

Labor Market 'Reform' in Australia The New Industrial Relations Law and the Elections :: Monthly Review

Peter Harkness more on Labor

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For the first time in decades, the role of the state in industrial relations became a central issue in an election in an English-speaking first-world nation-state. The Australian election of November 24, 2007, resulted in an emphatic win for the Labor Party opposition led by Kevin Rudd. It was the second largest winning margin since the Second World War.

During the election campaign, the incumbent right-wing government of John Howard had repeatedly urged Australians to vote again for his eleven-year-old government because: (1) the world economy was entering very uncertain times (particularly because of the subprime mortgage losses in the United States) and only his government had the expertise and experience to steer Australia through these turbulent times; (2) if Labor were elected then there would be “wall to wall” Labor governments, because Labor currently holds power in all six states and two territories. Without any conservative governments, Labor would be unstoppable and dangerous; and (3) 70 percent of Labor’s federal politicians were ex-unionists and would be biased in favor of the unions.

This message was the constant theme in all Liberal Party advertisements on TV, radio, newspapers, and billboards. Why then did Australians vote so decisively against Howard’s safe, conservative, experienced government, supported effectively by the considerable and vicious skills of the uniformly neoliberal media? To understand that, one needs to know a little of the history of industrial relations in Australian industrial relations. This article describes briefly the early history of Australia and then concentrates on the last decade under John Howard’s coalition government.

Australian Labor History

As in most countries, the working class in Australia has had to struggle both to improve the lot of workers and for its collective action to be viewed as legitimate.

The first members of Australia’s working class were often convicts. British felons could no longer be transported to the United States so they were shipped to Australia to serve their sentence. Most never returned to Britain.

In the 1790s, when prisoners demanded better rations, and reapers and seamen better rewards, they were punished severely by the colony’s red-coated British soldiers. James Straiter suffered 800 lashings to his back for having tried to organize (unionize) his fellow convict-shepherds.

By the 1820s sufficient free settlers from the British Isles had arrived for commerce and industry to take off. The capital-labor relationship replaced that of jailer-convict. Wage laborers soon began to collectivize and seek improved conditions. Coopers, compositors, bakers, and cobblers struck in the new colony of Port Phillip.

In the 1830s scores of societies of skilled tradesmen were established. They provided benefit funds for their members and began to agitate for political changes but they resisted the employment of convicts and apprentices.

The discovery of gold in Bendigo, Ballarat, Bathurst, and other places attracted tens of thousands of free settlers from all over the world. For the next forty years the fledgling economy prospered. The number of people, the wealth, and the work were conducive to the growth of trade unions and improved working conditions—such as the eight-hour day.

In 1856 stonemasons building the University of Melbourne walked off the job, gathered tradesmen from other building sites, marched to Parliament House, and demanded the eight-hour day (“eight hours labor, eight hours recreation, eight hours rest”). Their demands were met. In the following months and years, the eight-hour day spread to paperhangers, butchers, bakers, and many other occupations.

Australia was the first country to legislate the eight-hour day. This radical improvement in working conditions was not the only one to be pioneered in the antipodes by Australia. Trade unions gathered strength and erected grand buildings in the capital cities that were a type of workers’ parliament. Australia was described at this time as a “workers’ paradise.” But it should be added that in the nineteenth century, ethnic minorities were generally excluded from trade union membership.

Trade unionism is a story of progress and regress. With success union membership had grown and the movement had assumed a muscular macho image that was threatening to business. Both capital and labor were spoiling for a fight. It came in the 1890s in the form of a series of important strikes and lockouts. The state dispatched police and army troops to suppress the strikers and to protect the strike breakers. Some unionists were arrested, tried, and sentenced to hard labor. The unions suffered many defeats; their families went hungry, the press condemned them, and their will was broken.¹

At the turn of the century the labor movement decided a new tactic was required. Since the force of the law was frequently used against them, they should establish their own political party to amend and refashion the law to make it friendly to the working class. In 1901 the Australian Labor Party (ALP) was formed.

This strategy (parliamentary representation) was and still is only partially successful. Loyal unionists who were familiar with the battles at the coal face or on the wharf came to view their “labor” representatives in parliament as soft and half-hearted. Worse, these representatives could be so disloyal sometimes as to order police or troops to disperse picketers and to protect a replacement workforce (as happened several times) in order to maintain “law and order.” Nevertheless, the Labor parliamentarians did advance the workers’ lot by enacting some progressive and important social and industrial laws.

The six colonies—New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania—federated in 1901. The new Commonwealth of Australia government established an industrial court called the Commonwealth Conciliation and Arbitration Commission. The legislation made conciliation and arbitration compulsory if requested by either party to an industrial dispute. In addition, third parties could submit their views to the court. The new legislation recognized trade unions. Registered unions were now part of the institutional framework for industrial relations in Australia. Even small weak unions had an important role and rights under the law.

One of the early determinations of the Commonwealth Conciliation and Arbitration Commission was the Harvester wage ruling in 1907 by Justice Higgins, whose decision emanated from his remarkably progressive and compassionate view of industrial relations and social justice. The Harvester wage determination was pathbreaking in that it was based on a family’s *needs* for income rather than what an employer could *afford*. If employers could not afford to pay at least the income a family of four needed to live in modest comfort, then they had no right to employ staff.

It was a pity to see this trailblazing and enlightened criteria slip away in decades to come. By the 1990s wages in Australia were rarely being determined on this basis or even through courts. The Commonwealth Conciliation and Arbitration Commission had been replaced in 1988 by the Australian Industrial Relations Commission. This organization then had its powers of intervention and wage fixing steadily eroded by the subsequent legislative amendments of hostile conservative governments since the 1990s, especially by the WorkChoices law.

Today nearly all Australian workers have their wages determined in one of two ways: either (a) by a collective “enterprise bargaining agreement” usually, but not necessarily, negotiated by a trade union; or (b) by an individual contract, which is now often a WorkChoices “Australian Workplace Agreement” which is theoretically negotiated by the individual. In most cases, there is little negotiation because individual workers generally have no bargaining power. The Howard government claimed this industrial relations system is much more “flexible” because workers now have the right to bargain for whatever conditions and hours of work best suit them and their families.

About a quarter of the workforce is now on Australian Workplace Agreements (AWAs). In nearly all cases, the boss gave these workers no choice. Surveys of recent AWAs reveal that all these workers have lost benefits they previously enjoyed such as higher wages for overtime, leave bonuses, and long-service leave, and in return have often received tiny wage raises, if any, for example ten cents per hour. AWAs are a manifestation of neoliberal microeconomic theory.

Microeconomic Reform

Over the last twenty years in Australia, New Zealand, and many other western countries there has been a strong move by governments (supported by many economists) to transform their economies into something much more like the model of perfect competition taught in microeconomic theory. That theory holds that a perfectly competitive economy would achieve the most efficient allocation of scarce resources. The theory claims that markets will always clear, there should be no unemployment, and welfare will be maximized (but only for that given distribution of income). It is hoped (but not proven) that there will be a high rate of economic growth. Whether the rate of inflation and balance of payments will be better or worse cannot be predicted. It seems likely that jobs will become less secure and the gap between rich and poor will grow wider, but again this cannot be predicted from the theory with any confidence.

The theory posits that the main benefit of a perfectly competitive economy—where every industry is comprised of many small firms and all workers compete with one another without contracts or unions—is that scarce resources will be employed and allocated efficiently. The price (or wage) at which they will be employed cannot easily or accurately be predicted. But it will fall until the markets clear.

To achieve this benefit, several requirements are crucial. The theory says there must be perfect information available to everyone about everything economic. There must also be perfect mobility of all resources.

Even if these unlikely conditions were met, the theory admits that the market forces driving a perfectly competitive economy are likely to fail to allocate our resources efficiently if there are any costs or benefits external to transactions (e.g. pollution) or if there are joint costs in producing goods, or increasing returns to scale, or if property rights cannot be clearly defined or are common to several parties (as with the oceans and skies), or if non-payers cannot be excluded, or if the good is a public good. Thus, there is a long list, well recognized, of reasons why markets will fail to allocate resources efficiently even if we had perfect information and mobility.

So, given that perfect competition offers mixed results (successes and failures) why have so many governments been trying to reshape their economies in its mold over the last twenty years?

My answer to this is twofold. Firstly, I think many political parties (especially the more right-wing ones) largely believe microeconomic theory. Its claim that it will allocate our resources most efficiently seems well based on convincing science. Most economists believe in microeconomic theory because it is all they have learned. Few universities teach any alternative economic theory.

Secondly, to the extent that perfect competition and neoliberalism can be achieved, members of the rich and powerful classes of society (many of whom are aligned with right-wing parties) are almost certain to benefit from neoliberal policies. There is much evidence (some is cited below) that free-market, right-wing policies skew the distribution of income disproportionately in favor of the upper classes. The rich get richer.

Pursuing Perfect Competition in the 1980s and '90s

There are hundreds of examples of the implementation of neoliberalism in many countries that could be described. Here are a few including some local ones from Melbourne.

