The roller coaster of reform politics and the implications for union organising

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A brief history of the roller coaster

• Award system, reliant on tribunals 1904-1991

• Move to single-employer collective bargaining (‘enterprise bargaining’) 1991

• Encouragement of individual contracting

• ‘Return’ to collective bargaining
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- Move to single-employer collective bargaining (‘enterprise bargaining’) 1991
  - supported by major legislative changes wef March 1994
- Encouragement of individual contracting
  - Workplace Relations Act wef January 1997
  - ‘WorkChoices’ (WC) amendments wef March 2006
- ‘Return’ to collective bargaining
  - transitional amendments wef March 2008
  - Fair Work Act wef July 2009
A brief history of the roller coaster

• Award system, reliant on tribunals 1904-1991
  – New Zealand National (conservative) government introduces Employment Contracts Act 1991
  – ‘Liberal’ (conservative) party adopts radical policy 1992, loses 1993 election

• Move to single-employer collective bargaining (‘enterprise bargaining’) 1991
  – supported by major legislative changes wef March 1994

• Encouragement of individual contracting
  – Liberal coalition government elected 1996
  – Workplace Relations Act wef January 1997
  – ‘WorkChoices’ (WC) amendments wef March 2006

• ‘Return’ to collective bargaining
  – Coalition defeated November 2007 election
  – transitional amendments wef March 2008
  – Fair Work Act wef July 2009
Key elements of WorkChoices

• Ended unfair dismissal protections for workers in firms with 100 or fewer employees
• Abolished ‘no-disadvantage test’, removing most minimum conditions that agreements had to satisfy
  – especially important for ‘Australian Workplace Agreements’ (AWAs) – individual contracts registered under 1996 act – and non-union ‘collective’ agreements
• Enabled employers to make ‘employer greenfields agreements’ with themselves
• Changed minimum wage fixation – from tribunal to ‘Fair Pay Commission’
• Took away most responsibilities of tribunal
• Restricted union access to workplaces through system of permits, notice and employer ability to determine conditions of entry
• Promoted individual contracting & restricted collective bargaining rights and rights to take industrial action
• Attempted to create single national system
Some effects

• Only a small proportion of employees on AWAs or non-union ‘collective’ agreements (CAs)
• But majority of those lost some or all ‘protected’ award conditions in overtime and shift premiums, penalty rates for night & weekend work, etc
  – lower wages or lower wage increases
• Softening of gender pay ratio
• Those most insecure and most affected in weakest part of labour market
  – many not affected because of strong labour market at the time (pre- financial crisis)
• Many people knew someone adversely affected
• Union membership fell notably (though may have increased slightly in lead up)
from ‘Choice’ to ‘Fairness’

• New institution: ‘Fair Work Australia’
  – Minimum wages, awards, grievances, disputes, unions, dismissals, good faith, compliance
  – ‘one stop shop’ (or at least one brand)
  – less partisan selection process

• New safety net
  – 10 ‘national employment standards’
    • including ‘right to request’ changes in work arrangements for parents of young or disabled children, or to extend maternity leave
  – 10 allowable minimums in flexible ‘modern awards’
  – awards ‘modernised’ by 2010 – rationalising conditions within industries
  – ‘flexibility’ clauses for ‘individual arrangements’ within awards and collective agreements

• Unfair dismissal protections broadly reinstated with amendments
  – special provisions for firms with less than 15 employees
from ‘Choice’ to ‘Fairness’

• No new AWAs, transitional ‘ITEAs’
  – Bargaining in good faith, incl union recognition where majority support
  – ‘better off overall’ test for agreements
  – Non-union CAs retained, no union right to be notified or heard

• Maintain hard line restrictions on union access to workplaces, prohibitions on ‘pattern bargaining’ and secondary boycotts, requirements for secret strike ballots

• Consolidates move to national system
  – referrals from state Labor governments

• ‘Tough cop’ regulation of construction industry retained
  – separate legislation, of greatest concern to unions – spectacle at ACTU Congress
  – construction industry employees can be jailed for refusing to answer questions about union meetings
  – mild easing blocked in Senate, personnel changes forthcoming
from ‘Choice’ to ‘Fairness’

