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"Industrial Relations After the Thirty Years War"
Address to the Sydney Institute, Sydney

Check against delivery.

Introduction

When Martin Luther initiated the Reformation and posted his Ninety-Five Theses to the door of the church in Wittenburg, the reverberations ultimately led to a major war between Protestants and Catholics - the Thirty Years War - which wracked Europe in the first half of the seventeenth century. As a Protestant, I won't blame Luther for starting the war.

Workplace relations devotees might say that when Gerard Henderson posted his nine page "Industrial Relations Club" Thesis in the pages of Quadrant in 1983, it had similar but more immediate consequences.

Supposedly the devastating length of the Thirty Years War convinced many people that neither side could be absolute victor, and consequently the two sides ultimately learned to live together, albeit on rather strained terms.

In the case of Australia's Thirty Years War in Industrial Relations - I lay the blame squarely at the feet of our host, Gerard Henderson, who thirty years ago, on a late August afternoon in 1983, as he tells it, 'decided to drop a bucket on the system'.

His essay in *Quadrant* in September 1983 coined the now-famous phrase "The Industrial Relations Club" and started a debate of unprecedented vigour and duration in this area. Ever since then, our host has been at the forefront of public policy thinking. His writings are always worth a read and his appearances on the ABC are always worth a listen, but are regrettably far too rare, which in itself is a topic but for another day.

Having triggered a major conflagration thirty years ago, there is still no Australian workplace relations equivalent of the Peace of Westphalia, albeit we did have the ceasefire of 2010 when neither side of politics released a workplace relations policy – it seemed everyone was battle weary.

Prior to the Henderson Thesis, the Industrial Relations Club in Australia was exceptionally comfortable – too comfortable, to the detriment of workers, business viability and the economic wellbeing of our nation.

The thought process of the Club, as described by Henderson, discounted the importance of the individual, the enterprise, society and the economy. Can I ask rhetorically, in the Industrial Relations Club view of the world, who stands up for the individual? Who stands up for the individual enterprise? Who stands up for society's needs? Who stands up for the unemployed? Who stands up for the economy's needs? It was in recognition of this concern that the Prime Minister shrank my title to simply that of Minister for Employment. In the past too great an effort has been placed on massaging two sectional interests whilst overlooking both the individual and the common good.

Those who were spurred on to argue for reform – emboldened by the Henderson Thesis – spoke of the need to consider the needs of individual enterprises, on the basis that one size did not always fit all. It was not long before it appeared that every parrot in every pet shop (with apologies to Paul Keating) was squawking "enterprise bargaining" and so some vital reform was commenced under the aforementioned Labor Prime Minister in 1993. This transformation within Labor was significant, given Keating's predecessor labelled such thinking as that of "economic troglodytes".

Peter Reith built on those modest Keating reforms from 1996 onwards.

We then witnessed the Howard Government's reforms in its final term of office, which assisted in its defeat. The Coalition's misadventures in relation to workplace relations reform following the 2004 election are well-known. The key lesson learned from this experience is that the path to substantial and lasting reform does not lie in one side of politics exceeding its electoral mandate and implementing change for which the community is not prepared. I emphasise that this lesson applies equally to the Coalition and Labor.

From 2007 the Rudd-Gillard-Rudd Governments, having promised to wind back the excesses whilst retaining a modern system, could not resist the urge to re-institute the Industrial Relations Club and ultimately wound back the system to its pre-Keating status.

Labor's Legacy

It is interesting to put the recent actions of Bill Shorten and the Rudd-Gillard-Rudd Governments into some historical perspective. In the 1980s, early on in the Thirty Years War, the Hawke Government implemented the Accord, which sought to use the machinery of the existing centralised wage fixing system to achieve wage restraint and prevent reckless union claims from ruining a fragile economy. It involved a comparatively economically literate Labor Government and an accommodating ACTU leadership looking beyond the interests of the IR Club and belatedly accepting responsibility for ensuring that their actions did not jeopardise the jobs of the millions of workers they sought to represent.

