AUSTRALIAN INDUSTRIAL RELATIONS AND COVID-19

Sarah Kaine

To understand the current state of industrial relations in Australia and intuit what the post-COVID-19 industrial landscape might look like it is necessary to briefly revisit the political, labour market and industrial context immediately preceding the crisis. 2019 saw another federal election in which industrial relations loomed large. The union movement bet heavily on defeating the Liberal-National Party Coalition through its campaign to 'Change the rules' that attempted to foment voter concern about the industrial relations regulatory framework. The campaign presented that framework as skewed in favour of employers and targeted insecure work, penalty rates and wage theft as particular issues to be addressed.

However, with Labor's election loss the politics turned, requiring a more defensive posture from the labour movement. Specifically, in late 2019 the conservative government attempted to pass the 'Ensuring Integrity' bill, which, according to the Liberal Party, was aimed at reducing 'unnecessary costs and delays that law-breaking unions can cause' (Liberal Party of Australia n.d). Unions saw it differently, the Australian Council of Trade Unions (ACTU) accusing the Prime Minister Scott Morrison of wanting to 'introduce the most anti-union laws we have seen in a generation' that would give 'big business and their lobbyists power to interfere with how unions run' (ACTU n.d.). The government suffered a surprise loss in the Senate in late November when cross-benchers voted against the Bill and, despite it being reintroduced into the House of Representatives in December 2019, it has not had its second reading in the Senate. The stand-off regarding the Ensuring Integrity Bill is indicative of the antagonism that characterised union/federal government relations heading into 2020.

Kaine, S. (2020)
'Australian Industrial Relations and COVID-19'
Journal of Australian Political Economy
No. 85, pp. 130-7.

The pre-COVID labour market in Australia was, *prima facie*, in good health. Employment was low and had been for a considerable period of time due to the record run of economic growth (Cranston 2019). While the headline unemployment figures were low, the reality of labour market participation was much more complex. Underemployment was a major issue and the perception of insecurity of work (Carney and Stanford 2018) belied the oft-quoted statistic that non-permanent forms of work have remained at the same levels of the last two decades. Such perceptions of insecurity were compounded by record low levels of wages growth in many areas of the economy (Wright and Kaine, forthcoming).

Industrially, a number of issues had come to the fore which provide a rationale for the 2019 ‘Change the Rules’ union campaign. Over the past few years, wage theft[1] had reached seemingly epidemic proportions with almost weekly media exposés that large, successful organisations had been party to underpayments (Kaine and Josserand 2019). The Australian system of collective bargaining (notionally encouraged under the *Fair Work Act 2009*) was widely regarded as having collapsed, with only 12% of private sector workers being covered by an enterprise agreement by 2017 (Pennington 2018) contributing to the wage stagnation noted above. Additionally, new forms of work were emerging through the rise of digital platforms challenging not just the capacity of unions to organise and represent those workers but also the ability of existing businesses to compete. Digital platform service providers have, with few exceptions, insisted that those working for them are not employees and, as such, have skirted the legal obligations faced by other employers.

The impact of COVID-19

The shutdown necessitated by the need to halt the spread of COVID-19 has resulted in a severe contraction of the Australian economy and labour market. By the end of April, the number of people registered for unemployment benefits (called JobSeeker payments) reached 1.3 million, a doubling since December 2019 (Hendriques-Gomes and Karp 2020). Predictions are that there is worse to come, with high unemployment

[1] Wage theft is taken to include: being underpaid for regular hours, not receiving penalty rates, unpaid working hours or overtime, unpaid trials, internships or training, unpaid superannuation, illegal deductions (CBSI 2020).

expected to continue. Estimates have varied from 9 to 26 per cent (Coates *et.al.* 2020: 12), depending on calculation methods. Whatever the real number, the labour market shock is greater than any felt for decades if not generations. This employment shock and the policy response pursued by the federal government has significant implications for industrial relations.

At an economy-wide level, the government created a scheme for employers called 'JobKeeper'. JobKeeper provided businesses that had been impacted by the coronavirus pandemic with a $750 payment per employee per week (close to the minimum wage but only about 70% of the median wage) (Wright and Kaine *forthcoming*). Employers were required to pass the payment on to employees who fulfilled eligibility requirements that included: at 1 March 2020 the employee was 18 years or older; employed by the business on a full-time or fixed term basis or was a long-term casual; and was an Australian resident (ATO 2020).

Critics have pointed out that the scheme leaves some of the most vulnerable workers unsupported. Specifically, temporary migrant workers (of which there are 1.2 million) do not qualify for financial support (except New Zealanders) through either the JobKeeper or JobSeeker schemes. While the Job Keeper payment is available to the self-employed, there is questionable capacity for many who are classified as 'self-employed' (such as gig workers) to demonstrate the 30% decline in turnover required to access the scheme as many of these workers are engaged by digital platforms rather than having their own administrative systems (Hamilton *et.al.* 2020).

The JobSeeker and JobKeeper schemes represent a massive injection of public funds into the economy and signal the almost unprecedented levels of government intervention in the labour market and economy that have suddenly become politically palatable (even to the conservative side of politics). Surprisingly given the animus described above, the government consulted with the ACTU in the scheme‘s developmente. The Industrial Relations Minister has suggested the co-operative relationship with the ACTU could be the basis for further negotiations that may take on some characteristics of the Accord between the union movement and the Hawke/Keating governments. This move toward greater consultation was further developed in the Prime Minister's address to the National Press Club on 26 May in which he called for an end to 'tribalism' in industrial relations and shelved the controversial Ensuring Integrity Bill (Macmillan 2020). However, it is difficult to see this developing rapidly or deeply, as business representatives have pushed for major reforms including the further simplification or abolition of industrial Awards (Lewis *et al.* 2020). There has also been deep concern among unions about the government's other temporary reforms to the *Fair Work Act*, particularly the provisions which allow employers to give employees only one day's notice to vote on variations to enterprise agreements. Taking to social media, ACTU secretary, Sally McManus, urged workers to vote no to changes to agreements if they do not have enough time to properly consider the ramifications (McManus 2020a). This does not augur well for ongoing cordial relations between the government and the ACTU.

