

Industrial relations – centralised vs decentralised essay



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The implementing of the Workplace Relations (Work Choices) Amendment Act 2005 ('Work Choices') by the federal Coalition government saw the most audacious industrial relations legislation enacted for the Australian community in over a century (Peetz, 2006). It was to be a central plank in the government's stated aim of reform by decentralizing industrial relations laws in Australia. The changes were significant and included: -abolition of the 'no disadvantage' test abolition of unfair dismissal protections for workers in firms with less than 101 workers -privileging individual contracts ('Australian Workplace Agreements' or AWAs) over collective agreements (CAs), -restricting the right to undertake collective action -restricting union entry to workplaces; -forcing many employers previously covered by State legislation into the federal jurisdiction Now, with the Rudd Labor government in power, a huge body of legislation will be introduced to dismantle Work Choices.

Labor's new Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 seeks to revert to a centralizing of Industrial Relations law in Australia through: -introducing a new 'no-disadvantage' test -Replacing the Coalition government's Work Choices laws and AWAs. -Ensuring that employees earning under \$100, 000 per year are protected by a strong safety net which will, in turn, protect key entitlements like public holidays, overtime, penalty rates, annual leave, parental leave, and redundancy for Australian employees (ALP, 2007) Enacted, this is likely to produce a hybrid ... a centralized/decentralized IR environment. It also leaves undecided some key elements in the coverage of employees under State rather than federal awards. Advocates of a decentralized system of IR laws in Australia cite the inadequacy of centralized systems to cope with the increasing demands of a

globalised environment, believing that, in order to stay competitive, companies need a system that supports the rigor of continually evolving and staying flexible (ACCI, 2005).

The Business Council of Australia declared in 2005 that “ The core elements of Work Choices are vital for our (Australia’s) economic growth”. The promoted view was that working together to meet business challenges promoted choice and flexibility in respect to how workers are employed, managed and rewarded (Chaney, 2007). There was a belief that prior to Work Choices 2005, a “ them” and “ us” culture permeated the Australian workplace resulting in a restricted productive capacity and limited innovation (Chaney, 2007). Although AWA’s have been proclaimed as ‘ dead and buried’ this is not entirely true. The Rudd government reforms have meant that no new AWA’s can be constructed, but under these new Forward with Fairness arrangements, existing AWAs can continue up to and even beyond their five year nominal expiry dates (Siewert, 2008). Any workers in workplaces currently using AWAs can still be offered a new type of individual workplace agreements called an Individual Transitional Employment Agreement or an ITEA (ALP, 2007).

This is virtually the same thing. These will end on the 31st December 2009 when the more centralised system will be reinstated. It is argued that a centralized system of inflexible IR laws brings with it awards which are long, complex and difficult for the average employer and employee to interpret (Schubert, 2005). AWA’s can be constructed collaboratively, thereby allowing parties to clearly understand their rights and obligations without being hindered by third party (including unions or arbitral tribunals) interference <https://assignbuster.com/industrial-relations-centralised-vs-decentralised-essay/>

(Lye, 2005). Negotiating and agreeing on individual workplace wages and conditions means certainty of (forward) cost and the ability to be flexible and competitive (ACCI, 2005).

Rather than threatening jobs, that Business Council of Australia (BCA) pointed out that between 2006 and 2007 more than 200, 000 additional full-time positions had been created (Chaney, 2007). This is attributed to the ability of AWAs to provide packages that are competitive and reflective of market conditions. Flexibility is demonstrated with options to 'cash out' sick leave, penalty rates, overtime pay, shift loadings, allowances, redundancy pay and the extra week of annual leave where it exists (ACCI, 2005). Only the five designated protected conditions are immune from such employer/employee negotiation (OAE, 2008). Certain requirements must be met in order to undertake industrial action under WorkChoices. These requirements are designed to significantly reduce the occurrence of protected industrial action (APH, 2008).

The management and resolution of disputes pre-Work Choices 2005 involved a massive commitment of both time and energy to work through the resolution processes (ACCI, 2005). All workplace agreements contain a dispute-resolution procedure clause. Work Choices makes third party intervention in disputes between employers and employees by the Australian Industrial Relations Commission (AIRC) a last resort, unless industrial action is actually threatened or taking place (APH, 2008). This is said to provide for improved communication and the ability to effectively resolve disputes in the workplace without resorting to a drawn out process involving 'interested' third parties.

