WHO IS THE FAIREST OF THEM ALL?

(WITH APOLOGIES TO SNOW WHITE'S STEPMOTHER)*

In industrial relations, Liberal and Labor offer a choice between levels of over-regulation argues **Des Moore**

In the forthcoming federal election workplace relations policies are portrayed as an area of major difference between the major parties. Even so those parties have been attempting to reflect remarkably similar images from their mirror surfaces. These reflections have apparently been designed principally to portray fairness in policies towards employees, but with flexibility added to allow some variety in conditions able to be included in employment agreements.

Initially, the Coalition sought to prove its fairness and flexibility by legislating *WorkChoices* with effect from March 2006. The then Workplace Relations Minister Kevin Andrews claimed the new arrangements would not only move Australia 'towards a flexible … and fair system' but would be 'simple'. This last despite there being no less than 1700 pages of legislation and regulations!

Following unions' anti-WorkChoices advertising campaign and the initial publication of Labor's policies, as well as unfavourable polling, the Coalition decided to become even fairer. Accordingly, the *Workplace Relations Amendment (A Stronger Safety Net) Act* was passed (with allegedly grudging Labor support) in June 2007. Among other things, this requires any modification of 'protected' conditions—including conditions covering penalty rates, shift and overtime loadings, monetary allowances, annual leave loadings, public holidays, rest breaks and incentive-based payments or bonuses—under awards to pass a fair compensation test.

This applies to all collective agreements and all individual agreements (where the employee earns less than $75,000 pa) made or altered after May 2007, thus allowing the removal of conditions applying under the 'old' award system but in return for 'fair' compensation. In fact, even though the pay scales derived from former awards now formally determine pay for only about 20% of non-managerial employees, the legislation provides for an award to be 'designated' solely for purposes of the fairness test.[1] Accordingly, although awards are being reviewed with a view to rationalisation, and although the provisions in such awards have hitherto had only limited enforcement, under the Coalition they would continue to provide a base overall compensation level for all agreements that will, according to official sources, apply to about 90% of employees covered by the legislation.[2]

For its part, Labor has published two policy statements, the first a 22 page *Forward with Fairness* policy statement in April 2007, and the second entitled *Forward With Fairness—Policy*

* In Walt Disney's 1937 film Snow White and the Seven Dwarfs, based on a German fairy tale by the Brothers Grimm, the jealous stepmother of the Princess asked the mirror on her wall daily, 'Who is the fairest one of all?' When one day the mirror gave the wrong answer, the stepmother attempted to kill the beautiful Snow White. But the handsome Prince saved her with a kiss and the song 'Some Day My Prince Will Come' was born.

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Implementation Plan on 28 August. Although there is some overlap, it is important to recognise that there is no one document setting out Labor's complete policy, that is, the two have to be read in conjunction. Basically, the August statement responds to queries arising from the April statement, and from subsequent ad hoc statements indicating some apparent reversals or modifications by Opposition Leader Kevin Rudd and Shadow Ministers Julia Gillard and Craig Emerson, as well as setting out transitional arrangements that would apply until the new policy, *including* that outlined in the April statement, took full effect in January 2010. But it leaves considerable uncertainty about important aspects of policy both pre and post 2010.

Thus, while the August statement includes some retentions or phasing outs of policies existing under the present Government (misleadingly described by some as 'concessions' to employers), it makes no reference to some important policy changes in the April statement, such as the union entrées provided by employers' obligations to bargain in good faith and the over-riding emphasis on collective bargaining. Although Gillard has pointed out that it would be 'possible' to have non-union collective agreements, the obligation to bargain in good faith would undoubtedly leave employers facing potentially enormous union pressure to conclude union collective agreements. This is discussed further below.

The August statement also fails to explain how some important aspects of policy would apply in practice during the so-called transition period, including the role that would seemingly have to be assumed by the Australian Industrial Relations Commission (AIRC). Astonishingly, that body would be given a task for which it is entirely unsuited viz, that of attempting to modernise the many awards it created—and failed to modernise once before. But, as the new Fair Work Australia (FWA) body would not come into existence until 2010, the AIRC would seemingly *also* become the only body responsible for administering the existing award 'system' and dealing with new claims under those awards.

