

## WORKPLACE RELATIONS

# MORE JOBS, BETTER PAY

**More Jobs, Better Pay** – commits the Coalition to continuing workplace relations reform so that the benefits of changes made during the Coalition's first term of office can be extended more widely throughout the community to protect and improve the living standards of Australian workers and enhance the productivity of Australian industry.

## More Jobs, Better Pay

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## Executive Summary

### Benefits of Reform

- In 1996 the Coalition delivered, as promised, major changes to the Australian workplace relations system. Those changes have been beneficial to Australia, and to individual employers and employees. They have enhanced job security. They have led to **more jobs and better pay** throughout the economy;
- A Coalition Government will consolidate the benefits of workplace relations reform and extend their availability more widely throughout the Australian economy;
- The Coalition's vision is for a system with **an effective safety net protecting the low paid** whilst encouraging, at a local level, high labour productivity, higher wages, workplace choices and individual

freedoms. Our objective is a fair day's pay for a fair day's work, with **reward for effort**, and the flexibility for businesses and employees to work together for their mutual benefit.

## Workplace Agreements

- Under Coalition policies, **workplace agreement-making will remain the primary focus** of the system. Workplace agreements are the best way to deliver genuine and lasting improvements to living standards and business productivity;
- Australian Workplace Agreements (AWA's) and Certified Agreements (CA's) will continue to be available but with an award safety net and streamlined approval process encouraging further agreement-making. **The no-disadvantage test will be retained. No worker making an agreement will be worse off than the award safety net;**
- A Coalition Government will continue to ensure that effective laws apply **to ensure that agreements are made without duress**, harassment, intimidation, threats or coercion, and that employers and employees have the free opportunity to take full advantage of all agreement-making options to meet their particular needs and circumstances;
- A Coalition Government **will retain the right for unions to take limited protected industrial action** for the purpose of making collective agreements. Immunity against civil action should, however, be used constructively. The Coalition will ensure that protected industrial action cannot commence until employees have been able to express their wishes by way of a **secret ballot**; will require earlier notification of an intention to take industrial action; and **introduce cooling off periods and mediation options** in circumstances where an agreement making process is protracted or costly.

## Awards and the Industrial Relations Commission

- **The award system will be maintained**, and the process of simplification of awards will be continued. **The Australian Industrial Relations Commission will be retained and renamed as the Australian Workplace Relations Commission**, in recognition of the workplace focus of the system. **The Commission will maintain a safety net to protect the low paid;**

- introduce **contemporary management practices into the structure of the Commission** (including peer review machinery, greater accountability in reporting arrangements and an enhanced client focus, especially for small business and self represented employees using its services);

## Voluntary Mediation

- Mediation services are an alternative to the traditional process of conciliating and arbitrating industrial disputes. They are low cost, informal and may be accessed locally. Effective mediation can provide employers and employees with more direct ownership of the outcome of a dispute. A Coalition Government will give **formal legislative recognition to mediation services** in industrial disputes, for use on a voluntary basis as an alternative or supplement to the quasi-legal processes of the Commission. These services will be particularly useful for small business and for resolving disputes in the agreement-making process, during periods of industrial action or as a substitute for tribunal based involvement.

## Compliance

- Industrial disputes between employers and employees should be dealt with at the enterprise level, with the direct parties themselves being accountable for the outcomes in an orderly and responsible manner. **Primary and secondary boycotts will continue to be unlawful** under the *Trade Practices Act 1974*. **Strike pay will continue to be banned;**
- The compliance framework of the system will be improved by more clearly distinguishing the rights and responsibilities of employers and employees, and the circumstances in which industrial action is lawful or unlawful;
- The **Office of the Employment Advocate will be retained;**
- The review of employee entitlements in cases of business insolvency will be completed by the Commonwealth and State and Territory Governments under the auspices of the Labour Ministers Council.

## Unfair Dismissals

- In order to remove legal uncertainty and **promote new job creation**, unfair dismissal laws will require new workers to have worked for six months with their employer before being eligible to lodge an unfair dismissal claim. Rules governing claims by casual employees and **frivolous claims will also be tightened** to reflect the original intention of the *Workplace Relations Act 1996*;
- **Small businesses employing fewer than 15 employees will be permanently exempted from unfair dismissal claims** by newly employed workers. Upon its re-election the Coalition will immediately re-introduce this proposal into Parliament, which has been twice blocked by Labor and minor Senate parties;
- A Coalition Government will **retain existing rights** for all employees against unlawful dismissals;
- All current and future **trainees and apprentices will retain their prevailing rights** in relation to termination of employment.

## Small Business

- Decentralisation of the system, together with streamlined agreement-making processes and improved service delivery by governments and industrial tribunals, will **enable small businesses to fully participate in the system** with a minimum of cost and red-tape;
- Independent contractors, many of whom are small businesses, will not be regulated by the workplace relations system as if they were employees;
- A Coalition Government will introduce **stronger barriers to prevent unions forcing employers and employees in small business** into the federal award system when they already have lawfully established employment arrangements or pre-existing and settled forms of regulation;
- Time and wage record keeping requirements on employers, especially small businesses, will be simplified to **reduce unnecessary paperwork and red-tape**.

## Young Australians

- Age-based youth wages in awards will be permanently retained, and

the **reduction of youth unemployment and the protection of their competitive position in the labour market** made a specific object of the *Workplace Relations Act 1996*.

## Women

- The workplace relations system will continue to provide full access to **women's entry, participation and choices, without discrimination**, and according to merit and equal opportunity. The Coalition will retain the role of the Affirmative Action Agency with improved workplace links and targeted functions.

