

Chapter Seven

7

A New Industrial Relations System: A Fairer Future for Working Families

Central to Australians' belief in a fair go for everyone is the belief in fairness at work. The Australian labour movement's commitment to improve pay and work conditions for working people has for generations helped make Australia such a great place to live, work and raise a family. Yet these basic rights and conditions are now being taken away by unfair, one-sided industrial relations laws. Labor will abolish these one-sided laws and restore balance and fairness to the working lives of all Australians.

The Future of Industrial Relations

1. A flexible industrial relations system based on high employment, a skilled workforce and increased productivity is the basis of a modern, thriving Australian economy and is essential for building and sustaining prosperity for all Australians.
2. To play a productive role in the Australian economy and to participate in family and community life, employees need the financial security which comes from employment security and protection.
3. The Howard Government's new industrial relations laws are unfair and put the interests of working Australians and their families last. Under these unfair laws, terms and conditions of employment which make up the take home pay of working Australians, like penalty rates, overtime, leave loadings, shift allowances, bonuses and public holiday rates can be stripped away.
4. These laws have taken away the rights of working people, and ripped fairness out of the workplace. They have:
 - reduced the safety net by replacing awards with five minimum conditions;
 - removed the no disadvantage test for agreement making so workers' terms and conditions can go backwards without compensation;
 - promoted unfair take it or leave it Australian Workplace Agreements (AWAs) which cut hard-fought for pay and conditions;
 - made it impossible for the majority of workers in an enterprise who want a collective agreement to get one unless the employer consents;
 - taken away the principle of an independent umpire and gutted the Australian Industrial Relations Commission;
 - stripped unfair dismissal protections for Australian workers; and
 - prevented trade unions from properly representing their members.
5. The Howard Government's unfair industrial relations laws have made it even harder for parents to balance their responsibilities at work and at home, with no adequate protections from excessive and unpredictable hours. This is bad news for Australians and their families – and particularly for their children and grandchildren.

- 6.** These laws are most harmful to those most at risk—and that includes teenagers in their first job. More and more Australians are worried about their family, their relatives, their friends and their neighbours being affected by these unfair laws.
- 7.** It's just another example of the Howard Government throwing the fair go out the back door.
- 8.** Labor will repeal this unfair legislation and will use the full range of powers available to it in government to replace these unfair laws with new laws that create a fair, flexible and productive industrial relations system. We must have a modern industrial relations system for a modern Australia.
- 9.** Labor's new system will balance our priority for a globally competitive economy while helping families manage their responsibilities at home and in the workplace. Specifically, Labor will guarantee:
 - a strong safety net of minimum conditions;
 - the right to bargain collectively for decent wages and conditions;
 - access to an independent industrial umpire which will ensure fair wages and conditions and settle disputes;
 - the right to join a union and be represented by a union;
 - fair rights if employees are unfairly dismissed; and
 - the abolition of AWAs and an industrial relations system in which there will be no statutory individual employment agreements.

Principles

- 10.** Security of employment is fundamental to income stability and to all aspects of personal and family life. Therefore the industrial relations system should provide significant protection for the security of workers' employment and of their wages, entitlements and working conditions.
- 11.** Industrial relations arrangements should serve social and economic goals. There must be emphasis on both achieving fair outcomes for workers and building efficient enterprises.
- 12.** The industrial relations framework should encourage cooperation not confrontation. Government has a key role in promoting and fostering such a climate of cooperation.
- 13.** Labor recognises that our industrial relations system must take account of the inherently unequal power balance existing between individual workers and their employer. This principle has long been accepted in Australian society and by virtually all federal governments prior to the Howard Government.
- 14.** The rights and entitlements of workers, particularly the most vulnerable such as young workers, workers with disabilities and workers from non-English speaking backgrounds, need to be supported and protected as a consequence.
- 15.** The inherent imbalance of power between workers and their employers requires a collective approach within the industrial relations system in order to deliver fairness. Fair and balanced bargaining must be underpinned by a safety net of legislated minimum conditions and decent minimum wages and conditions contained in modern awards. Agreements should be subject to a no disadvantage test, to ensure vulnerable workers are not exploited in bargaining.
- 16.** The legitimate role of trade unions and their rights to organise, to take action on behalf of their members and on behalf of workers generally, and to bargain collectively, should be recognised, defended and enhanced.

- 17.** A strong and independent industrial umpire is vital to the fair and proper functioning of our system.
- 18.** Workers must be able to participate in and share the benefits of the success of the enterprise or industry for which they work and of the economy as a whole.
- 19.** Labor recognises that there is a crisis of low pay in Australia that has come about in conjunction with growing income inequality. Labor acknowledges public disquiet about the increasing difficulty for low-paid workers and their families to participate fully and with dignity in Australian society, whilst at the same time there has been an explosion in executive salaries.
- 20.** The independent industrial umpire has an important role in examining the means by which the low pay crisis and specific areas of labour market exploitation in Australia can be addressed.
- 21.** Nationally recognised high quality vocational training and skill development opportunities should be available throughout the workforce.
- 22.** Non-discrimination will continue to be a central tenet of Labor's industrial relations policy. This includes recognition that work in some industries with traditionally high levels of female employment has been historically undervalued, and a continuing commitment to equal remuneration for women, not just equal pay.
- 23.** Labor will ensure that Australia's domestic industrial relations arrangements are consistent with its international obligations. Labor will restore Australia to a position of international leadership and pride.

Fairness

Fair Representation

- 24.** Every Australian has the right to freely choose whether or not to be a member of a trade union and to be represented by the union. Labor recognises this fundamental democratic right and will protect Australians from being discriminated against because of their trade union membership or activity.

Fair Pay and Conditions

- 25.** Australian workers deserve a proper safety net of legislated minimum conditions and decent minimum wages and conditions relevant to particular industries contained in modern, simplified awards.

Fair and Balanced Bargaining

- 26.** Collective bargaining should be promoted through a fair and simple stream of workplace and enterprise agreements negotiated with trade unions or employees and consistent with ILO obligations.
- 27.** Labor recognises that employers and employees or unions may also want to negotiate consistent terms and conditions across an industry, for example childcare.
- 28.** Labor will abolish AWAs which are secretive, unreviewable and unfair. There will be no legislative provision for federal statutory individual agreements. Labor will implement transitional arrangements for employers and employees who are bound by existing AWAs, which are simple and sensible, and which take into account the wishes of the parties.

A Fair Independent Industrial Umpire and Monitoring

- 29.** Labor believes a strong and independent industrial umpire is essential to the maintenance of a fair and balanced industrial relations system.
- 30.** Labor will ensure the independent industrial umpire has real powers to settle disputes, to maintain a safety net of fair wages and conditions. Under Labor, the industrial umpire will act in the national interest and in the interests of fairness and equity.
- 31.** Labor will create an effective and impartial monitoring agency with enhanced resources for the enforcement of workplace laws, awards and agreements.

Fair Termination of Employment

- 32.** Labor's industrial relations system will provide significant employment protection and job security for working Australians.
- 33.** Labor will balance the right of employees to have protections against unfair dismissal with a process which takes account of the needs of business and employees to have unfair dismissal matters resolved in a balanced, cost effective and timely fashion.

Fair Superannuation

- 34.** Labor will ensure that all statutory and industrial superannuation obligations, and statutory and voluntary superannuation entitlements, are protected for Australian employees.

Fair Transfer of Entitlements

- 35.** A change in ownership of a business or similar corporate restructure should not be used as a means of evading pre-existing wages and conditions. Labor will facilitate schemes that provide portability of leave entitlements between employers where those entitlements would otherwise be lost to the employee.

103**Fair Treatment of the Federal Government's Own Employees**

- 36.** Public sector workers should be treated fairly by government and have full access to the independent industrial umpire.