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According to the Australian Bureau of Statistics, the number of working days lost due to industrial disputes in the June and September quarters 2006 was 53 per cent lower than the equivalent period in a year earlier before Work Choices was implemented (Chaney, 2007). These figures are due to Work Choices encouraging 'in house' resolutions. According to the Business Council of Australia (BCA), productivity increases as a result of more flexible workplace relations because "it reduces the role of third parties with agendas less linked to productivity gains" (Chaney, 2007). Free from engagement in complex and drawn out disputes with unions, businesses are able to focus on the job at hand and achieve significant cost savings (Chaney, 2007). Productivity gains can then lead to increased wages and employment opportunities. As a result more people, including women and the semi-skilled, are encouraged to join the workforce (ACCI, 2005).

The BCA cites that, "Unemployment is the lowest in more than three decades. The economy has grown by nearly 4 per cent and days lost to strikes are their lowest in history. Recent Australian Bureau of Statistics data shows real incomes have risen by an average of 10 per cent in the two years to 2005-06, and 34 per cent in the 11 years to 2006-07" (Chaney, 2007). The recent Rudd government reforms run the risk of returning Australian workplaces to the "us versus them" culture that resulted in high levels of industrial disputation, reduced employment opportunities and pattern-bargaining induced inflation. .

. In short, a real possibility of putting Australia 's forward momentum back 20 years (Chaney, 2007). A report appearing in The Australian newspaper (7 May 2008) suggested that an analysis of the Labor Party's proposed changes <https://assignbuster.com/industrial-relations-centralised-vs-decentralised-essay/>

to Work Choices prepared before their election predicted that such changes would lead to an increase in levels of unemployment and higher inflation induced by uncontrolled wages increases. Deputy Prime Minister Gillard has dismissed this analysis as flawed because it allegedly did not consider the Labor Party's proposals in their final form.

Nevertheless the Treasury criticisms reflect the concerns raised by employer groups and the now Opposition parties. Labor's new Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008, is the first in a raft of legislation to be introduced to Parliament and is described by the Rudd government as "the first step in the dismantling of Work Choices" (ALP, 2007). However, the new Act fails to reverse many of the provisions of the original Work Choices 2005 which the government characterised as unfair (Matthews, 2008). It is argued that, the system was, is and will continue to be unfair and unbalanced for some time to come (Matthews, 2008). The remnants of Work Choices still benefit employers over employees. Under the umbrella of Forward with Fairness, there have been abuses of power by business and an exploitation of working people which has been detrimental to families and the notion of social equality (Siewert, 2008).

The claim that Work Choices would allow Australia's employers and employees the freedom and the choice to sit down and work out the arrangements that best suit them is seen as fallacious (Peetz, 2006). The reality is that due to a lack of third party protection, freedom and choices are severely constrained because of a clear imbalance of power. It is argued that

Individual employment arrangements where third party influence from trade
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unions and industrial tribunals is marginalized can impact negatively on those who are least advantaged in our society (The Age, 2005) —young people, women, migrants, those in low-paid and so-called ‘vulnerable’ work, especially casual and temporary workers and those in non-unionised workplaces.. The Work Choices Act and, to a lesser extent, the current regime (in its state of flux) reflects a neo-liberal philosophy of a single, national system of regulation.

It is believed that choice has not been restored to many Australian workers. To have choice, they must first have bargaining power. Individual employees who have negotiated individual agreements without third party protection are left with a very limited ability to protect themselves or their interests (Matthews, 2008). It is usually the more vulnerable members of the workforce who suffer most.

Even the massive reduction in the safety net under Work Choices is still evident (Siewert, 2008). Although AWA’s have been proclaimed to be ‘dead and buried’ this is not entirely true. Under the new Forward with Fairness arrangements, existing AWAs can continue up to and even beyond their five year nominal expiry dates, and workers (in workplaces currently using AWAs) can still be offered a new type of individual workplace agreements called an ITEA (individual transitional employment agreement) (Siewert, 2008). The question is begged by The Greens: “ Why can’t workers on unfair AWAs have their situation assessed by the new no-disadvantage test? ” If a particular AWA fails to meet the ‘ fairness’ criteria, then the workers should have the right to terminate that agreement (Siewert, 2008). The loss of sweeping AIRC powers to ‘ give all such directions, do all such things, as are necessary and

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necessary for an efficient, fair hearing and determination of the industrial dispute' resulted in many employees being stripped of their benefits as they were bullied and bargained away (APH, 2008). Still bound by those contracts, the revision of the 'no disadvantage' test offers little help in the short-term as their contract were compared with the AFPCs five standards.