## Families

- Policies promoting the better integration of work and family responsibilities, including **improved access to employment options** (such as regular part-time work) and arrangements for flexible participation in the workforce will continue through the award simplification and workplace agreement-making process.

## Registered Organisations

- **Union membership will be voluntary** and based only on the free choice of an individual employee. The closed shop will remain unlawful, as will laws prohibiting coercion of workers. Stronger laws will prevent the retention of closed shops, make direct or indirect preference to unionists over non unionists unlawful **and prohibit discrimination or victimisation against workers** who choose to join or not join unions, or who make workplace agreements;
- Legislation will be amended to **increase the accountability of employer and employee associations** to their members in financial and decision-making matters. Existing deficiencies in union registration laws will be rectified;
- **Amend the right of entry provisions** of the *Workplace Relations Act 1996* to ensure that the proper role of unions is as a service provider to its members, not as an uninvited quasi-inspector at the workplace.

## State Industrial Relations Systems

- A Coalition Government will continue to work co-operatively with the States and Territories to **harmonise the operation of Federal and State workplace relations systems**, to retain workplace choice over the preferred agreement-making jurisdiction and to **reduce duplication, red-tape and cost** in the provision of workplace services.

## Labor's Record

### Labor's Failure

Labor Governments from 1983-1996 knew that fundamental workplace relations reform was essential. But Labor, with its ties to the trade union movement, never delivered that reform.

The Australia of the 1990's had changed but, until the election of the Coalition Government in 1996, the workplace relations system had not.

Labor's record when it was last in government failed Australia badly. It introduced an unfair dismissal law that cost the jobs of thousands of Australians. Worker's living standards dropped, job insecurity rose, rorts and inefficiencies went unchallenged, unemployment reached record levels, industrial disputes went unchecked and unfair dismissal claims skyrocketed.

And worse of all, powerful unions got what they wanted at the expense of ordinary workers and small businesses.

### Labor's Recycled Policy

Labor has a policy to return Australia to these bad old days, where decisions affecting ordinary Australian workers and employers are taken out of their hands and made in the closeted deal-making world of union officials, governments and industrial tribunals.

Under Labor, the gains of the past two years would be thrown away. Their last policy cost jobs. Their next policy not only repeats these past failures but makes the risks even greater:

Under Labor's policy:

- **Union bosses will again be given the power to veto agreements** made by ordinary workers- denying workers the benefits and security

of those agreements;

- **Union bosses will be put above the law** (such as the law against secondary boycotts which applies to every other Australian) – allowing national strikes and more industrial disputes - putting everyone's job security at risk;
- Unionists will be able to **discriminate against non-unionists**;
- Priority will be given to collective agreements, denying individuals the right to have agreements tailored to their needs;
- Pattern bargaining and other 'one size fits all' arrangements will be imposed on unwilling businesses and employees;
- Australian Workplace Agreements and non union collective agreements **currently the basis for jobs for thousands of workers will be abolished and the benefits they provide workers denied to them**;
- The **Office of the Employment Advocate** – set up to protect the rights of all workers and not just unionists - **will be abolished**;
- Non-union workers and independent contractors will be **forced to join unions** and be bound by union-promoted awards;
- Small businesses will face **more and more unfair dismissal claims**;
- Rorts and inefficiencies will be rewarded with a centrally controlled wages system, leading to **less jobs, inferior pay, lower quality employment and less training**;
- Industrial tribunals will become more powerful and increase their influence over individual workplaces as Labor **re-regulates and re-centralises** the labour market;
- **Youth wage rates will be abolished** and the jobs of up to 300,000 young people put at risk, according to the Australian Retailers' Association;
- Powerful unions in economically sensitive industries (like the mining and building industries) will become more powerful;
- Penalties for unlawful industrial action will be softened;

- Union bosses will get **new rights to enter every workplace** in Australia without notice – whether workers want the union there or not;
- Businesses, especially small business, will be **forcibly roped by unions into federal awards** and out of their lawful workplace agreements or State based regulation.

The Labor Party, with a policy to satisfy only union bosses, remains unfit to govern. The modern Australian workplace has left Labor behind. Only Labor and the unions want to go backwards.

## Highlights of the Government's Achievements

### The Workplace Relations Act 1996

The Coalition's *Workplace Relations Act 1996* has been a watershed in the renewal of Australia's workplace relations system.

Until 1996, Australia laboured under a workplace relations system that was created in 1904 and had changed too little since.

It was a paternalistic system devised in another era, for another time.

Coalition policy is building cooperative workplaces around the common objectives of better productivity, better employment security and higher living standards. Unlike the system of the past, it does not cast workplace relationships as inherently combative or confrontationist. To do that would be to misjudge Australia's contemporary workplace culture.

The system now allows for employers and employees to reach mutually rewarding objectives by making workplace agreements in a non adversarial environment. Workplace agreements are able to directly improve business competitiveness and to sustain increases in wages and lead to meaningful improvements in working conditions.

The system now gives employees, from whatever background, a right to participate (collectively and individually) in their workplace decisions. It harnesses, in the most productive way possible, the skills and work ethic of Australian workplaces. It ensures that employees in high performing and competitive businesses can achieve full reward for effort, and acquire skills and knowledge that are valuable in meeting their career goals.

To encourage employee participation it has been important for the workplace relations system to be simplified, to provide scope for the making of agreements more easily, and to do everything possible to ensure that agreement outcomes reflect the needs of single enterprises. **Uninvited third party intervention has been minimised by placing people and businesses first; the system and its institutions second.**

Importantly, the Coalition has achieved these reforms against a **sensible safety net of minimum terms and conditions**, and in a framework where employees and employers can have a ready understanding of their rights and responsibilities.

## **Coalition Achievements and Outcomes**

The Coalition's workplace relations reforms have delivered tangible benefits to employers and employees. Most importantly, **they have contributed to more jobs and higher pay throughout the Australian economy**. More jobs and better pay is a recipe for business growth and improved living standards. It stands in stark contrast to Labor's years of forced central control over workplaces.

Under the Coalition's system:

- Jobs are growing and unemployment is falling. More than **317,000 new jobs have been created** in the Coalition's first term of office. Under Labor, one million Australians were out of work and unemployment peaked at 11.2%.
- Wages for workers under both agreements and awards are growing faster than the rate of inflation. This means **real wage increases** under a Coalition Government's policies. Under Labor, real wages for the low paid actually fell.
- Productivity is growing strongly, especially with workplace agreements eliminating inefficient work practices and **redesigning old rules** governing penalty rates, hours of work and overtime payments. Under the Coalition, productivity rose by 3.8 per cent through the year to the June quarter 1998 (measured as (trend) non-farm market sector output per hour worked), more than double the average of 1.7 per cent per annum between 1983 and 1995.
- **Living standards, even for low paid workers, are increasing** with two safety net wage increases higher than increases in the cost of living. Under Labor, the low paid saw their wage increases eaten up by high inflation and high interest rates.

- In the first full year of the Coalition's new system, the level of **industrial disputes (per thousand employees) fell to the lowest level since 1913**. The number of industrial disputes fell to the lowest level since 1940. Under Labor, industrial disputes were greater than our competitors.
- **Youth employment has been protected** by retaining youth wage rates. Under Labor, youth wage rates were being abolished.
- More than two thirds of Australian workers have chosen not to join trade unions. Under Labor, unions were granted preference deals and closed shops even though workers were leaving unions in droves.
- More than 27,000 Australian Workplace Agreements have been made between individual workers and employers without uninvited union interference. Under Labor, unions could effectively veto every agreement in every workplace in the country even without a worker's consent.
- More than 7,500 collective agreements have been made between groups of workers and employers tailored to workplace requirements, including about 75,000 workers in workplaces benefiting from **some 575 non-union collective agreements**. Under Labor, collective agreements only occurred where union bosses allowed them to apply.
- New choices have been made available for employees to link their working arrangements with personal or family circumstances through the Coalition's global no-disadvantage policy. **Better choices for families have been created**, such as systematic and regular part-time work rather than irregular or uncertain casual employment. Under Labor, awards placed limits on permanent part-time work and forced women and working parents into less secure casual employment when it was not their preference.
- **Unfair dismissal claims against employers**, including small businesses, under Federal laws **have dropped by 49%**, and have fallen across all jurisdictions by an average of 18%. Under Labor, unfair dismissal claims reached record levels, costing jobs and sapping small business energy.
- The process of **award simplification** is bringing about an extensive deregulation of the labour market. Awards are being simplified and are limited in content to no more than 20 subject matters. Under Labor, awards were complicated and too prescriptive.

- Secondary boycott laws in the *Trade Practices Act 1974* have **prevented strikes by unions** damaging innocent small businesses. Under Labor, these laws which apply to every other Australian were inaccessible and, in effect, unenforceable against union officials.
- More than 390 applications have been made to the Commission for orders requiring unlawful industrial action not to begin or to cease. Under Labor, no specific power existed for these orders to be made.
- Workers and employers have **greater choice** to use Federal or State laws to make agreements, and State industrial relations systems have been free to operate without being overridden by Federal laws. Under Labor, union bosses could dictate to workers and employers which laws they had to operate under.
- State and Federal laws and administrative systems have been progressively harmonised, including (for the first time) the creation of a **single workplace relations system in Victoria**. Under Labor, Federal laws tried to destroy State systems and eliminate workplace choices to use State laws, not harmonise with them.

The Coalition's record is a record of achievement.

## **Job Security**

Job security for Australian workers is important. The best form of job security is a strong economy, a profitable and productive workplace and a culture of co-operative workplace relations.

Despite recent economic turmoil in our region, the Coalition's economic management has seen Australia's economy expand, new jobs created and lower unemployment. Our workplace relations reforms have reduced industrial disputes and provided sustainable real wages growth underpinned by productivity improvements. Our move to a workplace focussed agreement-making system, and away from the central control of awards, has reinvigorated workplace relations and employee participation. Some awards, with their mechanical prescription as to how work must be performed across an entire industry, are direct threats to job security and seriously compromise worker initiative and company performance.

And in contrast to Labor's record, the Coalition Government is also doing something for those who experience the greatest job insecurity

– the unemployed.

The Coalition will not allow the jobs and job security of Australians to be sacrificed by a return to Labor's policies. Weakening secondary boycott laws, like Labor wants to do, is an open invitation to national strikes and damage to our international reputation. That simply puts the job security of every Australian at risk, as does compulsory unionism and restrictions on agreement making. Returning to central control by third parties would stifle workplace enterprise and lead to less jobs and inferior pay.

Giving unions the system they want, including the right to force industry-wide agreements on unwilling employers and employees, gives unions more power and members, but is no way to protect the job security of Australians.

## **Building Jobs**

Australia is now well placed to consolidate the benefits of its new workplace relations system.

A Coalition Government will give further workplace relations reform a high priority.

We will build on the foundations laid by the 1996 reforms in the *Workplace Relations Act*. Our objective is to further improve outcomes, to lower transaction costs, to improve opportunities for enterprise level innovation and flexibility, to have a more effective safety net, to provide impetus for organisational change and to provide a flexible labour market capable of meeting our competitive challenges.

