

Introduction to the special issue

Despite their historical similarities, in the early 1990s employment relations in Australia and New Zealand appeared to be headed in different directions. While employment relations reform in Australia took place within the traditional institutions of arbitration and was guided by corporatist style agreement between the Labour government and the Australian Council of Trade Unions, the Employment Contracts Act 1991 signalled a radical reordering of employment relations in New Zealand. This marked divergence produced a lively and interesting comparative literature, sparked by a research workshop held at the University of Sydney in 1991. This literature, which focussed on the institutional sources of divergence between the two countries, anticipated what was to become the dominant approach to globalisation in the comparative employment relations literature.

This special issue revisits the Australia-New Zealand comparison in light of significant changes that have taken place in the two countries during the last decade. The articles are edited and refereed versions of some of the papers presented at a research workshop held at the University of Sydney in February 2005 which focussed on recent developments in employment relations in the two countries and was attended by many of the academics who attended the original workshop, as well as a new generation of scholars from the two countries.

The articles in this special issue provide insight into the similarities and differences which have developed in key aspects of employment relations in the two countries since the early 1990s. The paper by Brosnan and Campbell focuses on labour market outcomes and provide a nuanced understanding of the interplay between economic and institutional context in shaping these outcomes. Ramia explores the connections between social welfare and labour market reform in the two countries. The two papers by Cooper and May and by Briggs focus on recent trends in the two labour markets: Cooper and May discuss union trends and issues while Briggs overviews the changing patterns of industrial conflict. Taken together, the articles in the special issue provide empirical support for Barry and Wailes's view that the Australia New Zealand comparison reveals some of the limitations of the institutionalist arguments that have dominated contemporary employment relations scholarship. This suggests that the Australia New Zealand comparison remains just as fruitful a ground for comparative research and theoretical development as it was in the early 1990s.

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Revisiting the Australia-New Zealand Comparison

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Abstract

Labour market regulation in Australia and New Zealand has proceeded along a similar trajectory, sometimes intersecting and other times appearing to take divergent paths. Interest in comparing both systems of labour market regulation peaked in the 1980s and early 1990s when there was a marked divergence. The structural divergence was highlighted by the abolition of compulsory arbitration and the introduction of the Employment Contracts Act in New Zealand. Since the early 1990s, there has been a re-convergence in the structures of labour market regulation. This re-convergence highlights a need to revisit the Australia-New Zealand comparison. This paper seeks to re-conceptualise the comparison by highlighting some of the limitations of the existing comparative literature and developing a broader framework that examines both the structures of labour market regulation and the functions that labour market institutions perform. In doing so, and in keeping with the earlier comparative literature, it seeks to contribute to the theoretical matrix within which cross-national industrial relations research is conducted.

Introduction

Australia and New Zealand share similar histories including similar patterns of economic development and labour market regulation. During the 1970s both countries were affected in similar ways by changes in the international economy and during the 1980s both countries elected labour governments who introduced market oriented reforms (see Castles et al, 1996). Despite these similarities, Australia and New Zealand appeared to take very different approaches to labour market reform in the 1980s and early 1990s. In Australia the Australian Labor Party (ALP) entered into a social pact, called the Accord, with the Australian Council of Trade Unions (ACTU). Under the Accord, changes in industrial relations were gradual and took place within the existing institutions of industrial relations. In contrast, in 1984 the New Zealand Labour Party (NZLP) initially eschewed a formal compact with the unions and New Zealand governments introduced a series of radical changes in industrial relations policy. The highwater mark of this divergence was reached in 1990. While the Accord partners were pursuing 'managed decentralism' through award restructuring in Australia, the newly elected National government introduced proposals in New Zealand that were to form the basis of the Employment Contracts Act (ECA).

This apparent divergence in industrial relations policy, in two countries with similar economic and political histories and similarly affected by changes in the international economy, created the conditions for the development of a vibrant and insightful

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comparative literature. While quite diverse, the main focus of this comparative literature was the role organizational and institutional variables played in producing industrial relations policy divergence in these most similar cases. In particular, this literature attributed much of the policy divergence to differences in the organization of unions and employers and the autonomy and capacity of the state. With its focus on the significance of institutional variables, the Australia-New Zealand comparative literature provided strong empirical support for what was to become the dominant analytical approach to the impact of globalization on national patterns of industrial relations in the broader comparative literature.

Since the early 1990s there have been a number of changes in both countries which suggest the need to revisit the comparison between the two countries and to reassess the conceptual and theoretical basis on which the original comparative literature was based. If industrial relations in Australia and New Zealand diverged during the 1980s, it has shown a tendency to converge during the 1990s (see Barry and Wailes, 2004). During the 1990s Australia experienced significant changes in labour market regulation - starting with the shift to enterprise bargaining and culminating in the introduction of the Workplace Relations Act in 1996 - which have brought it much closer to the pattern of labour market regulation in New Zealand under the ECA. This is likely to continue. The Howard Coalition government took control of both houses of the Australian Federal Parliament on July 1 2005 and has subsequently introduced legislation which further erodes the traditional institutions of arbitration. Meanwhile in New Zealand, the election of a Labour government and the introduction of the Employment Relations Act (ERA) in 2000 has seen some attempt to re-collectivise the labour market. This article argues that revisiting the Australia New Zealand comparison, and taking these recent developments into account, provides an opportunity to reflect on the strengths and limitations of the theoretical framework that informed the earlier comparative literature and may provide the basis for further theoretical development.

The article is structured as follows. The first section briefly reviews the main findings of the original Australia New Zealand comparative literature and its relationship to broader debates in comparative industrial relations scholarship. The second section reviews the limitations of the comparative literature and some of the theoretical concepts on which it was based. In light of these criticisms, the final section argues that while institutional factors are important in shaping industrial relations outcomes, comparative scholarship needs to take into account a broader range of variables and to be based on a more complex understanding of the form and functions of institutions.

The Australia-New Zealand Comparative Literature

The apparent divergence between two similar countries in the late 1980s and early 1990s created the conditions for the development of a lively and insightful comparative literature (for a review see Wailes, 2003: 135-206). One catalyst for this comparative literature was a research workshop held at the University of Sydney in May 1991. Papers from this workshop were subsequently published as *Economic Restructuring and Industrial Relations in Australia and New Zealand: a comparative analysis* edited by Mark Bray and Nigel Haworth (Bray and Haworth, 1993a).

As Bray and Howarth (1993b: 2) noted the development of a policy divergence between two ‘most similar’ cases provided a rare opportunity to identify sources of variation. Broadly speaking, it is possible to identify three separate but interrelated sets of explanations for divergence in the subsequent comparative literature. First, a number of authors noted differences in the institutional structure and organisation of the labour movement in the two countries. Specifically, they identified differences in the unity of the labour movement, the power of the trade union central and the links between the industrial and political wings of the labour movement in the two countries. Bray and Walsh (1993), for example, argued that while both union movements adopted a similar response to economic restructuring, the Australian labour movement was more successful in implementing a strategic response to economic restructuring because of the greater authority of ACTU in comparison with its New Zealand counterpart. As they note “[By the 1980s] the ACTU was more representative, due to mergers ... [and] it developed better organisational structures which more effectively bound federal unions to ACTU policy”. This meant that the ACTU was in a position to deliver wage restraint under the Accord and also play a role in policy development. In New Zealand, by contrast, Bray and Walsh (1993: 132) argued that there was

a belief by leading Labour politicians that the central union organisations - the Federation of Labour (FOL) and the Combined State Unions (CSU) - would be unable to deliver their side of an accord. The historical legacy of weak central union organisation continued to frustrate any hopes of significant union influence over national economic policy making.

The New Zealand Council of Trade Unions (NZCTU), a single trade union central, was formed in 1987. However, in part because some powerful blue collar unions did not affiliate, Gardner (1995) argues that it lacked the national authority and cohesiveness of its Australian counterpart and was unable to actively shape or participate in the national process of industrial restructuring (see also Bray and Walsh, 1995).

These differences in organisational capacity of the labour movements were reinforced by differences in the links between the industrial and political wings of the labour movement. This reflected both differences in the extent to which ministers in the incoming labour governments had union backgrounds and the formal institutional role played by unions in the policy development in the two countries. Castles et al (1996: 13), for example, note that “the formal organisational role of unions in the federal ALP is much more substantial than the NZLP: union affiliates normally control fewer than half of the votes in an NZLP annual conference, but significantly more than half in the federal ALP counterpart”. For them, the “attenuated links between the two wings of the New Zealand labour movement meant the virtual exclusion of a union role in policy formation, leaving the way open for the adoption of radical policies of market liberalisation”.

A second set of explanations for differences in patterns of industrial relations reform focused on organisational differences between employer bodies in the two countries. Plowman and Street (1993), for example, contrast the growing unity of employer opinion, about the need for dramatic labour market deregulation in New Zealand in the lead up to the ECA, with the continuing fragmentation of employer opinion about

the scope and nature of the change in the operation of the arbitration system needed in Australia during the 1980s and 1990s. During the 1970s, restructuring of employer representation in New Zealand led to the formation of single peak employer body, the New Zealand Employers Federation (NZEf) (Wanna, 1989). Similar attempts to form a Confederation of Australian Industry (CAI) in Australia during the 1970s failed (Mathews, 1991). Contributors to the comparative literature argued that this difference in organisational unity allowed New Zealand employers to have a much more significant impact on the development of policy, than was the case for their Australian counterparts (see, for example, O'Brien, 1994).

A third set of explanations for policy divergence focused on differences in the autonomy and capacity of the state in the two countries. Australia is a federation with a written constitution and a bicameral parliament. New Zealand is a unitary state with an unwritten constitution and a uni-cameral parliament. As Boston and Uhr (1996: 64-65) note these differences mean that:

Australian and New Zealand governments operate in different constitutional environments. The dispersed powers that are basic to the Australian federal and bicameral system limit the capacity of a national government to transform governance... Australian national government has more of a brokerage character than that of New Zealand, where governments have greater capacity to impose new modes of and orders of rules.

For a number of contributors to the comparative literature these differences helped explain the more radical pattern of industrial relations reform that developed in New Zealand in comparison with Australia during the 1980s and early 1990s (see Mitchell and Wilson, 1993 and Bray and Neilson, 1996). This view is neatly summarised by Bray and Walsh (1998: 380), in an article which appeared in the prestigious journal *Industrial Relations* and in many ways represented the culmination of this comparative literature:

In New Zealand the absence of constitutional constraint enabled the governments to pursue rapid and radical change... in contrast, both Labor and Coalition governments in Australia were forced to make compromises because they shared power with state governments, and new legislation had to pass an upper house of review, in which the government did not necessarily have a majority. Change was consequently incremental, making Australian corporatism weaker, but also slowing the march of neo-liberalism.

Not only did the Australia-New Zealand comparative literature provide an explanation for the policy divergence between two most similar cases, it also provided strong support for what was to become the dominant criticism of the view that globalisation would produce convergence in national patterns of employment relations. As Hyman (2001: 25) notes "if there is a dominant analytical premise of recent Anglo-American research it is the principle that 'institutions matter'". This focus on institutional arrangements reflected the growing influence of the 'new institutionalism' in comparative politics on comparative industrial relations scholarship (Wailes, 2000). Locke and Thelen (1995: 26), for example, argue that, because institutional arrangements, like bargaining structures and patterns of union organisation, play an important role in shaping the policy preferences of actors, "international trends are *not*

in fact translated into common pressures in all national economies but rather are mediated by national institutional arrangements and refracted into *divergent* struggles over particular national practices". The Australia-New Zealand comparative literature suggested that quite small differences in institutional arrangements could produce significant differences in national responses to pressures associated with globalisation.

Limitations and Recent Developments

While the Australia-New Zealand comparative literature highlighted the potential significance of institutional arrangements in shaping the relationship between international economic change and national patterns of industrial relations, subsequent developments in the two countries and criticisms of some of the underlying assumptions on which this literature is based suggest the need for rethinking the comparison.

One set of criticisms focuses the significance that the comparative literature attributes to institutional variables. Thus, for example, many of the contributions to the comparative literature, either explicitly or implicitly, tend to assume that the institutions of arbitration played a similar role in shaping industrial relations outcomes during the twentieth century. A number of recent studies has questioned this assumption and argued that, despite similarities in arbitration, there are some important historical differences between the two countries which help explain the policy divergence that developed in the 1980s. Thus, for example, Ramia (1998) takes issue with Castles' (1985) highly influential view that the two countries shared a common pattern of social protection rooted in the institutions of arbitration. Ramia demonstrates arbitration played a much more important role in providing social protection in Australia than in New Zealand. Similarly Sandlant (1989) notes that, despite the similarities in the institutions of arbitration in the two countries, there were significant differences in the wages policies developed in the two countries- with Australia developing a broader and more generous pattern. He argues differences in wages policy help explain differences in the attitude of union movements in the two countries to arbitration and also played a role in explaining policy divergences during the 1980s in the two countries.

The tendency to ignore historical differences between the cases in the comparative literature builds on existing historiographical tendencies in both countries, which largely attribute industrial relations outcomes to institutional arrangements. These assumptions too have come under scrutiny. One example is the trade union dependency thesis. This argument, that unions were dependent on arbitration and that arbitration fundamentally shaped their actions and behaviour, has been influential in debates about Australian unionism (Howard, 1977) but has its origins in New Zealand (Hare 1946) and has figured prominently in the Australia New Zealand comparative literature (eg. Bray and Walsh, 1993: 123; Hince, 1993). Australian academics have recently called this characterisation into question. Cooper (1996: 64), in a study of the Organising Committee of the New South Wales Labour Council from 1900-1910, argues that "the contribution of arbitration to union recruitment was ambiguous". Gahan (1996: 693), in a study of union action under arbitration, argues that "while arbitration influenced the behaviour and character of individual unions.... [this is] very different from the view that arbitration has made unions *dependent*". Both of

these studies suggest that while arbitration was important, it was not the only factor shaping union action and strategy. A related set of criticisms have also been made of Plowman's employer reactivity thesis (see Barry, 1995). The implication for the Australia-New Zealand comparative literature is that the shared institutional heritage of the two countries may not fully account for the behaviour of unions and employers and that it may ignore other important sources of difference in the two countries.

This theme is taken up by Barry and Wailes (2004), in their comparison of the impact of arbitration in Australia and New Zealand. They argue that, not only did arbitration historically play a different role in the two countries, but that the origins of the policy divergence that developed in Australia and New Zealand in the late 1980s and 1990s can be traced back to developments in the late 1960s. This earlier divergence, they argue, is a product of differences in the severity of the economic pressures that were brought to bear on the institutions of labour market regulation in the two different countries during this period. Indeed, they suggest that many of the organisational and institutional differences that are central to the Australia-New Zealand comparative literature, like differences in the organisation of employer opinion, have their origins in this earlier divergence. In an extension to this argument, Wailes *et al.* (2003) argue that the policy divergence that developed in the late 1980s and early 1990s was not only a function of institutional and organisational differences between the two countries, but also reflected important differences in the economic situation facing the two countries. While both countries faced similar economic pressures, the economic crisis facing New Zealand during the 1980s was much more serious than that which faced Australian governments. They argue that this difference in external economic imperatives shaped the extent to which employers and governments regarded the existing institutional arrangements as sustainable.

Taken together these criticisms of the Australia-New Zealand comparative literature, and some of the assumptions on which it is based, suggest that there is a need to re-examine the role and function that institutions play in shaping industrial relations policy and outcomes, and to take into account a broader range of variables, including those that are non-institutional in character. This view about the need to go beyond looking at institutions is reinforced if one compares the impact of labour market reform on labour market outcomes in Australia and New Zealand during the 1980s and 1990s. Despite important differences in the institutional arrangements that govern labour markets in the two countries, there are notable similarities in the labour market outcomes in Australia and New Zealand. During the 1990s both countries have experienced dramatic declines in trade union membership, collective bargaining coverage and significant increases in individual contracting. Furthermore both countries have witnessed significant increases in wage inequality (see Harbridge and Walsh, 2002; Barry and Wailes, 2004: 438-441). While many of these features are shared with other developed countries, and these changes have been more dramatic in New Zealand than in Australia, in international comparative terms Australia and New Zealand represent extreme cases (Campbell and Brosnan, 1999: 354). The original comparative literature's focus on institutions and policy outcomes, rather than the consequences of those policies, may therefore exaggerate the differences between the cases.

Furthermore, policy developments during the 1990s have significantly eroded differences in patterns of labour market regulation. Since the early 1990s there have

been a series of significant policy changes in Australia which have brought it much closer to its New Zealand counterpart (for a brief overview, see Lansbury and Wailes, 2004). Of particular significance, this policy convergence took place despite the continued existence of the institutional and organisational differences that the comparative literature regarded as so important in producing the policy divergence that developed in the late 1980s and early 1990s. While there is little doubt that the bicameral nature of the Australian federal parliament has frustrated the ability of the Howard government to introduce radical labour market reform, and that the pace of reform will quicken now that it has control of both houses, the process of reform was initiated by the Keating Labor government in the early 1990s. The 1993 Industrial Relations Reform Act, which amongst other things recast awards as safety nets and introduced non-union agreements in the Federal jurisdiction for the first time, represented an important rupture in the traditional pattern of Australian labour market regulation (Gardner and Ronfeldt, 1996). This suggests that, while institutional and organisational factors may play an important role in shaping policy outcomes, they are not the only thing that matter.

Rethinking institutions

In a recent contribution, Godard (2004) has argued that if industrial relations academics are to account for continued diversity in national patterns of employment relations, they need to incorporate the insights of the new institutionalism. The comparative literature on Australia and New Zealand draws heavily on the new institutionalism and therefore provides a good opportunity to reflect of its strengths and weaknesses. This section argues that the new institutionalism needs to focus on a broader set of variables. In particular, the Australia-New Zealand comparison implies the need for comparative industrial relations scholars to go beyond thinking solely in terms of convergence or divergence and to develop models which make it possible to explain similarities and differences within the same conceptual framework. In order to do this, there is a need for industrial relations scholars to incorporate a role for interests and ideas (as well as institutions) and, thus, examine the importance of agency in shaping labour market outcomes. It also suggests that it is important for industrial relations scholars to consider the complementarities between labour market institutions and the other institutional arrangements which characterise national capitalisms. Finally, we argue that the Australia-New Zealand comparison suggests the benefits of IR scholars adopting a more explicit regulatory lens with which to view the role of labour market institutions.

Beyond Convergence and Divergence

Concern with issues of convergence and divergence have long been a key animating theme of comparative industrial relations scholarship (see Bamber *et al.*, 2004: 12-26). Much recent debate in industrial relations scholarship has focussed on whether changes in the international economy, associated with globalisation, are producing convergent or divergent pressures in national patterns of industrial relations (eg. Katz and Darbishire, 2000; Traxler *et al.*, 2001). The Australia-New Zealand comparative literature, however, highlights some of problems of such a framework. Whether developments in Australia and New Zealand are characterised as convergent or

divergent is in part a function of what is considered to be the dependent variable and over what period of time the comparison is taken. Thus, for example, if we were to take the existence of arbitration to be the dependent variable, then Australia and New Zealand clearly demonstrate divergence. However, if labour market outcomes are the dependent variable, it is less clear that Australia and New Zealand have diverged markedly. Similarly a comparison of developments in Australia and New Zealand from the mid 1980s to the early 1990s is likely to yield different conclusions from a comparison which considered developments from the late 1960s until the present day.

Institutionalist analyses tend to focus on sources of divergence between countries. Pontusson (1995) suggests that this tendency is not just a reflection of methodological choices. Rather it is more deeply rooted in the theoretical concerns of the institutionalist project. In particular, he argues that institutionalists tend to attribute analytical primacy to polity centred institutional variables (like constitutions) and to downplay or ignore the significance of other non institutional variables (like economic structure). The result is that institutionalists “focus almost exclusively on the nature and sources of variation between advanced capitalist countries, ignoring what these political economies have in common” (Pontusson, 2005: 164). Pontusson rejects this view and calls for the development of analytical frameworks, which go beyond a simple convergence/ divergence framework and make it possible to explain both the similarities and the differences between capitalism economies.

Interests, ideas and agency

Pontusson’s argument suggests that if comparative industrial relations scholarship is to provide insight into the complex nature of change taking place in national patterns of industrial relations then it needs to compare countries across a broader range of variables and reconsider the role of agency in shaping labour market outcomes. This is not to argue that institutional frameworks are not important. Rather it is to suggest that they are not the only factors that matter. As was noted in the previous section, differences in the interests of employers and unions appear to have played an important role in producing different policy responses in the two countries from the mid 1980s until the early 1990s (see Wailes, 2000).

A focus on the interaction between interests and institutions seems to be particularly relevant given that much of the change that industrial relations scholars are interested in involves changes to institutional arrangements themselves. As Hall (1998: 183) puts it “to the degree that the core institutions are subject to change, the focus of analysis must shift (away from institutions) towards the socioeconomic or political coalitions that underpin them and toward more dynamic theories of institutional determination”.

The importance of interests, especially those of employers in particular labour market arrangements, has become an increasing focus in the broader comparative literature. Pontusson and Swenson (1996), for example, argued that employer interests played a significant role in the collapse of centralised bargaining in Sweden in early 1990s. More recently, Thelen (2000) has argued that German employers have resisted wholesale decentralisation of bargaining because the benefits they gain from the current system outweigh those that might be expected from such a change.

While the role of interests in shaping and sustaining particular institutional arrangements has received increasing attention, there has been less explicit attention paid to the role of ideas in shaping patterns of labour market regulation. Anyone familiar with recent industrial relations developments in Australia and New Zealand over the past decade or so will be aware of the role that ideology has played in shaping labour market regulation. Thus, for example, many of the features of the ECA can be traced back to views of Hayek, an Austrian economist, and Epstein, a US professor of law and economics, about how to structure labour regulation in a way that maximises a particular type of individual freedom. In the New Zealand case, these views were strongly expressed by Penelope Brook (1990), a researcher working for the New Zealand Business Roundtable at the time. The legislation recently introduced by the Howard government in Australia also reflects a particular world view, which amongst other things questions the legitimacy of unions.

There is a growing body of literature on the relationship between ideas, institutions and interests. Campbell (2002), for example, argues that ideas can take a number of different forms which affect policy making in different ways. These include programmatic ideas which “help actors devise concrete solutions to policy problems”. Thus, for example, Campbell notes that policy prescriptions based on supply side economics took root in the US in the late 1970s because they offered what appeared to be clear solutions to the economic problems facing the country at the time. However, for Campbell (2002: 173), ideas can also take the form of public sentiments, which reflect “broad based attitudes and normative assumptions about what is desirable or not”. He demonstrates that supply side policy prescriptions in the US in late 1970s resonated with generally held beliefs about the wasteness and corruption of government. While he acknowledges that the institutional framework and the pattern of interests played a significant role in shaping how these ideas were put into practice, his analysis nonetheless suggests that ideas may have an independent impact on policy direction (see also Hall 1998). According to Blyth (2002: 11), “economic ideas also act as blueprints for new institutions. In sum, ideas allow agents to reduce uncertainty, propose a particular solution to a moment of crisis, and empower agents to resolve that crisis by constructing new institutions in line with these new ideas”.

Taken together these arguments suggest that comparative industrial relations scholars need to look beyond the role of institutions in producing national diversity and to examine the interaction between institutions, interests and ideas in particular national economies. They also suggest that industrial relations scholars need to be much more attentive to the role of agency in shaping labour market regulations and outcomes. Institutionalists tend to view institutions as constraints on action. Some even suggest that institutions shape what actors see to be in their interests (Hall and Taylor 1996). However, if we accept that institutions are not the only thing that matter, then we need to allow for the possibility that agency is not completely constrained by institutional context.

Institutional complementarities

For scholars interested in industrial relations developments in Australia and New Zealand over the last 20 years, it is difficult to consider developments in labour market regulation separately from other changes in the economy. For example, many Australia and New Zealand IR scholars would accept that pressures for decentralisation of bargaining are closely related to the erosion of tariff protection and the development of independent central banks with control over monetary policy settings. This points to the need to consider not just interests and ideas but also a broader range of institutional variables.

One of the most important recent developments in institutionalist thinking has been the growing focus on how institutions relate to one another. The most influential version of this is Hall and Soskice's (2001) varieties of capitalism (VOC) approach. Hall and Soskice distinguish between two broad types of capitalism - liberal market economies (LMEs) and coordinated market economies (CMEs) - and argue that each possesses institutional complementarities which give them comparative advantages. LMEs, such as the US, are those in which market mechanisms mediate the relationships between firms, between firms and their employees and between firms and their investors. CMEs, like Germany, tend to use non-market and relational modes of coordination in the dealings between firms, between firms and employees and also between firms and investors.

As Godard notes the VOC approach has a number of implications for industrial relations scholarship. Specifically he argues it "demonstrates that economic and technological developments do not impose an immutable logic on economic and IR systems... Rather, the extent to which they matter, and the way that they come to be reflected in IR practices is largely a function of the institutional arrangements characteristic of these systems" (Godard, 2004: 245). To some extent, this is reflected in the growing literature on the connections between financial market structure and firm IR practices. The contributions to Gospel and Pendelton (2004), for example, demonstrate that differences in the structure of national financial systems affect the ways in which firms finance their operations and that this can, in turn, affect the types of employment relations practices they adopt.

Both Australia and New Zealand fit firmly in the LME camp and an understanding of the institutional complementarities of LMEs may help account for some of the growing similarities in labour market outcomes that have been observed between the two countries since the early 1990s. The Australia-New Zealand comparison, however, also points to the dangers of applying the VOC approach too generally. Simply characterising the two countries as LMEs misses some of the important differences between the countries and also makes it difficult to account for the significant amounts of change experienced by the two countries over the last two decades. Thus, the Australia-New Zealand comparison suggests that while it is important for IR scholars to understand the interconnections between institutions of labour market regulation and other institutional arrangements, there is a need for this analysis to be more fine grained than that advocated by the VOC approach.

Towards a regulatory lens

One way for industrial relations scholars to develop a more sophisticated means to compare institutional arrangements is to shift away from focussing on the *form* that institutions take and examine the *functions* that they play. This approach to institutions has its proximate origins in the work of Polanyi. Polanyi (1957) claims institutions become embedded in social relations because the key factors of production – land, labour and money – cannot be traded as commodities. For Polanyi, any movement towards a self-regulating market, in respect of the key fictitious commodities, is met by a protective societal response to re-embed market exchanges in social relations through institutions. Polanyi refers to this as the “double movement”. Thus, according to this perspective labour market institutions are created to ensure that the consequences of commodifying labour, through the operation of a self-regulating market, are avoided.

In recent labour law scholarship, Polanyi’s approach has informed the development of a ‘regulatory’ lens on changes in labour law. Howe (2005) and others have criticised the characterisation of recent changes in labour law as one of deregulation.

The rhetoric of labour market deregulation often masks extensive legal re-regulation and juridification of social and economic systems or spheres to suit prevailing political objectives. This rhetoric is based on a rather narrow definition of ‘regulation’ and its purposes when it comes to the exchange of labour in the economy (Howe 2005: 1-2).

Legal regulation highlights the importance of viewing public (statute) and private (contract) law as overlapping and interacting rather than separate and distinct systems of regulation (Collins, 1999). In a longitudinal study, Johnstone and Mitchell (2004) examine the relationship, or “collisions”, between these two systems of regulation over several centuries. Contrary to the popular view of the emergence of the regulatory state in the twentieth century, they argue that state instrumental regulation has been the dominant form of labour regulation for centuries. For these authors, the significance of “regulatory” labour law during the twentieth century was not that it supplanted “contract” law as a basis for regulating the employment relationship but that it developed an important protective function, in the provision of minimum wages and terms and conditions of employment.

