

A Fair Go? The Common Good?

Changes to the Industrial Relations System in Australia

Consequently, if the organisation and structure of economic life be such that the human dignity of workers is compromised, or their sense of responsibility is weakened, or their freedom of action is removed, then we judge such an economic order to be unjust, even though it produces a vast amount of goods, whose distribution conforms to the norms of justice and equity.

Pope John XXIII, *Christianity and Social Progress* #83 1961

It is now a well established aspect of Australian history that Catholic Social Teaching, particularly Pope Leo XIII's teaching on the just wage in *Rerum Novarum*, was a significant influence on Australian policy makers a century ago when an Industrial Relations system and mechanism was set up to balance the interests of workers and businesses.ⁱ This was "conciliation and arbitration; a form of collective bargaining with resort to a neutral umpire."ⁱⁱ The Howard Government is currently proposing sweeping changes to the Australian industrial relations landscape. For the first time the Government has the numbers in the Senate to bring in such changes without the support of minor party and independent senators who held the balance of power in the Senate for over two decades. These changes have the capacity to fundamentally alter the fabric of Australian workplaces and society at large. This briefing paper aims to outline the basic changes being put forward and in light of Catholic Social Teaching offer critical comment on the changes and their likely effects.

Proposed changes and critical issues

1. Scrapping of Unfair Dismissal laws for companies with less than 100 employees

In the absence of a fair process it is difficult to expect the development of constructive relationships between employers and workers based on mutual trust and loyaltyⁱⁱⁱ

Until now employers have been urged to follow certain steps - 'procedural fairness' - in dismissing an employee. To dismiss an employee who is beyond their probation period employers have been advised to:

- Make sure the employee is aware they are not performing to expected standards and outline why
- Make sure they are given an opportunity to improve
- Make sure they are told their job is on the line if they don't improve
- If, after being given a reasonable time to improve – and they haven't – terminate their employment with the appropriate notice.

With the proposed changes there will no longer be access to low or no cost independent umpires in the Australian Industrial Relations Commission (AIRC) for workers in companies with less than 100 employees. Although all employers will still be bound by anti-discrimination and unlawful dismissal laws (for example, a worker cannot be sacked while on leave) the reality is that workers on minimum wage levels are highly unlikely to have the financial resources to privately challenge a dismissal, unlawful or otherwise, in the legal system. The changes remove the legal requirement upon the employer for the fair treatment of workers.^{iv} This means that employers could effectively dismiss workers at will with no recourse for the vast majority of workers.

The AIRC is already required to take into account the size of a business in considering unfair dismissal claims and compensation

Some of the issues arising from changes to the Unfair Dismissal laws are:

- Lack of or less job security for workers.
- Churning – a term that means higher rates of staff turnover, particularly in low skilled or unskilled areas of employment, but not necessarily more jobs.
- The creation of 2 classes of workers - discrimination against workers who work in small and medium sized organisations (SMEs) and protection for workers who happen to work in large companies.
- In some cases even the larger companies will be able to get around the 100 employee threshold by contracting out work to smaller ‘labour hire’ companies or restructuring into smaller subsidiary companies.
- Giving such power to employers does not encourage them to develop better, smarter workplace relations and management practices nor encourage them to develop better selection and job matching practices.

2. Proposed changes to wages and conditions

If through necessity or fear of a worse evil, the workman accepts harder conditions because an employer or contractor will give him no better, he is the victim of force and injustice.

Pope Leo XIII – *Rerum Novarum* #34 1891

Awards, EBAs, AWAs and the “No Disadvantage Test”

Australia’s IR system has evolved over the past 100 years and has been quite unique in the world through its recognition of unions as bargaining parties with legal rights and awards that comprehensively fixed wages and conditions.^v This system has moved since the late 1980s toward greater flexibility, with industry and workplace agreements. Enterprise Bargaining Agreements (EBAs) are collective, certified agreements most often negotiated with support from unions. The Federal Government preferred Australian Workplace Agreements (AWAs) are, theoretically, more individualised agreements between employer and employee but workers under these agreements have also had the safety net of the “No Disadvantage Test”. This means that, under the present system, no worker can be forced to work to an agreement that would see them, on balance, worse off than their current industry award.

Under the Coalition Government’s IR changes the “No Disadvantage Test” will be scrapped.

