



# Porter tries to get business back on track

## Exclusive

Jennifer Hewett

Attorney-General Christian Porter is urgently trying to reach compromise deals to salvage prospects for industrial relations reform, but his target of a major package to link with the budget next month looks increasingly unlikely.

Last Friday's official end of the business-union working groups coincided with a massive brawl between employers over how to revive enterprise bargaining along with only limited progress in other areas of potential change.

That has derailed the government's timetable for the cabinet to consider key decisions on the reforms tomorrow, leaving Mr Porter scrambling to finalise points of agreement in a series of ad hoc

meetings and confidential conversations over the next few weeks.

The most contentious dispute is over the future of enterprise bargaining after the Business Council of Australia and the ACTU presented a joint proposal last week which infuriated four

major employer groups. These employers adamantly reject the "fundamentally flawed" suggestion of the BCA and ACTU that only union agreements should be fast-tracked through the Fair Work Commission and regard this as a non-negotiable "deal-breaker".

They have written to the Attorney-General detailing their ferocious objections to giving priority and preference to union agreements over non-union agreements, arguing this would reward higher levels of union militancy, disputation and anti-competitive conduct, and is counter to freedom of



Christian Porter

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association principles. This will put the onus on ACTU secretary Sally McManus to decide whether her ambition to give priority to union agreements should also be a deal-breaker for a union movement that has finally developed a somewhat better relationship with the Morrison government.

Employer groups and major unions all agree the virtual collapse of enterprise bargaining in recent years is in no one's interests and makes Australia's industrial relations system even more dependent on an excessively complex award structure. They also agree change will require greater flexibility in the "better off overall test" (BOOT) rather than sticking with a highly technical interpretation that means every single worker must be better off, even in theory.

This leads to major difficulties and delays, sometimes for months, leading to a huge drop in agreements.

But the BCA's willingness to entertain splitting union and non-union agreements into two streams to facilitate a deal was overwhelmed by the vehement opposition of the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Australian Mines and Metals Association and the Master Builders of Australia.

This led to an explosive fight between employer groups and the BCA during an online meeting last Tuesday, shocking union representatives and the minister.

According to the opponents' September 17 letter to Mr Porter, union and non-union agreements must be accorded the same priority with all getting a new two-week deadline for approval by the Fair Work Commission – assuming agreements satisfy required

standards and are supported by a clear majority of the workforce.

"We believe that the (BCA/ACTU) proposal will do nothing for well over a million Australians seeking work as we enter possibly the worst recession in our nation's history, nor equip Australia for a successful post-COVID recovery," the letter said.

The ACTU believes the application of minimum national standards does not offer sufficient protection in non-union agreements and these should include some of the additional safeguards guaranteed by the BOOT.

This demand is also likely to be rejected by the four employer groups, who insist all agreements should be subject to the same approval processes whether or not unions are involved.

But one employer carrot on offer to the ACTU is that non-registered employee bargaining representatives would need to be nominated by at least 5 per cent of the workforce. This would stop big unions like the "shoppies" being upstaged by a small renegade group blocking an agreement as occurred with Coles in 2016. This has compounded the decline in enterprise agreements.

Porter is under great pressure to show progress in reforming an

industrial relations system now even more rigid than it was decades ago when Paul Keating introduced enterprise bargaining to benefit the economy, and employers and employees alike.

The need to now reconcile the bitter dispute among employers in such an important area while smoothing over the typical stand-offs between employer groups and unions makes his task even more difficult.

The chief executives of the four employer groups initially said they would no longer have anything to do with the BCA, although its CEO Jennifer Westacott is still expected to attend further joint meetings with the unions and Mr Porter. But some of her

own members also strongly disagree with her backing the ACTU.

Steve Knott, chief executive of AMMA, said the proposal did not enjoy the support of the broader employer community and contrasted the extensive industrial relations expertise of the four opposing groups with that of the BCA.

"The Group of 4 have staff who are employment lawyers, industrial relations experts and routinely appear before the bodies like the Fair Work Commission and other employee relations bodies," he said.

As the impact of COVID-19 became clear last May, Prime Minister Scott Morrison announced five different working groups to look at reform of enterprise bargaining, award simplification, casual employment, compliance and greenfields projects.

Changes to award simplification are likely to be limited to creating new "schedules" for small businesses for two years to allow employers greater flexibility on rosters and duties. But there is still disagreement on the level of union access to employee records while bigger businesses will receive little relief.

The working group on casual employment has agreed casuals have the right to be made permanent after nine months. But employers want casuals who do not take this option to then wait another nine months unless the employer agrees to the switch earlier.

The unions will receive greater satisfaction from the compliance stream given the government had already committed to tougher penalties for "wage theft" even if the underpayment was not intentional.



## Hard bargain

### ■ Enterprise bargaining

Employer groups at war over BCA-ACTU plan for preferential treatment for union agreements. More informal meetings with Industrial Relations Minister Christian Porter to try to negotiate compromise.

■ **Casuals** Agreement for casuals to have right to convert to permanent employees after nine months. Disagreement over access to employee records and need to wait another nine months to have same right enforced if not taken up initially.

■ **Award simplification** Small business will be given greater flexibility in rostering and overtime and penalty payments for two years. Bigger employers will get no real relief.

■ **Compliance** Government has already committed to tougher penalties for "wages theft" no matter the arguments of employers that it is usually unintentional or due to award complexity.

■ **Greenfields** No agreement on matching duration of an enterprise agreement and time frame for construction of a major project. Details will be left to negotiations with the crossbench in the Senate next year.