The Liberal-National Parties' Industrial Relations Policy: Deregulation by Providing an Enterprise Focus

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Abstract

The central objective of the Opposition's industrial relations policy is to provide an enterprise focus to the current industrial relations system. Deregulation will be achieved by introducing voluntary unionism and creating an alternative industrial relations stream of enterprise-based voluntary agreements alongside the existing system. The new agreements will have the status of awards but will not be within the purview of the Australian Industrial Relations Commission (AIRC). Over time, the alternative, deregulated system would become the predominant one as employers recognised its benefits and opted out of the centralised system. Greater flexibility would lead to greater productivity without the problem of wage break-outs.

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1. Introduction

The most prominent feature of Australia's industrial relations system is its highly centralised and highly institutionalised nature. ("Industrial relations" here is meant to encompass both employer-employee relations and wage-fixation). The system is also characterised by occupationally based, multi-employer and multi-industry awards. A third prominent feature of the system has been its tendency to maintain relativities among awards (OECD, 1990; BCA, 1989).

These three features are the system's most important defining characteristics for the purposes of policy formulation. Over time they have operated to ensure that a variation in a major award in a particular firm or enterprise flowed quickly through the industry, into other industries employing the same tradesmen and respondent to the same award, and through most other occupations and industries as wage relativities between the original award and other occupational awards were restored.

Whatever the justification for the initial variation, the highly aggregative nature of the process ensured that a matching of productivity and wage increases in firms and enterprises throughout the system would be purely fortuitous. "Equilibrium" was restored by changes in employment and inflation, with the government balancing the trade-off by varying rates of protection (Plowman, 1990).

The oil shocks in the seventies revealed the inability of traditional demand management policies to maintain full employment without inflation. They focused international attention on "micro-economic" reform - the need to ensure that individual industries were economically efficient and responsive to changing market conditions.

Micro-economic reform in Australia has encompassed the deregulation of the finance industry, the abandonment of the two-airline policy, and the sale of some government assets. The Government has been less than determined in its attempts to deregulate and privatise the telecommunications industry, and to clean up the coastal shipping, stevedoring and transport industries. Levels of protection have been reduced, and there is a bipartisan commitment to further reductions if not to their magnitude or timing.

By contrast, industrial relations "reform" has turned out to be an extraordinary exercise outside the mainstream of micro-economic reform. Industrial relations"reform" has two major identifiable components: trade union amalgamations, intended to create more efficient bureaucracies (ACTU, 1987), and revised wage-fixation procedures intended to inject an element of flexibility into the system. In the case of amalgamations, the agenda has been left to the Australian Council of Trade Unions (ACTU, 1987), and in the case of wage-fixation, to the major participants in the system. The

Government is an accessory after the facts, providing the legislation, the money and the rhetoric.

Moreover, the changes themselves - union amalgamations, award restructuring, and now "managed flexibility" or, less euphemistically, "centralised decentralisation" - will reinforce the centralised nature of the system. Such an outcome is the antithesis of the disaggregation and deregulation inherent in the concept of micro-economic reform. Change is not reform. The objective of the current round of changes would seem to be to return the system to where it was before the introduction of the total wage in 1967 (Plowman, 1990). The proponents of this change steadfastly refuse to acknowledge that centralisation, not its particular manifestation, is the problem.

2. The Opposition's Program

By contrast, the Opposition's industrial relations programme will introduce an alternative system alongside the existing system. Voluntary unionism and enterprise-based voluntary agreements, by creating a second stream and facilitating the opting out process, will begin to disaggregate industrial relations procedures and outcomes in the generally accepted micro-economic sense.

The distinction between the two programmes is important. Some commentators have tended to equate the changes occurring in the existing regime with the programme being advocated by the Opposition. The confusion is understandable but unfortunate. Both programmes are superficially similar inasmuch as they are seeking increased flexibility by devolution of wage-fixation to the enterprise level. The similarity ends there. The differences are numerous, substantive and ideological.

First, the changes being sought by the parties to the present system are all changes envisaged to occur within the industrial relations jurisdiction and the existing award framework. Enterprise agreements would be based on criteria determined by the Commission, would be realised as Section 115 agreements or paid rates awards, and would be subject to Commission approval.

By contrast, the system of enterprise agreements being proposed by the Opposition would not be within the Commission's purview. They would not fall within the industrial relations jurisdiction, but the common law jurisdiction. A Liberal-National Party Government would amend the Industrial Relations Act to give each voluntary agreement the status of an award, and to remove such agreements from the Commission's jurisdiction.

