Australian High Court sanctions wholesale assault on working conditions

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Last week's ruling by the Australian High Court to uphold the Howard government's WorkChoices industrial relations laws has cleared the way for an escalating attack on workers' jobs, wages, working conditions and basic rights. By a 5-2 majority, the country's supreme court dismissed a challenge to the constitutional validity of the laws mounted by several state Labor governments and trade union bodies.

The decision demolished the fraud that the High Court case represented any serious threat to the IR laws, let alone a means of protecting workers and their families from the onslaught that has been under way since the legislation came into effect on March 27. All the empty claims by the Labor and union leaders of fighting the laws in the court served only to defuse the overwhelming opposition to the legislation throughout the working class.

After Howard first announced the laws in May 2005, Labor premiers and Australian Council of Trade Union (ACTU) officials told mass rallies and Sky Channel meetings involving hundreds of thousands of angry workers that they must not take industrial action or any independent political action to defeat the laws. Instead, they urged working people to place their faith in the legal challenge and to vote Labor at the next election.

In truth, the High Court case was based on an appeal to the corporate elite, not any defence of workers' interests. It sought to preserve at least some aspects of the tried and tested state IR systems, in which Labor and union bureaucrats have combined to produce record low levels of industrial disputes. Queensland premier Peter Beattie boasted that his state had the lowest strike rate, and Australian Workers Union national secretary Bill Shorten said the state systems had "a way of defusing tough industrial dispute before they become too ugly".

However, the majority of judges—most of them Howard appointees—rejected all arguments for limiting the scope of the new laws to preserve specific aspects of the state systems. Moreover, the judges went further and gave the Howard government a virtual carte blanche to sweep aside working conditions nationally.

The decision opens the door for a radical expansion of federal executive power, with Canberra's "corporations power" able to override state laws across the board. These implications go far beyond industrial relations, because the case virtually abolishes the constitutional division of powers between the federal government and the states. (The 1901 constitution allocated only certain powers to Canberra, with the states retaining the rest.)

The two dissenting judges—Michael Kirby and Ian Callinan—issued lengthy individual judgments vehemently opposing the majority decision. Kirby, a traditional small "l" liberal, declared that it marked a "radical shift in the constitutional affairs of the nation" that would concentrate power in Canberra and also dismantle the compulsory arbitration system that had helped contain industrial disputes throughout the twentieth century.

Despite these sharp differences, various legal experts have acknowledged that the ruling was "not unexpected". In fact, the High Court majority simply expanded the logic of IR laws introduced by the Keating Labor government in 1993, which also substantially relied upon the Australian constitution's "corporations" power, rather than the "conciliation and arbitration" power.

Keating's laws marked the first major break from the national industrial relations system that was enshrined in the constitution in 1901. "Conciliation and arbitration" had underpinned decades of collaboration between unions, employers and governments to contain the class struggle by regulating wages and conditions. This was done via "awards"—legally-binding rulings negotiated by unions to set standard statewide wages and conditions for every category of employment.

Keating introduced individual "enterprise bargaining" as a means of breaking down solidarity and pitting workers against each other, workplace by workplace, to meet the new profit requirements of employers under conditions of globalised production. That legislation also facilitated non-union agreements, but did not tear up the "award" system, much of which was embedded in state IR laws.

As this record demonstrates, the Labor Party and the unions began the offensive against wages, job security and conditions. The unions enforced the attacks under Hawke and Keating through the Labor-ACTU "Accord" and in 1996 they suppressed the mass movement against Howard's initial IR laws, which introduced individual employment contracts (Australian Workplace Agreements or AWAs).

The WorkChoices legislation merely took the next step by gutting the state-based systems, leaving them to cover only workers employed by state governments and "non-incorporated" employers. It exploited the High Court's previous broad interpretations of the "corporations" power, which could extend way beyond companies to an array of bodies such as universities, hospitals, charities and non-government organisations.

The High Court also rubberstamped the wide use of executive power to demolish working conditions and essential democratic rights. The WorkChoices Act gives Howard's cabinet unlimited regulation-making power to set "prohibited content" for employment agreements. Workers are now "prohibited" from demanding a long list of items, including that agreements recognise the right to take industrial action, restrict the use of labour-hire contractors or permit union entry to workplaces. Also outlawed are "non-employment" conditions (e.g. bans imposed for social justice or environmental reasons). No legislation is needed to expand this list; it can be altered with a ministerial pen stroke.

Two days after the High Court decision, new data released by the Australian Bureau of Statistics gave a glimpse of how the legislation has already been used to cut pay levels. Average earnings dropped 1.2 percent in the real terms in the year to September 2006—a fall of about $13 a week. Employers are systematically driving down wage rates, as well as eliminating overtime and penalty payments, while the cost of living is soaring.

No sooner had the court handed down its orders than the very same Labor and union spokesmen who promoted the case declared that workers could now do nothing except vote Labor. Victorian premier Steve Bracks claimed that today's state election in Victoria would be a "referendum" on the IR laws, only to have federal Labor leader Kim Beazley issue the same statement about the 2007 federal election.

Bracks is cynically trying to channel the antipathy of workers into securing the return of his government. Yet, for the past seven years, he has maintained the previous Kennett Liberal government's handover of state IR powers to Howard.

Bracks had obviously anticipated the High Court ruling. In a media statement issued within hours, he declared that only a Labor government now stood "between the rights of Victorian working families and the Liberal Party's extreme industrial relations agenda". He listed 10 bills that his government had passed to protect workers from WorkChoices. But these measures offer only partial "safety nets" and even these are confined to the estimated 20 percent of the Victorian workforce outside the WorkChoices laws.

Beazley, who was Keating's deputy prime minister, rushed in to repeat his previous pledge to "rip up" the laws—without saying what would replace them. In the five months since he first made that promise, in order to shore up the collapsing support for his leadership, Beazley has repeatedly assured employers that under a Labor government they could obtain all the "flexibility" they want through common law individual contracts or union-negotiated enterprise bargaining.

As for the ACTU, it gave Beazley a standing ovation at its biennial congress last month. There was not a murmour of dissent as he warned delegates not to demand too much of a Labor government, insisted employers had to be allowed to "protect their legitimate commercial interests". Beazley vowed to govern in the "national interest" not "sectional interests"—i.e., in the interests of the corporate elite, not the working class.

The congress adopted a new IR policy that commits the unions to help meet the "imperatives of a modern economy", "boost productivity" and "support the use by a future national Labor government of all of the powers available to it under the Australian Constitution". In other words, for all the talk of going to the High Court to defeat Howard's laws, the unions are fully committed to working with a Labor government to deliver employers the same outcomes.

At the same time, the ACTU is doing everything it can to keep a lid on the opposition of workers. The unions are staging a nationally-broadcast rally and rock concert from Melbourne's main sporting stadium on November 30. The only purpose of this extravaganza is to let off steam, stifle discussion and block the development of an independent political movement against the Howard government and its sustained assault on the rights of the working class.