



# ACTU plan is step backwards

Collective bargaining rights assault the rights of employees and employers, writes **Heather Ridout**.

**T**he ACTU's argument for enshrining collective bargaining rights in law is yet another example of "roll-back" and resonant of the industrial democracy debate of the 1970s and '80s.

Far from improving democracy in workplaces, ACTU secretary Greg Combet's proposal (*AFR*, July 11) ignores the rights of individual employees and of employers.

Combet wants a bargaining system with these elements:

□ If the majority of the employees in a workplace voted in favour of a collective agreement, the employer would be forced, in "good faith", to negotiate a collective agreement covering all employees.

□ If negotiations broke down, the Australian Industrial Relations Commission would have "last resort" arbitration powers.

In workplaces in which 51 per cent of employees vote in favour of a collective agreement, 49 per cent vote to not support a collective agreement.

If an employee wants to enter into an individual agreement with his or

her employer, it is unfair to prevent this with laws that would amount to tyranny by the majority.

Combet acknowledged companies in a global marketplace need to be productive and competitive. What was not acknowledged is the obvious — a flexible agreement-making system is vital to enable companies to work with their employees to improve productivity and competitiveness.

Employers and employees should have the right to pursue the form of agreement that best suits their needs,

whether a collective agreement, an individual agreement, an agreement with a union or one directly with employees. There can be no "one size fits all" approach.

We've been down this road before. Compulsory bargaining models, such as that proposed by Combet, have been examined in detail by the Australian Industrial Relations Commission, and rejected.

In the 1994 *Asahi* case, a five-member full bench of the commission held that in the Australian context it is appropriate that bargaining be voluntary and that parties not be forced to bargain

"Compulsion" and "bargaining" are incompatible. The full bench said "an agreement cannot be reached with a person who does not want to agree and negotiations for an agreement cannot take place with a person who does not want to negotiate".

The commission found that there was nothing unfair in having voluntary bargaining. The award system provides a safety net of minimum conditions for those not under an agreement. Also, a right to strike exists for employees who want a collective agreement to apply lawful pressure.

The proposal to give the AIRC "last resort" arbitration powers is an attempt to reintroduce compulsory arbitration through the back door and is also incompatible with bargaining. The outcome of such an arbitration, by definition, can never be an "agreement", because the parties did not agree.

Australia's voluntary bargaining

system, which has been in place since the Keating government introduced it in 1993, still serves us well. This system, which still applies under Work Choices, allows

arbitration only if a bargaining dispute is threatening to damage the economy or community welfare.

Combet's proposal picks some elements of the UK and US bargaining systems but fails to adopt other integral parts of those systems. For example, unions in Australia have broad representational and entry rights regardless of whether the majority of employees in a workplace are union members. This is not the case in the US and the UK.

Australian Industry Group would agree with Combet that all working people should have a set of fundamental rights: a decent safety net of pay and employment conditions; a guarantee of fair treatment; and the right to freely associate with a union if they wish.

Employees should also have the right to seek a collective agreement but we draw the line at employers being compelled to bargain collectively. This has never been part of our system and has no place in the 21st century.

While couched in rhetoric about democracy, Combet's proposal would undermine the rights of both employees and employers and take Australia's workplace relations system backwards.

■ *Heather Ridout is chief executive, Australian Industry Group.*

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