Given the impact of the COVID-19 pandemic across industries in the economy, there have been calls for the federal government to subsidise industries that have been specifically affected and have national significance. The aviation sector was one of the first to receive a relief package (Karp 2020) but despite this, major airline Virgin Australia, was forced into administration, throwing into doubt the future of 10,000 employees and thousands of other businesses that contract to it (BBC 2020). The spectre of business collapse in vulnerable sectors such as tourism and hospitality creates a climate in which industrial relations becomes a focus for business looking to cut costs. Business lobbyists have been calling for greater labour market flexibilities and industrial relations reform as the way to drive the economic recovery (Lewis *et al.* 2020).

However, the conclusion that industrial relations reform holds the key to the post-COVID economy is questionable. In his assessment of the five current and impending labour market challenges facing Australia (structural change and labour reallocation, employment for young workers, industrial relations reform, long-term unemployment and the refinement of the JobKeeper program) economist Jeff Borland cautions against 'spending time contemplating major changes to the industrial relations (IR) system'. He argues that the 'time spent thinking about IR policy would be much better spent on other policy issues' and that it is unlikely that much has changed since the 2015 finding of the Productivity Commission that labour market flexibility in Australia compares favourably internationally. He concludes by citing the capacity of the IR system to adjust to the mining boom without a major wages outbreak as evidence that the system already allows for sufficient flexibility and that claims to the contrary 'hold little water' (Borland 2020: 5)

While the macro-debates are set to continue, there are signs that individual workers are facing increasing challenges. The Fair Work Commission has seen a surge in unfair dismissal claims, reaching 60% more than the same time last year with a 10% reduction in voluntary settlements (Workplace Express 2020). Not all workers are facing the same challenges. White collar and professional workers are navigating a virtual workplace in which they participate from their own homes often whilst simultaneously supervising children (Sanders 2020). How lower-skilled workers have fared has been dependent on their industry. The hospitality, cultural and tourism industries have been decimated (Borland 2020b) but some retail (think big supermarkets) and food delivery have seen an increase in demand and the health sector has, unsurprisingly, provided consistent work (RBA 2020).

But even those who have kept work have had to deal with COVID-19 related challenges. In the disability support sector unions have made a claim for a $4.94 hourly allowance for disability employees who work with clients in quarantine or self-isolation. The application to vary the Social, Community, Home Care and Disability Services Award 2010 has been supported by some employers (represented by the National Disability Service – NDS) on the condition that the allowance be financed through an increase in government funding to disability services (FWC 2020). In the education sector, social distancing requirements have meant almost overnight transition to online learning across primary, secondary and tertiary education institutions, with attendant industrial concerns such as work intensification and the management of WHS when face-to-face teaching recommences (Duffy 2020).

The widespread shutdown of the economy gave rise to the deeming of some jobs as 'essential' but the definition of essential has been amorphous. The Prime Minister noted that 'it can be essential in a service, whether it's a nurse or a doctor or a schoolteacher, or a public servant […] these are all essential jobs […] People stacking shelves – that is essential.' But he also suggested that the concept of essential expanded beyond occupation or industry, saying that 'People earning money in their family when another member of their family may have lost their job and can no longer earn – that's an essential job' (Dunn 2020).

It has been observed that many of those jobs deemed 'essential' during the COVID 19 have (aside from doctors) traditionally held a less prestigious position in the labour market and that this has become a source of pride to those workers (McManus 2020b). Many of those 'essential' industries and occupations are feminised: teaching, nursing, child-care, aged-care and supermarket workers, many of which have arguably been historically undervalued (Kaine 2012; Muller 2019).

Undoubtedly, there are difficulties ahead for economic recovery and all that implies for the workforce and the industrial relations system that frames it. It is likely that many businesses will go under despite high levels of unemployment exerting downward pressure on wages and conditions. Early evidence suggests that many employers are already pursuing pay freezes or cuts and the Fair Work Commission has postponed its annual wage determination, prompting the Reserve Bank to reflect that in the 2009 GFC, the 'Australian Fair Pay Commission (the predecessor to the FWC) decided to freeze the federal award wage rates, citing a reduction in the ability of employers to offer sufficient work during that period' (RBA 2020: 83). The wartime atmosphere created by the COVID-19 crisis has provided a space for major policy change and offers both opportunity and peril for Australian industrial relations. One opportunity would be to recognise the importance of those feminised and blue-collar 'essential' industries and reflecting that through industrial instruments.

The main danger is that change could be ideologically driven. Influential employer bodies have already begun calling for industrial relations reforms, sensing an opportunity to leverage dire economic circumstances. Thus far, the federal government has largely avoided this trap but, as the immediate crisis passes, it remains to be seen whether the cooperation that has characterised it gives way to more 'normal' Australian politics in which industrial relations is highly contested and partisan.

Sarah Kaine is an Associate Professor in the Business School at the University of Technology Sydney.

Sarah.kaine@uts.edu.au

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