

Editors' introduction: Australian industrial relations in transition

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Introduction

Australia's industrial relations system has long been hailed as distinctive in the international arena, although it shares many commonalities with the systems of other countries. This Introduction contextualises the papers in this issue, by describing first the birth and development of the system, and secondly the system's most recent and arguably most tumultuous ten years. The Introduction concludes with a précis of the various papers in the special issue.

Australia's industrial relations system developed as a hybrid system that set a floor of minimum standards via awards, which provided widespread protection for many workers including the most vulnerable, but also enabled collective bargaining where unions had sufficient market power. Australia's central, and most distinctive, institutional actor, the arbitration commission, was insulated from direct political interference and was independent in its judgements, although it was required to take into account the views of employers and unions – and government – in making its decisions. In some respects, the history of the Australian industrial relations system is a history of the rise and then fall of Australia's arbitration system. It is the state's institutional architecture that has altered most dramatically, particularly in very recent years, while the roles of unions, large employers and employer associations in industrial relations have undergone evolutionary but not so startling change.

The trajectory of changing IR regulation in Australia can be simplified into three periods: a long period known as ‘the Australian settlement’, for most of the twentieth century (1904-1982), followed by a quasi-corporatist system under a Federal Labor government (1983-1996) and then a neoliberal roll-out (1996-2007) under a Liberal (conservative) government. An Australian Labour Party (ALP) government, elected in November 2007 with a strong policy platform of rolling back recent conservative-led changes is, at the time of writing, comprehensively amending industrial laws – not to the extent that many in the union movement would prefer, but probably to a greater extent than most employers and their associations would like.

The ‘Australian Settlement’: the Arbitral Model is established and consolidated

The first two phases – the long ‘Australian settlement’ and the Labor-led corporatism of the 80s and early 90s – have been characterised as ‘union-based, collective and relatively egalitarian’ (Cooper and Ellem, 2008:537). Dating from 1904, the ‘arbitral model’, the cornerstone of which was the arbitration commission, was the basis for regulating the employment relationship. The period in which the system was devised followed a series of strikes and then a severe economic depression in the 1890s, leading to hardline action by employers against unions, supported by the state. The worst effects were felt in the mining, agriculture and transport sectors (Gollan, 1968). The period following these nationally debilitating events was a favourable context in which to argue for a state-led means of eliminating industrial conflict – as industrial arbitration was presented at the time.

Politically, the country was federating and gaining independence from Britain, thus determining its Constitution and its own laws; the economy was reviving and manufacturers sought tariff protection to shore up their position, a strategy Castles (1988) has termed

‘domestic defence’; and socially, there were strong discourses of nationalism and ‘fairness’ that united workers and small-l liberals across class lines (Patmore, 1991; Macintyre, 1989). Thus unionists and liberal social reformers of various political hues argued that a system that guaranteed fair and reasonable wages for employers, and a state-sanctioned means of settling disputes, was a good quid pro quo for tariff protection (Plowman, 1989), and manufacturers did not disagree. In an international context, the social experiments in Australia early in the twentieth century – and in particular, its conciliation and arbitration system – put the country in the vanguard of progressive political and social action by state actors (Reeves, 1902). Social protection was balanced against capital’s capacity to pay for increased wages and conditions (Macintyre and Mitchell, 1989).

The arbitral model was based on the Australian Constitution’s ‘industrial relations power’, which allowed Federal Parliament to make laws for ‘conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State’ (Section 51.xxxv). As the system was centred upon the decision-making capacities of tribunals, it grounded institutional relationships, rather than individual ones (Cooper and Ellem, 2008: 535), relying for its effective operation on trade unions and employer associations (and, to a lesser extent, on large employers). The Conciliation and Arbitration Commission (often called ‘the tribunal’) set wages and conditions by making ‘awards’, sometimes by consent but more often by arbitration. Each Australian state also had its own set of tribunals, and until the 1990s the state systems were covered more employees, although the national system had a strong role in terms of pace-setting test cases and because of the dominance of the federal Metal Trades Award, with wage decisions made by the federal tribunal for this award ‘flowing on’ to other industries (Macken, 1989). ‘Test cases’ – usually initiated by the union movement via the Australian Council of Trade Union (ACTU)

