



Chp. 4: ECA 1991

✦ Overview

- ✦ The philosophical debate of labour market deregulation: proponents v/s opponents
 - Underlying economic & social 'drivers' (chp. 3)
- ✦ ECA & key changes to ER framework
- ✦ ER processes & outcomes under the ECA
 - Information, biases & issues of causality
 - Impact of employment institutions & legal precedent

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These are the 3 important areas to understand in terms of the 1991-2000 era of the ECA. My advice: stick to general issues & trends; don't get lost in detail.

I think that points 1 & 3 are most important. The Act itself is only discussed briefly in the chapter (and there is only one overhead). If you want more information, start with note 1 on p. 81 (or see Harbridge, 1993 or California Western International Law Journal, 28(1)).

Philosophical debates and especially their impact are often associated with the social & economic situation. There was a general international trend towards deregulation post 1980 and there were special NZ circumstances (as discussed in chp 3): "In the late 1980s there had been continuous pressure in New Zealand for further labour market deregulation. Many employers were under considerable cost pressures as economic deregulation and the fall-out from the 1987 sharemarket crash started to bite. This led to demands from employer organisations for more flexibility in terms of contractual relationships with staff, for changes in working time arrangements and for reductions in wage costs. The demand for flexibility was further fuelled by the fact that, under the 1987 Labour Relations Act, there were few signs of increased enterprise bargaining in the private sector." (p. 75).

The discussion of the legal precedent can be found in chapter 13.



ECA – a major change to ER

- ✦ ECA is on par with 1894 & 1930s changes
- ✦ ECA ends the IC&A system
 - ❖ Abolishes: award system, union registration & protections, multi-employer strike rights
 - ❖ But: key aspects still survive
 - Employment institutions, legal precedent, statutory minima, disputes distinctions
 - Employers' org. & some unions survive but also change
 - ❖ Include both collective & individual contracts
 - IEC inclusion brings new dimensions & dynamics

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The ECA is a major revolution in NZ ER, with the demolition of the IC&A system, labour law now covering all employees, and facilitation of direct employer-employee relationships at workplace level (see overhead re: the Act)

As in the 1890s & 1930s, there were substantial economic and social reforms which further buttressed the effects of the ER legislation.

There had already been some changes to the IC&A system. See for example, the changes from the 1973 Industrial Relations Act, the introduction of voluntary arbitration in 1984, and support to market driven collective bargaining under the LRA 1987 & the 1990 LRA Amendment Act. However, the ECA finally ended the IC&A system.

While there were massive changes to bargaining (what was abolished by the ECA impinged directly on bargaining: strategies, process & outcomes), the tradition of conflict resolution & legal stability were kept alive in the second part of the Act. Although the distinction between disputes of interest and disputes of rights was not mentioned by name, the Act gave practical effect to such a distinction.



The deregulation debate - I

- ✦ Why is this debate important?
 - ▣ Public policy, public opinion, ER 'thinking'
- ✦ Proponents (see pp 77-80)
 - ▣ Direct, private relationship with the emphasis on individual choice & contractual relations
 - View labour markets as other markets
 - Common law & 'employment-at-will' approach
 - ▣ Approach was untested in NZ

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Why is this important? Because the clash between the two opposed positions had an influence on the debate of the ERA. Thus, it has an impact on the current ER framework and its associated practices.

Why is this important? The debate influenced public policy (not just the development of the ECA but also other types of ER legislation – see chapters 7, 8 & 9).

Why is this important? The way people think about ER has changed significantly because of the ECA & included an impact on ER practitioners.

The proponents' view is influenced by a particular view of the labour market (see chp. 15), with a heavy dose of liberalism & market-driven solutions.

It is important to understand the positions of the proponents and the opponents and you should ask yourself: what are the key elements, what does this mean in practice, and how do I feel myself about the positions (in terms of their relevance & personal affinity to either of them)?

Do you understand what common law is and what it signifies (as opposed to labour/employment law)? Do you understand what an 'employment-at-will' approach is and where it can be found?



The deregulation debate - II

- ✦ Debate bypassed practices & SME concerns
 - ✦ But: influenced focus on ER info for SMEs
- ✦ Criticisms of deregulation approach
 - ✦ Unrealistic & unsuitable approach for NZ
 - ✦ Efficiency & equity balance
 - Collective bargaining as efficient & equitable
 - Concerns over bargaining processes & outcomes
 - Concerns over legalistic, litigation approach
- ✦ Criticisms 'drive' shift towards ERA framework

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There was little discussion of the practical implications of the proponents' preferred ER 'model' – the focus was on criticising the IC&A system.

It also appeared to be driven by big business interests and little was heard of the concerns of SMEs. However, this appeared subsequently as the ECA heralded an emphasis on the information needs of SMEs & compliance issues.

The opponents of deregulation attacked proponents as being 'model fixated' & taking little account of the particularities of the NZ labour market. Do you understand the point about low transaction costs for SMEs under the award system on p. 80?

The opponents support some kind of balance between efficiency & equity and criticised the drive towards an efficient labour market. And they had another understanding of what would facilitate an efficient labour market.

While opponents gain influence through the post-1999 Labour-Alliance government & the ERA 2000, it is important to stress that: (a) they had changed their mind somewhat in light of the ECA; (b) the ECA-ERA shift is not that unusual as similar adjustments to ER happened in other OECD countries in the 1990s (for example, in the UK).



ECA – the law

- ✦ New policy aim: an efficient labour market
- ✦ Shift in ECA's language & concepts
 - ▣ Employment contracts, unions as agents, freedom of association & freedom of choice
- ✦ Focus on direct, workplace relationships
- ✦ Extension of jurisdiction to IECs
- ✦ Difference between the first (bargaining) & the second (institutions & rights) part of Act

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The opening parts of an Act tend to be important as the major policy intentions are signalled. You should compare the ECA & ERA.

Language & concept: (a) think about chp. 1; (2) new concepts tend to give rise to different interpretations and legal challenges – thereby increasing the possibilities of conflict & litigation.

“There can be no doubt that employer complaints about a policy overload have had some real substance. In recent years, there have been a number of large, radical, new pieces of legislation which have put considerable strain on small and medium-sized businesses.” (p. 84).

Coverage of IEC is a major impetus for change. Do you understand why this has a major impact in terms of ER ‘thinking’ & HRM systems?

Why do you think that the National Government implemented this difference between the first and second part of the Act?



Processes & outcomes - I

- ✦ Information, causality & evaluation biases
 - ✦ We know surprisingly little about processes & outcomes for particular employee groups
 - See discussion on pp. 86-88
 - ✦ Causality: ECA is part of many large changes
 - Be critical when ER trends are linked directly to an Act
 - ✦ Information sources: Statistics NZ, CEC databases, individual surveys & databases
 - Secondary labour market & individual arrangements have had very limited information coverage

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It is extraordinary that we – after 9 years with the same Act – did not have the basic information about changes in the labour market. IECs covered the majority of employees but there was little knowledge of IEC processes and contents. When it comes to the ‘new labour market’ there was & is a lack of information.

This lack of information has raised several questions: was this a deliberate strategy, was it caused by resource constraints or by biases in official & academic interests, or....?

Information sources are important in several ways: (a) some sources are statistically better than others and there are variations in relevance across topic areas; (b) the range of information sources is large. This allows for biases but it also makes it necessary that You know where to go for information whether as a student, an employee or a manager.



Processes & outcomes - II

- ✦ Shifts in contract structure
 - ✦ Multi-employer (awards) => single employer CECs (limited public surveillance - §24)
 - Choice re: CEC or IEC?
 - Collective contracting or collective bargaining?
- ✦ Information from CEC databases
 - ✦ Covers a quarter of the workforce
 - ✦ Are these CECs guidelines and/or trend-setters?
 - What is the link between contract minima & actual employment conditions (particularly pay)

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See Figure 4.1 which shows a rapid shift in contract structure.

“Clearly, bargaining structure reform was one of the most significant outcomes of the ECA.” (p. 86). Why is that important for You?

I have become of the opinion that there generally has been an under-estimation of the extent of CEC coverage (see discussion on pp 77-82). This is partly driven by employers’ interest in standardised employment arrangements (see the discussion of ‘collective contracting’ versus ‘collective bargaining’ (p. 90).

CEC databases have provided the best guidelines to collective bargaining structures and outcomes. We do not know, however, what the impact is beyond the collective contracts – for example, how many employees were on or close to the stipulated contractual terms and conditions, and did these contracts have any impact on employees who were not covered?



Processes & outcomes - III

✦ Bargaining processes – lack of knowledge

❑ Employers drive the bargaining process

- Limited employee or union input
- Many employees were not concerned
- Segmented labour market being established in terms of bargaining process & contract content?
- Legal precedent has major impact

✦ Decline in union membership & density

- ❑ Discussion of strategies & obstacles in chp. 12
- ❑ Uneven fall in union membership & union density

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Was there limited employee or union input? “...the indications are that there was seldom negotiation over their content.” (p. 91).

I was a bit surprised that many employees were not concerned that they had no input into the bargaining process. Why was that and what is your opinion?

There are indications – but really no firm evidence - that the secondary labour market had less bargaining, less employer consideration of employee interests and that a link existed between the lack of choice and substandard outcomes.

The union decline raises two questions: (a) how much was this an effect of the Act & how much impact had other influences (what are they?); (b) what could/can unions do to overcome the adverse environment?

Regarding b: have you looked at chp. 12's discussion of factors influencing union membership decisions, factors facilitating growth in collective bargaining & unionism, strategies pursued by unions over the last 15 years?

Note that the fall in union density is stronger than the fall in union membership. Why is that?



Processes & outcomes - IV

- ✦ Union decline: changes in union structures
 - ▣ Concentration but also no change in union no.
 - ▣ Private sector unions suffer most
 - Some major unions can't survive without awards
- ✦ Other associated changes
 - ▣ Pay: rise in pay differences & limited real rises
 - NZ 'leads' in terms of rising income inequality
 - Stagnating or falling real wages in secondary labour market (majority of employees face decline until 1996)
 - Cut in penal rates & overtime pay hurt some groups hard

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Some unions have attempted to overcome falling membership numbers & an adverse environment by amalgamating with other unions. What is the thinking behind these amalgamations?

However, there was also a growth in smaller & more specialised unions, reversing the trend towards large unions started by the LRA 1987. This trend has been accelerated by the ERA. Why do you think this is the case?

What impact could size have when we talk about smaller NZ unions?

In many private sector workplaces union membership was non-existent and if there were union members this had often limited impact on the existence of collective bargaining or, indeed, terms & conditions.

Rising income equality: there appears to be surprisingly little impact of the ECA. Why do you think this is the case?

It is also unclear what the impact is on earnings of the major changes to penal rates & overtime payments.



Processes & Outcomes - V

- ✦ Other associated changes
 - ✦ Hours: bifurcation of working time patterns
 - Rise in part-time work & longer weekly hours
 - ✦ Disputes: low level of strikes & lockouts
 - In line with long-term decline in NZ & overseas
 - Impact of higher levels of unemployment?
 - ✦ Personal Grievances: large rise in numbers & big media attention (esp. large payouts)
 - PGs & procedural fairness became major issues

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Since the mid-1990s, it has been clear that longer working hours have become a major issue. This has made working time a trendy, middle class concern.

Part-time (& other forms of atypical) employment has become more prevalent. However, across OECD countries, there are different growth patterns, different impacts of more part-timers & different ways of countering negative impacts.

It is unclear to what degree the ECA had an impact on disputes levels: (a) a low level of industrial disputes has occurred in many OECD countries in light of higher levels of unemployment, less confrontational negotiation approaches and changing occupational patterns. (b) the decline in dispute levels happened before the ECA.

However, the ability to employ new employees during a dispute appears to have had some influence on employee/union willingness to take strike action. Do you understand why this is? And what is the current position?

PGs became a major concern for employers and, as part of that, there was an increased focus on 'procedural fairness'. It also gave rise to several myths such as that employees nearly always received large payout & "it is impossible to dismiss anybody these days".

Key words/impacts: Focus on systems, management ER skills, & unintended policy outcomes. And do you know what this really means? Otherwise ask!



Final few words

- ✦ Controversial piece of legislation
 - ✦ Public opinion was divided
 - ✦ Employers: worried about compliance costs
 - Legislative changes considered in late 1990s
 - ✦ Unions & left-wing parties constantly opposed
- ✦ Didn't deliver in terms of productivity
 - ✦ Why was labour productivity so lacklustre?
- ✦ Secondary labour market outcomes: major concerns about job security & conditions

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Figure 4.4. Can you explain the fluctuation in the approval rating of the ECA?

Figure 4.4. (a) what does the high number of 'no difference' indicate in terms of individual effect? (b) why is there a difference between the impact of the Act on people personally and the way they support or oppose the Act?

Employers started to join unions in complaining about the ECA. What was the Government reaction, what kind of changes were the Government interested in implementing and why didn't it do it?

The lacklustre growth in labour productivity under the ECA is a major issue!! Why did it happen and what are the implications? If you don't know then you better ask! Or later take a look at pp. 447-451.

Remember that strong employment growth was one of the positive trends during the 1990s.

The problem with concerns about secondary labour market outcomes & processes is that there didn't exist comprehensive statistical information about the extent of casualisation and inferior employment conditions.