In short, for two years Australia would apparently experience not only a return to the AIRC days of yore (including the use of de facto compulsory arbitration powers) but, contrary to claims by Labor spokesmen, a period of considerable uncertainty about employment conditions. The sources of such uncertainty would relate to the actual and possible decisions of the AIRC in the transition period and the likely content of the new legislation to apply from January 2010 (on which consultations would occur), as well as the possible content of the new awards that would be the heart of the new system. Previous attempts to rationalise awards have inevitably run into one major apparently insurmountable hurdle, namely unless it would be acceptable politically to *reduce* wages and/or other conditions under many existing awards, rationalisation would result in increased wages and/or conditions that would be inappropriate from both a micro and macro perspective. The absence of any guidance on this important policy issue leaves a major gap in Labor's policy and highlights the basic problem with the award system.

This is relevant to Labor's claim that its policy would constitute 'a new industrial relations system based on driving productivity in our private sector', and create 'a fair system, a simple system, a flexible system'. It is difficult to see how ten minimum legislated employment standards, and 'modern, simple industry awards' which could include up to a further ten minimum standards as well as major changes to existing labour market conditions, could produce anything other than an extremely complicated and inflexible system. Importantly also, these industry awards appear to envisage setting annual wage levels by providing for 'minimum annualised wage or salary arrangements'. In reality, Labor thus presents itself as using detailed awards in regulating employer/employee relationships *and* regulations would expand very considerably.

Moreover, although under that system 'collective agreements will be able to override award entitlements provided the agreement means employees are genuinely better off overall', no indication is given as to how aggregate wage increases (that is, from awards and collective bargaining) would be prevented from exerting upwards pressures on prices and interest rates. Assurances by Gillard that 'wage movements will be founded on productivity increases'[3] need to assessed in the light of the role the AIRC would play in the transition period and then the role of the all-powerful new body, FWA. Although appointments to this body would (we are assured) be based on merit and subject to bipartisan processes, past experience suggests such appointees

are more sympathetic to wage and other claims than to possible adverse price or employment effects, with obvious potential for inflationary awards and collective agreements to emerge.

The much-hated (by Labor) statutory individual agreements or Australian Workplace Agreements (AWAs) would be abolished (except for the about 1 per cent of total employees earning over $100,000 a year), although an *existing* AWA could continue up to 31 December 2012 and, if an expiry occurred prior to 1 January 2010, a new form of temporary individual contract would be permitted until then. The few still on de facto AWAs would not be subject to awards but, even though earning above $100,000, would have to comply with the ten minimum legislated conditions.

Also abolished by 2010 would be the highly successful Australian Building and Construction Commission established by the Coalition in October 2005.[4] It would be replaced by a specialist inspectorate division of the FWA that would supposedly have the same responsibilities. In addition, there would be no exemptions for businesses from unfair dismissals, except in the first 12 months for those with fewer than 15 employees (and businesses able to show they are having a downturn or have reported to police an alleged crime by an employee).

Labor has made much of its retention of some of the present government's existing policies, including the requirements that industrial action have secret ballot approval and occur only during bargaining for a collective enterprise agreement, and that secondary boycotts be subject to the recently strengthened *Trade Practices Act*. But, while these are important, the value of other retentions may be more limited. Although pattern bargaining, for instance, would continue to be outlawed, this would likely be readily achievable indirectly. Equally, while unions would continue to need right of entry permits to businesses, Labor's policy omits any reference to the important need to state reasons for obtaining a permit and requires only 'prior' (not 24 hours) notice. Again, although agreements by individuals categorised as independent contractors would continue to *not* be subject to workplace relations legislation, it is unclear the extent to which union agreements or bargaining claims could restrict the use of contractors.[5] No charging of union bargaining fees would be permitted on employers with non-unionist employees. Importantly, the extent to which these so-called 'concessions' were meaningful would depend in part on how the proposals for a much more regulated system worked in practice.

The attempt by each major party to portray its policy as 'fair and flexible' is little short of absurd: 'fairness' and 'flexibility' are in the eye of the beholder. Snow White's stepmother was unable to hide her inferior image and attempts to disguise important substantive differences in the proposed legislative and institutional frameworks will not work either. But it is important first to examine the sadly deficient images that *both* sides portray.

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The end of deregulation

In reality, whichever party is returned there will be a Pandora's box of subjective regulatory decision-making by government-established institutions using judicial and/or quasi-judicial powers. Coalition legislation includes terms, such as 'reasonable' and 'fair', that necessarily can only be interpreted by those institutions, and Labor's legislation would inevitably pursue the same course. In short, the 'system' is moving a long way back in time to one in which such institutions will intervene in employer/employee relationships to interpret and apply a wide range of detailed legislative conditions. Such institutions will, moreover, continue to lack the qualifications needed to assess the circumstances in which individual employer/employee relationships work to the mutual benefit of both sides.[6] And the increased regulation will, of course, be a boon for lawyers while adding to transactions costs and uncertainties of employers.

