

Article

The role of government in influencing labour conditions through the procurement of services: Some political challenges

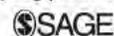
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Abstract

The increasing complexity of the employment relationship in supply chains poses challenges to the protection of labour standards internationally. While there is significant research on labour standards in international supply chains, there is much less on domestic supply chains and public procurement. Furthermore, the role of government in supply chain labour standards is under-researched. This article uses the context of residential aged care in Australia and New Zealand to highlight the inadequacy of the current role of government in promoting decent labour standards in domestic supply chains. We argue that the role of government in the employment relationship needs to be reconceptualised in order to recognise its agency as an indirect employer, and its consumer power, in public procurement.

Keywords

Aged care, labour standards, public procurement, regulation, supply chain

Introduction

There is growing scholarly concern with the challenges to the regulation of labour standards that are posed by the increasingly complex supply chains that characterise contemporary production and employment (Donaghey et al., 2014; Lakhani

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et al., 2013). Research points to several inherent challenges: the difficulty for unions in organising fragmented workforces (Burgess et al., 2013; Wright, 2013; Wright and Brown, 2013); worsening labour standards at the bottom of supply chains (Burchielli et al., 2014a, 2014b; Locke et al., 2013; Rinnie et al., 2011) and the challenges of monitoring company use of voluntary codes.

Given the rapid growth in multinational enterprises, much of the research investigating supply chains has focussed on international supply chains (Barrientos, 2013; Wright and Brown, 2013). This research concentration has occurred to the detriment of our knowledge of domestic supply chains. Further, another related aspect of labour standards in supply chains that is largely overlooked is in public procurement and the role of government (Brammer and Walker, 2011; Donaghey et al., 2014). Donaghey et al. (2014) emphasise this and highlight the dearth of scholarship on this issue. Specifically, they note that:

public procurement and the role of the state have attracted remarkably little attention from employment relations scholars... Even if governments are unwilling or unable to intervene through regulation, they can play an important role in promoting standards adoption, and we need a better understanding of how the role of public procurement affects labor governance. (p. 19)

Scholarship indicates that government can have a positive role in labour standards by requiring contractors to comply with minimum legislated standards and voluntary industry codes (Howe and Landau, 2009; Kaine and Rawling, 2010; McCrudden, 2004). Indeed, the US has a history of some success in government intervention in relation to race and gender in employment (Madland and Walter, 2010). Bourgeault and Khokher (2006) suggest that action aimed at 'state-directed efforts' to decrease inequities in care work is more successful than unionisation and 'credentialization' (p. 422), while Jaehrling (2015) concludes that 'Regardless of whether or not the public authorities emphasize social criteria in procurement-related procedures, they *do* effectively take decisions that help to shape working – in contracted out services – for better or worse' (p. 161).

Whilst private voluntary codes in global supply chains can provide some protection of work conditions, Locke et al. (2013) demonstrate that effective regulation should include both state regulation and private voluntary codes. The combination of private and public regulation better responds to worker needs, since many in the supply chain may not be connected to the ultimate 'producer' of the product they make.

A reexamination of the role of government in supply chains is necessary because 'the traditional tripartite model of labor governance in relation to global supply chains, where labor, state and employers collectively produce labor governance' (Donaghey et al., 2014: 2) does not readily translate to the complexity of the employment relationship created by indirection employment in supply chains.

Consequently, this article seeks to address the question: What role does government procurement play in the regulation of labour standards in domestic supply

chains? It does so through exploring key issues associated with the economic role of the state in public procurement, supply chains and labour standards. In order to provide richer analysis, we adopt a comparative approach (Brammer and Walker, 2011) using the different national contexts of Australia and New Zealand. Within these respective national contexts, the residential aged care sector is used as an illustrative setting for the analysis.

The following section outlines extant research on labour standards in the supply chain and public procurement. We then discuss the traditional industrial relations' views of the state in labour standards. The implications of this for domestic supply chains in residential aged care in Australia and New Zealand are then examined. We focus on this sector because it is characterised by low labour standards, and significant government procurement of services. This analysis is then used to provide empirically based conclusions on how the role of the state could be conceived in contemporary, fragmented employment relationships.

