

BACKGROUND

In recent years the AIER has been developing a project entitled ‘*A New Workplace Relations Architecture*’. The project responds to the premise that Australia’s current workplace relations system, has not addressed technological, economic and social changes to work and is failing to deliver on the AIER’s core principles of good faith and dignity at work. The aim of the project was to deliver a ‘best practice’ roadmap for the reconfiguration of Australia’s industrial relations, human rights and workplace safety laws with positive duties on employers to return the ‘fair go’ to the heart of Australian workplace relations.

The May 2019 federal election unexpectedly returned a Coalition government and in doing so ensured the structural changes campaigned for by the Australian Council of Trade Unions (ACTU) would not be implemented. We are now facing a critical period in Australian industrial relations. Freedom of association is under renewed threat by way of the reintroduced *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019*. The government has announced that IR Minister Christian Porter is set to conduct a review of the Fair Work Act and already the debate has been dominated by calls for diminished protection from unfair dismissal, the reintroduction of Work Choices-era ‘prohibited content’ rules and a return to an inferior ‘no disadvantage test’ for agreements.

PROJECT

The 2006 ‘Work Choices’ amendments represent a low point in Australian industrial relations, one that led to the formation of the Australian Institute of Employment Rights and one to which we must not return. We have an opportunity in this highly contested environment to play a central role in both defending the principles of dignity and fairness in our workplace relations system and mounting the case for reforms to deliver a system capable of delivering fair and dignified workplaces. Remaining true to its tripartist foundations (encompassing the notion of the responsible employer), there is scope for the AIER to follow the example of its UK counterpart and articulate an evidence-based blueprint for labour law reform.¹

The AIER’s project would have two inter-linked elements:

1. **Producing research that substantiates the critique of the current regulatory framework.** The ACTU ‘Change The Rules’ campaign mounted a considerable critique addressing key issues like insecure work, wage stagnation, wage theft and the flawed rules for collective bargaining and industrial action. What was missing? More robust evidence supporting the claims about, for example, the growth of casual work (especially long-term casuals), labour hire, sham contracting, etc. In many areas, IR and legal academics are already doing this research. The AIER can act as a bridge between academics who support its aims and the labour movement. Supportive academics may be willing to adapt existing research, or undertake new work, for use in this project.

¹ See the Institute of Employment Rights publications: *A Manifesto for Labour Law: Towards a Comprehensive Revision of Workers’ Rights* (2016) and *Rolling Out the Manifesto for Labour Law* (2018).

2. **Developing a detailed set of legislative reform proposals capable of implementation by Government.** Keith Ewing described the IER's *Rolling Out the Manifesto* document as a 'white paper' which could be picked up and used as the basis for workplace reform legislation. It is understood that the ACTU and key unions had been working on proposed legislative changes prior to the election, although details were not released. Instead the ACTU outlined broad principles, such as the need for workers to determine their preferred level of bargaining (e.g. industry, sector, across supply chains or wherever employer power is located). The AIER can lead the debate by developing clear proposals on, for example, how and in what circumstances a system of sectoral bargaining would work, or what an expanded role of would look like for the *Fair Work Commission*.

INITIAL CONSULTATION

An initial project consultation meeting with Melbourne unionists, academics and lawyers was held on 19 July 2019. Keith Ewing outlined the history of the IER in the UK and the process through which it had developed the Manifesto in close consultation with unions and academics.

All those in attendance expressed support for the AIER undertaking this kind of project. Union officials from Victorian Trades Hall Council, Migrant Workers Centre, SDA, NUW, SPSF, NTEU, FSU and ACTU welcomed the initiative. The feedback included the need to address the following:

- Ensure consultation and involvement of workers on the ground. They need to be brought into determining solutions.
- Combine statistics and data with (powerful) worker stories – follow this model: issue → worker story → research/solution.
- Possible issues to start with: state-v-federal regulation (e.g. Victoria leading a more progressive IR agenda even though it has limited legislative powers – what else is possible?); improving collective enforcement of workplace laws given the Fair Work Ombudsman's gaps; challenging managerial prerogative and proposing alternative ownership models.
- Engage with contemporary issues affecting young workers. (In a subsequent meeting with VTHC Young Workers Centre, they identified 3 priority areas for research and reform advocacy: ending the discriminatory practice of junior pay rates; resolving the problems around the definition of 'casuals'; tackling the categorisation of gig economy workers as contractors through a new definition of 'employee').

Jobwatch representatives encouraged us to involve a wide range of community legal centres in this project (e.g. WestJustice and others that focus on providing employment law services). Funding constraints can prevent them from advocating vocally for reform – the AIER could amplify their voice.

Academics offered to assist (e.g. through writing, research, seminars) and urged a focus not only on labour law but also IR and the social sciences.

THE WAY FORWARD

Next steps:

- We need to identify the key research streams/themes that will be examined in a series of AIER discussion papers over the next 12-18 months.
- This will be done through direct discussions with union leaders, academics, employers and community groups, and a Sydney workshop to be held prior to the Ron McCallum debate on 31 October.

- Priority areas to be considered include:
 - Collective bargaining – changing the level of bargaining (sectoral, supply chain, etc).
 - A comprehensive safety net – living wage, awards (including penalty rates), expanding the NES.
 - The role of industry standards and voluntary charters in promoting decent work, legislative compliance and improve workplace culture – the ‘Cleaning Accountability Framework’ is one model to consider.
 - Countering sham contracting in the gig economy.
 - Ensuring the organisation of small entrepreneurial business is not unduly hampered by corporations law.
 - Insecure and ‘fissured’ work – casuals, labour hire, franchising, outsourcing, etc.
 - Wage theft and other forms of non-compliance – improving workplace law enforcement and access to justice for individual workers – this stream may also consider the cost to small business of competing in a non-compliant market.
 - Application of agreements – the ‘free rider’ problem.
 - Industrial action and the right to strike – statutory requirements, suspension/termination, protest action, sympathy action etc.
 - Tools to organise workers and amplify worker voice – right of entry, consultative committees, delegates’ rights, organising outside the workplace.
 - Pay equity – for women, young workers, migrants, other disadvantaged groups.
- The discussion papers (8-10 pages in length) will leverage existing research from academic contributors, supplemented by any new work they are willing to produce.
- Each discussion paper release will be accompanied by a shorter ‘blog post’ (600-800 words) with the aim of publication as op eds in *The Conversation* and other media. We could also consider producing podcasts or short videos. All outputs to be hosted on a separate project page on the AIER website.
- The discussion paper series will be followed by another paper outlining detailed reform proposals (modelled on the IER *Manifesto*), with a similar promotional campaign – timed for release in the lead-up to the next federal election.
- AIER seminars and other events should be held to promote each discussion paper and the final reform proposals.

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