



## **Speech to the Australian industry Group**

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### **Industrial Relations: Give Workers a Genuine Choice**

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#### **Introduction**

I'd like to use the opportunity I have to speak to you by going straight to the heart of the Government's industrial relations changes, and why they fundamentally undermine employee rights.

The Prime Minister is fond of saying that the essence of the changes is to align the interests of employees and employers by encouraging bargaining at the workplace over pay and employment conditions.

The ACTU has no essential objection to this goal. It was the ACTU, after all, which led the move from centralised wage fixing to enterprise bargaining.

Workplace level bargaining is not new. The ACTU supports it. We accept that it is important in an open trading economy, and we recognise how vital it is to productivity and competitiveness.

But the decentralisation of the system the ACTU supported was based upon collective bargaining at the enterprise – and respect for the right of employees to freely associate in a union and act in a collective way if they chose.

We also supported it on the basis of a decent underpinning safety net to protect those without bargaining power, and access to the industrial tribunals to ensure fair treatment.

The Government's aim is quite different. It is to break down collective industrial relationships, institutions and the safety net, and to drive employees into individual employment contracts.

This is the vision of John Howard's 'enterprise worker' – a person of enlightened self-interest, employed on an individual contract, free of 'outside' interference from awards and unions, who recognises that their personal hopes and aspirations can only be realised through their commitment to the enterprise.

Maybe you'll find some swingin' dudes like this in the financial services or IT industries.

But you won't find too many working in department stores, coal mines, on production lines, in hospitals and nursing homes, or working as cleaners or security officers or transport workers.

Australian people don't mind hard work, they understand how important it is for them that their employer is successful and commercially viable, but they overwhelmingly support institutions which safeguard their right to decent and fair treatment.

Most of John Howard's enterprise workers will in reality be enterprise servants.

They will under his system be denied real choices about the form of agreement governing their employment - denied the right to meaningful union representation and collective bargaining if they want it - denied access to independent tribunals to ensure fair treatment if they need it – and denied the security of a decent safety net.

#### **Key elements of the changes**

The realisation of the vision of John Howard's 'enterprise worker' necessitates a radical attack on workers rights. It involves a major boost in workplace power for employers at the expense of employees.

There are several critical changes which will bring about this increase in power for employers.

Firstly, the legislation will enshrine individual contracts as the dominant form of agreement making.

Collective agreements are to be subordinated to individual contracts, and collective bargaining will not only be made far more difficult for employees and unions, it will be lawful to discriminate against employees who wish to collectively bargain.

In fact, we are advised that collective agreements will never be closed – that employers party to lawfully made collective agreements will be free at any time to offer individual contracts to any employee which will negate the operation of the collective agreement in relation to that employee.

Unions will be bound by collective agreements for their term, and be subject to severe sanctions if they act outside their commitments, including if they act to protect the integrity of the collective agreement against the offering of individual contracts by the employer.

But employers will be free to opt out of collective agreements with individual employees at any time.

Just imagine the effect of this if it were applied to commercial contracts, if one side could freely disregard its obligations at any time whilst the other faces

crippling penalties if it responds and seeks to protect the integrity of the contract?

The second key element increasing the power of employers involves the removal of the award safety net as the minimum platform underpinning workplace agreements.

The award safety net is to be replaced by only five legislated minimum standards. These five standards will form the 'no disadvantage test' which any individual or collective agreement must meet, rather than the award.

This change creates a massive financial incentive for employers to get minimum wage workers off the award and onto individual contracts. The incentive will be the capacity to cut labour costs by lawfully abolishing things such as overtime pay and penalty rates.

Thirdly, so-called third party involvement in bargaining will be removed or made more remote. Independent industrial tribunals will lose their jurisdiction to ensure fair bargaining, and access to unions made more difficult.

Lawful industrial action will be near impossible. Any affected third party, such as a public transport commuter in the case of a rail dispute, may apply to have lawful industrial action terminated.

Responsibility for protecting people through the approval of all collective agreements and individual contracts will reside with the Orwellian farce known as the Office of Employment Advocate – a hopelessly conflicted joke of an agency set-up to rubber stamp individual contracts in job-lots.

The combined effect of all of this will be that many employment rights which have until now been guaranteed will hereafter be up for grabs in workplace bargaining.

That's why there has been so much concern about the potential loss of public holidays, meal breaks, overtime pay, penalty rates for shift and weekend work, rostered days off, redundancy pay and a host of other employment rights.

### **Bargaining power**

Employees will only hang onto employment conditions like these if they have the bargaining power to do so, or alternatively if the employer is kind enough to maintain them.

And if you are employed in a workplace with less than 100 employees you'll have in the back of your mind at all times the fact that you can be sacked without a right of appeal.

