

2016 FEDERAL ELECTION: The Workplace Relations Policies

28 June 2016



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Notwithstanding that we are in the final week of the 2016 Federal Election campaign, the Australian Labor Party (Labor), the Coalition and the Australian Greens (the Greens) have released only partial detail on their workplace relations policies, and little if any detail on how they intend to amend the *Fair Work Act 2009*.

AMMA has consistently argued that significant flaws and imbalances in the Fair Work Act need to be addressed urgently, and we are campaigning for “[5 reforms over 5 years](#)” to ensure our workplace relations system better supports investment, doing business and job creation in Australia’s resource industry (visit amma.org.au/backontrack).

Both Labor and the Coalition are yet to publicly indicate:

- How they will respond to the Productivity Commission’s [69 recommendations](#) to reform the Fair Work Act (issued in December 2015).
- How they would ensure our workplace relations system better supports productivity, competitiveness, doing business and job creation in Australia.
- How they will address serious, practical problems experienced by those operating under the current Fair Work Act.

However, there have been policy announcements on workplace relations during the campaign to date, which we can use to start to take stock of the competing policies of the two major parties, the Greens and others on employment and workplace relations.

These are outlined within the following pages.

If further significant workplace relations policy announcements are made during the final days of the 2016 campaign, this briefing will be reissued.

AMMA members with any questions regarding workplace relations policies that are taken to the 2016 Federal Election, or the future direction of workplace relations regulation in particular areas, should contact AMMA’s Policy Team on 03 9614 4777 or policy@amma.org.au.

AMMA, 28 June 2016



THE COALITION

At the time of writing, the Coalition has not yet released a formal, complete workplace relations policy as part of its federal election campaign. Nor has it formally responded to the Productivity Commission's 69 recommendations for changes to the Fair Work Act and related legislation (released in December 2015).

However, the Coalition has made several policy announcements in recent weeks that go to workplace relations issues. These include:

Registered organisations and the building industry

The Coalition's [commitment](#) to fairness and transparency in workplaces: This policy states that a re-elected Turnbull Government would adopt the recommendations of the Heydon Royal Commission relating to registered organisations and the building industry. In particular, the Coalition would:

- Re-establish the Australian Building & Construction Commission (ABCC).
- Legislate to allow the courts to ban officials of registered organisations from holding office if they repeatedly break the law.
- Codify the obligations for officials of registered organisations to act in the best interests of their members.
- Outlaw payments between an employer and union that are not covered by legitimate exemptions.
- Require disclosure to employees of any payments between employers and unions.
- Enable courts to place registered organisations in administration or deregister them if they become "dysfunctional".
- Introduce new sanctions for deliberately falsifying membership records.
- Introduce a new "public interest test" for mergers of registered organisations. This is directly relevant to the proposed merger between the CFMEU and the MUA.

Vulnerable workers

The Coalition in recent weeks has also announced its [Policy to protect vulnerable workers](#) that would strengthen existing laws and:

- Increase the penalties that apply to employers who underpay workers and who fail to keep proper employment records.



- Introduce an even higher penalty for “serious contraventions” that would apply to any employer that has intentionally “ripped off” workers, regardless of the employer’s size.
- Introduce a new offence that captures franchisors and parent companies who fail to deal with exploitation by their franchisees (this policy was in response to the recent 7-Eleven scandal that revealed systematic underpayment of workers in the franchise).
- Deliver \$20 million in extra funding for the Office of the Fair Work Ombudsman for its enforcement and compliance activities.
- Strengthen the Office of the Fair Work Ombudsman to more effectively deal with employers who “intentionally exploit” workers.
- Establish a Migrant Workers Taskforce within the Office of the Fair Work Ombudsman to target employers who exploit skilled migrants.

At an April 2016 [breakfast](#) hosted by Thomson Reuters and Landers & Rogers on the subject of “The future of industrial relations”, Minister for Employment Michaelia Cash identified four priorities for the Coalition when looking at workplace reform:

- The need for a system that promotes jobs and productivity.
- The need for a “future-focused” workplace relations system.
- A strong safety net.
- Women’s participation.



LABOR

Labor has issued policy statements and media releases across a variety of areas of workplace relations regulation, including a number that would impose new regulation, liabilities and obligations on employers. It would be fair to characterise these announcements as solely responding to union concerns, and as adding additional regulation to an already flawed and unbalanced Fair Work Act.

