Federal Industrial Relations Changes:

An Issues Paper Concerning the Potential Impact on Communities & Local Government

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Summary

- Overriding States' rights is a blatant attack on our de-centralised system of government. The constitutional problems will mean that the system is complex and will have significant gaps – these will affect many workers and small businesses.

- Rights to collective bargaining should be maintained, and should be strengthened for small businesses who negotiate with large corporations.

- Conflict bargaining, including the use of strikes and lockouts, will have a severe impact on rural and regional areas. The use of individual contracts will exacerbate the rural/urban drift as workers migrate to districts and cities where there are greater rewards.

- The reduction of unfair dismissal rights will mean more work for lawyers - unlawful dismissal and wrongful termination of contract cases will be heard in common law courts rather than being conciliated in industrial tribunals. This will increase costs, cause lengthy delays and create greater uncertainty. This will be worse for employees and smaller businesses.

- Using individual contracts and Australian Workplace Agreements (AWAs) will increase the administration costs for small to medium businesses. Greater volatility in the labour market will require small employers to constantly review labour market strategies to compete against multi-national corporations.

- Employees, families, small businesses and local communities will not benefit from a move away from conciliation and arbitration. The conflict model of industrial relations proposed by the Liberal Party will favour big business interests.

- The removal of the award safety net and the move towards minimum legislative conditions will have a detrimental effect on rates of pay and conditions of employment for workers in rural and regional communities. Low wage industrial strategies will favour larger businesses that will drive small business competitors from local communities.

- Undermining the award safety net will see ordinary working hours extended into evenings and weekends, adversely impacting on the balance between employees' work and family lives. There will be less time for community activities.

- Industrial arbitration is critical in ensuring consistent conditions of employment for local government workers. Deregulation will remove a guard against corrupt employment practices.

- The proposed laws may override state laws concerning employment protection for council workers affected by boundary changes and amalgamations including local government employees living and working in small rural communities. This will reduce employment security in local government.

Introduction

The planned changes to employment law as announced by John Howard[1] will affect almost every Australian in some way, whether they are an employer or employee. The changes proposed are extremely complex and aim to fundamentally alter the manner in which employment arrangements are regulated in Australia.

This briefing paper considers some of the practical consequences of the Federal Government's Industrial Relations proposals. This analysis is of a federal model based on the following propositions, which are sourced from the government's announcements of the changes:

- Hostile takeover of States' rights to legislate for Industrial Relations
- Move minimum wage fixing from the Australian Industrial Relations Commission (AIRC) to the "Fair Pay Commission"
- Encourage individual bargaining through AWAs or common law contracts
- Reduce the significance of awards by abolishing the "no-disadvantage test"
- Remove the powers of the AIRC for arbitration of disputes
- Limit rights of workers to collectively bargain by preventing pattern bargaining and placing greater obstacles to industrial action
- No rights of workers in enterprises with less than 100 employees to access unfair dismissals laws
- Reduce worker's access to the Unions on-site

There have been many grand claims about the economic benefits of moving to an economic rationalist model of industrial relations. However there are equally significant concerns that the changes will harm small business and be detrimental to local communities. Based on this analysis, the new laws will have a disproportionate effect on regional and rural communities and be harmful to the prospects of small business.

Despite these concerns, there is a risk that these changes will be rushed through Parliament without proper debate or scrutiny. While significant economic advantages are claimed, there has been no credible economic modelling that has considered the totality of the package or its flow on effects. If the changes are rushed through, there will be no opportunity to understand let alone comment on the effects of the changes or conduct economic or social modelling.

For a proposal that amounts to a radical change to existing law that will affect almost every Australian, very little detail has been released so far. Many of the policy decisions appear to be being made on the run as a reaction to the media.

