THE NATURE AND CONSEQUENCES OF LABOUR MARKET DEREGULATION IN AUSTRALASIA

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Australia and New Zealand have recently experienced the most sweeping changes to their industrial relations systems since the first decade of the century. Each country has moved from a highly regulated, centralised system towards one in which emphasis is placed on deregulation, decentralisation, and lowering minimum standards and protections. These changes are designed to produce, by the freeing up of the market, labour forces which are more flexible and internationally competitive in an increasingly globalised economy. This paper examines relevant changes in the industrial relations structures and processes in New Zealand, Victoria and the Australian federal system, and explores their consequences. The ideological dimension of the changes is discussed, and it is concluded that while neo-liberal, New Right theories have been influential in motivating the changes, significant elements of continuity with the past have so far been retained.

INTRODUCTION

Significant changes in industrial relations legislation and practices have occurred in Australasia over the past decade, exemplified by the *Employment Contracts Act* 1991 (NZ) (henceforth ECA), a similar trend towards a more decollectivist bargaining model by some Australian states, and the more gradual chain of events in the federal Australian system of which the *Workplace Relations and Other Legislation Amendment Act* 1996 (Cth) (henceforth WROLA) is the most recent manifestation. Such changes have been fuelled by a perceived imperative to increase workplace flexibility in order to maintain competitiveness in a context of increasing global

competition. Changes in technology and lowering of trade barriers, it is argued, increasingly make for a borderless economy requiring flexibility in workplace industrial relations and reduced labour costs. It has also been argued that changing consumer preferences towards greater product differentiation and higher quality, combined with the increasingly successful thrust by newly industrialising economies into global markets, requires established industrialised economies to refocus upon specialist, high quality products, produced in rapid response in small batches for niche markets. These changes in turn require greater numerical and functional flexibility in production. Centralised fixation of wages and conditions of employment cause rigidities in the application of labour, creating financial disincentives for the restructuring of working arrangements. Removing such rigidities is essential for the survival of enterprises within the new competitive environment; decentralisation and deregulation have therefore been witnessed in varying degrees across a range of industrialised economies, including Australia and New Zealand.

Coexisting with such arguments, and in an important sense driving them, is a neo-liberal New Right agenda typified by University of Chicago law professor Richard A. Epstein's (1995) book, *Simple Rules for a Complex World,* which was based largely on transcripts of speeches he delivered in Australia and New Zealand in July 1990 following invitations from the large Australian mining company, the Western Mining Corporation, and the New Zealand Business Roundtable, an organisation consisting of the chief executives of many of New Zealand's largest companies (Epstein 1995: xiii). The theme of the book is a 'keep it simple' exposition of neo-liberal philosophy influenced heavily by Hayek (1944). Epstein argues that rules should aim at 'offering solutions for 90 to 95 percent of all possible situations' (Epstein 1995: 53) and industrial relations is therefore best dealt with by common law and does not require special laws or tribunals. Indeed, any government regulatory action which negatively affects the potential or actual value of private property constitutes a 'taking' of that property, an act prohibited by the Fifth Amendment of the US Constitution unless fair compensation is paid. This interpretation invalidates all environmental, labour and civil rights legislation and virtually all government entitlement programs (Epstein 1985, 1991; Ramos 1995). According to the Executive Director of the New Zealand

Business Roundtable, the New Right rejects completely 'Marxist-Fabian ideas' which hold that labour is not a commodity, and that there is an inherent inequality of bargaining power between employers and employees (Kerr 1995). The New Right agenda has gained widespread recognition and status through the operation of well-funded think tanks and activist organisations, which, since the 1960s, have spent large sums on training, research and promotion (Berlet & Quigley 1995).

