Pictured: Parliament House in Canberra as viewed from ANZAC Parade. Parliament passed the Secure Jobs, Better Pay Act in December last year and it has now come into force. Photo credit: Social Estate via Unsplash.

A new industrial relations landscape

Is the Australian supply chain about to see large numbers of boxes build up in container yards once again? Will we see omitted port calls? Will we again see lots of blank sailings? Are we about to enter a period of extreme disruption in the supply chain?

We might also see managers buckle to union pressure, thereby delivering massive cost hikes right across the waterfront and associated sectors.

Both of these are real prospects because the Australian Labor Party has served up the Secure Jobs, Better Pay Act to its trade union partners. That Act, which is now in force and which amends the Fair Work Act, paves the way sector-wide enterprise bargaining between trade unions and employers as it empowers unions to group together multiple employers and bargain with them as one group.

The Hon. Tony Burke, the Minister for Employment and Workplace Relations, gave the second-reading speech in the House of Representatives last October.

“Australia’s bargaining system is not working effectively and hasn’t worked effectively for a long time. Bargaining delivers simpler and more tailored workplace arrangements for businesses, and an average of $601 more to workers each week, compared with those on awards. Yet only 14.7 per cent of employees are covered by an agreement that is in date… Reforms will remove unnecessary limitations from the existing framework,” he told the House.

Protected industrial action can be taken by the unions against the employers they have grouped together into the multi-enterprise bargaining process.

We’ve been here before. During the COVID pandemic and lockdowns, the unions had arranged matters so they could take simultaneous action against stevedores. For instance, in August 2020, the unions had the right to take industrial at Hutchison Sydney and Brisbane; DP World Australia in Melbourne, Brisbane, Fremantle, Sydney; and Patrick Brisbane, Sydney, Melbourne, and Fremantle.

The unions were authorised to carry out an unlimited number of bans on the performance of work on any nominated vessel for an indefinite period and an unlimited number of bans on the performance of work on vessels that had been sub-contracted or outsourced.

Sector-wide industrial action led to horrendous problems, as a review of Shipping Australia articles published over the last three years reveals.

Back then, when strikes were being carried out against the box terminal operators, there was a build-up of empty boxes in depots and yards. Ports could not get ships in fast or frequent enough because of union-imposed restrictions and this led to container exchanges (full boxes being unloaded and empty boxes being put back on) not being completely carried out. That led to a build-up of boxes in empty container parks, and in yards and depots around the country. It got to the point where some parks and yards were completely full – no more boxes could be stacked in the facility as it would get too dangerous.

Ports became congested with vessels. An observer would not have been able to see a ship queue offshore near Australian ports (unlike, say, off the coast of Los Angeles, USA), but those queues were there. The ships simply slowed down during their voyage across the ocean to save fuel as there was no point sailing fast only to idle at the port.

An inability to turn around ships quickly enough and in large enough volumes led to congestion and that led, in turn, to a host of consequences such as less ship-capacity for the carriage of goods, port calls being omitted, port calls being re-ordered, whole loops being changed or reduced in frequency, and ships burning huge amounts of fuel to recover lost time. Costs of all kinds went through the roof.

We are likely to see a return to those days as multi-enterprise bargaining creates the potential for conflict. Costs across the supply chain will increase because of the costs of bargaining, the increase in wages, and because of the direct and indirect costs of industrial action.

Before we get into the legalities in this special report, please remember, this is an extremely simplified description of some of the law in this area along with associated processes. Inevitably, we will have to skip over some very important details and nuances. This article is not legal advice, it is not intended to be regarded as legal advice, and it should not be relied upon as such. Every company’s circumstances are different and the law in this area is highly technical and full of traps for the unwary.

Professional advice from a qualified lawyer experienced in this area of law is vital.