What's A Job?

KEN PHILLIPS

Business and the ALP

Why was it that in the federal election the ALP found itself confronted by open business opposition to its industrial relations policies when the ALP claimed that those policies were 'light touch'?

The reason was simple. A study of the policies showed that it would have turned the industrial relations system into a super regulator of management, making direct worker–management discussion and agreements too complex to carry out in practice.

Business has become accustomed to the Coalition's *Workplace Relations Act*, an Act with simple key features. First, it focuses on protecting worker entitlements under core awards. Then it offers workers and managers three options: collective agreements with unions; collective agreements without unions; and individual agreements (AWAs) with workers.

Further, the 28 per cent of the private-sector workforce who are not employed, but who are independent contractors, can work outside industrial relations control under commercial contracts.

By comparison, Labor policy would have done the following: expanded the reach of industrial relations into commercial contracts; pushed independent contractors into the industrial relations net; reduced the authority of the *Trade Practices Act* over commercial issues; removed the individual employment agreement option; and given unions authority over all collective agreements, removing the non-union option in all but name.

It went further. ALP policy proposed a new but unexplained wages-setting system which included reintroduction of paid rates awards for the public service. It then tied government procurement policy to its industrial relations policy.

The federal ALP policy closely resembled New South Wales' industrial relations legislation, which itself has run into controversial difficulty.

The Carr Government's 1996 industrial relations legislation is legally radical because it gives the NSW Industrial Relations Commission power to rule over commercial issues. The simple rewording of the purpose of NSW's Act, changing 'industrial disputes' to 'industrial matters', coupled with unfair contracts clauses, has resulted in the NSW IRC ruling over commercial tenancy leases, franchise agreements and even looking to rewrite business sale agreements retrospectively.

NSW legislation enables the writing of clauses into enterprise agreements that stop the use of labour hire, forces unrelated companies into union agreements, delivers control of training to union bodies, requires non-unionists to pay unions fees and facilitates committees that usurp management authority. The list goes on.

Non-union Enterprise Bargaining Agreements (EBAs) are blocked in NSW because initiation of direct employee–employer discussion requires union notification and allows unions the right to interfere and object. Federal ALP policy followed NSW.

Federal Labor also proposed Queensland-style legislation that denies independent contractors their right to be independent contractors. In Queensland, this resulted in a corporation being declared an employee and the President of the Queensland Commission declaring the provisions unworkable. There are suggestions that these provisions breach International Labor Organisation principles.

Finally, federal ALP went further than NSW and Queensland where, under the terminology of 'good faith bargaining', it would have been illegal for businesses not to enter into industrial negotiations with a union and would have given the Commission the power to force agreements onto unwilling businesses. In addition, the Commission would have had the power to force companies to divulge commercial information.

The package was locked together by downgrading the competition authority of the *Trade Practices Act* to stop secondary boycotts. This was consistent with federal ALP policy to replicate the NSW outworker legislation which subjects commercial transactions in specified markets to industrial relations legislation and which fixes prices in those markets.

Australia's business associations 'twigged' to the ALP agenda, understood the implications and thus opposed it.

When Western Australia introduced legislation of this type, business associations led the community in a rush to Howard's EBAs and AWAs. South Australia is attempting legislation which parallels federal ALP policy.

Normally, industrial relations does not figure highly as a decisive factor in voters' choices. But the Liberal Party has stated that their post-election polling showed that, this time, industrial relations featured significantly, particularly with the small business sector.

Does this election signal the collapse of the traditional business–government–union deal-making that has long been at the core of how Australia manages business? It's hard to say. But there is certainly a fundamental shift indicating that business no longer sees deal-making with unions as vital to its future.

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