



# The Coalition's Policy to Improve the Fair Work Laws

May 2013

# 1. Introduction

Workers, business and the economy will be better off under the Coalition's policy to improve the current Fair Work laws.

Our policy will help make Australian workplaces even better, by improving the Fair Work laws to provide a stable, fair and prosperous future for all.

Workplaces are important to our economy and society. Higher living standards, better pay and more jobs all depend on having fair, productive, and effective workplaces. The prosperity of tomorrow is driven by what happens in our workplaces today and this is why it is in our national interest to make sure that the Fair Work laws are balanced and effective.

The Coalition's plan to improve the Fair Work laws embraces common sense and provides practical solutions to everyday problems. It will ensure that the Fair Work laws provide a strong and enforceable safety net for workers while helping business to grow, create new jobs and deliver higher real wage growth.

Under a Coalition Government, the pay and conditions of workers will be protected.

We believe in reward for effort and we believe in protecting people's jobs.

We also understand the need for healthy businesses to create opportunities for workers to get ahead and ensure that nobody is left behind.

Our policy will encourage business to work innovatively and productively, helping to create one million new jobs over the next five years and two million jobs within ten years. This will drive prosperity and a strong economy to provide more job security and ensure sustainable wage increases.



The Coalition's Policy to Improve the Fair Work Laws will:

- Keep and improve the Fair Work laws – including the independent umpire
- Re-establish the Australian Building and Construction Commission
- Provide better protection for members of Registered Organisations
- Provide practical help to small business workplaces
- Guarantee workers have the right to access fair flexibility
- Create realistic timeframes for Greenfield agreements
- Ensure union right of entry provisions are sensible and fair
- Give underpaid workers a better deal
- Promote harmonious, sensible and productive enterprise bargaining
- Ensure the laws work for everyone and undertake an independent review by the respected Productivity Commission
- Deliver a genuine paid parental leave scheme and lift female participation rates in Australian workplaces
- Ensure workplace bullying is comprehensively addressed
- Urgently review the Remuneration Tribunal for the trucking industry
- Implement many recommendations from the Fair Work Review Panel report.

The Coalition's Policy to Improve the Fair Work Laws will restore the balance back to the sensible centre. A Coalition Government will give workplaces, business and workers the hope, reward and opportunity they need to ensure a long term, stable and viable future for everyone.



## 2. Our Policy – An Overview

The Coalition's Policy to Improve the Fair Work Laws will involve the following measures:

### 1. We will keep and improve the Fair Work laws

A Coalition Government will keep the Fair Work framework and work to improve them. Although there are some problems with the current laws as set out in this document, there are also many positive aspects. The Coalition will work to improve the operation of the Fair Work laws so that workers, business and the economy are better off.

### 2. We will ensure the laws work for everyone

A Coalition Government will initiate a genuine and independent review of the Fair Work laws to ensure Australians have the benefit of an objective, comprehensive and factual assessment of their operation and impact. This will be conducted by the Productivity Commission which will also be asked to consider how the laws can be improved.

We will also continue the improvement of the Fair Work Commission, reflecting the change programme which is currently underway. We believe it is crucial that our workplace relations system is supported by an efficient and modern tribunal which promptly provides effective and consistent decision-making. This will include giving active consideration to the creation of an independent appeal jurisdiction.

### 3. We will deliver a genuine Paid Parental Leave Scheme

A Coalition Government will deliver a genuine Paid Parental Leave Scheme to give mothers six months leave based on their actual wage. We will help families get ahead and give women a more realistic choice if they want to combine work with family and continue their career.

Under the Coalition's scheme mothers will be provided with 26 weeks of paid parental leave, at full replacement wage or the national minimum wage (whichever is greater)<sup>1</sup> plus superannuation.

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<sup>1</sup> Up to a maximum of \$75,000.



At 26 weeks, the Coalition's Paid Parental Leave Scheme is consistent with recommendations from the Australian National Health and Medical Research Council and the World Health Organisation that the minimum period of exclusive care and breastfeeding for optimal maternal and infant health outcomes is six months.<sup>2</sup>

As the Productivity Commission notes, the health gains from paid parental leave do not only benefit families. Society at large will benefit from lower long-term health costs and the likely long-run productivity benefits.<sup>3</sup> Our scheme will be of benefit to the economy at large because it will keep productive and potentially productive people more engaged in the workforce.

#### 4. We will ensure union right of entry provisions are sensible and fair

A Coalition Government will ensure union right of entry provisions are sensible and fair, by making sure they are modelled on the 2007 promise of Julia Gillard who said "we will make sure that current right of entry provisions stay."<sup>4</sup>

This promise was broken and unions were given much easier and far broader access to workplaces under the Fair Work laws, in one case, up to 200 visits in three months.<sup>5</sup>

More recently, Labor said they want to go even further by forcing employers to pay for the travel and accommodation costs of union bosses travelling to workplaces and giving them a right to recruit in lunch rooms even when the workers don't want them there.

A Coalition Government will change the law so that they are modelled on the promise that Labor made in 2007 and oppose Labor's recent attempts to go even further.

#### 5. We will re-establish the Australian Building and Construction Commission

The Coalition will re-establish the Australian Building and Construction Commission (ABCC) to ensure it maintains the rule of law and drives productivity on commercial building sites and construction projects whether on-shore or off-shore.

<sup>2</sup> Australian National Health and Medical Research Council, "Dietary Guidelines for Children and Adolescents in Australia," June 2008. Available: [http://www.nhmrc.gov.au/\\_files\\_nhmrc/file/publications/synopses/foodinfo.pdf](http://www.nhmrc.gov.au/_files_nhmrc/file/publications/synopses/foodinfo.pdf); World Health Organisation, Fifty-Fourth World Health Assembly, Global Strategy for Infant and Young Child Feeding, Report by the Secretariat, p. 2. Available: [http://apps.who.int/gb/archive/pdf\\_files/WHA54/ea547.pdf](http://apps.who.int/gb/archive/pdf_files/WHA54/ea547.pdf)

<sup>3</sup> Productivity Commission, Inquiry, 'Overview,' p. xviii.

<sup>4</sup> Julia Gillard, 28 August 2007, Press Conference

<sup>5</sup> CFMEU v Foster Wheeler Worley Parsons (Pluto) Joint Venture [2010] FWA 2341, 29 March 2010



Until it was abolished by Labor, the ABCC had been very effective in addressing workplace militancy and improving productivity in the building and construction industry. It helped increase industry productivity by around 10 per cent, reduced days lost to strikes, and provided an annual economic welfare gain of over \$6 billion per year.<sup>6</sup>

The ABCC will replace Labor's failed Fair Work Building Construction unit and will administer a national code and guidelines that will govern industrial relations arrangements for Government projects. This step will ensure that taxpayers' dollars are used efficiently. We will work with state governments who have put in place their own codes, to ensure consistency.

## 6. We will provide better protection for members of Registered Organisations

The Coalition will take strong action to stamp out the rip offs, rorts and corruption that has flourished inside some unions.

Members of registered organisations, such as employer associations and trade unions, are mainly small businesses and low paid workers. The Coalition believes they are entitled to representation which is accountable and transparent. Members deserve to know that their membership fees are being used for proper purposes.

