

# COULD WAR

The proposed Better Bargaining Bill threatens the bargaining power of all workers in “essential industries”, including education. Diny Slamet reports.

## ATAGLANCE

■ The Howard government's Better Bargaining Bill would severely reduce the bargaining power of teachers and other education workers

■ Unions and their members would be at considerable legal risk if they took industrial action

■ Employers and others would be allowed to take pre-emptive action

■ The bargaining power of the government and employers would be strengthened and workers deprived of the ability to withdraw labour.

In eight years of power Prime Minister John Howard has proved himself a master practitioner in the art of wedge politics. Over issues such as race relations, asylum seekers and the war in Iraq, the Howard government has divided Australian society.

But nowhere has the divisive nature of Howard politics been more apparent than in the area of industrial relations. The stated agenda of the government's 1996 Workplace Relations Act was to allow more flexible workplace arrangements and improve productivity.

In reality, it undermined collective bargaining, severely limited the umpiring role of the Australian Industrial Relations Commission (AIRC), stripped awards of significant protections and placed severe restrictions on the role of trade unions and their members. In short, it overturned a federal industrial relations system that had been operating for almost 100 years and that recognised the imbalance in bargaining power between an employer and an individual employee.

As ACTU President Sharan Burrow says: “The irony is that the Howard government's attempt to weaken unions, in the hope that it would create an environment where employers would have more control, has actually resulted in a more adversarial system than when they came to government.

“The industrial commission had powers to sort out a conflict where bargaining failed. Most of those powers have been negated or weakened to the point where the system is, by its very nature, more adversarial, because the umpire lacks the capacity to intervene in significant areas.”

### Teachers under attack

Over the years the government has tried to introduce ever more draconian amendments to the Act. One such amendment, introduced in 2003, is seen as a particular attack on education and health workers and is being fought tooth and nail by the AEU, the National Tertiary Education Union, the Nurses' Federation and the ACTU.

If the government is re-elected and manages to pass the Better Bargaining Bill, the rights of as many as two million workers would effectively disappear. The bill would allow

individuals or groups who are not directly involved in an industrial dispute—for example, clients of health, community services or education systems—to apply to the AIRC to suspend protected industrial action, if they can demonstrate that the action will cause them significant harm. The bill allows applications to be made not only against actual, but threatened, industrial action and requires the AIRC to put the interests of “vulnerable” third parties foremost.

Currently, the AIRC can suspend a bargaining period (during which industrial action is protected) if the action “endangers the life, health or welfare of the population or part of it, or if it would cause significant damage to the economy.” This rule has disadvantaged education workers in the past. The commission has previously found that university students and school students and their families could be considered a relevant “part of the population”, so that strike action threatened by teachers was a sufficient danger to their “welfare” to trigger a suspension of the bargaining period.

Under the proposed bill, however, all that is required is significant harm to a single person. This would mean that the impact on each individual student or parent could be considered in isolation, without regard to the overall impact on the population of students and parents, or on the economy as a whole.

According to the AEU's submission to a Senate Inquiry on the proposed bill, just as the Howard government has consistently tried to eliminate the collective power of workers, focusing only on the individual, the Better Bargaining Bill shifts the focus from a public interest vested in the community towards the individual.

“The Better Bargaining Bill is an Orwellian term to start with,” says Sharan Burrow. “To introduce a bill that would effectively make bargaining much, much harder, if not impossible, and to call it the Better Bargaining Bill suggests to you where the government's intentions really lie. If the bill is passed, you will have a situation where a union that can't get an employer to the table and bargain in good faith would find themselves effectively blocked from taking what

is, at the moment, legally protected strike action during a bargaining period.

“By bringing in the third party rights to have the bargaining activity stopped because somebody is being harmed, you will have all manner of industrial and civil mischief that employers or indeed the general public more broadly could engage in,” she says.

Industrial action not taken lightly

In its submission to the Senate Inquiry, the ACTU described the bill as a “spiteful proposal” that portrays those in the caring professions as heedlessly taking industrial action without leaving minimum arrangements in place to ensure the health and safety of their clients and patients.

“Nurses, teachers and other similar professionals do not take industrial action lightly. On the rare occasions when they do, it is invariably in the interests of their patients and students. Issues like nurse/patient ratios and class sizes are as much about decent service standards as they are about working conditions for the employees involved.

“The unfortunate fact is that industrial action has been responsible for the establishment of some key standards in these areas, without which health, education and community services would be inferior to current operations. To give rights to third parties seeking to oppose industrial action, but none to the many thousands of patients and

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parents who support the union efforts to improve services is hypocritical in the extreme,” the ACTU submitted.

While the bill is currently before the Senate (and likely to be rejected), its status is less important than what the bill says about the government’s intentions, says Linda Gale, an industrial officer with the AEU. “This legislation is part of a pattern by this government of continually undermining the industrial rights of all workers. It is directly aimed at health and education workers and clearly shows what Howard’s policy is,” she says. “While it may not get through the Senate now, if the government wins the election and gains control of the Senate, this is part of their agenda.”

