EMBARGOED UNTIL 6.30 PM 26TH OCTOBER 2005

THE 19TH LIONEL MURPHY MEMORIAL LECTURE
DELIVERED BY
THE HON BOB HAWKE AC
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"From Deakin to Howard – a Tarnished Vision"

We all have our special memories of Lionel Murphy. For me nothing is more vivid, or lasting, than our last meeting on 10th August 1986. Knowing he was in his final days I had invited Lionel and Ingrid to the Lodge for a meal. While our wives were talking Lionel and I returned to my study and reminisced alone, each well aware this would be our last time together. We covered so much ground but, as I wrote in my Memoirs, I was left with one abiding impression: "I could hardly believe and will never forget his gentleness towards his accusers and tormentors, and those of his High Court and other judicial brethren from who he had hoped for greater understanding. His great monuments of legal reform, more efficient use of Senate resources and enlightened constitutional interpretation will endure. But for me what will always remain is the memory of the sad warm eyes of a charitable man at peace with himself."

But my friends for all his wonderful reserves of charity I am sure that Lionel, no more than any of you here tonight, would have found it within himself to forgive John Howard and his colleagues for their commitment to destroy concepts and principles which Australians have considered to be at the very heart of the national character. For make no mistake, that is precisely what is involved in Howard's proposed gutting of the Australian industrial relations system built up over more than one hundred years. Lionel, better than most others, would have understood this for he had spent so much of his professional life at the bar helping to ensure the efficiency of that system particularly by his representation of trade unions which, from the inception, had been legislatively recognised as centrally important to its operation. No one appreciates the truth of this more than the two men who worked so closely with Lionel in these matters – Neville Wran and Ray Geitzelt – and I am delighted they are with us this evening.

That I am not seen to exaggerate the appalling implications of what the Prime Minister is proposing, I take you back, briefly, in our history. In the first decade before Federation the colonies were racked by a series of massively disruptive industrial disputes particularly in the pastoral but also in the maritime and mining sectors. At the heart of these disputes was the demand of the employer for "freedom of contract" with its associated restriction on the right of workers to organise in trade unions and bargain collectively.

The disputes were especially vicious in Queensland where the employers then, as they do now federally, had the unqualified support of a conservative Government. The Premier, Sir Samuel Griffiths, passed draconian legislation and had troopers lined up with gattling guns to fire on the striking shearers. With the odds so stacked against them the workers lost the immediate industrial battle but the combined might of employers and government was not able to crush the indomitable spirit of these men.

In the end they had been beaten industrially by the power of government and so they determined to turn their endeavours to the political field. They helped found the most durable instrument in our political history – the Australian Labor Party – and committed themselves to ensuring that the tyranny of the past would play no part in the new Commonwealth of Australia that was about to emerge.

After bitter debates in the three Federation Conventions in the 1890's, the final Convention in 1898, by a vote of 22-19, had included in the Constitution for the new Commonwealth, a power to legislate with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limit of any one State." Labor gave its support when the non-Labor government in 1903 introduced the Bill to establish the Commonwealth Court of Conciliation and Arbitration. The passion, and the ideological gulf, between the Convention delegates were reflected in the seventeen months of debate before the Bill had its final passage in the House of Representatives on the 9th December 1904 – I have speculated before whether the fact that the 9th December is my birthday means that there was something written in the stars.

It is fascinating in examining now these parliamentary debates one hundred years ago to see, essentially how little the philosophy – the vision – of the protagonists in the great issue have changed up to the present day. On the one hand consider the words of that great early liberal, Alfred Deakin, who, as Attorney-General introduced the Bill. In what was nothing less than a *tour de force* – one of the truly memorable speeches in the history of our Federal Parliament – Deakin observed:

"The task here commenced will be long and painful. There will be painful incidents, there will be the inevitable swing of the pendulum, and many obstacles will have to be surmounted. But, at least, the aim with which we have commenced is high… Social justice is a lofty aim… We have trusted for centuries to the various tribunals erected for the administration of civil justice, and I hope that we shall begin from this day forth to trust to these courts for industrial justice."

Compare Deakin's view with the philosophy of one of his most vigorous opponents, Sir William McMillan, (the member for Wentworth) arguing for the maintenance of the *status quo*. McMillan asked : "Is it an advance, seeing that we are asked to give up the whole of the principles which have made our race what it is …" and went on to deplore the intention

to alter entirely " the principles on which business has hitherto been conducted….and the relative position of employer and employees."

As the French would say "Plus ca change, plus c'est la meme chose" – the more things change the more they are the same. John Howard is the reincarnation of McMillan, Griffith and the employers whose privileges they were prepared to fight and legislate for. For "freedom of contract" substitute "individual work place agreement" played to the same tune of "tie the trade union down."

