

ACTU

Revised draft executive resolution
Tuesday, 9 December 2008

Fair Work Bill

1. ACTU Executive welcomes the introduction into the House of Representatives of the Fair Work Bill 2008, but believes that there is still much unfinished business.
2. Executive notes that the Bill addresses many of the inequitable features of the Coalition's WorkChoices laws by ensuring the rights of Australian workers to bargain collectively are respected and that balance is restored to our workplace laws by:
 - (a) Restoring protection from unfair dismissal for more than three million workers;
 - (b) Providing for significantly expanded safety net of fair minimum wages and conditions in that will be regularly adjusted having regard to living standards and the needs of the low paid;
 - (c) Abolishing new AWAs, and ensuring that enterprise agreements cannot undermine minimum wages and conditions, and every employee covered by an enterprise agreement must be better off than they would be on the relevant modern award;
 - (d) Protecting employees who choose to join and be represented by a union and to act collectively, and expressly acknowledging in law the right of employees to seek advice and information in the workplace;
 - (e) Requiring bargaining for an agreement to be undertaken in good faith and conferring broad powers on FWA to ensure this occurs, including making a determination where good faith obligations are persistently breached; and
 - (f) Establishing a new independent industrial tribunal Fair Work Australia.
3. These elements of the Bill keep faith with Rudd Government's commitment to the Australian community, especially the many thousands of working people and community members who campaigned under the Your Rights at Work banner for these laws.
4. Executive condemns the misleading and deceptive campaign against the Bill currently being waged by some extreme employer organisations and Members of Parliament. They are wrong to suggest workers should not have access to union advice and support in their workplace. It is vital that unions are able to prevent workers being exploited or discriminated against by inspecting pay and personnel records. Their suggestion that facilitated low paid bargaining will legalise industry-wide strikes is incorrect and simply demonstrates that they remain committed to the divisive politics that was a feature of WorkChoices.
5. Executive calls upon all Members of Parliament to vote for the Bill and vote for the end of WorkChoices.
6. However Executive notes a number of transitional and implementation matters that will be essential to ensure the laws deliver as promised. In particular Executive notes with concern:

- a) There is an ongoing risk that Award modernisation could result in a loss of take home pay or overall conditions for employees, and/or a reduction in standards in an occupation or industry; and
 - b) There is no right to arbitration as the final step in procedures dealing with disputes arising under the NES, awards and collective agreements.
7. Executive calls on the Government to continue to consult with unions to ensure that employees' rights are protected in transitioning to the new system.
8. Executive notes that Forward with Fairness promises that *State Governments, working with their employees, will be free to determine the appropriate approach to regulating the industrial relations arrangements of their own employees and local government employees.* Forward with Fairness also promises that *"transitional arrangements [will be] put in place so that those currently covered by State industrial relations systems will not be disadvantaged as a result of the creation of Labor's national industrial relations system"*. Consistent with ACTU congress policy, Executive calls on State governments to consult with unions, and to only refer powers if the best possible workplace rights are guaranteed. In the event that powers are referred, Executive calls on the federal government to ensure that its commitments to employees in State IR systems are delivered. This includes ensuring arrangements for employees covered by State IR systems to opt into the federal system and for participation by State registered unions.
9. Executive notes that there are features of the Bill which are inconsistent with ACTU policy, and which will be pursued vigorously by the ACTU and affiliates. In particular:
- a) The Bill does not repeal the BCII Act. The government must repeal this Act and abolish the ABCC immediately.
 - b) While the Bill provides for no new AWAs, existing AWAs will be retained, including AWAs that would not pass the government's own standard for fair agreements. FWA must be able to terminate unfair AWAs prior to their expiry date if they would not pass the better off overall test.
 - c) While the Bill provides some redress for sham contracting, it does not provide an effective and low cost remedy for unfair contracts. The *Independent Contractors Act* should be reviewed to ensure that all workers in Australia have decent working arrangements, access to low cost remedies against unfairness, and are able to bargain collectively.
 - d) While restoring unfair dismissal provisions, the Bill retains a different set of conditions for unfair dismissal for workers in small workplaces compared to those in workplaces with more than 15 employees. The requirement to lodge an unfair dismissal claim within 7 days is unnecessarily restrictive.
 - e) While the Bill removes some of the most obnoxious prohibitions on the subject matter of agreements it retains unwarranted restrictions on the scope of agreements, by confining agreements to matters pertaining to the relationship between employers, employees or union. Particularly offensive is the prohibition on employers agreeing to waive the qualifying period for unfair dismissal or from conferring additional access to the workplace on union officials. These provisions of the Bill should be removed.
 - f) The Bill retains unwarranted restrictions on, and penalties for taking industrial action, including retention of:

- (i) procedures for secret ballots that, rather than being solely concerned with ensuring employees can vote on whether to take action, instead enable employers to frustrate or delay the taking of protected industrial action;
- (ii) the prohibition of industrial action in support of pattern bargaining;
- (iii) the requirement that employers deduct strike pay even in circumstances where the employees are at work; and
- (iv) the Minister's powers to end protected action.

These provisions of the Bill should be removed.

- g) The Bill retains restrictions on employees' access to advice and information at work. The Bill should guarantee employees can access union advice and representation at work.
 - h) While improving protections for workplace delegates, the Bill fails to recognise and codify the role of workplace delegates.
 - i) The application of the laws should extend to foreign ships in the domestic transport chain.
 - j) The exemption of high income earners who have traditionally been entitled to award protection from the application of awards should be removed, particularly as the mechanism envisaged in the Bill not only suspends the application of award conditions of employment, but also suspends the employees' award rights to be consulted about significant change and to access the award disputes procedures.
10. Executive notes that the passage of the legislation will not ensure workers rights in the workplace. It will be essential for the new laws to be implemented thoroughly. Executive calls for:
- a) Unions to undertake education programs for employees, delegates, officials and employers, including participating in the Union Education Program for officials and members; and
 - b) Appropriate government policies to fully implement the new laws and the commitment of adequate resources for education, research and monitoring.

Moved:

Seconded: