

**SPECIAL REPORT** Labor has seen off Workchoices

but keeping unemployment under control is the key

# We'll judge you on jobs not on workers' rights



**THE MICHAEL COSTA SOLUTIONS PART 2  
INDUSTRIAL RELATIONS**  
with Scott Holmes and Michael Costa

Industrial relations policy has always had a unique role in Australian politics. Not many other countries' political history can point to two governments and their prime ministers losing office as a result of public rejection of their industrial relations policy.

In 1929, the Bruce/Page government was brought down when it failed to maintain its numbers on key industrial relations reform. Prime Minister Bruce lost his seat in the subsequent election. John Howard suffered the same fate as a result of his WorkChoices reforms.

Industrial relations policy is highly politicised. Both sides of politics pursue political agendas dressed up as policy reform.

Because of its historic links with the trade union movement, Labor seeks to provide a supportive environment for trade union activity. The conservative side, for the very same reasons, tries to restrict the activities of unions for their political advantage.

Sifting through the exaggeration and ideology associated with industrial relations policy is always difficult for the public.

The public expects the industrial relations system to meet its prime concerns: which is that it is fair and maximises their chances for secure employment.

Employers, of course, will argue that security of employment can only be maintained if the system of industrial relations doesn't inhibit productivity and competitiveness.

When you cut through the ideology of getting the balance right between fairness and competitiveness, then you are at the core of what this policy debate is all about.

The Rudd government has a clear mandate following its 2007 election win to alter the current industrial relations system. The ACTU and its affiliates made Howard's WorkChoices a central

election issue. Malcolm Turnbull's acknowledgment that WorkChoices is dead is only reflecting the political reality.

Peter Costello's continuing campaign to maintain the central elements of WorkChoices is unrealistic, indicating that many Liberals should be careful what they pray for.

The ACTU argues that WorkChoices had a dramatic impact on the labour market. They claim that the laws most directly affected the more vulnerable workers, low-paid, women and young workers.

The ACTU's areas of concern include the safety net, unfair dismissals, workplace agreements, Australian Workplace Agreements (AWAs) and union right of entry.

According to the ACTU, the Howard government dramatically reduced the traditional safety net for workers by replacing what was a comprehensive industrial relations system, which covered wages and conditions of work through broad awards with just five minimum legislated standards.

As a result, workers were stripped of key conditions without compensation. The body responsible for setting minimum wages — the Australian Fair Pay Commission — they claim, acted in a non-transparent manner, without any real obligation to ensure its decisions were "fair".

In its March 2008 submission to the Australian Fair Pay Commission, the ACTU claimed that, in its first two years of operation, 62 per cent of minimum-wage workers suffered a decrease in real wages.

They also claimed that the restriction on unfair dismissals for employees of businesses with 100 or fewer employees linked with the ability to dismiss "for genuine operational reasons" resulted in a significant majority of the workforce losing any form

of job security. Even though AWAs covered around five per cent of the workforce, the ACTU argues that this five per cent is the most vulnerable and AWAs were used unilaterally by employers to strip back award safety net conditions.

Those with the least amount of bargaining strength were the most exposed. To justify this view, the ACTU points to research which showed that nationally the median AWA worker earns 16.3 per cent less per hour than a comparable worker on a collective agreement.

The decline in the bargaining power of unions under WorkChoices is a key concern for the ACTU.

The union movement's membership has been in free-fall since the '70s. The rate of decline has increased over the 12 months to August, 2007, with membership falling by five per cent or 89,000. Union membership is about 19 per cent of the workforce.

Over the past 20 years, membership has almost halved. If public-sector members are removed from the data, the private sector has only 14 per cent of its workforce in unions. Given this level of membership, why should unions be driving the changes in regulations that have an impact on all workers and employers?

Greg Combet, when he was ACTU secretary, claimed that the principal aims of WorkChoices was to make it difficult for people to join unions. Sharan Burrow, the current president of the ACTU, puts a positive spin on the decline, arguing that the latest "data shows unions have successfully survived WorkChoices".

Whatever the truth, the ACTU and its affiliates spent tens of millions of dollars and unquantifiable indirect resources in ensuring the defeat of the Howard government and



WorkChoices. They were right to see it as a life-and-death struggle.

