'Softly, softly catchee monkey'

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2005 seems sure to be a big year for labour relations. John Howard's win in last year's federal election leaves no doubt about his right or his capacity to make substantial changes. So what should we expect?

The first Howard Government made sweeping changes to Australian labour laws in 1996/7 with its *Workplace Relations Act*. But its lack of a Senate majority meant that the government got only part of what it wanted. Since then, a hostile Senate has repeatedly frustrated the government's efforts to make further changes. Several bills have been on the parliamentary table for some years now. They will be passed early in the new term, whether before or immediately after the government gains control of the Senate in July. Among them are long-standing proposals to make life easier for small business by exempting them from unfair dismissal laws [if they have less than twenty employees] and award obligations to make redundancy payments [if they have less than fifteen employees], as well as helping them resist union efforts to have them 'roped-in' to industrial awards. Three fully-drafted bills to enact these provisions await Senate ratification. They will be brought in very speedily. Commitments have also been given to encourage and help smaller employers to enter into individual agreements [*Australian Workplace Agreements* — AWAs] with their staff. More broadly, plans have been developed to make this form of agreement simpler for all organisations. The limited take-up of AWAs in the past seven years has been something of an embarrassment for the government. Look for a very strong effort to remedy this in the next three years.

Having pushed through its legislative backlog, the government will then move on to its more radical new proposals. These include a new *Independent Contractors Act* to protect and promote the status of independent contracts and to prevent trade unions seeking orders from industrial tribunals to limit their use. Few reasonable people would take issue with the approach as far as people who genuinely work as independent contractors are concerned. But the potential for more recourse to unfair and forced contracts will worry employees and their organisations. Already many workers — including library and information professionals — are being pressured to sign away employee rights in contracts that wrongly describe them as independent contractors. Further impetus for this practice could be a negative aspect of the government's changes. It could create considerable difficulty for some ALIA members.

But by far the biggest item on the government's agenda is a single national system of workplace regulation. In the federation that is Australia, this involves huge questions for states' rights and constitutional powers. Under the Australian Constitution [s51 xxxv], federal industrial relations powers are restricted to matters extending beyond state borders. In other words, the Constitution gives primacy to state industrial tribunals. It is possible for the Commonwealth to override a state law by legislating itself on a particular matter [s109], but to do so in a manner that completely eradicated state systems of labour regulation would be hugely controversial at any time, given Australia's history. It will be all the more so with every other jurisdiction presently controlled by Labor governments. More likely would be an attempt to bypass the industrial relations provisions and use the Constitution's Corporations power to regulate employment. While this is arguably somewhat more practical, it would still be an extremely dramatic move and guaranteed to spawn massive resistance. Ironically, the last — unsuccessful — attempt to increase the federal government's constitutional power over industrial relations and wage fixation by referendum was by the Whitlam Labor government in the 1970s. It failed after massive objections from the Conservative opposition. It would certainly be passing strange, historically, to see the Coalition — traditionally fierce defender of states' rights — moving now to remove or subvert them. And sceptics will surely note that the government's goal of further labour market deregulation is being pursued via a raft of proposed new regulations.

More important than historical and conceptual vagaries, however, is the question of efficacy. Undoubtedly, the labour relations system needs to be adjusted regularly to ensure contemporary relevance, just like any other part of the country's legislative and policy framework. But the road to ruin is paved with attempts to make changes that cut too fiercely against the grain of embedded social systems. Those who seek changes that work with the grain of history usually make much better progress, as Alan Fox has observed in his epic book on this subject [*History and heritage: the social origins of the British industrial relations system* ISBN 0-04-331099].

For Australia, there are four areas in which care should be taken: productivity performance, job quality, cohesion and realism. The government quite rightly wants to build productivity in the face of considerable economic challenges and a serious national debt problem. But care should be taken with the idea that total freeing-up of labour relations is a guarantee of that outcome. Our New Zealand neighbours provide a clear warning in this regard. When its new conservative government took precisely that step in the early 1990s with its new *Employment Contracts Act*, great things were expected. In fact, productivity was very disappointing — much inferior to levels achieved under Australia's more moderate and careful partial deregulation. The New Zealand approach was soon abandoned in favour of a more co-operative regime. History shows

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For jobs, the government — again quite properly — is keen to build on apparent strengthening of employment in recent years. More deregulation coupled with reduction in trade union power is seen as pivotal. Again care should be exercised. It is true that official data suggest falling unemployment and improved job creation. But very respectable arguments can be advanced for the proposition that official statistics hide the extent to which casualisation and part-time work are reducing the quality of employment. Australia is already struggling with skills shortages in several areas. Open slather with even more resort to poor quality, short-term jobs is unlikely to improve things, and may well make the problem worse.

As far as social cohesion is concerned, few people in Australia have a greater understanding of the workings and history of industrial relations in this country than former prime minister Bob Hawke. In a recent speech, Mr Hawke urged the new government not to 'take Australia down what can only be a more confrontationist and, in terms of social cohesion, self-defeating road'. For a hundred years, said Hawke, the federal industrial relations tribunal had, indisputably, been an integrally important player in establishing the social cohesion and economic prosperity enjoyed in today's Australia. Now was not the time to be dispensing with it.

Notwithstanding the more extreme hopes of some right-wing think-tanks for complete abolition of the Industrial Relations Commission [IRC], John Howard is likely to hear Hawke's argument. Even his worst enemies could never accuse the prime minister of being out of touch with the realities of Australian life. The industrial relations system and its tribunal have changed continually since federation, under governments from both sides of the political fence. The new government will justifiably want to continue that process. But realists will acknowledge the truth of recent comments by Michael Kirby, High Court judge and former deputy president of the AIRC:

> *'Australia is not a land of extremes. Irritatingly enough to those of extreme persuasions, Australia's basic institutions and laws tend to adapt very slowly and over time: adjusting to changing economic and social forces only as such adjustment is truly needed. So it has been with the national conciliation and arbitration tribunal. So it will be in the future. Those who want more dramatic change, as distinct from constant adjustment, need to look for another country'.*

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