

ACTU industry bargaining proposal is a 'wolf in sheep's clothing'

"A policy paper released today by Actus Workplace Lawyers shows that the ACTU's industry bargaining proposal is a 'wolf in sheep's clothing.' It is dressed up with deceptive assertions about being focussed on the low paid and being of benefit to small businesses, but industry bargaining would be available across all sectors, including those with militant unions and where workers are highly paid. The unions have made no secret of their plan for lawful industrial action to be available across entire industries as a so called 'last resort'. Protected action ballots to authorise industrial action at the enterprise level and the current laws which ban industrial action in pursuit of pattern bargaining would be cast aside," Stephen Smith, Principal of Actus Workplace Lawyers said.

"Given the relatively harmonious industrial relations environment in Australia over the past 15 years, many people have forgotten the lessons of the past.

Surprisingly, the Federal Government and even some smaller employer groups appear to be actively considering this crazy idea. The unions' proposal is self-serving, not in the community's interests, and needs to be quickly and decisively ruled out by the Federal Government.

Australia's international reputation as a reliable trading partner was severely damaged in the past due to industry-wide stoppages, and the costs to the community were very high. For example, in a 2002 inquiry the Productivity Commission noted that the estimated cost of lost production from two industrial disputes in the automotive industry that stopped production across the industry in 2001 were up to \$630 million.¹ This cost would be more than \$1 billion in today's money.

In the 1970s when industry-wide strikes were common, Australian industry operated behind high tariff walls. These days, Australia has a very open economy and industry-wide strikes would inflict major damage upon our international reputation. This in turn would lead to reduced exports, reduced economic growth and lower living standards.

Industry-wide industrial action has never been lawful in Australia. Since 1993, there has been a right to take industrial action in pursuit of an enterprise agreement, but there has never been a right to take industry-wide industrial action. The industry-wide strikes of the past were all unlawful.

Genuine enterprise bargaining and the requirement introduced in 2006 for a secret ballot at each enterprise to authorise industrial action have led to a dramatic decrease in industrial action. It is foolish to think that a huge increase in the level of industrial action would not be a direct result of the ACTU's proposals being adopted.

¹ Productivity Commission, *Review of Automotive Assistance*, final report, p.53.

The unions' proposed bargaining system would lead to the Australian economy being crippled by strikes across the construction, maritime, mining, manufacturing, transport and other industries. These strikes would inflict widespread hardship on businesses, workers and the broader community.

Does anyone other than the unions and a few academics seriously think that an outbreak of industrial action is what the community needs in these challenging times?

In the early 2000s, the Royal Commission into the Building and Construction Industry considered in detail the arguments often raised in support of industry and pattern bargaining. The Royal Commission's conclusions are as relevant today as they were at the time. Industry/pattern bargaining denies employers the capacity for flexibility, innovation and competitiveness. It denies employees the capacity to reach agreement with their employer regarding their own employment conditions – including leave arrangements, participation in bonus schemes, flexible working hours and other mutually acceptable arrangements. It assumes that all businesses and their employees operate in the same fashion, have the same objectives, adopt common approaches to working arrangements and are content with uniformity. It assumes that third parties such as unions and employer associations understand better than either the employer or the employees what the business model of the enterprise is and what the wishes and desires of the employees are. It assumes that employees are not capable of negotiating satisfactorily on their own behalf.²

Just like larger businesses, there is absolutely no benefit for small businesses in being part of a multi-employer agreement reached between the unions and an industry group. Any industry group that negotiated such an agreement could find that a large proportion of its membership quickly evaporates.

In these challenging times businesses and the community need a focus on productivity, innovation and flexibility, not on gifting unions a major weapon to use against employers", said Mr Smith.

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[Actus Workplace Lawyers, Workplace relations policy paper – The ACTU's Industry Bargaining Proposal is not in Australia's Interests, 26 August 2022.](#)

² Royal Commission into the Building and Construction Industry, Final Report, Volume 5, p.53.