

**'Moving Forward' Conference On The
Employment Contracts Act 1991**

Why Not Full Employment By 2000?

**Douglas Myers
CHAIRMAN
NEW ZEALAND BUSINESS ROUNDTABLE**

**AUCKLAND
15 MAY 1996**

WHY NOT FULL EMPLOYMENT BY 2000?

At this stage of the day's proceedings, I think we are all entitled to a little light relief.

An entertaining pastime that I can commend to you is to go back and look at what the many critics of the Employment Contracts Act 1991 (ECA) had to say about it at the time it was enacted.

An editorial in *The Dominion*, which is now one of the strongest supporters of the Act, said it would plunge New Zealand into a "dizzying industrial free-for-all". John Kennedy, then editor of *The Tablet*, said it "will tear the community apart". Cardinal Thomas Williams thought the legislation was "sinful". Patricia Herbert of Radio New Zealand described it as "a recipe for exploitation".

Academics chimed in. Raymond Harbridge of Victoria University said the ECA would lead to "a proliferation of industrial disputes", and open New Zealand to "the worst excesses of gangster unionism". Pat Walsh, also of Victoria, predicted a "slide into a major depression". Margaret Wilson of the University of Waikato said the legislation denied employees the means to organise. Ian McAndrew of the University of Otago said it would make "stable and sensible bargaining between a firm and its employees virtually impossible." These are people who are still teaching the graduates our firms employ; incompetence seems no barrier to lifetime employment in New Zealand universities.

Unions warned that wages would collapse, and later that they would explode. Ken Douglas told us that the reforms would lead to "anarchy" and "the Pol Potisation of the union movement". As its continuing leader, I don't often hear Ken likening himself to Pol Pot these days.

Some employers were only marginally less hostile. One large retailer complained that "the Bill would give workers too much freedom of choice." Many wanted the government to require that employers should have to deal with only one bargaining unit. The head of Fisher and Paykel said the Business Roundtable had a "death wish" for advocating such reforms.

I can assure you there are many similar quotes where those come from. You will see I have been charitable and left politicians off the list.

A few of the critics have not changed their views one iota. Bill Andersen, a former leading union official, regarded East Germany as the finest society ever created on earth, and I am sure he will go to his grave believing the Berlin Wall was built to keep the West Germans out. Others had the integrity to change their views in the face of irrefutable evidence. One of the first to recant was John Kennedy. Archbishop Brian Davis has praised the ECA and noted that one of its failings is that it is still too difficult to dismiss unsatisfactory employees. Churches have found this out to their cost in personal grievance cases before the Employment Court. We are yet to be advised of the Cardinal's latest thinking.

In general, most people have stopped making fools of themselves in their comments on the ECA. The main exception is some judges and many politicians, but more on that later.

We have heard today of the immense economic and social benefits of the ECA.

- Since 1991, the number of people in jobs has grown by nearly 14 percent or 200,000, or around half the workforce of Auckland. The ECA has been called by one foreign observer the "Kiwi job-creation machine".
- Unemployment has come down from nearly 11 percent of the workforce to nearly 6 percent, and remains on a falling trend. In Australia, it appears to be stuck at around 8.5 percent.
- The widening of the income gap which was occurring with the growth in unemployment up to 1991 has been arrested.
- Labour productivity growth rose sharply in the period following the ECA, to over double the average annual rate in the 15 years to 1984.
- Wage rates did not collapse, and have started to move upward as the labour market has tightened.
- Contrary to the predictions of industrial mayhem, disruptions outside the public sector have been at an all-time low, with New Zealand experiencing one of the largest falls in lost working days in the OECD.

We have heard of the transformation of working relationships in our enterprises.

