



# Fighting the last war

The construction reforms—not WorkChoices—were the real industrial relations issues in the 2007 campaign.

Ken Phillips

For the last century, it has been assumed that conservative parties represent the bosses, and the Labor Party represents the workers. The political divide has reflected the assumed workplace divide.

But, as a matter of internal business realities, this worker–boss consciousness in Australia has been collapsing for more than two decades. The evidence is well accepted. Independent contracting is widespread. Workers are ‘aspirational’ and no longer firm-loyal. The progressive management mantra is that ‘everyone is a manager’.

Competition pushes businesses in this direction. Employers who view their workforce as ‘the enemy’ are failing; and the correlation between business profitability and effective human capital management is accepted as axiomatic.

For the last decade, John Howard has successfully captured the political mood that flowed from these momentous workplace changes. By contrast, Labor has been trapped by its past.

The 2007 federal election marks a point

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when Labor caught up and moved beyond the Coalition. The story of how this happened gives an insight about what we might see in the future.

When the Coalition unexpectedly won Senate control in the 2004 election, it was unprepared. It had not expected to be in a position to change the law as it wished. It chose to drive workplace reform as the big ticket item for the following three years.

There were several reasons for this. Howard saw an opportunity to politically ‘checkmate’ Labor by tearing apart the industrial relations institutions that underpinned union and Labor Party power. Further, Howard’s agenda had an economic angle—to create more jobs without increasing inflation by freeing-up labour markets. He also had a cultural agenda—to release latent entrepreneurship in the community.

But while it knew that it wanted to destroy union power by abolishing the Industrial Relations Commission, the Coalition had little if any concept about what would replace it. This failure was its political undoing.

Howard’s earlier reform priorities, such as the tax reform that brought in the GST, had, for the most part, been well conceptualised and implemented early in the electoral cycle—leaving time before the following election for adjustments and community acceptance. WorkChoices broke all these rules.

As a total package, the workplace reforms ultimately proved to be riddled with inconsistencies in terms of its themes, principles and design. The legislation itself was complex and produced major compliance issues for employers. This confused and quickly numbed the Coalition’s political capacity and strategy.

This contrasted sharply with Howard’s reforms to the construction sector.

## Construction reform

The construction industry reforms were designed under Tony Abbott's ministerial leadership. They were already half in place at the end of 2004 and had received a good deal of public acceptance. Abbott had created an atmosphere for change through Royal Commission exposure of industry orts. And construction unions had assisted by persistently displaying their thuggery and a complete lack of interest in the competitiveness of the industry.

Industrial relations laws in the construction sector had always involved the secret sanctioning of mafia-like behaviour by unions in collusion with selected construction firms. The system stopped a free market operating by restricting competition under the banner of a 'level playing field.' This came at a high financial cost and assisted criminals to operate. Police and business regulators kept their distance, believing that they were constrained by 'industrial realities'.

The full construction industry reforms were implemented by late 2005. The guiding principles involved the application of the rule of law and ensuring that there was a functioning free market. The period 2005–07 saw dramatic industry change. Construction costs plummeted. Strikes disappeared. Company profits soared. Wages went up. Construction activity and the workforce expanded hugely.

The macroeconomic impact produced downward pressure on inflation and an expansion of wealth.

Construction companies—large and small—welcomed the reforms. Their futures became reform-dependent. Apart from NSW, State Labor governments privately welcomed the change. Construction unions are generally factional enemies of these governments and excessive construction costs damage State budgets. The reforms improved State budget infrastructure spending capacity.

The reforms also had a political impact inside the Labor Party which Howard didn't seem to recognise. The reforms began a process of financially and industrially neutering the mad, construction-funded Labor left—something which the Labor Centre and Right factions and unaligned individuals could never achieve. This helped open the factional door for an unaligned Kevin Rudd.

When Rudd took the ALP leadership in late 2006, he initially followed the established public Labor position of opposition to the construction reforms. But on this, he and his deputy Julia Gillard changed their position fairly rapidly.

For many years, construction union funding of the ALP has been overwhelmed by that from the corporate sector. Consequently, construction union influence inside the ALP has long been counter-balanced by construction company influence.

Around mid-2007, Rudd responded to representations from construction companies and agreed to retain the reforms and only modify aspects of them after 2010. Rudd bought political time by neutralising potential construction industry

campaigning against him. The industry campaigned instead to support the reforms but did not attack Rudd.

This was the clearest, but not the first, indicator that Labor was changing under Rudd and with a speed and substance that is and was historic. Union influence is being restricted.

The Coalition reacted badly. By mid-2007 it was already in political panic. Instead of declaring that the shift under Rudd was a Howard reform victory, the Coalition looked for excuses to say that the change was not genuine. The government ignored the change inside the ALP and walked away from claiming a new high moral ground based on its free market-induced success.

Rejecting the morality of free markets was also Howard's downfall with WorkChoices. But this time, the failures of WorkChoices stand in stark contrast to the highly successful construction industry reforms.

