Australian Institute of Employment Rights

WORKCHOICES: HOBSON'S CHOICE AT WORK

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Introduction

The Howard Government promoted its employment reforms as being all about choice. Public opinion seems to believe that it is about choice for employers only and that for employees, it's a matter of take it or leave it; Hobson's choice. Given the radical change that the WorkChoices amendments may be found to have made to the jurisdictional landscape, what options are there for reform?

Should and can the clock be turned back to the Federation settlement in industrial relations or are the changes irreversible and the new pace to be set by corporate interests from now on? Is there are new historic compromise to be reached?

What are the priorities of the unions? Will Labor adopt policy to reform the system to replace the WorkChoices package it promises to rip up? How does a Charter of Employment Rights fit into the reform agenda?

More Fun or More Class?

Australia's chief law reform officer, President of the Australian Law Reform Commission Professor David Weisbrot, recently urged people to use the new WorkChoices provisions to redress work/life imbalance;

> 'On any rational view we really need to be taking leisure and relaxation and family and fun a lot more seriously. And it's time to start just building those things into the way we negotiate our workplace agreements…' (ABC Online, August 8, 2006)

Professor Weisbrot must be disappointed that the parties to industrial relations don't seem to get the message. Instead, public debate has been dominated by allegations of self-interest. There has been little talk of leisure, relaxation, family and fun!

Before the WorkChoices Bill was introduced, Mr Hendy, the Chief Executive of the Chamber of Commerce and Industry said,

> 'The big lie peddled by unions is that proposed workplace changes are a win for employers and a loss for working people, as if it is an 'us or them' game. It isn't. The class war ended years ago, but unions still hanker for it.'
> (*The Australian,* 7 July 2005)

But in a more recent statement (denying concerns raised by the unauthorised release of ACCI documents urging Federal Minister Andrews to further amend the Workplace Relations Act) Mr Hendy appears to have abandoned his pursuit of the

'big lie'. To back his claim that business did not want further changes, Mr Hendy said,

> 'Many of the key measures in WorkChoices directly accord with the policies of Australian employers, and are precisely the approaches we endorse as the way forward.' (Business Clarifies Ongoing Workplace Relations Dialogue with Government, ACCI, 20 July 2006)

You can't do much better than that. So from the rhetoric about choice and flexibility now emerges a new theme; it serves our interests as employers, so it's our choice.

Joel Butler described academic criticisms of the WorkChoices Bill as generally,

> "…a rhetorical presentation of very narrow sets of facts, buffered with a great number of untested assumptions or crudely stated and inaccurate presumptions, meant clearly to demonise even quite unexceptionable aspects of the bill…" (Quadrant, December 2005, p 31)

Butler went on to buttress his case with his own version of historical justification for supporting the erosion of union rights.

> "But it should be no great revelation that a non-Labor government would want to limit the power of organisations that are, in its view, becoming increasingly anachronistic."
>
> "It is not a particularly important criticism that union powers will be weakened by the bill. The unions are doing (and have done) plenty themselves to weaken their position without the federal government's help. Despite the almost hysterical cry that the union movement must be preserved, membership of unions is at an all-time low, unions represent a small minority of workers, and membership is still declining. To preserve the central place of unions in an industrial relations system that no longer wants them is simply an inefficient anachronism." (Quadrant, December 2005, p 31)

This argument of course begs the question, 'Why is the Federal Government turning the Constitution upside-down, creating chaos and spending millions of public funds all to remove the influence of an anachronism?'

Sound and Fury Signifying…?

Perhaps the abandonment of pretence at the provision of 'choice' about union representation and about which interests the changes serve reflect the fact that winning public opinion has been an up-hill battle. After nearly six months of the operation of the WorkChoices amendments there has been a fair bit of sound a fury, but what does it signify?

The Federal Government expected opposition from unions, even industrial conflict, but not the level of public opposition demonstrated repeatedly in opinion polls. It expected that the public would recognise a self-serving union campaign and see it

replaced by the earnest hum of individual bargaining over new flexible working arrangements.

Instead, as Paul Sheehan said in the Sydney Morning Herald on August 5, the 'serial offender' Greg Combet and the union media campaign have made it appear that workers are being victimised which has created a serious political problem for the Howard Government. According to Sheehan, having defended the indefensible role of the MUA a decade ago, Combet has demonised the WorkChoices legislation so that it appears to be a threat to working families.