The AIRC in its safety net review drew a conclusion which stated that the AIRC was "not persuaded that there is any necessary association between award coverage, safety net adjustments and employment growth. (Bisset, 2005)" AWAs have lawfully abolished penalty rates, overtime pay, shift loadings, allowances, redundancy pay and the extra week of annual leave where it exists (APH, 2008). The Australian Greens argue that "there is a compelling argument for ensuring that unfair dismissal provisions are fixed at the very start of this reform process, so that the lack of protection from unfair dismissal does not undermine the fairness of this process", yet the Rudd government seems content to leave vulnerable workers in fear for their jobs (Matthews, 2008). Over 4 million workers employed in 99% of corporations are not protected from being dismissed unfairly. Previously, these workers would have been able to have had their claims dealt with in the Australian Industrial Relations Commission. Given that no unlawful reason is ever given for the dismissal under the current system they have no recourse (Lye, 2005).

The Australian Industrial Relations Commission (AIRC) now plays a reduced role in determining employment conditions and resolving industrial disputes while for Unions it is more difficult to enter workplaces to act on disputes and to hold employers accountable for unfair dismissal claims (APH, 2008). It is <https://assignbuster.com/industrial-relations-centralised-vs-decentralised-essay/>

widely accepted that collective action, through union organisation, has been the way workers have traditionally achieved favourable employment conditions that benefit themselves, families and society overall (Wright, 2007). “ The ACTU’s view is that workers must have a genuine right to bargain collectively. This right must be accompanied by an obligation of an employer to negotiate with unions who represent employees in the particular industry or occupation. Bargaining should occur in good faith and resulting agreements must apply to all employees for the life of the agreement” (ACTU, 2007).

Instead, a \$22 million watchdog keeps union activity under surveillance. Research conducted by the ACTU has concluded that: -85% of people agree that unions should be able to enter workplaces to talk to members, -84% disagree that Australia would be better off without unions, -59% think pay and conditions are better in union workplaces, -82% are opposed to changes to the laws which make it harder for workers to collectively bargain. Industrial action in Australia is rapidly becoming a thing of the past. Work Choices legislation allows employers to limit the rights of unions to enter workplaces under the rewritten Part 15 of the WR Act (CommLaw, 2005). Under the amended WR Act, industrial disputes no longer have to be notified to the AIRC (The Age, 2005). Dispute resolution processes are greatly altered for the purpose of encouraging parties to resolve disputes themselves. But, industrial action is just about the only influential power employees have – however under the current system it is harder for employees to exercise this power due to certain requirements and legal methods where it can be curtailed.

Employees don't have choice if they don't have power (ACTU, 2007). It is seen as unfair that many workers who are still stuck on AWAs will have to wait up to five years to reap the fairness they voted for (Matthews, 2008). Little wonder that in the first year of WorkChoices becoming fully operational, the Human Rights and Equal Opportunity Commission handled a 60% increase in workplace-related complaints (ACTU, 2007). The Howard government's neo-liberal philosophy to endeavor to achieve a single, national system of regulation was taking its toll.

WorkChoices was supposed to allow employers and employees the freedom and the choice to sit down and work out arrangements that suited them best. Instead, marginalised third party influence from trade unions and industrial tribunals meant that average Australian workers rights were at the employer's discretion (ALP, 2007). Rather than the traditional conciliation and arbitration powers defined in s 51(35) of the Constitution, Australia's industrial legislation system under Work Choices draws its power from its right to legislate with respect to corporations (as defined in s 4(1) of the WR Act) granted by s 51(20) (CommLaw, 2005). Almost 4 million Australians employed in a business with less than 100 staff lost protection from being unfairly dismissed from 27th March 2006 (ACTU, 2007).

