



Speech to the National Press Club

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A fairer balance between industrial relations and the economy

13 September, 2005

The Government's new IR laws

The Howard Government is losing the debate over the new industrial relations laws not only because the laws are unfair. It is also losing because it has been dishonest. It has failed to argue a case for the changes, choosing instead to try to deceive people about the effect of the laws, and the motivation for them.

Here are some of the facts:

- Millions of Australians employed in businesses with less than 100 staff have lost protection against unfair dismissal – they can be sacked arbitrarily without any opportunity for independent review or redress;
- Workers in businesses with more than 100 staff can also be unfairly sacked provided their employer cites 'operational reasons' for the dismissal;
- The same 'operational reasons' excuse can be used to sack people and offer them their job back on inferior terms – like the 30% pay cut for the Cowra Abattoir workers;
- The wages of more than 1.5 million people who depend upon minimum award pay have been frozen – their ability to keep up with rising prices and interest rates is now in the hands of the opaque and unaccountable Fair Pay Commission – an organisation which outsourced its community consultations with low paid workers to a PR firm;
- The award safety net of pay and employment conditions has been usurped by only five minimum standards - putting overtime pay, penalty rates, annual leave loading, public holidays,

allowances, career structures, regular pay increases and a host of other employment rights up for grabs;

- Collective bargaining has been undermined in favour of John Howard's individual employment contracts – the so-called AWAs which allow business to unilaterally determine pay and conditions and deny people a say;
- State industrial relations systems, which have provided decent protection for people, have been marginalised;
- The Australian Industrial Relations Commission has been stripped of its power to guarantee a fair go all round – there is nowhere to go to resolve disputes;
- Union representation is directly attacked by the law – even the making of a claim on behalf of workers for unfair dismissal protection, or seeking a role for the union in dispute settlement, or asking for employees to attend a union training course are illegal and can attract fines of \$33,000;
- Union activity in the building industry is effectively criminalised. To gather evidence of an offence the Government can haul individual workers in for a secret interrogation. They can be imprisoned for contempt if they don't attend, don't answer questions or provide documents, or if they disclose the content of the questioning to others including their family. There is no right to silence or protection from self-incrimination – treatment akin to alleged terrorists and a breach of human rights and democratic principle.
- The labour market shake-up has also been complimented by abuse of the Government's guest worker program. Temporary migration visas are being issued without sufficient opportunity being given to Australians to fill the available jobs. In some cases foreign workers are exploited and paid substantially less than Australians and are accommodated in unacceptable circumstances.

Overall, the new IR laws have handed employers tremendous power over employees.

The laws put downward pressure on the take home pay of many people, particularly the low paid. This is a key element of the economic rationale behind the laws – a rationale the Government tries to hide.

The threat of the sack in combination with the power to impose individual contracts enables the systematic intimidation of employees to accept the dictate of their employer.

I recognise that many employers value and respect their employees. They will not be motivated to use their new powers. But the pressure of commercial competition has already created a dynamic to cut costs.

The Government's own Office of Employment Advocate has surveyed AWAs made since the laws came in and found that:

- Every AWA it examined removes at least one key award condition and almost one in five AWAs eliminate all award conditions;
- Two thirds of the AWAs remove penalty rates and the same number get rid of annual leave loading;
- More than half abolish shift penalties;
- A third cut overtime rates; and
- More than 40% removed the public holiday entitlements the Government promised would be 'protected by law'.

As to the Government's argument that AWAs generate higher pay, 22% of these AWAs do not provide any pay increase at all, and bear in mind that AWAs can last for up to five years.

These statistics mean pay cuts for working families. Little wonder the laws are unpopular in the electorate.

People's concerns about the changes are being confirmed by experience. People are being unfairly sacked. 1.5 million low paid workers are falling behind.

People are being told if they don't sign the contract they won't get the job. Some employers are targeting union delegates for redundancy and dismissal. AWAs are removing people's overtime rates, penalties and public holidays.

107 workers in Western Australia face fines of up to \$28,000 for taking industrial action to defend a sacked union delegate. Evidence against them has been gathered we believe using the coercive powers I described a moment ago.

ABS figures recently showed that increases in average weekly earnings for workers have fallen to their lowest level for 7 years. Economic commentators attributed this to the new IR laws, and in particular the loss of penalty rates.

