

Radical employment relations reforms: their influence on New Zealand's economic performance

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INTRODUCTION

New Zealand undertook radical ER reform in the late nineteenth century, followed by nearly a century of adaptive change. Since 1990, the ER system has been jolted twice, first by a National Party radical neo-liberal reform agenda and then, in 2000, by a modern social-democratic, Labour Party-lead alternative. A new National-lead government was elected in late 2008 and is promising some changes to the current legislation. The nature of that reform remains unclear, but the new government appears to share one key belief with its social-democratic predecessor – the employment relations framework must contribute more successfully to improved economic performance.

The radical changes of 1991 (the Employment Contracts Act - ECA) and 2000 (the Employment Relations Act - ERA) did not in either case command a consensus across the employment relations parties. In 1991, the trade union movement was bitterly opposed to the ECA, to the point that calls for a general strike were made. In 2000, the ERA provoked widespread opposition from employers, to the extent that it fuelled what has become known as the 'winter of discontent'. Thus, from the early 1980s and the inception of the New Zealand 'experiment', tripartite consensus around the required structure of the employment relations system has been weak. Weak consensus reflects an absence of shared thinking across the parties about what should replace the post-1894 conciliation and arbitration system.

The ECA promoted the marginalisation of unions and, consequently, a decline in collectivism and a palpable rise in individualism. The underpinning argument was that individualised bargaining at the enterprise level would contribute to increased flexibility and productivity, and, therefore, significantly improved economic performance. As we shall see, relative economic performance did not improve substantially as a result of new employment flexibilities. The ERA was designed to reverse these impacts, but to the same broad effect – an increase in economic performance, based on good faith outcomes, empowered workers, workplace partnerships and high performance work systems. The impact of the ERA was not that anticipated by some. Collectivism (measured by union density and coverage by collective agreements) did not increase across the economy and declined in the private sector. Whilst economic performance for much of the post-2000 period has been good, labour utilisation has been high and labour productivity performance has remained weak.

The focus of this paper discusses why the two recent, radical reforms – the ECA and the ERA – have been unable to drive improved productivity and economic performance. Implicit in this focus are two more challenging questions: what are the links between economic performance and the employment system, and, in particular, given the resilience of individualised agreements at enterprise level, how possible is a renewed collectivist approach to economic performance in New Zealand?

RADICAL EMPLOYMENT RELATIONS REFORMS

New Zealand is well-known for its root-and-branch neo-liberal reform after 1984, more so because it was originally introduced by a Labour government. The rationale for the reform

was the need for New Zealand to restructure its economy to meet the demands of global competitiveness. This was based on a growing conviction, not only on the part of neo-liberals, that the New Zealand economy was in serious, long-term decline, and required major redirection. Inevitably, the issue of labour market reform became central to the New Zealand debate. Neo-liberalism argues that the labour market is easily prone to distortion and inefficiency, primarily as an effect of trade union activities. For many neo-liberals, it is *primus inter pares* as the vital target of reform. In New Zealand, many neo-liberals regarded the conciliation and arbitration system first introduced in 1894 as a major source of economic inefficiency. The system's own crisis from the 1960s onwards compounded that view.

However, a wholesale reform of the labour market was not introduced in the 1984-1990 period. The Labour government chose to adopt an adaptive approach to labour market reform, seeking to encourage, rather than impose, labour market flexibility. The key measures in place between 1984 and 1990 were designed to promote a greater incidence of enterprise-level bargaining. In general, unions were not prepared to experiment with alternative bargaining arrangements, particularly as they were already under pressure as a result of industrial restructuring and the wider impacts of the post-1984 reforms. The important exception to this was in the public sector, in which privatisation and corporatisation drove significantly more demanding reform agendas. Thus, at the time of the Labour government's defeat in 1990, the labour market remained one of two important areas (the other being social welfare) in which neo-liberal reform had not been completed.