It was an environment in which Bob Hawke had learned the error of his ways in pursuing damaging wage claims at the ACTU in the 1970s. The ACTU's leaders like Bill Kelty and Martin Ferguson, for their part, accepted wage restraint for the greater good in return for other commitments. There was always a sense of quid-pro-quo. They never expected the Labor Government to unilaterally dispense largesse to them, and nor did they demand it. They were not so reckless as to think their role was simply to squeeze a Labor Government to provide every item on their wish list. And Bob Hawke and Paul Keating would not have acquiesced.

Martin Ferguson articulated that position well when he wrote last year that:

> *"In my 20 years as a union official, I was always mindful of the economic conditions facing employers.... Wage claims that do not consider market conditions, with no productivity improvements, do not serve anyone well over the longer term. All they ultimately do is price the sons and daughters of current workers out of a job."*

Despite the flaws of the Accord approach, we should acknowledge that there were grown-ups in charge of both the Labor Party and the union movement who were not oblivious to the broader national interest.

In contrast, the record of the most recent Labor Government demonstrates that, during its period in office, we were not so fortunate.

During the last term of Parliament, the Labor Government, particularly with Bill Shorten as Minister, was characterised by its granting of an unseemly range of union wish list claims. Some of the reasons for this have recently come to light. One of the most notable revelations of the Rudd-Gillard-Rudd years has not received the attention it should have.

On 18 November 2013, Peter Hartcher of the Sydney Morning Herald wrote of a secret "Kirribilli Agreement" between Julia Gillard and a number of union leaders, which effectively out-sourced workplace relations policy to the union bosses in return for their internal political support. Hartcher's account of this deal is highly illuminating :

> *"Much as Gillard forged alliances to support her government against Abbott, she forged an alliance with the trade union movement to support her government against Abbott and defend herself against Rudd.*
>
> *"In November 2011, Gillard hosted a meeting with the secretary of the ACTU, Dave Oliver, and the heads of the major unions. It was held over lunch at Kirribilli House. Its purpose was to forge a strategic alliance between Gillard and the union movement.*
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> *"It was another Kirribilli agreement," says Martin Ferguson, referring to the notorious secret deal where Bob Hawke promised to hand over the Labor leadership to Paul Keating. "It was the deathknell for her government. She gave the unions everything they wanted."*
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> *"...Dave Oliver began the meeting with a log of demands. A discussion followed. Gillard responded by setting up a machinery for working on key items, according to participants...."*

The results following this meeting are now well-known. Far from running a Labor Government that engaged in grown-up negotiations with the union leadership, Ms Gillard took on the role of Santa Claus. Every union boss, like a child writing to Father Christmas, presented their wish list to the Government, which was duly granted. Unlike Martin Ferguson, the union leaders in question weren't inclined to show restraint in their wishes.

If Julia Gillard played the role of Santa Claus, then Bill Shorten as Minister was, for his part, Santa's most obedient Little Helper. In this context, Julia Gillard will go down as one of the

most economically reckless Prime Ministers of all time, just as Bill Shorten must surely go down in history as the worst and most partisan Workplace Relations Minister since Eddie Ward. In the period that he was the Minister, Labor delivered countless favours for the union bosses, the most high profile being:

- An address from Mr Shorten to the Maritime Union of Australia's self-styled 'militancy conference' celebrating 140 years of law breaking and thuggery where he gave emphatic support for their cause. Just last week Martin Ferguson expressed a very different view, stating that *"There are some sections of the community who have no appreciation of the changing circumstances such as the Maritime Union in the offshore industry"*[1];

- The stacking of the Fair Work Commission with a veritable endless tribe of union bosses and the creation of two new Vice-Presidents at the Fair Work Commission, at the expense of the two existing Vice-Presidents;

- The abolition of the Australian Building and Construction Commission and its replacement with a toothless mouse, at the insistence of building unions – we now know why;

