

INDUSTRIAL RELATIONS: WHERE TO NOW?

HR Nicholls Society Speech 28 March 2009

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Introduction

Thank-you for the opportunity to speak to you today.

I am very honoured to speak for the second time before the Society.

The first occasion was in March 2006 in Sydney.

I recall that I was attacked by the Press as joining the conspiracy with a capital C.

However the real attention of that conference was focussed on Senator Nick Minchin.

I understand that he let slip that he thought that the Howard Government needed to go further in industrial relations (IR) reform, beyond even, according to the national press, the evils of WorkChoices.

Well, Nick Minchin is no longer a Cabinet Minister and under the current leadership no longer a part of the inner circle – despite the fact he remains the Opposition Leader in the Senate.

I will have more to say about the directions of the Liberal Party on IR policy later in my talk.

I have been asked to give an historical overview of the IR debate in Australia, and also to give my views on the current debate and where I think things are heading in the future.

I will try to keep that to 25 minutes so that there is time for questions.

Historical Background

I do not have to spend long in any historical analysis of the IR debate in Australia.

If any group of Australians understands the pushes and pulls in this area of public policy better than the HR Nicholls Society I don't know that I have met them.

Very quickly then the salient features are:

Australia's IR system has its roots in the bitter industrial disputes of the 1890s.

As a result a key component in the Federation negotiations in the 1890s was the treatment of IR issues.

The Liberal protectionists who as a group dominated the Federation discussions came up with the idea of “New Protection”, which embodied both of their two policy pillars.

In essence New Protection, a term first coined by a leading member of the Victorian Chamber of Manufactures (hat manufacturer Samuel Mauger) and taken up with gusto by liberal politician Alfred Deakin, was to link high levels of industry protection with a centralised wage fixing system.

In summary the argument went that the benefits for colonial industry, that would be able to grow strongly behind protective barriers, would be shared with the working man through the use of third party tribunals to ensure a “living wage” for everyone, thus controlling the frequency of violent disputes.

The business community was split in its support.

The various Chamber of Manufactures across the country strongly supported a policy that would deliver them high tariff protection.

Chambers of Commerce which were opposed to high protection levels, were generally against the policy.

The Employers Unions or Federations were hostile to the IR component of New Protection.

As time moved on New Protection or as Paul Kelly renamed it in the early 1990s, the “Australian Settlement”, came to be accepted by the business community generally.

Indeed the Employers Federation nationally, firstly named the Central Council of Employers and later the Australian Council of Employer Federations (ACEF) metamorphosed from being the number one opponents of the centralised system into the number one ticket holders, along with the ACTU, of the “Industrial Relations Club” (a term made famous by Gerard Henderson).

However, as almost always happens with the business community it eventually got mugged by reality and as time moved from the 1970s into the 1980s they came to the view (or at least the majority did) that the system wasn’t working – that is, neither protection nor centralised wage fixing worked in the national interest.

As an example, my old organisation, the Australian Chamber of Commerce and Industry (ACCI) adopted on its formation out of the merger of the old Confederation of Australian Industry and the Australian Chamber of Commerce in 1992, a policy framework of free trade and a radical reform to the IR system based on ending compulsory arbitration.

This position was also strongly pushed by the Business Council of Australia.

But just to complete the picture it is worth mentioning that not all business groups supported this new policy direction.

So in the minority were groups like the Metal Trades Industry Association, renamed the Australian Industry Group in 1998, which continued to be protectionist and a supporter of centralised wage fixing.

As far as the Labor Movement was concerned, they have stayed resolutely wedded to centralised wage fixing.

To its credit the Keating Labor Government did begin to understand the importance of enterprise bargaining and started to legislate for that, principally starting in 1993.

And very importantly the Hawke and Keating Governments were instrumental in the dismantling of tariff protection as a principal pillar of Government policy.

In 1995 despite the subsequent claims of their opponents that they have never had a mandate for IR reform (I'll be saying more about mandates a little later), the Howard led opposition campaigned on IR reform, particularly in relation to the waterfront and unfair dismissals.

On winning the election that so-called mandate was not "respected" and the government probably got 70 per cent of its agenda of the time through the Senate.

Ironically the Australian Democrats led by future ALP shadow minister, Cheryl Kernot finally supported the legislation to allow it to pass.