The Employment Contracts Act: promoting an 'efficient labour market'

The National government elected in 1990 completed the employment relations reform process with the Employment Contracts Act (ECA). This was expressly couched in terms of economic outcomes, privileging enterprise-level ER arrangements and individual, rather than collective, contracts. Arguably, it remains to this day the OECD's most comprehensive implementation of neo-liberal labour market ideology. The object of the ECA was to promote an efficient labour market, in which an individual was free to choose between an individual or a collective contract (Harbridge 1993). The primacy of individual contracts was firmly established: by 2000, over 75% of employees were on individual contracts, compared with under 50% in 1990. Enterprise bargaining grew equally: in 1990, around 23% of employees were so covered; by 2000, the figure was 91%. Not surprisingly, union density slumped from over 40% in 1990 to 20% in 2000.

In most respects, the ECA more than achieved its intended changes in bargaining structures, processes and outcomes. However, evidence suggests that the primary purpose of the ECA – improved economic efficiency – was not realised in improved productivity levels (Easton 1997, Rasmussen 2009). In simple terms, the ECA should have resulted in significantly improved productivity, if the neo-liberal argument was correct. In practice, New Zealand's productivity performance remained at best modest, particularly in comparison to its nearest, and more highly-regulated, neighbour. This is illustrated by Graphs 1 and 2. Graph 1 shows the relative movements in labour productivity in New Zealand and Australia between 1978 and 1998. Graph 2 shows movements in the two countries in per capita GDP for the same period.

(Graphs 1 and 2 here)

The reasons for the poor productivity performance have been hotly debated. In relation to the employment relations system's contribution to economic performance, there are two broad camps. The first, broadly in line with the neo-liberal argument, suggests that the reforms were the correct policy option, but they were given too little time to work through and/or were not sufficiently robustly enforced. The second camp proposes a counter view, which argues that the ECA was poor policy. This often mixes a number of insights, including a focus on continuing capital shallowness, encouraged by cheap labour and the possibility of

longer-than-OECD-average working hours, a collapse in training provision, management capacity issues, and, above all, a dangerous misunderstanding of the roots of sustainable productivity improvement in modern work systems

The Employment Relations Act: context and public policy setting

In 1999, a Labour-led government was elected with a clear mandate to abolish the ECA. Its approach to employment relations rejected both the post-1894 arbitration system and post-1990 contracts-based model (Wilson 2001, 2004a). The approach adopted was 'social-democratic'; some saw elements of Blair's 'Third Way' in the New Zealand approach. The key tenets of the post-1999 approach might be summarised as: an emphasis on supporting economic performance through investments in people, production and infrastructure; a promotion of social inclusion through improvements in public services (for example, health, housing, education) and enhanced social welfare; and nation building in terms of national identity, culture and international positioning.

The government made particular use of two mechanisms - tripartism and a 'whole-of-government' framework. The former was at odds with the previous government's approach, which had been generally to marginalise trade unions from policy discussions and engage directly with the business community. The post-1999 government consistently used tripartite representation in its economic and employment relations policy setting, and also encouraged broad civil society representation in other policy discussions. Tripartism worked well as a process, though its capacity to produce outcomes acceptable to all parties was limited (Burton 2004, Wilson 2004b). The latter was an attempt to integrate policy discussion to improve outcomes, avoid duplication of effort, and reduce inter-departmental rivalries. This was at best only modestly successful.

The new employment relations approach nestled firmly in the heart of both the economic and inclusion agendas of the government. It was designed to improve economic performance, yet also ensure that employee voice was heard clearly, not only in bargaining process and outcomes, but also in a broader policy setting. The intention of the government was to locate its legislative approach to employment relations (the ERA in particular) in a broader platform of rights and behaviours that included health and safety matters, equal opportunity, work-life balance, pensions and superannuation provision, access to lifelong education, improved holidays and parental leave provision and protections for workers facing the sale or transfer of ownership of their company (Haworth 2004, Haworth et al. 2006). The unifying themes in this platform can be distilled to two: the broader ER platform must sustain a successful economy, but must do so in a way that protected the vulnerable and took seriously the voice of working people (Wilson 2001, 2004a).

