NEWS FEATURES

AUSTRALIA

Industrial relations Accord: One more step to workplace bargaining?

Industrial relations was among the main items on the political agenda when Prime Minister Paul Keating called a snap general election on 13 March. Having ousted Mr. Bob Hawke from the leadership in 1992, Mr. Keating decided to take advantage of a slight rise in Labour's popularity to bring the election forward from its projected date in June. His gamble paid off.

Immediately before the election, with unemployment at a record high of 11.3 per cent, the economy growing at a mere 0.3 per cent a year and the budget deficit forecast at A$13.4 billion ($9.5 billion), Mr. Keating had announced a package of job creation measures, including additional training resources and increased spending on infrastructure projects.

Enterprise bargaining or centralized accords?

The industrial relations issue centred on the degree of decentralization required in collective bargaining. Since Labour was elected in 1983, the Government and the Australian Council of Trade Unions have negotiated an annual or bi-annual social contract known as "the Accord". But this form of centralized pay bargaining has been increasingly criticized for its inability to deliver improvements in productivity and changes in work practices.

In October 1991 the Industrial Relations Commission (IRC) decided that direct collective bargaining should be permitted between companies and their employees. The decision marked a decisive break with previous practice even though any enterprise productivity agreements still had to be ratified by the IRC to ensure that they complied with Commission rules. As recently as the previous April the IRC had been saying that Australian industry was still unready to handle company-level bargaining without provoking widespread inflation. According to the federal Government, over 720 workplaces and more than 30 per cent of employees covered by federal Awards are now covered by workplace agreements giving productivity "overawards" ratified by the Industrial Relations Commission.

Labour and the unions: Accord Mark VII

Following a Special Union Conference in Sydney, the Government and the Australian Council of Trade Unions released a three-year Accord document at the beginning of March, immediately before the election.

The Accord is based on an undertaking to create a minimum of 500,000 new jobs over the next three years. It confirms that the prime focus for wage increases over the same period will be productivity-based workplace bargaining, but it also provides for safety-net increases for lower paid employees or for enterprises where no workplace agreement has been concluded. These increases are: A$8 ($5.67) from 1 July 1993 and A$5-A$10 ($3.54-$7.08) from 1 July 1994 and 1 July 1995.

The job-creation strategy proposed by the Government includes:

- "one nation" infrastructure and investment measures;
- investment allowances of up to 20 per cent for major projects;
- company tax rates to be reduce from 39 per cent to 33 per cent;
- personal income tax rates to be cut from July 1994 and January 1996;
- continuation of labour market stimulation programmes;
- a regional development programme;
- a package for regional tourism;
- the elimination of developing country preference tariffs on certain products;
- encouragement for the creation of high-skill, high-wage employment by supporting growth industries such as telecommunications, shipbuilding and pharmaceuticals;
- encouragement of business cycle recovery and company profitability;
- improving competitiveness through low inflation and exchange rates.

Devolution – with a safety net

The Accord document states that one of its main aims is "the devolution of authority by the continuation of a more decentralized and flexible approach to wages and working conditions, based on workplace bargaining involving employees and their unions." The Accord also emphasizes "equitable solutions" as an objective to be pursued in their own right and rejects "unfair one-sided policies which promote industrial confrontation and provide no effective resolution to the economic challenges facing Australia." In this regard it specifically criticizes the industrial relations policies of the opposition Coalition, and more particularly the industrial relations changes being implemented in the State of Victoria, as inequitable and disruptive. In November 1992 Victoria was hit by a state-wide 24-hour strike, mainly by public sector workers whose jobs are threatened, against proposed industrial relations reforms.

Labour and the unions – the signatories of the Accord – say they support an approach in which the primary responsibility for industrial

relations is exercised at the workplace level within a framework of minimum standards provided by tribunal awards. They support the continuation of a periodically adjusted Award system to underpin workplace bargaining. Access to arbitration is seen as an integral part of such a system. And a permanent and reliable safety net is seen as an essential base from which industrial relations reform should proceed.

To ensure that all Australians – regardless of which State or Territory they live in – are protected by this safety net, the Government has decided to legislate under international Conventions to guarantee employee rights to minimum award wages; equal pay for work of equal value; protection against unfair dismissal; and unpaid parental leave. The Government is, indeed, already proceeding towards ratification of ILO Convention No. 158 concerning Termination of Employment at the Initiative of the Employer and Convention No. 156 concerning Equal Opportunities and Equal Treatement for Men and Women Workers: Workers with Family Responsibilities.

So the Accord sees the future role of industrial tribunals as increasingly focused on safety-net provisions, test case standards, conciliation and dispute settlement. It envisages a situation in which employees will increasingly be covered by workplace agreements and in which most decisions about wages and work arrangements will be made at the workplace level between employers, employees and their unions.

