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Fair Work Act a featherbed for unions

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IT is no defence of a law that encourages arson to say it also provides firefighters. And it is even worse if the fire brigade will save your house only if the entire street is on fire, forcing the victims of arson to themselves become arsonists. Yet that is exactly what the Fair Work Act does.

Its provisions placed Qantas in an impossible situation. They encouraged Qantas's unions to seek agreements that mandated featherbedding and locked in excess costs. They required Qantas to negotiate over those demands "in good faith". And they allowed the unions, while pursuing those outcomes, to engage in protected industrial action.

That action exploited two important features of air travel.

First, seats on a scheduled flight are a perishable commodity. If unions threaten Sanitarium, it can build inventories so as to continue to meet demand for Weet-Bix. But Qantas cannot store up the 10am flight to Melbourne; if that flight is cancelled, its services are forever lost. And to handle the passengers meant to be on that flight, Qantas must sell fewer seats on adjacent flights, losing further revenues.

Second, passengers pay a premium for reliability and frequency. That premium hasn't fallen out of the sky: it is a return on investments made over many years. The unions threatened to trash those returns; thanks to the act's protections, they could do so gradually but persistently, staying just below the threshold that would push Qantas over the edge.

British Airways' long-running dispute with cabin crew would have shown Qantas how great the resulting harm can be.

But the dangers this posed to Qantas went far beyond the immediate claims. By imposing inefficiencies, the unions' aim was to tax Qantas and through it the travelling public. Like all taxes, that would work only so long as Qantas could not replace the taxed inputs by cheaper alternatives. Hence the proposed, unprecedented, restrictions on offshore investments. And hence the certainty that if Qantas capitulated, the next target would be the agreements, initially reached under the Howard government, with Jetstar. With foreign investment constrained and Jetstar neutered, Qantas would be on a path to inexorable decline.

Far from protecting jobs, that would eliminate them. But that would not happen overnight. And the agreements the unions are seeking mean that even if jobs went, their existing members at Qantas would be looked after.

No surprise then that the unions showed so little concern for wealth creation. But what is startling is the government's response. And even more so, its silences.

For months, Tony Sheldon has used the word "Asia" as a term of abuse: snarled and slurred, rather than spoken. Not once, however, has the government taken him to task, saying that, on the contrary, foreign investment by firms like Qantas enhances our prosperity and is essential in responding to Asia's economic growth.

Nor has the government shown any disquiet at union demands that under the guise of job security entrench outdated ways of working and create barriers between labour market insiders and outsiders similar to those in Europe. Those silences are hardly accidental. They betray a mindset that was prominently on display in Julia Gillard's outbursts during the crisis. That mindset is based on two beliefs.

First, as Gillard told the ABC's 7.30, companies such as Qantas are important to her "because they provide jobs to working Australians". Not because they create wealth by successfully competing on world markets; not because they meet the needs of consumers; but because "they are major employers", presumably of unionised workers.

Rarely has an Australian prime minister so thoroughly confused means and ends.

Second, that left to their own devices, those employers would create a world that was Dickensian at best, Brutopia at worst. Absent the protections of the FWA, Gillard snapped at Chris Uhlmann, "young Australians and Australians at risk would have their penalty rates ripped away or be unfairly dismissed without reason".

No sense here that, in a highly competitive labour market, workers have options; nor that, in an ever more demanding world market for goods and services, firms that cannot attract, retain and motivate high-quality employees are doomed. Rather, this is the mindset of class arraigned against class; of the light of the future against the misery of reaction. It is a throwback to rhetoric Labor had jettisoned many years ago.

But it is not mere rhetoric. Rather, there is every reason to believe it is "the real Julia": that these are indeed the only beliefs she holds with genuine passion and conviction, the ideological core in an otherwise polished but empty box. And the Fair Work Act is that core's ultimate incarnation, right down to its name, which implies that absent the powers the FWA gives unions, work would be inherently "unfair".

Little wonder the FWA is so ill-conceived; and little wonder its flaws are becoming ever more apparent.

The government's defence against mounting criticism of the FWA is twofold. First, it says, dispute numbers are still low. And indeed they are. But that is because union membership has reached such low levels in the private sector. Where unions remain strong, ambit claims and ongoing disputes have become common. And as the unions try to rebuild their base, they are becoming ever more widespread.

Second, the government points to the provisions that allow parties to trigger conciliation and arbitration processes. But those provisions are important only because the act encourages conflicts to occur. And, as in Qantas's case, they perversely incite the disputes to persist and escalate.

The economic risks this creates are difficult to overstate. We have more major investment projects under way or about to be launched than at any time in our history, with 14 projects worth more than $10 billion each and five whose cost exceeds $30bn. Delays at those projects could impose massive losses on investors. They are therefore highly vulnerable to the kinds of demands, and the union threats of disruption, the FWA encourages.

The immediate solution lies in drastically narrowing the scope of matters that can give rise to protected industrial action. That done, acceptable ways of creating vastly more scope in our IR system for individual contracts and for genuine enterprise bargaining need to be found.

To achieve that goal, a real review should be undertaken of the FWA, ideally by the Productivity Commission, rather than the Clayton's review the government has planned.

As the events of recent weeks have made clear, the alternative is yet more strife, with the crippling costs it brings.