

Productivity Commission draft report on the Workplace Relations Framework

Submission from the Communist Party of Australia

The Communist Party of Australia anticipated the anti-worker thrust of the Productivity Commission's draft report on the Workplace Relations Framework. Many of the measures aimed at stripping long-held rights and entitlements have been on the agenda of employers for decades, so their appearance in the draft document came as no surprise to workers. Nevertheless, it is worth examining some points in detail and considering the choice of language to package this attack.

The draft report is full of reassurances that the current industrial relations regime needs only a few tweaks to deal with today's "24/7", "21st Century" economy. The framework built around the FWC (Fair Work Commission) is "not dysfunctional". It needs "repair not replacement," the report says, trying to dumb down the true nature of its contents and disguise any similarity to the Howard government's WorkChoices. But make no mistake, the report is brimming with benefits for employers and attacks on workers' rights. The federal government's Productivity Commission has delivered just what Tony Abbott ordered.

The final report is due in November but already it is clear Abbott wants to continue to undermine workers and their unions but doesn't want to go to an election with the electorate fearing WorkChoices Mark II and attacks on workers' rights and living standards.

The language of the draft report is low key and acknowledges the existence of and relative strengths of the two sides in the industrial relations system – workers and employers – seeking to defend their interests. It is surprising to see such openness about the existence of class struggle (which it seeks to quash) in these neo-liberal times.

"There are ethical and social factors that separate the labour market from more conventional markets," it says. In other words workers are commodities with a little difference – they can fight back if they are not handled properly. "The ethical and social dimensions of the labour market form the basis for many aspects of the WR system that differentiate it from the regulation of other markets."

Fair Work has delivered in spades for one side – big business. "Strike activity is low, wages are responsive to economic downturns and there are multiple forms of employment arrangements that offer employees and employers flexible options for working," it says. A potential "wages contagion" from high paying resource sector jobs to the rest of the workforce didn't happen and wages in that previously advantaged sector are coming down. Wage increases are a disease that needs to be quarantined in the eyes of the Productivity Commission. Wage reductions are described as "responsive" to economic downturns.

The Commission's draft report seems to delight in the low level of struggle, of strike activity, when workers' wages are being reduced in real terms and workers are losing working conditions that were once legally binding in awards. What does it mean by "wages are responsive to economic downturns" when according to the federal Treasurer Australia has had a record of run of almost 25 years without a recession? Surely that is a period when real wages should have been increasing. "There is no risk of recession in Australia," Treasurer Joe Hockey told Channel Nine. (September 3, 2015). So why isn't the Productivity Commission looking at how workers should be gaining from this growth and seeing real wage increases.

Australia has performed well, from the point of view of private profit-takers, by comparison with other OECD economies.

Industrial relations virgins

The Commission's draft is peppered with references to the "baggage" of the past. This "baggage" is all to do with the gains made by workers through decades of struggle. Long service leave, penalty rates and even awards are seen as quaint legacies forced on the community by an increasingly irrelevant history. The Fair Work Commission supposedly needs a re-organisation with instrumentalities populated by those without backgrounds in "antiquated" industrial relations.

The PC recommends that the FWC should have two distinct divisions.

The first is a Minimum Standards Division with responsibility for wage determination. "It would undertake the annual wage review and make award determinations. Its members should primarily have expertise in economics, social science and commerce, not the law."

The second is a Tribunal Division which "would be responsible for the quasi-judicial functions of the FWC, such as decisions relating to unfair dismissals, adverse actions, approval of agreements, rights of entry and industrial disputes."

This division would be headed by officials with "... a broad experience, and be drawn from a range of professions, including (for example) from ombudsman's offices, commercial dispute resolution, law, economics and other relevant professions."

A new "independent expert appointment panel" would make recommendations to the Minister for the appointment of members of the Fair Work Commission. It would be made up of those with "well-developed analytical capabilities and experience in economics, social science, commerce or equivalent disciplines."

The vision is of the FWC as a technocratic body controlling workplace relations in a dispassionate, unbiased fashion without the involvement of former trade unionists. The biases of "experts" whose only common background is in law or capitalist economics and commerce is seemingly invisible to the authors of the draft report or, more likely, recognised but glossed over. The bias against trade unions shines through.

