

# COMING SOON TO A WORKPLACE NEAR YOU – THE NEW INDUSTRIAL RELATIONS REVOLUTION

**David Peetz\***

This article explains and examines the content and likely effects of the industrial relations legislative package announced by the Prime Minister in May 2005. After placing the package in historical context, including the low take up of registered individual contracts, it focuses on the abolition of the "no disadvantage" test, changes to minimum wage fixation arrangements, the removal of unfair dismissal protection for many employees, other amendments to the safety net, changes to freedom of association and the right to collectively bargain, the unilateral move to a national system of industrial relations, the politics of reform, and interpretation of the Prime Minister's closing statement that "the era of the select few making decisions for the many in Australian industrial relations is over

On 26 May 2005, the Prime Minister announced to Parliament a package of industrial relations proposals the federal government would seek to enact after gaining control of the Senate in July. In addition, a number of measures rejected by the Senate over the preceding six years were to be reintroduced and enacted. At the time of writing, details of the new legislation were not available, and it was uncertain whether a dissenting government Senator might create problems for some aspects of the package. Nonetheless, the broad shadow cast by the legislation is clear enough. This article seeks to explain, summarise and analyse the package. We will consider, first, the background to and reasons for the legislation, then the changes encompassed by it and the likely consequences.

## **Background**

---

\* Centre for Work, Leisure and Community Research and Department of Industrial Relations, Griffith Business School, Griffith University.

For most of the twentieth century Australia had an industrial relations system that was almost unique in the industrialised world. Whereas most developed nations had industrial relations systems that could be characterised as being based on a 'bargaining model' of industrial relations, in which industrial relations outcomes were bargained between the parties subject to various procedural requirements and minimum standards set by state institutions, Australia and New Zealand operated an 'arbitral model' of industrial relations in which arbitral institutions of the state played a central role in determining outcomes where the parties were unable to determine them themselves or where the outcomes determined by the parties would be against the public interest.

During the 1990s governments in both Australia and New Zealand introduced changes which had the intention and effect of moving those countries towards the bargaining models that operate elsewhere. Thus the role of arbitral institutions was diminished (or, as in the case of New Zealand and Victoria, abolished altogether) and greater emphasis placed on the parties handling their own industrial relations and making arrangements that best suit their own interests. The presumption was that reduced interference by the state would improve productivity and through it national welfare.

This, however, has not been the only element in industrial relations reform. Along with the shift from the arbitral model to the bargaining model, public policy in some cases has also been aimed at shifting the balance of power in industrial relations between the interests of employees and the interests of employers, through individualisation of employment relations. The legislative agenda of individualisation commenced across the Tasman, with New Zealand's *Employment Contracts Act 1991* (ECA). The ECA abolished industrial awards, ended official recognition of unions, prohibited compulsory unionism, and installed a system for the creation and enforcement of "individual contracts" and "collective contracts". It did not take long for the effects to be felt in Australia. Six weeks after being elected in 1992, the Kennett Government in Victoria passed an Employee Relations Act which effectively abolished awards for many workers and replaced them with individual contracts. At the national level, the Liberal and National Parties formed a conservative coalition in Opposition, and they were under pressure from radicalised employer associations and more aggressive anti-union corporations. They adopted a similar policy to

Victoria for their 1993 election campaign and called it *Jobsback!* The then Opposition spokesperson on industrial relations, John Howard, commented, "I said to the President of the Commission, who I've discussed our policy with, I said if we stab you, it will be in the stomach, and not in the back" (ABC 2005). It was not a popular prospect. Despite recent record unemployment, the Labor Government was able to offset electoral losses in other states by picking up seats from the Opposition in Victoria and stay in office. In Western Australia, the new Court Liberal government in 1993 did not go quite as far, but permitted registered "Work Place Agreements" (WPAs) which could be "collective" or individual. These only had to satisfy a small number of minimum standards, including a minimum wage that was well below the lowest award rate. Liberal governments elected in other states also enabled registered non-union agreements inconsistent with awards.

The federal coalition Opposition parties amended their industrial relations policies for the 1996 election, promising to maintain awards and test registered individual contracts, to be known as Australian Workplace Agreements (AWAs) against more generous standards. They won the election and, following some minor amendments agreed with the Australian Democrats in the Senate, secured passage of the *Workplace Relations Act 1996* (WR Act). It was law in the federal jurisdiction – by far the largest single jurisdiction in Australia – from 1 January 1997.

The WR Act enabled the introduction of AWAs subject to the 'no disadvantage' test, restricted awards to twenty allowable matters, narrowed the circumstances in which industrial action was legal (including by prohibiting secondary boycotts), introduced stern sanctions for unions breaching restrictions on industrial action (but not on corporations breaching agreements), abolished the limited "good faith" bargaining provisions that existed, prohibited compulsory unionism and union preference, and encouraged non-union certified agreements (referred to as "section 170LK agreements") by restricting potential union involvement in certification hearings.

At the state level in Australia, and in New Zealand, the systems of individual contracting gradually unwound after 1997, as conservative governments were defeated and replaced by Labo(u)r governments that reversed or rewrote provisions for non-union agreements. Before being defeated, the conservative Victorian government handed the remnants of its private sector

industrial relations system to the Federal government in 1996, and a specific section of the WR Act (Schedule 1A) was created to accommodate those employees with a set of minimum standards and rights that were, until 2005, much weaker than those applying to other employees in the federal jurisdiction. By 2004 the only conservative government left, out of ten governments in the two countries, was the federal government in Australia. It had maintained and in some ways intensified the WR Act, though most amendments it proposed from 1997 to 2004 were rejected by the Senate. The Howard government was re-elected and obtained a majority in the Senate for the first time from July 2005. This enabled it to introduce radical extensions to the WR Act, some reminiscent of the failed 1993 policy agenda, but much more expansionist because it has sought to forcibly take over the state jurisdictions. It is this last point that causes some uncertainty as to the future of aspects of the legislation.

