

HOWARD REMOVES THE RIGHT TO STRIKE

by Chris White

'The right of workers to leave their jobs is a test of freedom. Hitler suppressed strikes. Stalin suppressed strikes. But each also suppressed freedom. There are some things worse than strikes, much worse than strikes - one of them is the loss of freedom.' USA Republican President Eisenhower.

'Eisenhower was correct in pointing out that the **hallmark of the Police State is the loss of the right to strike**. A worker's right to strike is surely a basic human right. The right to withdraw labour is the one thing that distinguishes a free worker from the slave. This is a fundamental freedom.' This argument from Clyde Cameron, Labor Minister in the Whitlam government, applies to the Howard government.

The unfairness of *Work Choices* is well known. Along with taking away many workers' rights, Howard has also unfairly removed our limited legal right to strike. Howard's spin '*We won't remove the right to strike*' tries to hide the repressive changes. *Work Choices* makes legitimate union industrial action 'unlawful'. Striking workers protesting for their legitimate workplace and economic interests risk new penal powers. The strategy to **legally suppress strikes** is back. It is first used against building and construction workers.

These 9 further limits on the right to strike are not warranted and most unfair. The devil is in the detail.

1. Minister Andrews has unprecedented power to intervene to halt any strike. This was formerly only by the Australian Industrial Relations Commission or Courts; not the Minister! Andrews power stopping strikes in 'essential services' is not limited to the police, but covers any corporation, citing car, mining and power companies. University workers, nurses and teachers are unjustly targeted.
2. Compulsory, complex, secret ballots have now to be conducted before taking lawful protected action. Ballots were formerly voluntary. Unions had to follow processes, such as three days notice. *Work Choices* compulsory ballot requirements are prescriptive with many ways employers can challenge the process with legal technicalities. In practice, this severely restricts protected action in enterprise bargaining. Little choice to legally strike remains. Workers already democratically vote at meetings (and at times with ballots) so there is no lack of democracy as Andrews alleges. The double standard is clear, as employers do not have to compulsorily ballot shareholders before locking out their workforce, but retain their power with three days' notice to lockout to force AWAs. Such imbalance of bargaining power for corporations is one of the worst in the world.
3. New provisions outlaw basic union rights for industrial action for industry or pattern bargaining. No choice here, as there is no right to strike outside of the single enterprise. Nowhere else in the Western world is pattern or industry or national bargaining unlawful. This is against International Labour Organisation's (ILO) protection for the right to strike for pattern or industry bargaining.
4. One amendment, with wide ramifications, allows third persons affected directly or indirectly by industrial action (other than the employer and union in dispute) to halt protected legal strikes. By definition industrial action affects third parties in some way. So other businesses affected or other persons, such as students or patients can stop legitimate union protected bargaining. No choice here.
5. Unions pursue claims to encourage unionism and many employers agree. Unbelievably in a system based on 'voluntary agreement', employers and workers are now banned from reaching agreement on such claims, called 'prohibitive content' in the new regulations. It is unlawful to bargain with industrial action for legitimate union claims such as training, no AWAs, fair dismissal treatment and union involvement in disputes. No choice for the parties to agree. And large fines are threatened.
6. The Australian Industrial Relations Commission, which is all but gutted of its responsibility to prevent and settle disputes, has more powers to halt industrial action 'not protected'. The earlier

AIRC discretion 'may' stop strikes is now 'must' stop strikes. Employers can easily get their law firms to apply to the AIRC for orders and courts for labour injunctions to halt a strike.

7. The formerly limited right to protected action for enterprise bargaining is narrowed. Many exceptions are listed. Any other industrial action that is not protected will be penalisable. Workers formerly taking lawful action can now risk dismissal and victimisation and their unions fined. All industrial action is prohibited during the agreement's life, irrespective of the legitimate grievances. New employer Greenfield 'agreements' are without any workers agreeing and no strikes.
8. *Work Choices* repeals the section for the AIRC to settle a dispute before employers can take common law action for damages. The 19th century common law tort, based on master and servant doctrine, makes all industrial action unlawful and returns as another legal weapon for employers.
9. Legitimate political protests and environmental actions such as green bans are at risk. OHS action is legally more complex. A strike is not lawful if (inadvertently) a non-unionist is involved.

Howard during the election did not raise these restrictions on the right to strike. Nor in 2005 did he give any reasons to legally suppress strikes. Australia is in a low strike era. *Work Choices* has no legitimacy. These provisions were rammed through the Senate ignoring the voice of working families and despite public hostility. Powerful corporate associations lobbied Minister Andrews to remove the protections for effective and lawful strike protest. Howard targets his biased eyes on so-called 'disruptive elements', 'militants', and unions for his 'law and order' campaign.

Howard first outlawed the right to strike specifically for building and construction unions in August 2005. The new building industry police force is 'investigating' workers involved in so-called 'unlawful industrial action'. They have incredible authoritarian powers. Building workers basic civil rights to silence and not to incriminate yourself have been removed with threat of jail!

These labour laws breaches Australia's ILO obligations for protecting the right of workers to collectively bargain and strike without penalty. Howard has no reason to undermine workers collectivity and hand more power to already powerful corporations and management. Corporate rule is more entrenched.

Blueing' with the boss is even more legally risky. Will the Australian 'blue' be an endangered species? Workers and their unions in dispute over genuine grievances can be ordered back to work, fined with increased penalties, sued, victimised and even criminalised. Employers who love power have new authoritarian weapons to suppress workplace conflict, rather than settling by agreement the injustices.

Will the government's attempt to suppress strikes be effective? Historically, unions took protest industrial action to defend the right to strike. The right to strike as a human right has been fought for as an essential workers' freedom; freedom from forced labour; freedom from master and servant relationships; for union freedom of association; as an essential means for collective bargaining to defend and promote the social and economic interests of working people and their families; for freedom of speech and as a civil and democratic freedom in a democracy.

200 years ago Colonial Australia's penal colony used penal powers punishing unionists. Now in the 21st century, penal powers return. This time Howard's extreme right wing government is armed ready to legally suppress strikes. But Australians don't want to go back to the penal days of masters and servants, or wage slaves with forced labour, or disciplining or fining workers on strike. The ACTU's www.yourrightsatwork.com.au campaign includes the right to strike without penalties.

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