The problem for the Federal government is that despite spending huge amounts on media advertisements, consultants and legal advice the comparatively meagre publicity of the union movement rings true because it is able to demonstrate the argument from individual cases. Attempts to clean up the mess by the Office of Workplace Services (which only interviewed the employers of individuals appearing in the ACTU's advertisements) only compounded the problem for the government.

The perception of bias towards employers was given further credibility by the Federal government's own statistics. The evidence to a Senate Estimates Committee on 29 May 2006 from the Head of the Office of the Employment Advocate, Mr McIlwain, provided statistics confirmed union claims about the intention of Australian Workplace Agreement (AWAs) and their effect on individual employees.

He said that almost 64% of 250 AWAs surveyed by the OEA removed Annual Leave loading and 63% removed Penalty Rates, more than 50% removed Shift Allowances, 16% removed all award conditions and replaced them with the five statutory minimum conditions, 40% removed gazetted public holiday and 22% contain no pay increases over the life of the AWA.

Further it was clear that the OEA was assisting the parties with advice to achieve that end, when Mr McIlwain said, that either an 'omnibus' or a clause by clause approach could be taken to the removal of award conditions from an individual's contract of employment.

> ' – we are suggesting that parties that wish to adopt that omnibus approach use words like, "For the avoidance of doubt, the following protected award conditions are excluded or modified in this agreement." Then the parties may choose to list by dot point those protected award conditions that they are excluding or modifying.' (Hansard, EWRE 98, Monday 29 May 2006).

Monitoring WorkChoices

The Victorian Government alone has referred its industrial relations jurisdiction to the Commonwealth so it is in that state, and the territories, that the new world is most clearly visible because there are no state awards to continue under transitional provisions of the Workplace Relations Act. In Victoria the effects of the changes are being studied by considering the complaints made to public information lines to see how the operative legislation is working. Most of the people who contact the information lines do not have the option of seeking advice and support from a union.

They are generally employed under individual common law contracts; that is where no individual agreement (AWA) or collective union agreement (CA) applies. Where a Federal Award may still apply, it does not have a great deal of relevance due to the lack of amendments and restrictions on subject matter arising from WorkChoices and previous amendments.

Research is being undertaken by Monash University for the Victorian Workplace Rights Advocate to monitor the effects of WorkChoices as they are reported to the Victorian Rights Information Line and the Job Watch Workplace Rights Legal Service (Job Watch). This analyses calls prior to and since the passage of the WorkChoices amendments.

A breakdown of the problems reported shows that callers to these lines are fairly representative of the characteristics of the labour force in Victoria by gender, age, occupation and employment status. An analysis of these figures is being undertaken for a report by the Victorian Workplace Rights Advocate. These will show who is calling, the nature of their employment and the problems they are experiencing.

Unionised Large Employers

It seems that the pursuit of the WorkChoices options for employers have not occurred or been pursued widely and not in areas traditionally covered by union bargained collective agreements.

The office of Workplace Services estimates the level of take-up of Australian Workplace Agreements to be 4% and a survey of business by MYOB found little or no enthusiasm to pursue changes now available to employers in the business services sector.

There is little other than anecdotal evidence available about the mainstream unionised sector to suggest anything conclusive. At present there seems little enthusiasm to rewrite the industrial relations manual in large unionised industries. Perhaps this derives from a 'wait and see' attitude to the High Court challenge and the strategic nature of the legislation which will begin to cut in as current collective agreements expire. It is not designed to be a sudden change notwithstanding its radical character over time; that mistake was made in the 'Kennett revolution' from which no doubt the same legal firms advising the Federal government have learned. Perhaps also the shortages of particularly skilled labour and the low unemployment rate is a deterrent to undertaking experiments in this area.

One sector in one area is said to be an exception; the mining industry in the North West of WA. When the ALP leader Kym Beazley announced at the NSW ALP Conference that an incoming Federal Labor Government would abolish AWAs, the Federal Government castigated him for threatening chaos in the mining industry in WA where AWAs are quite widespread. The spread of AWAs in that area was given as evidence of the irreversible nature of the changes introduced by WorkChoices. If it were repealed, skill shortages would be created because of the lack of flexibility and centralised regulation that would follow.

