

PLIMMERTON ROTARY CLUB

---

POLICIES FOR A BYGONE ERA

---

NORMAN LAROCQUE  
NEW ZEALAND BUSINESS ROUNDTABLE

PLIMMERTON  
25 MARCH 2004

## **POLICIES FOR A BYGONE ERA**

Late last year, former minister of labour Margaret Wilson announced a series of amendments to the Employment Relations Act (ERA).

The proposed changes include measures that seek to push workers into collective contracts and force employers into multi-employer agreements. The bill broadens the duty to bargain in good faith, widens the rules governing unjustified dismissals and introduces 'protections' for workers when businesses are sold or restructured.

The former minister of labour has defended the changes on several grounds. For example, she has argued that the ERA and her proposed amendments will prevent New Zealand from "deteriorating into a low-wage country". What rubbish.

Between 1992 and 2002, New Zealand's gross domestic product (GDP) per capita – a measure of the country's economic well-being – grew at a rate four times faster than in the previous ten years. Much of this growth occurred under the relatively liberal Employment Contracts Act (ECA). If Margaret Wilson is right, surely we should have all been penniless by the end of that period, instead of being 28 percent wealthier on average as measured by GDP per capita!

There is no public policy justification for the changes to the ERA, just as there was none to support the repeal of the ECA in 2000. The changes are instead being driven by a lethal cocktail of blind ideology, ignorance of economic principles and special interest politics.

It's politics, not policy, stupid!

The ERA amendments are just another fillip to the unions for feeding and clothing the government during its years in the political wilderness. The reality is that Big Union has been disappointed at how small the payback has been from the ERA. Although the number of unionised workers grew by 10 percent between 2000 and 2002, the proportion of unionised workers in the workforce has remained static. In the private sector, union membership is down to 12 percent of the workforce. In some parts of the

private sector, unions are almost irrelevant. New Zealand workers have 'moved on' from class-ridden union politics, to use one of the prime minister's pet phrases. So when Ross Wilson, president of the Council of Trade Unions (CTU), talks about protecting vulnerable workers, he means union bosses.

Irrefutably, the sequel to the ERA bill is an attempt to 'fix' the unions' problem. A large number of the demands outlined by the CTU in its December 2002 submission to the government (as part of the review that preceded the bill) are found in the bill. Right down to the specific wording of many of the clauses.

So when people refer to the legislation as the 'Wilson bill', they actually mean Ross Wilson, not Margaret Wilson!

The government has stated that economic growth "remains a top policy priority". The Speech from the Throne at the opening of the current parliament stated that the government:

... sees its most important task as building the conditions for increasing New Zealand's long term sustainable rate of economic growth.

The government has amplified this statement by saying its goal is to see New Zealand attain a level of income per capita in the top half of the member countries of the Organisation for Economic Cooperation and Development (OECD).

The test of any policy should therefore be whether or not it assists in moving the country toward this laudable and ambitious goal.

The proposed changes to the ERA fail this test. Indeed, they are far more likely to reduce the growth rate of the economy and frustrate the attainment of this goal. As a result, wages will be lower than otherwise and, as a country, we will be less able to afford services such as better schools and better health care.

The proposed changes to the ERA and the wider labour market reforms represent a move toward a 'European' model of labour market regulation. Incredibly, New Zealand is embracing European-style welfare statism and

employment policies at the very time that the weaknesses in that model are becoming more obvious in countries such as France, Italy and Germany, and commentators are recommending wholesale changes to their systems.

While the full extent of the bill's impact cannot be known, given the scale of the changes and the scope for legal interpretation of its provisions, the key question is whether it moves New Zealand's labour market framework in the right direction or the wrong one. No single policy move, by itself, is likely to have a large impact, either positively or negatively, on economic performance. Cumulatively, however, sound or unsound moves make a large difference.

It is now well established that the relative quality of policies and institutions is the main determinant of differences in countries' economic performance. Continuous improvement in policy settings is essential to maintaining international competitiveness. In the view of the Business Roundtable, the ERA bill is a backward move in terms of improving the environment for growth.

Collectively, the proposed changes to the ERA will mean a less flexible workforce through their promotion of collective bargaining, unionisation and multi-employer collective agreements. The narrower definition of 'justifiability' in the area of personal grievances will mean it is harder to dismiss workers. This will make employers less willing to hire them in the first place. The changes will lead to greater uncertainty for employers as new legal interpretations are developed in areas such as personal grievances, 'good faith' and bargaining.

The new 'protections' afforded to workers in the event of contracting out or the sale or transfer of a business could have a significant impact on the ability of firms, and the economy more generally, to adapt and restructure. According to International Labour Organisation official Alan Wild, who was in New Zealand recently, the European experience with similar provisions has shown that:

- failing companies tended to close rather than restructure;

- new entrants into the market had an unfair advantage over existing companies;
- it was difficult for a company looking to contract out work to manoeuvre; and
- legal costs increased.

This is hardly a sound approach to 'worker protection'. And in Wild's view, the effects could be worse in New Zealand than they have been elsewhere.

The ERA bill's expansion of the role of 'third parties' such as the Employment Relations Authority and the courts is a move back toward compulsory arbitration.