Erosion of workers’ rights

The Workplace Relations Act has fettered the workers’ right to collective bargaining and is therefore in breach of the International Labour Organisation conventions to which Australia is a signatory, according to industrial barrister Tony

Lawrence. The secretary of the international organisation, the International Centre for Trade Union Rights, Lawrence says that two major planks of the Workplace Relations Act have been responsible for the erosion of workers’ rights.

The first was the stripping of awards to 20 basic elements or “allowable matters”. These allowable award matters included fundamentals such as rates of pay, long service leave, ordinary time hours, classifications of employees and so on. But protections that had previously been agreed to under the old awards, such as the requirement to notify and consult in a redundancy situation, the requirement that a termination of employment not be harsh, unjust or unreasonable, preference to unionists and other similar provisions, were swept away. At the same time, the arbitration powers of the AIRC were severely curtailed.

Lawrence says that workers who wanted to preserve the conditions previously protected by their old awards had to pursue those conditions through a certified agreement. Strong unions who are in a better bargaining position are usually able to achieve these agreements, but that hasn’t been the case for more vulnerable workers.

“Under the current regime, if you are in a weak bargaining position—for example in the textile, clothing and footwear industry where you have some dreadful employers who just won’t reach agreements—you have lost the protection of those previous award conditions,” he says. “This is because you haven’t been able to get them into an agreement and you haven’t been able to go to the Commission to have a number of previous award entitlements and wage increases arbitrated because there is no scope for the Commission now to arbitrate where the parties don’t agree.”

Sharan Burrow says, while in the past weaker workers were able to benefit from the flow-on of wage rises and improvements negotiated by stronger unions, today they have to rely fundamentally on the minimum wages case. This has fuelled the growing discrepancy in wages, particularly in the gender pay gap for women, and the growing number of hours Australians work today.

Collective power undermined

The other major plank in the Howard government’s industrial relations policy has been the introduction of the Australian Workplace Agreement (AWA), which is entered into by an individual employee and employer and prevails over awards and certified agreements. The AWA represents a real individualisation of employment arrangements and has undermined the collective nature of employment relations.

According to Professor Richard Mitchell’s research, AWAs

have tended to emerge in a broad cross-section of industries, including mining, retail, property and business and hospitality, amongst ordinary employees but also with a strong presence in ranks of management. Those at the bottom end of the scale, without the bargaining power of senior and managerial employees, have tended to receive poor outcomes from AWAs.

Professor Mitchell, who is the director of the Centre for Employment and Labour Relations Law at the University of Melbourne's Law School, says his research shows that workers who have AWAs have tended to trade a lot away for slim gains.

"The sort of bargaining we have seen under these industrial relations laws has been largely a cost-reduction type of bargaining rather than an innovative, high-performance-workplace style bargaining.

"Because many conditions have been cut out of awards and unions are weakened, workers are accepting very thin wage increases and losing control over their working lives. In exchange for mediocre wage increases at best, you have the ordinary hours of work being extended, you can be called into work at any time, the regular working week is gone, people are working evenings and weekends. This may not be true in stronger industries but certainly in industries where you have individualised agreements or non-union agreements or weak union agreements a lot is given up for very little," Professor Mitchell says.

Where collective agreements do operate, Professor Mitchell's research confirms the opinions of Tony Lawrence and Sharan Burrow. "Where unions are weak, wage increases have not kept up with what they were like before this system came into effect. Unions are doing better where pattern bargain agreements have been allowed, that is, in the construction, key manufacturing and mining sectors, where unions have the strength to make the system work for them and are able to bargain for pretty good outcomes on the whole.

"Generally speaking, the impact of the bargaining system has been to increase the gap between the better-off workers and the worse-off workers extraordinarily by normal Australian standards. We always had a very compressed wage system and this has been ruptured as a result of these new laws," he says.

#### Little innovation or vision

Where the laws have failed, says Professor Mitchell, is in encouraging the kind of innovative agreements the government might have hoped for. While flexibility may have been the stated goal, it is workers who have been the ones to bend over backwards. "These agreements have seen plenty of flexibility but not much worker empowerment. The idea



of empowering workers through things like teamwork, quality circles, joint decision-making, workplace committees, the sorts of thing that are said to characterise leading international firms—our agreements don't appear to be developing in that way. In other words, there's lots of flexibility but that flexibility largely rests in the hands of management rather than being jointly determined by the workforce."

While Professor Mitchell is critical of Australian management for a lack of vision, he also holds unions

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responsible for failing to bring to the negotiating table more innovative agreements.

Sharan Burrow partly agrees with Professor Mitchell, but adds that issues around grievance procedures and workplace consultation were often contained in awards that existed prior to the 1996 Workplace Relations Act. "If you're in an adversarial situation where just to get agreement on wages and conditions is a significant struggle, then it's not the climate where you actually seek creativity, partnerships and flexibility, so he's right about that. The government deliberately set out to smash any kind of partnerships, tripartite structures or workplace involvement by workers through the stripping of awards, putting in place AWAs and making collective bargaining more difficult," she says.

"The government has created this environment where it's been about sustaining wages and conditions. It has narrowed the base on which unions will set out to bargain." ■

DINY SLAMET is a freelance writer.