In the interest of achieving greater efficiency our previous conservative (Liberal Party) state government split the profitable State Electricity Commission into six sections and then privatized them. This was meant to lead to cheaper electricity for households, but ten years later this has not happened. The state misses out on over \$300 million in profit each year, and the private owners are refusing to build new generating capacity since additional electricity is needed in only one summer month when air conditioners are used. The private operators prefer to save their money and black out the poor western suburbs for a few hours at peak times. The only winners have been some very large users (big manufacturing and smelting companies and the casino), which have managed to negotiate cheaper rates.

The same Victorian state government privatized our trains and trams expecting the private operators to run them more efficiently. The state government now has to pay the private operators a larger subsidy (in real terms) than before.

A subsequent Victorian government (the current one) paid a company largely owned by one of Australia's wealthiest families \$300 million more than the cost (which was \$140 million) to have Melbourne's new court house built by private enterprise in a private-public partnership to minimize risk to the public sector. The government will not even own the court house.² The results of the privatization onslaught elsewhere in the world are no less dramatic:

In Mexico an already extreme concentration of wealth and power was intensified by the process of privatization. A group of some 35 businessmen who already controlled nearly a quarter of Mexico's Gross National Product took a leading part in virtually all the privatizations of public utilities—they were the only people who had the money. Here, as elsewhere in Latin America, shares in the new private monopolies sponsored the growth of stock markets where massive speculative profits could be made—again by those who had the money to start with.

In Chile between 1975 and 1979 most of the local banks were sold for a song to the handful of families that already dominated Chile's finance and industry. So disastrous were the results for Chile's financial 'stability' that a programme of renationalization had to be hurriedly cobbled together. During the second round of privatizations that began in 1985 by far the largest chunk of stock in ENDASA, the electricity utility, was made available to members of the armed forces.³

Privatization is supposed to save money but it rarely does. Profits add to costs. And governments can borrow money at lower interest rates, making public financing far cheaper.

- In the Dominican Republic electricity charges jumped by 51% after privatization—daily blackouts followed. The Government was forced to underwrite the private sector due to contract obligations. By 2000 the country owed the power companies more than \$135 million.
- The Auditor General in New Brunswick, Canada, found one school built under a public-private partnership deal would have cost \$775,000 less if the province had done the work. Half the extra cost came from higher borrowing costs the private company had to pay.
- In Lee County, Florida, the water and sewer system was returned to public control in 2000 after an audit discovered a history of slipshod maintenance. The county estimated costs of \$8 million to rebuild the system.

Notice that another example of microeconomic reform (or neoliberalism) not usually recognized as such is the strong preference governments have developed in recent years for monetary policy (mainly varying interest rates) rather than fiscal policy to control the macro economy. Fiscal policy is seen as too interventionist and likely to tilt the playing field. Raising taxes and government expenditure is contrary to the neoliberal creed. The main examples of new fiscal policy in recent years in Australia have been tax *cuts*—mainly for high-income earners. Reducing taxes and otherwise minimizing the use of fiscal policy are both part of the current neoliberal desire to keep government small and leave the economy to market forces (that is, big business).

The WorkChoices Legislation

The name “WorkChoices” is largely a misnomer. The only choice lies with employers as they can choose to offer a collective or individual contract. But in presenting the new industrial relations law, the Howard government described it as providing *workers* with a choice.

The legislation does not require employers to offer prospective employees a choice between a collective (union) agreement and an individual one. While many collective agreements will continue, bosses are not compelled to offer them or update existing ones. Many workers (especially new and young ones) are likely to be offered only an AWA (an individual contract). Due to their lack of bargaining power, often their only “choice” will be to take it or leave it and search for another job. This is already happening at my university.

Individual contracts are likely to offer inferior conditions of employment. AWAs override all previous employment laws that offered rights or benefits to workers. In fact, there are only five conditions that must be offered:

- a wage, which must be at least \$13.45 per hour (less for workers under 21);
- four weeks annual leave (but two can be taken as cash instead, which poorer people will often choose);
- ten days per annum sick leave (medical certificate needed);
- thirty-eight hours per week (on average);
- unpaid parental leave of up to fifty-two weeks.

At present under collective agreements most workers enjoy many other benefits, including:

- spayment for public holidays;
- rostered days off;
- overtime payment (double time);
- higher rates (often double and often called “penalty rates”) for working on public holidays and weekends;
- paid maternity leave;
- three months leave on full pay after ten years continuous service (called long-service leave)
- fifteen days sick leave
- rates for casual or part-time work
- in some industries, workers receive meal, travel, clothing, and tool allowances
- pay (an amount of money—related to your length of service—to help you survive, if you are sacked, until you find your next job).

Now bosses do not have to offer any of these conditions. In the past they offered them because unions pressed them to do so. Individuals, starting a new job, have little negotiating leverage. To the extent that individuals are unsuccessful, wages and working conditions in Australia will decline, and neoliberals will have succeeded in achieving “equilibrium” in the labor market.

Is a decline in Australian wages necessary to compete with China and India? Maybe, but note the following: Australia's wages have always been higher than these countries, including in recent years when Australia has been exporting a lot of industrial production. The Australian economy and labor market have been performing very well as is, and this is predicted to continue. There has been no suggestion that the employment conditions of high-income earners including politicians will or should decline—in fact, all Australian parliamentarians received, on July 1, 2006, a pay raise of 6.9 percent which is about double that of inflation and most other wage rises in recent times. Wages are only one of the costs of production. Australians can be, and often are, more efficient with our technology and capital than developing countries. With much of our production (perhaps half) we do not have to be internationally competitive because it must be produced locally (e.g., electricity, public transportation, retailing, most health and education, etc.) and if wages decline so does aggregate demand, sales, production, and GDP.

While the Australian Council of Trade Unions (ACTU) and the Labor Party have been opposed to the harshness of the WorkChoice legislation, the Liberal Party and big business are extremely pleased with it. Yet prior to the elections big business had not engaged in much debate about the details of the legislation. They had not sought to answer the many criticisms made by the trade unions. They made only very general comments such as: "Reforms to employer-employee relations have played a major part in Australia's economic success. Continued progress (like 'WorkChoices') will mean that Australia has the workplace innovation and productivity needed to keep our economy growing strongly."⁵

One might well ask who benefits if we "keep our economy growing strongly." You might be inclined to say everybody. But this is simplistic. More than two million Australians live below the poverty line, so they have not benefited much by past economic growth.⁶ Another two million Australians (that is 10 percent of the population) own nearly 60 percent of Australia's wealth. That is six times what they should have if we wanted an equal distribution of wealth and income. So this top 10 percent have done very well from past economic growth. Various studies show that the benefits of economic growth go overwhelmingly to the rich. For example, in the United States two-thirds of the growth in family income in the 1970s and '80s went to the richest 3 percent of families.⁷ In a similar vein, real wages in the United States are now 12 percent less than they were in 1973.⁸

Thus the higher economic growth sought by the government and the Business Council of Australia is likely to benefit mainly wealthy people and businesses. And to achieve this, poorer working-class people are expected to take wage cuts. Is this fair?

A Comparison with New Zealand

The Howard government had argued that its new industrial relations laws would lead to increases in wages, productivity, employment, and GDP. Yet Howard's industry minister, Ian McFarlane, said in August 2005 that Australian labor costs were too high. "We've got to ensure that industrial relations reform continues so we have the labor prices of New Zealand. They reformed their industrial relations system a decade ago. We're already a decade behind the New Zealanders. There is no resting."⁹

New Zealand introduced an industrial relations law, the Employment Contracts Act (ECA) in 1991 that, like WorkChoices, aimed to put most New Zealand wage earners on individual contracts. Subsequently, many New Zealanders lost their overtime and penalty rates. New Zealanders get paid four dollars less per hour than Australians on the minimum wage.

The full-time male participation rate in New Zealand fell by 11 percentage points during the 1990s following the ECA. "The ECA did not deliver on labor market participation, productivity or wages and many average Kiwi workers are still reeling from the fall-out."¹⁰

The Australian economist John Quiggan sees the difference between individualized (neoliberal) labor markets and ones based on collective bargaining as being even more profound. Countries which use collective bargaining and/or centralized wage fixing tend to have higher levels of equality. He compared Australia, the United States, the United Kingdom, and New Zealand. He concludes, “the United States, where the labor market has always had most of the main neoliberal characteristics displays easily the highest inequality. The radical neoliberal reforms undertaken in New Zealand and the United Kingdom in the 1980s and early 1990s show up clearly in rising levels of inequality, overtaking European countries that were initially less egalitarian.”¹¹

More recently, New Zealand made an important industrial relations change back toward intervention and collectivism. The government raised the minimum wage for young people. For eighteen and nineteen year olds it rose 69 percent, and for sixteen and seventeen year olds it rose, over two years, by 41 percent.

Accepting neoliberal microeconomic theory, one would expect that such a large rise in real wages would reduce the demand for labor. But two economists from the New Zealand Treasury Department undertook a careful study of the subsequent data. They concluded, “we find no robust evidence of adverse effects on youth employment or hours worked. In fact we find stronger evidence of positive employment responses to the changes for both groups of teenagers, and that 16–17 year olds increased their hours worked by 10–15 per cent following the minimum wage changes.”¹²

In contrast the Howard government’s Fair Pay Commission, which under WorkChoices replaced the Industrial Relations Commission in setting minimum wages (but now without interested parties being able to submit views) said that the minimum wage was too high, and announced it would postpone any pay raise for twelve months longer than usual. Meanwhile, after being in existence for only three months the Fair Pay Commissioners accepted a 4.1 percent pay rise for themselves.

Early Experience with WorkChoices

The new industrial relations law WorkChoices took effect at the end of March 2006. By June the government’s own Office of the Employment Advocate had inspected 6,000 of the AWAs. The office reported that 100 percent of them excluded at least one condition or benefit which employees previously enjoyed as part of the union negotiated award: 63 percent removed penalty and overtime rates, and only 59 percent retained declared public holidays; 78 percent provided a wage increase, but the pay raises were as little as two cents an hour.

On September 5, 2007, the government’s own Workplace Authority reported that it had scrutinized a sample of 1,100 AWAs and found that 15 percent were offering conditions inferior to the minimum permitted under old awards.

A study released in September 2007 by Sydney University’s Workplace Research Centre found that: “Average pay for workers in liquor stores, fast food businesses, bakeries, restaurants and supermarkets dropped by between 2 and 18 per cent as a result of the 339 new agreements it studied in Victoria, NSW and Queensland. But the worst affected workers lost more than a third of their salaries through agreements that were legal.”¹³

At Cowra in New South Wales, twenty-nine abattoir workers were sacked soon after WorkChoices came into effect. Under the new law they had no access to any right of contesting unfair dismissal. Some of them were immediately offered new jobs on AWAs with significantly less favorable terms. Because of union and community outrage, even the government mildly rebuked the firm, which subsequently re-employed all workers on their original terms. The government has since confirmed that in fact the abattoir did nothing wrong in sacking and re-employing more cheaply. So the door is open for other employers to pursue such actions. Telstra, Australia's largest telephone company (30 percent owned by the government), has indicated it is likely to take such action with thousands of employees soon. My own employer, Swinburne University in Melbourne, has recently done this. Thirteen employees in the student union were sacked and then about half were re-employed, to do much the same work, on AWAs with significantly inferior wages and conditions. The approach at Spotlight, Australia's largest fabric, craft, and home interior superstore, may prove typical: "Workers at Spotlight will be given a pay increase of just two cents per hour in exchange for losing entitlements like penalty rates, rest breaks and overtime. The Australian owned chain of fabric and home wares stores employs 6,000 workers and rakes in over \$600 million a year. But new staff will lose up to \$90 a week under the terms of Spotlight's new AWA individual contracts."¹⁴

Analysis

There seems little doubt that WorkChoices will reduce the wages and benefits of many Australians. Wage cuts are likely to be greatest among the lower paid and also the less unionized, because these workers are often unskilled, easily replaced, and have little bargaining power.

Seventeen of Australia's leading academic researchers in industrial relations made the following points:

There are at least four critical labor market challenges facing Australia today:

- Labor and skill shortages exacerbated by an ageing population
- The productivity slow down
- Work-family tensions
- The growth of low paid precarious employment.

On all the evidence available from this wealth of research, there is simply no reason to believe that the Federal government's industrial relations changes will do anything to address these complex economic and social problems. The government's new law will:

- Undermine people's rights at work
- Deliver a flexibility that in most cases is one way, favoring employers
- Do—at best—nothing to address work-family issues
- Have no direct impact on productivity
- Disadvantage the individuals and groups already most marginalized in Australian society.

The narrowing of awards and enterprise agreements and the promotion of individual contracts by the government will significantly enhance managerial prerogatives and diminish the independence and choice available to employees.

The right of employees to choose to bargain collectively and to require employers to recognize this choice is not protected in Australia—unlike all other OECD nations (including the USA). The effect of the reforms will be to force employees onto individual agreements and deny them access to collective agreements. Australian evidence shows that collective agreements deliver better wages, better employee "voice" in the workplace and better working conditions than individual agreements.

If the Howard government seeks to establish one national labor law through primarily relying upon the corporations power in the constitution, this will inevitably lead to labor law becoming a sub set of corporations law.* In truth, we will be witnesses to the corporatization of our labor laws. Labor laws seek to balance the rights, duties and obligations of employers and employees as equal legal actors in the processes of work and production. However, general labor laws relying upon the corporations power could not for long maintain this balance between employers and employees. In the fullness of time, these laws will inevitably fasten upon the economic needs of corporations. Their employees will be viewed as but one aspect of the productive process in our globalised economy.

Many workers hired as independent contractors (which is happening apace) will find that their incomes are more uncertain, their hours of work less predictable, access to paid annual leave non-existent and the threat of dismissal ever present.