It is a matter of very great regret that there is now no hope in the foreseeable future of moving to a deregulated labour market in which, subject mainly to observing normal contractual requirements, the terms of employment agreements are basically settled between employers and employees. It might

be noted that overt support for a less regulated market is not confined to a small group in Australia. The OECD 2006 Economic Survey on Australia, for example, welcomed *WorkChoices* as moving 'towards a simpler, national system' but pointed out 'the system is still complex: federal legislation runs to nearly 700 pages, distinct federal and state systems remain, and businesses have complained about compliance costs.'[7] Since that report the passage of the stronger safety net legislation has further added to the complexity.

It is particularly alarming that the Liberal Party should have thrown in the towel on the important question of greater freedom for individuals, including for the almost forgotten participants, namely, individual employ*ers*. It is appropriate to recall that in November 2004 I sent a letter to the Prime Minister, signed by a group of prominent Australians, advocating extensive further deregulation and suggesting a commission of inquiry to examine, inter alia, measures that would 'guarantee employees their right to exercise freedom to choose their terms and conditions of employment'.[8] The Prime Minister's rejection of such an approach sealed the fate of deregulation and, as he acknowledged in July 2005, 'Australia's labour market will still be more regulated than those in the UK and New Zealand.'[9] My own conclusion in December 2005 was that the legislation 'is less flexible in many respects … is still grossly unfair … and demonstrably fails to understand the role of the market in balancing bargaining power.'[10]

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Bargaining power

The acceptance by both sides of the need for extensive legislation to protect workers may seem an appropriate response to the perceived strength of employers' bargaining power. In his second reading speech introducing the stronger safety net bill, Employment and Workplace Relations Minister Joe Hockey asserted, for example, that its rationale included 'employers cannot coerce existing employees into modifying or removing protected award conditions.'

In similar vein, Labor also expounds the need for detailed regulation to prevent exploitation. However, whereas the Coalition's attitude on respective bargaining powers arguably reflects an inability to publicly face up to the imbalance issue, Labor's is clearly driven by its close association with the union movement and the latter's (justifiable) fear of a further diminished role in a less regulated labour market. Hence the extensive proposals designed to limit the bargaining role of individuals and employers and to promote collective bargaining. Where, for example, a majority of employees wants to bargain collectively, employers will be required to comply and the FWA will even be empowered to determine the extent of support for it.

The false premises of the preventative exploitation approach is revealed by the competition for labour amongst the more than 800,000 businesses operating with work forces *and* by the competitive basis on which the economy operates. Of those 800,000, around 90% are small businesses with about 35% of total employment, very limited bargaining power and the serious risk of loss of staff and difficulty in operating a business if exploitation was attempted.[11]

Indeed, individual employees not only have the capacity to readily quit jobs if they feel badly treated by their particular employer or for any other reason—but well over a million do so voluntarily each year.[12] Individual employees are also increasingly either bargaining for themselves or obtaining advice from the many employment and legal agencies/associations/government inspectorates rather than relying on unions, who now speak for only 15% of the private sector work force.[n] During the period of reduced regulation in recent years, average hours of work and industrial disputation fell while real wages increased, which scarcely suggests employees bargaining powers would weaken in a deregulated labour market.[13]

Labor's alarming support for collective bargaining, leading to its policy of abolishing AWAs and making it extremely unattractive to conclude individual common law contracts (under the so-called flexibility in awards provision) by requiring they comply with award and legislated conditions and be subject to industrial action, thus clearly reflects its power base rather than concern for the

position of individual workers. Its approach brushes aside the likelihood of a deregulated labour market resulting in higher levels of employment and a much fairer system. True, moving to a less regulated labour market would, ceteris paribus, cause some employees to experience *reduced* compensation/conditions. But any substantive such reductions would almost certainly reflect the removal of unjustified union quasi-monopoly situations under the regulatory system. The outcome of the waterfront dispute illustrated vividly the existence then of extensive unwarranted protection of an unfair nature[15] and a similar situation obviously existed in the construction industry before the ABCC was established.[16]

A further very worrying aspect of Labor's policy on bargaining is the policy statement that 'all bargaining participants will be obliged to bargain in good faith'. There is no such requirement in the *WorkChoices* legislation. Labor's policy effectively means employers seeking an employment agreement or a change in an existing one would have to involve unions if requested even by one employee who is a union member. It claims the 'obligations are simple' and only require such things as attendance at meetings 'at reasonable times', timely 'disclosure of relevant information', and 'timely responses to proposals'. But these and other requirements are far from simple in the overall scheme of things.