We would argue that this focus on the regulatory role of institutional arrangements is particularly useful for examining recent changes in industrial relations in Australia and New Zealand. In particular, the decline of the structures of arbitral regulation in Australia and New Zealand has not heralded the introduction of so called “at will” contracting but, rather, has coincided with the creation of alternative employment institutions, which in some cases perform similar regulatory functions to the previous institutional structures. In New Zealand, an Employment Tribunal and Employment Court replaced the Arbitration Court in 1991. These institutions solidified the transition from collective to individual bargaining by strengthening and extending the protection of individual rights. Under the ECA, any employee could file a personal grievance if they unfairly suffered a disadvantage in any area of employment. The transition from collective to individual rights was reflected in both the marked decline in recorded industrial disputes and the marked increase in personal grievance claims

during the 1990s (Harbridge, Crawford and Kiely, 2000). Under the Employment Relations Act (ERA), a Mediation Service and Employment Relations Authority replaced the Employment Tribunal by splitting its functions across two agencies. The ERA represents, then, an attempt not to re-regulate the New Zealand labour market as is often assumed but rather an attempt to re-collectivise it by the provision of specific protections for collective bargaining and unionization.

Although it has been constrained by opposition in the Senate in the past, recent electoral gains have made it possible for the Coalition Government in Australia to introduce a new wave of industrial relations “reform”. The Workplace Relations Amendment (Work Choices) Act (2005), amongst other things, extends unfair dismissal exemptions to include organisations with up to 100 employees, introduces secret ballots for union industrial action, further strips award entitlements to comply with a new set of minimum standards, and attempts to streamline the process for individual agreement making by removing the no disadvantage test.

On the institutional front, the Act will further emasculate the Australian Industrial Relations Commission (AIRC), but, in doing so it will strengthen or create alternative institutions to continue its pervasive regulation of the labour market. Under the changes, the Government will strengthen the Office of the Employment Advocate by enabling it to certify collective agreements. The Government will also relieve from the Commission its role in determining wage adjustments for low paid workers but will establish a Fair Pay Commission so as to preserve this important institutional function. The Government will also continue its campaign to “reform” industrial relations in the building and construction industry by giving further powers and a much increased budget to the Building Industry Taskforce, a specialist industry regulator it created in response to recommendations from Cole Royal Commission into the industry. These changes highlight a pattern of regulation reminiscent of that which occurred in Britain during the 1980s and 1990s where, “paradoxically in a period when deregulation has been claimed to be the driving force of public policy under the influence of the neo-liberal strand of New Right ideas, more new central regulatory agencies have been created than ever before” (Baldwin, Hood and Scott, 1998: 6).

It is not our intention to argue an institutional regime based on individual bargaining is likely to produce the same social protections as one based on collective regulation of employment. However, we would argue that a regulatory lens, which focuses on the role that institutions play, provides a framework for thinking about changes in patterns of labour market regulation and rethinking similarities and differences across countries.

Conclusion

This article has reviewed some of the main features of the comparative literature on industrial relations reform in Australia and New Zealand from the mid 1980s until the early 1990s. This literature attributed the apparent policy divergence between these two most similar countries to differences in the organisation of labour and capital, and to differences in the autonomy and capacity of the state. In doing it drew attention to the importance of institutional arrangements in accounting for diversity in national

patterns of industrial relations. Thus it pre-empted what was to become the dominant theoretical approach to examining the relationship between globalisation and industrial relations in the broader comparative literature.

Criticisms of the Australia-New Zealand comparative literature and recent developments in the two countries, suggest that there is a need for comparative industrial relations scholars to rethink the focus on institutional arrangements. In the final section of this article we outlined four ways in which the institutionalist approach needs to be improved if it is to account for contemporary patterns of industrial relations. These include developing conceptual models that go beyond attempting to establish whether countries are converging or diverging and which focus on similarities and differences between cases. Central to this is shifting from an analytical framework which privileges institutional variables to one which examines the interaction between institutions, interests and ideas. It also involves broadening the focus of study away from labour market institutional arrangements and considering the complementarities between institutions across national capitalisms. Finally, we argued that industrial relations scholars are likely to benefit from an approach which focuses not just on institutional structure but also considers the functions that institutions play. Therefore just as the literature which compared industrial relations developments in Australia and New Zealand, in the late 1980s and early 1990s, had implications for the broader comparative literature, we would argue that the contemporary comparison of industrial relations developments in these two countries have a number of important lessons for industrial relations scholars who are interested in explaining continuity and change in national patterns of employment relations.

References

- Baldwin, R., Scott, C. and Hood, C. (eds.). (1998), *A Reader on Regulation*. Oxford, Oxford University Press.
- Bamber, G, Lansbury, R and Wailes, N. (2004), Introduction. In Bamber, G, Lansbury, R and Wailes, N. (eds.), *International and Comparative Employment Relations: Globalisation and the Developed Market Economies*, 4th edition. Sydney, Allen and Unwin.
- Barry, M. (1995), Employer Associations: Assessing Plowman's Reactivity Thesis, *Journal of Industrial Relations*, 37(4): 543-61.
- Barry, M. and Wailes, N. (2004), Contrasting Systems? 100 years of Arbitration in Australia and New Zealand, *Journal of Industrial Relations*, 46(4): 430-77.
- Blyth. M. (2002), *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century*, Cambridge, Cambridge University Press.
- Boston, J. and Uhr, J. (1996), Reshaping the Mechanics of Government. In Castles, F., Vowles, J. and Gerristen, R. (eds.), *The Great Experiment: Labour Parties and Public Policy Transformation in Australia and New Zealand*. Sydney, Allen and Unwin.
- Bray, M. and Haworth, N. (eds.). (1993a), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*. Sydney, Australian Centre of Industrial Relations Research and Training.

Bray, M. and Haworth, N. (1993b), Comparing Australia and New Zealand. In Bray and Haworth (eds.), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*. Sydney, Australian Centre of Industrial Relations Research and Training.

Bray, M. and Neilson, D. (1996), Industrial Relations Reform and the Relative Autonomy of the State. In Castles, F., Vowles, J. and Gerristen, R. (eds.), *The Great Experiment: Labour Parties and Public Policy Transformation in Australia and New Zealand*. Sydney, Allen and Unwin.

Bray, M. and Walsh, P. (1998), Different Paths to Neo-Liberalism? Comparing Australia and New Zealand, *Industrial Relations*, 37(3): 358-387.

Bray, M. and Walsh, P. (1993), Unions and Economic Restructuring in Australia and New Zealand. In Bray, M. and Haworth, N. (eds.), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*. Sydney, Australian Centre of Industrial Relations Research and Training.

Bray, M. and Walsh, P. (1995), Accord and Discord: Differing Fates of Corporatism Under Labo(u)r Governments in Australia and New Zealand, *Labour and Industry*, 6(3): 1-26.

Brook, P (1990), *Freedom at Work: The Case for reforming Labour Law in New Zealand*. Auckland, Oxford University Press.

Campbell, J. (2002), Institutional Analysis and the Role of Ideas in Political Economy. In Campbell, J. and Pedersen, O. (eds.), *The Rise of Neo-Liberalism and Institutional Analysis*. Princeton, Princeton University Press.

Campbell, I. and Brosnan, P. (1999), Labour Market Deregulation in Australia: The Slow Combustion Approach to Workplace Change, *International Review of Applied Economics*., 13(3), 353-94

Castles, F. (1985), *The Working Class and Welfare: Reflections on the Political Development of the Welfare State in Australia and New Zealand, 1890-1980*. Wellington, Allen & Unwin in association with Port Nicholson Press.

Castles, F., Vowles, J. and Gerristen, R. (1996), Introduction: Setting the Scene for Economic and Political Change. In Castles, F., Vowles, J. and Gerristen, R. (eds.), *The Great Experiment: Labour Parties and Public Policy Transformation in Australia and New Zealand*. Sydney, Allen and Unwin.

Collins, H. (1999), *Regulating Contracts*. Oxford, Oxford University Press.

Cooper, R. (1996), *Making the NSW Union Movement? A Study of Organising and Recruitment Activities of the New South Wales Labour Council, 1900- 10*, Sydney, Industrial Relations Research Centre, UNSW.

Katz, H. and Darbishire, O. (2000), *Converging Divergences: Worldwide Changes in Employment Systems*. Ithaca, Cornell University Press.

Gahan, P. (1996), Did Arbitration Make for Dependent Unionism? Evidence from the Historical Case Studies, *Journal of Industrial Relations*, 38(4): 648-98.

Gardner, M and Ronfeldt, P. (1996), The Arbitral Model: What Remains? In R. Fell and T. Todd (eds.), *Current Research in Industrial relations: Proceedings of the 10th Annual AIRAANZ Conference*. Perth, AIRAANZ.

Gardner, M. (1995), Labour Movements and Industrial Restructuring: Australia, New Zealand and the United States. In Turner, L. and Wever, K. (eds.), *The Comparative Political Economy of Industrial Relations*, Madison, IRRA.

Godard, J. (2004), The New Institutionalism, Capitalist Diversity and the Industrial Relations. In Kaufman, B. (ed.), *Theoretical Perspectives on Work and the Employment Relationship*. Madison, IRRA.

Gospel, H. and Pendelton, A. (eds.). (2005), *Corporate Governance and Labour Management: An international comparison*. Oxford, Oxford University Press.

Hall, P. (1998), Interests, Institutions and Ideas: Three Approaches to Comparative Political Economy. In Lichbach, M. and Zuckerman, A. (eds.), *Comparative Politics: Rationality, Culture and Structure*. New York, Cambridge University Press.

Hall, P. and Taylor, R. (1996), Political Science and the Three New Institutionalisms, *Political Studies*, 44(5): 936-57.

Hall, R. and Sosicke, D. (2001), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. New York, Oxford University Press.

Harbridge, R. Crawford, A. and Kiely, P. (2000), *Employment Agreements: Bargaining Trends and Employment Law Update 1999/2000*, Wellington, Industrial Relations Centre, Victoria University of Wellington.

Harbridge, R. and Walsh, P. (2002), Globalisation and Labour Market Deregulation in Australia and New Zealand: Different approaches, similar outcomes, *Employee Relations*, 24(4): 423-36.

Hare, A. (1946), *Industrial Relations In New Zealand*, London, Dent.

Hince, K. (1993), Is Euro-American Union Theory Universally Applicable? An Australasian Perspective. In Adams, R. and Meltz, N. (eds.), *Industrial Relations Theory: Its Nature, Scope and Pedagogy*. New Jersey, IMLR Press/ Rutgers University.

Howe, J. (2005), Deregulation of Labour Relations in Australia: towards command and control. Paper presented to *Labour Law Equity and Efficiency: structuring and regulating the labour market for the 21st century*, Centre for Employment and Labour Relations Law, University of Melbourne.

Hyman, R. (2001), Trade Unions Research and Cross National Comparison, *European Journal of Industrial Relations*, 7(1): 203-232.

Johnstone, R. and Mitchell, R. (2004), Regulating Work. In C. Parker, Scott, C., Lacey, N. and Braithwaite, J. (eds.), *Regulating Law*. Oxford, Oxford University Press.

Lansbury, R. and Wailes, N (2004) Employment Relations in Australia. In Bamber, G, Lansbury, R and Wailes, N. (eds.), *International and Comparative Employment Relations: Globalisation and the Developed Market Economies*, 4th edition. Sydney, Allen and Unwin.

- Locke, R. and Thelen, K. (1995), Apples and Oranges Compared: Contextualised Comparisons and the Study of Comparative Politics, *Politics and Society*, 23(3): 337-367
- Mathews, T. (1991), Interest Group Politics: Corporatism Without Business? In Castles, F. (ed.), *Australia Compared: People, Policies and Politics*. Sydney, Allen and Unwin.
- Mitchell, R. and Wilson, M. (1993), Legislative Change in Industrial Relations: Australia and New Zealand in the 1980s. In Bray, M. and Haworth, H. (eds.), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*. Sydney, Australian Centre of Industrial Relations Research and Training.
- O'Brien, J. (1994), McKinsey, Hilmer and the BCA: The New Management Model of Labour Market Reform, *Journal of Industrial Relations*, 36(4): 468-90
- Plowman, D. and Street, M. (1993), Industrial Relations and Economic Restructuring in Australia and New Zealand: Employers' Agendas. In Bray, M. and Haworth, N. (eds.), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*. Sydney, Australian Centre of Industrial Relations Research and Training.
- Polanyi, K. (1957), *The Great Transformation*. Boston, Beacon Press.
- Pontusson, J. (1995), From Comparative Public Policy to Political Economy: Putting Political Institutions in Their Place and Taking Interests Seriously, *Comparative Political Studies*, 28(1): 117- 48.
- Pontusson, J. (2005) Varieties and Commonalities of Capitalism. In Coates, D (ed) *Varieties of Capitalism, Varieties of Approach*, London, Palgrave Mcmillian
- Pontusson, J. and P. Swenson (1996), Labor Markets, Production Strategies and Wage Bargaining Institutions: The Swedish Employer Offensive in Comparative Perspective, *Comparative Political Studies*, 29(2): 223- 51.
- Ramia, G. (1998), *Wage Earners and "Wage Earners' Welfare States": Industrial Relations and Social Protection in Australia and New Zealand, 1890-1996*, PhD Thesis, University of New South Wales.
- Sandlant, R. (1989), *The Political Economy of Wage Restraint: The Australian Accord and Trade Union Strategy in New Zealand*, Masters Thesis, The University of Auckland.
- Thelen, K. (2000), Why German Employers Can't Bring Themselves to Dismantle the German Model. In Iversen, T., Pontusson, J. and Sosicke, D. (eds.), *Unions, Employers and Central banks: Macroeconomic Coordination and Institutional Change in Social Market Economies*. New York, Cambridge University Press.
- Traxler, F., Blaschke, S. and Kittell, B. (2001), *National Labour Relations in Internationalised Markets: A Comparative Study of Institutions, Change and Performance*. Oxford, Oxford University Press.
- Wailles, N. (2000), Economic Change and Domestic Industrial Relations Institutions: Towards a Theoretical Model, *Journal of Industrial Relations*, 42(2): 214-33.
- Wailles, N. (2003), *The Importance of Small Differences: Globalisation and Industrial Relations Reform in Australia and New Zealand*, PhD Thesis, University of Sydney.

Wailes, N., Ramia, G. and Lansbury, R. (2003), Interests, Institutions and Industrial Relations, *British Journal of Industrial Relations*, 41(4): 617-37.

Wanna, J. (1989), Centralisation Without Corporatism: The Politics of New Zealand Employers in the Recession, *New Zealand Journal of Industrial Relations*, 14(1): 1-15.

Strikes and Lockouts in the Antipodes: Neo-Liberal Convergence in Australia and New Zealand

CHRIS BRIGGS¹

Abstract

By international standards, labour disputation during the post-war boom was moderate or mid-range in New Zealand whilst Australia was part of a group of strike-prone nations. However, significant convergence has occurred between the two nations as strikes have declined and lockouts have re-emerged. Though there were differences in timing and the extent of change, and Australian unions still retain a stronger capacity to mobilise members into disputes, the overall trend has been strong convergence to bargaining systems with low levels of disputation and ascendant employers. A combination of economic and institutional factors explain these trends, a conclusion which is broadly consistent with the existing Trans-Tasman comparative literature, though the quantitatively greater influence of bargaining fragmentation on Australian unions and disputation will also be highlighted.

Introduction

Australia and New Zealand represent the ‘almost perfect’ cases (Wailes, 1999) for ‘most similar’ comparative studies. Both are settler-capitalist societies colonised by the British, both are small trading nations vulnerable to international economic vicissitudes and both developed systems of compulsory conciliation and arbitration for settling labour disputes throughout most of the twentieth century. The disputation statistics of both nations are also similar and relatively comprehensive, further enhancing the scope for comparison.

Australia and New Zealand have experienced some of the most far-reaching neo-liberal reforms in the OECD, especially New Zealand which completely dismantled its century-old industrial relations institutional framework in one single legislative swoop. Comparative analysis highlights some differences between Australia and New Zealand but overall illustrates the effectiveness of neo-liberal institutional reform in fragmenting labour markets, de-mobilising trade unions and lowering disputation. In both nations, strikes have fallen dramatically - especially New Zealand where officially recorded disputes have almost disappeared – amidst a resurgence in employer militancy and lockouts. Disputation levels in Australia remain significantly higher but the overall picture is one of unmistakable convergence towards New Zealand – a bargaining system with low disputation, low union bargaining power and ascendant employers. This convergence will probably continue as a newly re-elected conservative government in Australia implements radical industrial relations reform including extraordinary limitations on strikes - but there is a possibility that the extremity of the changes, the politicisation of industrial relations and a coordinated union campaign could lead to a short-run upsurge in disputes.

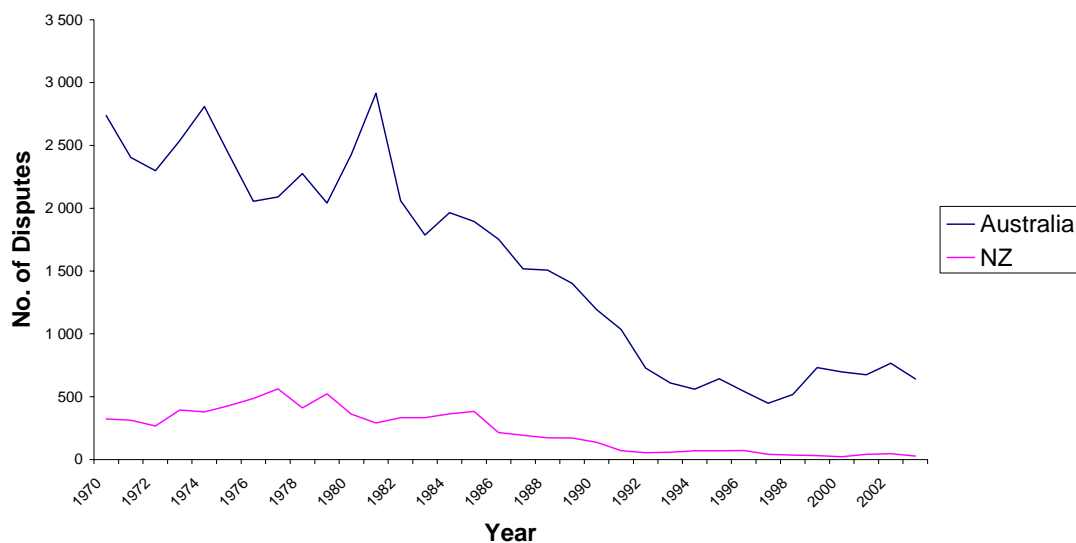
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Disputation Trends: Strikes Down, Lock-outs Up!

The difficulties in cross-national comparisons of labour dispute statistics owing to differences in definitions, collection techniques and measurement standards are well-known. Happily, these problems do not bedevil comparisons between Australia and New Zealand. Australian and New Zealand dispute statistics are among the most comprehensive in the OECD and quite similar. Both have low thresholds for the inclusion of disputes. Until 2000, both nations included all disputes which led to the loss of 10 working days at which point New Zealand lowered their threshold to just 5 working days. Neither country makes exclusions found elsewhere such as disputes in the public sector, political strikes and employees indirectly unable to work (Aligisakis, 1997). Both nations use more or less the same definition of lockouts but unlike Statistics NZ, the Australian Bureau of Statistics (ABS) does not distinguish between lockouts and strikes in collating or presenting its data on labour disputes. However, the development of a lockouts database for Australia now allows for comparison (Briggs, 2004a). So in terms of aggregate disputation statistics Australia and New Zealand are highly comparable.

Australia was more dispute-prone than New Zealand throughout the post-war era. Throughout the 1960s, the portion of workers involved in industrial action in New Zealand was only around one-quarter of Australia, stoppages per employee varied between around one-third and one-half the level prevailing in Australia. In terms of working days (WDL), Australia's WDL/1000 employees rate from 1962-1981 was almost two and a half times higher than New Zealand (Creigh and Poland, 1983: 82 & 112-113). Consequently, Creigh and Poland (1983) classified New Zealand as part of a mid-range group of nations in relation to work stoppages but classified Australia with nations displaying 'relatively high average stoppage incidence rates'.

Figure 1: Number of Labour Disputes, Australia and New Zealand, 1970-2003



Source: ABS, *Industrial Disputes*, Cat. No. 6321.0; New Zealand Department of Labour (1970-2003), *Work Stoppages*.

However, beginning from the 1970s, there is a significant convergence in the number of labour disputes although there are some significant differences in trends between Australia and New Zealand - as illustrated by Figure 1 above.

Even with one of the lowest statistical thresholds for the inclusion of disputes, work stoppages virtually disappeared in New Zealand during the 1990s, whereas the number of disputes in Australia has actually trended upwards in the past five or six years after a major decline from 1970 onwards. Whilst this reflects a highly fragmented bargaining system, it also suggests Australian unions retain something of a capacity to mobilise members into disputes by comparison with New Zealand unions. A higher ratio of WDL per unionist in Australia than New Zealand throughout the 1990s also fits with this interpretation (Briggs, 2005).

As the legal capacity to use industrial action has become more limited, Australian unions have also been more adept at organising ‘corporate campaigns’ as an alternative to industrial action. Some examples include the Textile, Clothing and Footwear Union’s ‘fair-wear’ campaign using publicity actions in concert with church and community groups to pressure retailers to sign a code of conduct refusing to use ‘outworkers’ in sweatshops (Weller, 1999) and shareholder activism by the mining and bank unions to resist anti-union employment strategies (Cutcher, 2004). Corporate campaigns are extremely rare, if not more or less unheard of to date in New Zealand, though the union movement is starting to consider these as it re-emerges from the *Employment Contracts Act* (ECA) period (Beaumont, 2005).

Figure 2: Australia & New Zealand: WDL/1000 Employees, 1970-2003



Source: ABS, *Industrial Disputes*, Cat. No. 6321.0; New Zealand Department of Labour (1970-2003), *Work Stoppages*.

Trends in WDL/1000 employees, generally considered the best overall measure of disputation, diverge significantly during the 1970s and 1980s but converge strongly from the early 1990s. WDL/1000 employees in Australia trends consistently, gradually downwards whereas New Zealand trends upwards gently from the 1970s,

culminating in a major labour market confrontation in the mid-1980s (reflected not only in WDL but also other indicators such as duration of disputes and lockouts), which was obviously decisively won by employers as WDL/1000 employees dives subsequently. From the early-to-mid 1990s, Australia has been ‘catching-up’ with New Zealand, as disputation has declined strongly – as is illustrated by figure 2.

The scale of this graph makes the two nations appear closer than they are as Australia has generally maintained a rate of 50-75 WDL a year since the mid-1990s whereas in New Zealand disputation fell almost as low as it could without completely vanishing (less than 10 WDL). Nevertheless, the overall convergence is unmistakable.

Whilst strikes declined, lockouts re-emerged strongly in both Australia and New Zealand. Table 1 documents key trends in relation to lockouts in Australia for the two half-decades since the right to lockout was introduced at the beginning of 1994.

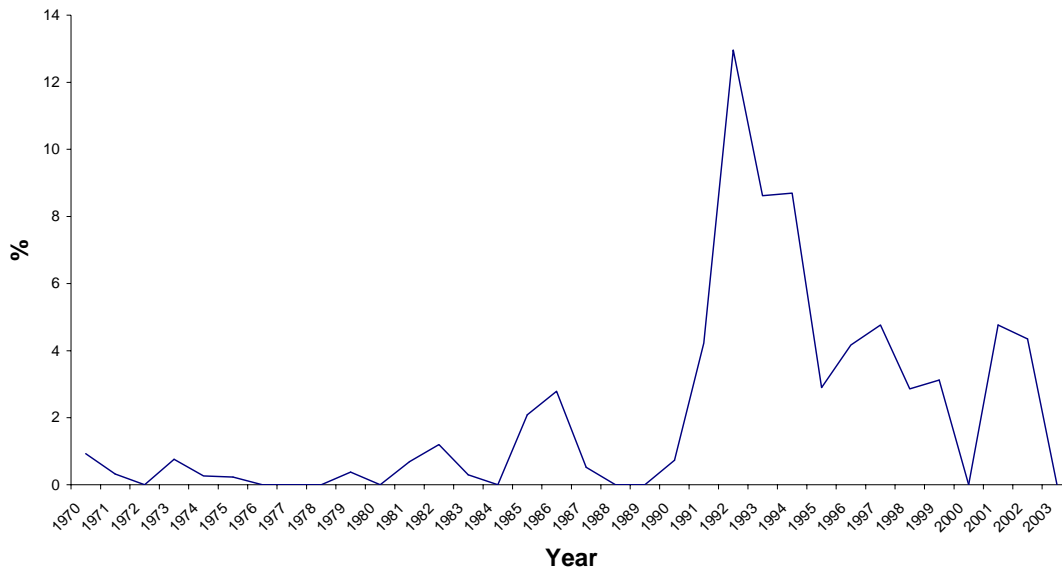
Table 1: Lockouts, Australia, 1994-2003

	1994-98	1999-03
WDL to Lockouts as a Proportion of all Disputes	1.6%	9.3%
Lockouts as a proportion of all disputes	0.3%	2.0%
‘Long’ Disputes (i.e. greater than 20 days) comprised by Lockouts	7.7%	57.5%
Proportion of WDL to Lockouts, Manufacturing	3.0%	26.6%

Source: ABS, *Industrial Disputes*, Cat. No. 6321.0; Briggs (2004a).

Lockouts are still relatively rare, only 2 per cent of disputes involved a lockout, but the number of WDL in disputes involving a lockout increased over five-fold during the second half-decade of enterprise bargaining to just under 10 per cent.¹ Additionally, just over half of ‘long’ industrial disputes (defined by the ABS as longer than a month) in the past five years were lockouts. Lockouts still comprise a small proportion of disputes but they are significantly more likely to evolve into drawn-out industrial disputes with high economic, social and personal costs. The take-up in lockouts has been led by manufacturing employers where lockouts have increased from just 3 per cent of WDL to labour disputes to a remarkable 26 per cent.

In New Zealand, whereas lockouts comprised between 0 and 2-3 per cent of disputes from 1970-1990, the proportion of disputes comprised by lockouts was just over or under 10 per cent for much of the 1990s before easing to around 5 per cent (New Zealand Department of Labour, 1970-2003). The surge reflects the decline in strikes but also a pronounced increase in aggressive employer bargaining strategies. New Zealand does not collect figures on WDL for lockouts but the proportion of disputes accounted for by lockouts was significantly higher than Australia from the early 1990s onwards – as is illustrated by Figure 3.²

Figure 3: Lockouts as a Proportion of Labour Disputes, 1970-2003

Source: New Zealand Department of Labour (1970-2003), *Work Stoppages*.

Overall, there are some important differences in dispute patterns and trends between Australia and New Zealand but there is unmistakable evidence of convergence. Labour dispute in Australia fell in a more gradual, less far-reaching fashion to the quite abrupt collapse which occurred in New Zealand. Both nations have experienced substantial falls in dispute but the decline has been extraordinarily steady in Australia, and has stabilised at a moderate level of dispute by international standards in recent years, whereas dispute levels in New Zealand collapsed to almost negligible levels during the 1990s after a crescendo in the mid-1980s. In both nations, lockouts re-emerged strongly as strikes declined. Explanations for these similarities and differences between dispute trends in Australia and New Zealand are now considered.

