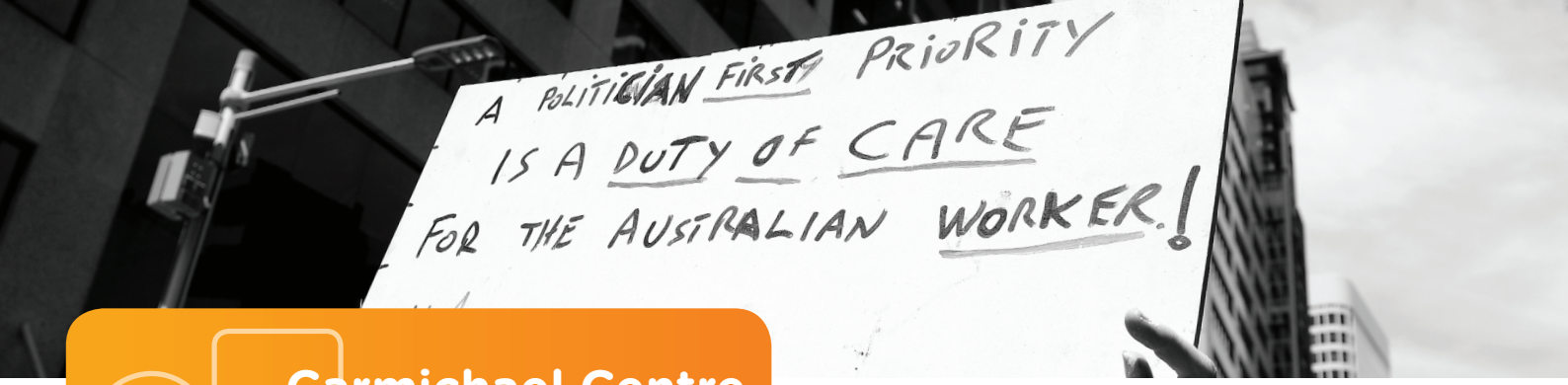

Carmichael Centre Explainers Kit

A WORKER FOCUSED AGENDA FOR INDUSTRIAL RELATIONS REFORM

In the run up to the 2019 federal election, the ACTU's Change the Rules campaign focused the public's attention on Australia's crises of insecure work, flatlining wages growth and systemic underpayment (wage theft).

The ACTU mounted a compelling case for reforms to our nation's labour laws, demonstrating how weaknesses in the Fair Work Act have been exploited by employers over the last decade to produce negative outcomes for workers.

As we approach the next federal election, these shortcomings in workplace legislation have become even more apparent. In part, this is down to a continuing stream of unhelpful interpretations of the law by the heavily business-friendly Fair Work Commission.

Only a fundamental re-write of the Fair Work Act will ensure that workers and unions have the ability to build — and exercise — collective power in the workplace. Here are six of the major problems with the current legal framework, and the solutions needed to fix them.

Problem	Solution
Enterprise bargaining | The Fair Work Act limits the making of collective agreements to an enterprise, or part of an enterprise. This system was designed for the 1980s economy, still mostly built around large corporate or public sector employers with 1000s of employees at fixed workplaces. The economy has been transformed since then through business strategies like outsourcing, labour hire, franchising and supply chains. But unions can still only bargain with the direct employer of a group of workers. They can't negotiate (for example) with the host business engaging labour hire staff – only with the labour hire agency.	**Multi-employer bargaining** | Workers and unions must be able to bargain with indirect employers. The legislation should provide a range of options including collective bargaining across industries (e.g., the entire fast-food sector); product/transport/distribution supply chains (e.g., major retailers and the warehousing/transport firms they contract with); and lead firms and other providers of services (e.g., cleaning and security contractors to commercial buildings like shopping centres). International evidence shows that collective bargaining coverage and unionisation rates are much higher in multi-employer bargaining systems, than those where bargaining is focused at the level of the firm.
Protected industrial action | Just as bargaining is limited to the enterprise, so is the right to take protected industrial action. In addition, the Fair Work Act suffocates the right to strike by imposing a swath of procedural hurdles to getting an employee ballot approved; allowing employers to object to protected action at several stages of the process; then allowing businesses to get industrial action terminated on spurious 'public interest' grounds. Australian workers also have no right to take protest action or to strike during a current agreement. These limits place our law in breach of standards established by the International Labour Organization.	**A genuine right to strike** | The right to take industrial action is critical to collective bargaining – workers cannot negotiate an agreement on a level playing field with management unless they can freely withdraw their labour. The Fair Work Act constraints on the right to strike must be removed, including employee ballots and the requirement that employees/unions must have genuinely tried to reach agreement before imposing work bans or stopping work. Termination of protected action should only be possible in relation to a restricted category of essential services, where public welfare is genuinely under threat (not mere inconvenience or economic damage).