From the Health Services Union scandal to the Australian Workers Union slush fund saga, the list of corruption and allegations of wrongdoing continues to grow. There have been more than seventeen separate investigations and inquiries into registered organisations under the Fair Work laws.<sup>7</sup>

A Coalition Government will ensure that registered organisations and their officials play by the same rules as companies and their directors, with the same penalties. This will ensure that members' money cannot be spent on prostitutes, used for personal holidays, or withdrawn from ATM's to be spent on personal items.

In addition, we will improve financial disclosure rules and create a Registered Organisations Commission as a watchdog to ensure the obligations are met and to help educate people about improved standards.

<sup>6</sup> KPMG Econtech Report "Economic Analysis of the Building and Construction Industry Productivity 2010" and "Senate Education, Employment and Workplace Relations Committee on Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011" Master Builders Association Australia 20 January 2012

<sup>7</sup> Fair Work Commission website



## 7. We will provide practical help to small business workplaces

The Coalition will provide practical and useful help for small business workplaces because this is where many jobs are created and innovation happens.

Small business men and women have many demands on their time and don't have the resources to be legal experts as well. The Coalition is determined to help them by ensuring the Fair Work Ombudsman provides targeted and clear help.

This will include a number of initiatives and help small business improve their understanding of the Fair Work laws so they have confidence to grow and employ.

We will also encourage greater compliance and education by providing potential immunity from Fair Work Ombudsman pecuniary penalty prosecutions for a small business employer if it pays or applies the wrong employment conditions, provided the error was not deliberate and the employer had previously sought Fair Work Ombudsman advice and help on the same issue.

## 8. We will guarantee workers have the right to access fair flexibility

The Coalition will remove the ability to restrict the use of Labor's Individual Flexibility Arrangements in enterprise agreements. This will ensure that workers can ask for fair and protected flexible working arrangements if they want.

The Fair Work laws introduced Individual Flexibility Arrangements (or IFAs) as a new way to allow workers and a business to agree on conditions that are suitable to their individual needs.<sup>8</sup> However, because some unions don't like workers and employers agreeing on anything except standard conditions, Labor gave them the ability to restrict access to IFAs or further narrow the standard terms in enterprise agreements.<sup>9</sup> This is unfair to workers who want to work innovatively or to suit their personal situation, such as leaving early to collect children from school, coaching a sports team, or other personal commitments.

A Coalition Government will ensure that enterprise agreements cannot restrict the use of IFAs. Because a Coalition Government will retain Labor's own 'Better Off Overall Test' it will mean that any IFA will always lead to a worker being better off. A Coalition Government will not reintroduce AWA's.

<sup>8</sup> Use of IFAs Best Practice Guide – Fair Work Ombudsman

<sup>9</sup> *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v HJ Heinz Company Australia Ltd (Echuca Site)* [2009] FWA 322 (22 September 2009)





## 9. We will ensure workplace bullying is comprehensively addressed

The Coalition believes that bullying is unacceptable in any workplace. It is a risk to health and safety and can have very serious, life-long consequences.

Although bullying is an occupational health and safety matter, Labor has promised to amend the Fair Work laws to include bullying.<sup>10</sup> The Coalition will support Labor's proposed changes to address workplace bullying but only if it is clear that a worker has first sought help and impartial advice from an independent regulatory agency, and further, the changes are expanded to include the conduct of union officials towards workers and employers.

## 10. We will create realistic timeframes for Greenfield agreements

The Coalition will ensure that enterprise agreements for new projects (called 'Greenfield agreements') can be negotiated quickly to ensure that infrastructure projects are not delayed and to encourage investment for everyone's benefit.

Greenfield agreements apply only to new projects where there are no existing workers employed. A Greenfield agreement will form the basis of employment conditions when the project is ready to start providing jobs.

Under Labor, the Fair Work laws effectively give unions the power of veto over new projects by requiring an employer to always negotiate a Greenfield agreement with a union.<sup>11</sup> Some unions have exploited this veto power by deliberately causing delays and setbacks, while others have used it as a tool to demand exorbitant conditions.

A Coalition Government will fix this problem by requiring negotiations for new project agreements to be completed within three months of them starting. If they are not completed in this time, the Fair Work Commission will be given powers to make and approve the agreement, so long as the proposed agreement provides fair working conditions that are consistent with prevailing industry standards.

We will retain Labor's own "Better Off Overall Test" to ensure that workers will be better off when they are employed.

<sup>10</sup> Fair Work Amendment Bill 2013

<sup>11</sup> s.187 (5) Fair Work Act 2009





## 11. We will give underpaid workers a better deal

The Coalition will ensure that workers who are underpaid receive interest on back pay held for them by the Fair Work Ombudsman. Currently, this is kept by the government.

The Coalition believes that this is unfair and if elected, we will ensure that any interest accrued on workers' money is given to the workers – not kept by the government.

## 12. We will promote harmonious, sensible and productive enterprise bargaining

The Coalition will ensure that negotiations for enterprise agreements are harmonious, sensible and productive. Enterprise bargaining is an important part of the Fair Work laws however Labor's provisions have resulted in some outcomes that simply fail the common sense test.

For example, they allow protected industrial action to be taken before genuine and meaningful talks have taken place, and in support of claims that are fanciful and unrealistic – such as a \$100,000 per year pay rise. Despite Labor claiming that productivity was a 'cornerstone' of the Fair Work laws, they contain no method to encourage workers and business to consider productivity when making an enterprise agreement.

To solve these problems a Coalition Government will ensure that protected industrial action can only happen if the Fair Work Commission is satisfied that there have been genuine and meaningful talks between workers and business at the workplace; and that the claims made by both parties are sensible and realistic. When it is asked to approve an enterprise agreement, the Fair Work Commission will need to be satisfied that the parties have considered and discussed ways to improve productivity.

We believe that Labor's 'strike first, talk later' approach is wrong. Labor promised this wouldn't happen – another broken promise. Protected industrial action in support of a claim for an enterprise agreement should always be considered a last resort option when talks break down – not the first step in bargaining as Labor has allowed.



### 13. We will urgently review the Road Safety Remuneration Tribunal

A Coalition Government will urgently review the operation of the Road Safety Remuneration Tribunal and the need for a further level of regulation.

In recent years, there have been many developments to address safety and remuneration issues in this sector, including revised health and safety laws, the introduction of modern awards, the Fair Work Commission and the National Heavy Vehicle Regulator. There is no evidence that a separate additional tribunal or a further level of regulation is necessary. Some have even suggested that the tribunal is “not about safety”<sup>12</sup> and a Government commissioned review found that “being definitive around the causal link between rates and safety is difficult”<sup>13</sup>.

Former transport union employees have spoken against the tribunal noting that there is “barely a specific case study where a death is involved to support [the link between rates of pay] and safety.”<sup>14</sup>

A Coalition Government will urgently review the role of this tribunal. Other protections, like National Heavy Vehicle Regulator will stay.

### 14. We will adopt some recommendations from the Fair Work Review Panel report

Despite being handed the report almost one year ago, Labor has ignored many of the common sense recommendations made by the panel that reviewed the Fair Work laws. The Coalition supports many of the remaining recommendations and we will seek to implement them in consultation with workers and business.<sup>15</sup>

<sup>12</sup> James Massola Ex-Union Official Slams Safe Rates Australian Financial Review 3 May 2013

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Towards more productive and equitable workplace: An evaluation of the Fair Work legislation 2 August 2012



## 3. Implementing our policy

### There will be no other changes

The details of the Coalition's Policy to Improve the Fair Work Laws are spelled out clearly in this document. Based on the laws as they stand now, the Coalition has no plans to make any other changes to the Fair Work laws.