This paper examines recent changes in industrial relations legislation in New Zealand, Victoria and the Australian federal system, with an emphasis on structures, processes, changes in minimum labour standards, and outcomes. It is concluded that, while elements of the New Right model have been adopted widely in Australasia by conservative governments, there has been incomplete acceptance of the proposition that labour is simply a commodity, or that employers and employees can bargain on an equal footing without government intervention. As a consequence, in no case in Australasia has industrial relations jurisdiction yet been transferred entirely to the civil courts.

AUSTRALASIAN INDUSTRIAL RELATIONS STRUCTURES

New Zealand

An arbitral model of industrial relations operated in New Zealand from the enactment of the 1894 *Industrial Arbitration Act* until compulsory arbitration was abolished by a Labour Government in 1984. Collective bargaining was introduced in the *Industrial Relations Act* 1973, under which collective agreements could be negotiated on top of awards, while collective bargaining became the chief mechanism for determining pay and conditions under the *Labour Relations Act* 1987. These changes facilitated flexibility in working hours arrangements and wage outcomes, but these possibilities were not always exploited; for example, only about a third of the agreements made under the Act contained a change to working-time arrangements, of which 80 per cent provided employers with more flexibility (Harbridge & McCaw 1991). The ECA,

introduced by the National Party Government in 1991, reinstated the contractual model of employment relations which had existed prior to 1894, with some modifications discussed below. The adoption of the individual contract model has been attributed by Anderson (1991) to the capture by employer organisations like the Business Roundtable of the policy-making initiative within the National Party. The union movement and, to a large extent, the Department of Labour, were isolated from the policy process, and the Bill was drafted with the assistance of an employee of the Wellington Employers Association (Grills 1994).

Under the ECA, employees negotiate individual or collective employment contracts, with the decision as to which type of contract applies itself being a matter for negotiation. Collective agreements must be in writing, but an individual contract must only be in writing if the employee makes a request at the time the agreement is negotiated. There is no requirement for agreements to be signed. Individual contracts may be negotiated when a collective agreement exists provided terms of the individual contract are not inconsistent with the collective contract. While agreements covering more than 20 employees must be lodged with the Secretary of Labour, the information therein must only be used for statistical or analytic purposes.

The ECA provides minimal opportunities for collective representation. Union preference clauses and the use of 'undue influence' to promote membership are prohibited under 'freedom of association' clauses. Bargaining agents may be used, but individual authorisation is required. Unions seeking such authorisation may only enter the workplace with the permission of the employer, and recognised bargaining agents may only enter the workplace for the purpose of negotiating contracts 'at any reasonable time'. Industrial action to force recognition of a bargaining agent is illegal. While employers are bound to recognise a duly authorised bargaining agent, there is no obligation to negotiate, although the recently negotiated Coalition agreement between the National Party and New Zealand First following the 1996 election contains a provision for the future insertion of a 'fair bargaining' clause (*Press On-Line* 1996). Under the ECA, all laws regulating unions were repealed,

while awards were eliminated, and existing contracts phased out over a two-year period.

Disputes are to be resolved by the parties themselves, however, restrictions on the right to strike mean that workers must fight with one arm tied behind their back. Strikes are lawful only in respect of the negotiation of a collective contract, and then only where the issue is not one of freedom of association or a personal grievance or a dispute; if the industry is not an essential industry and required notice has not been given; and is not concerned with the issue of whether the agreement will bind more than one employer. According to Anderson (1991: 140) the ECA 'has severely eroded the collective rights of workers and consequently their ability to protect their individual interests in employment relationships'.