However, individual contracts established under legislation operate in different ways depending on the nature of the employment and its place in the labour market. The mining industry in Western Australia and elsewhere has traditionally been the site of over award agreements reached after union campaigns. There has always been a need to attract skilled workers to remote locations such as the Pilbara and not just in the mining industry.

In the school system in Western Australia similar individual contracts were offered by the Court Government to teachers to attract them to the towns established for mineworkers and their families. Then titled West Australian Workplace Agreements (WAWAs) and fuelled by a similar zeal for individual contracts as the Howard Government, the terms and conditions offered by the Court Government were substantially above those paid to the rest of the state's schoolteachers under the relevant award and certified agreements. Despite their union's opposition in principle to such agreements, most of the teachers involved signed them because they offered substantial increases in pay and conditions. When the Court government was defeated, these individual contracts were replaced by incentives and benefits included in a state-wide union-bargained federal certified agreement operating in conjunction with a state award.

The Howard Government's trumpeting of the advantages of AWAs in the North West ignores the fact that on balance they provide superior terms and conditions not because they are AWAs but because they provide additional benefits to attract and retain employees in remote and difficult locations. The same incentives and benefits can be included in union-bargained certified agreements to have the same effect; the only difference is the framework and its scope.

Additionally, in the case of WA schoolteachers and in many of the mining agreements there is little that is distinctively individual in such contracts. They replicate each other and effectively operated as over award agreements previously operated but they are concluded individually at law. Together they operate in identical terms. The alternative for employers, and a major problem for the ideological proponents of individual contracts, is that it is very expensive to continually negotiate with individuals to reach different contracts of employment for the same work other than in small workplaces. It may be attractive in the short term to offer additional incentives to break workers from union adherence and representation, but collective bargaining by unions can also deliver flexibility and comparable outcomes to any other system.

Collective or Individual Bargaining

As the OECD recently noted, union bargained collective agreements often produce comparable outcomes to other systems because the union operates to average the terms…some employees get more but others get less than they otherwise would, including those whose individual or sectional position means they could have achieved better outcomes. Those familiar with the creation of union bargaining claims, negotiation and conclusion of agreements is aware of that process; it often extends to restraining sections of the workforce covered by the agreement in the interests of other sections or the whole, in effect a disciplinary role in the collective interest.

The proponents of individual bargaining tend to ignore the cost to the firm of doing anything other than replicating the terms across sections of the workforce. Another way of looking at that is to observe that effectively the union, or its members, bear the cost of bargaining in union collective agreements, including the production of explanatory material, media, meeting venues etc.

Options for the Labour Movement

Whether the unpopularity of WorkChoices is relevant at all to the future of industrial relations in Australia depends on political and legislative change, with all their inherent vicissitudes. Whether the opposition parties can capitalise on the unpopularity of the package will depend on which policy alternatives they offer and promote.

Certainly the opportunity is there. Industrial regulation in Australia is in a greater state of flux than it has been for more than a century. The settlement reached with variations and permutations but generically in the Conciliation and Arbitration Acts at Federal and State levels may well have been terminated by WorkChoices, subject to the High Court's decision on the states' challenge.

Whether the Pandora's Box WorkChoices opens can be closed again is doubtful, short of constitutional change, because there is a new power in the land. By virtue of the presumed scope of the Corporations Power all sorts of possibilities open up, subject to the High Court's decision on the states' challenge. Unless the Court substantially revises its previous interpretations, the Corporations Power will provide the legal foundation for a national system of industrial relations into the future.

The new province of law and order involved the subjugation of union independence and freedom to the system of regulation included in the conciliation and arbitration acts. The industrial jurisdictions gained control of union affairs to a degree unmatched in comparable countries, regulating internal elections and processes, membership coverage and financial affairs. In return for this surrender, the unions gained recognition within the system and rights to a fair hearing through an independent tribunal and to be parties to awards. They risked the imposition of orders to control industrial activities in return for the right to an outcome which would be imposed across employment categories, regions or industries in the form of awards.

One of the options for the ALP is to adopt a model similar to the UK or the US. WorkChoices is often compared to the US model but this ignores the fact that it retains the compulsion and regulatory elements of the former conciliation and arbitration system while removing the protections and rights that unions used to enjoy under that system. If the ALP was to adopt a version of an overseas model, unions in Australia could enjoy substantial new freedom of operation as a result, tempered of course by the limits which prosecution for civil damages, ballot processes and restrictions on union rights could impose. However, the weight of history and the interests of affiliated unions would suggest that Labor will opt to attempt to reconstruct the model introduced by the 1993 amendments to the Workplace Relations Act.

