

The Case for Minimal Regulation of the Labour Market

Address to Stonnington University of the Third Age Group

Des Moore¹, 17 March 2008

Introduction

I am an advocate of increasing the role of competitive private enterprise and reducing the role of government in society, although that was not the case when I joined the Commonwealth Treasury in 1958 after completing my economics degree at the London School of Economics. My perspective then was that an increase in government intervention would improve both the economic and social situations. My 28 years experience working in the Treasury led me to the opposite view – that is, while still seeing an important role for government I argue for a considerable reduction in its intervention in society. This applies particularly to the subject under consideration today, where my view is that the terms of employment should basically be settled between employers and employees acting on their own behalves, subject mainly to observing normal legislated or common law contractual requirements.

However, as the Howard Government discovered, the long history of regulation of wages and employment conditions in Australia has made it particularly difficult to move away from detailed government regulation of those conditions. That difficulty has been enhanced by the fact that major components of the regulatory arrangements have originated from decisions by many judges and industrial commissioners who have adopted a role to pursue supposedly ‘fair’ or socially desirable outcomes of employment negotiations.² They have continued in this role despite the fact that s.51 (xxxv) of the Constitution, which has until very recently been assumed as providing the constitutional basis for federal regulation, provides no basis for it. Mr Justice Kirby, who has been a leading advocate of a social justice role by the judiciary, has even justified the approach on the basis that where there is no law on a specific subject, judges should prescribe it rather than waiting for Parliament to act.³ I should

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² Examples include widely-reported public interviews given in February 1996 during the federal election campaign by Justice Murray Wilcox in which he criticized the Coalition’s plans to amend unfair dismissal laws (for further references to Wilcox J, see Forbes, John, “*Just Tidying Up*”: *Two Decades of the Federal Court*, Proceedings of the Tenth Conference of The Samuel Griffith Society, August 1998); a paper to the XX1st Conference of the HR Nicholls Society in May 2000 (see www.hrnicholls.com.au) by leading industrial barrister Stuart Wood analysing judgments by several Federal Court judges, including Justice North’s in the important case of *Australian Paper Ltd v CEPU* (1998, 81 IR 15) suggesting tortuous interpretations of Section 127 of the Workplace Relations Act designed to render largely ineffective the legislative provisions directed at preventing unlawful industrial action; and an interview by Justice Munro with Workplace Express on his retirement in 2006 as Deputy President of the Commission implying that the judiciary must keep Parliament and the Government in line because “the number [of ministers] who actually know what goes on has been fairly few, and a lot of advisers know even less.” By contrast, according to Justice Munro the Commission had been “getting with the parties and trying to get them to work through problems”.

³ A report in the Herald Sun of 26 November 2003, “Kirby Calls for Judicial Activism”, included the following quotation from a lecture by His Honour in England on law-making by judges: “If there is no

mention here that my advocacy of the abolition of the Industrial Relations Commission led His Honour to attack me publicly as a heretical “industrial ayatollah”.⁴

However, entrenched opposition has not prevented some progress being made over the past 20 or so years in increasing the scope for individuals to agree the terms of employment under arrangements involving less regulation and less involvement of unions. The outcome appears to have been favourable.

Since the mid 1990s the rate of unemployment has been halved from around 8% to 4% now and the proportion of the working age population that is employed has increased from 66% to 72%, with the proportions increasing for both males and females.⁵ As the attached table shows, that increase in the proportion employed is quite remarkable when viewed against the almost stationary situation in the thirty years before the mid 1990s. If that relatively stationary position had been maintained, there would now probably be close to 900,000 fewer people employed and the growth in national productivity and the economy would have been much less over recent years. The table also shows that the increase since the mid 1990s has led to a “catch up” with the United States and the United Kingdom: we now have similar proportions employed and have moved from being around the OECD average rate of employment to above it.