Coalition policies will continue:

- to put workers and businesses first, not institutions;
- to be relevant to modern Australia as we enter the 21<sup>st</sup> century;
- to build on the common interests which exist in the workplace;
- to provide fair and productive outcomes which reflect our national economic and social goals.

## **A Workplace Agreements**

# 1 Agreements

The object of the Coalition's policy is to provide employers and employees, in whatever industry and without discrimination, the freedom to make mutually beneficial workplace agreements in a non adversarial environment.

Workplace agreements are tangible evidence of a system based on common interest, not conflict or class ideology. They have empowered and restored people and individual workplaces to the heart of the system. Unlike awards, they can link better pay to improved business performance by rewarding effort and initiative. They help grow jobs, strengthen job security and improve wages and conditions of employment. They also enhance the quality of jobs with opportunities for workplace-focussed training structures and career development.

A Coalition Government will:

- Maintain effective workplace agreement-making choices as the principal way that employers and employees can achieve improvements in productivity and living standards;
- Allow both Australian Workplace Agreements and Certified Agreements to continue to be available;
- Simplify the process requirements for approving Australian Workplace Agreements and Certified Agreements to make them more accessible, to encourage more innovative and better quality agreements and to reduce transaction costs and unnecessary red tape and paperwork. This will allow workplace agreements to be implemented more quickly, to allow organisational change to be implemented without long procedural delays and to reduce delays and barriers to engaging new employees under these agreements;
- Discourage arrangements which compromise workplace choice and undermine company performance and job security, such as forced industry-wide agreements and pattern bargaining;
- Retain an award safety net underpinning all workplace agreements in a simplified form so that red tape in agreement-making can be cut and better quality agreements can be encouraged;
- The no-disadvantage test for the making of workplace agreements will be retained. No worker making an agreement will be worse off than

the award safety net.

## 2 Agreement-making Processes

The *Workplace Relations Act 1996* is enabling legislation. It allows workplace agreements to be made but it does not force them on employers and employees. Employers and employees and their representatives, should be free to select the agreement making options which best suit their needs and circumstances. The system should not prejudice that choice nor should it enable other parties to interfere with those decisions.

A Coalition Government will:

- Strengthen the existing protection for workers against coercion, duress, intimidation, victimisation, threat or harassment when making workplace agreements – behaviour that has no place in the Australian workplace relations system;
- Make it easier for Australian Workplace Agreements and Certified Agreements to be offered to workers individually or as a group. When negotiated individually, we will not require identical Australian Workplace Agreements to be offered throughout a workplace. Agreements negotiated as a group will not be able to exclude the right of a worker subsequently to make an Australian Workplace Agreement;
- Retain the right for unions to take limited protected industrial action for the purpose of making collective agreements, but ensure that limited immunity against civil action is used to foster a constructive bargaining environment and not be used as a guise for punitive industrial action or for ulterior purposes. Damaging protected industrial action does not substitute for genuine discussions about making an agreement;
- Require earlier notification of an intention to take industrial action so employees, their representative organisations, and employers have a genuine opportunity to discuss the matters subject to a claim before any potentially damaging industrial action commences;
- Allow for the suspension of bargaining periods where industrial action by the parties becomes protracted or costly, and where a party considers they may benefit, through a cooling off period and/or from external mediation;

- Retain the right for workers negotiating agreements to be represented by a person of their choice, whilst ensuring that unions are not allowed to engage in unwarranted interference in agreements freely made directly with employees. The right to choose representation means that uninvited union intervention in the negotiation or approval of workplace agreements will continue to be prohibited.

### **3 Secret Ballots**

An agreement making system driven primarily by the employer and employees at the workplace, together with a right to take limited protected industrial action, requires the parties directly affected to take responsibility for managing the bargaining process, and its outcomes.

Decisions to take (or not to take) protected industrial action have a direct impact on the workplace and the job security of Australians. The Coalition's objective is for workers, not union officials, to be accountable for and to have the final say in these decisions. Secret ballots of workers can provide a fair, effective and democratic process for determining whether a group of employees at a workplace genuinely supports taking industrial action.

To achieve this, a Coalition Government will:

- Introduce a requirement that protected industrial action cannot commence until the employees affected have had the right to express their wishes to undertake such action by way of a secret ballot;
- Require a majority of voters by secret ballot to endorse specific action (notified in advance) before it is protected by law.

### **4 The Employment Advocate**

The Coalition's objective is to ensure that all workers (irrespective of union membership) and all workplaces have equal opportunity to participate fully in the workplace relations system, without coercion, duress, threats, harassment or victimisation.

The protection of the right to freedom of agreement making and freedom to choose whether or not to be a member of a union has been enhanced by Coalition policy through the creation of the Office of the Employment Advocate.

A Coalition Government will:

- Retain the Office of the Employment Advocate and its role in the approval of AWA's and the investigation and enforcement of laws preventing coercion, discrimination, threats, harassment or victimisation in relation to an individual's choice whether or not to be a member of a union.

## **B Awards**

### **1 Awards**

The contemporary Australian workplace achieves its best results when priority is given to enterprise specific outcomes, formed at the local level, rather than central control of workplace conduct.

However, some employers and employees choose, for various reasons, to operate solely under awards made by the Australian Industrial Relations Commission and not make formal workplace agreements. One of the goals of the Coalition's policy is to ensure that the award system is principally a safety net for these employers and employees and for the low paid, who do not access the agreement making system.

