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Porter getting a lesson in cat herding

Christian Porter says it's no surprise there would be different points of view within the various working groups on industrial relations reform.

"If there wasn't there'd be no need for this in the first place," the Attorney-General insists. But there's no doubt the government wasn't expecting those differences to be so intense among employer groups. Disputes are usually most obvious in bitter union rivalries over membership and coverage or between unions and business.

The fissures within the business community have erupted due to the antagonism of other employer groups to a joint proposal from the Business Council of Australia and the ACTU over how to fix enterprise bargaining.

That compounds the problems facing Porter when he reports on progress to federal cabinet next week. How far does the government want to push an agenda that is not only disputed by unions but also marked by bitter disagreement among employers?

The enterprise bargaining group is just one of the five reform areas announced by Scott Morrison last May. But it promised one of the more significant potential agreements between employers and unions. That's even more important given limited progress in the groups considering award simplification, compliance, casual work and greenfields projects.

The last of 10 weeks of confidential meetings is due today, with little information about developments until *The Australian Financial Review* ran an exclusive report this week.

Despite the willingness of the ACTU to work with a co-operative minister and a government that had previously shut it out, hopes of using this opportunity to deliver substantial improvement are diminishing.

The Australian industrial relations system has never been for the faint-hearted – or for an efficient economy in urgent need of a COVID-19 reboot.

The dispute locking up Australia's ports provides grim evidence of that.

Nor does any other country have a similar complicated award structure underpinning wages and conditions for much of the workforce. Even New Zealand abandoned it years ago.

But rather than the award system fading away in favour of enterprise bargaining under the original Keating model, Australia in 2020 is back to the future.

Instead of offering flexibility to employers and improved conditions for the workforce, the increasing rigidities and protracted time frames for enterprise agreements turned that pathway into a dead end for most.

Add in a very strict interpretation of the Better Off Overall Test (BOOT) in the Fair Work Commission to ensure no single employee can be considered worse off.

This is not only a problem for employers. The "shoppies" union – the Shop Distributive and Allied Employees Association – was blindsided by a small rival union, for example, that successfully challenged a looser interpretation of the BOOT on behalf of a retail worker in 2016. This blew up the SDA agreement with Coles and stymied the whole model.

This reality is behind the joint proposal of BCA chief executive Jennifer Westacott and ACTU secretary Sally McManus to consider changes to the operation of the BOOT in exchange for fast-tracking union enterprise agreements.

But other employer representatives were infuriated by the idea union agreements would be given preference in approval from the Fair Work Commission. In a meeting on Tuesday, they expressed vehement opposition.

The chief executives of the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Australian Mines and Metals Association and Master Builders of Australia are writing to Porter dissociating themselves from the BCA/ACTU position.

A spokesman for the BCA says it entered into discussions in good faith and would maintain the commitment to confidentiality. Westacott has always stressed the unity of interest between big and small businesses and employees.

But in a passionate opinion piece for the *Financial Review*, the MBA's Denita Wawn lambasts the proposal and says her organisation will never give up the principle of freedom of association.

"It shows that unions actually agree that there are big problems with the system, but they can only be fixed if unions get more privileges and rights under the law," she writes. "The result would be that the overwhelming majority of workplaces, with no union presence, would be treated differently when seeking approval of a proposed agreement while the minority with a union presence would be given preferential treatment, involving different tests and a streamlined approval process."

The divisions among employers also reflect the different conditions facing different industries and businesses.

The Master Builders, for example, have to deal with the militant construction union, the CFMEU, and the spectre of pattern bargaining and the aggressive tactics used to target employers.

At least everyone can agree that the overall system of enterprise bargaining is no longer working.

About 10,000 enterprise agreements are still current nationally. Of these, about two-thirds involve a union. But in many cases, this may be only a handful of workers or union members in a much larger workforce asking for a

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union representative to act as their bargaining agent.

The other employer groups insist there should be a 14-day deadline for the Fair Work Commission to approve all agreements that have satisfied the requirements and have the support of a clear majority of the workforce whether or not unions are involved.

Whether this leaves any room for further negotiation with the ACTU is not clear. But the working groups all believe Porter, a newcomer to the arcane world of industrial relations, now has a clear appreciation of the issues he has to "work through".

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