John Howard's industrial relations proposals are simply conservative ideology gone mad. He is seeking to emasculate and ultimately destroy the two institutions – the independent conciliation and arbitration tribunal and the organised trade union movement – which for a hundred years have done more than any other to embed the concept of the "fair go" into the law, the practices and the very fabric of Australian life.

I ask you to consider these indisputable facts in regard first to the tribunal and secondly to the trade unions.

A. The Tribunal

The tribunal has been integrally important in establishing the social standards and cohesion and the economic prosperity Australians enjoy today. The tribunal has shaped the introduction in this country of the following benefits which are an accepted part of the Australian way of life.

- Reduced working hours from 48 to 38 per week
- Annual leave from one week to four weeks
- Equal pay
- Superannuation from a right enjoyed by a privileged few to a broad based award entitlement
- Long service leave
- The concept of a minimum wage below which no one should be employed
- Maternity leave and carers' leave
- Redundancy pay

On all of these issues the trade union movement put the arguments for those benefits and on every occasion had to fight in the tribunal against the opposition of organised employer groups and conservative governments. As well as these pioneering changes the tribunal had, by the end of the first century, revamped and restructured all its awards, with multi-skilling career paths and consistent minimum rates of pay.

B The Trade Unions

The Australian trade union movement simply does not deserve to be attacked as Howard proposes. Certainly some trade unions have in the past behaved irresponsibly but many employers fall into that category. I believe that no other non-governmental organisation has played such a

significant role as the ACTU in contributing positively to the character of the nation and the quality of life we pride ourselves on today. I ask you to consider four points.

First, there is not an employee in Australia who, directly or indirectly, does not owe a debt of gratitude for the wages and conditions they enjoy to successive generations of trade union members who, by their membership dues and commitment to collective action, cases before the industrial tribunals and legislative reform, have made the emergence of these standards of pay and conditions possible. They have all had to be fought for and the fight was financed by the dues of rank and file workers, members of trade unions

Second, the single most important governmental decision ever taken to determine the character and strength of our nation today was that to implement the vast post-war immigration program. The idea was anathema to many unionists who had never experienced full employment but, with great foresight, the ACTU leadership fully supported the concept and the planning of that program. The Prime Minister's Liberal predecessors, Sir Robert Menzies and Harold Holt, publicly acknowledged that the program would not have been the success it was without that co-operation and participation of the ACTU.

Third, for decades up to the early 1970's consumers in this country had been exploited by Australian manufacturers' ruthless use of the system of resale price maintenance. Under this system, goods were supplied to retailers on the condition that such goods were sold at the price fixed by the manufacturers. If the retailer attempted to sell at a lower price supplies were refused. As ACTU advocate I had argued to government and in the Arbitration Tribunal against the iniquity of this practice but without avail. When as President of the ACTU I began the association with Bourkes' Store we had the opportunity of taking retail sales maintenance head-on. Manufacturers refused Bourke Stores supplies because the store insisted on selling at prices lower than those fixed by the manufacturer. Dunlop was one such manufacturer and with the support of our affiliates I told Dunlop that we would stop their business unless they left us free to set lower prices than they insisted upon. After a brief confrontation Dunlop capitulated. This was the end of the pernicious practice of RSM. In the event Australian consumers have been saved scores of billions of dollars. This was the triumph of collective action over collusive action.

Fourth, virtually every economist in the country acknowledges that the current strength of the Australian economy owes a great deal to the massive restructuring reforms, including industrial relations reforms, undertaken by my government in the 1980's. Many of the things we had to do went against the grain of long-held attitudes within the trade union movement. But the leadership of the ACTU realised that these changes had to be made if we were to have a sustainable economy in an increasingly competitive world. They co-operated in these changes under the Accord, accepting restraint in money wage increases in return for improvements in the social wage. That

transformation from which all Australians continue to benefit would not have been so readily achieved without the foresight and co-operation of the ACTU.

John Howard and his government are the direct beneficiaries of those historic changes that we made and which he as Treasurer and the government of which he was a member did not have the courage – may I say "the ticker" – or the political will to make in the period preceding our terms of office. In one of the most cynical and dishonest pieces of politicking in the history of this country the Prime Minister boasts of the fact that real wages have risen more under his government than in our term. Of course they have, because the Australian trade union movement in an act of unparalleled selflessness and commitment to the national interest, in co-operation with our government, forsook their power to secure greater money wage increases by accepting improvements in the social wage – particularly in the areas of health and education – thereby decreasing cost pressures on employers and increasing Australia's international competitiveness.

