2005.

There was widespread speculation in the first week after the election. Employer and business interests were “salivating”: the Business Council of Australia (BCA) called for the Government to use its Senate majority to further deregulate the labour market, and the Australian Chamber of Commerce and Industry (ACCI) suggested it was time to reintroduce the 1999 “More Jobs, Better Pay” Bill as a template for reform. Media sources speculated whether Howard would be able to resist using his unfettered powers to implement long-desired reforms. Peak union bodies called crisis meetings to plan how to deal with this likely event. Academics speculated on the options for small, medium or large scale reform (Workplace Express 14 October 2004).

Within a week of winning government, Federal Workplace Relations Minister Kevin Andrews began outlining the reform agenda. At a conference ironically celebrating the centenary of the Australian system of conciliation and arbitration, he noted plans to reduce the role of the AIRC, take over state industrial commissions, and water down the unfair dismissal system (Andrews 2004). Other prominent speakers at the conference urged the Howard Government to reconsider its plans. Former Prime Minister Bob Hawke warned about leading Australia down a more confrontationist and less socially cohesive path (Hawke 2004). High Court Justice Michael Kirby praised the role of the AIRC and stated that there was “no room in this nation for industrial ayatollahs” (Kirby 2004).

Supporters of the reforms weighed in to the debate to steel the Government’s resolve. A group of

business leaders (including Patrick chair Chris Corrigan) wrote to John Howard on 9 November 2004 “urging him to establish a high profile inquiry into a further wave of industrial relations change that would include whether unions should continue to enjoy special privileges” (Workplace Express 15 November 2004). Howard assured business leaders that further reform was a key priority, to build a “simpler and fairer” system and “improve workforce participation and high rates of productivity”. Initiatives included simpler agreement making, a new mediation service for small business outside the “quasi-legal AIRC processes”, and assistance to small and medium businesses in accessing flexibilities under Australian Workplace Agreements. He was committed to “greater harmony among the six overlapping workplace relations systems” using the constitutional corporations power. He also planned to introduce those reforms that had stalled in the Parliament. Howard advised that their proposal for an inquiry was not necessary, as he was already formulating an “ambitious forward agenda” (Howard 2004). This was the first sign that evidence and views from stakeholders would not be valued in the policy process.

Opponents used various conferences and forums to oppose the informal proposals. In Western Australia, a leading legal firm warned against provoking a reaction from workers and unions. Victorian unions used the state Australian Labor Party (ALP) conference to urge maintenance of Labor’s industrial relations policy and to protect workers (Workplace Express 1 November 2004, 16 November 2004). Historian Stuart McIntyre (2004) warned that removing third parties would not remove conflict between employees and employers:

industrial relations before the advent of trade unions was characterised by explosive, often violent forms of protest ... lack of representation, exploitation of the vulnerable, imposition of excessive hours, low pay, sweating of outworkers, unsafe work practices, neglect of training, absence of safeguards against arbitrary sackings or mass redundancies and denial of workers’ dignity are conducive neither to long-term business success nor industrial peace. ... We remove the forms of social protection at our peril.

Australian Workers’ Union (AWU) Secretary Bill Shorten warned the ALP against individual contracts, and Australian Council of Trade Unions (ACTU) Secretary Greg Combet stated that industrial relations would be evidence that the Howard Government would become arrogant as a result of its Senate majority (Workplace Express 7 February 2005).

The lobbying continues ... but still no policy announcement

Four months after the election, in mid-February 2005, there had still been no formal policy announcement. Various government representatives continued unofficial and informal announcements, perhaps trying to de-sensitise the public. On a popular morning television show, Federal Treasurer Peter Costello outlined his vision for a brave new industrial relations world, with more individual contracts, stripped back awards, simpler dismissal of employees, and productivity-linked wage increases (Channel 7's Sunrise Show, 12 February 2005). On 22 February 2005, a spokesman for Andrews noted that Cabinet had favourably received a broad outline of the industrial relations agenda, and he would begin work on a detailed policy package (Workplace express 22 Feb 2005).

