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Labour's Labour Relations

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Employment law changes are a certainty should a Labour-led government be formed later this year. Ever since its enactment in 1991, Labour has held consistently that the Employment Contracts Act should be replaced. That view was reflected in detailed policy for the 1993 and 1996 elections. Moreover that issue was a significant stumbling block in our negotiations with New Zealand First just over two years ago.

Our 1999 policy has not yet been released but it will be consistent with our position in the previous two elections.

The Employment Relations Act is the working title of Labour's replacement legislation.

It seeks to bring New Zealand within Conventions 87 and 98 of the International Labour Organisation that concern the application of the principles of the right to organise and the right to bargain collectively.

The Employment Relations Act will promote collective bargaining, and freely allow for individual bargaining in addition or instead. Unions will negotiate collective agreements. Any employee can join a collective agreement by joining the relevant union. Union membership will remain entirely voluntary.

A union will be required to be democratic and accountable. Unions will, subject to certain constraints, have improved rights of access to workplaces to discuss union matters or recruit new members.

The Act will also extend rights to leave to attend two union meetings a year, provide for a compulsory agreement ratification procedure, reduce the list of essential industries to those that are really essential, mandate mediation procedures in agreements, and permit rules maintaining union membership during the initial stages of bargaining.

Importantly, the legislation will require that the relationship between workers and employers are governed by good faith. The Act will set out that good faith bargaining includes an obligation to meet and consider the proposals of another party, to provide information necessary for the purpose of bargaining, and so on. The duty to act in good faith will not imply a duty to settle a collective agreement.

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The legislation will contain measures which allow for strikes (and lock outs) in pursuit of multi-employer agreements, though only under prescribed conditions the most important of which is that a majority of affected employees at each site must support such a move.

Moreover an employer wishing to promote only one collective contract for his or her enterprise may notify workers of that intent, again only under prescribed conditions.

In other respects the limits on strikes and lockouts will remain substantially as they are now.

The essential features of current mediation and adjudication procedures will be retained, and universally available. The Employment Court will remain. At an operational level the current delays to adjudication of about one year will need to be addressed. At present justice is being denied by being delayed.

That is a potted summary of the main points of the main legislative change we propose. Our 1996 policy runs to many pages and is freely available on request to anyone who wishes to know more. Alternatively the Workplace Relations Bill, a document released by the New Zealand Council of Trade Unions last year, is a rough approximation of our 1996 policy but translated into statute format. Many people may find it a more accessible document for that reason. However it is not our document. We did not write it nor were we, to my knowledge, consulted on it. We have warmly endorsed it as a useful addition to the debate, and as a good "first cut" at what Labour's Bill may look like. But do not assume that the Workplace Relations Bill is, or will become, our policy in every detail. It is not, and will not.

Readers will have discerned our general approach. We intend to promote, or give primacy to, collectivity whilst freely allowing for the rights of those who wish to operate outside a collective. We intend to both actively promote and legally mandate good faith bargaining in respect of all parties. We are allowing a return to strikes in favour of a multi-employer agreement. However we fully anticipate that enterprise bargaining will continue to be the norm. We hope and anticipate that a collective approach will grow in New Zealand work places. We will ensure that employees will be able to freely choose which union best represents their overall interests.

What Labour's policy is not

It is appropriate to pause here and state what Labour's policy is not. Contrary to written assertions from the Employers Federation, Labour will not return, directly or indirectly, to compulsory unionism, compulsory arbitration or national awards.

The Employers Federation claims that, indirectly, all three will result. Their logic is tenuous, but it is worth exploring briefly, before rebuttal.

Their claim of compulsory unionism is difficult to understand. It appears to be based both on an imaginative interpretation of Alliance policy, plus a conclusion that that policy would dominate in a coalition Government. They have drawn a fancifully long bow. Rebuttal seems unnecessary. For the sake of clarity, Labour's policy is that any union which seeks to coerce or influence any worker at any workplace to join that union will be breaking the law, just as they would break s.6 of the Employment Contracts Act now, or cl.6 of the Workplace Relations Bill.

