

# Australian government retains key “Work Choices” measures against workers

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The Australian government released details last month of its replacement for the previous Howard government's "Work Choices" laws. While the final legislation is still being drafted for introduction later this year, it is already plain that Labor is establishing the legal framework for a far-reaching assault by employers on jobs, wages and conditions as the global financial crisis and economic slowdown deepen.

Speaking at the National Press Club on September 17, Industrial Relations Minister Julia Gillard made clear that the government's overriding concern was to protect business, not working people. Her main criticism of Work Choices was that after its introduction, "annual productivity fell by two-thirds". That is, the Howard government had failed to deliver the constant speed-up and cost-cutting required by business. Gillard's list of the main goals of Labor's policy focused on "national economic competitiveness", "workplace flexibility", "enterprise-level bargaining" and "tough sanctions against unprotected industrial action".

The legislation has been drawn up after months of intensive discussions with the major employers, notably the mining giants. Far from "ripping up" the previous Howard government's detested Work Choices measures, as Labor promised before last November's federal election, it is keeping all their core features. Employers can continue to abolish basic conditions, such as overtime and penalty rates, and small businesses can freely sack workers. State-run secret ballots must be conducted before any industrial action is called, nearly all strikes are banned, and employers can dock workers' pay even for a lawful stoppage.

The speech underscored the fraud of the "Your Rights at Work" campaign conducted by the trade union movement between 2004 and 2007. The three-year campaign had nothing to do with protecting the rights and conditions of working people. Instead, its purpose was to divert the hostility to Howard's laws behind the election of a Labor government that had in fact pledged to the corporate elite that it would surpass the Coalition in pursuing "workplace reform".

The details of Gillard's announcement were entirely in keeping with the "Forward with Fairness" platform that the trade unions signed onto at Labor's national conference six months before the 2007 election. On a number of fronts, where Gillard fleshed out aspects of the policy, the provisions underscored Labor's determination to give employers a free hand.

Labor's "new bargaining system" entrenches practically all the Work Choices bans on industrial action. Whereas Work Choices

outlawed industrial action to insert "prohibited content" into enterprise agreements, Labor's version would make it illegal to stop work over any "prerogative of management," including mass sackings, plant closures and choice of suppliers.

Gillard emphasised that "unprotected industrial action will not be tolerated under any circumstances". "Wild-cat" or snap strikes would be severely punished, all industrial action would require a secret ballot with three days' notice, and workers must not demand strike pay. In the event of industrial action, including partial work bans, employers would be legally entitled to lock-out workers.

No industrial action would be permitted in solidarity with other workers, or over a political or environmental issue. In addition, strikers could be ordered to return to work if their action threatened the economy, or significant harm to the employer, or safety or health.

In one apparent departure from Work Choices, "low-paid workers" (undefined) would be permitted to negotiate collectively with employers across an industry, e.g., child care or cleaning. However, they would have no right whatsoever to take industrial action.

Under Work Choices, employers of less than 100 workers were exempt from "unfair dismissal" laws. Labor's scheme removes the exemption but still allows employers of less than 15 people to sack anyone who has been employed for less than 12 months. After 12 months, employers need only abide by a six-paragraph Fair Dismissal Code, which simply requires a verbal warning and also allows for summary dismissal for "serious misconduct," business downturn or "position no longer required". Employees of larger firms would still face a six-month period before they qualify for such token protections.

Gillard announced that "Modern Awards" would be in place by January 2010. Labor's "award modernisation" is a continuation of the Howard government's "award rationalisation", designed to reduce the 4,300 workplace conditions and protections covering each industry to a far smaller number of "flexible" provisions.

This process is already well underway, with the Australian Industrial Relations Commission issuing draft awards for 14 "priority" industries on September 12. In higher education, for example, the proposal includes sweeping changes that the Howard government could not impose, such as reducing pay rates, sick leave entitlements and redundancy payments, while further winding back overtime and penalty rates.

The government had previously abolished the hated individual

contracts called Australian Workplace Agreements, but allowed companies to replace them with transitional and common law work contracts that continue to strip workers of penalty rates, travel allowances and other benefits. As workers in a number of major companies, such as Telstra, BHP Billiton, Rio Tinto and Cochlear, have already discovered, Labor's 10-point National Employment Standards, which expanded Work Choices' five minimal standards, has proven to be no obstacle to employers in cutting pay and conditions.

Business groups and media editorials reacted with considerable praise for Labor's "business-friendly" package. Among them were the Australian Chamber of Commerce and Industry, the Australian Industry Group and the National Farmers Federation, which between them cover the vast majority of Australia's large and small employers. A comment in the Melbourne *Age* welcomed the measures as "an attempt to make Work Choices more efficient".

The *Australian's* September 22 editorial noted: "The impression Ms Gillard clearly wanted to leave last year [before the federal election] was that Work Choices would be torn up. We can report, with some relief, that the Deputy Prime Minister meant no such thing... Ms Gillard has explicitly rejected the Year Zero approach by retaining more of Work Choices than she will repeal. The Rudd government has accepted the premise of Work Choices, which held that the Australian economy required another wave of workplace reform."

These comments underscore why key sections of big business backed the election of a Labor government last November. It was already apparent that the 17-year boom enjoyed by Australian capitalism--largely riding on expanding mining and energy exports to Asia, and a massive growth in private debt--was coming to an end. As frustration mounted at the failure of the Howard government to press ahead with economic reforms, the corporate elite threw its support behind Labor as the means for carrying out the agenda of big business, which now assumes a pressing urgency amid the new period of worldwide economic turmoil and recession.

Significantly, the *Australian* editorial noted the favourable response to Gillard's speech by the Australian Council of Trade Unions. ACTU president Sharan Burrows issued a media release that "welcomed the important next step" taken by the Rudd government toward scrapping Work Choices and "restoring the rights of Australian workers". As the Murdoch media understands, Burrows's whitewash of the new laws is a pledge by the union bureaucracy to enforce them on behalf of big business.

This was underscored by Burrows's own speech to the National Press Club on October 1, in which she said the crisis on global markets had placed a new premium on stabilising the Australian financial system and delivering "economic certainty". After pointedly warning that workers would not be immune from the fallout of the economic turmoil, she echoed Gillard's complaint that Work Choices had hindered productivity.

Burrows specifically called for the involvement of unions in collective bargaining agreements as a means of boosting productivity, citing the Productivity Commission and the Reserve Bank governor Glenn Stephens as agreeing with that view. "Business and the economy will also benefit from new IR laws

that put collective bargaining at the centre of workplace relations," she emphasised.

Last year, when the union leaders voted for Labor's "Forward with Fairness" package, they claimed they were making a tactical move to ensure the election of a Labor government as a "lesser evil". But the ACTU's reaction to Gillard's speech makes clear its fundamental agreement with Labor's pro-business framework, as long as the unions have a central place in the new order.

Over the past two decades, union membership has shrunk dramatically, precisely because the unions have earned the contempt of workers by increasingly collaborating with the employers, particularly since the prices and incomes Accords struck between the unions and the previous Labor government in the 1980s. The unions once covered more than half the national workforce. As recently as 1990, they represented 40.5 percent. Now they have just 18.9 percent, mostly in the government sector.

The primary concern of union leaders is that the new policy gives them insufficient official status to act as the chief brokers of the measures. The unions are seeking legal means to convince large employers to enter collective bargaining with unions, and to channel disputes into compulsory arbitration by industrial commissions, where Australian unions historically held a monopoly over workers' representation rights.

Last year union leaders corralled widespread anger over Work Choices behind the election of the Rudd government. Now they are preparing to repeat the confidence trick by encouraging their members to press for greater union input into the new legislation. "Pressure's the name of the game," Construction Forestry Mining and Energy Union national secretary John Sutton told journalists last week.

The Labor government has already made abundantly clear that it will not bow to pressure. That was demonstrated last month when Gillard prevailed upon Senator Gavin Marshall to withdraw a planned caucus motion mildly criticising the Australian Building and Construction Commission (ABCC), an anti-strike policing agency whose powers the Rudd government has vowed to keep in place.

The ABCC's coercive powers violate fundamental legal and civil rights by forcing workers to appear and answer questions under the threat of jail, and without legal representation. The ABCC can prosecute workers for taking industrial action, leading to imprisonment. Labor has promised employers to maintain the ABCC until 2010 and then transfer its powers to a new centralised industrial relations body, "Fair Work Australia", which may well apply similar draconian measures in other industries.



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