After the war — back to the workplace

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The recent election took industrial relations hyperbole to new levels. Much of the claim and counter-claim was couched in absurdly-exaggerated language. Yet there was little serious focus on real problems in current labour relations — like the ubiquitous No-Disadvantage Test.

Whether you supported John Howard's claims for his individual workplace agreements or the ALP advocacy of its preferred collective agreements, the old award system was effectively dead long before the election. Both parties had already displaced the traditional system of broad awards covering huge numbers of workers. The central elements of both approaches to agreement-making have been in place for at least seven years. Whether agreements are individual or collective, both operate fundamentally on the basis of a compulsory test — the No-Disadvantage Test [NDT] — that supposedly ensures no employee is worse-off under new arrangements. The efficacy of that test, in fact, has far greater effect on employees' conditions than the form of the agreement under which they work.

Now that the Coalition has been re-elected it might be expected that their Australian Workplace Agreements [AWAs] will dominate workplaces in the next three years. So much was said about their benefits — font of flexibility, driver of productivity, epitome of choice — that it could be assumed employers and their workers are now queuing up to adopt them. But this ignores the reality that, in nearly eight years, less than three per cent of workers have switched to AWAs. Most, in fact, are covered by collective agreements. It is unlikely that this will change greatly.

The real question for both forms of agreement is: are workers better off, are they fully-protected when transferred to them? A major recent study says 'probably not'. Melbourne University's Centre for Employment and Labour Relations Law conducted extensive analysis of actual agreements across four industry sectors for Industrial Relations Victoria [*Protecting the worker's interest in enterprise bargaining*]. Both collective and individual agreements were studied in depth. Their focus was on three particular aspects: general effectiveness in protecting employee interests in the bargaining process; specific instances of disadvantage and failure to maintain certain 'community standards'; and, the extent to which the No-Disadvantage Test was able to prevent deterioration in workers' ability to balance work and family lives. The Centre concluded that, under both collective and individual agreements, the Test is failing to protect employees from a decline in their terms and conditions of employment.

At the heart of this are four issues. First, it is true that most employees are receiving as much — or more — in cash wages under an agreement as they would have been under the award used for comparison in the Test. Under the award system, however, many workers also received over-award payments. So NDT comparison is not strictly between actual rates. Second, pay difference under the NDT is usually very slight. When the trade-off of numerous non-cash benefits is taken into account, it appears that, overall, many employees are worse off. For example, many have now lost a clearly-defined working week, with real disturbance to family life. Others have far less freedom in choosing when to take their annual leave. Many have less control over the way in which they actually carry out their duties. Issues like these are rarely included in a cost-benefit analysis for NDT purposes. Third, employees almost always lose power, especially under individual agreements. While managerial prerogative has always been powerful, the absence of collective and/or union protection has removed even the illusion of an equal-power concept from the employment contract. Fourth, in very many agreements, benefits for employees are prospective — that is, there is a promise of certain developments contained within the formal provisions. There is considerable evidence that employees often do worse than expected because employers do not fully give effect to an agreement's provisions. The transparent absence of adequate follow-up provisions by the Industrial Relations Commission [or in the case of AWAs, the Employment Advocate] makes it difficult for employees to enforce the terms of their agreement.

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What to do about it? This form of employment regulation seems certain to be with us for the foreseeable future, so change is only likely through adjustment to the processes used. The Melbourne University team makes several recommendations. Comparison of conditions under a proposed agreement should be with the actual existing benefits rather than with a nominated award's basic provisions. Quarantining them from bargaining could better protect community standard benefits like annual and sick leave. The Industrial Commission could be required to consider the totality of working issues when comparing existing with proposed benefits. And a more comprehensive system of follow-up after ratification of new agreements could be adopted, including procedures allowing employees to have checks made to encourage full implementation.

Politics almost always gets in the way of calm assessment of how industrial relations laws and systems are operating. With the election race now run and won, it is time for a return to the 'bread-and-butter' issue of practically improving the current system. A good starting point would be review of the No-Disadvantage Test, beginning with the Melbourne University analysis. ■