Although the ECA takes New Zealand a substantial way down the path advocated by neo-liberal opponents of collectivism, the Act deviates from the New Right model in several respects. Whereas most New Right theorists advocate the enforcement of employment contracts in normal civil courts, the Act established an Employment Tribunal to adjudicate on questions connected with the construction of employment contracts, and an Employment Court to hear appeals on Tribunal determinations. The Act explicitly recognises that the nature of employment contracts is sufficiently different from that of other contracts to warrant a specialist court. Paradoxically, the Act also reduces freedom of contract, as the definitions of 'employee', 'employer' and 'employment contract' are sufficiently broad to encompass workers who had previously been outside the ambit of previous industrial relations legislation. 'Employees' include any person of any age employed to do any work for hire or reward, including homeworkers. Nevertheless, compared to previous labour Acts in New Zealand and Australia, the ECA is a very slim document, comprising just 90 pages and 189 sections, about 60 per cent of which deal with housekeeping details like the operation of the various institutions established, and amendments and repeals of other legislation. The framers of the legislation thus seem to have had Epstein's (1995) theme of 'simple rules for a complex world' very much at the front of their minds.

Victoria

Unlike New Zealand, Australia has federal and state systems of industrial relations, and the trend towards deregulation occurred initially at the state level. In the last decade, several conservative state governments have introduced legislation containing provisions for individual employment contracts. Only the Victorian situation will be examined here, as this state arguably has gone further down the road of deregulation than the others.

About 40 per cent of employees in Victoria were covered by state awards in 1990, the lowest proportion of any state (ABS 6325.0). These workers were concentrated in the state government and retail sectors. The *Industrial Relations Act* 1979 (Vic) provided for certified agreements to operate as substitutes for, or supplements to, awards, but the provisions were rarely used (Brown & Ferris 1989). The Kirner Labor government passed legislation in 1992 which mirrored federal provisions for certified agreements (CAs) discussed below. The legislation also abolished the system of Conciliation and Arbitration Boards which had, with their predecessors, Wages Boards, been a key feature of the Victorian jurisdiction for almost a century. The Kirner administration was replaced by the Kennett Coalition Government shortly after the changes came into operation.

The Kennett Government enacted the *Employee Relations Act* 1992 (Vic) and complementary legislation which aimed to encourage an individual contract model of industrial relations and to harmonise employment conditions between the public and private sectors. This legislation abolished existing Victorian awards, deeming them to be Individual Employment Agreements (IEAs) while CAs were phased out. As in New Zealand, the legislation also provided for collective employment agreements (CEAs). Unlike the ECA, agreements were required to be in writing and be signed by or on behalf of the parties. Employers bound by a CEA were required to lodge a copy with the Employee Relations Commission (ERC) within 14 days of its coming into operation. There was no requirement for the lodgement of IEAs, but employers

were required to provide annual notification of the numbers of employees bound by them. Unlike the system which operated at the federal level until 1996, but in common with the ECA, agreements had the force of law without any third party scrutiny and were not available for public examination; however, an agreement which provided inferior terms to the prescribed minima had no effect. This provided little protection, given the confidentiality and lack of scrutiny of agreements. In cases where no agreement existed, an individual agreement was deemed to exist based on conditions on an expired award or agreement. The legislation also provided for awards; these were required to have the consent of all parties and applied only to them, eliminating common rule application. Award provisions which limited working hours to particular days of the week or which provided for penalty rates to be paid for weekend work were not permitted.

Australia

As in New Zealand, arbitral models of industrial relations predominated in Australia until recently. Ironically, the first substantial decentralisation of the federal system since its foundation was implemented by a Labor government, which, from the time of its coming to power in 1983 until 1995, entered into a succession of eight agreements (the Prices and Incomes Accord) with the Australian Council of Trade Unions (ACTU). In the first of these, the ACTU agreed to constrain wage claims in exchange for regular wage indexation and increased Government social expenditure. In the latter part of the Accord period, the Government and ACTU cooperated in the design and promotion of enterprise bargaining, albeit not without some tensions. While the maintenance of a centralised federal system was recommended by a Government-appointed Committee of Review into Australian Industrial Law and Systems which reported in 1985, increasing external pressures, including a deteriorating trade balance and falling dollar, led to a growing preparedness within the union movement to consider a wage system which encouraged higher labour productivity. Employer groups, some influenced by New Right ideas, also came increasingly to favour decentralisation, while the Labor Government displayed a growing zeal for neo-liberal economic principles, exhibited through policies like the

deregulation of the financial system, taxation changes, fiscal restraint and tariff reductions (Griffin & Teicher forthcoming; Morris 1996).

