

Forward with Fairness

Labor's plan for fairer and more productive Australian workplaces



Kevin Rudd MP
Labor Leader

Julia Gillard MP
**Shadow Minister for Employment
and Industrial Relations**

April 2007

Introduction

Australia is at a fork in the road.

As a nation, we face many important challenges: the challenge of making Australians the best skilled people in the world; of responding to climate change; of developing world class infrastructure; and of ending the blame game between governments.

We confront the challenge of keeping our nation competitive in the global economy and ensuring fairness at work for all Australians.

Our opponents believe we must choose between economic prosperity and fairness. Our opponents have chosen to throw fairness out the back door for Australian working families.

Labor believes we can have both economic prosperity and fairness.

We believe our economy can go forward, but with fairness.

Forward with Fairness establishes a new industrial relations system for Australia that is fairer, simpler and more productive. And only Labor can deliver it.

Labor has a proud history of economic and industrial relations reform.

The first round of national economic reform took place in the 1980s with the floating of the Australian dollar, the deregulation of our financial sector and the effective ending of high tariff protection.

The second round of economic reform took place in the mid 1990s. Labor introduced universal superannuation, which boosted national and household retirement savings. The mid 1990s also saw the adoption of National Competition Policy. This policy was responsible for significant increases in productivity and economic growth.

Labor also has a proud history of industrial relations reform in Australia's national interest.

Labor is the party which decentralised wage fixing and, in the early 1990s, first introduced enterprise bargaining in Australia to drive productivity through cooperative workplace arrangements. An old centralised wage fixing system is not relevant to Australia's modern workplaces and modern economy.

Australia now needs a third round of economic reform to meet the needs of our 21st century economy. Labor understands a critical component of this next vital reform project must be a new industrial relations system based on driving productivity in our private sector.

At the next election, Australians will face a choice. The choice will be between a Howard Government that plans to get even more extreme on industrial relations or Labor's plan to go *Forward with Fairness*.

The Government has confirmed they have 'unfinished business' on their industrial relations agenda. Just like at the last election, the Government is refusing to give working Australians any description or detail. However the responsible Minister has failed to rule out even more extreme industrial relations laws and the Government's Leader in the Senate supports tougher laws.

Australians face so many challenges in the next decade, and they face critical choices at the next election.

The choice for Australia to go *Forward with Fairness* has never been so important.

Table of Contents	page
<i>Forward with Fairness – An Overview</i>	3
A Uniform National Industrial Relations System	6
A Strong and Simple Safety Net	7
Fairness, Choice and Representation at Work	12
Productivity and Fairness Through Collective Agreements.....	13
A New Independent Umpire - <i>Fair Work Australia</i>.....	17
Protection From Unfair Dismissals – A Fresh Approach.....	19

FORWARD WITH FAIRNESS – AN OVERVIEW

Labor believes that the Howard Government has gone too far with its extreme industrial relations laws.

A Rudd Labor Government will create a new industrial relations system for Australia – a fair system, a simple system, a flexible system. *Forward with Fairness* will bring a new balance to Australian workplaces.

In government, Labor will rely upon all of the Constitutional powers available to it to legislate national industrial relations laws to reduce complexity and duplication.

A Rudd Labor Government will achieve nationally consistent industrial relations laws for the private sector. This will be achieved either by State Governments referring powers for private sector industrial relations or other forms of cooperation and harmonisation.

Collective enterprise agreement making and democracy will be the heart of Labor's industrial relations system. Collective bargaining allows balanced, cooperative arrangements that foster improved productivity across a business and provide the flexibility employers and employees want. Collective bargaining is the best way to ensure working arrangements are tailored to suit the needs of an individual business and its employees.

AWAs and statutory individual contracts will not be a part of Labor's fair and balanced workplace laws. A Rudd Labor Government will focus on cooperative workplace relations, instead of the Government's one sided system based on take it or leave it individual contracts.

Labor believes in a fair day's pay for a fair day's work. A Rudd Labor Government will ensure a decent and relevant safety net for Australian employees. Labor's safety net will underpin collective enterprise bargaining and common law arrangements.

Under Labor, the safety net will be in two parts. Firstly, there will be 10 legislated national employment standards which will apply to all Australian employees.

Secondly, awards will provide a safety net of up to 10 additional conditions relevant to particular industries and enterprises. Labor will also do the job that the Howard Government has failed to do, and will simplify and reduce the number of awards in an open and consultative process.

A Rudd Labor Government will also create a genuinely independent umpire.