## WorkChoices

WorkChoices was portrayed by the union movement as a conspiracy between bosses and the government. Instead, WorkChoices came from a totally different conceptual direction that was not apparent until it was well implemented.

John Howard has always maintained that the Liberal Party is not purely liberal but a complex blend of liberalism and conservatism. WorkChoices came from a particular aspect of the Australian conservative tradition which views unions and bosses as potentially equal oppressive exploiters of workers. WorkChoices removed union legal authority over workers, but rather than delivering power to bosses, it transferred power to government.

Under WorkChoices, managers must comply with highly complex, detailed and often confusing ministerial regulations, subject to change at ministerial whim. WorkChoices in fact caused enormous business frustration and behind-the-scenes lobbying, which the Minister frequently ignored. WorkChoices is not an application of free-market principles but of traditional Big Brother micro-interference in business.

What damaged the government most, however, was that WorkChoices dropped a primary pillar of the rule of law.

The 2005 WorkChoices Australian Workplace Agreements model dropped the requirement for the 'no disadvantage test' which had applied for years. This test had meant that no worker being employed could be offered an AWA on worse conditions than they currently had. With the test gone, workers could be and were given new work arrangements with the same employer on lower pay.

It was a fundamental breach of core contract principles which defied basic rule of law concepts. If a person has an existing contract, that contract cannot be altered without clear agreement. The union movement pounced with brilliant anti-government marketing campaigns using real cases of workers receiving less pay against their wishes. Under commercial law, many of the unions' examples would have failed an uncon-

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scionable conduct test. The government reversed this policy in 2007, reintroducing the ‘fairness test’, but only after the political damage had solidified.

The design of WorkChoices reflected a confusion of competing and inconsistent agendas within the total workplace reform package. The construction reforms applied free-market and rule-of-law principles and proved hugely successful. WorkChoices was an arrogant expression of belief in Big Brother government and a denial of the rule of law.

The government’s confusion over reform was reflected in its incapacity to sell the reform package. Few, if any, government ministers or backbenchers could explain the reforms. Supportive advertising fell flat and became counter-productive because no clear message came through.

The Australian Council of Trade Unions undertook an unprecedented lengthy campaign which delivered clear ‘rule of law’ messages that unsettled the government’s political orientation and confidence. The government’s inconsistencies created and sustained the ACTU’s campaigning opportunities.

Kevin Rudd fed off this opportunity. As with the construction industry reforms, he adopted elements of WorkChoices that muted business opposition to him. Further, he adopted those parts of WorkChoices that would deny unions the same industrial power they once had. This limits a resurgence of left-wing factional power in Labor that would otherwise undermine Rudd’s position.

The outcome is that industrial relations policy—once thought to be at the heart of Labor principles—has been dumped. Rudd initiated historic cultural, structural and policy change within Labor, thus supporting his own standing.

Throughout 2007 the Coalition refused to believe that this was occurring. It adopted obsessive denial, determined to fight the ghost of an old ALP rather than confront the ALP that Rudd had made it become.

## **Industrial Relations and the future of the major parties**

Over the last two decades, a significant political agreement has developed around the wealth-creating superiority of free market systems. It’s been a struggle, but there is a strong consensus which supports the elimination of trade barriers, open financial markets, the private sector delivering government services, choice in schooling and so on. Objectors to this consensus remain, but they exist on the political fringe.

The area meeting greatest political resistance has been workplace relations. Workplace reform is about allowing free market principles to operate inside firms. This changes relationships, cultures, motivations, creativity and outcomes. The last three years has triggered a major collapse in that political resistance.

The immediate future of a Kevin Rudd Labor Party is vastly different from the class-obsessed ALP of the past, although there are still some historical tensions.

The new federal model is the model that the ALP governments of South Australia, Tasmania, Queensland and Victoria have adopted. Those governments have close personal and institutional affiliations with business, and conduct behind-the-scene struggles with unions and (still kicking) left-wing factions. They have substantially adopted free market principles, often displaying a sharper intellectual grasp of the issues than their dysfunctional Liberal oppositions.

Rudd’s risk is political infection from New South Wales. There, the ALP government is of the traditional deal-making unionist form, where the free market is systemically corrupted for the purposes of factional power plays.

Rudd’s earliest test in this regard is likely to be implementing his promise to harmonise workers’ compensation and occupational health and safety laws. The factional differences between New South Wales and the other States on these items is stark. For most national employers, a consistent, single OHS and workers’ compensation scheme offers one of the most important productivity opportunities available.

On workplace issues, the Liberal Party is a mess. It is confused about its objectives, sometimes free-market, often authoritarian, still believing that it can benevolently micro-manage people’s behaviour. It wants a union-controlled ALP and fantasises that the ALP is unchanged. It is determined to assess its opposition falsely for fear that a correct analysis will force change within itself.

But above the party political issues, it may be that Australia has edged closer to a consensus. That is, that at work, individual and collective systems should coexist and even compete to provide better outcomes for everyone involved. Class consciousness at work is rapidly dying in Australia and its parallel political death would be a welcome event.

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