This fresh series of announcements brought a further round of lobbying by both supporters and opponents. The BCA advocated stripping awards back to six allowable matters, with minimum wages to be fixed by the government, and fairness to be achieved through the tax and welfare systems rather than the industrial relations system (BCA 2005). The Australian Industry Group (AIG) was pushing for a reduction to just 20 industry awards, a new Minimum Wage Commission similar to that of the United Kingdom, and a division of responsibilities between state and federal industrial systems (AIG 2005). ACTU Secretary Greg Combet continued his opposition, noting that the Government had failed to make a case for the changes, and warning a conference of mining employers that unions would declare a war on the government and employers if they didn't engage with unions to ensure fair industrial relations changes (Workforce Express 21 February, 11 March 2005).

Unitary system

A major element of the debate was in regard to the institutions of arbitration, conciliation and wage-fixing. As discussed earlier, there were constitutional limitations to the federal government's industrial relations powers, and hence a dual system of state and federal tribunals and laws. In 2003, one state government (Victoria) had ceded its industrial relations power to the federal government, and discontinued its state system. Given that the ALP held power in every

state, it was highly inflammatory for Howard to informally suggest plans to implement a unitary system of industrial relations by taking over state systems, using another section of the Australian Constitution – the corporations power. Several state governments indicated that they would consider a High Court challenge against such a move which would lead to a downgrading of employee rights (Workplace Express 31 October 2004, 9 February 2005).

In February 2005, Andrews began openly discussing a unitary system. On 16 February, addressing a dinner to celebrate the anniversary of the AIRC, he suggested that, if states would not hand over their powers, he would take incremental steps towards national regulation (Andrews 2005e). On 25 February, on the eve of a meeting of State industrial relations Ministers to discuss the changes, Andrews announced at a luncheon that the Government would seek to take over state IR functions (Andrews 2005a). Note that these mentions were at luncheons and dinners, rather than formal policy announcements.

The lobbying continued, with varied opinions about the potential success of such a strategy. The Prime Minister down-played it as “not shaking the foundations” of the industrial relations system (Howard 2005b). In a surprise twist, Opposition Leader Kim Beazley said it was “something that can be considered” (Beazley 2005). The ALP and Democrats industrial relations spokespersons suggested the Government should try a more co-operative strategy (Workplace Express 11 March 2005). Some right wing groups, such as the Institute of Public Affairs, warned of the dangers of a unitary system if business-friendly parties lost power (Workplace Express 21 March 2005). The NSW Industrial Relations Commission (IRC) system cast doubt over the federal Government’s ability to use the corporations to achieve a national system (Workplace Express 21 February 2005). Academics, such as Sydney University Dean of Law Ron McCallum, agreed that the High Court might be tempted to curb radical plans to move from the labour power to the corporations power (Workplace Express 11 April 2005). The Victorian Trades Hall Council called on the State Government to take back the industrial relations power it had ceded to the Commonwealth in 2003, if awards were to be stripped right back (Workplace Express 11 February 2005). Public service unions approached states to bring “hundreds of thousands of employees of state-owned corporations back into direct Crown employment” and remove them from the likely reach of reforms (Workplace Express 3 March 2005).

Howard defended his approach (in a speech to the Liberal Party's think tank, the Menzies Research Centre) against critics from all sides of politics. He rejected concerns that this Government had "discarded its political inheritance in a rush towards centralism" as a "complete misunderstanding ... Where we seek a change in the Federal-State balance, our goal is to expand individual choice, freedom and opportunity, not to expand the reach of the central government." He sought to remove the "dead weight of Labor's highly-regulated State industrial relations systems". If States would not refer their powers, the Government would use its corporations to bring a projected "85-90% of employees into a national system, and States would eventually refer their remaining powers" (Howard 2005a).