For awards to be effective, they must be relevant, simple to understand and provide fair minimum safety net standards, without discouraging the mutual benefits of higher productivity and better wages under workplace agreements. An important objective of the Coalition is to reduce the complexity of the existing system by creating a sharper distinction between the functions of the award and the agreement-making processes.

The Coalition Government will:

- Maintain, in awards, a fair and reasonable safety net for low paid and disadvantaged workers;
- Continue the process of award simplification so that awards are simple instruments that do not impede agreement making, workplace efficiency, organisational effectiveness or act as barriers to employment growth;
- Discourage industry wide awards from regulating work practices which are relevant to only a limited range of enterprises (such as the tally system in the meat industry);

- Require the Commission, when simplifying awards, to have regard to the interests of employees, the primacy of agreement-making, the productivity and efficiency requirements of businesses (including small business), the removal of inefficient work practices and the importance of regulating workplaces to the minimum extent only;
- Maintain Coalition policy to remove duplicate regulation of occupational superannuation arrangements by having minimum superannuation rights and obligations regulated by legislation rather than prescribed under the award system;
- Require the Commission to complete its review of paid rates awards so that employers and employees under these awards can fully benefit from the agreement making process underpinned by a safety net of minimum award wages and conditions.

## **2 Australian Industrial Relations Commission**

The Australian Industrial Relations Commission will have a continuing and important role, particularly looking after the interests of the low paid and disadvantaged workers.

Making the workplace relations system more accessible to employers and employees requires the Commission to adapt to the revised objects of the *Workplace Relations Act 1996* and its framework for cooperative workplace relations, which primarily focus on the workplace rather than central control by third parties.

The conduct of the Commission has important commercial and industrial ramifications for the parties that use its services. As an administrative tribunal, the Commission should also be provided with the legislative basis for self appraisal of its service delivery. Within the framework of its statutory independence, the Commission and its registry must be exposed to similar performance monitoring and evaluation processes as other similar bodies. It has already made increasing use of information technology (including the internet) and these initiatives should be broadened.

Equally, the Government and the Parliament have a responsibility to ensure that the legislative framework used by employers and employees, their representatives and the Commission is easily understood, coherent and simply expressed. If individual employers and employees are to access the system more easily and with undue

cost, then industrial legislation cannot simply be the province of specialist advisers and lawyers.

A Coalition Government will:

- Rename the Australian Industrial Relations Commission as the Australian Workplace Relations Commission in recognition of the enhanced workplace focus of the system since 1996;
- Provide, within the parameters of its independent role, the President with more responsibility over the work of the Commission, the introduction of contemporary management practices into the structure of Commission (including peer review machinery), greater accountability in the reporting arrangements applying to the Commission and its registry and an enhanced client focus with time sensitive and simpler processes, especially for small business and self represented employees using its services;
- Require the more effective availability of Australian Workplace Relations Commission services in regional Australia, and the broader use of information technology (such as video conferences) in the work of the Australian Workplace Relations Commission;
- Accelerate the harmonisation of service delivery between the Australian Workplace Relations Commission and State industrial relations tribunals with a service delivery mix of Federal and State resources that provide the most efficient outcomes;
- Review, in conjunction with the States, the performance benchmarking of administrative services of workplace relations tribunals throughout the country.

## **C Workplace Conduct**

### **1 Voluntary Mediation**

Workplace conduct, and industrial disputes, are as diverse as Australian workplaces themselves. When dealing with industrial disputes, the workplace relations system must be facilitative and allow a range of alternative avenues for their resolution. The 'institutionalisation' of dispute resolution functions into one body (the Commission) does not provide the optimal structure for a system based on local agreement-making processes and the individual choices of employers and employees. Many industrial disputes can be

addressed without invoking formal tribunal processes.

Legislative reforms need to recognise a role for external (non Commission) based agencies and resources performing these functions. For example, mediation services are an alternative means of dispute resolution to the traditional process of conciliation and arbitration. They are low cost, informal and may be accessed locally. Small business, in particular, would be a beneficiary of this approach. Mediation is well established in the court system and also has a principal role in overseas industrial relations jurisdictions.

Circumstances where mediators may be usefully engaged include during periods of industrial action, when resolving disputes in the agreement-making process or where tribunal or judicial involvement in a workplace relationship may previously have been the conventional recourse.

Effective mediation, which can be more facilitative and less judgemental than traditional approaches, provides the parties with more direct ownership of the outcome of a dispute.

A Coalition Government will:

- give formal legislative recognition to the provision of mediation services in industrial disputes, for use on a voluntary basis, as an alternative or supplement to the quasi-legal processes of the Commission. These services will be particularly useful for resolving disputes in the agreement making process, during periods of industrial action or generally as a substitute for tribunal based involvement.

## **2 Compliance**

In a decentralised workplace environment it is important for individual employees and employers, and their representative organisations, to understand clearly their rights and obligations. While they have the responsibility for determining the outcomes of agreement-making, they must act in an orderly way which does not cause unnecessary or costly damage, but which focuses on their responsibilities.

Under the Coalition, the law (including the *Trade Practices Act 1974*) has applied equally to unions as it does to other Australians. Stronger sanctions and deterrents have existed against unlawful industrial action and breaches of agreements, whilst respecting the right to take protected action when necessary to negotiate collective agreements. A

much fairer balance under the general principle of mutual obligation between employers and employees has been struck.

These laws have been vital in curtailing widespread irresponsible action that, in the past, has damaged the economy and job security of Australians. Without them, unions would have unleashed crippling national strikes on small businesses, manufacturers, exporters and Australian consumers – for example, during the 1998 waterfront dispute. Only the Coalition's laws – which Labor has promised to repeal – stopped innocent Australians from being the victims of reckless union boycotts and wildcat or sympathy strikes.