Despite the WR Act, the growth of formalised individual contracting has been slow. Registered individual contracts have grown from 1.8 per cent of employees in 2000 to 2.0 per cent in 2002 (about 157,000 workers) and 2.4 per cent in 2004 (195,000 workers) (ABS Cat No 6306.0). The latter is equivalent to about 38,000 more people on registered individual contracts over two years (Table 1). The number of people on AWAs grew more rapidly – it doubled from 1.2 per cent in 2002 to 2.4 per cent in 2004. This overstated underlying growth in AWAs, because more than half of it was due simply to the demise of the state agreements, mostly Western Australian WPAs. Most of the workers formerly covered by WPAs went onto AWAs, (Todd & Eveline 2004:65) with some going onto section 170LK non-union federal agreements and some others having contracts that would be unable to be registered in any jurisdiction. The use of unregistered individual contracts has declined while that of collective agreements has grown – from 3.0 million workers in 2002 to 3.3 million in 2004 – despite roughly stable trend union membership and declining union density (Peetz 2005). This growth of 300,000 in collective agreements is several times the numerical growth in use of registered individual contracts.

**Table 1 Change in coverage by selected types of instrument, Australia, 2002-2004**

	proportion of employees (%)			approximate no of employees		
	2002	2004	change	2002	2004	change
Collective agreements	38.3	40.9	+ 2.6	3,012,000	3,320,000	+ 308,000
- registered collective agreements	36.1	38.3	+ 2.2	2,839,000	3,108,000	+ 269,000
o union	33.8	35.6	+ 1.8	2,658,000	2,886,000	+ 228,000
o non-union (s170KL)	2.3	2.7	+ 0.4	181,000	223,000	+ 42,000
Individual arrangements	41.3	39.1	- 2.2	3,248,000	3,170,000	- 78,000
- registered individual contracts	2	2.4	+ 0.4	157,000	195,000	+ 38,000
o AWAs	1.2	2.4	+ 1.2	94,000	< 195,000	+<101,000
o state-registered individual contracts	0.8	<0.05	- 0.8	63,000	< 4,000	- >59,000
Award-only	20.5	20	- 0.5	1,612,000	1,623,000	+ 11,000
Total	100	100	0	7,865,000	8,117,000	+ 252,000

Sources: ABS Cat Nos 6306.0, 6310.0 and 6202.0, DEWR (2004).

Notes: Coverage proportions for most instruments from ABS 6306.0. Coverage estimates of s170LK agreements calculated from DEWR (2004), inflated for expired agreements by ratio of total federal agreement coverage in ABS 6306.0 and DEWR (2004). Employee estimates calculated as a proportion of estimated total employment. Total number of employees estimated from ABS 6310.0 for August, extrapolated to May by employment growth estimates in ABS 6202.0. 'Union' collective agreements comprise federal excluding s170LK collective agreements, plus state collective agreements. Note that in 2002 the ABS did not differentiate between owner-managers of unincorporated enterprises and other unregistered individual arrangements.

Back in 1998 the Employment Advocate predicted that AWAs would eventually cover six to seven per cent of the workforce (IRM 1998). Seven years later, with this expectation barely a third met, there must have been considerable frustration in government and corporate circles. It is partly because unions have had some successes against corporate and government strategies that collective bargaining is growing and that further policies to promote individualisation are still on the policy agenda.

More than this, however, industrial relations is a long standing interest of the Prime Minister, and the legislative package proposed therefore bears several similarities to the policy that was defeated at the 1993 election, in particular the standard against which individual agreements

would be assessed, as we shall see shortly. That said, the stated rationale is more noble – to "drive the productivity improvements necessary for creating more jobs and increasing the standard of living for all Australian workers" (Howard and Andrews 2005).

### **Abolishing the no-disadvantage test**

One of the most important proposed changes is the abolition of the no disadvantage test, whereby agreements are meant to leave employees no worse off than they would be under the award, and its replacement with a "fair pay and conditions standard". This minimum standard will comprise the relevant "award" wage and legislated minima for annual leave, personal/carer's leave and parental leave (including maternity leave). At time of writing we do not know at what levels those leave standards will be set. (There will also be an as yet unspecified "maximum hours of work", which the government briefly toyed with setting at 40 hours before political reality showed its hand, but in the absence of any right to overtime pay it is questionable whether this has much significance.) The schema is almost identical to that which was to apply under *Jobsback!* (minimum hourly wages, four weeks annual leave, two weeks sick leave and twelve months unpaid maternity leave) and is similar to those which applied in the 1990s in New Zealand (a minimum wage, annual leave, sick/bereavement/carer's leave, and public holidays) and, less closely, Western Australia (a minimum wage, annual leave, sick leave, bereavement leave, public holidays, a standard 40-hour week, plus three procedural rights including protection against unfair dismissal) (Bailey & Horstmann 2000). In addition, the procedural requirements for lodging AWAs are to be changed, with their taking effect from the date of lodgement rather than the date of approval. Non-union s170LK agreements will now be approved by the Employment Advocate and also take effect from date of lodgement (as will also be the case for union agreements).

Two major consequences stand out. First, there will be widespread potential for reductions in employee weekly pay, arising from the scope for cuts in penalty rates, overtime rates, leave loading, shift allowances and all other items of remuneration not covered by the "fair" standard. If history (and the present) is any guide, then this potential will, in significant ways, be realised.

Even with the no-disadvantage test in place there is substantial evidence that AWAs focus on reducing costs to employers by changing the ways in which working time is paid for, principally by cutting or abolishing overtime rates and/or penalty rates, widening the spread of "standard" hours or replacing wages with "annualised salaries" (ACIRRT 2001; Cole et al 2001; Mitchell & Fetter 2003; van Barneveld 2004). There are major concessions on hours in many AWAs but very little in the way of offsetting wage increases, leaving Mitchell et al (2003:62) to wonder, after analysing many such agreements, whether there was "sufficient value to the employee for the agreement to have passed" the no disadvantage test. There was growing evidence that the Office of the Employment Advocate (OEA) has already been approving agreements that lead to below-award wages – even the chief executive officer of the Western Australian Retailers Association complained about the "lax interpretation" of the no disadvantage test (Todd & Eveline 2004:66). For example, the OEA (2003c) promoted the non-payment of overtime rates when employees "volunteer" to work overtime hours, a concept that is rather dubious when employees have little bargaining power.