In doing so, the question will be whether a better balance of rights can be achieved through changes to restore the role of the AIRC to maintain a flexible set of standards to provide fair employment across the workforce while encouraging the industrial parties to negotiate particular employment arrangements appropriate to their needs.

The 1993 Industrial Relations Reform Act (Cth) enterprise bargaining reforms of the Keating government saw protection against prosecution or claims for damages arising from protected action in pursuit of enterprise certified agreements which were measured against the underlying award base to determine disadvantage or otherwise. The erosion of the award basis of this comparison means that a simple return to this formula is impossible.

Given the likely shift in the jurisdictional landscape introduced by WorkChoices a series of difficult questions open up for unions and the ALP. The Beazley promise to rip up WorkChoices may be a populist winner, but what will replace it? It is difficult to imagine that the machinery and its operating manual developed over a century of labour law and practice can lead to it simply being restarted if the Labour Power has been displaced as the relevant constitutional head of power. How the High Court deals with the argument about the role of S51 (xxxv) will be vital and will determine the nature and extent of Commonwealth power for the foreseeable future.

The radical recasting of industrial regulation in Australia which precipitated this state of flux has been taken by the Federal Government, employers and their legal advisers in WorkChoices. No doubt there are refinements and extensions which could be made, but the die seems cast on the conservative side of politics.

Union Priorities

Unions commenced discussing new legislative options by recognising that policy and strategy to sustain collective rights in bargaining were at the heart of their project. Through their work in Global Union Federations, in which Australian affiliates have often played an active role, Australian officials have been aware of the shifts in regulation which occur from time to time in comparable countries, particularly in the anglosphere. Legislation like the New Zealand Employment Contracts Act and the subsequent revisions, the UK Thatcher and Blair government provisions and the variations on the themes of good faith bargaining and union recognition ballots in the US and Canada are quite well known.

Declining unionised workforce share in most developed countries has intensified examination of recruitment and organising strategies internationally, not least in Australia. International perspectives inevitably raise national similarities and differences but also prompt comparisons on the basis of industries. Most economies have seen similar changes in employment due to technology and the shifting of production to developing countries, a rise in the level of precarious employment and union-hostile human resource management. However these changes occur unevenly and at different levels of intensity in different industries. Shifts in the union movement occur as a result with traditional highly unionised areas of employment losing numbers and service industries growing. Public employment is significantly more highly unionised than private as a result.

Building a consensus among unions on the key features of a new system faces centrifugal forces along a number of employment and industry lines but also on geographic lines; the influence of the state industrial systems particularly in NSW and Queensland in the union movement and the ALP for example is considerable.

By focusing on rights in the workplace to recognition and bargaining, unions have put the priority at the level which meets immediate needs. This is at the opposite end of the policy scale to where the 1980s negotiation for an Accord between the ALP and ACTU commenced. At that time the imperative of the union movement was to intervene at a level of economic policy which had failed them during the Whitlam government 1972-5.

For the election of 1983 the ACTU won automatic cost of living increases through the award system and a range of social wage increases in return for agreement to contain inflation and industrial disputes outside the central agreement. The erosion of that agreement is another story, but the compact did not include any significant changes to the system.

By the 1990s the driver for change was the international orthodoxy espoused by the IMF, World Bank and OECD for enterprise bargaining and restructuring of employment regulation to match an agenda for flexibility and the removal of restrictions due to trade and skill complexities and multiple union organisation which went with them. The ACTU promoted these changes with the support of traditionally militant sections of the union movement which were well able to deliver outcomes at the level of the firm and had been doing so through over-award campaigns for many years. While effective unions were able to deliver through this system, the disparity between well and less organised sections relying on the awards has grown. De-unionisation has been accelerated in areas where awards have become irrelevant because the standards in them have fallen below the going agreement rates.