Fair Treatment of All Who Work

- 37.** The protection of the industrial relations system should be extended beyond a narrow definition of employees to include those in employment-type relationships. The method of engagement of workers should not be a vehicle for denying them access to the independent industrial umpire or the usual range of entitlements and rights. Nor should it be designed to undermine their income or conditions.

Outworkers

- 38.** Labor recognises the disadvantaged position of outworkers in the textile, clothing and footwear (TCF) sector when compared with the rest of the labour force. Outworkers require specific regulatory protection in order to control the exploitative conditions under which they are employed.
- 39.** Labor is committed to introducing complementary federal and state legislation that aims to ensure outworkers are employed under secure, safe and fair systems of work.

Flexibility**Getting More Out of Life: Work and Family**

- 40.** The way families live and work has changed radically. Women's employment participation is increasing. Labor recognises the importance of women's participation in the labour market to

Australia's productivity and global competitiveness and the importance of work to the independence of women and the security of their families. Labor is committed to a work and family package, which supports women's participation in the workforce and provides improved assistance to all Australian families, especially in areas such as industrial relations, children's services, taxation and income support.

- 41.** Labor believes that policies to better balance work and family mean better economic prosperity and community harmony. It means that employers can get the best out of their employees and families can get more out of life.

Paid Maternity Leave

- 42.** Australia and the United States are the only developed countries that do not have a national paid maternity leave scheme.
- 43.** Labor believes that it is economically and socially responsible for governments to assist mothers with the financial costs associated with the birth of their children. In particular, mothers need to be able to spend time with their newborn babies and have time to recover from childbirth.
- 44.** Labor will aim, over time, to introduce a paid maternity leave scheme for all mothers with no cost burden to small business.

Productivity

- 45.** Labor believes that investment in human capital is at the heart of the economic reform that will position Australia as a competitive, innovative, knowledge-based economy that can compete and win in global markets.
- 46.** Instead of investing in our stock of human capital, Australia has fallen behind in its education and training of all workers. Australia has also pursued an industrial relations agenda which encourages individual agreement over collective bargaining—despite the positive relationship between enterprise level agreements and long-term productivity growth.

Promoting Safe Workplaces

- 47.** Whilst occupational health and safety is currently primarily a State responsibility, the federal government can and should do more to ensure appropriate standards are applied for Australian workers irrespective of where they work.
- 48.** Labor will work cooperatively with the States and Territories to ensure that workers' compensation schemes, social security and Medicare deliver the best possible benefits to injured workers. Labor will work with the States and Territories to achieve appropriate minimum national standards of benefits for injured workers.
- 49.** Labor will work with the States and Territories to achieve a nationally consistent occupational health and safety framework which reflects best safety practice within Australia, and which is consistent with the best international standards. This framework should be clear and capable of enforcement at the workplace level.

Resolutions

Workers' Contribution To Economic Wealth

Labor recognises that Australian workers have made a significant contribution to the social fabric and economic prosperity of the country.

Despite this contribution, the period of Howard government has seen growing unfairness in the labour market. Jobs are increasingly fragmented. There has been a significant growth in poor quality jobs that are associated with insecure incomes, irregular or unpredictable working hours and a loss of benefits and entitlements.

Working families are struggling to keep their heads above water. Households now spend a record 11.6 per cent of disposable income servicing debt.

Despite economic growth driven largely by the resources boom, in the 12 months since the introduction of the Howard government's extreme IR laws, real wages have declined. In the first 12 months that the laws were in force real total average earnings for full time adult workers dropped by 0.6%.

For full-time workers in the private sector average total earnings have dropped by 1.1%, with average earnings for women workers in the private sector is falling by 1.8%.

The gender pay gap is as large today as it was in 1978. Full-time women earn on average 10% less than full-time adult males.

At the same time executive salaries have grown at an unacceptable pace. Between 1990 and 2005, the average annual total regular cash remuneration of Chief Executives of a sample of Australia's largest companies rose by 564 percent, from \$514,000 to \$3.4 million, or to a notional weekly average of \$65,700. There is no evidence that these excessive rates care correlated with company performance.