Explaining Dispute Trends: the Role of Economic Factors

Economic changes and reforms underpin the general direction, timing and extent of dispute trends in both nations. Both nations are small, open trading economies with a high dependence on agriculture and resources production. The commonly observed effects of globalisation on union bargaining power, competitive pressures stiffening the resistance of employers and governments to industrial action and lowering the potential gains apply strongly to both Australia and New Zealand which removed most tariff and non-tariff barriers during the 1980s and 90s. Local sites of multi-national corporations have the added risk of head-offices penalising them by redirecting investment and work to other national subsidiaries in the event of extended stoppages. The President of Australian Industry Group (AIG), Peter Nolan, the major representative of manufacturers, observes:

You have the whole global competition issue ... (and) You've got global parents looking all around the world to see where they are going to invest their dollars. Those investment dollars are extremely fluid ... the overseas parent is

getting reports daily (during a labour dispute) ‘what is going on? When is this going to fix itself?’ So it demands a speedy reaction ... I think that is a significant difference to where things were 10 years ago. I think those pressures on manufacturers to remain viable, competitive ... doesn’t sit comfortably with protracted industrial action (Peter Nolan, personal interview, October 16, 2003).

Other types of structural change which led to the decline of union membership, essentially the shift away from sectors, occupations and workplaces with high union density to those with low union density (Peetz, 1998), also help explain the decline in strike levels. Put simply, there are fewer of the blue-collar workers that historically led industrial campaigns and the casualisation and fragmentation of the blue-collar workforce has left it much less strike-prone.

However, these economic changes and associated neo-liberal reforms were considerably deeper and faster in New Zealand than Australia. Following the end of the post-war boom in the 1970s, both nations were enveloped by economic crisis characterised by large external deficits and stagflation, but the depth of crisis and the early 90s recession was much deeper in New Zealand (Wailes, 1999: 193-194). New Zealand also embarked on what is often considered the most radical programme of neo-liberal reform in the OECD. In a ‘policy blitzkrieg’, the New Zealand economy was transformed from ‘one of the most interventionist to one of the most open and market-based’ (Conway & Orr, 2000) through comprehensive economic liberalisation and deregulation. Australian economic policy has followed a similar path by liberalising its currency, opening up the economy and de-regulation but the pace and extent of reforms was significantly moderate by comparison. A significant portion of causality for the similarities in general disputation trends, as well as variations in the depth and timing, lay in these economic factors.

However, economic factors cannot be considered a complete explanation. Cyclical economic conditions factors have been observed to be less powerful in shaping disputation trends (Healy, 2002: 81; Shalev, 1992: 117). So it is with Australia and New Zealand. After a long period of ‘jobless recovery’ from the early 1990s recession, both nations have experienced significant falls in unemployment in recent years, especially in New Zealand where unemployment has fallen beneath 4 per cent since the election of a Labour Government. Whilst unemployment rates are currently at their lowest levels in both nations since the 1970s, disputation levels have continued to fall in Australia and maintained their negligible presence in New Zealand. Institutional and policy reforms - and the associated fragmentation of labour markets, bargaining systems and trade unionism – have also played an important role in weakening the link between economic cycles and strikes.

The Role of Institutional Factors: from Arbitration to Neo-Liberalism

Australia and New Zealand are distinctive as the only two advanced market economies to develop systems of compulsory conciliation and arbitration throughout most of the twentieth century. Under the conciliation and arbitration system, all forms of industrial action were outlawed because in the florid prose of pioneering Australian judge, Henry Bourne Higgins (1915), conciliation and arbitration was to substitute for

‘the rude and barbarous process of strike and lockout.’ In practice, the blanket prohibition of industrial action under the conciliation and arbitration was unenforceable and sanctions were only used in exceptional disputes. Paradoxically, although both nations legislated for a right to strike (and lockout) for the first time as bargaining was decentralised, the accompanying institutional and policy changes have eroded the capacity of unions to undertake industrial action and led to lower levels of stoppages.

The industrial relations institutions of both nations have now been remodelled (Australia) or completely dismantled (New Zealand) by neo-liberal legislative reforms. In New Zealand, the Conservative National Party, simply eradicated the century-old institutional framework of the arbitral system through the *Employment Contracts Act* (1991) within a couple of months of coming to power. The ECA abolished the industrial tribunals and the multi-employer award system, replacing them with individual employment contracts and collective employment contracts (a contract between an employer and two or more employees), but favouring individual contracts which were considered the ‘natural’ state of affairs (Anderson, 1994: 124). The ECA completely removed the legal status of trade unions, referring only to ‘employees organisations’ without according them any legal rights or requiring employers to even recognise and bargain with these organisations. The object of the ECA was to replace the arbitration system with a ‘individual contractual order’ (Wailles, 2003: 153).

Australian legislators retained the tribunals and awards but placed them firmly in the ‘shadow’ (Gardner & Ronfeldt, 1996) of enterprise bargaining. The tribunals could only arbitrate as a ‘last resort’ where the dispute threatens the national economy or health and safety. Awards have been limited in scope to twenty ‘allowable matters’ and repositioned as a ‘safety net’ to underpin enterprise bargaining. Only single-employer agreements and strikes are recognised. Non-union and individual agreement streams were introduced alongside collective bargaining. Vestiges of the award system do remain but a highly fragmented, decentralised bargaining system has emerged since the 1990s.

In both nations, as the dispute-settling powers of the tribunals were wound back and decentralised bargaining was introduced, recognition of the need to create legal space for industrial action as part of the bargaining process led to legal distinctions between lawful and unlawful industrial action. A limited immunity from civil liabilities for strikes lockouts used to exert pressure during the bargaining process was introduced. Consequently, industrial action was now illegal with few exceptions outside notified bargaining periods every few years. Previously legal forms of industrial action such multi-employer strikes, secondary boycotts and sympathy strikes were also outlawed (although multi-employer strikes have been re-legalised in New Zealand). So although there was a statutory right to strike for the first time, it effectively represented a contraction in the circumstances and ways in which unions could take industrial action.

Furthermore, by replacing an unenforceable blanket prohibition of industrial action with the statutory construction of legal and illegal forms of industrial action and opening up pathways to the common law courts, legislators encouraged the active

policing of these boundaries by employers and their solicitors. Anderson's (2004: 8.25) observation in relation to New Zealand applies equally to Australia:

... it seems to have become more acceptable to utilise the law as a means of combating strikes and lockouts. The categorisation of a range of strikes as lawful seems to have led to a much greater willingness to use the law against unlawful strikes. During the period when virtually any strike was unlawful there seems to have been a greater reluctance to take full advantage of the law.

In addition to the visibly increased role of the common law courts and solicitors, in Australia the role of the AIRC has also been transformed from the arbiter of disputes to one of 'policing the perimeter' of the bargaining system (Slevin, 1998; Stewart, 2004). More than most aspects of labour relations, disputation is sensitive to changes in the law and the way it is applied.

By limiting industrial action to bargaining periods every few years, the well-established linkage between economic cycles, union bargaining power and industrial action have been substantially weakened. As Hodgkinson & Perera (2004: 440 & 455) concluded after running regression tests:

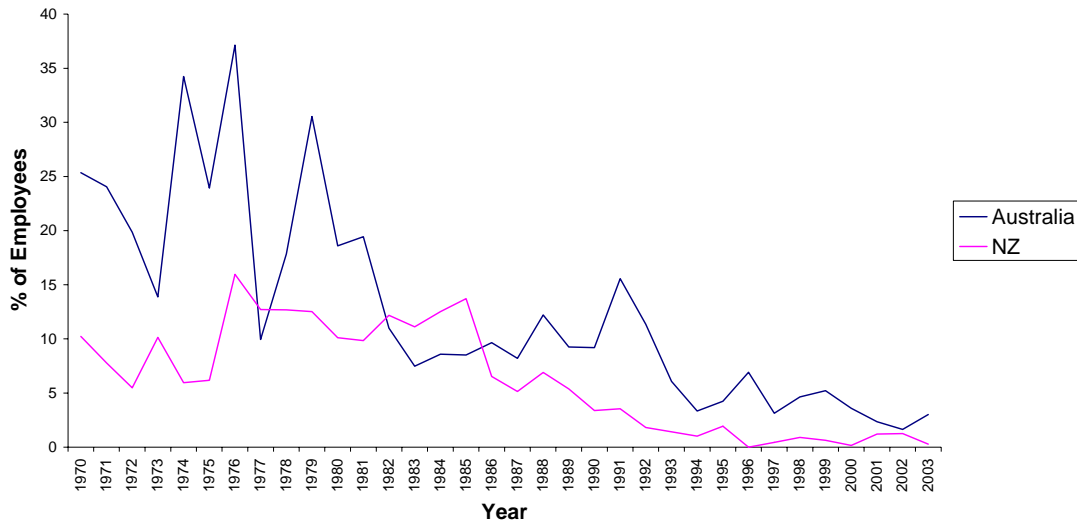
Previous economic analyses which attempt to explain levels of industrial action have focused on macroeconomic conditions whereby strike levels are assumed to move in a pro-cyclical manner ... However, under enterprise bargaining, workers are constrained by 'no more claims' clauses during the life of each agreement. Thus pay claims cannot be timed to take advantage of favourable economic conditions and must be left until the termination of agreements ... regardless of prevailing economic conditions ... the conditions of enterprise agreements prevent workers taking advantage of cyclical improvements in economic conditions to pursue wage claims, as was the situation in Australia under the award system.

Workers are less like to enjoy significant bargaining due to economic changes but even where they do institutional limitations may prevent them from using industrial action to take advantage as they could under the award system.

The other major institutional change has been the fragmentation of bargaining, especially significant in the decline of WDL to disputation in Australia. As Figure 4 illustrates, the Australian union movement was much more cohesive than the New Zealand movement and more effective at building national campaigns.

In four major national campaigns in Australia from 1970 to the early 1980s, over 25 per cent of the workforce was involved in industrial action (peaking in the 1976 protest strike at the removal of universal health insurance at 38 per cent) whereas just 10-15 per cent of the New Zealand workforce were generally involved in industrial action over the same period. In New Zealand, the portion of the workforce engaging in industrial action rose in the aftermath of the 1968 'nil wage order'. A statutory incomes policy was in force for all of 8 months from 1971-84 (Boston, 1984; Wailes, 1999: 326-333; Walsh, 1994).

Figure 5: The Scope of Industrial Action, Australia and New Zealand, 1970-2003



Source: ABS, *Industrial Disputes*, Cat. No. 6321.0; New Zealand Department of Labour (1970-2003), *Work Stoppages*.

Industrial action and worker unrest built gradually throughout the 1970s but never erupted in the spectacular fashion of Australia. It then began to decline after the mid-1980s spike, dropping sharply to almost negligible levels from the early 1990s. In Australia, after contracting from the peaks of the 1970s, the portion of the Australian workforce engaging in industrial action increased gradually throughout the 1980s, peaking in the last major national union mobilisation around the decentralisation of bargaining before also sharply dropping during the 1990s. The portion of the Australian workforce which has taken industrial action in the past five years, just 2-3 per cent, is now only marginally higher than New Zealand.

A structural break in Australia's pattern of disputation, union mobilisation and labour relations occurred with the inception of a quasi-corporatist 'Accord' between the ALP and ACTU (1983-96). The core of the Accord was a commitment by the ACTU to 'no-extra claims' in exchange for centralised real wage maintenance 'over time', increases to the social wage and consultation in the policy-making process (ALP-ACTU, 1983). Econometric studies have almost universally concluded the Accord was a significant factor in the major decline in disputation throughout the 1980s (Beggs & Chapman, 1987a & b; Healy, 2002; Morris & Wilson, 1994 & 1999).³ The Accord, remarkably successful at reproducing union commitment to centralised wage-setting, broke the cycles of industrial action and periodic wage explosions. The two Australian strike peaks in 1973-74 and 1980-81 were the vehicles for wage explosions. In the late 1980s, when the centralised wage system could easily have unravelled at the crescendo of a roaring boom with major skill shortages in key sectors such as metals manufacturing which had previously been the precursor to wage explosions, the ACTU was able to avert a wage explosion, primarily by linking \$4.9 billion of tax cuts to a renewed commitment to the centralised wage system. As Bill Kelty (ACTU Secretary) later said:

I think most people thought that we were going to have some form of wage explosion ... many people thought it was time to get whatever they could out of the system but we held firm and it would have been impossible to get today's (1991) historic low rate of inflation without that 1989 decision (the tax cuts) which bought off a wage explosion (Kelly, 1992: 493).

The ACTU also defused labour market hot-spots through special agreements and allowance increases where possible or alternatively isolated recalcitrant unions determined to break out of the centralised wage guidelines to coercive state power. The emergence of the 'new right', an ultra-conservative cabal of businessmen, lawyers and politicians which successfully targeted some militant unions with common law actions, was another threat to unions operating outside the aegis of the Accord and the ACTU (Briggs, 2002).

The introduction of enterprise bargaining virtually signalled the death of national industrial campaigns. The ACTU had still organised national mobilisations within the aegis of the Accord for occupational superannuation (1986) and to pressure the AIRC on national wage rulings. Australian unions retained a greater capacity for mobilising workers into industrial action than New Zealand but the last major national surge in disputation was, ironically, orchestrated by the ACTU in 1990-91 to pressure the AIRC into decentralising bargaining. Aside from protest strikes organised against conservative legislative reforms, nationally (1996) and at state level (New South Wales, 1991; Victoria, 1992; Western Australia, 1993), bargaining and industrial action has subsequently been scattered, infrequent and dis-connected. Significant industrial action still occurs in some pockets of blue-collar sectors such as mining, construction and manufacturing and the white-collar 'new heartlands' such as teaching and nursing. But the decentralisation and fragmentation of bargaining removed the focal point national wage-setting provided for national mobilisation, erected obstacles to multi-employer strikes and bargaining and severed the institutional mechanisms such as comparative wage justice which linked strong and weak unions. Consequently, Australian unionism lost much of its capacity to mobilise as a movement which clearly is a significant factor in the large numerical falls in WDL to stoppages. Similar dynamics operated in New Zealand with the fragmentation of bargaining in the early 1990s but as New Zealand unions did not mobilise as widely as Australian unions or as frequently as a movement it was less of a factor in falling levels of disputation.

Neo-liberal legislative reforms have also played a key role in the resurgence of lockouts. Institutional features of the arbitration system such as compulsory union recognition, the tribunals' authority to arbitrate legally-binding settlements to disputes and coordinated employment regulation virtually removed the opportunity and incentive for such lockouts (Briggs, 2004b; Macfie, 1992).⁴ Australian and New Zealand conservatives delivered unique freedom for employers to deploy lockouts. Whereas other OECD nations either prohibit lockouts or limit them to circumstances under which employers are considered to require them to 'equalise' bargaining power, Antipodean conservatives enabled employers to use lockouts against unorganised workers and to de-collectivise bargaining (see Anderson, 1994; Briggs, 2005). Liberal lockout regulations created greater opportunities to use lockouts whilst rising union/non-union wage differentials created pressures and incentives for employers to take advantage of this opportunity. In Australia, lockouts remain virtually unheard of

outside of the Federal Jurisdiction (which was the only jurisdiction to establish a statutory right to lockout) whilst lockouts surged under the *Employment Contracts Act* (see Briggs, 2004a & 2004b). The militants in Australia (and New Zealand) are now often employers instead of unionists.

Whereas some of the neo-liberal New Zealand strike laws have been removed by a Labor Government, Australian strike law and industrial relations is set for a further dose of neo-liberal reform. Under the *Employment Relations Act* (ERA) 2000, the New Zealand Labour Party lifted the prohibition on strikes/lockouts for a multi-employer agreement, introduced a 40-day freeze on strikes/lockouts from the initiation of bargaining, introduced public mediation services and prohibited the use of replacement employees during strikes/lockouts (Anderson, 2004: 8.2). In Australia, after surprisingly capturing a majority in the upper house of Federal Parliament in the 2004 Federal Election, the Liberal-National Party is on the verge of passing the *Workplace Relations Amendment (Work Choices) Bill* into law. *Work Choices* extends the circumstances under which industrial action is prohibited, imposes a legalistic secret ballot process for unions and create almost open-ended rights for the suspension or termination of industrial action. The AIRC can suspend or terminate industrial action upon application if it is ‘adversely effecting’ an employer or any ‘third party’ (individual or business). The Minister for Workplace Relations can simply issue a declaration suspending or terminating the industrial action if the industrial action is being ‘taken, or is threatened, impending or probable’ which would cause ‘significant damage to part or all of the Australian economy’. It is so open-ended it is difficult to think of a strike which will not be open to legal challenge. AWA lockouts will no longer be legally recognised but lockouts are not subject to the ballot process and legal remedies against industrial action are clearly designed for strikes. Once the *Work Choices* Bill is enacted, Australia will become the only OECD nation which legally discriminates in favour of lockouts against strikes.

Conclusion

Overall, Trans-Tasman trends in labour disputation closely conform to the conclusions reached by comparative studies of industrial relations reform in Australia and New Zealand (Barry & Wailes, 2004; Bray & Walsh, 1998; Wailes, 1999; Wailes & Ramia, 2002). Namely, Australia has experienced more gradual and less far-reaching neo-liberal reform than New Zealand, but through a process of ‘slow-combustion’ labour market de-regulation, Australia has been converging on New Zealand. Australia, traditionally one of the most strike-prone nations in the OECD, is now ‘moderate’ or ‘average’ by comparison whilst New Zealand has one of the lowest levels of work stoppages in the OECD. There is unmistakable convergence between the two nations towards bargaining systems with low disputation, low union bargaining power and ascendant employers.

Economic factors have underpinned the general trend and differential timing of the falls in disputation in both nations but neo-liberal institutional reforms have also transformed Antipodean industrial relations, including labour conflict. The right-to-strike was accompanied by a considerable tightening of the circumstances under which unions could take industrial action, the active policing of the boundaries between lawful and unlawful industrial action and the fragmentation of bargaining

and solidarity which ended national campaigns including widespread disputation. Institutional and economic factors are inter-linked as restructured economic institutions and bargaining rules have both exposed workers to global economic pressures whilst limiting their ability to exploit cyclical bargaining power where it exists.

Australian unions still retain a greater capacity to mobilise workers into disputes but further convergence is likely in view of recent political and legislative events. Following the re-election of the Labour Party in New Zealand, more of the same might be expected though there could be a moderate upturn in disputation as major unions continue to strive to re-establish multi-employer collective bargaining. In Australia, the extraordinary limitations on industrial action will probably lead in the long-run to further convergence but the extreme character of the new legislation adds a new degree of volatility to Australian industrial relations which makes predictions difficult. *Work Choices* potentially sets the scene for confrontations over rights to organise and basic employment conditions and unions are planning a long campaign, potentially including civil disobedience. *Work Choices* aims to accelerate the neo-liberal fragmentation which has led to falling labour disputation but it is not out of the question, especially in the short-run, that it leads to a resurgence of labour disputes.

Notes

1. It should be noted the definition of a 'lockout' by the ABS which underpins these figures is quite narrow. The ABS (2002a) defines a lockout as a 'total or partial temporary closure of one or more places of employment ... by one or more employers with a view to enforcing or resisting demands or expressing grievances, or supporting other employers in their demands or grievances.' Excluded from the ABS definition are stand-downs (or 'lay-offs'), common law actions refusing to pay employees not working as directed (due, for example, to selective work bans), 'lockouts' which terminate rather than suspend contracts (for example, it excludes the 1998 waterfront lockout by Patricks Stevedores which attempted unsuccessfully to replace their unionised workforce) or 'de-facto lockouts' where the employers does not formally lockout their employees but triggers a strike with an unconditional demand their unionised employees sign individual contracts. Without systematically searching for these other types of withdrawal of work by employers, around 30% of the disputes investigated in the course of fieldwork were excluded on the basis that they fell into one of these four other categories. These figures therefore represent a conservative estimate; lockouts as more commonly understood (i.e. the refusal to furnish work as a bargaining tactic) are significantly more common.

2. Unfortunately, the number of lockouts is the only data-item collected in New Zealand limiting the scope for comparison. However, to give some appreciation of the significance of the difference in the proportion of disputes constituted by lockouts, in Australia 2 per cent of disputes translated into just under 10 per cent of working days lost because lockouts are longer on average than strikes. If a similar ratio of disputes/working days lost applied in New Zealand, the portion of working days lost to lockouts would come to just under 30 per cent.

3. For a dissenting view, which claims declining strike levels in Australia merely reflected international trends, see Perry (2004).

4. Although no official figures on lockouts exist for Australia, it is universally agreed they were extremely rare throughout the twentieth century (Briggs, 2004a: 112) whilst

in New Zealand there were less than 15 lockouts from 1925 until the early 1970s (Anderson, 1994: 125).

References

- Aligisakis, M. (1997), Labour Disputes in Western Europe: Typology and Tendencies. *International Labour Review*, 136(1): 73-95.
- ALP-ACTU. (1983), *Statement of Accord by the Australian Labor Party and the Australian Council of Trade Unions Regarding Economic Policy*.
- Anderson, G. (1994), New Zealand. In Blanpain, R. (ed.), *Strikes and Lockouts in Industrialized Nations*. Bulletin of Comparative Labour Relations, 29.
- Anderson, G. (2004), Part 8 – Strikes and Lockouts. *Mazengard's Employment Law*, Wellington, Lexis-Nexis.
- Barry, M. and Wailes, N. (2004), Contrasting Systems? 100 Years of Arbitration in Australia and New Zealand. *Journal of Industrial Relations*, 46(4): 430-447.
- Beaumont, C. (2005), *Personal Interview*, New Zealand Council of Trade Unions, Secretary, May 25.
- Beggs, J. and Chapman, B. (1987a), Australian Strike Activity in an International Context: 1964-85. *Journal of Industrial Relations*, 29(1): 131-49.
- Beggs, J. and Chapman, B. (1987a), Declining Strike Activity in Australia, 1983-85: an International Phenomenon? *Economic Record*, 63: 330-39.
- Boston, J. (1984), *Incomes Policy in New Zealand: 1968-1984*. Wellington, Victoria University Press.
- Bray, M. and Walsh, P. (1996), Different Paths to Neo-Liberalism? Comparing Australia and New Zealand. *Industrial Relations*, 37(3): 385-87.
- Briggs, C. (2002), The Paradox of ACTU Hegemony. *Labour and Industry*, 12(3): 77-102.
- Briggs, C. (2004a), The Return of the Lockout in Australia: a Profile of Lockouts since the Decentralisation of Bargaining. *Australian Bulletin of Labour*, 30(2): 101-112.
- Briggs, C. (2004b), The Return of Lockouts Down Under: Globalisation, the State and Employer Militancy. *Work, Employment Society Conference*, September 1-3, <http://www2.umist.ac.uk/management/ewerc/wes2004/papers.htm>. Paper accepted for publication in *Comparative Political Studies* (October, 2006).
- Briggs, C. (2005), Lockout Law in Comparative Perspective: Corporatism, Pluralism and Neo-Liberalism. *International Journal of Comparative Labour Law and Industrial Relations*, 21(3): 481-502.
- Briggs, C. and Buchanan, J. (2005), Work, Commerce and the Law: A New Australian Model? *Australian Economic Review*, 38(2): 181-192.

- Conway, P. and Orr, A. (2000), The Process of Economic Growth in New Zealand. *Reserve Bank of New Zealand Bulletin*, 63: 4-20.
- Cooper, R. and May, R. (2005), Organising for Survival: Australia and New Zealand's Trade Unions 1995-2005. *Globalisation and Industrial Relations Reform in Australia and New Zealand*, Non-refereed Conference Paper, February 8.
- Creigh, S. and Poland, G. (1983), Differences in Strike Activity Between Industrial Countries in the Post-War Period. *National Institute of Labour Studies Working Paper Series*, 59.
- Cutcher, L. (2004), The Customer as Ally: the Role of the Customer in the Finance Sector Union's Campaigning. *Journal of Industrial Relations*, 46(3): 323-336.
- Gardner, M. and Ronfeldt, P. (1996), The Arbitral Model: What Remains? In Fells, R. and Todd, T. (eds.), *Current Research in Industrial Relations- Proceedings of the 10th AIRANZ Conference*, February.
- Healy, J. (2002), Peace at Last? Recent Trends in Australia's Industrial Action. *Australian Bulletin of Labour*, 28(2): 80-87.
- Higgins, H. (1915), A New Province for Law and Order – I. *Harvard Law Review*, 29(1).
- Hodgkinson, A. and Perera, N. (2004) Strike Activity Under Enterprise Bargaining: Economics or Politics? *Australian Journal of Labour Economics*, 7 (4): 439-457.
- Kelly, P. (1992), *The End of Certainty: the Story of the 1980's*. Sydney, Allen & Unwin.
- Macfie, R. (1992), Employers' Use of Lockouts under the Employment Contracts Act 1991: A New Balance of Power? *New Zealand Journal of Industrial Relations*, 17(3): 319-331.
- Morris, A. and Wilson, K. (1994), An Empirical Analysis of Australian Strike Activity: Further Evidence on the Role of Prices and Incomes Accord. *The Economic Record*, 70(209): 183-191.
- Morris, A. and Wilson, K. (1999), Strikes and the Accord: The Final Word? *Australian Bulletin of Labour*, 25(1): 63- 71.
- Peetz, D. (1998), *Unions in a Contrary World: the Future of the Australian Trade Union Movement*. Melbourne, Cambridge University Press.
- Perry, L. (2004), Comments on the Decline in Strikes in Australia. *Australian Bulletin of Labour*, 30(2): 134-153.
- Shalev, K. (1992), The Resurgence of Labour Quiescence. In Regini, M. (ed.), *The Future of Labor Movements*. London, Sage.
- Slevin, T. (1998), Policing the Perimeter: the Australian Industrial Relations Commission's Role in the Hunter Valley Dispute. *Alternative Law Journal*, 57.
- Stewart, A. (2004), The AIRC's Evolving Role in Policing Bargaining. *Australian Journal of Labour Law*, 17 (3): 245-75.
- Wailles, N (2003), The Importance of Small Differences: Globalisation and Industrial Relations in Australia and New Zealand. *PhD Thesis*, University of Sydney.

Wailes, N. and Ramia, G. (2002), Globalisation, Interests and Institutions: Industrial Relations Reform in Australia and New Zealand. *Policy, Organisation and Society*, 21(1): 74-95.

Walsh, P. (1994), An "Unholy Alliance": the 1968 Nil Wage Order. *New Zealand Journal of History*, 28(2), 178-93.

Watson, I., Buchanan, J., Campbell, I. and Briggs, C. (2003), *Fragmented Futures: New Challenges in Working Life*. Sydney, Federation Press.

Weller, S. (1999), Clothing Outwork: Union Strategy, Labour Regulation and Labour Market Restructuring. *Journal of Industrial Relations*, 41(2): 201-227.

Relative Advantages: Casual Employment and Casualisation in Australia and New Zealand

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Abstract

Australia and New Zealand share a common experience of casual work. In both countries a category of ‘casual’ has long been permitted under labour regulation, and in both countries this has been associated with concerns about precariousness in employment. At least up until the recent period, labour regulation in both countries sought to limit casual employment in similar ways through quantitative restrictions and through prescription of a ‘casual loading’ on the hourly rate of pay. Yet, in spite of these strong parallels, casual employment seems less significant in New Zealand as a proportion of the total workforce and it seems to lack the same pace of growth as in Australia. This article asks why there should be this difference. It sketches out an answer that focuses on employer calculations and choices (within the framework of labour regulation, including custom and practice). We suggest that the relative advantages of casual employment to employers are narrower and less imposing in New Zealand. We warn that this cannot be taken as a source of comfort about the better quality of work in New Zealand. The compression of relative advantages is partly because of the greater access of casual employees to standard rights or benefits but it is also partly because of the poorer conditions of permanent workers.

Introduction

Labour restructuring in the current period has produced major changes in the employment structure of advanced capitalist societies. Though common themes are evident, including widely-shared concerns about increased precariousness, there is surprising diversity in the way in which the changes have unfolded in individual nations. This article explores a comparison of one aspect of labour restructuring in Australia and New Zealand. We start with the familiar Australian phenomenon of casualisation and the underlying category of ‘casual’ work. We work our way outward from this starting-point, examining what is known about analogous phenomena in New Zealand. In particular, we consider a crunch question: Why are casual employment and casualisation less significant in New Zealand than in Australia?

