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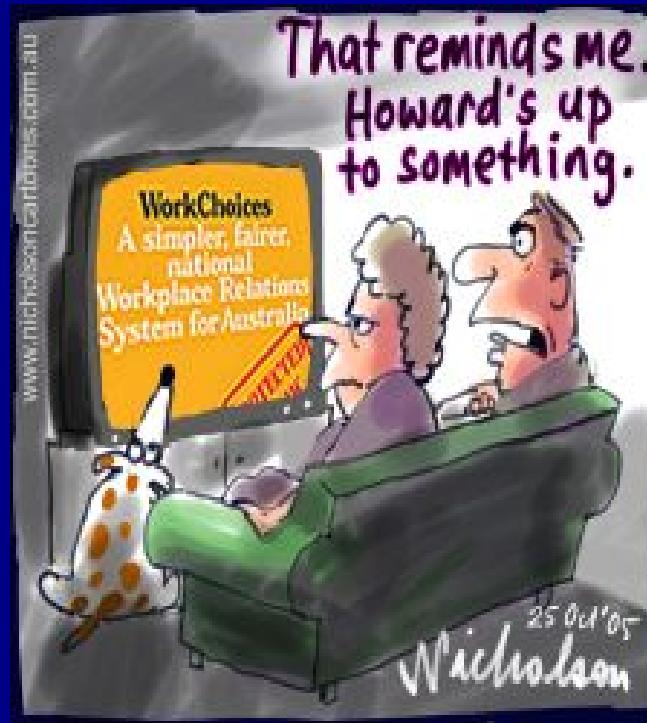
Work Choices: Deregulation or
'Ultra-Regulation' of Labour
Relations?

1. Background:

Workplace Relations Act 1996

- key features:
 - overall: promotion of flexibility in IR
 - minimise influence of AIRC & unions
 - reduced role for awards
 - further encourage workplace bargaining
 - especially individual bargaining, ie 'AWAs'
- 1980s IR reform agenda realised, but with limits
- further reform proposals 1996-2004 defeated
- Govt re-elected Oct 2004 – Senate majority

2. *Work Choices Act 2005*



3. Key features of the national IR system

■ Constitutional Basis of System

- shift from labour power: s 51(xxxv)
- to corporations power: s 51(xx)
- therefore, Work Choices is not a completely national system

3. Key features of the national IR system

- Employers & employees covered
 - 'constitutional corporations' & their employees
 - Federal public service
 - all employers & employees in Victoria & Territories
 - left out of national system are:
 - unincorporated businesses (eg sole traders, partnerships)
 - State Govt departments & agencies
- Federal 'takeover' of State IR systems
 - High Court challenge by State Govts

4. Key features of the national IR system

- Australian Fair Pay & Conditions Standard (AFPCS)
- Australian Fair Pay Commission (AFPC)
- AIRC & dispute resolution
- Awards
- Bargaining & workplace agreements
- Unfair/unlawful dismissal
- Trade unions
- Industrial action

4. Australian Fair Pay & Conditions Standard (AFPCS)

- 5 minimum employment conditions, ie:
 - hourly rates of pay – Federal Minimum Wage (\$12.75) or APCS
 - maximum 38 hour week, but note provision for 'reasonable additional hours'
 - 4 weeks annual leave
 - 10 days paid personal leave per year (ie sick/carer's leave)
 - 52 weeks unpaid parental leave
- all awards, agreements and employment contracts must meet AFPCS.

5. Australian Fair Pay Commission (AFPC)

- takes over AIRC's wage-fixing role
- AFPC to set & adjust minimum wages under AFPCS, giving priority to:
 - effects on employment & ensuring low-paid & unemployed can get/keep jobs
- modelled on UK Low Pay Commission (debatable)
- 1st minimum wage decision due Spring 2006

6. AIRC & dispute resolution

- AIRC loses wage-fixing & agreement approval functions
- no longer has powers to settle industrial disputes by conciliation & arbitration
- main functions:
 - unfair dismissal;
 - orders to stop industrial action;
 - regulating unions;
 - voluntary dispute resolution (in competition with private 'ADR' providers)

7. Awards

- once dominant, covering 80+% of workforce
- now approx 20%, and potentially irrelevant
 - no longer the benchmark for agreements;
 - overridden by agreements (forever);
- new limits on content
 - only 13 'allowable matters'
 - many more 'non-allowable'
- number of awards will be reduced by Award Rationalisation Taskforce (ART)

8. Bargaining & workplace agreements

- despite 1996 Act, coverage of collectively determined wages etc still high
 - 20% awards + 38% collective agmts, mostly with unions
 - AWAs = only 2.4%
- 2005 Act objective: to simplify & 'free up' agreement-making
- 6 types of workplace agreements
 - AWAs
 - union & non-union collective agreements
 - union & employer 'greenfields' agreements
 - multiple-business agreements

8. Bargaining & workplace agreements

- Some procedural safeguards, but agreements take effect on lodgement
- 'No disadvantage' test abolished
 - agreements are subject to AFPCS;
 - 'protected award conditions', eg penalty rates, overtime/shift loadings, continue to apply unless expressly excluded by the agreement
- 'Prohibited content' in agreements
- Unilateral termination on 90 days' notice

9. Dismissal

- Unfair dismissal in AIRC (requires valid reason + fair process) – new exemptions:
 - businesses with < 100 employees
 - termination in first 6 months of employment
 - “operational requirements” or redundancy
- Unlawful termination in Fed/Fed Mag Crt (termination for a proscribed reason)
 - Exemptions don't apply
 - Narrow grounds, but reverse onus

9. Dismissal

- Common law:
 - Employer can terminate for any reason and without following a fair process, provided notice is given;
 - Reluctance to extend implied duty of 'trust and confidence' to dismissals because of overlap with statutory rights:
 - 'carefully calibrated balancing of conflicting interests by Parliament should be respected': *NSW v Paige*
 - Contraction of statutory rights may lead to expansion of the duty.

10. Trade unions

- Union decline since 1980s ...
 - union density = 49.5% in 1982
 - 22.4% in 2005 (16.7% in private sector)
- 1996 measures taken further in 2005 Act
 - restrictions on union 'right of entry'
 - 'freedom of association'
 - impact on unions?

11. Industrial action

- limited 'right to strike' since 1993
 - 'protected' industrial action in bargaining period for negotiation of new collective agreement
- now even more limited
 - eg 'secret ballots', prohibitions on 'pattern bargaining' & seeking 'prohibited content'
 - new powers for Minister to end strikes in "essential services"
 - easier access for employers to court remedies for 'unprotected' industrial action

12. Work Choices: deregulation or 'ultra-regulation'?

- 'deregulation', 'freedom', 'choice'?
 - not when you consider eg:
 - plethora of regulatory bodies/agencies, ie AIRC, AFPC, OEA, ABCC, ART, OWS
 - detailed restrictions on bargaining content & outcomes
 - micro-regulation of specific sectors, eg construction, higher education, public sector
 - really = 'ultra-regulation'
 - & substitution of 'unacceptable' forms of regulation (eg AIRC), for others ...