Their second claim, that of compulsory arbitration, appears to be based on a genuine misunderstanding as to the role of the good faith bargaining provision. Our policy will allow any party to trigger mediation to address an allegation that good faith bargaining provisions have been broken. Mediation will be aimed at resolving process issues, not judging the outcome. Should mediation fail, and one party takes another party to court, the question will still be about process not outcome. Under Labour no court will be able to determine an outcome; the judgement and the sanctions apply to process only.

The good faith bargaining provisions will therefore not lead to compulsory arbitration.

The third issue, that of national awards, has an air of mischief about it. The Employers Federation logic is that, given Labour's intention to return the right to strike, a situation may arise whereby a union may represent workers on all sites in New Zealand of a particular industry and that that may result in a strike for the entire industry in favour of a claim which therefore is, more or less, a national award.

This construct ignores several crucial facts. The first is that unions have no right of coverage. Unions must establish their presence in the labour market site by site. Put bluntly, poaching is allowed for. Secondly there will be no provision to register national awards. The concept will not be found in the law. Thirdly, the reason to allow strikes in favour of multi-employer agreements is to return some of the internationally normal bargaining power to workers. Wages in supermarkets, rest homes or forecourts will no longer be as easily bid down by an employer for whom labour costs are the main competitive advantage, like it or not, that he or she has available. Under Labour, should an employer wish not to join a multi-employer agreement, he or she is free to offer wages and conditions that achieve that outcome.

One final point on this central legislation. Labour aims to introduce it quickly. Our hope is to have it into the House early in our first year. It will go to a Select Committee. The Select Committee process will proceed at a reasonable pace. It will not be hurried. Our hope is to provide legislation that is sufficiently well balanced, fair and devoid of ideology that it will attract wide enough support to stand the test of time.

Beyond bargaining: a minimum code

Industrial law embraces many other Acts as well. Too many. They include the Holidays Act, the Waitangi Day Act, the ANZAC Day Act, the Wages Protection Act, the Parental Leave and Employment Protection Act and the Equal Pay Act. Labour anticipates a legislated minimum code of wages and conditions which will progressively amalgamate and update this legislation into one Act, eliminating the tensions and contradictions that currently exist to an extent between them. A working title might be the Minimum Code of Employment Rights Act.

The minimum wage will be reviewed annually, as it is now, but by way of tripartite negotiation. We eschew the present system whereby the Minister seeks advice, then decides alone. Labour's opening negotiating stance will be to raise the minimum wage significantly. We are very aware of the arguments concerning job losses but our view is that at seven dollars per hour those arguments have little resonance. We also propose changes to the age of eligibility and the youth minimum rate.

Importantly there are no objects or criteria on the statute books for determining what the minimum wage should be. Labour will address that so that the history of periods of nominal freezing followed by periods of rapid catch up is replaced by a future of relatively regular adjustment.

The Holidays Act has just creaked, unconvincingly, through another festive season. Labour intends to amend it. The July 1998 announcement by the Government, not yet enacted and not likely to be now that the coalition has collapsed, provides a satisfactory starting point for such an amendment. Specifically we will address various shortcomings so that all full time workers can access 11 paid public holidays a year. Labour is clear that the prospect of the sale of any holiday entitlement will not be entertained. Where an employee works a public holiday that decision will attract a legislated minimum payment plus a day in lieu.

The minimum code will be upgraded progressively as we resolve what are safe and fair hours of work, including breaks. We anticipate something similar to the European Union directive on working time, and the various exceptions to it. The minimum code will be upgraded to ensure employee access to their employment agreement, records, certain rights on termination (including a written record of employment), and so on.