Casual Work and Casualisation in Australia

Casual work and casualisation in Australia have attracted a great deal of research over the past fifteen years in Australia. At latest count, almost one hundred scholarly articles, reports or books have taken up aspects of the topic. There is no room here to summarise all that is known. We just summarise two points that seem particularly salient, drawing on one recent

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contribution (Campbell, 2004; see also Pocock, Buchanan and Campbell, 2004; O'Donnell, 2004).

Casual work and labour regulation

Casual employment was an old form of employment, prominent in Australia in industries such as the waterfront, construction, shearing, meat preserving and flour milling (O'Donnell, 2004, 12). It was marked by a strong degree of commodification, where the worker enjoyed little more than a simple entitlement to a money wage in exchange for being at the disposal of the employer.

As labour regulation has developed, casual employment has come to be firmly embedded in labour regulation. Indeed, it is impossible to understand casual employment without an appreciation of the structure of labour regulation. The Australian system has had little statutory regulation. The common law provides an underlying structure. However, the main vehicle of labour regulation has been through the arbitration system and the awards produced by it – legally binding prescriptions of wages and conditions laid down by independent quasi-judicial tribunals (Creighton and Stewart, 2005). Though it was a complex patchwork, the award system, together with supplementary agreements, acted reasonably effectively to generalize minimum conditions to a majority of the waged workforce. Coverage was broad; though declining during the 1970s and 1980s, it was still 80 percent of all employees in 1990 (Campbell and Brosnan, 1999). On the other hand, however, enforcement was often poor, leading to an undermining of award regulations in sectors where non-compliance became widespread.

In most awards, full-time permanent employment was the axis along which standard rights and benefits were defined. As in most other OECD countries, it formed the pivot for the creation of a dominant norm of 'standard employment'. Other forms of employment were covered in special clauses, which often specified exemptions from the standard provisions. The vast majority of awards included a casual clause, which allowed some employees to be hired without standard rights and benefits (but with a casual loading on the hourly rate of pay).

The substantive content of casual clauses in awards and agreements can be easily summarised. First, the *definition of casual* was generally very broad, with employees often defined, somewhat tautologically, as 'casual' because they are paid 'as such'.² Second, casual clauses generally offered some *mechanism of control*, designed to limit the use of casual employment. However, these controls were often poorly designed. Sometimes they set restrictions on how casuals could be used, such as when, under what conditions and for how long, but more often they took the simple form of proportional limits or quotas (casual employees calculated as a proportion of the total number of employees or total number of hours). The third point relates to the extent of the *exemptions from rights and benefits*. The precise extent varied from award to award, but in general it was surprisingly wide. Casual employees had relatively few rights and benefits in awards and agreements, apart from the right to an hour's wage in exchange for an hour of work performed. Finally, we can note that a *casual loading* on the hourly rate of pay was found in almost all awards (justified as

² This definition is even used in some legislation, for example the West Australian Minimum Conditions of Employment Act, 1993.

compensation for foregone benefits, as compensation for irregular employment and as a deterrent for employers).

The history of award regulation of casuals stretches back to the origins of the arbitration system. It is likely that award regulation in areas where casual workers existed initially aimed just to boost wages through a casual loading on a base rate of pay. In making the Builders Labourer's Award in 1913, Justice Higgins noted the point that casual pay for builders' labourers – a group who were employed casually at the time – should be higher to compensate them for the uncertainty of their employment. In making the award, Higgins noted that “not one employer objected” (Builders Labourer's 7 Com Arb 210,218 (1913)).

This structure of award regulation persisted through to the end of the century in Australia, though with some amendments (including supplementing awards with independent agreements in the changes since the early 1990s). An audit of 50 federal awards conducted in 2000 (Commonwealth Government, 2000, 32-37, see also Attachment B, Schedule A), suggested that almost all (47) had casual clauses. All of these incorporated loose definitions of casuals. All but two of these provided for a casual loading, most commonly 20 percent. The audit took place after the *Workplace Relations Act 1996* proscribed quotas, and it indicated that, while twelve had restrictions on the length of engagement of casuals, most had no restrictions or much looser restrictions.

Award regulation has been crucial in shaping the practice of casual employment. The overall effect was to establish a sharp divide in the employment structure (and the workforce). The predominant form was permanent employment, which attracted an increasingly-wide range of rights and benefits. Other forms such as fixed-term employment, work on employment programs and traineeships sprang up at the margins. But casual work emerged as a form of employment that was the most common alternative to permanent work and that displayed the largest reduction or shortfall of rights and benefits. The shortfall permitted for casuals spanned numerous dimensions of the employment relation, extending well beyond the employment insecurity often associated with casual work. Casual clauses signalled a type of ‘officially sanctioned’ gap in the regulatory system. But also important was the effect of two other gaps, associated with the partial coverage and the poor enforcement of existing rules, which similarly acted to nurture unprotected employment. Thus, casual employment can be seen as a form of employment that straddles the border between the regulated and unregulated sectors, displaying a shortfall in protection in both sectors.

The features of labour regulation identified above help to define the opportunities for employers. Numerous casual clauses, broad definitions, poor controls, together with partial coverage and poor enforcement, mean that labour regulation provides few barriers to the use of casual employment. In short, in the absence of other barriers, casual work appears readily available to employers. At the same time, the fact that casual employment – even in the effectively-regulated sector – displays such a large shortfall in protection means that casual work appears as a highly flexible resource, which offers employers numerous advantages and can be used by employers in many different ways.

Given these features, it is not surprising that casual jobs can be highly diverse. For example, around two-thirds of workers classified as ‘casual’ in their main job are part-time (representing approximately 60 percent of all part-time waged workers), while the remaining one third are full-time (representing approximately 13 percent of all full-time waged workers). Diversity in casual jobs is matched by diversity both in the groups that participate in casual

work and in the forms of their participation. One crucial aspect concerns the peculiar phenomenon of what are sometimes called ‘regular’ (or ‘long-term’ or ‘permanent’ or ‘ongoing’) casuals, often distinguished from ‘irregular’ (‘short-term’ or ‘true’ or ‘genuine’) casuals. Such workers are used by employers in a regular, long-term manner that is similar to the manner in which permanent employees are used. However, they are deprived of the standard employment rights and benefits normally associated with permanent work (Owens, 2001). This disadvantage extends to other areas of their life too; for example, regular casual employees may be denied bank loans because their employment is not “permanent”. In effect employers are able to abuse the opportunities of casual status, by substituting such casual workers for permanent workers. Regular casual workers have become prominent in Australia. In recent years, some state tribunals have been prepared to reclassify casual workers as permanent after a qualifying period, usually six months. This has not happened in the federal jurisdiction.

The Size and Rate of Growth of Casual Work

In short, the category of casual in Australia covers distinct ways of using casual workers. There is a large amount of irregular and short-term casual work. But perhaps most surprising (and most problematic) is the large amount of regular casual employment, in which employees are able to build up long periods of tenure.

The official statistics confirm the large size of the casual workforce. According to one conventional measure used in recent years by the Australian Bureau of Statistics (ABS), a ‘casual employee’ can be defined as an employee who is not entitled (in his or her main job) to paid annual leave and paid sick leave. This is a robust definition, which captures important aspects of the practice of casual employment (Campbell and Burgess, 2001). ‘Casual employees’ in this sense numbered 2,249,300 persons in August 2004. They represented 27.7 percent of all employees (or around 23.5 percent of the total employed labour force). These figures point to a trajectory of strong growth or casualisation, the number having risen from 850,000 persons or 15.8 percent of all employees in 1984. The rate of growth was most powerful in the 1980s and early 1990s, but it has slowed down in the period of employment growth since the mid-1990s, just keeping ahead of the expansion in other forms of employment.

The process of casualisation has occurred across the board, including in all major industry groups. It is more difficult to estimate the relative rates of growth for regular and irregular casual workers. Data on tenure for casual workers from 1993 to 2002 suggest significant growth in all groups, but with a faster rate of growth amongst casual workers with relatively long periods of tenure with the one employer (ABS Cat. No. 6254.0).

Casual Work in New Zealand

Unfortunately, research into casual work in New Zealand is relatively meagre. Moreover, labour force data are less detailed than their Australian equivalents. Nevertheless, it is possible to develop a few tentative arguments.

Casual Work and Labour Regulation

New Zealand offers the closest comparison to Australia in its experiences of casual work (Campbell, 2004). The most compelling parallel is at the level of labour regulation. It is true that statutory regulation of labour conditions has been more important in New Zealand than in Australia. Nevertheless, beginning from the end of the 19th century, New Zealand developed a similar – though by no means identical – labour regulation system, which supplemented statute with compulsory conciliation and arbitration and the setting down of awards (MacIntyre, 1987). As in Australia, the award system functioned as the main mechanism of generalization to spread gains in wages and conditions to the vast majority of workers. However, as Schwartz (2000, 78-79; see also Barry and Wailes, 2004) points out, the New Zealand version was more weakly institutionalised and had less comprehensive coverage, even during its heyday. Even prior to the abolition of the award system in 1991, many workers in strong unions stood outside the award system and relied on so-called ‘enterprise bargains’ to improve wages and conditions. Coverage was estimated as just 60 percent in 1987. As in Australia, poor enforcement was also a problem, exacerbated by the large number of small employers in the New Zealand economy.

As in Australia, the use of casual labour in New Zealand pre-dates the arbitration system (Martin 1990). As labour regulation developed, casual labour was integrated into the system. New Zealand’s Court of Arbitration would seem to have led the way. Explicit casual loadings had been in New Zealand’s awards for about a decade before Higgins’ 1913 decision in Australia.

The substantive content of awards in Australia and New Zealand developed to have similarities (and some subtle differences). New Zealand awards, like those in Australia, defined rights and benefits for permanent employees, thereby helping to establish a norm of standard employment, but they allowed room for other forms of employment through special clauses. *Casual clauses* were common, but they were not in all awards (New Zealand Treasury, 1990, 148). The *definitions* of ‘casual’ varied from award to award, but they tended to be tighter and more specific than in Australia. In particular, the definitions often explicitly incorporated a notion of restriction in the use of casual workers. They tended to stress that the engagements of casuals should be on an “as needs” basis, and they often imposed limits on the engagement of casuals; the maximum duration of employment – usually about a week, and a minimum period of payment (and hence of work) – usually about three hours a day. When the definition was restrictive, there was little need for a separate *mechanism of control*. It is difficult to gauge the precise extent of the *exemptions from standard rights and benefits* that were associated with casual work. However, the general principle of casual employment as work with only a basic entitlement to an hourly wage seems to have been influential. In common with Australia, the clauses often stipulated a *casual loading* on the hourly rate of pay. Again in common with Australia, these loadings sometimes were designed to penalise employers for using casual labour and sometimes to compensate the worker for lost earnings due to the casual nature of the work. Once the awards constrained the use of casuals, the first intention became the main one. In some awards the casual loading was non-existent; in others it was at least as high as one-third (e.g. Wellington District Grocers’ Assistants Award, 1931).

In spite of some differences, the two systems developed in parallel, often copying each other’s innovations (Woods, 1963). However, New Zealand has been able to use statute to supplement award regulation to a much greater extent than Australia. After World War II, New Zealand introduced legislation which provided some basic rights for all workers, such as

the Holidays Act 1946 and the Minimum Wage Act 1946. These established a floor of basic rights that boosted protection for casual workers, including some who may not have been covered adequately by an award. Nonetheless, the loose nature of casual employment probably allowed some employers to evade their responsibilities and, as in Australia, gaps and a lack of enforcement left casual employment at the margins of the labour market such that casual workers in New Zealand, along with those in Australia, straddle the border between the regulated and unregulated sectors.

Casual work in New Zealand is diverse, though less so than in Australia. Casual workers can be full-time or part-time, though they are more likely to be part-time. The paradoxical presence of 'regular' casuals can also be detected. Whatman, Harvey and Hill (1999, 5) state that they "encountered definitions of casual workers as casual-casual, regular-casual and permanent casual" in the three industries of accommodation, winemaking and brewing. The term is mentioned in some awards (Ferguson, 1997), though it is difficult to assess its significance.

Awards were abolished as a result of the *Employment Contracts Act* in 1991, to be replaced by a system that preserved some room for single- and multi-employer collective agreements but was primarily oriented to individual contracting. Casual employment fitted well into the *Employment Contracts Act* environment (Ferguson, 1997). The *Employment Relations Act*, which the incoming Labour government introduced in 2000, reversed in part the earlier Act, but it failed to restore awards.

The disappearance of awards had an effect on the regulation of casuals. Although the collective agreements that succeeded awards sometimes just rolled over the provisions of the award, in the medium term, casual clauses tended to be dropped from agreements and where they survived they often failed to specify a casual loading. Nevertheless, this did not mean the disappearance of the label "casual", which continued to be used as a term in everyday parlance, to be mentioned in written contracts, and to appear in provisions in statute and common law judgments.

New Zealand law does seem clearer as to what is casual labour, although it is still a "grey area" (Ferguson, 1997, p.123). In general, the courts have found that to be a casual employee, work must be irregular and uncertain. Even where an employee is explicitly employed as a casual, such as a written contract which specifies as such, if the pattern of work becomes regular the worker will have become a part-time or full-time permanent employee. Thus, to cease to offer work once such a pattern of employment had become established would constitute a dismissal, and the former employee could seek a legal remedy (Butterworths ER103.20). This is not to say that a person could not be a permanent casual. For example, a catering firm dependent on irregular commercial contracts might have on their books several waiters who are offered work for each function catered for. Thus the relationship might continue for many years, but work each week would be uncertain and irregular depending on the contracts won (Butterworths ER103.20).

In short, there are strong parallels in the relationship between labour regulation and casual work between New Zealand and Australia. However, there are also some subtle differences. One important difference is the greater provision of rights and benefits for casual workers in New Zealand through statute. Moreover, even with respect to award regulation before 1991, New Zealand differed from Australia as a result of the tighter restrictions on casual work, which seemed more likely to be based on limits on the length of engagement of casuals. This

tended to restrict casual work in practice to short-term and irregular work. Finally we can note that the abolition of awards seems to have been accompanied by a disappearance of casual clauses and provisions such as the casual loading.

The Size and Rate of Growth of Casual Work

Where New Zealand most obviously differs from Australia is in relation to estimates of the size and pace of growth of casual employment. Data on the size and nature of the casual workforce are sparse, and there is little case-study research to fill the gaps in knowledge (but see Whatman, Harvey and Hill, 1999; WEB Research, 2004). Two Department of Labour phone surveys of employees in 1993 and 1997, which divided employees into 'permanent' and 'casual', produced estimates for casual employment of 11 percent (Tucker, 2002, 21). One of the few other data sources is a workplace survey (Brosnan and Walsh, 1996, 1998; Allan et al, 2001), conducted in 1995 in New Zealand (and simultaneously in Australia and South Africa). This produced an estimate for 'occasional' employees, defined as "employees hired on a periodic basis as need arises", of 5.4 percent of the New Zealand workforce. The term 'occasional' was used for two reasons: because the term casual is not widely known in South Africa, and also to capture the component of irregular casuals in the Australian data. This category is sometimes identified in the published results as 'casual' or 'casual/occasional' (Brosnan and Walsh, 1998, 29-30), and it is a different measure than the Australian Bureau of Statistics measure of casual. If we bring together the categories of 'occasional', 'temporary' and 'fixed-term' from that study, the proportion is recorded as 11 percent (Brosnan and Walsh, 1998, 29-31), which is identical to the Department of Labour figure.

Though the precise extent is unclear, these figures suggest that casual workers represent a sizeable proportion of the workforce in New Zealand. However, this is still much less than the comparable figure for Australia. Any Australia-New Zealand comparison is complicated by the different categories in the available data. However, the 1995 workplace survey does allow a direct comparison using similar categories. The category of 'occasional' was 9.9 percent in Australia (compared to 5.4 percent in New Zealand). If we group together the categories of occasional, temporary and fixed-term, the figure is 14.6 percent in Australia (compared to 11 percent in New Zealand). In commenting on these figures, Brosnan and Walsh (1998, 31) stress that "no matter which definition we use, be it casuals, casuals plus temporaries, casuals plus temporary plus contractors/ consultants and so on, Australia has less of its labour force in secure employment than New Zealand".

It seems clear that New Zealand has fewer casual workers in its employment structure. It clearly has fewer irregular or genuine casuals. It is unlikely to have anywhere near the same number of regular casuals. It still may be true, however, that some industries have significant numbers of casuals. For example, case studies of industries such as accommodation, call centres and labour hire in construction point to a predominance of casual and temporary work (Whatman, Harvey and Hill, 1999; WEB Research, 2004; Hannif and Lamm, 2004).

What about the pace of growth? 'Casualisation' has been used in the past as a loose term to cover general trends (Anderson, Brosnan and Walsh, 1994) or specific trends in industries such as retail (Brosnan, 1991). More recently, casualisation is cited as a trend in industries such as the waterfront (Reveley, 1999) and accommodation (Whatman, Harvey and Hill, 1999, 5, 109). However – at least in the narrow sense of a growth in the proportion of casual

workers – casualisation does not seem to be anywhere near as prominent in other industries as in Australia. Evidence from two workplace surveys in 1991 and 1995 in fact suggested a decline in the proportion of ‘occasional’ workers in the workforce (Brosnan and Walsh, 1996, 9-10; but c.f. Tucker, 2002, 31). As Carroll (1999, 120) notes, the evidence is thin. However, it is certainly not suggestive of the strong growth that is so clearly apparent in Australia.

Why Are Casual Employment and Casualisation Less Significant in New Zealand?

So, why are casual employment and casualisation less significant in New Zealand? To this crunch question we can add others. Is the lower proportion of casual workers a positive indicator, which reflects well on the policies followed in the 1980s and 1990s? Does it mean that employment is less precarious in the New Zealand labour market? Drawing on the analysis developed for Australia, we can frame the answer to these questions in terms of the interactions between employer calculations and choices and the labour regulation system.

Casualisation in Australia cannot be explained easily by appealing to shifts in employee choices or structural change. There are groups of workers for whom casual employment is a convenient option. Students are a case in point. The fact that some entitlements are cashed up into a casual loading may suit their consumption patterns, and the irregular and part-time work may also suit their preferences. There is no evidence that such groups have grown significantly in number (Campbell, 2000). Some New Zealand researchers (e.g Rasmussen and Deeks, 1997), following the limits of the official statistics, focus on part-time employment as a symptom of casualisation. However this is a very imperfect indicator for capturing the differences between the two countries. Indeed, the degree of part-time employment is approximately the same in Australia as New Zealand. As for structural changes, there is no evidence that these have led to substantial employment growth in industries which could only operate with casual employment. This point, needs to be understood without the background noise of employer rhetoric. Many Australian employers in industries such as hotels claim that the pattern of demand is such that they need a casual labour force. Against this, however is the evidence that other hotels operate very profitably with a permanent labour force.

Most researchers, including ourselves, emphasise the demand side of the labour market, encompassing the impact of labour regulation and employer calculation and choices. This analysis suggests that the crucial mechanism for changes in the significance of casual employment in Australia is *employer choices* about the structure of employment in their enterprise, primarily based on perceptions of the relative advantages of casual employment (Campbell and Brosnan, 1999; Campbell, 2001). A decisive shift took place in the 1970s, linked to increased competitive pressures and weakened labour market conditions. As a result employers started to show an increasing willingness and an increasing ability to realise the advantages of casual work.

It should be noted that the explanation does not rely on changes in labour regulation. We stress an underlying continuity in the relevant features of labour regulation up to now. The patchwork nature of the Australian system, marked by numerous hidden gaps, and without any underpinning floor of basic rights, was decisive in making casual employment available to employers. However, the system had been little changed in the way it treated casual work since the early years of the twentieth century. It is true that the labour regulation system has changed in other ways, in particular as a result of the neo-liberal program of ‘labour market

deregulation' in the 1990s. This can be seen to have had a slight direct impact. On the one hand, 'deregulation' has opened up more opportunities for the use of casuals – loosening award restrictions, enhancing employer power and contributing to changes in employer perceptions. It has widened the existing gaps (Campbell and Brosnan, 1999, 360-362, 371-374). However, 'deregulation' was mainly aimed at the wages and conditions of permanent workers. There have been some signs of deterioration in wages and conditions for *part-time* permanent workers, but so far such deregulation has not had its intended effect on full-time permanent workers (Campbell and Brosnan, 1999).

From the mid-1970s on, New Zealand employers faced just as much economic pressure as their Australian counterparts. Perhaps more. They could use the category of 'casual' if they wanted. But they did not (or at least not to the extent that employers did in Australia). Why not?

We put to one side the challenge of theorising employer interests in detail. Instead, we assume that employer interests are the same in both countries and are focused on generating profits. We concentrate on examining the relative advantages of using casual employment, first in Australia and then in New Zealand. Australian employers gain five types of advantage by using casual labour. First, they gain operational, financial and administrative flexibility. Secondly casuals are rarely eligible for promotions or to be on experience-related pay scales; thus despite casual loadings, they tend to be the most lowly-paid workers. Thirdly, they can dismiss a casual worker without fear of legal or financial claims. Fourthly, the conferring of casual status on a worker gives the employer a psychological advantage. When a worker is told that they are a casual, they are more likely to perceive themselves as being at the periphery of the firm with limited rights. Moreover, the peripheral status of their employment may make them less likely to question managerial decisions on a wide range of issues. Finally, employers save on various benefits which permanent and fixed-term workers gain by right (although these may be offset by the casual loading).

The first and second sets of advantages arise out of the very nature of casual labour and also apply to the use of casual labour in New Zealand. The third is quite different. As we discussed above, New Zealand law gives better protection to casual workers. A casual worker whose hours become regular would be deemed to be a part-time worker, and would have legal rights should they be dismissed unfairly or due to redundancy (Ferguson, 1997; Butterworths ER103.20), and there is also the danger that an employer who misuses casuals may find themselves in a difficult position if they are inspected by the Department of Labour. These possibilities do not stop unscrupulous behaviour, for some employers have been found not paying casuals their holiday pay. But they do discourage it.

As to the fourth advantage, the psychological benefits for the employer, this may apply with equal force in New Zealand. However the greater range of rights may modify its effect in some cases. Nonetheless, the evidence does seem to suggest that some New Zealand employers do use casual employment to keep their labour force more subservient (Hannif and Lamm, 2004).

The final advantage is more complicated and difficult to evaluate. Selected general entitlements for casuals and permanent or fixed-term workers are set out in Table 1, where 'YES' signals a general entitlement, while 'NO' signals an absence of a general entitlement (though the specific benefit may be available to some workers under awards and agreements). As can be seen, the main benefit to Australian employers in employing casuals is that they

avoid paying for annual leave, public holidays and sick leave. They also avoid paying for bereavement leave in most states. Depending on the number of hours worked by casuals, they may also avoid paying the superannuation levy of 9 percent. Australian wage cases, which review the casual loading, attempt to monetarise the value of the benefits foregone. The debate ranges around issues such as superannuation, and sick leave and other special leaves which may or may not be taken when they are available. Thus union estimates of the benefits foregone can be over 40 percent. The relevant tribunals generally grant loadings of the order of 20-25 percent. While the union estimates are obviously at the high end – assuming the maximum use of sick leave, being paid for all public holidays etc – it is clear that an employer can reduce hourly labour costs by using casual labour. Moreover, because casual workers rarely receive pay rises or promotions, their basic wage remains low, thereby conferring a further advantage on their employer. To sum up, even if an employer pays the casual loading of 20-25 percent, careful use of casual labour can result in clear financial advantage. If the employer does not have to pay the casual loading, the financial advantage from the use of casuals can be very considerable.

Table 1: Employment form and employment benefits

	Paid holiday s	Paid sick leave	Unpaid parental leave	Paid parental leave	Long service leave	Bereave-ment leave, etc	Superan n-uation
Australia							
Permanent or fixed term full-time	Yes	Yes	Yes	No	Yes	Yes	Yes
Permanent or fixed term part-time	Yes	Yes	Yes	No	Yes	Yes	If > \$450 a month
Casual	No	No	Yes a)	No	Yes	Q a) W	If > \$450 a month
New Zealand							
Permanent or fixed term full-time	Yes	Yes	Yes	Yes	No	Yes	No
Permanent or fixed term part-time	Yes	Yes	Yes	Yes	No	Yes	No
Casual	Yes	Yes	Yes	Yes	No	Yes	No

Notes: Q in Queensland.
W in Western Australia.
a) only after periods of continuous service

The situation in New Zealand is quite different. Casual loadings have largely disappeared, but even with this fillip a cost advantage of casual employment to employers is hard to identify. New Zealand workers receive fewer benefits, e.g. three weeks annual leave compared with four weeks in Australia, minimal or no long service leave, and no legal guarantee to superannuation. On the other hand, the benefits they do enjoy are available to casuals as well as permanent employees. The new *Holidays Act 2003*, follows earlier Holidays Acts in specifying eleven public holidays, and three weeks paid annual leave (after 12 months employment). The new Act extends employee rights by giving a statutory right to five days special leave (after six months employment) for all employees. Thus there is no obvious financial benefit from using casuals, other than they may be employed on the lowest rates of pay.

The changes over the past twenty years in New Zealand have not, at least at the general level, widened the relative advantages of casual employment; on the contrary, any relative advantages appear to have been compressed. This is largely because of movements that have affected permanent workers. New Zealand experienced similar pressures for 'labour market deregulation' as in Australia, but the outcome in New Zealand was much more radical and comprehensive (Harbridge and Walsh, 2002). As noted above, this had some effect on casual work. However, the major effect was on permanent workers. The so-called 'minimum code' survived, and this acted as a floor on wages and conditions for both permanent and casual workers. But some of the rights and benefits specified in awards and agreements for permanent workers – in particular penalty rates – largely disappeared (Harbridge and Walsh, 2002). This directs our attention not only to the fifth set of advantages listed above but also to the first set, couched in terms of 'flexibility'. Using some of the new 'flexibility' opened up in connection with permanent workers, in particular the new flexibility of working-time arrangements, may have become more attractive to employers in the 1990s than using casuals.

In short, compared with Australia, the relative advantages of casual work to employers in New Zealand are compressed. This is the result of two main processes. On the one hand, there is the compression from below, as a result of the access of all workers to a floor of minimum conditions. On the other hand, there is the compression from above, in particular as a result of the deterioration in the conditions of permanent workers after the changes of the early 1990s.

Conclusion

Both Australia and New Zealand stand out in cross-national comparison because of the prominence of the unusual category of casual work. This similarity is perhaps unsurprising given the parallel history of labour regulation and labour market institutions in the two countries. Nevertheless, this article focuses on some intriguing differences, including differences that have emerged in the most recent period. The analysis remains exploratory, but it suggests that an explanation for the New Zealand experience of less casualisation and a lower density of casual employees in the workforce can be found in the fact that the relative advantages of casual work to employers are not as sharp as in Australia.

This analysis needs to be deepened. However, it is important to stress that we are not arguing that New Zealand has better conditions in its labour markets. It is true that it has less casual employment. But this is not the same as less precariousness. As we suggest above, New

Zealand has less casual employment at least partly because of the radical program of 'labour market deregulation' in the 1990s. Far from reducing precariousness, the changes of the 1990s are best seen as having spread precariousness from its previous heartlands into larger and larger sections of the permanent workforce.

The policy implications of this study are relatively straight forward. If Australia wishes to develop a committed, highly skilled workforce, it must offer jobs which are secure and where the employees receive benefits commensurate with their skills and experience; in other words the many holes in the legislative and administrative framework need to be tightened up so that casual work is not abused. For New Zealand the lesson is even simpler, the protections that are in place against abuse of casualisation must be maintained and even strengthened. Both countries must guard against the lure of degrading conditions for the core group of permanent workers.

