

Howard's Industrial Laws

The Federal Government wants to tear down the fundamentals of the Industrial system that has served Australia well for over a century, and replace it with a return to the industrial laws of the 18th and 19th Century.

1. The context

- With **control of the Senate**, the Howard government can at last steamroll through the industrial relations revolution that has been the subject of their wet dreams for years.
- A quick lesson in constitutional law: The powers of the Federal Parliament are listed in the Constitution of the Commonwealth of Australia. Any law validly passed by the federal parliament will override state laws on the same subject. In this case, laws on industrial relations are proposed which will override state industrial relations systems.
- The federal parliament has **several powers** under which it can make IR laws.
 - o There is a direct power for laws "to prevent and settle interstate industrial disputes".
 - o They can regulate pretty much anything in the Territories.

- They can also pass laws to regulate the affairs of trading corporations.
- And they can pass laws to give effect to international treaties, such as the ILO convention on the rights of workers with family responsibilities.

3. **So Who will the new system affect?**

- The Howard Government is proposing to use the “trading corporations” power to completely regulate industrial relations for all workers employed by corporations. For these workers, there will be no access to any state system, as the federal law will override any state law.
- **The majority of all workers are employed by corporations.** This includes the entire private sector (except perhaps some unincorporated churches and charities) – manufacturing, construction, most agriculture, retail, hospitality, banking, insurance, transport, mining and energy, private health, education, prisons, etcetera. It also includes some things which you might think of as public, but which take the form of incorporated entities which engage in trade for goods and services – such as universities, TAFE colleges in some states, public hospitals, community organisations and clubs.
- It has been estimated that over 85% of workers will be directly governed by the new federal IR system.

- **People employed by state and territory governments** are NOT employed by trading corporations. But...
- The federal government has a direct power to regulate the territories. In the **ACT** and **NT** there is only one IR system – the federal system.
- In **Victoria** under the Kennett government, the State voluntarily gave its control over IR to the Commonwealth. Since Labor regained government in Victoria, there have been some minimal steps towards building a better state safety net, but for all practical purposes, there is only one IR system in Victoria – the federal system.
- The Bracks government has promised to protect current conditions for many public sector employees, but they cannot protect those conditions against future state liberal governments.

5. **Don't forget the money**

- In addition to industrial legislation, the Commonwealth can impose its industrial agenda on state government employment by placing conditions on the grant of federal money to the states. They have already started doing this with TAFE and university funding, which is conditional on States agreeing to comply with the

Commonwealth's bizarre industrial and educational obsessions.

- In this way, without needing a constitutional power, the Commonwealth's financial power over the States may be used to impose a national industrial agenda even on state government employees.

2. **What are the key elements of the new federal system?**

IR Minister Andrews has described the plan as "evolutionary, not revolutionary". This is a lie, pure and simple. The Government's IR agenda is certainly not evolutionary – **it is a radical and sudden break with the current system.**

This will be an upheaval in industrial relations that will cast us back to the days of the Tolpuddle Martyrs and the earliest struggles for the right of workers to form unions.

The basic elements of this reactionary agenda are:

- **lower the safety net for employment conditions below the award standard to a new legislated minimum.** The safety net for deciding whether an AWA is "fair" will not be the Award, as is currently the case. Instead, AWAs will be measured against a legislated minimum of only 5 conditions: the minimum wage (currently \$12.75 an hour), unpaid maternity leave, 4

weeks annual leave, 8 days sick leave, and ordinary rate hours of 38 per week.

- So long as an AWA includes those five conditions, it will be acceptable to the Howard Government, no matter what else is missing. And even the 4 weeks annual leave can be cut back to 2 weeks if the worker "agrees"!
- **tear down the award safety net.** Awards will be stripped back with many existing conditions simply abolished. For example, topics such as long service leave, jury service, and the right to notice of termination will be cut from awards. Other conditions like superannuation, transfer and relocation provisions, career paths and incremental structures for wages, are in danger of being abolished or severely cut back. Government ministers are currently floundering around giving contradictory signals about whether or not *everything* in industrial awards will be stripped back to the five minimum conditions.
- The award safety net will be set so low that it will not be a safety net at all. If you have a collective agreement which protects those conditions, you might be ok, but tens of thousands of workers currently rely on awards alone, without any workplace bargaining. About half the Australian workforce is covered by state awards.
- **cut the minimum wage.** Setting of the national minimum wage will be taken away from the Industrial

Relations Commission and handed to a special tribunal with orders to keep the wage down. The architects of this system admire the USA, where the minimum wage is currently around US\$5 an hour. The new Fair Pay Commission will not be allowed to set a wage below the 2005 minimum wage, but inflation will quickly make that a meaningless protection.

