

Independent arbitration could work

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Deputy Prime Minister Julia Gillard's announcement on Friday that her new legislation will provide for arbitration creates another impasse for industrial relations.

The issue is whether the legislation should allow for arbitration of unresolved disputes remaining after wage negotiation and, if so, what sort of arbitration.

Everyone agrees there should be wage bargaining that might lead to an agreement on wages and conditions. But what happens if the bargaining ends up in a deadlock?

The unions and a lot of Labor backbenchers want those disputes arbitrated. The unions believe this will give them a better than even chance of winning a decision.

The government maintains that if arbitration is used as an automatic circuit-breaker, we will go back to the bad old days of "industrial reality" and "wage justice", the industrial relations club will be restored to its former glory and wage increases will occur as a matter of course and not because of increased productivity.

It is no surprise that this obstacle has appeared. In all industrial relations systems, sooner or later you come to the question: if parties cannot agree, how do you break the impasse?

Australia has answered that question since 1904 by having an institution that tries conciliation first and then arbitration.

The mistake Australia made was to assume the only way of resolving disputes was by arbitration through a statutory tribunal.

But there is another and better way of solving the problem: to allow a process of outside and independent mediation and arbitration using private mediators and arbitrators. This will meet the government's concern to avoid the "club-like" atmosphere generated by a permanent tribunal.

It also meets the needs of unions and others who want arbitration after bargaining has failed.

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Private or outside mediation and arbitration would be much the same as private mediation and arbitration of commercial disputes. Most domestic commercial disputes and virtually all international ones are resolved these days by arbitration and not by the courts.

✓✱ Applying commercial arbitration to industrial relations would be easy. Each side, the union and the employers, would nominate its own arbitrator, preferably someone who knows the industry. The two arbitrators then agree on a chair. If they cannot, the chair is appointed by one of the organisations that maintain a panel of accredited arbitrators, from which one would be chosen on a rotating basis.

Private arbitration has several advantages. The arbitrators are unbiased and not influenced by the culture of a permanent tribunal. It was this culture that gave rise to the criticism that arbitrated wage decisions have little to do with productivity, but a lot to do with industrial peace at any price.

Secondly, the parties have control of the dispute. They will have an immediate input into the process and will learn that the price of not reaching agreement is the prospect of a truly independent arbitration process where they might just lose.

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