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Working to curtail rights

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The plan by the Commonwealth Government to take over the states' industrial relations systems is the most serious challenge to the principles of balance and fairness that Australian employees have faced in a century.

The Commonwealth plans to use the corporations power in the Constitution to do this. Use of this power would give the Commonwealth the capacity to bypass independent tribunals and replace them with administrative controls by the Government.

The system of conciliation and arbitration could – and eventually probably would – be abolished.

At present the Commonwealth Parliament is constrained when legislating on industrial relations by the existing conciliation and arbitration power. The Parliament simply cannot direct the AIRC on what decisions it must reach. The tribunal maintains autonomy from the legislative and administrative arms of government and so makes its decisions in good faith, even if the parties, or the Commonwealth, do not always agree with them.

Use of the corporations power would eliminate this constraint. Instead, new Commonwealth agencies could directly regulate industrial relations matters in corporations, and do so under direction from the minister.

In these circumstances it would be unlikely that Commonwealth agencies could be relied upon to regulate industrial relations matters impartially and effectively. This is borne out by examples of agencies recently established by the Commonwealth.

For example, the Office of the Employment Advocate is charged with both the impartial task of regulating individual contracts known as Australian Workplace Agreements, and the very partial task of promoting them. This is a direct conflict of interest.

On the one hand, the OEA is meant to ensure AWAs do not disadvantage employees. On the other hand, it actively encourages employers to use AWAs that abolish penalty and overtime rates of pay, sometimes without even offsetting increases in base pay. Indeed, 20 per cent of the OEA's budget (i.e. $3.2 million a year) is for the promotion of AWAs.

The OEA also is meant to protect employees' freedom of association under the Workplace Relations Act.

An impartial body charged with defending freedom of association would work tirelessly to prevent AWAs being used to de-unionise workplaces. Yet because of its role in promoting AWAs, the OEA has taken virtually no action against firms using AWAs to de-unionise.

Thus the OEA has been silent in many Federal Court cases when it was claimed AWAs were being used to de-unionise workplaces on the waterfront, in banking and in mining.

Similarly, the Commonwealth body established recently to supervise industrial relations in the building industry – the Royal Commission into the Building and Construction Industry, or the Cole commission – has been vigorously and widely criticised, by groups ranging from unions to lawyers and conservative political commentators such as Alan Jones, for being politically biased and lacking impartiality in its dealings.

These experiences raise grave doubts about whether any independent bodies established

by the Commonwealth to regulate industrial relations through the use of the corporations power, could be relied upon to be truly independent. There is a real danger that the independent umpires will be replaced by the partisan players or coaches.

Proposals to appoint the head of Treasury – who is directly responsible to the Treasurer – to a new wage-fixing body are just another example of how the "umpire" would be replaced, in this instance, by the "assistant coach".

Our concern is not confined to a Commonwealth government of one political persuasion. Once a partisan standard of behaviour is established, it is far easier for an incoming administration to simply change the direction of partisanship, than to introduce a new system based on impartiality.

But perhaps most importantly, the Commonwealth's proposal reduces the capacity of the system to check abuses of power. By giving a much greater proportion of industrial relations power to the Commonwealth, the likelihood of extremist policies favouring, or disadvantaging, one side or the other in the employment relationship is increased substantially.

This is especially so when a Commonwealth government has control of both houses of parliament. The system of checks and balances in the federal system of government is designed in part to protect against abuse of power by the central government.

The unilateral assumption of all power concerning industrial relations in corporations would represent a serious concentration of power that would no doubt have been seen by the framers of the Constitution as dangerous.

In short, federal use of the corporations power to seek to directly control industrial relations fails when tested against the criteria of fairness and in particular the protection of ordinary citizens from potential abuses of power. It would be substantially inferior to the present system.

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