Second, both the existing system and the alternative system would be characterised by voluntary unionism, not compulsory unionism as at present. An end to compulsory membership of trade unions is desirable for its own sake: it is a denial of an individual's basic human right to associate or not associate. But the abolition of compulsory unionism also could be expected to weaken the existing award system and promote voluntary agreements between employers and individual employees by reducing trade union membership, and by putting an end to "closed shop" arrangements and union preferences.

Third, the enterprise agreements being proposed by the parties to the present system, as well as being subject to Commission scrutiny, would be collectively bargained agreements to which a non-enterprise-based union and an employer would be respondent.

By contrast, the enterprise agreements envisaged by the Opposition would be agreements confined to employees of the enterprise and the employer. While they may be collectively bargained - by an existing union on behalf of the employees, or by a newly formed enterprise union or shop union on behalf of the employees of the enterprise - only a shop union or an individual employee would be respondent to the agreement.

The difference between the "enterprise agreement" approach being adopted by the parties under Accord Mark VI and the voluntary enterprise agreements being advocated by the Liberal-National Parties might best be explained by reference to the study commissioned by the Business Council of Australia (BCA), which drew attention to the existence of two worlds in Australia's industrial relations galaxy. There are the large companies, whose workforces are heavily unionised, and the small and middle-sized firms, very few of whose employees belong to a trade union. Under the Coalition's policy there will be essentially three options available to enterprises and their employees. They may choose to remain totally within the purview of the Industrial Relations Commission and the totality of its awards. As options they might either choose the route of certified agreements, as provided for in Section 115 of the Industrial Relations Act, or take the bolder step of going right outside the system by opting for a voluntary agreement.

These options are available irrespective of the size of a firm. In practice I would anticipate that, in the first instance at least, smaller firms would be more likely to take advantage of the voluntary agreements option. Larger firms seeking a variation of general award conditions and having a heavily unionised workforce may well invoke certified agreements under Section 115.

Government Departments as Enterprises

Public sector employees have been poorly served by the centralised wage-fixation system, and the wastage of professionals, whose remuneration has lagged behind market rates, from the federal bureaucracy has become almost notorious.

The enterprise focus of the Liberal-National Parties' industrial relations policy will allow government departments and instrumentalities to be treated as enterprises. Already there has been a partial movement in that direction with the autonomy now allowed federal government agencies and statutory authorities to set the salaries of their chief executive officers and senior staff.

A Liberal-National Party Government would go further. It would replace existing seniority and tenure arrangements for senior staff with a contract system based on remuneration consistent with performance and market rates. Each departmental head or equivalent would be given responsibility for the size, structure and remuneration of his staff.

3. The Wages Break-Out Issue

It is frequently claimed by the ACTU and its Accord partner, the Labor Government, that the emergence of enterprise agreements which disturbed existing wage relativities within and between existing awards would provoke a wages break-out as mainstream unions sought similar benefits for their members in existing awards - that the introduction of enterprise agreements would become a re-run of the wages break-out that occurred under the Fraser Government in 1981.

The claim deserves to be taken seriously and confronted. Any Government that adopted a policy with a high risk of wages break-out after the searing experience of 1981 would be culpably reckless. For the purposes of responding to it I shall take a wages break-out to mean "a rate of wage increase far in excess of productivity increases that encourages inflation".

Before addressing the substance of the claim I want to point out that Queensland's experience with enterprise agreements provides evidence for many of the propositions I shall argue. So, too, do an increasing number of public and private single-employer awards, of which there are now about 2,000 (McDonald and Rimmer, 1988).

The claim can be taken as an argument, or it can be taken as a threat. For the purpose of this paper, I shall accept it as an argument in the sense that what the ACTU and the Government are saying is that the introduction of enterprise agreements inevitably would create circumstances in which the

ACTU would be powerless to stop a wages break-out - a case of "force majeure".

With regard to inevitability I shall argue three propositions: first, that the argument relies on a misinterpretation of events in 1981 to create a false analogy; second, that there will be sufficient legislative provision for legal containment in the new system; and third, irrespective of the events of 1981, changed circumstances are much less conducive to a wages break-out in the early 'nineties.

I shall then address the "force majeure" issue.

Finally, I shall argue that a productivity break-out is more plausible under the new system than a wages break-out. If that were not the case, there would be little point in persisting with the policy.

False Analogy

The claim that enterprise bargaining would lead to a re-run of the 1981 wages break-out relies on a comparison which can be described only as a travesty.

In 1981, the agreement which led to the wages break-out was a collectively bargained, industry wide, agreement between a major industry organisation and the metal trades unions affecting some of the system's principal awards. The agreement was duly ratified by the Commission as being in the public interest. Once ratified, the multi-industry awards and rigid wage relativities that have been features of the centralised system ensured a rapid transmission of the principal features of the agreement to other principal industries and awards.

The metal industry agreement was not an enterprise agreement. Nor was it confined to a single firm and its employees.

It simply is invalid to argue that an industry-wide agreement involving a key award in a heavily unionised industry within the centralised wage-fixation regime with no provisions for containment, and its consequences, is a paradigm for the gradual introduction of a system of agreements unique to each firm outside the reach of the centralised regime.

Legal Containment

By contrast, under a Liberal-National Party regime there would be several specific provisions for containment. A Coalition Government would amend the Industrial Relations Act to prohibit flow-ons from an enterprise agreement to other awards and agreements. An enterprise agreement would have the status of an award; it would be unique to the enterprise; it would be outside the jurisdiction of industrial tribunals; and its provisions would be excluded from matters a tribunal properly might consider when determining an industrial dispute.

This series of containment provisions would be reinforced with penalties. The Act also would be amended to penalise any union which attempted to import the provisions of an enterprise agreement into a Commission award to which the union was respondent.

Legal Balance

In addition to specific containment provisions, employers and employer organisations in 1990 are more aware of and more willing to use their common law rights and the deterrent power of Section 45(D) of the Trade Practices Act as a result of several prominent disputes - particularly the Mudginberri, Dollar Sweets and pilots disputes - and the litigation that flowed from them.

The change on this front has been momentous. In 1985 the members of the Committee of Review of Australian Industrial Relations Law and Systems - the Hancock Committee - could state with a collectively straight face that trade unions could not be made subject to the ordinary courts because they could not be expected to obey the directions of those courts. Yet only four years late the Prime Minister, a former president of the ACTU, was exhorting airline companies to sue the Australian Federation of Air Pilots.

Changed Circumstances

Australia's economic circumstances in the early 'nineties are less amenable to a wages break-out than they were in the early 'eighties.

Australia's economic circumstances have deteriorated markedly since the early 'eighties, when Australia was confronted with the prospect of large scale mining development and the "problem" of managing a balance of payments surplus. In the early 'nineties, an economy which has endured several years of real wage reductions, has recently experienced the economic and social dislocation of a severe recession, and still has to contend with significant industrial reconstruction to overcome a chronic external debt problem, is not nearly as conducive to or tolerant of large, disruptive union wage campaigns.

Other factors also militate against another break-out. Firstly, the costs of the 1981 campaign in terms of lost industry and employment remain a salutary lesson to unions and employers alike. It was after all a Labor Treasurer, Mr Paul Keating, who told the National Secretary of the Amalgamated Metal Workers' Union, Mr George Campbell, at the ALP'S 1986 Hobart conference, that he "had 100,000 dead men around his neck".

Second, the trade unions no longer have moral sway over the hearts and minds of the workforce. Many working women and the young question the

relevance of trade union ideology and the relevance of archaic and inefficient work practices, and believe unions are too powerful. The unionised sector of the workforce continues to decline and would be even lower if trade unionism was not compulsory in some areas of industry. Nearly 90 per cent of Australians believe unionism should be voluntary, and only 22 per cent of Australians aged 14 and over are members of trade unions compared with 24 per cent in 1976. Only 16 per cent would be members if membership was not compulsory. Only 29 per cent of full-time private sector employees are union members. (Morgan 1989, 1990; Savery and Soutar, 1990).

According to the 1988 survey figures from the Australian Bureau of Statistics, between November 1976 and August 1988 the percentage of employees who were members of trade unions fell from 51 per cent to 42 per cent. In the six years to August 1988, the proportion of public sector employees who were members of a union fell from 73 per cent to 68 per cent. In the private sector, the decline was from 39 per cent to a mere 32 per cent.

Employees are more inclined to assume responsibility for their own wages and conditions, and to abandon old shibboleths and attitudes to maintain and improve their wages and conditions. Fifty-four per cent of Australians believe the best way to decide wages and conditions of employment is by direct negotiation between employers and employees (Morgan, 1989). The popularity of contract labour in the building industry around Australia and of enterprise agreements in Queensland is evidence of it. Both are strenuously opposed by the trade union movement.