If this evidence tells us about the present, Western Australia and New Zealand tell us about the future. In New Zealand, cuts in penalty rates and overtime rates were particularly likely amongst those in low-wage areas (Rasmussen & Deeks 1997). In Western Australia, the Commissioner of Workplace Agreements, whose job it was to register these agreements, published data on WPAs, based on two official analyses of agreements published in 1996 and 1999. In 1994-96 some five per cent of employees had agreements that provided for an ordinary rate of pay that was below the award rate. This later rose sharply, so that by 1998 a quarter of agreements had an ordinary rate of pay that was below the award. In both periods the *majority* of agreements provided for inferior penalty rates and overtime rates than in the award. Indeed, in most cases where overtime or penalty rates had been reduced, they were abolished altogether. That is, in the first and second periods, penalty rates were abolished altogether in 54 per cent and 44 per cent of cases respectively, and overtime rates were abolished in 40 and 44 per cent of cases respectively (CWA 1996,1999). Under the no-disadvantage test that has applied in the federal jurisdiction, these changes to overtime and penalty rates should be offset by increases in the base wage rate, but under the new "fair" standards to apply federally, there will be no need for increases in base wage rates, and without such increases overall earnings of these workers would fall. Hence the

Prime Minister has been careful to avoid repeating the former guarantee that "no worker will be worse off", instead saying "my guarantee is my record", referring to rising real average wages (Howard 2005b). Of course, rising average wages disguise distributional and compositional differences, and we can expect average real wages to continue to rise, driven by growth in strongly unionised sectors and managerial/professional employees, notwithstanding the declining position of many workers on AWAs. We can also expect the share of wages in national income to fall, and that of profits to rise, as they have done in trend terms since 1997 (ABS Cat No 5306.0).

If the Western Australian experience is anything to go by, we may also anticipate some problems with the gender pay gap. Amongst those on WPAs, two in ten male employees, but three in ten female employees, had ordinary time wages below the award rate (CWA 1999). In 2002, average hourly earnings under formalised individual contracts in Western Australia were 26 per cent lower for women than for men – the highest gender gap for any type of agreement in any state jurisdiction (ABS Cat No 6306.0). So it was not surprising that an independent review into the gender pay gap in Western Australia endorsed "the importance of collective bargaining, in preference to individual agreements, in wage determination for the achievement of a narrowing of the gender pay gap" (Todd & Eveline 2004:66).

The second effect of the abolition of the "no disadvantage" test is that we will finally see the surge in registered individual agreement-making that the government and the Employment Advocate have long failed to achieve. Some currently unregistered individual agreements may be registered because of the lower transaction costs, but the main mechanism for AWA growth will probably be a drop in award-only coverage, as the new requirements and processes will make it so much easier for employers to undercut award conditions on payment for working time. Indeed, for employers who wish to make it so, the award will become irrelevant. Hence the Minister anticipates that few people will remain on awards in five to ten years (Workplace Express 2005). While many employers will still find the award to be a handy guide to appropriate conditions, many others will find AWAs so much more convenient than in the past, since will probably only have to require all new employees to sign a simple document that

specifies a single wage rate – Minister Andrews envisages future AWAs to be just one or two pages (Workplace Express 2005), with all else presumably set by managerial prerogative. Such AWAs will be downloadable from the OEA's website, as indeed template AWAs already are, but they are longer and more detailed now than they soon will be because they currently reflect the 'no disadvantage' test.

Government Ministers were reportedly openly speculating that union density may fall to as low as 12 per cent as a result of the policy package (Wendt 2005), which in turn implies a collapse of collective bargaining coverage. It is doubtful the abolition of the 'no disadvantage' test will lead to any decline in collective bargaining coverage – the incentive on individual employees to join a union will be enhanced, not diminished, by these provisions. The government would rely on other provisions, discussed later, to achieve such an effect.

### **Changing minimum wage fixation**

Throughout its term of office the federal government has been dissatisfied with the size of annual safety net adjustments to award minimum wages by the AIRC. On each occasion the Commission has granted a higher increase than was submitted by the Commonwealth and employers – though it has always been lower than that sought by the ACTU, mostly closer to the Commonwealth's position, and on average (particularly for skilled workers on award rates) well below the growth in average weekly ordinary-time earnings (AIRC 2005:106). The government's solution to this independently minded behaviour is to take wage fixing away from the AIRC, and give it to a new body, to be named the "Australian Fair Pay Commission". Minister Andrews states that the body is to be modelled on the UK Low Pay Commission, but with "greater economic rigour" than the AIRC and taking account of "the impact of any decisions on the low paid and the unemployed" (Andrews 2005). The implication that the AIRC does not take account of these things would startle anyone who has sat through a safety net case, as "the levels of productivity and inflation and the employment effects of minimum wages are discussed at great length" in these cases (Alley et al 2005). Something like 27,000 words of the Commission's 2005 Decision dealt with such issues (AIRC 2005). It is difficult to know how much credence to attach to analogies with the Low Pay Commission. The Minister has opined

that the UK Commission appears to "have been striking the right balance between the needs of the low paid and unemployed" adding that "since 1999 the minimum wage in the United Kingdom has increased by over 30 per cent." However, it is almost impossible to reconcile this with the Government's persistent view that the AIRC has been too generous in safety net cases, bearing in mind that the AIRC increased minimum wages by only 18 per cent between 1999 and the time of the Minister's statement. Much more instructive is the Minister's determination that the new body would "recognise" that the tax transfer system has displaced wages as the "primary lever of social protection" (Workplace Express 2005). While some, in the light of increasingly restrictive criteria for transfer payments, would dispute that the tax transfer system has become more generous for the low paid in recent years, the suggestion that minimum wages no longer need to perform a significant role of social protection clearly implies that minimum wages will grow at a lower rate than they otherwise would. But how would this occur?

One possibility is that the new Commission may freeze or virtually freeze nominal minimum wages (ie, reduce real minimum wages) in an ostensible attempt to increase employment amongst the low paid, as suggested by "the five economists" (Dawkins 1999; cf Nevile 2001). The effects of minimum wages on employment are highly controversial in the literature (eg Card and Krueger 1995,1997; Nevile 1996,2001; Neumark & Wascher 1995; AIRC 2005) and so the efficacy of such a policy is equally contentious. However, it may also be politically improbable: the government has shown little inclination to undertake the expenditure on tax-transfers, labour programs education and training that would be necessary to supplement and offset falling real wages and test the "five economists" plan.

It seems more likely that the Government's interest goes beyond the size of minimum wage increases to the structure of award wages. No promises have been made that award wages above the minimum wage will increase in nominal terms – only that they "will not fall below the level set after inclusion of any increase determined by the 2005 Safety Net Review" (Howard 2005a). The original *Jobsback!* proposal was for a single minimum wage, and it was only under political pressure that the then Opposition clarified this to mean award wages would remain intact. So a more plausible scenario is that, while the minimum wage may be adjusted at a rate consistent with government submissions to previous AIRC cases (around 2 per cent per annum) award rates

above the minimum wage may rise by little or nothing, until such times as, one by one, they are absorbed by the minimum wage, thereby achieving over time the objectives of *Jobsback!* (and a minimum wage system like Britain's) while maintaining the guarantee, repeated in seemingly all government brochures, that the reforms will "**not** cut minimum and award classification wages" (Howard and Andrews 2005, emphasis in original; DEWR 2005a,b,c). Of course, all this depends on the wording of the instructions given the "Fair Pay Commission" in the legislation and, much more importantly, on the individuals appointed to it. A reasonable indicator of the direction it will take will be how many members appointed to the new body have appeared on the guest list of the HR Nicholls Society or other pro-corporate think tanks.