The conventional wisdom among many union officials is that the Accord period of agreements between the ACTU and the Hawke and Keating Governments caused union decline because negotiations about policy were confined to a small group convened under the Australian Labour Advisory Council (ALAC) where key negotiations occurred, obviating rank and file involvement in campaigns. The decline in real wages and membership which occurred during that time is blamed on the Accord relationship imposing neo-liberal policies on the labour movement. As a result, there is little or no interest among unions in attempting to intervene in economic policies for a future ALP government if that involves ceding autonomy to formal ALP-ACTU agreements.

However, short of an Accord, in a sense there is always a policy dialogue between sections of the union movement and the ALP, particularly expressed through the ACTU leadership and ALP-affiliated unions.

Policy Ideas

To prepare policy ideas the ACTU decided to send a delegation of representatives of key unions to look at the industrial relations systems which operate in comparable countries in Europe, North America and New Zealand. The specific brief for the

delegation was to consider union collective bargaining rights and union recognition processes for that purpose.

In a research report commissioned by the unions through the Australian Institute of Employment Rights three alternative approaches to providing statutory union recognition and collective bargaining rights were identified: Certification, Constitutional and Hybrid models. The strengths and weaknesses of these alternatives were compared with the traditional Australian system of registration and conciliation and arbitration by an independent tribunal making awards by employment classification and industry. (Forsyth, Gahan, Michelotti, Pekarek, Saibi, Research Report, Collective Bargaining and Union Recognition Rights; Policy Issues for Australia, Monash University, 2006, can be viewed at aierights.com.au)

In identifying issues for consideration the authors suggested adopting elements of the legislative provisions which exist in Sweden for union workplace representatives and in other parts of Europe for workplace representative structures, as well as elements of the rights available in the US and Canada arising from ballots to determine union and bargaining rights. A reinvigoration of the Australian system was canvassed by considering bargaining rights in the context of democratic support expressed by employees.

At the time of writing the report of the ACTU delegation is being finalised. This report will provide the background on for the preparation of ACTU policy recommendations for its Congress in October 2006. The ALP Conference in April 2007 will have the task of defining the policy which Labor will take to the election later that year.

Key Issues

One of the key questions for Labor will be the role of the Australian Industrial Relations Commission and in particular the place of industrial awards in any new system. When the Keating Government's 1993 Industrial Relations Reform Act enterprise bargaining reforms were introduced, they were supported by unions on the basis of the 'no disadvantage' test being applied to certified agreements in comparison with a relevant award provision for each occupation in each industry. Such an award net would be maintained at relevant standards by regular variations by the AIRC.

However, WorkChoices curtails the function of awards and the role of the AIRC in determining their content, creating new awards and varying existing ones. Awards will be subject to further rationalisation and another round of simplification. (Colin Fenwick, How Low Can You Go? Minimum Working Conditions Under Australia's New Labour Laws – 2006, The Economic and Labour Relations Review 85, p 6- 11)

In recasting an industrial relations policy, Labor will have the evidence of the widening range of income dispersal which has occurred since enterprise bargaining was introduced as the principal vehicle for expressing and varying terms and conditions of employment. While strongly unionised areas were able to maintain and improve standards under that system, in others it contributed to de-unionisation and increased the vulnerability of employees in industry sectors where casual and

irregular employment predominates. The inadequacy of the 1993 changes will need to be considered, as well as the subsequent amendments of the Howard Government.

Awards?

Despite all the amendments introduced by WorkChoices, awards remain part of the current system to ensure that minimum entitlements are 'protected through a system of enforceable awards' maintained by the AIRC, provided they are rationalised and simplified. No system which presumes to equity and fairness can ignore the need for the maintenance of relevant minimum standards of employment. In the Australian system these have been maintained for a century by awards arrived at often by negotiation, conciliation and consent and sometimes by arbitration following industrial action. Such awards have generally applied across industries to employees in a similar calling.

However, awards need not be synonymous with inflexibility, complexity and multiplicity. In the US school system those same attributes are blamed on annual school board contracts concluded with staff in each local government authority. It is not the instrument which determines inflexibility, it is the intentions of the parties. An award can be inflexible, but it can also provide a framework which encourages innovation and variation precisely because it guarantees standards, giving the parties certainty and recourse to a tribunal in the event of decisions or actions contrary to its terms. Having a union as a party to an award of this kind can give employees and employers in individual workplaces the motivation and confidence to introduce variations, rather than to fear a leap into the unknown.