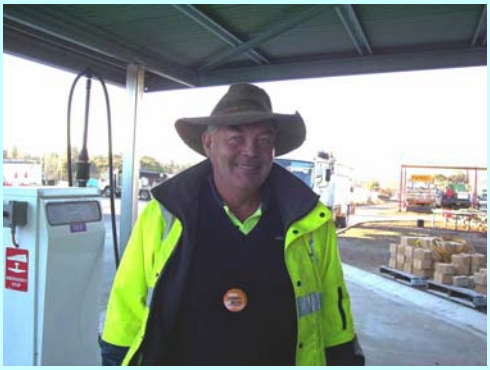
Before any widespread change to legislation such as this, there should be opportunity for consultation and public debate not just on the general nature of proposals, but on the detail as proposed in legislation. Australia has a proud democratic tradition that deserves responsible government, not law-making on the run. If legislative change is rushed through, the results could be disastrous. Opportunities for genuine and productive reform will be missed.

[1] Prime Ministerial Statement to Parliament 26 May 2005

State Rights - Constitutional Issues

The proposal to use the "Corporations Power"[2] is an unprecedented attempt by the Commonwealth to take control of an area of law that has traditionally been regarded as the responsibility of State governments. Irrespective of whether such a takeover is ultimately upheld by the High Court, there can be no doubt that such a system is entirely contrary to the objects that the founders of the Federation sought to incorporate into the Constitution.

The notion that power over Industrial Relations, or indeed power generally, should be centralised in Canberra rather than determined locally is one that was clearly not within the contemplation of the founders of the Constitution. This is clear from the specific inclusion of a very limited industrial relations power[3]. Similarly other powers given to the Commonwealth were limited, the aim being to create a balance between State responsibilities and not to create a large, all-powerful federal government.



"I'm a member of the National Party and I'm very concerned about the changes. Who gave John Howard the mandate to take away our rights to awards and to have the independent Industrial Relations Commission removed in New South Wales" Neville Pearson, Grader Operator.

The reluctance on the part of our predecessors to give absolute power over such matters to Canberra should lead us to question the wisdom of doing so now. If Australia's system of government – a federation of States is to be changed, this should be done by changing the constitution, not by lawyers in Canberra manipulating the powers set out in the current constitution.

It is true that Australia's industrial relations legislation is complex. However, the main cause of this problem is the intrusion of federal legislation . No doubt this has been the product of good intentions, however the outcome is highly complex federal legislation that interferes with relatively simple state legislation.

The current complexity of the federal legislation is not due to what the legislation does – on one level this is quite simple – but due to the complex linkages that need to be made to bring the legislation within the power conferred by the Constitution. A further complication is in the limitations that have been put on the exercise of Commonwealth power thorough the separation of powers doctrine [4].

The Industrial Relations power in the Constitution is found under clause 51(xxxv) – that is to "make laws for the peace, order, and good government of the Commonwealth with respect to: conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state." This power does not extend so as to allow for the regulation of employment arrangements through contract law in the

[2] Australian Constitution s51 (xx) The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: -Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:

[3] Australian Constitution s51 (xxxv)

[4] See for example *NSW v The Commonwealth* (Wheat Case) (1915) 20 CLR 54; Boilermakers case, *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254; Brandy case, *Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245

absence of an "interstate industrial dispute". Nor does the power extend to allow the government to legislate for minimum wages and conditions. To avoid this obstacle, the parts of the *Workplace Relations Act* 1996 that deal with non-union agreements are linked to the Corporations power. To be eligible to enter into an AWA, a s170LK agreement or a s170LJ agreement, an employer needs to demonstrate that it is a foreign, trading or financial corporation. This necessitates paperwork and results in the risk that the employing entity is not in fact a constitutional corporation. The consequence of getting this wrong would mean that any agreement or AWA would be void.

"Country towns will be affected greatly by these reforms and will suffer enormously." Paul Battle, Records Officer.

The structure of the Constitution, and in particular the separation of powers doctrine creates further obstacles in the area of regulating industrial relations. It means that one tribunal cannot be vested with both arbitrary or executive power, and judicial power. In practice, this means that judicial functions, such as interpreting contracts, awards or the law cannot be combined with powers such as conciliation or arbitration, or other administrative powers such as giving advice on employment matters or other regulatory functions. As a result any ensuing system seeking to exercise both functions needs to create a complex and expensive set of tribunals, commissions and courts.