105

Decent Work

Hours of work

Some Australians have too much paid work, while others do not have enough.

Full-time jobs have become long-hours jobs. Between 1985 and 2005 the average working hours for men increased by 1.9 hours per week to 43.2 hours and for women by 1.7 hours to 39.3 hours. Labor recognises that these long, and often excessive hours of work, place unfair levels of stress on workers and their families, and constitute a risk to workers health and well-being.

Part-time work can assist employees undertake study or training or care for dependents.

However many part-time employees would prefer longer hours. The ABS suggests that 5% of employees are under-employed and seeking more hours. These workers are looking for another 20 hours of work each week. This involuntary part-time work camouflages under employment, with adverse consequences for both employees and for national prosperity.

The arrangement of hours has also changed. More and more workers are working unsocial and irregular hours. Thirty seven per cent of employees regularly work overtime, 13% of workers hours have hours that vary from week to week and three in ten regularly work weekends. Recent research highlights that personal relationships health and well-being suffer when workers are unable to strike the right balance between work and other commitments. These unpredictable, insecure and fragmented working arrangements place strains on working families.

Casual work

The period of the Howard government has been associated with a growth in casual, contingent and other insecure forms of employment. In August 2006 over 28% of all employees were employed on a casual basis, with almost a third of all women employed casually. In certain sectors permanent work has all but disappeared, with almost two thirds of employees in the hospitality sector and half of all employees in retail employed on a casual basis.

This level of job and income insecurity is not in the public interest. Such insecurity has been associated with employee stress, and associated harm to workers' well-being, family relationships and worsening social problems. The concentration of casual employment amongst women workers denies women access to training and promotion, and means that those workers most likely to require paid leave to care for family members are least likely to have access.

Instead, the long-term interests of workers, industry and the nation is better served by an expansion of secure, high quality jobs with appropriate training and career prospects.

Quality Jobs And Balanced Lives

Labor acknowledges that working time arrangements can vary according to the needs of employees and employers in an industry. Nevertheless, the erosion of full-time employment and growth in casual, part-time, contracting and insecure forms of employment is adversely affecting the ability of families to meet their financial, family and social needs and responsibilities.

Labor also believes that long and excessive working hours are placing unfair levels of stress and strain on workers and families.

Labor will encourage employers and unions to develop working time arrangements in agreements or awards which:

- Are consistent with employees' preferences and needs;
- Reduce excessive working hours;
- Maximise employment creation;
- Reflect agreed enterprise or industry priorities;
- Emphasise levels of working time that are sufficient and reasonably predictable to provide relevant and meaningful outcomes for work;
- Encourage preference for secure full time and part time employment over casual employment; and
- Prohibit the misuse of unpaid trial work.

Labor will initiate an inquiry to examine the growth of insecure and contingent employment and its effects on workers and their families, and to recommend measures to promote greater employment stability. Labor will work with employers, unions and other parties to develop effective and viable solutions to these important issues.

Workers With Disabilities

Unlike the Howard government's punitive approach to getting people with a disability into work, Labor will consult and work with unions, employers and community organisations to remove obstacles to the employment of people with disabilities in fair and non-exploitative ways.

Safe And Healthy Workplaces

The current application of the Comcare scheme and the Commonwealth's occupational health and safety jurisdiction to the private sector is bad public policy. It has created:

- A complication of federal arrangements;

- An undermining of entitlements such as access to journey accident and common law claims; and
- A safety gap where basic safety standards will not be properly enforced.

Labor will work cooperatively with the States and Territories to:

- Ensure that workers compensation schemes, social security and Medicare deliver the best possible benefits to injured workers; and
- Harmonise occupational health and safety frameworks which reflects best safety practice within Australia, and which is consistent with the best international standards. This framework should be clear and capable of enforcement at the workplace level.

Labor will reintroduce income protection by amending the Safety, Rehabilitation and Compensation Act for the purposes of employees who are injured travelling to and from work and during breaks in working hours.

