

## **THE NEO-LIBERAL INDUSTRIAL RELATIONS PROGRAM IN AUSTRALIA**

*Labour Market Deregulation: Rewriting the Rules*, Joe Isaac and Russell D. Lansbury, eds. (Sydney: Federation Press, 2005, 256pp., \$45.00(U.S.) (paperback))

*Brave New Workplace: How Individual Contracts are Changing Our Jobs*, David Peetz (Sydney: Allen & Unwin, 2006, 272 pp., \$29.95 (Austl.) (paperback))

*reviewed by John Burgess*<sup>†</sup>

The Australian industrial relations system has undergone significant change over the past fifteen years. There has been a systematic shift away from centralized wage determination toward enterprise based wage determination, the role of collective arrangements (called awards in Australia) that apply across the workforce has diminished, unions are faced with harsh legal measures designed to reduce their ability to organize and participate in the workplace, and Australia's industrial arbitration and conciliation system is slowly being dismantled and replaced with institutions that are controlled by the federal (central) government. These developments are captured by the federal government's WorkChoices legislation that came into force in early 2006. After unexpectedly gaining control of both houses of parliament in 2005, the conservative government brought forward its extensive industrial relations legislation without prior discussion, debate, or inquiry. Using corporation law, the federal government is attempting to shift the responsibility for industrial relations away from state governments and at the same time centralize power with the minister and federal bureaucracy, supplanting traditional industrial relations third parties. The WorkChoices legislation is an expression of the neo liberal ideal of marginalizing unions, eroding collective arrangements, corroding

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the arbitration system, strengthening managerial prerogatives, and facilitating individual bargaining. The “choices” in the legislation largely extend to offering employers choice regarding the type of agreement making that they wish to apply to the workplace, in contrast there are few choices available to employees under the legislation.

The new legislation is very complex and extensive. The government spent over \$50 million in advertising the legislation to persuade the public that it was needed and was both fair and simple. However, the legislation runs to over 2.5 thousand pages with supporting administrative arrangements, and is definitely not a blueprint for the deregulation of the industrial relations system. Instead it introduces new regulations and gives the minister new powers, it sets out prohibitions on the content of industrial agreements and makes it difficult to trade unions to organize and engage in industrial action. It represents a process of extended bureaucratic control and regulation, but it is layered on the existing systems and institutions of industrial relations, resulting in an extremely complex and convoluted system.<sup>1</sup> State industrial relations system will remain to regulate industrial relations for unincorporated and public sector organizations. The legislation also reduces protection to employees against unfair dismissal, allows for a diminution in the terms and conditions of employment, and promotes individual agreement making (known as “Australian Workplace Agreements”).<sup>2</sup>

There have been a number of recent books that have traced the ongoing evolution and transformation of the industrial relations system and the labor market in Australia over the 1990s.<sup>3</sup> In addition the WorkChoices legislation has been the subject of recent special issues of journals that examine the content, operation, and implications of the legislation.<sup>4</sup> Of the two books included in this review, the Isaac and Lansbury collection pre-dates the WorkChoices

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1. Mark Bray & Peter Waring, “Complexity” and “Congruence” in *Australian Labour Regulation*, 47 J. INDUS. REL. 1 (2005).

2. Peter Waring et al., *Advancing Australia Fair: The Australian Fair Pay and Conditions Standard*, 56 J. AUSTL. POL. ECON. 105 (2005).

3. See DEVELOPMENTS IN ENTERPRISE BARGAINING IN AUSTRALIA (John Burgess & Duncan Macdonald eds., 2003); MICHAEL CROSBY, POWER AT WORK: REBUILDING THE AUSTRALIAN UNION MOVEMENT (2005); MARK HEARN & GRANT MICHELSON, RETHINKING WORK: TIME, SPACE AND DISCOURSE (2006).

4. See 16 ECON. & LAB. REL. REV. 1 (WorkChoices Special Issue) (Braham Dabscheck ed., 2006); 56 J. AUSTL. POL. ECON. 5 (Whose Choices? Analysis of the Current Industrial Relations Reforms, Special Issue) (John King & Frank Stilwell eds., 2005).

legislation while the Peetz book was published almost simultaneously with the legislation.

The Isaac and Lansbury collection is an edited collection of essays on various aspects of the Australian industrial relations system and the labor market. This collection captures many of the developments of the 1990s. The book is dedicated to Keith Hancock, who has had a distinguished career as an academic and federal industrial relations commissioner. The collection is very uneven in terms of its content and organization. While it is dedicated to Keith Hancock, there is a short essay by Hancock that is placed toward the end of the book. There are a series of chapters that have commentaries attached and there are a number of chapters without commentaries. The book is not consistently organized around the thematic material. Indeed the book appears to be two collections (one with commentaries and the other without commentaries) that have been put together within the one collection. As a result, the structure of the book is difficult to follow. For example, there are three chapters on wage determination, yet only two of them are grouped together.