The Government's strategy is a market-based approach, and obviously the market conditions in a particular industry will have an important role to play in

how employees will fare in this system – the outlook in minerals and resources for example will afford employees better bargaining power.

But many people will find themselves under pressure.

This will ultimately be the case even in the most cooperative of workplaces, where the employer might be the nicest person with the best of motives towards employees.

In a competitive environment, particularly when the safety net has been reduced and weakened, it will only take one business to take advantage of the new rules and others will be commercially compelled to follow.

This will be evident quite quickly we expect in the labour hire industry under the new laws. Market entry is relatively easy, capital costs are minimal, and the business depends on gaining contracts where price is largely dictated by labour costs.

In these circumstances, when you reduce the minimum employment standards, new entrants and hard-headed operators will use individual contracts to drive down labour costs quite quickly.

We have had extensive experience of this in Western Australia when the Court Government brought in laws the same as John Howard is proposing in the 1990s. Our colleagues in New Zealand saw the same under their employment contracts laws.

But also in manufacturing, in an open international trading environment, businesses will inevitably explore all means of reducing costs.

In all of these circumstances the relative bargaining power of employees and employers will fundamentally determine pay and employment conditions – as the Government clearly intends.

And this is where the real problem with the Government's changes, with the vision of the enterprise worker, comes into sharp focus.

Remember that the stated aim of the Government is ultimately to make each employee bargain individually with his or her employer. The legislation, accompanied by aggressive Government policy, will promote this objective.

Right now, for example, the Government is blackmailing universities and TAFE colleges into offering all their staff individual contracts by threatening to withhold funding – notwithstanding that employees want and are covered by valid and lawfully made collective agreements. Schools will be next.

The essential problem with the Government's approach is that the overwhelming majority of individual employees do not have equal bargaining power with their employer.

Individual bargaining hands to the employer unfair and unequal market power.

Naturally I recognise that employers are not all motivated to exploit their staff, but market rules like those proposed by the Government open the door to exploitation.

And when people know that they are in a weak and subordinate relationship with their employer it undermines the dignity and sense of common purpose they derive from more equal, fair and respectful workplace relationships.

How can most people on their own gain the knowledge, skills and negotiating muscle to bargain with their employer?

As Family First Senator Fielding put it, how can a check-out employee be expected to bargain with Coles Myer? How will young people bargain with a fast-food chain?

How will people with limited English language and literacy skills cope?

Only employees with special power in the labour market, mostly highly skilled professionals, are able to negotiate on reasonable terms their own individual contract.

The fact is that for the overwhelming majority of employees individual contracts are a means for employers to dictate the terms of employment. Pay and employment conditions are unilaterally determined by the employer.

The Government's individual contracts, called AWAs, are in fact the purest expression of pattern bargaining, something employers and the Government complain about if it is undertaken by unions.

In every instance in which I have experienced them industrially, AWAs are in identical terms, conveniently drafted by lawyers or the HR manager for the employer, and spewed off the word processor ready for signature.

Workplace bargaining involving AWAs simply means that employees are presented with 'take it or leave it' offers. Workers are often made to sign an AWA just to get or keep a job, such as in Kevin Andrew's own department.

In fact it's not just pattern bargaining. When you have to sign an AWA as a condition of employment, AWAs are in effect the Government's own version of 'no ticket no start' – that much decried practice in the building industry.

This hypocrisy and bias is at the heart of the rules which will govern workplace bargaining under the new system. There is no choice for employees at all, the choices all reside with the employer.

The alignment of the interests of the 'enterprise worker' with the enterprise is essentially to be achieved by imposing the interests of the enterprise on the worker.

I do not believe that the economic circumstances facing the country in any way justify this approach.

I am a strong believer of the importance in a democratic society of upholding the rights of working people, and I do not accept that this belief is in fundamental conflict with the imperatives of economic prosperity.

A better balance is needed. If we are to have a market based bargaining system, workers must have enforceable bargaining rights which give them real choices.

### **Fair bargaining rules needed**

What approach could be taken to the bargaining system to satisfy the need for fairer bargaining rules?

If the Government is determined to strip away the safety net and give far greater articulation to market forces in the pricing of labour, then the rules for bargaining must enshrine fair bargaining practices.

The industrial relations systems in all advanced economies recognise this. The Howard Government's plans do not.

Individual contracts are and will be used by employers to undercut pay and employment conditions, destroy collective bargaining, and eliminate union representation.

If exploitation and unfair treatment is to be avoided, employees must have the right to join together in the workplace and collectively bargain. This is the fundamental basis for any fair bargaining system.

That is why the right to collectively bargain has been internationally recognised for many decades. It was in fact a key element of the international settlement following the second world war, and is an essential component of any sustainable democracy.

Collective bargaining is the only way to remedy the inherent imbalance in the bargaining power of employers over individual employees.