While the Government claims no workers already employed by an organisation or company will be forced to sign AWAs that lower their wages and conditions the reality is that this is already occurring in the current system that still has reasonable protections for workers. This would likely worsen under the new IR regime. The following report illustrates:

Six women who have supported their families by working as mushroom pickers in Mildura in country Victoria, some for the past eight years, were sacked in February for refusing to sign a new Australian Workplace Agreement. The AWA, signed by other workers, cut their pay by \$150.00 or more than 25% per week. The new agreement replaced hourly rates with a “piece” rate of 55 cents per kilo picked.^{vi}

The scrapping of the “No Disadvantage Test” will leave workers vulnerable to exploitation and, if they work for a business with less than 100 employees, without recourse to conciliation and arbitration.

One inherent problem with AWAs is that, while they are marketed by government and business groups as providing freedom for individuals to negotiate their employment contract, AWA negotiations are not played out on a level playing field. The only option and ‘freedom’ may be to accept a standardised AWA already worked up by the company/employer: to accept wages and conditions well below what is currently maintained under the No Disadvantage Test and award system or no job at all.

One causal effect of this in the ‘marketplace’ may be ‘churning’ at the bottom of the employment pond: a significant turnover of staff, particularly of those without skills, experience or the ability to negotiate a beneficial contract and who are now more vulnerable to unfair dismissal. Domestic evidence and international experience has shown that AWA type agreements are “rarely beneficial for the vast bulk of employees.”^{vii} A study by Professor David Peetz from Griffith University, compares incomes of those on AWAs to those on EBAs. It shows the hourly rates for non managerial employees on AWAs was 2% less than for those on EBAs and that women are particularly disadvantaged, earning 11% less on individual contracts than their EBA counterparts.”^{viii} At the top there may also be turnover of workers with high skill levels and experience who will move from job to job of their own accord until they find a position with an AWA that suits them. So, one result of churning may be instability and insecurity – for business and employees alike.

Allowable matters and conditions: links to the living wage and the Common Good

The late 1990s saw a revision of the Workplace Relations Act which simplified the traditional award system of wages and conditions to 20 “allowable matters”.

The current proposals further cut the “allowable matters” in awards to 16, removing the following standard conditions:

- Superannuation
- Long service leave
- Notice of termination
- Jury service.^{ix}

The Government’s changes go further: legislating a new Standard of just four matters in addition to the minimum wage, currently \$12.75 for the hourly rate for an adult worker. These conditions are:

- maximum weekly hours of work
- annual leave
- unpaid parental/carers leave and
- 8 days sick leave.

Other conditions such as holiday loading, penalty rates, redundancy packages and provisions for rest/meal breaks may also be removed to simplify awards, ultimately under a single federal system, and so are under threat.

Some of the issues and concerns arising from proposed changes to wages and conditions are:

- **A radical change to how minimum wages and conditions will be set.** Since 1907 the AIRC and its predecessors has been responsible for hearing national wage cases and has set award

wages and conditions in light of the need for a living wage. Submissions have been taken from all stakeholders including family and employee advocates such as the Australian Council of Trade Unions, the Australian Council of Social Service and Churches as well as government, employer and business groups. The Government plans to take the wage setting function away from the AIRC by legislating minimum requirements to the Standard of five matters, creating their own new body to set minimum award wages, the “Australian Fair Pay Commission” (AFPC). The Australian Catholic Commission for Employment Relations (ACCER) has serious concerns about the operation, independence and accountability of the AFPC and its Commissioners.

- **That these Commissioners will adhere to the narrow economic view** of the current Government which values labour only in accordance with its economic purpose. This flies in the face of Catholic Social Teaching which holds that labour must be privileged over capital. At the last federal wage hearing the ACTU asked for a rise of \$26.00 per week for the poorest of full time workers. The AIRC settled on a \$17.00 increase although the Government and business groups argued for a much smaller increase. Narrow economic perspectives cannot provide balanced decisions and so there are concerns that the needs of business will come before workers rights to a just and fair wage.

- **Ensuring a living family wage.** The current minimum wage is \$484.40 per week (recently up from \$467.50) which is well below the Henderson Poverty Line of \$598.21 for a couple with two children^x. The minimum wage on its own is insufficient for a small family’s basic needs. The tax system through rebates and family allowances makes up some of the shortfall but the fact remains that a worker’s family on the minimum wage “struggles to meet the very necessities of living”^{xi} and remains close to the accepted poverty indicator.

3. The link between the proposed IR and ‘Welfare to Work’ changes

Concurrent to the government’s proposed IR legislation is the push on their “Welfare to Work” policy, designed to shift many disabled persons and sole parents onto the rigorous NewStart allowance regime and off the pension.