The Government's own Productivity Commission (2005:xxxviii-xxxviv) raised doubts about the wisdom or benefits of the proposed unitary industrial relations system. It cautioned that, although the "differences in State and Territory provisions, and their interface with Federal arrangements, can create significant complications for, and impose substantial costs on, multi-State employers", it was difficult to balance "the costs of divergent approaches against the potential benefits from competition between jurisdictions on the basis of distinctive features of their labour market arrangements". It suggested that "new nationally coordinated initiatives" in industrial relations would provide "little pay-off".

Andrews discussed the national system of industrial relations in a television interview on 17 April 2005. When asked why the Government was not taking a more co-operative approach, Andrews claimed this was the fault of states for rejecting the idea of handing over their powers. He acknowledged the question of constitutionality, but noted that the Keating Labor Government had first used the corporations' power with their industrial reforms in the 1990s. He admitted that it wouldn't be a national system, as he estimated that it would bring in about 85 to 90 per cent of employees (Andrews 2005b).

The Howard Government appeared to have little chance of improving that ratio in the face of conservative governments being elected in each state. The NSW Liberal Leader had agreed that he would hand over the NSW industrial relations system if he gained power in 2007, giving the

Howard Government control of the two largest states (Victoria and NSW). However, the leaders of conservative parties in other states supported a dual system, on the basis that businesses should have a choice, and states' rights should be protected (Workplace Express 21 April 2005).

Andrews made a series of speeches to quell these fears amongst government supporters. He informed a business group in South Australia not to worry that a change of government might allow Labor to introduce an unpalatable national system, as "Experience elsewhere shows that Labor governments in the United Kingdom and New Zealand have not substantially wound back changes made by previous governments" (Andrews 2005c). On 9 May 2005, he informed an AIG dinner that even though states might initially fight federal moves, they might refer their powers in the future rather than maintain very small state systems. He also believed the High Court was prepared to continue changing the federal-state balance (Workplace Express 10 May 2005). Andrews indicated that the Government was still finalising the "pillars of change" and exploring other measures for reform, but Cabinet deliberations were delayed until after the 10 May budget (Workplace Express 10 May 2005).

Andrews was less interested in meeting industrial relations ministers of any political persuasion. He refused to meet state shadow Industrial Relations Ministers from his own party until June, after federal Cabinet had already made decisions on industrial relations. And he continued to withdraw from planned meetings with State ALP Ministers until after decisions had been made (Workplace Express 14 April 2005, 21 April 2005).

Sydney University Dean of Law Ron McCallum outlined his views. He considered that there were arguments for "the establishment of one truly national labour law regime for Australia with its relatively small population" in the next decade. However, the dual federal and state systems were not such a problem that they affected productivity. Most large employers were corporations and could already enter into non-union certified agreements or individual workplace agreements with their employees, but chose to remain under state systems. Therefore it was hard to argue an urgent imperative to dissolve them through such extreme legislative and constitutional measures. He considered that a co-operative national system could be built under the existing constitutional labour power, and governments at all levels owed it to employees and businesses to make

stronger efforts toward this end (McCallum 2005).

Pay and conditions

Significant lobbying also occurred around the institutions responsible for pay and conditions.

Opponents of any reduction in the existing AIRC role in wage-setting questioned the imperative for such fundamental change, given the flexibility in the existing system. Soon after the 2004 election, ACTU President Sharan Burrow wondered how much lower protections and flexibility should go, given that 65% of Australian already earned less than \$600 per week, and half of all new jobs in the last decade were casual (interview, Workplace Express 28 October 2004). In March 2005, the ACTU highlighted Australia's achievements against other systems. In Australia, moderate wage growth (2.9%) had been accompanied by strong jobs growth (10.4%), while in the US wages had fallen by nearly 12% and jobs growth had been low. This was also contrasted to the moderate jobs growth in the UK, despite the minimum wage increasing significantly as part of a campaign against poverty (Workplace Express 15 March 2005). Even independent sources indicated the flexibility of the system. The use of individual agreements was continuing to increase, with the Office of Employment Advocate noting that 155,000 Australian Workplace Agreements had been approved in the 2003-04 financial year, exceeding their target of 150,000, with an overall total of more than 500,000 (OEA 2004:5). Minister for Families and Communities noted that family impact statements would be undertaken to assess the affect of the industrial relations reforms on families (in line with commitments given to the Family First Party in exchange for preferences in the October 2004 election) (Patterson 2005), although the Government would later renege on releasing such information.

