

SYDNEY UNIVERSITY

2008 ANNUAL LABOUR, LAW CONFERENCE

**“From Work Choices to forward with Fairness: Continuity and
Change in Australian Labour Law”**

ADDRESS BY THE HON BOB HAWKE 15TH AUGUST 2008

“Challenges & Opportunities in Labour Law Today”

I thank you Ron McCallum and John Buchanan and your associates for the invitation to make a brief opening contribution to your Conference today.

I guess it will come as no surprise to any of you that I approach this topic today with a certain amount of relish. I spent some three months last year leading up to the 24th November campaigning in more than 40 electorates urging the rejection of the Howard Government and the return of Labor.

Of course I addressed a number of issues but the central one was the iniquity of Work Choices – so it was one of the great joys of my political life when the Australian people made that choice on the 24th November. And they did that, I believe, more than for any other

reason because – to use the words of your conference theme – they wanted to move “from Work Choices to Forward with Fairness.”

For me there was a delicious co-incidental irony in all of this. I was born in 1929 and that was the first, and until now, the only time that a sitting prime minister had lost his seat. Then it had been PM Stanley Melbourne Bruce’s decision to abolish the Commonwealth Conciliation and Arbitration Court. Sensing that history could well repeat itself I visited Bennelong more than any other electorate. In the event the longest political suicide note in history – John Howard’s enactment of and commitment to work choices, played out to its conclusion after a magnificent campaign by Maxine McHugh.

But my friends there is more than personal relish involved in referring to these delightful happenings. Underlying them, I believe, are some fundamental realities of the Australian policy which are directly relevant to your theme and the brief introduction you have asked me to make.

If you cast your minds back to the three Federation Conventions in the 1890’s leading to the

creation of our nation, and its history since 1901, I think it is impossible to avoid the conclusion that in no other country has the broad issue of industrial relations so consistently played such a central and, at times, pivotal role. During the Convention debates no other topic aroused more passion and indeed at the final Convention the inclusion of the conciliation and arbitration power of the Commonwealth Parliament would have been defeated with a switch of two votes.

And when the Parliament first moved on the 7th July 1903 to exercise that power to create the Commonwealth Court of Conciliation and Arbitration it began a legislative saga never since matched to this day. Seventeen months and eight days elapsed before the Bill received the Royal Assent and in that time it acquired an impressive list of casualties – one Minister resigned, two governments fell and in fact it was steered through Parliament under four different prime ministers. And it was during this protracted debate that the loose amorphous system of parliamentary representation began to crystallise into the dichotomy of Labor and anti-Labor that has endured to the present day.

The C.C.C.A. quickly gave substance to the Australian concept of the “fair go”. By establishing the concept and implementation of a basic wage – a wage enabling a worker to sustain himself and family at a reasonable minimum standard – below which no one could be employed. Higgins did this in 1907 in the Harvester case. His simple but eloquent affirmation that the price of the commodity sold by the worker – his labour – was not to be determined solely by the de-personalised mechanistic laws of supply and demand gave expression to the social convictions of a young nation. The principle he asserted then – that a man must be paid in return for his labour a wage consistent with his obligations as a member of a civilised community – became inextricably into the social fabric of the Australian people.

Stanley Melbourne Bruce did not understand this and paid the price with his prime ministership 22 years later – nor did John Howard and he paid the same price another 78 years on.

I suggest the basic reality for our purposes today, which emerges from this condensed historical analysis, is that there is a continuing and deeply-

embedded commitment in the Australian electorate to a fair system of industrial relations which reflects a tradition of more than one hundred years. And referring particularly to the words of the topic “challenges and opportunities in labour law today” I would say first that in relation to “opportunities” this fact means that there should be a better chance than at any time in recent memory to get a broad measure of political agreement on a legislated industrial relations system that gives workable effect to the expectations of the electorate. While it may be too much to expect a total abandonment by the Liberal and National parties of the ideological and historical folly underpinning Work Choices the events of last year should have sharpened their political survival instincts where they will be more amenable to the thrust of the second stage of the “forward with fairness” legislation to be introduced later this year after further consultation with relevant interests. Certainly one would expect this to be the case with the Greens and Independents in the Senate.

The challenges, it seems to me, are fairly obvious. The first, speaking from a long experience both as leader of the trade union movement and as prime minister, is to frame legislation which emerges from having created in the minds of the major players – workers and

employers, and their organisation – their mutuality of shared interests. The government should emphasise the legitimacy of their respective ambitions – for the unions over time to gradually improve the wages and conditions of their members and, for employers, to grow their business; and then it should declare that these legitimate aspirations are more likely to be achieved in an atmosphere of constructive co-operation rather than confrontation.

The further challenge is to put these basic principles within the broader context of the difficulties – and opportunities Australia faces in a rapidly changing, increasingly competitive globalised economy. Consistently improving productivity flowing from new technology, a well-trained workforce and adequate infrastructures are at the core of meeting these challenges and taking advantage of these opportunities. Government must persuade the major shareholders that a fair and flexible system of industrial relations is an integrally important part of achieving these necessary outcomes.

Of course one of the greatest challenges confronting those responsible for preparing the new labour law in this national and international context I have

outlined is the question of creating consistency and predictability within our federal system with its multiplicity of states and commonwealth jurisdictions. I have never resiled from the view I expressed in the 1979 Boyer Lectures that the states are an anachronism. If you were drawing up a constitution for Australia in the world today there is no way you would have anything resembling the division of functions in geographical areas representing the meanderings of British explorers around the continent some 200 years ago.

Unfortunately, that remains the counsel of perfection and, realistically, we are bound to act within this ossified framework. This puts an enormous responsibility upon the political leadership in the states to think nationally in this area of labour relations reform and it is my sincere hope that they will respond constructively to federal government initiatives in this respect. As I said in the Boyer Lectures there is no such thing as states' rights – there are only peoples' rights. The Australians who lives in NSW, Victoria, Queensland and the other states have the right to expect that their state politicians will act in a way that will give us an industrial relations system that will optimise our chances of having an efficient economy and a just society.

My friends I have spoken today in terms of broad principles. So many of you are experts in the fine detail. I hope many of you will be able to make a contribution to the final form of our new labour law that will give Australia an industrial relations that our tradition demands and our economy needs.

RJL Hawke