The first tentative step towards decentralisation came with the adoption in 1987 of a two-tier wage system which included a universal $10 per week rise, with a second tier increase of up to a further 4 per cent contingent upon productivity-improving changes to work practices. Although the impact of this system was uneven, it cleared the way for the introduction of a more market-oriented, flexible system. The Industrial Relations Commission (IRC) introduced the Structural Efficiency Principle in 1988, through which skill-related career paths, multiskilling and broadbanding were encouraged. By 1991, the IRC reluctantly agreed that unions and employers were mature enough for the implementation of enterprise bargaining, provision for which had been introduced in 1988 legislative amendments (Dabscheck 1995). The IRC continued to play a significant role, determining minimum wages, and a 'social safety' net of terms and conditions through awards, and vetting enterprise agreements to ensure employees were not disadvantaged *vis-a-vis* awards. Progress, however, was slow, prompting the Government to introduce further legislative changes in 1993, including the extension of enterprise bargaining to non-unionised employees on an individual or collective basis through a new category of Enterprise Flexibility Agreements (EFAs). This proposal encountered the vehement opposition of the union movement, and a compromise allowing intervention by unions with coverage rights was reached. In addition, the resulting *Industrial Relations Reform Act* 1993 (Cth) split the IRC into a bargaining division and an awards division, and established a specialist Industrial Relations Court, which Labor had attempted to create as early as 1985. Perhaps the most important change was a new philosophical direction, with enterprise bargaining replacing the arbitral model as the dominant means of fixing wages and conditions. The new system led to the rapid spread of bargaining. By early 1996, about 60 per cent of employees under federal jurisdiction were covered by agreements, although in most cases these supplemented rather than replaced awards (Department of Industrial Relations 1996).

The Labor Party was defeated in March 1996 by a Liberal-National Party Coalition, which had campaigned on a policy of labour market deregulation, *Better Pay for Better Work* (Reith 1996a). This espoused the principles of freedom of contract and freedom of association which had formed the basis of previous Coalition proposals, but in a new departure, the policy also promised the retention of safety net wage increases for the low paid and a comprehensive 'no disadvantage' test (Reith 1996a, 3). As in New Zealand and Victoria, the focus of change was on the employment relationship and achieving flexibility by encouraging a 'cooperative workplace culture' and a 'genuinely flexible labour market' (Reith 1996b). These themes recurred in the Bill when it was first tabled in Parliament. In the original Bill, the roles of the IRC and the Industrial Relations Court were downgraded, and individual contracts, known as Australian Workplace Agreements (AWAs), became the favoured means of regulating the employment relationship. AWAs were validated upon lodgement with a newly-created Office of Employment Advocate, the functions which partly duplicated those of the IRC and the Awards Management Branch of the Department of Industrial Relations; that is, advising employers and employees of their rights and obligations under the Act; assisting employers and employees in developing AWAs by providing advice on relevant award and statutory entitlements; scrutinising, approving and filing AWAs; assisting employers to prosecute breaches of the Act; and collecting aggregated data. CAs were retained subject to scrutiny by the IRC, while EFAs were to be phased out. Awards were to become residual in that they were to be stripped back to 18 allowable provisions within 18 months and would apply only to those employees not covered by agreements. Paid rates awards were to be phased out. Oddly, given the number of changes, the Bill was presented as a series of amendments to existing legislation rather than the New Zealand and Victorian model of drafting a new Bill from the ground up. The simplicity which characterised the ECA was absent.

