

Industrial Relations Legislation

Background Paper

ACTU CONGRESS 2003

Quick Fact:

Since the collapse of the attempted "second wave" of industrial legislation in 1999, Peter Reith and Tony Abbott, his successor since 2001, have introduced a large number of bills seeking to amend the Act, with almost no success.

CONGRESS 2000

1. At the last Congress, it was reported that unions had been able to limit some of the worst effects of the Howard Government's 1996 amendments to the *Workplace Relations Act* through successful cases in the Australian Industrial Relations Commission and the Federal Court, and through bargaining.
2. On the other hand, it was also acknowledged that the Coalition laws had weakened the award system, encouraged employers to insist on individual agreements rather than bargaining collectively and imposed significant costs on unions in defending awards and their right to function.
3. Congress 2000 also noted the Coalition's failure to further amend the laws following the 1996 amendments, due to vigorous campaigning by unions and community groups and the support of the Australian Democrats, the ALP and other non-Government Senators.

DEVELOPMENTS SINCE CONGRESS 2000

Legislative developments

4. Since the collapse of the attempted "second wave" of industrial legislation in 1999, Peter Reith and Tony Abbott, his successor since 2001, have introduced a large number of bills seeking to amend the Act, with almost no success.

5. Legislative changes since Congress 2000 include:

- removal of tallies in the meat industry from the list of allowable matters;
- amendment of unfair dismissal provisions to provide for earlier dismissal of applications, consideration of the size of the employer's business and restrictions on lawyers and other advisers;
- passage of the *Registration and Accountability of Organisations Act* (with ALP support) which significantly amends the provisions of the Act relating to organisations and places them in a Schedule;
- prohibition of union bargaining fees; and
- amendments to the bargaining provisions of the Act restricting the ability of unions to cancel a bargaining period and initiate a new one, and facilitating employers' ability to apply to terminate bargaining periods without specifying all the actual bargaining periods involved.

6. The Senate rejected a number of bills including those dealing with:

- secret ballots before protected industrial action,
- exemption of small business from the unfair dismissal provisions of the Act, and
- amendment of the Trade Practices Act to enable the taking of representative actions against unions in breach of sections 45D-E.

Each of these has been returned to the Senate by the House of Representatives, and could form part of a trigger for a double dissolution of Parliament.

7. There are also a number of bills which are before the Parliament but have not yet been considered by the Senate. Provisions of these bills include:

- transmission of agreements being subject to an order of the Commission;
- a further round of award simplification, removing more provisions from awards;
- restrictions on roping small businesses into award coverage;
- union officials who breach an order of the Commission or the Court being ineligible to hold office for five years;

- additional restrictions for employees who have been unfairly dismissed, together with an extension of the federal system so that it overrides state legislation in most cases;
- more restrictions on industrial action through narrowing the Commission's discretion in making section 127 orders;
- awards being restricted to addressing the needs of the low paid; and
- AWAs taking effect from when they are signed, not when they are approved.

Initiatives by State Labor Governments

8. Since Congress 2000, Labor Governments in NSW, Queensland, Tasmania and Victoria have been joined by Labor Governments in Western Australia in 2001 and South Australia in 2002. As each Government was elected it set in place a process of review and amendment of industrial relations legislation to ensure proper award protection for workers and a greater ability for unions to represent members effectively in the bargaining process.
9. In Victoria, the 2002 election saw Labor gain control of the Legislative Council, which had previously blocked all attempts to reform industrial relations, giving it the opportunity to implement its policy of extending federal award conditions to all Victorian workers.
10. In response to Labor's success in every state the Federal Government has revived its interest in uniform national legislation, commencing with unfair dismissal.

ISSUES FOR POLICY AT CONGRESS 2003

11. Congress 2000 carried a comprehensive resolution detailing how industrial relations legislation should be amended to meet appropriate standards of award protection and collective bargaining rights. The proposed policy for Congress 2003 slightly amends that policy, with the issue of employee consultation and democratic participation the only major addition.

Consultation and workplace democracy

12. The ACTU Executive carried the following resolution at its March 2001 meeting:

"That the Executive encourages unions to debate the merit of collective mechanisms such as European-style Works Councils, industry or international level bodies. Unions are encouraged to attend the seminar on April 9 at RMIT for the purpose of further

consideration of this issue. ACTU policy concerning Works Councils will be determined following a reasonable period for discussion of the issues involved."

13. The July 2001 Executive carried the following resolution:

"The Executive authorises the development by the ACTU of a proposal for a Test Case dealing with award consultation and redundancy rights for employees. Consideration is to be given to international standards, and the following:

- The right of employees and their unions to be consulted about changes and the establishment of structures to facilitate such consultation;*
- In particular, the obligation of employers to inform employees immediately once consideration commences on issues such as closure, relocations, restructuring, outsourcing and the like; and*
- Improved redundancy pay provisions including extension to employers with less than 15 employees."*

14. The ACTU is currently running the case for improved redundancy pay, and is seeking to vary award disputes procedure clauses to provide that in cases of disputes about redundancy, employers are required to consult and provide information in line with the Termination of Employment Convention.

15. Since the ACTU first addressed the issue, there has been debate in a number of forums about the value of consultative mechanisms and other elements of workplace democracy, including through some variants of works councils - a concept developed in Western Europe and which has spread to the UK through the Directives of the European Union

16. European works councils generally comprise directly elected workplace representatives; in some cases the candidates are nominated by unions, while in others, unions are entitled to also sit on the councils. Their roles and functions differ from country to country, ranging from a right to formal consultation about the company's activities and future plans as they affect employee interests, to the right to "co-determination" or joint decision-making about specified issues arising in the workplace.

17. The restriction of bargaining to the enterprise level in Australia is more extensive than in other developed countries and, in particular, those with a works council system. Although there is a trend towards more decentralised bargaining in Europe, works councils largely operate in the context of relatively centralised bargaining over key issues,

including wages and hours of work, with the resulting collective agreements applying throughout industry sectors. In Germany, formal co-determination rights mean works councils must approve management decisions on issues including organisation of working time and the administration of remuneration and benefit systems.

18. The UK “single channel” model, which is used for negotiations around collective redundancies and transfers, and which is being considered for the purposes of implementing the EU Directive on employee consultation in the UK, means that union workplace representatives, where these exist, are the primary vehicle for consultation.
19. In Australia, there have been union concerns about the works council concept due to a belief that they will operate to undermine the role of unions and provide legitimacy to employer strategies to negotiate directly with workers. Support is mostly limited to the councils playing a purely consultative role, primarily about non-industrial issues.
20. However, it is also necessary to consider how to broaden the means by which collective representation can work at the enterprise level in the context of significantly reduced union membership, particularly in the private sector. Encouraging collective representation and activity is vital, given the Government’s vision, supported by significant employer forces, of a workplace relations system characterised by direct dealings between employers and individual employees rather than through any representative structures.
21. For these reasons, there may be merit for legislation along the lines of some European models, so long as it was accompanied by a legally enforceable obligation on employers to negotiate with unions which represent employees in particular enterprises and industries.
22. Unions will not accept displacement of their role in collective bargaining. A workable formula for union recognition for bargaining purposes would be that the union has at least one member at the enterprise for whom it has coverage in its rules. This is already a precondition for a union wishing to make certain certified agreements.
23. In circumstances where there is no significant union membership, collective representation through some form of representative consultative body could be more conducive to the development of a collective culture than individual agreements or non-union agreements concluded without any representative bargaining structure.