– set standards for issues such as hours of work, minimum wages and, as the twentieth century progressed, a host of other matters such as redundancy provisions. Australian tribunals therefore determined a whole range of working conditions that, in other countries, are the subject of collective bargaining or are provided by the social welfare system (Hartog and Theeuwes, 1993) – hence the characterisation of Australia as ‘the wage-earner’s welfare state’ (Castles, 1988). That is not to downplay the role of collective bargaining in Australia, for it was often only when an issue such as reduced working hours had been won on the ground by workers in areas of strategic strength, that it was translated into a wider right by tribunals. Such a system was largely accepted by employers, for it regulated wages, ensured to a large extent that militant unions were not able to win very large wage increases except in highly favourable economic circumstances, and largely took wages out of competition for employers, which suited the interests of capital in a stable Keynesian economic environment, with fast-growing manufacturing sector, particularly after World War Two.

Not only did the arbitral system privilege institutional actors, it empowered them and further institutionalised their roles. It encouraged them to become adept political actors in order to modify the industrial relations system for their own purposes (Weller, 2007: 904). The union movement had given birth in the 1890s to the precursor of the Australian Labor Party (Buckley and Wheelwright, 1988), and by 1910 the party had attained government federally, holding a majority in both houses of parliament. Unions were able to gain favourable legislation when the ALP held office. The union movement was highly fragmented at the level of the individual union, as small, occupationally-based unions were as able as large unions to access the benefits of the IR system (Howard, 1977); the ‘industrial advocate’ was a key figure in unions. However, the union movement as a whole was relatively coherently organised at peak level, with a single major federation, the Australian Council of Trade

Unions (ACTU) in existence from 1927. The ACTU amalgamated with various smaller white collar federations in the late 1970s (Griffin and Guica, 1986), becoming a highly unified peak council. Workplace activism was often muted by the IR system, since unions could readily apply for compulsory conciliation conferences and then for compulsory arbitration to solve disputes (Howard, 1977; Bramble, 2008), although there were significant pockets of militant workplace culture (Rimmer, 1989) and some scholars vigorously debate the 'quiescent workplace' thesis (Cooper and Patmore, 2002). Thus, the form and character of the union movement was shaped by its function, which was to lobby government for improved legislation and to win as many gains as possible for members from the arbitral system, with limited scope for workplace activism.

The links between conservative parties and large employers and employer associations were more fragmented and much less formalised than the ALP-union relationship, but they still existed (Deery and Plowman, 1991: 200-203). Changing economic circumstances in the 1980s and the existence of the Prices and Incomes Accord – 'the Accord' – between the ALP government and the unions, saw employer groups, particularly the newly created Business Council of Australia, becoming more powerful and organised, and indeed influential with Labor as well as conservative governments (Bennett, 1999; Barry, Michelotti and Nyland, 2006).

Bargaining complexity characterised the Australian IR system: awards, collective agreements and more recently individual agreements, are supplemented on some conditions such as long service leave and public holidays by legislation (Bray, Waring and Cooper, 2009: 335). Until the emphasis on enterprise bargaining in the Labor Accord period in the early 90s (see below), at least 80 per cent of workers were covered by tribunal-sanctioned awards and

agreements (and the rest, mainly the very highly paid, by common law contracts) (ABS Cat. No. 6315.0). Powerful unions were however able to win over-award payments in particular organisations and industries by a mix of industrial action and multi-employer collective bargaining (Plowman, 1986: 21-29). While the workplace was not unimportant, and local negotiations and agreements occurred, industry and national scales largely subordinated the local. The system generated complexity institutionally and procedurally. Individual workplaces often had multiple unions and multiple awards, some had both state and federal awards, and some working conditions were covered by state or Federal legislation, all of which added to the complexity of regulating wages and conditions. The system preserved managerial prerogative (Bray, Waring and Cooper, 2009: 306), as a sequence of tribunal and High Court decisions clearly delineated what was an ‘industrial matter’ and what was not – and much was not.