- The NZIER survey found that the most common changes to employment contracts as a result of the ECA were an increase in flexible work practices, reduced demarcations, greater multi-skilling and an increase in performance-based remuneration - all the things that make for higher productivity and growth.
- Three-quarters of all firms surveyed said the ECA was positive for their overall performance. The most significant outcomes were enhanced productivity, operational flexibility and greater training.
- Outside of industries which are still subject to statutory protection such as the dairy industry, most firms have moved to predominantly individual contracts or enterprise collective contracts, and the NZIER found, predictably, that those which had retained multi-employer collective contracts had not done as well. Firms with multi-employer contracts of the type which Labour and the Alliance wish to promote have lower investment and employment intentions, higher average cost increases, and worse profitability performance than other firms.
- The culture in our enterprises has been transformed. There is far more awareness of human resource issues generally. A climate of trust and cooperation has in most cases displaced former adversarial relationships.

We have seen how outsiders have viewed New Zealand's labour reforms.

- The efforts by Australian unions and Jane Kelsey, an Auckland University academic, to discredit the changes fell flat on their face. The Australian electorate has just overwhelmingly rejected the corporatist Accord which is still touted by Labour and the Alliance as a model for New Zealand.

- The new Australian government has a mandate to introduce changes on New Zealand lines. If implemented, they will put pressure on New Zealand to make further improvements. Already New Zealand laws on dismissals are more restrictive than those in Australia, and the new government proposes to relax Australian laws further.
- Professor Charles Baird of the California State University at Hayward has warned of the harm done to labour relations in the United States by laws mandating good faith bargaining and union representation rights of the type Labour and the Alliance are promoting.
- Europe is drowning in joblessness. In the late 1970s, unemployment was under 5 percent in France, Germany and most other European countries. It is now closer to 12 percent in France and Germany and about 20 percent in Spain. The French government knows it must reform its job-destroying minimum wage legislation, and Spain and Italy are trying to reform their laws on dismissals.
- It is extraordinary that Labour and Alliance politicians still hold up Sweden and Germany as labour market models for New Zealand. Bo Carlsson of the Swedish Employers Confederation has told us why New Zealand is doing it right and why Sweden has to change, and we recently had the same message from the head of the German chamber of commerce.

Finally, we have heard how the ECA has been good for women, Maori and small businesses.

Women's interests rarely got a fair hearing in male-dominated trade unions committed to a 40-hour week; the extra flexibility in working hours and growth in part-time jobs have been of great advantage for them. Maori unemployment has fallen much faster than average unemployment, although it remains far too high. And small firms have been able to go about their business unhampered by the costs and hassles of dealing with national or industry unions with an agenda that had little to do with their workplaces.

The facts brought out in today's presentations have been increasingly recognised by New Zealand workers and the public. At the time the ECA was passed there was a high level of disapproval of it. Now that the scaremongering has turned out to be baseless, attitudes are much more favourable. The MRL Research Group survey released earlier this year found that over 75 percent of New Zealanders were satisfied with their terms and conditions of employment, their employers and their jobs. It showed the public understands that the ECA has been good for employment, productivity and the economy. The Employers Federation deserves credit for initiating the MRL and NZIER research.

Armed with these facts, all concerned New Zealanders should vigorously contest proposals put forward by any parties in this year's election campaign to repeal or undermine the ECA. They must be exposed as driven either by vested interest or by ignorance. We no longer have to rely on abstract arguments, analogies and examples to make our case: the evidence of five years' experience with the Act speaks for itself.

Regrettably, proposals to repeal the ECA are still being canvassed. Despite being responsible for substantially increasing unemployment in the 1980s by its refusal to

free up the labour market, Labour still seems to be in thrall to union interests. Only five years ago Labour was passionately defending compulsory unionism and national awards. It now accepts that those views were mistaken, but it is promoting soft porn versions of the same ideas which are equally mistaken. Labour is still locked in yesterday's mindset, and the harmful effects of its proposals on all parties - except unions seeking statutory privileges - must be vigorously exposed.

We have seen that it is possible to win arguments with logic and facts. The ridiculous initial posturing of the ILO did not stand up to analysis and it backed down. The ECA is a win-win statute for all parties: it is pro-worker, pro-employer and pro- the interests of the unemployed. It is not anti-union or anti-collective bargaining. It does not tilt any playing field or confer unequal bargaining power on any party. It simply allows choice and free contracting. If anything, it is biased towards employees: they are able to quit employment at will whereas employers, wrongly in my view, are no longer able to negotiate at-will contracts. There is nothing in the ECA that is not capable of being embraced by all parties that are genuinely concerned with community rather than sectoral interests. If it survives for a further parliamentary term, the ECA, like so many of New Zealand's other important reforms, will, I believe, no longer be a contentious issue.

