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Unions urge PC inquiry to give more rights at work to casuals and women

The ACTU calls for workplace rights to be strengthened for women and millions of Australians in casual and insecure work in its submission to the Productivity Commission inquiry into workplace relations.

Australian Unions also call for the minimum wage and penalty rates to be protected as well as greater rights for workers to bargain collectively, including labour hire and temporary workers.

Australia's workplace system is based on fairness, equality, protection of the vulnerable and rewards for hard work.

This is a system Australians have demonstrated they want and support.

Instead of trying to destroy these foundations as the employer lobby is calling for and as the Coalition Government tried to do with WorkChoices – the Productivity Commission should build on these fundamental principles to ensure workers' rights are protected and that there is a role for policy intervention to ensure all Australians are paid fairly for their efforts.

In our submission to the Productivity Commission's Inquiry into the Workplace Relations Framework, Australian Unions call for action to:

1. Address insecure work and casualisation of the workforce

- Independent contractors or freelancers should be given the same rights and protections as other employees, including the right to bargain collectively
- Consider a legal definition of a casual worker, prerequisites to hire a casual worker and the extension of minimum standards to casual workers
- Labour hire or temporary workers should have the same rights as the permanent employees

2. Support women and close the gender pay gap

- Create a new right for employees to return to work in their existing role on a part-time basis following parental leave
- To deny a request to change work arrangements following parental leave or deny an extension of unpaid parental leave, an employer must demonstrate they have tried to reasonably accommodate the request and this must be underscored by an effective right of review

3. Remove red tape around fair and reasonable bargaining

- Strengthening bargaining requirements in the Fair Work Act to allow arbitration to resolve deadlocks that occur when employers refuse to bargain in good faith
- Broaden the scope of bargaining content to allow industry-wide bargaining, including supply chain bargaining, to extend protections and rights to labour hire workers who currently have no power to bargain within their workplace

4. Pursue a portable entitlements scheme and fairer redundancy provisions

- The Productivity Commission should recommend a separate inquiry into a national portable long service leave scheme

- Such a scheme would allow all workers - whether permanent, casual, temporary or contract - to accrue long service leave
- A portable long service leave scheme could also serve as a model for a national portable entitlements scheme for other kinds of leave, including sick and annual leave, which the union movement is pursuing
- Redundancy pay and provisions should be extended to workers who are casual or work on successive fixed term contracts

5. Strengthen our minimum wage safety net and reduce inequality

- The system for setting the minimum wage is fair and there is no evidence to show it negatively impacts employment
- To make the setting of the minimum wage more effective, the Fair Work Act and Fair Work Commission should clearly articulate and focus on how the minimum wage can reduce inequality
- Juniors should be paid at the same rate as adult employees under the award

6. Protect penalty rates

- Employees should be appropriately compensated for working long, inconvenient and unsociable hours
- Employer arguments about the so-called “24/7 economy” are nothing new – the Fair Work Commission and its predecessors have been dealing with versions of the argument for over 60 years and should continue to do so
- Some of the most vulnerable employees rely on penalty rates to make ends meet. These employees include the low paid, women and those in regional and rural areas
- Close to 40% of the Award dependent workforce is employed in hospitality and retail
- While employers in these industries are the loudest critics of penalty rates, the fact is that pay rates in hospitality and retail are so low that even if senior staff were paid double time for a full week of work – they would still earn less than the full time average weekly earnings

7. Greater protection against unfair dismissal

- The Fair Work Act provides some protections against unfair dismissal but should be expanded to include:
 - An avenue for employees to argue they have been unfairly selected for a redundancy
 - Removal of restrictions such as qualifying periods of employment, the nature of the employment or size of the employer that stop some workers being covered by unfair dismissal laws
 - Removal of caps on the compensation payable to employees for unfair dismissal. It cannot be assumed that payments would blow out if the cap were lifted, due to other checks and balances in the system

The ACTU urges the Productivity Commission to consider the following points when reviewing employer submissions to the inquiry into workplace relations:

- The exploitative practices adopted by employers under WorkChoices,

which enabled award conditions to be removed, clearly demonstrates the risk to employees of eliminating or reducing award regulation.

- The award system has been thoroughly reviewed on numerous occasions over more than two decades and has retained industry differences for good reason. There is no case for another round of award consolidation or review.
- It is undesirable and inefficient to have both the Productivity Commission and the Fair Work Commission conducting parallel inquiries into penalty rates.
- Modern awards provide significant flexibility to employers to structure their businesses. They do not regulate trading hours or impose restrictive work practices - they provide a safety net for workers that is adapted to industry needs. Further workplace flexibility is achieved through collective bargaining on a better off overall basis. Calls by industry for further flexibility in the safety net are ambit claims of dubious merit.
- Collective agreements are a well-established path for workers who seek better conditions and for employers who seek greater flexibility.
- There is no evidence that the requirement for agreements to meet the better off overall test is an impediment on agreement making. The fact that the better off overall test does not permit safety net conditions to be traded for non-monetary compensation does not inhibit flexibility in the workplace.
- Permitting the better off overall test to take account of non-monetary compensation would lead to uncertainty, exploitation and would undermine the safety net.

Quotes attributable to ACTU Secretary Dave Oliver:

“Australia’s workplace system is based on fairness, equality, protection of the vulnerable and rewards for hard work – the system works and has the support of the Australian community.

“Women make up more than half of our workforce and there are millions of Australians in casual or insecure work – they deserve the decency of a secure job and equal rights at work.

“The minimum wage and penalty rates must be protected for Australia to avoid developing a US-style underclass of working poor.

“Unions are calling on the Productivity Commission to use this inquiry to improve workplace rights for Australian workers and reject extreme attempts by the employer lobby to dismantle the system in order to cut wages and rights at work.

“Australian workers know the Coalition Government called this inquiry into workplace rights in an effort to cut penalty rates, abolish the minimum wage, bring back unfair individual contracts and swing even more power to the employers.”

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