

Employment Update

"CCH Industrial Law News -

Howard's Vision for Industrial Relations - Reform or Revolution?"

30 May 2005

On Thursday, 26 May 2005 the Prime Minister, John Howard, launched what will perhaps be his final attempt to achieve the most fervently held objective of his political career - fundamental change in Australia's system of employment and industrial relations.

The Prime Minister's statement to the House of Representatives consists of a mere 12 pages, but the shortness of the statement belies the huge changes it heralds. Those changes, can be summarised as follows:

1. Massive emasculation of the Australian Industrial Relations Commission (AIRC), removing its National Wage Case functions and its supervision of the collective enterprise bargaining system.
2. Establishment of a National Industrial Relations system, based on the corporations power in the Constitution (section 51(xx)) eradicating the state industrial systems, or at least removing them to the outer most margins of industrial relations.
3. Reducing the AIRC's role to making "safety net" awards on 16 "allowable matters" and settling industrial disputes within that framework.
4. Establishing a new "Fair Pay Commission" (membership as yet undetermined, but certainly different from the composition of the Bench that currently determines the National Wage Case), which will set minimum wage levels for all employees on a common rule basis - but by reference to factors dictated by the government. This will have the result that after the current National Wage Case increase is handed down by the AIRC, adjustments upwards in minimum wages will be "periodic" rather than annual.
5. Enormously simplifying the system for making binding agreements, both individual and collective, by removing the current "no-disadvantage test" for approval of such agreements and replacing it with an approval test based on the Fair Pay Commission's minimum wages and certain legislated minimum conditions (essentially hours and leave). Further, the approval process for all such agreements will be assigned to the Office of Employment Advocate (which has previously demonstrated a readiness to approve agreements submitted to it if possible).
6. The removal of unfair dismissal rights for the vast majority of the workforce in Australia (those employed by employers with more than 100 employees).

While, no doubt, a tidal wave of praise, criticism, comment and prognostications will crash down (or already has) on everyone with a passing interest in this subject, I will nevertheless add my observations to the deluge.

(i) Whether the changes to industrial relations system in Australia that the Prime Minister's statement proposes are categorised as either reforms or revolution, they are no doubt the most fundamental changes to the system in this country since the establishment of the federal conciliation and arbitration system in 1904.

(ii) The Prime Minister's statement recognises the existence of trade unions and does not incorporate any particular measures to limit the rights of trade unions or their members. But there can be no doubt that the dismantling of the central role of industrial tribunals in wage fixing and approving collective agreements will impact significantly on the structural advantages that have underpinned trade union power in this country since 1904.

(iii) The Prime Minister relied on the "chicken little" parable to contend that his proposed changes will, like the changes introduced by his Government in January 1997, not have prejudicial effects on the Australian workplace, even though that will be firmly predicted by his opponents. But it is simply not possible to rationally equate the 1997 changes with what is now proposed.

Two examples should suffice to demonstrate this difference. The 1997 changes introduced "Australian Workplace Agreements" (AWAs) - but no AWA could be approved unless it satisfied the "no-disadvantage test", which benchmarked AWAs against the provisions of relevant awards (federal and/or state). By contrast, agreements under the new system will only need to meet the minimum wage standards set for the work in question by the Fair Pay Commission, together with the limited number of legislated conditions of employment.

Secondly, in the case of unfair dismissal, the 1997 changes introduced various procedural hurdles and limitations (perhaps to discourage claims to some extent), together with the "fair go all round" test (replacing an approach to these matters which was said to be biased towards questions of procedure rather than substance). But the current proposal is to remove the right to make an unfair dismissal claim for most of the workforce. The difference between the two measures is, of course, quite profound.

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