WE MUST Change THE RULES AT WORK

The Problem

Australian working people are not getting a fair go. The economy has grown over the last 30 years, but that growth hasn't been shared: profits have gone up at a much faster rate than wages. The Reserve Bank acknowledges that low wage growth is a threat to further economic growth. It has identified a decline in bargaining power of working people as a cause of that decline.

Work has also become more and more insecure. Recent figures show that for the first time, full time employees with leave entitlements are less than half of the workforce. This is having a significant impact on working people and their families.

Inequality is at a 76 year high. This cannot be addressed unless our workplace laws are re-calibrated to account for the changing models and the power of big business so working people have better job security and their fair share of prosperity.

The Cause

The union movement has been aware of these problems for many years. We know that a big part of the problem is our industrial laws. It was once possible to address the sort of problems workers now face using balanced industrial laws that ensured working people were treated fairly. We had an industrial tribunal that could guide the industrial parties to just outcomes. Where necessary, it could arbitrate for fairness. Workers could bargain freely. Workers had a right to strike. Workers had a right to be effectively represented at work by their union. Disputes could be resolved. Underpayments could be addressed quickly and cheaply.

Those laws have changed. They have become too complex and have not been capable of adapting to new business models. Workers and their unions have been sidelined. In 2010 around 15 % of workers relied on awards for their pay; today it is around 25% of the workforce. However Awards have been stripped back as they were intended to be only a safety-net. Enterprise bargaining is failing. In 2010 over 43% of workers were covered by enterprise agreements. That has dropped to around 35% today. Bargaining rules are too complex and inflexible. Our bargaining system has been criticised time and again for not meeting basic ILO standards. The right to take industrial action is tied in red tape. If an "i" isn't dotted or a "t" not crossed workers can be exposed to huge penalties and compensation orders. Even getting existing rights enforced is a long and costly process. There is no way of resolving disputes in the workplace as the Commission has severely limited arbitration powers.

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The Solution

We have to change the rules at work. Our industrial laws must change. The union movement has been working on solutions for two years. We have developed a proposal for change. It wouldn't take much. We simply need strong laws to:

1. Provide a clear framework of minimum standards.
2. Deliver all workers a living wage.
3. Ensure gender equality.
4. Facilitate improved wages and conditions through collective bargaining and where necessary arbitration.
5. Give workers a meaningful right to strike.
6. Allow workplace disputes to be resolved.
7. Allow working people to be represented by their union.
8. Let workers recover wages quickly and cheaply.

Four Key Elements

Four key elements to the reform are:

1. A flexible approach to collective bargaining so workers can win their fair share through pay rises.
2. An arbitration system to resolve differences and guide parties through economic and social change.
3. Workers' rights to access union representatives in the workplace and organising rights for workers that will sustain the reforms.
4. A fair and meaningful right to strike to help swing the pendulum back from excessive corporate power.

These elements work together with enhanced statutory rights and a stronger enforcement regime to provide a robust industrial system focussed on: driving down inequality, ensuring sustainable wage growth, and providing flexibility to meet an ever-changing economy.

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1. Collective Bargaining

The current laws intend enterprise bargaining to be the primary means for workers to achieve a pay rise. Those laws are not working. The number of workers on enterprise agreements has dropped. The wage outcomes for those who remain on enterprise agreements have fallen.

Enterprise agreement rates are higher than award rates, but the latest published figures show enterprise agreement wage rates only going up by 2.5%. This is a key reason why we have record low wage growth and working Australians are struggling with the cost of living.

Workers are not getting the expected wage increases from bargaining because the system is broken. The current Act has an inflexible focus on the single employer enterprise. It doesn't allow agreements for sectors or occupations. It doesn't allow agreements that cover multiple employers at one workplace, site or project. When work is contracted out through labour hire or supply chains workers can't bargain with the principal which is the entity that has the power to grant a pay rise.

The low paid bargaining stream that was supposed to allow industry-wide improvements for some workers doesn't work. The complexities of supply chains have put even organised workers at arms length from economic decision makers, rendering enterprise bargaining largely ineffective. Contract cleaners, horticultural workers, employees of franchisees, labour hire workers, community sector workers and early childhood educators are all disadvantaged by enterprise only bargaining.

The Act has restrictive and confusing bargaining content rules, complex procedural rules, and a limited role for unions. Australia is the only jurisdiction in the OECD that gives legal force to non-union agreements. Enterprise only bargaining has repeatedly been criticised by the ILO as being inconsistent with Australia's international obligations.

Loopholes such as terminating current agreements to force lower pay on workers are being exploited by companies who want to increase leverage in bargaining or avoid bargaining altogether.

Collective bargaining should be the chief means by which workers lift their wages and share more equally in the benefits of economic growth. To achieve that objective a new bargaining system is needed. It should deliver a genuine voice at the table for workers while meeting our international obligation to promote collective bargaining. The ACTU proposes that:

1. The scope of collective agreements is a matter for the parties. For example, it could be an agreement at enterprise, site, project, industry or sector levels.
2. Agreements should be made with unions representing workers.
3. The content of a collective agreement is a matter for the parties. There should be few restrictions.
4. The Commission should have powers of conciliation and arbitration during bargaining to assist parties to reach agreement.
5. The tests for approval and termination of agreements should be straightforward and designed to ensure agreement making is fair.