### Regulations

To implement our policy, it will also be necessary for a Coalition Government to make changes to regulations and other rules underpinning the Fair Work laws. These changes will only be made in order to give effect to our policy and will go no further.

As is the case with all legislation, it is sometimes necessary to make administrative or machinery changes to rules and regulations to ensure they are consistent with other laws, or to keep them updated and workable. This has occurred several times under Labor.<sup>16</sup>

If this becomes necessary under a Coalition Government they will also be 'disallowable' as is the current practice under Labor. To be clear, administrative changes to regulations will only be made where absolutely necessary to ensure the laws are operative.

### Labor has proposed further changes to the Fair Work laws

Labor recently introduced the Fair Work Amendment Bill 2013 which proposes to make substantive changes to the Fair Work laws.

Except as spelled out in this policy, the Coalition will not oppose those changes and they will stay under a Coalition Government.

If Labor changes the Fair Work laws any further before the election, the Coalition reserves the right to repeal those measures, unless it is clear that they have the support of both workers and the business sector.

<sup>16</sup> For example, the Fair Work Legislation Amendment Regulations 2009 (No. 1) made a number of changes to reflect the name change from the AIRC to Fair Work Australia.



## 4. Our Policy – the background and detail

### 1. Keeping and improving the Fair Work laws

An elected Coalition Government will work with, and improve, Labor's Fair Work laws.

#### The issue

Some people have argued that there should be major changes to the Fair Work laws or that they should be repealed and replaced.

#### The Coalition's view

There are some problems with the current laws and how they operate. But there are also many positive aspects to the system and the Fair Work laws are still relatively new. The Coalition believes that it is better to work with and build on what we have now than it is to go back to square one and start again, as some have suggested. We know that stability, certainty and clarity are important to workplaces and their plans for the future.

#### The Coalition's solution

There is no need for major changes to the Fair Work laws as some have suggested. Instead, a Coalition Government will work to improve them as outlined in this document.

### 2. Ensuring the laws work for everyone

The Coalition will task the Productivity Commission with undertaking a thorough analysis of Labor's Fair Work laws and the impact they have on our economy, productivity and jobs.

#### The issue

There are important national interest questions to be answered about the Fair Work laws. For example, what impact have the Fair Work laws had on productivity? Are there ways in which the laws could be improved to help promote more jobs, better wages, a better standard of living and to make our workplaces operate better?



## The problem under Labor

Labor's review of the Fair Work laws in 2012 was deliberately weak. It was conducted by a hand-picked panel of people, some of whom reportedly either had ties to Labor or had already expressed public support for Labor's system.<sup>17</sup> Even the hand-picked panel were confined to reporting on the terms of reference that were narrowed terms of reference that had been altered by the Workplace Relations Minister's office.<sup>18</sup> In any event, the Fair Work laws have not undergone a rigorous review, which is needed.

Many groups have suggested changes to the system to solve those problems. The Coalition believes that Australians deserve a thorough enquiry followed by wide public debate.

## The Coalition Solution

We believe that it is fundamentally important to make sure that the Fair Work laws work for everyone and will task the Productivity Commission with undertaking a comprehensive and broad review of the laws.

## How this will work

The Productivity Commission is independent and has previously conducted reviews, such as in relation to the NDIS, that have been adopted by Labor. This will be an important development and everyone will be given an opportunity to have a say.

The review will give independent consideration to the problems raised by business and workers. These will be analysed in an independent and impartial way.

The Productivity Commission will be asked to make recommendations about how the laws can be improved, bearing in mind the need to ensure workers are protected and the need for business to be able to grow, prosper and employ.

Although the Coalition has no further plans to change the Fair Work laws, we will carefully consider the recommendations and findings of the Productivity Commission. If there is a good case for sensible and fair changes, they will be taken to an election before they are implemented.

In addition, a Coalition Government will also continue the improvement of the Fair Work Commission's operation, reflecting the change programme which is currently underway. We believe it is crucial that our workplace relations system is supported by an efficient and modern tribunal which promptly provides effective and consistent decision-making. This will include giving active consideration to the creation of an independent appeal jurisdiction.

<sup>17</sup> Paul Osborne and Andrea Hayward Minister Shorten defends Fair Work Act AAP August 02, 2012

<sup>18</sup> Judith Sloan Fair Work Act review an object lesson in spin The Australian August 03, 2012



### 3. A genuine Paid Parental Leave Scheme

A Coalition Government will deliver a genuine Paid Parental Leave Scheme to give mothers six months leave based on their actual wage.<sup>19</sup>

#### The issue

The Coalition understands the importance of ensuring that women, particularly those with children, are able to participate as fully as they wish in the workforce. Too many highly skilled and educated women are missing out on the career opportunities and financial security they want and deserve because they don't receive the right support through a proper paid parental leave scheme.

#### The problem under Labor

Labor has introduced what purports to be a national paid parental leave scheme, but is in fact just a rebadged Baby Bonus. It further entrenches the disparity in average retirement incomes between men and women by failing to include superannuation.

Labor has also imposed new and unnecessary administrative demands on employers, forcing them to act as paymasters for its Paid Parental Leave Scheme and bear the cost and inconvenience of restructuring their payroll and accounting systems.

#### The Coalition Solution

The Coalition will establish a proper scheme giving mothers 26 weeks paid parental leave, at full replacement wage or the national minimum wage (whichever is greater)<sup>20</sup> plus superannuation. Paid parental leave will be paid directly to parents by the Government and will be administered through the Family Assistance Office so there will be no additional paperwork for employers or cash flow problems for small business.

The period following the birth of a child is one of the hardest financially for parents. With the majority of mothers now in paid employment immediately prior to giving birth, many families cannot easily forgo a second income, even temporarily, without putting the financial security of their family at risk.

The Coalition's Paid Parental Leave Scheme recognises that a family's financial responsibilities don't reduce – indeed, they increase – when a new child is born. There is no maternity leave from mortgage payments, power and fuel bills or grocery expenses.

<sup>19</sup> Up to a maximum of \$75,000

<sup>20</sup> Up to a maximum of \$75,000



The Coalition's Paid Parental Leave Scheme will enhance child and maternal wellbeing by providing financial support to mothers while they are outside the paid workforce recovering from childbirth, breastfeeding and bonding with their newborns.

At 26 weeks, the Coalition's paid parental leave scheme is consistent with recommendations from the Australian National Health and Medical Research Council and the World Health Organisation that the minimum period of exclusive care and breastfeeding for optimal maternal and infant health outcomes is six months.<sup>21</sup>

As the Productivity Commission notes, the health gains from paid parental leave do not only benefit families. Society at large will benefit from lower long-term health costs and the likely long-run productivity benefits.<sup>22</sup> Our scheme will be of benefit to the economy at large because it will keep productive and potentially productive people more engaged in the workforce.

Importantly, we also acknowledge the disparity between the average retirement incomes of men and women. That's why our scheme includes superannuation at the mandatory rate.