Increasingly workers will have little choice but to accept these forms of employment.¹⁵

The Australian Centre for Industrial Relations Research and Training conducted research comparing AWAs with union negotiated collective agreements and found that wage increases under the latter consistently averaged 1 percent higher.¹⁶

Tim Colebatch, a well regarded staff economist who has written for *The Age* newspaper in Melbourne for twenty odd years, recently drew attention to an OECD study of the performance of different countries' industrial relations systems. Having previously championed the virtues of deregulating labor markets and making them more "flexible," a la the American system, the OECD has recanted. It now says "Different policy packages have yielded equally successful employment outcomes. Some countries have achieved high employment protection and a strong emphasis on activation policies (for the unemployed)." It found that the level of minimum wages had no significant impact upon unemployment levels. It also found that moderate unfair dismissal laws do not hurt employment. Colebatch concludes that the Howard government's case for introducing WorkChoices was based on false claims.¹⁷

Theory and Reality

Contrary to the prediction of neoclassical economics, reducing wages does not necessarily increase employment. Cutting wages is a cost- or supply-side policy. Keynes rejected such classical economics policies (based on Say's Law) because he demonstrated well that it is aggregate demand that drives growth of the economy and jobs. Reducing people's wages reduces aggregate demand and employment.

Deregulating labor markets does not necessarily reduce unemployment. Australia has been deregulating for ten years, but our unemployment rate of 4.5 percent is worse than Iceland (2.4 percent), the Netherlands (3.6 percent), Norway (4.0 percent) and Denmark (4.3 percent)—all of which have much more regulated labor markets.

John Howard said his WorkChoices law would not reduce wages (despite the growing evidence to the contrary). He claimed we should trust that his reforms would increase wages and employment, as his government had already done over the last eleven years. He claimed that average real wages in Australia had risen 14 percent since 1996 under his government, and employment had grown by hundreds of thousands.

Both claims may well be true. But the average wage is pulled up greatly by top wage earners' huge pay rises. For example CEOs wages have risen by 229 percent since 1998. But real wages for ordinary adult workers rose by only 3.6 percent between 1998 and 2004, and have risen only a little since (and that is due mainly to the booming mining industry). As a proportion of GDP, wages have fallen from 56 to 54 percent between 1996 and 2006.

Employment has grown by hundreds of thousands, but nearly all of it has been casual and part time. Full-time jobs are only inching up. Peter Sheehan and Peter Stricker (formerly of Melbourne University) explained long ago that our method of measuring unemployment understates it by about 50 percent.¹⁸ That is, unemployment in Australia is really closer to 9 percent. For example, even if you only work for one hour a week, you are classified as “employed.”

Income inequality steadily worsened under the Howard government’s neoliberal policies. WorkChoices was the most radical of all these policies, and is very likely to widen the income divide a great deal more. If Labor does not reverse this law, life will become much harder and less secure for many Australians.

Polls in the year prior to the election indicated that 72 percent of Australians were opposed to WorkChoices. One hundred thousand of them protested against WorkChoices in Melbourne on June 28, 2006. The government dismissed the protest saying it had been “just a small number of rusted on unionists.”

The Election

In the course of the election campaign, WorkChoices was the most controversial and divisive issue. While education, health, and the environment were all important, the one on which the parties differed most, and which was featured the most in political advertisements on television and radio, was industrial relations. For six weeks during the election campaign, and the eleven years preceding it, unions were vilified and maligned by the Howard government. They were portrayed as beer-bellied thugs that would hold the country for ransom. In Liberal Party television ads unionists were shown as evil-looking muscle men ready to threaten businesses with strong arm tactics.

Despite Labor’s resounding win, the Liberal Party’s ads did reduce the swing to Labor from the 10 percent predicted at the start of the campaign to just under 6 percent. The Liberal’s anti-union campaign also forced Labor to moderate its plan to “rip up WorkChoices” (because of loud howls of protest from business and the right-wing press).

Indeed Labor may well have lost the election if it had not been for their own clever and convincing advertising campaign. In 2005 the Australian Manufacturing Workers’ Union commissioned a Melbourne research firm to interview groups of employees on average wages (70 percent of whom had voted for Howard in 2004) to discover what their views were of the proposed WorkChoices law. Most employees it turned out knew little about it, but when the draconian provisions of the law were explained, the common and overwhelming reaction was anger and shock (particularly as the Howard government had not even mentioned the proposed law in the 2004 election campaign). It was such a strong finding that the ACTU soon decided to levy all unions and seek donations from the public to fund a series of television advertisements that showed ordinary working families being shocked to learn that one or the other parent had just been told by the boss that, for example, overtime or penalty rates would no longer be paid. Further research indicated the advertisements were very effective. They worried viewers. Howard’s approval rating dived. So much so, that the Howard government quickly put on the air a series of its own advertisements (paid for with tens of millions of dollars of tax payers’ funds) to provide “important information and education” to the public about their employment rights. But these advertisements were widely received with cynicism and disbelief. The ACTU’s ads called “Real People, Real Stories” hit the spot. Viewers could identify with the hardships depicted in the union ads.