Tedious as it may be, it is therefore incumbent on all of you as people who understand the importance of sound labour law to explain the benefits of the ECA, and the dangers of tampering with it, in your firms and communities in the months ahead. Sadly, it remains the case that many politicians have little understanding of workplace realities. Unlike the majority of New Zealanders, many Labour and Alliance politicians have never worked in private sector firms. Much of what little knowledge many of them have of employment relations comes through distorting filters such as trade union officials. You can help them by exposing them to the new environment and dispelling the myths they still harbour, as David Sixton of Fletcher Challenge has done today.

However, we should not be spending our energy simply defending the status quo. The last thing New Zealand needs is a backward-looking debate when successful countries in Asia have long since accepted the importance of free labour markets and when Australia and other countries are trying to move in that direction. New Zealand can do a lot more to improve its labour market and advance the interests of firms, workers and the unemployed. We need to focus politicians' attention on this forward agenda.

For a start, there are several areas outside the ECA that need attention. The Holidays Act 1981 is a shambles, and the government seems to have given up trying to fix it. Our minimum wage legislation is denying low-skilled and marginal workers several thousand jobs and should be scrapped: there are no minimum wage laws in countries like Britain, Switzerland, Denmark and Hong Kong which understand that, far from protecting workers, such laws harm the least well off. The trans-Tasman maritime accord should be dismantled, and the Commerce Act 1986 should be applied to the labour market to reduce the risk of similar boycotts and collusive action.

Whereas in the private sector employment contracts are now overwhelmingly enterprise-based and strikes are a rarity, the public sector is still riddled with national awards and plagued by disruption, often at great inconvenience to the public. New Zealand's worst labour market problems are now occurring with groups such as teachers, health workers, prison officers, firefighters and air traffic controllers. Such problems have long since disappeared in formerly trouble-prone areas like the

electricity industry which now operates on private sector lines. The State Services Commission has clung to its centralised role in areas like education; it should be disbanded and the task devolved to schools. In all cases what is needed is moves to introduce competition and/or various forms of privatisation in order to foster productivity and better working relationships.

The most harmful feature of all our present labour market arrangements is, of course, the Employment Court. This should be no surprise. The Business Roundtable and others repeatedly warned the government that it would be making a serious mistake to include compulsory grievance procedures in the legislation and retain a specialist court.

Courts with a specialist role are rarely content just to administer the law; they breed judges with a crusading mission. They deal with the few atypical contracts that have failed, and they seek to engineer perfection in these particular situations by making laws which reduce the efficiency and social benefits of the labour market as a whole. The retention of a Court made up of judges who viewed their role in this light was bound to mean a clash with a regime based on standard contract law principles.

The principles of the ECA were also resisted by the Department of Labour which was part of the old industrial relations club and to this day remains basically attached to the old order: it supports minimum wage laws, a specialist court and the general run of the Employment Court's controversial decisions. The mess it made of drafting the personal grievance provisions has led to many of the present difficulties.

The Business Roundtable has been redoubling its efforts to bring home to the public the social costs of the flawed policies in this area. Our approach has been a three-pronged one. At the end of last year, together with the Employers Federation, we released a legal analysis of court interpretations of the ECA by Dr Colin Howard, the main finding of which was what he called the "quite extraordinary resistance to implementation of the [contract-based philosophy of the] Act manifested by a section of the judiciary". A study in progress examines the constitutional case for a specialist employment court and finds it lacking; I understand the Employers Federation has now come to the same conclusion. Finally, Professor Baird's study looks at the economic effects of the Employment Court's decisions in dismissal cases; he finds that, far from protecting workers' interests in its rulings, it is actually costing workers millions of dollars in wages and destroying thousands of potential jobs. The right for all parties - employers as well as employees - to enter into at-will contracts which provide for termination without having to show cause, unless the parties agree otherwise, should be restored in the interests of job creation.

The problems do not end with the Employment Court, however. They are also apparent in some decisions of the Court of Appeal, most notably in the infamous *Brighouse* case. This was New Zealand's most blatant example of the Court engaging in circular arguments and judicial activism to come down, by the slenderest of majorities, with a judgment that was a direct and conscious snub to parliament's intentions in passing the ECA.

Lord Cooke fired a parting shot at the Business Roundtable in stepping down from the Court of Appeal. Whatever one might think of such judicial conduct, it is consistent with the political and activist role which the Court assumed under his leadership, and employers now have to cope with that environment. I very much doubt that Sir Ivor Richardson would oversee a repeat of *Brighouse*, but Justice Thomas, a newly appointed member of the Court, produced an extraordinary

dissenting judgment in the recent *Fire Service* case. This ended with the flamboyant suggestion that, as a result of the majority decision, "collective bargaining in the form recognised in the Employment Contracts Act is largely vitiated". Given that collective bargaining had stayed alive and well on terms which were understood by all parties until overturned by the Employment Court's decision in this case, Justice Thomas's outburst is in the same ludicrous category as those I quoted at the beginning of my remarks. Like the earlier ones, the prediction can be tested in the light of events and we should reflect on how a judge might be held accountable for making such a judgment if it is found to be wrong. Justice Thomas also failed to explain that the Employment Court had misinterpreted the law so as to make unions immune from any criticism by employers during negotiations - a proposition that would be laughed out of any trade union conference. The problems employers have had with judges who are remote from the marketplace are clearly not over yet.

I conclude that politicians and judges could do a great deal more yet to improve the working of New Zealand's labour market. One of the more straightforward indicators of whether a labour market is working well is whether it is achieving a high level of employment.

Some years ago, most people seemed to regard the Business Roundtable's vision of full employment as an impossible dream. Politicians and others spoke of having to live with an unemployment level of, at best, 6 or 7 percent of the workforce. Teachers told their classes that many school leavers would have to prepare for a lifetime of unemployment.

These views were absurd, but they carried over into the work of the Employment Task Force which suggested in May 1994 that even with foreseeable economic growth, unemployment in 1998/99 would still be 7 - 8 percent. Professor Judith Sloan, in a study for the Business Roundtable, said that such projections were far too pessimistic provided present policies were maintained and improved, and suggested that a rate of 4 percent by that year was achievable. That projection still looks eminently realistic, given the same assumptions.

No one can say for sure when full employment is achieved in any economy, including New Zealand. In a dynamic economy, with supply and demand conditions frequently changing, there will always be some firms that are contracting employment and some others that are expanding employment. Given that labour market information is not free, there will always be some search activity going on - both by job seekers and employers. Therefore, reallocation of labour resources always takes time. There will always be people in the job-search pipeline. Some begin job search and others end job search every day. A certain level of reported unemployment is, therefore, part and parcel of the never-ending process of resource reallocation in a dynamic economy.

Given these caveats, however, I suspect full employment in New Zealand would mean a measured rate of unemployment nearer to, say, 1 - 3 percent than the present 6 percent rate. If unemployment were to drop to 4 percent by 1998/99, it could readily fall within the 1 - 3 percent range two years later. In other words, full employment by the year 2000 is a feasible goal.

In view of the importance of work for individual well-being and self-worth, why should we settle for any lesser goal? The Employment Contracts Act 1991 has turned what was just a dream into a realistic possibility. It won't be achieved, however, without further hard work to promote growth and labour market flexibility.

New Zealanders will soon be voting on whether they want to maintain and enhance the ECA and related policies which have brought full employment within our reach, or whether they want to throw them away. I have no doubt where this audience stands on that choice, and I believe the challenge of full employment by the year 2000 is the one we should leave with the electorate and politicians today. Five years experience with the ECA has shown beyond doubt that it is an outstanding success which we must defend against those who would dismember it for political advantage. It is the task of all of you to get out and sell the vision of what might be achieved in another five years' time if politicians and the community set their minds on moving forward.