Despite these structural problems there are a number of essays that are worthy of mention. Co-editor Joe Isaac, a contemporary of Keith Hancock, has also had a distinguished career as an academic and federal industrial relations commissioner, provides an overview of recent developments in Australian industrial relations policy. Although the title of the book, and indeed this chapter, is “labour market deregulation,” on both counts this is a misnomer. This chapter examines debates and developments in the industrial relations system, specifically the merits of a centralized wage determination system as opposed to a decentralized wage determination system. This incorporates traditional arguments concerning what type of bargaining arrangements are best conducive to non-inflationary growth and job generation. This chapter captures the essence of these debates in Australia, though the move toward greater decentralization is not associated with any deregulation, and as already indicated, the Australian industrial relations system has more regulations and more complexity as a result of recent legislative developments toward decentralization of the system.

The chapter by Barbara Pocock, and commentary by Marion Baird, highlight how the work-care arrangements in Australia are not assisted by a decentralized industrial relations regime that stresses individual bargaining. The Australian work-care regime is built upon a high incidence of part-time and temporary work being used by

female workers to combine work and family duties. It is labeled by Pocock as “backward and in disequilibrium.” This chapter draws on a more extensive study of Australia’s policies and programs toward work and life balance.<sup>5</sup> As the industrial relations system has become more decentralized there has been an extension in long and unsociable hours of work and an absence of work and family friendly conditions in enterprise and individual agreements. Overall, the public policy developments remain largely gendered, either being built on the construction of what an “ideal” worker and family caregiver should be, or excluding conditions such as paid maternity leave, that would enhance the ongoing participation of women in the labor market.

Peter Saunders presents a thoughtful chapter on the trends in wage (and income) inequality in Australia. As the industrial relations system becomes more decentralized one would expect wage inequality to increase as wage outcomes are more dependent on market forces. In Australia there has been a long history of centralized determination of minimum wages to ensure that work pays a wage that is compatible with minimum living standards and to ensure that those with the least bargaining power have access to wage increases. Even through the recent decentralization of the industrial relations system, arbitrated minimum wage or safety net wage adjustments have been set on an annual basis. In a thoughtful evaluation of the conceptual and statistical framework, Saunders demonstrates the ongoing polarization of the wage distribution in Australia. However, this process has preceded the decentralization of the industrial relations system. Saunders assesses the pattern of inequality and considers which groups have made gains over the period 1986–2001. The greatest increase in inequality occurred in the 1990–1995 period, one associated with the formal decentralization of the industrial relations’ system, but more importantly, also associated with a recovery from a deep recession where unemployment rates remained in double figures. Inequality has an age and gender aspect, and in the period under study the greatest growth in wages occurred in the top (highest paid) decile of the distribution. In contrast, male workers in the lowest decile recorded a real decline in their wages over the period of the study. The significance of the research is that it highlights the stagnation of earnings of the lowest paid and reinforces the need for a system of minimum wage adjustments. However, the WorkChoices legislation creates a new institution, the Australian Fair

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5. See BARBARA POCOCK, *THE WORK LIFE COLLISION* (2003).

Pay Commission, to replace the Industrial Relations Commission, and to deliberate on minimum wage adjustments using distinctly neoclassical wage principles. One could anticipate further wage polarization and increased pressure on the real earnings of low paid workers under these arrangements.<sup>6</sup>

The chapter by Rae Cooper and commentary by Michael Crosby (a trade union official) considers the position and responses of trade unions under an increasingly hostile political environment. Cooper states that “Australian unions are reeling from the effects of legislative changes which have made it harder for them to organize, bargain, represent workers, and regulate employment and to take industrial action.”<sup>7</sup> The conciliation and arbitration process provided trade unions with legitimacy and centrality in the industrial relations system, and encouraged complacency in their organizing strategies and the provision of services to members. Recent federal legislation attempts to place as many legal obstacles as possible in the way of trade unions organizing and representing employees. Even without the hostile legislation trade unions have suffered from a decline in membership and a falling workforce density—falling from 46% in 1986 to 23% in 2003. Cooper argues that it is not only legislative barriers that confront trade unions, it is an aggressive business sector intent on increasing managerial prerogative and marginalizing trade unions in the workplace. In this context it would be apt to conclude that the Australian industrial relations system is not only characterized by ongoing decentralization, but by ongoing de-collectivization. Cooper outlines how trade unions are adopting and responding in this environment and this theme is taken up by Crosby in his commentary as he outlines some of the strategies discussed in his recent book that trade unions need to develop and implement if they are to remain viable and relevant.<sup>8</sup>

*Brave New Workplace* by David Peetz is a more cogent analysis of contemporary developments in industrial relations and has as its central focus individualism. The book is well written, informed, aimed at a broad audience, and contains interesting anecdotes as well as being dotted with humor and poetic interludes. The effects of individualization and de-collectivization are represented by vignettes and stories about how employees are being coerced into individual

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6. Peter Waring et al, *The Australian Fair Pay Commission: Rationale, Operation Antecedents & Implications*, 16 ECON. & LAB. REL. REV. 127 (2006).