- Legislation to reclassify outworkers in the textile, clothing and footwear sector as employees, at the insistence of the Textile Clothing and Footwear Union;

- Tying the majority of a $1.2 billion package in aged care funding to union Enterprise Agreements which favour the Health Services Union;

- Tying $300 million for childcare pay subsidies to union Enterprise Agreements in favour of the United Voice union;

- Pursuing the ratification of a range of ILO conventions that had not been deemed worthy of ratification by every federal Government from Whitlam onwards;

- In breach of a specific election promise by Julia Gillard, dramatically softening rules governing union access to workplaces, including even requiring employers to fly union representatives to remote work sites;

- Silence when the CFMEU was found guilty of 30 counts of contempt of court by the Victorian Supreme Court in relation to the Grocon dispute, after receiving more than $6 million in funding from the CFMEU over the last decade.

Justice Heydon of the High Court stated that Minister Shorten was acting "as a partisan" and not as an intervener in his intervention in the *Barclay v. Bendigo* TAFE case.[2] This unsuccessful intervention in support of the union position cost taxpayers almost $200,000.

And the list goes on.

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[1] "Labour heads warn on fall in wages growth", Australian Financial Review, 24 January 2014
[2] *Board of Bendigo Regional Institute of Technical and Further Education v Barclay* [2012] HCA 32

I should add that of the legislative and policy changes listed above, only one of them was taken to an election by the Labor Party. Some of them were directly contrary to election commitments. When I referred previously to the unwise practice of exceeding electoral mandates and imposing radical reforms by surprise, Labor's highlights reel under Minister Bill Shorten probably exceeds any previous follies in this regard.

Far from re-embracing the spirit of the Hawke-Keating reform legacy, the current ALP under its most recent leaders has more in common with the Calwell-Whitlam legacy in terms of its economic ineptitude and subservience to union bosses.

As one final example, I cite the sad tale of Individual Flexibility Arrangements. This idea of the individual having distinctive rights has been one of the most fought-over during the Thirty Years War. As long ago as 1996, Bob Hawke commented that:

> *"For its part, the trade union movement must recognise ... the right of an employer and an employee, freely, to enter into individual contracts underpinned by an independently determined safety net."*[3]

Prior to the 2007 election, Julia Gillard had initially promised to sweep away all individual agreements, but ultimately took the more pragmatic path of promising that:

> *"Under Labor's new collective enterprise bargaining system all collective agreements will be required to contain a flexibility clause which provides that an employer and an individual employee can make a flexibility arrangement."*[4]

However, the reality fell well short of the promise. The legislation as ultimately introduced made Individual Flexibility Clauses effectively worthless. These clauses in union agreements typically allowed for the variation of only one or two minor terms and could be unilaterally terminated on only one month's notice. The overwhelming majority of employers and their employees simply ignored them as offering no practical benefit to either party.

Unfortunately, the very concept of individual flexibility, even in a collective framework, and even if the employee is better off, is still vigorously opposed by unions.

The Coalition's Approach

Which brings us to the present day and what the future holds under the Coalition.

To me, workplace relations is one of the most stimulating and dynamic areas of public policy as it intersects the major macro-economic levers right through to the micro and the minutiae of individual lives.

Getting workplace relations policy wrong can destroy a nation's economy. Conversely, getting it right can help to build a nation's economy.

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[3] Hawke, R. L. J., "Contracts and contemporary industrial relations" in McCallum, R. C. (Ronald Clive)(ed), Individual contracts and workplace relation, ACIRRT Working paper No. 50, Sydney, Australian Centre for Industrial Relations Research and Training, University of Sydney, 1997 pp.69-75

[4] ALP policy "Forward with Fairness Policy Implementation Plan", August 2007, page 14

Getting workplace relations policy wrong can destroy a household budget. Conversely, getting it right can help to build a household budget.

In short, balance, guided by the wider social interest which includes the individual, is the key. In approaching the subject of future reform, I am conscious of the lessons of history that the last thirty years has to teach us.

