Australian unionism in a decollectivised environment

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ABSTRACT

This paper examines the state of unionism in a 'decollectivised' employment relations environment and finds that on almost every conceivable measure, union power has declined. The paper addresses the practical impact of changes in the environment for unionism and finds that unions in 2004 are doing 'more' with 'less' than they were in the late 1980s. However, an examination of key aspects of unionism during the late 1990s and early 2000s, suggests that while the condition of Australian trade unions is not healthy, the situation is far from terminal.

Introduction

During the past fifteen years there has been enormous change in the regulation of work and industrial relations in Australia. While this process has often been termed 'deregulation', this paper argues that 'decentralism', 'decollectivism' and 'individualisation' are more useful concepts for explaining the nature and outcomes of this change. Australian unions currently face an environment where it is harder for them to unions to organise, to bargain and to effectively represent workers. Legislative change alone can not explain the shift in the environment in which unions operate and the paper argues that this has been part of a broader process where employers have sought to assert their 'right to manage' and where the federal government has encouraged them to do so. Despite the undeniably hostile environment for unionism in this country, Australian unions have attempted to reorient their practices through an activist strategy emphasising renewal at the workplace level.

Re-deregulation, decollectivisation and individualisation

While 'deregulation' was the stated aim of the critics of the centralised industrial relations system in the mid-1980s and early 1990s, it certainly was not the outcome of the changes to industrial legislation and policy (Dabscheck 1993). It is true that regulation of work by external institutions like the Australian Industrial Relations Commission (AIRC) and through formal arrangements like awards has been diminished; but this has clearly not been replaced by a void. Instead, as a number of industrial relations researchers have argued, the workplace and labour market has been 're-regulated' through internal, informal mechanisms and the assertion of managerial prerogative (ACIRRT 1999; Callus and Buchanan, 1993; Ronfeldt and McCallum, 1995; Watson *et al.*, 2003). Perhaps more useful concepts are those of 'decentralism' and 'decollectivisation'. These terms allow us to better understand both the processes which have been associated with changes in the regulation of industrial relations during the past fifteen years as well as to better appreciate the implications of these changes, issues which are addressed in following sections of the paper.

Great changes to the industrial relations system began in the late 1980s. The process got under way with the 'managed decentralism' of the second tier system, where representing the first time that wages and conditions of employment were able to be negotiated directly by employers and their associations and unions (McDonald and Rimmer, 1989). This system maintained a clear role for the industrial tribunal, relied upon awards as the instrument through which flexibility could be achieved and, importantly, 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. 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 in the form of Enterprise Flexibility Agreements. This was the first time that unions were barred from participation in any form of agreement in the federal jurisdiction and, as we shall see, it would not be long before they would be further marginalised.

The most radical industrial relations 'reforms' of the past fifteen years were ushered in after the election of the Howard government in 1996. Speaking at a Young Liberals' Conference just prior to his election as Prime Minister 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 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). Another effect was that it signaled the diminution of formal and external regulation of work and workplaces through awards and the intervention of the AIRC. The workplace was now clearly the locus for regulation. Further, it enshrined the 'individualisation' of employment relations.

Decentralisation and later decollectivisation and individualisation of the industrial relations system had powerful impacts upon trade unions, and arguably none of these changes has had a positive effect. But how do we quantify the impact upon unions? The following section of the paper looks to a number of indicators of union power to argue that, whatever the measure; unions are in worse shape in 2004 than in the 1980s.

Indicators of union power in a decollectivised environment

It is undeniable that union power has declined significantly during the past fifteen years. Some indicators of this power are quantifiable including: union membership and density levels; levels of industrial disputation; 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, even a cursory analysis of the performance of unions in these areas suggests that the Australian union movement is in crisis.

The most obvious indicator of union strength is the level and proportion of union membership. ABS membership figures released in March 2004, show that in August 2003 membership stood at 1,866,700 and in three of the four past years aggregate membership has grown, albeit marginally. However, in the longer-run the trend in membership has been against unions. From the early 1990s when membership stopped growing, to 1999 when membership slipped below 2 million for the first time in many years, the picture was bleak for unionists (ABS, 6310.0)

Looking to union density, the proportion of wage and salary earners who are members of unions, 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; the first time since the depression of the 1930s that this had been witnessed. By 2000 less than a quarter were unionised and in 2003 the figure was lower still. It was not just the broader decline in density which was a real problem for trade unions. Density deteriorated in almost every industry and occupational classification, across both private and public sectors, among full-time, part-time and casual employees, among all age groups and for both males and females. It is no exaggeration to describe the current position of Australian unions in relation to membership as a crisis.

Another traditional indicator union power is the level of industrial disputation. Statistics in 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). 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 entitlements, to prevent

legislative change or to ward of anti-union actions by employers, rather than to make real gains for workers (Wiseman 1998, Cooper 2003, Gorman 1996).

The bargaining reach of unions has declined markedly during the past fifteen years, one indicator of this is the extent to which collective bargaining determines the wages and conditions of Australian workers. The Department of Workplace Relations and the Office of the Employment Advocate (DWR and OEA) suggest that between 1990 and 2000, award coverage declined significantly. In 2000, 23.2 percent of workers were paid under an award, compared to a figure of 67.6 percent in 1990 (DWR /OEA 2002). Campbell (2001) has used similar figures to estimate what he calls the 'collective bargaining coverage rate'. He suggests that in 1990 this stood at 80 percent. By comparison, he argues that the figures from a decade later point to a 'collapse' in collective bargaining.

Of course it is difficult to discuss increased managerial power to determine workplace outcomes without discussing some of the issues discussed earlier in the paper. Clearly the collapse of union membership and the active dismantling of the traditional structures and processes of collective bargaining are both intimately related to increasing managerial prerogative. Similarly, the decline in union power evidenced in declining density and industrial disputation are interconnected with the rise in managerial power and the 'decollectivist' and individualist' environment in which unions operate.

Union action in a decollectivised environment

Australian unions are reeling from the effects of legislative change which have made it harder for them to organise, bargain, represent workers, regulate employment and to take industrial action. This section of the paper briefly examines the practical impact of recent changes and the impact this has had upon the work of unions. In particular it examines the impact of the impact of non-union bargaining streams in the forms of AWAs and 170 LK agreements, changes in the right of access of officials to workplaces and workers, and changes in employer and government strategy during after the introduction of the *Workplace Relations Act*, 1996. This section draws upon published research on these issues but also upon the author's primary research investigating union strategies from the mid 1990s to the early 2000s which involved over one hundred and twenty interviews with union officials conducted between 1996 and 2004. The quotes interspersed in the following section are drawn from these interviews. This research allows us to investigate what union officials themselves suggest have been the key impacts of the decollectivised environment upon their organisations.

The *Workplace Relations Act* introduced Australian Workplace Agreements (AWAs); individual agreements from which unions are excluded. The registration of these agreements has been underwhelming compared to the hopes of the federal government. By the end of 2001, the federal government reported that 215,000 AWAs had been approved involving 3,736 employers in the five years since the agreements came into place (DWR and OEA, 40). In 2001 the OEA estimated that there were approximately 130,000 'live' agreements, that is agreements effective at that time either in their first period or having been renegotiated. By their calculations this amounted to 1.7 percent of the workforce (DWR and OEA, 200, 150-1).

The 1993 Industrial Relations Reform Act introduced Enterprise Flexibility Agreements (EFA's), which were collective enterprise agreements negotiated between employers and their workforce, without union involvement. At the time of their introduction there was speculation that these agreements would allow employers to deunionise their operations or to accelerate their move to non-union status (see for example Nomchong and Nolan 1993). However, these agreements never gained a real foothold in Australian workplaces, accounting for 2-3 percent of registered agreements and covered only 1 percent of workers in the three years between their introduction (1993) and their repeal (1996) (DWR and OEA 2002, 34). The successors to EFA's, agreement made under section 170LK of the *Workplace Relations Act*, which were also collective non-union agreements were introduced in 1996. These agreements took away many of the rights that unions had been afforded to intervene under EFA's.

The number of these agreements and the proportion of workers covered by them steadily rose from 1997 until 2001 when they constituted 15 percent of agreements, covering 9 percent of employees (DWR and OEA, 57). If we accept the federal government's figures, then the proportion of the workforce covered by either individual or collective agreements in the federal jurisdiction which *exclude* unions is thus 10.7 percent. As we shall see, the impact of these agreements is disproportionate to their direct coverage.

There has been scant research on the impact of 170LK agreements but we know considerably more about the impact of AWAs. Most of the research undertaken on the impact of these agreements emphasises that they are used either solely, or in combination with a number of other strategies, as a device to deunionise and to reduce union influence (see Peetz 2002; van Barneveld and Nassif 2003). Anecdotal evidence suggests that the offer of AWAs in key centres of bargaining in workplaces in industries such as in mining and manufacturing can have a 'demonstration effect' upon workplaces in that industry and possibly beyond. Union officials across a number of industries argued in interviews that the offer of AWAs by employers in the sector they organised created an environment of fear among unionised workers and tempered their expectations of industrial outcomes:

> Employers now understand that a few AWAs here and there in key enterprises dent confidence in union bargaining, lower standards and diminish outcomes much more than the 1 or 2 percent of workers that they cover (Elected Official, AMWU, 2004).