While the system was redistributive in intention and ideal, this was never unproblematic. Female paid labour, for example, was devalued within a framework that privileged notions of the male breadwinner and the ‘family wage’, leading to a discriminatory gender order within the industrial relations system (Whitehouse, 2004). Tribunals institutionalised a gender pay ratio of 54% early in the twentieth century, which was only amended – to 75% – following World War Two (Whitehouse, 2004: 225) and then via equal pay decisions made by the federal tribunal in the late 60s and early 70s (see below) and the creation of an equal minimum wage in 1974. The system also permitted discriminatory practices against Indigenous workers (Hagan, Castle and Clothier, 1998). In Whitehouse’s words, ‘justice for all has been an elusive target’ (Whitehouse, 2004: 207).

‘The Australian settlement’ was a long period which from historical distance now seems more uniform than it actually was. Political, economic and social context continued its interplay with institutional agency. Two examples illustrate this. The first example is from the 1970s, when economic crisis and wage inflation put the conciliation and arbitration system under pressure, and so the Federal tribunal introduced a direct linkage between wage rises and cost of living increases in 1975 and then a temporary freeze on wages in 1981 (Deery and Plowman, 1991). The second example is the erosion – although not the disappearance – of the discriminatory institutionalised gender order. Pressures from women’s groups throughout the twentieth century, and eventually from the trade union movement, led to the introduction of equal pay by means of tribunal decisions in 1989 and 1972 but with an unsatisfactory formulation that did not fully relieve the problem (Bennett, 1988). These decisions were followed by a series of occupationally-based test cases (Rafferty, 1994). However, the full realisation of equal pay is still to come (Baird and Williamson, 2009).

Corporatism under Labor: the Arbitral Model under a variant of ‘the third way’

The hybrid quasi-corporatist system (1983-1996) did not create a fundamental shift in the nature of the institutions at the time, but it marked the ushering out of the previous macroeconomic approach of ‘domestic defence’ and was the curtain-raiser for the Australian era of neo-liberalism. In the 1980s it was somewhat distinctive for centre-left governments to acknowledge and use market mechanisms in a widespread way; at that time Australia however became a pioneer in a variant of ‘third way’ social democracy (Castles and Pierson, 2002). In the context of a sustained period of rule by conservative parties federally, Australia’s peak union body, the Australian Council of Trade Unions, in 1983 entered into a formal quasi-corporatist arrangement – known formally as ‘the Prices and Incomes Accord’ –

with the ALP. This gave electoral clout to the ALP in the Federal election later that year, where it won power that kept it in government for the next 13 years. The Labor government under its first Prime Minister (and former ACTU president) Bob Hawke (replaced in 1991 by Paul Keating), pursued a mix of structural macro-economic reforms with micro-economic industry reform in crucial sectors of industry (Bell, 1997). In essence, this was a response to increased exposure to world markets and moves away from economic protection, factors that are particularly salient in countries such as Australia which have small economies and do not fit easily into transnational, regionally based groupings of nation states (Castles, Curtin and Vowles, 2006: 132). The Labor government trod a path between European ‘social pact’ government and Anglo-American economic liberalism. This made for a mix of policies: an expanding ‘social wage’ of benefits (including compulsory employer contributions to private pensions, dubbed ‘superannuation’, a strengthened national health system and increased funding for child care); and at the same time a policy – contentious within some areas of the union movement – of wage restraint. While the Accord has been dubbed ‘corporatism without business’ (Mathews, 1994), the ALP did bring employers to the table in a range of structural arrangements to oversee the rollout of macro and micro-economic changes, although business never considered it was a ‘full partner’ to the extent trade unions were. The political clout of the ACTU, its largest affiliated unions, and large employer associations such as the Business Council of Australia (BCA) increased further over the early years of the Accord.

Changes to the industrial relations system were necessary to support government policy. Wage-fixing decentralised over the period, with the tribunal system in effect co-opted into the process, such was the degree of agreement between government, business and unions. A ‘second tier’ of productivity bargaining, granting so called ‘above award’ increases,

commenced in 1986, requiring negotiation at the workplace to achieve changes over and above the modest increases sanctioned by tribunals (McDonald and Rimmer, 1989). Government, business and unions then jointly argued at successive Wage Fixing case for the introduction of enterprise bargaining – unsuccessfully in 1988 as the tribunal was not persuaded, but successfully in 1991. A major reworking of the legislation produced the 1988 Industrial Relations Act. Amendments in 1992 and 1993 (in the midst of recession) cemented the 1991 shift to workplace bargaining (Forsyth and Sutherland, 2006). This included non-union collective bargaining; although, as unions could intervene in proceedings for such agreements, few such non-union agreements were registered (Briggs and Cooper, 2006). Effectively, the award structure, long the lynchpin of the industrial relations system, was relegated to a ‘safety net’, important for the low paid (but capable of delivering less to them), and increasingly irrelevant for workers with high labour market power. The whole process, from the mid 1980s to 1996, has been characterised as ‘managed decentralism’ (the term being coined by McDonald and Rimmer, 1988), with decentralisation being controlled and a balance being maintained between employment protection and security, and the achievement of flexibility in wage fixing and bargaining (Howe, 2006). From the late 1980s onwards, therefore, the ‘third way’ corporatism of the early 1980s began unravelling, with the government increasingly turning to market-based solutions, such as tariff cuts and changes to the IR system (Bell, 1993, 1997; Hampson, 1996). Deregulation of the labour market was less than in other areas of the economy; however, partly because of the continuation in power of an ALP government and its links with unions (Bray, Waring and Cooper, 2009: 84).

The changes in the IR system in the 1990s were made possible by using ‘heads of power’ in the Australian Constitution other than the industrial relations power. The ‘corporations’ and ‘external affairs’ powers were used to introduce a non-union collective bargaining stream

and to impose regulation on employers in areas of minimum wages, equal remuneration and redundancy, thus undermining collective bargaining to an extent, but at the same time widening and deepening the protections afforded to employees to comply with international labour standards (McCallum, 1994). The changes that took place were, in the main, socially progressive; use of the corporations power by a later, conservative, government to introduce changes in 1996 and 2005 (see below) were the reverse. Essentially, however, the conciliation and arbitration power remained at the core of the industrial relations system until 2005. However, the decisions made by government in this period saw the introduction of ‘a hybrid structure blending arbitration with enterprise-level bargaining’ which ‘strengthened the depth and scope of the Federal jurisdiction and diminished the separation between the law and economic and social policy making’ (Weller, 2007: 908-9).

Alongside these changes in the IR system there was a steady decline in union numbers, density and strength. Union density, which had fluctuated around 50% from the 20s to the mid 80s, went into freefall. By the mid 90s it was 33%, and today is just under 20% (ABS Cat. No. 6310.0). While there are a complex range of factors that led to the declining fortunes of unions, political factors, economic circumstances both domestically and internationally, changing labour market composition, the lack of workplace focus of Australian unions and greater employer militancy all played a part (Peetz, 1998). Union consolidation had occurred through the twentieth century but accelerated significantly in the early 1990s with a wave of mergers, a process fostered by the policies of Australian Council of Trade Unions (ACTU), Australia’s peak union body and via legislative change by the Federal ALP government (Hose and Rimmer, 2002). From the late 1990s onwards, a range of unions have developed increasingly sophisticated organising strategies (Crosby, 2005).

Neo-liberalism under the conservatives: the Arbitral Model undergoes further decline

The mid 1990s heralded a period of major change in employment relations in Australia. The election of the Howard Liberal government in 1996 meant that neo-liberalism was extended into most areas of economic policy including employment relations (Bray and Underhill 2009). What the previous Keating Labor government had initiated, John Howard, intensified in the first nine years of his government. The last three years of the Howard regime can be characterised as an intensification of these earlier policies. Consequently this assessment will be divided into two segments: the period from 1996 until the enactment of the *Work Choices* legislation in 2005; and the period following *Work Choices* and its subsequent amendment by the Rudd Labor government in 2009.