History has shown us that in workplace relations the most effective and most lasting reforms are those that are undertaken carefully and cautiously, where the case for change is made out in advance, and where there is the opportunity for genuine consultation with all of the interested parties.

The Coalition released its election policy in May of last year, well in advance of the election. It sought to address a number of key problems with the Fair Work Act and to return the pendulum to the sensible centre. For the purposes of tonight, I don't intend to take you through our 38 page policy document, suffice to say we are committed to the implementation of our policy.

Sensible and measured reform allows for the economy, employers and employees alike to adapt and find comfort in the system – comfort and understanding, which leads to more confidence to employ and greater trust between workers and their employers.

The last thirty years has also shown that, in this portfolio more than any other, lasting reform only truly takes hold where a process of rigorous debate takes place and the change is not unexpected. Only then, when the case for change is properly made out, will one side of the partisan divide accept the legitimacy of the other side's reforms, rather than simply seek to undo them as soon as the opportunity presents itself

A further lesson of history is that too much emphasis has been placed since 1901 on the IR Club – of satisfying the so-called members and participants. If the employer and the employee representatives were agreed, there was practically nothing for the Commission to consider.

This was painfully obvious with the approach taken by the Commission and the former government to the issue of 'default superannuation funds' named in the so-called modern awards. They were included, I was told, by consent of the parties – even a particular super fund which was the underperformer of them all. It won't surprise to learn that the parties consented to the naming of, in particular, various industry funds as the default funds from which employer and employee organisations, or their representatives, obtained handsome board fees.

Sweetheart Deals - Unions and Employers

In 1983, Gerard Henderson wrote that:

> *"No effective attempt can be made to achieve long-term reforms in industrial relations unless due consideration is given to the role and attitudes of the IR Club.... Club members should be made responsible for the consequences of their actions."*[5]

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[5] Henderson, G "The Industrial Relations Club", Quadrant, Volume XXVII, No 9, September 1983, page 28

One of the first things I learned in relation to this portfolio is that debate around the workplace relations system often overlooks the reality that regardless of what policy settings are put in place, the most important driver of outcomes is the actions of the participants themselves.

As Shadow Minister it was always disappointing to see weak-kneed employers caving into unreasonable union demands then coming to me advocating for workplace relations reform, effectively blaming the system for their own shortcomings. In some cases, their history of cave-ins was longstanding, even during times when the system was arguably more in their favour. As Minister, this phenomenon is now even more frustrating.

I have often wondered why they couldn't just say 'no' from the outset?

But I have also wondered why the union bosses continue to push the envelope in making unsustainable demands, even when they know that it will ultimately end in their own members losing their jobs. The thing is that the union bosses who push the envelope too far don't actually have anything on the line personally and will have job security regardless of what happens, like at the Burnie paper mill in Tasmania in the 1990s, where ultimately all the workers lost their jobs with the mill closing, and all the union officials found their way into Parliament.

On the other hand, with most large employers it is actually employees conducting the bargaining on behalf of the employer – it's not their own money and again they don't have anything directly at stake.

It is of great concern to the Coalition that unions and employers have inserted unproductive and expensive clauses into enterprise agreements, particularly where the taxpayer is subsidising the sector.

Almost two years ago in February 2012 *The Australian* reported under the bold headline *"Holden signs record pay deal; unions win 22% wage hike as car maker seeks taxpayer handouts"*.[6] The report contained extracts of a circular sent by the Federation of Vehicle Industry Unions to Holden members that:

> *"Negotiations for a replacement EBA are now finalised with the wages component wrapped up late last week. The outcome sees a spectacular minimum 18.3% leap in members income over a three year period with a potential for that to rise to 22.3% by the end of the agreement.*
>
> ...
>
> *In the automotive sector, it represents the best deal yet to be negotiated and is highly recommended to members."*

For what it's worth, the day after the Holden wage deal was announced, I said that:

> *"When the trade union bosses boast that they've got huge wage rises without a productivity trade-off and they are well above CPI, taxpayers are entitled to ask*

[6] Ewin Hannan, *'Holden signs record pay deal; unions win 22% wage hike as car maker seeks taxpayer handouts',* The Australian, 14 February 2012, page 1

whether they are getting value for money and whether the company is genuinely engaged in transforming itself to stand alone."