Other developments that occurred over this period confirm the improvement in living standards was not confined to higher employment. These included a *real* increase in average wage and salary earnings, averaging 1.6-1.7% a year,⁶ and a reduction in average *hours* of work⁷ and industrial disputation. All this was accompanied by a further decline in the rate of union membership from over 30% in the mid 1990s to only 20% today, and meant that 90% of businesses have no union members.⁸ The clear implication is that there was no weakening in the bargaining power of employees as the labour market became less regulated.

These developments provide strong support for concluding that reduced regulation under the Howard government made an important contribution to the increase in employment and the accompanying benefits. They certainly raise a question as to the justification for the reversion by the Rudd government to increased levels of regulation.

apparent law on a subject, the judge is duty bound to create it, based on past precedents. Citizens need to know and face these realities. So do the bullies who cry judicial activism”.

⁴ See address by Justice Kirby to the 2004 centennial celebration of Australia’s compulsory conciliation and arbitration system.

⁵ Using data published in the OECD’s annual Employment Outlook, which defines working age population as the 15-64 year old age group. Australian data for that age group provides a broadly similar result.

⁶ ABS Australian National Accounts: cat.no.5206.0 Table 10 Table 7.6 Labour Costs, Annual Average for real average earnings. Average earnings per week increased in real terms by 21.4% between 1995-96 and 2006-07 (from \$841pw to \$1021pw), implying a doubling over about 40 years.

⁷ As reported in the AFR (“Families first, workers say”, AFR 27 June 2007), research by the Melbourne Institute suggests the reduction in average working hours since the peak in 1994 - when enterprise bargaining was introduced - may be partly reflect the growth in real wages. To the extent this is a trade-off by *employees*, it indicates a degree of relative bargaining strength.

⁸ The rate of private sector union membership is only about 15%

Of course, there have also been other important improvements in economic policies contributing to the addition to employment. Most important, perhaps, was the adoption of an anti-inflationary monetary policy which effectively put a stopper to the awarding of national wage increases by an Industrial Relations Commission that had previously given a low priority to potential adverse effects of its decisions on price and employment levels. In other words arrangements based more on individual negotiations allowed increased demand for labour to be met without inducing inflationary wage pressures across the economy.

The reductions in labour market regulation under Howard included the easing of the unfair dismissals regulation, the increased resort to individual agreements encouraged by legislation with limited regulation, the bar on any further exercise of compulsory arbitration, and the limitations placed on industrial disputation. The separate establishment of the Australian Building Construction Commission to counter union restrictive practices in the construction industry also markedly improved the functioning of that industry's labour market and investment environment.

Labor says it is retaining some important Howard changes in regulation, including the outlawing of pattern bargaining and secondary boycotts as well as of industrial action during the life of an employment agreement (including the requirement to hold a secret ballot before initiating allowable industrial action). Similarly, there is supposed to be no compulsory arbitration. However, there appear to be contradictions within Labor's stated policies, including the implication that compulsory arbitration could well emerge from the proposal that the Fair Work Authority "will have the power to end industrial action and determine a settlement".⁹ More generally, on a broad assessment the Rudd government's stated policy will establish what will probably be the most extensive and detailed legislative regulation of relations between employers and employees ever applied by the federal government.

Labor claims the essence of its current approach is to base employer/employee relations on decentralised enterprise agreements. In reality, however, the essence is that all agreements will be subject to extensive centralised legislated regulation as to wages and conditions, to detailed judicial and administrative interpretations and applications of such regulation, and to an increased role for unions in bargaining.

Labor's legislation is to be implemented over a period and will not come into full operation until January 2010. The initial legislation, expected to pass in the near future, effectively outlaws the conclusion of *new* statutory individual contracts directly between employers and employees¹⁰ and a new "no disadvantage test" will apply to all collective and other agreements.¹¹ This test is designed to ensure that any agreement will not make an employee worse off than the relevant award ie a no-losers

⁹ This and other references to or quotes from Labor policy are taken from one or other of its two *Forward with Fairness* policy statements, one in April 2007 and the other in August 2007.

¹⁰ Except for the about 1 per cent of employees earning over \$100,000 a year and so-called "individual transitional employment agreements" (ITEAs) that may in certain circumstances be concluded until the end of 2009. An existing Australian Workplace Agreement (AWA) will be able to continue up to 31 December 2012.