In the first full year of the Coalition's new system, these laws contributed to the lowest level of industrial disputes in Australia since 1940 and the lowest level of disputes (per thousand employees) since 1913.

A Coalition Government will:

- Encourage employers and employees to deal with industrial disputes at the enterprise level (including the use of alternative dispute resolution options);
- Maintain the principle that all Australians, including union bosses and union officials, are equal before the law and should not have special rights to inflict economic damage on persons or businesses;
- Primary and secondary boycotts by unions will continue to be unlawful under the *Trade Practices Act 1974*.
- Improve the compliance framework of the system by more clearly distinguishing in legislation the rights and responsibilities of employers and employees, and reinforcing the simple and unambiguous distinction between protected and other, illegitimate industrial action;
- Maintain the successful Coalition initiative of empowering the Commission to issue specific orders preventing the taking or continuation of unlawful industrial action, and to have those orders enforced by the Federal Court, and legislate to make the process of making and enforcing these orders more efficient;
- Examine ways to improve access to injunctions and common law remedies against unprotected action (such as the repeal of section 166A of the *Workplace Relations Act 1996*);

- Maintain and tighten the ban on strike pay (payments by employers to employees when they undertake industrial action) to further deter such action (including retaining the Coalition's legislation discouraging the random use of bans and limitations).

## **D Unfair Dismissals**

The Coalition has removed, as promised, Labor's job destroying unfair dismissal law and replaced it with a new system based on the concept of 'a fair go all round'.

These changes have already resulted in the number of unfair dismissal claims against employers, including small business, under Federal laws falling by 49%, and by 18% across all jurisdictions.

But unfair dismissal laws are still holding back job creation and deterring employers from taking on new employees. The reform of unfair dismissal laws needs to go further if unemployed Australians and young people are to get new job opportunities.

Unfair dismissal laws cannot be allowed to override the public responsibility of Governments and industry to foster job creation and create new job opportunities. New initiatives are required to target unfair dismissal rights where they are most needed – to the long term employed, not short term, casual or transient employees. Better targeted unfair dismissal laws are also consistent with practices of countries with which Australian business competes.

One grouping of unfair dismissal claims concern employees with less than six months' service. Claims by these employees, who have been given a job but not entrenched their role at the workplace, discourage employers offering more jobs, and are as costly and time consuming to defend as claims by long term employees.

Furthermore, the unfair dismissal rights of these employees, especially workers on probation and workers with brief service has been unclear – particularly determining what is an acceptable or appropriate period of probation. To provide certainty to both employers and employees, the Coalition will fix the period of probation at six months for all new employees (although current and future apprentices and trainees will be unaffected by this proposal).

The small business sector remains hardest hit by unfair dismissal laws. Small business owners, working long hours and increasingly deprived

of their own family and leisure time, have had the work available for additional employees but are still deterred from offering more jobs and hiring more staff by the unfair dismissal laws. Small business loses out, as do the unemployed and young Australians.

Small business estimates that up to 50,000 new jobs would be created, particularly for young people, if small business was exempt from unfair dismissal claims by new employees. Already the Coalition has proposed this initiative to the Parliament, but it has twice been blocked by Labor and minor Senate parties, which have allowed union ideology to prevail over the interests of small business and unemployed Australians.

A re-elected Coalition Government will have a fresh electoral mandate to implement this measure as a matter of high priority. Following re-election a Coalition Government will resubmit this legislation to the parliament, and require its immediate commencement.

Restoring balance to unfair dismissal laws should not, however, excuse an employer who acts unlawfully in victimising or dismissing an employee on prohibited grounds (such as discrimination-based dismissals). It is important that these protections, already legislated by the Coalition, remain in existence.

A Coalition Government will:

- Require at least six months continuous employment with an employer before a newly employed person can apply for an unfair dismissal remedy. This will remove existing uncertainty over the rights of probationary employees and encourage the creation of new jobs for unemployed Australians across the economy;
- Continue to pursue a specific permanent exemption for small business from unfair dismissal laws for newly employed workers;
- Retain the right of newly employed workers affected by the six month exemption or the small business exemption to seek remedies against unlawful dismissals for reasons, such as discrimination or victimisation, or on grounds which infringe their rights to freedom of association and free choice in workplace agreement-making;
- Retain the prevailing rights of current and future trainees and apprentices in relation to termination of employment under the *Workplace Relations Act 1996*;

- Take further steps to amend the unfair dismissal laws to ensure that legal costs are minimised and to discourage claims by casual employees or frivolous and vexatious claims, including doubling the filing fee to \$100 but retaining the right of waiver for disadvantaged persons.

## **E Small Business**

Small business is crucial to our economic growth and social welfare. Yet small business has, for most of this century, been disenfranchised by the centrally controlled workplace relations system based on third party intervention by big Government and big union interests. The Coalition's 1996 reforms started the process of reshaping the system so that it fitted the nature of small business workplace relations, and not vice versa. A re-elected Coalition Government will continue that process.

Labor's system gave unions a control over the workplace relations system well beyond the actual influence union bosses have at workplaces. This was especially true in small business where up to 90% of workplaces are non unionised, and where employers and their employees are rarely, if ever, in dispute. The old system also created an unjustified burden of red-tape and complexity for small business owners and their employees.

In contrast, Coalition policies of allowing choice and ease of non-union workplace agreements, a reduced role for third party intervention, simplified award safety nets underpinning workplace bargaining and a less bureaucratic process for approving agreements respond directly to the reform objectives advocated by small business.