As of 27 June 2016, Labor has still comprehensively failed to address:

- Key problems with the Fair Work Act identified by employers, and in particular the five key areas in which AMMA has campaigned for reform (see amma.org.au/backontrack).
- Recommendations for change from the Productivity Commission and the Fair Work Review Panel Labor appointed when last in government.

The centrepiece of Labor's published policy commitments is a booklet entitled [100 Positive Policies](#), which in turn is backed up by more detail on specific clusters of policies.

One such cluster is workplace relations, with Labor to date releasing various policy statements under the banner of "Protecting penalty rates and your rights at work".

Casual employment

Shadow Minister for Employment & Workplace Relations, Brendan O'Connor, has announced [plans](#) for additional regulation of casual employment. If elected, Labor will "examine the definition of casual work" and "set an objective test for determining when a worker is 'casual'."

Labor argues that "workers should not be 'casual' just because their employer tells them they are" and says "Labor will put an end to the increasing prevalence of this practice".

Licensing labour hire

Labor's policy on [labour hire](#) seeks to introduce a national licensing regime for labour hire companies. This would mean that from 1 July 2017:

- It will be unlawful for labour hire companies to operate without a licence.
- There will be new obligations on the clients or users of labour hire, ie. it will be unlawful to knowingly or recklessly use an unlicensed labour hire company.



- To gain and maintain a licence, labour hire companies will have to demonstrate compliance with the Fair Work Act, workplace health and safety laws, migration laws and demonstrate they are correctly paying superannuation and tax.
- Licences will last for three years and will be automatically renewed subject to a compliance audit by a (new) Labour Hire Licensing and Compliance Inspectorate. Licences will be able to be revoked where there is evidence that the qualifying conditions are not being met.
- Licences will only be granted to employers who are judged to be “fit and proper” persons, taking into account criminal convictions as well as their co-operation with the Fair Work Ombudsman and a new Labour Hire Licensing and Compliance Inspectorate.
- To tackle “shadow directors”, a person may be deemed not to be “fit and proper” because of a connection with a person or company who does not qualify, someone who has previously been refused a licence, or has had a licence cancelled.
- There will be an option for licences to be granted with conditions, e.g. for new operators with no history of compliance.

Overseas companies that supply labour to Australian firms, either directly or through other companies, will also have to be licensed to operate in Australia.

It appears that Labor’s national scheme would operate in place of proposed state licensing regimes under consideration by state Labor governments following a series of recent simultaneous parliamentary inquiries.

Union governance

The governance of registered trade unions and employer organisations has been a significant issue following recent scandals and the investigations and final [recommendations](#) of the Heydon Royal Commission into Trade Union Governance and Corruption.

Both major parties have released policies in this area. Labor’s policy for [Better Union Governance](#) commits to:

- Empower the General Manager of the Fair Work Commission to share information with the Australian Securities & Investments Commission (ASIC) to improve the investigation of serious contraventions of the Fair Work (Registered Organisations) Act.
- Increase funding for the General Manager of the Fair Work Commission by \$4.5 million over four years to improve the monitoring of registered unions and employer associations.



- Increase penalties from \$10,800 to \$18,000 for union officials who engage in false or misleading conduct, or who don't comply with requirements to provide information to members.
- Double maximum penalties for all criminal offences under the Fair Work (Registered Organisations) Act.
- Increase fines from \$10,800 to \$216,000 for paid union officials who act in a way that "materially prejudices" the interests of the union or its members. That would include breaching duties to act in good faith, and with due care and diligence, and breaching disclosure requirements (e.g. failing to disclose a material personal interest).
- Subject officials who improperly take part in a decision of the union from which they will personally benefit to fines of up to \$216,000 for serious contraventions and \$18,000 otherwise.
- Introduce new powers for courts to disqualify paid officials for serious contraventions of their duties, "akin to penalties for publicly listed companies under the Corporations Act".
- Require (registered) unions to rotate their auditors every five years.

Notably, Labor's proposed new duties and liabilities are to apply to paid officials only, "who are responsible for decisions about the financial management of registered organisations".

Whistleblowers

Buried in Labor's [Plan for Better Union Governance](#) are new obligations to protect / not take adverse action against whistleblowers, which would apply to the entire private and not for profit sector (i.e. to AMMA member companies).

