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'THE INDUSTRIAL RELATIONS DEBATE: THE STAKES ARE HIGH FOR EMPLOYERS'

Prepared for NFIA by ACCI

Policy announcements by the Labor Party and trade unions in September 2006 about plans for a new collective bargaining system are of profound concern to Australian industry.

Bargaining over wages and employment conditions with unions is collective bargaining.

Unions want to replace basic rights of employers and employees with powerful new union rights to force union demands on a workplace. So far, the federal Labor Party is going along with it, although the detail of Labor's approach is still being worked out, and Labor is still seeking industry views.

Nonetheless, the signs are not good. In Mr. Beazley's words, the starting point is "if workers want a collective agreement, they will be able to get it". This proposition is much more dangerous than it seems at first glance because it ignores the need for 'mutual consent", which is the normal principle that underpins the making of agreements in employment matters or other commercial contracts.

Greg Combet, the ACTU secretary, in *The Australian* on 22nd September said, correctly, "*... under WorkChoices most collective bargaining in Australian workplaces occurs by mutual consent between employers, employees and unions*".

This is an accurate statement of the current industrial relations system under WorkChoices.

Unfortunately, this '*mutual consent*' is not good enough for the trade unions. They want more. They want compulsory union bargaining. This candid admission by Mr. Combet tells us important things about WorkChoices. Ironically, it also shows WorkChoices to not be the bogey that unions make out.

Mr. Combet and Mr. Beazley want people to believe that WorkChoices does not allow collective bargaining and forces everyone onto individual contracts.

Yet Mr. Combet confirms collective bargaining is allowed under WorkChoices, and that collective agreements are being made under WorkChoices. Mr. Combet also admits that collective bargaining under WorkChoices occurs with unions.

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WorkChoices has its defects, but it is a much fairer and balanced system for collective bargaining than what is proposed by the ACTU and being developed by the Labor Party.

Under the union plan if unions knock on your door and demand a union agreement and they think half your employees back them, you will be forced to negotiate the union demands under threat of arbitration. According to the 158-page ACTU plan released in September, you wouldn't even need a majority.

Australians, including Australian employers, accept voluntary unionism, and voluntary bargaining.

Mr Beazley also promises industrial tribunals would be made "much more powerful", so powerful they can force people to agree to things that they do not agree to by arbitrating an 'agreement'! An unfair and genuinely extreme approach to industrial relations. Collective bargaining earns respect when it in turn respects the rights and interests of individuals.

Collective bargaining is supported by employers where three conditions exist::

- t is freely entered into,
- it reflects the real interests of the parties, and
- it is not the exclusive form of employer / employee engagement over wages and working conditions.

Both Mr. Beazley and Mr Combet's plans breach these principles. Collective bargaining will be compelled, outcomes will be determined by powerful third parties and collective bargaining will override every other form of bargaining, including AWAs (which will be torn up).

This fundamentally distorts the basic freedom to say 'no' to union demands and 'yes' to direct discussion between employers and employees. In contrast, a voluntary system of agreement making is not anti-union; it is pro choice.

The intrusion into basic rights is compounded by the ALP announcement that an employer is also prohibited from reaching an agreement with an employee on terms that differ from the collective agreement.

Mr. Beazley has said employers and employees can reach individual common law agreements. This is not a flexible option to set aside restrictive work practices or unacceptable conditions in awards or collective agreements. Common law agreements are simply employment contracts requiring award or over award payments and conditions. They are only able to operate if they do not differ from the terms of an award or a collective agreement. Inefficient work practices or unjustified labour costs arising from collective agreements cannot be set aside or varied by common law contracts. This has implications for productivity.

There is also another good reason why individual bargaining rights should be kept as part of the choice offered for setting wages and employment conditions, even in a unionised business. The fact that an employer or employees in that business could, at any time, invoke individual bargaining options has an impact on existing employer / union negotiation over collective agreements, and makes it more likely that those agreements address inefficient work practices.

Abolishing that option would give unions the whip hand in negotiations, as few other alternatives would be available to employers. Collective bargaining without individual bargaining rights is also a recipe for over regulation. Compulsory collective bargaining on top of compulsory awards imposes a level of regulation, and over-award labour costs that has not previously existed in Australian law. It will make Australia the most regulated labour market in the world, importing the most regulatory aspects from a myriad of differing countries.

International comparisons relied on by unions are flawed. Unlike other countries where awards setting minimum standards do not exist, collective bargaining in the Australian context means bargaining above minimum standards (i.e. bargaining market rates, not minimum rates, of pay and conditions).

Experience suggests compulsory union bargaining and compulsory arbitration inhibits flexibility, makes it difficult to remove restrictive work practices and raises labour costs.

The collective bargaining plans of Mr. Beazley and Mr. Combet roll back thirteen years of industrial relations reform, not just the past six months of WorkChoices.

The economic and social consequences of rolling back a decade of workplace reform would be devastating. The ALP now needs to be wise enough to ditch the union plan, but the signs are not good.

For many years, employer organisations have represented the interests of employers in industrial matters. Despite many significant cases heard in industrial tribunals over the years, the stakes in the current debate that will continue up to the 2007 general election could hardly be bigger.

NFIA through its membership of ACCI will continue dialogue with the federal ALP on the detail of its policy direction. In doing so, we will oppose forced collective bargaining as being a denial of fundamental freedoms to determine the level at which bargaining occurs, including individual bargaining. We will support voluntary collective bargaining, together with individual bargaining rights, freedom of choice and minimum standards.

The absence of detail accompanying the federal Labor Party's announcements at least suggests that the Opposition's industrial relations policy remains a 'work in progress', and scope to influence the detail remains.

After a generation of effort, Australia has an unemployment rate with a '4' in front of it – unthinkable a few years ago. Having achieved this, we should do everything to keep it that way. The last thing we should do is tear up the workplace laws that help make it possible, or deny our basic workplace freedoms that now exist.