Howard's IR Legislation 1996

The trade union movement is facing an entirely new industrial relations situation with the Federal Coalition government's Workplace Relations Amendment Bill. After 90 years of a highly regulated and centralised system of industrial relations in which trade unions played a central role, the Howard government's legislation seeks to turn the clock back to the dark days of the 19th century. It would wipe out 150 years of hard won working conditions and wage levels.

In this special four-page supplement to "*The Guardian*" ANNA PHA outlines some of the key features of the legislation and what they mean for workers. Anna Pha is Editor of "*The Guardian*" and a former member of the Victorian Trades Hall Council Executive.

Defeat govt's IR legislation

In sharp contrast to all the pre-election lies about no worker being worse off, the aim of the Workplace Relations Bill (WR Bill) is to worsen working conditions, slash wages and weaken and exclude trade unions.

- It is based on the replacement of a centralised industrial relations system by one where employers deal with workers on an individual basis, without union representation.
- The Bill unashamedly sets out to give employers dictatorial powers in the workplace and remove the limited legal protection that workers had under the centralised award system.
- Employers are to be relieved of any obligation to provide a living wage or humane working conditions.
- Awards will be stripped to their barest minimum. There will be no legal restrictions (through awards or legislation) on the maximum hours of work or the use of contract, casual or part-time labour.
- A "regular part-time" employee could be required to work for one hour or 20 hours straight or four hours spread over 20 hours.
- Family life will be destroyed, not assisted, as Industrial Relations Minister Peter Reith claims.
- A deregulated labour market is a one way street - deregulated for the employer while workers are to be straitjacketed with very few real rights. The government mocks when it talks of "choice" for employees. It is a cruel hoax.

The right to strike is virtually eliminated. It will be illegal to take any form of industrial action in defence of an award, to force employers to comply with the conditions in an award or agreement, to prevent the introduction of individual contracts, to support other workers' struggles, prevent sackings, stop privatisation or defend Medicare.

There is a battery of penal provisions with court injunctions, fines on individuals and unions, deregistration of unions, sequestration of union assets and the possibility of being sued in court by employers for millions of dollars in damages.

The aim of the Bill is to make Australian labour as cheap as possible, which Peter Reith claims is “demanded by the imperatives of world competition”. By that he means making Australian labour as cheap as possible to transnational corporations.

Defeat the Bill

The Bill must be defeated before it becomes law. It cannot be satisfactorily amended. It is urgent that the fight against the Bill be taken up as quickly and as forcibly as possible. Some unions are already on the move.

For all its attempts to intimidate workers and suppress struggle, the Bill, if it is passed, will not stop workers defending their rights. The Bill could provoke a new era of mighty struggles until it is defeated or rendered inoperable.

For a successful struggle, trade unions need to become well organised, with many job activists and with an increased trade union membership. Recruitment will become easier if workers see trade unions taking a strong stand and fighting in defence of their interests.

A new unity

The fight to defeat the Bill and defend trade union rights is part of a wider struggle. The Bill is not the whim of a Minister but an integral part of the economic rationalist program being forced on the people of Australia. The cuts to public education and student fees; privatisation; the threat to Medicare; planned cuts to social security benefits; environmental degradation; attacks on Aboriginal land rights; and the massive public sector sackings already taking place, are all part of the same package.

On the other hand the struggles of the many community groups against these policies are all part of the same fight-back being initiated by trade unions. There is tremendous potential to bring together the many groups fighting these policies.

There is an urgent need for a new type of “togetherness” - against the Howard government’s policies. The participation of the trade union movement together with others will strengthen this movement and the struggle to defeat the WR Bill in particular.

The old Act and the new

One of the aims of the original Conciliation and Arbitration Act 1904 (C&A Act) was to encourage the organisation of trade unions and their registration under the Act. The Act also had the aim of promoting “industrial harmony and co-operation” between trade unions and employers, and providing a framework for the prevention and settlement of industrial disputes by conciliation and arbitration. In 1907 Justice Higgins handed down a decision (Harvester Case) which adopted the principle that employers had a responsibility to provide

workers with a basic wage which was enough for a man to support himself and his family in frugal conditions.

However, improvements in conditions and the size of wage rises depended very much on the community standards set by the struggles of the stronger and more militant unions.