In practice, the obligation to meet and to disclose relevant information would make it difficult for employers to avoid agreeing to certain 'pattern' terms, particularly as the relevant division of FWA would likely adopt an interventionist approach involving a continued ordering of meetings and information disclosure. Thus, under a regime of mandatory collective bargaining and bargaining in good faith, employers could effectively be forced by FWA to pay the 'reasonable' going rate or apply the 'reasonable' condition, as the costs of paying the condition will be cheaper in the short run than continuing to bargain in good faith. Recalcitrant employers would be forced to spend uncommercial amounts to protect their bargaining position and this would lead others to fall into line, resulting in the gradual adoption of conditions which would over time result in loss of productivity.[17]

Labor's interventionist policy on bargaining powers and bargaining in good faith would also risk a return to the situation in which rogue unions under the supposed protective regulatory system have been allowed to exercise quasi-monopoly powers to the detriment of employers and fellow workers. Although the Opposition Leader claims Labor has a no-violence/no-threat of violence policy in regard to the activity of unions, and has expelled of one or two violent union leaders from the party, Labor's establishment of extensive regulatory arrangements supervised by FWA appointees would almost certainly increase union power in practice. The archives of the HR Nicholls Society are replete with examples of the 'exploitation' of employers despite regulatory arrangements supposedly designed to provide 'balanced' outcomes.

In short, both parties have paid insufficient regard to the circumstances in which bargaining occurs in today's competitive economy—and would occur in a less regulated labour market. But Labor's approach is by far the most worrying in terms of its potential adverse effects on employment and productivity, not to mention individual freedom.

The institutional framework

The acceptance of the imbalance of bargaining power argument has inevitably led both major parties to establish special authorities or tribunals to administer the supposedly protective legislation. Thus, in addition to its new Fair Pay Commission determining a minimum wage, and the maintenance of the ABCC and the Australian Industrial Relations Commission (although in a more limited role), the Coalition has created a Workplace Authority that will reportedly have no less than 700 employees whose responsibilities include administering the fairness test. Also established is a so-called Workplace Ombudsman, with a staff of 250–300 to advise on the obligations of employers and employees, monitor observance and investigate or prosecute contraventions. In short, we already have an industrial police force.

This very bad decision reflects a complete misunderstanding of the how the industrial regulatory system, particularly the award component, has hitherto worked in practice. Although the numerous awards have been complex, they were often not enforced: Justice Giudice once even raised the question of what purpose the Commission was serving in setting standards. In practice, unions (the primary enforcers) tended to use any award breach they found more as a bargaining weapon in negotiating workplace agreements and to focus more

on increasing membership and incomes. This limited application of awards was particularly important for service industries, such as hospitality, restaurants, security, cleaning and tourism, which operated more in a de facto deregulated labour market. Now, however, the Coalition has established well-funded bodies to *ensure* regulations are enforced.

In these circumstances it is surprising that Labor not only says the authorities established by the Coalition do not provide a 'genuine independent umpire' but proposes a one stop-shop FWA replacement, albeit including an 'independent' judicial division and seemingly consisting of other divisions too. In reality, Labor would inherit an already well-established enforcer and unions would continue to have little to do to earn their butter. Moreover, although Labor boasts that it offers the advantage of a nationally uniform set of laws, it has indicated that it would negotiate with the states on the possible exclusion of the public sector, that is, not a national system and a possible state run public sector system that could 'lead' in setting standards. And where is the advantage in having an authoritarian set of laws, covering a much wider and more restrictive range of employment standards than the already dirigiste Coalition, and applied by an authority likely to be run by interventionists?

I have written elsewhere that the historical record of courts, tribunals, commissions and authorities in administering workplace relations laws is a poor one, even in achieving its supposed principal objective (the prevention and settlement of industrial disputes).[18] Decisions by such bodies have not only generally started with acceptance of a basic dominant employer position and interpretation of legislation accordingly. They have frequently also reflected the arbiter's view of 'sound' social policy. Yet the latter should be a matter for political not judicial decision-making.