Labour standards in the supply chain

Supply chain research has generally overlooked labour standards in examining global supply chains, and viewed labour as only one point in the chain, rather than a 'source of value *but also* [sic] as a subjective agent' (Rainnie et al., 2011: 161). Where supply chain research is carried out on labour standards, it concentrates on the activities of multinational, privately owned companies operating or procuring goods and services in developing countries (Barrientos, 2013; Wright and Brown, 2013). Much of the research available on the role of supply chain and labour standards investigates the use of voluntary codes such as the International Labour Organization (ILO) Declaration of Principles Concerning Multinational Enterprises and Social Policy, and company codes of conduct (Markey and Ravenswood, 2011). The underlying assumption is that conditions will be lower for those employed by outsourcing companies, and that the work is undertaken in a different country, with lower regulation, generally, than the firm's home country. This assumption is demonstrated by Multinational enterprises (MNEs) that 'regime shop' for the lowest employment regulation (Donaghey et al., 2014).

As the supply chain is often assumed to be international, with fragmentation of employers, the role of government is seldom, if ever, discussed (Donaghey et al., 2014). Indeed, the employment relationship is not often unpacked, and agency in the employment relationship is often assigned to the lead company, and perhaps with the monitors of voluntary codes, such as the ILO. However, Lakhani et al. (2013) propose a framework to explain the impact of globalisation on the employment relationship. In particular, they focus on global value chains and the relationship between lead firms, supplier firms and labour standards. Lakhani et al. (2013) find that although lead firms are significant in determining the labour standards and conditions, the context (including the skill level required) and strategy of the supplier firm are pivotal in what is a reciprocal relationship. Lakhani et al. (2013) posit that 'the national institutional context of supplier firms

are likely to influence the strategies employed by lead firms and that lead firm strategies will also, in turn, affect supplier firm national institutional systems' (p. 25). This indicates an institutional role of government in the international supply chain as a regulator.

If national institutions are significant in determining supply chain labour standards, then what happens to labour standards when a 'supplier' country has few, or unmonitored, labour standards? Voluntary codes, or private labour standards, as Donaghey et al. (2014) describe them, are 'voluntary, predefined rules, procedures, and methods to systematically assess, measure, audit and/or communicate the social and environmental behaviour and/or performance of firms' (Gilbert et al., 2011, cited in Donaghey et al., 2014: 6). Voluntary codes, such as corporate or corporate social responsibility (CSR) codes, have been significant in labour standards in developing countries (Howe, 2010). One advantage of voluntary codes is that they can play a role in countries that have low government regulation of labour standards (Howe, 2010; James et al., 2014; Locke et al., 2013).

Locke et al. (2013) argue that voluntary codes play an important role, alongside government regulation. They found that in a country with low enforcement of already minimum labour standards, private codes that were regularly monitored by lead companies in the supply chain enhanced working conditions for employees of suppliers. In this case, private codes replace government regulation. Where government regulation is more effective, private codes complement, and potentially lift, labour standards above the minimum level offered through state regulation (Locke et al., 2013). In these instances, the government's role, in relation to voluntary codes, is still largely perceived as that of regulator, and is sometimes usurped by voluntary codes. Where voluntary codes are often monitored and reported on by social partners, such as unions and civil society actors (Williams et al., 2011), this has been seen (in reference to the gender pay gap in Europe) as 'an abdication of responsibility by the state for what could be considered a human right' (Smith, 2012: 376). Generally, enforcement of voluntary codes is through market pressure. As a regulatory mechanism, this is one of their weaknesses, since market consumer pressure may vary from one product or industry to another. Voluntary codes therefore do not easily provide stable labour standards across multiple industries and employers (Donaghey et al., 2014).