Third, the authority of the ACTU continues to wane as people realise the ACTU-sponsored Accord that was meant to protect their incomes and jobs has done neither, and that the rate of accumulation of foreign debt which has sustained the Accord strategy is itself unsustainable. Victorians are even more aware of the damage of which a government beholden to the trade union movement is capable.

Moreover, the ACTU's use of the centralised wage-fixation system to reinforce the Accord has created serious reservations about the centralised system within the trade union movement. The reservations have been reinforced by the ACTU's strategy of forced amalgamations now being implemented by the Government. The proposed compulsory deregistrations of small unions and amalgamations are offending and alienating a large part of the union rank and file who realise they are being disenfranchised again.

Force Majeure

Finally, for the sake of the argument, consider the hypothetical situation in which a union or group of unions decided to flout the law by trying to import

some part of an enterprise agreement into an existing award of the Commission, and that the ACTU considered itself powerless to stop the attempt. The questions then would be whether there were sufficient legal sanctions to prevent such an exercise from succeeding and whether the Government would be prepared to use them.

The prospect is not pleasant to contemplate and I do not wish to dwell upon it nor be provocative. I would argue, however, that of the two questions the critical question is not whether legal sanctions would be available - they would be, in the form of emergency services legislation, Section 45(D) provisions, common law remedies and so on - but whether the Government of the day had sufficient resolution to use them.

The Coalition Parties confronted that question during the vigorous internal debate that attended the formulation of its 1986 industrial relations policy, further refined in 1988. The 1986 policy ended the bipartisan support for the centralised, institutional system which had prevailed until then, and committed the parties instead to the enterprise-focused policy I have outlined here. Those who doubt the claim of bipartisan policies before 1986 should compare the post-1986 policies with the policy with which the Coalition entered the 1975 federal election. In the earlier policy there is no mention of enterprise bargaining, not a whisper of criticism of the predominant role of the Commission, and even an exhortation that all employees should be encouraged to belong to a trade union.

In addition, there are now a sufficient number of precedents - in Australia, in the United States of America and in the United Kingdom - to demonstrate that governments do have the resolve and community support to prevail. Apart from the specific disputes in the Australian context mentioned earlier, in particular the pilots' dispute, I also would recall the South East Queensland Electricity Board (SEQEB) dispute (Gilbert, 1986).

Let me repeat that I regard this wages break-out scenario as hypothetical. For reasons mentioned earlier, Australia's economic circumstances are much less amenable to large, disruptive wage campaigns than they were at the beginning of the 'eighties. I believe the improvement in Australia's industrial relations climate as measured, for instance, by a reduction in days lost through industrial disputes, would have occurred irrespective of the prevailing industrial relations and wage-fixation regime.

The improvement was not confined to Australia but was evident in most comparable economies during the decade [Table 1]. Indeed, as measured by improvements in unit labour costs, other countries did even better [Table 2].

We have all been mugged by reality.

Table 1: Industrial Disputes: Working Days Lost Per Thousand Employees** in All Industries and Services*

	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
United Kingdom	450	410	1270	520	200	250	180	1280	300	90	170	..	..
Australia	330	420	780	630	780	370	310	240	230	240	220	270	190
Austria	–	–	–	10	–	–	–	–	–	–	–	..	..
Belguim	220	330	200	70	..	..	..	..	..	..	..	..	..
Canada	380	830	840	930	890	610	460	390	310	690	380	..	..
Denmark	120	70	80	90	320	50	40	60	1060	40	..	..	..
Finland	1310	70	130	840	340	100	360	750	80	1320	70	..	..
France	210	130	210	100	80	130	80	80	50	60	60	..	..
Germany (FDR)	–	200	20	10	–	–	–	--	–	–	–	..	..
Greece	810	630	1040	1740	480	840	320	320	620	700	990	..	..
Ireland	570	770	1750	480	500	500	380	470	520	..	..	..	..
Italy	1170	720	1920	1140	730	1280	980	610	270	390	..	..	..
Japan	40	40	20	30	10	10	10	10	10	10	10	..	..
Netherlands	60	–	70	10	10	50	30	10	20	10	10	..	..
New Zealand	410	360	350	350	360	300	340	380	660	1110	310	..	..
Norway	20	40	–	60	20	170	–	60	40	560	10	..	..
Portugal	130	..	200	200	330	170	230	100	100	140	30	..	..
Spain	1940	1380	2310	790	670	360	580	880	440	300	680	..	..
Sweden	20	10	10	1150	50	–	10	10	130	170	–	..	..
Switzerland	--	–	–	–	–	–	–	–	–	–	–	..	..
United States+	260	270	230	230	190	100	190	90	70	120	40	..	..