With or without the necessary infrastructure supports such as sufficient and appropriate training, sufficient child care places in Out of School Hours (OOSH) programs and viable transport options, the entry of sole parents and disability pensioners into the open employment market will increase the pool of low and unskilled workers and make them even more vulnerable to the vagaries of a deregulated system. – their presence, and that of other marginalised unemployed and underemployed people, contributing to a downward pressure on minimum wages.

On NewStart, sole parents and many disabled pensioners, already disadvantaged and in poverty, would suffer a loss of income along with a loss of pension related benefits such as health care cards and discounts on transport and utilities not to mention the significant added stress of dealing with a bureaucratic regime that has often penalised people without regard for difficult circumstances.

The National Centre for Social and Economic Modelling published research on August 25 showing that even if a single parent with a child over six years of age does find part time work under the new system, they will be up to \$100 a week worse off. On the current pension system taxes don’t kick in so quickly with every dollar earned. Whereas in the new system, under NewStart Allowance, the effective marginal tax rate is much higher. For example:

A single mum with one child who finds work for 15 hours a week at \$12.75 an hour will be \$92 a week worse off after June 2006. The Federal Government will be the major beneficiary. Mum

keeps \$81 a week of her \$195 a week earnings. The Government takes the other \$114 through reduced NewStart Allowance and increased income tax payments.^{xii}

Some pension recipients suffer episodic, physical or mental illness and disabilities which make consistent job searching and work – for employee and employer alike – highly problematic. Such people, who may have never participated in paid work or have long been out of the workforce, often require intensive support which is not offered under these policies.

4. The Role of Unions in pursuing the Common Good

Although ... democratic societies today accept the principle of labour union rights, they are not always open to their exercise. The important role of union organisations must be admitted: their object is the representation of the various categories of workers, their lawful collaboration in the economic advance of society and the development of their sense of their responsibility for the realisation of the common good.

Pope Paul VI, *Octogesima Adventiens* #14 1971

Laborem Exercens, following on from Pope Paul VI's 1971 Encyclical, affirms the priority of labour over capital, places work at the centre of the social question and enshrines the right of association of workers "for the purpose of defending the vital interests of those employed."^{xiii} It affirms that "unions are indeed a mouthpiece for the struggle for social justice, for the just rights of working people..."^{xiv}

The Government's intended changes will restrict the right of unions to organise and operate in the workplace and effectively...

render the task of enterprise bargaining more difficult for unions, because close contact with members in the form of workplace visits is essential to the collective bargaining process. The strategy is aimed at creating a union-free vacuum which will enable the employer a free hand to impose outcomes in the form of inferior 'agreements'.^{xv}

Furthermore, amendments to the "Better Bargaining Bill" passed through Parliament in early Sept ban employees, at different sites, from asking for similar wages or conditions: even when they are doing the same work. This is akin to making equal pay for equal work unlawful. This 'pattern bargaining' ban however only applies to collective (union supported) bargaining, not standardised AWAs developed by employers.^{xvi}

They will also further restrict the workers right to strike: "Banning all industrial action during the life of an AWA – extending that from 3 to 5 years – and will remove legal barriers against unions for engaging in industrial action."^{xvii}

This constitutes not only a significant rollback of industrial and workplace relations gains, developed over the past one hundred years for the Common Good in Australia but a serious rollback and undermining of workers rights and capacity to actively participate for the just development of the Common Good.



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5. Independent, Secular Voices – what they are saying about the proposed changes ^{xix}

Seventeen of Australia's top IR and labour market academics have researched various aspects of the Federal Government's IR policy and together released a 'report card' on the proposed changes. In their overview they list four critical labour market challenges facing Australia:

- Labour and skill shortages exacerbated by an aging population
- The productivity slowdown
- Work/family tensions
- The growth of low paid precarious employment.

The group states that on all the available evidence there is no reason to believe the proposed changes will do anything to address these issues. They agree that the Government's proposals will:

- Undermine peoples rights at work
- Deliver flexibility that is mostly one way in favour of the employer
- Do – at best – nothing to address the key challenge of work/family issues
- Have no direct impact on productivity
- Disadvantage the individuals and groups already most marginalised in our society.

Employee rights undermined – the effect of the proposed 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 and conditions and a better employee 'voice' in the workplace than individual agreements.

Safety Net compromised – The changes will effectively abolish the award system – the main way in which minimum standards for wages and employment conditions have been developed in this country. While the changes may preserve the 'shell' of an award system (see allowable matters above), they are likely to eliminate the last remnants of their substance.

Job security weakened – Australia already has very high levels of casual work compared to other OECD countries. Research shows that casual work has negative effects on gender equality and on the development of skills. Casual work provides no security to plan for the future, let alone for retirement and the changes will add to the problem. Workers hired on a casual or independent contractor basis 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.

