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The IR mess: how to make the best of a bad lot of law

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The changes will be made but Senator Joyce can still do much to limit the harm.

THE **workplace** reforms are the most important legislation of the Howard Government's decade in office. Over time, they will erode the bargaining strength of workers, and increase that of employers. Their impact on Australians' lives will be more profound than anything the Government has done.

In his role as a one-man house of review, Nationals senator Barnaby Joyce now faces his toughest task. Does he accept the bill as it stands, amend it, or tell the Government to go back and start again?

His job was not always so lonely. Some Coalition senators played an independent role under the Menzies and Fraser governments. They knew that a house of review worked only if it was a genuine house of review. The Senate's reason for existence is to be a check on executive power.

But Labor poisoned the well by denying its MPs and senators any independence. And like Gresham's law - bad money drives out good - the Coalition has largely followed Labor's bad example.

The real house of review until recently was the Democrats party room. In 1996, their economic spokesman, **Andrew Murray**, joined with the Howard Government to write the **Workplace** Relations Act, a reform that fairly balanced the interests of employers and workers, and whose effects are still percolating through our workplaces.

Murray's background was in business, as was that of Victoria's Family First senator, Steve Fielding, who has surprised many by proving himself an articulate independent. The reason the fate of this legislation now depends on Joyce is that Murray and Fielding both reject it as unfair to workers.

"The changes have gone too far," Murray says. "They are complex, create over-regulation, will create uncertainty, and will force better employers to bring down their wages to compete with less scrupulous employers."

"The Government will be making a mistake if they don't reconsider the harshest aspects of the legislation. The impact may not be immediate, and they won't affect all Australians, but in the long term they will undermine our egalitarian society."

Fielding is worried that by making it easier for employers to force workers onto AWAs, the bill will erode the penalty rates that protect family time. A study for the Victorian Government by Barbara Pocock cites Federal Government figures as showing that 54 per cent of AWAs offer no penalty rates, and 75 per cent offer no family or carer's leave.

"Australian families know there is more to life than making money, but they are on a treadmill and feel they can't do anything about it," Fielding says. "The Government's proposals will only make matters worse."

"They seem to think that an employer and an employee can sit down over a cup of coffee and negotiate an **employment** contract on an even footing."

Most Australians share their concern. Last month's ACNielsen AgePoll found only 23 per cent support the reforms, while 57 per cent oppose them. Most striking were the one in six Australians who do not support the Coalition, Labor or Greens. Just 11 per cent of them support the Government's plans, while 61 per cent oppose them.

Joyce is concerned about the removal of protection for most workers against unfair dismissal, and the overriding of states' rights to set their own **workplace** laws. But in reviewing this bill, where should he start?

Frankly, the best course would be to withdraw this bill and start again. The Government should draft a new bill a 10th as long as this one, that avoids heavy-handed over-regulation, and genuinely gives workers choice and a level bargaining table.

Realistically, though, Joyce will not do that. At best, he will try to amend the bill, and his most likely focus is on unfair dismissals.

His message ought to be the one the OECD sent earlier this year: don't throw out the baby with bathwater. Australia already has the sixth least restrictive job protection in the Western world, it pointed out. Job security is something it should keep.

"Disincentives to hiring should be kept as low as possible through policies which contain the cost of dismissal procedures, without abandoning (the) substantial social and economic benefits of **employment** protection," it urged.

One obvious compromise is to do what the Government had said it would do: remove the protection for employees of genuinely small business (fewer than 20 employees), while keeping it for medium and large firms.

But Joyce should also focus on the default provisions. At present, when agreements expire, their provisions continue until a new deal is agreed. Under the new rules, after 90 days' notice by an employer, workers - whatever their job or pay level - will be thrown onto the minimum wage (now \$484 a week) and the four minimum conditions.

It is a grossly, malevolently lopsided rule that tilts the table to favour employers. Joyce ought to insist that agreements continue in force until they are replaced.

And third, he should insist that the Government restore the no-disadvantage test protecting workers from being ripped off in negotiating AWAs with their employers. If it has worked for the past nine years, it should go on working.

These three changes would make the bill significantly less unfair to the battlers the Coalition pledged to support.

Tim Colebatch is economics editor.

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