This is the reality for working families under these laws.

But rather than accept the overwhelming evidence of the injustice of its laws the Government has waged a smear campaign against the ACTU and the workers who have appeared on our TV ads.

Let me state something very clearly. I stand firmly behind our campaign and the workers who have had the courage to speak out.

The Government smear tactics will likely intensify in the months ahead. As they do I ask people to bear in mind that this is a Government that has a disreputable history.

It lied about refugees throwing their children overboard, it took the country to war over weapons of mass destruction that did not exist, it makes the incredible claim that it knew nothing about AWB pay-offs to Saddam Hussein despite repeated top-level warnings, and it spent \$55 million of taxpayers money on patently deceitful ads to promote the IR laws.

In the last election campaign it made misleading claims about interest rates – claims that we now know were of grave concern to the Reserve Bank Governor.

People should not be conned by the Government. Unions will not be intimidated by the Government. Our campaign against these laws will continue and it will grow.

Union values and beliefs

The ACTU's opposition to the IR laws is not confined to the specific elements of the *WorkChoices* legislation.

Our opposition is more fundamental. We have different values, different beliefs, and a more positive vision for industrial relations, the economy and Australian society.

Unions don't want Australia to go down the US road. We don't want widening inequality and social dysfunction. We are opposed to the entrenchment of even more wealth and power at the top, and the increased alienation of working people from the decisions which affect their work and livelihoods.

We are fighting for a fairer and more just society, one where the benefits of economic prosperity are more fairly shared.

We are fighting to ensure that people have reasonable rights to mitigate the abuse of power by big business.

We are fighting for democratic rights and principles – to improve the quality of our democracy and society.

We believe that economic prosperity can be achieved in harmony with decent employment rights and the observance of democratic principles.

We do not accept that economic competitiveness can only be achieved at the expense of people's rights at work.

And this gets to the heart of the debate about the Government's approach to industrial relations. If the Government had the decency, honesty and courage to argue its case it would assert that the employment rights it has abolished are not economically sustainable - **because that is effectively what it is saying.**

It would assert that business must be awarded the freedom to adjust to competitive pressure unencumbered by union organisation, collective bargaining, obligations to deal fairly with employees, or by minimum pay and employment conditions established by independent institutions. **Effectively the Government is saying we cannot afford these things in our economy & they have to go.** By allowing business to take penalty rates off cleaners and shop assistants the Prime Minister seems to believe that we are on the way to developing a truly productive and internationally competitive economy. That is an insipid vision for Australia and its people.

It is a vision we reject. Australian people know it is garbage. The laws are bad policy and they will hurt people.

The Rights at Work campaign

Unions are not simply opposed to the IR laws, we have a positive alternative. We want laws based on strong Australian values:

- A decent safety net of pay and conditions in awards and/or legislation that is able to be adjusted to take account of community standards – one that ensures the low paid a fair share in the benefits of prosperity;
- A system of collective bargaining over and above the safety net in which all parties are encouraged to bargain in good faith and uphold democratic values;

- The protection of workers against individual contracts and the abolition of AWAs;
- An independent tribunal to maintain and improve the award safety net, to oversee the bargaining system and to guarantee fair treatment and protection against unfair dismissal;
- Ensuring Australian employees can exercise their right to union membership and representation; and
- The elimination of discrimination and artificial arrangements that exclude workers from protection by the IR system – such as dodgy corporate restructures and sham independent contracting.

IR policy development

I believe these principles are more important to Australians than questions about which Constitutional head of power is used to legislate and implement them, or the jurisdiction in which they are delivered.

The judgement of the High Court in the constitutional case against the IR laws is expected later this year. This case is not a test of the fairness of the laws. The verdict has already been delivered on that. Rather, the case will define the extent of the Australian Government's capacity to legislate using the Corporations head of power.

If the High Court interprets this power narrowly the Government's IR laws and its attack on the rights of Australian workers will be in tatters. This clearly is our desired objective.

However, if the High Court interprets the power widely the Commonwealth will have been granted broad powers to legislate national industrial relations laws. This will have significant implications for the development of union policy.

In such circumstances I will ask the union movement to support the use by a future Labor Government of all of the Constitutional power available to it to repeal *WorkChoices* and legislate a decent IR system based upon the principles I have articulated.