The proposed changes will lead to higher administration and compliance costs for employers. Simon Carlaw, chief executive of Business New Zealand, recently told the parliamentary committee considering the ERA bill that the total annual expenditure by firms on employment-related compliance was conservatively estimated at \$665 million (0.5 percent of GDP). He welcomed any considered analysis to disprove his estimate that the bill would increase compliance costs by 30-50 percent. To my knowledge, no one has yet done so.

These increases in compliance costs come on top of a raft of legislation that has increased the costs of doing business and tied up employers in ever greater amounts of red tape – Occupational Safety and Health (OSH) changes, parental leave, Holidays Act changes and the introduction of an extra week's annual leave.

Compliance costs are a major issue for business. This is evident from the *New Zealand Herald* 'Mood of the Boardroom 2004' survey of 120 chief executives of New Zealand's largest companies, released today. It found that, among those surveyed, 90 percent believed that the employment relations legislation would have a negative effect on productivity and growth. The equivalent percentages for the Holidays Act and OSH were 74 percent and 46 percent respectively.

As Roderick Deane, chairman of Telecom, ANZ-National and Fletcher Building, said in today's *Herald*:

I'm stunned at the amount of detailed regulatory intervention ... compliance costs are just becoming formidable ... talk about losing the plot.

Still to come are pay equity and initiatives to improve so-called 'work-life balance'.

Might I be so bold as to suggest a bit more 'work-life balance' for the ministers and advisers who dream up these retrograde policies?

In 1999, the OECD argued that the employment relations framework that existed under the ECA was "sound". The ERA, introduced in October 2000, represented a step in the wrong direction for labour relations law in New Zealand. The changes proposed in the bill represent a further move away from the decentralised and flexible labour relations system that existed under the ECA.

In its most recent report on New Zealand, the OECD criticised the current government's labour market reforms, noting that:

Although the labour market remains one of the most flexible in the OECD, recent years have seen a clear trend towards greater rigidities and higher labour costs. Further such changes are in the pipeline. Individually the measures have been fairly benign, but cumulatively their impact may be important ... social objectives need to be balanced against the benefits of labour market flexibility – namely faster productivity growth and a more stable and resilient economy.

The changes proposed in the bill will harm employers, employees and the national interest. They will do nothing to assist the government in meeting its ambitious target of restoring New Zealand to the top half of the OECD in terms of GDP per capita. Indeed, they will have the opposite effect by reducing the economy's ability to adapt to frequently changing market conditions in the world economy.

Don't get me wrong. The sky won't fall the day after the ERA bill is passed into law. The Business Roundtable did not say that at the time of the changes in 2000 and we are not saying that now. We don't intend to make exaggerated claims like those who opposed the ECA in the early 1990s. At that time, groups such as the CTU argued that the ECA would lead to

'anarchy' and 'the Pol Potisation of the union movement'. These claims proved to be nonsense in the end.

But the changes to the ERA are moving us in the wrong direction.

Margaret Wilson says they are simply fine-tuning. More recently, Michael Cullen described them as "minor changes to employment laws". Yet, the bill and its accompanying explanatory notes total around 100 pages!

The changes clearly are not fine tuning. In the words of law firm Simpson Grierson, "The bill represents a significant change to the current law."

We should also recognise that the proposed changes are unlikely to represent an end point for policy. The December 2002 CTU submission makes it clear that the CTU sees them as but a stepping stone on a path back to the world of national awards, compulsory unionism and compulsory arbitration that existed in the 1970s and 1980s. At its recent appearance before the parliamentary committee examining the bill, the CTU presented 39 pages of additional proposed changes! And this after having practically written the bill in the first place!

At the behest of the CTU, the provisions relating to the sale or transfer of a business, which were removed from the Employment Relations Bill in 2000, have returned in modified form in this bill. The introduction of paid parental leave in 2002 is further evidence of CTU influence, with the prime minister recently announcing an expansion of the scheme.

But employers are fighting back.

The Employers and Manufacturers Association in Auckland has slated the changes. Business New Zealand has called the bill "an undisguised shifting of the goal posts by attacking individual agreements and freedom of choice in the workplace". A *New Zealand Herald* survey earlier this year found 'unprecedented anger' at the potential impact of the bill. Gallagher Group chief executive Bill Gallagher called the employment legislation "absolutely bad law".

Leaders from the country's major business organisations have called for the bill to be withdrawn.

That call should be heeded.

The government claims it is keen to engage with business on the bill. John Tamihere has even talked about "making love to small business". To date, the experience of business with the government has been more akin to a vigorous S & M session on K Road!

While the government has paid great attention to union demands, it has not listened at all to the concerns of business – unless you count the recent introduction of freepost envelopes for business tax payments! Even modest employer proposals, like the removal of the union monopoly on collective bargaining and a probationary period before personal grievance provisions apply, have been ignored.

Those who want to see New Zealand move forward, not backward, need to work together to ensure that the ERA bill, and the outdated, class-ridden ideologies that underpin it, are thrown into the policy equivalent of the fires of Mount Doom – never to be seen again.