Implicit in the ERA, but explicit in ministers' statements and in related initiatives (for example, around workplace partnership), was a belief that New Zealand had to shift its focus from the 'low road' of high labour utilisation, low wages, poor training and inadequate capital investment to a 'high road', high performance model. The focal point for this belief became the challenging questions surrounding New Zealand's continuing poor productivity performance. Substantial evidence of this weakness was provided by the Workplace Productivity Working Group (WPWG) report in 2004, and a subsequent series of reports by Treasury in 2008/9.

The WPWG report starkly showed that, in comparison to other developed economies, New Zealand's relatively lower per capita GDP incomes reflected high labour utilisation rates and lower labour productivity (WPWG 2004). This was coupled with a lower capital-to-labour ratio (capital shallowness), which may explain lower labour productivity. The major location in which overall productivity performance could be improved appeared to be in the workplace. The report went on to identify seven drivers of productivity:

- Building better leadership and management.
- Organising work.
- Networking and collaborating.
- Investing in your people and their skills
- Encouraging innovation and using technology to get ahead.
- Creating productive workplace culture.
- Measuring what matters

In a series of papers addressing various aspects of New Zealand's productivity performance, the NZ Treasury also emphasised the need to focus on productivity improvement. Interestingly, their analysis produced five drivers of improved productivity: enterprise, innovation, skills, investment, natural resources (Kidd 2008). Notably, the Treasury approach downplays relatively the importance of the workplace and the nexus therein between management, workers, technology and work organisation. Reflecting on the government's desire to see a 'whole-of-government' approach adopted on pressing issues, the disparities in approach between Treasury and the Department of Labour are telling.

The Labour Governments' approach: meeting the productivity challenge

We can divide the productivity-orientated interventions by government post-1999 into two broad categories: those directly focused on productivity improvement in the workplace, that is, those which took forward the WPWG agenda, and those wider interventions intended, amongst other things, to contribute to stronger economic growth. We will concentrate on the former here, but we should bear in mind the wider interventions. These included, for example, the expansion of education and training, the attempts to establish sectoral and regional development strategies, and a renewed focus on research and development.

There were four key direct interventions. The first was the ERA itself. The second was the work undertaken by the Department of Labour as a consequence of the WPWG report. The third, related but with a different origin, was the development of a workplace partnership initiative. The fourth type constituted a number of initiatives designed to promote productivity workplace improvements by, for example, adoption of lean manufacturing methods.

The ERA, as we have seen, was intended to support productive employment relations, which, by their constructive and engaged nature, would deliver higher productivity at workplace level. Whilst the word 'partnership' did not appear in the legislation, it could be read as a framework in which partnership would prosper. The framework was based on some key, traditional principles. First, collective bargaining provides sustainable productive outcomes because it overcomes problems in the imbalance of power between employer and employee, and, therefore, establishes equity in power relations between the parties, which, in turn, is the necessary platform for sustainable movements up the high-performance spiral. Second, the ERA promoted problem-solving in a pragmatic way, at the 'lowest' level possible, which would provide a further boost to constructive ER. This has proved broadly to be correct. Third, the ERA sought to modify poor behaviour in bargaining by incorporating a 'good faith' approach, including a code of practice for its achievement. This was linked also to provisions intended to promote a freer flow of information about companies within the workforce, on the assumption that informed outcomes will be better. Finally, the overall thrust of the Act was voluntarist, that is, it was up to the parties to decide how they were going to establish sustainable employment relations in their workplaces. This allowed for flexible processes and outcomes and, if necessary, help was available in the form of information and low cost mediation or adjudication through the Employment Institutions.

The Department of Labour was a lead agency in a number of productivity-related initiatives. It was the agency in which the work of the WPWG was located and was charged with the

follow-up activities. It also played an important role in a number of related areas, for example, the development of a skills strategy in conjunction with other agencies (Ministry of Education, Ministry of Social Development, Tertiary Education Commission and so on). Here we are particularly concerned with the work derived from the WPWG report. The DoL's focus on productivity included a number of initiatives. Subsequent to the 2004 publication of WPWG report, a tripartite Workplace Productivity Reference Group was established to support departmental work in this area. That work was driven by the seven drivers of productivity identified by the WPWG. For each driver, case studies of good practice were produced alongside a FAQ-based model of information delivery to the parties. The department developed a wide range of resources and tools to support companies seeking to improve productivity, and spread the word about these resources in meetings, by newsletters, electronically and by networking. It also supported financially projects such as the NZCTU's Workplace Productivity Education Project. However, the department faced challenges in developing its response to the WPWG report. Whilst it has some delivery responsibilities (for example, the Mediation Service), it was not established, nor funded, to develop an extensive company-level intervention programme. Thus, it is fair to say that the department did what it could within its resource base, yet, across government as a whole, opportunities were missed to build on the insights offered by the WPWG.

Partnership was the third direct approach to improved productivity promoted by the post-1999 government. Whilst the initiative was located primarily in the Department of Labour, its origins lie beyond the work of the WPWG and can mainly be found in the partnership discussion in the union movement. It is a complex story, which can be distilled to this. The two largest unions - the Public Service Association (PSA - in the public sector), and the Engineering, Printing and Manufacturing Union (EPMU - in the private sector) developed in different contexts partnership-style models. These were also found in, for example, the dairy industry, in which the Dairy Workers and the management of New Zealand's massive dairy company, Fonterra, moved into a partnership model. Meanwhile, the New Zealand Council of Trade Unions - the unions' peak body - was renewed by leadership change in the late 1990s. The new leadership, working in a broadly convivial arrangement with the government, took seriously the issue of improved economic performance, and actively participated in an array of tripartite activities on that front. The international experience of partnership (especially that of Ireland) was also important in the New Zealand debate. Thus, a combination of factors established partnership as an option in New Zealand. It was not without its critics, as international experience would predict. Some unions were very wary about it. Some business organisations were equally chary, as indeed were some government politicians.

Two key partnership initiatives derived from this conjuncture. The first was the Partnership Resource Centre. It was located in the Department of Labour, but was a semi-autonomous operation, guided by a tripartite advisory board. It owed its creation to, first, union discussions with government, and, second, the belief by key government ministers that partnership was a sensible approach to the productivity issue. Its brief was to support the building of workplace partnerships in companies in which the employer and the union(s) were willing to put in the effort. To this end, a group of trained and experienced associates of the centre was created, who worked on a project basis with interested companies. Whilst broadly successful, the Centre faced one key challenge. With private sector trade union density being low, the opportunities for employer-union partnerships were limited. The positive in this was that unions were still strong in many of the larger organisations, so a relatively limited number of interventions would have a relatively larger impact. This also raised another issue, still to be resolved. How might the constructive elements of the partnership process be used to improve performance on non-unionised companies? For the unions, that raised a tantalising question: to what extent might interventions around productivity in non-unionised firms provide an opportunity to increase union membership?

The second partnership initiative was in the public sector. The PSA adopted a broad strategy around democracy at work, one element of which was a partnership model between government departments, the PSA and government. It was called the Partnership for Quality and, at the time of the 2008 election, was embodied in a third partnership agreement. Its purpose was to establish a strong and constructive worker voice in the creation of constructive EWR in the public sector. The new National government has chosen not to continue the partnership arrangement.

The fourth and final direct intervention into productivity improvement were some piecemeal projects designed to promote improved practices, usually on the basis of lean manufacturing or related models of work organisation. New Zealand Trade and Enterprise (NZTE), for example, promoted lean manufacturing through its Enterprise Training Programme, an approach subsequently adopted by, for example, the Auckland region's economic development agency. Assessments suggest that these interventions, designed to build management capacity and improve work organisation procedures, rarely if ever addressed employment relations issues, though training and workforce quality issues were important factors.

