

IR HISTORY AND CONTEXT FOR REFORMS

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Pre-1990	1992	1994	1996	2006	2008	2009-10	2013-present
Centralised Arbitration / Wage Fixation	Keating Bargaining and Agreements Limited enterprise bargaining within conciliation and arbitration/award system Agreements with unions only and subject to NDT Arbitration remains dominant	Keating / Brereton <i>Fundamental shift away from traditional system, in favour of EB with NDT retained</i> Bargaining and Agreements Agreements for 'single business (or part)' Bargaining periods (including ability to terminate on public interest grounds) Certified agreements with unions Collective agreements with employees (EFA's) GFB powers of AIRC Industrial Action PI Action introduced (employee/ union action and lock-outs on equal footing) Section 166A procedure to restrict employer access to court action for unlawful conduct Employment Standards Legislated minimum standards for first time (unfair dismissal, parental leave, etc) Freedom of Association Freedom of association rights retained	Howard / Reith <i>Primacy of bargaining elevated with reduction of awards to safety net</i> Bargaining and Agreements Promotion of individualised bargaining (AWAs) Section 170LJ union agreements Section 170LK non-union agreements Section 170LL greenfields agreements Agreement termination option after NED if not contrary to the public interest GFB removed Industrial Action PI Action retained, but: <ul style="list-style-type: none">Section 127 orders in AIRC to prevent/stop industrial actionStatutory cause of action through section 170MN for any industrial action prior to nominal expiry date (NED) Award Reform Award simplification Limited arbitration (only 20 allowable award matters and last resort) Right of Entry Statutory framework including restrictions on union right of entry (e.g. permits) Employment Standards Office of the Employment Advocate Freedom of Association Freedom <i>from</i> association	Howard / Work Choices <i>National System (elevation of corporations power)</i> Bargaining and Agreements No role for AIRC in approval of EAs Prohibited content rules for agreements to streamline bargaining and restrict access to PIA Unilateral termination of EAs NDT removed for collective agreements and AWAs (subject to limited protected award matters and, later, fairness test) Employer greenfields agreements (12 month term) Industrial action PABO process for 'authorisation' of PIA Section 166A certificate requirement abolished Dispute Resolution Reduced role for AIRC – 'voluntary' dispute resolution Award reform Award rationalisation (not completed/effective) Wage-fixing given to Australian Fair Pay Commission Right of entry Further constraints on right of entry (e.g. not permitted in agreements) Employment Standards Legislative safety net (AFPCS) Office of Workplace Services and Workplace Ombudsman Freedom of Association Clawback on 'freedom of association' prohibition around entitlement to benefit of industrial instruments (sole reason) Transmission of Business Transmission rules modified favourably to business (i.e. 12 month cap in transmission period)	Rudd/Gillard Bargaining and Agreements Abolition of AWAs ITEAs (to end-2009) Award reform Award modernisation (reduction to 122 awards)	Fair Work Act <i>National System and State referral of powers;</i> <i>Fair Work Australia/FWC</i> Bargaining and Agreements One bargaining stream for existing businesses (no concept of union/non-union EAs – all made with employees and unions can be 'covered' if BR) Greenfields agreements with unions retained but 'employer only' option abolished BOOT test introduced GFB / MSDs/ scope / low-paid bargaining (high regulation) Collective bargaining cf. agreement-making (so not all agreements necessarily involve bargaining) Concept of bargaining representatives Industrial action PI Action, PABOs and ballots retained Dispute resolution Section 240 bargaining dispute resolution Award reform Award modernisation (and abolition of enterprise awards) Right of entry Expanded rights of entry (e.g. entry to hold discussions not dependent on award or EA coverage and, from 2014, additional obligations on employers such as access to remote work sites) Employment Standards Expanded legislative safety net (NES) Anti-bullying jurisdiction (from 2014) Fair Work Ombudsman Freedom of Association Expanded protections for employees from adverse action by reference to complaints/ inquiries in employment Transmission of Business Expansion of 'transfer of business' rules to capture outsourcing and internal 'group' transfers	Abbott-Turnbull-Morrison <i>Fair Work Amendment (Repeal of 4 yearly Reviews and Other Measures) Act 2018</i> <i>Productivity Commission Report of 2015 not implemented</i> <i>Focus instead on reducing union power, e.g. TURC and Construction Legislation</i> Bargaining and Agreements New greenfields bargaining process Industrial action Removal of ability to force employer to bargain through PABO, introduction of concept of 'notification time' Possible ALP Reforms Bargaining and Agreements Greater access to multi-employer bargaining for low-paid workers Broader GFB requirements around disclosure of information and 'genuineness' of intent to reach agreement No 'unilateral' termination of EA during bargaining (or perhaps at all) End 'small cohort' agreements by ensuring EA must be made with representative group More avenues for arbitration of intractable bargaining disputes Insecure Work Address insecure work through objective definition of 'casual' (no permanent casual) National labour hire licensing scheme and 'same job, same pay' principle Limit misuse of fixed term contracts (no ongoing roll-over) Union Rights Relaxed right to entry regime to facilitate representation and enforcement Increased rights/protections in workplace for delegates to support broader representative focus Abolition of the ABCC and the ROC Industrial action Watered down lock out option (proportionality principle) Dispute resolution Increased capacity for FWC to arbitrate employment related disputes (NES/award/EA) Improved safety net Minimum wage = 'real' living wage Restoration of penalty rates Restoration of the RSRT Facilitate improved test case standards Transfer of business More expansive 'transfer of business rules' to neuter secondary outsourcing and 'sham' agreement making

ACTU POSITIONS IN CONTEXT

National Level

Enterprise Level

Industry Level regulation through awards (1990)

Site Level and/or across supply chains, franchises, industries (ACTU 2017-18)

Enterprise focus for bargaining: single business (or part) (1993-present)

Union-driven bargaining

Exclusion of Unions

Enhancement of existing FW Act framework and measures to address subversion of union-based bargaining (small cohort strategy, labour hire, agreement termination) (ACTU 2017-18)

Strong statutory facilitation of CB through MSDs, GFB, scope, etc (FW Act 2009)

Highly deregulated and undermining of collective bargaining through AWAs, reduced union rights of intervention in agreement approval, removal of NDT (Work Choices 2006)

Freedom to take IA

Highly constrained IA

Reduced notice and other pre-conditions for protected action; limits on grounds for terminating protected action (ACTU 2017-18)

Protected industrial action in support of bargaining claims, relatively unconstrained (1993)

Restrictions on protected action (ballots etc); greater access to remedies against industrial action and employer lockouts (1996 and Work Choices)