Anyone who takes adverse action against whistleblowers will face two years' jail and an \$18,000 fine, and whistleblowers will be able to take civil action for reinstatement and compensation.

In the case of unions / employer organisations, whistleblowers will be protected from adverse action if they disclose information to a third party (including the media), provided they first raise the matter with one of the Fair Work regulators and the union itself.

Labor's *Plan for Better Union Governance* also contains various announcements to alter disclosure laws for political donations by organisations and individuals.

Safeguarding workers' rights



Under this heading, Labor commits to imposing a range of [additional obligations and liabilities on employers](#), encompassing:

- Increased penalties for “deliberate and systemic” underpayments to employees / workers.
- Additional liabilities for “sham” contracting.
- Additional powers for the Fair Work Ombudsman to pursue employers who liquidate companies to avoid paying monies owed to employees (i.e. new penalties for phoenix companies).
- Additional regulation to ensure temporary overseas workers are not underpaid and there is a “level playing field for all workers in Australia”. This includes clarifying that skilled migrants who enter Australia under 457 visas are covered by the Fair Work Act.

These are not new proposals although Labor has reiterated them in the pre-election campaign. Labor introduced a private members bill (the Fair Work Amendment [Protecting Australian Workers] Bill 2016) containing the same proposals. AMMA and other employer representatives [opposed the bill](#), which was not debated prior to parliament rising ahead of the federal election.

Penalty rates

Labor’s policy to [Protect Weekend Penalty Rates](#) commits a Shorten Government to intervening in award review proceedings to make further submissions to the Fair Work Commission in favour of retaining penalty rates, and indicates that Labor “will never stop fighting for penalty rates - before and after the decision”.

This is a well-publicised contrast to the Greens, who have indicated they will legislate to reverse any Fair Work Commission decision to reduce weekend penalty rates.

Labor’s remaining published policies to date are less relevant to AMMA members, addressing [Commonwealth Cleaning Services Guidelines](#) and [Reform of the Defence Force Remuneration Tribunal](#).



THE GREENS

As with the two major political parties the Greens do not yet appear to have released a new and explicit workplace relations policy going into the last week of the 2016 federal election campaign.

However, a number of previous policy announcements point to their approach, as does the consistent opposition to all Abbott / Turnbull government amendments to the Fair Work Act during the last Parliament.

Prior to the calling of the 2016 federal election, the Greens released a series of [Principles on Employment and Workplace Relations](#). These include proposals for additional regulation that would impose additional costs on business and reduce employers' flexibility and capacity to manage workplaces. The Greens' principles include:

- Facilitating collective agreements that are union-negotiated and exceed award standards.
- Ensuring no workers are subject to laws and regulations detrimental to their interests on the basis of the industry in which they work. This appears to restate Greens' opposition to the separate building industry workplace relations regulator, currently Fair Work Building & Construction, and restate the Greens' opposition to the restoration of the Australian Building & Construction Commission (ABCC).
- Ensuring "individual arrangements cannot be sub-standard compared with awards or collective agreements". While the Greens' emphasis is clearly on collective bargaining, this principle seems to accept there should be scope for some form of individual arrangements.
- Informing new and existing employees that they are entitled to join a union, and enabling the provision of information about the unions responsible for the sector and the industry. Presumably, this would be by way of an obligation for employers to provide information about relevant trade unions.
- Protecting workers and their unions against sanctions under non-industrial laws (such as the Competition and Consumer Act 2010) or common law actions when undertaking legitimate industrial activity. This appears to be in opposition to secondary boycott laws that have the longstanding support of the AMMA network.
- Strengthening right of entry powers for unions. While there is little further detail this appears to position the Greens in direct opposition to AMMA's calls for reform in this area by further opening up unions' powers to enter workplaces.
- Ensuring greater protections for casual, fixed-term and probationary workers, including providing them with full rights to challenge termination of employment. Notably, both Labor and the Greens have made commitments in this area.