Fair Work Australia will be a one stop shop, making it easier for employers and employees to understand and enforce their rights and obligations at work. Fair Work Australia will provide information and advice, undertake formal and informal dispute resolution and contain an inspectorate to monitor compliance with Labor's new industrial relations system.

Within Fair Work Australia there will be an independent judicial division created and operating in accordance with the Australian Constitution.

Fair Work Australia will determine the minimum wage in an open and transparent process conducted once each year, review awards and provide recommendations to Government about Labor's national employment standards.

A Rudd Labor Government will guarantee the right of Australian employees to be protected from unfair dismissal. Labor's system is based on a fair go all round for employees and employers. Labor's system will deliver a simpler, faster and less costly unfair dismissal process. Labor's system also includes special arrangements to assist small business.

THE HOWARD LEGACY

The Howard Government's industrial relations laws are just another example of the 'fair go' going out the back door.

Even though the Howard Government failed to tell working Australians about its unfair industrial relations laws at the last election, it now argues that the Australian economy needs these laws. But they have failed woefully in making the case.

The Howard Government has claimed that its unfair industrial relations laws are responsible for recent employment growth. While employment growth since March 2006 has been strong, it has not been as strong as the same period in 2004-05, at the comparable point in the cycle, when it was almost 20 per cent higher.

In claiming its unfair laws have created Australia's economic prosperity, the Howard Government fails to take into account the impact of the resources boom on the Australian economy.

The mining states of Western Australia, Queensland and the Northern Territory have been responsible for over 50 per cent of the nation's employment growth since March 2006 even though they account for about one third of Australia's entire workforce. Historical analysis shows that for each new job created in mining and quarrying, at least three additional jobs are created in sectors such as construction, retail and accommodation.

The Howard Government has failed to provide any economic analysis that its extreme industrial relations laws will deliver productivity and maintain Australia's prosperity. The Treasury and the Workplace Relations Minister's own Department have confirmed that no analysis has ever been undertaken on the impact of these laws on the Australian economy.

While the Prime Minister says that 'families have never been better off', the only evidence that does exist about the impact of John Howard's unfair Australian Workplace Agreements shows that they hurt Australian working families.

ABS data reveals that non managerial employees on AWAs continue to work more and earn less per hour than those non managerial employees on collective agreements. ABS data confirms that both men and women work more and earn less per hour under AWAs than collective agreements, however the gap for women is truly startling. Women working full time on AWAs take home on average \$87.40 per week less than their colleagues working on collective agreements. Women working on AWAs in casual jobs earn \$94 per week less than women on collective agreements.

While the Howard Government attempts to deny the official ABS data, it has also failed to come clean on the impact that AWAs are having on the take home pay and conditions of working Australians.

The Office of the Employment Advocate revealed in May 2006 that it had been reviewing AWAs to determine how many were stripping away so called 'protected award conditions' – the same conditions John Howard promised Australians would be protected by law.

At the time the OEA revealed that 100 per cent of AWAs cut at least one so called 'protected award condition' and:

- 64 per cent cut annual leave loading;
- 63 per cent cut penalty rates;
- 52 per cent cut shift work loadings;
- 51 per cent cut overtime loadings;

- 48 per cent cut monetary allowances;
- 46 per cent cut public holiday pay;
- 40 per cent cut rest breaks;
- 36 per cent cut declared public holidays; and
- 22 per cent provided workers with no pay rise, some for up to 5 years.

After the data was released in May, the OEA stopped reviewing AWAs even though under the Government's laws every AWA must be lodged with it. The Minister also refused to direct them to continue this review process, to try to stop the analysis of the impact of AWAs on protected award conditions being made public.

However, in April 2007 AWA data was leaked to the media which reconfirmed that AWAs are stripping away 'protected award conditions', the conditions which make up the take home pay of Australian employees. This leaked data revealed that 44 per cent of AWAs excluded all eleven protected award conditions.

This most recent data also revealed that in some cases, AWAs are eroding pay and conditions to a greater extent than had been previously revealed:

- 75 per cent cut shift work loadings – up by 23 per cent;
- 68 per cent exclude penalty rates – an increase of 5 per cent;
- 57 per cent cut monetary allowances – up by 9 per cent; and
- 52 per cent exclude public holiday pay – up by 6 per cent.

It's no wonder the Minister refuses to release AWA data.

John Howard believes Australians don't deserve a 'fair go' when they are at work.

Under John Howard, balance and fairness have been stripped from Australian workplaces and replaced with one sided laws. Australian working families have lost their job security and the basic conditions which make up their take home pay.

That's what the Howard Government's extreme laws mean for Australian working families.

A UNIFORM NATIONAL INDUSTRIAL RELATIONS SYSTEM

In Government, Labor has been at the forefront of economic and industrial relations reform.