Many of these proposals were modified as the Government lacked a majority in the Senate, and was obliged to negotiate amendments with the Australian Democrats, a party which, although sympathetic to the goal of a more flexible labour market, insisted on increased safeguards for vulnerable workers. Consequently, there is

much greater institutional continuity in WROLA than in either the New Zealand or Victorian cases. The IRC is retained, although its role in agreement making has potentially been reduced by the creation of the Office of Employment Advocate. The Court, however, was abolished and its functions transferred to the Federal Court. In the Act, provisions relating to AWAs and CAs are more similar, though AWAs will provide a greater measure of confidentiality for the parties. The 18 allowable provisions in awards were increased to 20 and amplified in certain respects, and the safety net function of awards for all employees was reinstated. Agreements are required to satisfy a 'global no disadvantage' test to ensure no reduction in overall terms and conditions of employment in comparison to a relevant designated award, or other state or federal law considered relevant by the IRC. Where there is no applicable award for the operation of the 'no disadvantage' test, the EA or the IRC as appropriate is required to designate a benchmark award. The Act now provides limited scope for continuing paid rates awards and enables the IRC to make new awards in exceptional cases. The amendments also enlarged the role of the Employee Advocate to include the protection of disadvantaged workers, and a two-level process of scrutinising AWAs.

AUSTRALASIAN INDUSTRIAL RELATIONS PROCESSES

New Zealand

Early commentators predicted that the establishment by the ECA of the specialist Tribunal and Court might create an autonomous system of labour law which, while rooted in contract, could in time develop its own individual character (Anderson 1991; Hughes 1991). Evidence for such a tendency is mixed. There has been a dramatic reduction in the proportion of employees covered by collective bargaining, while multi-employer bargaining has largely collapsed (Harbridge & Hince 1994; Harbridge & Honeybone 1995). Individual contracts have become the predominant method of setting pay and conditions for most workers in small firms in the service sector (Hamberger 1995). Employers dictate the terms of IEAs and only rarely are

employees able to negotiate significant modifications (McAndrew 1993). Most of these outcomes presumably are consistent with the goals of the framers of the legislation. On the other hand, the deregulationists have not had it all their own way. The Court, for example, has made determinations limiting employers' ability to change employment conditions based on 'right to manage' arguments; and, in cases where a contract was based on an expired collective contract, upheld unions' rights of entry (Kiely & Caisley 1993). Under the terms of the recently negotiated Coalition agreement between the National Party and New Zealand First following the 1996 election, the Court's decisions will be reviewed to see whether 'Parliament's intentions have been clearly expressed for the purposes of minimising judicial activism in the employment area' (*Press On-Line* 1996).

Victoria

As noted above, the 1992 Act provided for individual and collective employment agreements. Negotiations for an IEA or CEA could be conducted with an individually authorised bargaining agent or a committee of employees formed for the purpose. In the case of an IEA, negotiations could also be conducted between employer and employee directly. Whether authorised or not, unions had the same standing as any other bargaining agent, although unaccountably the Act retained the concept of union recognition. As in the ECA, IEAs and CEAs could apply to employees simultaneously, and (unlike the ECA) in case of conflict the former prevailed. Individuals were liable for damages to a maximum of $5,000 for breaches.

Australia

The extent to which the recasting of industrial relations structures has influenced processes has been the subject of much debate. While enterprise bargaining has been used extensively, particularly since 1993, there has been considerable variation between industries, and is less common in small establishments. Many early agreements were struck at the industry level, with extensive pattern bargaining in the metals, public service, and meat sectors. There were also examples of corporate

level bargaining such as the Telstra, Qantas and National Australia Bank agreements. While there has also been wide variation in the content of agreements in terms of comprehensiveness, similarities abound.