According to Australian Bureau of Statistics data, around 80 per cent of Australian women who earn a salary earn less than \$62,400; and the average salary for women who work full-time is around \$65,000. This means the average woman who works full-time will be more than \$21,500 better off under the Coalition's scheme because they will receive their actual wage over 26 weeks (around \$32,500) instead of the minimum wage for 18 weeks (around \$10,900).

#### 4. Sensible and fair right of entry provisions

A Coalition Government will ensure union right of entry provisions are sensible and fair, by making sure they are modelled on the 2007 promise of Julia Gillard.

##### The issue

The Fair Work laws set out conditions relating to when a union official can access a workplace, known as 'Right of Entry' rules. The Coalition believes that right of entry rules should equally and fairly balance the need for workers to be represented if they wish, with the need for workplaces to run without unnecessary disruption.

<sup>21</sup> Australian National Health and Medical Research Council, "Dietary Guidelines for Children and Adolescents in Australia," June 2008. Available: [http://www.nhmrc.gov.au/\\_files\\_nhmrc/file/publications/synopses/foodinfa.pdf](http://www.nhmrc.gov.au/_files_nhmrc/file/publications/synopses/foodinfa.pdf); World Health Organisation, Fifty-Fourth World Health Assembly, Global Strategy for Infant and Young Child Feeding, Report by the Secretariat, p. 2. Available: [http://apps.who.int/gb/archive/pdf\\_files/WHA54/ea547.pdf](http://apps.who.int/gb/archive/pdf_files/WHA54/ea547.pdf)

<sup>22</sup> Productivity Commission, Inquiry, 'Overview,' p. xviii.





## The problem under Labor

In 2007, Labor actually promised that they would not change union access rules. They said:

*We will make sure that current right of entry provisions stay. We understand that entering on the premises of an employer needs to happen in an orderly way. We will keep the right of entry provisions.<sup>23</sup>*

*...the current rules in relation to right of entry will remain. With the right to enter another's workplace comes the responsibility to ensure that it is done only in accordance with the law.<sup>24</sup>*

*We promised to retain the current right of entry framework and this promise too will be kept.<sup>25</sup>*

Julia Gillard personally guaranteed these promises about right of entry and said:

*I'm happy to do whatever you would like. If you'd like me to pledge to resign, sign a contract in blood, take a polygraph, bet my house on it, give you my mother as a hostage, whatever you'd like ... we will be delivering our policy as we have outlined it.<sup>26</sup>*

Labor immediately broke this promise and changed the access rules allowing any union entry, giving unions massively expanded rights to access worksites.

Under the current Fair Work provisions, unions have been able to gain entry to workplaces even if they are not a party to the award or agreement that applies to that business and where they have no members. Labor's changes give unions privileged entry rights to any workplace, as long as they have potential members. This is the case even where enterprise agreements are made with other unions or directly with employees.

This has caused numerous problems where union right of entry has been exploited. For example, the Worsley aluminium plant experienced over 180 union visits in one year<sup>27</sup> and the Pluto LNG project had 200 union visits in three months<sup>28</sup>.

<sup>23</sup> Julia Gillard, 28 August 2007, Press Conference

<sup>24</sup> Julia Gillard, 29 April 2008, Speech - Fair Work Australia Summit

<sup>25</sup> Julia Gillard, 28 May 2008, Speech to Master Builders Australia

<sup>26</sup> Deputy Opposition Leader Julia Gillard, National Press Club debate, 8 November 2007

<sup>27</sup> Ewin Hannan "Union tilt for BHP workers slammed" *The Australian* January 26, 2013

<sup>28</sup> CFMEU v Foster Wheeler Worley Parsons (Pluto) Joint Venture [2010] FWA 2341, 29 March 2010



## More Labor changes are coming

Not content with breaking their 2007 promise, Labor now wants to go even further. The recently introduced Fair Work Amendment Bill 2013 contains more changes to give unions greater power when exercising right of entry laws.<sup>29</sup>

These changes will require employers to facilitate union transport and accommodation in so-called remote areas while at the same time limiting employers' ability to recoup the full costs of such exercises. The changes also make lunch rooms and crib rooms the default locations for unions to meet with potential members for discussion purposes or to conduct interviews in situations where the parties cannot agree on alternative locations and whether workers want this or not.

## The Coalition Solution

While it is important to allow workers access to industrial representation, the current rules have been abused and exploited by some unions. This is unfair to workers and businesses that simply want to get on with their jobs, rather than dealing with unreasonable attempts by unions to access their workplace.

A Coalition Government will change the Fair Work laws to ensure union right of entry provisions are modelled on the promise that Julia Gillard made in 2007. We will also oppose Labor's latest attempts to go even further, and, if they become law, a Coalition Government will repeal them.

This will mean that unions can seek entry to a workplace if:

- The union is covered by an enterprise agreement that applies to the workplace; or
- The union is a bargaining representative seeking in good faith to make an agreement to apply in that workplace; and
- There is evidence that it has members in that workplace who have requested their presence.

If a workplace is covered by a modern award, or, an enterprise agreement that does not cover a particular union, access will only be allowed if:

- The union can demonstrate they have, or previously have had, a lawful representative role in that workplace; and
- There is evidence that the workers or members have requested the presence of a union.

29 Mark Skully "Shorten has gone too far: bosses" Australian Financial Review 9th March 2013



To ensure that disputes about union entry laws can be resolved quickly, the Coalition will adopt the relevant recommendation of the Fair Work Review Panel Report<sup>30</sup> which gives the Fair Work Commission power to resolve disputes about frequency and ensure the rules are enforced. If they are breached, a penalty could be imposed.

In addition, we will provide union officials with photographic entry permits and require that they be produced if asked.

These changes will not affect the right of entry provisions for unions to investigate breaches affecting their members, representing a member in a dispute under an award or agreement, investigating health and safety breaches, or the special entry provisions for outworkers in the textile, clothing and footwear sector. Those rules will remain the same to ensure unions can act in their lawfully authorised representative roles.

### The Coalition will oppose Labor's attempts to go further

The Coalition will oppose Labor's proposed amendments to mandate that meal rooms or break areas are default locations for union officials to conduct interviews or hold discussions with employees. If passed, they will:

- Unfairly remove the right for an employer to reasonably request that interviews be conducted and discussions held in a particular area;
- Discourage unions from entering into sensible discussions with employers about a reasonable location; and
- Unfairly insert union bosses into lunch rooms used by all employees, including those who are not union members and those who do not wish to participate in union discussions. Only a small minority of employees are union members, about 13 per cent in the private sector.

Under the current provisions, unions have the right to challenge the location proposed by the employer in the Fair Work Commission if they regard it as unreasonable. There have been very few disputes about this issue over the years because employers typically make reasonable requests.

The Coalition believes there should be a fair balance between union's right to represent their members and to meet with them during meal breaks to discuss relevant issues, against the rights of non-union members to relax during their lunch breaks and not be forced to listen to union officials if they remain in the lunch room.

