Australia: Labor opposition caves in on unfair dismissal legislation

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The Australian Labor Party (ALP) has wasted no time in accommodating itself to the newly reelected Howard government.

Barely two months have passed since Labor announced a full review of its past policies in the wake of the party's rout at the federal elections last October. But it is becoming all too clear that this "review" is simply a means for extending even greater bipartisan support to the Howard government's assault on the conditions of working people.

Throughout the election campaign, Labor made much of its record in the Senate of blocking legislative changes to the unfair dismissal and termination clauses of the Workplace Relations Act. Howard's amendments centred on exempting small businesses that employed up to 20 workers from the existing provisions. The Labor leadership declared the matter to be a point of principle and pledged to never soften its stance.

Last month, however, two of Labor's spokesmen Stephen Smith and Tony Burke issued a statement that effectively ditched the election promise. While still opposed to Howard's proposals, they declared, Labor was drawing up a plan for a "range of procedural improvements to simplify and improve the unfair dismissal process and reduce costs for small businesses."

The *Australian* newspaper, which has been at the forefront of demanding further industrial relations "reform", immediately welcomed the shift. "Labor has extended an olive branch to the Howard Government on the unfair dismissal laws, offering new proposals to help small business owners defend themselves against claims of unfair sacking," it declared.

Small business spokesman Burke claimed that "Labor would not shift its long-held position that workers should not be able to be sacked unfairly". But the proposals being considered are specifically designed to shift any remaining emphasis from protecting workers against arbitrary dismissal to assisting employers sack them without restriction.

Labor's amendments include empowering the Australian Industrial Relations Commission (AIRC) to order costs against applicants (workers) who pursue so-called "speculative or vexatious claims" and requiring the court "to conduct conciliation conferences at the convenience of small businesses".

Such measures would include "encouraging the use of telephone conferencing to assist small businesses that have difficulty attending (AIRC) hearings in person" and "legislating an indicative time frame within which the Commission should deal with unfair dismissal applications."

Even under the present system, workers are under enormous pressure not to bring unfair dismissal cases. Having lost their jobs, they are in no position to contest a drawn-out and potentially highly expensive legal battle. The extra threat of being saddled with costs at the discretion of the AIRC—a court that has historically acted in defence of employers—is designed to ensure they remain completely silent.

The proposal that hearings should be held "at the convenience" of employers is also aimed at placing maximum pressure on sacked workers, who need a speedy resolution either through reinstatement or compensation. Even with a "time frame", employers, if they wished, could stall proceedings for extended periods simply by claiming that they were being inconvenienced.

Labor is also considering preventing workers from hiring lawyers, "if they tie their fees to cash settlements". In what amounts to a malicious attack on

sacked employees, Labor spokesman Burke declared: "We need to get these ambulance-chasers out of the system. We have to deal with unfair dismissal and we have to acknowledge that 'go away' money exists."

So-called "go away" money is a derogative term used by employers and by the corporate media—and, one can now add, by leading Labor parliamentarians—to suggest workers who accept a cash settlement to abandon unfair dismissal claims are engaged in a form of blackmail.

Former shadow finance minister Bob McMullan, who resigned from Labor's front bench in the wake of last year's election debacle, adopted the same line. He penned an article in the *Australian* on December 27 arguing for "hard fiscal decisions" and a "more positive approach (by Labor) to the issues of unfair dismissals".

After declaring, "[I]t is clear that the existing system is generating unfairness for some small businesses and apprehension for others," McMullan added: "'Go away' money, which is a pay-off to avoid an unfair dismissal case, is often nothing more than blackmail and should not be tolerated."

The argument stands reality on its head. Most working people live from week to week and, if sacked, need to find alternative employment quickly. The prospect of having to attend a lengthy unfair dismissal case, which takes on average 185 days to settle, simply means added hardship. It is hardly surprising that many opt for a cash settlement and employ lawyers on that basis even if their claims are completely justified.

Employers disparage compensation as "go away" money because they regard any fetter on their "right" to hire and fire at will as illegitimate. Their outlook is summed up in Howard's proposal to exempt small businesses from unfair dismissal legislation. While Labor is yet to openly support the government's amendments, it has fully embraced the underlying rationale.

Even the present legislation, which Labor defended at the election, provides only limited protection for employees at best and in many areas is heavily weighted in favour of employers. The legislation was a product of a series of amendments made to the Workplace Relations Act by the Howard government in 2001, which made serious inroads into the rights of sacked employees.

The changes prevented many workers from taking an unfair dismissal case. Excluded were those in the first three months of employment and casual workers with less than 12 months service. The result has been that the growing numbers of casual and temporary workers have been left completely at the mercy of employers. Workers were also no longer able to argue that unwarranted demotions were akin to unfair dismissal.

The 2001 amendments added a far-reaching caveat to the grounds for unfair dismissal. The legislation bars "harsh, unjust or unreasonable" dismissals and prohibits discrimination on the basis of race, color, sexual preference, age, physical or mental disability, family responsibilities, pregnancy, religion, social origin or political opinion. Employers can now argue against these provisions on the basis of the "inherent requirements of the job".

The Howard government's 2001 legislation was clearly not enough to satisfy those employers who, faced with intensifying global competition, want to be able to restructure their enterprises and downsize their workforce without restriction. Corporate spokesmen have consistently pressed Howard for further "reform" and were incensed by Labor's opposition in the Senate.

Having secured control of the Senate at last year's election, Howard can now push through legislation without the backing of smaller parties. As well as exempting small business from unfair dismissal provisions, the government can now extend the scope of its offensive on workers' rights. The statements of leading Laborites signal that Howard can expect no serious opposition from that quarter.