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'Multi-employer bargaining', 'tidy up' of casual definition: Labor's IR plan

Labor industrial relations spokesperson Brendan O'Connor has stopped short of endorsing the Australian Council of Trade Unions' (ACTU) calls for industry-wide bargaining, declaring Labor was instead "examining whether there is scope to enhance the role of multi-employer bargaining".

In a speech to the National Press Club today (December 12), O'Connor said a Labor government would "tackle the defects in the workplace relation system that are contributing to wage stagnation, the modern precariousness of work, widespread underpayment of workers and declining collective bargaining".

"In a careful and considered way, we are looking at the evidence and consulting with experts, employers and unions, we are examining whether there is scope to enhance the role of multi-employer bargaining," he said.

"There is no one-size-fits-all to stimulate collective bargaining, which is why Labor is looking at enhancing the way our system works, to make it fit-for-purpose.

"Labor's guided by the principle that workers should have the right to genuinely bargain collectively to get a fair share and a reasonable outcome."

Still engaging with employers and unions about - expanded right to strike ...

Asked at the end of his speech whether workers covered by "multi-employer bargaining" would be given the right to strike during negotiations, O'Connor said "that's something we haven't resolved".

"We are still engaging with employers and unions about that right," he said.

"Despite what the Morrison govt may say, there is no evidence that multi-employer bargaining leads to increased industrial disputation, let alone the hysterical forecast of economic doom.

"That argument is felled by the simple fact that most of the world's leading economies have some variant of multi-employer or sector bargaining combined with local or enterprise negotiations."

O'Connor said Labor's priority was its "focus on the low-paid bargaining stream", and why it failed in the past. "I think there are some areas it's very easy to identify where they should be multi-employer bargaining, but unfortunately the provision of the Act failed."

He said Labor would expand bargaining power beyond a worker's direct employer, to cover independent contractors.

"Larger employers and corporations are outsourcing their labour to smaller employers through franchises, subsidiaries and related corporate entities, independent contracting, both real and sham and labour hire."

"This practice means that it is less likely that a worker is employed by the economic decision-maker and their wages are effectively set by the head of the chain, not by their direct employer.

"This makes it harder for workers to collectively bargain because although they may work at the same site or in the same business, it is not necessarily for the same employer.

"If elected, a Labor govt will stop the use of labour hire by employers to undermine the paying conditions of direct employees by requiring that workers at a site who do the same work get the same pay."

O'Connor reiterated commitments to introduce a national licensing scheme, and would "increase penalties for systemic and intentional underpayment of wages", holding employers liable for to penalties "three times the size of the underpayment".

"Under a Labor govt, corporations who are the economic decision-makers will be held responsible for underpayments that occur along their supply chain unless they can establish or prove that they took all reasonable steps to prevent it from occurring," he added.

... about need for 'casual' employee statutory definition

He said the definition of casual employment would be "tidied up". Pressed for more details on this, O'Connor responded "there needs to be statutory test, we're working with employers and unions about how exactly we design that".

"Most importantly want to make sure that it works so the reason I haven't outlined in detail the statutory definition is we want to have further consultations with employers and unions. We want to avoid unintended consequences."

"We've got to get away from this idea that you get to deem the definition of someone's employment status just because you're the employer. You get to choose to use people in a casual way, but if all the characteristics of their employment scream permanent, you don't get to do that."

O'Connor also signalled changes to the use of temporary visas, saying "it is a visa to be used in a time of temporary skill deficiencies, not a mainstay of employment for our labour market".

"The overuse of temporary visa holders has certainly undermined labour conditions by exploiting those temporary visa holders, it places downward pressure on wages, displacing local workers and there needs to be some better arrangement to ensure that that does not happen. It just has to change in the way it operates today," he said.

Unions welcome Labor 'commitment'

Despite O'Connor's reluctance to embrace the ACTU's key IR reforms, the peak union body welcomed Labor's "commitment" to "change the rules to create fair pay and secure jobs".

"The ALP [Australian Labor Party] know that we need to change the rules to fix our broken system," ACTU secretary Sally McManus said, in a statement responding to O'Connor's speech.

"We want to work with the ALP and any other political parties or representatives, as well as any employers, who want to restore the fair go for working people.

"The Abbott/Turnbull/Morrison govt has refused to even acknowledge there is a problem in wage growth or insecure work, even as thousands of families are pushed into poverty and insecure work becomes a business model for many employers."

Govts should 'promote' enterprise bargaining

Meanwhile, Australian Industry Group (Ai Group) called for govts to devote "more resources towards promoting the benefits of enterprise bargaining", to tackle the decline in enterprise agreement (EA) numbers.

"It is in the interests of businesses and their employees to reach agreement on wage rates and conditions of employment that suit the needs of each business and its employees, provided that minimum legislative award standards are not under-cut," Ai Group chief executive Innes Willox said.

Willox partially attributed the decline in EAs to "the lack of discretion that the Fair Work Commission has to approve EAs when very minor procedural or technical errors have been made by one or more of the parties", an issue which was addressed with the passing of the Fair Work Amendment last week (WF 6/12/18).

But he said there were other steps that could be taken to "refresh" the bargaining system:

- govts devoting more resources towards promoting the benefits of enterprise bargaining;
- addressing a few other technical problems in the Fair Work Act, including changes to the Better Off Overall Test to ensure that it is applied to logical groups of employees; not every employee; and
- implementing better systems to streamline EA approval applications, to ensure that "a more practical, less pedantic approach is taken".

Govt boosts ABCC funding as review rejects ACTU bias claims

The Federal Government has promised the Australian Building Construction Commission (ABCC) an extra \$3.7 million in funding over four years from 2019-20.