Lowering the level of the "floor"

The minimum wage, the National Employment Standards and awards (including penalty rates) were hot potatoes for the Commission. After much ducking and weaving and references to the "Goldilocks dilemma" of getting the minimum wage "just right", the draft report suggests cuts could be in order. It says many recipients of the minimum wage live in median or even high income households. These workers are obviously considered hobbyists who don't need or deserve more substantial wages.

Many workers pulling down the minimum wage live in low-income households and, in this instance, the report suggests that the government should top up the pay packet. Other OECD countries are doing this. Rather than oblige businesses to pay liveable wages (a 20th century notion, apparently), governments should chip in to prevent starvation. This is nothing short of corporate welfare, a means of boosting profits at the expense of taxpayers. The Communist Party of Australia rejects any reduction in the minimum wage.

There is a problem with this "solution" from the neo-liberal point of view. An "earned income tax credit" (EITC) "must also be financed through taxes, which have their own adverse economic

effects. In an Australian context, any EITC would also interact with a well-developed tax-transfer system, which is also intended to improve the incomes of the low paid.” (Transfer system includes payments such as family allowances, income support, concessions on income tax and GST.)

As with other, more controversial suggestions, the PC has deferred making a recommendation and is “seeking views on whether there are grounds for giving further consideration to an EITC as a complement to minimum wages.”

Wages for juniors, apprentices and traineeships were also sensitive. The Commission was cautious not to recommend anything that might lead to wage increases and put youth employment in jeopardy, or so the narrative goes. The idea that higher wages cause unemployment is woven into the document. So is the myth that employers reward wage restraint by employing more people. Higher wages, especially a minimum wage, creates demand which leads to job creation. If people have less money in their pockets businesses do not invest and is something we are witnessing now. Business investment has slumped.

One of the less developed thought bubbles in the draft is to give the jobless a say in the Fair Work Commission’s deliberations. Presumably, the unemployed would have a dampening effect on workers’ claims because the jobless should consider higher pay and better conditions as barriers to their entry into the labour market.

The most notable recommendation with regard to the National Employment Standards, the lowest of the “floors” below other regulations and legislation, is to disallow any future public holidays declared by state or territory governments and to allow employers to shift the day the penalty will be paid to any other agreed day.

The idea of a national standard for Long Service Leave is floated, too. There will be “winners and losers” in such a move but, make no mistake, this document is about ensuring there are more losers than winners.

“24/7 economy”

Changes to penalty rates for shift, overtime and weekend work have been the most widely reported recommendations of the draft report. A long preamble talked about the development of a “24/7 economy”, declining religious observance, the presumed demand of consumers to shop around the clock and the fact that many have already been bludgeoned into working longer hours. The weekend has not gone out of existence even though many workers have been forced into weekend work for survival.

Police and workers in emergency services or nursing are quarantined from cuts to penalty rates. But those in hospitality, entertainment, retail, restaurants and café industries must forgo double time on Sundays and go back to the time and a half regulated for Saturdays if they are “lucky”. In future, employers might be able to negotiate which time slot is the most “asocial” (as the report describes it) and adjust penalties accordingly.

The PC claims the Australian workplace is an essentially harmonious environment. Workers won’t be fooled. Ask women who are being sexually harassed or workers who are being bullied by their employers. Ask 7-Eleven workers or Australia Post workers who have been cheated out of millions of dollars in pay and live in fear if they speak up. There is nothing in the Commission’s draft report that would ensure that such workers can achieve their legal entitlements, speak up about breaches of occupational health and safety regulations or work in a relaxed, friendly environment.

Suggested changes to unfair dismissal procedures are nearly all prompted by sympathy for the bosses. Workers can't be compensated or reinstated because of procedural failures on the part of employers. In fact, reinstatement would no longer be a goal of the system. Lodgement fees are higher and the FWC will have greater latitude to decide issues "on the papers". This creates even more fear and tension for workers who fear dismissal if they try to address any wrong.

EBAs – race to the bottom

Modern awards contain minimum entitlements for wages, casual and part-time loadings, penalty rates and shift allowances and are occupation based. At present the outcomes of enterprise bargaining must meet the Better Off Overall Test (BOOT). For example, this would permit a reduction in loadings below the minimum in the award in exchange for a higher wage rate as long as the outcome saw workers better off.