I am keen to use all of the available powers to establish a fair system for Australian workers and their employers.

If the business community wants to have a say in the development of such a system it would be well advised to break with its partisan advocacy of the Liberal's attack on workers and unions.

The ACTU is not interested in talking to Liberal Party stooges parading as business representatives.

The economic circumstances demand greater responsibility and imagination from business leadership - less partisanship and better long-term thinking.

Business has a responsibility to recognise that Australia is a democracy and that we must as a society adhere to democratic rights and principles, and internationally recognised labour rights.

Democratic societies do not hold secret interrogations of ordinary workers under threat of gaol because they go on strike to defend a union delegate or stop work for a meeting. That feature of the laws alone should alert people to the fact that something is seriously wrong in Australia.

Genuinely free and democratic societies appeal to what is best in people, to respect one another, to care for others, and to strive for higher standards of cooperation and a sense of community.

Democracies respect the right of working people to freely associate and organise in trade unions, and champion the right of workers to collectively bargain.

With big business support the Government has repudiated these values and attacked these rights.

And what sort of society would we be if they succeed?

Who would fight for justice for James Hardie victims if not unions? Who would fight to lift the living standards of the low paid, to improve health and safety at work, to build retirement savings for workers, to fight to recover people's entitlements following a company collapse, to guarantee a fair go for ordinary people?

One of the giants of the 20th Century Franklin D Roosevelt, knew that to avoid a repeat of the economic and political failures that had contributed to the Great Depression it was critical that the New Deal delivered rights for working people – rights that would improve US democracy.

If we want to defend and improve the quality of Australian democracy a similar recognition is needed here and now.

Australia is the only advanced economy where an employer can make a collective agreement with a union and, in the very next moment, repudiate its contractual commitment and require employees to agree to substantially inferior individual arrangements.

Australia is the only country in the developed world where an employer is not obliged to negotiate with a representative union – where the law mandates an employer to say “I don’t care if you represent all of my employees. I will not talk to you and I’ll demand that your members sign individual contracts in terms dictated solely by me”.

Collective bargaining policy

That is why one essential remedy to the injustice at the heart of the Government’s IR laws is the enactment of an enforceable right for employees to collectively bargain. The ACTU has been working for some months on a new model for collective bargaining in Australian workplaces.

A delegation of senior officials visited North America and Europe to investigate the way those countries give effect to their international collective bargaining obligations.

Earlier today I launched the delegation’s findings and the policy responses they suggest for Australia. It will be the centrepiece of policy to be considered by the ACTU Congress next month.

It represents an entirely new approach for Australia – one which not only respects workers' rights but which promotes cooperation and productivity in workplaces.

The report argues for a policy that removes the right of employers under *WorkChoices* to unilaterally dictate the form of agreement their workers will have. It argues in favour of a system where an employer, a union, or the employees themselves will have equal rights to initiate a collective bargaining process.

Collective agreements will be possible with unions or directly between employers and employees, but union members will at all times have the right to be represented.

Within that framework there are two vital components of our proposal.

Firstly, we argue that the law must oblige all parties to bargain with each other in good faith, and empower the Industrial Relations Commission to help make this happen when that help is needed.

Secondly, we argue that workers themselves must have a say when there is a contest about whether there should be a collective agreement. For example, when an employer refuses to bargain collectively and insists on individual contracts, we believe that the majority view of the workers should determine the issue.

If a majority of workers express support for a collective agreement then the IRC must ensure an employer respects that decision and collectively bargains with workers in good faith. And as a last resort the Commission must be able to arbitrate to resolve intractable disputes.

Democratic principle is the foundation of this proposal.

We want to give people a say in their own workplace.

The Government has already declared its opposition to these ideas.

The Workplace Relations Minister Kevin Andrews says that good faith collective bargaining means compulsory unionism. This is so stupid and ridiculous it is unworthy of a response.

John Howard says that individuals will be denied their right to an individual contract if that's what they want. This is misleading and wrong. Collective agreements would certainly bind all employees under our proposal.

But there would be nothing to stop an employee and an employer agreeing to an improvement or some sensible flexibility which does not undercut the collective agreement. Common law agreements like this have always been available.

