Australian Labor government's new workplace laws codify second-class status for gig workers

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On February 12, the third tranche of Labor's new industrial relations law was given final approval by the Australian parliament. The measures, known as "Closing Loopholes No. 2," were originally intended to be legislated last year along with other Fair Work Act (FWA) amendments, but were split into a separate bill when minor opposition emerged among the Senate cross-bench.

The changes, hailed as a "massive worker win" by the Australian Council of Trade Unions (ACTU), are ostensibly aimed at improving the wages and conditions of vulnerable workers, engaged as casuals, under sham contracting arrangements, or in the gig economy, as well as "self-employed" truck drivers.

This is a fraud. The real purpose of Labor's new laws is to defend the right of corporations to implement ever-harsher forms of exploitation, establishing a lower tier of "employee-like" workers without most of the basic rights required by existing workplace rules.

Moreover, the proliferation of casual jobs and other precarious working arrangements is a direct product of the mass destruction of full-time jobs kickstarted by the union-backed Hawke-Keating Labor governments in the 1980s and 1990s, and enforced by the union bureaucracy ever since.

Now, under conditions of an ongoing cost-of-living crisis and a global upsurge of strikes and protests, Labor is concerned that these millions of highly exploited workers will take up a struggle against their increasingly impossible circumstances. The unions have negligible coverage and influence over these workers, especially in the gig economy, meaning the apparatus cannot apply the same methods of class suppression that have ensured industrial peace for corporations and governments for decades.

Similar considerations were behind this Labor government's first major industrial relations bill, introduced in late 2022. Its multi-employer bargaining laws were aimed at delivering low-paid sections of workers, including in aged care, early childhood education and cleaning, into the grip of the union bureaucracy and the enterprise bargaining system.

The 2022 legislation also strengthened Australia's already draconian anti-strike laws, granting stepped-up powers to the pro-business Fair Work Commission (FWC) to intervene in disputes, halt industrial action, and impose the demands of business through arbitration.

The "Closing Loopholes" legislation is designed to build upon that, further entrenching the industrial courts and the union bureaucracy as the arbiters of every workplace dispute, keeping workers on the sidelines.

While the "intractable bargaining" laws remain untested in the FWC, they have been wielded by companies, and, more commonly, by union officials, as a threat in several major disputes.

Workers are told that, if they reject a regressive company offer and continue with industrial action, the dispute will be declared "intractable" and they will have to settle for whatever the FWC decides, likely a worse deal than what they have already turned down.

The new legislation includes a revision to "intractable bargaining," that requires that a determination handed down by the FWC cannot leave workers worse off on any single clause (except relating to wage increases) than the previous enterprise agreement. The exception to this is where management and the union have already agreed to such a term.

All experience shows that no faith can be placed in such provisions. Only the credulous would believe that the FWC, a pro-business tribunal, could not stretch the definition of what will leave workers worse off and what will not. To the extent that the change has any significance, it solidifies the legislation's overall thrust of relying ever-more directly on the union bureaucracy to enforce cuts.

The complexity of the new provisions, and the fact that, in almost every case, they will only be enforced after employees apply to the FWC, is designed to force workers into the grip of the unions. Otherwise, workers will not have the resources to carry out detailed and likely protracted legal battles in the pro-business industrial tribunal in order to defend basic rights.

Around one third of the 2.5 million Australian workers engaged as casuals are in fact working regular hours more typically associated with full- or part-time work, but have no paid, sick or holiday leave, and no guarantee that their employment will continue beyond their current shift.

Under the existing laws, employers were required to offer conversion to full- or part-time employment for casuals employed for at least 12 months who had "worked a regular pattern of hours" for at least 6 months.

The new legislation reduces the waiting time to 6 months for

employers other than small businesses, and does not stipulate a minimum length of time to establish "a regular pattern of hours."

But it will now be up to employees to request such a conversion, a potentially intimidating prospect for casual workers, whose employment is precarious by definition. It also requires these workers to know that they have a legal right to do so.

While employers are not allowed to cut workers' hours or sack them to avoid these provisions, it would again be up to the workers to prove that was the reason behind their dismissal. Employers will also be able to refuse a conversion request on the basis of "fair and reasonable operational grounds," which they will not be required to specify.

Employers are not required to increase the hours of a casual worker who converts to permanent, so these measures will do nothing to help the more than 977,000 workers deemed "underemployed" by the Australian Bureau of Statistics.

University of Adelaide law professor Andrew Stewart told the *Australian Financial Review*, "I don't expect that this will result in a substantial reduction in the proportion of Australian workers who are casuals."

Labor's new laws will allow the Fair Work Commission to set minimum standards for gig workers on a given "digital platform" (e.g., Uber, DoorDash, or other businesses in which work is assigned through an app), if those workers are determined to be "employee-like." An application would need to be made by a union to start this process.

Only the most basic conditions, essentially limited to wages and union rights, can be included in these standards. Roster and overtime provisions are specifically prohibited. Penalty rates, minimum shift lengths, and payment for time spent waiting between orders are also stipulated against, although the FWC has the discretion to include such terms where appropriate.

When making a minimum standards order, the FWC will be required to avoid "unreasonable adverse impacts" upon the "national economy," or the "innovation, productivity or viability" of business. In other words, the needs of gig workers for a liveable wage and basic workplace rights must not be allowed to impinge upon the profit interests of corporations.

The section of the new legislation that has attracted the most media attention in recent weeks deals with the so-called "right to disconnect." A last-minute addition, demanded by the Greens, the measures are ostensibly aimed at giving workers the right to ignore work-related communications outside of business hours.

But the way this is implemented would seem to render it virtually unenforceable.

Employers will not be prohibited from attempting to contact workers, instead, it will be up to individual employees to decide (and prove, if challenged) that it is "reasonable" to ignore the communication.

Among the factors that must be considered in determining what is reasonable is "the reason for the contact or attempted contact," which the employee may have no way of knowing if they are not reading messages or answering phone calls.

The limited character of the "right to disconnect" measures has not prevented an outpouring of vitriol from business lobbyists and the corporate press.

Nick Cater, writing in the *Australian*, said the am "a victory for the anti-work ethic which has been gathering since the Covid-19 panic." Workers should not be annoyed by late-night calls from the boss, he argued, but "recognise it as reassurance that their work is valued."

Cater did not just demand that workers must be on call 24-7. He continued: "We must revisit the meaning of retirement after a century of rising life expectancy. Workers in their late 50s or early 60s should be able to look forward to something other than a 25-year holiday." In other words, every last drop of profit-producing labour must be wrung out of workers, until the day they die.

While this is a particularly hysterical example, it makes clear what is behind big-business objections to Labor's industrial relations law. They believe the government is not doing enough to boost "productivity," that is, to drive up corporate profits through a deepening assault on jobs, wages and conditions.

Labor does not disagree with the premise. The conflict represents a difference of opinion between two sections of the ruling elite about how best to achieve it, while simultaneously preventing any challenge from the working class.

The latest industrial relations laws show that Labor is once again placing its trust in the union apparatus, aided by the FWC, to enforce its wage-slashing austerity agenda and head off mounting tensions in the working class.

The global class struggle is reemerging after decades of union-enforced quiescence. In Australia and everywhere, the fight against increasingly oppressive living and working conditions is forcing workers into conflict with a joint union-management-government offensive.

Taking this on will require new and genuine organisations of struggle. That means the construction of independent rank-and-file committees, controlled by workers themselves, as the basis for a unified political and industrial struggle and the development of a new, independent movement of the working class.