Labour's 1996 policy was to provide six weeks taxpayer funded paid parental leave, as a first step. But the introduction of Laila Harré's member's bill has forced the Government to address this issue and it is likely the Government will legislate for some parental leave in the forthcoming budget. The issues we currently confront include the six week versus twelve week debate and the issue of who pays; the taxpayer or the employer. However the deadline for this article predates both the forthcoming budget and the report back of the Select Committee considering the private member's bill. Labour will review its policy position following the passage of both these events.

Labour has considerable concerns about occupational safety and health. Work place injuries and fatalities are rising. The potential of the Health and Safety in Employment Act has not been realised. Labour will amend that Act to ensure worker involvement in the development of work place health and safety policies. The current Act is couched in language that infers that those policies are delivered to workers, not with them. The amendments will provide for a wider range of tools to better manage health and safety issues. Examples include the provisional improvement notice systems, access of worker representatives to health and safety information held by employers, access of worker representatives to relevant training through paid education leave, and provision for the establishment of safety committees which in turn will have access to relevant information.

A members bill, in my name, seeks to remove OSH's monopoly on prosecution; that can therefore be anticipated as a further policy shift when our 1999 policy is released.

That concludes a summary of the legislative changes Labour is anticipating, which was one of the precise briefs for this article. It has not covered non-legislative policy changes and it has not attempted to describe related policy such as employment policy, equal employment policy, industry training, industry development, ACC and the like.

But, having outlined these legislative changes, the question arises, why?

The bases for Labour's policies

Labour believes that we need to build an economy and a society based on skill, new technology, constant innovation, customer focus, adding value to products and services; an economy and a society that is progressively more knowledge based. We believe in a high wage, high sustainable growth and high skill future.

So, we suspect, do most people. Such vision statements are frequently made, and agreed to. Such a vision has widespread acceptance in our society.

Labour holds the view that a deregulated, cost minimising approach to the labour market is antithetical to that vision. We say that if labour is viewed as another input, another cost, another chattel, then that vision will not be approached – much less realised.

We hold the view that a culture in which workers are not valued is also a culture in which innovation cannot optimally flourish, in which productivity gains will not be optimally attained and in which skills are neither sought nor offered to an optimal degree. It is worth pausing here to look not at Labour's legislation, but the legislation we will be replacing.

When the National Party released its industrial relations policy nine years ago, spokesman Bill Birch declared that "the challenge New Zealand faces in industrial relations is to create an environment that delivers high productivity, high income and high employment".

There is no fairer way to measure the effect of the Employment Contracts Act than by National's own oft-repeated criteria - high productivity, high income and high employment.

The first criterion is productivity, and the news is not auspicious for the Government. The best labour productivity data comes from the Reserve Bank series, begun in 1987. In the five years from 1987-1991 inclusive, labour productivity rose by 1.5 percent each year - not a bad result. In the eight years from 1991-99 inclusive ('99 being an estimate), labour productivity rose by only 0.5 percent each year - not a good result.

The second criterion is income. As a general rule, high incomes have risen and low incomes have fallen. Executive salaries are up; overtime is down, or it doesn't exist. Overall our nation's standard of living has increased in absolute terms, but it continues to decline relative to the rest of the western world. In that sense the Employment Contracts Act has failed to ignite New Zealand's still sluggish economy.

However I would argue that the more important question is whether the rich-poor gap has widened. It has.

The best measure of the rich-poor gap is known as the Gini co-efficient. A perfectly equal society has a Gini co-efficient of zero; a perfectly unequal society scores one. Unfortunately there is to my knowledge no statistical data series to separate the effects of the Employment Contracts Act from the 1991 benefit cuts or for that matter the restructuring undertaken by the previous Labour Government.

However the gap in New Zealand has widened, from 0.26 in 1985 to 0.33 in 1995. More recent data is not available, nor is data from 1991, the year the Employment Contracts Act was introduced.

But the data available shows that we have become a less equal nation than, say Australia or Canada, and are now very nearly as unequal as the USA, the most unequal western nation of all. In fact our jump from 0.26 to 0.33 is the highest movement of any nation in either direction in the entire Western world. Undoubtedly the Employment Contracts Act has contributed to that.