¹¹ Except for employees who are 'historically award free, such as managerial employees'.

philosophy. Later legislation to apply from 2010 will require ten minimum standards (including 4 new “rights”) to be met.¹²

That legislation will also include the results of the award modernisation review being undertaken by the creator of awards, the AIRC, which has already had two unsuccessful attempts at modernisation.¹³ At a briefing I recently attended by a prominent legal firm, the idea of bringing of an award system “back from the dead” was rightly characterised as a return to the 1970s. It is medieval to believe that bureaucratic or quasi-judicial authorities can determine wages and conditions appropriate for particular workers and particular situations. Labor policy statements also suggest that later legislation may not only contain additional minimum standards for particular industries but provide for awards that would set annual wage levels on an industry basis.¹⁴

Later legislation will also establish in 2010 a new institution named Fair Work Australia that will effectively take over the old wage-determining roles of the AIRC as well as those of the several regulatory institutions established by the Coalition. These include the Fair Pay Commission determining a minimum wage, the Australian Building and Construction Commission, the Workplace Authority (established to administer the fairness test under Australian Workplace Agreements) and the Workplace Ombudsman (established to monitor observance of the WorkChoices legislation and to investigate or prosecute contraventions). In short, Labor will operate a very substantial industrial regulatory force.

The rationale behind Labor’s new set of regulations and institution(s) is that there is a basic imbalance of bargaining power between employers and workers. According to Labor, the greater flexibility in terms and conditions achievable in employment agreements under the WorkChoices arrangements increased the likelihood that employees would lose conditions to which they were ‘entitled’ or had negotiated in the past.¹⁵ Indeed, much was made during the election campaign and since of the fact that some statutory individual agreements negotiated under WorkChoices did not include conditions provided under awards previously made by the AIRC and thus resulted in reduced pay and conditions. Hence the perceived need, stated to be in the interests of fairness, to ensure that basic conditions would be stipulated by legislation or ensured by an appropriately charged institutional framework.

Problems with the Basic Rationale

Labor’s adoption of the highly regulated approach ignores the potential for both economic and social benefits from a freer labour market. The notion that extensive

¹² These guaranteed minimum conditions will include no “unreasonable” work hours beyond 38 hours, “flexible” work arrangements for parents with pre-school age children, penalty rates for evening, week-end or public holiday work, redundancy pay, and long service leave.

¹³ There are still over 4,000 wards that have application.

¹⁴ It appears that proposals for additional minimum standards may be subject to compulsory arbitration.

¹⁵ However, the Coalition’s WorkChoices legislation allowing both individual and collective agreements by *direct* negotiations between employers and employees required *all* such agreements to comply with mandatory legislated minimum standards. Also, the introduction of the fair compensation test effectively returned to the no-disadvantage test under the Workplace Relations Act’s requirement that individual agreements contain no overall reduction in award conditions.

regulation ensures a “fair go” for the workers actually overlooks the unfairness of much of that regulation, as well as largely neglecting the implications of the structural changes in society over the past twenty or so years. Two major structural changes in the economy and society should be mentioned.

One of those is the now widespread acceptance that the most appropriate form of economic organisation is a competitive market economy and that, in such a competitive environment, individuals can generally make their own employment decisions without fear of being exploited by employers and without the need for support from union actions.

The second is that over recent years governments have increasingly assumed direct responsibility through an extensive social security system for helping those judged unable to obtain employment or otherwise disadvantaged. This system provides a protective bulwark for those at the bottom end of the social spectrum and eliminates any need for the wage system to attempt that.

These changes in the last twenty five or so years, producing a market economy and a social security system, should have long since led to recognition that workers in modern societies have no need for special legal protection against employers, let alone dictation by outsiders of what employment conditions are socially “appropriate”.

Collective Bargaining, Bargaining in Good Faith and Bargaining Powers Generally.

I argue therefore that there is no substantive case for *special* legislation either to encourage or allow collective bargaining or even to prevent exploitation by employers.