The funding tops up the agency's annual operating budget, which was \$32.5m in 2017-18.

Industrial Relations minister Kelly O'Dwyer announced the funding on pressday, following the release of an independent review (and the govt's response) into the Building and Construction Industry (Improving Productivity) Act 2016 released late last week (*see below*).

O'Dwyer said that since the ABCC was re-established in 2016, the agency had received more than 470 complaints, carried out 355 investigations, and recouped more than \$450m in wages and entitlements for employees.

She noted more than \$20m in penalties had been awarded in cases brought by ABCC and its predecessor bodies against the Construction Forestry Maritime Mining Energy Union (CFMMEU), other unions and employers.

"The Coalition Govt is committed to addressing the lawlessness, thuggery and intimidation in the building and construction industry," she said.

O'Dwyer said the extra funding would be used to hire more "frontline inspectors in Queensland, where work sites are being subjected to increasingly militant, law-breaking behaviour".

The IR minister said most construction jobs were in small businesses "that make up 99% of the industry". "Most of these small businesses are at the bottom of the contracting supply chain, making them particularly vulnerable to the lawless behaviour of militant unions and poor treatment by the large construction companies," she said.

The minister said the extra funding would also boost the ABCC's efforts "to support small businesses and sub-contractors when head-contractors unlawfully withhold payment".

"This additional funding will allow for more frontline investigators to make sure that workers are receiving all their wages and entitlements correctly," O'Dwyer said.

"It will also help small businesses in the industry to understand their obligations."

Bullying pushes costs up 30%: Master Builders

Employers welcomed the funding news.

"The additional resources announced today will enable to ABCC to better discharge its functions as a regulator and hold building industry law-breakers to account," Master Builders Australia CEO Denita Wawn said.

She cited several cases within the last week that have confirmed the benefit of this additional funding, including the High Court last week upholding a \$306,000 fine against the CFMMEU and its then Qld branch president Dave Hanna for threatening a site manager (*WF 6/12/18*).

In another penalties decision, the Federal Court fined the CFMMEU \$250,000 and its official Joe Myles \$44,000 for illegally threatening to blockade a Melbourne rail and road project to coerce the contractors to sign up to a union EA (*WF 7/12/18*).

"The illegal conduct and bullying from building unions means the cost of construction is up to 30% higher than it normally would be," Wawn said.

Australian Mines & Metals Association (AMMA) chief executive Steve Knott said the funding would "better safeguard" the community from "intimidation, thuggery and contemptuous disregard for our nation's workplace laws".

Knott took aim at the CFMMEU.

"Regular and nonchalant law-breaking is simply part of the CFMMEU business model and more needs to be done to protect Australians from their disgraceful and reckless conduct," he said.

"AMMA is pleased the Minister has stood up for everyday Australians, protecting their businesses and the country's interests by promoting legal compliance and upholding workplace laws."

ABCC not biased, but even-handed approach crucial: BCII Act review

The Australian Building Construction Commission (ABCC) review by Rex Deighton-Smith of Jaguar Consulting found it was "functioning as a full-service regulator" despite union submissions the agency was "showing a strong bias toward investigating and prosecuting unions and workers, while giving little attention to wages and entitlements issues".

The Building and Construction Industry (Improving Productivity) Act 2016 review – and the Coalition Government's response released late last week – rejected Australian Council of Trade Unions (ACTU) evidence, saying most of it "related to the operations of the ABCC's predecessor organisations".

"Data on the activities of the ABCC indicates that a substantial, and progressively increasing, proportion of its resources have been devoted to wages and entitlements and sham contracting issues, while a recent recruitment process will further strengthen its capacities in this area," the Deighton-Smith review said.

"Analysis of investigations also found a near identical proportion of employers and employees/unions as the subjects of investigations.

"The ABC Commissioner also indicated in discussion with the review a clear focus on the need for the ABCC to be responsive to the concerns of all industry participants."

Deighton-Smith noted the "full service regulator concept" which includes the support of all building industry participants "will only occur if the level of activity of the ABCC in pursuing issues such as wages and entitlements and sham contracting is sufficient to overcome embedded scepticism as to its orientation and provide confidence that it will behave in an even-handed fashion".

He acknowledged the review was being undertaken at a very early stage in the ABCC's operations. However, "the available quantitative evidence regarding its activities indicates that it is acting consistently with this requirement, while the strategic orientations of the ABCC, as outlined by the ABC Cmr, are also consistent with its obligations under section 16 of the BCIIIP Act".

Uber drivers want compensation after being 'shut out' of app

The Transport Workers' Union (TWU) and Rideshare Drivers' Co-operative are calling on Uber to compen-

sate drivers for lost wages, after the unions said workers were "shut out" of the app for several hours yesterday (December 11).

TWU on-demand economy co-ordinator Tony Sheldon said Uber should compensate "any drivers who tried to log onto the app and were not able to".

"They must take responsibility for these lost wages," Sheldon said.

"The loss of income will hurt them hard, as we know from a survey that they earn just \$16 per hour before costs such as fuel while 85% said they are not satisfied with their earnings."

Rideshare driver Emmett said: "we shouldn't have to take a hit because the technology went down."

"Drivers would have turned up to work like any other workers today only to discover we were shut out," he said.

"We rely on this money, just like any other worker relies on their pay cheques. We need this money to pay bills and provide a decent Christmas for our families."

Sheldon said the incident was "yet another example of the need for regulation of the on-demand economy".

"Drivers are left without wages and members of the public are left stranded," he said.

"There are serious consequences to the broader economy when a company leaves people hanging like this.

"How much more destruction can companies like Uber create in our society before the Federal Government holds them to account?"

Workforce Daily has contacted Uber for its response.

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