The Howard government inherited a very healthy economic position from its predecessor. Australia enjoyed low and declining unemployment, increasing participation rates especially amongst women and – on the down side – skill shortages in key occupations and industries. In addition, during the 1996-2005 period wages grew by 21% over and above inflation, as Australia's terms of trade with its major trading partners were extremely favourable. Part of this economic success was due to a mining boom and rapid growth of the Chinese economy. The globalisation of the Australian economy and in particular the provision of services especially in education, property and business services further assisted this favourable economic outcome (Bray, Waring and Cooper 2009). The early years of the Howard

government were characterised by pragmatism in economic policy and gradualism in the application of that policy. Howard continued a move towards the privatisation of public services and the sale of government-owned enterprises. The most dramatic example of this was its phased privatisation of Australia's state-owned telecommunications company, Telstra, which commenced in 1997 and continued until 2006 (Bray, Waring and Cooper 2009).

The single most important legislative enactment of the Howard government was the *Workplace Relations Act 1996*. The Act was the first employment relations legislation to make significant use of the Corporations power in the Australian Constitution (Section 51[xx]), rather than the Conciliation and Arbitration power (section 51 [xxxv]), and introduced a number of controversial innovations including:

- individual statutory agreements, known as Australian Workplace Agreements (AWA'S), as an addition to common law contracts;
- the establishment of the Office of the Employment Advocate to scrutinise and register agreements;
- a reduction in the arbitral powers of the Australian Industrial Relations Commission, (AIRC) so that it had reduced jurisdiction and became merely one means of resolving industrial disputes;
- the introduction of "freedom of association" provisions with a view to restricting union activity;
- award simplification through the Award Simplification Taskforce;
- restrictions on the activities of trade unions such as tighter rules governing their internal processes and restrictions on right of entry into workplaces (Colvin, Watson, Burns 2004).

Three key features of this legislation will be examined in turn.

Australian Workplace Agreements (AWAs) were a key aspect of Howard's individualisation agenda. For the first time employers who were corporations could offer individual contracts to their employees which if accepted could be registered with the Employment Advocate. These AWAs had to pass a “no disadvantage” test which meant that the Advocate compared the proposed AWA to a relevant award in order to ensure that the employee was not disadvantaged overall. The advantage for employers was that it enabled them to negotiate directly with their employees without union involvement and in particular to cut pay and certain conditions, particularly penalty and overtime rates. Initially the coverage of AWAs was very slow but it grew somewhat after 2005 (McCallum, 1997; Peetz, 2006). While, at most, 5% of the workforce was covered by these agreements by the time of the defeat of the Government (Peetz, 2007), they exerted a disproportionate effect. ‘High wage’ agreements were used by employers to make individual offers to employees if collective bargaining had stalemated; effectively, large parts of the mining industry was largely deunionised and decollectivised by using AWAs. ‘Low road’ agreements were not widely used until the Work Choices amendments as the “no disadvantage” test meant that there was limited incentive for employers to use them, although there was controversy about how rigorously the NDT was administered (Peetz, 2006).

Another major innovation under the *Workplace Relations Act* was the substantial weakening of the arbitral powers of the Australian Industrial Relations Commission. Under the Act the AIRC could only arbitrate to solve a dispute if industrial action threatened a significant part of the Australian economy; the health and safety of the community; or in order to prevent industrial action outside a bargaining period. The AIRC was also put in charge of the award simplification process and the content of awards was confined to 20 allowable matters or core employment conditions, including leave, hours of work and the payment of wages (Creighton

and Stewart, 2005) but there were some significant exclusions that affect trade unions in particular.

Finally, the Act made significant inroads into union activity and collective bargaining. It imposed restrictions on bargaining by limiting union right of entry into workplaces and giving employers the right to refuse to negotiate with union representatives. It also became difficult for unions to take industrial action as they exposed themselves and their members to fines if they did not strictly comply with procedures for taking such action, including strike ballots and the giving of appropriate written notice. Secondary boycotts and sympathetic strike activity was also outlawed and awards could not include any matter that facilitated trade union activity. In addition, employers were allowed to lock out employees in order to pressure them into signing individual agreements, further undermining collective bargaining (Peetz, 2002), Forsyth and Sutherland 2006).