However, under the legislation proposed by Labor collective bargaining will be allowed where a majority of employees want it and Fair Work Australia will be empowered to determine the extent of support for it. Although Workplace Relations Minister Julia Gillard has given assurances that wage increases under Labor will be productivity-determined, and that pattern bargaining will continue to be outlawed, that will be difficult to achieve if collective bargaining becomes more prevalent. It seems clear that the collective bargaining promises are designed to help unions.

In any event, collective bargaining constitutes a quasi monopoly and its adoption can only be justified if it can be shown to be in the public interest. This would be hard to establish as it adds to the risk that both individual businesses and the economy will be exposed to possible “forced” wage increases that do not reflect increased productivity but do reduce employment. Australia has had several experiences of collective bargaining induced inflationary wage increases, most notably in the mid 1970s, which had adverse effects on employment and the economy.

As to employee exploitation, where this occurs or is attempted it can and should be dealt with either through normal legal processes or through market processes. Employees are protected under the common law and ordinary contract and criminal legislation and, like everyone else, employers are legally obliged to observe contracts

including those containing agreed wages and conditions. Nor are the parties to employment negotiations able to avoid the normal criminal law applying to actual or attempted exercises of violence and duress and the legislation requiring no racial, sexual, age or disability discrimination would also continue to apply. It is also relevant that the ordinary common law provides some protections against abuse and contracts will not be upheld if procured by force, fraud, or undue influence. Contracts deemed to have been entered into in a manner that is “unconscionable” may also not be enforced.

The imbalance of bargaining power justification for special protective legislation also fails to take account of the competitive environment in which employers operate today. Australia now has more than 800,000 businesses competing with each other and operating with a workforce of over 10 million. In such circumstances no valid argument can be mounted that, without prescriptive regulations, employers as a group would force wages down or impose “unfair” conditions on employees as a group. When working conditions are unacceptable to either party, each side has alternatives that, while not necessarily the first best option for either, prevent businesses as a group from being imposers and workers as a group from being slackers.

ABS data on Labour Mobility¹⁶ shows that each year about 1.4 million employees leave their jobs voluntarily, with around 20 per cent doing so mainly because they assess their working conditions as unsatisfactory. This indicates that competition between employers for labour gives individual employees a degree of bargaining power. In fact, each employee has the capacity to readily quit jobs if he or she feels badly treated by their particular employer, or for any other reason, and this is demonstrated by the nearly 2 million of employees who left their jobs in 2005-06, only about 11 per cent of whom were retrenched.¹⁷

Small businesses, which comprise around 90 per cent of all businesses and account for about 35 per cent of total employment, are particularly limited in attempting to exercise bargaining power. If they seek to “exploit” workers in some way, they are exposed to serious risk of loss of staff and difficulty in operating a business. Potential competition for labour also exists from the *additional* 1,550,000 owner-run businesses that are would-be employers and, hence, also judges at the margin of the regulatory arrangements.

What we have on the employer side of the labour market is a large number who face the risk of loss of staff/difficulty in operating a business if exploitation is attempted. Those businesses not only need to retain competent staff if they are to operate successfully but they have to do so in a constantly changing environment. In 2005-06, for example, out of the 808,000 businesses that employed work forces at the end of the year, about 102,000 had started as employers during the year while 80,000 had ceased to be employers.¹⁸

¹⁶ Labour Mobility, ABS Cat No 6209.0, Feb 2006 (Reissue). The data relating to the year ended February 2006 shows about 1.35 million leaving jobs voluntarily and about 640,000 leaving involuntarily.

¹⁷ Ibid.

¹⁸ Australian Industry, ABS Cat No 8155.0, 2004-05; ABS Cat No 8156.0, Table 1.1.

On the employee side, we find increasing numbers who are either bargaining for themselves or obtaining advice from the many employment and legal agencies, associations, and government inspectorates rather than relying on unions. I do not want to suggest that unions should have no bargaining role but they now have to compete with other sources of advice and help. They also have less power to force unwarranted conditions on employers.