Pattern Bargaining and Multi-employer Agreements

The WorkChoices amendments have prohibited industrial action in pursuit of multi-employer agreements and pattern bargaining, and rather than removing the requirement for prior authorisation for multi-employer agreements as requested by the Committee of Experts of the ILO, it has continued the requirement.

In a speech to the ILO on the effects of WorkChoices provisions on Australia's compliance with ILO Conventions 97 and 98 ICFTU and ACTU President Sharan Burrow said of these provisions:

> 'There is a rights-based approach operating in Australia but it is all rights for the employer. For a company can impose the same individual contracts company wide, all common to all of its employees, no negotiation, stripping away established conditions including penalty rates, shift allowances, overtime rates, certainty of hours – no protection for established conditions. It can wave the threat of dismissal over their heads if they don't sign.
>
> Balance that against a union being prohibited from lodging a common claim for the same company, same employees in more than one worksite.'
> (Address to the ILO on the effects of the Workchoices Act on Australia's compliance with Conventions 87 and 88, ACTU website.)

The ALP will inevitably struggle with the interplay of policy questions posed in rewriting the Workplace Relations Act when it comes to setting and maintaining standards. It will face pressure from employers because 'you can't turn the clock back' and the increasing weight of global firms, particularly due to their familiarity with the US system, will create pressure to abandon the Australian award system.

The inadequacy of the former 'no disadvantage test', the role of the Australian Fair Pay Commission and its standards, the nature of the federal jurisdiction which previously constrained determinations to parties to disputes, the decision of the High Court on the operation of the Corporations Power and interpretations of the reach of the Labour Power to matters pertaining to the employment relationship will all be in play.

New Rights for Old

From the employers' point of view the adoption of an attitude that tipping the balance in their favour is justified because it is possible may prove to be counterproductive.

Others may well take a similar view, for example that because the Corporations Power can reach much further than the Labour Power has in regulating the activities of trading corporations, in relation to employment matters, governance and policy, labour law should go there. Unrestricted by the limits of interstate industrial disputes and the parties to them, a reformed Federal Workplace Relations Act based on the Corporations Power could establish comprehensive awards which operated on the basis of common rule across industries and which regulate managerial employment as well as staff.

By introducing amendments which require corporations to consult with the representatives of their employees prior to any redundancy or retrenchment programme, or which require agreement to the shifting of production to other sites including off-shore sites, Australia would be reinstating requirements which were standards in the 1980s and which are common in more advanced economies.

The labour movement in Australia turned to the parliamentary process in the 1890s to pursue its goals following the failure of the strikes early in the decade. The passage of the conciliation and arbitration acts early in the new century enshrined a number of rights in their provisions without ever making them explicit. For example, the Federal Act encouraged the formation and recognition of representative organisations of employees and employers to become parties to proceedings and to the award instruments the tribunal created. Unions had rights for a century which WorkChoices has removed.

In a society in which the expression and pursuit of individual rights becomes more forceful and widely accepted from year to year, the historic reversal in employee rights which WorkChoices represents seems to be widely rejected. The question is posed, 'Why should our rights end at the door or gate to the workplace?'

The Australian Institute of Employment Rights, with its counterpart in the UK, is promoting the concept of a popular process to develop a Charter of Employment Rights to answer that question. The UK Institute of Employment Rights has

developed a Charter of Workers Rights which draws upon UN, EU, ILO and OECD declarations, covenants, constitutions and guidelines. WorkChoices has prompted the Australian Institute of Employment Rights to promote a Charter of Employment Rights for Australia as the basis of reform of the employment laws.

Most of the rights in the UK Charter are couched in individual terms, for example that, 'Every worker has the right to form and join a trade union…' However, the Charter includes a right for unions themselves titled 'Union Autonomy' which provides that 'Every trade union has the right to uphold its own rule-book, to spend its funds and to conduct its activities including industrial action in accordance with its rules, free from employer and state interference.' (Ewing and Hendy, A Charter of Workers' Rights, Institute of Employment Rights, London, 2002)

WorkChoices has ended the century of acceptance of mutual rights for unions and employers in the Workplace Relations Act and its predecessors. A Charter of Employment Rights is a step forward to creating community debate and acceptance of the rights of the parties to industrial relations. In the 1890s widespread community discussion occurred about the rights and wrongs of the industrial system.

WorkChoices has created the need for a similar debate again.