Indeed the proposal put forward by the Liberal Party is a system that comprises:

- a body providing mediation services
- The Office of the Employment Advocate to deal with AWA approvals and certified agreements
- The Australian Industrial Relations Commission to set award conditions other than rates of pay and to conciliate disputes
- The Federal Court to interpret and enforce instruments and to prosecute unlawful dismissal applications
- The Fair Pay Commission to make recommendations about setting minimum wages and classifications
- The Department of Employment and Workplace Relations to presumably implement any recommendations by the Fair Pay Commission
- The Building Industry Taskforce to deal with construction industry matters
- Industrial Inspectors to ensure compliance with the legislation

Rather than a simplified system, a closer analysis indicates a case of bureaucracy gone mad. It is highly unlikely that these bodies will all be properly accessible in regional or rural areas. Dividing responsibility amongst several bodies also places a higher onus on business and employees to deal with the appropriate authority. Invariably there will also be considerable overlap in their respective functions.

Any federal legislation that takes over State Industrial Relations powers will need to make complex links to the constitutional powers. Given the scope of the proposals, many commentators envisage areas that will not be able to be covered by the legislation.

Obvious problem areas include:

- Not for profit organisations
- Local Government authorities
- Family Trusts
- Sole Traders and Partnerships

If a simpler and more cost effective solution is really the desired outcome, a possible solution would be to hand back the unfair dismissal jurisdiction to the State tribunals which do not face the same obstacles created by the separation of powers doctrine.

Collective Bargaining

There is no doubt that there have been changes in the economy over the last century that require a review of the powers available for collective bargaining. In recent times this debate has been driven by the national competition policy push. This has led to the rights of small businesses to collectively bargain with large enterprises such as large supermarket chains being reduced. It also appears to be the philosophy driving the push towards individual contracts.
What has been lost in the debate is that most employees and smaller enterprises do not have the same bargaining power as big business and employers. In particular the growth of multi-national corporations means that employees and small businesses are more vulnerable to the market power of large corporations than ever before. Placing limitations on employees, individual contractors or on small business in collectively negotiating their employment arrangements or contracts would do nothing to increase employment opportunities or increase prosperity to Australians. In fact, this would have the effect of further reducing the power of small businesses to negotiate to improve outcomes. As with many other competition policy driven changes, the impact will be most strongly felt in rural and regional areas.

A far greater benefit to rural and regional employers, and to small business generally would be a further reduction in the limitations to collective bargaining. This includes collectively bargaining in conjunction with Unions to ensure that small business and employees have the benefit of fairer and more predictable prices for their products. An example of this would be increasing the rights of primary producers to form collectives to achieve better prices when negotiating with large supermarket chains.

Such opportunities have been denied to small business for too long, particularly given that they would improve the return to primary producers and small business owners, in turn providing better more stable job opportunities. While there have been positive moves in easing the requirements through the ACCC in recent legislation, the changes do not go nearly far enough to ensure that there is a more level playing field.

Conflict Model of Bargaining

The Australian industrial relations system has long been founded on a system of conciliation and arbitration. This has recognised that the interests of a business and its employees are often not reconcilable. It also recognised that industrial unrest and disputation are damaging to the interests of both employers and employees.

Despite this, the *Workplace Relations Act* 1996 brought about a conflict based system of industrial relations. This gave employees immunity for protected industrial action, but

limited the circumstances where such action could be taken. Under this system, employees and employers periodically renegotiate their agreements. If agreement cannot be reached through negotiations, notice is given by one party or the other to take protected industrial action – in the case of employees generally a strike, or in the case of employers generally a lockout. In practice, this means that in workplaces characterised by high union membership, or in an industry that is particularly vulnerable to stoppages, employees and unions are able to achieve far better wage increases than un-unionised workplaces. Where employees have less bargaining power, the employer is able to dictate terms.