### **Removal of unfair dismissal protection**

The biggest single surprise of the package was the removal of protection against unfair dismissal for all workers in firms with less than 100 employees, a decision that reflected the dominance by the Prime Minister of the Cabinet (Kelly 2005). Unfair dismissal provisions were introduced into federal legislation by the Labor Government, under Minister Laurie Brereton, with effect from 1994. The WR Act watered them down significantly. On over 40 occasions since 1997 the government introduced legislation seeking to remove this protection for employees in firms with less than 20 employees, but it was always rejected by the Senate. While the Brereton legislation is still referred to as "job-destroying" (Howard 2005a), and many claims about the employment gains from removing them have been made (Reith 1998a), the growth of 7.6 per cent in employment and 8.0 per cent in hours worked during the three years of the Brereton laws (1994-96) have not yet been surpassed in any three year period of the WR Act. So it seems unlikely that employment gains from the new exemption, if they exist at all, will be dramatic.

Under the proposals, protection against dismissal for "unlawful" (discriminatory) reasons will remain, but in practice this is considerably harder to argue. For example, when the AIRC reinstated fifteen workers sacked from Rio Tinto's Blair Athol mine after management, in a "conspiratorial allegiance", created a "black list" of union members who had declined to sign AWAs and who were "singled out for termination", the union's argument and the Commission's decision were based on the fact that the decisions were "harsh, unjust and unreasonable" (that is, unfair), rather than for unlawful reasons. Apart from leading to an increase in the number of

harsh, unjust and unreasonable dismissals (assuming the existing law had some impact, which judging by the number of cases it must have), the increased burden of proof will also make it easier for employers to engage in discriminatory dismissals.

The new threshold may also lead to changes in employer organisation. A company with a few hundred workers may find it profitable to divide itself into a few companies, each with less than a hundred workers, thereby purporting to avoid the remaining unfair dismissal provisions. Firms will find it more feasible to do this than if the threshold size was twenty employees. Firms may also resist hiring additional workers where this takes them over the threshold of one hundred employees. If this happens on a large scale, there may be negative consequences for employment.

### **Other changes to the safety net**

Workers in small businesses (presumably with less than 15 employees, though that threshold has not been confirmed) will lose their entitlement to redundancy payments, recently created through a test case decision of the AIRC.

There will be "improvements to awards" by removing four matters from the list of allowable award matters, as they are "already covered by other legislation": jury service, notice of termination, long service leave and superannuation. For a government intent on creating a national system of industrial relations, it may seem strange to vacate long service leave to state legislation. The reason for doing it is that many awards provide for long service leave after ten years (sometimes eight), considerably more generous than state legislative standards, which are typically thirteen to fifteen years. This improvement represents a significant lowering of the safety net.

Around 2 per cent of workers are dependent contractors, where the worker is not an employee, even though they are only working for one corporation (ABS Cat Nos 6359.0, 6361.0). Ironically, government and corporate representatives often refer to them as "independent contractors", despite their dependency on one corporation. At law, many but not all of these workers are unable to be covered by collective agreements, even though they do the same work

as other workers on collective agreements. The government intends to "protect the status of independent contractors and support the right of people to make a choice about their working arrangements." Details are unclear, but the government has stated interest in: preventing unions from seeking orders from the AIRC which would impose limits, constraints or barriers on the "freedom to operate as an independent contractor" (making it harder for unions to organise and represent them); applying similar provisions to labour hire workers; redefining independent contractors; overriding relevant state laws; introducing a separate Independent Contractors Act; and, echoing the rallying cries of employers during the violent national disputes of the nineteenth century, amending the objects of the WR Act to ensure that the concept of "freedom to contract" is "protected, promoted and enhanced" (Liberal Party 2004; DEWR 2005d; Hagan 1977; Macintyre 1983).

### **Freedom of association and the right to collectively bargain**

Several proposals previously rejected by the Senate aimed at reducing union power and the scope for collective bargaining will be reintroduced and enacted. The government plans to "provide tougher laws in relation to industrial action." Chief amongst these will be a requirement for secret ballots before protected industrial action can be taken. A previously rejected bill proposed that all protected industrial action must be preceded by a secret ballot in which at least half of eligible members must vote and set out detailed procedural requirements which would in effect introduce a delay of at least two weeks before employee action could take place. Secret ballot requirements are uncommon in bargaining jurisdictions, existing in the UK, Ireland, Greece, Iceland (where union membership is compulsory), some Canadian provinces, Fiji and Brazil.

Two stated objectives of secret ballots are to curtail industrial action; and to improve the accountability of the union to its members and strengthen union-member links (Reith 1998b). The first of these objectives might not be achieved. In the UK, most researchers do not attribute the decline in working days lost in the 1980s to ballots (eg Martin et al 1991, Dunn & Metcalf 1993). Overall, there is no evidence of reduced militancy. By 1992, union recommendations

(mostly to strike) were accepted in 95 per cent of ballots. The campaign to achieve a significant majority often 'raised expectations that could not simply be discounted later', leading to a raising of the stakes, and possibly of strike duration. It was 'difficult to justify calling off action without a ballot' (Martin et al 1991). Hence some employers or groups sympathetic to employers (eg the Institute of Economic Affairs) argued that pre-strike ballots encourage or prolong industrial disruption. About 30 per cent of unions in a study (Martin et al 1991) indicated ballots increased the willingness of members to strike by legitimising the process of decision making.

Researchers identified a "tiny fraction" of instances where balloting led to a clearly different outcome (usually a non-strike instead of a strike). What we do not know is how many times unions do not propose a strike that they otherwise would have been able to run. However, one effect was that employers often caved in to union demands after a ballot was held - less than half of ballots led to action being taken. UK unions adapted to the procedures by improving internal communication but also by increasing the central control of industrial campaigns to avoid litigation (Dunn & Metcalf 1993:83-4; Martin et al 1991:205). This may decrease the prospect of 'disputes being resolved at local level', contrary to expectations (Reith 1998b:20), and would have a mixed impact on union democracy, since local control is an important element of union democracy. The main effect, however, is to give a tactical advantage to employers, by introducing a lag into employee behaviour that is not matched by a lag on the employer side.