For many years there were automatic cost of living adjustments to the basic wage but even these had to be fought for in some periods.

Over time, awards became comprehensive documents covering a wide range of working conditions, reflecting the many gains that workers and their unions won.\

Rights

Under the C&A Act unions were guaranteed a number of benefits and rights:

- recognition of unions and the right of association;
- the right of entry, to inspect wages books, etc;
- arbitrated awards where agreement was not reached through negotiations. (Arbitrated decisions often did not favour workers.)
- the right of unions to negotiate collective agreements (awards) which were legally binding and covered wages and the working conditions of all workers in a particular industry or occupation whether members of a trade union or not.

Restrictions

The C&A Act also imposed obligations and restrictions on unions:

- restraints on industrial action;
- state registration of union rules and intervention in the internal affairs of unions;
- penal provisions for non-compliance with Commission decisions and other rules.

The Act, as its objectives stated, aimed to suppress (by penalties) and eliminate class conflict, by transferring union struggle from the workplace into courts or the Commission.

Gradual transformation

The Hawke and Keating Labor governments began a gradual transformation of the industrial relations system with the replacement of the C&A Act by the Industrial Relations Act 1988 and subsequent amendments to that Act.

Cost of living adjustments (wage indexation) and the concept of an employer having responsibility to pay an adequate wage were replaced by productivity bargaining. Wage rises were increasingly made dependent on trade-offs.

The focus was slowly shifted to the workplace. Enterprise agreements were brought in to replace awards. Gary Johns, the Assistant Industrial Relations Minister in the Keating government spoke of “unhitching” workers from awards.

The award was increasingly defined as a “safety net” containing a limited number of provisions and establishing minimum conditions. Said former Prime Minister, Keating: “The safety net would not be intended to prescribe the actual conditions of work of most employees”. The Commission no longer awarded national wage rises, but “safety net” increases for low income earners who could not secure a rise by other means.

Non-union

Legislative reforms permitted non-union agreements and individual contracts in the place of collective agreements.

The process of decentralisation and deregulation was gradual. It was done with the full co-operation of the ACTU leadership.

Unlike the Liberal/National Party agenda, the ALP’s program retained a role for the union movement and retained a number of trade union rights.

There is nothing gradual about the Coalition’s Workplace Relations Bill (WR Bill). Peter Reith’s description of the Bill as a “fair go for all” is a deception and a lie.

The WR Bill seeks to take back trade union rights, replace collective bargaining with the master-servant relationship, abolish many award conditions now and abolish awards entirely in the future. It wipes out or renders close to meaningless, many of the rights enjoyed by unions under the former C&A Act.

Behind the stated aims of Reith’s Bill: “Encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible labour market”, is the economic rationalist philosophy of the Coalition government.

Master / servants

The Bill is to ensure “that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level”.

This is based on the totally false assertion that there is a “level playing field” on which the employer and each single employee can talk it out or battle it out as equals.

An analysis of the legislation leaves no doubt as to whose interests the government is serving - the big business employers. If passed by parliament and implemented it will create a new situation for unions which will require careful consideration of methods of struggle and maximum unity to continue the struggle for the interests of the working people.
The Workplace Relations Bill provides three different forms by which wages and conditions are set out:

1. AWARDS: provide a bare minimum safety net for workers who are not covered by another form of agreement;

2. CERTIFIED AGREEMENTS: collective agreements made with or without the participation of trade unions which cover an enterprise or part of an enterprise;
3. AUSTRALIAN WORKPLACE AGREEMENTS (AWAs): these are secret individual work contracts made between individual workers and their employer.

Certified agreements and AWAs do not have to meet the award safety net conditions. There are ten statutory minimum conditions that they are supposed to meet, relating to pay rates and leave provisions.

The immediate aim of the Government's legislation is to strip existing awards and drive workers onto individual contracts or, where the trade union is strong, into certified agreements.

Gutting awards

All awards will be gutted over an 18-month transition period to bare minimum conditions, with only 18 permitted matters. (See list opposite) During this period unions and employers are expected to "simplify" their awards - meaning to strip them. The powers of the Australian Industrial Relations Commission (IRC) will be severely curtailed. Its role in varying or making awards will be limited to making minimum rates awards with the 18 allowable matters.

