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**SUCCESSSES AND FAILURES OF LABOUR MARKET REFORM IN  
NEW ZEALAND**

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## **SUCSESSES AND FAILURES OF LABOUR MARKET REFORM IN NEW ZEALAND**

### **BACKGROUND**

For most of the past 100 years, New Zealand has had a heavily regulated and centralised labour market system. A 1894 statute aimed at avoiding strikes introduced a compulsory arbitration system whereby disputes not resolved by negotiation were to be resolved by a central arbitration court. It also provided for extended agreements covering many employers in a region or industry, including Employers who were not parties to the original dispute. Over time, a British-style craft-based trade union structure developed, including registration of unions and, from 1936, compulsory union membership. New Zealand was a flourishing country around the turn of the century and its system attracted international attention. Features of it were adopted in Australia, the Weimar Republic in Germany and the United States during the New Deal era.

In the decades that followed, a regulated labour market evolved hand-in-hand with a protected economy and regulations governing many economic activities, including frequent episodes of price controls. Centralised forms of wage restraint were often seen as necessary to check inflationary pressures arising in the cost-plus environment. Tripartite structures involving employers, unions and the government became a feature of economic policy making. In the immediate post-war period the leader of the trade union movement actually had an office in the Treasury as a member of an economic stabilisation commission.<sup>1</sup>

By the early 1960s it was becoming clear that decades of controls and inward-looking policies were taking a toll on New Zealand's economic performance. For the next 25 years, however, attempts to grapple with the problems were fitful and ineffective. Economic difficulties intensified with the oil shocks and inflation of the 1970s and the wage-fixing system, as well as 'fortress New Zealand' policies more generally, came under increasing pressure. Various forms of incomes policies and

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<sup>1</sup> Michael Bassett (1998) *The State in New Zealand 1840-1984: Socialism Without Doctrines?*, Auckland University Press, Auckland, p226.

wage-tax trade-offs were tried in an effort to shore up the rickety structures. Centralised wage orders by the Arbitration Court ceased in 1979, and voluntary unionism was introduced in 1983 but it only lasted for a brief period. For the most part the system of registered unions and blanket coverage awards remained intact.

With the election of a Labour government in 1984 against a background of economic crisis, including a serious run on the currency, New Zealand embarked on a broadly based programme of economic liberalisation. Progressively this included the removal of all wage, interest and other price controls, the dismantling of import licensing and tariffs, the deregulation of financial markets and exchange controls and the adoption of a freely floating currency, a disinflationary monetary policy, extensive product market deregulation, moves to corporatise and privatise state trading enterprises, and other public sector reforms. In most respects these were moves in the direction of policies that more successful OECD countries had long practised or were also implementing.<sup>2</sup>

The Labour government, however, found it difficult to apply a similar liberalising philosophy to labour markets. It abolished compulsory arbitration but reintroduced compulsory unionism in 1985. In that year a wage freeze ended in an environment where disinflationary policies and increased competition had not fully taken hold, with the result that average private sector wages increased in a 12-month period by around 18 percent (and public sector wages by an even higher amount). This real wage shock was a major factor in the steep increase in unemployment in the late 1980s. Between 1987 and 1990 the Labour government made some further changes to labour market structures including the introduction of limited contestability among unions for groups of members and limited provisions for initiating enterprise-specific negotiations. These reforms were minor and piecemeal, however. They failed to meet the needs of firms having to adjust to new competition and did little to facilitate the reallocation of labour from declining to expanding sectors. More significant and successful changes were made to public sector employment arrangements, to waterfront employment and to shop trading hours, which were substantially liberalised. However, not until the Labour government lost office and a National Party government was elected in 1990 did labour market reform get addressed in a somewhat more coherent fashion.

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<sup>2</sup> For an account of New Zealand's economic reform programme, see Lewis Evans, Arthur Grimes and Bryce Wilkinson with David Teece, 'Economic Reform in New Zealand 1984-95: The Pursuit of efficiency', *Journal of Economic Literature* Vol XXXIV, December 1996, pp1856-1902.