The government's proposals for "better bargaining" appear to involve: prohibitions on industrial action during the course of an agreement, even when the matter at issue is not covered by the agreement (for example, an employer's decision during an agreement to undertake retrenchments); enabling the AIRC to terminate a bargaining period (during which industrial action is protected from tort and common law liabilities) at the request of one of the parties or a third party indirectly affected by the industrial action; preventing unions from engaging against action against more than one employer even where they are related corporations; and deeming that industrial action not be protected if the union organises it in concert with people who are not employees of the employer proposed to be covered or officials of the union, or if people other than those people engage in the action. Each of these proposals is aimed not so much at improving bargaining as at changing the balance of power in bargaining. Some are directly inconsistent with the bargaining model (as industrial action is aimed at making the other party

concede by causing inconvenience to them, it hardly makes sense in a bargaining model to terminate it simply because it is having its desired effect). The last proposal appears to imply, for example, that if a union peak council were assisting in advising on protected industrial action, and if that were construed to be assisting in 'organising' it, the action could be declared unprotected. Likewise if a union in a regional area obtained support from a community group or an environmental group in a campaign (eg to improve occupational health in a new agreement) the latter might be construed as assisting in 'organising' the action and render the action unprotected and all parties liable to claims under common law. As unions may seek assistance in difficult disputes the aim appears to be to weaken the power of employees by reducing the resources that they can call upon to assist them during an industrial dispute.

The government also plans to "discourage pattern bargaining." Earlier bills proposed that the AIRC must terminate a bargaining period where the union has engaged in 'pattern bargaining', and would prohibit the AIRC from approving secret ballots if the union is engaging in "pattern bargaining". The concept of pattern bargaining was so difficult to operationalise that it was not defined in previous Bills, though there was some attempt to specify what it was not. In making a decision on the appropriateness of proposed terms and conditions, the Commission was to have particular regard to the views of the employer who is affected by the bargaining period and potentially by industrial action. This proposal would offend the principles of the bargaining model by taking away from the parties the opportunity to decide how they conduct their bargaining or at what level they bargain and requiring the AIRC (rather than the parties) to determine what terms and conditions of employment are appropriate to be included in an agreement for a single employer. This is an area where asymmetry in policy is most stark, as 'pattern bargaining' by employers is not only permitted but encouraged by the government. Through the Office of the Employment Advocate (OEA), the government actively promotes the inclusion in AWAs of provisions that change the way working time is paid for, including by publishing and disseminating "template" and "framework" agreements which corporations can download and apply to their staff. For example, corporations running call centres can download from the OEA website a 21 page AWA which includes wage rates to apply when employees "ordinary hours of work" are Monday to Sunday all hours – that is, with no penalty rates for night or weekend work (OEA 2005a). Under its "Specified Partners Program", bodies the OEA

recognises as "specified partners" pre-check AWAs and promote pattern bargaining. One such partner, the "Small Business Union", announces on the OEA website that it has "developed a template that is both effective and simple to understand" and "offers workers a flat hourly rate of pay, which is applicable twenty-four hours a day, seven days a week" and which "cashes up contingencies and includes components for holiday pay and loading, long service leave, sick pay, meal and travel allowances, redundancy and severance" (OEA 2005b). This asymmetry in the treatment of pattern bargaining suggests that the principal purpose is again to shift the balance of power.

The government also proposes to "provide a single right of entry regime". This would be aimed at supplanting state laws and tightening the federal law, making union right of entry into workplaces to see current or potential members more difficult. Under the proposals, union officials must have reasonable grounds for suspecting a breach of an award or agreement, can only access the records of their members, and can only visit a workplace twice a year for recruitment purposes. They also have to meet more stringent documentary requirements. Such measures do not sit easily alongside the concept of "freedom of association" and again appear aimed at altering the balance of power away from employees.

### **Unilateral national industrial relations system: the stomach or the back?**

The proposals envisage the Commonwealth using the corporations power and other related powers of the constitution to take over most of the states' systems of industrial regulation. This would cover four fifths or so of employees, leaving the states with regulation of the remainder (unincorporated enterprises, and state government employees). The Commonwealth hopes that the states will then voluntarily cede their powers to it. The problems engendered by the federalist system have been well rehearsed. The system promotes inefficiencies and inequities. An individual employer can have some employees covered by a federal award or agreement and others covered by a state award or agreement (DWRSB 2000). There may be inconsistencies in the pay, entitlements and rights of employees under the two jurisdictions, particularly for award-covered employees. The system has promoted factional conflict within unions (Mourell 1995). That said, there is little in the way of empirical evidence to suggest that productivity effects are large. For example, the 1995 Australian Workplace Industrial Relations Survey identified

approximately 19 per cent of workplaces with 20 or more employees had both federal and state awards operating together. Amongst workplaces with both state and federal awards, 75 per cent reported an increase in productivity over the previous two years, whereas the figure was 73 per cent amongst workplaces with only one jurisdiction. The differences were not statistically significant (AWIRS dataset). If the existence of concurrent state and federal jurisdictions has any effect on workplace productivity, it is relatively small and much less important than factors such as employee involvement, gender equity, capital investment, training, work organisation and gender equity in shaping productivity (eg Alexander & Green 1992; Drago & Wooden 1992; Peetz et al 1999). In the meantime, there may be transitional costs as firms move between jurisdictions or, worse, are uncertain of their jurisdiction because of possible High Court challenges.

The most important aspect of the use of the corporations power is that it enables the government to all but abolish industrial tribunals. Governments of both sides have long complained, publicly or privately, when tribunal decisions have not favoured their case, but until now they have had to be content with trying to guide what they do by constraining legislation, careful appointments and the logic of the Commonwealth's arguments, never a reliable trio. The constitutional restrictions of section 51(xxxv) of the constitution (the conciliation and arbitration power) prevented it from directing tribunals to come up with certain decisions. Use of the corporations power circumvents this problem, as it purportedly enables the government to directly regulate industrial relations without recourse to tribunals. Hence through the corporations power the AIRC's responsibility for certifying agreements (one of its most frequent activities) is handed to the OEA, as is its role in approving AWAs that the OEA admits are too difficult to adjudicate. The AIRC's responsibility for setting minimum wages (arguably its most important role) is handed to the "Fair Pay Commission". Its other most common activity is determining unfair dismissals, and this is largely abolished. Its role in interest arbitration has long since virtually disappeared with the shift to enterprise bargaining. The regulation of the building and construction industry is handed to government agencies. The AIRC is left to focus on "resolving legitimate disputes" and "further simplification of awards". The state tribunals will be similarly gutted, except in relation to the minority of employees they will still cover if the state government lose a High Court challenge but choose to retain separate systems.