A Coalition Government will:

- Maintain and develop a workplace relations system which provides employers and employees in small business with opportunities to develop, with the minimum of paperwork, productive and mutually beneficial workplace agreements, without uninvited third party intervention;
- Continue policies which encourage small business to participate fully in the decentralised system, including the distribution of material in plain English and improve the timeliness of notifications and the convenience of hearing locations;
- Further limit the capacity for unions to rope employers and employees

in small business into the Federal award system against their will by placing higher legislative value on lawfully established employment arrangements or pre-existing and settled forms of regulation;

- Require small business to be given better notice of proposed hearings of union roping-in logs of claim, and broader rights of objection to such claims;
- Continue to pursue a specific permanent exemption for small business from unfair dismissal laws for newly employed workers;
- Legislate to ensure that the distinction between employees and independent contractors is clearly defined and that independent contractors, many of whom are small businesses, are not regulated as employees by the workplace relations system;
- Reduce the paper work burden (with particular benefit for small business), by removing duplication and complexity in time and wage record keeping requirements on employers whilst maintaining protection for employee entitlements;

## **F Young Australians**

The Coalition believes that the workplace relations system must positively contribute to the creation of jobs and career paths for young Australians. It is also an important part of Government policies designed to reduce youth unemployment.

The workplace relations system has never openly affirmed these objectives. Labor, when in Government, actually legislated to abolish age-based youth wages, a policy reversed by the Coalition in 1996 because it would have priced young Australians out of jobs. 420,000 young Australians are employed on age based junior wage rates. The Australian Retailers' Association estimates that Labor's policy would put at risk the jobs of up to 300,000 young people in the retail industry alone. Unlike Labor, the Coalition will not create an ideologically driven system which prices young people and the young unemployed out of jobs.

A Coalition Government will:

- Include, for the first time, in objects of the *Workplace Relations Act 1996* a specific requirement that the system, and in particular the AIRC, promote the employment of young people, help reduce youth

unemployment and protect their competitive position in the labour market;

- Legislate to permanently retain existing age-based youth wages and protect the jobs of the 420,000 young people currently employed on that basis, and require the AIRC to ensure that all awards include junior wage rates where appropriate;
- Support the new training opportunities being provided for young people under New Apprentices through appropriate wage arrangements in the award and agreement system.

## **G Women**

Women have been key beneficiaries of the enabling provisions of the *Workplace Relations Act 1996*. The system has now been opened up to all those who have not been well served in the past by third parties with vested interests and fixed solutions.

Coalition policies have created scope for the development of genuinely innovative and flexible workplace-based agreements on working patterns and leave entitlements (including cashing out of leave or time in-lieu arrangements) through the global no-disadvantage policy. This has enabled women to enter into agreements tailored to their personal or family circumstances through workplace agreements. We have also improved career paths and job security for women through simplified awards and wider availability of permanent part time (rather than less secure casual) employment when this suits an individual's preference.

In all of these areas, women had for years been disadvantaged by inflexible regulation, made largely in response to standards set in male dominated blue-collar industries. Women, not just union bosses, now have a say in the negotiation of agreements. Agreements now regularly include tailor-made approaches to working hours, time off and leave for various family reasons, career break arrangements, provision of family or nursing facilities and equal opportunity initiatives – which were not a feature of the previous ‘one size fits all’ system.

The Coalition has balanced the system so that these new freedoms and flexibilities are linked to protections against discrimination and respect for the principle of equal remuneration for work of equal

value.

The Coalition has also provided funds for advisory services that assist women employees and their employers, and set up the Office of the Employment Advocate to have particular regard to the needs of women, workers with family responsibilities and outworkers in relation to workplace agreements and their rights to freedom of association.

A Coalition Government will:

- Maintain a flexible and fair workplace relations system that provides full access to women's entry and participation in the workplace, and which enables women to make informed choices about their working arrangements;
- Retain the role of the Affirmative Action Agency but improve its operation with an incentive based, educative and conciliatory approach to compliance, a reduction in the paperwork reporting burden and stronger workplace links.

## **H Families**

Through its workplace reforms, the Coalition has provided practical measures to allow employees to better balance work and family responsibilities.

The Coalition's *Workplace Relations Act 1996* now has a specific object of recognising work and family issues and helping to prevent discrimination on grounds that include family responsibilities.

The removal of many restrictions on types of employment (such as part time work), the freeing up of restrictive work practices and rosters and legal access to carer's leave are of practical benefit to families where working men or women share family responsibilities.

A Coalition Government will:

- Continue to pursue policies which foster the development of job opportunities, job security and career paths for workers who wish to better integrate work, family and lifestyle requirements;
- Strengthen the focus on accessing agreement-making choices and the new flexibilities in the simplified and consolidated award system;

- Continue to implement policies which prevent third parties – either uninvited unions or industrial tribunals – from denying workers with family responsibilities access to agreed flexibilities in work patterns or categories of employment which suit their individual needs and circumstances.

## I Registered Organisations

A workplace relations system which respects individual rights and reflects the profile of modern Australian workplaces must recognise the fact that two-thirds of workers choose not to join unions, and that the vast majority of businesses do not employ union members.

The Coalition is committed to the principle of freedom of association and to maintaining a system which protects individual choice of union membership. We are proud of having already legislated against the closed shop and abolished Labor's laws that gave – and now promise to again provide - preference to unionists over non-unionists.

The Coalition will not divide Australians between unionists and non-unionists and then discriminate in favour of the minority unionists like Labor did – and would do again.

We will continue to welcome responsible unions and believe that unions, where truly representative and responsive to their members, can have an important role to play in expressing the legitimate interests of their members. Unionism must not, however, be allowed to override the basic rights of individual freedom of association and freedom of choice. Responsible unions should adhere to the principles of best practice corporate governance and the rules applying to membership based service organisations within the community. Over time, appropriate provisions of the corporations law should progressively govern the regulation of registered organisations.