Paid rates awards will be abolished. These are awards which specify the actual rates that are paid. Public servants, teachers, oil, maritime, airline and many other workers are covered by paid rates awards. This could lead to a substantial loss of wages - as much as $200 a week for some workers. The Commission will arbitrate where agreement between employers and unions cannot be reached and will strip the award for them. Where agreement has been reached, the Commission can reject their proposals if it believes the rates of pay are not true minima - i.e. if it decides the rate is too high.

It must ensure awards do not prescribe "work practices or procedures that restrict or hinder the efficient performance of work" - another safety valve for employers who may concede too much! Where awards have not been stripped by the end of the 18 months period, award provisions dealing with any of the 18 permitted matters will be reduced to meet the minimum requirements. The rest of the award will be scrapped.

The only way to preserve other existing conditions is by entering into a separate agreement with the employer.

No guaranteed wage

In stripping back awards the Commission may reduce wages in awards where it believes these "were not operating as minimum rates of pay" or "were not intended to operate as minimum rates". The Commission may include in the award other provisions that would restore overall entitlements back to their

former level. But, the Commission is not obliged to maintain such entitlements. It appears that this measure is related to the government's pre- election assertion that "award simplification will not be a device to reduce wages".

The measures which could maintain wage rates might only be temporary or not available to new employees.

Unions will have to fight to maintain wage rates and total take home pay under minimum rates awards.

They will also have to fight to restore salary increments, limits on the use of casual and part-time labour, the span of hours worked and other issues which have now been explicitly excluded from awards. It appears that employers may be able to force workers who recently transferred to Federal awards, back to the State system, onto agreements, individual contracts or awards which are even worse than the Federal Bill's awards!

This would be an enormous setback for the tens of thousands of public sector and other employees who had won (or are in the process of gaining) Federal coverage to escape the anti-union laws of the Coalition governments in Victoria, South Australia and Western Australia.

Open go for employers

- Provisions limiting the proportion of employees in permanent, casual or part-time work are expressly forbidden. Setting maximum or minimum hours of work for regular part-time employees is also out.
- Employers can direct a "regular part-time" worker to work one hour one day, 20 hours another and four hours the next. They will be given total flexibility to convert workers from permanent employment to part-time or casual.
- Breaks between shifts will be at the whim of employers. No notice of overtime will be required.
- The Bill opens the way for unrestricted use of "independent contractors" with no minimum requirements what-so-ever. The only force that can stop employers implementing these anti-worker, anti-union conditions is worker resistance organised and led by the trade union movement. The government knows there will be strong resistance so, while giving employers an "open go", the Bill ties-up the trade union movement, eliminates worker rights and imposes drastic penalties.

Bleak outlook

The prospects are bleak for future rises in the award minimum wage rate or improvements in conditions.

In considering "safety net" wage rises, the IRC will be obliged to consider economic factors such as productivity, inflation and the desirability of attaining a high level of employment.

The living needs of workers and their families - a principle established

by the 1907 Harvester award - is abandoned. Any future wage increases will be dependent on workers trading off jobs, giving back more conditions and ensuring that wage rises leave employers with higher profits.

There are a number of indications in the Bill that award wage rates will be progressively forced down. A number of provisions in the existing Act which had helped to maintain wage levels have been watered down.

For example, the existing Act speaks of awards maintaining minimum terms and conditions “at a relevant level”. The Workplace Relations Bill drops any reference to “relevant level” and adds the reference to economic factors referred to above being taken into consideration - another hint that wages are to be reduced. The reference in the old Act to awards “underpinning direct bargaining” has been dropped.

While there is supposed to be a connection between award rates of pay and the minimum paid under enterprise agreements and individual contracts, the new Act severs the relationship between conditions in an award and other agreements in all other respects

The “safety net” does not extend fully to workers on individual contracts or certified agreements or those forced back onto individual contracts, agreements or awards under State legislation.

Each workplace a new battle

Part of the ACTU campaign against the legislation involves trade unions demanding from employers an undertaking to preserve existing wages and conditions. In unionised workplaces the outcome will depend on the strength of the union demanding that award conditions be maintained.

But the workers in many smaller workplaces, where union membership is either small or non-existent, the task is going to be much harder. In the past all workers were automatically covered and protected by the award and this helped to prevent wages and conditions from being driven down. The abolition of the centralised, cover-all award system leaves such workplaces with little protection.