The government role in supply chains, while generally overlooked (Donaghey et al., 2014; McCrudden, 2004; Oruezabala and Rico, 2012), has been explored to some extent through sustainable public procurement (Erridge and Hennigan, 2012; McCrudden, 2004). However, while sustainable public procurement addresses economic, environmental and social issues (Oruezabala and Rico, 2012), its preponderant focus to date on the purchase of products, rather than on human services, has placed more emphasis on environmental issues than on labour standards in the supply chain. Even growing research on sustainable public procurement in health care focusses on purchasing, rather than procuring services (Oruezabala and Rico, 2012). Indeed, debate in nascent Green human resource management (HRM) literature discusses the different priorities given to social or environmental

sustainability (Harris and Tregidga, 2012; Renwick et al., 2013; Spooner and Kaine, 2010). An emerging priority is evident in Dutch Sustainable Public Procurement Policy with its recent inclusion of 'social criteria' (Melissen and Reinders, 2012). In the United Kingdom, procurement has been used to improve the skills and training of care workers for older people, but information is scarce on the success of this method to improve labour standards and quality of care (Chester et al., 2014). The overall focus on goods springs from a greater emphasis on research into the role of public procurement in global supply chains than in domestic ones (e.g. Howe, 2010; Melissen and Reinders, 2012; Oruezabala and Rico, 2012).

Research indicates that combining voluntary codes and formal regulation may provide enduring protection for labour standards. However, the role of the state is still underresearched (Donaghey et al., 2014) and instead scholarship has clustered around international supply chains (Barrientos, 2013; Wright and Brown, 2013), particularly in developing economies (Howe, 2010; James et al., 2014; Locke et al., 2013).

The role of the state

The state has traditionally been viewed as performing three main functions in industrial relations: as *regulator* responsible for setting the boundaries of labour law and minimum employment standards, as *arbitrator* responsible for regulating and limiting industrial conflict and as *employer* through direct public sector employment (Creighton, 1997; Keller, 1990; Traxler, 1999). This characterisation has proved useful in the past to describe the largely stable role the state has played in New Zealand and Australian industrial relations. However, it is proving less durable in the context of both states' recent pursuit of labour market change (Treuren, 2000), the fracturing of the traditional employment relationship and the decline in collective institutions.

Whilst there have been multifarious interpretations of the economic role of the state, in practice, dominant political ideology shapes the acceptability of state intervention generally and, more specifically, as a regulator of labour. For much of the 20th century, the practice of industrial relations in Australia and New Zealand could be categorised as pluralist. Consequently, the role of the state in both countries was often 'simply assume[d] . . . to be [as] an agent maintaining the distinct regulatory system of arbitration' (Anderson and Quinlan, 2008; Treuren, 2000: 75). The associated assumption of the largely 'static' state (Treuren, 2000) discounts the agency of the state and its capacity to influence the environment in which the employment relationship is conducted.

The depiction of the state as 'static' in relation to rules and regulations (Dabscheck, 1994; Michelson and Westcott, 2001) now requires revision following significant and somewhat rapid ideological changes in both countries in the late 20th century: namely, the shift from pluralism to an era of neoliberal dominance (Markey, 2008). The assumption that economic performance should be paramount and that this will improve if the state withdraws from the regulation of the labour

market provides a potent point of criticism. Except in the realms of pure economic theory, the market does not always provide the best economic outcome (Stiglitz, 1989), let alone the best social outcome.

If the government does not provide adequate social outcomes in relation to labour standards, then it could be argued that alternative methods of improving labour standards need to be explored. One such possibility for the role of governments is as a procurer of publicly funded private services (Howe, 2010). Harnessing the specific market power of the state leverages its direct economic power. Donaghey et al. (2014) refer to this ‘consumption power’ of the state:¹

Governments are among the largest consumers of goods and services in many countries, and hence there is enormous scope to understand how they as consumers themselves can exert their consumption power to influence markets towards meaningful self regulation. (p. 34)

As consumers of goods and services in many sectors, the state could leverage its power to enhance and protect labour standards from its suppliers. The concept of government being in the position of lead supplier is alluded to in Holley’s (2014) discussion of the changing role of governments in public procurement. Indeed, Holley (2014) argues that government has defaulted in its role as ‘regulator’ and in doing so has changed to ‘contractor’ of public services. This neoliberal shift (Anderson and Quinlan, 2008; Markey, 2008) has been remarked on elsewhere as part of a shift to new public management where business trumps the ‘public sector ethos’ of the public service (Hebson et al., 2003: 482). Tendering processes have thus focussed more on presumptions of contractual processes as vehicles for efficiency rather than enhanced labour standards (Holley, 2014; Howe, 2006). This poses problems for the inclusion of ‘social aims’ in publicly funded supply chains. Howe (2010) succinctly summarises this, noting that:

