ACTU
australian council of trade unions

fact sheet

FAIR WORK AMENDMENT BILL 2014

The Australian Council of Trade Unions (ACTU) represents nearly 2 million working Australians and their families. Many more workers have their conditions of employment shaped by the work and representation performed by our affiliates.

The ACTU opposes the Fair Work Amendment Bill in its entirety because it will result in the exploitation of the most vulnerable workers in our community.

The return of unfair individual contracts

The Bill opens the way for a return to the most insidious aspects of individual statutory arrangements (Australian Workplace Agreements (AWAs) established under Work Choices).

AWAs were emphatically rejected by Australians in 2007 after resulting in the exploitation of workers.

An analysis of AWAs in 2006 by the Office of the Employment Advocate found that 89% of AWAs removed at least one 'protected award condition'; two thirds removed penalty rates, shift work and overtime loadings, incentive based payments and bonuses; half removed monetary allowances, public holiday payments or substitute days; one third removed rest breaks or public holidays.

Individual statutory arrangements fail to appreciate the unequal bargaining position between workers and their employers. Low-skilled workers, workers in areas of high unemployment, women with caring responsibilities – are most disadvantaged in these negotiations.

The manner in which these amendments interact with the existing law is complex, however their practical effect it is abundantly clear: A worker who signs on the dotted line will be held to their "agreement", whatever the circumstances - even if it demonstrably and unfairly cuts their pay and conditions.

A worker who needs to ask for irregular hours because of their caring responsibilities can be required to give up their penalty rates in exchange, to get the only pattern of hours they can work.

Many workers rely on penalty rates to get by – they are not a luxury.

Under the Government's proposal, even if a court found that an agreement was so unfair that it should never have been entered into in the first place, the worker may never be able to recover their losses.

Cheaper to sack workers than let them take their holidays

The Government's Bill reduces the National Employment Standard in relation to payment of annual leave. Workers who get paid their base rate plus usual allowances when they go on holiday will only get their base rate.

This change adversely affects workers who are reliant on overtime and other allowances to make ends meet.

An employee who doesn't take all of their holidays before they leave their job will be worse off than if they had taken their holidays.

National Employment Standards are taken into account in awards, collective agreements and employment contracts. Anyone who thought their conditions were protected because of the National Employment Standards would be worse off because of this Bill.

A green light to sham arrangements

Currently, when a business restructures or outsources work to a related company, and its employees move, the employee's pay and conditions generally go with them.

The Fair Work Commission can change the employee's conditions having regard to all the circumstances, including the economic capacity of the new employer, compatibility with existing arrangements and productivity.

This Bill requires that employees will always lose their conditions in these circumstances and the Fair Work Commission will have no role.

These arrangements create an incentive for sham restructuring and sets up a race to the bottom for wages and conditions that is not in the long term interests of the Australian economy or society.

Greenfields "Agreements"

This Bill creates a special rule for a special group of employers in the mining and construction industries, allowing them to reach agreement with themselves. This change undermines the principle that there should be one law for everyone.

The Bill allows these companies to simply write their own workplace agreement.

There is real potential for substandard agreements that will undermine terms and conditions across an industry as a whole.

The Bill would give a special deal to some of Australia's most powerful companies while workers in other industries and businesses are excluded. The irony is that if this arrangement was extended to the whole economy it would look more like centralised wage fixing than enterprise bargaining.

Giving employers a veto over industrial action

The current rule, which has been around since 1993, allowed workers to take industrial action as long as they were genuinely trying to reach agreement.

It is a rule grounded in fairness. Parties seeking to use lawful industrial action in support of their claims should first try to reach agreement with the other parties to the dispute.

The changes proposed by the Government in effect give the employer a right of veto over employees taking industrial action. The employer has to agree to bargain with the employees in order to give employees the chance to take industrial action.

This Bill strips workers of their ability to negotiate with companies that don't want to do a deal. It provides a structural incentive not to bargain.

Right of Entry

The Bill has significantly more restrictions than the right of entry situation even under WorkChoices.

A union will not be able to attend a workplace unless the union is already a party to an enterprise agreement that applies to work at that workplace or employees demand that the union be allowed to attend.

It also repeals the important amendments Labor introduced to ensure that workers at remote sites had access to their union representatives. It removes the ability for union representatives to travel and stay at remote worksites.

The current provisions of the Act enable a union official to enter a workplace to hold discussions during unpaid breaks with employees who wish to participate in those discussions, and who would be eligible to join that union.

Contrary to the very clear commitment given by the Coalition, there is no explicit right of entry (conditional or otherwise) given where a union is a bargaining representative seeking in good faith to make an agreement to apply in that workplace.

Window dressing real problems

In echoes of the budget, the Bill makes two token gestures in favour of workers. Neither delivers any substantive benefit.

Currently, an employee can request an extension of up to 12 months' unpaid parental leave. This can be refused on "reasonable business grounds", but unless an enterprise agreement specifically provides for it, the reasonableness of refusal cannot be disputed. Simply requiring an employer to give an employee a reasonable opportunity to discuss their request will not change employer behaviour. The right to request needs to be underscored by an effective right of review if attitudes are to change.

Similarly, despite the pre-election commitment to "require that the interest earned on money which has been recovered by the Workplace Ombudsman for underpaid workers, be given to those workers who are underpaid", this is not what this Bill does. The Bill merely permits (but does not require) the Minister to define rates of interest that apply to such amounts. It expressly permits the rate of interest prescribed to be "nil".