"Given the huge job losses the car industry is facing, one is perplexed to understand how this wage increase could have been sought and justified, let alone granted. I would counsel the workforce to moderate the wage increases they are seeking to be more in line with community expectations and the capacity of the employer to pay."

This is a view that I still hold.

Shortly after I received an "educative" letter from Holden which told me that "*claims (that) have been made... (are) simply not true*". I was told that it was a *"groundbreaking agreement in Australian automotive manufacturing"* that would *"significantly improve our productivity"*.

This "landmark" agreement was so good and so productive that it included:

- More than double the award rate for apprentices;
- A so-called "hardship payment" of $3750 in lump sum hand-outs to employees and up to 2 per cent of base salary "gain share" payment for each year of the agreement on top of the other wage increases;
- Handing over human resource management to the union, with a requirement that unions must be consulted prior to hiring casuals, contractors, or other supplementary labour and union officials having the right to participate in committees such as the Dispute Resolution Panel for performance-assessment disputes; and
- The spreading of hours of work and methods of working shifts may be altered only by mutual agreement between Holden and the relevant union representatives.

Barely one month later, the then-Prime Minister Julia Gillard announced an additional $275 million in Government subsidies for Holden, which she claimed would "guarantee" its manufacturing operations in Australia until 2022.

A rough back-of-the-envelope calculation suggested that much of Ms Gillard's new funding would simply go towards paying for the excessive wage increases that her union friends had just convinced Holden to agree to. Some of us may well ask whether the two events were related, or simply one great big enormous coincidence.

It is a matter of record that shortly after this agreement took effect, Holden realised that it had made a terrible mistake and was seeking to vary the agreement to reduce the size of the wage increases.

Since 1994 Holden has provided 11 wage increases above the equivalent quarter Average Annualised Wage Increase for both the 'Manufacturing' industry and 'All Industries'. Over

the last 12 years alone Holden has received more than $2 billion in taxpayer funding from the Commonwealth and States.[7]

And now that Holden has announced its departure from manufacturing in Australia, the union movement has been desperate to rationalise its role in putting Holden in an untenable position.

The ACTU Secretary, Dave Oliver's, last role was as Secretary of the Australian Manufacturing Workers Union, the union covering car industry workers. Paul Keating once said of one of Mr Oliver's AMWU predecessors, George Campbell, that he carried the scalps of 100,000 unemployed metal workers around his neck[8], in reference to the early 1980s wages explosion that he and his union had initiated. Mr Oliver and the union leadership owe it to their constituency to seriously consider whether they wish to be similarly responsible for the scalps of thousands of unemployed former auto worker members.

While a range of factors would have contributed to Holden's decision, it's very clear that the workplace relations arrangements created huge cost pressures on their operation. To be frank – this is a prime example of what happens in IR Club-style deals when unions make inappropriate claims and employers don't say no. Both parties are responsible. And the taxpayer is called in to subsidise.

More recently, Toyota has sought to vary its enterprise agreement to remove a number of restrictive clauses. But even before the workers could have their say, the Federal Court frustrated this exercise, upon an application from the AMWU.

Becoming more productive and thereby providing job security is clearly beneficial for employees, not only of Toyota but of the many companies that supply Toyota. The Government supports these efforts.

It is worth noting that, unlike Holden, Toyota is not seeking to claw back planned wage increases but is seeking only to remove various costly and unproductive clauses in its agreement. Some of the changes it seeks are:

- Reducing the 'Christmas shutdown' period from 21 days to 10 days;
- Reducing the number of paid days leave to attend union delegate training from 10 days per year to 5 days in the first year and 2 days in subsequent years;
- Requiring that a doctor's certificate be provided for sick leave taken beyond the first 2 days per year;
- Removal of paid 'wash up time';
- Removal of a half day's leave on the last day before shut down (despite being paid for a full day); and

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[7] *"Holden receiving twice as much government funding as Toyota and Ford to build cars",* News.com.au, 2 April 2013 accessed 8 January 2014

[8] cited by John Howard , House of Representatives Hansard, 3 September 1991

- Removal of payment for employees travelling to and from work.