30 Towards more productive and equitable workplace: An evaluation of the Fair Work legislation 2 August 2012



## What this will mean

Our changes will mean that:

- Workers will still have access to their representatives when they want them;
- Entry to investigate alleged breaches of the laws, including under safety laws, will remain the same;
- Special entry rules for the outworkers in the textile, clothing and footwear industry will remain as they are;
- The 87 per cent of workers who are not union members will be able to eat their lunch in peace without listening to a union official;
- Business will not be forced to pay the costs of travel and accommodation for unions when they visit workplaces; and
- The Fair Work Commission will have powers to resolve disputes about right of entry.

## 5. Re-establishing the Australian Building and Construction Commission

The Coalition will re-establish the Australian Building and Construction Commission (ABCC) to ensure it maintains the rule of law and improves productivity on building sites and construction projects, whether on-shore or off-shore.

### The issue

For many years, the building and construction sector provided the worst examples of old fashioned industrial relations lawlessness. The Cole Royal Commission established that building sites and construction projects were hotbeds of intimidation, lawlessness, thuggery and violence.<sup>31</sup> Projects were delayed, costs blew out and investment in our economy and infrastructure was jeopardised.

It fell to the Howard Coalition Government to step in and make the tough decisions to clean up this sector. The establishment of the ABCC in 2005 provided a genuinely strong watchdog, dissolving the 1970's style practices that plagued this industry. It was a specialist regulator that enforced the rule of law applying to the building and construction sector.

31 Final Report of the Royal Commission into the Building and Construction Industry, February 2003



While the ABCC existed, the performance of the building and construction sector improved dramatically. The results speak for themselves:

- Industry productivity up by 9.4 per cent;
- Annual economic welfare gain to the community of around \$6 billion dollars per year; and
- Significant reduction in days lost through industrial action.<sup>32</sup>

### The problem under Labor

Over its term in government, Labor progressively dismantled the powers of the ABCC and then finally abolished it in 2012. It did this despite the fact that with each Labor change reducing the watchdog's powers, almost immediately the 'bad old days' returned. Labor oversaw wildcat stoppages, militant protests, demands that union mates be employed on projects, and an increase in disputes and did not address them effectively. For example:

- In August 2012, the CFMEU / Myer Emporium dispute saw violence in city streets, militant protestors intimidating the community and attacks on police horses.<sup>33</sup>
- In November 2012, the Little Creatures brewery site in Geelong suffered a violent dispute where picketers were accused in court documents of making throat-cutting gestures, threats of stomping heads in, workers being told they were dead and of shoving, kicking and punching motor vehicles. On social media, a union member also threatened to boycott a local store for providing food to the workers on site.<sup>34</sup>
- In February 2013, City West Water in Werribee was subject to a dispute where protestors threatened people with 'Columbian neckties' and the dispute was so heated that workers had to be flown in by helicopter.<sup>35</sup>

It stands as a stark reminder of what can happen if there is no tough watchdog for building sites and construction projects to properly enforce the rule of law.

The problems were made worse because at the same time as Labor reduced the watchdog's power, it weakened the Code and Guidelines that contained special rules on government procured construction. Labor let in practices that were previously banned such as "one in all in" where if one person is offered overtime all of the other workers must also be offered overtime.

<sup>32</sup> KPMG Econtech Report "Economic Analysis of the Building and Construction Industry Productivity 2010" and "Senate Education, Employment and Workplace Relations Committee on Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011" Master Builders Association Australia 20 January 2012

<sup>33</sup> Mark Skulley and Nick Lenaghan "Unions' workplace war goes national" Australian Financial Review 28 August 2012

<sup>34</sup> John Ferguson "CFMEU defies court on death-threat dispute" The Australian November 19, 2012

<sup>35</sup> Stephen Drill, Chris Gillett "Dispute costs water project builder up to \$300,000 a day" Herald Sun February 12, 2013



## The Coalition Solution

The Coalition will re-establish the ABCC. We will reverse Labor's changes to the laws which underpinned the ABCC and replace Labor's failed and ineffective Fair Work Building Construction unit. The ABCC will administer a national code and guidelines and we will work with the State Governments who have put in place their own codes to ensure consistency.

A re-established ABCC will have appropriate and effective safeguards to ensure due process and transparency. We will ensure that compulsory interview processes retain Commonwealth Ombudsman oversight and that they are videotaped.

## 6. Better protections for members of Registered Organisations

The Coalition will take strong action to stamp out the union rip offs, rorts and corruption that has flourished over recent years. Revelations surrounding the Health Services Union have highlighted a failure in Australian law.

A Coalition Government will establish stricter reporting rules and higher penalties for those who do the wrong thing. We will also establish a genuinely independent watchdog to ensure the new rules and obligations are strictly enforced.

### *(a) Stricter reporting rules and increased penalties*

#### The issue

Many industry associations, such as employer groups and trade unions, are 'registered organisations' whose elected officers are required to comply with obligations set out in the Fair Work (Registered Organisations) Act 2009. This registration, amongst other things, helps them to represent members and their industry in workplace relations matters.

These obligations include rules requiring that they act in the best interests of members at all times, do not use their position to seek personal financial gain, and use members' money appropriately in a way that can be verified through the lodgement of financial returns and related statements to the Fair Work Commission



The laws applying to these registered organisations are akin to those which apply to companies and their boards of directors. Just as shareholders are entitled to know that the money they have invested is used for proper purposes, members of registered organisations are also entitled to know that their membership money is being properly used. However, unlike companies and their directors, registered organisations and their officials do not face the same consequences for doing the wrong thing.

For example, the lengthy Fair Work Commission investigation relating to the Health Services Union found that officials had:

- Used union members' money for personal advantage;
- Failed to act in the best interest of members; and
- Breached financial management rules.

Had these offences occurred in a company with directors, they would be exposed to criminal penalties including personal fines of up to \$340,000 and up to five years imprisonment. However, under the Fair Work (Registered Organisations) Act 2009, registered organisations and their officers are only exposed to civil penalties with the potential for comparatively modest fines of \$10,000 for an officer or about \$50,000 for an organisation or branch.

It is now clear that the existing laws need to be stronger. There is clear evidence that the money paid by members to some registered organisations is being used for personal gain and inappropriate purposes. The Coalition believes that the members of registered organisations, mainly workers and small businesses, deserve better. They are entitled to the same protections as shareholders of companies.

### The Coalition Solution

If elected, a Coalition Government will:

- Amend the laws to ensure that registered organisations and their officials have to play by the same rules as companies and their directors;
- Ensure that the penalties for breaking the rules are the same that apply to companies and their directors, as set out in the Corporations Act 2001; and
- Reform financial disclosure and reporting guidelines under the Registered Organisations laws so that they align more closely with those applicable to companies and that required by the ASX corporate governance rules.





In addition, a Coalition Government will require registered organisations provide better information to their members about how membership fees are spent. We will require them to provide each member of their organisation with a written simple, one page pie-chart breakdown of their yearly expenditure on particular items, such as labour, advertising, capital, operating and political donations every year.

Other rules relating to registered organisations, such as taxation laws, will not be affected by these changes proposed by the Coalition. They will remain the same as those that currently exist. The overwhelming majority of registered organisations already do the right thing and, in many cases, already comply with higher standards than those that currently apply.