The creation of a uniform national industrial relations system for the private sector is a critical economic reform for our nation's future.

Only a Rudd Labor Government can work with the States to deliver a uniform national industrial relations system for Australia's economic future.

A Rudd Labor Government will rely upon all of the Constitutional powers available to it in government to legislate national industrial relations laws. Labor will work cooperatively with the States to achieve national industrial relations laws for the private sector. This will be achieved either by State Governments referring powers for private sector industrial relations or other forms of cooperation and harmonisation.

Under the Howard Government's industrial relations laws, many businesses in the private sector are caught in a legal mess, uncertain which laws apply to them.

Federal Labor intends to give sole traders, partnerships and companies a uniform industrial relations system – a uniform system for Australia's private sector.

Businesses, large and small, are increasingly operating across State borders. Under Labor, whether employees are working in Bundaberg, Bright or Bunbury the same system of laws will apply.

This will end the costs and confusion for business of dealing with separate industrial relations systems.

Unlike the Howard Government, Labor believes that the goals of driving future economic prosperity and ensuring fairness at work are not mutually exclusive.

A Rudd Labor Government will deliver national industrial relations laws which are fair to working people, flexible for business and which promote productivity and economic growth for the future economic prosperity of our nation.

Labor's plan will reduce the complexity and confusion of the current system and create certainty for employers and employees about the basis of their rights and obligations at work.

Current arrangements for the public sector and local government can continue with many of these workers regulated by State industrial relations jurisdictions.

State Governments, working with their employees, will be free to determine the appropriate approach to regulating the industrial relations arrangements of their own employees and local government employees.

A Rudd Labor Government will also ensure appropriate transitional arrangements are put in place so that those currently covered by State industrial relations systems will not be disadvantaged as a result of the creation of Labor's national industrial relations system.

A STRONG AND SIMPLE SAFETY NET

Working families in modern Australia face the daily challenge of balancing the pressures of work with the demands of family life, paying their mortgage and participating in the community.

This is a difficult task, but when Australian working families face cuts to their take home pay, no certainty about their hours of work and no job security, the task becomes almost impossible.

Labor believes in supporting Australian working families. Labor also believes in a fair day's pay for a fair day's work.

Unfortunately, the Howard Government's unfair industrial relations laws are just another example of the 'fair go' going out the back door for working Australians and their families.

A Rudd Labor Government will guarantee a safety net of decent, relevant and enforceable minimum wages and conditions for working Australians.

Labor's safety net will be in two parts.

- A Rudd Labor Government will guarantee 10 legislated national employment standards which will apply to all Australian employees. Labor's new national employment standards will contain entitlements for all employees regardless of their industry or occupation. These new standards cannot be removed or replaced.
- Awards will also play an important part in Labor's safety net. A further 10 minimum employment standards will be included in awards which will be tailored to the needs of the industries, occupations or enterprises they cover.

Labor's safety net will underpin Labor's collective bargaining system and common law arrangements which will allow employers and employees to create flexible and fair workplace arrangements which best suit their needs.

Labor's 10 National Employment Standards

A Rudd Labor Government will guarantee the following minimum standards in law for all Australian employees:

1. Hours of work

Under Labor, the standard working week for a full time employee will be 38 hours.

Employees may be required to work additional hours, but cannot be required to work unreasonable additional hours.

2. Parental leave

Labor recognises that many families want to have a parent provide all or most of the care for a child during the first two years of the child's life.

A Rudd Labor Government will guarantee that both parents have the right to separate periods of up to 12 months of unpaid leave associated with the birth of a baby.

Where families prefer one parent to take a longer period of leave, that parent will be entitled to request up to an additional 12 months of unpaid parental leave from their employer.

The employer may only refuse the request for the additional 12 months' leave on reasonable business grounds.

This will guarantee that Australian working families have the flexibility of up to 24 months' unpaid leave to provide care for their child.

3. Flexible work for parents

A Rudd Labor Government will guarantee a right for parents to request flexible work arrangements until their child reaches school age.

Employers will only be able to refuse any request on reasonable business grounds.

4. Annual leave

All full time non casual employees will be guaranteed 4 weeks' paid annual leave each year. Part time employees will be entitled to 4 weeks' annual leave paid pro rata. Shift workers will be entitled to an additional paid week of annual leave.

5. Personal, Carers and Compassionate leave

All full time non casual employees will be entitled to 10 days' paid personal and carers leave each year. Part time employees will be entitled to 10 days' personal leave paid pro rata.

These employees will also be entitled to 2 days' paid compassionate leave on the death or serious illness of a family member or a person the employee lives with.