The arbitrated safety net of minimum pay awards is seen as a last resort to be used only if the parties have failed to reach agreement at enterprise level. If no such agreement is reached the Industrial Relations Commission will require the parties to negotiate in good faith, using conciliation and arbitration where necessary. Only if this fails will access be given to the arbitrated safety-net awards, which will not apply to workers receiving increases through enterprise bargaining.

Coalition "Jobsback" policy

Immediately before the election the centre-right opposition Coalition released details of its "Jobsback" industrial relations policy as part of *its* election platform. The package of proposals was built around the assumption that the electorate was tired of the degree of union involvement in industrial decision-making, particularly with regard to pay.

The Coalition proposed to end compulsory arbitration by providing that none of the industrial relations parties would be bound to accept the ruling of an industrial tribunal unless it had voluntarily submitted to its jurisdiction. Employers and employees would jointly decide whether to remain within the Award system or negotiate a workplace agreement (subject to minimum terms and conditions). The role of the Industrial Relations Commission would be restricted to those accepting its jurisdiction and the parties would have access to its conciliation and arbitration services on a fee-paying basis.

The minimum terms and conditions proposed by the Coalition were an hourly rate of pay not less than that applicable under the Award prevailing at the time the workplace agreement was signed. The minimum wage for young people would be A$3 ($2.12) for 15-17 year olds and A$3.50 ($2.48) for 18-30 year olds. Employees would also be entitled to four weeks' annual leave, two weeks' non-cumulative sick leave and women would be entitled to 12 months' unpaid maternity leave after 12 months' continuous service. Part-time employees would be subject to the same terms, pro rata. Casual workers would be entitled to the minimum wage plus a 15 per cent premium in lieu of holiday pay and other entitlements.

The core of the Coalition's Jobsback policy is to abolish the Industrial Relations Commission's key role in the determination of pay and conditions and to devolve the bargaining process to the individual employer and "one, some or all" of its employees. Although trade unions and employers' organizations could assist in drawing up agreements they would be specifically excluded from being parties to an agreement.

The Coalition proposed to phase out Award coverage by amending the law so that, on the anniversary of the signature of the previous Award, it would automatically lapse unless the parties to the Award had given prior notification that they wished its terms to continue. The terms of a lapsed Award would continue indefinitely until replaced by new terms negotiated under a workplace agreement. Collective agreements would include a requirement to renegotiate prior to the termination of the agreement and an undertaking by the parties not to resort to industrial action with a view to varying its terms within the lifetime of the agreement. All forms of compulsory unionism or closed-shop arrangements would be prohibited and the monopoly representation rights of unions under the Award system would end.

Victorian values?

Victoria is the State which has gone furthest to introduce industrial relations legislation in line with the Coalition's Jobsback proposals and to distance itself, in so far as it is constitutionally competent to do so, from the Award system. Following the election of a new State Government in late 1992, Victoria promulgated the Employee Relations Act 1992, repealing the Industrial Relations Act 1979, on 1 March 1993.

The Employee Relations Act 1992 brings to an end compulsory arbitration and the central position formerly enjoyed by the Award system for the determination of conditions of employment. The Act curtails any award in force on 1 March and provides that new awards can only be made with the consent of all employers and all employees involved. Alternatively the Act permits the conclusion of employment agreements which do not require the approval of a third party.

The intention of the Act is to replace the central role played by awards under the former system with devolution to enterprise bargaining. By giving individual employers and employees control over the employment relationship, the Victoria Government feels, enterprises will be able to develop working conditions more suited to their particular needs and raise productivity. The State also wishes to prohibit any form of compulsory unionism and to move away from a system which gives preference to the major unions.

The choice of whether to continue with the terms and conditions of any applicable award, or to negotiate an employment agreement, arises afresh each time an existing award expires. Agreements may be concluded for a maximum of five years. Certified agreements concluded under the Industrial Relations Act 1979 expire on 1 July 1993. Where no new agreement is concluded the law will presume that individual employment agreements exist under the same terms as the previous collective agreement.

Collective agreements as defined under the 1992 Act may be concluded by one or more employers with two or more employees. It is therefore possible for such agreements to be concluded on an industry, enterprise or occupational level. The scope of such agreements may cover some, or all, conditions of employment. Alternatively, different employment agreements may be concluded covering different aspects of the employment relationship. In any event, such agreements must be recorded in writing and a copy of the agreement must be supplied by the employer to any employee who requests it. Once an agreement has been concluded, there is no provision to vary its terms while it is in force.

Section 9 of the Employee Relations Act allows an employee to conclude with the employer an individual employment agreement covering his or her employment situation. In any case, if a collective agreement expires before the conclusion of a further collective agreement, employees are deemed to be working under individual employment contracts on the same terms as the expired agreement. An individual employment agreement also overrides a collective agreement. Such agreements, like collective agreements, must be in writing and a copy must be furnished to the employee on demand. Unlike collective agreements, however, individual ageements are normally of indefinite duration lasting until they are superseded by a fresh agreement.