We did the hard policy work; trade unionists made the sacrifices which have created a strong economy which can now afford these real wage increases. Instead of being grateful, as he should be, to the trade unions and their leadership, John Howard now launches the most vicious attack upon them and their members in what is, quite simply, the most despicable and ungracious decision by any Prime Minister in the history of industrial relations in this country. It is wrong, it is unfair, it is un-Australian, it is immoral – is it any wonder that the whole spectrum of Australian churches have condemned his proposals for what they are?

They object, as any decent Australian must do, to the fact that under the proposed new laws employers will be able to use individual workplace agreements (AWA's) to cut take home pay and, <u>without any compensation</u>, strip workers of basic conditions like:

- Public holidays – including Christmas Day, Anzac Day, Good Friday, New Year's Day and Australia Day
- Meal and Rest Breaks
- Weekend loadings
- Overtime Payments
- Penalty Rates
- Shift Loadings
- Redundancy Pay
- All allowances
- Annual leave loading

- Rostering protections
- Reimbursement of expenses
- and many other workplace rights and entitlements

They object, as any decent Australian must do, to the fact that as distinct from virtually every other OECD country there will be no obligation upon an employer to bargain collectively. They cannot accept, rightly, that young kids, particularly those from lower socio-economic groups are going to have the capacity, or experience, to negotiate with any semblance of equality with an employer. And their distaste is strengthened by the intention of the Government to remove from the legislation the protective provisions against unfair dismissal which employees have been able to process within the independent arbitration tribunal. These provisions will no longer apply to employers with less than 100 employees which means that 99% of private sector employers – covering some 4 million employees – will be able to sack their workers unfairly, not even giving them a reason for being sacked. As against the relatively cost-free process within the arbitration system a victimised employee will now have to resort to the expensive avenue of the law courts.

They object, as any decent Australian must do, to the restrictions and legal sanctions imposed upon what have been traditionally regarded as legitimate trade union activities. A significant number of matters have been deleted from what are allowable matters to be negotiated under an award. For instance trade union training has been regarded by most reasonable employers as something which is of mutual benefit to the industrial relationship and, until now, it has been a common matter in negotiation of awards for provision for time off for such training. That is now to be deleted as an allowable matter and a union official and his organisation could be subject to prosecution and fines of up to $33,000 for pressuring an employer to negotiate on that issue.

They object, as any decent Australian must do, to the proposal to remove the power of the Australian Industrial Relations Commission to set the minimum wage. They know that the Howard government has opposed every minimum wage increase awarded by the Commission since 1996. The minimum wage is now the less than princely sum of $484 a week ($12.75 per hour) – if the Howard government's submissions had been accepted by the Commission the minimum wage would be at least $50 a week – or $2,600 a year – less than it is now. But this further degradation of the lower paid which they could not obtain by argument before the Commission, they now aim to achieve through the establishment of a Fair Pay Commission. This Commission, Howard says, will take proper account of economic considerations. This is a monstrous confidence trick on the least privileged workers.

The fact is that the AIRC is required under current legislation to take into account "economic factors, including levels of productivity and inflation and the desirability of obtaining a high level of employment." In discharging that legislative responsibility the commission, in its deliberation, hears submissions on, and takes into account, Australia's economic outlook and the desirability of full employment specifically considering average weekly earnings, inflation and productivity, the balance of payments and a range of economic indicators.

In the result the Commission has seen fit to more than maintain the real value of the minimum wage which is the very least that the institutions of a decent humane society should do in an economy which is consistently growing in real terms. Under the proposed legislation there will be no requirement that this fundamentally valid criterion need be taken into account by the Fair Pay Commission. Indeed, when asked to guarantee that minimum wages would not be lower under the proposed system Howard's Minister, Kevin Andrews, dismissed the issue contemptuously: "I am not in the business of giving guarantees for or against anything."

I put a simple question: in whom can the low paid workers of this country have the greater confidence that their meagre income will at least maintain its real value – (a) permanent members of a tribunal with a century-old tradition going back to Higgins and the Harvester judgement of concern that they not be left behind or (b) a body made up of fixed term members appointed by the Howard government whose re-appointment rests on the whim of government.

It is interesting to note that a prominent free-market economist, Professor Mark Wooden, the deputy director of the Melbourne Institute at the University of Melbourne in a address on the 28th September 2005 said on the issue of minimum wage fixing : "…it is not obvious that this power would lead to better outcomes."