References

- Allan, C., Brosnan, P., Horwitz, F. and Walsh, P. (2001), Casualisation and Outsourcing: A Comparative Study. *New Zealand Journal of Industrial Relations*, 26(3): 253-272.
- Anderson, G., Brosnan, P. and Walsh, P. (1994), Flexibility, Casualization and Externalization in the New Zealand Workforce. *Journal of Industrial Relations*, 36(4): 491-518.
- Barry, M. and Wailes, N. (2004), Contrasting Systems? 100 Years of Arbitration in Australia and New Zealand. *Journal of Industrial Relations*, 46(4): 430-447.
- Brosnan, P. (1991), Labour market flexibility and the quality of work: a case study of the retail industry. *New Zealand Journal of Industrial Relations*, 16: 13-36.
- Brosnan, P. and Walsh, P. (1996), Non-Standard Employment in Australia and New Zealand: Results from a Workplace Survey. In J. Teicher (ed.), *Non-Standard Employment in Australia and New Zealand*, NK CIR Monograph no. 9, Monash University, 1-22.
- Brosnan, P. and Walsh, P. (1998), Employment Security in Australia and New Zealand. *Labour and Industry* 8(3): 23-41.
- Butterworths (n.d.), *Butterworths Employment Law Bulletin: Recent Developments in Employment Law*. Wellington, Butterworths of New Zealand.
- Campbell, I. (2000), The Spreading Net: Age and Gender in the Process of Casualisation in Australia. *Journal of Australian Political Economy*, 45: 68-98.
- Campbell, I. (2001), Casual Employees and the Training Deficit: Exploring Employer Calculations and Choices. *International Journal of Employment Studies*, 9(1): 61-101.
- Campbell, I. (2004), Casual Work and Casualisation: How Does Australia Compare? *Labour and Industry*, 15(2): 85-111.
- Campbell, I. and Brosnan, P. (1999), Labour Market Deregulation in Australia: the slow combustion approach to workplace change. *International Review of Applied Economics*, 13(3): 353-394.
- Campbell, I. and Burgess, J. (2001), A New Estimate of Casual Employment? *Australian Bulletin of Labour*, 27(2): 85-108.

Carroll, N. (1999), Non-Standard employment: a note on levels, trends, and some implications. *Labour Market Bulletin*, 1999: 101-121.

Commonwealth Government (2000), Outline of Submissions, The Metal Engineering and Associated Industries Award 1998, Casual Employment, Canberra, Department of Employment, Workplace Relations and Small Business.

Creighton, B. and Stewart, A. (2005), *Labour Law: An Introduction*, 4th ed., Sydney, The Federation Press.

Ferguson, J. (1997), Casual Employment Contracts: Continuing Confusion when Protection and Free Market Clash. *New Zealand Journal of Industrial Relations*, 22(1): 123-142.

Hannif, Z. and Lamm, F. (2004), Precarious Employment in the New Zealand Call Centre Industry, paper presented to Labour, Employment and Work conference, Wellington, November.

Harbridge, R. and Walsh, P. (2002), Globalisation and labour market deregulation in Australia and New Zealand: Different approaches, similar outcomes. *Employee Relations*, 24(4): 423-436.

Macintyre, S. (1987), Holt and the Establishment of Arbitration: An Australian Perspective. *New Zealand Journal of Industrial Relations*, 12(3): 151-159.

Martin, J. E. (1990), *The Forgotten Worker: The Rural Wage Earner in Nineteenth-Century New Zealand*. Wellington, Allen & Unwin/Trade Union History Project.

New Zealand Treasury (1990), Briefing to the Incoming Government. Wellington.

O'Donnell, A. (2004), "Non-Standard" Workers in Australia: Counts and Controversies. *Australian Journal of Labour Law*, 17: 1-28.

Owens, R. (2001), The 'Long-term or Permanent Casual' – An Oxymoron or 'a well enough understood Australianism' in the Law. *Australian Bulletin of Labour* 27(2): 118-136.

Pocock, B., Buchanan, J. and Campbell, I. (2004), *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*, Sydney, Chifley Research Centre, www.chifley.org.au

Rasmussen, E. and Deeks, J. (1997), Contested outcomes: Assessing the impacts of the Employment Contracts Act. *California Western International Law Journal*, 28(1): 275-296.

Reveley, J. (1999), From "Supplementary Seagulls" to "Cut Price Casuals": Changing Patterns of Casual Employment on the New Zealand Waterfront 1951-1997. *Labour and Industry*, 10(1): 35-56.

Romeyn, J. (1992), *Flexible Working Time: Part-Time and Casual Employment*, Industrial Relations Research Monograph no. 1, Canberra, Department of Industrial Relations.

Schwartz, H. (2000), Internationalization and Two Liberal Welfare States Australia and New Zealand. In F. Scharpf and V. Schmidt (eds.), *Welfare and Work in the Open Economy, vol. II. Diverse Responses to Common Challenges*, Oxford, Oxford University Press: 69-130.

Tucker, D. (2002), 'Precarious' Non-Standard Employment – A Review of the Literature. Labour Market Policy Group, Department of Labour, Wellington.

WEB Research (2004), Report of Exploratory Case Study Research into Precarious Employment. Department of Labour, Wellington.

Whatman, R., Harvey, O. and Hill, R. (1999), *The Effects of Employment Regulation: Case Study Research in the Accommodation, Winemaking and Brewing Industries*. Occasional Paper 1999/4, Labour Market Policy Group, Department of Labour, Wellington.

Woods, N. S. (1963), *Industrial conciliation and arbitration in New Zealand*. Wellington, Government Printer.

Union Revitalisation in Australia and New Zealand, 1995-2005

RAE COOPER and ROBYN MAY¹

Abstract

This article examines the factors which have led unions in Australia and New Zealand to adopt an organising strategy since the mid 1990s. Previous research in Australia and New Zealand has tended to treat unions strategy as a direct or indirect response to institutional context. This article focuses on the role of more union centric factors in shaping strategy. It demonstrates that even though the two union movements have experienced a switching in the institutional context they face, similar developments in both union movements have produced similar shifts in strategic direction.

Introduction

While there have been numerous comparative studies of the labour movements of Australia and New Zealand (Gardner 1995, Bray and Walsh 1993, Bray and Walsh 1995), for the past decade there has been no analysis of the context for, or the relative strategies of, unions in these countries. Much has changed during these ten years. In Australia, the regulatory regime has been 'decentralised' and later 'individualised', the award system has been stripped back and the powers of the Australian Industrial Relations Commission (AIRC) to set wages and conditions and to intervene in disputes have been all but undone. This is a radically different backdrop to unionism than was in evidence when the most recent comparative perspective on unionism was written. This was the time of the Accord compact between the ACTU and the ALP, it was an environment of centralised wage fixation and it was a time when unions held a number of rights which have since been taken from them.

In New Zealand, the 1990s was a period of decline and devastation for unions following the Employment Contracts Act 1991 (ECA). Union membership, density and collective bargaining coverage collapsed in the immediate years after the ECA and continued to decline until 1999. Since that low, and following the election of a Labour coalition government in 1999, a degree of re-regulation in the form of the Employment Relations Act 2000 (ERA) and other social reform, has taken place, albeit within a 'post ECA' context. Almost five years into the ERA the New Zealand union movement is finding its feet again, growing slowly year on year since 1999 and re-establishing a level of legitimacy denied for the previous decade.

This re-examination of the comparative strategies of Australian and New Zealand unions is structured thus. The following section outlines in brief our framework for analysing Australian and New Zealand unionism in and since the 1990s. Here we

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briefly discuss earlier comparative work on the two union movements as well as setting out the contribution of a number of Australian, New Zealand and international scholars whose research on union revitalisation informs our work. The next section presents an analysis of the state of unionism in New Zealand in the post-1995 environment, before moving to a discussion of Australian unionism during the same period. We conclude with a discussion of the similarities and differences in the strategies of both union movements and the critical factors which have shaped them.

Union revitalisation in Australia and New Zealand: A framework

A clear theme emerging from the work of a number of writers making a mid-1990's analysis of unionism in Australia and New Zealand is that the institutions which dominate the industrial relations landscape also dominate, if not determine, union features, strategies and outcomes. Researchers often identify a *direct* relationship between the institutions 'around' unions and the generation of union strategies, arguing for instance that wage fixing institutions and structures determine union action. Even when researchers make an attempt to incorporate elements of unionism into their analysis, union strategy is often seen as a by-product of interaction between existing union features and the features of other institutions. That is, 'external' institutions have an *indirect*, but nonetheless a *causal* relationship with union strategy (Bray and Walsh 1993, 1995; Gardner 1995).

More recent work on union crisis both in Australia, New Zealand and in other countries emphasises that forces and factors external to unions (such as union security arrangements, employer hostility and changes in the regulation of work) are critical in prompting, if not necessitating change in union structures and strategies (Boxall & Haynes, 1997; Heery, 2002; Peetz, 1998). However researchers examining union renewal strategies have also identified a range of union-centric features (such as leadership factors, full-time officer commitment) which are critical for explaining both the process and the nature of union strategic innovation (Carter 2000; Cooper 2001 & 2003; Heery et al 2000a, 2000b and 2000c; Oxenbridge 1997, 2000 & 2003)

In this paper we analyse the impact of changes in the institutional environment upon unions and unionists, but in so doing we attempt to avoid an excessively 'institutionalist' approach. Our argument is that whilst social, economic and institutional factors have indeed played an important role in shaping union responses, these offer an incomplete explanation for union choices. Our analysis gives a central place to union strategic choices. This framework allows us to identify the *interaction* of institutional change and union strategy, rather than to simply view unions as the passive victims of change (for a similar framework, see Frege and Kelly 2003).

The State of New Zealand Unionism in 2005

Every year since the introduction of the Employment Relations Act in 2000 by the Labour/Alliance Government, union membership in New Zealand has risen. Overall, the four years 1999-2003 has seen membership rise by 13 percent, or a little over 39,000 members. The annual increases have been variable. In 2000 membership increased by 5.4 percent, in 2001 it was 3.6 percent and for the last two years the rate

of annual increase has dropped to 1.5 percent. In terms of union density, the raw figure, which arguably provides the clearest measure of union strength, strong labour force growth over recent years has meant density has effectively stalled at between 21 to 22 percent of all wage and salary earners. Looking further we find a distinct polarisation of membership, more than half of New Zealand's trade unionists work in the public sector and private sector density is a worrying 12.4%. Women are 53% of all trade unionists and the areas of recent union growth; education, health and to a lesser extent the public service, are those dominated by women workers (May *et al.*, 2004).

At the peak council level, three distinct but intertwined strategic choices have become apparent since the late 1990's. First, following the merger of rival peak union bodies, the Trade Union Federation (TUF) and Council of Trade Unions (CTU) in 2000, and the return to one peak council, a new discipline has emerged within the ranks of affiliates endorsing the CTU to exercise a high degree of informal authority. This followed widely supported change of leadership in the CTU in 1999. Second, and only possible because of the first, a strong central lead has been given to the promotion of organising as the way forward for unions. Third, an evolving formal and informal engagement with Government (commenced in the late 90's when Labour was in opposition), carving a role for unions as both a natural partner for consultation and giving unions a platform upon which to pursue their agendas. This has necessitated a cohesive 'single-voice' approach by unions to maximise the opportunity for influence.

It is fair to say that in 2005 we have seen a growing sense of optimism amongst New Zealand's unionists. Significant gains by a number of unions, notably nurses and teacher unions, through reinstating industry bargaining and strong campaigning, have lifted the spirits of the union movement. A nation-wide campaign for a 5% wage increase was begun earlier in the year, dubbed the 'fair share - five in 05' campaign, and some sectors, particularly metals have seen industrial action. In the run up to the General Election in October 2005, the CTU was actively campaigning on the points of difference between the political parties.

New Zealand Institutional Changes

The 1990's saw New Zealand at the vanguard of neo-liberal 'reform'. Dubbed the 'New Zealand experiment', and spanning market liberalization, free trade, deregulated labour markets, and small government, the series of radical changes commenced in 1984 by a Labour government were stepped up once the National Party took office in 1990 (Kelsey, 1995). At the forefront of labour market deregulation was the Employment Contracts Act 1991 (ECA), the impact it had on New Zealand's trade unions has been well documented (Kelsey, 1995; Harbridge, 1996; Anderson, 1991). Whilst the dismantling of the system of compulsory arbitration, commenced with the Labour government, the ECA went much further, prohibiting compulsory membership provisions, and placing individual and collective contracts on the same footing whilst making negotiation of multi-employer contracts difficult. The ECA also gave employers veto rights over union access and allowed non-union groups or individuals to negotiate collective agreements. The changes were widely supported by employers and represented a victory for business lobby group, the Business Round

Table, a powerful organization that at one time boasted 57 Chief Executives from New Zealand's largest corporations (Kelsey, 1995).

The impact of the ECA on unions was devastating. By 1994, union membership and density had halved, and collective bargaining collapsed to where it was the method of pay determination for only an estimated one-fifth of the workforce (Harbridge & Honeybone, 1996). Membership loss occurred at all levels, from workplace to industry and also from the impact of wide-scale job losses in the public sector following contracting-out and restructuring. By the end of the 1990's membership was highly concentrated in the public sector, manufacturing, and to a less extent the transport and storage sectors and unions effectively found themselves relegated to the status of single site bargaining agents, servicing rather than organising, members (Goulter, 2003, Gardner 1995:53-54)

The delivery of the Labour Party's promise to remove the ECA, with the enacting of the ERA in October 2000, marked the beginning of a turn around in the legitimacy of the union movement rather than a watershed in union fortunes. That Labour coalition government, and the minority government elected in 2002, governing with the support of the Greens and United Future, has taken a measured approach to re-regulation of industrial relations. The Employment Relations Act 2000 and the recently enacted Employment Relations Amendment Act 2004, despite the howls of protest from employer groups, represent moderate reform, a degree of re-regulation within a clear ECA context. The ERA does not replace that lost through the late 80's and 90's, instead it carves a 'third way' of mediation (solving employment relationship problems), ingraining the individualistic nature of grievance and dispute, and gives unions a 'hand-up' with access rights, information disclosure and attempts to change workplace culture via a strong emphasis on good faith. The ERAA 2004, presented as a 'fine-tuning' exercise endeavours to strengthen good faith principles with penalties for breach, requirements on employers to conclude bargaining, unless there is genuine reason, offers protection for low paid vulnerable workers in the situation of transfer, and proposes measures to deal with free loading via an attempt to circumvent pass on and also by allowing the establishment of a bargaining fee where a union and employer agree.

At the same time, the government has advanced a broader social agenda in large part through improvements to the minimum code. The minimum wage has been increased by 36% since June 2000 (from \$7 per hour to \$9.50 per hour in April 2005), 4 weeks annual leave introduced, effective April 2007, and taxpayer funded paid parental leave of 12 weeks (rising to 14 weeks from December 2005, with a 6 month qualifying period) introduced. The government has also improved minimum sick leave and domestic leave provisions, mandated time and a half, plus a day in lieu, for all work on statutory holidays and strengthening health and safety legislation. Each of these changes has been vigorously opposed by employer groups who have thrown their support behind former Reserve Bank Governor, now Leader of the National Party, Don Brash. Brash believes the ECA did not go far enough and has opposed the introduction of four weeks leave and penalty rates for public holidays (see, Brash, 23/7/04, 'pay off time for unions').

New Zealand Peak union strategic revitalization

In 2000 the rival peak organisations, the TUF and CTU merged amicably, ending seven years fall out over the CTU's response to the ECA. The current formation, operation and functioning of the peak body is arguably the most stable and powerful, particularly in relation to influence over and coordination of affiliates, in the history of New Zealand union movement. The turning point was new leadership in 1999, marking a determination by unions to put the hardship of the 90's behind them. Currently, thirty-six unions, representing some 88% of trade union members, are affiliated to the CTU. Only 2 of the largest 20 unions are outside of the CTU structure. The CTU has no formal power over affiliates, however currently a high degree of mutual trust, confidence and shared vision is apparent. The lack of control over wage bargaining by the CTU (observed by Gardner, 1995:49), remains, in part this is due to the lack of institutional structures for industry coordinated bargaining.

The new informal authority vested in the CTU has allowed it to embark on a number of innovative programs. Recognising asymmetries within the movement, in particular that high growth well resourced unions are in relatively well unionised areas (public sector density is approx 60% in NZ) whilst private sector unions who have the task of reaching out to the 7 in 8 private sector workers not unionised, are resource poor and stretched beyond capacity; the CTU has facilitated a number of ground-breaking responses. First, via a CTU re-unionisation fund resource-rich public sector unions are encouraged to contribute resources, with the private sector unions allowed to draw upon the funds and resources to organise in new areas. Second, unions have been encouraged to work with other unions in their particular industries to ensure that workers are being represented in the most efficient manner, with the long term aim that there be fewer unions in each particular industry. This fits within the CTU's program of industry focus on all issues ranging from training, growth and innovation, organising and engagement with the state. Third, the CTU has facilitated a series of delegates' forums where the Prime Minister and senior Ministers engage with union delegates in various regional forums, in a formal and informal setting. These forums are not controlled by the CTU or union leaders, rather delegates are encouraged to ask questions of the Ministers and PM about issues that affect them, often these issues do not neatly coincide with their respective union agendas. These unscripted exchanges changed the debate over the ERA reforms in a number of areas, and have assisted the beginning of a regeneration of delegate structures at workplaces, broadening the inclusiveness of the movement.

Institutions impact on the degree to which unions are empowered or constrained to act upon the choices they make. The active promotion of an organising approach by the CTU is a case in point, resource intensive this requires money and scale, features not common to New Zealand unions. Those unions who pioneered the organising approach (SFWU & Finsec) in particular have done so in both the ECA and ERA institutional context (see Oxenbridge, 1997), and the rationale for this choice whilst it has evolved and been refined, remains the same. What is different in the post 1999 climate is that push for renewal via organising is now led by the CTU leadership and broadly supported by affiliates at large. Further the CTU has strategically placed itself in a position best suited to taking advantage of the window of opportunity offered by the ERA climate and institutional supports, such as access rights and good faith bargaining requirements. Upper most in their mind is the knowledge that a Brash led National government would mean a return to the past.

The CTU has forged strong links, both personal and formal with the ACTU, both movements benefiting from a sharing of ideas and resources across the Tasman. This close relationship, facilitated by a shared vision on renewal strategies, has enabled both movements to cut down on duplication of resources, work together on training for delegates, organize a biannual organizers conference, and develop joint campaigns and strategies. This close cooperation has allowed a more rapid development and take-up of organizing and growth strategies and is hard evidence of unions' capacity to act in a way that is not simply a response to the institutional environment.

The state of unionism in Australia in 2005

Australian unions are reeling from the impact of a multitude of forces. Ongoing changes in the nature of work and the composition of the labour force have taken their toll upon the membership levels and industrial clout of unions (see Peetz 1998). Legislative change enacted at the federal level in 1996 made it more difficult for unions to undertake their most basic functions, organising, bargaining and the representation of members effectively. At the same time employers, encouraged in their endeavors by the federal government, have shown an increasing willingness to engage in anti-union behaviour.

Table 1: Australian and New Zealand union membership and density 1976-2003

Year	Australian Members (mil)	Density Australia %	Density NZ %
1976	2.51	51.0	—
1982	2.57	49.5	—
1986	2.59	45.6	—
1988	2.54	41.6	—
1990	2.66	40.5	43.0
1992	2.51	39.6	35.6
1993	2.38	37.6	33.0
1994	2.28	35.0	28.6
1995	2.25	32.7	26.7
1996	2.19	31.1	24.1
1997	2.11	30.3	23.0
1998	2.04	28.1	21.9
1999	1.88	25.7	21.1
2000	1.90	24.7	21.6
2001	1.90	24.5	21.6
2002	1.83	23.1	21.4
2003	1.86	23.0	21.4

Some indicators of union power are quantifiable including: union membership and density levels; levels of industrial dispute; and the extent of union influence over the determination of the wages and conditions of workers. While there are obviously

other dimensions to and indicators of union strength (see Frege and Kelly, 2003), even a cursory analysis of the performance of unions in these areas suggests a movement in crisis.

Australian Bureau of Statistics (ABS) data collected in August 2003, shows aggregate membership standing at 1,866,700 and membership density at 23 per cent (ABS 6310). While in three of the four past years aggregate membership has (marginally) grown in the longer-run, the trend has been against unions. In 1992 for the first time in living memory, aggregate union membership began to fall and it continued to so throughout the decade (ABS, 6310.0 see Table 1). Looking to union density, the situation is even worse. There was a freefall in density in the 1990s. By 1994 less than a third of the workforce was unionised; by 2000 less than a quarter of workers were union members and in 2003 the figure was lower still.¹

Declining bargaining reach is as much a symptom as an indicator of diminished union power. While there is some debate as to the extent of influence unions have over the wages and conditions of workers, the available evidence suggests that a large and a growing group of workers have their pay set on an individual basis without representation (see Watson *et al.*, 2003). Campbell (2001) argues that 'management unilateralism' rather than genuine collective bargaining is the key process determining workplace outcomes for the majority of employees. Union capacities have been diminished in other areas. For instance ABS data indicate that industrial action, measured by the number of working days lost and the number of workers involved, has declined substantially over the past two decades (ABS 6321.0). In recent years even when major disputes involving industrial action have been waged they have tended to be defensive in nature and have aimed at minimising union defeat, such as to secure worker entitlements or to ward off anti-union actions by employers, rather than to make significant gains for workers (Wiseman, 1998; Cooper, 2003; Gorman, 1996).

As their industrial power has weakened, so too has the ability of Australian unions to influence political decisions and to shape policy outcomes. With the crumbling of the Accord upon the election of the Howard government in 1996, unions lost their (at times problematic) access to the levers of national political power. As described in later sections of the paper, the Howard government has done its best to undermine union power in the workplace but has also successfully undone any semblance of consultation between the movement and government. The unravelling of external power has real implications for power relations *within* union ranks. For one, the ACTU's ability to exercise internal authority over affiliates has been weakened. Earlier, for instance in relation to the amalgamations programme of the early 1990s, the ACTU wielded significant authority over affiliates and drawing upon external power bases was able to coerce in some cases unwilling affiliates to acquiesce to its demands (Griffin, 1991). As the 1990s progressed, the ACTU was in retreat, and in these conditions, was forced to cast off its earlier role as the driver of union strategy and instead to adopt the role of a 'servicing organisation' for affiliates (Briggs, 1999).

Australian Institutional Changes

Groundbreaking changes to the regulation of work and employment relations began in the late 1980s with the ‘managed decentralism’ of the second tier system. This was a milestone in that it represented the first time that wages and conditions of employment were able to be negotiated directly between employers and their associations and unions (McDonald and Rimmer, 1989).² This system maintained a clear role for the industrial tribunal, relied upon awards as the instrument through which flexibility could be achieved and, reaffirmed that unions were the sole representatives of workers in bargaining. While flexibilities were obvious, pressure for further ‘reform’ was building. After being put under pressure from all sides, the Commission introduced the Enterprise Bargaining Principle in the second (October) National Wage Case of 1991. Under this principle, the position of unions was recognised and retained but more radical changes were enshrined in the *Industrial Relations Reform Act* 1993. These included, among other things, the introduction of a non-union (collective) bargaining stream. It would not be long before unions were more comprehensively marginalised from the bargaining process.

The most radical changes in industrial relations regulation of the past fifteen years were ushered in after the election of the Howard government in 1996. Speaking at a Young Liberals’ Conference on the eve of his government’s election, John Howard alluded to his vision for ‘decollectivising’ employment relations:

the goals of meaningful reforms, more jobs and better higher wages, cannot be achieved unless the union monopoly over the bargaining processes in our industrial relations system is dismantled. (Howard, 1996, quoted in van Barneveld and Nassif, 2003)

The passage of the *Workplace Relations Act* 1996 went some way to achieving these aims and marked a new era of decollectivism and individualism in the regulation of the wages and conditions of Australian workers. This Act stripped back the content of awards, necessitating that unions protect workers’ entitlements by attempting to push award stipulations into enterprise agreements. It seriously curtailed the ability of the AIRC to intervene in industrial disputes and introduced hefty fines for unions taking ‘unprotected’ action. The Act introduced individual Australian Workplace Agreements (AWAs) which excluded unions. A range of other changes in the Act made it more difficult for unions to access workplaces and to represent workers and easier for employers to choose whether, and to what extent, they would negotiate and bargain with the collective representatives of their workers. As such the Act has been identified as enshrining a ‘decollectivist’ ethos in the regulation of employment (Peetz, 2002). It signaled the diminution of formal and external regulation of work and workplaces through awards and the intervention of the AIRC. The workplace, and to some extent the individual contract of employment, was the locus for regulation.³

Changes to the union environment have not sprung exclusively from the legislative agenda of the Howard government. Certainly being locked out of various forms of bargaining, no longer having a robust award system which can be used to enforce union standards and having next to no recourse against employer anti-union activity through the Commission has not helped unions. However, it would be wrong to suggest that the legislative and regulatory regime *alone* has left unions where they are today. Managerial prerogative has been further increased by the militant activity of some Australian employers and by an increasingly interventionist (anti-collectivist)

Federal government. Australian studies have identified a range of employer tactics used in order to avoid unionisation or to reduce union influence in their workplaces during the 1990s. These include: discriminating against union activists in relation to pay, redundancies and other employment conditions; introducing non-union agreements; taking industrial action in the form of 'lockouts' in response to unionisation or union bargaining demands; monitoring employees; using strategic recruitment and selection techniques to manipulate union sympathies in the workplace; and establishing alternative representative forms (Briggs, 2004; Edwards, 2003; Ellem, 2003; MacKinnon, 2003a; Peetz, 2002; Townsend, 2004). Most researchers in the area agree that in Australia the use of such anti-union tactics has been on the rise in the post *Workplace Relations Act*, 1996 environment (see for example Briggs, 2004; Mackinnon, 2003). Another key change in the post-1996 environment has been the hard-line anti-union policy approach of the federal government. On top of their legislative agenda, the Federal government has played an 'activist' role, promoting and in some cases, such as in higher education *requiring* anti-union employer behaviour (see Howe, 2005; Cooper, 2004).

What have these changes meant for Australian unionists? Quite simply, declining membership, decentralisation and, later, individualisation of bargaining, the increasing inability of unions to call upon bodies such as the AIRC to enforce standards or to resolve disputes, diminishing rights to access and to bargain for workers, increasing employer militancy and the anti-union activism of government have shifted the balance of power away from unions and towards employers. Indeed, life looks set to get a whole lot tougher for Australian unions in mid-2005 when the government takes control of the Senate and is able to comprehensively apply its industrial relations wish list.

Australian Peak union strategic revitalization

What has been the response of Australian unions to these thoroughgoing changes in their environment?⁴ For the national peak council, the ACTU, the decade to 2005 was one of strategic reorientation centred on 'organising'. Beginning in the early 1990s the peak union expended considerable energy urging affiliates to adopt new organising strategies in order to build membership and renew a union presence in Australian workplaces. This included both direct organising initiatives and broader attempts to garner affiliate support for the organising agenda. The earliest and best known organising initiative was *Organising Works* 1994, a training programme designed to inculcate union officials with a commitment to new member growth and to teach innovative organising techniques. By 2005 over 450 organisers had graduated from the programme (see Cooper, 2003 for an overview of further direct initiatives).

