

# **An Outline of the New Labour Law in Australia : Importance for North Queensland**

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# Labour Law in Australia: Importance for North Queensland

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- **Australia has yet another new IR system - only this one may actually endure...**
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- **What is the change and why is it important?**
  - **Essentially, Australian IR has moved in stages:**
    - **A prescriptive system of collective bargaining and adherence to Industrial Commission principles (1900-1980s);**
    - **through to a hybrid system, in which there were prescriptive safety nets but also collective bargaining at an enterprise level sanctioned by the Industrial Commission (No Disadvantage Test) (1980s-1996);**
    - **a system like the above, only in which statutory individual agreements (Australian Workplace Agreements) also evolved (1996-2005);**
    - **through to *Work Choices* - in which collective bargaining was wound back in favour of AWAs, the role of the Commission (eg NDT) diminished and unfair dismissal became largely unavailable; national system; reliance on statutory minima (2005-2008); and now**
    - **The *Fair Work Legislation* in which the move towards individual bargaining is replaced by collective bargaining at workplaces but underpinned less by a centralised Commission and more by statutory standards (incrementally from 2008- )**
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- **Key features of the new system (Fair Work Legislation):**
  - Still aims to foster a national system - although Australia is a federation
  - reintroduces unfair dismissal laws in addition to unlawful dismissal;
  - introduces concepts relevant to trade unions -new right of entry laws and good faith bargaining.
  - the basic philosophy behind the new law seems to be The Third Way - hence the belief this system will endure for some time.
  - Let us look at each feature in some detail...
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- Australia the federation:

But

***NSW v Cth*** (High Court of Australia 2007) gives broad powers to the Commonwealth regarding constitutional corporations (refer ***Educang*** - decision of Hall P Queensland Industrial Court 2007). Notion of co-operative federalism.

- Is there a chance of a state hand over of IR Powers?
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- **Unfair dismissal:**
  - in addition to unlawful termination (such as discrimination)
  - note the emphasis on efficient settlements
  - note the position of trade union representatives
  - position of small business (noting the fair dismissal code)
  - Compared to work choices - new jurisdiction not limited to workplaces with less than 100 workers and overcomes decisions like *Village Cinemas*.
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- **Trade Union Law**
  - Under Work Choices and associated legislation, there was case law which indicated (at that time) that employers may simply be able to decline to bargain with a union (*BHP* decision). That would no longer seem to be the case after these Fair Work changes. There is good faith bargaining (falling short of trade union recognition) and new right of entry laws.
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- **The Third Way**
- The above system aims to promote fairness and flexibility. The government has gone a long way to noting that it has not simply reintroduced Australia's old IR system (eg there is more reliance on statute and there is at least a special position for small business in dismissal).

BUT

- the new laws go back further than 1996 by eg abolishing individual agreements. Further, there are questions regarding eg demarcation disputes for unions.
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- **The real questions?**
  - **Independent contractors?**
  - The Fair Work protections (like unfair dismissal) and common law protections relating to good faith etc relate to **employees** as defined by common law and **not necessarily to independent contractors**. As regards independent contractors, the new Labor government has retained the former conservative government rules which promote contracting. So, what becomes of them during the global financial crisis?
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- There is some research being done on whether contractors can actually organise without breaching our Trade Practices legislation. However, they seem a vulnerable group.
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- **Response to the Global Financial Crisis:**
  - The federal government has introduced a stimulus package for all workers and there is the job squad concept, but there will be many job losses to come unfortunately...
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