Problem	Solution
Agreement-making process that bypasses unions and workers | Enterprise agreements under the Fair Work Act are made between employers and their employees. In many workplaces, an employer only has to provide information to staff about a proposed agreement – then ask them to vote within the statutory timeframe. These agreements are made without any negotiation occurring. If some employees try to bring a union into the picture, the weak good faith bargaining requirements enable the employer to engage in limited discussions – then insist that employees vote on the agreement anyway.	**Genuine collective bargaining** | A real collective agreement is the product of a negotiation process engaged in collectively – between the employer and a union representing employees. Stronger good faith bargaining rules are required to ensure that employers take the process seriously, and do not sideline the union by putting the agreement to ballot prematurely. Employers must also be required to put an offer in bargaining (rather than stalling through endless talks). Arbitration must be available when employers frustrate negotiations. Any agreements made without union involvement need to be subject to more rigorous approval requirements to protect workers' interests.
Insecure work | The prevalence of insecure work – including casual employment, fixed-term contracts, labour hire and independent contracting – has left millions of Australian workers stuck in low-wage work without job security. The overall share of non-standard employment is now as high as it has been in the last 20 years at 55.6% of the workforce.	**Measures to promote permanent employment** | The Fair Work Act should redefine a 'casual' employee to preclude employers from keeping workers in irregular, insecure work for years on end. The legislation should also include stronger rights for casuals to convert to permanent employment. Labour hire workers must receive the same wages and employment conditions as direct employees of a host business (the 'same job, same pay' principle).
The gig economy | The engagement of workers to provide services via apps is simply the latest form of insecure work, dressed up as technological innovation. Gig economy platforms have inverted the long-standing assumption that workers providing their labour are employees, covered by employment law protections. The sham contracting business model of the platforms has led to widespread exploitation of rideshare drivers, food delivery riders/drivers, and (increasingly) care workers.	**Make gig work fair, or shut it down** | Globally, the platforms threaten to flee whenever a jurisdiction even contemplates regulation to challenge their contracting model. Australian law-makers must call their bluff. The Fair Work act definition of 'employee' must be extended to workers providing labour through a platform (unless they are genuinely running a business of their own). This would bring gig workers within the coverage of awards, collective bargaining and unfair dismissal protections.
Non-union free-riding | Australian unions are compelled to give away one of their major products for free. Non-union employees are covered by, and get the benefits of, an enterprise agreement negotiated by a union – without paying membership fees. The Fair Work Act prohibits unions from making any claims or demands for bargaining services fees, or having such clauses included in enterprise agreements. The current restrictions were introduced by the Howard Coalition government and are an important area of reform for any future Labor government.	**'Fair share' or 'bargaining services' fees** | Non-unionists should make a fair contribution to the work undertaken by unions in winning them better wages and conditions. There must be no legal restrictions on unions offering non-union members a choice: join the union, or contribute by paying fair share or bargaining service fees. This will help build collectivism in Australian workplaces.

The federal Coalition government and business groups have constantly evaded responsibility for the wage stagnation of the last decade, and continue to deny that problems like insecure work even exist.

Informing workers of the connection between these issues and the deficiencies in Australia's labour laws is critical to shifting public opinion.

The regulatory solutions outlined in this explainer can provide a basis for discussions led by delegates at the workplace level, to mount the case for much-needed IR reform.

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