Following the 1996 legislative agenda the next significant event was the 1998 waterfront dispute, where it was made abundantly clear to the trade union movement that the Howard Government would back up its words with resolute action.

Both sides claimed victory but I think the overwhelming evidence of history is that the Government won significant reforms.

Finally after winning a Senate majority in the 2004 election the Howard Government moved further in dismantling compulsory arbitration; the use of enterprise based agreements particularly individual statutory agreements; and on unfair dismissals.

Although on this occasion the last vote that had to be garnered was that of the junior Coalition partner the National Party personified in the guise of Barnaby Joyce.

This legislative package was dubbed WorkChoices for marketing reasons.

In reality the WorkChoices changes were only incremental and were only another step in 12 years of reform actually begun (with baby steps) by the Keating Government.

In content terms the legislative package of 2005 was not some vast overhaul of the system that was presented by the Labor Movement.

After all the song and dance the Australian Industrial Relations Commission, albeit weakened, stayed in existence; complicated unfair dismissal laws for larger

businesses remained; very generous minimum wage setting remained; as did many of the laws that gave unions a pre-eminent role in the Australian workplace.

In fact Australia retained a more heavily regulated labour market than say Great Britain.

Probably the most significant long-term aspect of the 2005 legislation was the hostile takeover of state IR systems using the Commonwealth's corporations power under the Constitution.

I know many members of the Society were opponents of this particular aspect of the changes even though there were other aspects they agreed with.

The Current IR Changes

As I said on a recent television interview no sane government would be re-regulating the workplace relations market in face of the worst financial crisis in 80 years and surging unemployment unless they had some primary motivation.

That motivation is easy to see.

In the lead-up to the last election campaign the ACTU effectively signed over a \$30 million cheque (at least) to help the ALP get elected.

The consideration for that little transaction was the implementation of the Fair Work Bill we have recently witnessed.

In the end the Government satisfactorily got its legislation through Parliament.

Senators Fielding and Xenophon, after extracting some minor changes to justify their deal-making, supported the legislation.

The Greens of course are far more socialist than our Christian Socialist, neo-liberal hating Prime Minister and they did not hold up the Bill even though they didn't think it went far enough in giving more powers to trade unions.

Major issues with the legislation are:

- A significant increase in compulsory arbitration.
- Despite the denials an unprecedented expansion of the opportunities for unions to indulge in pattern bargaining.
- An award simplification process that will massively increase cost pressures on small business.
- Despite the sweet words about co-operation and reduction of red tape a new Fair Dismissals Code that will re-entrench the worst aspects of the Keating Governments unfair dismissal regime.

- Expanded union rights of entry that do nothing if not give a legislated leg-up to union membership recruitment.

In 2007, before the last election the Business Coalition for Workplace Relations Reform released economic modeling that detailed the costs of the reversing 15 years of economic reform.

I think it is salient to remind you of some of the numbers.

According to this research by a leading independent economic research firm, Econtech, abolishing the workplace reforms since 1993 would make a person on average wages with an average mortgage \$4,063 worse off per year (comprising a \$787 cut to real wages after tax and a \$3,276 increase in mortgage repayments).

Even a partial winding back of these reforms will have a substantial cost to Australian workers and businesses.

The report stated that, by 2011:

- GDP will be \$57 billion or 4.8 percent lower;
- business investment will be \$11 billion lower, a fall of 5.6 percent;
- employment will be cut by 2.9 percent, with 316,000 jobs lost;
- the cost of living (CPI) will be 1.3 percentage points higher; and
- due to the higher rate of inflation, interest rates will be 1.4 percent higher by 2011, with repayments on the average mortgage \$273 higher per month.

Trade exposed industries are hit the hardest by the rollback of reform, with output of agriculture falling by 7 percent; mining falling by 8 percent and manufacturing by 11 percent.

Separate calculations drawn from data in the report show that winding back workplace reforms will cause Australia's ranking against world GDP per person to fall from 8th to 14th.

Even though these are substantial numbers, the results were conservative because they did not include some of the benefits of workplace reform such as the positive effects on productivity of the Australian Building and Construction Commission and increased enterprise bargaining.

This research clearly shows that winding back workplace reform will cost the country and ultimately working families and our future generations.

I note that the Government has produced no robust cost-benefit analysis showing the benefits of their IR changes.