.. Not available
– Less than five days lost per thousand employees
* Definitions differ
** Employees in employment: some figures have been estimated.
\+ Figures for all years reflect the threshold of more than 1,000 workers involved which was introduced in 1981.

Sources: UK Employment Gazette for years 1977 to 1986. Updated from 1986 from International Labour Office (ILO) Yearbook of Labour Statistics

Table 2: Unit Labour Costs in the Business Sector

	Australia	Total OECD (a)
	Index Nos	
1973	100.0	100.0(b)
1974	129.6	109.7(b)
1975	151.9	120.3(b)
1976	166.7	132.0(b)
1977	181.5	144.8(b)
1978	192.6	158.9(b)
1979	203.7	174.3(b)
1980	225.9	183.5(c)
1981	251.9	193.3(c)
1982	292.6	203.5(c)
1983	303.7	214.3(c)
1984	314.8	225.7(c)
1985	325.9	237.6(c)
1986	355.6	250.2(c)
1987	370.4	256.7
1988	396.3	262.9
1989	429.6	272.9
1990	470.4	284.6
1991	492.6	295.1

Sources: OEDC Economic Outlook, No 47. OEDC computerised data bases.

(a) Total of the following OEDC countries: United States, Japan, Germany, France, Italy, United Kingdom, Canada, Australia, Belguim, Denmark, Finland, Greece, Ireland, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Australia, New Zealand

(b) Average annual rate of increase of 9.7 per cent between 1973 and 1979 (from *OEDC Economic Outlook*) assumed to be a constant rate over the period.

(c) Average annual rate of increase of 5.3 per cent between 1979 and 1986 (from *OEDC Economic Outlook*) assumed to be a constant rate over the period.

4. Productivity Break-Out

Australia's productivity performance relative to comparable overseas economies in recent decades might most charitably be described as mediocre (OECD, 1990; Blandy and Brummit, 1990; BCA, 1989). More positively, Australia has yet to realise a huge potential for productivity growth. There is no one, single solution for allowing that potential to be realised, as demonstrated by the comprehensive programme that goes by the title of micro-economic reform, mentioned earlier.

Much of the gain will be realised by genuine labour market reform (BIE, 1990). Preliminary indications are that award restructuring within the framework of the Accord has failed to capture any significant gains. Substantial gains are unlikely to be realised until management and labour have the incentive to work cooperatively instead of within the artificial, adversarial framework created by the current centralised system. Decentralised, voluntary enterprise agreements offer the incentives that the centralised, award-restructuring exercise has lacked.

By reinforcing the centralised nature of the existing system, the Accord has reduced real wages and redistributed the share of wages and profits in national income. However, in terms of the definition of a "wages break-out" above, it is apparent that Australia has had a low-level break-out for the past eight years. Unrealised productivity gains could have accommodated both money wage increases and a reduction in inflation.

The simple realisation of this fact and an end to compulsory unionism will do more to promote enterprise-based agreements than all the effort and resources which have been devoted to award restructuring in the last three years.

Industrial Relations - New Arrangements

Under a Liberal-National Coalition Government employers and employees will be free to choose between the existing industrial relations system or an individualised system of voluntary agreements which better suits their needs.. Voluntary Unionism will apply no matter which system you opt for.

Present System Industrial Relations Commission	Either ⟷ Or	**The Alternative** Enterprise Based Agreements
■ Pay and conditions set by Industrial Relations Commission, based on submissions from union leaders, business and government		■ Pay and conditions settled through mutual agreement between employees and employers at the workplace under voluntary agreements
■ Awards enforced by the Industrial Relations Commission		■ Voluntary agreements are legally binding contracts under civil jurisdiction
■ Terms of pay and conditions apply to all workers subject to the award		■ Agreements subject to minimum hourly wage rates - but no upper limits on agreements
■ Time period of award set by Industrial Relations Commission		■ Time period set by agreement between employers
■ Dispute resolution by centralised authority of the Industrial Relations Commission		■ Individual disagreement procedures without intervention by the Industrial Relations Commission unless specified in voluntary agreement
■ Industrial Relations Commission controls the industrial arena		■ Grievance procedures can be set up in voluntary agreement
■ Difficult, nearly impossible for workers to gain pay increases in return for higher productivity		■ Flexible arrangements that lead to better wages for increased output
■ Awards lock in rigid terms and conditions on worker benefits		■ Opportunity to build in profit sharing, share ownership and other worker benefits under individualised agreements

Employers and Employes can move from the present system to the alternative by mutual agreement

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