It is not a right to be granted at the discretion of the employer – it must be an enforceable right available to employees.

Consider how AWAs are often used.

During a bargaining process it is increasingly common for employers to refuse to collectively bargain and to offer AWAs on the basis that pay increases will only be made to those who sign the AWA.

Those who wish to collectively bargain are therefore the subject of discrimination, and are generally denied opportunities such as promotions

unless they sign the AWA. This is Government policy in many areas of the Commonwealth public service, but it is widespread in the private sector too.

Under the Government's laws the decision on the form of agreement to be negotiated is entirely a matter for the employer. If there is disagreement it is the employers decision which has legal backing. Discrimination is a legitimate and lawful means of coercing employees to sign AWAs

Every employee in an enterprise could be demanding collective bargaining, but if the employer refuses and insists on AWAs that's what the law supports.

I have been involved in countless disputes involving collective bargaining versus individual contracts – they are becoming more prevalent than disputes over pay and conditions.

There is one right now at Boeing aircraft maintenance operations in Newcastle in NSW and, as the Prime Minister observed in Parliament, the employer is quite entitled to lock people out for as long as necessary to resist collective bargaining and press the demand that individual contracts be signed.

At the same time the Prime Minister deceitfully argues that his system is delivering choice for employees. In truth the choice is all one way – in favour of the employer.

I can assure you that for as long as I fulfil any leadership role in the labour movement I will dedicate myself to ensuring that working people have access to fair and decent collective bargaining rights.

The pursuit of collective bargaining rights will be the defining issue for the labour movement in the coming years.

### **Overseas experience**

It's worth considering how some of our closest cultural, political and economic allies deal with this issue.

Employees in Great Britain, Canada and the United States can express their desire to collectively bargain by democratically voting in the workplace.

If employees and their unions in those countries cannot voluntarily agree with the employer on the form of bargaining to occur, for example if the employer insists on individual contracts but the employees seek a collective agreement, the employees themselves can vote by majority to decide the issue.

It's a democratic choice which binds all employees and the employer. It's the same democratic basis upon which we elect governments – the majority rules.

If we are to have a radically diminished safety net and a freer labour market for the setting of wages and employment conditions, it's time that the pros and cons of such an approach were debated in Australia.

It allows employees to have a genuine choice about the form of agreement that they want.

If it's good enough for the Government to use Great Britain as a model for the new 'Fair Pay Commission' it's appropriate to look at the British workplace bargaining rules as well.

In the UK it works as follows.

The employer and the employees and their union can voluntarily agree to collectively bargain, in which event good faith bargaining processes are followed.

If more than 50% of the employees are union members, collective bargaining is automatically recognised and there can be no contest about it.

If less than 50% of the employees are unionised, and there is no voluntary recognition of collective bargaining by the employer, then a ballot of the employees can be conducted by a Government agency.

A ballot will only be held if at least 10% of employees are union members.

Collective bargaining recognition occurs if a majority of those who vote, vote in favour.

A good faith bargaining process then ensues. It is a breach of good faith for an employer to offer individual contracts.

Once a collective agreement is reached it is binding and enforceable upon both parties for its term. The employer cannot contract out of the agreement by entering into individual contracts with employees, and the union is similarly legally bound to respect the agreement.

The arrangements are similar in the US and Canada.

They are not ideal systems from a union standpoint, particularly the US laws, which have been significantly weakened over the years by extensive litigation, extremist employers, anti-union governments, and conservative courts.

But these systems do at least afford employees, not simply union members, a right to choose the form of agreement that they want.

It helps to balance workplace bargaining power and generate fairer and more respectful enterprise relationships.

Workplace voting would present plenty of challenges for unions as well as employers, but it's time in the debate about industrial relations that genuine choices for employees were given greater priority.

I should note that what I am proposing is not at this stage ACTU policy – it is a matter that unions will also have to debate.

Whilst we remain opposed to AWAs we have to deal with the fact that AWAs compete with collective bargaining in the way I have described.

In such circumstances the most important policy issue for unions is respect for collective bargaining, and the right of employees, not just union members, to engage in it.

Real choice means letting workers decide how best to protect and advance their own pay and employment conditions, and backing it up with an enforceable right.

I strongly encourage you to think about the issues I am raising. I believe that it is in your longer term interests to do so, to look beyond the immediate commercial imperatives driving your broad support for many of the Government's industrial relations changes, and consider the issues from the perspective of working people.

A system based upon an unfair imbalance of power in the workplace is not sustainable. And this Government will not last forever.

An effective and sustainable democracy requires checks and balances.

Democracy also involves respect for working people, not treating them as pawns in a big picture economic game, but giving them a real say in their own working lives.

The Government is proposing to give the business community all of the aces in its' new industrial relations system. How about a fair deal, a genuine democratic choice for workers?