A few months before the election, the government was so unpopular that it quickly amended WorkChoices by introducing a “Fairness Test” to ensure that AWAs did not leave employees worse off. More government advertising accompanied this turn. It was farcical because several studies (including one by the government’s own Workplace Authority) had demonstrated many times that nearly all AWAs disadvantaged workers. It was precisely because of this that they were (and still are) so popular with business. And this had always been their purpose.

An exit poll conducted by researchers for *The Age* newspaper confirmed that industrial relations was a dominant concern in the election. Michael Bachelard, writing for *The Age*, concluded “the real victims of the anti-union campaign were the Liberals.” Howard used to scoff that less than 20 percent of Australian workers belong to unions. Perhaps, but that is still by far the biggest organization in the country, and in this election it spoke.

Will a Rudd Labor Government Be Better?

Unfortunately, not much. After eleven years in opposition, Labor is so hungry for power that it has shown that it is quite prepared to sacrifice traditional Labor values and goals and compromise with big business in order to win the government.

When Kevin Rudd, leader of the Australian Labor Party opposition, announced details of his industrial relations policy on April 28, 2007, many Labor supporters, most unionists, and leftists felt disappointed and betrayed. Labor had softened its anti-WorkChoices policy because of loud opposition from business.

The previous leader of the opposition, Kim Beazley, had said he would “tear up WorkChoices” if elected. This was generally interpreted as meaning Labor would return the industrial relations laws to the pre-Howard status quo. But Kevin Rudd has proposed a much less radical change. Much of John Howard’s industrial relations law will remain.

Rudd has said only that he will abolish the AWAs. And even here, all existing AWAs would run their five-year life, meaning that some workers would still be subject to the stinginess of AWAs till 2012. On the good side, the minimum five entitlements that must be offered in an AWA have been increased to ten. At least two of these are significant benefits: penalty rates must be paid to employees (but not subcontractors) who are required to work on public holidays; and Labor will negotiate with the state governments to spread a uniform entitlement to long-service leave. The Liberals had been trying to get rid of long-service leave.

On the bad side, several of the very harsh and oppressive provisions of WorkChoices would remain under Labor. For example, the right to strike or to take almost any other direct action that interferes with the employers operations is illegal (and attracts very heavy fines) except in the designated bargaining period after an enterprise agreement has finished. Even then, withholding labor is only permitted if supported by a majority of workers in a secret postal vote, organized (over some weeks) by the Australian Electoral Commission. Even after the vote, either the employer or government can request that the Australian Industrial Relations Commission hear the dispute in the hope that it will rule that due to social disruption the bargaining (and therefore striking) period be stopped, thereby forcing workers to return to work. Rudd will retain these heavy limitations on the right to strike.

Howard’s law made it illegal for unions to strike in sympathy with any other union. This had occurred in 1998 when the waterside workers struck in response to a conspiracy by the Howard government and stevedoring companies to sack hundreds of wharfies, most of whom would not even have received any redundancy pay. The sacked workers were replaced with army personnel and scabs whom the government had been secretly training in wharf and crane skills in Dubai. The courts ultimately ruled against Howard, but not until dramatic support for the striking port workers from other unionists had created a national sense of crisis. Under Howard’s law, sympathy strikes are always illegal and can attract fines of millions of dollars. Rudd has retained this part of Howard’s industrial relations law. His deputy opposition leader has said often that workers who engage in illegal strikes will “be met with the full force of the law.”

In order to further frustrate the operation of trade unions, Howard’s WorkChoices law had imposed restrictions on the right of union officials to enter their members’ work places. Rudd has retained this provision.

WorkChoices deems it illegal for trade unions to engage in pattern bargaining. Pattern bargaining occurs when unions attempt to achieve essentially the same terms and conditions for their members in a particular industry no matter which firm employs them. This enables economies of scale in the union's operations, and prevents inferior conditions being offered to their members employed in smaller firms where they have little bargaining power due to small numbers. Rudd has retained the ban on pattern bargaining. Rather than leveling wages up, Labor, like Howard, will encourage leveling down or a race to the bottom.

Howard established a new statutory authority (the Australian Building and Construction Commission) to monitor and supervise closely the day to day industrial relations in the building and construction industry. Rudd will retain this antiworker, antiunion statutory authority; although he has indicated he might reconfigure it in the future.

