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Opinion Piece by Stephen Smith, Principal of Actus Workplace Lawyers

Workplace bill is beyond repair

Industrial relations

Crossbench senators would be doing the Albanese government a great service if they block the flawed legislation, which is not going to end well for anyone other than militant unions.

Stephen Smith

There are so many problems with the government's industrial relations bill, it's difficult to know where to start. The government has tabled 34 pages of amendments that open up a raft of new complications and problems.

At least the amendments recategorise agreements in the single-interest bargaining stream as multi-enterprise agreements, rather than misrepresenting them as single-enterprise agreements.

Despite this, the single-interest bargaining stream remains an extremely risky and flawed policy proposal that would expose a wide range of businesses to sector-wide terms and conditions and sector-wide industrial action. Once trapped within a single-interest employer authorisation, there is virtually no way out for employers and employees who want to negotiate their own win-win outcomes at the enterprise level.

One amendment is to exclude employees engaged in "general building and construction work" from the supported bargaining stream, the single-interest bargaining stream and the co-operative bargaining stream.

An appropriate exemption for the building and construction industry would be worthwhile, but the government's proposed exemption does not include civil construction work or metal and engineering construction work.

Also, the government's proposed definition expressly states that many of types of work are not covered by the exemption, including coal mining, electrical contracting, plumbing, sprinkler pipe fitting and elevator work.

Building projects require a large number of specialised workers. It is impossible, of course, to construct a high-rise building without power, water or elevators. A large proportion of the specialised workers do not fall within the proposed exclusion for "general building and construction work".

The Electrical Trades Union, the Australian Workers Union, the Australian Manufacturing Workers Union and the like would be able to freely organise industrial action pursuing excessive outcomes and bring construction projects to a grinding halt.

This would only be avoided if contractors capitulated to the unions' demands, which are likely to be unreasonable given that the unions would have far more bargaining power. Capitulation would drive up the cost of vital community infrastructure like roads, hospitals and schools.

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By expressly stating in the supported bargaining stream that coal miners, electrical contractors, etc. are not excluded, there is the risk that the Fair Work Commission would decide that they are intended to be included. The government's assertion that the supported bargaining stream is intended for the low paid is not reflected in the loose eligibility criteria or in the terms of the proposed exemption.

A similar problem arises with the flawed single-interest bargaining stream. By narrowly defining those excluded to not even comprise one complete sector of the construction industry, the implication will be that other types of workers are intended to be included.

The central eligibility criterion for the supported bargaining stream and the single-interest bargaining stream is whether the employees have "common interests". Such interests, like much else in this bill, are very loosely defined.

Some limited exclusions apply for small businesses, but they typically rely heavily on larger businesses as customers and suppliers. If larger businesses are shut down due to industrial action, it would be naive to believe that small businesses will not be affected.

The bill is a recipe for uncertainty, risk, poor productivity and less competitive Australian businesses. The unions' argument that productivity will be boosted if employers are unable to compete on employment terms and conditions is complete nonsense.

The award system stops businesses paying less than a fair and relevant safety net of wages and conditions. Beyond that, the workplace relations system should encourage employers, employees and their representatives to search for win-win outcomes at the enterprise level that would deliver flexibility and innovation for businesses and their employees.

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Its multi-enterprise bargaining provisions are beyond repair. The government should go back to the drawing board and engage in a proper consultation process about what changes would be worthwhile to the existing low-paid bargaining provisions in the Fair Work Act. Any changes should be based on evidence rather than on union arguments,, which often have no foundation in facts.

Rather than trying to ram the bill through parliament before Christmas, a calm and cautious approach is needed to this important area of public policy.

Implementing a multi-employer bargaining system was not flagged ahead of the federal election. Even the unions went quiet. It is unfair to foist this major change to our workplace relations system on the community, particularly without an extensive consultation process.

Crossbench senators would be doing the community a great service by blocking the legislation. They would also be doing a great service to the Labor government, because if the bill is passed in anything remotely like its current form, this is not going to end well for anyone. Other than perhaps militant unions.

Stephen Smith is the principal of Actus Workplace Lawyers and was the head of national workplace relations policy at the Australian Industry Group for more than 20 years.