Section 14 of Act lays down that both individual and collective agreements must include provisions setting out procedures to prevent or settle claims, disputes or grievances and for laying off employees who cannot be usefully employed because of a strike, machine breakdown, or other stoppage for which the employee cannot be held responsible. The Act also lays down that although the agreement does not have to cover all aspects of the employment relationship, there are certain minimum provisions which may not be undercut by an agreement. These are:

(a) four weeks' basic annual leave for each year worked;
(b) one week's sick leave for each year worked;
(c) basic hourly or weekly rates of pay not less than those specified under the base award rate for the classification of employee concerned;
(d) maternity, paternity or adoption leave and an entitlement to work part time in connection with the birth or adoption of a child.

Aged, infirm or slow workers and students performing work as part of a course of study may be exempted from the minimum pay rates.

A question of precedence

In Australia, where a federal system operates, the state or the federal parliament is free to legislate in any area not exclusively reserved to the other. Federal law takes precedence in the event of a conflict. Industrial relations is one area where either parliament may legislate. So employees may be subject to industrial relations legislation adopted at either the state level or at the federal level.

To put the Victorian industrial relations system into perspective, it is worth comparing it with the systems operated in other states. Firstly Victoria is the only one of the six states to have abolished the existing awards. It is also the only state which does not require an enterprise agreement to be vetted by the Industrial Relations Commission before registration. South Australia and Queensland both require trade unions to be involved in enterprise agreements while Victoria, New South Wales, Tasmania and Western Australia have all scrapped this provision. Victoria is the only state which provides for prosecution of those involved in unlawful strikes, though this provision of the legislation has yet to be tested. Compulsory arbitration exists in all states except Victoria but is to be phased out in Western Australia.

The Victorian legislation now needs to be tested for its compatibility with federal legislation. For example, amendments by the federal parliament to section 111(1)(g) of the Industrial Relations Act 1988 have been challenged by the Victorian state Government which is trying to prevent state-employed workers from receiving federal awards. It claims that the IRC has no power to hear matters involving state-employed nurses, health workers and public servants. The Government has asked the High Court to rule on the extent of the IRC's jurisdiction. The IRC has rejected the Victoria Government's argument that it should refuse, in the public interest, to hear federal award claims relating to Victorian workers. The proprietors of two food businesses in Mildura, Victoria, are also being sued by employees who claim that they have been made to sign unfair employment agreements under duress.

Balancing act

It remains to be seen whether Mr. Keating's Government will be able walk the tightrope of job creation and economic reflation while simultaneously restraining wage growth under this compromise between decentralized bargaining and centralized controls.

Employers have welcomed the increased emphasis on enterprise-level productivity negotiations, the reduced role of arbitration, and the priority being given to job creation and growth. They are less keen on the "safety net" wage increases and on the Government's intention to use international Conventions to override state legislation on matters of minimum wages, equal pay, protection against unfair dismissal and unpaid parental leave.

Sources: Australian Chamber of Commerce and Industry: *Media release* (Melbourne), 5 Apr. 1993. *Workforce* (Manly, NSW), passim, Jan.-Apr. 1993. *Financial Times* (London), 11 Nov. and 1 Dec. 1992, 8 Feb. and 9 Mar. 1993. Employers' Federation of NSW: *Employers' Review* (Sydney) 29 Jan. 1993. *Accord Mark VII – Jobs and Protection*, media release from Senator Peter Cook, Minister for Industrial Relations (Perth), March 1993. Information supplied by Mr. Bill Dejong, Australian Permanent Mission to the UN (Geneva), May 1993.

MALI

New Labour Code: State disengages

Mali's new Labour Code has come into effect despite the opposition of the Mali National Workers' Union (UNTM), which demanded that it be renegotiated. As early as May 1992, a few days before the newly elected President, Mr. Alpha Omar Konaré, took up office, the UNMT had used the strike threat to get the provisional government to sign a social pact. Article 6 of that pact stated: "Both parties undertake to see to it that the Labour Code, currently under revision, shall contain a body of laws to safeguard the interest of the workers and the national economy." In the union's view, this meant opposing the abolition of a system of prior administrative authorization of redundancies, a measure established by decree, which the new Code was to ratify. This was a sensitive issue, as the international financial institutions were making the reform of the Labour Code, and especially the abolition of the authorization in question, a condition of their continued aid in the context of structural adjustment. Having failed to win its case during the debate on the Bill, the UNTM demanded a second reading of the Code by the Assembly, after the latter had adopted it in September 1992, again without success.

In April 1993, President Konaré announced the opening of tripartite talks on the country's social and economic development. Mali is faced with the discontent of business circles and youth, whose expectations after democratization have been disappointed. Moreover, the present state of