Whichever party is in office, those appointees with interpretative-making powers in these new authorities are unlikely to allow employers and employees greater freedom to determine their own workplace agreements. This gives rise to an additional major concern if Labor is elected. The new FWA institution would completely replace existing institutions and, notwithstanding assurances about bipartisan processes and appointments on merit, appointees to it may well exclude those with a more moderate approach made by the Coalition and substitute instead those with approaches similar to members of the industrial relations club.[19]

The minimum wage

The Coalition's policy of continuing to set, and to prevent any reduction in, minimum wages is among the worst features of the *WorkChoices* legislation. Moreover, the 'guidelines' given to the Fair Pay Commission, including that it 'have regard to' providing a safety net for the low paid, virtually ensure Australia's minimum will continue close to the highest amongst OECD countries relative to the average wage.[20]

This not only misuses the wage system as a vehicle of social welfare policy but applies it unfairly. Thus many of those receiving the minimum wage are women or young workers living in households that have high incomes with no need for an income supplement.[21] The determination of minimum rates for those with wages both on the minimum *and* well above it, totalling in all about 1.2 million employees, also involves setting wages for many in high income households as well as raising the question of why anyone already earning *above* the minimum needs wage level protection.[22] The whole minimum wage 'system' is little short of farcical.

The minimum's relatively high level also limits the scope for increasing the employment of those looking for work. ABS surveys show that around 1.7 million Australians want work or more of it.[23] But as many are relatively unskilled, their capacity to obtain jobs is importantly dependent on employers being able to offer a wage commensurate with their lower productivity. A minimum over $27,000 a year (not including on-costs), or close to 60% of the median wage, necessarily prevents a significant proportion of lesser skilled being offered employment and condemns them to social welfare.

Without such a minimum would the supply of labour be reduced and a higher proportion on welfare benefits? Perhaps. But any unjustified resort to welfare is surely better handled by tightening the eligibility for benefits. Indeed, the Government has already started on such a program. In any event, if employers could offer a wage between the minimum of $27,000 pa and the unemployment benefit of more than $12,000 pa that would surely attract some employees.

Labor's policy of having its FWA appointees determine an annual minimum wage is cause for

similar if not greater concern. The adverse reaction of Opposition Shadow Minister to the 5 July increase by the FPC confirmed that concern and implied Labor has even less regard for lesser skilled job seekers.[24] Under Labor FWA would apparently have wider minimum wage responsibilities, including an annual updating of minimum wage rates for all awards under an award system that would be more extensive than at present. Given that FWA would have a well-funded enforcement arm, the problems for outsiders would likely increase.

Unfair dismissals and AWAs

WorkChoices introduced reforms involving the exemption from unfair dismissal claims of businesses with up to 100 employees and making it easier to enter into less-regulated individual and collective agreements. Even with the fair compensation test applying to agreements, these are worthwhile reforms that Labor would reverse or change substantially.

The provision in *WorkChoices* legislation allowing both individual and collective agreements by *direct* negotiations between employers and employees is an important in-principle recognition of the right of employers and employees to negotiate the terms of employment. However, that principle has been heavily qualified by the introduction of the fair compensation test, which effectively returns to the so-called 'no-disadvantage' test under the *1996 Workplace Relations Act*'s requirement that agreements contain no overall reduction in award conditions. As noted, this is in part a response to reports that the trading away of clauses in awards in exchange for a higher wage may have resulted in net reductions in overall compensation levels paid to some individuals, particularly in service industries. However, no evidence has been adduced as to whether either the previous award conditions were appropriate and needed to be upheld or whether any of the new (lower) levels of overall compensation were unjustified either by market conditions or the employer's assessment of the capacities of the individuals affected.

'Fair compensation' for 'protected award conditions' apart, under *WorkChoices* all agreements must also comply with mandatory legislated minimum standards. Those standards are included by force of law in all agreements. In fact, they apply universally to all employment contracts in Australia, and are unable to be varied or altered even by agreement. There is potential for penalties and even 'variation' of the agreements if the legislated standards are not observed to the letter. These cover 'at least four weeks paid annual leave per year, at least ten days personal/carers leave (including sick leave) after 12 months of service, at least 52 weeks of unpaid parental leave (including maternity leave) at the time of the birth or adoption of a child, and a maximum number of 38 ordinary working hours per week'. It is stated that 'no employee can receive less' than these conditions.