In the real industrial world the Government opposes flexibility for individuals when it matters. Unions have been seeking for example the right for a woman to return to part-time work after a period of maternity leave but we have been opposed by the Government every step of the way.

Kim Beazley's policy statement in recent days in support of collective bargaining, and the views of the majority, means that there is a clear policy difference developing between Labor and the Coalition.

The Federal Government's AWA individual contracts are the antithesis of giving workers a say. They are offered on a take-it-or-leave-it basis.

The flexibility John Howard really wants is the flexibility for employers to insist on individual contracts in terms determined unilaterally by them.

Individual contracts have never been a path to economy-wide productivity and growth. New Zealand in the 1990s was proof enough of that. Workers were pushed onto contracts and productivity fell relative to Australia.

In Australia the collective bargaining system we had in the 1990s was an engine of productivity growth.

As a nation it is imperative that we overcome the Government's obsession with IR. The path to improved productivity and prosperity involves dealing with the real economic challenges facing our country.

Australia's economic future

After more than a decade of Coalition Government we are experiencing an unprecedented skills shortage, significant infrastructure blockages, a collapsing manufacturing base and there is no one at the national level driving productivity and innovation.

These issues should be at the forefront of policy debate.

The sustained boom we have experienced for 14 years has provided a unique opportunity to tackle long-term economic constraints. So far that opportunity has been squandered.

The Government has relied too heavily on household debt and consumption as a driver of economic growth. This has been the main driver of the current business cycle and the source of interest rate sensitivity in the electorate.

It cannot continue. Growth is already slowing. The challenge now is to identify new drivers of economic growth and to tackle the serious capacity constraints on growth and productivity.

The first constraint on growth that must be met is the skills shortage. It requires substantial investment in education and training.

The Government has overseen a decline in the proportion of GDP which is dedicated to education and skill development. Its priority in post-secondary education is to compel institutions to offer AWAs to staff by threatening to withhold Commonwealth funding.

This will not fix skills shortages, and neither will the Government's unpopular and abused guest worker visa program.

A major boost in genuine trades apprenticeships is needed along with increases in Year 12 completion rates. At tertiary level more places are needed in engineering and applied science disciplines.

A major scholarship program must be developed to attract students to the studies which are vital for our economic future.

A second constraint to growth is the lack of national leadership in infrastructure investment. There is no nation-building plan and no strategy for funding one.

The resources boom is fuelling huge fiscal surpluses but they are not contributing to public or private investment in our economic and social infrastructure.

With globalisation and increasing WTO regulation of what Government's can and cannot do to assist firms, infrastructure becomes even more important as a major determinant of competitiveness.

All Australian governments should be identifying priorities for infrastructure investment in a cooperative federal framework. Many of the States have been investing heavily in recent years, but national leadership is needed.

A third constraint on growth is the failure of Government to drive innovation. A strategy is needed to restore double-digit growth in business investment in research and development for the next decade.

This is vital for manufacturing.

In the decade to the mid 1990's business investment in manufacturing R&D grew in real terms by 10.5% per annum. Since then growth has slumped to only 2% per annum.

Reversing this trend is a key to improving manufacturing competitiveness. It's how we get the high-skill, high-wage jobs and

how we reposition Australian industry higher up the value-added chain.

Rather than meet this imperative the Government is preoccupied with a free trade agreement with China – an agreement with potentially devastating implications for manufacturing jobs in Australia.

What is the Government doing to prepare Australia to effectively compete and prosper from an FTA with China? The answer is the new IR laws – to allow business to drive down labour costs.

Cutting the wages and conditions of Australian workers will not protect people from competition with China and Asia. We could never go low enough.

Australia must chart an alternative path by investing in skills, education, infrastructure and innovation.

Conclusion

Which returns me to my essential argument – there is a better way forward.

A way which gets the balance right between workers' rights and economic imperatives. A way which addresses the real economic issues and respects the basic Australian value of a fair go.

A way which treats people with respect and dignity, and which nourishes our democracy and our commitment to social justice.

These values define the labour movement. We are developing policies founded upon these values.

We will campaign for them for as long as it takes.

We will keep our TV ads on air, we will defend people in their workplace, we will mobilise hundreds of thousands in the streets, we will campaign in marginal seats, and we will stand up for people's rights.

We are building a movement for change.

We will win the support of Australian people **and bring about positive change.**