## **Ideas about labour market regulation**

From the 1890s on, New Zealand labour law had been based on the premise that labour markets were somehow special. The driving ideas were those of Fabian socialism and were entrenched in the rhetoric of trade unions.

"Labour is not a commodity" was one slogan that dates from this era. The Clayton Antitrust Act in the United States proclaimed "That the labour of a human being is not a commodity or article of commerce". An associated idea was that "wages should be taken out of competition". But while people are not commodities or articles of commerce, the labour services they provide using their mental and physical capacities most certainly are. Workers are sellers of labour services and employers are buyers. There is a supply, a demand and a price for every kind of labour. If the terms on which labour services are bought and sold are not set by voluntary contracts in competitive labour markets, there will be enormous problems achieving coordination through regulatory or judicial processes. Ironically, the one-size-fits-all uniform terms that inevitably result in a regulated environment come much closer to treating workers like commodities.

Another longstanding idea behind labour market regulation, unionisation and collective bargaining was the notion of 'unequal bargaining power' with its connotations of worker 'exploitation'. This simply misunderstands the nature of markets and competition. An individual customer at a large department store or a bank is not at risk of exploitation even if they have no apparent ability to influence the terms of their transactions. Their basic protection is actual or potential competition from other firms eager to meet their needs. Similarly, in competitive labour markets firms compete with one another for the services of employees, and wages and other conditions of employment are set through voluntary exchanges that yield mutual gains.<sup>3</sup> On each side, bargaining power depends on alternatives, and at times labour markets, like any others, may favour buyers or sellers. But there is no systematic or long-run bias in labour markets in favour of employers – which party has

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<sup>3</sup> This argument is explained in one textbook as follows: "Often it is said that individually employees lack sufficient bargaining power ... . This is the argument used in favor of collective bargaining ... . But ... employers compete against other employers, and employees against other employees – not employees against employers, as folklore says. It is the availability of higher-valued alternatives, not the ability to bargain collectively, that increases bargaining power." Armen Alchian and William R Allen (1983) *Exchange & Production: Competition, Coordination and Control*, Wadsworth Publishing Company, Belmont, p328.

the most bargaining power in the technology industries in the United States today? Moreover, relatively inexperienced or undereducated workers are protected by the pattern of conditions established by better informed participants.

Whether theories of unequal bargaining power hold is easily tested by empirical observation. If they did, employers would clearly exploit this power and bid wages ever lower. The reality, of course, is that wages and other conditions of employment have risen over time, even (or especially) in economies such as Hong Kong where labour regulations and unionisation are minimal.<sup>4</sup>

In the 1980s in New Zealand there was an increasing realisation that labour markets are not in fact special. Problems of 'market failure' such as public goods, externalities and monopoly are not serious in labour markets, at least in the absence of statutory interventions. By contrast, the problems associated with regulation and 'government failure' are acute, because no central authority can possibly have the information or ability to understand the needs and preferences of diverse workplaces and huge numbers of workers, and to regulate their employment arrangements in an efficient manner.<sup>5</sup> The conclusion reached in New Zealand by many business and employer

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<sup>4</sup> Richard Epstein has illustrated this point in the following terms: "The argument about exploitation is surely no stronger when cast in the analogous language of inequality of bargaining power. Thus assume that an employer could "dictate" the terms of trade in the marketplace. What would we expect to see the contract look like? The answer is that the employer would never stop pressing her advantage. If it turned out that the employer could dictate terms, why would she offer a wage of 10 if she could drive it down to 9; and why would she settle for 9 if she could drive it down to 8? The logic of dictation leaves the employer no reason to stop until, without mercy, she has extracted the last bit of advantage. When the process comes to a halt, we should observe people working for employers at a zero wage, and we don't. If firms can exploit workers, then retailers can exploit their customers, so that it is unnecessary to offer cash discounts, free exchange privileges, and volume discounts. Start with these oft-repeated assumptions, and there is no stable or discernible equilibrium with wages or, for that matter, prices in any relevant market. Yet the theory of exploitation notwithstanding, we have long observed positive wages for labor and finite prices for goods. ... The idea of inequality of bargaining power, the idea of dictation, fails the most decisive test: it has no *descriptive* power." Richard Epstein (1995) *Simple Rules for a Complex World*, Harvard University Press, Cambridge, p84.