It remains to be seen how WROLA will operate in practice. Past experience with complex industrial relations legislation indicates that teething problems requiring future amendments will be likely, and it is possible that during that process, the Government will attempt to reinstate elements of its original agenda. As it stands, WROLA provides employees entering into individual or collective contracts with greater protections against exploitation than does the ECA or former Victorian legislation, largely as a result of the Senate's amendments noted above. The Act specifies, *inter alia*, that employees entering into AWAs must receive a copy of the agreement 14 days prior to signing, along with information from the Employment Advocate as to what bargaining assistance is available to them; the agreement must have been explained to the employees and they must have genuinely consented to it; the validity of the agreement is subject to scrutiny by the Employment Advocate and may be referred to the IRC if there are concerns about conformity with the no disadvantage test. In respect of CAs, where negotiations are conducted directly with employees the notice of intention to make an agreement must have been accompanied by advice that union members could request their unions to meet and confer with the employer about the agreement; a valid majority of employees must have genuinely approved the agreement; and unions have a right to be heard in the IRC where they have been authorised by a member to meet and confer with the employer; and parties may be required to modify agreements to satisfy the no disadvantage test.

While the unamended Bill abolished the 'may conveniently belong' rule — a move which, in conjunction with provisions for the disamalgamation of unions and the formation of autonomous enterprise branches of unions and enterprise unions, threatened to fragment unions and dramatically undermine their bargaining power — these provisions were substantially revised in WROLA with the introduction of a 'more conveniently belong' test enabling registered organisations to oppose

registration of a new body on the basis that the applicants' members could be more effectively and conveniently be represented by it. Provision for autonomous enterprise branches was also deleted by the Senate. Enterprise unions will not now need to be capable of engaging in an interstate dispute or need to satisfy the 'more conveniently belong' test, but will need to have a minimum membership of 50 (up from 20 in the unamended Bill and down from 100 under the former Act) and be free from improper influence of the employer.

Under WROLA permits may be issued to union officials on application to the Registrar which allow rights of entry for the purpose of discussions with members and matters pertaining to the enforcement of awards and certified agreements (but not AWAs). These rights are more restrictive than those in the previous legislation, but are much more liberal than those contained in the original Bill. WROLA also removes the IRC's power to award preference, while compulsory unionism is outlawed. Historically, preference clauses could be inserted into awards and agreements by the IRC and this was part of the encouragement of registered organisations which was fundamental to the *Conciliation and Arbitration Act* from its inception in 1904. Less importantly, but still part of the increased emphasis on freedom of association, existing provisions are extended to AWAs and are made more comprehensive by the addition of 16 pages of provisions. In addition, registered organisations are subjected to more detailed provisions pertaining to financial accountability.

WROLA retains the concept of protected industrial action introduced in the 1993 Reform Act, but these rights are subject to genuine attempt to reach agreement and notice, and may be withdrawn by the IRC in essential services or where genuine bargaining is not occurring. The IRC may conciliate, and the full bench may arbitrate in essential services when conciliation is exhausted, usually at an enterprise level. The IRC may give directions to terminate unprotected industrial action, and these are enforceable in the Federal Court. Non-compliance with an order or an award will be a new ground for deregistration and the fines increased. In a new restriction on contractual freedom, it becomes unlawful to pay or pursue the payment of strike pay.

Secondary boycott provisions, which had been transferred to the *Industrial Relations Act* by the 1993 Reform Act, have been returned to the *Trade Practices Act.*

LABOUR STANDARDS

New Zealand

No minimum employment standards are set in the ECA, but some are specified in unrepealed previous legislation originally designed to provide minimum standards for non-award employees. These include a minimum wage ($NZ6.375 per hour for adult employees in 1996); three weeks annual leave; five days sick, bereavement or domestic leave per annum; and 52 weeks unpaid parental leave. Under the terms of the recently negotiated Coalition agreement between the National Party and New Zealand First following the 1996 election, the minimum wage will rise to $NZ7.00 from March 1997 (*Press On-Line* 1996).

