

Opinion Piece by Stephen Smith, Principal of Actus Workplace Lawyers

It would be folly to label millions of workers as ‘free riders’

Industrial relations

There are good reasons why unions can't charge bargaining fees to non-members – and the Albanese government would be foolhardy to reopen the issue.



Stephen Smith

Every few years the unions raise the same tired old arguments about “free riders” in pursuit of their perennial claim for non-members to be charged bargaining agents’ fees. The claim grossly offends freedom of association principles.

It is worth recalling the reasons why bargaining agents’ fees were outlawed in Australia in 2003.

In the early 2000s, some unions began pursuing clauses in enterprise agreements which required non-members to pay a bargaining agents’ fee to the union. For example, the Australian Manufacturing Workers Union and the Electrical Trades Union had a standard claim at the time for non-members to pay a fee of \$500 a year to the union, even though union membership was only around \$300 a year. The employer covered by the enterprise agreement had a legally binding role to ensure that all employees were aware of the requirement.

Bargaining agents’ fee clauses in enterprise agreements were outlawed in 2003 through amendments to the Workplace Relations Act 1996 which deemed these clauses to be “objectionable provisions”. The legislation was passed with the support of the Australian Democrats. Bargaining agents’ fee clauses were also

the subject of the High Court of Australia’s landmark *Electrolux* decision in 2004. The Court held by a 6-1 majority that these clauses do not “pertain to the employment relationship”.

These clauses remain outlawed under the Fair Work Act 2009. Such provisions are

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“objectionable terms” and “unlawful terms” under the Act and hence cannot be included in an enterprise agreement. In 2009, the Rudd Labor government wisely gave short shrift to the unions’ claims for bargaining agents’ fees to be allowed.

Bargaining agents’ fees are a de facto form of compulsory unionism. The unions’ aim is to ensure that employees have no real

choice other than to join a union. They operate as a form of financial coercion.

Bargaining agents’ fees are akin to the closed shops of the distant past when Australian businesses operated behind high tariff walls and employees were accustomed to the idea that they needed to join a union to work in many workplaces. Those days are long gone. Australian businesses are now exposed to intense global competition and employees are rightly accustomed to having the freedom to decide whether to join a union.

Unions receive many rights and protections under Australian workplace laws. They have the right to represent their members in numerous forums. They have the right to organise industrial action in pursuit of an enterprise agreement, and the right to be covered by agreements which apply to any of their members. Union officials have the right to enter workplaces to hold discussions with employees about union membership and to investigate any alleged underpayments.

Unions that provide good services and representation to their members have no need for bargaining agents’ fees. Those that do not cannot expect to be propped up by unfair and draconian laws which trample

upon an individual’s liberties and rights.

Unions spend vast sums on political activities and campaigns. It is unfair and undemocratic for employees to be coerced into supporting such activities.

The federal government would be wise to adopt a similar approach to the Rudd Labor government and reject the unions’ claim for bargaining agents’ fees to be allowed.

It would be foolhardy for the Albanese government to label non-union members “free riders”. This terminology is offensive. Freedom of association is a fundamental tenet of Australia’s industrial relations system. Employees have the right to join a union and the right not to join one, and 92 per cent of private sector workers have chosen not to join a union.

These millions of employees will no doubt be extremely opposed to being forced to pay hundreds of dollars a year to a union, particularly at a time when they are struggling to cope with the rapidly rising cost of living, high inflation, increasing interest rates and higher energy costs.

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