On top of their exclusion from bargaining, unions have also suffered as a result of having the scope of matters which can be regulated in the award system 'stripped back'. The prescription in the 1996 Act that awards should be reduced to twenty 'allowable matters' further undermined collective bargaining and union strength. The removal of key conditions from awards meant that they are contestable at every workplace, forcing unions to bargain to maintain them. In a time of membership crisis and declining income, this means that unions are simply doing 'more with less'. One union official reflected that his work had taught him that there was no longer any point turning to the AIRC to help solve disputes simply because:

> You just can't win disputes anymore with good advocates and lawyers in the Commission (Lead Organiser, CFMEU, 2004)

Along with changes to industrial legislation, unions have also had their right to access workplaces, members and non-members circumscribed. Since 1996 officials have had right of access only when they had union members at a site and then only when they gave employers notice of their intention to visit. Changes to rights of access, as well as employers' increasing willingness to enforce the legislative provisions, have had a major impact upon the work of union officials. In an interview in 1999 an organiser in a NSW white-collar union, reflected upon the changes in this area during the 1990s:

> When I started right of entry wasn't a problem, coming into a place. But even more than that you were given a badge and you could walk around basically like a staff member and it was like that in basically every area I went into … you were perceived as being part of the place, so that meant you tended to be a lot more involved in the organisation, a lot more involved in consultative forums, sitting down with managers and negotiating things out on behalf of members. (Organiser, CPSU, 1999).

Another official of the same union described his organising work as work of consisting largely 'getting booted out of buildings a lot' (Organiser, CPSU, 1999). Partly in response to the changed situation as regards access to workplaces, unions have begun to enact strategies focusing upon organising outside of the workplace (see Cooper 2001).

Clearly we can find some explanations for the situation in which some of the situation in which unions find themselves in the legislative changes of 1996. 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 or in any other forum has not helped unions. However it would be wrong to suggest that legislative and regulatory regime alone has left unions where they are today. Two other critical factors: increasing employer anti-unionism; and an actively anti-union policy approach of the federal government need to be considered.

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 2003b).

Another key change in the post-1996 environment has been the hard-line anti-union policy approach of the federal government. The Federal government, especially under the tutelage of Workplace Relations Ministers Peter Reith and Tony Abbot has played an 'activist' role, promoting employer militancy. The activities of Abbott alone provide ample illustration of this approach. Throughout his term as minister Abbott maintained his long-held hostility toward unions and on many occasions used the metaphor of battle and war to describe industrial relations. Unions of course were the 'enemy'. It was not all rhetoric and Abbott spent much of his term encouraging employers to 'take on' the unions in a variety of settings but most noticeably in the construction and manufacturing industries, where the targets were the CFMEU and the AMWU. Three clear examples in the past three years of Abbott's interventionist approach are to be found in the establishment of the Cole Royal Commission into the construction industry, the commissioning of the Productivity Commission report into the automotive sector and the intervention of the Minister into bargaining in the higher education sector in 2003. Employers were not only encouraged by the government to take a more confrontational approach to unions but, inline with the legislative changes outlined earlier in the paper, were given ample means to do so.

Union officials suggested in interviews that changes in employer strategy, in tandem with the regulatory change, undermined their ability to achieve outcomes for members through traditional approaches. For example in 1999 an elected official of the FSU representing argued that employers in the finance industry:

> Are certainly are more aggressive, the combination of the legislation and the encouragement that the employers get from the government, have made them much more radical as employers and they've increasingly used the ideology of individualism. (Official, FSU, 1999)

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. The recent election results suggest that unions can expect an even harsher environment in the foreseeable future. s.

Union change in a deregulated environment

It has been widely recognised that unions are resistant to radical changes in strategy (Craft 1991; Hecksher 1988). When change does occur, a number of researchers have argued, it tends to be marginal and incremental rather than rapid and ground-breaking in nature (see for example Gardner 1989; Gardner and Palmer 1992). We find some evidence for these claims in the strategies of Australian unions from the early 1990s onward. For instance while (some) unions pushed for the decentralisation of bargaining from 1991, even earlier in some quarters, it would be many years before they enacted a strategy response to the changes this system brought about. However if we look to the changes in the policy and practice of Australian unions in recent times, we do see signs of adaptation to the changed environment. Space precludes a full discussion of union strategy in the workplace, branch and national level, as such the ensuing discussion concentrates upon national peak council policy and practice from the late 1980s to 2004.

In 2003 the Australian peak council, the Australian Council of Trade Unions (ACTU), released a document entitled *Future Strategies: Unions working for a fairer Australia* (ACTU 2003) which articulated a vision for union activity. The title of this policy paper echoed an earlier contribution of the peak council, in the form of *Future Strategies for the Trade Union Movement* (ACTU 1987) which was endorsed at the peak union's 1987 biennial Congress. Analysis of the themes and prescriptions of these two documents reveals the extent of the changes in the peak council during those sixteen years. Both documents analyse the environment for unionism and argue for an urgent reorientation in union practice, structures and priorities. *Future Strategies (Mk I)* suggests:

> unions cannot ignore the mounting pressure for further change. The question is not whether the movement can adapt and respond but whether it can adapt at a sufficient rate not just to ensure its survival but to promote further growth (ACTU, 1987, 1).

