IR change: radical? — probably; simpler? — no!

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Arguments about the Howard government's imminent shake-up of industrial law and practice now dominate labour market discourse in Australia. Few issues have so starkly polarised public policy debate in recent years. Already the positions taken by protagonists are well known. On the one hand, the federal government and much of industry assert a need for radical change to drive renewed productivity growth and efficiency. On the other, state governments, the federal Opposition and trade unions claim the mooted changes will disadvantage employees by giving far too much power to employers, some of whom may misuse it. Advertising agencies are doing well. Ordinary workers are alarmed. ALIA members are seeking information on likely effects for them.

Many aspects of the so-called Howard Plan can be debated. Will protection against only unlawful rather than unfair dismissal be a sufficiently practical and accessible safeguard for most workers? Will individual agreements be genuinely voluntary instruments? Will a hand-picked 'body of experts' truly set minimum wage rates at arm's length from government and its treasury? Is there any compelling evidence that radical recasting of the balance in industrial negotiation will actually create the productivity gains routinely assumed by the Plan's proponents? Claim and counterclaim continue around these and other questions.

Yet one vital element of the government's rationale has not received the same degree of scrutiny. This is the pivotal issue of 'simplification'. All the proposals are said to add up to a simpler industrial relations system, which we are told is absolutely essential for more effective competition and optimal economic performance. Stripped of its purple prose, the policy essentially seeks to create a simpler, more accessible regulatory regime. But will it? A fair assessment suggests the answer is: 'probably not'.

Industrial relations law in Australia has always been complicated, simply because we are a federation. Essentially the power to regulate employment and industrial conditions is vested in the states. Federal powers have traditionally been restricted in the Constitution's industrial relations power (section 51(35)) to territorial issues and conciliation and arbitration of disputes extending beyond the boundaries of any one state. As a result, Australia has operated for most of the past one hundred years with seven industrial jurisdictions — a fact deplored as old-fashioned and unacceptable by advocates of the current plan. They want to override the states' industrial relations powers by using the Constitution's corporations power (section 51(20)). It is difficult to disagree with the contention that the current system is complex. But then so are all other state and commonwealth interactions in a federation. There seems no stronger argument for the federal government to take over all power in labour relations than for its doing so in regard to health, education and numerous other areas subject to inter-jurisdictional complexity.

More importantly, use of the corporations power will not create the desired 'single, unified, national industrial relations system'. Arguably, that power — 'to make laws in respect of trading, financial and foreign corporations' — would allow a federal government to regulate employment conditions for all employees of corporations across Australia. But significant gaps would remain. The power could not extend to state government employees, for example. And, ironically given the emphasis on small business in government rhetoric about industrial relations change, nor could it fully regulate that sector. Reliable estimates suggest that at least 100 000 small business employees would not be covered. In short, hostile state governments would be able to retain their industrial systems, covering their own employees and staff of unincorporated bodies. That does not constitute a 'single, unified, national industrial relations system'.

Without doubt a smooth-running single national industrial system would be a spur to national efficiency. But it seems unachievable without state co-operation. The Victorian Government voluntarily referred all its industrial relations powers to the Commonwealth in the early 1990s. A co-operative approach now could have encouraged other states to consider the same course. What appears to have happened, however, is that a hostile take-over stance has, not surprisingly, hardened the position of state premiers. There seems little likelihood of any referral of state powers in the foreseeable future, especially given the other proposed reforms that are so alarming trade unions and their members across the country. And even the prospect of future conservative state governments offers no guarantees, since members of state opposition parties — especially in Western Australia and Queensland — are among the strongest opponents of the single system proposal.

Given its control of the Senate, the Howard government will make major changes to labour laws, though their precise nature will be unclear until a Bill is presented to Parliament. Already, however, it seems clear that political, legal and structural realities mean the system that emerges will be anything but simple. ■

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