- Expanding portability of entitlements (such as long service leave). Again, this positions the Greens in opposition to the approach advocated by AMMA and other employer groups to ensure existing portability is not extended to other industries.
- Mandating shorter standard working hours, and reversing current trends towards increased unpaid overtime. Very few countries have pursued such a course, and France's 35 hour week is widely considered to have been a costly failure that damaged France's economy and destroyed rather than created jobs.
- Giving employees greater control over their workplace arrangements, the meaning of which is unclear but seems to support the idea that employees should be able to work their preferred hours.
- Restricting independent contractor arrangements to individuals who are genuinely running their own business, and enhancing protections against sham contracting. Labor has also announced policies to increase penalties for "sham contracting", and this was one of the few recommendations from the 2015 Productivity Commission review that AMMA opposed.
- Improving minimum employment standards for trainees and apprentices, the meaning of which is unclear but presumably this would include increased remuneration for trainees and apprentices.
- Abolishing any building and construction industry laws or codes, and completely removing any coercive powers over workers, with the Greens' view being that "one set of laws should apply equally to all workers".
- A legislated minimum of five weeks' annual leave for all employees.

During the course of the 2016 Federal Election campaign, specific policies have been released on:

- **Gender pay:** The Greens have [recommitted](#) to their Fair Work Amendment (Gender Pay Gap) Bill 2015, which would protect employees from disciplinary action where they disclose their pay levels.
- **Trade:** In addition to opposing the Trans-Pacific Partnership (TPP), the Greens [would](#) "legislate to ensure that trade deals do not diminish Australia's requirements for labour market testing" or act "as a means of circumventing safety requirements or taxation laws".
- **Coal Industry:** The Greens would create a federal [trust fund](#) for coal mine recovery, the proceeds of which would be used to retrain displaced coal industry employees.

OTHER POLITICAL PARTIES

Notwithstanding recent reforms to the Commonwealth Electoral Act, the 2016 federal election is expected to return to office various non-major party Senators and independent MPs, potentially in significant positions for determining the “balance of power” in the Senate and perhaps the House of Representatives. This may well have a direct impact on the workplace relations legislation the next government is able to pass through the parliament.

Varying policy detail is available from independent and smaller party Senate candidates, including those currently or formerly in parliament. In the specific area of workplace relations, there is virtually no publicly available information from candidates beyond the two major parties and the Greens.

Nick Xenophon Team (NXT): The NXT does not release specific policies, instead choosing to identify the principles it will apply to legislation that comes before it. On employment and workplace relations, the NXT indicates that:

High levels of workplace participation and productivity are the key to achieving a strong and prosperous economy, particularly in the small business sector. This needs to be set in a framework of mutual fairness.

Examples of what needs to be done:

- *Reviews of the employment and workplace relations system should be ongoing to ensure our standard of living is maintained and small business – the engine-room of jobs growth – prospers.*
- *Acknowledge and respect the role of responsible unions in the workplace to give a voice to workers who otherwise would face an un-level playing field.*

During the final days of the 2016 federal election campaign, Mr Xenophon has sought to clarify the NXT policy on penalty rates, issuing an additional “[policy principle](#)”:

Penalty rates are an integral part of the industrial relations system and any variance to rates and conditions must be dealt with by the appropriate workplace relations tribunal (currently the Fair Work Commission). The unique challenges of small business should always be considered.

Examples of what needs to be done:

- *The Fair Work Commission should remain the independent umpire.*
- *Small business and the potential for increased youth employment should always be considered in any determination of weekend penalty rates.*

Jacquie Lambie Network: No express policy on workplace relations.

Derryn Hinch’s Justice Party: No express policy on workplace relations.

Pauline Hanson's United Australia: No express policy on workplace relations.

Bob Katter: Includes one statement (partially) on workplace relations in his "[20 Key Policy Points](#)" which seeks:

Assurance that employees will maintain their current rights to collective bargaining, as well as their right to arbitration.

That these same rights be restored to Australian farmers and that where a majority of farmers in an industry request collective bargaining arrangements, that such be provided with rights the same as those enjoyed by every Australian employee.

This appears primarily geared to the capacity of farmers to collectively agitate for pricing from key clients such as the major supermarkets.

Andrew Wilkie: No express policy on workplace relations.

Tony Windsor: No express policy on workplace relations.

Cathy McGowan: No express policy on workplace relations, but she did support the recent repeal of the Road Safety Remuneration Tribunal (RSRT).

FURTHER UPDATES

Further updates to this document will be made daily in the lead-up to the 2016 Federal Election.

For more information on AMMA's workplace relations policies, including our comprehensive evidence-based submission to the Productivity Commission's review of Australia's workplace relations system, and AMMA's "5 Reforms Over 5 Years" campaign, visit amma.org.au/backontrack.