The Professor by the way made two other pertinent comments. First: "If the aim is to provide employees with real choices then I am on Greg Combet's (Secretary of the ACTU) side – the right to collectively bargain needs to be protected." Second, the following observations appear in the press conference report after he had delivered his address: "What is all this about?" asked Mark Wooden after presenting a paper that criticised every plank of the Government's planned industrial relations changes to an economic conference in Melbourne. "It must be pork-barrelling or it is just acquiescence to some employer interest. There is no economic sense in it."

This economic assessment confirmed a detailed analysis undertaken by seventeen of Australia's leading academics in industrial relations convened by Professor Russell Lansbury of the University of Sydney. In a Sydney Morning Herald article of 17th June, 2005, Professor Lansbury and Associate Professor Bradon Ellem, commented on this report.

I make no apology for quoting this article at some length for there could

be no more devastating exposure of the deceptions and disastrous consequences of the Howard proposals by an independent group of experts.

Professors Lansbury and Ellem said:

" we have pooled almost a decade of research on the impact of industrial relations policy change thus far. The record shows there is no reason to believe the proposals to go before Parliament later this year will address the complex problems Australians face as we grapple with global competition and social change. What does the evidence tell us? It says that the results since the Government came to office in 1996 and the likely outcomes include: an undermining of employees' rights at work, the promotion of flexibility but chiefly for employers; greater social inequity; no genuine productivity growth; and minimal attention to work – life balance.

Rights at work have been diminished. The narrowing of awards and the promotion of individual contracts have significantly enhanced managerial prerogative. Contrary to Government claims employees do not have 'freedom of choice.' Australian employees do not have the right to choose to bargain collectively. In other OECD countries, when employees want collective bargaining employers are required by law to come to the bargaining table…..Australian evidence shows that collective agreements do deliver better wages and working conditions than individual agreements. For example average weekly earnings for union members are 17% higher than for non- union members. Part-timers, women and casuals do best from the "union effect" and have therefore more to lose from individualisation. It is also bad news for quality jobs. Australia has very high levels of casual work compared to other OECD countries. Twenty- five percent of main jobs are casual. Casual work has negative effects on gender equality, skills development and conditions. The proposed changes are likely to expand the gaps that have allowed the rapid expansion of casual work. Similarly, independent contractors have found that incomes are more uncertain and their hours of work less protected. Workers have found and will continue to find, that there is little choice other than accepting these forms of employment.

Recently the biggest story has been the impact of change on women, work and family. The proposals would mean fewer incentives for women to work. The changes will also exacerbate problems of lower pay, fewer entitlements and job insecurity which already hit women. Overall the evidence shows that individualised employment arrangements result in miserly work and family benefits. Current data shows that women on AWA's earn $5.10 an hour less than men on them. Some proponents of change say it will drive job creation. One of the most contentious areas in this debate is the link between unfair dismissal and employment. Most researchers are getting tired of having to say the awkward truth over and over again: there is no convincing evidence that the proposals will generate jobs.

The unfair dismissal exemption could cause the quality of jobs in small to medium-sized enterprises to decline. And it may make it more difficult for such employers to recruit high-quality workers. Why choose to work for the company best placed to sack you?

There are also claims about a productivity boom…but the claim that individual contracts deliver higher productivity is highly questionable."

We have already paid far too high a price for the Americanisation of Australian foreign policy under the Howard government including our unqualified identification with the dangerous and self-defeating adventurism in Iraq. But the damage this has done to our country is as nothing compared with this move down the path to the Americanisation of labour relations in Australia. In the USA, minimum wages are just US$5.15 an hour and have not increased for eight years leaving the poorest working families living below the poverty line.

My friends, what John Howard is proposing is not just an attack upon an effective independent conciliation and arbitration tribunal and a free trade union movement. It is an assault upon the very core of what generations of our citizens have been proud to boast of, at home and abroad, as the essence of the Australian character – the "fair go", the belief that might is not right, that it is not those already with privilege who should be protected by government but the most vulnerable in our society, the encouragement of enterprise not exploitation.

What Howard has done in this area to prop up privilege and degrade the most needy is part and parcel of a broader reactionary philosophy which under his leadership has seen a perversion of priorities in expenditure on education; where the capacity of a kid to get into University depends more on the size of the parental wallet than on his or her intrinsic ability; and where from 1996 to 2003 public investment in tertiary institutions in Australia has fallen by 8% while in the rest of the OECD it has increased by an average of 38%.

Lionel Murphy fought at the Bar, in the Parliament and on the Bench against such distorted priorities and for the protection and advancement of those essential principles we had come to associate with the Australian character. We will best honour his memory if we bend every sinew of our endeavours to ensure that at the next election this most un-Australian of our Prime Ministers, and his Government, are consigned to the dust-bin of our history which they have done so much to disgrace.