7. LABOUR MARKET DEREGULATION: REWRITING THE RULES 97 (Russell D. Lansbury et al. eds., 2005).

8. See CROSBY, *supra* note 3.

contracts or losing pay and conditions as a result of individual contracts, and how unions and union members are being isolated and ostracized within workplaces. The informality of the narrative does not take away from the significance of the content. What exactly is “individualism” and what is the intellectual basis for individualism? Peetz discusses these questions in chapter one and sets out the nature of collectivism, the antithesis of individualism. What is important about individualization in the Australian context is that it takes several forms and that it is often not individualized. Peetz outlines the different types of individual contracts that operate in Australia and emphasizes that in many cases individual contracts do not often differ in the content or clauses offered to workers in the same workplace, nor do they accommodate the individual needs or aspirations of workers.

Chapter three on the links between individual contracting and productivity is significant in that one of the ongoing claims in Australia is that decentralized bargaining increases productivity growth, and ultimately individual bargaining will generate even more productivity gains. It also contains a brief review of recent developments in the Australian industrial relations system and the assertions linking bargaining to productivity. Most of the claims are either unsubstantiated or supported by poor analysis.<sup>9</sup> In this chapter Peetz demolishes some of the evidence put forward by peak business groups that link decentralized bargaining with productivity gains. What is interesting is the fact that such claims have been continually put forward to justify further shifts toward decentralization, yet as Peetz demonstrates, they are totally without substance. He also highlights how the push toward individualism is out of step with collective work organization arrangements such as work teams and high performance work systems that depend upon trust and cooperation. Peetz also asks how the pay of CEOs is linked to productivity. Often the high pay is justified by references to the market or to “norms” set for attracting executives—that is, a form of collective pay setting!

In chapter five Peetz highlights the strategies and processes used by corporations to promote individualism in industrial relations. Again anecdotal examples, in many cases involving mining companies (Rio Tinto and BHP-Billiton), are used to demonstrate the points of argument. Here there is a tension between individual freedom and

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9. See John Burgess & Peter Waring, *The Productivity Question*, in *THE STATE OF THE STATES* 2005, 53 (Christopher Shiel ed., 2005).

the freedom to engage in collective association. Peetz states that “a central element of shifting employees to individual contracts is to weaken unions . . . The individualization of the employment relationship is fundamentally about restricting freedom of association and the right to collectively bargain.”<sup>10</sup>

Chapter six on the response of trade unions has resonance with the chapter by Cooper and commentary by Crosby in the Isaac and Lansbury book. Peetz argues that unions need to develop a new response to corporate de-unionization tactics, and they need to consider community based organizing and mobilization. Again the focus of discussion and illustration are cases involving community based organizing in remote mining communities in response to corporate attempts to de-unionize the workforce. Peetz acknowledges the unique features of the mining communities and the difficulty of transference of similar activities to urban communities, service workers, and low paid part-time and casual workers. However, he suggests that the experience is instructive and that effective coalitions can be developed within communities regardless of industry or form of employment.

Chapter seven addresses the issue of where to go from here. At one level the industrial relations legislative developments are driven by ideology that is supported by partisan political decisions. To reverse the process requires political action and a change of government. In the Australian context it is debatable as to how far the Australian Labor Party would retreat from or reverse the policies and legislation that have been put in place by the current coalition government. After all, as Peetz himself demonstrates, the path to individualism was initiated by a Labor led government.<sup>11</sup> Peetz suggests a number of policies to encourage: collective arrangements at the workplace, increased corporate responsibility and accountability, the removal of the partisan third party industrial relations institutions that have been put in place over the past decade, and a legal reinforcement of fundamental rights associated with collective representation and action.

Australia represents an extreme manifestation of the neo-liberal agenda in industrial relations. The central or federal government has embarked upon a program to de-collectivize the workforce, facilitate individual agreement making, establish partisan institutional

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10. DAVID PEETZ, *BRAVE NEW WORKPLACE: HOW INDIVIDUAL CONTRACTS ARE CHANGING OUR JOBS* 155–56 (2006).

11. *Id.* at 51.

arrangements, and strengthen managerial prerogative. However, this program is supported by an extensive array of regulations and powers associated with a shift toward greater centralization of industrial relations legal powers with the federal government. It is not a deregulationist policy, it is a policy that encourages decentralized bargaining and individual employment contracts, but it is ironically supported by extensive centralized governmental power. Currently, the WorkChoices legislation is subject to a constitutional challenge from the Australian state governments and trade unions, and it is possible that the legislation could be declared illegal or modified by the High Court of Australia. Whatever the outcome of this legal challenge, the reality is that the fundamental nature and balance of power in the Australian industrial relations system has shifted toward employers and the federal government.