Supposedly the flexibility and productivity benefits are so self-evident there is no need to produce such superfluous detail.

Electoral Mandates

Obviously the Gillard IR Bill passed through Parliament last week.

It is the 2nd tranche of Bills.

The 1st tranche was the legislation abolishing new AWAs, which was passed last year.

I understand is a third tranche, focusing on transition issues, that will be debated by Parliament soon.

So even though WorkChoices is now dead and the Government has delivered on its so-called mandate I do want to say a few words about the concept of mandates as they have been critical in the political debate on IR over the last few years.

Let me say clearly, the Government does not have a mandate to pass the IR laws.

The critical word in the last sentence is the word “pass”.

I could equally have used the word “implement”.

The Government does not have a mandate to “pass” nor “implement” its election policies.

I have a particular view of mandates that I have not heard others articulate but which I think is very credible and sustainable.

I believe that Malcolm Turnbull and other leading Opposition figures are wrong when they say the Government received a mandate at the last election to implement their IR policy.

Malcolm Turnbull has repeatedly declared that he “respects” the mandate that the ALP won.

So if you “accept” or “respect” someone’s mandate to implement an election policy where does that leave you when you then turn around and vote against parts of it?

Most people who argue against the Government’s so-called mandate do so on the basis of three arguments.

First, that it was either fraudulently won because of a \$30 million plus, misleading TV and radio advertising campaign funded by the ACTU and the union movement.

Alternatively, they rationalize that the mandate was subject to the caveat that the arguments during the 2007 election campaign were made on the basis of a booming economy and that the game has now changed and all bets are off.

Third, they argue that the ALP voted against the GST and the sale of Telstra even after the Howard Government won decisive victories and so “they shall reap as they sow”.

In my view, while I find these arguments appealing because I think the Government should not implement these disastrous policies I do not consider that they are intellectually sustainable.

In my view the Government did win a mandate.

But it was simply a mandate to *try to implement* its policy agenda.

Put another way it was simply a mandate to introduce the relevant bills into parliament.

In my view, in a representative democracy every single elected official to Parliament, member or senator, has a mandate on the basis of their electoral success.

So in the Senate for example I believe that even the Greens and the two independents have secured a mandate to represent those people who voted for them – both in terms of primary votes and second and third (and so on) preference votes.

Certainly the now Opposition equally has a mandate to vote against bad IR laws, for that is exactly what they campaigned on in the 2007 election.

So my argument is that the Government cannot expect the Senate to be a rubber stamp for its policies simply because it won a majority in the House of Representatives.

If you accept the typically expressed mandate theory you are conceding that there is no justification for the Senate or its voting system.

That is the radical and logical extension of the superficial and commonly expressed view on mandates, now being put for all it’s worth by the Government.

In the end it is up to the Government to convince the Senate as a majority to pass its laws.

That in the end was what Prime Minister Howard had to do on GST, Telstra and IR laws.

Indeed probably for the vast bulk of his reformist legislative agenda.

And in the end it is what Julia Gillard had to do in the Senate last week.

The Coalition

After Brendan Nelson, as Federal Leader of the Opposition, declared that WorkChoices was dead and that AWAs were dead, he nonetheless very importantly went on to articulate that there remained four IR policy pillars for the Coalition.

They were:

- Support for individual statutory contracts.
- The right to freedom of association to either join or not join a union.
- The continued support for a small business exemption from unfair dismissal red tape.
- Continued support for the retention of the Australian Building and Construction Commission.

For all her faults, perceived and otherwise, Julie Bishop supported this position publicly.

Unfortunately, I personally never heard Malcolm Turnbull when he was Shadow Treasurer repeat this declaration and what is more worrying have not heard him say it since he was promoted to Leader

Further the Liberal Party now appears to be abandoning completely the long held policy position of exemption for small business from unfair dismissals red tape – or as I prefer to put it a sensible fair dismissal policy.

It would appear, based on my conversations with key Coalition players, that they have been completely spooked by the ACTU TV advertisement during the last election campaign depicting a mother being threatened with dismissal when she sought to stay home to care for a sick child.

It does not matter that it was questionable whether the scenario painted by the ACTU was actually illegal activity under the workplace laws of the Howard Government.

According to so-called internal Liberal Party polling, which I hasten to add I have never seen, this was the most effective of all the ACTU ads.

On the basis of one, misleading 30 second advertisement the Liberal Party is now abandoning a 16 year old core policy.

This is a disgraceful back-down and should not occur.

Whether the current leadership of the Liberal Party will equally be spooked with respect to the former AWA debate and therefore abandon individual statutory agreements I just do not know.

Based on recent events one would fear for the worst.

However, I am confident that a certain tall man from Melbourne may have strong views on these matters, and that the internal debate on these matters in the Liberal Party is nowhere near over.

Business Groups

By and large I don't believe business groups have been serving their membership well in the recent debate about the IR changes.

Probably the only honourable exceptions have been the Australian Mines and Metals Association (AMMA) and the Restaurant and Caterers Australia (RCA).

Generally speaking the business groups have been like scared rabbits and have basically adopted the policy that if you are extra nice to the new government you will be more effective lobbyists.

That is a recipe for failure.

It rarely works with any government.

You need to have the courage of your convictions.

For example, if the Government will not satisfactorily produce a cost benefit analysis for their legislation why hasn't the ACCI, the BCA or heaven help me by even suggesting it, the AIG, paid to get an independent assessment done?

Interestingly the detailed Econtech economic modeling report that I referred to before has mysteriously disappeared from all the websites.

I would hate to think that the history record, like old Soviet photographs, has been airbrushed to protect the so-called innocent.

At this stage I'll assume that it is a technical mistake caused by IT gremlins.

Where to from here?

The arguments of the last 20 years for IR reform stand.

I have not changed my fundamental opinions on these issues, as I suspect neither have most of you.

Unfortunately we may be returning to an era of New New Protectionism.

Certainly one side of politics, the Labor movement, are heavily re-regulating the IR system.

And while Kevin Rudd and his Trade Minister, Simon Crean, talk the talk on free trade, they aren't necessarily walking the walk.

Most of the Government's so-called industry policy since the election has had a decidedly protectionist tinge about it.

Fortunately we are far short of a bi-partisan consensus on a New, New Protectionism like we saw in the first 80 years of Federation. Let's hope a deep world recession does not spook too many onto the wrong path.

However, I want to raise an additional problem.

What would appear nominally as a side issue for this presentation, but actually a hugely important one, is the issue of electoral funding.

A major issue regarding the democratic nature of our society is the ACTU's intervention in the electoral system during the course of the 2004-2007 Parliamentary term.

They spent an unprecedented amount of money.

I said at the beginning of this talk that they spent something like \$30 million plus.

However, some other estimates are \$40 or \$50 million and I have heard Joe Hockey, John Howard's last IR Minister, claim as high as \$100 million.

We don't actually know because I understand that the ACTU does not regard the bulk of their expenditure as falling under the definitions of the Electoral Act and so they have not fully disclosed what they spent.

Nevertheless this magnitude of expenditure needs to be put in perspective.

In a typical Federal election campaign major parties spend around \$20 million each.

Some people claim that the ACTU's intervention was no different than the Banks supporting the Liberal Party in the run-up to the 1949 election, when they were petrified about nationalization by the Chifley Government.

There are some similarities no doubt, but after that election I understand that it was not long before electoral funding returned to normal patterns.

What we are seeing in Australia today is a the Government seeking to make electoral law changes that will restrict direct funding of political parties and potentially institutionalize the ACTU model, to the massive detriment of the non-union aligned parties.

If there is a matter that the HR Nicholls Society needs to put onto its agenda, if it already hasn't then it is this one.

Conclusion

One benefit of the changes being made is that it will see people like myself, who hopefully have quite a few productive years left in the workforce, a solid agenda for reform over the next two decades

Unfortunately there will be a lot to repair and it will take a lot of courage to do the things that need to be done.

You can be sure that no future ALP Opposition will respect anybody's so-called electoral mandate to fix the IR mess they are creating.

We can all wonder where that courage will come from, especially in the political arena.

But the history of this nation is that there are always people who will step up to the crease and do what is necessary in the public interest.

At this stage we are probably looking for some dogged opening batsmen to build a long hard fought innings.

Flashy players, with no clear commitment to reform, are not what we need right now.

The arguments for reform need to be restated and the marketing job must continue *ad infinitum*.

Thank-you for listening.