Departmental brochures are able to announce that the proposals "**retain** a role for the AIRC" and do "**NOT** abolish awards" (DEWR 2005a,b,c, emphasis in original), so it appears that the knife has been aimed between the vertebrae after all.

The Prime Minister's statement finished with the flourish, "Mr Speaker, the era of the select few making decisions for the many in Australian industrial relations is over." Yet what is notable about this aspect of the reform package is the change in *who* is making the decisions. A century earlier, section 51(xxxv) of the constitution "put the major issue of social rights on a national scale – the relations between capital and labour – into the hands of a court," an independent arbiter (Davidson 1997:56, quoted in McCallum 2005). Both sides would complain at various times that the tribunals' decisions favoured the other, but few doubted that the tribunal acted with integrity and, on the whole, impartiality. Now the power of the arbiter is being transferred to government agencies, which either currently act under direction from the Minister, or (in the case of the "Fair Pay Commission") could be easily made to act under instruction from the Minister or the Cabinet – the "select few" – with a few select words of legislation. The corporations power is not readily suited to the balanced regulation of employment relations. It is, as McCallum (2005:18) points out, akin to having a paragraph in the constitution that enabled the Commonwealth Parliament to legislate with respect to men, and then using this platform to enact laws enabling men to enter into or to dissolve marriages with women: "women and men would cry out about the imbalance of such laws that treated women as little more than appendages of men." If the corporations power is to be the prime source of labour regulation then:

our labour laws would become a sub-set of corporations' law and employees would be regarded as little more than actors in the economic enhancement of corporations. For our labour laws to pass the test of "justice and fairness at work", they must focus equally upon the rights, duties and obligations of employees and of employers. (McCallum 2005:18)

As it is, there are numerous complaints that the OEA, and the various bodies involved in regulating the building industry (the Cole Royal Commission, the Building Industry Task Force)

are highly partisan, complaints that are difficult to refute and in some cases come from both sides of politics (Marr 2004; Jones 2002). The OEA brought a case against a union official based on evidence by two witnesses whom the Federal Court found had lied in an attempt to 'set up' a union delegate – and then, with approval of the Minister, paid the \$96,000 in costs that the Court had ordered the discredited witnesses personally pay (Workplaceinfo 2002). Incidents of behaviour by any of the tribunals that approached this degree of partisanship do not immediately come to mind. Coercive powers, beyond those available to police, have already been given to the Minister's Building Industry Task Force to compel union members in that industry to answer questions and provide self-incriminating documents, with penalties up to six months jail for non-compliance. This body will shortly be transformed into a permanent Building and Construction Commission with even stronger powers. The enabling legislation contains heavy retrospective penalties, against individuals and unions engaged in broadly-defined "illegal" industrial action – penalties that can be instigated by the new agency even if employers demur (Roberts 2005). It is a form of state micro-management of industry.

Amongst the industrialised nations, Australia has had one of the more highly regulated systems of industrial relations. Overall the distributional consequences of the award-dominated system up until the 1990s were minor, particularly between capital and labour. It probably led to a reduction in wage dispersion compared to the UK and USA, at least up until the 1990s, and almost certainly led to a reduction in the gender wage gap below that existing in most other industrialised countries, but otherwise the aggregate effects reflect the broad operation of market forces that would have operated in more orthodox collective bargaining systems anyway (Rowe 1982; Norris 1980,1983; Brown et al 1978; Burgess 2004). The new system that will follow from 2006 will not be a deregulated system, such as New Zealand's under the ECA (a mere wisp of a pamphlet by comparison with the size of the amended WR Act). It will be a highly regulated system but one in which partisan regulation, through the corporations power, has replaced independent regulation through the conciliation and arbitration power, and in which a partisan state takes a highly activist role. Two further examples of state activism will suffice: the 1998 Waterfront dispute, in which the Government and a key waterfront corporation, Patrick Stevedores, engaged in an alleged "conspiracy" to replace Patrick's fully unionised workforce with non-union workers trained and employed by a labour hire corporation (Lee 1998; Trinca &

Davies 2000); and the current Higher Education Workplace Relations Requirements, through which the government intervenes in the internal employment relations of universities in a manner unknown in other industrialised countries (Nelson & Andrews 2005; Giglio 2003).

### **Concluding remarks**

Across the industrialised world, it would be hard to find a combination of complexity and active partisanship to match that of Australia. Even the Thatcher government, widely seen as introducing laws that disadvantaged unions and reduced union membership (Freeman & Pelletier 1990), largely kept away from day to day involvement in industrial relations between the parties once the mining and Working battles were over. It would appear that the era of the select few making decisions affecting the many in Australian industrial relations may be just beginning.

Whether this is sustainable over the long run is an open question. Public opinion research undertaken for the government several years ago showed that "the single biggest perceived benefit of government involvement in the workplace is...the setting of guidelines and standards" but that "if a government is perceived to blatantly take sides on industrial relations matters, workers fear outcomes that are unfair" (Australasian Research Strategies 1999:10). A large national survey in 2003 found 66 per cent of voters agreed that "award wages are the best way of paying workers and setting conditions", with only 13 per cent disagreeing. Although a majority said that "employees and employers should be able to negotiate pay and conditions directly", this did not translate into support for individual contracts, as 46 per cent agreed that "individual contracts favour the employer over the employee" while only 18 per cent disagreed. Some 43 per cent agreed that "employees will never protect their working conditions and wages without strong unions", while just 32 per cent disagreed (AuSSA 2003). Not surprisingly, then, an opinion survey commissioned by the ACTU found considerable employee opposition to most aspects of the (about to be announced) package (ACTU 2005). A careful reading of public opinion explains why, despite the protestations of some enthusiasts (eg Moore 2005), the government has devised a package that enables it to say the AIRC and awards will remain in place and award wages will not be cut. It also helps explain why key elements of the package – the abolition of the no-disadvantage test, the end of AIRC safety net cases, the unfair dismissal

exclusion – were not disclosed during the election campaign just seven months earlier. This may not be the end of the road. Looking further ahead, "the government considers [it]...worthy of further consideration" that it should be possible to be "an employee...free to contract without current restrictions imposed by legislation and industrial instruments" (DEWR 2005d:5).