After the election of Greg Combet to the Secretary-ship of the ACTU in 1999, the organising strategy was given renewed vigour. The two signature strategy documents of the Combet leadership, *unions@work* (ACTU 1999) and *Future Strategies: Unions working for a fairer Australia* (ACTU, 2003), both articulated an 'organising' vision for Australian union activity. The difference between these recent organising-focussed strategy documents and the recovery strategies, such as mergers and individual services provision, issued from the heart of Accord unionism (see for example ACTU 1987) could not be starker. The more recent documents, urge affiliates to devote unprecedented resources to new member organising and building hardy workplace

organisation as well as developing union strategic campaigning capacities while broadening union constituencies. While peak council policies and prescriptions and individual union action another, there is evidence that in workplaces and union in branches across the country have indeed heeded the ACTU's call to organise (see Cooper and Ellem, 2005; Ellem, 2004; Griffin and Moors, 2002; Tattersall, 2005)

What explains the adoption of the organising strategy by the Australian national peak council? Any explanation of strategic innovation must clearly incorporate the massive changes in the environment for unionism. The ACTU's organising strategies did not arise within a vacuum but in the context of a significantly weakened union movement suffering declining membership and under attack from a conservative federal government and increasingly anti-union employers. For the ACTU, these factors combined to create a significant 'crisis' in its external environment. It is undeniable that consciousness of crisis, and the desire to find ways out of it, sparked the organising debate within Australian unions as occurred in many other international settings (Hurd, 1995; Grabelsky and Hurd, 1994; Oxenbridge, 1997). However, a range of further influences helped shape ACTU revitalisation strategies during the 1990s. These include: the extent of leadership endorsement for organising; the power and authority of the peak council, and; 'organisational learning' drawing upon the experiences of Australian and international unions.

We have known for many years the critical influence that union leaders have over the strategic direction of their organisations (see Undy *et al.*, 1981). There could be no more powerful an advocate for change than the ACTU Secretary. The accession of Combet to the leadership of the peak council had the consequence of 'mainstreaming' organising (see Cooper, 2000). 'Organising' was not new to the ACTU in the later 1990s, but it was not until Combet's leadership that the future directions of the movement were explicitly aligned and integrated with an organising agenda.

The peak council's pursuit of the organising agenda throughout the 1990s remained non-coercive in nature. Instead, individual unions 'opted into' organising strategies rather than being forced to adopt them. Clearly this approach recognised that - due to diminished power resources discussed earlier in the paper - the peak council could not impose specific organising forms and goals upon affiliates. Thus, it chose - and arguably was forced - to avoid a more interventionist approach (see Cooper, 2003).

There is ample evidence that the changes in the approach of the ACTU drew upon the effectiveness, or otherwise, of previous union strategies both in Australia and abroad. For instance, a decision to develop and run a broad-based union education programme including training for senior union leaders in the late 1990s resulted from what were seen as the shortcomings of previous strategies, such as Organising Works. ACTU officials also borrowed heavily from the experiences of other union movements, particularly in North America and New Zealand. During the past decade official exchanges, speaking tours and training programmes involving officials from the United States and New Zealand have been sponsored by the ACTU as a part of the organising strategy. This was taken to a new height in 2003 when the Secretary of the New Zealand CTU was recruited to take on a strategic organising role within the ACTU, based in Sydney. Organisational learning both reflecting upon past Australian strategy and borrowing from the experiences of unionists across the Pacific Ocean is critical in explaining the nature of ACTU innovation during the decade to 2005.

Strategic revitalisation in New Zealand and Australia: Implications & Conclusions

Australian and New Zealand unionists find themselves in rather different political social and institutional places in 2005. To a certain degree we have identified a 'swapping' of the environments in which the respective union movements operate. The *Workplace Relations Act*, 1996 ushered in changes which made it harder for unions to organise, bargain and to effectively represent workers. However, as challenging as the outcomes of this legislation were for unions, the Howard government was unable to gain outright control of the Senate between 1996 and 2005 and as such their ability to pursue a more thoroughly decollectivist agenda were held in check. This will change late in 2005 when we can expect an Australian version of the Employment Contracts Act. On the other hand, after having suffered for nine years under the ECA, New Zealand unions find themselves in 2005 in a not dissimilar environment to that of the early Accord years in Australia, without the formal structures of corporatism, but nonetheless in the midst of developing close working relations with government and rapidly expanding their sphere of influence to a wide range of public policy matters.

However, the movements of both Australia and New Zealand share what can only be described as a severe crisis in relation to density and membership, with density sitting at 23% and 21% in the respective countries. While on recent trends there is more cause for optimism in the New Zealand union ranks, with less than a quarter of workers unionized in either country both movements face the looming possibility of pressure group status.

The CTU has been through something of a revival and in 2005 the peak body is more united than at any time in its history. This new-found authority is a combination of the strong endorsement from affiliates for a centralized focus on renewal strategies and the necessity of a single voice to take advantage of the more favourable political climate. In Australia, the ACTU retains its long-held place as the voice for union interests. However, this must be qualified with the recognition that the unraveling of external sources of power has reduced the peak council's ability to wield coercive power over affiliates, as was witnessed during Accord unionism. While it may represent a single voice for union interests in Australia, as far as the Federal government is concerned, it is a voice to be ignored as they seek to marginalise unions not only from the regulation of work but from public policy making.

The mood amongst New Zealand unionists is optimistic, there is a sense that they have a window of opportunity to make real gains for members and this has focused the attention on renewal strategies. By comparison, in Australian unions - whilst there is a firm resolve to pursue renewal strategies - many leaders, officials and members are depressed about the ability of unions to weather the storm ahead.

There has been considerable change in the industrial relations regulatory institutions in both countries. In Australia, the decentralism of the late 1980s was undone as the formalised and collective regulation of workplaces was replaced by a more informal and individualist system. This system afforded employers an increased prerogative,

the government encouraged them to use it, and use it they did. In New Zealand, managerial prerogative was firmly entrenched by the ECA and has proved hard to shift, despite the current government's attempts at 'culture change' via emphasis on good faith bargaining. The fact remains that the vast majority of New Zealand workers have their pay and conditions determined by 'managerial unilateralism', and the individualist ethos of the 1990's remains firmly embedded (May et al, 2004:15).

Explaining Union Strategic Choices in Australia and New Zealand

Australia and New Zealand unions spent a good deal of the past decade in an environment which undermined their effectiveness and indeed their capacity to invent strategies for renewal. However, the period from 1995 to 2005 was not characterized by union stasis in either country. Both movements showed a determination to put in place strategic innovations which would ensure their survival. The comparison revealed a remarkable similarity in the strategies of the peak councils in both countries. In Australia, the ACTU attempted to expose affiliates to both the message and the practices of organising unionism from 1993 through a number of direct and indirect initiatives. However, it was not until 1999 that a more thoroughgoing commitment to organising became evident. In New Zealand, a centralized focus on organizing only came in 1999, with new leadership, endorsed by affiliates to pursue this approach. Up until this point the CTU had facilitated discussion and some international exchange on organizing strategies but organizing had essentially been pioneered by individual unions; SFWU and Finsec.

The establishment of an organising strategy as a path for the future was critically influenced in Australia by the ACTU mission to the USA in 1993, and in New Zealand, led by individual unions in the early 1990's with exchange visits by various US and NZ officials. In Australia, the search for innovative strategies for renewal was a response to what was ahead; for New Zealand it was the bitter realization that state dependence was no longer a viable survival strategy which sparked it. This suggests that whilst the search for innovation was catalysed by different local experiences, international exchange between peak union bodies was central to the development of those strategies.

Our comparison has reaffirmed that union strategic choices are influenced by the context in which they are made. In both countries, interest in organising was first sparked by crisis arising from massive changes in the institutional setting for unions as well as in the relationship between unions and other actors in the industrial relations world. However, these changes in themselves are not enough to offer a complete explanation of the process undergone by either union movement. This analysis suggests that union-centric factors are vital for determining union strategic choice. As Frege & Kelly note, 'explaining actors' strategies by their institutional context alone is too simplistic and deterministic' (2003:12). In Australia, increased leadership endorsement for organising-focused innovation, following from the election of a new ACTU Secretary was identified as a critical influence upon the peak council's strategy. The (dwindling) power and authority of the peak council paradoxically both spurred change in the ACTU's strategy and limited the extent to which affiliated unions could be forced to adopt a particular course. The CTU, having

never had the kind of authority over affiliates the ACTU had, is now strongly endorsed by affiliates to provide the lead on renewal strategies.

It seems almost a truism that the ways in which unions interpret their environment is important in shaping their responses to it (Frege and Kelly 2003). Yet, most comparative studies of Australian and New Zealand union strategies to date have underplayed the importance of this process. Our work suggest that by sharpening our gaze into the union world, we can uncover a range of union features and relationships which shape the nature, the process and the timing of union change. This includes a number factors *within* national union movements, such as leadership change and support for strategic reorientation, as well as *between* national union movements, including dynamic exchanges between national peak councils.

Conclusion

The period since 1995 has been a time of real crisis for unions in both countries. This crisis has partly stemmed from the paring back of the traditional regulatory mechanisms in Australian industrial relations and a shift to an individualised and decollectivised employment relations environment. In New Zealand, it has been from the impact of the ECA and broader structural change. It is clear that these changes have had a palpable impact upon unions, essentially making it harder to undertake their traditional role and suffering the double burden of operating with considerably less resources. Whilst in New Zealand there has been a degree of re-regulation since 2000 and a markedly less hostile environment, the ECA legacy remains and the institutional structure has not been reassembled.

Despite the quite different environments faced by both movements at the present time, both have made significant innovations directed at renewal. This has been a process of adapting to a changed industrial and political environment, but it is clear that the exact nature of that response is not predetermined by the environment. By placing unions at the centre of our analysis and viewing them as something more than reactive players, we can begin to understand the factors contributing to the convergence of strategies of both union movements, despite the divergence in their external environments. Whilst we agree with the conclusion of many comparative industrial relations researchers that 'institutions matter' (Frege & Kelly, 2003:11) our argument is that unions *can* and *do* take on the role of strategic actors in deciding their own fate. The close working relationship and shared vision of the ACTU and CTU in operation at the moment, is concrete evidence of this. Whether this will translate into a renewal of union power is another question.

Notes

1. Another significant feature of the changing shape of unionism during the past ten years has been a shift in the gender composition of membership and the unionisation of men and women. While men remain more highly unionised than women, the difference between their unionisation rates has closed considerably since 1993. During the past decade, Australian unions have become more feminised, at least in terms of women's share of union membership. In 1993 39.5 per cent of union

members were women, in 2003, 43.7 of Australian unionists were female (ABS 6310.1 1993-2003).

2. Apart from apart from the well-entrenched over award bargaining system in various industries and over time.

3. More thoroughgoing changes to industrial relations legislation which will further enshrine the individualisation of employment and reduce unions' ability to take effective action were being flagged announced at the time of writing (see Cooper 2004 forthcoming)

4. Space precludes a full discussion of union strategy at the workplace, branch and national levels and as such the ensuing discussion concentrates upon national peak council policy and practice from the late 1980s to 2004.

Bibliography

Anderson, G. (1991), The Employment Contracts Act: An employer's charter? *New Zealand Journal of Industrial Relations*, 16(2), 127 - 142

Australian Bureau of Statistics (ABS), *Employee Earnings, Benefits and Trade Union Membership*, Catalogue number 6310.0.

ABS, *Industrial Disputes, Australia*, Catalogue number. 6321.0.55.001.

Australian Council of Trade Unions (ACTU) (1987), *Future Strategies for the Trade Union Movement*, ACTU Congress Document, ACTU.

ACTU (1999) [unions@work](#): *The challenge for unions in creating a just and fair society*, ACTU.

ACTU (2004) *Future Strategies: Unions working for a fairer Australia*, ACTU.

Boxall P. & Haynes P. (1997), Strategy and trade union effectiveness in a neo-liberal environment, *British Journal of Industrial Relations*, 35(4), 567 - 591

Brash, D. (2004) Pay off time for unions, Speech, 23 July 2004.

Bray M. & Walsh P. (1993) Unions and economic restructuring in Australia and New Zealand. In Bray, M & Haworth, N (eds) *Economic Restructuring in and Industrial Relations in Australia and New Zealand: A Comparative analysis*. Sydney: ACIRRT

Briggs C. (1999), *The Rise and Fall of the ACTU: Maturation, Hegemony and Decline*, unpublished PhD thesis, Department of Industrial Relations, University of Sydney, Sydney.

Briggs C. (2004) *Lockout Law in Australia: Into the Mainstream?* ACIRRT Working Paper 95, ACIRRT.

Campbell I. (2001) Industrial Relations and Intellectual Challenges: Reconceptualising the Recent Changes to Labour Regulation in Australia, Paper presented to symposium on 'Future Directions of Industrial Relations as a Field of Inquiry', University of Sydney, 14 September.

Carter B. (2000), Adoption of the Organising Model in British Trade Unions: Some Evidence from MSF, *Work, Employment and Society*, 14(1), 117-36.

- Clark H. (2003) 'All workers to enjoy 4 weeks annual leave', *Press Release*, 8 November 2003.
- Cooper R. (2000), Organise, organise, organise! ACTU Congress 2000, *Journal of Industrial Relations*, 42(4), 582-594.
- Cooper R. (2001), Getting Organised? A white-collar union responds to membership decline, *Journal of Industrial Relations*, 43(4), 422-437.
- Cooper R. (2003a), Peak Council Organising at Work: ACTU Strategy 1994-2000, *Labour and Industry*, 14(1), 1-21.
- Cooper R. (2003b), Trade Unionism 2002, *Journal of Industrial Relations*, 45 (2), 205-223.
- Cooper R. (2004), Trade Unionism in 2003, *Journal of Industrial Relations*, 46 (2), 213-225.
- Cooper R. (2005) Trade Unionism in 2004, *Journal of Industrial Relations*, 47 (2)
- Cooper R. and Ellem B. (2006), Union Power: Space, Structure and Strategy. In Hearn M. and Michelson G. (eds) *Rethinking Work: Time, Space and Discourse*. Melbourne: Cambridge University Press, forthcoming.
- Crawford A. Harbridge R. & Walsh P. (2000), Unions and union membership in New Zealand: Annual review for 1999, IRC Working Paper 11/00, VUW Wellington
- Edwards R. (2003), Plant Relocation: When Is It A Viable Threat?, *Journal of Industrial Relations*, 45(1), 23-34.
- Ellem B. (2003), Re-placing the Pilbara's Mining Unions, *Australian Geographer*, 34 (3), 281-296.
- Ellem B. (2004) *Hard Ground: Unions in the Pilbara*. Sydney:
- Frege C. & Kelly J. (2003), Union revitalisation strategies in comparative perspective, *European Journal of Industrial Relations*, 9 (1), 7-24
- Gardner M. (1995), Labour movements and industrial restructuring in Australia, New Zealand and the United States. In Wever, K. & Turner, L. (Eds) *The Comparative Political Economy of Industrial Relations*. Madison: IIRA
- Gorman, P. (1996), *Weipa: Where Australian unions drew their 'line in the sand' with CRA*. Weipa Industrial Site Committee: Construction Forestry Mining Energy Union.
- Goulter P. (2003). Speech to 2nd Australasian Organising Conference, University of Sydney, 7 May 2003.
- Grabelsky J. and Hurd R. (1994), Reinventing an Organizing Union: Strategies for Change. In proceedings of the Industrial Relations Research Association 46th Annual Meeting, Boston, January 3-5.
- Griffin G. (1991), Changing Trade Union Structure. Centre for Industrial Relations and Labour Studies Working Paper 61, University of Melbourne.
- Harbridge R. Hince K. and Honeybone A. (1994), Unions and Union Membership in New Zealand: Annual Review for 1993, IRC Working Paper 1/94, Wellington: Victoria University

- Harbridge R. and Honeybone A. (1996), External Legitimacy of Unions: Trends in New Zealand, *Journal of Labour Research*, 17(3), 425–444.
- Heery E. (2002), Partnership versus organising: Alternative futures for British trade unionism., *Industrial Relations Journal*, 33(1), 20–35.
- Heery E. Simms, M., Delbridge, R., Salmon, J. & Simpson, D. (2000a), Union organising in Britain: A survey of policy and practice, *International Journal of Human Resource Management*, 11 (5), 986-1007.
- Heery E. Simms M. Delbridge R., Salmon, J. & Simpson D. (2000b), The TUC's Organising Academy: An assessment, *Industrial Relations Journal*, 31 (5), 400-415.
- Heery E. Simms M. Delbridge R. Salmon J. & Simpson D. (2000c), Organising Unionism Comes to the UK, *Employee Relations*, 22, 38-57.
- Howe J. (2005), Deregulation of Labour Relations in Australia: Toward Command and Control, Working Paper no.34. Centre for Employment and Labour Relations Law
- Hurd R. (1995), Contesting the Dinosaur Image - The Labor Movement's Search for a Future, Mimeograph, Labor Studies Department, Cornell University
- Kelsey J. (1995), *The New Zealand Experiment*. Auckland: Auckland University Press
- Mackinnon B. (2003), Employer Matters in 2002, *Journal of Industrial Relations*, 45 (2), 226.
- May R., Walsh, P. & Otto C. (2004), Unions and Union Membership in New Zealand: Annual Review for 2003, IRC Working Paper 1/04, Victoria University, Wellington.
- McDonald D. & Rimmer M. (1989), Award Restructuring and Wages Policy, *Growth*, 37, 111.
- Oxenbridge S. (1997), Organizing Strategies and Organizing Reform in New Zealand Service Sector Unions, *Labor Studies Journal*, 22(3), 3-27.
- Oxenbridge S. (2000), Stasis or Renewal? A Study of Two New Zealand Unions in a Time of Change, Paper presented to the Union Innovation Workshop, Industrial Relations Research Association, May 29-June 2, Tokyo.
- Oxenbridge S. (2003), The Service and Food Workers Union of Aotearoa: A Story of Crisis and Change. In Fairbrother, P. & Yates, C. (eds), *Trade Union Organising, Adaptation and Renewal: A Comparative Study of Trade Union Movements in Five Countries*. London: Mansell.
- Peetz D. (1998), *Unions in a Contrary World: The Future of the Australian Trade Union Movement*. Melbourne: Cambridge University Press.
- Peetz D. (2002), Individual Contracts, Bargaining, and Union Membership, *Australian Bulletin of Labour*, 28(1), 39.
- Tattersall A. (2004), Community Unionism: a strategy for union power under neo-liberalism. Paper presented at AIRRANZ Conference, Sydney, February.
- Undy R. Ellis V. McCarthy W. & Halmos A. (1981), *Change in Trade Unions: The Development of UK Unions Since the 1960s*. London: Hutchinson.

van Barneveld K. & Nassif R. 2003, Motivations for the Introduction of Workplace Agreements, *Labour and Industry*, 14(2), 21.

Watson I. Buchanan J. Campbell I. & Briggs C. (2003) *Fragmented Futures: New Challenges in Working Life*, Sydney: Federation Press.

Wiseman, J. (1998), Here to Stay? The 1997-1998 Australian Waterfront Dispute and Its Implications, *Labour and Industry*, 9 (1), 1.

Industrial Relations in the Context of Workfare: Comparing Australia and New Zealand

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Abstract

The objective of this paper is to assess the implications of workfare for the comparative analysis of Australian and New Zealand industrial relations since the 1980s. It argues that examining the relationship between industrial relations and social protection, and in particular their fusion in the domain of “workfare”, helps to account for the recent re-convergence between the two regimes since the mid 1990s. Yet beneath the overarching re-convergence, a workfare comparison illustrates that Australia is now more marketised than New Zealand. This is internationally significant as workfare allows governments to *appear* to cater more for social protection than they do.

Introduction

The institutional and political processes which determine workers’ social safety-nets have been in focus throughout the history of industrial relations scholarship. Yet labour market protections exist within the context of broader “social protection” regimes, where social protection represents the summation of all policies and institutions which shield citizens from the potential insecurities of life in a market economy. With noteworthy exceptions the broader protection context has not been prominent in studies of Australian and New Zealand industrial relations, whether comparative or national in orientation.

In light of the intellectual challenge presented by incremental transformations in work and welfare over the last three decades (Sarfati & Bonoli, 2002), it is timely for scholarship to take greater account of the relationship between industrial relations and social protection, particularly given the fusing of the two spheres in the lives of many as they combine work with receipt of social security benefits. The primary objective of the current article is to contribute to the analysis of this phenomenon by assessing the implications of workfare for the comparative analysis of Australian and New Zealand industrial relations since the 1980s. The intermeshing between work and welfare is considered in the context of increasing recourse to “workfare”, the phenomenon of jobseekers and other welfare beneficiaries having to engage in work or work-like activities in return for receipt of their social security benefits and services.

The central argument of the paper is that examining workfare helps to account for the greater similarity between the industrial relations frameworks of New Zealand and Australia since the mid 1990s. However, considering workfare reveals a greater

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marketisation in Australia. The drift of the reform agendas of both regimes toward workfare forms part of a broader international movement calling for an industrial relations analysis of the debate on workfare and the examination of work as a complex policy domain. This debate is significant for comparative industrial relations scholars in that it has allowed some governments to *appear* to cater more genuinely for social protection than indeed they do. The paper explains the further marketisation of Australia, and the similarities between the two regimes, by reference to the comparative literature on industrial relations and social policy change.

Integrative Frameworks and the Role of Workfare

The workfare phenomenon draws its inspiration from productivity enhancement principles in industrial relations, labour economics and labour law (Carney, Ramia and Chapman, 2006; Ramia, Chapman and Michelotti, 2005). Yet, as discussed below, workfare programmes are implemented within the institutional realm of social policy. Accordingly, an analysis of Australian and New Zealand industrial relations which incorporates workfare draws simultaneously on frameworks covering the relationship between industrial relations and labour markets on the one hand, and social policy and social protection on the other.

As discussed in previous studies (Ramia and Wailes, 2006), more of these integrative frameworks have emanated from the latter literature than from the former. Over time social policy scholarship has progressively come to consider labour market protections as well as those of the social security and broader welfare systems. Indeed, from its beginnings the field of social policy was virtually inseparable from industrial relations, the latter being the body of scholarship which most closely scrutinised labour market minimum standards and other protections (Webb and Webb, 1897). Yet, as is well known to social policy analysts and welfare historians but not their industrial relations counterparts, the Webbs as academic parents of the field were also key to the birth of the contemporary field of social policy (Webb and Webb, 1911).

The tradition set by the Webbs in the two fields suffered a long hiatus after World War II (Ramia, 1998: 19-24). Subsequently, in the post-War period, given the three-decades long economic boom, industrial relations became a somewhat secluded field under Dunlop's (1958) "systems" tradition, and social policy did much the same as part of Titmuss's "social division of welfare" (Titmuss, 1958). For its part, as is well documented, industrial relations has retreated further into isolation from broader social concerns by moving closer to human resource management and management studies generally as worker protections are studied increasingly in organisation-based analyses of the employment relationship. From the other side, several strands of social policy literature since the 1960s have combined to help in the process of fusing social problems with industrial relations phenomena. This includes: the "rediscovery of poverty" in the mid-to-late 1960s (Townsend, 1962; 1979); analyses in the 1970s and 1980s on the so-called "fiscal crisis" of the welfare state (O'Connor, 1973; Mishra, 1984); and feminist scholarship on the work-welfare-household interface (Wilson, 1977).

Social policy research in the comparative arena has been equally important, spawned as it was mainly by the need to assess the differential welfare effects of labour

markets and social policies in different nations and regions (Esping-Andersen, 1990). Nations deal with “public/private interplay in social protection” in different ways (Sarfati & Bonoli, 2002). For industrial relations, the most important and most prominent arena of public/private fusion is that of workfare. The concept of workfare refers to the phenomenon of jobseekers and other welfare beneficiaries engaging in work or work-like activities in return for the right to receive social security benefits and services. As discussed further in the final sections, Australia’s Work-for-the-Dole scheme typifies workfare in a strong, compulsory form.

Though it has various institutional and policy characteristics in different countries and regions (Peck, 2001; Lodemel and Trickey, 2000), as a basis for contemporary regimes of unemployment compensation it originated in the US (Wiseman, 2000). Despite its American origins, however, its international significance is underpinned by its application across most developed and many developing states. China is a significant example of the latter, with unemployment only relatively recently having been officially recognised by policy authorities (Leung, 2003). Whereas traditional social policy is increasingly deemed “passive”, workfare has at its core, “activity” in return for a jobseeker’s social security benefits and training and placement services. Given that it involves reciprocal obligations for jobseeker and government, workfare represents a shift “from [rights-based] citizenship to [commercial] contract” (Carney and Ramia, 1999) in employment policy.

Inherent to workfare are industrial relations productivity principles, though these are channelled principally through the system of jobseeker compensation rather than through labour regulation (Carney, Ramia and Chapman, 2005). Invoking the principle that the unemployed should make a moral contribution in return for the taxation revenues they draw upon, versions of workfare range markedly: from relatively progressive, high-choice and capacity-building models in parts of Northern Europe, to punitive, comparatively ungenerous and highly privatised models as in the United States and Australia (Lodemel and Trickey, 2000; Ramia and Carney, 2001).

Comparing New Zealand and Australia

Understanding industrial relations in the social protection and workfare context first requires consideration of the relationship between industrial relations and social policy. Historically this relationship in New Zealand and Australia conformed largely to one model rather than two. Francis Castles’ concept of the wage-earners’ welfare state (WEWS) captured the interplay (Castles, 1985), his work being most influential among those seeking to understand the evolution of arbitration within Australasia’s overall social protection pattern (Ramia and Wailes, 2006). In explicating the WEWS model Castles argues that the policy pattern which characterised the two countries’ social protection regimes for much of the twentieth century was built on four interdependent policy planks; two of which engaged mainstream industrial relations and social policy institutions.

First, industrial relations was central, Australia and New Zealand having established the world’s only nationally applicable *compulsory arbitration* systems. These were the institutional mechanisms for providing worker protection through minimum wages and working conditions. Second, *industry protection* gave employers strong economic

incentives to adhere to the labour minima. Third, *selective immigration* policies were used as means to exclude migrant workers entering from countries which had lower than Australasian-standard wages and conditions. By design, as well as being motivated by racial discrimination, selectivity in immigration was a tool to avoid downward pressure on labour remuneration. Fourth, a comparatively early but minimalist and *residual state welfare* system was developed in both countries, relying first on a combination of the market and the family and second on a last-resort safety-net in the form of state-provided welfare benefits and services.

Progressively from the 1970s, the WEWS arrangements were reconceived. The re-conception sowed the seeds of what later became workfare programmes; which have come to dominate the social protection landscape in many countries. Policy change has had its international context in widespread debate stemming from the OECD's agenda of making welfare receipt more active and less passive. This has driven restructuring of traditional methods of service and benefit delivery (OECD, 1988; 1990), which as outlined below has occurred with significant fervour, though with different timing in different nations. From the labour market side workplaces have been restructured so as to be more "flexible", again an OECD agenda (OECD 1986), designed to aid labour markets to adapt to continuing shifts in international demand.

The traditional protective settlement in Australia and New Zealand tied together arbitration, immigration, industry protection and residual welfare. On the other hand, the new relationship has evolved into one principally containing the industrial relations and social policy agendas and invoking workfare as part of the restructuring of social protection. As argued in the next section, the increasing integration of these arenas has not been subject to extensive discussion within the comparative Australasian industrial relations literature.

Industrial relations and social policy change over the last three decades in the two countries is well documented; though in two literatures rather than one (especially, Bray and Haworth, 1993; Castles, Vowles and Gerritsen, 1996; Castles, 1996; Ramia, 1998; Wailes, 2003). The use of immigration as a labour supply instrument was all but abandoned and the industry protection agenda was gradually phased out, though less gradually in New Zealand than in Australia (Bell, 1993 and 1997; Kelsey, 1993; Kelsey, 1995: 94-99). These shifts formed part of a significant break with tradition following the entry of Britain into the European Economic Community in the 1960s, breaking with it the guaranteed trade markets which Britain represented for the Australasian economies.

