# New ‘binding’ IR rules in Australia will gain international attention

**ANDY PRENDERGAST**

**New bargaining rules in Australia will be of interest to industrial relations observers in Ireland, as new ‘binding’ features have been introduced, demonstrating preference to use legal mechanisms rather than union power, to extend the reach of collective agreements.**

Since June, Australia’s Fair Work Legislation, known also as the ‘Secure Jobs Better Pay Act’, has provided various means to extend collective agreements to employers who were not original signatories to an agreement. It also has a mechanism whereby Australia’s Fair Work Commission (FWC) can make a binding bargaining determination where the parties cannot strike a deal themselves.

It moves IR in Australia away from a voluntary approach, to a more structured template – the FWC having an integral role – and with greater reliance on statutory devices. Australia and Ireland both operate a common law system derived from the UK, as well as having similar IR features, such as a traditionally voluntary system.

## *Australia and Ireland have traditionally had voluntary IR systems*

The revision to Australia’s industrial relations rules comes in the context of its declining trade union density (8% in the private sector) and wage stagnation, which unions attribute to a prevalence of enterprise level bargaining in recent decades.

The new law aims to enhance sectoral and multi-employer bargaining and extend coverage, particularly to lower-paid workers.

The features include ‘single interest’ employer agreements, ‘supported bargaining’ authorisations and agreements, and ‘intractable bargaining declarations.’

The reform in Australia is more extensive and somewhat more complex than the changes signalled to Ireland’s IR landscape with the 2022 High Level Group proposals, or even to basic requirements to transpose the Adequate Minimum Wages Directive.

Nevertheless, in the time between the 2022 High Level Group’s recommendations on reforming industrial relations in Ireland, to the emergence of a general scheme for a new bill, it will be interesting to see if what Australia has implemented will have any influence here – particularly with regard to how Ireland transposes the Adequate Minimum Wages Directive (by November 2024).

## EXTENDING COVERAGE

Single interest employer agreements can be pursued on foot of a single interest employer authorisation.

Applications for a single interest employer authorisation in relation to a proposed enterprise agreement that will cover two or more employers can be made by those employers, or a bargaining representative of an employee who will be covered by the proposed agreement.

The FWC "must make a single interest employer authorisation if an application for the authorisation has been made and the Commission is satisfied that:

- at least some of the employees that will be covered by the proposed agreement are represented by a union;
    - the employers are certain franchisees or common interest employers, as they:
    - carry on similar business activities under the same franchise and are either franchisees or related bodies corporate of the same franchisor (or a combination of these), or
    - have clearly identifiable common interests with the other employers, it is not contrary to the public interest to make the authorisation, and the employers' operations and business activities are reasonably comparable;
- the employers and the employee bargaining representatives have had the opportunity to express their views (if any) on the authorisation to the Commission."

'Common interests' include geographical location, regulatory regime, the nature of the enterprises (size and scope) to which the agreement will relate, and the terms and conditions of employment in those enterprises.

## SUPPORTED BARGAINING STREAM

'Supported bargaining agreements' can be pursued following a 'supported bargaining authorisation'. The supported bargaining stream "is designed to assist and encourage employers and their employees who may, for various reasons, find it difficult to bargain at a single-enterprise level."

The effect of a supported bargaining authorisation, the Australian government says, "is that the employers specified in it are subject to certain rules in relation to the agreement that would not otherwise apply (such as in relation to bargaining orders)", i.e. non signatories to a collective agreement can be brought into its coverage, according to the certain criteria.

These include: pay and conditions — what the prevailing pay and conditions in the relevant industry or sector are, including whether low rates of pay are prevalent; common interests — whether the employers have clearly identifiable common interests, such as: a

geographical location, the nature of the enterprises and the existing terms and conditions of employment in those enterprises, and being substantially funded by government (state, territory or federal); bargaining representation — whether the likely number of bargaining representatives is manageable for a collective bargaining process; and other matters the Commission considers appropriate.

The FWC must be satisfied that at least some of the employees are represented by a registered union. The Commission must also make a supported bargaining authorisation if an application for the authorisation has been made and the employees specified in the application are in an industry, occupation or sector declared by the Minister for Employment and Workplace Relations for this purpose.

## 'INTRACTABLE' BARGAINING

Another feature of the new law is 'intractable bargaining', which replaces two former mechanisms bargaining parties could use.

A bargaining representative can now apply for an intractable bargaining declaration if the parties:

- have been bargaining for at least 9 months (the minimum bargaining period) and have reached an impasse;
- have already tried to resolve the bargaining, dispute including by making an application to the FWC;
- want further assistance to resolve the dispute.

If the Commission makes an intractable bargaining declaration and bargaining representatives still can't resolve the dispute, the Commission must make an intractable bargaining workplace determination. This determination establishes the terms and conditions of employment in place of an enterprise agreement.

## INFLUENCE ELSEWHERE?

It will be interesting to see if the new regime will enhance union density in Australia, now that it gives more means to trade unions to have a direct influence.

Commenting on the new rules in Australia, executive director of the Brussels European Employee Relations Group, Tom Hayes, says this might happen but questions why would workers join a union if they are going to benefit anyway, citing the example of France, which has 8% density but 98% collective bargaining coverage.

He says Australian unions are aware of this issue and have already raised the issue of "bargaining fees", an obligation on non-members to pay a levy to the unions for the benefits they derive from the unions' efforts on their behalf. This could be considered in Ireland at some point if the planned reforms here do not lead to union membership growth.

Mr Hayes says that the Australian legislation could provide a template for other countries where the future of collective bargaining is under discussion, but notes that the introduction of such legislation "requires the wholehearted backing of the government, and the coalition nature of European politics is unlikely to deliver such backing."

"There is a unique relationship between the unions and the government in Australia that is not found in European countries, even in the UK", he adds.

It remains to be seen how developments in Australia, or New Zealand, with its relatively new Fair Pay Agreement sectoral bargaining system (which itself is under threat if the National Party win the forthcoming NZ election), could have on the formation of new IR features in Ireland.

Observers await new details on what is proposed by Government to meet commitments made around the 2022 High Level Group proposals and the transposition of the Adequate Minimum Wages Directive. The Labour Employer Economic Forum (LEEF) meet again this week, from which reform proposals will likely be moved along.