Future Strategies (Mk II) similarly urges unions to urgently reorient practices in order to ensure organisational survival (ACTU, 2003, 1). Apart from their titles, and the recognition of crisis for unions in both, the two documents could not be more dissimilar.

Future Strategies (Mk 1) set out the ACTU's ambitious plan to restructure unions through a wave of mergers. The amalgamation of the then 326 mainly occupationally-based unions into 20 'super unions' was heralded by the ACTU leadership as the means to remove the duplication of union services, organising and research functions which had arisen due to the multiplicity of occupational, industry and craft based unions. Super-unions, it was argued, would effect economies of scale within the labour movement, free up resources for the better servicing of existing members and release resources to be directed at building membership in poorly organised and non-unionised sectors of the economy (ACTU 1987, 15).

The amalgamation programme began in earnest in the early 1990s. In an unprecedented reorganisation of the union movement, between 1991 and 1994, over 120 mergers took place. In the five-year period between June 1989 and June 1994, the number of unions in Australia nearly halved, decreasing from 299 to 157 (ABS 6323.0). Considering that union numbers have remained relatively constant throughout the last century this was a considerable feat (Griffin 1991, 10). By the end of 1994 the total number of unions had halved and the number of large federally registered unions had fallen from 134 to 52 (ABS 6323.0) and by the mid-1990s, 98 percent of the members of ACTU affiliates were members of the largest twenty unions. These were certainly spectacular results in terms of restructuring the union movement. However, they were less impressive on other measures. As a response to declining membership the amalgamations were an abject failure. As detailed earlier in the paper, the period in which amalgamations were in full swing, from 1991, membership decline did not abate, it actually accelerated.

Future Strategies (Mk 1) (ACTU 1987) also advocated that unions should pursue strategies for attracting members and forming a relationship with them based upon the provision of union services to members. It argued that enhancing the services provided to members was the best way for unions to ensure the viability of the organisation and member relationship, for example:

> members need to have a perception that the union has something to offer in terms of service. For that to happen the union actually needs to have something to offer' (1989, 17)

In the face of widely recognised union crisis, throughout the 1990s the ACTU put in place a number of initiatives directed at changing the behaviour of Australian unions (see Cooper 2003 for a review). Under the new leadership of Greg Combet, this strategy was given renewed vigour (see ACTU 1999) culminating in the publication of the strategy document *Future Strategies (II)*. Whereas its predecessor advocated union restructuring and centralised service provision, *Future Strategies (II)* emphasised activist organising strategies as the key to union survival. Critically, this document placed workplace organisation centre stage:

> An active delegate is the single most important factor affecting union density, activity and effectiveness in the workplace (ACTU 2003, 22)

As such unions are encouraged to recruit, resource and educate thousands more workplace representatives. In addition, *Future Strategies (II)* urges affiliates to devote unprecedented resources to new member organising, to involve members in a debate about 'the direction and priority' of their unions and to adopt a more strategic approach to building membership and the execution of union campaigns. These prescriptions arguably hold greater potential as a base from which unions can rebuild their power than those put forward by the ACTU in 1987.

This brief comparison of the signature strategy documents of two 'generations' of the ACTU hints at the changes in the national peak council's approach. As important as these changes are, they remained primarily changes in the orientation and vision of the national peak council. The daily burden of change necessarily remains within individual unions themselves. In short, change in the ACTU's approach and practices in relation are one thing, but practices at the level of the union branch are another.

Conclusions

The decentralisation and the decollectivisation of employment relations have had powerful impacts upon Australian trade unions. Changes in legislation, a growing antipathy toward unions from government and the assertion of managerial prerogative have made it harder for unions to organise workers, to bargain and to effectively represent workers. It is undeniable that union resources have been stretched by these changes and quite simply unions in 2004 are doing much more, with much less than they were a decade and half ago. None of this is heartening for Australian unionists. However, despite this indisputably hostile terrain unionists have shown a capacity to respond rather than surrender to their environment. This paper has primarily addressed ACTU action in a time of crisis and has argued that two very different strategies have been articulated by the national peak council. In the late 1990s, the ACTU's response to union crisis relied, among other things, upon centralising union structures, but by 2003 the national peak council's strategies were focussed more clearly upon organising new members and building activism in workplaces. Arguably these organising and activist focussed strategies hold far greater prospect for union renewal in the current decollectivised environment.

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