We have ceased taxpayer funding of trade union training, and ensured that employer funding of trade union training is no longer mandatory in awards.

A Coalition Government will:

- Maintain the principles of freedom of association (voluntary unionism) and strengthen their operation in the *Workplace Relations Act 1996*, particularly to avoid loopholes where the laws may not fully protect independent contractors or their employees from coercion;

- Legislate to make it unlawful for any person or group of persons (whether employers, union bosses or workers) to plan to establish or maintain, directly or indirectly, a closed union shop;
- Legislate to remove all forms of preference to unionists against non-unionists, whether by employees, employers or contractors, including the removal of provisions granting indirect preference in awards or agreements (such as existing requirements that employers actively encourage unionisation of their workforce);
- Amend the *Workplace Relations Act 1996* to increase the accountability of unions to their members in financial and other matters, and foster the creation of greater democratic control of union decision making;
- Support (by further legislation, if necessary) the formation of enterprise unions, the disamalgamation of super unions and the creation of formal or informal workplace consultation structures;
- Amend the right of entry provisions of the *Workplace Relations Act 1996* to ensure that the proper role of unions is as a service provider to its members, not as an uninvited quasi-inspector at the workplace;
- Amend the existing registration provisions of the *Workplace Relations Act 1996* to make them more workable and overcome technical and procedural impediments never rectified by Labor governments.

## **J Occupational Health and Safety**

Government has a responsibility to provide leadership to employers and employees to reduce the social, economic and personal cost of workplace injury and disease.

A significant initiative which the Coalition Government, working with the States and Territories, has implemented and fully funded is the development of a national system for comparative performance monitoring of occupational health and safety and workers compensation systems between jurisdictions. This initiative will help States and Territories implement best practice standards for workplace safety in their occupational health and safety and workers compensation systems.

Through this new approach, and with other initiatives, we have already introduced a new business plan for the National Occupational

Health and Safety Commission. It is now a more focussed and relevant body which better directs resources and priorities, and gives strategic direction to national reform. Under the Coalition, National Occupational Health and Safety Commission works towards identifying significant and emerging OHS problems and provides practical occupational health and safety solutions for workplaces. As a result, State and Territory Governments, which implement standards and provide services, are now fully and effectively engaged in the work of the National Occupational Health and Safety Commission.

The Coalition Government is also committed to achieving best practice in the administration of its own workers compensation system for Commonwealth employees.

A Coalition Government will:

- Continue the progress that has been made in improving Australia's occupational health and safety performance by co-ordinating national initiatives aimed at reducing the human and economic costs of injury and disease at work;
- Pursue priorities with the States and Territories that focus attention on practical workplace health and safety prevention measures and minimise administrative overlap or duplication;
- Promote the integration of health and safety principles with the broader issues of workplace productivity, workplace relations and organisational change;
- Introduce a stronger and more efficient structure for the administration of the Commonwealth's workers compensation responsibilities, including the use of private sector services for the management of claims;
- Continue to work with the State and Territories to develop ways to better harmonise their workers compensation systems where employers and workers operate across State borders;

## **K Consultation**

### **1 Commonwealth/State Co-operation**

The Coalition has restored a co-operative working relationship with State industrial relations systems.

We have made the Labour Minister's Council a workable and useful forum for high-level policy consultation between the Commonwealth and the States and Territories. One important example of this work is the review that has been initiated, through the Labour Ministers Council, of national and state laws to better protect workers redundancy and other entitlements in cases of business insolvency.

A Coalition Government will:

- Complete the review of worker entitlements in cases of business insolvency in co-operation with the States and Territories, as well as representatives of industry and employees;
- Continue to respect the right of employers and employees to make workplace agreements in the Federal or State jurisdiction of their choice, and to strengthen section 111AAA of the *Workplace Relations Act 1996* to ensure that there is a higher value placed upon lawfully established employment arrangements or pre-existing or settled regulation (rather than the forced, unnecessary or disruptive process of unions roping-in workplaces into federal awards);
- Take further measures to reduce technical or inter-jurisdictional issues that impact in a practical way on the rights and responsibilities of employers and employees;
- Reduce the cost burden on industry operating across State borders by continuing the process of harmonisation of workplace relations systems between jurisdictions. With the support of Governments in each of these States, we established a single system in Victoria, and a complementary system in Queensland. We have also co-operatively implemented harmonised administrative measures in Western Australia, South Australia, New South Wales and Tasmania with the support of those State Governments;
- Give active consideration to further arrangements that reduce duplication and red tape in service provision, including service delivery through State systems. The contracting out of services either to other government agencies or to the private sector, subject to strict quality controls, can improve service delivery and reduce costs to the taxpayer.

## **2 Employers and Employees**

Governing in the public interest means not being captive to any one

interest group. Unlike Labor, which is captive to trade union bosses policy and ideology, the Coalition's workplace relations policies are governing for all of us.

A Coalition Government will:

- Continue to consult with all employer and employee stakeholders (and their representatives), seeking to magnify common interests and balance competing interests;
- Maintain active consultation with employers and workers, including small businesses, unions and industry associations;
- Retain a formal consultation mechanism with peak industry and union bodies through the National Labour Consultative Council;
- Consult with the minor parties in the Senate to achieve the objectives of this policy whilst retaining the right to act on our mandate for any of those still appropriate initiatives contained but not implemented in the Coalition's first workplace relations reform Bill introduced into the Parliament in May 1996.

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