I think the proposed changes will favour the companies and big business' compromising workers' rights. Who will help those with low bargaining power for better working conditions and fair pay? Trinh Pham, Bushland Regeneration Officer

The model improves outcomes in a small number of industries where employees are able to exert more pressure on those employers who are vulnerable to militant industrial action. It directly rewards Unions that adopt a militant approach to industrial relations. On the other hand, the system disadvantages employees that do not have effective bargaining power. It also hurts businesses that do not have the resources to negotiate complex contracts or workplace agreements.

Either way the conflict model does nothing to create positive workplace relationships, it simply reinforces mistrust. There are no productivity gains from making the workplace an ideological battleground.

This model of bargaining has already been forced on many employers that are in the federal system by virtue of having a federal award. An example of this is in the Queensland local government industry where each council negotiates a sperate Enterprise Bargaining Agreement. This has led to an increased level of conflict, and seen large differences in rates of pay between city councils and those in regional areas. Naturally this makes it more difficult to retain skilled employees.

The impact of this system of industrial relations has been somewhat mitigated in both NSW and Queensland through a State industrial relations system that is modelled on preventing industrial action, and allowing for a broader range of business needs. The primary focus of both systems is to avoid strikes and industrial action . Workers can be directed by the Industrial Relations Commission to return to work. The trade-off for this restriction on the right to strike is that the IRC has powers to arbitrate and determine disputes. This has often resulted in outcomes that are favourable to workers; particularly those in lowly unionised workplaces. Extreme results that are the product of a strong union's bargaining position are rarely seen. Historically this system has also mitigated wage blowouts that result from labour shortages. Abolishing the state system would hurt particularly those businesses that chose to remain in a system where they can avoid industrial unrest though the intervention of the State Industrial Relations Commission.

Unfair dismissals

One of the key changes proposed by the Liberal Party is that the unfair dismissal system will not apply to businesses with less than 100 employees and that this will encourage

small business to hire more staff. However, on this analysis, this part of the proposed package is the most flawed. It fails to account for the interaction of individual contracts, and the severe limitations to the power of the Federal Government to abolish state laws through the corporations power.

Whatever the intention of exempting these businesses from unfair dismissal laws, benefits to small business are highly unlikely to result. Even if businesses with less than 100 employees were exempted from unfair dismissals, other remedies for the termination of employment remain.

Unlawful Termination

At present, applications for unlawful termination are relatively rare. This is because an application that solely seeks a remedy for unlawful termination (s170CE(1)(b)) must be prosecuted in the Federal Court. The expense associated with such actions is often prohibitive. In practice they are often dealt with as unfair dismissal applications. If other remedies were removed there would be a significant increase in unlawful termination applications.

This proposal has been designed, I believe on the American way... We are Australians, lets do it our way." Donna McMillan, Customer Service Team Leader.

Wrongful Termination of Contract

An action for wrongful termination of contract is also available as a remedy under the common law of contract[5]. At present, this is not commonly used due to the availability of a cheaper, faster industrial relations tribunal. In the absence of express terms, the common law implies that there are two ways to terminate an employment contract – summary dismissal in the event of an employee's misconduct, and by giving an employee "reasonable notice". What constitutes reasonable notice has been held to vary considerably[6], but is often well in excess of the 6-month limit for unfair dismissals. It has been held to depend on factors such as the employee's length of service, their responsibility and the likelihood of obtaining suitable alternative employment. In some cases where an employee was subject to a written contract that specified a notice period, but subsequently promoted, the original notice period has been held to no longer apply.

Civil cases can be long and drawn out, with significant costs for both sides. Small businesses faced with such claims would often not be able to afford to defend them. In the event that a claim is successful, a small business could be faced not only with a much larger payout, but also with the prospect of a costs order. Often large corporations are better able to be defend such claims because they have significant legal resources and generally more carefully drafted contracts.

Duty of Mutual Trust and Confidence

[5] See for example *Jager V Australian National Hotels Pty Ltd* (1998) 44 AILR ¶ 15-064

[6] See for example *Dick v WH Bowden (Real Estate) Pty Ltd* 1989 AILR ¶315 (3 months notice awarded); *Thorpe v South Australian National Football League* (1974) 10 SASR 17 (6 months notice awarded); *Tucker v The Pipeline Authority* 1981 AILR ¶429 (9 months notice awarded); *Kilburn v Enzed Precision Products (Australia) Pty Ltd 1988* AILR ¶215 (12 months notice awarded); *Quinn v Jack Chia (Australia) Ltd* (1991) 43 IR 91;1991 AILR ¶361. (12 months notice awarded); *Sawyer v Cutler-Hammer Pty Ltd* (2002) 51 AILR ¶5-376 (15 months awarded); *Jager v Australian National Hotels Pty Ltd*. Sup Ct of Tas (Slicer J) (737 of 1995) 12/5/98 (2 years notice awarded);

There is a growing body of common law based on the principle that the traditional common law employment relationship recognises an implied duty of mutual trust and confidence. This means that employees and employers have a duty to act in good faith in their dealings with one another. To date, this principle has had limited application in respect to employees who are covered by the unfair dismissal regime, on the basis that the legislature has expressed an intention to prescribe the appropriate remedies, and limit claims to that statutory system. In the absence of this statutory system, the development of the common law in this area would lead to greater uncertainty and risk for employers. In many cases the interpretation that is given by courts, particularly to unwritten employment contracts, will be unpredictable.

AWAs: extra paperwork for small business

I think the Howard IR policy is linked to all the free trade agreements being pushed by this government in an attempt to lower the basic wages and conditions of all Australian workers to benefit big business and corporations. Mark Gowan, Team Leader Parks and Gardens.

One of the often-neglected features of the award system is that to a large extent it has served to determine the majority of employment conditions for employees and employers. The result is that all businesses are able to apply employment standards that are consistent with those of their competitor and have been held by an independent party to be fair and reasonable to both sides.

For small business this means that there is no need to regularly engage legal advice on the latest developments in industrial or contract law. Similarly, there is no need to make substantial adjustments to wages – either upwards or downwards to stay inline with "the market". These features ensure that there is a high level of predictability, a low level of cost to business and fairness to all parties.

Under a system of individual contracts and AWAs there will be winners and losers. The winners will almost certainly be large multi-national corporations and workers in a strong bargaining position either through skills shortages or an employer that is vulnerable to industrial action.

The Impact on Families and Local Communities

The downgrading of the award safety net will have a particularly detrimental effect on rural and regional communities. These communities already face significant pressures associated with the migration of skilled workers to larger regional centres and cities. Common rule state awards ensure the maintenance of decent real wages and working conditions regardless of bargaining power. Under the award system workers in regional areas and in major cities have the security of a proper wages safety net. The award system also inhibits wages blowouts in areas marked by a high demand for labour and where there are skill shortages.

The Liberal Party's proposed conflict model of industrial relations will make it more difficult for employees in rural areas to negotiate fair and reasonable wage outcomes. This will result in the degradation of working conditions for some employees and an increase in

the incidence of strikes and lockouts in other sectors. The use of AWAs will fragment the labour market meaning that some workers in metropolitan areas may see significant increase in their wages, while the incomes for working families in rural and regional areas will decline.

"We all work hard and deserve to be paid accordingly. How are we supposed to save for our future if we get paid less?" Maree Lord, Library Circulation Officer

Without the equalising influence of awards, local communities will find it increasingly difficult to retain young and skilled workers as they move to regional and metropolitan areas where greater rewards are available. Occupations such as nurses, teachers, child care workers and engineers are less likely to stay in regional and rural areas. This loss of population and employment is then associated with a loss of government and private sector services. This can lead to further closure of hospitals, schools post offices and banks. Small businesses in rural and remote areas will come under further pressure as the reduction in discretional spending results in a vicious circle of drifting population away from rural areas.

