



- ▶ **Employer groups reject BCA-ACTU enterprise bargaining plan**
- ▶ **Porter's industrial relations talks make little progress**

Business splits over union deal

Exclusive

Jennifer Hewett

Employer groups are at war with one another over possible changes to the enterprise bargaining system, further damaging the prospects for the Morrison government of making any substantive industrial relations reform that would promote a jobs recovery.

Angry recriminations among leading employers erupted during this week's virtual meeting of the enterprise bargaining group, one of the key groups of employers and unions set up by Industrial Relations Minister Christian Porter to try to find areas of agreement.

To the astonishment of union representatives, four of the five employer representatives expressed furious disagreement with proposals backed by Jennifer Westacott from the Business Council of Australia, representing big business, and the ACTU.

They are now refusing any further engagement with the BCA, accusing it of not engaging in good faith bargaining by freewheeling with the ACTU.

The chief executives of the Australian

Industry Group, Innes Willox; the Master Builders of Australia, Denita Wawn; the Australian Chamber of Commerce and Industry, James Pearson; and the Australian Mines and Metals Association, Steve Knott, will now write to the minister, informing him they will put forward their own proposals and want nothing to do with the "fundamentally flawed" approach of the BCA and ACTU.

Ms Westacott and ACTU secretary Sally McManus had agreed preferential arrangements for union-backed enterprise agreements that would ensure they were fast-tracked through the Fair Work Commission.

The trade-off was a softening of the wording around the "better off overall test", known as the BOOT, that the FWC interprets to mean no single worker can be worse off in negotiations over new enterprise agreements.

But the other employer representatives insisted any such commitment on the BOOT would have very limited practical effect, while a preferential deal for union agreements would unfairly disadvantage non-union agreements and is wrong in principle and counter to existing law.

"It puts pressure on employers to encourage employees to become union members in order to access a fast-track enterprise agreement," said one employer representative. "With unions only 10 per cent of the private sector workforce, it's nuts."

Ms Wawn was so infuriated by the proposed deal she temporarily left the



From left: Innes Willox, Jennifer Westacott, Christian Porter and Sally McManus.

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joint meeting "in disgust". Two CEOs did not attend themselves but later endorsed their representatives' response.

The ferocious reaction in the joint meeting with unions led to a subsequent meeting of employers where antagonism towards the BCA-ACTU position was expressed even more strongly.

Instead, the other employer groups want a 14-day time frame and obligation enforced on the FWC to approve all agreements that have satisfied the required tests and have the support of a clear majority of the workforce whether or not there is union involvement.

There has been a massive decline in the enterprise bargaining system, championed by Paul Keating decades ago, due to the increasing delays and difficulties in getting agreements approved in the commission.

A startled Mr Porter was present for both the acrimonious meetings.

The minister is attempting to finalise the results of weeks of talks by the five working groups, ahead of a cabinet meeting next week, in the hope of making an announcement of the government's plans for industrial relations reform next month.

Following Prime Minister Scott Morrison's May announcement of the urgent need for this, different working groups were established to separately consider five areas – enterprise bargaining, award simplification, casual employment, greenfields projects and compliance.

The focus of all groups is the need to protect and create jobs in the wake of COVID-19 and a weakened economy and they have been under strict instructions to negotiate in private rather than revert to the usual public brawls.

Mr Porter, a relative newcomer to a portfolio known for arcane intransigence, is well-respected by all sides and has established a strong relationship with Ms McManus.

But despite the stated ambitions and scheduled meetings winding up this week, the ability to find significant areas of agreement between unions and employers in the five groups has

usually proven elusive. Employers believe unions are using the groups as stalking horses to promote old claims such as industry-wide bargaining and increased arbitration powers for the commission. They suggest the government will not be able to deliver on raised expectations.

That will put the onus on the Morrison government about how hard to push a disputed reform package via legislation in Parliament this year. It is also unlikely to get to the Senate until next year due to the need for negotiations with crossbenchers.

This will only become more contentious when there are also disagreements between employers themselves, as well between unions jostling for membership and coverage in Australia's sclerotic industrial relations and awards system.

Although the blow-up in the enterprise bargaining meetings has been the most spectacular display of tension, frustrations in the other groups are also obvious.

There has been little progress in the working group looking at award simplification overall. But Mr Morrison is insisting on a special deal for small

businesses to help them deal with numerous complicated awards.

This is supposed to make it easier for small business owners to employ people and arrange flexible rosters, overtime and duties. The likely time frame for this relaxation of award standards is two years but this relief is not expected to apply to bigger businesses, while unions are rejecting the idea of flexibility considered to

undermine conditions.

There has also been no agreement yet on the vexed definition of casual work, although most participants expect this to happen. That is despite the problems in working through the eligibility for those on different shifts and work patterns.

Mr Porter has already said it is

to request permanent employment after a year. But he is strongly opposed to the ability of casual workers on higher hourly rates to "double dip", by also claiming entitlements like holiday and sick pay provided to permanent employees.

A recent court judgment allows many employees on casual shifts to claim such payments retrospectively and the government has joined the appeal and is likely to wait on that.

In the area of compliance, the government is getting more pushback from employer groups than unions, given its prior commitment to make underpayment of wages a criminal offence. But unions have been pushing for tougher jail terms for employers and also want access to the time and wages records of non-union members, which employers oppose.

The government is also expected to proceed with extending enterprise agreements for the duration of a major greenfields project, particularly as this commitment was part of Labor's campaign platform under Bill Shorten last year.

At present, construction timetables on some of the biggest projects can extend past the usual four-year agreement, making some companies vulnerable to industrial action and therefore unable to lock in their costs and project financing.

Major unions, the AWU and CFMEU, are bitter rivals but are also opposed to altering the four-year time limit and can be expected to lobby the crossbenchers and Labor to block this in the Senate. This group is due to have the last meeting of all the streams tomorrow.



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