All employees will be entitled to an additional 2 days of unpaid personal leave where required for genuine caring purposes and family emergencies.

6. Community Service Leave

Employees will be entitled to leave for prescribed community service activities, for example paid leave for jury service and reasonable unpaid leave for emergency services duties.

7. Public holidays

Labor's industrial relations system will guarantee public holidays including Christmas Day, Boxing Day, New Year's Day, Australia Day, Anzac Day, Queen's Birthday, Good Friday and Easter Monday. Public holidays prescribed in State law such as Labour Day, Easter Saturday, Easter Tuesday, and local public holidays like Cup Day, will also be recognised in those States in which they are prescribed.

Where an employee works on a public holiday, they will be entitled to an appropriate penalty rate of pay or other compensation. This will be set out in the applicable award.

8. Information in the workplace

Employers must provide all new employees with a *Fair Work Information Statement* which contains prescribed information about the employee's rights and entitlements at

work, including the right of the employee to choose whether to be or not to be a member of a union and where to go for information and assistance.

9. Termination of Employment & Redundancy

All employees will be entitled to fair notice of termination in accordance with the following scale:

Length of continuous service	Minimum period of notice
Less than 1 year	At least 1 weeks
More than 1 year but less than 3 years	At least 2 weeks
More than 3 years but less than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

Where an employee is over 45 years of age and has at least 2 years' continuous service, the employee will be entitled to one additional week of notice.

Employees who are made redundant and who are employed in workplaces with 15 or more employees will also be entitled to redundancy pay as determined by the Australian Industrial Relations Commission in the 2004 Redundancy Test Case:

Length of continuous service	Redundancy pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

10. Long Service Leave

As part of its commitment to national industrial relations laws, Labor will work with the States to develop nationally consistent long service leave entitlements.

In the transitional period, Labor's guaranteed entitlement to long service leave will reflect the long service leave arrangements currently contained in State laws or federal awards and federal agreements.

Under Labor, long service leave entitlements accrued under these arrangements will be protected in the transition to nationally consistent long service leave entitlements so Australian employees are not disadvantaged.

Modern, simple industry awards

Labor understands that some minimum terms and conditions will vary depending on the needs of particular industries, occupations or enterprises and cannot be reduced to a 'one size fits all' approach.

Labor believes that awards are an important safety net and an effective floor for collective bargaining. Collective agreements will be able to override award entitlements provided the agreement means employees are genuinely better off overall.

Under Labor, awards may build on and also provide industry detail on Labor's legislated minimum standards. Labor's new awards may only contain a further 10 minimum employment standards:

1. Minimum wages. This will include skill based classifications and career structures, incentive based payments and bonuses, wage rates and other arrangements for apprentices and trainees;
2. The type of work performed, for example whether an employee is permanent or casual, and the facilitation of flexible working arrangements, particularly for workers with family responsibilities, including quality part time employment and job sharing;
3. Arrangements for when work is performed, including hours of work, rostering, rest breaks and meal breaks;
4. Overtime rates for employees working long hours;
5. Penalty rates for employees working unsocial, irregular or unpredictable hours, on weekends or public holidays, and as shift workers;
6. Provisions for minimum annualised wage or salary arrangements that have regard to the patterns of work in an occupation, industry or enterprise as an alternative to the payment of penalty rates, with appropriate safeguards to ensure individual employees are not disadvantaged;
7. Allowances including reimbursement of expenses, higher duties and disability based payments;
8. Leave, leave loadings and the arrangements for taking leave;
9. Superannuation; and
10. Consultation, representation and dispute settling procedures.

Under Labor award coverage will not be extended to cover those who are historically award free, such as managerial employees.

In setting and adjusting awards Fair Work Australia will be required to:

- ensure awards are simple to understand, so that employees and employers have certainty regarding their rights and obligations;
- ensure awards promote the efficient performance of work, having regard to the nature of the work and the characteristics of the workforce covered by the award; and
- encourage work-family balance.

Awards will be reviewed every four years by Fair Work Australia to ensure they remain relevant to those covered.

A Rudd Labor Government will also complete the task that the Howard Government has found too hard. Labor will provide Fair Work Australia with the resources to simplify and reduce the number of awards operating in Australia. This will be done in a timely manner, free from political interference and with consideration of the views of those affected.

Minimum Wages

Decent minimum wages are central to Labor's safety net.

Under Labor, Fair Work Australia will review minimum wages in an open and transparent process conducted once each year. In adjusting minimum wages Fair Work Australia will be required to consider a range of economic and social factors.