- Some aspects of FW Act reverse even the 1996 WRA reforms; others maintain aspects of WC
- Continuing emphasis on flexibility, though it does not appear to go as far in flexibility for employee as in UK
- Better minimum standards for employees, though still limited
- Harder for employers to
  - exclude unions through individualisation strategies
  - refuse to negotiate with unions
- Easier to get disputes resolved
- But few major improvements for unions in terms of industrial action or right of entry
- Continuing issues in construction industry
Can we assess the effects of ‘Fair Work’?

- At the macro level – everything dominated by Global Financial Crisis
  - Sudden slowing of GDP growth, sharp rise in unemployment,
    - since fallen
  - But Australia has performed better than most OECD countries
GDP real growth rate compared to the same quarter of previous year
GDP real growth rate compared to the same quarter of previous year
Harmonised unemployment rates
Can we assess the effects of ‘Fair Work’?

• Data on
  – agreement coverage only up to transitional period
  – union membership to 2 months after FW Act commenced
Instrument coverage, Australia, 2000-2008

The bar chart shows the percentage coverage of different types of contracts over the years 2000 to 2008. The contracts include:

- Award-only
- Collective agreement
- AWA/ITEA/State registered contract
- Common law
- Individual contract
- Employee-proprietary of incorporated business

The data is presented as follows:

- Award-only
  - 2000: 18%
  - 2002: 20.5%
  - 2004: 19%
  - 2006: 16.5%
  - 2008: 11%

- Collective agreement
  - 2000: 2%
  - 2002: 2.4%
  - 2004: 3.1%
  - 2006: 2.2%
  - 2008: 5.4%

- AWA/ITEA/State registered contract
  - 2000: 36.7%
  - 2002: 38.3%
  - 2004: 40.9%
  - 2006: 41.1%
  - 2008: 39.8%

- Common law
  - 2000: 32.7%
  - 2002: 33.8%
  - 2004: 31.2%
  - 2006: 31.7%
  - 2008: 36.5%

- Individual contract
  - 2000: 5.1%
  - 2002: 5%
  - 2004: 5%
  - 2006: 5%
  - 2008: 5%

- Employee-proprietary of incorporated business
  - 2000: 5.4%
  - 2002: 5.1%
  - 2004: 5%
  - 2006: 5%
  - 2008: 5%
Trend and original union density 2005-2009

The graph shows the trend and original union density from 2003 to 2009. The trend line is represented by the solid red line, while the original line is represented by the dashed blue line. Both lines indicate a decrease in union density over the years, with a more pronounced decline in the later years.
Implications for union organising

• Reversal of membership & density declines reflecting reform effects within unions, plus abolition of WC
• Policy focus is still heavily on the workplace or enterprise, and so union skill sets still need to focus in developing power at this level
• Continuing difficult regime of permit-regulated access to workplaces emphasises continuing importance of having active delegates, as organisers have limited direct access to current and potential members
• But task is easier under FW than WC because it is harder for employers to be as actively anti-union as before
  – even Rio Tinto and Telstra have been forced to negotiate with unions they previously demonised
• Some unions question benefits for organising of legislated minima and would resist extension of NES
  – or are concerned about potential for misuse of flexibility clauses or right to request
• Alternatively, each gain is a platform from which new gains can be fought for
Has the roller coaster stopped? Or will WorkChoices be resurrected?

- WC electoral poison in 2007
  - would expect no party could win office if advocated a return to WC

- 2010 election quite competitive
  - current polls suggest close result, after Labor (ALP) government dominance through most of cycle
Has the roller coaster stopped?
Or will WorkChoices be resurrected?

- Opposition Leader promised that WC would not be back ‘in name’
- ACTU launched campaign saying Liberals would reintroduce WC
- Opposition denies but leadership ideologically aligned with WC
- ALP government will also push this line, but election likely to be dominated by other issues ➜ uncertain outcome