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Enterprise bargaining looks irrelevant

Whatever happened to enterprise bargaining? It was supposed to be a way of making Australian workplaces more flexible and productive, of mutual benefit to employers, employees and economic growth.

For a while it did deliver – starting to free up Australia's centralised and inefficient industrial relations system and trading productivity improvements for real wage rises.

But 25 years on from the Paul Keating-Bill Kelty revolution, enterprise bargaining now looks, at best, largely irrelevant or, at worst, a hindrance to greater flexibility.

It's become much less – rather than more – attractive to private-sector employers. Instead, a rigid system of 122 awards, unique in the world, remains the industrial relations basis for most Australian workplaces.

Yet this comes when union membership is at a record low, when workplaces need to compete more effectively and when the gig economy and businesses like Uber and Airbnb are creating a new breed of independent workers and contractors.

The recent decision by Coles to revert to negotiations based on the award is just another example of the death of enterprise bargaining as an alternative.

Last February, the Department of Employment issued a report on enterprise bargaining showing the number of agreements had declined by about a third over the six years to mid-2016. The decline was largest for agreements covering less than 20 employees. Of course, most small and medium sized businesses always found enterprise bargaining too complicated. That's only become more so, making it increasingly preferable to rely on the relevant award as the basis for pay and conditions.

To the extent enterprise bargaining still exists, it is often a tool allowing unions to insist on additional concessions and conditions rather than producing anything of mutual benefit.

Just think of the CFMEU's version of enterprise bargaining in the construction industry.

The main advantage for employers is a restriction on strike activity for the life of an agreement, particularly valuable in the construction phase of a project. But that comes at an extremely high cost to meeting union demands.

In Western Australia, Murdoch University is attempting to get out of its enterprise agreement and return to award conditions as a way of increasing flexibility!

In the oil and gas industry, enterprise agreements are still relatively common. But Steve Knott, the chief executive of the Australian Mines and Metals Association, describes their main purpose as a transactional arrangement to "break free of restrictive award provisions produced by employment lawyers and ex-union officials holding court at the Fair Work Commission".

Employees in the industry are usually paid two to three times the award rate anyway.

"But the idea of trading off terms and conditions for pay rises has died," he says. "We can't afford to wait for three to four years for efficiency gains through enterprise bargaining. We need to encourage and anticipate innovation so we are permanently involved in a program of continuous improvement."

In the retail sector, as in hospitality, unions willing to trade lower penalty rates for higher base rates has always been common in enterprise agreements but their decline is evident.

Last year, the Fair Work Commission's new, strict interpretation of the "better off overall test" – wonderfully known as BOOT – has also made it virtually unworkable.

In Coles' case, the company decided there was no point in continuing with enterprise bargaining that meant employees working Monday to Friday got more pay. The catch was some casuals working weekends and after hours received less than under the award. The agreement meant most full-time employees were better off while the company was better able to afford consumer demand for shopping at irregular hours. But after an agreement for 2014-2017 was challenged by a trolley collector, the commission applied a new line-by-line assessment of the agreement v the award. This was to ensure every single employee was better off for every hour of every shift.

Coles then reverted to the 201-2014 agreement as the basis for new negotiations. But this too is being challenged by a woman working to fill shelves at night.

But Coles announced last week negotiations for a new two-year agreement would be based on the minimum award conditions, including the commitment that penalty rates would deliver at least the same amount as the award.

Even union officials agree there's now little in it for employers to negotiate enterprise agreements.

Yet it wasdifficult for the Turnbull government to complain about the commission's re-interpretation of the BOOT. Ministers had attacked Bill Shorten for negotiating similar arrangements cutting penalty rates when he was a union official. The government assault outsmarted itself.

And as demonstrated by the uproar over the commission's subsequent decision to phase in cuts in Sunday penalty rates for a range of retail and hospitality workers, no one in politics is

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happy to argue the merits of lower pay in exchange for increasing jobs and profitability these days.

Not in an era of sustained low wages growth that concerns even the Reserve Bank. Not even when it's a decision from the Fair Work Commission.

Malcolm Turnbull and Scott Morrison understand that Bill Shorten's condemnation of the government for presiding over pay cuts for the most vulnerable while giving tax cuts to millionaires resonates with voters.

Not much enthusiastic talk of the need for greater innovation and flexibility for agility and productivity obvious here. Not any more.

It is often a tool allowing unions to insist on additional concessions.