Employee Entitlements

Protection of employee entitlements in circumstances of company insolvency is an increasingly important aspect of income security. Labor's scheme to protect employee entitlements will be national and will ensure that:

- 100% of entitlements of employees are protected in circumstances of insolvency;
- There is an obligation on employers to make proper provisions for employee entitlements;
- Employers of businesses which cease trading, close their business, 'disappear', transfer assets out of the employing entity, establish phoenix companies or otherwise have an incapacity to pay employee entitlements, irrespective of whether an insolvency practitioner has been appointed to the employing company or not, are eligible to receive assistance including in circumstances where employees are stood down by an insolvency practitioner;
- Corporations law is amended to enable recovery of assets in circumstances where the use of corporate structures has the effect of denying workers their entitlements;
- Payments to employees are timely;
- Employees have a right to review and appeal in respect to decisions to reject application for assistance;
- Additional cost burdens placed on employers are minimised;
- Employers are not required to make additional payments for benefits already protected by trusts or other appropriate means; and
- Small business is protected from any additional costs.

Labor recognises the importance of a sound legislative framework to strengthen corporate governance and responsibility with respect to the security and protection of employee entitlements. Labor will ensure:

- The recovery of assets in circumstances where the use of corporate structures have the effect of denying workers their entitlements;
- All employee entitlements, whether they arise from an industrial instrument, any other instrument, terms of settlement or by law, are recognised as a debt for the purposes of insolvency;
- ASIC's powers are reviewed and strengthened where necessary, to enable disqualification of a director from holding office where the director has been convicted of trading while insolvent;
- Ensure that administrators and liquidators of insolvent companies are independent of creditors;

- Upon reasonable request by employees or unions, require companies to disclose financial information as to the company's ability to meet their obligations under the law regarding employee entitlements (by means which are practicable); and
- Directors are required to act once they have reasonable grounds to believe that the company is, or likely to become insolvent.

Labor will also conduct a review of the Corporations Act which will consider the following issues:

- The early detection and prevention of insolvencies with the objective of restructuring businesses in difficulty;
- The treatment of creditors who are competitors of the insolvent company and whether such creditors should be able to vote on a proposal to wind up the company;
- The situation where there is an objection to the decision of the chairperson (of a meeting of creditors) to include or exclude any proof of debt or claim and that decision alters the outcome of the vote;
- Whether directors who are convicted of trading while insolvent should be personally liable for outstanding employee entitlements;
- The effectiveness of the legal framework in relation to director disqualification, avoidance of obligations and insolvent trading, including whether the current onus of proof provisions are appropriate; and
- The effectiveness of the provisions in the Corporations Act which deal with penalties imposed on directors for breaches in relation to employee entitlements and trading whilst insolvent.

In recognition of the importance of superannuation in enhancing employees' long-term entitlements and security, Labor will amend relevant superannuation and associated legislation to ensure that:

- They maintain the capacity for awards and agreements to ensure monthly contributions;
- The superannuation system provides essential protection for employees and for the superannuation contributions made by them or on their behalf;
- Effective choice, without undermining successful industry funds;
- Representative and balance trustee structures;
- An independent appeals process; and
- Unpaid superannuation entitlements will be included in Labor's scheme to protect employees' entitlements.

Labor will enable Fair Work Australia to act to enhance the security and protection of employee entitlements.

Labor will facilitate schemes that provide portability of entitlements between employers where those entitlements would otherwise be lost to the employee. Labor acknowledges that less people are becoming eligible for long service leave and will examine ways in which long service leave can be returned to being a mainstream entitlement which better reflects the contemporary labour market.

Building And Construction Industry Act

Labor in Government will abolish the Australian Building and Construction Commission and ensure that the new Fair Work Australia provides a balanced and effective compliance regime, which will provide procedural and substantive fairness to all parties in the construction industry.

