OPINION

The Workplace Relations Act 1996 — one year on

The first year of operation of the coalition government's *Workplace Relations Act 1996* (the Act) has witnessed a dramatic shift in the industrial relations climate in this country. It is true that some aspects of the legislation can be seen as a natural progression from earlier reforms. However, the ideological goal of a 'freer', more flexible labour market within a broader context of global trade liberalisation and deregulation has taken a far more central role in our industrial framework as a consequence of the legislation.

This issue of the *Alternative Law Journal* critically examines the impact of the Act in its first year of operation.

Pressure for change

International financial and economic systems are placing increasing pressure on national governments to deregulate their domestic trade and labour markets, cut public expenditure and take steps to keep wages down. The aim is to advance international competitiveness on a 'level playing field', at the expense of workers and domestic communities.

The changes being wrought on the Australian industrial relations system by the Act can be seen as part of this broader philosophical framework, which values 'efficiency', 'competition' and 'flexibility' in the pursuit of profits, and expects workers to demonstrate these capacities on employers' terms. Increased flexibility for employers usually means decreased security for workers. Increased competition for limited work, in the absence of minimum protections, reduces an individual's bargaining power. Increased efficiency often translates as 'de-localisation' and 'out-sourcing' of production from high wage to low wage labour markets.

Impact of the Act

The Act fundamentally alters the power balance between the players in the Australian industrial relations system. A number of mechanisms under the Act effectively weaken the role of both unions and the Australian Industrial Relations Commission (AIRC) in the pursuit of a decentralised flexible system which encourages one to one bargaining relationships between employers and employees.

These include:

- limiting the arbitral powers of the AIRC in relation to awards and agreements;
- undermining the role of unions in relation to collective representation and lawful industrial action; and
- weakening the safety net for workers by the process of 'award simplification' and by encouraging the surrender of award protections under certified agreements and Australian workplace agreements (AWAs).

The ILO Committee of Experts (comprising government, employer and workers' representatives) has recently expressed strong concerns in relation to the Act, in the context of Convention No. 98 on the *Right to Organise and to Bargain Collectively.* In particular, the Committee identified the primacy given to individual over collective relations in the Act, and the potential for anti-union discrimination.

Unequal bargaining power

The scope for agreements to be made between parties with radically different bargaining power has been entrenched in the Act.

Differences have already begun to emerge in the content of union and non-union collective agreements made in the first year of the Act's operation, most significantly in relation to wages, working hours and consultative provisions, where union involvement has regularly resulted in better outcomes for workers.

The weakened roles of the AIRC and award safety net provisions under the Act offer little comfort to vulnerable workers. Moreover, the attempt to shift agreement making onto an individual rather than a collective basis necessarily weakens individual worker's positions, although, in the short term, some workers may be rewarded by employers for moving away from the collective model.

Has the PR battle been lost?

Another factor in the advance of 'free market' economic rhetoric has been the accompanying demonisation of collectivism and the promotion of individualism as regards workers.

Some of the popular reaction to the recent NFF operations at Webb Dock, for example, seems to reflect an idea that unions are motivated by self-interest (or the self-interest of their members) and therefore unions should have less power. This seems paradoxical considering that corporations are, by definition and constitution, principally concerned with advancing the self-interest of their shareholders, regardless of the needs of broader society.

There is evidence, however, of a growing disillusionment with free market ideology and the emergence of a broad coalition of interests (from the labour movement, academics, journalists, policy makers and citizens) promoting a shift to a social market economy.

Where to from here?

The effects of the first year of the Act's operation have not been as devastating for the union movement as may have been predicted — the union movement has had to adapt to the new environment but has not been excluded to the extent originally intended by the Government (due in no small part to various changes negotiated by the Democrats).

With the Government's unfair dismissal laws rejected by the Senate for a second time, providing one of three possible double-dissolution triggers, the next stage of industrial reform is uncertain. The future direction will be largely determined by the results of the next election. In the meantime, all players in the industrial relations system must continue to test the new framework and carve out new roles for themselves within it, and should continue to question the broader agendas driving domestic reform.

ACT Editorial Committee