<sup>5</sup> "The genius of labour markets – whether in the United States, New Zealand or anywhere else – lies in the decentralisation of employment decisions. [There are] enormous odds against successful labour market outcomes created by a centralised labour statute. We are not talking here about [network industries] where there are genuine problems over interconnection that are not obviously resolved by the market. Nor are we talking about collusion amongst firms, or a business using force or fraud. We are talking about employment relations in general – ordinary contracts between

organisations, government officials and the government which was elected in December 1990 was that employment relationships should, by and large, be regulated by ordinary contract law.

### **The Employment Contracts Act 1991**

The long title of the Employment Contracts Act (ECA) enacted in May 1991 stated that its intention was to promote an efficient labour market. Essentially the Act deregulated employment contracting and removed most of the structures that upheld the previous centralised system. Compulsory unionism was replaced by freedom of association, enabling employees to choose whether or not to join an 'employee organisation'. The words 'trade union' do not appear in the Act; unions have no special statutory backing or privileges but can acquire legal status as voluntary societies or through other forms of incorporation. There is no bias either for or against collective bargaining in the Act; section 1 (c) provides that it is a purpose of the Act:

To enable each employee to choose either – (i) To negotiate an individual employment contract with his or her employer; or (ii) To be bound by a collective employment contract to which his or her employer is a party.

In negotiating employment contracts, employees can freely choose their own bargaining agent – themselves, a union or any other agent such as a lawyer. Strikes and lockouts are permitted but only if they relate to the negotiation of an expired or new collective contract for the employees concerned (or on health or safety grounds). Sanctity of contract was thereby restored in these respects.

Thus far it is clear that the ECA went a long way to fully deregulating the *process* of employment contracting and introducing standard principles of freedom of association and contract. One questionable exception is that it does not permit union-only or union-free workplace contracts.

On the other hand, the ECA retained a number of provisions which regulate the *content* of employment contracts and thus treat them differently from normal contract law, and in some

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employers and employees – where markets have their strongest and most vital application. There is no area in which there is a stronger case for markets." Richard

respects it introduced new forms of regulation. These restrictions remain problematical in New Zealand labour law.

One mandatory aspect of the content of employment contracts is the personal grievance provisions of the Act. These are particularly important in the case of so-called unjustifiable dismissals, and include both procedural and substantive elements. It is not possible to contract out of these provisions, which in effect require employers to show 'just cause' for dismissals. As a result, employment at will (the ability of an employer to dismiss without showing cause, matching an employee's ability to quit at will) was abolished in New Zealand. Prior to the Act, non-union workers on individual contracts, who accounted for a significant proportion of the workforce, could be employed on an at-will basis.<sup>6</sup>

In addition, the ECA did not give the task of administering a regime based on contract law to the general courts but retained separate institutions in the form of a low-level Employment Tribunal and an Employment Court. The latter in particular has been reluctant to abide by contract law principles and has maintained a pattern of third-party interference in employment relations.<sup>7</sup>

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<sup>6</sup> Epstein (1999) *Age Discrimination and Employment Law*, New Zealand Business Roundtable, Wellington, pp24-25.

<sup>6</sup> Indeed prior to 1970 most employment in New Zealand, including employment covered by collective bargaining contracts, was subject to the English common law under modified at-will terms. Reasonable notice of termination was an implied term. This was confirmed in the leading British case of *Addis v Gramophone Co Ltd* [1909] AC 488. As two commentators on the ECA put it, "The inclusion of all employees in the [Employment Contracts Act's] jurisdiction constitutes a remarkable extension of the state's industrial relations role". Pat Walsh and Peter Brosnan in Jonathan Boston, Paul Dalziel and Susan St John (eds) (1999) *Redesigning the Welfare State in New Zealand: Problems, Policies, Prospects*, Oxford University Press, Auckland, p121.