Within 18 months the majority of award obligations covering these workers will have been stripped. All of the award conditions listed opposite will have to won back as entitlements. Even where an employer agrees to abide by the former award conditions, the Bill prevents their inclusion in the award. They may be included in a certified agreement but these are for a maximum of three years. Conditions won will again be up for grabs. The government said that nobody will be forced off their award. Everyone was told that “No worker will be worse off”.

The legislation tears these commitments to shreds. They were lies!

AWARDS

Within 18 months all federal awards will be stripped to the barest minimum. Only 18 specified matters will be permitted in an award and even these do not have to be included. No other matters will be permitted in an award.

WHAT'S IN

The 18 permitted matters are:

- classifications of employees;
- ordinary hours of work and times within which they are worked;
- rates of pay (generally hourly and annual salaries);
- piece rates, tallies and bonuses;
- annual leave and leave loadings;
- long service leave;
- personal (e.g. sick, bereavement) and carer's leave;
- parental leave;
- public holidays;
- allowances;
- loadings for overtime, casual or shift work;
- penalty rates;
- redundancy pay;
- stand down provisions;
- notice of termination;
- dispute settling procedures;
- jury service;
- type of employment - full-time, casual, shift work, etc.

WHAT'S OUT

The following will be removed from Federal awards if the Howard government's Bill is passed:

- meal breaks
- smokoes
- maximum hours of work
- spread of hours
- flexitime
- shift breaks
- call back
- accident pay
- rostered days off
- restrictions on use of casual, part-time and casual labour
- maximum or minimum hours of part-time or casual work
- incremental wage rises
- equal employment opportunity
- promotion systems
- amenities
- protective clothing
- equipment
- occupational health and safety
- superannuation

- training & study leave
- trade union training leave
- travelling time
- fare allowance
- right of entry of union officials
- preference to unionists (out-lawed)
- closed shops
- stopwork meetings
- consultation over workplace change
- workplace harassment
- shopsteward rights
- and anything else that is not on the list of 18 matters

If you want to hold onto these conditions then defeat the Bill.
Make sure it does not become law

Individual employment contracts

The centre-piece of the Workplace Relations Bill is the section on Australian Workplace Agreements (AWA) - a fancy name for individual employment contracts.

Individual contracts have the aim of eliminating collective bargaining and action, isolating and dividing workers, and driving down wages and conditions. They enable employers to intimidate and coerce workers.

THEY CONSTITUTE THE MAIN THREAT TO THE TRADE UNION MOVEMENT IN THE BILL. Reith's hypocrisy and dishonesty reaches its pinnacle when he claims that in "the course of reaching AWAs, there will be a right to take protected action", that is, for the individual to take strike or other industrial action against his/her employer! Few workers would be prepared to take industrial action on their own when negotiating an individual contract!

The law forbids other workers expressing solidarity. Three days notice of intention to take action has to be given!

And what negotiations? Employers will present existing employees and new job applicants with a contract to sign. The employee's choice is to sign or stay unemployed or face possible dismissal.

The individual is powerless

Individual workers have no hope of understanding the legislation or knowing their rights - not that the Bill gives them many. And even if they did know them, they are not enforceable. It is possible for an employee to be represented by a "bargaining agent" including the union. The worker must appoint the agent in writing which makes it very difficult for many workers with lower English language or literacy skills.

Any job applicant who fronts up for an interview with a union representative as agent to negotiate or examine a contract is hardly likely to be given work!

Intimidation,
victimisation
The provisions in the Bill that make employer intimidation and victimisation illegal are not worth the paper they are written on. A handful of workers may gain some justice from them, but millions will not. They are not backed by serious enforcement measures. On the contrary, the anti-union provisions are designed to ensure that these provisions are not enforced.

The only legal redress a worker has to employer standover tactics and coercion is through the court system - which takes time, money, legal representation and even with union help is a formidable prospect. And what does the worker do for an income in the meantime? Industrial action during the life of an individual contract is outlawed - even if it were possible.

Secret contracts

There is no external scrutiny of an AWA. It is filed with the Employment Advocate (a new position created in the Bill) and a receipt issued. The Employment Advocate does not scrutinise the contract.