Having spent so much money and effort in defeating WorkChoices, the ACTU expected the Rudd government to deliver on its concerns. Despite grumblings from the union movement about aspects of the Fair Work Bill, it does just this.

The Fair Work Bill dramatically alters the WorkChoices industrial framework. It provides for a new set of minimum wages and conditions which cannot be bargained away.

These are provided in two parts: National Employment Standards and new awards. The National Employment Standards will comprise legislated minimum conditions covering work hours, leave, public holidays, notice, redundancy pay and provisions for flexible arrangements.

The new awards are envisaged as additions over these standards and will cover things such as minimum wages, work performance arrangements, overtime and penalty rates, allowances, leave and leave loadings, super and "procedures for consultation, dispute resolution and the representation of employees".

A new body, Fair Work Australia, which looks similar to the old Australian Industrial Relations Commission, will undertake four yearly reviews of awards and minimum wages in awards, through minimum wage panels. Award-free employees will be provided minimum wage standards to be determined by Fair Work Australia. It is very much a case of back to the future.

There are however, provisions for exemptions for people earning over \$100,000 a year to enter into voluntary arrangements outside the relevant award.

To meet ACTU's objectives, in regards to union involvement in bargaining, the bill provides for the elimination of non-union enterprise agreements.

Union involvement in industrial relations is restored to its position prior to the Workplace Relations Act. Union right of entry provisions have been reinstated. Unions can enter work-

places to inspect employment records, including records of non-members and hear complaints from non-members.

New good faith bargaining provisions are being introduced which empower Fair Work Australia to make orders to compel "good faith bargaining."

In fact the bill provides Fair Work Australia with powers of intervention across a range of areas excluded by work choices.

Unfair dismissal provisions have been extended to virtually all employees. Those working in businesses with fewer than 15 employees face 12-month probationary requirements and their dismissals will be assessed against a Small Business Fair Dismissal Code.

Objectively, the bill, particularly with the expansive powers and scope of Fair Work Australia, represents a significant re-regulation of the labour market.

It is this re-regulation which has the employers concerned.

The Business Council of Australia is concerned that the bills, by diminishing the enterprise focus of industrial relations, will weaken Australia's international competitiveness.

The BCA is concerned that the bill represents a re-regulation and re-centralisation of the labour market. They correctly point out that global competitiveness depends on the flexibility to respond quickly at an enterprise-level.

The Australian Industry Group makes the point that the Fair Work Bill is being introduced at a tough time when businesses need to remain highly flexible and adaptable. It is concerned by the increase in industrial dispute for the year 2008, and believes the signs are not good for a continuation of the harmony workplaces have experienced.

Of particular concern to all employers is the added complexity in managing industrial relations that the Fair Work Bill creates. This comes at a time when the Government's carbon-reduction strategy has the potential to create additional costs.

The reintroduction of complex award and bargaining arrangements will add to the cost pressures for businesses struggling

to compete in a challenging global environment.

The ability of Fair Work Australia to intervene extensively in relationships between employers and the workforce could result in a return to rigid inflexible work arrangements or practices.

AIG feels the provisions of the bill could result in "a return to the old days of arbitrated outcomes", where particularly those favourable to unions, flow automatically across all industry sectors due to doctrines of precedent.

The scope of the unfair dismissal provisions will provide a disincentive for employment.

The biggest concern for employers is the generous arrangements concerning union entry. Employers argue that the right of entry provisions in the bill breach the commitments the Government gave before the election.

AIG, one of the more moderate employer organisations, has concerns these provisions of the bill will "operate unfairly for non-union members".

Deputy Prime Minister Julia Gillard, in presenting the bill to Parliament argued the Government's intention was to provide a balance framework for a fair, co-operative and productive workplace that promotes prosperity.

If "fairness" is measured by meeting key union concerns, with WorkChoices the Government has certainly delivered. But at a time of economic difficulty, it would be unwise to dismiss the concerns of business.

Business faces challenges adapting to government policies, particularly carbon trading, and another set of unwelcome changes in industrial relations will not help employment prospects.

Remember, WorkChoices reform was fought out in a different climate. As indicated by the growing unemployment rate, which reached 5.2 per cent last week and is projected to go as high as nine to 10 per cent, jobs rather than perceptions of fairness will become the factor by which labour reforms will be judged.

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