<sup>7</sup> See Colin Howard (1996) *Interpretation of the Employment Contracts Act 1991*, New Zealand Business Roundtable and New Zealand Employers Federation, Wellington. In 1997, the minister of labour, Max Bradford, stated that "There are signs the combined effect of the Employment Tribunal and the Employment Court decisions – as well as business practices flowing from those decisions – may be adversely affecting employment prospects and flexibility in our labour market. Some Employment Court decisions are clearly inconsistent with the principles of the Act and have caused considerable debate over the role of the Court". Hon Max Bradford, 'What Happens Now?', Labour – Management Government Relations Seminar, Industrial Relations Centre, Victoria University of Wellington, 20 March.

New Zealand has also maintained a statutory minimum wage, currently set at a proportion of average wages which is around the middle of the OECD range. It was extended to youth wages in 1994, and is likely to be a factor in keeping youth unemployment at relatively high levels. New Zealand has not applied a contractual

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approach to holiday entitlements, which remain governed by statute.<sup>8</sup> Similarly, it has a mandatory approach to workers' compensation for injury from accident, although from July 1999 the private insurance sector has been able to provide accident insurance. Health and safety arrangements are governed by regulation rather than contract, and in the 1990s other employment-related legislation introduced by governments includes a Privacy Act and legislation prohibiting discrimination on the basis of age and other grounds. Professional occupational regulation has remained largely untouched.

Thus while New Zealand, together with the United Kingdom, has moved further than other OECD countries in recent years to liberalise its labour market arrangements, it retains many restrictions which in some cases are more stringent than those in a number of OECD countries and which have little justification in terms of public policy criteria.

### **Experience under the ECA**

The ECA is only one element, although an important one, in a wide-ranging set of moves in New Zealand over the last 15 years towards greater economic freedom, and in some respects it is not easy to disentangle its influence from other influences on the economy's performance. The interpretation of some of its effects remains controversial. Moreover, while a broadly sound and consistent economic policy framework was established in the early 1990s and contributed to a strong economic performance in the first half of the decade, that framework has become substantially weaker in recent years with the result that economic performance has been mediocre at best.

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<sup>8</sup> Charles Baird has commented as follows: "Mandated holidays, in the form of minimum vacation periods, mandated family leave and the like, amount to an assertion by regulators (i) that they know better than individual workers and employers what holiday policy should be, and (ii) that a uniform holiday policy, imposed by central planners, is correct for all workers and all employers notwithstanding the local circumstances of time and place. ... It is not difficult to imagine circumstances under which both workers and their employers would be better off *as they see it* if they were free to make trade-offs between holiday time and wages and salaries. There is no reason to think that voluntary exchange would result in a uniform holiday policy for all workers within a firm, much less that it would result in a uniform holiday policy among firms." Speech to the 'Moving Forward' conference on the Employment Contracts Act, Auckland, 15 May 1996.

In looking at experience under the ECA, the first striking result to note is the virtual disappearance of multi-employer contracts. The evidence suggests that in a freer environment most employers want to deal directly with their own workforces and vice-versa. Trust and cooperation have largely supplanted former adversarial relationships. There have been substantial gains in the operating performance of many firms with the elimination of inefficient work practices, demarcation arrangements and penalty and overtime pay, and their replacement by performance elements in remuneration, flexible work practices and multi-skilling. The Act has given employers and employees the opportunity to develop employment conditions appropriate to their circumstances.

Unions have survived and continue to be the predominant bargaining agent for workers opting for collective contracts. Union density has fallen from around 50 percent of the workforce to under 20 percent and only 19 percent of workplaces have any union members at all. This trend was occurring prior to the ECA but was accelerated by it.

