

A Single National IR System – How Do We get There?

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Overview

- Why we don't already have a national system
- Why the issue matters for higher education
- A national system – the pros and cons
- How we might get there
- The Williams Report
- Where to from here?

The absence of a national system

- Historically, Commonwealth, States and Territories have shared responsibility for regulating IR and employment conditions
 - federal arbitration system for interstate industrial disputes (and disputes in Territories)
 - State systems for other disputes
 - States also left to legislate on OHS, workers compensation, leave entitlements, etc

Expansion of federal system

- Gradual expansion prior to 2006 as
 - more interstate disputes manufactured
 - High Court took broader view of ‘industrial’
 - during 1990s, greater use of ‘alternative’ powers to extend reach of federal system
 - reference of powers by Victoria in 1996

Work Choices reforms

- From March 2006, federal system expanded to cover all employers who are
 - trading, financial or foreign corporations
 - Commonwealth agencies
 - in Victoria or the Territories
- State and Territory industrial laws excluded from applying to such employers

Work Choices reforms

- Use of corporations power to achieve those outcomes challenged by States, Territories and unions
- But validity of Work Choices legislation upheld by High Court in *NSW v Cth* (2006)

Work Choices reforms

- Despite Howard Government rhetoric, no ‘single national system’ because
 - around 25% of employees work for excluded employers
 - State & Territory laws still allowed to apply to federal system employers on ‘non-excluded matters’, including OHS, workers comp, training, child labour, discrimination, long service leave

The Rudd Government's view

- Despite commitment to 'bury' Work Choices, new government committed to idea of a single national system, at least for private sector
- No move to take away State/Territory coverage of non-excluded matters, but push to 'harmonise' some laws
 - eg OHS, long service leave

Implications for higher education

- Most higher education employers currently covered by federal system, by virtue of being trading (and/or financial) corporations
 - see *Quickenden v O'Connor* (Full Federal Court, 2001)

Implications for higher education

- But this may change
 - pressure on courts to reconsider principles for determining ‘constitutional corporation’ status
 - see eg *Aboriginal Legal Service of WA v Lawrence* (WAIRC, 2007)
 - test cases on local councils
 - comments from bench in Work Choices case
 - might some States seek to decorporatise their universities???

Implications for higher education

- Even if still covered by federal system for ‘industrial’ purposes, higher education employers have an obvious interest in moves to harmonise laws on OHS, etc

A national system: why?

- Efficiency
- Simplicity
- Universal standards
- Link to economic policy-making
- Avoiding a race to the bottom



A national system: why not?

- Diversity and experimentation
- Safe havens
- Political power bases

Pathways to a national system

- Finding the right head of power
 - the industrial arbitration power
 - the trade and commerce power
 - the external affairs power
 - the taxation power
- Maximise federal coverage through combination of powers, wait for States to give up
- Co-operation

The Williams Report

- *Working Together: Inquiry into Options for a New National Industrial Relations System*
 - undertaken by Prof George Williams on behalf of NSW government, but with broad consultation and stakeholder input
 - released January 2008, available at industrialrelations.nsw.gov.au/action/inquiry.html

The Williams proposals

- Intergovernmental agreement to establish national system
- Two options for each State
 - text-based referral of powers to Commonwealth
 - State-based legislation to apply national template
- Provision for exclusions
- Strong governance arrangements to ensure ongoing State input

The obvious problems

- Getting the Commonwealth to agree to share power
- In States that choose second option, federal courts and officials can't be empowered to enforce the national law
- Neither model can work with legislation anything like as complex as the current Workplace Relations Act

Solutions

- The obvious compromise
 - Commonwealth agrees to share power ... but only after drafting initial law
 - States agree to give up second option
- Defer commencement of new and much simpler national law until 2010, to avoid complexities of current transitional rules

The default position

- Rudd Government continues Howard policy of hostile takeover, waits for States to hand over powers with minimal conditions
- But still need to resolve boundary issues
 - status of non-profit corporations
 - clarification of matters left to State law
- And we still need (and deserve) simpler laws!