The Employment Advocate must not disclose information about the identity of employers or employees who are parties to AWAs. Breach of this section is punishable by six months jail.

The complete lack of scrutiny and secrecy surrounding individual contracts gives employers open slather to discriminate on the grounds of race, sex, union membership or any other basis, as well as ignore the legal minimum requirements.

There is not monitoring of employer compliance with the terms of the contract. The Employment Advocate may give employees and their employers advice, make investigations when breaches of the law have been alleged, and may provide representation in the courts when individual workers pursue contraventions of the law.

However, only court action provides an avenue to redress employer breaches. The Industrial Relations Commission cannot arbitrate.

Breaking worker solidarity

AWAs can include confidentiality clauses (as they did at CRA's Weipa operations), in the same way as business contracts contain legally binding confidentiality clauses.

This means that a worker would be in breach of contract and could be subjected to heavy penalties if she/he revealed the contents to the union or other workers.

Workers would not be able to compare contracts, would not know if other employees were being paid more or less. The union would be denied the

knowledge necessary to ascertain whether the contract complied with the legal minimum standards set out in the Bill or was being complied with.

Undermining collective agreements

In certain circumstances AWAs can override certified agreements. This gives employers an opportunity to undermine a certified agreement which was, for example, won in a workplace where the union was strong and militant.

Industrial action against the introduction of individual contracts or pressure on employees to refuse to sign is illegal. Unions negotiating certified agreements would be well advised to include clauses ruling out AWAs, otherwise employers will be free to pick off employees one by one and force new employees to sign individual contracts with inferior conditions.

Minimum wage undermined

The comparison of the wage being paid under a contract with the minimum that should be paid under the relevant minimum conditions, relates to a “reasonable period” which could be anything up to 12 months!

This would allow an employer to pay below minimum wages in the early days of the contract without fear of being challenged successfully.

And how many workers who left or were sacked in less than 12 months would know their rights or be in a position to pursue them? -

Certified agreements

Certified agreements are collective agreements which can cover union or non-union workers. However, the rights of registered unions to represent their members and to negotiate with employers have been seriously curbed.

The union has the right, if the employer agrees , to participate in negotiations, but only if it has at least one member in the enterprise who will be covered by the agreement and who the union is legally entitled to represent.

Agreements are negotiated during a formal bargaining period which can be initiated by the union, employees or employer. The Industrial Relations Commission (IRC) is required to certify the agreement if it is satisfied that a majority of workers have genuinely given their approval and its conditions “are not less favourable than the minimum conditions that are applicable to an employee of that kind”. The Bill gives 10 minimum conditions which replace the award safety net. These are listed separately below.

Even the 10 minimum conditions are not guaranteed. They can be reduced if the employees affected “genuinely approve” and it is “part of a reasonable strategy” to deal with a short-term crisis” in the company. The IRC’s role in certifying agreements is limited to ensuring that the Act has been complied with. It cannot normally arbitrate on contents, or enforce their implementation.

Negotiations <R>
optional
There is no obligation on an employer to negotiate. The employer is only required to give employees a copy of an agreement five working days before it is signed and then ask [or standover] them if they agree. A majority must give approval.

- If the union was not involved in negotiating the agreement, but has made a request to represent an employee who will be covered by it, the union must also be given a copy and a chance to meet and confer with the employer about it.
- Agreements must include procedures for preventing and settling disputes about matters arising under the agreement. Before certifying the agreement the Commission may order a secret ballot to determine the view of employees.

Protected action”

During the negotiating period (if there is one) employees have a limited right to take industrial action, called “protected action”. This gives workers certain legal immunity for actions taken against their employer to advance their claims during negotiations. All other industrial action is illegal. There are heavy penal provisions to discourage such action.

Action by workers who will not be covered by the agreement is illegal and subject to heavy penalties. It is illegal for workers in other sections of an enterprise who might be covered by individual contracts or a different agreement to take solidarity action. This is one way of splitting the workforce and having a ready pool of scab labour.

The employer also has the right to lock out or standdown workers taking industrial action.

The Commission may order a secret ballot before any action is taken. Action following the ballot is only protected if a majority of those voting were in favour. Three working days notice must be given to the employer.

Payment for work not performed is illegal and subject to heavy penalties.