CONCLUDING REMARKS

While it is still too early to make firm evaluations, the discussion above raises several questions about the ERA's impact. For example, to what extent did the ERA contribute to the broad transformations desired by the post 1999 government and, in particular, to what extent was productivity and economic performance improved as an effect of the ERA?

Labour productivity performance in the post 2000 has remained poor. On average, between 2000 and 2008, it rose annually by 1.3%, compared with 2% in the period 1978-2008, and an annual average of 2.6% in the 1990s. Driving the 2000-2008 figures was a record increase in labour input plus an average growth in real GDP of 3.4%, the combination of which is estimated to have halved labour productivity increases compared with the 1990s. Explanations for this continuing poor performance vary. The NZCTU emphasises the need for improved capital spend, better training and, above all, improved workplace organisation (NZCTU 2009). Business New Zealand, the major employer organisation, points to an increased capital spend and low output growth, which, with poor labour productivity, is primarily an effect of skill shortages and their negative impact on the utilisation of new capital (BNZ 2008). The neo-liberal think tank – the New Zealand Business Roundtable – blames the poor productivity performance on interventionism and a general weakness in government economic policies (NZBR 2008). The OECD takes a similar line in its 2009 country report on New Zealand, blaming the post-1999 government for diverting from a proper focus on productivity and performance and allowing unnecessary regulation to increase the costs of doing business (OECD 1999). So far, the New Zealand Treasury has been more careful than the OECD in attributing poor productivity to particular causes. It has concluded that it is difficult to provide a clear explanation for that performance for a variety of reasons, including data difficulties. In a refreshingly frank manner, it concludes that we don't really understand why New Zealand is doing so poorly, but that should not stop us from trying to do better (Janssen and McLoughlin 2008).

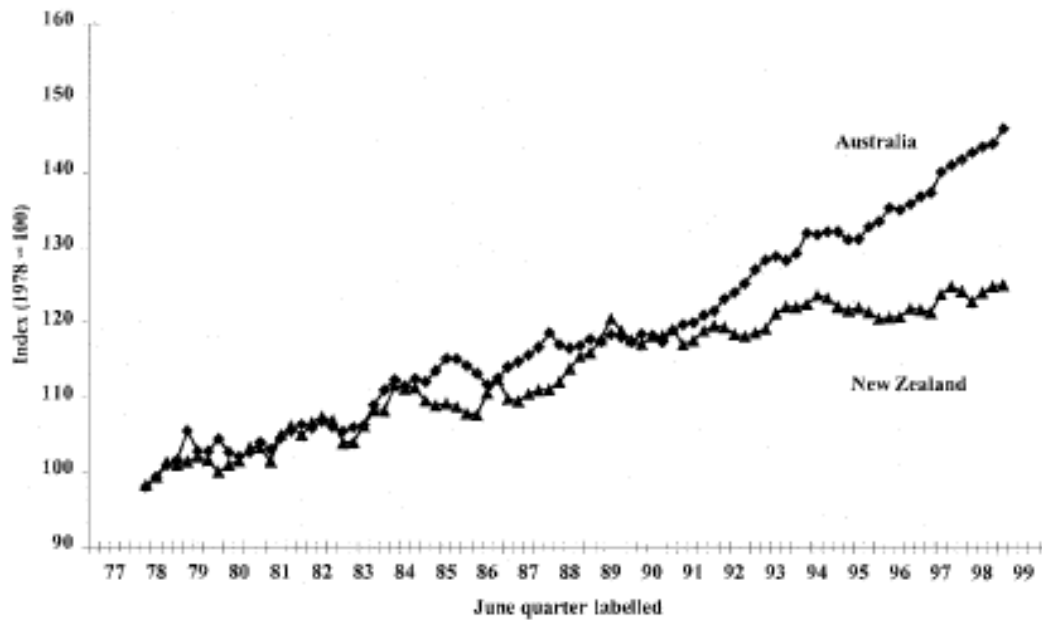
This debate cannot be resolved here, but it is clear that the social democratic attempt to drive improved productivity and, therefore, economic performance, has not been particularly successful. It is the case that for much of the 2000s, the New Zealand economy has been performing well, but underlying problems around productivity have not been resolved. New Zealand is still a high labour utilisation, rather than productivity-driven, economy. On the other hand, in the light of the ECA experience, the traditional, embedded response of deregulation of a neo-liberal government also appears to be ineffectual. While the newly elected National government has indicated a return to traditional, deregulatory responses