The government before Howard's was a Labor one led by Prime Minister Paul Keating. It introduced a law to protect workers from being unfairly dismissed. Howard watered this law down beyond recognition. Rudd will partially reinstate it, but only for workers who have been employed for more than six months in a business with over fifteen employees, and for twelve months for smaller businesses. Labor is doing nothing to stop the increased use of temporary agency staff. Such staff might have worked for the one company for several years but can be sacked at any time and not be entitled to any of the benefits contained in the company's collective agreement.

At my university about half of all hours taught are by temporary or casual sessional staff. Reliance on casual staff (who have no security or benefits apart from their wage) is growing steadily at all Australian universities. In fact after fruit picking and the hospitality industry, universities are the industry with the most casual employees in Australia.

Environmental issues were also important during the campaign and according to the exit poll. Howard had done very little on this front. He was a global warming skeptic who refused to see Al Gore when he visited Australia in May 2006, dismissing him as an "alarmist." Rudd's first act as prime minister, within hours of his government being sworn in on December 3, was to arrange to sign the Kyoto Agreement on climate change, which Howard had always refused to sign. This was a popular move and widely celebrated. The United States is the only other developed country that has refused to sign Kyoto.

The victory by the ALP was resounding. The party enjoyed a swing of nearly 6 percent and will have a majority of at least 22 in the 150 seat House of Representatives in Canberra. The icing on the cake was that Prime Minister Howard lost his own seat to a journalist standing for the ALP. Labor and Greens supporters were delighted. Howard's deputy and heir apparent, the treasurer for eleven years, Peter Costello, has announced that he will soon resign from Parliament to seek employment in the private sector. Costello and Howard had been the chief architects of WorkChoices, and were planning an even harsher WorkChoices Mark 2 had they been reelected. Mark Vaile, the leader of the National Party (the smaller party in Howard's coalition government) has resigned. The coalition parties are in a shambles. The week after the election Howard's minister for workplace relations completely disowned and distanced himself from WorkChoices. He said Labor's elected representatives have a mandate to tear it up. Let us hope they do.

Notes

1. The main source for the history of industrial relations in Australia is Sean Scalmer, *The Little History of Australian Unionism* (Carlton, Vic.: The Vulgar Press, 2006).
2. Kenneth Davidson, "Any disclosure would be good," *The Age*, November 3, 2006.
3. Danni Sandberg, "The Pirate Privateers," *New Internationalist*, September 1994.
4. *New Internationalist*, April 2003.
5. Business Council of Australia, April 25, 2006, <http://www.bca.com.au>.
6. Australian Bureau of Statistics, *Australian Social Trends* (Catalogue 4102.0).
7. *Australian Financial Review* 6 (March 1992); originally published in the *New York Times*.
8. "The Other America," *New Internationalist Magazine*, no.351 (November 2002): 18.
9. Liquor Hospitality & Miscellaneous Union, <http://www.lhmu.org.au>.
10. *The Age*, May 24, 2005.
11. John Quiggan, *IR Reforms*, monograph (University of Queensland, 2005), 9.
12. Dean Hyslop and Steven Stillman, *Youth Minimum Wage Reform and the Labour Market*, New Zealand Treasury Department, working paper 04/03 (March 2004), 2.
13. *The Age*, September 18, 2007.
14. For this and more tactics by employers, see <http://www.actu.asn.au>.
15. The federal government's *Industrial Relations Policy: Report Card on the Proposed Changes*, coordinated by University of Sydney Economics Faculty, 2005, <http://www.econ.usyd.edu.au>.
16. David Peetz, *Brave New Work Place* (Crow's Nest, NSW: Allen & Unwin, 2006), 97.
17. Tim Colebatch, "Wage cuts won't boost jobs," *The Age*, June 20, 2006.
18. Peter Stricker and Peter Sheehan, *Hidden Unemployment* (University of Melbourne: Institute of Applied Economic and Social Research, 1981).

The powers of the commonwealth government are limited to those listed in the Constitution, whereas the state governments have all residual powers. One of the commonwealth's powers is to make industrial relations laws but only in relation to industrial disputes which extend beyond any one state. Section 51 (xx) of the Constitution empowers the commonwealth government to make laws concerning corporations but only in relation to the commonwealth's other listed powers, such as external affairs or taxation. A ruling by the High Court in the 1971 "concrete pipes case" interpreted the "corporations power" as enabling it to make laws concerning the interaction of third parties (e.g., customers) with corporations. This enabled Australia's first antitrust law in 1972. John Howard's government proposed to base WorkChoices, and future industrial relations laws on this widened interpretation of the corporations power. It was expected that the corporations power would enable more radical (and harsher) industrial relations laws than the Constitution's industrial relations power permitted. [Go Back](#)