- Allowing the minimum wage to fall in real terms will not only affect low wage workers – including most casual student workers – but will also undermine the value of social security benefits which have means tests linked to the minimum wage.
- The most vulnerable employed and unemployed in our society will pay the cost.
- **make collective bargaining much harder.** Part of the “evolutionary” package is a suite of changes to the rules for collective bargaining that will strengthen the hand of employers, make it harder for unions to get involved, and undermine the rights of workers in the bargaining process.
- **Awards and collective agreements are being undermined in order to support the centrepiece of the government’s plan: the promotion of individual agreements.** The Federal government is already actively promoting the use of Australian Workplace Agreements (AWAs) by employers. They have

gone to extreme measures to do so in education, which other speakers will talk about.

- These individual contracts take workers outside the scope of collective bargaining. The new laws will make it easier for employers to pressure workers into signing AWAs, including making accepting an AWA a pre-condition of employment. Despite all the rhetoric, this is not about CHOICE, but about forcing the majority of workers into a situation where our internationally recognised right to bargain collectively has been abolished.
- Australia is already the only country in the world in which it is legal to offer employment conditional on the worker losing the right to bargain collectively. They can't do that in the USA. They can't do that in Indonesia. They can't do that in South Korea. But they can do it here.
- The only brake on the use of AWAs under the current laws is that if there is a collective agreement in the workplace, that will override any AWA – so there's not much point in mucking about with them. But that is about to change:
- **make individual agreements override collective agreements.** At the moment, if a collective agreement is in place there is no reason for the employer to push AWAs, because the collective overrides individual

agreements. The new law is expected to ensure that individual AWAs can undercut a collective agreement even after it has been certified.

- **keep unions out of workplaces.** The right of union members to be visited by union officers in the workplace is already quite limited. The union must give the employer notice of the visit, and the officer has to have a permit issued by the Industrial Registry. Those permits can be revoked if the union officer doesn't behave themselves. The new laws will give employers the right to know which employees asked for the union to visit, greater powers to refuse entry to union officials, to restrict access to only those parts of the workplace the employer chooses, and to monitor everything the union does while there. The terms on which a permit can be revoked will be expanded.
- **make it easier to sack workers.** All workplaces with fewer than 100 employees will be exempted from unfair dismissal procedures, so workers unfairly sacked will have no rights of appeal. Approximately 4 million workers will be affected. The government is legislating to enshrine the right of employers to act unfairly.
- **put conditions on taking protected industrial action that make it nearly impossible to comply.** Industrial action – whether it is a month-long strike, a 5 minute delay to the start of work while holding a quick stopwork

meeting, or a ban on emptying the office rubbish bins – will require a secret ballot to authorise it. **The secret ballot process will take up to six weeks.**

It is a one-way ballot. If the majority vote against, that decision binds everyone: individual workers have no right to choose, and no-one can take industrial action. But if the majority vote in favour of industrial action, that decision binds no-one: each individual worker then has the right to choose whether to take part in the industrial action or not.

Once action is properly authorised, and the employer has been given written advance notice, then it will be very easy for a third party who is affected by the industrial action (say a student whose lecture has been cancelled) to apply to have the industrial action cancelled by the Industrial Commission or a Court.

- **further reduce the powers of the Industrial Relations Commission to act as an independent arbitrator.** This government has no interest in a genuinely independent industrial tribunal. It's appointments to the Industrial Relations Commission have weighted the Commission down with factional warriors of the new right. But stacking the tribunal is not enough. They also want to strip it of almost all of its powers.

Over the last two hundred years, working people have developed strategies to help redress the imbalance of power between employer and employee in industrial relations. The most important of these are:

- **organising collectively in unions**, to ensure solidarity and support, and to enable workers to exercise some bargaining power, including through the threat of withdrawing their labour – a threat which only works when we act together, not individually.
- **imposing some legislative restraints on the worst instincts of the worst employers** – setting minimum conditions, and outlawing discrimination and arbitrary dismissals without cause.
- **demanding a fair system of wage fixing, and arbitration of disputes** where they cannot be resolved locally, based on an independent “umpire” not directed by employers or government.

The Howard IR agenda directly attacks all three. It aims to destroy unions, free employers from

legislative constraint, and render the Industrial Commission ineffective.