An examination of the impact on working hours and weekend penalty rates illustrates the adverse effect of these types of reforms. Under the proposed Liberal Party model penalty rates are not protected as core employment conditions. This means that provisions for penalty rates (for weekend and shift work) may be removed by AWAs and certified agreements, without assessing whether an employee is overall not worse off then she/he would be under the relevant award (the "no disadvantage" test).

The removal of penalty rates for weekends and night shifts will greatly enhance the capacity for big businesses to undercut locally owned sole traders and other small businesses. Under this model larger business will maintain extended operations, paying only a basic wage and driving local competitors from the market. Workers suffer under this model as ordinary working hours are extended into time traditionally reserved for community and family activities. Smaller businesses suffer due to their inability to compete in a low wage market. Communities suffer as the choice and diversity of local services diminishes and is replaced with a monoculture dominated by corporate branding. Local economies suffer as the profits of big business are returned to shareholders residing in Melbourne, Sydney, or overseas rather than being returned to the local community. Eventually, once the local competition has been removed, the larger corporate businesses are free to raise prices and further increase their profits at the cost of the local community.

The common denominator where the negative effects of all these changes accrue is the Australian working family. As "ordinary" working hours are changed to include work in the evenings and on weekends, the time families spend together becomes fragmented. The balance between the working and family lives of ordinary Australians becomes lost. There is less time for parents to support the development of their children. Less time to participate in the community activities which are such an essential part of our quality of life. Less time to support local sports clubs. Less time for religious worship. Less time for volunteer emergency and rural fire services. There is little wonder that the Liberal Party's proposed industrial relations changes are widely opposed by a broad range of community and church groups.

Evidence of the negative impact of similar industrial relations changes is available from the New Zealand experience where the introduction of the Employment Contracts Act in 1991 was associated with a decline both in real wage and growth and general economic activity. Larger corporate supermarkets have increased their domination of local economies, while general economic activity has declined and smaller businesses close down. Similar changes have already taken place in Australia with the increase in the strength of large corporations and retailers.

Competition policy such as dairy de-regulation has been a massive failure for primary producers. The proposed industrial relations changes are nothing more than an extension of these economic rationalist policies to working people. The results can be expected to be similar to those experienced by dairy farmers, but on a much wider scale.

Impact on Local Government Employment

"I have been a Liberal voter for a very long time. Unfortunately the Liberal government is betraying us. I think I am going to have to vote the other way next time." Steve, Site Attendant

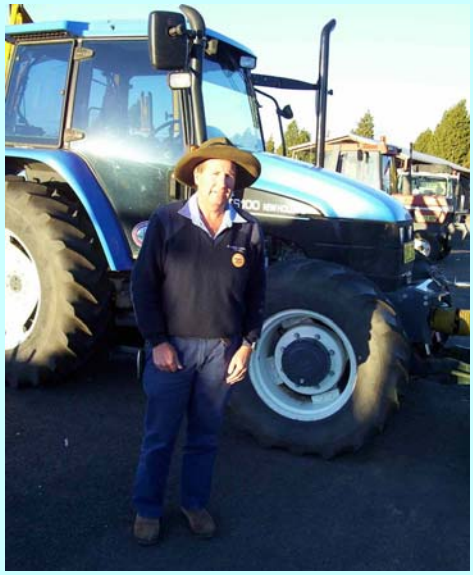
Local councils help maintain the social and economic stability of local communities, particularly in rural and regional areas. They mean a core base of secure local employment especially when times are tough. This helps support healthy local economies. Often employment in Local Government by one family member means that families don't have to rely solely on agricultural or small business ventures for their income.