The challenge facing state and non state actors willing to locate and hold businesses accountable to labour standards ... is the actual or perceived conflict between these standards and the main drivers of corporate business activity: profit seeking and share holder value. (p. 330)

Contextualising governments’ role as a significant market power (Donaghey et al., 2014) and as an indirect employer in procurement (Holley, 2014) highlights the ways in which the fracturing of direct employment relationships changes the level and nature of the regulation of labour standards by the state (Holley, 2014; Howe, 2010; Howe and Landau, 2009).

Gahan and Brosnan’s (2006) typology of regulation is instructive in conceptualising the ranges and interrelationships of regulatory forms involving the state. Whilst they note the historical importance of ‘command and control’ regulation largely implemented through ‘centralised institutions’, they contend that these approaches are no longer as effective. Given this reduction in the perceived

effectiveness of command and control regulation, Gahan and Brosnan attempt to categorise other sources of regulatory power that the state might harness in order to promote particular policy outcomes. In doing so, they identify four other regulatory categories. The first is economic instruments, most obviously taxation and subsidies, but could also include the 'public production of goods or services deemed to be in the public interest' or competition policy. The second is the management of public functions (e.g. procurement, privatisation, contracting out and marketisation). The third is management-based/facilitative regulation, which describes the coproduction of rules by government agencies and those entities being regulated. The final category is market-based regulation, which entails the 'removal of regulatory instruments and the promotion of self-reliance' as well as a 'policy of neglect of formal policy requirements' (Gahan and Brosnan, 2006: 141–144).

Whilst these categories suggest a 'repertoire' of tools available to the state in order to regulate the labour market, how they might be implemented is not simply a decision taken by governments. The institutional, economic and political contexts also influence the choice of regulatory approach and consequently the capacity of the state to exercise its market power to set labour standards (Jaehrling, 2015). In the following section, an illustrative example is used to examine this interplay of context with the regulatory 'repertoire' available to the state in the setting of labour standards in the residential aged care sector in Australia and New Zealand. The comparison of Australian and New Zealand assists in the analysis of the institutional, economic and political contexts.

The procurement of aged care in New Zealand and Australia

The aged care sector in both Australia and New Zealand is largely funded by government, contracted out to private (both profit and not-for-profit) providers of aged care. Although the supply chain in aged care has not directly been studied, the sector in both countries has been criticised for low work conditions, and in particular low wages of the predominantly female workforce (Kaine, 2009, 2010, 2012; Kaine and Ravenswood, 2013; McGregor, 2012; Ravenswood, 2011). To this point, the role of government as procurer of these services, rather than as traditional regulator, has been largely unscrutinised. This is surprising given the increasing importance of aged care in Australia and New Zealand, and indeed globally, alongside suboptimal labour standards (Kaine, 2009, 2010, 2012; Kaine and Ravenswood, 2013; McGregor, 2012). In this section, we first outline the general background of aged care procurement in New Zealand and Australia, alongside other examples of government funding being used to influence labour conditions. Using Gahan and Brosnan's (2006) typology, we then illustrate the government's role in the regulation of labour standards in both New Zealand and Australia to date.

In New Zealand, the government is the funder and procurer of standard residential aged care (Carryer et al., 2010; Kaine and Ravenswood, 2013; Ravenswood, 2011). This is funded through government revenue, and therefore through taxes paid by New Zealand workers, beneficiaries and companies. The central government

devolves responsibility for provision of care to District Health Boards (DHBs) who provide residential aged care in their specific region of the country. There are 21 DHBs nationwide, which manage government money to provide public health services. Providers of residential aged care must be accredited under national legislation to be able to provide health care and tender for the contracts with the DHBs. Accreditation is regulated through the Health and Disability (Services) Act 2001 (Kaine and Ravenswood, 2013; Lazonby, 2007) and all providers are regularly audited to ensure they meet the requirements, with the threat of being unable to provide the service if they are not accredited. It has been suggested that accreditation could provide one means of regulating labour conditions (Kaine and Ravenswood, 2013). However, there is little political will for this, and accreditation standards remain unspecific and vague with regards to labour conditions (Ravenswood, 2011).