The half day on the last day before shut down (despite being paid for a full day) means that there are 1,586 working days lost, or around $370,000 in wages being paid while no work is being performed.

Assuming all of the 69 union delegates take the full 10 days paid leave for education activity, this results in 690 working days lost, or around $150,000 in wages.

These are just two instances of how more than 2,000 working days worth of productivity could be re-injected into Toyota immediately.

These clauses shouldn't have been in the agreement. Management needs to accept responsibility. But it is deeply troubling that the employees' right to vote on proposed variations has been frustrated. Once again we have union bosses dictating the terms without hearing from the actual employees.

It is clearly in the public interest that the workers be allowed to vote on Toyota's proposed variations and determine their own destiny.

Tonight I announce that I have decided to intervene in support of Toyota's workers being allowed a say as soon as possible on the proposed variation.

Of course, these restrictive practices are not solely in the car industry. Regrettably, they appear across the economy.

We saw similar disappointing conduct in the case of the MUA's negotiation with Total Marine Services in Western Australia, which embraced a 30% wage increase with no productivity benefits. The then Government and Minister in the Senate, Mark Arbib thought this was a great thing, saying that:

> *"The government welcomes Total Marine and the MUA reaching a new enterprise agreement. We welcome that."*[9]

There was no regard for the potential impact, not just at that company but also for the flow-on effects in the industry, which we witnessed just months later when the MUA brought Australian ports to a halt in pursuit of a $46,000 wage increase for workers already earning over $100,000 for 185 days work per year.

I would simply point to the adage by former Labor Treasurer Frank Crean that *"one man's pay rise is another man's job"*.

Still in Western Australia, we had the case in 2012 where the Fair Work Ombudsman prosecuted the MUA and Offshore Marine Services over a 'no-ticket, no-start' policy in place at the company. This practice led to Offshore Marine Services telling two individuals in 2009 that in order to secure employment with the company, they would have to obtain membership with the MUA.

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[9] Question Time Hansard, the Senate, Wednesday, 3 February 2010

This cosy deal gets worse, with the MUA then rejecting these two individuals' membership applications to ensure that the jobs were given to existing MUA members. In open defiance of the law of the land, the company and the union struck this deal to *"keep industrial peace"*.[10] Winston Churchill's adage that peace without honour will not be lasting peace is apposite.

In contrast, there have been responsible employers who have said 'no', and for whom the price of doing so was significant. Most famously, Fred Stauder of Dollar Sweets fought one of the early pitched battles of the Thirty Years War and prevailed over a mindless 5 month picket at his Dollar Sweets business in 1985. My personal, albeit minor, involvement of four weeks in that case was instructive.

More recently, Daniel Grollo stood up valiantly to the violent besetting of his construction sites in Melbourne by the Victorian CFMEU. Boral, the concrete supplier to Grollo, is taking similarly strong action against the union in response to its long-running threats and boycotts against the company arising from the Grollo blockades and I salute the principled stand taken by its chief executive Mike Kane.

These are three examples of employers who had the resolve to say 'no' to clearly outrageous union conduct. But it is a matter of regret that in all three cases the price of saying 'no' was so great. Even with the vast bulk of their workforce on side, employers in such a position often find themselves becoming high-profile political figures, being subject to threats and vendettas and incurring the huge costs of protracted legal proceedings.

When employers have to face their own potential martyrdom as the cost of simply saying 'no' to even the most extreme or unlawful demands, there is clearly much that still needs to change in Australia's industrial relations culture. Too often the imperative to simply do a deal is seen as a more expedient option than putting one's faith in the hope that the system will provide some protection.