Submissions from all Australians will be invited and encouraged. Fair Work Australia may also commission and publish research on the effect of minimum wage variations on matters such as equity, employment and inflation.

Fair Work Australia will consider all the evidence available to it and make a decision which is fair to Australian working families, promotes employment growth, productivity, low inflation and downward pressure on interest rates.

A Rudd Labor Government will require the Treasury to provide information to Fair Work Australia on the likely impact of any proposed changes to federal minimum wages on wages growth, employment, participation, productivity, inflation and interest rates.

Fair Work Australia will be required to complete its determination to allow enough time for any updated minimum wage rates to take effect from the first pay period on or after 1 July each year.

To provide a simple and efficient reference point for employers and employees about the appropriate minimum wage, Fair Work Australia will be required by legislation to publish updated wage rates for all awards by 1 July each year.

FAIRNESS, CHOICE AND REPRESENTATION AT WORK

Labor's new industrial relations system represents a significant break from the past.

The industrial relations system of the 20th century was based on arbitration and big institutions remote from most workplaces.

Labor's new system will be different. It will be based on the rights and responsibilities of those at a workplace and democracy in the workplace. Consequently, Labor will give effect to important workplace rights that are essential to a functioning democracy:

- collective bargaining;
- freedom of association;
- the right to representation, information and consultation in the workplace;
- protection against unfair treatment;
- access to an effective procedure to resolve grievances and disputes;
- freedom from discrimination; and
- equal remuneration for work of equal value.

Respecting choice

Labor believes freedom of association is a basic democratic right for all Australian workers.

Under Labor, all workers will be free to decide whether or not to join and be represented by a union, or participate in collective activities.

Labor's national industrial relations laws will recognise that freedom of association is vital for the proper functioning of a fair industrial relations system built on the concept of democracy in the workplace.

It will be unlawful for anyone to try to stop a working person exercising this free choice by threats, pressure, discrimination or victimisation.

Labor's national industrial relations legislation will also ensure that working people are not discriminated against because of the nature of the industrial instrument that covers their employment. Should employees elect, within Labor's industrial relations laws, to exercise their rights to collectively bargain, take protected industrial action or rely on the benefits of a collective bargain, their choice is respected.

A Rudd Labor Government will ensure Fair Work Australia has the power to make orders to ensure freedom of association is protected.

The role of unions

Labor believes that unions play an important part in ensuring workplaces are fair.

Unions work to protect the health and safety, living standards and job security of employees. Unions are advocates for Australian working families in the wider community.

Employees will have the right to seek advice, assistance and representation from their union in the workplace and workplace delegates will be able to represent their colleagues in the workplace.

A Rudd Labor Government will continue to ensure that unions and other registered organisations are democratic and accountable to their members.

PRODUCTIVITY AND FAIRNESS THROUGH COLLECTIVE AGREEMENTS

Labor believes collective bargaining is the way forward with fairness. That is why collective agreements will be at the heart of Labor's industrial relations system.

Collective agreements deliver benefits to employees above and beyond the safety net and are the most efficient and productive form of workplace arrangements for business.

Collective bargaining will be based on bargaining at the level of an enterprise. The well understood definition of 'enterprise' will continue and may include a single business or employer, a group of related businesses operating as a single business or a discrete undertaking, site or project. For example, this means a collective enterprise agreement can be made for employees at a warehouse, a chain of shops, a manufacturing plant or a major construction project.

Enterprise level bargaining enables the development of fair and flexible employment arrangements that are tailored to suit the needs of an individual business and the needs of employees. Collective enterprise bargaining fosters team work, employee involvement and commitment to the workplace. It improves loyalty and morale, lowers labour turnover which in turn delivers better performance and productivity.

Labor was the party which moved Australia from the one size fits all model of centralised wage fixing to enterprise bargaining in the 1990s. This important economic reform by Labor saw the start of the current period of economic and wages growth, and the significant decline in the level of industrial disputation from the 1970s and 1980s.

Labor's simpler system

A Rudd Labor Government will replace the Government's current complex and unfair agreement making process with a simple, flexible and fair system to help employers and employees bargain collectively for agreements which deliver benefits to all parties.

AWAs will not be a part of Labor's workplace laws and there will be no place for statutory individual contracts. There will be sensible transitional arrangements that give businesses and employees certainty.

Under Labor's new industrial relations system, there will be freedom to bargain collectively without excessive government rules and regulations.

Where an employer and a union with coverage in a workplace voluntarily agree to bargain together they will be free to do so. In a workplace, where an employer and employees who are not union members voluntarily agree to collectively bargain together they will be free to do so. Where more than one employer and their employees or unions with coverage in the workplaces voluntarily agree to collectively bargain together for a single agreement they will be free to do so.