Industrial disruption has fallen dramatically. In the five years before the ECA, annual work days lost through strikes averaged 266,000. In 1998, the figure had dropped to 11,778 – the lowest in 64 years. In the March 1999 year, 73 percent of all employees involved in stoppages were in the education sector – unionisation, national awards and other features of the old system have remained more entrenched in the public sector.

Contrary to the views of those who subscribe to theories of unequal bargaining power, average real wages fell only marginally in the freer environment despite the recession of the early 1990s, and began to rise as the economy grew strongly in the mid 1990s. And contrary to other predictions (sometimes by the same people) wages did not 'blow out' as labour markets began to tighten. Wage growth has outstripped inflation but has suffered from the recent decline in overall economic performance. There has been some increase in wage dispersion.

Since 1991, over 270,000 new jobs have been created, in a labour force that now stands at 1.74 million. There has been substantial growth in full-time employment and no

evidence of an increase in the proportion of workers employed on a casual or part-time basis. Unemployment fell from 11 percent of the labour force in 1991 to 6 percent by late 1996, a very sharp fall by international standards, despite substantial inward migration during the period. The direct and indirect effects of the ECA clearly played a part in the improved employment trends. The unemployment rate has subsequently risen again to 7 percent in the recent economic downturn.

There has been controversy about the impact of the ECA on productivity growth. The evidence seems to indicate that aggregate labour productivity improvements have been modest, which is not surprising given the movement of many previously unemployed and low-skilled people into work. That trade-off between job creation and labour productivity growth would probably strike most people as a perfectly acceptable one. Recent research suggests that improvements in total factor productivity, a more useful indicator, have been significant and have been aided by the labour market reforms.<sup>9</sup>

Much academic opinion about the ECA and assessments by organisations such as the OECD and the IMF have been strongly positive. Opinion surveys suggest that most people think it has been good for the economy and that most people are happy with their own working conditions, although opinion is divided over whether workers overall have benefited. The ECA has given New Zealand an important competitive advantage in attracting business and investment, particularly vis-à-vis Australia. However, this competitive edge has recently eroded with the weaker policy environment in New Zealand and parallel moves in Australia away from centralised wage agreements towards enterprise contracts.

### **Other influences on labour market performance in New Zealand**

New Zealand's former centralised wage-fixing system and protected economy placed a low premium on education and training and skill differentials were compressed. Many people were employed in inefficient manufacturing industries, over-staffed government

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<sup>9</sup> Erwin Diewert and Denis Lawrence (1999) *Measuring New Zealand's Productivity*, Treasury Working Paper 99/5, Wellington.

organisations such as the railways and the post office, and meat processing plants serving the guaranteed UK market. Jobs were readily available for people leaving school so there was little incentive to acquire advanced qualifications.

With the opening up of the economy to international competition and reforms in the public sector, many of these jobs were lost and skill requirements changed radically. Participation in tertiary education has increased substantially and firms are undertaking much more industry training. The ECA has helped achieve the necessary wage differentials to attract and retain staff, although differentials in the lower wage ranges remain distorted by statutory minima. Nevertheless, education and training lag economic changes and there is still a substantial proportion of the total population that is poorly educated and without formal qualifications. Educational achievement

continues to be handicapped by the quasi-government monopoly of schooling and higher education and by a lack of rigorous curriculum content and assessment in schools.

Labour market trends have also been affected by developments in social welfare policies since the 1960s. Less than 2 percent of the working-age population was dependent on benefits in 1960 compared with 5 percent in 1980 and around 15 percent in the 1990s. Despite better average economic performance in the 1990s, the dependency ratio remains at 13 percent. While wider social and economic developments (such as marriage breakdown, failures within the educational system and economic adjustment) contributed to the growth in unemployment and welfare dependency, there can be little doubt that factors such as wider access to benefits and the level of benefits relative to wages – the replacement ratio – have played a key role. A new domestic purposes (solo parent) benefit was introduced in the 1970s and replacement ratios increased substantially in the early 1980s. For example, the maximum unemployment benefit payable to single adults increased from about 36 percent of the average ordinary time wage (both net of tax) in 1980 to 42 percent in 1985. These changes largely reflected movements in real wages and taxes as benefits have generally been adjusted for changes in consumer inflation.