The third criterion, employment, is also bad news for the Government. Seasonally adjusted unemployment is the best measure. My data series begins in December 1985. In the five and a half years before the Employment Contracts Act was introduced unemployment averaged 5.8 percent. In the eight years since it has averaged 8.0 percent. The Act therefore fails on this count.

Unemployment is currently falling, to 7.2 percent in the figures released earlier this month. That is a welcome trend, but it masks another, unwelcome trend; in the past year 19,000 full-time jobs have gone, to be replaced by 30,000 part-time jobs.

Our labour market is being casualised. Real jobs are being replaced by McJobs. Part-time work is only part of the casualising trend (indeed part-time permanent work is not strictly casualised work at all). The rest of the trend is to be found with temporary work, short-term labour contracts, split shifts, wholly dependent contractors, "permanent" temporary workers and so on.

Some of these trends predate the Employment Contracts Act, such as the increasing participation of women opting for part-time work. However most of the trends do not predate the Act; rather they are caused by it. The Employment Contracts Act, far from increasing the proportion of permanent full-time jobs, is destroying them. Many people now have two or three McJobs running at once. Many others go to work only when the phone rings, and not otherwise.

These trends are insidious. The Government refuses to measure them; no firm statistics exist, except for part-time work. But for anyone who keeps an eye out, the evidence is swirling everywhere.

The effects on household security are serious. Getting a mortgage becomes very difficult. There can be no certainty of repayment. Bread winners find themselves on the dole, off the dole and on the dole again as each month passes, and they spend a lot of time at Work and Income New Zealand trying to sort out their endlessly changing circumstances.

On the third criterion of employment, the Employment Contracts Act therefore fails twice. Unemployment is higher after the Act was passed than before it, and the labour market has become more uncertain and casualised. In short both unemployment and under-employment are up.

Despite the failure of labour deregulation to deliver on its architect's own three criteria, the Government refuses to acknowledge failure. On the contrary. In the course of 1998 we witnessed an attempt to head further down the deregulatory pathway. Holiday entitlements were to become saleable, in the certain knowledge that many such sales would in effect be compulsory. Employer freedom to hire and fire was to be enhanced significantly, in the certain knowledge that the already asymmetric balance of influence would tip further in the employers' direction. The Employment Court was to be removed, in the certain knowledge that the District Court pathway would further entrench the contractualist approach to the sale and purchase of labour.

In the event, all these initiatives have, so far, failed. But they serve to illustrate the forlorn and empty prospect of building a modern knowledge-based society whilst simultaneously investing the franchise on wisdom with one group of people alone, employers.

Of course most New Zealand enterprises do not operate according to that ideological paradigm, or anything approximating it. Most New Zealanders are good employers and good employees. Most work places are functional and healthy; despite the prevailing theory, not because of it.

But promoting a legislative approach that is very often observed in the breach is itself dysfunctional, or plain silly. That is why there must be change. The other reason is the regrettable reality that many New Zealand workers and their families suffer badly from the low pay and insecurity that now exists in their jobs.

Labour's vision for our economy and our society, shared by many, is dependent on a more balanced approach to industrial relations. It is an investment model rather than a deregulatory model. It is a model which actively promotes partnerships throughout the economy. It combines enterprise with equity. It places emphasis on skills development, capacity building and a valued, valuable work force. It asserts that health and safety is a smart investment not a vexatious hurdle. It places a premium on motivation, openness, co-operation.

The investment model is already in place in many enterprises. It is neither a new nor radical idea. Yet it struggles under the prevailing ethos. Labour is well aware that a change to industrial relations law does not of itself force a change in industrial relations culture.

But it does promote and enable such a change. More to the point it removes an impediment. That impediment is the deregulatory model and its various legislative expressions. That model is doing our nation no good at all. It is time we eased forward.