IRC may outlaw action

If the IRC believes that the action threatens to “endanger the life, the personal safety or health, or the welfare, of the population or part of it” or “cause significant damage to the Australian economy or an important part of it”, it can suspend or terminate a bargaining period, and hence render further industrial action illegal.

This provision targets workers in essential services like nurses who are set to lose their paid rates awards under other provisions in the legislation. They will be robbed of their wages and conditions and the right to fight to retain them.

Maritime, mine and construction workers are prime targets of the employers and this section of the Bill. A big battle is looming over their conditions and trade union rights.

In the event of the IRC terminating a bargaining period, it must then begin conciliation processes and if these fail, may make orders. This is one the few instances in which the IRC retains its compulsory arbitration powers.

The IRC will be making decisions in a new political climate under legislation which obliges it to put economic considerations like “efficiency” and “productivity” before workers’ interests.

Anti-union measures

It is illegal to pressure employees to take industrial action or join a union. Discrimination between union and non-union members, such as giving preference in employment to formally retrenched union members, is illegal.

- Conversely, employers are not supposed to discriminate on the basis of union membership. Nor are they permitted to sack workers for taking “protected action”. The court may reinstate the worker or order payment of compensation. Employers can, it seems, dismiss workers for illegal industrial action.
- Agreements are fixed term, with an absolute maximum of three years including any extensions. They may be ended by mutual consent during their life or by either party giving one month’s notice after the expiry date up until the end of the three years.
- Failure to negotiate a new agreement after three years means reversion to the bare minimum award.

Agreements may prevail over federal awards and orders of the Commission, State law and State awards with the exception of occupational health and safety, workers’ compensation, apprenticeships and matters prescribed by regulation.

They may also override conditions of employment contained in common law.

Minimum conditions

governing certified agreements & individual contracts

The government does not see awards as the main focus of its industrial relations system. It intends to replace them with certified agreements and individual employment contracts (Australian Workplace Agreements - AWAs).

The award does not provide a safety net for workers on individual contracts or AWAs. Certified agreements and AWAs may completely displace the award. In the place of the award, there is a set of 10 statutory minimum conditions. Certified agreements and AWAs should provide terms and conditions that are

“not less favourable” than these specified minima. This provision replaces the old Act’s “no disadvantage test”.

Minimum standards
The ten statutory minimum standards are:

1. Wages: “wages payable under the agreements to the employee for any reasonable period ... must be no less than the wages that would be payable under the relevant award ... for the hours worked ...”

This does not protect current wage rates. It refers to wage rates in the award at the time the agreement is made. Agreements made after awards are gutted will have to comply with the new bare minimum rates. This provision only covers the rates for hours worked. It does not include leave payments. There is no provision for wage rises in line with any increases in the award minimum during the life of the agreement.

2. Casual work: as per the relevant award “for any reasonable period” for the hours worked. Casual loadings, overtime and penalty rates are included. If the relevant award contains no provisions for casuals then the minimum loading is 20 per cent.

3. Piecework: what would have been paid under the relevant award.

4. Wages of employees on labour market programs, traineeships, apprenticeships:

may be specified by government regulations. Payment is restricted to actual hours worked. Training time is be unpaid. For youth there will be special minimum wage rates, not specified in the Bill. Judging by the government’s statements, probably around $3 an hour.

5. Recreation leave: minimum of four weeks annual leave for each completed year of service.

If the award provided for five or six weeks, the agreement could see it reduced to four.

6. Personal/carer’s leave:up to 12 days for each year of employment (up to 10 days not taken can be accumulated).

The whole 12 may be used for sick leave; up to five to support immediate family or household member, and a maximum of two for a death. 7. Parental or adoption leave: after 12 months continuous service, up to 52 weeks unpaid leave before the child’s first birthday to provide primary care for the child. The leave is available to the mother or her spouse.

8. Long service leave: no less favourable than the applicable award (if specified) or legislation (federal or state) that applied before the agreement was made.

9. Equal pay for work of equal value: applies to rates of pay for workers employed by the same employer.

The Bill seeks to repeal many of the IRC's powers to stop pay discrimination between men and women. The IRC can only deal with minimum rates. It has no power to determine overaward payments (where much of the discrimination occurs), bonuses, and other forms of discrimination such as the undervaluation of types of work predominantly done by women, e.g. nursing. The abolition of paid rates awards will hit women hard.