One means of regulation of labour standards could be through the nationally agreed contract that DHBs, provider representatives and Ministry of Health representatives agree each year: the aged-related Residential Care Services Agreement (Kaine and Ravenswood, 2013). However, in its current form, this agreement does not specify wages or conditions beyond minimal requirements for registered nurse coverage and minimal training requirements. Indeed, it could be argued that the agreement is instrumental in keeping wages down, where efficiencies are sought through outsourcing. There is evidence that health care assistant jobs that are directly employed by DHBs in public hospitals are paid more than those outsourced to private providers of residential aged care (*New Zealand Service and Food Workers' Union (SFWU) and Bartlett v Terranova Homes and Care Ltd*, 2013). In this case, the state acts in clear contrast to the desired behaviour of a lead firm in the supply chain (Donaghey et al., 2014), using the national regulatory framework minima as its base criteria for labour conditions.

There is some historic evidence of the State's attempt to use procurement as a means to improve working conditions in the supply chain. In the mid 2000s, the Labour government in New Zealand sought to make funding to aged care providers contingent upon collective bargaining outcomes. Employers mounted a legal challenge and the policy was subsequently rescinded (*Healthcare Providers New Zealand Incorporated and New Zealand Association of Residential Care Homes Incorporated vs District Health Boards of New Zealand*, 2007). Although this was an attempt to tie procurement of services into funding agreements, it was done outside of the prescribed method for agreeing the aged-related residential care agreement, rendering it futile, and similar instruments were not followed up before a shift to a more centre-right, liberal government in 2008. The government's attempt to prescribe collective bargaining was met with clear distaste from providers, whose opposition was most likely ideological (Foster et al., 2012; McAndrew et al., 2013).

In the example of residential aged care, the state's reluctance to act as regulator coupled with the increasingly neoliberal advance has seen a dilution of regulation. This is most obvious in the removal in the 1990s of legislation specifically governing aged care and rest homes, the *Old People's Homes Regulations* and the *Hospital Regulations* now superseded by the Health and Disability (Services) Act 2001

(Kaine and Ravenswood, 2013). The *Old People's Homes* Regulations included more specific attention to both staffing levels and labour standards, yet were never reintroduced in any form by successive governments. This reduction in regulation, in conjunction with a gradual erosion from 2008 of protection for workers in the Employment Relations Act 2000, and instruments such as the Minimum Wage Act, have resulted in labour standards tracking along legislative minima, rather than optimal conditions.

A recent development that does consider the supply chain is the proposed change in the Health and Safety Reform Bill, which places a duty of care throughout the supply chain so that an indirect employer or a lead firm also must be aware of and be responsible for the health and safety of the workers in the supply chain (Worksafe New Zealand, 2014); this is reminiscent of provisions in the Australian Model Work Health and Safety Act (Quinlan, 2011). One further consideration in New Zealand is the requirement of the public sector to be a good employer as indicated by the State Sector Act. The State Sector Act includes a focus on encouraging equal employment opportunities in the state sector. This legislation must be taken into account when considering the role of the state in New Zealand as an indirect employer, especially given the new focus on supply chain in the proposed health and safety legislation changes. Could the requirement to be a good employer be one for the State as an indirect employer also?

Funding of residential aged care in Australia closely resembles the New Zealand system with the government overseeing the procurement of aged care services from accredited providers. A key characteristic of the residential aged care market in Australia is that it is 'managed' by the federal government through the The Aged Care Act 1997 (the Act). The Act is the overarching legislation articulating the goals of the sector, establishing the funding framework and detailing the responsibilities associated with the acceptance of such funding by service providers (Nicoll et al., 2003). Specifically, the Act outlines the regulatory mechanisms with which the government controls the allocation of beds, limits service prices and accommodation bond charges, allocates funding and assesses the eligibility of clients to attract subsidies (Kaine, 2009; Productivity Commission, 2008). In effect, the Act allows the federal government to constrain the actions of aged care providers by placing conditions on the granting of subsidies and imposing penalties if those conditions are not met.

