"Second wave" industrial laws to strip workers' rights in Australia

By Terry Cook
10 August 1999

With little fanfare or significant press coverage, the Howard government is moving to deepen the sweeping changes to working conditions that it began in 1996 when it introduced the Workplace Relations Act.

The government's "second wave" industrial legislation, currently before parliament, includes most of the provisions that were modified after the original Act was amended to secure the vote of the Australian Democrats for its passage through the Senate.

While the 1996 legislation allowed the employers to make significant inroads into dismantling hard-won working conditions and workers' rights, it fell well short of the agenda demanded at the time by the big business and financial organisations, the banks and leading media barons.

The ruling circles were seeking nothing less than the dismantling of the industrial relations framework based on a centralised system of regulations governing wages and conditions, overseen by the Australian Industrial Relations Commission (IRC)—a system that recognised, and indeed enshrined, the role of the unions.

For corporations facing increased competition both at the national and international level, this system had become completely incompatible with the need for daily flexibility in the hire of labour, constant downsizing, contracting out, the use of part-time and casual labour and flat-rate working to eliminate overtime payments. Today, under conditions of economic turmoil and growing trade war, the task of abolishing all restrictions on the exploitation of labour has become, for the ruling class, an even more pressing issue.

While the 1996 Act gave employers the right to impose individual work contracts, it retained 20 minimal award conditions, maintained unfair dismissal procedures, forced employers to register industrial agreements with the IRC and continued the role of the unions.

Central to the new "second wave" legislation is the abolition of the closed union shop, whereby workers and also employers have enforced full union membership in factories and worksites. Breaking the closed shop has been high on the government's agenda since the debacle when it attempted to impose individual contracts and deunionise the country's stevedoring industry in 1998.

At that time the government fell foul of its own 1996 Act, which prohibits discrimination on the grounds of union membership. The unions went to the Federal Court and accused the government of conspiring with Patrick Stevedoring to dismiss its entire workforce and introduce non-union labour.

Under the new laws any action by workers or unions to enforce or establish a closed shop is prohibited. This includes pressuring employers to stipulate that union membership is a condition for being hired, displaying "no union ticket-no start" signs at worksites, and site delegates insisting on union membership.

Union officials will only be able to enter premises on the written request of a union member. A new invitation will be required every 28 days and the employer can insist that any discussions between union officials and workers are restricted to a room specially provided by the company, thereby stopping union officials from visiting any other area of the site.

At the same time the new laws all but outlaw strikes and severely restrict the ability of workers to take swift collective action. The IRC will be required to issue orders stopping "unprotected" strike action within 48 hours of an application being registered by an employer. "Unprotected" industrial action is any stoppage or bans outside the "allowable" bargaining period for negotiating a new work contract.

Even before taking (legal) "protected" strike action workers will have to give five days' notice (rather than the three days currently required), state the precise nature of the proposed action, the day or days on which it will take place and its duration. Workers will also be required to apply through their unions to the IRC for an order and will have to conduct a secret ballot.

A "bargaining period" can be terminated and industrial action made "unprotected"—opening up individual workers and unions to heavy fines—if the IRC believes it is "against the public interest". That is, if it is deemed to "endanger life, personal safety, or public health or welfare or cause significant damage to the Australian economy". Any strike in the public service, such as the current fire fighters' dispute in New South Wales, will be illegal, not to mention areas that affect trade, such as rail and road transport and stevedoring.

The new legislation will enable employers to remove the 20 minimal award items, which the 1996 Act specifies to ensure that "workers were not disadvantaged". Employers will have to meet only "basic minimal wages and conditions".

They will be able to apply for the removal of a raft of entitlements, including wage maintenance for workers injured at work, piece rates and bonuses, job transfer protections and some public holidays. Workers will be obliged to negotiate on an enterprise-by-enterprise, or even on an individual basis, to have such protections inserted into a workplace agreement.

Low-paid workers, who are not in position to independently bargain for wages, and rely on the annual "safety-net" wage increase negotiated in the IRC by the Australian Council of Trade Unions (ACTU), will be forced to wait for the increase while their particular awards go through the lengthy "stripping-back" process. This is designed to deter these sections of workers, already facing hardships because of low pay and who are dependent on the increase, from taking action to oppose the changes.

One of the conditions high on the list for destruction is the "tally system" of payment that is currently common in the meat processing industry. This requires employers to pay workers for any extra production once they have reached an agreed level of output or "tally". If the daily requirement is met before the end of the normal shift workers have traditionally gone home.

An attempt to wipe out the tally system and undermine pay rates was at the centre of a four-month lock out at the G&K O'Conner abattoir in Victoria last March. The lockout received the blessing of Workplace

Relations Minister Peter Reith. His department provided “advice” to the company. Reith created a special unit to deal with the restructuring of the meat industry. It is part of the Workplace Reform Group, whose task is to draft recommendations targeting workers conditions in industries where union membership remains high—coal, construction, transport and the meat industry.

