

# **INDUSTRIAL RELATIONS LEGISLATIVE REFORM RESOLUTION**

## **ACTU Congress September 1993**

1. Having heard a report on developments in the area of industrial legislation, Congress believes:

2. Negotiating Principles

2.1. That the following principles for the ACTU negotiating committee be endorsed:

2.2. Award System - Safety Net

(i) All workers to be protected by a safety net of minimum award wages and conditions.

(ii) The award system to continue to underpin workplace bargaining. Such awards should be periodically adjusted so that they remain relevant over time and protect the rights of workers. Access to arbitration is an integral part of such a system.

(iii) The provision of a permanent and reliable safety net is the essential foundation upon which industrial relations reform should proceed. To ensure that all Australian workers are protected by this safety net, regardless of the State or Territory they live in, the Government should legislate under International Conventions to guarantee award rights to:

(a) minimum award wages as determined by the Commission through the use of common rules;

(b) equal pay for work of equal value by men and women;

(c) protection against unfair dismissal including the requirement for an employer to offer a valid reason for dismissal, severance pay and appeal to an impartial tribunal against unfair dismissal;

(d) unpaid parental leave

2.3. Sanctions

(i) If workers and unions are to be placed on an equitable footing with their employers in this bargaining process it is imperative that the legal constraints on the right to strike are removed. Agreements, including enterprise agreements, with Governments and/or employers must not restrict the right of workers to take industrial action, of any kind, against oppressive Government legislation and/or policies, to improve award entitlements or in solidarity with other workers.

(ii) The whole issue of sanctions should be addressed within the industrial relations framework and not left to the common law or other legislative provisions (either Federal or State). At the very least an unqualified right to strike should be provided for the period during which the bargaining is taking place. Thereafter the terms of the agreements entered into would regulate the relations between the parties. This is consistent with the approach adopted in countries elsewhere which have wage systems dominated by enterprise bargaining i.e. the Scandinavian countries, Germany, etc. These countries also provide strong legislative support to the role of unions in the bargaining process.

(iii) Support for the repeal of s.66 of the Public Service Act.

2.4. Other Issues

(i) Whilst maintaining access to arbitration as an integral part of the award system, there shall be increased emphasis on the process of conciliation in the development of enterprise agreements. Creation of a legislative obligation to bargain in good faith and an extension of the Commission's power to direct employers to disclose information.

(ii) The current jurisdiction of the Industrial Division of the Federal Court to be transferred to a specialist industrial tribunal. The new Industrial Court to incorporate a small claims section to provide an expedient, inexpensive method of recovering monies owing under awards or agreements.

(iii) Review Division 3A in the light of the outcome of the Family Court Counsellors Case including the need to ensure that parties to agreements are able to incorporate mechanisms that permit some adjustment of the terms of the agreement arising from the application of the agreement at the enterprise level.

(iv) The continuation of the requirement for a union to be a party to a Division 3A Agreement.

(v) Total rejection of changes to Division 3A of the Industrial Relations Act which would allow non-unionists new and specific rights in respect of certified agreements.

(vi) The maintenance of the uniform protections and regulations contained in the registration and rules requirements of the Industrial Relations Act in respect to unions.

(vii) It is fundamentally important that the existing criteria for registration are retained, particularly the 'conveniently belong' test for registration and rule changes.

(viii) The impact of the ILO ruling on the 10,000 minimum union member number requirement should be confined to the alteration of the minimum number requirement criteria in Section

(ix) The existing object 3(k) in the Act should be reaffirmed and strengthened with a statement that the development of genuine independent and effective organisations is to be encouraged.

### 3. Progress to Date

3.1 That Congress note and endorse the progress that has been reached in the negotiations to date, and in particular the principle agreement in relation to proposals to amend the Industrial Relations Act to:

(I) strengthen the award system, in particular, to underpin enterprise bargaining;

(II) empower (in reliance to ILO Conventions) the AIRC to make orders in respect of minimum wages; equal remuneration for work of equal value; and redundancy, with a new Court to be able to deal with unfair dismissals and a statutory entitlement to unpaid parental leave;

(III) insert new provisions to clarify the AIRC's powers to supervise bargaining;

(iv) revise, in line with ILO recommendations, sanctions applying to industrial action to restrict their use;

(v) repeal, in line with ILO recommendations, the existing minimum size requirements for the registration of unions;

(vi) strengthen the protections against discriminatory or coercive actions against union members;

(vii) establish a new Industrial Relations Court;

### 4. Further Consideration

4.1 That prior to any final agreement being reached with the Government regarding Industrial Relations Legislative Reform the proposed package would be considered at a special ACTU Council meeting called for that purpose and that meeting shall be held prior to any legislation being introduced into Parliament.