Victoria

The 1992 legislation provided minimal direction as to the content of agreements, although the framework of protections was more extensive than in New Zealand. An agreement was required to contain a grievance procedure, a stand-down clause and certain minima; specifically: a minimum wage, paid annual leave (four weeks cumulative), sick leave (one week per annum, non-cumulative), parental leave (52 weeks unpaid after qualifying service), and notice of termination and payment in lieu of notice. Initially, minimum wages were set at the rate of the relevant expired award wage, but amendments in 1993 provided for the ERC to set minimum wages on a sector by sector basis on a ministerial reference or on the application of an employer, employer association, an employee or a union (Fox & Teicher 1995: 22). In a further departure from the New Right model, the 1993 amendments required account to be taken of the needs of workers and their families, taking into account the general level of wages in Victoria, the cost of living, social security benefits and the relative living

standards of other social groups; and economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. This is similar to the basic wage concept formulated by Justice Higgins in the 1907 Harvester judgement, which, in one form or another, has permeated centralised wage fixing this century. As noted above, the Victorian Government has since largely withdrawn from the industrial relations arena.

Australia

Prior to 1993, minimum standards were set by awards. The 1993 Reform Act used the Federal Government's external affairs powers to implement various international labour conventions. Under these provisions, minimum standards were set for termination of employment, parental leave and leave to care for immediate family. No minima were specified for wages, or for equal remuneration for work of equal value, although workers and unions could apply to the IRC to make orders covering particular groups of workers if they were covered by a federal award, or not covered by a state system of compulsory arbitration.

Under WROLA, these protections remain, except that awards are to be pared back to 20 allowable provisions: classifications of employees and skill-based career paths; working hours; rates of pay; piece rates, tallies and bonuses; annual leave and loadings; long service leave; personal/carer's leave; parental leave; public holidays; allowances; overtime, casual and shift loadings; penalty rates; redundancy pay; notice of termination; stand-down provisions; dispute settling procedures; jury service; type of employment, such as full-time, casual, regular part-time and shift work; superannuation; and pay and conditions for outworkers, to the extent necessary to ensure their overall pay and conditions are fair and reasonable compared with comparable employees employed on business premises. As in the past, awards will be determined by the IRC, however, their discretion will be guided by three criteria: the need to provide minimum standards for employees in the context of living standards generally prevailing in the community; economic factors, including levels of productivity and inflation, and the desirability of attaining a high

level of employment; and, when adjusting the safety net, the needs of the low paid. This formulation has a striking similarity to the amended Victorian legislation noted above, and to earlier wage fixation principles. The IRC is required also to have regard to the 'need to apply the principle of equal pay for work of equal value without discrimination based on sex' and 'to prevent and eliminate discrimination' based on a comprehensive set of factors including race, colour, sex, sexual preference, marital status and political opinion.

OUTCOMES

New Zealand

In New Zealand, the ECA appears to have had a dampening effect on real wages, which fell over 1 per cent in 1995 after a similar drop in 1994 (McIntyre 1996). Employees deliver 'more grunt for the dollar, with ordinary-time, weekly paid hours growing steadily because employers demand greater commitment for the same rate of pay' (Parker 1995). Wages share of GDP has fallen sharply, with the heaviest burdens borne by the lowest income group (West 1996). The Act has affected gender equity adversely (Hammond & Harbridge 1993; Harbridge & Street 1995). Proponents of the Act argue it has increased industrial harmony, leading to fewer strikes. However, the number of stoppages had been trending downwards since the peak in 1977, and was lower in every successive year from 1985 to 1992. Moreover, lockouts have increased since the Act came into operation (Henning 1995).