Collective agreements will bind employers and employees covered by the agreement. Where employees covered by a collective agreement were represented by a union in bargaining, the union will be bound by the agreement.

Regardless of the bargaining participants, under Labor's industrial relations system every agreement must be submitted to the workforce to be covered by the agreement for approval. An agreement cannot be made unless approved by a majority of employees voting.

Once an agreement is made then a deal is a deal. The agreement must be complied with and there can be no industrial action during its term.

Where an employer commences a genuinely new business or undertaking and they have not yet engaged any employees, the employer and a relevant union may bargain for a collective greenfields agreement for the new business. Alternatively, employees may be employed on or above Labor's safety net.

Labor's system will respect democracy in the workplace

While most employers and employees in Australia voluntarily and successfully bargain collectively, there are times where a majority of employees at a workplace want to collectively bargain and this choice is not respected by their employer.

In these circumstances Labor will allow Fair Work Australia to determine the level of support for collective bargaining amongst employees in a workplace.

Fair Work Australia will have discretion about how it does so, for example using evidence of union membership, petitions or a secret ballot of employees.

Under Labor, if a majority of employees at a workplace want to bargain collectively, their employer will be required to bargain collectively with them in good faith.

Labor's fairer system

Labor's new industrial relations system will ensure collective bargaining and collective agreements are fair.

At the commencement of bargaining, employers will be obliged to inform the employees to be covered by the agreement of their right to choose to be represented in bargaining.

Employees and employers will be free to choose who represents them in collective bargaining. Employees who are union members will be able to be represented by a union that is eligible to represent them. All bargaining participants must respect that choice and bargain in good faith with all other bargaining participants.

Before it can approve a collective agreement, Fair Work Australia will consider whether the collective agreement meets Labor's safety net.

However, to provide flexibility, collective agreements will not need to comply with every condition in the relevant award to be approved by Fair Work Australia, as long as the agreement means employees are better off overall against the safety net.

Fair Work Australia will be able to give bargaining parties advice they can rely on along the way so that parties can be certain their agreements are properly made.

Fair Work Australia may also facilitate multi employer collective bargaining for low paid employees or employees who have not historically had access to the benefits of collective bargaining, such as employees in the community services sector, cleaning and child care industries.

Labor's more flexible system

A Rudd Labor Government will also remove the Government's onerous, complex and legalistic restrictions on agreement content.

Under Labor's system, bargaining participants will be free to reach agreement on whatever matters suit them.

Labor believes that as long as bargaining participants bargain in good faith and are able to reach agreement, they should be free to do so without the need for government intervention or to comply with complex procedural rules and requirements.

The only requirements will be that the terms of the agreement are lawful, the bargaining is conducted in good faith, the employees covered by the agreement are better off overall against the safety net and a majority of employees vote in favour of the agreement.

Labor's system frees employers and employees from having to resort to side agreements and other deals to set out their arrangements under the Government's prescriptive and inflexible agreement making rules.

Fair Work Australia will be able to provide guidance and examples of simple, flexible collective agreements for employers and employees to use to assist them in bargaining.

Labor's system will facilitate agreement making not industrial disputes

Under Labor, all bargaining participants will be obliged to bargain in good faith.

Good faith bargaining is not new and already applies to commercial transactions in Australia.

Good faith bargaining does not require bargaining participants to make concessions or sign up to an agreement where they do not agree to the terms.

Instead, good faith bargaining encourages and assists employers and employees to consider the issues central to bargaining and work efficiently towards making an agreement.

The obligations are simple, such as:

- Attending and participating in meetings at reasonable times;
- Disclosing relevant information in a timely manner, subject to appropriate protection for commercial in confidence information;
- Responding to proposals made by a party in a timely fashion;
- Giving genuine consideration to the needs of the other parties, and providing reasons for their responses; and
- Refraining from capricious or unfair conduct or conduct that undermines freedom of association or collective bargaining.

Good faith bargaining rules apply equally to all bargaining participants. Fair Work Australia will assist bargaining participants to bargain in good faith, and will have the power to make orders where bargaining participants are not bargaining in good faith.

A fast and simple approval process

Under Labor's system, collective agreements will be approved by Fair Work Australia within 7 days.

Fair Work Australia will be required to approve agreements 'on the papers'. There will be no need for the bargaining participants to attend a hearing.

Fair Work Australia may seek further information from the bargaining participants and will only not approve a collective agreement if it determines that the agreement does not make employees better off overall or that the agreement was not genuinely agreed to by or approved by the workforce.

Once approved, a collective agreement can operate for up to four years.