In the industrial relations arena, by the early 1990s differences between New Zealand and Australia were pronounced; indeed more pronounced than at any previous stage in the two countries' evolution since the end of the 19th century. This new divergence was seen in the regulation of employment conditions (Mitchell and Wilson, 1993), in the unity and relative power-bases of employers and employers' associations (Plowman and Street, 1993), and in trade union and broader labour movement strategy and strength (Sandlant, 1989; Gardner, 1995). By the early 1990s, almost overnight with the enactment of New Zealand's Employment Contracts Act in 1991, compulsory arbitration and collectivism were abandoned and replaced by voluntarism and individualism. A drastic decline in trade union density was effected in the

process, and reliance on statutory minimum labour conditions was increased markedly (Harbridge, 1993).

These statutory minima were largely absent from the Australian labour market, at least at the Federal level. Federal government involvement in the setting of conditions was always Constitutionally limited in Australia, though indirect involvement through the Commonwealth and State arbitration system was always a prominent feature (eg. McCallum, Pittard and Smith, 1990: 348-349). The differences in relation to social policy in this period were similarly marked. New Zealand remained relatively unchanged until the National Party came to power in 1990, replacing the fourth Labour government. By that time, Australia was in the midst of a transformation in the way social security and broader welfare services were provided.

This is explicable in terms of ever-closer interplay between the social policy and industrial relations agendas, and an associated drift toward a workfare approach. The process of intertwining social policy with industrial relations began in 1983 as part of the Prices and Incomes Accord, an agreement between the (then) Labor Government and the peak trade union body, which established a wage-“social wage” trade-off (ALP/ACTU, 1983). Under the Accord, real wages over time would be allowed gradually to decrease, with a greater share of GDP channelled away from labour and toward capital. This was designed to increase aggregate investment and employment, underwritten by a neo-corporatist industrial relations environment based on peak-level labour movement co-ordination and an emphasis on industrial conflict management.

As part of the bargain, the conditions of those who were left behind in the expected GDP growth would be ameliorated by a more substantial social wage, which took the form of “direct income transfers or provision of [social and human] services” (ALP/ACTU, 1983: 4). The wage-social wage tradeoff was substantial, though the benefits to workers and to beneficiaries were diminished over time (Hampson, 1997), with the attention moving to active labour market programmes – evolving into the antecedents of contemporary workfare by the late 1980s; though it is integration or fusion rather than inter-dependence which typifies workfare. Training policy is perhaps the best example of Australia’s nascent workfare agenda; which was important because it developed significantly earlier than its New Zealand counterpart. As part of the Labor Government’s Working Nation package in 1994 (Australia, Prime Minister, 1994), the so-called Job Compact involved an unemployed person being offered either a job or subsidised training in return for the person accepting both the offer and the employer assigned to them. The arrangement thus simultaneously engaged employers (who employed or trained), the social security authorities (who paid the benefit/subsidy) and the job-seeker (who performed the work/training). The job-seeker had a multiple status, therefore: of trainee, of worker and of social security beneficiary, all at the same time (Ramia and Carney, 2001).

Subsequent changes under the current Liberal/National Government have watered down this explicit form of policy interaction. Yet, under the Job Network - the scheme which replaced Working Nation - the general approach is one of “mutuality of obligation” (OECD, 2001; Considine, 2001; Carney and Ramia, 2002). This agenda steps up the emphasis on work-like activity in jobseekers and embeds social policies within the language and ethos of a labour market relationship through workfare. As Walters (1997: 224) argues, the activation of social policy “seeks to make us all

workers”, including those who do not engage formally in paid labour. Thus, the pattern is one of social policy moving closer to the labour market, rather than the labour market moving closer to social policy.

In contrast to the integrationist approach in Australia, New Zealand’s National Government in the early 1990s de-coupled industrial relations from the social policy agenda. This was part of a more hard-line, classical Friedmanite form of neo-liberalism (Ramia, 1998: chps. 8 and 9) characterised by the philosophy of treating labour markets *as markets*, with limited redistribution mechanisms to be channelled only through the state. In this regime, workfare was all but absent. The problem in the New Zealand case was that the distribution occurring through the state was overtly socially regressive. This was best seen in 1991, when – alongside the Employment Contracts Act - radical cuts in the level of benefits and social and human services were introduced. As well as the tightening of eligibility criteria, cuts were made to unemployment, sickness, widow’s and domestic purposes benefits. The most severe reductions were applied to unemployment payments, which in some categories of the target population decreased by 30 percent. In addition, the age of eligibility for superannuation was raised from 60 to 65, and the health, housing and education systems were changed to take on a more user-pays basis (Kelsey, 1995: 120-121, 214-224).

Despite the major divergence during the 1980s and into the early 1990s, however, there has been a re-convergence between Australia and New Zealand since the mid 1990s. This is best seen in the central piece of industrial legislation in each country; with Australia moving closer to New Zealand in some key respects, and New Zealand also edging closer to the Australian model in others. New Zealand’s current Labour Government, first elected in 1999, replaced the Employment Contracts Act with the Employment Relations Act in 2000, instituting the re-introduction of explicit recognition for unions and more generally watering down the more radical aspects of the predecessor Act (Wilkinson, Harbridge and Walsh, 2003). Australia’s Workplace Relations Act of 1996 had earlier brought it somewhat closer to the New Zealand Employment Contracts Act, though it now stands closer still to the current legislation across the Tasman (Wailes, Ramia and Lansbury, 2003). In effect the two are closer to meeting each other in the middle than at any stage since the early 1990s.

The social policy agendas of the two countries have also been drawn closer together, with workfare the primary common characteristic. As outlined above, up to the early 1990s New Zealand was on a path of de-coupling industrial relations from social policy, in pursuit of a model whereby the labour market is separated from the redistributive responsibilities of the state, which were handled almost purely through minimalist, residual, state-instituted social policies (Ramia, 1998: chp. 8). Yet from the mid-1990s, New Zealand has moved closer to the Australian model of active benefits, relying as these do on the ethos of mutual obligations. This includes experimentation with an Australian-style work-for-the-dole scheme, whereby some categories of unemployed must perform certain mandated hours of work in order to be eligible for jobseeker’s allowance (Nevile & Nevile 2003; New Zealand Herald 2004). In 1996, the New Zealand government went as far in connecting unemployment payments with industrial relations language as to replace benefits with a “community wage” (Higgins 1999). Some of the country’s workfare programmes have taken on the contracting-out approach to the delivery of programmes in so-called

quasi-markets (Bartlett, Roberts and Le Grand, 1998). This is the *raison d'être* of the contemporary Australian approach to employment services under the Job Network.

Industrial Relations, Social Protection and Workfare: Issues for Comparativists

Despite the overriding similarities between New Zealand and Australia, it is possible to overstate the re-convergence argument. Yet, when considered in long-term perspective alongside the major divergence between the Australia and New Zealand of the 1980s and early 1990s, the contemporary similarities are more compelling than are the differences. Workfare aids in uncovering the sources of this increased similarity. Within an approach which incorporates workfare, it is a broader and elaborated concept of work which joins traditional meanings of the term. The Australian Job Network has arguably constructed work so as to incorporate the work-like activities of the unemployed alongside the work of formal members of the paid labour-force. When viewed in light of workfare, Australia is a more radical model of marketisation than is New Zealand. Workfare is a key element in the broader international quest to understand two key features of contemporary capitalism: the ever-greater integration of the once more separate worlds of commercial work and public welfare; and the increasingly covert nature of the neo-liberal project. These issues are now discussed in turn.

Comparativists have been largely unable to explain fully how and why Australia and New Zealand have become increasingly similar since the mid 1990s. Wailes, Ramia & Lansbury (2002) argue that this lacuna has its prime source in over-emphasis on institutionalist analysis, which does not effectively streamline with similarities and differences in the political and economic preferences over time among the main industrial relations “interests”. Institutionalism, they contend, tends to emphasise difference and underestimate the similarities which national policy regimes often show in the face of common global economic pressures. The current analysis does not take issue with this argument. Rather, it makes the complementary argument that another dimension of the problem of explaining recent similarities between Australian and Zealand industrial relations lies in re-conceiving the *content* of industrial relations change. Part of the change in content has been the re-framing of the role of social protection in and outside the labour market. In their account of “the differing fates of corporatism under the two Labo(u)r Governments”, for example, Bray and Walsh (1993) for the most part do not capture the significance of the industrial relations-social protection relation inherent to Australia’s wage-social wage trade-off under the Accord; and the failure to adopt such arrangements in New Zealand. More recent work (Bray and Walsh, 1998) has the same characteristic, the result being two-fold: an overemphasis on differences between New Zealand and Australia in relation to the institutions of the industrial relations system; and the promotion of a view of industrial relations as largely exclusive of its social protection context. To be fair, however, particularly in relation to content, Bray and Walsh’s analysis applies only to the period prior to the introduction of New Zealand’s Employment Relations Act, which as argued earlier was a major development contributing to New Zealand’s move towards the Australian model after the mid-1990s.

The importance of the social protection context is seen in particular in the recasting of the traditional division between employment and non-employment. This affects the

concept - and indeed the political influence – of industrial relations explanations for labour market change. As Walters (1997) argued at a relatively early point in the evolution of closer interplay between labour markets and welfare systems, the traditional welfare state was built upon the assumption of a full-time, usually male, workforce. This was in his terms an “exclusive” definition of work, and thus by implication industrial relations was more strongly justified in focusing on the institutions of industrial relations systems in the tradition of Dunlop (1958), as discussed earlier in the paper. Yet, by virtue of the rise of workfare, social policy has borrowed from industrial relations; and this has implications for comparativists in both fields. In social policy, it points up the death of the social citizenship rights of welfare beneficiaries, replacing them with a widespread convergence around workfare (Handler, 2004). In industrial relations, it implies the broadening of the concept of work.

In line with this, industrial relations analysts might bring groups of workers who have been less conspicuous in mainstream research closer to the centre. This is justified by the *employment* focus of social policy scholars. As Bonoli and Sarfati (2002) suggest, social policy over the last two decades has followed an “employment-at-all-costs” approach to the work-welfare relation, which is strongest in the Anglo countries.

If current trends [in the work-welfare nexus] continue, the dividing line between employment and *legitimate* non-employment may start to encompass other social groups which have not traditionally been expected to participate in the labour market. In the United Kingdom, for instance, persons with disabilities are being invited to an interview where their job prospects are evaluated. ... In the United States, in view of current and expected labour shortages, attention is turning increasingly towards older people. ... The risk is that marginal groups will be forced against their will into low quality employment in order to comply with the values of an anti-welfarist and employment-oriented majority (Bonoli and Sarfati, 2002: 473-474).

The contributions of industrial relations scholars such as Standing (1999; 2002) are important for their simultaneous attention to work and welfare as two sides of the same coin, without privileging workfare-type compulsion. These have their broader base in the longstanding work of the ILO on the importance of linking labour-force employability with human dignity and minimum standards of legal social protection; though more recently this has taken “security” as its underpinning (ILO, 2004; Standing, 2002).

Conceivably, problematising the social protection and workfare contexts of labour market regulation is indispensable if industrial relations analysts are to be maximally effective in challenging the inequity of the employment at all costs and anti-welfarist perspectives. Beyond being merely a dimension of the internationally populist agenda of so-called “new progressive” centre-left politics (Giddens, 2003), workfare is arguably a central component of the current incarnation of neo-liberalism. Neo-liberalism today is characterised by the continuation – perhaps a moderation in some countries, though a continuation none the less – of marketisation apparently ameliorated by individual self-help and ongoing work or work-like activities. Australia took on this agenda earlier than New Zealand, and indeed earlier than most other countries. This is seen most clearly in its adoption of several agendas: the OECD’s active society push in the late 1980s; reciprocity of obligations under

Working Nation in the mid 1990s; and finally, the mutuality platform of the Job Network since 1998.

As part of the same continuum, Australia has taken on the excesses of neo-liberalism, albeit in a more covert form than did New Zealand before it. In the early 1990s, the New Zealand National Government's welfare cuts and the Employment Contracts Act signalled a harsh form of the industrial relations-social protection relation, characterised largely by *non*-relation. Australia took a slower approach, which has helped to institutionalise neo-liberalism more strongly for the long haul. The Australia programme, using as it did the politically populist language of assistance for those who help themselves while also providing individualised services, provided other neo-liberal governments with a model of how to appear to cater for the mutual intermeshing of the industrial relations and social protection agendas.

This has gone largely unrecognised in industrial relations debate. Australia is an excellent example of a policy regime which subverts social protection through a concerted push for work or work-like activities. Social policies thus reach out to the labour market concepts of industrial relations, rather than industrial relations shifting to take on more social protection principles. Regardless, politically, integration of *any* kind between the two areas is a particularly potent weapon in the quest to (at least appear to) cater for the growing labour market and demographic groups who must habitually interchange between work and the receipt of welfare benefits, and who often must combine the two simultaneously. This includes the working poor, youth and older workers, and those whose family responsibilities pose especially difficult challenges for their worklives (Sarfati and Bonoli, 2002). Again, Australia has been ahead of New Zealand in imposing the language and implementing the policies of integration. This arguably reflects the fact that the Party in government spearheading the policies for the first decade was Labor, and that the politics of the Accord compelled the Labor Party to take a more time-consuming approach. As argued here, however, marketisation in the workfare form has arguably seen its moment more clearly, and earlier, in Australia.

Conclusion

The concept of work has been transformed by virtue of its context in a workforce with characteristics which challenge traditional industrial relations analysis. Though there is a significant literature exploring the relationship between labour markets and social protection, industrial relations scholars have not played a major role within this. More work is needed to enhance scholarly understanding of the ways in which the institutions which shape employment conditions interact and are interdependent with protective mechanisms inside and outside industrial relations systems. Recognising the blurring boundaries between work and welfare, employment and non-employment, the current analysis has argued that the comparative analysis of New Zealand and Australian industrial relations is aided by considering the wider social protection context. In particular, the concept of workfare was used to discuss the relation between industrial relations protections and the conduct of work or work-like activities for the receipt of social security benefits.

Workfare adds explanatory potential to comparative accounts which seek to account for the greater similarity between Australia and New Zealand since the mid 1990s. In addition, it reveals that Australia is now the more marketised labour market model. While the two industrial relations regimes are more similar than they were during the 1980s and early 1990s, Australia has a more commercialised workfare programme under the Job Network. While New Zealand authorities experimented with a work-for-the-dole scheme and commercialised labour market and training programmes, it is the Australian approach which rests more comfortably in the realm of managerialist employment services. The latter combines a growing work-for-benefit ethos, extensive private sector involvement in the determination of unemployed people's standards of living as they search for work using profit-seeking placement agencies, and increasingly decentralised industrialised relations under the Workplace Relations Act. On one view, that this difference has largely evaded comparativists in industrial relations is testament to the less obvious methods used by contemporary governments to advance their neo-liberal agendas.

Workfare renders it easier to combine the language of self-help, which is politically a winner, with the language of extensive programmes; such that rejection of programmes is often seen to be excessive to an employment-focused and anti-welfarist public. These and other factors place work in a somewhat different context, one which considers new and different categories of workers and workers who have a marginal attachment to the labour market. Even if the worker does not have a formal attachment to the market, their life may well be governed by jobsearch administration principles which mirror the employee's quest to meet the employer's demands. This phenomenon is significant for all scholars studying labour and social protection.

References

- ALP/ACTU (1983), *Statement of Accord by the Australian Labor Party and the Australian Council of Trade Unions Regarding Economic Policy*, Melbourne, ACTU.
- Australia, Prime Minister (1994), *Working Nation: Policies and Programs*, Canberra Australian Government Publishing Service.
- Bartlett, W., Roberts, J.A. and Le Grand, J. (eds) (1998), *A Revolution in Social Policy: Quasi-market Reforms in the 1990s*, Bristol, Policy Press.
- Bell, S. (1993), *Australian Manufacturing and the State: The Politics of Industry Policy in the Post-war Era*, Cambridge, Cambridge University Press.
- Bell, S. (1997), *Ungoverning the Economy: The Political Economy of Australian Economic Policy*, Melbourne, Oxford University Press.
- Bonoli, G. and Sarfati, H. (2002), Conclusions: The Policy Implications of a Changing Labour Market-Social Protection Relationship, in Sarfati, H. and Bonoli, G. (eds), *Labour Market and Social Protection Reforms in International Perspective: Parallel or Converging Tracks?*, Aldershot, Ashgate: 453-484.
- Bray, M. and Haworth, N. (eds) (1993), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*, Australian Centre for Industrial Relations Research and Teaching Monograph no. 8, Sydney, ACIRRT.

Bray, M. and Walsh, P. (1993), Unions and Economic Restructuring in Australia and New Zealand, in Bray, M. and Haworth, N. (eds), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*, Sydney, Australian Centre for Industrial Relations Research and Teaching (ACIRRT) Monograph no. 8, ACIRRT: 122-155.

Bray, M., and P. Walsh. (1998), Different Paths to Neo-liberalism? Comparing Australia and New Zealand, *Industrial Relations*, 37(3): 358-387.

Carney, T. and Ramia, G. (1999), 'From Citizenship to Contractualism: The Transition from Unemployment Benefits to Employment Services in Australia', *Australian Journal of Administrative Law*, 6(3): 117-139.

Carney, T. and Ramia, G. (2002), *From Rights to Management: Contract, New Public Management & Employment Services*, The Hague, Kluwer.

Carney, T., Ramia, G. and Chapman, A. (2006, in press) 'Which Law is Laggard? Regulation and the Gaps Between Labour Law and Social Security Law', in Mitchell, R. (ed.), *Labour Law and Labour Market Regulation*, Sydney, Federation Press.

Castles, F. G. (1985), *The Working Class and Welfare: Reflections on the Political Development of the Welfare State in Australia and New Zealand, 1890-1980*, Wellington, Allen and Unwin/Port Nicholson Press.

Castles, F.G. (1996), Needs-Based Strategies of Social Protection in Australia and New Zealand, in G. Esping-Andersen. (ed.), *Welfare States in Transition: National Adaptations in Global Economies*, London, Sage: 88-115.

Castles, F.G., Vowles, J. and Gerritsen, R. (eds) (1996), *The Great Experiment: Labour Parties and Public Policy Transformation in Australia and New Zealand*, Sydney, Allen and Unwin.

Considine, M. (2001), *Enterprising States: The Public Management of Welfare-to-Work*, Cambridge, Cambridge University Press.

Dunlop, J.T. (1958), *Industrial Relations Systems*, Carbondale, Southern Illinois University Press.

Esping-Andersen, G. (1990), *The Three Worlds of Welfare Capitalism*, Cambridge, Polity Press.

Gardner, M. (1995), 'Labour Movements and Industrial Restructuring: Australia, New Zealand and the United States', in L. Turner and K. Wever (eds), *The Comparative Political Economy of Industrial Relations*, Madison, WI, IRRA: 33-69.

Giddens, A. (ed.) (2003), *The Progressive Manifesto: New Ideas for the Centre-Left*, Cambridge, Polity Press.

Hampson, I. (1997), 'The End of the Experiment: Corporatism Collapses in Australia', *Economic and Industrial Democracy*, 18(4): 539-566.

Handler, J.F. (2004), *Social Citizenship and Workfare in the United States and Western Europe: The Paradox of Inclusion*, Cambridge, Cambridge University Press.

- Harbridge, R. (ed.) (1993), *Employment Contracts: New Zealand Experiences*, Wellington, Victoria University Press.
- ILO (2004), *Economic Security for a Better World*, Geneva, ILO.
- Kelsey, J. (1993), *Rolling Back the State: Privatisation of Power in Aotearoa/New Zealand*, Wellington, Bridget Williams Books.
- Kelsey, J. (1995), *Economic Fundamentalism: The New Zealand Experiment - A World Model for Structural Adjustment?*, London, Pluto Press.
- Leung, J.C.B. (2003), 'Social Security Reforms in China: Issues and Prospects', *International Journal of Social Welfare*, 12(2): 73-85.
- Lodemel, I. and Trickey, H. (eds) (2000), *'An Offer You Can't Refuse': Workfare in International Perspective*, Bristol, Policy Press.
- McCallum, R.C., Pittard, M.J. and Smith, G.F. (1990), *Australian Labour Law: Cases and Materials*, Sydney, Butterworths.
- Mishra, R. (1984), *The Welfare State in Crisis: Social Thought and Social Change*, Brighton, Wheatsheaf Books.
- Mitchell, R. and Wilson, M. (1993), 'Legislative Change in Industrial Relations: Australia and New Zealand in the 1980's', in Bray, M. and Haworth, N. (eds), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*, Australian Centre for Industrial Relations Research and Teaching Monograph, no. 8, ACIRRT, Sydney, University of Sydney: 38-59.
- Nevile, A. and Nevile, J. (2003), *Work for the Dole: Obligation or Opportunity?* Centre for Applied Economic Research/UNSW Press, Sydney, University of New South Wales.
- New Zealand Herald (2004), 'Govt Turning Back on Successful Work-for-the-Dole Scheme Says Act', Editorial, *New Zealand Herald*, 21/1/04.
- O'Connor, J. (1973), *The Fiscal Crisis of the State*, New York, St Martin's Press.
- OECD (1986), *Flexibility in the Labour Market: The Current Debate*, Paris, OECD.
- OECD (1988), *Employment Outlook*, Paris OECD.
- OECD (1990), *Labour Market Policies for the 1990s*, Paris OECD.
- OECD (2001), *Innovations in Labour Market Policies: The Australian Way*, Paris, OECD.
- Peck, J. (ed.) (2001), *Workfare States*, New York, Guilford Press.
- Plowman, D. and Street, M. (1993), 'Industrial Relations and Economic Restructuring in Australia and New Zealand: Employers' Agendas', in Bray, M. and Haworth, N. (eds), *Economic Restructuring and Industrial Relations in Australia and New Zealand: A Comparative Analysis*, Australian Centre for Industrial Relations Research and Teaching Monograph, no. 8, ACIRRT, Sydney, University of Sydney: 91-121.

- Ramia, G. (1998), *Wage Earners and "Wage Earners' Welfare States": Industrial Relations, Social Policy and Social Protection in Australia and New Zealand, 1890-1996*, PhD Thesis, Sydney, University of New South Wales.
- Ramia, G. and Carney, T. (2001), Contractualism, Managerialism and Welfare: The Australian Experiment with a Marketised Employment Services Network, *Policy and Politics*, 29(1): 59-80.
- Ramia, G., Chapman, A. and Michelotti, M. (2005), 'How Well Do Industrial Relations and Social Policy Interact?', *International Journal of Comparative Labour Law and Industrial Relations*, 21(2): 249-279.
- Ramia, G. and Wailes, N. (2006, in press), 'Putting Wage-Earners into Wage-Earners' Welfare States: The Relationship Between Social Policy and Industrial Relations in Australia and New Zealand', *Australian Journal of Social Issues*, 41(1).
- Sandlant, R. (1989), *The Political Economy of Wage Restraint: The Australian Accord and Trade Union Strategy in New Zealand*, unpublished Master of Arts thesis, Auckland, University of Auckland.
- Sarfati, H. and Bonoli, G. (eds) (2002), *Labour Market and Social Protection Reforms in International Perspective: Parallel or Converging Tracks?*, Aldershot, Ashgate.
- Standing, G. (1999), *Global Labour Flexibility: Seeking Distributive Justice*, London, Macmillan.
- Standing, G. (2002), *Beyond the New Paternalism: Basic Security as Equality*, London, Verso.
- Titmuss, R. (1958), The Social Division of Welfare: Some Reflections on the Search for Equity, in Titmuss, R. (ed), *Essays on the Welfare State*, London, Unwin University Books: 34-55.
- Townsend, P. (1962), The Meaning of Poverty, *British Journal of Sociology*, 13(2): 210-227.
- Townsend, P. (1979), *Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living*, Hammondsworth, Penguin Books.
- Wailes, N., Ramia, G. and Lansbury, R.D. (2003), Interests, Institutions and Industrial Relations, *British Journal of Industrial Relations*, 41(4): 617-637.
- Walters, W. (1997), The 'Active Society': New Designs for Social Policy, *Policy and Politics*, 25(3): 221-234.
- Webb, S. and B. (1897), *Industrial Democracy*, London, Longmans, Green & Co.
- Webb, S. and B. (1911), *The Prevention of Destitution*, London, Longmans, Green & Co.
- Wilkinson, D., Harbridge, R. and Walsh, P. (2003), Labour Market Re-regulation and its Effects on Free-Riding in New Zealand, *Journal of Industrial Relations*, 45(4): 529-538.
- Wilson, E. (1972), *Women and the Welfare State*, London, Tavistock.

Wiseman, M. (2000), 'Making Work for Welfare in the United States', in Lodemel, I. and Trickey, H. (eds), *'An Offer You Can't Refuse': Workfare in International Perspective*, Bristol, Policy Press: 215-249.

Unions and Union Membership in New Zealand: Annual Review for 2004

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Introduction

This paper reports the results of Victoria University's Industrial Relations Centre's annual survey of trade union membership in New Zealand for 2004. The survey has been conducted since 1991, when the *Employment Contracts Act 1991* (ECA) ended the practice of union registration and the collection of official data. This year we report changes in union membership, composition, and density from December 2003 to December 2004, taking an historical perspective to compare the industrial relations periods framed by the ECA and the *Employment Relations Act 2000* (ERA).

For the year to December 2004, union membership increased by 3.6 percent (a net increase of 12,427 members). This builds on five years of growth with an overall 17 percent increase since 1999 (Crawford, Harbridge, & Walsh, 2000). Moreover, union density is 21.1 percent, slightly down from 2003 due to union recruitment not keeping pace with strong labour force growth (4.8% for wage and salary earners) over the year (May, Walsh, & Otto, 2004). Notwithstanding a recent decline in members in retail, wholesale, restaurants and hotels, the last eight years has shown consistent membership growth – this has outstripped growth in wage and salary earners (Crawford, Harbridge, & Hince, 1997). Conversely, manufacturing – which is also a large employer – has seen a steady decline in union membership over the same period. This decline is from a relatively large membership base and more than one-quarter of wage and salary earners in manufacturing remain members of their union.

Methodology

Our survey included only those unions registered as at 31 December, 2004, as per the Department of Labour website of registered unions (see www.ers.dol.govt.nz/union/registration.html and DOL Annual Report 2004). In late January 2005, each of the registered unions was sent a survey requesting membership numbers as at 31 December 2004. One hundred and four unions responded. For those that did not, details were obtained either through telephone contact, or based on last year's figures verified by the Registrar of Unions (DOL, 2004, 2005). In the time between last year's survey and the return of this year's survey, 13 unions deregistered and two new unions registered, bringing the total number of unions to 170 (see Appendix for explanation of union registration under ERA).

Trade union membership and density

Table 1 shows trade union membership and density since 1991. Union density is defined as the proportion of potential union members who belong to a union.¹ One commonly used measure of union density is based on the total employed labour force. We present this figure here, but note that

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¹ The measure of potential union members used to calculate union density varies from country to country and there is no agreed 'correct' method. Consistency in reporting so that results can be compared year on year is, though, a priority.

it includes people who are not usually potential union members (for example, employers, self-employed and unpaid family members). A more accurate measure of union density is also presented – this figure is based on wage and salary earners only.