From a union perspective, the most visible impact of the ECA has been on unionisation. In May 1991, the month the Act came into operation, 41.5 per cent of New Zealand's workforce were union members. By December 1995, this had declined to 21.7 per cent. Deunionisation was highest in agriculture, mining, construction, and some service industries; while unions in transport and communication, energy, manufacturing, finance and business services, and public and community services fared better (Harbridge, Hince & Honeybone 1995). Not all

the New Zealand decline should be attributed to the Act. In the same period, union density declined in Australia from 40 to 33 per cent (ABS 6325.0). As in Australia, many unions were vulnerable to a trend away from state-aided union security arrangements, and union leaders were slow in developing effective responses to these changes (Way 1995). However, the widespread adoption of individual contracts, together with the reluctance of most employees offered an individual contract to nominate a bargaining agent (McAndrew 1993) has clearly been an important factor in the downturn. The marginalisation of unions prompted the New Zealand Council of Trade Unions to lodge a complaint with the International Labour Organisation (ILO) alleging that the ECA contravened ILO Conventions 87 and 98 (which had not been ratified by New Zealand). It was claimed the Act was not drafted with proper tripartite consultation, failed to promote collective bargaining, restricted the right to strike and otherwise contravened international conventions. The ILOs Committee on Freedom of Association issued an Interim Report which substantially upheld the complaints, and recommended a Direct Contacts Mission to New Zealand. The Final Report, however, contained fewer criticisms and was widely interpreted as an exoneration of the Government (Haworth & Hughes 1995).

Victoria

The consequences of the Victorian legislation have been more difficult to gauge than in New Zealand, partly due to the dearth of published research and the peripheral nature of the State system. Secrecy surrounding the content of agreements limits the evidence available on the bargaining process, but two studies examining the content of CEAs are in agreement that only a small proportion of agreements provided for either functional or numerical flexibility while a much larger proportion provided labour cost reductions, most commonly through abolition of leave loadings and penalty rates (Fox & Teicher 1994; Bell n.d. cited in Underhill 1996). Moreover, during the operation of the Act, working hours for both full and part-time employees increased faster than the national average (Underhill 1996).

The degradation of employment conditions arising from the legislation caused a mass exodus of employees to the federal system, facilitated by amendments to federal legislation in 1992 (Fox & Teicher 1994, 1995). Amendments to the Victorian Act in December 1993 restored a limited form of compulsory arbitration and made improvements to some minimum standards and entitlements, however, these failed to stem the flow into the federal system. Exposure to competition rendered the Victorian system increasingly irrelevant, a fact eventually recognised by the Kennett Government in 1996 when it transferred most of its industrial relations powers to the Federal Government. Existing IEAs, which were not required to include a provision on duration of operation, will continue to operate until brought to an end by the parties.

Australia

In the new Australian federal system, unions will retain a foothold on industrial negotiations but will be placed in a situation where competition between each other and other potential bargaining agents is more likely. The New Zealand experience indicates that the provisions for individual contracts and freedom of association will cause further erosion of union organisation and membership, especially where union workplace presence is weak. The IRC will retain a role in establishing and maintaining a safety net of conditions which is more extensive than in New Zealand and the former Victorian system, but less extensive than the existing award base. In marked contrast to the New Zealand and former Victorian systems, awards are retained and the IRC retains a capacity to arbitrate. However, with the narrowing of the award base will come an increased need for employees to negotiate agreements, or perhaps to accept unilateral management determination of an increased range of issues.

CONCLUSIONS

Governments in New Zealand, and in both state and federal arenas in Australia, have moved decisively to create a more flexible labour market. In general, this has involved moving from an arbitral model, to a collective bargaining model, to an individual contract model. In practice, different jurisdictions have moved at different speeds, and created distinctive hybrids of the models. Even in New Zealand, which has gone furthest down the path of individualism, provision remains for collective agreements and for distinctive industrial relations institutions. The most noticeable effect of decollectivisation has been on union density, which has virtually halved in New Zealand. Freedom of association legislation, as noted by Peetz (1996), not only liberates unwilling conscripts from union membership, it deters employees who would prefer to belong to a union from joining one or retaining membership. One potential area of difficulty for the new Australian federal system is the possibility of competition from different state models. While most state governments have now indicated a willingness to pass complementary legislation to reduce these difficulties, the Labor state of New South Wales is reluctant to do so. As was shown in the case of Victoria, when the neo-liberal model is exposed to competition from a more regulated model, it fails the test.

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