At this time, the ACTU launched a national campaign to attempt to restrain the Government before it took control of the Senate in July 2005. In addition to unions and state labour councils, it planned to work with state Labor Governments, community and church groups, and ensure that federal members understood that business interests might not be the same as their constituent's interests. It planned an education campaign for members and the community in April and May on the implications of the amendments, and activities including "defending democracy" in July

with the changeover in the Senate (Workplace Express 15 March 2005).

During March 2005, there were informal proposals and assurances on wage fixing. Prime Minister Howard assured journalists at the Canberra Hyatt Hotel that, even though the laws were still being drafted, “there’s one thing that won’t come out of the decision we take – we won’t be adopting policies that will lead to a reduction in the real level of wages in Australia” (Workplace Express 22 March 2005). Andrews indicated to the Sydney Institute on 23 March 2005 that the government would not strip awards back to less than the 17 allowable matters pursued by Minister Abbott in 2002 (WE 24 March 2005). These were later proved to be hollow assurances.

In line with employer groups recommendations (Workplace Express 7 March 2005), Andrews confirmed that he had visited the UK Low Pay Commission, and would seek Cabinet approval to establish a similar body to set minimum wages. Shadow Industrial Relations Minister Stephen Smith noted that it was unlikely that the Howard Government or employer groups were seeking similar outcomes to those of the UK, where the low paid received significant pay increases. On the contrary, the Howard Government had opposed ACTU proposed pay rises in every wage case. A further concern was that the UK Commission made recommendations and the government makes decisions (Workplace Express 20 March 2005, 7 April 2005).

Lobbying continued throughout April. On 8 April 2005, a leading business newspaper published a letter by nine former presidential AIRC members, accusing the Howard Government of inaccurate and misleading claims about national wage cases. They thought it was inappropriate to mislead the public into believing that the Commission did not consider the employment and price effects of its safety net wage adjustments (Australian Financial Review 8 April 2005). Others expressed concerns of the effect of setting pay increases for only the lowest paid, without safety net adjustments for higher skill and wage levels. The ACTU sought Howard’s guarantee that his changes to pay-setting arrangements wouldn’t cut the value of workers’ real wages (Workplace Express 11 April 2005).

Andrews further outlined plans in a television interview on 17 April 2005. He emphasised that the Government had been:

arguing before the Commission in each of the minimum wage cases for the last few years that the concentration should be on the low-paid and that the Commission should take account of the prospects of those Australians, tens of thousands of which still don't have a job. ... You can still have increases in wages under that as they do in the UK. What we're proposing is simply a different way of going about it, applying more ongoing economic rigour and monitoring of the outcome of the wage from time to time.

The interviewer pursued some guarantee that no worker would be worse off as a result of the changes, but Andrews continually avoided the question, instead referring to past pay increases. The interviewer noted that Andrews seemed unprepared to give the same guarantee that the Prime Minister gave. Andrews countered that they "don't want to see Australian workers worse off" but could hardly provide guarantees when wages were not set by the Government (Andrews 2005b). Journalist Misha Schubert from the Age queried that the Government approach of opposing minimum wage increases in all state wage cases was evidence that they wanted to reduce the minimum wage over time. Andrews claimed he just wanted a more rigorous way, rather than using a century old mechanism. When asked why he didn't just impose stricter conditions on the AIRC, Andrews said they were looking at a number of approaches – one was to look at the IRC method, another was to set up a specialist division, and a third was to have a, although he preferred a separate body that considered the minimum wage as well as monitoring it on an ongoing basis (Andrews 2005b).