As Gerard Henderson said in 1983, the approach of Club members to unlawful strikes is invariably to *"urge moderation and further talks leading to additional concessions. They are all for the carrot but see no role for the stick."*[11]

To borrow a union slogan – there really is strength in unity. Instead of agitating for reform to outlaw certain tactics, why can't employers band together and just say 'no'? The benefits of determined action by employers was seen in the successful High Court challenge to the draconian New South Wales workplace safety laws in the *Kirk* decision in 2010.[12] However, it always puzzled me why the business community took a decade to bring such a challenge.

Modern Awards

We are still yet to complete the process identified by Gerard Henderson in 1983 of transforming the award system from a prescriptive means of regulating the workforce to that of a simple safety net above which economic reality can prevail.

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[10] *Fair Work Ombudsman v Offshore Marine Services Pty Ltd* [2012] FCA 498
[11] Henderson, G "The Industrial Relations Club", *Quadrant*, Volume XXVII, No 9, September 1983, page 22
[12] *Kirk v Industrial Relations Commission; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs)* [2010] HCA 1 (3 February 2010)

If the Shorten Opposition would like an education on how Labor can act in the national interest in this space, it would be well advised to read former Prime Minister Paul Keating's address in 1993 to the Institute of Company Directors where he said that the workplace relations framework should shift to:

> *"(a) primary emphasis on bargaining at the workplace level within a framework of minimum standards provided by arbitral tribunals. It is a model under which... awards and... (centralised) wage increases would be there only as a safety net."*[13]

He went on:

> *"Over time, the safety net would inevitably become simpler. We would have fewer awards, with fewer clauses."*

I never thought I would say this, but to this end I am on a unity ticket with Mr Keating.

Today's so-called 'modern awards' still have a stifling degree of detail and some are so confusing that even big business, big unions and government regulators have difficulty interpreting them. Good luck to the small business sector and the individual worker.

Modern awards range in size from the 31 pages for the Higher Education Industry - General Staff Award 2010 to 179 pages for the Broadcasting and Recorded Entertainment Award 2010, with the average length of an award being 62 pages. So much for Paul Keating's vision.

The Building and Construction General On-site Award 2010, at 140 pages, includes some 69 separate allowances, including;

- Where two or more forklifts or cranes are engaged on any lift the drivers thereof must be paid an additional 16.2% of the hourly standard rate for each day or part thereof so occupied.[14]

- Employees who are regularly required to compute or estimate quantities of materials in respect of the work performed by other employees must be paid an additional 23.3% of the hourly standard rate per day or part thereof.[15]

Under this award, you will be pleased to learn that *"No apprentice under the age of 18 years will be required to work overtime... unless they so desire"*[16]. If the apprentice is over 18? Then only *"to enable requirements of the training plan to be met"*[17]. This is undoubtedly designed to acclimatise them to the rigours and realities of the sector!

But to really highlight how "modern" some terms of these awards are, bricklayers working in a tuberculosis hospital are entitled to have an x-ray every 6 months during work hours at the

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[13] Keating, P Speech to the Australian Institute of Company Directors Luncheon, Melbourne, 21 April 1993
[14] Clause 22.2 (u), Building and Construction General On-site Award 2010
[15] Clause 22.3 (j), Building and Construction General On-site Award 2010
[16] Clause 15.3(b), Building and Construction General On-site Award 2010
[17] Clause 15.3(a), Building and Construction General On-site Award 2010

employer's expense. As an inconvenient aside, the last dedicated TB Ward was closed in 1981 – before the commencement of the Thirty Years War.

Can I also say, whilst a minimal number of awards is ideal, there is no magic in the 122 we currently have. The Commission shouldn't be afraid of re-aligning or dis-amalgamating some awards where it makes good sense to do so.