Table 1: Trade Unions, Membership and Union Density 1991-2004

Year	Union membership	Number of unions	Potential union membership		Union density	
			Total employed labour force	Wage and salary earners	(1) / (3) %	(1) / (4) %
	(1)	(2)	(3)	(4)	(5)	(6)
Dec 1991	514325	66	1518800	1196100	33.9	43.0
Dec 1992	428160	58	1539500	1203900	27.8	35.6
Dec 1993	409112	67	1586600	1241300	25.8	33.0
Dec 1994	375906	82	1664900	1314100	22.6	28.6
Dec 1995	362200	82	1730700	1357500	20.9	26.7
Dec 1996	338967	83	1768200	1409300	19.2	24.1
Dec 1997	327800	80	1773200	1424000	18.5	23.0
Dec 1998	306687	83	1760900	1399100	17.4	21.9
Dec 1999	302405	82	1810300	1435900	16.7	21.1
Dec 2000	318519	134	1848100	1477300	17.2	21.6
Dec 2001	329919	165	1891900	1524900	17.4	21.6
Dec 2002	334783	174	1935600	1566400	17.3	21.4
Dec 2003	341631	181	1986100	1598700	17.2	21.4
Dec 2004	354058	170	2073800	1676200	17.1	21.1

Source: Household Labour Force Survey, Table 3, Table 4.3 (unpublished), HLFQ.SAA3AZ, Industrial Relations Centre Survey

Figures in columns 3, 4, 5 & 6 are different to those reported in previous years due to a population rebase by Statistics NZ in June 2004, see HLFS population rebase: June 2004 quarter, July 2004)

In 2004, total union membership increased by 3.6 percent (12,427 members). This builds on the five years of growth since the introduction of the ERA, producing an overall 17 percent increase in union membership since the nadir of 302,405 in 1999 (Crawford, Harbridge, & Walsh, 2000). For unions working to rebuild after the devastation of the ECA period, this is an encouraging sign.

Although union membership showed strong growth in 2004, it did not keep pace with the even stronger growth in the labour force generally (4.4%) and in the wage and salary earners component (4.8%). As a consequence, there was a slight decrease in union density of 0.1 and 0.3 percent respectively. Union density has now been hovering between 21 and 22 percent since 1998 (Crawford, Harbridge, & Hince, 1999), during a period of strong labour force growth coupled with high natural membership attrition (for example, through retirement and turnover). A slowing economy and slowing labour force growth – as widely predicted – coupled with the continuation of current trends in union membership growth, should see an increase in union density.

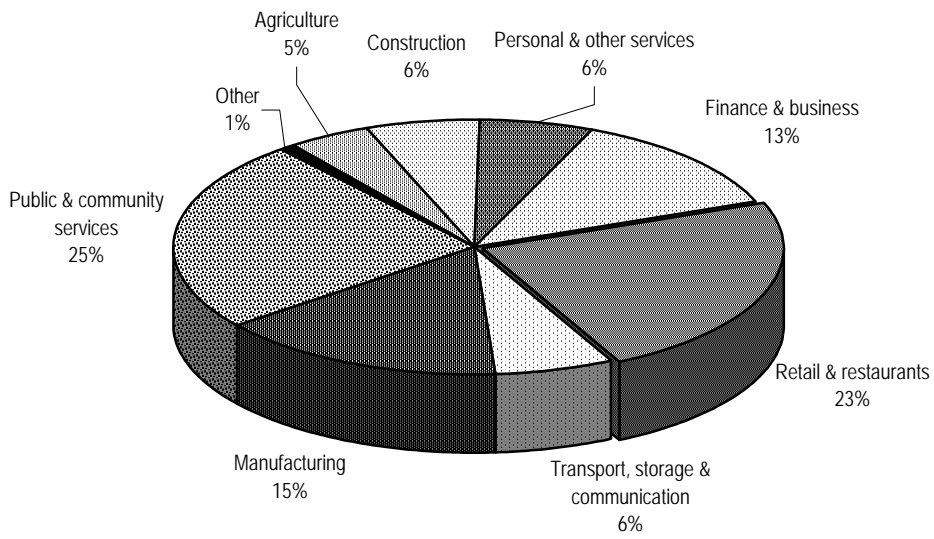


Figure 1: Distribution of wage and salary earners across industry sectors.

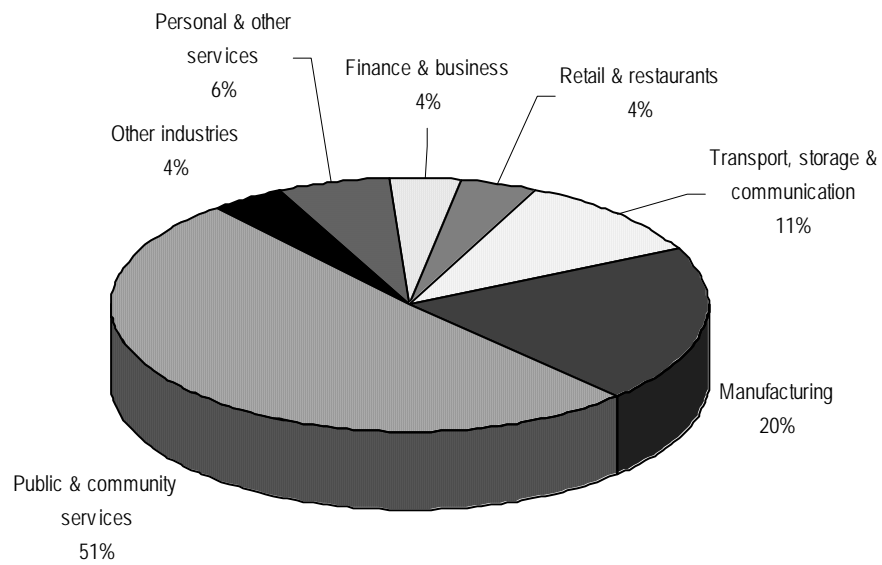


Figure 2: Distribution of union members across industry sectors.

Union membership and employment by industry

In this section we look at the distribution of wage and salary earners (see Figure 1) and of union members (see Figure 2), across industry sectors (classified according to the Australia New Zealand Standard Industry Classification). This provides a more nuanced picture of patterns of union representation in the New Zealand context.

In December 2004, the largest concentrations of New Zealand wage and salary earners were in public and community services (25%); retail, wholesale, restaurants, and hotels (23%); manufacturing (15%); and finance, insurance and business services sectors (13%: see Figure 1). Union membership was overwhelming concentrated in public and community services (51%), followed by manufacturing (20%) and transport, storage and communication sectors (11%: see Figure 2). These sectors are not major growth areas of the labour force (Statistics New Zealand, unpublished tables). In contrast, the large retail, wholesale, restaurants, and hotels sector which employs 23 percent of all wage and salary earners and is a growth area had only four percent of total union membership.

Change in union membership and employment by industry

Table 2 examines gains and losses in membership by industry and Table 3 compares these with changes in wage and salary earner employment.

Table 2: Union membership change by industry 2003 – 2004

Industry group	Dec 2003	Dec 2004	Change 2003-2004		New members breakdown %
			Number	(%)	
Agriculture, fishing, forestry etc	3656	3417	-239	-7	-2
Mining and related services	1029	1668	639	62	5
Manufacturing	71936	71504	-432	-1	-3
Energy and utility services	3763	4628	865	23	7
Construction & building services	6201	5729	-472	-8	-4
Retail, wholesale, restaurants, hotels	17849	15861	-1988	-11	-16
Transport, storage and communication	34153	38692	4539	13	37
Finance, Insurance and business services	13148	13402	254	2	2
Personal and other services	17427	19974	2547	15	20
Public and community services	172469	179183	6714	4	54
<i>Govt admin and defence</i>	33735	35048	1313	4	11
<i>Education</i>	75164	76909	1745	2	14
<i>Health</i>	63570	67225	3655	5	29
TOTAL	341631	354058	12427	3.6	100 (12427)
Membership private sector	160208	163927	3719	2.3	30
Membership public sector	181423	190131	8708	4.8	70

Source: Industrial Relations Centre Survey, 2004

When we examined changes in union membership from the previous year, the largest gains were in public and community services (particularly health); transport, storage and communications; and personal and other services. These three sectors accounted for 43 percent, 29 percent, and 16 percent, respectively, of the increase in union members. Coming off a small membership base, mining experienced very strong membership growth of 62 percent.

Conversely, in the large retail, wholesale, restaurants, hotels and manufacturing sectors, considerable losses in membership were reported. This is an important, yet difficult industry sector in which to recruit (and retain) members due to high levels of part-time and casual work, and high turnover – particularly in times of strong economic growth. Reflecting the volatility in this sector, the 11 percent loss of members in retail, wholesale, restaurants, and hotels followed a ten percent increase in the previous year.

Of concern for unions will be the ongoing decline in manufacturing, which accounts for the largest proportion of union members in the private sector. The one percent drop in union membership in manufacturing in 2004 is on the back of a three percent decline in 2003 and a one percent decline in 2002 (May, Walsh, & Otto, 2004; May, Walsh, Thickett, & Harbridge, 2003). This decline is largely attributed to the loss of unionised jobs overseas, and high attrition through retirement for this aging sector of the workforce.

Table 3: Union membership change and labour force change 2003 - 2004

Industry group	Union members Dec 2004	Change in members 2003-4 %	Labour force Dec 2004 (000)	Change in labour force 2003-2004 %
Agriculture, fishing, forestry etc	3417	-7	75.6	0
Mining and related services	1668	62	6	54
Manufacturing	71504	-1	259	4
Energy and utility services	4628	23	8.9	-6
Construction & building services	5729	-8	99.2	9
Retail, wholesale, restaurants, hotels	15861	-11	392.6	2
Transport, storage and communication	38692	13	105.5	5
Finance, Insurance and business services	13402	2	211.1	10
Personal and other services	19974	15	105.3	-3
Public and community services	179183	4	411	8
<i>Govt admin and defence</i>	35048	4	78.0	5
<i>Education</i>	76909	2	158.6	8
<i>Health and community</i>	67225	5	174.4	9
TOTAL	354058	3.6	1676.2	4.8

Source: Industrial Relations Centre Survey, 2004

In addition to industry breakdown, our survey asks unions to estimate how many of their members work in the private sector and the public sector. With the substantial membership gains in public, community and other services, most union membership growth was from the public sector (70%). Moreover, 53.7 percent of all union members are employed in the public sector – up from 53.1 percent in 2003 (May, Walsh, & Otto, 2004).

The preponderance of union membership in the public sector, which accounts for only one-quarter of all wage and salary earners in New Zealand, is reflected in a public/private divide in union density figures. We have used the Quarterly Employment Survey (QES) to estimate total employment by public and private sector. Table 4 shows that the public/private divide in New Zealand is somewhat greater than in our main international comparators (Blackwood, Feinberg-Danieli & Lafferty, 2005).

Table 4: Union Density – public and private sectors in selected countries (2005)

Country	Union density	Public sector	Private sector
New Zealand	21	66	12
Australia	23	46	17
Canada	30	70	18
UK	26	60	17
USA	13	36	8

Source: Statistics New Zealand, QES March 2005; Australian Bureau of Statistics 2005; Human Resources and Skills Development Canada 2005; UK Dept of Trade and Industry 2005; US Dept of Labor 2005; Industrial Relations Survey, 2004.

Changes in union density

Table 5: Density by industry 2003, 2004

Industry group	Approx. density 2003 (%)	Approx. density 2004 (%)
Agriculture, fishing, forestry etc	4.8	4.5
Mining and related services	26.4	27.8
Manufacturing	29.0	27.6
Energy and utility services	39.6	52.0
Construction & building services	6.8	5.8
Retail, wholesale, restaurants, hotels	5.1	4.0
Transport, storage communication	34.1	36.7
Finance, insurance & business services	6.8	6.3
Personal and other services	16.0	19.0
Public and community services	45.1	43.6
<i>Govt administration & defence</i>	<i>48.3</i>	<i>44.9</i>
<i>Education</i>	<i>51.0</i>	<i>48.5</i>
<i>Health & community services</i>	<i>39.5</i>	<i>38.5</i>

Source: Household Labour Force Survey – wage and salary earners component, unpublished, Statistics New Zealand, 2004. Industrial Relations Centre Survey

Table 5 shows the density figures by industry for 2003 and 2004. Density has been calculated by using the wage and salary earners only component of the Household Labour Force survey, thus eliminating the self-employed and employers from the calculations. Government administration and defence, education, and health and community services continue to be strongly unionised. So too do energy and utility services, transport, storage and communications, mining, and manufacturing – although there has been some slippage in the latter. Unions, however, are struggling to maintain a presence in the remaining industries which are predominantly private sector.

Changes in union membership and density 1996 and 2004

Table 6 shows that the number of wage and salary earners in New Zealand grew by 13.5 percent in the eight years between December 1996 and December 2004, while union membership grew by only 4.5 percent. Disguised within these figures, however, is an 11 percent drop in union membership between 1996 and 1999, followed by a 17 percent increase between 1999 and 2004 (Crawford, Harbridge, & Hince, 1997; Crawford, Harbridge, & Walsh, 2000).

Union membership growth has outstripped employment growth in retail, wholesale, restaurants, and hotels – large employers of wage and salary earners, experiencing sustained growth. Sectors where strong employment growth has outstripped membership growth, producing a decline in density, include mining and related services, construction and related services, and transport, storage and communication. These are relatively small industry sectors, however, so the failure of union membership to keep up with employment growth has not had too great an impact on overall density figures. Of more concern is the decline in membership in manufacturing – a large, though not rapidly growing, area of employment – and in finance and business services.

Table 6: Changes in wage & salary earners and union membership, 1996 – 2003

Industry group	Labour force Dec 1996 (000)	Labour force Dec 2004 (000)	Labour force change 1996-2004 (%)	Union membership 1996-2004 (%)
Agriculture, fishing, forestry etc	67.8	75.6	11.5	218.5
Mining and related services	2.7	6.0	122.2	45.8
Manufacturing	248.1	259.0	4.4	-9.2
Energy and utility services	12.5	8.9	-28.8	-23.9
Construction & building services	72.3	99.2	37.2	-12.9
Retail, wholesale, restaurants, hotels	321.0	392.6	22.3	49.0
Transport, storage and communication	87.7	105.5	20.3	-10.2
Finance, Insurance and business services	175.5	211.1	20.3	-47.5
*Public, community & personal services (includes some private sector employment)	417.9	518.4	24.0	19.9
TOTAL	1408.3	1598.7	13.5	4.5

Source: Household Labour Force Survey, wage and salary earners component, 1996 & 2004, unpublished, Statistics New Zealand

* Note: Public and community services and personal and other services are combined for the purpose of comparison with 1996 figures.

Gender and ethnicity

Women comprise only 46 percent of the New Zealand labour force (Household Labour Force Survey, Dec 2004 Table 3, Statistics New Zealand 2004), yet constitute 52 percent of union membership. This strong participation rate reflects women's high representation in public and community services and has been evident for the last decade with around 48-50 percent of union membership being female.

This year only 27 unions advised that they collected statistics on ethnicity. These unions covered 133,969 employees or 38 percent of total union members. Table 7 shows a higher representation of Maori and Pacific Islander peoples than their representation in the labour force would lead us to expect. Interpretation of these figures needs to be tentative as inspection of survey returns suggests that some unions may be placing employees for whom they do not have ethnicity information in the 'Other' category.

Table 7: Ethnicity by sample and labour force 2004 – where details are provided

Ethnic group	Survey sample (%)	Total labour force* (%)
NZ European:	50.4	77.7
Maori:	11.5	9.6
Pacific Peoples:	10.1	4.5
Asian:	1.5	N/a
Other:	26.4	8.2
Total	100	100

* Statistics New Zealand, Household Labour Force Survey, December Quarter 2004, table 5. No breakdown given for Asian working population

Trade union numbers, distribution of membership by size, and affiliation

Table 8 shows the number of identifiable trade unions, categorised by size, at the commencement and conclusion of the ECA period (1991 and 1999 respectively: Crawford, Harbridge & Walsh, 2000; Harbridge & Hince, 1993), and four years into the ERA period (2004). Refer to Table 1 for the number of trade unions for all years from 1991 onwards.

Table 8: Membership by union size 1991 – 2004, selected years

M'ship range	May 1991			Dec 1999			Dec 2004		
	No.	Members	%	No.	Members	%	No.	Members	%
Under 1000	4	2954	1	48	12703	4	133	19561	6
1000 – 4999	48	99096	16	22	43709	14	24	51689	15
5000 – 9999	8	64268	11	3	19669	7	5	36147	10
10000+	20	436800	72	9	226324	75	8	246661	70
Totals	80	603118	100	82	302405	100	170	354058	100
Av. Size		7539			3688			2083	

Source: Industrial Relations Centre Survey

The only clear effects of regulatory regimes on the industrial relations landscape in New Zealand are in relation to the number of trade unions. The requirement in the *Labour Relations Act 1987*, that unions have a minimum membership of 1000, set in motion union amalgamations and mergers leading to a dramatic drop in trade union numbers from 259 in 1985 to 104 in 1990. The ECA (1991) abolished registration provisions making identification of unions difficult. Estimates suggest, however, that there was a further drop in numbers during this period, varying between 58 in 1992 and 83 in 1996. Reversing this decline, the ERA's requirement that only registered unions could participate in collective bargaining, and its setting of a low membership threshold for registration at 15 members, saw the number of registered unions more than double to a high of 181 in 2003 (see Table 1 and May, Walsh & Otto, 2004).

Although the ERA has seen a growth in the number of unions, most new unions are small, enterprise or workplace based, and do not see themselves as unions in the traditional sense. Many exist solely for the purposes of negotiating a collective agreement and they tend to have extremely limited resources. Moreover, their entry has done little to change the distribution of union membership. Small unions (those with fewer than 1000 members) still only account for 6 percent of overall membership, and large unions (those with more than 10,000 members) account for 70 percent of all membership. It is these large, well established, and better resourced unions that account for most of the membership growth (May, Walsh & Otto, 2004).

Peak body affiliations

Only 38 of the 170 registered unions are CTU affiliates (see Table 9). However, with 310,451 members, CTU affiliates have 88 percent of total union membership and represent 17 of the 20 largest unions in New Zealand. This proportion has been consistent throughout the period of the ERA. Moreover, in the year to December 2004, CTU affiliated unions increased their membership by 13,011. In contrast, 584 members were lost from non-affiliated unions.

Table 9: NZCTU affiliation 1991 – 2004

Year	NZCTU Affiliate unions	Members	Percentage of total membership in CTU affiliates
1991	43	445116	86.5
1992	33	339261	79.2
1993	33	321119	78.5
1994	27	296959	78.9
1995	25	284383	78.5
1996	22	278463	82.2
1997	20	253578	77.4
1998	19	238262	77.7
1999	19	235744	78.0
2000	26	273570	85.9
2001	32	289732	87.8
2002	34	293466	87.7
2003	36	297440	87.1
2004	38	310451	87.7

Source: Industrial Relations Centre surveys

Discussion

The union movement has been successful during recent years in arresting the precipitous 1990s decline in both membership and density. The number of union members has increased consistently over the past five years, while density has remained at a stable, albeit historically low, level. While membership growth has been slightly outstripped by overall labour market growth within an expanding economy, the widely-predicted economic slowdown could well see an increase in union density, as labour turnover declines and fewer new casual or short-term jobs are created in such lowly-unionised areas as retail, wholesale, restaurants and hospitality. Where people have fewer alternative labour market opportunities, they are more inclined to remain in their current positions – a situation that should be more conducive to union membership. Unions might also seek to address the problem of retention directly, through making it easier for individual employees to retain their union membership, while moving between jobs.

The legislative environment established by the *Employment Relations Act 2000*, and its subsequent amendments, has no doubt contributed to this relative success for the union movement – a situation that is likely to remain reasonably favourable for unions in the foreseeable future. At the time of writing, it has been confirmed that Helen Clark will continue to be Prime Minister in a Labour-led government. In such a context, a dramatic shift from the ERA's moderate support for collective bargaining, union membership and good faith in the employment relationship should continue.

Major challenges remain, however. Unions continue to be handicapped by the persistence of free-riding: despite legislative encouragement for collective bargaining, many non-union members continue to benefit from the flow-on of pay and conditions previously negotiated by unions. The amendments to the ERA in December 2004 may prove at most a minor impediment to the continuation of this practice. The low incidence of both union membership and collective bargaining in the private sector also stands out as an important issue: the public sector has increasingly emerged as the contemporary union heartland, while some traditional private sector areas of union strength (most notably, manufacturing) have exhibited a decline. There are signs, though, that successful campaigns in 2005, such as the EPMU's 'five in 05', have attracted considerable momentum and generated greater support for unionism in the private sector. In short, therefore, the overall trend is reasonably encouraging for unions and the labour movement, but still the great majority of New Zealand's employees remain non-unionised. The reinvigoration of the union movement has gained some strength, though, with the NZCTU and several key unions playing significant roles.

References:

Australian Bureau of Statistics (2005), catalogue 6310.0 *Employee Earnings, Benefits and Trade Union Membership*. Canberra, ABS.

Blackwood, L., Feinberg-Danieli, G., and Lafferty, G. (2005), *Employment Agreements: Bargaining Trends and Employment Law Update 2004/2005*, IRC, Victoria University of Wellington.

Crawford, A., Harbridge, R., and Hince, K. (1997), Unions and Union Membership in New Zealand: Annual Review for 1996. *New Zealand Journal of Industrial Relations*, 22(2): 209-216.

Crawford, A., Harbridge, R., and Hince, K. (1999), Unions and Union Membership in New Zealand: Annual Review for 1998. *New Zealand Journal of Industrial Relations*, 24(3).

Crawford, A., Harbridge, R., and Walsh, P. (2000), *Unions and Union Membership in New Zealand: Annual Review for 1999*, Working Paper 11/00, IRC, Victoria University of Wellington.

Department of Labor (2005), *Union Members Survey*, Washington D.C, Department of Labor.

Department of Trade and Industry (2005), *Trade Union Membership 2004*, London, DTI.

Department of Labour (2004), *ERA Info*, Volume 16, July 2004, DOL.

Department of Labour (2005), *Unpublished data*, DOL.

ERS Website www.ers.dol.govt.nz/union/registration.html

Harbridge, R., and Hince, K. (1993), Unions and Union Membership in New Zealand 1985 – 1992. *New Zealand Journal of Industrial Relations*, 18(3): 352-361.

Human Resources and Skills Development Canada (2005), *Union Membership in Canada – 2004*, Ottawa, HRSDC.

May, R., Walsh, P., Thickett, G., and Harbridge, G. (2003), Unions and Union Membership in New Zealand: Annual Review for 2002. *New Zealand Journal of Industrial Relations*, 28 (3): 314-325.

May, R., Walsh, P., & Otto, C. (2004), Unions and Union Membership in New Zealand: Annual Review for 2003. *New Zealand Journal of Employment Relations*, 29 (3): 83-96.

Statistics New Zealand (2002, 2003, 2004), *Household Labour Force Survey*, unpublished reports.

Statistics New Zealand (2005), *Quarterly Employment Survey*, March 2005.

Appendix

The Employment Relations Act and Trade Union Registration

The objects of the Act with respect to the recognition and operation of unions are:

- To recognise the role of unions in promoting their members' collective interests
- To provide for the registration of unions that are accountable to their members
- To confer on registered unions the right to represent their members in collective bargaining
- To provide representatives of registered unions with reasonable access to workplaces for purposes related to employment and union business.

In pursuit of these objectives, the ERA establishes a union registration system, and grants registered unions bargaining rights together with rights of access to workplaces (specified in sections 19-25). To gain registration, a union must have more than 15 members, and provide a statutory declaration that it complies with the requirements of s14 of the Act regarding rules, incorporation and independence from employers. The Act requires the statutory declaration to stipulate that the union is 'independent of, and is constituted and operates at arm's length from any employer' (s14(1)d). The Registrar of Unions may rely on the statutory declaration to establish entitlement to registration. Only registered unions may negotiate collective agreements, and collective agreements apply only to union members whose work falls within the agreement's coverage clause, and to new workers whose work falls within the agreement's coverage clause for the first 30 days of their employment.

Book Review

Erling Rasmussen (ed.), *Employment Relationships: New Zealand's Employment Relations Act*. Auckland, Auckland University Press, 2004, 210 pages.

Although New Zealand employment relations has gone through extreme changes over the past 20 years, there have been few scholarly commentaries on the debates underpinning the changes and their impacts. Therefore, it is good to see that there is an edited book entitled 'Employment Relationships: New Zealand's Employment Relations Act'. It reviews the development and operation of employment relations reforms in New Zealand since 1999, with the Employment Relations Act 2000 (ERA) as the book's centre piece. This book follows a similar formula to the Raymond Harbridge's edited 'Employment Contracts: New Zealand Experience' from 1993 which was written following the introduction of the Employment Contracts Act 1991. As the Harbridge book, this book provides a number of different angles and allows, therefore, for a variety of opinions on what was/is a controversial change to employment relations.

There are thirteen chapters, one of which provides the reader with an overview. The contributors cover policy formation, the role of the media, collective bargaining, unintended consequences of the ERA, good faith bargaining, role of the institutions, and the reactions by employers, employees and unions to the ERA. The final chapter sets the ERA in a wider public policy context and poses the question: where to from here?

While the book provides a comprehensive coverage of the Act, its consequences and endeavours to anticipate the final draft of the Employment Relations Law Reform Bill, it was written prior to its passing and some of the assertions will need to be read with this in mind. However, this does not detract from the overall intention of the book which shows that many of the predictions surrounding the introduction of the ERA have not come to fruition.

The first chapter by the former Minister of Labour, Margaret Wilson, sets the tone for the rest of the book by giving a detailed account of the employment relations policy of the Labour-Alliance Government. The author outlines the rationale for the Act which was to reintroduce collective bargaining and to once again accommodate the role of unions in the bargaining process. She also emphasises the need to facilitate harmonious relationships between employers and employees with good faith underpinning this arrangement and providing the cornerstone of the Act.

The chapters on collective bargaining, employees and unions as well as those covering legal matters indicate that, in spite of the tenet of the Act, there has been no significant uptake of collective bargaining by workers in the private sector and that individual bargaining is still the preferred option. In fact, the chapter on collective bargaining indicates that there has been an unanticipated reaction to the Act: collective bargaining has declined as many non-union collective contracts have turned into individual employment agreements. This is explained partly by employers' approach to bargaining. Research undertaken by the Department of Labour shows that employers were aware of the requirements under the ERA but the way that they

handled employment relations issues had not changed since the implementation of the Act.

The three chapters that look at unions note that, to a large extent, the union movement is still struggling to gain recognition with private sector employees. This is especially so in small to medium enterprises where most employees are not experiencing the benefits of the ERA. The issue of 'free-riding' – addressed by the 2004 Amendment Act – has clearly been a problem for unions as employers have tended to pass on union-negotiated improvements to non-union employees.

The chapters dealing with legal matters also highlight how the good intentions of the Minister have been unsuccessful in moving the employment relationship from contractual to a more humane relationship. Furthermore, the contributors arrive at the same conclusion, albeit from different routes, namely that embarking on abstract concepts as the basis of legislative reforms are fraught with difficulty. The chapter on good faith shows that the predicted avalanche of court cases has turned into the total opposite: there is a lack of good case law on the practical application of the concept of good faith. In that sense, the chapter called 'the law moves in mysterious ways' is very appropriate and it does indicate that there are many, complex influences on New Zealand employment law. So far, however, the new employment institutions appear to have worked reasonably well and the analysis of institutions comes to a straightforward recommendation: don't mess with success.

The last chapter looks at the wider agenda for employment relations and social equity in New Zealand and the ERA is seen as a key component of this 'social democratic' policy drive. The author suggests that following the recent wave of employment relations reforms, the coming years will prove the lull after the storm. The major reforms in employment relations have been done and only fine-tuning will be required to firmly embed an inclusive employment relations system in New Zealand. Whether this is a correct prediction, only the future can tell.

Overall, this book is a much needed addition to the rather limited research on recent changes to employment relations legislation. It also presents a number of salient trends and new information. It clearly illustrates why the ERA was considered so controversial: the chapters by employer and union representatives (the viewpoint of Business New Zealand and Council of Trade Unions respectively) come to very different evaluations. Business New Zealand argues that employers' right to manage has been inhibited by the ERA and it will impact negatively on business performance while Council of Trade Unions argues that this is a modest piece of legislation and stronger, additional measures are necessary to move the labour market and the economy forward. Finally, the book's particular strengths are that it can be read by a wider audience - academics, students and the general public - and that it has identified and discussed the complex issues that surround the subject of employment relations in a comprehensive and accessible manner.

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