2. Arbitration

The powers of the Commission to arbitrate have all but disappeared. Arbitration now only occurs in prescribed and tightly limited circumstances. Merit-based arbitration has been taken away.

Currently, there is no guaranteed access to arbitration in industrial disputes, and the result is that parties look to court action to curtail objectionable behaviour rather than seeking to resolve the underlying cause of the dispute. The courts are expensive and slow. It is in the national interest to have a faster, more efficient mechanism to resolve industrial disputes.

The pay equity arbitration provisions have proven inadequate to allow the Commission to contribute to solving the gender pay gap.

A properly functioning independent Commission should have broad arbitration powers. The Commission should be able to intervene in disputes and resolve them at the request of employers or unions. Conciliation should be the first port of call with the focus on the parties working co-operatively but backed up with a power to arbitrate where necessary. A strong arbitration system offers the potential for a far more responsive and less politically charged means of regulating work.

A powerful independent Commission can moderate the behaviours of all players in the industrial relations arena. It could provide fast and efficient access to justice for workers, unions and employers. A Commission with arbitration powers to intervene and make orders to stop wage and superannuation theft would improve the living standards of thousands of workers and ensure a level playing field for companies that do the right thing.

Arbitration to settle outstanding matters in collective bargaining would avoid prolonged and damaging bargaining disputes. The current system of workplace determinations should be expanded to facilitate more effective use of arbitration in more circumstances.

The ACTU proposes that:

1. The Commission should be able to make orders to enforce awards and agreements affording workers quick and free access to justice
2. The Commission should have broad powers to conciliate and arbitrate to resolve disputes that arise in the workplace or during collective bargaining.
3. The Commission should be allowed to arbitrate so that industry awards reflect community standards.
4. National employment standards should be improved through arbitration of test cases.

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3. Workplace Access

The campaigns over the last 30 years which have demonised unions have simply facilitated inequality. The legislation has changed to reduce the role of unions. By weakening unions, the law has encouraged non-compliance. Reforming the rigid and obstructive rules that currently limit the effectiveness of worker representation at the workplace level is a key to better compliance and a more equal relationship between workers and employers.

Wage theft is widespread because the risks of employers being caught are too low while the potential rewards are very high. Ensuring widespread compliance with workers' pay and entitlements can break the ubiquitous wage theft business model and prevent unfair competition from employers seeking a market advantage by underpaying their workers.

The Australian workforce is over 12 million. There are currently around 200 inspectors employed by the Fair Work Ombudsman. There are over 3,000 union officers with right of entry permits. Union officers do not have the same powers to access workplaces as FWO inspectors. The rules constraining right of entry stop unions from ensuring compliance with legal entitlements.

Working people should have easy access to their relevant union so they can seek support, or to become a member. Current restrictions on union officials accessing working people so they can easily exercise their right to join or be represented by their union makes the job of unions very difficult.

The ACTU proposes:

1. Union officials should not be prevented from visiting workplaces so long as they do not intentionally and unreasonably disrupt work.
2. Union representatives should be allowed to visit workplaces to hold discussions with workers, and to deal with suspected contraventions.
3. Employers should be required to facilitate workers access to union representatives during workplace visits.
4. The current Fair Work Ombudsman powers of investigation should be extended to union officers.

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4. A Meaningful Right to Strike

International law and most countries have protections for workers who exercise the freedom to withdraw their labour. In many countries, the right to strike is a constitutional right. Australia's current laws regulating industrial action do not comply with our international obligations.

Our laws provide for a very limited right to strike, but only during bargaining. All other forms of industrial action attract harsh penalties and exposing workers to potentially ruinous common law action. Workers who take unprotected strike action run the risk of losing their jobs, their houses and being bankrupted.

Our limited right to strike has been whittled down over the years. It was first protected in amendments made in 1993 by the Keating Government. This gave protection from common law claims for all industrial action for 72 hours and a regime for longer action in support of bargaining claims. Those protections were replicated in the 1996 Howard Act but were taken away by Work Choices in 2005. New statutory offences against industrial action were also introduced by the Howard Government.

Australian labour law does not limit lockouts. This increases the power of corporations over workers. Employer lockouts have become the most damaging form of industrial action. Laws which limit lockouts are commonplace throughout the OECD and some countries prohibit it altogether.

The ACTU proposes:

1. Workers should have a right to strike, similar to the rights that applied from 1993 to 2005.
2. There should not be a right to lock out workers in legislation.
3. The Commission should have the power to stop industrial action where necessary and resolve the underlying dispute that gives rise to industrial action.

Summary

The ACTU proposals to change the rules for working people are necessary in order to combat growing inequality and to balance the growth in corporate power. The combination of: a strong statutory minimum; genuine collective bargaining; broad arbitration powers; workers having ready access to union representatives; a meaningful right to strike; and an affordable and quick enforcement system, offers the basis for reversing the growing inequality that is threatening ongoing economic prosperity and Australia's social cohesion in a rapidly changing Australian economy.

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