The government's activities against unions however did not go unchallenged. In perhaps the most significant dispute in many decades the Maritime Union of Australia (MUA) resisted attempts by Patrick Stevedores, the major employer of labour on the Australian waterfront, to de-unionise its workforce. In April of 1998 in a restructuring of company operations most of the Patrick companies' union employees were dismissed and locked out of the dockyards. There followed national and international union support and public involvement against the conduct of Patrick and a complicit government. The MUA took largely successful High Court action against the company and finally reached a negotiated settlement with Patrick's. This was a setback for the government as it was implicated in the Patrick's strategy (Dabscheck, 2000; Trinca and Davies, 2000; Wiseman, 1998). The government was however more successful in pursuing its anti-union agenda in other areas of the economy. For instance

it successfully fought a number of High Court actions against unions in the construction and manufacturing industries and successfully confronted the union movement in the banking industry, telecommunications and the public service. This further contributed to a decline both in union membership over the period and in industrial action as measured by working days lost (ABS Cat. No.6321.0.55.001.).

The re-election of the Howard government in 2004 with for the first time a majority in both Houses of the federal Parliament meant that the government could pursue its industrial relations agenda without substantial political limitations. From March 2006 an amending Act known as the *Work Choices Act* effectively removed previous protections against unfair dismissals for workplaces with up to 100 employees and enabled large employers to dismiss employees for “operational reasons” (Colvin, Watson & Burns 2007, [Stewart, 2008](#)). The Act also abolished the previous “no disadvantage” test introduced by the Keating government and amended under the *Workplace Relations Act*. *Work Choices* also created the Australian Fair Pay Commission (AFPC), modelled on the UK's Low Pay Commission, to set minimum wages and for the first time the government legislated a minimum hourly rate of pay calculated on the basis of the 38 hour week averaged over 12 months ([Stewart, 2008](#)). Legislative minimum conditions were established in hours, annual leave, sick leave and parental leave in place of the no disadvantage test. This enabled the creation of far lower minimum standards for agreements than there had been under awards. *Work Choices* for the first time also privileged individual contracts over awards and collective agreements ([Peetz, 2006](#); [Stewart, 2008](#)). It also allowed businesses to offer employment contingent upon the acceptance of an AWA. Also for the first time, employers were allowed to engage in employer “greenfields agreements” whereby a new business project could engage employees on the basis of a document formulated entirely by the employer ([Peetz, 2006](#); [Stewart, 2008](#)).

Finally, the *Work Choices* legislation established an award reviews task force with the aim of rationalising awards from approximately 3000 to less than 100. Since then the award modernisation process has been implemented through the AIRC and some 50 simplified and rationalised awards have been published (Workplace Express 22/5/2009).

The trade union movement and State governments unsuccessfully challenged the constitutional validity of the *Work Choices* legislation in the High Court in 2006. The Court found that the Commonwealth had the power under section 51(xx) (the Corporations power) to regulate all aspects of employment relations (McCallum, 2006; Stewart and Williams, 2007). There had been significant impacts on the wages and conditions of low paid workers. For instance a sample of AWAs in 2006 showed that nearly half had removed all of the so-called protected award conditions – namely penalty rates for working unsocial hours, leave loadings and incentive payments (Sydney Morning Herald, 2007). . During this period as well there was intensification of work, greater job insecurity and less representation in the workplace (Peetz, 2007; Pocock, 2008). In response to widespread concern the government made some minor amendments to *Work Choices* in May 2007 which reintroduced a “fairness test” (a watered down version of “no disadvantage”) and enabled the rebadged office of Workplace Authority to check agreements against some remaining award conditions. This was not enough, however to stem the growing tide of disaffection with the government's policies. Ongoing concerns and a well-orchestrated union campaign against *Work Choices*, known as “Your Rights at Work”, contributed to the government defeat in November of 2007 (Bray, Waring and Cooper 2009).