The inclusion of these conditions represents a major change compared with the situation already existing in practice in the labour market. Although the leave regulation does not apply to casuals, it is relevant that at the time over 20% of employees were working for no paid leave and 4.5 million were working over 38 hours. As the leave entitlements are now mandatory the only cashing out allowed is up to two weeks at the express request of the employee and then on a year to year basis, not a once off when the employment contract is made. As to those currently working more than 38 hours, they may—or may not—be allowed, depending on whether it can be shown 'reasonable additional hours' (above 38) are required.

As noted, Labor's plan would go much further, with 'guaranteed' minimum conditions extended to ten covering, among others, no 'unreasonable' work hours beyond 38 hours, 'flexible' work arrangements for parents with pre-school age children, penalty rates on evenings, week-ends or public holidays, redundancy pay, and long service leave. In addition, Labor's 'modern, simple industry awards' would allow up to a further ten minimum employment standards to be compulsorily arbitrated, depending on industry conditions. Moreover, such conditions/standards would apply to all *individual* employment contracts under common law (except for employees 'historically award free, such as managerial employees'). With minor exceptions, Labor would also remove the exemption of small businesses from unfair dismissal claims and, while extending qualifying periods for claims and asserting the FWA would ensure such claims receive a 'fair go all around' treatment, it is not difficult to envisage an expansion in 'judicial' interventionism under Labor—particularly as the enforcement arm of FWA would serve up many cases for their judicial brethren to consider.[25]

The Coalition's acceptance of extensive regulation of individual agreements and its continued application of unfair dismissals to larger businesses has lessened the difference between its policies and those advocated by Labor. Nonetheless, Labor's policies of abolishing AWAs and of effectively removing exemptions from unfair dismissals do represent major differences, particularly when account is taken of its much more extensive regulatory proposals and close association with a trade union movement prepared to use every niche to advance its cause.

Industrial disputes

Under the *Workplace Relations Act* industrial action may be taken during the *negotiation* of a collective agreement but not during the *operation* of that agreement. Moreover, unions are not able to take industrial action in respect of employees on AWAs. However, the application of the *Workplace Relations Act* provisions by the AIRC, which remains the body primarily responsible for handling industrial disputes, left a good deal to be desired. Following earlier failed amendment attempts, in 2006 the Coalition succeeded in effecting amendments designed to remove the discretion previously available to the Commission in processing industrial dispute cases, which had frequently caused costly settlement delays to employers.

Labor's plan indicates that, like the Coalition, it would legislate to forbid industrial action during the life of an agreement and action in support of an industry wide agreement (the so-called pattern bargaining), as well as requiring a secret ballot to initiate allowable industrial action. How this would work out in practice would depend importantly on the detail of the legislation and the discretion given to FWA, which 'will have the power to end industrial action and determine a settlement'. As with some other elements in Labor's plan, this seems to establish a de facto form of compulsory arbitration.

Even more concerning though is Labor's plan to allow union bargaining demands over 'any matter', paving the way for strikes over any subject matter contemplated by union officials without even a connection being required to wages and conditions of employment.

Labor has accepted that the outlawing of secondary boycotts should remain under the recently strengthened provisions in the *Trade Practices Act*. The switch of these provisions in 1993 to the then industrial relations act by the previous Labor Government effectively removed the ban on such boycotts and led to considerable exploitation of employers by unions. The return of the provisions to the *Trade Practices Act* by the Coalition Government in 1997 has stopped such exploitation by allowing proceedings to occur in a court instead of undergoing a slow arbitration process in the AIRC.

Conclusion

The foregoing analysis covers what seem to be the most important aspects of the workplace relations policies of the two major parties. Whichever party is elected the outcome will be retrograde because it will either maintain unwarranted restrictions or further reduce the capacity of employees and employers to determine the major components of employment agreements. However, from the information available, Labor's policies are truly frightening. The return of the AIRC, albeit temporarily, and its successor the FWA would create an environment more conducive to inflationary wage increases and what are likely to be the most extensive set of regulations ever stipulated in legislation while, at the same time, handing over to an outside body by far the most extensive interpretive and decision-making role. Moreover, with the backing of many millions of budgetary dollars, these regulations would be well and truly enforced by an FWA that would effectively administer a new compulsory arbitration system armed with an industrial police force. It is difficult to see how Labor's policy could produce anything other than an extremely complicated and inflexible system that would not be conducive to increasing either productivity or employment. That such a policy could be proposed at a time when individuals have considerably increased their capacity to reach decisions on such matters, and when the notion of an imbalance of bargaining power in favour of employers is outdated, is highly regrettable.