

Future of Work
Industrial Relations Legislation
Policy
ACTU CONGRESS 2003

Legislative Framework

1. A legislative framework should:
 - (a) provide for worker and union rights in relation to collective bargaining which, as a minimum, meet the standards set by international law and are comprehensive, enforceable and facilitate union organising;
 - (b) ensure that all workers have access to fair and relevant award wages and conditions in the context of living standards generally, and as a basis for bargaining;
 - (c) enable compulsory conciliation and arbitration of all industrial disputes; and
 - (d) facilitate the operation of independent and genuine industrial organisations with the capacity to effectively represent members.
2. The Commission's powers should be enhanced and its independence assured. The Commission should be required to develop and publish a protocol for defining, receiving and handling bona fide complaints against Commission members as well as complaints about Commission systems and processes.
3. The full constitutional powers of the Commonwealth should be used to ensure that all Australian workers receive access to rights and protections no less than those available under federal legislation. These powers should not override state systems that provide comparable rights and protections to the federal system, but legislation must ensure that federal standards prevail over inferior state systems.

The Award System

4. The *Workplace Relations Act* (Act) should be amended to give the Commission the power to make awards on any matter that is the subject of an industrial dispute; that is, empowering the Commission to the full extent of the constitutional conciliation and arbitration power. In particular, the Act should provide that, prima facie, provisions removed from awards pursuant to the 1996 amendments, should be restored.
5. The Act should be amended to remove the requirement to contain facilitative provisions. The amending Act should contain provision for facilitative provisions inserted as a result of simplification to cease to have effect unless their continuance is consented to by all award parties or their representatives.
6. The Commission should be required to ensure that awards provide for secure, relevant and consistent wages and conditions and provide for fair standards for employees in the context of living standards generally prevailing in the community. A priority for the Commission should be to address the crisis of low pay in Australia.
7. The Commission should be able to give regard to market rates, where appropriate, in determining award rates of pay.
8. The Commission should be required to ensure that achievement of equal remuneration for work of equal value is a consideration in its determinations, including for women, young people and labour hire and contracted out employees.
9. Additional resources should be provided to ensure the operation of an effective system of compliance.

Collective Bargaining

10. Federal legislation that provides for collective bargaining should ensure that Australian law is consistent with international standards and is conducive to union organising.

Objects of the Act

11. To make it clear that the legislation is directed towards the encouragement of collective bargaining between unions and employers or organisations of employers, the following should be included as objects of the Act:
 - (a) establishing and protecting rights to collective bargaining between unions and employers or employer organisations;

- (b) providing rights for parties in collective bargaining consistent with Australia's international obligations;
- (c) encouraging the association of workers and employers in trade unions and employer organisations; and
- (d) preventing discrimination in rates of pay and conditions for work of equal value performed by employees irrespective of their mode of employment.

The Bargaining Process

12. Employers should be required to bargain in good faith with a union which has indicated its desire to negotiate a collective agreement.
13. The Commission should be empowered to make binding orders in relation to the commencement and continuation of the collective bargaining process to ensure that the parties to a bargaining period negotiate in good faith. The powers of the Commission should also include the capacity, where unions agree, to mandate a single bargaining unit comprising the appropriate unions which have initiated a bargaining period. Where such a single bargaining unit has been formed, the employer must negotiate in good faith with the single bargaining unit.
14. The orders should be able to deal with issues such as:
 - (a) provision of information to the other party, including in relevant languages;
 - (b) requirement to genuinely consider proposals from the other party;
 - (c) adherence to a program for meeting and responding;
 - (d) recognition of unions' representative role and preventing conduct which undermines the authority of a union to represent workers or which interferes with the relationship between a union and its members;
 - (e) preventing the employment of replacement workers during protected action; and
 - (f) time limits for the conclusion of an agreement.
15. The Commission should be empowered to arbitrate a bargaining dispute where legitimate collective bargaining is not occurring, taking into account matters including:

- (a) that arbitration should not be used to avoid legitimate use of protected industrial action to achieve improved standards;
 - (b) the relative bargaining strength of the parties;
 - (c) the conduct of each party in the bargaining process;
 - (d) the history of wage fixing in the particular award, including whether it was characterised as a paid rates award; and
 - (e) the effect of the dispute on the community or part of it or on the economy or part of it.
16. Employers required to bargain with a union should not be permitted to put alternative agreements directly to employees during the bargaining process.
17. In line with international standards, union and delegate rights should be either legislated or determined by the Commission. These rights should include:
- (a) physical and electronic right of entry for union officials;
 - (b) the right for unions to hold discussions with and meetings of employees on the employer's premises; and
 - (c) delegates' rights to time off for training and facilities to enable them to carry out their functions, such as access to telephone, fax, email and reasonable time to consult with members.
18. It should be unlawful for an employer to discriminate in any way against an employee because the employee is seeking to bargain collectively through his or her union, or to induce an employee to abandon his or her right to bargain collectively through his or her union.
19. Congress recognises that successful bargaining is a key factor in encouraging increased union density. Where there is more than one union in a workplace or industry sector involved in collective bargaining, unions must make every effort to agree on joint claims and tactics. Where unions are operating in an SBU unions must not undermine the legitimate bargaining claims and tactics of the union collective by separate negotiations or settlement with the employer. Unions must not enrol or seek to enrol members of other unions whilst they are engaged in prosecuting collective bargaining disputes. Where a dispute arises the matter should be referred to the ACTU for prompt resolution.

Industrial Action

20. Workers should be able to take industrial action, including the right to strike, in accordance with international conventions, including on economic and social issues. Industrial action should be dealt with by the Commission, not the courts.
21. The right to take protected industrial action should be extended to collective bargaining on a multi-employer or industry basis, and to sympathy action in support of workers taking protected action against their employer.
22. The provisions of the Act which allow employers to lock out employees have been used to inflict extreme hardship and unfair pressure on employees in the bargaining process. Lock outs should not be a feature of the Australian industrial relations system. Part VIB Division 8 of the Act should be amended to remove lock out provisions.
23. Sections 127, 170MN and Part VIIIA of the Act, together with sections 45D-EB of the *Trades Practices Act* should be repealed. The Commission should deal with industrial action by unions or employers in the context of its general powers in relation to industrial disputes.

Certification of Agreements

24. Unions should have the right to be notified and intervene in certification proceedings for any agreement that is intended to cover an employee for whom the union has coverage under its rules.
25. The ACTU and its affiliates note that under the present legislation, non-union agreements have been used by employers to deunionise workplaces and undermine the union bargaining strategy. ILO conventions on collective bargaining and freedom of association embrace the fundamental role that unions play in effective and genuine collective bargaining. Unions believe that the only agreements that can genuinely protect workers are those negotiated with the involvement of unions. This is why the promotion of the representative roles of unions should be reinstated as an object of the legislation. Unions oppose non-union agreements for the foregoing reasons, and the fact that non-union agreements deliver inferior outcomes in pay and conditions to union negotiated agreements.
26. Multi-employer agreements should be able to be certified on the same basis as single enterprise agreements. Where an agreement has dominant coverage in an industry there should be scope for the Commission to extend its terms to cover non-consenting employers.
27. If the legislation continues to allow certification of collective agreements made without union involvement, then this should be available only where there are no union members at an enterprise, and

should be subject to the Commission being satisfied that the agreements are:

- (a) the result of a genuine collective bargaining process, involving genuine majority support of the employees concerned; and
 - (b) not capable of being used by employers to undermine or exclude collective bargaining involving union representation.
28. Where there is at least one union member involved, the union must be party to the negotiating process and the agreement. Where a union has initiated a bargaining period and this remains in place, negotiations for a non-union agreement should not be able to commence or continue.
29. Section 170LL appears to allow the employer to pre-select the bargaining partner on behalf of potential employees at a greenfields project, regardless of whether or not the employer's preferred partner will ultimately be truly representative of the workers later employed. Accordingly the Act should be amended to ensure that certified agreements are not misused as de facto demarcation instruments.
30. The no-disadvantage test should ensure that employees are not disadvantaged in their general or specific terms and conditions of employment by the making of the agreement. The Commission should be required to issue a statement certifying that the necessary calculations have been made to ensure that the agreement has been measured against the relevant award and the test satisfied.
31. Provision should be made for certified agreements to include a term providing that a specified negotiating fee be deducted from the wages of all employees covered by the agreement to be forwarded to the relevant union. The Union may determine that such fee be offset against union dues if paid by the employee.
32. The Office of the Employment Advocate, together with the system of AWAs, should be abolished. There should be no legislative provision for individual agreements.

Job Security and a Balanced Life

Employment Certainty

33. The definition of an "employee" should be extended to provide greater protection for persons who work under a contract wholly or substantially for labour only, even where that person is a lessee or owner of tools or other implements of production or of a vehicle used to transport goods or passengers.

34. The definition of an “employer” should be extended to include partnerships, group training schemes and labour hire agencies.
35. The Commission should be required to ensure, as far as practicable, that casual employment be applicable only for workers engaged on an unpredictable non-continuous basis, essentially for emergency situations, unforeseen absences or short-term demands. Casual and seasonal workers should be entitled to pro-rata leave on the same basis as other workers.
36. The Commission should be empowered to determine disputes about the use of contractors and labour hire companies.
37. The Commission should be empowered to regulate the use of precarious employment forms, depending on the circumstances of particular industries or workplaces.
38. Transmission of business provisions should apply in all cases where work or functions are transferred from one entity to another.
39. The Act should be amended to provide that a transmission of business includes where an employer ceases operations, and another company re-commences a similar business where that second company includes one or more of the same directors as the first company, whether or not the same assets are involved.
40. The *Superannuation Guarantee Act* should be amended to provide that superannuation contributions must be paid monthly.

Working Hours

41. An object of the Act should be inserted to ensure that award working hours provisions facilitate regular and predictable work, and prevent the working of excessive or unreasonable hours.
42. The Commission should be empowered to regulate the hours of work of all workers, including part-timers and casuals, and to include a minimum and maximum duration of employment for casual workers.
43. The Commission should be empowered to provide for portability of entitlements.
44. The Commission should be specifically empowered to set minimum and maximum hours of work for part-time workers.
45. The Commission should have power to determine disputes over hours of work.

46. The Commission should be able to determine requirements for consultation, monitoring and agreement about rostering, staffing levels and hours of work.

Work and Family

47. The Commission should be required to ensure that awards contain effective and innovative provisions to assist workers to combine work with family responsibilities, including provisions relating to hours of work.
48. The Commission should be required specifically to examine proposed agreements in relation to whether or not they positively assist the workers covered by the agreement to combine work with family responsibilities, and, in particular, that flexible hours provisions be held to contravene the no disadvantage test if they could result in disadvantage to workers with family responsibilities.
49. Personal/carer's leave should be legislated as a minimum standard of employment to apply to all employees who do not have access to at least this standard.
50. Paid maternity leave of 14 weeks, in line with the ILO *Maternity Protection Convention*, should be introduced.

Unfair Dismissal

51. The legislation should be amended to ensure that all employees, including apprentices and trainees, have access to a timely and fair remedy to prevent and compensate cases of unfair termination of employment.
52. As a priority, provisions relating to unfair dismissal should be streamlined.
53. The Commission should be required by legislation to:
 - (a) hear and determine unfair dismissal cases within set timeframes; and
 - (b) give the remedy of reinstatement primacy.
54. In circumstances of mass terminations, unions should be given the ability to make a single application to be heard and determined within set timeframes.
55. Application and filing fees for unfair dismissal applications should be abolished.

Consultation and Workplace Democracy

56. The ACTU and unions support the extension of workplace consultation. Better health and safety, improved skills, career paths and productivity can result from a stronger role for workers and their unions in the organisation of work. Better community services can also be achieved in the public sector by enabling the constructive input of workers and their unions.
57. Legislation should require that awards and agreements include provisions giving employees the right to be consulted on a regular and comprehensive basis. In particular there should be a requirement for the provision of information to unions and workers on the company's overall strategy and planning, with particular reference to employment-related issues, including new technology, products and processes, the company's future planning, future labour requirements and proposed changes to work organisation.
58. While the full detail of consultative mechanisms required in awards and agreements should be developed through a broad debate, key requirements for unions include:
 - (a) the promotion of consultation at the industry level, and the potential use of Industry Consultative Councils under s.133 of the Act;
 - (b) enterprise level consultative mechanisms not having a role in collective bargaining;
 - (c) where there is union representation in existence at the workplace, this being recognised as representing employees for the purpose of consultation;
 - (d) employers being required to provide all relevant information on issues including the economic and financial position of the business, its likely development, probable employment trends, the introduction of new working methods and substantial organisational changes.