A new Labor government under the leadership of Kevin Rudd won office but failed to gain an absolute majority in the Senate. The new government immediately commenced consulting

with unions and business groups to replace *Work Choices* with its pre-election policy titled “Forward with Fairness “. The new Minister Julia Gillard introduced legislation

- to phase out Australian Workplace Agreements with no new workplace agreements from March 2009 ;
- to establish 10 minimum workplace standards (the National Employment Standards- NES’s) covering hours of work, a right to request flexible work arrangements for certain parents, parental leave, annual leave, long service leave, community service leave, notice of termination and redundancy pay;
- to introduce a “better –off overall test”(a stronger version of the no disadvantage test) against which all agreements would be judged;
- to reinstate unfair dismissal provisions for all employees with significant concessions to employers of less than 15 employees; and
- to create for the first time a ‘good faith’ collective bargaining regime with some residual arbitration (Forsyth et al 2008, Forsyth & Stewart 2009).

However the ALP government chose to retain some of Howard's anti-union measures including a restricted right of entry, severe limitations on the right to strike, heavy fines for unlawful industrial action and stringent additional controls over the building industry administered by the Australian Building and Construction Commission, set up by the former government (Forsyth & Stewart 2009). This angered many unions (Workplace Express 16/6/2009).

In April 2009 the government enacted the *Fair Work Act* most of which came into operation in July. The Act abolishes all the existing bodies under *Work Choices* and earlier legislation, namely the Australian Fair Pay Commission, the Workplace Authority, the Workplace

Ombudsman and the AIRC. At long last the tribunal, altered and then significantly weakened, has gone. The Act establishes a new statutory body named Fair Work Australia (FWA) and creates a new employment division in the Federal Court for enforcement purposes. FWA deals with the administration of agreements and disputes arising under them; the National Employment Standards; the administration of modernised awards; and exercises the dispute settling powers formerly held by the AIRC. The National Employment Standards will apply to all employees, even those covered by transitional agreements (agreements made under previous legislation), where a comparison between those agreements and awards are detrimental to employees. The Act also makes provision for separate legislation to be introduced to govern the operation of unions (Forsyth & Stewart 2009). Under the Act, as under Work Choices, organisations, employees and their unions in most of the public sector and the unincorporated private sector remain the responsibility of the states unless they explicitly transfer IR powers to the Commonwealth; Western Australia, with a conservative government, has refused to cede its powers, while Victoria, Tasmania, South Australia and Queensland have, and New South Wales has not yet announced its decisions (Workplace Express 11/6/2009). The most lasting legacy of Work Choices is likely to be an almost national IR system.

The impact of the global financial crisis on employment relations has yet to be fully felt in Australia. Like the rest of the world, Australia's unemployment rate has risen in 2009, which may dampen union demands for higher wages and better working conditions. Despite this, though, the proportion of workers belonging to union rose in 2008 for the first time in many years and there was renewed pressure from the union movement and others for a paid maternity leave scheme – a measure that the government finally adopted in the Federal budget. Meanwhile employer groups have focused on the possible increase in costs

associated with the new legislation, in particular through award modernisation and the unfair dismissal provisions (Anderson 2009). It remains to be seen what impact these measures will have on employment and the economy in the next few years.

The papers in the special issue

This special issue examines a range of the issues covered above. Firstly, Bray and Underhill address the trajectory of IR, clarifying the concept of neo-liberalism and drawing upon both political economy and industrial relations literatures. They point out, that studies of neo-liberalism show that it assumes different forms in different countries to accommodate local institutional and political contexts. They describe the particular form that neo-liberalism assumed in Australia by tracing changes to the national system of industrial relations since the early 1990s and analyse differences in the form and effect of neo-liberalism in three industries. This ‘intra-national’ comparison demonstrates the need to go beyond national studies to reveal in more detail the variable impact of neo-liberalism upon industrial relations. The economic and technological features of the industries, and their histories, created different patterns of industrial relations which meant that the neo-liberal pursuit of decollectivisation and individualisation unfolded in different ways in those three industries.