There has been a gradual recognition that welfare arrangements are unduly discouraging employment and encouraging socially harmful behaviour. Some measures designed to address the problem have been taken. Benefits were reduced by an average of 14 percent in real terms from April 1992. The rates of unemployment and domestic purposes benefits were reduced by more than the invalids benefit. Supplementary welfare assistance, such as accommodation subsidies, has increased since 1992, thereby softening the reduction for some beneficiaries. Work tests and measures designed to place people in training or jobs have been introduced or extended and the income test has been relaxed to make part-time work more attractive to beneficiaries. However, New Zealand's welfare arrangements remain more generous and costly relative to gross domestic product (GDP) than Australia's and, not

surprisingly, New Zealand has a higher rate of welfare dependency.<sup>10</sup>

There has been concern that abatement arrangements trap beneficiaries in poverty. Until 1996 an unemployed person could receive the maximum benefit and earn NZ\$50 (or \$60 for beneficiaries with dependent children) a week before the benefit was abated. The abatement rate was 30 cents in the dollar up to \$80 of additional income and 70 cents thereafter. Under current arrangements an unemployed person can earn an income of \$80 a week before the benefit is abated. The present abatement rate is 70 cents for every additional dollar earned. These changes encouraged part-time work by beneficiaries as intended. However, full-time, full-year work is required to reduce poverty and welfare dependence.

New Zealand has not moved far in the direction of the United States to require reciprocal obligations on the part of beneficiaries to seek and accept work where they are able to do so and to apply time limits and asset tests on benefits. The problem of benefit abatement can only be effectively overcome by reductions in government spending and taxes which would provide more headroom to abate benefits without leading to excessive effective marginal tax rates.

### **The future**

There is no doubt that the ECA marked a watershed in New Zealand's labour market arrangements. Only one political party, currently attracting less than 10 percent support in opinion polls, wants to return to anything like the old regime. The Labour Party and the union movement vigorously fought for the retention of compulsory unionism and national awards in 1991 but no longer defend them. Nevertheless, while they admit that their former stance is no longer credible, they continue to cling to the nostrums and many of the artifacts of the former system.

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<sup>10</sup> For comparisons between New Zealand and Australian welfare arrangements, see James Cox (1998) *Towards Personal Independence and Prosperity: Income Support for Persons of Working Age in New Zealand*, New Zealand Business Roundtable, Wellington.

Thus the future course of labour market policy in New Zealand is unclear. The momentum of reform in general has slowed to a crawl in recent years, serious policy mistakes have been made – especially in the form of a big increase in government spending – and the country is under-performing relative to its potential. In the labour market area, court decisions, particularly in respect of unjustifiable dismissals, have re-regulated the labour market and partially undermined the benefits of the ECA.

A strong argument can be mounted for moving New Zealand's labour market regime further in the direction of contractual freedom. Employees who are capable of negotiating their own wages are perfectly capable of choosing the arrangements that best suit them in respect of such things as dismissal provisions and holidays. There is no more reason for thinking that they will end up with unfavourable terms because of alleged unequal bargaining power than for expecting wages to fall in a deregulated environment. The costs to employers of mandatory restrictions on dismissals will inevitably be shifted at least to some extent to employees and result in lower wages or other inferior employment conditions. Such trade-offs are best left to the parties to make in the light of their own circumstances. More broadly, a body of evidence suggests that by raising the costs and risks of terminations, employment protection rules cause firms to be more defensive about hiring and mean fewer employment opportunities for workers with poor skills and the long-term unemployed in particular.<sup>11</sup> By far the best protection for workers is a fully employed economy with plentiful alternative job opportunities. The introduction of restrictions on the terms on which people may make contracts renders those contracts less efficient and harms the prospects of restoring full employment.<sup>12</sup>

In a New Zealand context at least, further moves to place employment contracts on a firmer contract law footing would be facilitated by transferring the employment law

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<sup>11</sup> See John T Addison and W Stanley Siebert (1999) *Regulating Labour Markets: More Costs than Benefits?* Hobart Paper 138, Institute of Economic Affairs, London, pp59-71.