Evidence about the direction of the economy

There were mixed opinions about the economy, each cited to suit the arguments of supporters and opponents. An International Labour Organisation (ILO) report noted that Western Europe was proving that the United States labour market approach of lowering wages was not the only model for success. However, a benchmarking report by the OECD note that, to close the gap between Australian and US economic growth, Australia needed to cut minimum wages, drive people with disabilities off benefits and boost vocational education (Workplace Express 16 February 2005, 1 March 2005).

The Reserve Bank began warnings that the emerging skills shortages were putting upward

pressure on wages and inflation, and that continued expansion would require greater productivity and increased labour market participation (Workplace Express 15 December 2004, 8 February 2005, 2 February 2005). By May 2005, the Reserve Bank noted that labour shortages had put productivity into reverse and resulted in employers having to be more responsive to reviewing salary and non-salary benefits (Workplace Express 6 May 2005). Australian Bureau of Statistics data confirmed that labour shortages were driving wages upwards, with an increase of 1.1 per cent for the March quarter and 3.9 per cent annually – the highest year-on-year growth since data collecting began in 1998 (Workplace Express 18 May 2005). Against this backdrop, it is difficult to understand how removing protections on minimum employment conditions was going to solve productivity problems.

The first formal policy announcement in late May 2006

On 26 May 2005, John Howard finally made a policy statement to Parliament on industrial relations reform, which was more extreme than expected. In summary, the package included:

- (1) *New arrangements for setting minimum wages and conditions*, through a Fair Pay Commission which would set one minimum wage rather than providing safety net wage increases for workers at all levels. The existing no-disadvantage test would be replaced with a standard of five generic minimum conditions and rates;
- (2) *A more streamlined process for the making of workplace agreements*, providing approval of all agreements simply upon lodgement with the Office of the Employment Advocate;
- (3) *Greater award simplification* (meaning fewer matters being protected in awards, and an attempt at rationalising awards into one super-award for each industry) *and a more focused role for the Australian Industrial Relations Commission* (away from hearing applications to resolving ‘legitimate’ disputes and simplifying awards);
- (4) *Major liberalisation of unfair dismissal laws which have held back job growth in Australia*, exempting business of less than 100 employees from unfair dismissal protection laws, and misleading employees about what matters would remain protected by law; and finally
- (5) *The goal of a national industrial relations system*, cooperatively if possible, but otherwise coercively through reliance on the constitutional corporations power (Howard 2005c).

ALP representatives, unions, academics and even employer groups considered that the reforms went further than anticipated. It “gutted” the AIRC, lowered the safety net for all agreements, and removed most employees from unfair dismissal protections. Opponents suggested that it would lead to the creation of a US-style working poor (Labor Shadow Industrial Relations Minister Stephen Smith, AIG Chief Executive Heather Ridout; Flinders University Professor Andrew Stewart, cited in Workplace Express 26 May 2005).

There appeared to be no firm plans, and Howard claimed that the Minister for Workplace Relations would “continue to consult” on the detail of the legislation. (Howard 2005c). In the following six month period, which is beyond the scope of this paper, the lobbying continued as the stakeholders endeavoured to influence the policy decisions still to be made in the drafting of the legislation: unions planned far-reaching campaigns to mobilise employee opposition; state governments considered High Court challenges to protect their industrial systems and conditions for their states’ workers; and new alliances were formed between unions and church groups.

Analysis and Conclusion

This paper considered the preliminary stages of the issue identification for the Howard Government’s industrial relations reforms, characterised by vague and informal suggestions about the direction of reform. In the absence of concrete policy announcements, this early phase of the policy process focused on institutions of industrial relations – the AIRC, the Fair Pay Commission, a unitary tribunal system. This is not surprising, given the centrality of these institutions in the distribution of power in the industrial relations arena and to level the playing field.