However, the unions are mounting a long campaign against the legislation, with an eye partly to the Senate but mainly to the next election. The persuasiveness of that campaign, and the effects actually felt by workers, will determine the long term future of the new industrial relations revolution. The need to balance politics with ideology, which has led to the retention of remnants of the old system, also leaves Australians with something that was not available to New Zealanders after the demise of the ECA: the possibility than some future government might revive a real role for an impartial tribunal, at least by returning to it the responsibilities presently to be moved elsewhere.

## REFERENCES

- ABC [Australian Broadcasting Corporation] (2005) J Howard interview from 1992 replayed on *PM*, 26 May.
- ABS [Australian Bureau of Statistics], Cat No 5306.0, National Income and Expenditure, Australia, Canberra
- ABS Cat No 6206.0, Labour Force, Australia, Canberra (various years).
- ABS, Cat No 6306.0, Employee Earnings and Hours, Australia, Canberra (various years).
- ABS, Cat No 6310.0, Employee Earnings, Benefits and Trade Union Membership, Australia, Canberra (various years).
- ABS, Cat No 6359.0, Forms of Employment, Australia, Canberra.
- ABS, Cat No 6361.0, Employment Arrangements and Superannuation, Australia, Canberra.
- Alley, S et al (2005) letter to the editor, *Australian Financial Review*, 8 April.
- ACIRRT [Australian Centre for Industrial Relations Research and Training] (2001) *ADAM Report*, No 28, March, University of Sydney.
- ACTU [Australian Council of Trade Unions] (2005) Survey of employee attitudes to industrial relations reform, undertaken by Essential Research and MarketMetrics research, mimeo, ACTU, Melbourne, May.
- AIRC [Australian Industrial Relations Commission] (2005) *Safety Net Review – Wages, June 2005*, Decision PR002005, Melbourne, 7 June.
- Alexander, M & Green, R (1992) *Industrial Relations and Workplace Productivity*, Industrial Relations Research Series, Department of Industrial Relations, Canberra, August.
- Andrews K (2005) Building Better Workplaces, speech to the National Press Club, Canberra, 31 May.
- AuSSA (2003) Australian Survey of Social Attitudes, computer data file, ACSPRI, Australian National University, Canberra.

- Bailey, J & Horstmann, B (2000) "'Life is Full of Choices": Industrial Relations 'Reform' in Western Australia since 1993', in Burgess, J. and Strachan, G. (eds) *Research on Work, Employment and Industrial Relations 2000: Proceedings of the 14th AIRAANZ Conference*, Vol 1, February 2000, Newcastle, 39-51.
- Brown, W, Hayles, J, Hughes, B & Rowe, L (1978) 'How far does Arbitration Constrain Australia's Labour Market?', *Australian Bulletin of Labour*, 4(1), September.
- Burgess, J (2004) 'The Federal Arbitration System and Australian Economic Performance', *Journal of Industrial Relations*, 46(4), December, 413-429.
- Card, D & Krueger, A (1995) *Myth and Measurement: The New Economics of the Minimum Wage*, Princeton University Press, Princeton.
- Card, D & Krueger, A (1997) 'A Reanalysis of the Effects of the New Jersey Minimum Wage Increase on the Fast Food Industry with Representative Payroll Data', Working Paper No. 339, Industrial Relations Section, Princeton University, December.
- Cole, M, Callus, R & Van Barneveld, K (2001), What's in an Agreement? An approach to understanding AWAs', paper to joint ACIRRT/OEA seminar, University of Sydney, Sydney, September.
- CWA [Commissioner of Workplace Agreements] (1996), *Summary Statistics and Other Information*, Vol 2, <http://www.wa.gov.au/workplace/s86vol2>, June.
- CWA (1999), *Summary Statistics and Other Information*, Vol 8, Perth, [http://www.wa.gov.au/workplace/html/5pub\\_idx.htm](http://www.wa.gov.au/workplace/html/5pub_idx.htm), May, 11-14.
- DEWR [Department of Employment and Workplace Relations] (2004) *Wage Trends in Enterprise Bargaining*. December quarter and other editions.
- DEWR (2005a) Information for Small Business: The Howard Government's Plan – Building Better Workplace Relations, Fact Sheet, DEWR, Canberra.
- DEWR (2005b) Information for Employers: The Howard Government's Plan – Building Better Workplace Relations, Fact Sheet, DEWR, Canberra.
- DEWR (2005c) Information for Employees: The Howard Government's Plan – Building Better Workplace Relations, Fact Sheet, DEWR, Canberra.

- DEWR 2005d *Proposals for Legislative Reforms in Independent Contracting and Labour Hire Arrangements*, Discussion Paper, Australian Government.
- Drago, R & Wooden, M (1992) 'The Australian Workplace Industrial Relations Survey and Workplace Performance,' *Australian Bulletin of Labour*, 18, June, 142-167.
- Dunn, S. & Metcalf, D. (1995). Trade union law since 1979. In I. Beardwell (ed) *Contemporary Industrial Relations: A Critical Analysis*. Oxford: Oxford University Press, 66-98.
- Freeman, R B & Pelletier, J (1990) 'The Impact of Industrial Relations Legislation on Union Density in the UK and Ireland', *British Journal of Industrial Relations*, 28(2), June, 141-164.
- Giglio, M, 'Overseas experts join push', *Australian*, Higher Education supplement, 19 November 2003, 25.
- Hagan, J (1977) *The ACTU: A Short History*, Reed, Sydney.
- Howard, J & Andrews, N (2005) 'A New Workplace Relations System: A Plan for a Modern Workplace', press statement, Parliament House, Canberra, 26 May.
- Howard, J (2005a) Statement to Parliament, *Commonwealth Parliamentary Debates*, 26 May.
- Howard, J (2005b) answer to question without notice, *Commonwealth Parliamentary Debates*, 26 May, 46.
- IRM (1998). *Industrial Relations and Management Letter*. 15 (monthly editions).
- Jones, A (2002) Transcript of Comments on Cole Royal Commission, 25 September, [2gb.com/cgi-bin/501/501-2gb-news.pl?A=ReadStory&ID=260](http://2gb.com/cgi-bin/501/501-2gb-news.pl?A=ReadStory&ID=260) and [http://workers.labor.net.au/154/news3\\_bias.html](http://workers.labor.net.au/154/news3_bias.html).
- Kelly, P (2005) 'Howard's Industrial Revolution', *Weekend Australian*, 28 May.
- Lee, M (1998) 'On the Waterfront', *Alternative Law Journal*, 23(3), June, 107-111.
- Liberal Party (2004) *Flexibility and Productivity in the Workplace: The Key to Jobs, Industrial Relations Election Policy*, Liberal Party of Australia, Canberra.
- Macintyre, S F (1983) 'Labour, Capital and Arbitration', in B W Head (ed) *State and Economy in Australia*, Oxford University Press, Melbourne.
- Marr, J (2003) *First The Verdict: The Real Story of the Building Industry Royal Commission*, Pluto, Sydney.