Over the last decade local councils have come under increasing financial pressures. Cost shifting from both State and Federal governments has required councils to provide an ever-increasing range of services. When services are withdrawn, it is councils that pick up the slack. However an increased share of State or Commonwealth taxation revenue does not accompany these costs. Council amalgamations have seen service centres move from smaller local communities to larger regional cities. National Competition Policy (NCP) has required workers in rural communities to compete against major corporations for waste and road services and other basic works and services. The adverse impact of economic rationalist polices such as NCP upon rural communities is well documented. In Victoria in the mid 1990s NCP was associated with a policy of compulsory competitive tendering resulting in the loss of both job security and wages and conditions for rural workers.

The Liberal Party's industrial relations agenda will put more pressure on rural and regional councils. Local governments in Queensland and other states have undergone significant structural reform programs such as through amalgamation. Even so, there are still a large number of smaller councils which serve the day-to-day needs of small communities. In Queensland over 57 local councils have less than 100 employees. In New South Wales there are 41 councils with less than 100. These are relatively secure jobs for local residents. By their nature councils are political entities. Security of employment and the use of industrial arbitration is a critical feature ensuring consistency in conditions of employment as well as guarding against corruption and ensuring appropriate use of revenue.

Employment security for a core body of council workers contributes to the stabilisation of rural economies and builds business confidence.

Bringing AWAs into Australian local government would be a move away from merit and skills based employment. The idea that a true "labour market" exists in rural communities is quite artificial. The loss of an award safety net will only encourage the degradation of wages and employment conditions and suit the interests of large metropolitan areas rather than rural and regional communities. In New South Wales the weakening of award based weekend penalty rate provisions has already seen downward pressure placed upon penalty rates standards for workers engaged in country and rural areas.[7] Similar pressure has also been applied to wages due to difficulties with locally determined salary systems.[8] Both these issues have been associated with significant disputation in New South Wales. The existence of a strong state conciliation and arbitration system has enabled these disputes to be resolved with a minimum of industrial conflict providing for fair and reasonable wage and conditions, regardless of the bargaining power of employees.[9] This straightforward approach to resolving disputes about rates of pay and working conditions will not be available under Howard's conflict model of workplace relations.



"Australian Workplace Agreements are a major issue" Ray Duffy, Supervisor.

In New South Wales, local government employment is protected through State legislation employment guarantees prohibiting councils from implementing forced redundancies during council amalgamations.[10] Rural communities are also protected through state laws designed to maintain core employment numbers in "small rural centres" (towns with populations of around 5 000) when an amalgamation or boundary change occurs.[11] When introduced these laws were universally supported by all sides of politics. During parliamentary debate the Deputy Leader of the Coalition in the Legislative Council, the Hon. Duncan Gay said:

> *"Without the employment protections provided for in this bill council staff would not have access to the sort of employment protections they deserve, and rural communities would not have the guarantee that the core numbers of council staff will continue to be based in country towns."*[12]

The removal of unfair dismissal rights could make these laws more difficult to enforce. The adoption of a unitary federal industrial relations code will further undermine these employment protection provisions as State verses Federal rights arguments arise over the

[7] *FMSCEU v Wellington Shire Council* (2000) NSWIT Comm 268, 15 December 2000, per Harrison DP;

[8] Local Government Industry Salary System Dispute, IRC 2513 of 2000.

[9] *Local Government(State) Award, Re* (2005) NSWIR Comm, per Wright J, See also, Industry Salary System Dispute, Statement of the Commission 13 December 200, per Schmidt J.

[10] *Local Government Amendment (Council and Employee Security) Act 2004* (NSW), sections 354C & 354F.

[11] *Local Government Amendment (Council and Employee Security) Act 2004* (NSW), section 218CA.

[12] NSW Hansard, 30 May 2004, second reading debate on the passage of the Local Government Amendment (Council and Employee Security) Bill.

conflict between conditions contained in state local government laws and the conditions of employment contained in AWAs and federal agreements.

Local government awards have a long history in maintaining decent living standards for council workers while providing a skilled and productive workforce for councils and local communities. The abolition of state arbitration systems would mean that stoppages and industrial action would become the only primary means of resolving industrial disputes. This approach disadvantages those employees with lesser bargaining power and is inconsistent with the co-operative approach in the state systems.