For example, bakers have to work out whether they are covered by the Food, Beverage and Tobacco Manufacturing Award 2010 or the General Retail Industry Award 2010, even when they are making exactly the same products. There are a number of key differences between the awards including the commencement times. A Food, Beverage and Tobacco Manufacturing Award employee can start work earlier with lesser penalty than an employee under the General Retail Industry Award 2010 – whilst doing identical work. The difference is to be found in the place where their creations are sold – either wholesale or retail.

As the Fair Work Commission undertakes its four yearly review, it should take the time to carefully and critically work through each provision of each award and ask, is this really needed? The awards should be short, concise, clear and relevant.

In the lead up to the four year review of modern awards, I would invite not just the usual participants in the process to have their voices heard but also individual small businesses and individual employees to put forward their views. It is important for the Commission to hear from not just representative parties - the IR Club - but also from those at the coalface.

Conclusion

Workplace relations should be a genuine enterprise between government, employers and employees. Whilst self-interest will always play a part can I appeal to a higher interest – the long-term sustainability of jobs, wages and our economy.

As Minister, I am committed to playing my part and working in the national interest, not in sectional interests. It's up to the participants to step up to the mark and to play their part as well. We must be wary of the IR Club's *"ethos of complacency and self-congratulation"* described by Gerard Henderson thirty years ago, in which *"economic realities take what is very much second place, if that."*[18]

I am conscious that tonight I have stepped into a field in which debate and controversy over future reform has swung back and forth for three decades. There still remains much work to do to direct this debate back to the "sensible centre" and towards lasting reforms that will stand the test of time.

If we are to achieve a lasting peace settlement after our Thirty Years War, such a settlement has to be predicated on moving away from the dichotomy of two innately hostile sides within the Club, forever doing expedient deals to temporarily ameliorate the hostility.

Employers and unions must be encouraged to take responsibility for the cost of their deals, not just the cost to the affected enterprises, but the overall cost in relation to our economic efficiency and the creation of opportunities for others. If this is not done, then we risk seeing

[18] Henderson, G "The Industrial Relations Club", Quadrant, Volume XXVII, No 9, September 1983, page 23

something akin to the 'wages explosions' of the pre-Accord era, when unsustainable wage growth simply pushed thousands of Australians out of work. If the system is not driving the parties to act more responsibly, then it needs to be reformed so that it does. But even with the system's faults, there is nothing stopping participants acting responsibly. Indeed, some of the representations I receive could be categorised as a desperate plea to protect a participant from themselves.

Under any peace settlement, the system should be accessible and intelligible to all employers and employees, not just IR Club members. The system of workplace rights must be matched by an equal recognition of responsibilities. Where parties breach their legal obligations, they should be in no doubt that an effective system of sanctions will apply. It should go without saying that illegal and indeed criminal behaviour that would not be tolerated in any other setting should not be excused because it occurs in an industrial context.

The system should be one in which the concept of enterprise bargaining once again reflects the intent for which it was first introduced. It should be an opportunity to unlock value in workplaces through innovation and incentive, rather than what it has now increasingly become. Certain unions, on the one hand, see it as an opportunity to simply ratchet up wages to further unsustainable levels without any new trade-offs, whilst many employers approach the next round of bargaining with a sense of dread, and adopt a strategy of 'harm minimisation', with little prospect of improving their competitive position.

Finally, both sides of politics have to accept that labour and capital both have a role to play and should not see their role in Government as to simply further the interests of one at the expense of the other.

There ought to be scope for all parties to accept a settlement along these lines. When I consider the approach articulated by Paul Keating in 1993, it's impossible to avoid the conclusion that a peace settlement that acknowledged modern realities would have been much more possible with the Labor politicians of his generation than his successors twenty years hence.

As Minister for Employment, I see my role as being Minister for Jobs, being equally mindful of the legitimate aspirations of employers and employees, putting in place a system that is fair and reasonable for all and which promotes sustainable prosperity through sustainable and rewarding jobs for all. Whilst the same degree of fervour has embraced the participants of both Thirty Years Wars, I trust that after the thirty years of hostility in the latter war, it can similarly be resolved and that is one of my tasks.

(Ends)