In terms of policy process, the Howard Government approach has been mixed. It had begun with significant change after the 1996 election, but had taken an incremental approach to breaking down the system since that time. However, contrary to Lindblom’s suggestion that this was to avoid the mistakes that can arise from larger scale reform, this appeared to be a result of parliamentary blockages which provided the electorate with de-facto protection from such reform. Once Howard gained control of the Senate, he proceeded again with large scale reform.

Contrary to Bridgman and Davis' indication that ideologically driven reforms generally occur after the initial election, with later reforms being driven more by public services, these reforms in the fourth term of government remained heavily ideological, with little evidence of rational policy analysis. There was little evidence put forward and little substance behind assertions that removing wage and unfair dismissal protections will result in job creation and solve the effect of ageing on the labour market.

Liberal Party policies follow a unitarist model, insofar as it assumes harmony between employers and employees and no legitimacy in the role of unions or tribunals in this relationship. The reforms were not the result of a pluralist policy debate, but rather represent the interests of business. Rather, it appears to be the result of an elite group of business leaders with strong influence over government policy, and no amount of private or public lobbying by unions resulted in even the smallest change in direction. Arguably, it was a captured policy community. The Government did re-badge the reforms to try and persuade the public that they would benefit from more jobs and higher wages. Ryan's typology of policy communities does not describe those issues that the Government is pursuing despite the lack of support: the unification into a national industrial relations system seems to offend existing state governments, many state opposition parties, right wing groups and even the Productivity Commission.

Australian industrial relations policy is difficult to characterise in terms of state intervention. Australia has never fallen neatly into the identified categories, given the active and somewhat coercive role of the state in establishing the institutions and formal rules of the industrial relations system. Howard displays some elements of market individualism, seeking to restrict law to upholding property rather than workers rights, increasing restrictions on union activity and favouring individual over collective contracts. However, he is taking an active rather than passive role: his attempts at freeing up the labour market are not through deregulation but rather re-regulation; he is seeking to substitute one type of law for another; and he is seeking to replace the special jurisdiction (which takes a pluralist approach to levelling the playing field) in favour of the common law (which operates in favour of his preferred interests of business).

The union movement has responded to Howard's attempts to reduce their power and scope by

changing their relationship with the state. They have come to rely less on tribunals and legislation and central decisions, and established more direct relationships with members and the community. This turned out to be a crucial strategy, as the next phases of the roll-out of WorkChoices occurred.

Howard's fourth term in government and control of the Senate has led to an appearance of strong arrogance. He did not alert the electorate to sweeping reform plans, and has subsequently ignored pressure groups and other community feeling. If the ACTU is right, and this issue is strongly opposed, this may be at Howard's electoral peril.