The Government must be wary not to create an environment where federal industrial agreements and contracts will override state laws concerning the rights and obligations of local councils and their employees. As a matter of public policy local government should be excluded from the proposed federal industrial relations amendments.

Conclusions:

1. The hostile takeover of the State jurisdiction is a violation of essential States Rights and would create a complex central bureaucracy that would not suit the interests of business, particularly in regional areas.

2. The impediments to the exercise of Federal constitutional power would prevent the proposed legislation from "covering the field" as is claimed.

3. The right to collectively bargain should be maintained for employees, and strengthened for small business and in particular primary producers.

4. Removal of the unfair dismissal jurisdiction would be counter productive in that it would expose business to more costly claims in contract law.

5. A change requiring regular negotiations for contracts would increase costs to small business and present greater legal risks.

6. The conflict model of industrial relations will have a negative impact on employees, families, small business and local communities. Big business interests stand to gain the most from these reforms.

7. On the grounds of public policy local government should be excluded from the proposed amendments.

8. Care should be taken to ensure that federal industrial agreements and contracts do not adversely impact upon state employment protection laws relating to local government employees and small rural communities.

Councils with Less than 100 Employees (New South Wales) *

Council	Number of Employees
Balranald	50
Blayney	65
Bogan Shire	56
Bombala	57
Boorowa	58
Bourke	98
Brewarrina	73
Central Darling	50
Clarence Valley	75
Conargo Shire	30
Coolamon	60
Cootamundra	70
Deniliquin	87
Dungog	69
Eastern Capital City Regional	57
Glenn Innes/Severn	82
Gloucester	88
Gundagai Shire	55
Guyra Shire	58
Harden	59
Hay Shire	51
Hunters Hill	50
Junee	63
Leeton	89
Lockhart	42
Murray Shire	71
Murumbidgee Shire	38
Narrabri	90
Narrandera	94
Narromine Shire	75
Oberon	70
Temora Shire	85
Tumbarumba	58
Urana Shire	30
Walcha	58
Warren	72
Weddin Council	68
Wentworth Shire	98

These Councils did not include their number of employees: Carrathool, Canada Bay, Greater Hume Shire, Orange, Pittwater, Richmond Valley, Shellharbour, Shoalhaven, & Wakool.
Figures based upon The Australian Local Government Guide, March 2005 Edition

Councils with Less than 100 Employees (Queensland) *

Council	Number of Employees
Aramac	49
Balonne	85
Barcaldine	79
Barcoo	45
Bauhinia	65
Bendemere	31
Biggenden	27
Blackall	59
Boulia	55
Broadsound	85
Bungill	65
Cambooya	45
Carpentaria	85
Chinchilla	66
Clifton	42
Cloncurry	82
Croydon	50
Eacham	74
Eidsvold	43
Etheridge	54
Fitzroy	77
Flinders	93
Gayndah	43
Goondiwindi	42
Herberton	66
Ilfracombe	27
Inglewood	46
Isis	80
Isisford	26
Jericho	50
Kilcoy	48
Kilkivan	70
Kolan	56
McKinlay	59
Millmerran	70
Mirani	55
Monto	45
Mornington	65
Mount Morgan	38

Council	Number of Employees
Mundubbera	39
Murgon	54
Murilla	89
Nanango	65
Nebo	53
Peak Downs	92
Perry	34
Pittsworth	42
Quilpie	57
Richmond	58
Rosalie	75
Sarina	93
Taroom	90
Torres	72
Waggamba	63
Warroo	79
Wondai	70
Woocoo	24

These Councils did not include their number of employees:

Aurukun 71;
Bulloo 68;
Burke 30;
Burnett 145;
Cairns 991;
Diamantina 57;
Duaringa 91;
Gladstone 321;
Gold Coast 2908;
Jondaryan 110;
Tambo 46

Figures based upon The Australian Local Government Guide, March 2005 Edition