Ellem et al look at how low-paid work is experienced and understood by women. They examine women’s experiences under Work Choices to assess the impact that law, reporting that lowering of labour standards can have significant effects on low-paid workers and that heightened managerial prerogative, particularly the capacities to alter conditions unilaterally and dismiss at will, leads to fear and insecurity. But despite this, low-paid women have

significant pride in their work. Furthermore, the results of regulatory change go beyond the workplace to affect women as carers, citizens and community members...

Barry and Michelotti explore how employer preferences shaped both procedural and substantive labour conditions under Work Choices focusing on the opposite end of the labour market to Ellem et al. They note that there is a commonly held view that firms in high wage/skill intensive sectors tend to provide wages and working conditions that are above market clearing levels. They examine this claim by analysing the content of all collective agreements concluded in the resource sector in Australia after the enactment, in 2006, of Work Choices, which gave employers unprecedented ability to place downwards pressure on employee entitlements. As Barry and Michelotti point out, much of the research on employer interests suggests that in the skill intensive sectors, employers invariably support policies that enhance entitlements in order to retain skills but most of these studies are confined to the analysis of substantive standards, such as wages, while procedural conditions are ignored. In the resource sector, however, the results suggest that firms tended to maintain substantive standards, but extensively used key regulatory provisions to gain an unprecedented level of control over both functional and numerical flexibility in their workplaces. Employers used non union and union collective agreements to pursue their preferences in the resource sector after the enactment of *Work Choices*. Thus employers in the resource sector did make use of *Work Choices* to increase control over the production process, but they did not seek to undermine substantive entitlements.

Quinlan and Johnstone examine the institutional and regulatory interlinkages between industrial relations and occupational health and safety which are seldom explored in the industrial relations literature. They examine the laws enacted by the federal government

during Howard years, and events and cases arising from these laws that illustrate their effects. They argue that de-collectivist changes to industrial relations laws exacerbated problems posed by the growth of flexible work arrangements and a drop in union density, weakening participatory provisions in OHS laws and promoting work arrangements that undermined OHS standards. The study provides evidence of the implications of a divergence in the trajectory of industrial relations and OHS laws and the importance of better integrating worker protection laws. As Quinlan and Johnstone point out, the Australian experience is not unique. There are similar tensions in other countries between increasingly 'flexible' IR regimes and OHS regulation that depends on collective worker input.

Peetz and Preston examine individual contracting and suggest that, while it can be useful for those with strong bargaining power, it is not a solution for employees without bargaining power as it can be used to undermine labour standards (van Wanrooy et al. 2007). Its effects, by comparison with collective agreements, vary according to reasons for introduction and labour market characteristics. Employers may pay non-union premiums (and/or apply penalties for not signing AWAs) where they use individual contracts to avoid unions. That is consistent with the findings of Barry and Michelotti, who argue that employers are focused on using AWAs to retain control. However, where organisations did not perceive a union threat effect, such as in most small firms, and were focused merely on cost minimisation, AWAs were commonly used to reduce average pay and conditions. Those most affected were workers whose skills were not unique and who had limited bargaining power- a finding consistent with the story told by Ellem et al. For both ends of the labour market individual contracting represents a transfer of power from labour to capital but with different manifestations. Peetz and Preston's findings show that part of the reason for the widening dispersion of earnings under individual contracting is that workers with less skill and

bargaining power in the labour market lose power, relative to those with highly sought after skills who are in position to obtain benefits through individual contracting. Another reason for the widening dispersion appears to be the offering of a non-union premium in response to a union threat effect, specifically in situations where the threat of unionism is real and workers have some individual bargaining power.

Conclusion

The papers in this special issue look back to a period, a short time ago, when neo-liberalism reached a seeming high point in Australian IR. Some papers examine the impact upon the low paid, while one looks at employer strategy in a high-paying sector noting that even in this arena, employers gained power over numerical and functional flexibility. Another traces the relationship between IR and OHS regulation, and the opening paper shows how studies at industry level can expand our understanding of the operations of neoliberal IR regimes. It is of course a moot point as to whether neo-liberalism has reached its zenith in Australia; with a centrist ALP government on the one hand, and turbulent economic conditions on the other, there are conflicting forces in play.

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