<sup>12</sup> See Charles W Baird (1996) *The Employment Contracts Act and Unjustifiable Dismissal: The Economics of an Unjust Employment Tax*, New Zealand Business Roundtable and New Zealand Employers Federation, Wellington.

jurisdiction to the general courts, in line with the practice in many other countries. Specialist courts are always prone to thinking their jurisdiction is somehow special. The Court of Appeal has reversed a large number of the decisions of the Employment Court – no fewer than 81 percent of appeals were upheld in 1996, for example – but this remedy is costly to all concerned. It should also be noted that even ordinary judges are prone to accepting some of the fallacious ideas that shaped earlier labour law. The president of the Court of Appeal, for example, has recently stated that the contract of employment cannot be equated with an ordinary commercial contract: "It is a special relationship under which workers and employers have mutual obligations of confidence, trust and fair dealing".<sup>13</sup> This completely overlooks the crucial importance of confidence, trust and fair dealing in commercial contracts in general.<sup>14</sup> While the removal of the specialist jurisdiction would help, legislators may have to give clearer guidance to the courts if the philosophy behind a statute such as the ECA is to be upheld.

In the short term, however, labour market policy in New Zealand may well go backwards. Unlike the Blair government in the United Kingdom, which appears to have largely accepted Mrs Thatcher's labour market reform agenda, the Labour Party in New Zealand is committed to reversing key elements of the ECA, and polls suggest it is likely to win office in next month's general election.

Labour's election policy rejects the notion that labour services are exchanged by willing buyers and willing sellers to mutual benefit, and is based on the ideas of class domination underlying the former system:

Legislation should also recognise that the balance of power or influence between workers and employers is not equal. Labour believes that the best way to redress this imbalance is to encourage

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<sup>13</sup> I L M Richardson, 'Myth or Reality: Employment Cases in the Court of Appeal', speech to the Employment Law Institute, 20 August 1999.

<sup>14</sup> Charles Baird has commented that "Formulations like implied term of mutual trust and confidence" and "covenant of good faith and fair dealing" are simply lawyer-talk designed to allow judges to substitute their own views on employment relationships for the views of the individual parties involved". Speech to the 'Moving Forward' conference on the Employment Contracts Act, Auckland, 15 May 1996.

the collective organisation of workers and to foster collective bargaining ...<sup>15</sup>

In line with this philosophy, Labour proposes to restore the role of unions, in particular by giving them the sole rights to negotiate collective contracts, impose more restrictions on the negotiation of individual contracts, allow strikes in support of multi-employer contracts (thus facilitating a return to industry awards), bring dependent contractors under employment law, and introduce so-called 'good faith' bargaining which would greatly extend the scope for judicial meddling in employment contracts. Related policies would further reinforce the role of unions. These are significant incursions into the rights of workers and firms to freedom of association and contract.

Such moves would be damaging to employment prospects in New Zealand and its attractiveness as a place to work, invest and do business. They fly in the face of advice from the OECD and other commentators that the real priority should be to remedy the provisions of the ECA that have been undermined by the courts, and take other steps to make it easier for firms and workers to contract on mutually acceptable terms. In the event that Labour's proposals are implemented, such advocates of reform will have to take comfort in the fact that governments inevitably change, and that under a subsequent government labour market policy in New Zealand is likely to show greater respect for freedom of contract in the labour market setting. If the flaws in the ECA were remedied in this way it might constitute a useful model for other countries.

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<sup>15</sup> New Zealand Labour Party (1999) 'Working Together: Labour on Employment Relations', p1.