10. Jury service: payment of the difference between wages and what the court pays.

All out attack on unions

In the name of "freedom of association" the government is proposing a number of measures to weaken and split existing unions and facilitate the formation of company unions. The Bill "is designed to encourage the registration of a greater number of employer and employee organisations; to provide for greater choice; and to encourage greater competition in the provision of services to members", according to Reith's Explanatory Notes. Unions will be free to change their rules to cover any occupations they wish. This is an open invitation to unscrupulous right-wing unions like the AWU to do deals with employers, poach members, create disunity and split and weaken the union movement.

Company unions

Groups of 20 or more workers will be able to set up an enterprise union and seek registration although this is not automatic. The purpose is to form company unions with the support of employers and their stooges in competition with genuine unions.

Autonomous union branches

The rules of trade unions "must" provide for the establishment of autonomous enterprise branches.

These autonomous branches will be able to elect officers, make their own rules, manage funds and dissolve the branch if they wish. A secret ballot of union members requires a majority of those eligible to vote to decide to form an enterprise branch. It requires an application to the Industrial Relations Commission (IRC) by only four members in workplaces with less than 80 members or five per cent of the membership with a ceiling of 250 signatures for a ballot to be held. The industrial registrar is responsible for the conduct of the ballot, not the union.

If an autonomous branch is formed, then all eligible members of the trade union automatically become members.

There can be more than one enterprise branch in an enterprise, as long as the branches cover geographically distinct parts of the business.

Busting amalgamated unions

The Bill provides for the constituent parts of unions formed by amalgamations as a result of the drive by the ACTU, to pull out of the amalgamated union.

In this case the Australian Electoral Commission is responsible for the conduct of any ballot. A simple majority of votes cast is required - not a majority of those affected.

The Court can also determine the date the withdrawal takes effect and make orders to apportion assets, liabilities, etc. There is nothing more that employers would like to see than some of the tensions in recently amalgamated unions turn into bitter divorces with brawls over property and the formation of breakaway groups. The right of entry of union officials is curtailed. A union must be able to satisfy the Registrar that it has been invited by a member or members into a workplace if the employer has not agreed. This could involve supplying the name of a member to the Registrar who then issues a certificate to be presented to the employer, but the name of the employee requesting the visit is not to be identified on the certificate. The employer must be given 24 hours notice.

The union official has the right to inspect work, machinery, documents, etc, for the purpose of checking compliance with an award or a certified agreement, but is not allowed to examine AWAs or anything that would show any or all of the content of AWAs.

They may also gain entry to hold discussions with employees who are members of the union or eligible to become members. These discussions must be outside working hours, or during meal or other breaks.

Industrial action illegal

A whole section of the Bill is devoted to strengthening the IRC's powers "to stop or prevent industrial action". The only positive feature of this section is that action by a worker based on "a reasonable concern" about "an imminent risk to his or her health or safety" is exempted, as long as the employee was willing to do other available safe work.

The IRC has considerable powers to direct that industrial action cease or not occur, even where it might be legal.

Failure to comply can lead to court injunctions and if the union fails to obey the court injunction the Minister may apply for the union to be deregistered.

The union can be held responsible for members taking such action as if it were done by a member or group of members acting under the rules of the organisation.

It is illegal to pay a worker for a period when any form of industrial action was being taken, whether it was strike action, bans on certain tasks, or refusing to work as directed. It is also illegal to accept any payment.

The secondary boycott provision are returned to the Trade Practices Act and made more lethal and extended to include some forms of primary boycotts.

There are heavy fines and employers have the right to sue for damages resulting from “unprotected” industrial action.

Fairplay Howard’s way

Sacked workers will have to pay a $50 application fee to pursue an unfair dismissal claim - not easy for a worker without income. The IRC will determine whether the sacking was “harsh, unjust or unreasonable”.

Possible remedies for the sacked worker include reinstatement, payment of remuneration lost or compensation in lieu of reinstatement. But the Commission must take into consideration the financial situation of the company before determining any payouts. The victim pays the employers’ costs if the IRC decides the case was “without reasonable cause” or “vexatious”.

These changed provisions are another Reith hoax - to make it look as though a sacked worker has some rights. In fact, the employer’s right to hire and fire at will is effectively re- established.