Moving to a labour market that is less regulated and less open to union influence would cause *some* employees to experience *reduced* compensation and/or working conditions. But any substantive reductions would need to be assessed against the circumstances in which they were obtained and the subsequent consequences.

As already mentioned, much attention has recently been given to reductions in wages or conditions experienced by some workers employed under AWAs. However, no assessment has been made of whether the awards used to calculate the lower compensation had a sound economic basis. Nor has any assessment been made of the availability of persons out of a job and prepared to work for a lower level of compensation than stipulated in the award. Yet it seems that there were people prepared voluntarily to accept the conditions offered under individual agreements. The fact that over 4,000 awards exist, and have not been “modernized”, suggests that many may be outdated or inappropriate. In short, the idea that awards should be the test is, to say the least, highly questionable. Market forces as reflected in AWAs provide a more relevant test, particularly in circumstances of low unemployment.

Past experience also suggests that some awards reflect the provision of wages and/or conditions made by tribunals in circumstances where claims by unions were based on the actual or threatened use of industrial power that unions were allowed to exercise but should not have been. The outcome of the waterfront dispute illustrated vividly the existence then of extensive unwarranted protection of union power of an unfair nature¹⁹ and a similar situation clearly existed in the construction industry before the ABCC was established.²⁰

Under Labor’s policies there is increased potential for a return to such disputes. Its policy statements say that unions will be allowed to bargain over “any matter” (that is, not necessarily related to employment conditions) and that “all bargaining participants will be obliged to bargain in good faith”. There was no such requirement in the WorkChoices legislation and Labor’s policy effectively means employers seeking an employment agreement or a change in an existing one would have to involve unions if requested. During the election campaign Minister for Workplace Relations Julia Gillard argued that the “obligations are simple” for employers and only require such things as attendance at meetings “at reasonable times”, timely “disclosure of relevant information”, and “timely responses to proposals”. But these and other requirements are far from simple in the overall scheme of things.

¹⁹ Although Patrick did not succeed in replacing its unionised work force, that workforce was reduced by about half as a result of the dispute.

²⁰ The failure of police forces to enforce the law has also been an important element in providing such protection. For an analysis of the failures of the Victorian police force in the waterfront dispute, see *Keeping Things Peaceful or Keeping the Peace: Police at the Pickets* by industrial barrister, Stuart Wood (www.hrnicholls.com.au). There is little doubt that, had the police enforced the law, the attempted breaking of the MUA labour supply monopoly would have succeeded.

In practice, the obligation to meet and to disclose relevant information could involve a lengthy process imposing costs on employers and making it difficult for them to avoid agreeing to some perceived 'reasonable' going rate. If the relevant division of Fair Work Australia adopted an interventionist approach involving a continued ordering of meetings and information disclosure that situation would be exacerbated.²¹

Labor's unionist policy on bargaining powers and bargaining in good faith also risks a return to the situation in which rogue unions were allowed to exercise quasi-monopoly powers to the detriment of both employers and fellow workers. Although Prime Minister Kevin Rudd claimed in the election debate that Labor has a no-violence/no-threat of violence policy in regard to the activity of unions, and expelled a couple of abusive union leaders from the party, the establishment of extensive regulatory arrangements supervised by new appointees to the new Fair Work Australia would risk an increase in such union power in practice. The archives of the HR Nicholls Society are replete with past examples of the exploitation of *employers* despite regulatory arrangements supposedly designed to provide 'balanced' outcomes.

Overall, Labor has disregarded the likely beneficial effects for workers of "freer" bargaining arrangements in a less regulated labour market. Moreover, any idea that protective regulation would preserve employment in the event of a recession fails to recognize that a lack of flexibility works to undermine job security. This was illustrated in the recession in the early 1990s when unemployment increased to around 11%.²²

The Institutional Framework

The new institutional framework at the federal level, operating with so-called modernized awards and under legislated minimum standards, has adverse implications for the flexible operation of the labour market. In the past awards were often not fully enforced and a de facto *deregulated* labour market probably operated in about 15% of the market, particularly in the case of small businesses in the service industries, such

²¹ An example of what could happen may be found in the behaviour of the AIRC over a considerable period prior to WorkChoices in requiring employers to accept claims for the insertion into agreements of redundancy obligations well in excess of the 13 weeks standard supposedly set in 1983. During this period some employers "agreed" to redundancy obligations of 120-140 weeks and Telstra's acceptance of 84 weeks required it to provide about \$1 billion for redundancy during T1. Although this was the same amount as it promised for the environment, only the latter received any press coverage. While the Commission ceased under the Coalition to have the power to compulsorily arbitrate the settlement of disputes and hence require the insertion of provisions into agreements, it may still have an influence where both employers and unions have agreed to nominate it as the arbiter in disputes.

²² If the concern is to help financially workers in dispute with employers, a possible alternative to the industrial tribunal approach would be to establish a body with functions similar to those given to the Advisory Conciliation and Arbitration Service (ACAS) in the UK. That body is widely used in voluntary mediations/conciliations, has established itself as impartial as between employers and employees and provides extensive advisory services to both employers and employees at a low cost. ACAS was formed in 1974 to take over the industrial relations functions previously carried out from within the Department of Employment at the height of the collectivist approach to labour relations. It has performed four main activities. The most public of its roles is its conciliation involvement in industrial disputes. But it has also helped in organising arbitrations and, as individual rather than collective conciliation has grown, it has played an increasingly important role in individual conciliation. But its most extensive activity by far is its advisory work.

as hospitality, restaurants, security, cleaning and tourism. But once the new awards are in place the well-funded arms of Fair Work Australia will try to *ensure* all awards and other regulations are enforced. That would be the first time this has happened in Australian industrial relations and would reduce the incentive of businesses to employ.

Most importantly, however, the operation of regulatory and judicial industrial institutions separate from the ordinary courts will continue to expose employers (and others) to the uncertainties of interventionist decisions for social justice reasons that has been experienced hitherto. As I have written elsewhere,²³ the historical record of courts, tribunals, commissions and authorities in administering workplace relations laws is a poor one, even in attempting to achieve the original principal objective of having federal regulatory legislation involving the prevention and settlement of industrial disputes.²⁴ This gives rise to a major concern as to whether the appointees to Fair Work Australia will continue to have similar attitudes to their predecessors or, indeed, largely involve the same personnel. Labor has already announced that the existing President of the AIRC, Justice Giudice, will head the new institution.

The Minimum Wage and Unfair Dismissals

There is insufficient time to consider in detail the continuation by Labor of the Coalition's policy of setting minimum wages and its abandonment of the exemptions for small businesses from unfair dismissals regulation.

As to the provision for minimum wages, suffice to say that this is among the worst features of the regulatory legislation. Contrary to common perception, a basic problem is the inequity of the arrangements. Australia's minimum wage of around \$27,000 a year (not including on-costs) is close to 60 per cent of the median wage, which makes it the second highest minimum amongst OECD countries. This stops a significant proportion of lesser skilled workers from getting a job.

It is ironic that over half of low wage earners are in the top half of household incomes and have no need for a minimum wage income supplement.²⁵ By contrast, only about

²³ See, in particular, *Judicial Intervention The Old Province for Law and Order*, Samuel Griffith Society 2001 and *Overmighty Judges – 100 Years of Holy Grail is Enough*, HR Nicholls Conference 2004 www.hrnicholls.com.au. Also, my article on “*How the Judiciary Continues to Undermine Labour Market Deregulation*” in *Australian Bulletin of Labour*, Vol. 13 No 1 2005, refers to various decisions, especially those by AIRC commissioners, which suggested increasing interference - or failure to interfere when obviously necessary. Such decisions included failures to protect employers against violent and intimidatory union action, widening the definition of industrial action to allow more arbitration, an extension of circumstances in which unions have the right to strike and to enter business premises, a widening of the safety net beyond its objective, an apparently less favourable treatment of non-union agreements and an increasing attempt to restrict employers' use of non-union labour.

