

Give employers as much certainty as possible

Industry needs clear and rigorous bargaining laws to be able to preserve jobs, writes Heather Ridout.

A number of the fears that we had with Labor's pre-election Forward with Fairness policy were allayed during the consultations leading up to the introduction into parliament of the Fair Work Bill. We welcomed, for example, the retention of protected action ballots, and strong laws to deal with pattern bargaining and unlawful industrial action.

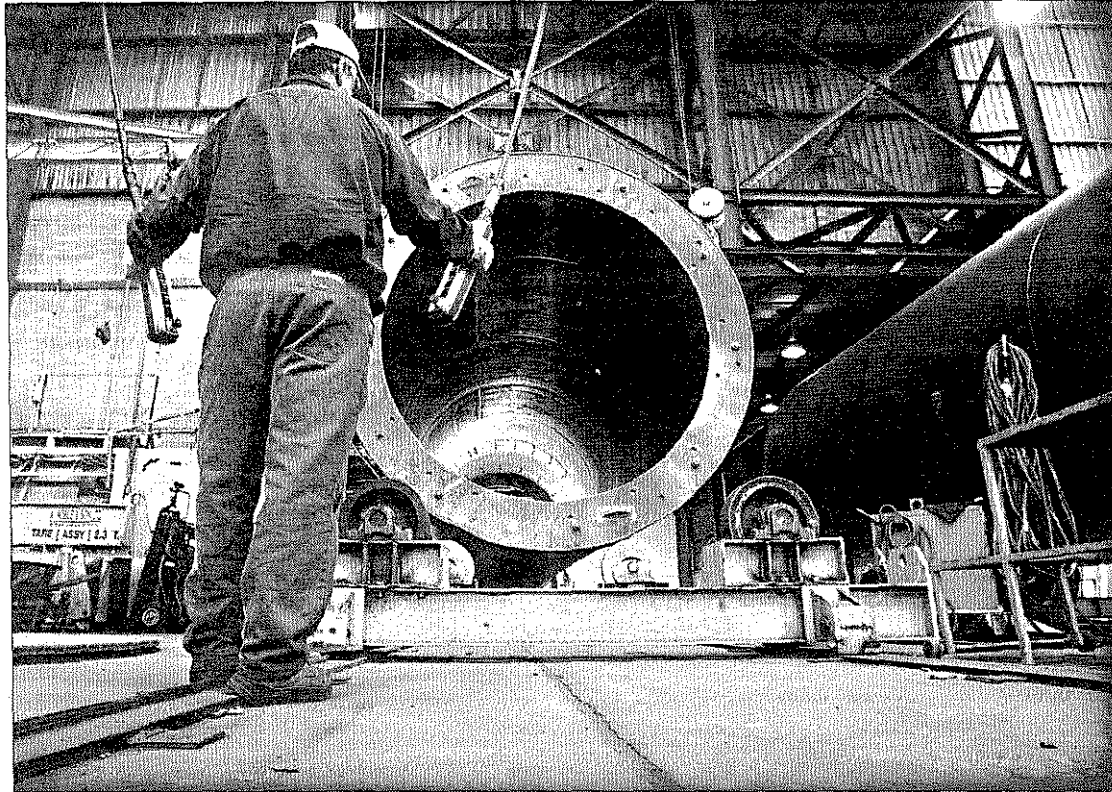
However, in analysing the Fair Work Bill the more appropriate starting point is to look at the current Workplace Relations Act and consider what changes are desirable in the interests of fairness, and in the interests of preserving jobs and business competitiveness.

The Australian Industry Group (Ai Group) very much supports the need for fairness. Laws need to be fair for both employees and employers, and laws need to be fair for those in jobs as well as those looking for work.

A key test for the draft bill is whether the proposed changes would be suitable for bad times as well as good times.

When the Forward with Fairness policy was released, and during most of the government's consultation process, the Australian economy was robust and the outlook was positive. As we are all aware, there has been a dramatic turnaround. Most other developed nations are in recession and it would be foolish to believe that the global financial crisis and economic slowdown will not have a major impact on Australian businesses, even though that impact has not yet been fully felt.

In this highly risky and uncertain economic environment, parliament needs to take great care when legislating to avoid imposing additional costs or inflexibilities upon employers that would be at the



Parliament should avoid imposing more costs or inflexibilities on employers that would result in job losses.

Photo: JESSICA SHAPIRO

expense of jobs. Jobs need to be the priority; along with preserving harmonious industrial relations.

This is a time for giving businesses as much certainty as possible. The Fair Work legislation is also being introduced during a year when more than 5000 enterprise agreements expire, including 1300 in the manufacturing industry. Industry needs clear and rigorous bargaining laws and the bill needs to be tightened in a number of important areas.

Ai Group has seven core areas of concern with the legislation. In all of these areas, the details we are most concerned about were not released before the federal election. For example, the right-of-entry provisions of the bill directly conflict with the Forward with

Fairness policy, and the massive changes proposed for the transfer of employment provisions were not mentioned in the policy.

The seven areas of concern are:
O The bill substantially increases union entry rights, giving each union access to a much wider range of workplaces and giving union officials access to wage records of non-union members.
O A union should not be entitled to be covered by an enterprise agreement if only a minority of the employees are union members.
O A union should be entitled to be covered only if the agreement specifies that the union is covered by it, and the agreement is made with the union.

• The greenfields agreement provisions of the bill are

unworkable and would be likely to result in substantial delays in the start of construction projects and increased construction costs.

O We have concerns about the drafting of some of the bill's provisions relating to enterprise agreement making and the potential for interpretation problems that could have major consequences for industry. This includes provisions relating to dispute settling, an employer's obligation to bargain, and Fair Work Australia's powers. Important changes are proposed to various provisions including those relating to dispute settling, an employer's obligation to bargain, Fair Work Australia's powers, and the criteria for majority support determinations and scope orders.

O The low-paid bargaining stream would undermine Australia's enterprise bargaining system and add a further layer of arbitrated employment conditions above the safety net and should be scrapped.
O The bill's approach of preventing enterprise agreements overriding state and territory long-service leave laws would disadvantage all parties and should be abandoned.
O The transfer of business provisions of the bill are highly problematic and would cause major problems for businesses in the information and communications technology sector, contract call centres, cleaning, catering and a wide range of other industries that carry out work outsourced from other sectors. The provisions are counterproductive and anti-employment. They indeed create a huge incentive for companies not to employ workers of businesses that they take over.

When compared with the existing laws, the bill does not fare well. It substantially reduces the rights of employers and substantially increases the role and power of unions.

Ai Group has identified more than 60 provisions of the bill where the role and power of unions have increased, and there are virtually none where employers have been given more rights. This is in the context of the main provisions regulating unions not even being included in the Fair Work Bill.

The changes we are seeking to the bill would result in a more balanced and workable piece of legislation.

Having dealt with major workplace relations reform on several occasions over the past decade or so we sincerely hope that this time we can get some settled law. Australian employers and employees have had to learn new systems and comply with them. This has been costly, distracting and disruptive and not consistent productive workplace relations.

• Heather Ridout is chief executive of the Australian Industry Group.