REPAIRING SOME BIG GAPS IN AUSTRALIAN WORK RIGHTS*

Howard Guille

Three big deficiencies in work rights are the excessive use of casual and other temporary workers, the restructuring, redundancy and out-sourcing that afflicts almost all workers and the limited protection given to union representatives and collective rights. Around forty per cent of Australian workers are effectively outside much of the safety net of Fair Work, very few workers can be confident about their security and workplace union representatives are at great risk. Fixing these will give workers a fair base on which to make meaningful choices about balancing life and work.

Change and redundancy often seem grossly unfair and beyond the influence of those directly affected. Here is an example, from May 2014

> *It was a bloody shock," said Mr B..., who worked at the firm for 17 years. "They called us to a meeting two weeks before and said [they] were looking at outsourcing staff, and putting casuals in our place." When the casuals were hired, Mr B... said, the company "had the audacity to ask us to train them".*[1]

Even where the law 'works' it hardly compensates people for their economic losses let alone their emotional ones. At best, there's rough justice for workers. This is despite the claims of employer organisations, right-wing think tanks and some academics that *Fair Work* swung things too far towards workers.

Three improvements are needed. One is for a comprehensive *Employment Rights Act* aimed at improving the lot of temporary workers and giving strong protections to job delegates. Second, is to make restructuring and redundancies matters for negotiation between employers, workers and unions and not an employer prerogative subject only to 'consultation'. Third, is the use of employment impact statements that treat major change as an economic and social issue for the entire community.

A comprehensive *Employment Rights Act* would correct the gulf between temporary and on-going employment. Australia has one of the highest levels of casualisation and temporary work of any OECD country. According to the Australian Bureau of Statistics almost 65 per cent of workers in tourism and 40 per cent in retail are casuals. Casuals are hired by the hour, have no guarantees about the amount of work (what the British call 'zero-hours contracts') and can be dismissed without notice. They do not receive annual, personal, compassionate or community service leave provided under the National Employment Standards.

The employment of casuals should be limited to exceptional circumstances where there is a 'one-off' need for short-term workers. There must be a guaranteed minimum number of hours in any pay period and an entitlement to all forms of paid leave.

A comprehensive *Employment Rights Act* must fully protect job delegates. Almost all unions have experience of delegates whose lives have been made difficult whether through being allocated the worst duties and working hours, refused time-off, had overtime and casual hours reduced, or who just happen to be in a work area where redundancies occur. The existing protections are slight enough and have been substantially weakened by the High

---

[1] Clay Lucas, 'Older workers dismissed as a casual expedient', *The Age*, May 19 2014, http://www.theage.com.au/victoria/older-workers-dismissed-as-a-casual-expedient-20140518-38hyn.html#ixzz328AfUJgo

Court in the Bendigo TAFE case. In this, the Court held that disciplinary action was justified against an employee who as a union delegate issued a notice to union members that the employer believed was against the interest of the college.

This must be changed so that the standard position becomes that employers have no power to discipline, dismiss or disadvantage employees for actions they take as a union representative. If an employer does not like what a union representative says or does, the employer should take it up with the union. This is exactly what unions have to do where they disagree with what a management representative does. In addition to this, dismissal of union representatives should only be possible where the employer gets a prior order from the Fair Work Commission. These are crucial changes to give practical effect to the principle that unions are integral to the industrial system and the workplace.

Insecurity at work has become the 'new normal'. Out-sourcing, restructuring and redundancies are the constant currency of almost all industries and occupations. Much of the job insecurity lies in the way enterprise bargaining is weighted to employers. Workers and unions have to make all their claims during a bargaining period and then accept the agreement for its term. Employers, however, are free to restructure, contract-out, out-source, declare redundancies and reduce the hours of casuals at any time during the life of an enterprise agreement. This allows employers to alter the impact of an agreement at any time without making a 'claim' in bargaining.

The best way forward is to require that restructuring occurs only after an implementation agreement has been negotiated. This would cover the scale and scope of job losses, the timetable and the criteria to apply in the event of any redundancies. The parties in negotiations over restructuring should be able to apply for bargaining orders and take protected action on exactly the same basis as for the making of a new agreement. The Fair Work Commission should be able to arbitrate on all aspects of restructuring including the number of job losses

Employers are putting the costs of restructuring and redundancy on to workers and avoiding responsibility for the wider economic and community impacts and structural adjustment. This can be overcome by requiring *employment impact statements* for major new projects and where a significant full or partial closure is mooted. These are analogous to environmental impact statements and will allow public debate about the impacts. For new projects this would emphasise sources of workers and how to maximise local skills development. For closures, the emphasis would be on how to provide training and education and new job opportunities for current workers and new entrants to the workforce. A critical part would be to coordinate transitional assistance including alternative uses of the plant and facilities for productive or community use.

* These ideas are expanded in a Research Report on employment rights prepared for the **TJ Ryan Foundation** see link below: