


Work, Contracts & The Law:
An Overview of WorkChoices, the Independent
Contractors Act and Federal Welfare Reforms


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Introduction

- Australian model of IR traditionally unique
- Current 'reform' proposals keep that tradition
 - more than Thatcher, Reagan and NZ Nationals proposed
- Independent contractors act: integral not incidental to change agenda



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Understanding Work & The Law (I): Ambiguous Realities, Commodity Fictions And Contracts

- **assumption** : reality changes, law adjusts
- **fact** : law both constitutes and reflects reality
- **root cause** : labour in market economies

- > the commodity fiction
- > the fiction varies
- > evolution of contracts governing work



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Understanding Work & The Law (II): The Key Dynamics

- boundary between commercial and labour law never stable
- labour law must always adapt to new circumstances
- if doesn't, commercial law prevails
- limiting labour laws adaptive capacity limits its reach

The New Framework

- WorkChoices: limiting union & tribunal adaptive capacity
- Independent Contractors Act: facilitating & protecting contractor forms of employment
- Welfare-to-Work: nurturing market dependence through business welfare

WorkChoices: Recasting Labour Law

- (a) Objective: limiting unions and industrial tribunals capacity to adapt
- (b) Elements
- (i) Vision: free economy, strong state
 - (ii) Strategy
 - Shrink labour law (eg 5 statutory minima)
 - Tilt labour law (eg regulate unions, empower employers)
 - Centralise labour law (eg Corporation Power and Ministerial discretion)
- > Essence of changes: IRC polices unions + mediation and minimum wage outsourced

The Independent Contractors Act (ICA): Expanding Commercial Law

- (a) Objective: facilitating and protecting contractor forms of employment
- (b) Elements
 - (i) Vision: employers' ability to run business as they like
 - (ii) Strategy: privilege form over substance
 - parties preferences to be respected where ever possible

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The Independent Contractors Act (ICA): Specifics

- Reduce labour laws capacity to adapt
 - Prohibitions for tribunals, unions and agreements (eg deeming S106 contractor limits)
- Codify preferred commercial principles
 - Uncertainty better than steady accretion of labour law rights from tribunals and separate courts of record
- Simplify enforcement
 - Federal Industrial registrar
- Question: what's wrong with idea of 'fair contracts'?
 - Executives, partners & franchisees have led the way

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Welfare-To-Work: Poor Must Depend On The Market Not Government

- (a) Objective: reduce government payments to the disabled and sole parents by boosting low paid jobs
- (b) Elements
 - (i) Vision: nurture market dependence through business welfare
 - (ii) Strategy:
 - Carrots
 - : Job Network additional programs
 - : Financial Incentives for employers
 - Sticks
 - : Realign/reduce payment levels
 - : Cut entitlements
 - : Increase obligations

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What Are The Likely Outcomes?

- Deeper and different inequality
 - Wages
 - Hours
 - Casuals and Contractors
- Deepen work/life tensions
 - Work and family
 - Skills 'shortages'
 - Safety problems
- Deepen social problems
 - Business welfare and the low paid
 - Debt, consumption and culture of 'indifference'
 - Growing reliance on prison system for order



Conclusion: Necessity, Choice & Standards

- "Freedom comes with recognition of necessity"
- Core change: evolution of commodity form
- Current policy initiatives
 - political – not economic
 - Likely to deepen not solve key problems
- If to continue down this road is it time to change family and corporate law in image of contract law?