Assisting agreement making and reducing industrial disputes

Labor's new collective bargaining rules are designed to encourage employers and employees to bargain and reach agreement.

Labor's good faith bargaining rules will not require an employer or employees to sign up to an agreement where they do not agree to the terms. Therefore there will be times when bargaining participants cannot reach agreement.

Where agreement cannot be reached, bargaining participants will have a range of options:

- they can agree to walk away, in which case the industrial arrangements already in place would remain in force;
- they can jointly request Fair Work Australia help them reach agreement or jointly request Fair Work Australia determine particular matters; or
- they can, in certain circumstances, take protected industrial action.

Industrial action

Under Labor, protected industrial action will be available during good faith collective bargaining, but only in accordance with Labor's clear, tough rules.

Labor believes that once an agreement is made the parties must be expected to stick by it.

Under Labor, industrial action during the life of an agreement will not be protected, industrial action in support of an industry wide agreement will not be protected and industrial action outside good faith bargaining processes will not be protected.

In addition, industrial action will only be protected when it has been approved by employees seeking protection in a mandatory secret ballot.

Labor believes that no one should be asked to take industrial action without having had the opportunity of a democratic vote. A secret ballot is a means of determining the views of employees about taking protected industrial action, not to frustrate or delay the action. The ballot process will be fair and simple, and will be supervised by Fair Work Australia.

Under Labor's industrial action rules it will be unlawful for employers to pay strike pay.

Employers may take protected industrial action including locking out employees in response to industrial action by those employees.

Resolving ongoing industrial action

Ongoing industrial dispute is not in the interests of employees, employers, families, communities or the economy.

Common sense dictates that where protracted industrial action is causing significant harm to the bargaining participants, there must be a process to resolve the dispute. Where industrial action or threatened industrial action is causing or may cause significant harm to the wider economy or to the safety or welfare of the community, there must also be a process to resolve the dispute.

A Rudd Labor Government will ensure that, in these circumstances, Fair Work Australia will have the power to end the industrial action and determine a settlement between the parties for their workplace.

A NEW INDEPENDENT UMPIRE - FAIR WORK AUSTRALIA

Bringing fairness and balance to Australian workplaces requires a genuinely independent umpire. A Rudd Labor Government will create a new independent umpire to oversee Labor's new industrial relations system.

Fair Work Australia will provide a 'one stop shop', to provide practical information, advice and assistance, to settle grievances and ensure compliance with Labor's workplace laws.

Fair Work Australia will be accessible to all Australian employers and employees. There will be offices in suburbs and regional centres and workplace visits will be available to provide further convenience. There will no longer be a need to contact different helplines and deal with separate agencies about workplace matters.

Fair Work Australia will be responsible for a range of functions, including:

- assisting parties to resolve workplace grievances;
- resolving unfair and unlawful dismissal claims;
- facilitating collective bargaining and enforcing good faith bargaining;
- reviewing and approving collective agreements;
- adjusting minimum wages and award conditions;
- monitoring compliance with and ensuring the application of workplace laws, awards and agreements; and
- regulating registered industrial organisations.

Fair Work Australia will also conduct inquiries and may recommend adjustment to Labor's national employment standards.

Fair Work Australia will have particular responsibility for promoting working arrangements that assist employees to balance their work and family responsibilities. Fair Work Australia will develop guidelines and practical advice to assist employers and employees to implement family friendly work practices and will champion family friendly workplaces across Australia.

Labor does not believe in separate industrial rules and regulations for different industries. Under Labor all employers, employees and unions across all industries will be required to comply with the rules and will face penalties if they do not do so.

Fair Work Australia's inspectorate will have specialist divisions that can focus on persistent or pervasive unlawful behaviour in particular industries or sectors. The first divisions established will be for the building industry and hospitality industry.

The inspectorate will be empowered to work with other relevant law enforcement agencies including State and Territory health and safety authorities, police, the Australian Tax Office, or the Australian Competition and Consumer Commission.

Fair Work Australia will include a separate division with jurisdiction to hear and determine unlawful dismissal claims, matters relating to Labor's minimum entitlements and freedom of association.

Whenever decisions involve the exercise of judicial power they will be the responsibility of a separate, independent, division of Fair Work Australia created to incorporate the independence and safeguards required by the Australian Constitution. The division would be staffed by Federal judicial officers appointed in accordance with the Constitution.

Fair Work Australia will also have a telephone information service, and will publish workplace information on its website.

Fair Work Australia will act informally and, in most cases, lawyers will not be necessary.

Fair Work Australia will also work closely with HREOC and other anti discrimination bodies.