The Australian system of aged care regulation is far more prescriptive than its New Zealand equivalent. Australian accreditation standards are detailed, and noncompliance results in financial sanctions and potentially the suspension of all funding. This demonstrates a willingness of the government to use public resources 'to secure compliance with government policy' (Howe, 2006: 167).

Whilst Howe (2010) argues that the use of government procurement to improve labour standards in supply chains is more 'politically palatable' than 'mandatory legal regulation' (p. 330), recent examples in both the New Zealand and Australian aged care sector suggest otherwise. In Australia, in 2013, the then Labor

government, in a similar pattern to New Zealand in the mid-2000s, attempted to link the receipt of funding by aged care providers to particular labour outcomes. As part of a larger package of reforms, the then federal government quarantined \$1.2bn of the \$3.7bn new funding to the sector overall, to be used for the improvement of wages and conditions. The receipt of these funds by aged care providers was conditional to particular labour outcomes being agreed upon and met through the development of a workforce 'Compact' (the tripartite commitment between government, unions and aged care providers). Whilst some aged care providers agreed to participate in bargaining under the conditions of the Compact, the incoming conservative government abandoned the policy agreeing with some employer peak bodies, which argued that the Compact was 'poor public policy' and a break with 'established and respected industrial relations practices' (Maher, 2013).

Stakeholder opposition to the linking of public funding to labour standards has had historical precedence in Australia. Unions and other civil society organisations provided strong resistance to the Howard government policy of linking higher education funding to the adoption of workplace policies, which sought to privilege individual contracting over collective bargaining in universities (Howe, 2006). This further demonstrates that the pursuit of 'social aims' through publicly funded supply chains is not value free and is likely to be contested (Howe, 2010).

Another illustration of the contested nature of attempts to embed 'social aims' into public procurement processes is provided by the fate of the 'Fair Work Principles'. Before being rescinded by the conservative government in June 2014, the Australian Fair Work Act 2009 (FWAct) contained the 'Fair Work Principles' (FWPs), which required federal government procurement decisions to comply with the FWAct (Department of Employment, 2013a).

Despite the clearly espoused desire to be a role model of fairness throughout the public supply chain, the FWPs' focus was primarily on compliance with existing legal minima rather than on raising labour standards more generally. The challenge in the case of aged care, in both New Zealand and Australia, remains how best to lift labour standards beyond those legal minima, to a level that assists in addressing the historical inequities in the (de)valuing of care work, and in so doing tackle the issue of attracting and retaining adequate staff.

Table 1 applies Gahan and Brosnan's (2006) typology to the procurement of aged care services in Australia and New Zealand. In both countries, the actions of governments in recent years have been most closely associated with the economic instruments, management-based and market-based regulatory tools outlined by Gahan and Brosnan (2006). Accreditation of providers reflects 'management based (or facilitative) regulation', which entails 'process standards or requirements on firms to produce plans that comply with general criteria which outline how to achieve specific regulatory goals' (p. 143). Accreditation in both countries provides potential to prescribe labour standards, but has not thoroughly applied this and has therefore been ineffective in raising standards in residential aged care.

Table 1. Summary of regulatory mechanisms to influence labour standards in aged care in Australia and New Zealand.

Regulatory types ^a	Generic examples	Aged care examples	Country
1. Economic instruments	Taxation Subsidies	Accreditation and 'managed market'	Australia New Zealand
2. Management of public functions	Competition policy Public procurement		
3. Management-based/facilitative regulation	Voluntary codes Responsive regulation	Workforce Compact 'Contingent' collective bargaining	Australia New Zealand
4. Market-based regulation	Removal of regulatory instruments	Revocation of the Fair Work Principles Reduction of protections for employees in the Employment Relations Act 2008 onwards. Removal of specific regulation for the sector	Australia New Zealand

^aNoncommand and control regulatory types utilised by the state based on Gahan and Brosnan (2006).