### What does this mean?

The Fair Work (Registered Organisations) Act 2009 will be improved to require registered organisations and their officers to observe the same fiduciary and statutory duties as companies and their directors as set out in the Corporations Act 2001<sup>36</sup>. This will harmonise obligations and rules as they relate to general duties and obligations, and penalties for non-compliance. Financial reporting obligations will, as a starting point, also reflect the obligations in the Corporations Act. Consultation will occur with stakeholders to seek their views about how to adapt and apply ASX governance rules.

### *(b) A genuinely independent watchdog with real powers*

It is also clear that the current enforcer of the Registered Organisations laws, the Fair Work Commission, has failed to do its job in this area. The three year Fair Work Commission investigation into the Health Services Union is a model of delay. Australians have lost the trust and faith needed in such an important body that is there to ensure members of organisations are not ripped off.

The Coalition will improve the Registered Organisations watchdog to ensure that reporting obligations are met and that allegations of wrong-doing are investigated quickly and efficiently. If elected, a Coalition Government will:

- Establish a new body, to be known as the Registered Organisations Commission. It will enforce, and police the expanded reporting and compliance obligations;
- Provide information to members of registered organisations about their rights and act as the body to receive complaints from their members;

<sup>36</sup> Sections 180-184; 189-190; 191-195; 198D; 208-210; 285-318; and 588G.



- Educate registered organisations about the new obligations that apply to them; and
- Absorb the role of registered organisations enforcer and investigator, currently held by the General Manager of Fair Work Commission

The Registered Organisations Commission will be independent and will operate within the office of the Fair Work Ombudsman. The new watchdog will have greater powers than those available to the current enforcer and will adhere to a strict charter to ensure all members of registered organisations are protected. The Registered Organisations Commission will also be required, to avoid any doubt, to cooperate with other law enforcement bodies where it is in the public interest to do so.

The first head of the Registered Organisations Commission will be appointed by the Minister but will not be subject to Ministerial direction. The Commission will be required to report to Parliament on an annual basis.

#### What does this mean?

The General Manager of Fair Work Commission (or delegate) has current responsibility to enforce the obligations in the Fair Work (Registered Organisations) Act 2009. These responsibilities will be transferred to the new Registered Organisations Commission, which will be an independent body, operating away from the Fair Work Commission. It will be based in (but not responsible to) the Office of the Fair Work Ombudsman and act as a truly independent agency. The new watchdog will be required to ensure that registered organisations comply with their improved obligations. It will have the power to investigate complaints and non-compliance quickly and effectively, while having an express obligation to cooperate with other law enforcement agencies. This will not affect the operation of the Fair Work Commission in any of its other day to day responsibilities, such as the conciliation and arbitration roles.

The Registered Organisations Commission will be independent of Government but will be required to report to Parliament and appear before Senate Estimates. The Commission will have enhanced powers to enforce the law similar to those held by ASIC.



## 7. More help for small business

The Coalition will provide practical help for small business workplaces.

### The issue

Small business men and women have many demands on their time and don't have the resources to be legal experts as well. We all know that small business is where jobs are created and innovation happens, and the Coalition is determined to help them in a number of practical ways.

### The problem under Labor

Instead of helping small business, Labor has instead imposed a plethora of new rules, regulations and red tape on them.

### The Coalition Solution

A Coalition Government will provide small business with better help to ensure they understand the laws and are confident to grow and employ. We will:

- Develop a 'Your First Employee' guide to encourage small business men and women to grow and create jobs, by developing a simple, plain-English guide that takes the mystery out of how to employ a new worker;
- Maintain a dedicated Small Business helpline within the Office of the Fair Work Ombudsman to provide information and assistance that is tailored to smaller workplaces;
- Develop a Small Business Wages App allowing workers and managers in small workplaces better access to real-time information that is accurate and suitable to their needs; and
- Encourage greater compliance and education by providing potential immunity from Fair Work Ombudsman pecuniary penalty prosecutions for a small business employer if it pays or applies the wrong employment conditions, provided the error was not deliberate and the employer had previously sought Fair Work Ombudsman advice and help on the same issue.



## 8. Guaranteeing workers have equal access to fair flexibility

The Coalition will ensure that all workers have access to Labor's system of Individual Flexibility Arrangements.

### The issue

The Fair Work laws contain a new way to allow a worker and a business to agree on conditions that are suitable to their individual needs, called Individual Flexibility Arrangements (or IFAs). IFA's are used to vary how the conditions specified in a workers award or enterprise agreement are applied to that particular worker.

They are not individual contracts or AWA's because they work in conjunction with an award or agreement, instead of replacing them. To ensure workers are protected if they use an IFA, Labor put in place a test called a 'Better Off Overall Test' or BOOT.

### The problem under Labor

Many unions do not like individual workers and their employers agreeing on employment conditions that are different from everyone else. To appease union interests, Labor ensured that the Fair Work laws allow enterprise agreements to restrict the use of IFAs.

This means that workers covered by an enterprise agreement may be denied the chance to have flexible arrangements even if they want one and their employer agrees. The Coalition believes that restricting the choice to use an IFA is unfair to workers who want to be better off overall, to work innovatively or to suit their personal situation.

While we understand that there are many people who are content to work under standard conditions, we believe there should be an option for those who have special circumstances (such as leaving early to collect children from school, coaching a sporting team, or other personal arrangements) to access genuine flexibility over their working arrangements provided they remain better off overall.



## The Coalition Solution

To provide workers genuine access to flexibility, the Coalition will ensure that IFA's cannot be restricted in an enterprise agreement. This will ensure they are available to workers if they ask for one. To ensure an IFA will always lead to a worker being better off, the Coalition will retain Labor's own 'Better Off Overall Test'.

In addition, we will ensure that the notice period to terminate an IFA is extended to 13 weeks consistent with the recommendations of the Fair Work Review Panel<sup>37</sup> and a recent Full Bench decision of the Fair Work Commission.<sup>38</sup>

### What this will mean

The ability for an IFA to be restricted by the terms of an enterprise agreement will be abolished. This will mean that workers covered by an award or agreement have equal access to fair flexibility if they want one, and won't be subject to union imposed restrictions. All of the other rules relating to an IFA will be kept, including that they be optional, pass the 'Better Off Overall Test' and be genuinely agreed.

## 9. Better ways to resolve workplace bullying

The Coalition will support proposals to address bullying at the workplace but only if it is clear that a worker has first sought help and impartial advice from an independent regulatory agency, and further, they are expanded to include the conduct of union officials towards workers and employers.

### The issue

Labor has introduced the Fair Work Amendment Bill 2013 which contains a new method to address workplace bullying.

Although bullying is traditionally a health and safety matter, Labor has promised to insert it into the Fair Work laws. This change will give a worker, who reasonably believes they have been bullied at work, the ability to apply to the Fair Work Commission for an order to stop the bullying.

<sup>37</sup> Recommendation 12

<sup>38</sup> Modern Awards Review 2012—Award Flexibility [2013] FWCFB 2170 (15 April 2013)



### The problem with Labor's proposal

In principle, the Coalition supports giving workers a further option to protect them from being bullied in the workplace.

Labor's proposed change will cause the Fair Work Commission to be swamped with claims that may be capable of otherwise being easily resolved. This is because the change proposed by Labor does not require a worker to seek help before going to the Fair Work Commission.

Further, many of the more serious cases of bullying have involved unions and their relationship with managers, employers and workers. To protect unions and allow them to go about unchecked, Labor has deliberately excluded them from coverage of their proposed changes.

