

It's time for Labor to go the AWA way

Heather Ridout

The government's introduction of a fairness test and the federal opposition's decision to support it presents an important opportunity for the Labor Party to adopt a new approach of their own to individual agreements.

They are now in a good position to study the application and use of the fairness test to inform their own policy on Australian workplace agreements (AWAs) – and agreement making more generally.

Contrary to the arguments being put forward against AWAs, common law contracts provide less protection to employees than AWAs underpinned by a rigorous and properly enforced fairness test.

AWAs will be vetted and approved by the Workplace Authority to determine whether they meet the fairness test, whereas common law contracts are not subject to any approval process at all.

AWAs are required to have a specific expiry date while common law contracts do not.

Common law contracts provide less flexibility for employers and employees as they cannot override award provisions. For example, employees wanting to cash out annual leave would not be able to do so under a common law contract.

Employers, who are in many industries paying well above award rates, would be badly affected by the abolition of AWAs because of the award complications. Over the years there have been a number of Federal Court decisions that make it hard for employers to absorb specific award entitlements (for example penalty rates and allowances) into an all-up rate of pay under a common law contract. This area is a legal minefield for employers.

AWAs are relatively easy to enforce and employers who breach them are subject to a penalty of up to \$33,000 per breach plus back pay. In contrast, common law contracts are difficult and expensive to enforce.

A government agency is in place to investigate alleged breaches of AWAs and other industrial instruments and pursue prosecutions, at no cost to underpaid employees.

AWAs provide more certainty. For example, one vital area of certainty for employers is that they won't be exposed to industrial action during the life of the agreement. Common law contracts can't provide this certainty. They are inconsistent with the assertion in Labor's IR policy that a "deal is a deal" and there should be no right to take industrial action during an agreement's term.

Most unions strongly oppose AWAs because they limit union power. But unions are not locked out of the AWA process.

First, an employee is entitled to appoint a union as his or her bargaining agent when negotiating an AWA.

Second, an employee has the right to invite a union official into the workplace to investigate a suspected breach of an AWA. However unions are not entitled to enter workplaces where AWAs apply for the purposes of recruitment or to hold general discussions with employees.

Clearly common law contracts are a poor substitute for fair individual statutory agreements – AWAs – which have proved to be a most important innovation in workplace relations.

■ *Heather Ridout is the chief executive of the Australian Industry Group.*

SPA (15)