Outworkers

Labor will implement a package of reforms including parallel federal legislation modelled on the Victorian Outworkers (Improved Protection) Act 2003 and the NSW Industrial Relations (Ethical Trades) Act 2001.

Labor will work cooperatively with the State governments to achieve these goals, including enactment of legislation designed to ensure the following:

- No outworker in any Australian jurisdiction will have fewer rights to legal redress and protection than are offered by any other Australian jurisdiction;
- The entire chain of clothing production and sale will be rendered transparent to scrutiny, so that each party in that chain will become identifiable and accountable for ensuring payment of monies sufficient to meet local labour standards for the production of clothing:
- Provision of sufficient resources to ensure effective compliance with these legislative protections at each step in the chain of production and sale;
- Implementation of policies which require governments to ethically source their TCF supplies; and
- An end to the artificial distinction between so-called 'employee' outworkers and 'contract' outworkers by deeming all outworkers to be employees.

In order to participate and take a lead role in global efforts to end the exploitation of home based workers, Labor will, in Government, accede to the International Labour Organisation—C177 Home Work Convention, 1996, Convention Concerning Home Work.

Labor will support the joint industry-union initiative, the Homeworkers Code of Practice and its No Sweat Shop label, including providing resources to assist in the further development and promotion of this voluntary system of company accreditation/certification. The Homeworkers Code of Practice seeks to address the high levels of exploitation found in the clothing and fashion industry by making production chains transparent and promoting ethical locally-based manufacturers and designers.

Labor will in Government introduce regulation which requires corporations to report on and be accountable for the labour rights of employees in their contracting chain.

Maritime Workers

Labor is committed to ensuring that the general workplace laws apply to employees in the Coasting Trade.

Conference notes that the Howard Government has excluded such protections to those engaged in certain commercial enterprises, particularly non-citizens, employees and corporations engaged in operating shipping vessels under single or continuing voyage permits.

Conference also notes the High Court Decision obtained by the Maritime Unions and the subsequent challenge by those unions to the application of WorkChoices Regulation making powers by the Commonwealth with regard to permit ships.

Labor will protect these vulnerable seafarers and promote fair labour standards in the Australian shipping industry.

Fair Treatment Of The Federal Government's Own Employees

Public sector workers are entitled to an industrial relations system that is flexible, fair and promotes collective bargaining as the most efficient way of delivering good pay and conditions. As an employer, Labor will develop a system that fosters the public service as a model employer that treats employees with dignity and respect in an apolitical framework.

Retirement Incomes

Labor understands that returns and costs are the drivers of investment performance. Labor also knows that the collective provision of superannuation maximises economies of scale and reduces the burden on employers.

Labor believes that employees should be able to access low cost not-for-profit funds through their workplace, and industrial awards should be able to address superannuation. Awards should contain not-for-profit funds as the default fund.

Labor notes the clear evidence that the 9% SG is insufficient to fund adequate retirement incomes for workers on average incomes. Labor believes that employers, employees and government will need to make a contribution to addressing this, and Labor will work over time to achieve a 15% contribution level.

Workers' superannuation savings should continue to be protected by representative and balanced trustee structures. These have proven to deliver honest and diligent leadership and administration of the funds under their management.

Promoting Decent Work Internationally

Despite seeking and accepting a position as a member of the International Labor Organisation's governing body, the Howard Government has repeatedly been found to be in breach of ILO fundamental standards, in particular Convention 87 on Freedom of Association and the Right to Organise, and Convention 98 on the Right to Organise and Collective Bargaining.

Labor will ensure that Australia's domestic industrial relations arrangements are consistent with our international obligations, and will restore Australia to a position of international leadership and pride.

Labor will also actively work within the ILO, in particular within our region, and the development of international labour standards and the promotion of decent work, with a particular focus on issues of forced labour and child labour.

Labor will provide support and assistance within the region to promote free and democratic organisations to represent workers and employers, and to champion respect for internationally recognised workplace rights, in particular the right to join a union and pursue workers common interests free from coercion and violence.