### The Coalition Solution

It is important that workers are encouraged to take reasonable steps to resolve their concerns, before elevating them to a proceeding before the Fair Work Commission.

The Coalition will therefore support the changes that Labor has proposed, subject to a worker first trying to seek preliminary help, advice or assistance from an independent regulator. If they have done this and their concerns remain unresolved, they will be free to make a claim to the tribunal.

In addition, we will require that Labor's proposed changes are expanded to include union officials and their conduct towards managers, employers and workers.

## 10. Realistic timeframes for Greenfield agreements

The Coalition will ensure that enterprise agreements for new projects (called 'Greenfield Agreements') are negotiated quickly to ensure that infrastructure projects are not delayed and encourage investment for everyone's benefit.

### The issue

When a new business or project is about to start, it can make a new project agreement to set in place employment conditions to be used when the project is ready to employ new workers. Under the current Fair Work provisions, a business must agree with the unions that might one day be eligible to represent workers, or seek the help of the Fair Work Commission to decide with which union it should reach an agreement.



### The problem under Labor

Labor deliberately exempted negotiations for new project agreements from their “good faith bargaining” rules that apply to existing workplaces. This has allowed some unions to purposely delay negotiations until their demands have been met. In other cases, union bosses have argued amongst themselves which has held up the start of the new project or business. In short, Labor has handed union bosses the power to disrupt and delay when and how a new project or business starts.

The choices for employers under the current system only undermine growth in investment and jobs.

One choice is to start up a project without a greenfield agreement in place, leaving the project vulnerable to protected industrial action as soon as employees start work. This has the effect of increasing the project’s financial exposure and placing it in an extremely uncertain position, potentially being subject to delays from the outset. The failure to have an agreement in place will also raise alarm bells with investors who demand industrial certainty before signing on the dotted line.

The only other choice for employers if they want to have an agreement in place is to agree to unions’ often exorbitant demands for wages and conditions, as well as the extensive union rights agendas being pursued across the board simply to get a Greenfield agreement.

The Coalition believes this is unfair as new projects represent major new financial investments in Australia, will lead to the creation of many new jobs, and are in our national interest.

### The Coalition Solution

To improve agreement making for new projects, the Coalition will:

- Introduce “good faith bargaining” rules to cover negotiations over Greenfield agreements; and
- Require agreement to be reached with a union within three months of the business starting negotiations.





Where agreement cannot be reached within three months, the business will be able to take their proposed Greenfield agreement to the Fair Work Commission for approval. To ensure that the proposed agreement provides fair working conditions that satisfy the existing rules under Labor, the Fair Work Commission may only be allowed to approve the agreement if it is satisfied that:

- it passes the existing tests contained in the Fair Work laws, such as the 'Better Off Overall Test' and the 'Public Interest Test'; and
- it provides for pay and conditions that are consistent with the prevailing standards and conditions within that industry for equivalent work.

Only where the agreement meets all the required tests will a business be able to use it as the basis for employing new workers. This will ensure that when new workers are employed, they will have working conditions that meet the existing safeguards, are consistent with other similar arrangements in that industry, and are better off overall under Labor's own tests.

A business that seeks to negotiate a Greenfield agreement will only need to negotiate with a union that will cover the majority of workers to be employed on the site. To ensure that future workers at the new site have access to industrial representation, the Fair Work Commission will be required to make that union a party to the Greenfield agreement if it is approved.

## 11. Giving underpaid workers a better deal

The Coalition will ensure that workers who are underpaid receive interest on back pay held for them by the Fair Work Ombudsman.

### The issue

When a worker has been underpaid and the Fair Work Ombudsman recovers those wages for an employee, the Government holds on to the money until the worker can be found and the unpaid money returned to them. This sometimes takes many months and the workers' money accrues interest which is kept by the Government.

There is over two million dollars in money held by the Fair Work Ombudsman that has been recovered from business on behalf of workers that have been underpaid.<sup>39</sup>

<sup>39</sup> Answers to Questions on Notice - DEEWR Question No. EW0892\_13



### The problem under Labor

But much of this money remains unclaimed for over six months or more and is used by the Government to earn interest - which they keep. This is unfair to workers. They should be entitled to receive any interest earned on their own money when it is held by the Government.

### The Coalition Solution

The Coalition will require that the interest earned on money which has been recovered by the Workplace Ombudsman for underpaid workers, be given to those workers who have been underpaid. Our proposal will mean it ends up in the pockets of workers, not the pockets of Government.

## 12. Promoting harmonious, sensible and productive bargaining

The Coalition will ensure that negotiations for enterprise agreements are harmonious, sensible and productive. Allowing workers and business to negotiate and make enterprise agreements is fundamental to encouraging workplaces to set employment conditions that are tailored and suitable to their specific needs. The Coalition recognises that every workplace is different, every worker has different needs and every business has different operational requirements.

### The issue

However, the enterprise bargaining provisions in the Fair Work laws have caused unnecessary problems that are not consistent with good faith bargaining. These problems mean that industrial action in support of claims for a new enterprise agreement is allowed to take place before genuine and meaningful talks have occurred, and in support of claims that are fanciful and unrealistic. Enterprise agreements are able to be made without having even considered ways to improve productivity at the workplace.



### **(a) *Strike first, talk later***

#### **The problem under Labor – strike first, talk later**

Labor's laws have created a new power where unions and workers can take strike action without having first held proper, meaningful talks with a business.<sup>40</sup> Labor promised this would not happen.

This 'strike first – talk later' approach does nothing to help workplace harmony and discourages workers from trying to genuinely negotiate with their employer. Some unscrupulous union bosses have used the 'strike first, talk later' approach to unfairly force businesses into a corner. Even Labor's own review of the Fair Work laws found the 'strike first, talk later' approach unacceptable and recommended ways to fix it.<sup>41</sup>

#### **The Coalition Solution**

To solve this problem and encourage meaningful, genuine negotiations during enterprise bargaining, the Coalition will change the laws to ensure that protected industrial action can only happen after there have been genuine and meaningful talks between workers and business at the workplace during enterprise bargaining.

The Fair Work Commission will keep its power to determine when industrial action may occur. The Fair Work Commission will have the job of making sure that genuine and meaningful talks have taken place at the workplace prior to authorising protected industrial action.

### **(b) *Workplace productivity***

The Coalition will put productivity back on the agenda by making sure it is actively and genuinely considered by workers and business during enterprise bargaining negotiations. Productivity matters because productivity gains allow more jobs to be created, more investment to take place, higher real wage growth to occur, and higher living standards to be achieved. Workplace productivity is the fundamental mechanism by which workers, businesses, families and the economy are all better off.

#### **The issue**

Improved productivity means greater prosperity for everyone and is especially important for the future of our workplaces. It doesn't mean working harder; but working smarter and more effectively.

<sup>40</sup> *JJ Richards & Sons Pty Ltd v Fair Work Australia (2012) FCAFC 53*

<sup>41</sup> *Recommendation 31*



The Coalition recognises that although workplaces are only one part of Australia's productivity equation, they are an important part. We believe that workplaces should be encouraged to innovate and work better so they can continue to grow, employ and pay better wages.

This is particularly so when a workplace is negotiating an enterprise agreement, because that is the best opportunity to put in place changes to help improve productivity. Sometimes, workers and business will agree that their workplaces already have productive work methods and no improvements can be made. But where there is room to improve, workplaces should be encouraged to talk about how they can work better.

### The problem under Labor

Labor talks constantly about 'workplace productivity' but there is nothing in their Fair Work laws that actually requires workers and business to even think about or discuss productivity when they are negotiating an enterprise agreement.

This is contributing to our poor productivity levels. As a country under Labor, business costs are going up and up, and we are becoming less and less efficient. If this continues, businesses will close or be less able to compete, jobs will be lost, and our society and economy will go backwards.

### The Coalition Solution

If elected, the Coalition will put productivity back on the agenda. We will require workers and management to consider productivity improvements when bargaining for an enterprise agreement.

Before an enterprise agreement is approved, the Fair Work Commission will have to be satisfied that the parties have at least discussed productivity as part of their negotiation process. There does not need to be agreement reached about improving productivity, or the parties can agree that there are no more productivity improvements to be made at that time.

The key is to make sure that workers and managers have at least considered how to improve productivity to help their workplace work effectively.

### *(c) Ensuring claims are realistic and sensible*

#### The issue

It is important to ensure that claims made by parties when negotiating for an enterprise agreement are sensible and realistic.



## The problem under Labor

Under the current provisions, protected industrial action can be taken in support of enterprise bargaining claims that are fanciful, exorbitant or excessive when compared to the industry in which it operates.

While there is a legitimate interest in employees seeking fair improvements to the terms and conditions, the process of bargaining should not be able to be abused as it has under Labor. For example:

- Maritime workers were allowed to take protected industrial action in support of an increase exceeding \$103,000 per year<sup>42</sup>;
- A union representing offshore welders demanded they be paid a salary \$425,000 for six months work – when only two years earlier, they received \$300,000 for the same work;<sup>43</sup>
- Recent EBA claims include demands for an extra 56 days pay to workers if they “come into contact with foreign workers” and allowances of \$495 per day, including \$40 for working on a vessel with a “non-compliant galley”;<sup>44</sup> and
- Agreements registered in 2011 for construction workers provided annual salaries of \$423,000 for a laundry hand, \$445,000 for a cook and \$498,000 for a welder<sup>45</sup> - slightly more than the salary for the Prime Minister.

## The Coalition Solution

Workers and businesses must be genuine in their attempts to bargain so that realistic improvements in employment conditions can occur for everyone. The Coalition will change the laws so that the Fair Work Commission must be satisfied that claims are realistic and sensible before they approve an application to take protected industrial action.

## What this will mean

Under the current rules, the Fair Work Commission is currently required to be satisfied that bargaining representatives are genuinely trying to seek to reach agreement before the representative can hold an industrial action ballot.

<sup>42</sup> “Ford workers take pay freeze, while MUA strikes for \$100,000” WorkplaceInfo.com.au 27 November 2009

<sup>43</sup> “Union’s \$425,000 demand for offshore welders ‘outrageous’” WorkplaceInfo.com.au 11 April 2011

<sup>44</sup> Sid Maher “Maritime Union fuels Julia Gillard’s war on foreign workers” The Australian 16 March 2013

<sup>45</sup> Ewin Hannan “Laundry staff on \$420k a year” The Australian 25 March 2011



The Coalition's plan would require the tribunal to be satisfied that the claims made:

- Are not exorbitant or excessive, having regard to the conditions at the workplace and the industry in which it operates;
- Are fair and reasonable having regard to the conditions at the workplace and the industry in which it operates; and
- would not adversely affect productivity.

### 13. Urgently review the Road Safety Remuneration Tribunal

A Coalition Government will urgently review the operation of the Road Safety Remuneration Tribunal and the need for a further level of regulation.

#### The issue

After years of lobbying by transport unions, the Road Safety Remuneration Tribunal was established by Labor to allegedly ensure pay for truck drivers did not jeopardise road safety. It has powers to set pay and conditions that are specific to the transport industry.

#### The problem under Labor

The Coalition believes that road safety is vitally important and there have been many developments to improve conditions in this sector. Since 2007, we have seen the introduction of new health and safety laws, the introduction of modern awards, the Fair Work Commission and the National Heavy Vehicle Regulator. There is no evidence that a separate additional tribunal or a further level of regulation is necessary or that the recent developments are not effective.

Some have even suggested that the tribunal is “not about safety”<sup>46</sup> and a Government commissioned review found that “being definitive around the causal link between rates and safety is difficult”<sup>47</sup>. Former transport union employees have spoken against the tribunal noting that there is “barely a specific case study where a death is involved to support [the link between rates of pay] and safety.”<sup>48</sup>

#### The Coalition Solution

The Coalition will urgently review the operation of the Tribunal and the need for a further level of regulation.

<sup>46</sup> James Massola Ex-Union Official Slams Safe Rates Australian Financial Review 3 May 2013

<sup>47</sup> Ibid

<sup>48</sup> Ibid



## 14. Recommendations of the Fair Work Review Panel

Despite being handed the report almost one year ago, Labor has ignored many of the common sense recommendations made by the panel that reviewed the Fair Work laws.

The Coalition supports the many of the remaining recommendations that Labor has ignored and we will seek to implement those summarised below, to the extent that they are not inconsistent with our policy.

- **Recommendation 2:**

This will clarify the interaction between workers' compensation and annual leave pursuant to s.130.

- **Recommendation 3:**

This will require the employer and employee to hold a meeting to discuss a request for extended unpaid parental leave, unless the employer has agreed to the request.

- **Recommendation 6:**

This will clarify circumstances where annual leave loading is payable on termination to address existing confusion and restore the conventionally accepted approach.

- **Recommendation 7:**

This encourages the Commonwealth, State and territory governments to expedite development of national long service leave standard.

- **Recommendation 9:**

This recommends changes to improve the application of the "Better Off Overall Test" to appropriately account for non-monetary benefits.

- **Recommendation 11:**

This will clarify defences for alleged breaches of flexibility terms in IFA's.

- **Recommendation 12:**

This will change the notification to terminate flexibility arrangement from 28 days to 90 days.





- **Recommendation 24:**  
Clarification of the interaction of model flexibility terms in enterprise agreements.
- **Recommendation 25:**  
Government to monitor the application of the “Better Off Overall Test” to ensure it is applied appropriately.
- **Recommendation 31:**  
This will partly fix the ‘strike first, talk later’ loophole in bargaining laws.
- **Recommendation 38:**  
This will clarify transfer of business laws as they apply to workers who transfer voluntarily.
- **Recommendation 43:**  
This will provide the Fair Work Commission clearer powers to dismiss proceedings due to non-attendance of a party.
- **Recommendation 47:**  
This will make it clear that central consideration about reason for adverse action is the subjective intention of the person taking the alleged adverse action.

A Coalition Government will consider the remaining recommendations and implement them if necessary, but only after consultation with workers, business and stakeholders.



# COSTS

The cost associated with re-establishing the Australian Building and Construction Commission will be met from the associated savings derived from abolishing the Fair Work Building Inspectorate.

The cost associated with establishing the Registered Organisations Commission will be met from the associated savings derived from abolishing the existing registered organisations compliance component of the Fair Work Commission.

