Why we (already) need to look beyond Work Choices

Anthony Forsyth

30 October 2006

https://apo.org.au/node/5517

What kind of labour law or industrial relations system should replace Work Choices? This might seem an odd question – after all, the new legislation has only been in operation for a little over six months. But the Work Choices Act is widely considered to be a partisan piece of legislation – one that provides too much scope for the untrammeled exercise of managerial power. It is also heavily oriented towards conflict – especially in the bargaining sphere, where the statute sets up a complex, legalistic process for parties to engage in "industrial warfare," without any effective mechanism for dispute resolution.

In his recent *Julian Small Lecture*, Professor Ron McCallum speculated that Work Choices will not stand the test of time. In his view, it will be substantially revised within six to eight years, for several reasons, including the failure of many employers to engage with the new laws – for example, because they want to treat their employees fairly (rather than engaging in the labour cost-cutting that is now open to them) or they want to avoid its complexity.

Clearly, the outcome of the next federal election will be critical in determining the longevity of the reforms. If the Coalition is re-elected, then Work Choices will probably have a minimum "life" of five years or so. On the other hand, if Labor wins the election, that will be the end of the Work Choices experiment. But apart from the ALP's commitment to "rip up these unfair laws," scrap AWAs, and introduce a firmer basis for collective bargaining, we do not really know what they will put in the place of Work Choices. So, with the federal election only twelve months away (maybe less), it is not at all premature to be considering "what next, after Work Choices?"

I want to suggest that the central concept underpinning any new industrial relations system should be that of "social partnership." I also want to briefly outline a couple of key elements of a system based on that concept.

Social partnership is a continental European notion. It essentially denotes the idea of *cooperation* between government, unions and employers, rather than adversarialism, as the basis for ordering labour relations. In its purest form, for example in Germany, these cooperative arrangements operate at three mutually reinforcing levels:

1. At the national, policy formulation level – through tripartite mechanisms for determining the framework of labour regulation and economic policy (Australia had some experience of this in the Accord years)

2. At the industry or sectoral level - through collective bargaining between unions and employer associations, which sets the parameters for workplace-level outcomes regarding wages, working hours, and other core employment conditions

3. At the firm level – the legal rights of workers to participate in workplace decision-making through works councils, and employee representation on the boards of larger companies.

Obviously, Australia cannot simply replicate the German (or any other European) industrial relations system. We have to bear in mind that their systems operate within specific institutional and economic contexts that support the social partnership approach – such as the European "social market economy," and "stakeholder" rather than shareholder-centred corporate governance systems.

However, we *can* borrow the underlying concept - that of partnership, or cooperation in industrial relations – and, by giving it a modern Australian flavour, use it as a basis for developing an alternative workplace relations framework. In this respect, recent experience in New Zealand points the way.

New Zealand has a remarkably similar industrial relations heritage to Australia: a long-standing conciliation and arbitration system that provided strong support to trade unions, but which gave way to a deregulated model centred on individualised bargaining. When Labour was re-elected to government in NZ in 1999 it was faced with similar questions to those confronting the ALP now; with a return to conciliation and arbitration no longer viable, how could the new government legislate for a fair and balanced employment relations system to protect workers' interests and meet the needs of a modern economy?

The settlement arrived at in New Zealand's *Employment Relations Act 2000* is founded on the concept of "good faith," which permeates all aspects of individual employment relationships, and collective labour relations, which are regulated by the legislation. For example, the 2000 legislation provides a framework of "good faith bargaining" rights and duties, applicable to employers, employees and unions, as well as consultation rights for workers over company restructuring at the firm level.

The strong statutory support for "good faith" employment relations is intended to facilitate a broader cultural shift in NZ towards "workplace partnership," which is defined as "an active relationship between unions & employers to deliver outcomes that benefit the mutual trust of both parties." The core ideas behind partnership include: a collaborative, "mutual gains" approach to bargaining; wide union and employee consultation practices; consensus over conflict; and restraint and protection of relationships in the management of conflict.

This approach is supported by various government organisations and processes operating at the national level, including the Growth and Innovation Framework, the tripartite Workplace Productivity Project, and the Partnership Resource Centre. Overall, through these inter-linked layers of innovative regulation, the Labour government has really engineered a NZ version of the European social partnership model.

I think we need a public policy conversation in Australia about establishing an IR system based on cooperation, not conflict. That debate should involve all of the "social partners" in the Australian context - for example, federal and state governments, employer bodies, unions, and welfare, church

and community groups. And, in my view, there are two key elements that need to form part of an Australian social partnership agenda:

1. "Good faith bargaining": We must rectify the current legislative anomaly, where we have around 100 pages of rules regarding protected industrial action, secret ballots, etc - but nothing preserving the right of a group of workers to obtain a collective agreement if they want one; nothing about the bargaining process; and little opportunity for resolving bargaining impasses (except in the most extreme cases).

The ACTU is leading the way here.Its recent collective bargaining proposals seek to bring Australia into line with other major industrialised economies, such as the UK, US, Canada - all of which provide in some way for a right to collective bargaining, where this is supported by a majority of the workforce. The ACTU has sensibly steered clear of mandatory employee ballots and other complex legal procedures that are features of some overseas IR systems, drawing in part on NZ's good faith bargaining model. It also seeks to restore a prominent role for the AIRC, as the body for determining whether a union has met the "majority support" requirement for triggering the bargaining process, overseeing that process and resolving deadlocks.

2. Participation in workplace decision-making: Employees in the modern workforce should be involved in strategic business decisions, and provided with the information they need to do so, including information about firm performance, future investment plans, and restructuring proposals. Much international evidence shows that this kind of "high consultation/high performance" approach leads to productive outcomes for firms, as well as providing workers with a "voice" over important issues of job security. In Australia, these objectives could be achieved through a combination of statutory mandate - for example, *information & consultation rights* for employees in larger businesses - supplemented by a range of *regulatory supports* (provided by federal and state governments) to enable firms to pursue the cooperative path to workplace innovation and business competitiveness - for example, information, training, funding trials, tax breaks and other incentives.

These ideas might seem a world away from the current reality of Work Choices. But they *are* being successfully implemented, in various forms, in several countries that share Australia's tradition of adversarial IR, including (as well as New Zealand) the United Kingdom and Ireland. As in those countries, any move to embrace workplace partnership will require a major cultural shift in Australia - greater levels of trust by managers in their workers, and a degree of compromise on the part of employees and their representatives. The idea of social partnership warrants serious consideration in any process of formulating alternative proposals for labour regulation in Australia.