The new Act will make it easier for employers to impose individual work contracts, known as Australian Workplace Agreements (AWAs), introduced in 1996. The 1996 legislation stipulated that AWAs would not have to be approved by the Industrial Relations Commission before being ratified, replacing the role of the IRC with a government-appointed Employment Advocate (EA).

The new provision gives the employers 60 days to seek approval for a new contract and allows it to be operational before being ratified by the EA. Under current legislation the Employment Advocate can only ratify an AWA if it passes a “no disadvantage” test, that is, if it does not reduce existing working conditions.

The new legislation will allow agreements that do not pass the test to be endorsed, as long as the EA declares that they are not against the “public interest”. The requirement that the same conditions be offered to all comparable employees at a work site will be repealed, making it easier to set workers against each other.

While the ACTU and the unions have spoken against the proposals, their essential objection is to the lessening of the role of the IRC and other changes that weaken the position of the union hierarchy. ACTU president Jennie George denounced the legislation because it contained, “an onslaught on the powers and independence of the Industrial Relations Commission,” which she referred to as “the independent umpire”.

The IRC has never been “independent”. Nor has it acted to protect the interests of workers. The arbitration system and industrial courts have long served as useful mechanisms for defusing workers struggles and maintaining the grip of the employers and the union bureaucracy.

For years it has been the standard practice of the union bureaucracy to direct disputes into the courts and subordinate workers to their directives. As in the past, the unions are again seeking to impose the demands of the employers, through arbitration system.

In the last round of “award stripping” the IRC, without any serious opposition from the unions, endorsed the application of major employers to eliminate hundreds of entitlements in industries such as coal, construction and manufacturing. While the unions made a legal challenge in the IRC, which they acknowledged “had little chance of succeeding,” they did not call any industrial action.

In the face of the “second wave” legislation the ACTU and its affiliates have threatened nationwide demonstrations this month. To date, despite the severity of the assault, they have done little outside holding a token march and rally in Sydney attended by just 300 union delegates. Thanks to the low-key response of the unions, the vast majority of the working class is unaware of the new legislation and its consequences.

However, even if the demonstrations go ahead, the unions' central strategy is to restrict all opposition to sterile protests that are tightly under their control, while seeking agreements with individual employer and pleading with the Australian Democrats to amend the legislation when it comes before the Senate.

Sections of the employers, particularly in the construction industry, have reservations about the legislation. They still prefer to rely on the unions to impose their demands. However, the spread of contracting out and individual contracts, plus the decline in union membership and working class support for the unions, have rendered the unions less useful to most employers. By talking of, and then heading off, possible disruption over the new legislation, the ACTU and the unions hope to convince employers of the continued need for their services.

Construction Forestry Mining and Energy Union general secretary John Sutton told a rally of construction industry delegates in Sydney earlier this month that the union “planned to divide the enemy—employers and Workplace Relations Minister Peter Reith—to block the reforms.”

This is far from some clever strategy designed to defend workers' rights. The union bureaucracy is merely seeking to play off sections of big business against Liberal-National Party government, on the basis that employers can more effectively impose the cuts through an alliance with the unions, rather than through Reith.

Even though the Australian Democrats leader Meg Lees has said the party will oppose the legislation in the Senate, her industrial spokesman Andrew Murray has already signaled that the group is again ready to come to an arrangement with the government.

Earlier this month Murray announced that the Democrats would back a wide-ranging inquiry into the “effectiveness of the 1996 Workplace Relations Bill.” If the present legislation “could be improved” then the Democrats “would consider the changes” advocated by the government.

The government is confident that the Democrats will continue to play the same role they have played in the past. Reith said last month that he was “more that happy to work through the Bill with them (the Democrats) and explain our position on each and every amendment".

Reith's confidence is well grounded. In August 1996, after 5,000 workers broke away from an official ACTU rally called to protest the government's budget cuts and the original Workplace Relations Bill, and stormed parliament house in Canberra, the government rapidly came to an arrangement with the ACTU over the new Bill. All sides—the government, the Labor Party, the Democrats and the unions—shared a common interest in ensuring that the social and class tensions expressed in the incident were contained.

The ACTU called off all further action against the Bill and called on workers to rely on the Democrats, who had promised to block the legislation in the Senate. Meanwhile, Jennie George and the then Democrats leader, Cheryl Kernot, drafted amendments to the Bill that were soon endorsed by the government. Kernot and her colleagues used their numbers in the Senate to ensure the smooth passage of the amended legislation.

For those workers who may still have illusions that the ACTU and the unions will act to protect their interests, it would be worth recalling the treatment dished out to those workers involved in storming parliament house in 1996. Not only were some witchhunted and expelled from the unions, but also the union bureaucracy identified them to the police.

For those who may still retain lingering hopes that the Democrats can be relied on, they need not hearken back to the lessons of 1996. Over the past few months the Democrats have cemented their place as a virtual government partner in implementing the Goods and Services Tax (GST) that will impose an ever-greater tax burden on working people and further eroding living standards. After holding a Senate inquiry, the Democrats dropped all pretence of opposition and ensured the passage of the new tax through the Senate.