Election 2025:

Workplace Relations Policy

March 2025

Key recommendations

- **Comprehensively review Australia's workplace relations system and workplace relations legislation**
- **Reinvigorate the enterprise bargaining system**
- **Tackle the unworkable complexity of 'modern' awards and the workplace relations system more broadly**
- **Reassess flawed changes to:**
  - **The definition of who can be a casual employee**
  - **The distinction between employment and independent contracting**
  - **Fixed term contracting arrangements**
- **Take decisive steps to tackle ongoing crises in the building and construction industry**

The challenge

The need for a comprehensive review of workplace relations regulation

More than 14.5 million employees, over 600,000 Australians seeking work, and the wider Australian community rely on the effectiveness of the way our country regulates work and workplace relations.

There is growing consensus across industry that Australia's workplace relations system has fundamentally lost its way; that it is a system which is increasingly unfit for purpose.

Our workplace laws have degenerated into a minefield of notoriously complex, overly prescriptive, and impractical regulation that is exceedingly difficult to navigate and apply. There is a growing disconnect between the requirements of the system and what industry needs to invest, grow and both create and sustain jobs.

The workplace relations system is increasingly predicated on conflict, rather than co-operation and has shifted towards a more centralised setting of terms and conditions rather than genuinely encouraging and empowering employers and employees to agree upon fair arrangements that suit their needs and priorities at a workplace level.

Although we are yet to see the full impact of recent waves of radical amendments to our workplace laws, many of the highly controversial and hurriedly developed changes, that were widely opposed by industry, will only exacerbate these problems.

Going into the 2025 election, the way Australia regulates work is failing to equip us for the challenges the country faces in the second quarter of the 21st Century. Substantial reform is needed.

Workplace relations is of course not the sole determinant of our country's prosperity, but appropriate regulation of this sphere plays a critical role in delivering future success. It is a vital piece of the puzzle that needs to be solved if we are to turn around our entrenched productivity problems and deliver sustainable wage increases and genuinely secure jobs.

Ultimately, Australia needs to urgently restore balance and practicality to the regulation of work.

The need for a comprehensive reassessment of our workplace relations laws to underpin genuine reform

The regulation of workplace relations has long been a highly contested and politically charged issue in Australia. It is an area in which the prospect of achieving sensible changes, in the interests of all parties, has frequently been collateral damage in highly adversarial public and political battles over potential reforms.

The legislation underpinning our current federal workplace relations system was implemented by a Labor Government in 2009. It has subsequently been subject to piecemeal amendments, largely introduced by subsequent Labor Governments and in many respects targeted at addressing demands and concerns from the union movement. The pendulum has swung much too far from the balanced approach to workplace relations that is needed in the interest of all parties, particularly in the face of economic headwinds and global uncertainty.

Recent amendments have introduced shockingly flawed changes to the system, many of which were not properly thought through when pushed through Parliament with insufficient regard for industry concern.

Initial reviews of recent amendment packages are currently underway, with more scheduled. These reviews only consider specific tranches of amendments in isolation and there is consequently an entirely foreseeable risk that the outcomes of these reviews will be underwhelming. Going through the motions and evaluating the system on a piecemeal basis will not be sufficient. The scheduled reviews will not be capable of identifying deficiencies in our system or the appropriate way forward.

It is well past time to step back and genuinely take stock of the performance of the Australian workplace relations system as a whole. There is a glaring need for a robust and wide-ranging review of the effectiveness and operation of all parts of the workplace relations system. Australia needs to have the courage to look at alternatives and better ways of regulating employment and workplace relations that will work for everyone.

Priority areas for action

Any new Government will need to engage constructively with industry to identify, develop and implement beneficial changes to our workplace laws, starting with the following key priorities:

Reinvigorate the enterprise bargaining system

Employers and employees need to be empowered and encouraged to set working conditions at the workplace level, subject to clear and effective safeguards and minimum entitlements.

The shift away from a highly centralised system of workplace relations regulation in the decades preceding the *Fair Work Act 2009*, particularly through the implementation of enterprise bargaining, delivered significant productivity benefits coupled with improved conditions for employees. However, the bargaining system withered rapidly following the 2009 amendments.

Recent changes to bargaining laws will not deliver comparable benefits to past reforms. Instead, they have taken us backwards and need to be fundamentally reconsidered.

Recent amendments have given unions a raft of new avenues to force employers into "agreements." But they have done nothing to genuinely incentivise employers to voluntarily and meaningfully engage in the kind of bargaining that will deliver productivity improvements and address the specific priorities of enterprises and their employees.

The increasing complexity and unreliability of our bargaining laws has become a barrier to parties electing to engage in bargaining that must be rectified. Recent amendments failed to meaningfully address this. Instead, they created additional problems, the full extent of which are yet to be felt.

A further barrier to bargaining is that it can now result in an employer being forced into litigation before the Fair Work Commission culminating in the tribunal setting the terms of the parties' so-called 'agreement' as a product of the new and blatantly unfair 'intractable bargaining' process.

Industry has been deeply alarmed by the initial application of the intractable bargaining laws by the Fair Work Commission. Amendments to ensure that any decision can only favour employees and unions will undoubtedly lock employers into outdated obligations that are not fit for purpose, with no tangible way to secure much needed improvements absent union agreement.

Unclear and unreasonable changes to force employers into multi-enterprise agreements also need to be rectified. The precise parameters of the new provisions and their potential to undermine what should be a focus on promoting bargaining at the individual enterprise level demand particular attention. Although we are only beginning to see the operation of these laws, it is apparent that concern over their potential to cause significant problems is justified, with unions moving quickly to use the new laws to press claims in the mining and fast-food industries. This is a long way from arguments that the laws were necessary to assist workers in government funded sectors, such as the care economy, who face barriers to bargaining.

The problems that will flow from retrograde changes to our bargaining laws legislated during the 2022-25 Parliament will take time to be fully felt. We have consistently warned that it would

be a ‘slow burn’, but there is nonetheless an imperative to urgently restore the utility of our previously effective bargaining system and avoid the obvious problems ahead.

The current system is failing employers, employees, and the community at a time when Australia desperately needs to be productive and competitive in the face of heightened adversity and uncertainty. This cannot be allowed to continue. Australia desperately needs a workplace relations foundation for improving productivity, as part of a wider, coordinated policy program to improve competitiveness and efficiency.

Address the unworkable complexity of ‘modern’ awards and the system more broadly

Australia must also significantly simplify our unwieldy, unnecessarily complex workplace relations system.

Reform is particularly urgently needed to address an increasingly archaic, notoriously complex, and confusing system of overly prescriptive ‘modern’ awards.

The complexity of this aspect of our system is part of a much broader problem. The breadth and pace of successive tranches of changes to workplace laws has only compounded this.

Recent legislative amendments have doubled down on penalties for employers who misapply awards and other workplace laws, including through the introduction of criminal penalties, but have failed to grapple with the complexity of the system that is the root cause of much non-compliance, even by employers with the best of intentions. A quickly conducted Government initiated review of awards by the Fair Work Commission last year did not deliver tangible improvements.

Industry calls for reform in this area should not be misunderstood as seeking a diminution of employee entitlements, or departure from the need for a fair and relevant safety net. A simpler and truly modern safety net, appropriate for contemporary work and workplaces, which can be understood and applied by all businesses, including small business, will be fairer and more effective for everyone.

Reassess flawed changes to the definition of casual employment; the distinction between employment and independent contracting and barriers to offering fixed term contracting arrangements

The recently implemented radical changes to the definition of who is a casual employee and who is an employee, as opposed to an independent contractor, need to be repealed.

These unjustified changes upended approaches settled by Australian courts It did so in a manner that has led to confusion and uncertainty for industry and workers by narrowing the capacity of employers to offer employment opportunities and calling into question the viability of hundreds of thousands of independent contracting arrangements. Industry is still grappling with the challenge of implementing these recent amendments. The changes will undoubtedly result in significant disputation and litigation in the years ahead if not amended.

The poorly framed and ill-considered restrictions on fixed term contracting should also be reconsidered. There is widespread uncertainty over the precise parameters of various exemptions contained in the legislation and a growing view that the rules on fixed term employment are creating barriers to offering employment opportunities.

Australia should stop deliberately narrowing avenues into paid work, particularly at a time when many jobs and enterprises are at genuine risk.

Reconsider radical changes empowering the Fair Work Commission to regulate independent contracting and other commercial arrangements

There is a need to reassess highly controversial amendments that granted the Fair Work Commission, a body that has long regulated employment arrangements, radical new powers to regulate commercial contracting arrangements. This includes not only commercial contracting arrangements in the Road Transport Industry and 'Gig Economy' but also complex commercial arrangements across a diverse range of supply chains.

Any regulation of these complex contractual matters needs a careful and nuanced approach that responds to genuine requirements for regulatory intervention. It is increasingly clear that the current framework and rules do not meet this standard.

There are currently a raft of TWU applications seeking to have the Fair Work Commission adopt a deeply flawed approach to heavily regulate contracting across a broad section of the road transport sector and an entirely impractical regulation of all supply chain participants across Australia. While it is early days for the operation of the new jurisdiction, there is an increasingly clear risk that these laws will lead to adverse consequences for the contractors they are intended to help as well as the businesses that engage them, and the broader community.

New 'regulated labour hire arrangements orders' are also proving problematic and should be repealed. They are not only unfair to labour hire businesses but also to sectors that legitimately rely upon labour hire services. A raft of uncertainties and problems have also been created by a framework that was not properly thought through in during its rushed passage through Parliament.

Take decisive steps to tackle ongoing crises in the building and construction industry

Australians continue to be shocked by ongoing media reports of appalling practices in the building and construction sector. For industry participants, they were far from revelations, with extensive problems in the sector long being common knowledge and a damaging reality of day-to-day operations. The problems plaguing the sector have been documented through a mounting body of court decisions and Royal Commission findings and recommendations.

The void left by the abolition of the Australian Building and Construction Commission and associated regulation of agreement making and industrial relations practices on building sites must be addressed.

While the appointment of an administrator to tackle some areas of entrenched dysfunction in the CFMEU as well as the establishment of an industry forum for discussion are welcome measures, they should only ever have been viewed as 'first steps' in a broader response.

The next Government needs to act decisively to address deficiencies in Australia's workplace relations laws that have permitted disgraceful problems in the building and construction sector to fester for far too long.

About Australian Industry Group

Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than 1 million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the broader economy through national and international supply chains.

Our purpose is to create a better Australia by empowering industry success. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international), we have the resources and expertise to meet the changing needs of our membership. We provide the practical information, advice and assistance you need to run your business. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

Australian Industry Group contact for this paper

Brent Ferguson | Head of National Workplace Relations Policy
The Australian Industry Group
E: brent.ferguson@aigroup.com.au

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