3

Has the Australian Model Resisted US-Style Anti-Union Organising Campaigns? Case Studies of the Cochlear and ResMed Bargaining Disputes

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Introduction

A major purpose of the *Fair Work Act 2009* (Cth) (FW Act) was to ensure collective bargaining would occur where a majority of workers want a collective agreement in their workplace.[1] The mechanism designed to achieve this goal – the 'majority support determination' (MSD) – allows majority support to be established through any method considered appropriate by the Fair Work Commission (FWC). This innovation responded to the pitfalls of union recognition laws in the United States, and to a lesser extent the United Kingdom, which generally require majority employee support to be established through a ballot. These systems have given rise to vigorous employer campaigning against union recognition. In the United States an entire 'union-busting' industry has emerged, dedicated to thwarting union ambitions to bargain.[2]

Historically, union-busting has not featured in Australia in the same virulent form as in the United States. Certainly, we have had our share of anti-union employers, and *de-unionisation* came to prominence from the early 1990s. Pioneered in the mining industry by companies like Rio Tinto and BHP Billiton, de-unionisation also took hold among the major banks and some telecommunications companies.[3] However *union-busting* is a slightly different concept: it involves a careful strategy to prevent a union from ever gaining

1 Parliament of Australia 2008b at [r 166].
2 See eg Adams 1999; Logan 2012.
3 See eg Cooper, Ellem, Briggs & van den Broek 2009.