It will be possible for any officer of Fair Work Australia to be jointly appointed by a State Government to perform a comparable role in the remaining State industrial relations system. It will also be possible for an officer of a State industrial relations system to be jointly appointed to perform a comparable role within Fair Work Australia.

PROTECTION FROM UNFAIR DISMISSALS – A FRESH APPROACH

An important element of Labor's plan to restore balance and a 'fair go' to Australian workplaces is the reform of Australia's unfair dismissal laws.

John Howard's unfair dismissal laws are unfair for employees and are onerous and complex for employers.

The Government's complex exemption rules provide no protection for Australian workers and only invite and encourage technical arguments, uncertainty, legalism and delay. Employees cannot bring a claim if they have been employed for less than 6 months, are engaged on a short term casual, seasonal or fixed term basis, or by a business employing fewer than 100 employees. The umpire cannot even consider a claim where the dismissal is for 'genuine operational reasons'.

Employers must work out whether their employees fall within or outside an exemption and now increasingly face costly unlawful dismissal claims in the courts.

A Rudd Labor Government will establish a simpler unfair dismissal system which balances the rights of employees to be protected from unfair dismissal, with the need for employers to manage their workforce, and to ensure a faster, less costly and less complex process for all.

Labor's system will also address the particular circumstances and concerns of small business.

A Rudd Labor Government will introduce a simple system for determining who can bring an unfair dismissal claim based on three circumstances:

- an employee who is employed by an employer who employs 15 or more employees must have been employed for 6 months;
- an employee who is employed by an employer who employs fewer than 15 employees must have been employed for 12 months;
- if the employee is not covered by an award, the employee must be earning annual remuneration of less than \$98,200 (to be indexed).

Requiring employees to serve a minimum qualifying period balances the right of employees to protection from unfair dismissal with the need for employers to have an adequate opportunity to determine whether or not an employee is suited to their job and the employer's business.

Once an unfair dismissal claim has been made, Labor's system will ensure the merits of the application are determined swiftly.

Under Labor, a claim for unfair dismissal must be made usually within 7 days of the dismissal. This is to ensure that, where reinstatement is appropriate, it remains a viable option.

Fair Work Australia will review the application and call the parties together for a conference to determine the matter.

Fair Work Australia will have local offices in regional and suburban areas and will be able to go to a workplace or another agreed venue to conduct the conference. Fair Work Australia will ask the parties for their views about how and where the conference should proceed.

During the conference Fair Work Australia will be required to reach a conclusion about whether the dismissal was unfair, considering all the circumstances of the dismissal, including the conduct of the parties.

During the conference, Fair Work Australia will be able to ask the parties questions and seek their views about the issues raised. There will be no formal written submissions, no cross examination and no hearing.

The parties may have a representative or support person present, however the employer and employee will be required to respond directly to questions from Fair Work Australia.

Where an employee has been dismissed unfairly, Fair Work Australia will be required to determine an appropriate remedy, ensuring a 'fair go all round' to both parties. Labor will ensure that errors of a procedural or technical nature do not automatically result in the finding that a dismissal is unfair.

Where an employee has been dismissed unfairly, the remedy will be reinstatement, unless reinstatement is not in the interests of the employee or employer's business. In those circumstances, compensation may be ordered. There will be a cap on compensation to increase certainty and parity and to discourage speculative claims and demands for 'go away money'.

Assistance for small business

Labor recognises that small business owners may not have the time or expertise to comply with the uncertainty and legalism associated with the current unfair dismissal system.

To assist small businesses to manage their obligations under the law, Labor will develop, in consultation with small business, a Fair Dismissal Code.

The Code will be tailored to the needs of small business and will be reduced to a clear and concise reference to help these employers meet their obligations under Labor's simpler unfair dismissal system. Where a small business employer has genuinely complied with the Code, the dismissal will be considered a fair dismissal.

Fair Work Australia will be able to provide information and assist small business employers to comply with their obligations before taking action to dismiss an employee.

Unlawful dismissal

Labor believes that employees should also be protected against unlawful dismissal.

Unlawful dismissal occurs when an employee is dismissed for reasons that offend community standards reflected in particular protections in the law. For example, dismissal on grounds such as family responsibilities, pregnancy, disability, race or trade union activity.

A Rudd Labor Government will also ensure that, where an employee is terminated for the purpose or effect of an employer avoiding their obligations under the Act, then the termination will also be deemed to be unlawful.

Fair Work Australia will include a separate division with jurisdiction to hear and determine unlawful dismissal claims.

This will save employers and employees the time and expense of pursuing unlawful dismissal matters in the Federal Court or Federal Magistrates' Court.