AIG (2005) <i>Making the Australian Economy Work Better – Workplace Relations</i> , publication of the Australian Industry Group 7 March 2005.
Andrews, K (2004) speech to Centenary Convention, Melbourne, 22 October 2004.
Andrews, K (2005a) "Where do we want workplace relations to be in five years time", Speech to the committee for Economic Development of Australia (CEDA), 25 February 2005, Federation Square, Melbourne.
Andrews, K (2005b) <i>Meet the Press</i> , interview with Paul Bongiorno, 17 April 2005.
Andrews, K (2005c) "A National System – Taking South Australia to 2010", a speech by Workplace Relations Minister Kevin Andrews to Business South Australia seminar, Adelaide, 4 May 2005.
Andrews, K (2005d) "Evolution or Revolution", speech by Workplace Relations Minister Kevin Andrews to AHEIA Conference Brisbane, 29 April 2005.
Andrews, K (2005e) Speech to a function to mark the centenary of the Inaugural President of the Commonwealth Court of Conciliation and Arbitration, Old Parliament House, 14 February 2006.
<i>Australian Financial Review</i> , Australian newspaper.
BCA (Business Council of Australia) (2005) <i>Workplace Relations Action Plan for Future Prosperity</i> , www.bca.com.au , produced 15 February 2005.
Beazley, Kim (2005) Address to the Business Council of Australia, http://www.alp.org.au/media/0305/spfill020.php , 2 March 2005.
Bridgman, P and Davis, G (1998) <i>Australian Policy Handbook</i> , Allen and Unwin, St Leonards NSW
Cook, Ian (2004) <i>Government and Democracy in Australia</i> , Oxford University Press
Dabscheck, B. (2001) "The Slow and Agonising Death of the Australian Experiment with Conciliation and Arbitration", <i>Journal of Industrial Relations</i> , Vol. 43, No. 3, September, pp. 277-293.
Davis, G; Wanna, J; Warhurst, J and Weller, P (1999) <i>Public Policy in Australia</i> , Allen and Unwin, Sydney.
Deery, S; Plowman, D and Walsh, J (1997) <i>Industrial Relations: A Contemporary Analysis</i> , McGraw hill, Sydney
Everett, Sophia (2003) "The Policy Cycle: Democratic Process or Rational paradigm Revisited?", <i>Australian Journal of Public Administration</i> , Vol 62, No.2, June 2003, pp. 65-70
Gardner, M and Palmer, G (1997) <i>Employment Relations</i> , Macmillan Melbourne.
Ham, C and Hill, M (1984) <i>The Policy Process in the Modern Capitalist State</i> , Harvester Wheatsheaf, Hempstead UK
Hawke, B (2004) speech to Centenary Convention, Melbourne, 22 October 2004.
Howard, John (2004) Letter to business leaders, dated 14 December 2004.
Howard, John (2005a) "Reflections on Australian Federalism", Address to the Menzies Research Centre, Melbourne, 11 April 2005.
Howard, John (2005b) Address to the Business council of Australia, Aitken Hill Melbourne, http://www.pm.gov.au/news/speeches/speech1263.html , 3 March 2005.
Howard, J (2005c) Prime Ministerial Statement on Workplace Relations, Parliament of Australia, 26 May 2005.
Jaensch, D (1997) <i>The Politics of Australia</i> , Macmillan, Melbourne.
Kirby, M (2004) speech to Centenary Convention, Melbourne, 22 October 2004.

Liberal Party (2004) Flexibility and Productivity is the key to jobs, Liberal Party policy platform in the October 2004 election, www.liberal.org.au
Lindblom, C E (1959) "The Science of 'Muddling Through'", <i>Public Administration Review</i> , Vol 19, No 2, pp 79-88
Lindblom, C E (1979) "Still Muddling, Not Yet Through:", <i>Public Administration Review</i> , Vol. 39, No. 6, pp. 517-526
McCallum, R (2005) "The Australian Constitution and the Shaping of our Federal and State Labour Laws, Presentation to the Industrial Relations Society of New South Wales 46 th Annual, 13 May 2005
McIntyre, Stuart (2004) "One hundred years of Arbitration", The Whitlam Lecture, Melbourne, 30 November 2004
OEA (2004) Office of the Employment Advocate Annual Report 2003/2004, Commonwealth of Australia.
Patterson, Kay (2005) Speech to the Australian Institute of Family Studies Conference – Families Matters, 9/2/2005, Melbourne Exhibition and Convention Centre, Melbourne.
Productivity Commission (2005) <i>Review of National Competition Policy Reforms</i> , Productivity Commission Inquiry Report No 33, 28 February 2005, Canberra, www.pc.gov.au/inquiry/ncp/finalreport/ncp.pdf
Ryan, N; Parker, R and Brown, K (2003) <i>Government, Business and Society</i> , Prentice Hall, Sydney
<i>Workplace Express</i> , www.workplaceexpress.com.au , non-partisan news service in industrial relations