²⁴ Although industrial legislation actually proscribed both strikes and lockouts until 1930, a high rate of industrial disputation continued after the initial legislation was passed. Moreover, international comparative data from the late 1970s on shows Australia had a higher rate of working days lost than the OECD average. It is arguable that the use of Section 51 xxxv as the basis for legislation and judicial intervention actually encouraged disputation. My report of November 1998 to the Labour Ministers' Council on *The Case for Further Deregulation of the Labour Market* contains further analysis of the history of industrial disputation.

²⁵ The fact that minimum rates are determined for those with wages both on the minimum *and* well above it, totalling in all about 1.2 million employees,²⁵ also involves setting wages for many in high

10% of the incomes of households in the bottom quintile come from wages. What is the result? Answer - the “system” – if one can call it that – pushes low skilled people into a welfare dependency situation and requires higher taxes to foot the bill.

The latest ABS survey of Persons Not in the Labour Force shows that around 1.7 million Australians wanted work or more of it.²⁶ But with many relatively unskilled, their capacity to obtain jobs is much reduced because employers are unable to offer a wage commensurate with their lower productivity.

Some analysts argue that without such a minimum, or with a much lower minimum, the supply of labour would be reduced and a higher proportion would then simply go on to welfare benefits. However, although welfare applicants would undoubtedly increase, their success (or otherwise) in obtaining benefits would depend on whether or not the eligibility criteria allow easy access. Assuming the access to benefits is limited, if employers could offer a wage between the minimum wage of \$27,000 pa and the unemployment benefit of around \$12,000 pa that would surely attract additional employees.

Conclusion

Although Australia has had a long history of detailed regulation of employer/employee relations, that does not justify its continuance, let alone a reversion to the past. As Keynes once suggested, when the facts change it is time to change views and policies. There is no doubt that in recent years the facts have changed dramatically, both as regards the increasing recognition of the past failures of the regulatory system and the obvious unsuitability of it to modern competitive economies and societies. In particular, the notion that there is an imbalance of bargaining power between employers and employees no longer has substance (if it ever did) and the belief that the regulatory system protects those at the bottom of the pile is clearly mistaken.

In my view, the legislative and institutional changes proposed by the new Labor government in regard to regulating workplace relations constitute a serious risk to the efficient functioning of the labour market both in terms of employment and productivity, as well as an unwarranted infringement of personal freedom. It will further reduce the capacity of employees and employers to themselves determine the major components of employment agreements. The effects on employment are likely to be adverse, particularly (but not only) when the economy slows.

income households as well as raising the question of why anyone already earning *above* the minimum needs wage level protection. With over 100,000 separately regulated minimum wage ‘points’, the whole minimum wage system (sic) is little short of farcical.

²⁶ Persons Not in the Labour Force, Australia, Sep 2006 (ABS Cat No 6220.0) showed that, in addition to the 500,000 or so then unemployed (4.8%), there were nearly 700,000 (equivalent to 6.4% of the labour force) who said they would like a job but who did not qualify as “officially” unemployed because they were not ready to start work within four weeks. Also, of the 2.9 million working part time, close to 500,000 would have liked to work more hours. The “official” unemployment rate thus considerably understates the potential for increasing employment. Many recipients of welfare benefits would also become available for work if the eligibility requirements for such benefits were tightened.

Labour Market Data 1966 - 2006

Proportion of Working Age Population Employed
Percentage

Average Earnings
\$ per week (Real)

	USA	UK	NZ	OECD Av	Australia	Australia
1966	63.6	na	na	65.5	67.0	na
1976	64.2	na	na	66.1	66.4	na
1986	69.7	67.1	72.0	63.4	64.5	754
1990	72.2	72.5	67.5	64.9	67.9	774
1994	72.0	68.7	68.0	64.0	66.0	816
2004	71.2	72.7	73.5	65.1	70.3	989
2006	72.0	72.5	75.2	66.1	72.2	1021

Notes: Data on the proportion of working age population (15-64) are from the Employment Outlook published annually by the OECD. Data on real average earnings per week for Australia are from ABS Australian National Accounts, cat.no.5206.0 Table 10 Table 7.6, Labour Costs Annual average for real average earnings.