Australian Labor government's industrial relations bill aims to block strikes

Martin Scott
31 October 2022

Last Thursday, the federal Labor government's minister for workplace relations, Tony Burke, introduced a bill that would make repressive changes to Australia's already draconian anti-strike industrial relations law.

Burke's claim that the legislation is intended to "get wages moving" is utterly false. The "Secure Jobs, Better Pay" bill is designed to enhance the powers of the pro-business Fair Work Commission (FWC) to intervene in disputes, shut down strikes and impose upon workers the demands of the corporate elite.

The bill is also aimed at expanding trade union coverage over sections of the working class to enable the union bureaucracies to play an even greater role in suppressing workers' struggles.

The union bureaucrats, whose fortunes are intertwined with finance capital, have enforced decades of attacks on jobs, wages and conditions, especially since the union Accords with Hawke and Keating Labor governments of 1983–96. But membership has plummeted as a result of these betrayals, leading to ruling-class concerns that the unions' efficacy as an industrial police force is slipping.

Workers confront soaring increases in the cost of living, only partially reflected in the official inflation rate of 7.3 percent, and at least two more years of real wage cuts, as outlined in the Labor government's first budget last week. With industrial action already at a level not seen in Australia for almost two decades, the government is seeking to prevent an eruption of working-class unrest.

The bill is a critical component of the broader agenda of Labor and the ruling class to slash jobs, wages and social spending in order to drive up corporate profits, recoup years of massive handouts to big business—accelerated during the COVID-19 pandemic—and finance a major escalation in military expenditure in preparation for war with China.

This is reflected in last week's austerity budget and successive interest rate rises by the Reserve Bank of Australia, aimed at driving up unemployment to push down wages.

A central objective of the bill is "to de-escalate disputes before industrial action is taken and after industrial action has been authorised." To achieve this, the FWC will be granted greater powers to undermine the extremely limited right of workers to strike over wages and conditions.

Under the bill, after the FWC approves an application from workers for a "protected action" ballot, it will set down a voting period of at least two weeks, during which union and employer representatives must attend a "mediation and conciliation conference." If a union does not attend, the workers it covers will be legally prohibited from taking industrial action over the dispute.

These conferences "must be conducted in private," underscoring their purpose as a mechanism for unions and management to negotiate behind the backs of workers to prepare regressive deals stamped with the authority of the industrial court.

Currently, after workers vote to take industrial action over an enterprise agreement, they have 30 days to begin that action before another ballot is required. Once started, the action can continue indefinitely. Under the new bill, workers will have three months in which they can take protected action after a successful ballot. The explanatory memorandum states that the intention of this is to "remove a perverse incentive for employees to take immediate industrial action," i.e., to give the union bureaucrats more opportunity to delay strikes.

At the end of the three-month period, a new ballot, and therefore another union-management-FWC conference, will be required for industrial action to continue.

The bill will empower the FWC to declare a dispute "intractable," which would prohibit workers from taking further industrial action and allow the court to determine the contents of a new enterprise agreement.

Multi-employer bargaining is the aspect of the bill that has been the subject of most discussion in the financial press. Three types of multi-employer bargaining are specified in the bill, each with different rules.

One, the "supported bargaining stream," is an overhaul of the existing, but never used, "low-paid bargaining stream." It is primarily intended to cover "low-paid industries such as aged care, disability care, and early childhood education." Unions will be able to ask the FWC to order businesses with "clearly identifiable common interests" to negotiate a single agreement covering workers performing similar roles.

While non-union employee representatives also can apply for workers to be covered by these agreements, the FWC will not authorise "supported bargaining" unless at least one union is

involved. This points to the real purpose behind multi-employer bargaining. It is not about improving the wages of highly-exploited workers in the care sector—in which wages are in any case largely determined by government funding—but about expanding the coverage of the unions to serve as an industrial police force.

"Cooperative workplace agreements" will replace existing provisions for multi-employer agreements, with workers still prohibited from taking industrial action. "Single-interest employer agreements" which have mainly covered franchisees, will allow unions or employers to seek FWC approval to negotiate, rather than be required to obtain ministerial approval.

Workers covered by supported bargaining or single-interest employer agreements will be allowed to take industrial action during negotiations, but must give employers five days' notice, rather than the three currently required.

Some business lobbyists and corporate bosses have decried the changes to multi-employer bargaining, claiming they could set off a wave of industry-wide strikes. Conscious of the increasingly intolerable living and working conditions faced by workers, the ruling elite fears that strikes by highly-exploited workers previously not legally allowed to take industrial action could develop into a broader movement of the working class.

The unions are determined to prevent anything of the sort. Australian Council of Trade Unions secretary Sally McManus said the unions "don't want to see more strikes." She noted favourably that the bill "adds more red tape" for workers applying to strike.

Workers will be excluded from multi-employer bargaining if they are covered by a union with "a record of repeatedly not complying with the Fair Work Act." Specifically, this could be used to shut out workers with any court findings against them over the previous 18 months.

This has been described in the media as targeting the supposedly "militant" Construction Forestry Maritime Mining and Energy Union (CFMMEU), but the implications are far broader. This provision will be used by the unions to justify shutting down or limiting industrial action by all workers, whether in relation to multi-employer agreements or not.

The exclusion rule is particularly significant in relation to recent legal action by the New South Wales government, directed against striking workers. The state government has taken the Rail, Tram and Bus Union to court seeking millions of dollars in damages stemming from industrial action this year and has imposed more than $100,000 in fines over "illegal" stoppages by teachers and nurses.

The unions not only defend and enforce these laws, but they also rely on them as a basis upon which to tell workers that a genuine struggle is impossible. The new measures will provide the bureaucrats further ammunition to block strikes.

Business groups have welcomed the bill's changes to the Better Off Overall Test (BOOT) for enterprise agreements, which already does not prevent employers from slashing wages and conditions. The test merely requires that workers will not be worse off than if they were employed under an industrial award setting out the bare minimum wages and conditions permissible in a sector.

The FWC will be able to approve agreements that could leave workers earning less than the award if their circumstances change after the agreement is approved.

Workers could later ask the FWC to reapply the BOOT, meaning they must monitor every roster change, calculate the implications and apply to the FWC for a reassessment. This would take place outside an enterprise bargaining period, so workers would be barred from taking industrial action over such an attack.

Employers will no longer be required to provide workers with a copy of a proposed enterprise agreement seven days before they are asked to vote on it, thus hiding all the details. This will be replaced with a vague requirement for the FWC to be "satisfied" that workers "genuinely agreed" to the offer.

The bill will further tighten the stranglehold of the pro-business FWC. Established by the Rudd Labor government in 2009, the FWC already enforces some of the most draconian anti-strike laws of any advanced capitalist country.

Far from "getting wages moving again," the union-endorsed bill is about increasing the power of the industrial courts and further gutting workers' legal rights. This underscores the necessity for workers to take up a political fight against Labor, the unions, the industrial courts and the capitalist system they defend.

Workers need to form real organs of struggle—rank-and-file committees, independent of the unions and Labor. Through a global network organised by the International Workers Alliance of Rank-and-File Committees, workers can fight to seize control of the productive forces they operate and the vast wealth they create, in order to begin rebuilding the economy along socialist lines, to meet the needs of the entire working class, not the profit demands of the corporate and financial elite.