The attempts by labour governments in Australia and New Zealand to encourage collective bargaining through the funding process are best described (in Gahan and Brosnan's terms) as 'responsive regulation' that sits more broadly under the 'management based/facilitative' regulation category in which general regulatory principles are adapted taking into account the particular context (p. 143). However, the New Zealand attempt, and also the Compact in Australia, were stymied by residential aged care providers. In relation to the supply chain, providers as supplier firms held considerable power and were able to significantly influence the lead firm (government) and therefore the regulatory context (Locke et al., 2013). Again, because of the complex interplay between context, lead and supplier firms, the management of public functions has not proved successful in relation to labour standards in aged care.

Given the laissez-faire approach under increasingly neoliberal governments, market-based regulatory mechanisms which are based on the 'removal of regulatory instruments and the promotion of self-reliance' have been apparent in both Australia and New Zealand. In Australia, the rescission of both the Fair Work Principles and the Workforce Compact illustrates the current government's commitment to reducing regulation most obviously expressed in its 'Repeal Day' on 26 March 2014, which saw 9500 regulations repealed and the Prime Minister stating that 'Cutting red tape is at the heart of this Government's mission: to build a strong and prosperous economy for a safe and secure Australia' (Abbott, 2014).

In New Zealand, the failure of new regulations to include details about staffing levels and labour standards contained in the superseded *Old Peoples Homes Regulations*, illustrates an ongoing reluctance of the government to assume the role of regulator, systematically reducing regulation rather than using it as a tool to enhance labour standards. Furthermore, general protections for workers have been reduced as the government focusses on flexibility and ease for employers.

Given this political environment (Anderson and Quinlan, 2008; Foster et al., 2012; McAndrew et al., 2013; Markey, 2008; Treuren, 2000), it is unsurprising that the regulatory developments in residential aged care have largely been left to management and market-based regulation. One obvious gap, however, is the lack of use of procurement to secure enhanced labour standards in both countries. This is an avenue that has not really been tried in either country, yet is increasingly being called for in relation to private, multinational supply chains and is being used in public procurement for sustainable *goods* in several countries globally (Melissen and Reinders, 2012; Oruezabala and Rico, 2012). We discuss the proper role of the state in relation to indirect employment and the supply chain in the following section.

What role should the state play in regulating supply chains?

In 2008, government procurement of goods and services in Australia and New Zealand accounted for 12% and 15% of gross domestic product (GDP), respectively (Organisation for Economic Co-operation and Development

(OECD), 2011). In Australia, the 2013–2014 dollar value of government procurement was just under 49 billion (AU\$) distributed across more than 66,000 contracts, with 61% of those contracts being for services (Department of Finance, 2014). These statistics highlight the economic significance of the nondirect provision of services by government and by corollary, the potential for governments to utilise this to achieve policy outcomes. However, this potential has not been realised very often. Indeed it could be contended that the idea of using the economic weight of the state to influence labour conditions in supply chains is an aspirational ideal. In reality, neoliberal business practice has influenced government procurement to adopt a business-focussed style of contracting, with disregard for the social role of the public service (Hebson et al., 2003; Holley, 2014; Howe, 2010).

As illustrated earlier, current public procurement practice has not resulted in enhanced labour standards. The pliable nature of government procurement policy means that it can equally bend in another direction: that is, it can equally work to serve a conservative agenda, to undermine decent labour standards and to fall short of effective regulation for workers. Without the institutional architecture of labour law, this approach is subject to the political whims of changing governments or the objections of business interests. Whilst labour law is itself not immune from the vagaries of the political cycle (evident in the frequent and significant legislative changes in both Australia and New Zealand over the last 20 years), it is more publicly contested and visible and as such requires the investment of more political capital in order for it to be changed.

The government role as formal regulator must remain, providing minimum protections for workers. However, governments could also ensure that enhanced labour conditions are required in procurement contracts, and that these are monitored and enforced. This would supplement international conventions to which both Australia and New Zealand are signatories, providing a stronger framework of formal and voluntary regulation. Such a regulatory hybrid of formal and voluntary measures has been shown to work in some cases. Whilst these have been criticised as weak and unmonitorable, research demonstrates that combinations of private regulation and government regulation can result in the best outcomes for labour standards (Howe, 2010; James et al., 2014; Locke et al., 2013).