6. What will the States do?

- The States can clearly provide some protection to most public sector employees if they choose to do so, by maintaining fair state IR systems. They could even expand the reach of those state systems by bringing some privatised or quasi-privatised areas of employment back into direct government employment. Victoria could withdraw its referral of industrial relations powers to the Commonwealth. But there are several reasons why this is unlikely to provide a long term solution for us.
- It is possible that other state governments might decide to copy Victoria and refer their IR powers in the interests of establishing a single national IR system.
- There are two issues here:
 - o One is the abstract concept of a unitary industrial relations system – a one-size-fits-all national system which would the same rights to all Australian workers, and the same industrial relations regulations for all Australian businesses. On paper, it sounds good. It has been a long-held ideal of many ALP leaders.

- The second issue is what such a system actually looks like in practice. No-one wants a unitary system that is not a fair system. We'd rather stick to state systems that are fair than jump into an unfair system simply for the sake of national uniformity. We won't accept a national curriculum if it means undermining the quality of what we already have, and we shouldn't accept a national IR system on the same basis.
- States which are currently standing firm about retaining their state systems – such as Queensland and New South Wales – might waver if they find themselves maintaining a state system only for government employees, while the rest of their workforce (and their constituency) are left exposed to the cold hard winds of the new federal system. The opinion pieces and shock-jock comments almost write themselves: luxury IR systems for “fat cat public servants”, at the expense of ordinary taxpayers who are in the federal system.
- In relation to public sector employment, the State government is, of course, also the employer. From an employer's perspective, they might be tempted to move their IR into the new, employer-friendly federal system.
- Even if ALP state governments hold firm, the first time any state falls to the Coalition, there is a strong possibility that they will refer IR powers to the Commonwealth straight away.

- So the states might be tempted to move sooner rather than later to refer their IR powers to the Commonwealth. If they do so, then all public sector workers (except arguably the senior executive service and policy advisors) would be in the federal system.

7. How does this affect education workers in particular?

- Some education workers in some states may find limited protection in state industrial systems. These have served AEU members well in the past, and should continue to do so. But we cannot rely on state systems in the longer term – the first Coalition state government will either abolish the state system entirely or change it to make it as bad as the federal system. And remember, other AEU members – in the Territories and Victoria – have no choice but the federal system (although the Victorian Government could withdraw its referral and re-establish a state system if it had the political will).
- But even those who can stay in state systems will be affected by the new federal laws:
 - o We have historically used interstate comparisons as an important factor in our wages and conditions bargaining. If conditions in one state or territory are dragged down, this will have implications for all.

- A general undermining of industrial conditions and increase in individual contract employment across the workforce will change the political dynamics underlying our bargaining.
- Education workers will also have to deal with the social consequences of this harsh system on our students and their families. The challenges for educators and educational communities which result from poverty, insecurity of employment, parents working excessive hours, and the involvement of family members in workplace conflict, will all increase in Howard's brave new IR world.
-

8. What can we do?

- **It is not too late** to influence the shape of this legislation, or the response of the State governments.
- **Educate ourselves and others.** We need to make sure we **understand** the full enormity of what is proposed, and that our friends, families and colleagues understand it too.
- **Be sceptical** about what you hear from government and business council spokespeople. (You know how accurate they usually are ... not. Why should they be any more honest, informed or accurate about industrial relations, where they have a direct self-interest in disempowering workers?)

- **Lobby.** Federal and state politicians from all parties need to be reminded that this is not inevitable, and that it is not fair. Get together with a couple of friends and make an appointment with your MP. Write a letter. Write several. Encourage your mum to write a letter. Keep the pressure on.
- **Campaign in our communities.** Use whatever forums are available to spread the word. Most people just don't know what this legislation will mean. Howard and Andrews keep throwing around words like "evolutionary", "reform", "productivity", "efficiency" and "necessary" when they talk about their agenda. This has to be challenged, on talk back radio, in letters columns, at public meetings, and in the grandstand at the footy.
- **Demand fairness.** We must demand that any Industrial Relations system will secure **the fundamental rights of working people:**
 - o the right to organise in a union, to collectively bargain and take industrial action to protect and advance their interests at work;
 - o the right to rely on a fair and decent safety net with a skills-based classification structure of minimum wages, comprehensive employment conditions and protection against unfair treatment;

- the right to access an independent tribunal and fair procedures for the resolution of disputes, the updating of the safety net, and the oversight of bargaining.