(for example, reduced job protections, constrained public sector expenditure), they are couched in a less neo-liberal, more populist and piecemeal fashion, at least for now. Reflecting on two phases of radical employment relations reform, neither of which has reversed New Zealand's poor productivity performance, it is tempting to question the extent to which employment relations frameworks influence economic performance. Arguments about both phases can be raised which are important – for example, was either allowed to run its full course and achieve its full potential? Were they introduced at different stages of the business cycle, to adverse effect? But, notwithstanding these questions, it might be that we must look to other factors as the key to unlocking New Zealand's productivity potential. In turn, this requires a far better understanding of productivity drivers in the New Zealand economy than we have at present.

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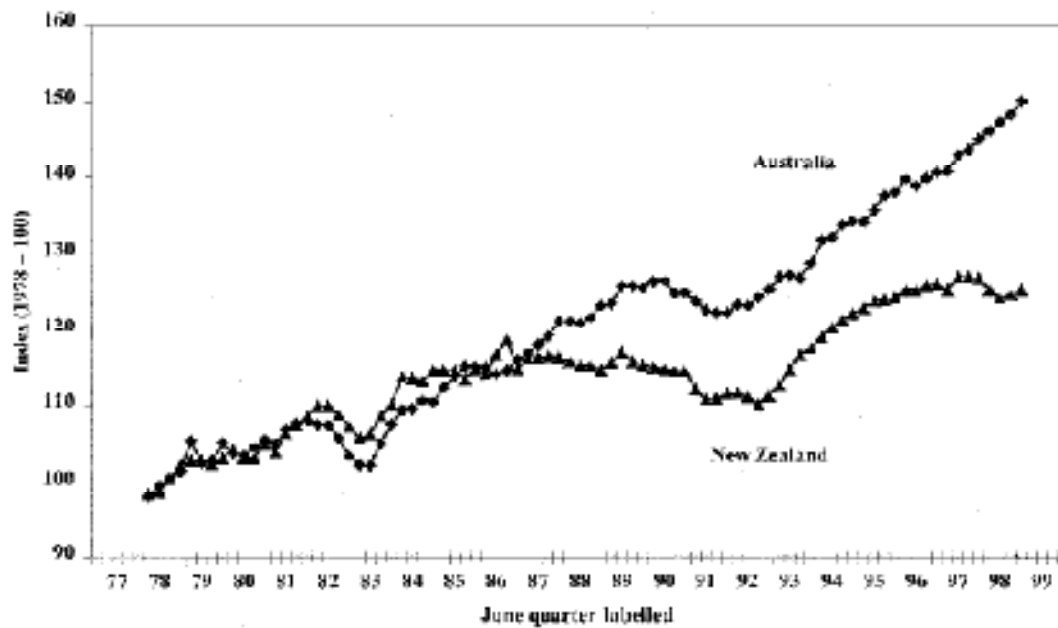
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Graph 1; Labour Productivity movements in New Zealand and Australia 1978-1999



Source: Dalziel (2002).

Graph 2: Per Capita GDP movements in New Zealand and Australia 1978-1999



Source: Dalziel (2002)