Unfair Dismissal – No evidence on jobs – There is no convincing evidence that the changes to the unfair dismissal laws will, as the government continues to claim, generate new jobs.

Negative impact on women and families – The changes will exacerbate the problems of lower pay, fewer entitlements and job security faced by women. They contradict the Governments professed commitment to better work/family practices.

Meeting the challenges? The report card – On the basis of the considered analysis of the 17 academics the proposed changes will do nothing to address the labour and skills shortage or the productivity slowdown. They will however damage the fabric of Australian society by encouraging poorly paid jobs with irregular hours and little security, worsening the work/family balance. The focus of the Federal Government policy is to give employers power over employees instead of promoting innovative solutions based on workplace partnerships.

Full papers and summaries are published on the University of Sydney School of Business website at <http://www.econ.usyd.edu.au/wos/IRchangesreportcard/>.

6. Commentary: What are the values underpinning the rhetoric and how do these sit with Catholic Social Teaching?

Catholic Social Teaching, according to Professor of Theology Neil Ormerod, sees the basis of society not in competition but in co-operation. He points to the Catholic understanding of human nature as being fundamentally social. The radically individualistic nature of the stances taken by the Government in proposing these changes undermine co-operation and so are contrary to Catholic teaching.^{xx}

There have been reports in the media about the role of the churches in commenting on 'economic' issues and claims that the churches are not qualified to comment on things that are economic in nature, nor is it their business to do so. (Strangely, this belief has not prevented some Government Ministers utilising Catholic Social Teaching to justify their Government's policies) But economics cannot nor should not be divorced from the social context that it necessarily operates within. When economics is artificially separated out from the lives of human persons as individuals and as communities it becomes economism, a dogmatic economic rationalism where profit, capital and corporations are privileged over the lifeworld of the individual human person and their communities.

Some commentators have claimed that even the AIRC lacks sufficient economic expertise to make wage decisions. Tim Battin points out that when business politicians make such a claim what they really mean is that the Commission has at times chosen not to privilege highly enough this particular kind of economics which positions the economic individual and firm or corporation as its starting point.^{xxi} Such a belief negates the social and spiritual dimensions of human beings in community.

Battin goes on, arguing that Justice Higgins, in the 1907 Harvester case, which set the scene for our comparatively peaceful IR system, used a kind of reverse economic rationalism – based in Pope Leo XIII's the privileging of labour over capital position in *Rerum Novarum* – when he said "Certain minimum conditions should be set first and that if a firm is not efficient or productive enough it cannot expect its workers to subsidise its poor performance. Struggling firms or industries can pay the minimum or go out of business."

Catholic Social Teaching also teaches us about human dignity which can only be recognised and protected in community with others and that a person's dignity is bound up with their right to

work. This right to work espoused by the Church's social teaching has been interpreted by the Minister for Workplace Relations, the Hon Kevin Andrews and used as a rationale for the IR policies put forward by the Government^{xxii}. Bishop Christopher Saunders of Broome, in his pastoral letter celebrating the Feast of St Joseph the Worker, makes the point however that "the burden of providing work for all should not fall on the low paid but on society as a whole and that those who are unemployed or underemployed must be assured that the work they seek will provide a just wage that will keep them out of poverty."^{xxiii}

Bishop Patrick Dougherty of Bathurst has urged the Government to tread softly on IR saying that "the proposed legislation cannot be honourably assessed without taking into consideration impact for and against the primacy of human rights and justice – a realm on which Christians and their leaders cannot be, in conscience, uninterested or silent."^{xxiv}

Some other troubling aspects of the Government's policy are the complex pieces of legislation required to bring in such far reaching changes and the ways in which such new laws may further impact upon the Common Good in times to come. The Government aims to bring industrial and workplace relations under a single and vastly simplified umbrella by way of legislative changes to the Corporations Act. There is an implicit danger here of making an individual's labour and some of their human rights subject to the power of Corporations. This privileging of capital over labour is very much contrary to the Catholic Social Teaching.

Fundamental questions these teachings have us ask about social development – and development must be about the social to be in line with the Church's teaching – are: What is happening to people? What is the effect on community? The option for the poor beseeches us to give special attention to the rights and needs of the poor – taken to refer to the economically disadvantaged but unravelling the intricate knit of community, already under significant strain in modern society, is something that ultimately affects us all.

Ultimately and logically we need to ask: will these draconian policies really create more jobs and higher wages, as is claimed by the Government, when the true intent and underlying ideology is about creating more competitive environments (and hence more profit) for business.

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