A further 6, 600, 000 employed in businesses with more than 100 staff also lost protection from unfair dismissal as long as it was for 'operational reasons' (ACTU, 2007). Workers were sacked around the nation for 'operational reasons' before being offered their jobs back with a substantial pay cut. How could this be deemed 'legal'? In 2006 29 workers from an abattoir in Cowra were sacked for 'operational reasons' and soon after, had <https://assignbuster.com/industrial-relations-centralised-vs-decentralised-essay/>

their jobs offered back to them with a 30% pay cut (ACTU, 2007). Despite the clear injustices, workers continued to be forced onto AWAs in droves. It was estimated that by late 2006 1, 000 workers a day were pushed onto AWAs because employers refused to collectively bargain or offer a job or advancement without signing an AWA (ACTU, 2007). Where's the 'choice'?? Without the 'no disadvantage' test to protect pay and conditions, AWAs under WorkChoices are able to strip away many benefits workers enjoyed for decades prior as long as 5 minimum conditions were met.

This has had major implications on important work-life balances. A government report in 2006 found that of all AWAs surveyed: – 100% cut at least one so called 'protected award condition'; – 22% provided workers with no pay rise, some for up to 5 years; – 51% cut Overtime Loadings; – 63% cut Penalty Rates; – 64% cut Annual Leave Loading; – 46% cut Public Holidays payment; 52% cut Shift Work Loadings; – 40% cut Rest Breaks; – 46% cut incentive based Payments and Bonuses; – 48% cut Monetary Allowances (for employment expenses; skills; disabilities); – 36% cut Declared Public Holidays; and – 44% cut Days to be substituted for Public Holidays (ACTU, 2007). Those with little or no bargaining power – most notably; women, those under 20 years of age and migrants who were most often casual workers with no job security, low skilled workers, workers with minimal literacy and numeracy skills continuously are exploited (Bissett, 2005). Due to the lower bargaining power of specific groups of women, for example those who are primary carers, single mothers, older, in regional areas, or lacking recognised skills. WorkChoices does little to support female participation in the workforce (Whitehouse, 2006). Without the full support of the AIRC,

women will be more dependent on managerial discretion to have their skills recognised, equitable pay and enable them to combine work and family interests (Whitehouse, 2006) A reported case to the ACTU tells of a woman by the name of Suzy.

35 years old, had worked between 10 am to 4 pm for over a year, which suited her child care arrangements. When asked by her employer to extend her hours to 5 pm, she explained that it was not possible given the high cost of after school care. Suzy was told she had to do the extended hours or leave. She refused and was dismissed (ACTU, 2007). Indeed this example could apply more generally to any workers with family responsibilities.

A need a secure a living wage; adequate, predictable common family time (including social work time and holidays); flexibilities that meet their needs, including the opportunity for leave and to work part-time; protection from excessive hours; and quality, accessible affordable childcare are the basic requirements of a system that supports families. WorkChoices guarantees none of these. On top of this, according to ABS data on Average Weekly Earnings in early 2007, total earnings for full-time workers and full-time workers in the private sector dropped -0.6% and -1.1% respectively.

Women again were even worse off with those working full-time in the private sector experiencing a -1.

8% drop in real earnings while being subjected to a gender pay gap not seen as wide since 1978 at 10% (ACTU, 2007). There have been continued calls to protect young workers (under 20) from being bullied, pressured and exploited and often being paid less than the relevant Award. A survey

involving 800 young workers conducted by SA Unions returned the following results: – 36% of young workers were pressured to work overtime without pay – 43% were pressured to work while sick 42% were forced to work through meal breaks – 22% were fired for reasons they felt unfair and 17% were fired or lost shifts after a birthday – 25% were bullied at work (ACTU, 2007) US doughnut chain Krispy Kreme was caught out, bullying their young workers (between 15 and 18) to sign AWAs. Penalty rates, overtime and allowances were removed cutting their take-home pay. Most of these workers were aged between 15 and 18 years old.

The Office of the Employment Advocate approved the contracts which resulted in one staff member having to work for 16 1/2 hours straight without any penalty payments or overtime loading (ACTU, 2007). Bakers Delight in South Australia was also found to be pushing young employees onto AWAs which had abolished annual leave and sick leave and cut their pay by 25% (ACTU, 2007). Younger workers, simply do not have equal bargaining power with their employer. Individual contracts mean that young workers, like specific groups of women workers are vulnerable to exploitation – to being bullied and discriminated against if they refuse to sign an individual contract, or to having their conditions and take home pay cut if they do sign (Whitehouse, 2006). It is argued that this vulnerability is heightened by the absence of a third party to assist in the protection of the rights of disadvantaged workers. A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, 2005, ' Research Evidence About the Effects of the ' Work Choices' Bill' , A Submission to the

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