Discussion of enterprise bargaining is dominated by the idea of replacing the BOOT with the Howard era notion of a No Disadvantage Test (NDT). The alleged problem with the BOOT approach is that unions tend to go through employers' proposals "line by line" rather than taking a "holistic approach". Advancing the interests of workers by insisting they must be better off than the no frills award is apparently not being "holistic"! The NDT reduces workers' entitlements.

The FWC is to be given the power to have the last say in the greenfields (new projects) agreement making process – deciding between the union's and employer's last offers.

Another theme of the draft report is that unions have some power left through the use of delays, procedure, bans, limitations and short stoppages. The sympathies of the authors are clearly with the employers and it is seeking ideas to expand the repertoire of industrial action available to the bosses. Lockouts are unpopular and the report refers to them as the "nuclear option".

It is considering punitive action against unions if they do not follow through with the threat of industrial action where employers have implemented a contingency plan. In other words it wants them to expose themselves to heavy penalties by taking the action or not following through with their threat.

A disturbing aside in the draft report is the "a person could only be a bargaining representative if they represent a registered trade union with at least one member covered by the proposed agreement, or if they were able to indicate that at least 5 percent of the employees to be covered by the agreement nominated them as a representative."

This foreshadows another feature of the US industrial relations system where unions have to campaign like mad to "earn" the right to represent workers enterprise by enterprise. Unions are clearly identified as a problem in the Productivity Commission's document and it looks forward to a future without them.

Employer dictated contracts

The PC would like to boost dramatically the relatively low number of Australian workers on Individual Flexibility Agreements (IFA). These WorkChoices-inspired agreements cover about three percent of the workforce, about the same portion that were on Howard's Australian Workplace Agreements (AWAs).

It also wants a new "enterprise contract", a type of collective IFA by which workers could "opt out" of the collective agreement and, according to the PC's fairy story, work out other arrangements more

suited to the worker and the employer.

Unlike Howard's AWAs, the worker couldn't be forced to take the agreement and it would be subject to the No Disadvantage Test. It is a safe bet the PC realises the power imbalance in the workplace and just how "voluntary" such offers of employment would usually be.

Protected action – in need of a "fix"

While the PC's report acknowledges the existence of class struggle, it sees it as a failure when it is engaged in by workers. Under the current regime, workers can essentially only take collective action or even propose such action when a new Enterprise Bargaining Agreement is being negotiated. This has crippled unions' capacity to defend workers. For example, it is illegal to take action to enforce conditions in an EBA. The Commission wants to drive home that disadvantage, not rectify it.

"The Australian government should amend the Fair Work Act 2009 (Cth) to grant the Fair Work Commission the discretion to withhold a protected action ballot order for up to 90 days, where it is satisfied that the group of employees has previously used repeated withdrawals of protected action, without the agreement of the employer, as an industrial tactic," it says. Industrial action is usually referred to as something akin to a conspiracy in the draft report.

"The Australian government should amend s. 423(2) of the Fair Work Act 2009 (Cth) such that the Fair Work Commission may suspend or terminate industrial action where it is causing, or threatening to cause, significant economic harm to the employer or the employees who will be covered by the agreement, rather than both parties (as is currently the case).

"The Australian government should increase the maximum ceiling of penalties for unlawful industrial action to a level that allows federal law courts the discretion to impose penalties that can better reflect the high costs that such actions can inflict on employers and the community."

Tougher penalties, more power to prevent industrial action by workers, more ways for employers to retaliate against workers – that just about sums up the PC's draft report on the Workplace Relations framework.

It is full of the lies and myths pedalled by the capitalist class that higher wages cause unemployment and the other negative economic consequences of the functioning of capitalism. It is a softly spoken reiteration of Abbott's declaration of war on workers and their unions. No doubt the final report in November will be full of the same anti-worker ideology. It should be and will be resisted vigorously by unions and the community.

The Communist Party of Australia will be campaigning against the corporate strategy, which includes the "framework" designed by employers and presented by the Productivity Commission. The Party will take any opportunity to put forward its assessment of the work of the Productivity Commission and the CPA's alternative based in the interests of workers and the community.