- Martin, R., Fosh, P., Morris, H., Smith, P. & Undy, R. (1991). The decollectivisation of trade unions? Ballots and collective bargaining in the 1980s, *Industrial Relations Journal*, 22(3): 197-208.
- McCallum, R (2005) 'Justice at Work: Industrial Citizenship and the Corporatisation of Australian Labour Law, Kingsley Laffer Memorial Lecture, University of Sydney, 11 April.
- Mitchell, R & Fetter, J (2003) 'Human Resource Management and Individualisation in Australian Law', *Journal of Industrial Relations*, 45(3), September, 292-325.
- Mitchell, R, Campbell, R, Barnes, A, Bicknell, E, Creighton, K, Fetter, J & Korman, S (2003) 'Protecting the Workers Interest in Enterprise Bargaining: The "No Disadvantage" Test in the Federal Jurisdiction', report to Workplace Innovation Unit, Industrial Relations Vioctria, University of Melbourne, Melbourne,  
[http://www.irv.vic.gov.au/CA256EF9000EB8A3/WebObj/B9721C262D82BE8ECA256EF2001A8EF3/\\$File/NDT%20REPORT.pdf](http://www.irv.vic.gov.au/CA256EF9000EB8A3/WebObj/B9721C262D82BE8ECA256EF2001A8EF3/$File/NDT%20REPORT.pdf), acc 6/3/05.
- Moore, D (2005) 'IR reform horse has fallen at the first hurdle', *Canberra Times*, 30 May.
- Mourell M (1995) 'Co-existing Registration and Factionalism in Australian Industrial Unions' , *Journal of Industrial Relations*, March, 24
- Nelson, B & Andrews, K (2005) 'Modernising Workplace Relations In Our Universities', joint media release, Department of Education Science and Training and Department of Employment and Workplace Relations, Canberra, 29 April.
- Neumark, D. and Wascher, W. (1995), 'The effect of New Jersey's Minimum Wage Increase on Fast-Food employment: A Re-Evaluation Using Payroll Records', National Bureau of Economic Research, Working Paper no. W5224
- Nevile, J W (1996) 'Minimum Wages, Equity and Unemployment', *Economic and Labour Relations Review*, 7(2), December, 198-212.
- Norris, K (1980) 'Compulsory Arbitration and the Wage Structure in Australia', *Journal of Industrial Relations*, 22(3), September, 249-263.
- Norris, K (1983) 'Market versus Institutional Issues', paper presented to Australian Wage Determination Conference, Industrial Relations Research Centre, University of New South Wales, Sydney.

- OEA [Office of the Employment Advocate] (2003) 'No Disadvantage Test and Voluntary Non Standard Hours', mimeo distributed by OEA to WA employers, Perth.
- OEA (2005a) 'OEA Victorian Call Centre Framework', OEA website, Canberra, [http://www.oea.gov.au/graphics.asp?showdoc=/home/frameworks-callcentre\(vic\).asp](http://www.oea.gov.au/graphics.asp?showdoc=/home/frameworks-callcentre(vic).asp) acc. 10/3/05.
- OEA (2005b) 'View Partner Details, Queensland: Specified Partner – Small Business Union', Company information, OEA website, Sydney, [http://www.oea.gov.au/graphics.asp?showdoc=/home/partner/partners\\_display.asp&id=2141](http://www.oea.gov.au/graphics.asp?showdoc=/home/partner/partners_display.asp&id=2141) acc 9/3/05
- Peetz, D (2005) 'Trend Analysis of Union Membership', *Australian Journal of Labour Economics*, forthcoming.
- Peetz, D., Gardner, M., K Brown & S Berns (1999) A Gender Equity Index and Workplace Performance, 13<sup>th</sup> conference of Association of Industrial Relations Academics of Australia and New Zealand, Adelaide, 5 February.
- Rasmussen, E & Deeks, J (1997) 'Contested outcomes: assessing the impacts of the Employment Contracts Act', *California Western International Law Journal*, 28, 275-296.
- Reith, P (1998a), Workplace Relations Amendment (Unfair Dismissals) Bill, Second Reading Speech, *Commonwealth Parliamentary Debates*, House of Representatives, 12 November, 243.
- Reith, P (1998b) *Pre-industrial Action Secret Ballots*, Ministerial Discussion Paper, DEWRSB, Canberra, August. <http://www.dwsrb.gov.au/ministers/reith/mindisc1.htm>
- Roberts, T (2005) 'Civil Disturbance', *Workers Online*, June 2005.
- Rowe, L (1982) 'Reward, Force or Compromise: Egalitarian Wage Structure Under Bargaining and Arbitration', *Journal of Industrial Relations*, 24(2), June.
- Todd, T & Eveline, J (2004) *Report on the Review of the Gender Pay Gap in Western Australia*, University of Western Australia, Perth, November, [http://www.docep.wa.gov.au/lr/LabourRelations/Media/Gender\\_Pay\\_Final\\_Rep.pdf](http://www.docep.wa.gov.au/lr/LabourRelations/Media/Gender_Pay_Final_Rep.pdf)
- Trinca, H & Davies, A (2000) *Waterfront: the Battle that Changed Australia*, Doubleday, Milsons Point.

Van Barneveld, K (2004) 'Equity and Efficiency: The Case of Australian Workplace Agreements', doctoral thesis, Faculty of Business and Law, University of Newcastle, Newcastle, August.

Wendt, J (2005) *Sunday*, TCN 9, 29 May.

Workplace Express (2005) 'No move to 40 Hours, says Howard', *Workplace Express*, 22 June.

Workplaceinfo (2002) 'Reith decision indemnified employers', [WWW] Workplaceinfo (Australian Business Ltd), 22 November,  
<http://www.workplaceinfo.com.au/registered/alert/2002/021122386.htm>