Such a change in practice and policy orientation would signal appropriate labour standards in a supply chain context but would not undermine the government's traditional role as a standard setter through direct employment. It would acknowledge the government's role of 'lead firm' in the supply chain with considerable influence on the labour standards implemented throughout the chain (Locke et al., 2013). This option is not one that either country has seriously entertained. In the context of the previous century's stable industrial relations, the state was viewed as static and not agentic in the broader employment environment (Treuren, 2000). For the state to adopt such an agentic role a cultural shift is also required, from viewing business contracts as being solely about efficiency (Holley, 2014; Howe, 2010), to placing labour more centrally in the supply chain (Rainnie et al., 2011).

Conclusion

Comparative analysis in both Australia and New Zealand has shown that despite some divergence in their Industrial Relations (IR) systems, the prevailing neoliberal business context in both countries (as in many other Western countries) as well as an internationally changing employment relationship requires a rethinking of the government role. This also suggests that the findings may be relevant to other, similar Western nations.

History demonstrates that there is little appetite for change. Comments by employer groups in both countries suggest that attempts by governments to use market power to determine labour standards, far from being ‘politically palatable’ (Howe, 2010: 330), may be met with suspicion if not outright resistance. However, in the case of aged care, a more accurate description is not consumption power but monopsony power. The structure of the aged care market (itself a product of sector-specific state regulation) in both Australia and New Zealand is such that the national governments are, in effect, the only buyers of aged care services. Consequently, governments are at the apex of publicly funded supply chains and have a sizeable economic footprint in the aged care sector, providing considerable market leverage. Government market power is not confined to aged care. Government procurement in the Western world represents significant proportions of GDP (Donaghey et al., 2014; Howe, 2010) and as a consequence is the source of latent, large-scale consumer power.

This raises the question, beyond procuring a necessary service, do governments have a duty to use this consumption power to ensure decent work conditions throughout the supply chain? The answer to this question will necessarily be subject to the ideological considerations mentioned earlier. However, there are a number of factors specific to the national policy context (Brammer and Walker, 2011) in New Zealand and Australia that do suggest a broader obligation. In New Zealand, there is a legal obligation on the State Sector (Public Service) to be a good employer (Ryan et al., 2014). Whilst this is generally taken to refer to core services and direct employment, it could be argued that given changing employment relationships, this duty should extend throughout the supply chain. In addition to ‘regulator, arbitrator and direct employer’, the role of the state as *indirect employer*, or more specifically as the *dominant power in public supply chains*, needs to be explicitly articulated in order to provide a more accurate picture of its influence on employment relations (Howe, 2006).

As in private, multinational supply chains, voluntary codes and enhanced labour standards have often arisen through increased social pressure. An abiding challenge for those advocating and researching the use of public procurement as a means of improving labour standards is to determine how to insulate it from the political cycle to avoid advances in its use under labour or progressive governments being undone each time a less sympathetic administration assumes government. This suggests that, alongside a reconceptualisation of the role of the state, fundamental social change with regards to roles not only of ‘business’ but also managers

and employers is required in order to create more consistent approaches to labour standards, despite changes in administration. Key social partners, who are beginning to emerge in both countries, will need to take a stronger role to pressure government as procurer to improve working conditions in all of its supply chains. This is particularly pertinent, given the power of 'supplier firms' in the context of aged care.

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Note

1. In terms of gross domestic product (GDP), 'recent estimates [of public procurement suggest] that between 8 and 25 per cent of the GDP of Organisation for Economic Co-operation and Development (OECD) countries and 16 per cent of European Union (EU) [is] attributable to government purchases of goods or services' (Brammer and Walker, 2011: 453). In relation to government spending in health care, the role is significant, 'ranging from a low of 57 percent in the US to a high of 96 percent in Denmark' of the total health care spend (Appelbaum and Schmidt, 2009: 1914).

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