

# IR – a single system

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## A UNITARY SYSTEM – A FIRM FOUNDATION FOR MODERN INDUSTRIAL RELATIONS

WorkChoices is unfair and has to go. Australia must have a workable industrial relations plan and a single system that is fair, balanced and practical. The Australian Democrats is the only party that can deliver a complete IR plan that is widely acceptable.

We say a modern Australia needs IR reforms that deliver productivity, efficiency, jobs growth and competitive gains but it must also accord with the values and goals of a civilised first-world society.

Australia needs a **genuine single national unitary system** agreed to with state governments, comprising four essential features:

*"A much more balanced and much fairer workplace relations system"*

**Senator  
Andrew Murray  
Spokesperson on  
Workplace Relations**

- 1. An Industrial Relations Commission** - a single, strong, independent, pre-eminent industrial relations tribunal that is appointed on merit and:
  - exercises judicial powers to determine awards, sets minimum wages, approves agreements and resolve disputes
  - absorbs the state industrial relations commissions
  - absorbs the federal Employment Advocate and Fair Pay Commission functions
- 2. A Workplace Regulator** - a single, national, strong, independent workplace regulator that:
  - absorbs the regulatory functions of the state departmental inspectorates
  - absorbs the regulatory functions of the Office of Workplace Services and the Australian Building and Construction Commission
  - ends federal ministerial discretionary and interventionist regulatory powers
- 3. A genuine safety net** - underpinned by the minimum wage, minimum conditions and awards that has:
  - fair and balanced minimum wage determinations made annually, taking into account living standards, skills, training, disabilities, anti-discrimination provisions, pay equity and relevant tax and government transfer payments
  - at least 8 minimum conditions for all workers, whether on statutory or common law agreements including carers and compassionate leave, public holidays, termination of employment and redundancy
  - national and industry-based, simplified awards with at least 16 allowable matters
- 4. A genuine flexible bargaining system** – that:
  - makes a mix of industrial instruments available - union and non-union; collective and individual agreements; statutory and common-law
  - enshrines the right to collectively bargain, genuinely and in good faith
  - enshrines freedom of association
  - abolishes WorkChoices AWAs, replacing them with statutory individual agreements with a global no-disadvantage test, referenced back to the relevant award

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## The case

### **Australia needs a genuine single national unitary system**

- agreed to by federal and state governments;
- to replace six confusing overlapping systems.

The Democrats have long advocated one industrial relations system not six. We have supported a national unitary IR system to provide simplicity and common rights and obligations, to reduce costs and to improve efficiency, domestic and international competitiveness, and productivity.

The current WorkChoices IR system is not a truly national system with broad acceptance, because the federal Coalition Government made a hostile takeover from the states, and up to 25% of the workforce is still left under state systems.

Post WorkChoices, the Democrats do not suggest returning IR powers to the states, but the situation cannot be left as it is. The Coalition has blown the opportunity to achieve a genuine unitary single national IR system through a negotiated agreement with the states referring their IR powers. Can a Labor government succeed?

### **Australia needs a single national strong independent industrial relations commission**

- appointed on merit;
- agreed to by federal and state governments;
- absorbing the state industrial relations commissions into one national commission;
- absorbing the determination functions of the federal Employment Advocate (Workplace Authority) and the Fair Pay Commission;
- with restored powers to ratify, vary and determine awards and agreements, and to resolve disputes.

The Australian Industrial Relations Commission is a tribunal established under the powers of the Australian constitution. Under the constitution, such a tribunal with judicial powers to determine awards, approve agreements, and arbitrate cannot also be the regulator. In that sense, a 'one-stop shop' is not possible.

If a Labor federal government was able to achieve a genuine unitary single national IR system through a negotiated agreement with the states referring their IR powers, the federal industrial relations commission should take over the state industrial relations commission functions. The federal commission should also absorb the determination functions of the federal Employment Advocate and the Fair Pay Commission.

We would insist that commissioners be appointed on merit, a statutory safeguard to avoid any potential threat to the independence of the industrial relations commission.

The Democrats would strengthen the federal industrial relations commission. We would be sympathetic to powers to make 'good faith' or genuine bargaining orders. We believe the commission is a preferable forum to the courts, provided it is made a low-cost, easy to access, and speedy tribunal. We would seek to reinstate and increase its capacity to resolve disputes, including on its own motion; and increase resources to ensure timely resolution of disputes. We would be sympathetic to removing limits on some of the subject matters on which the AIRC can make determinations. We would reinstate and improve the capacity of the AIRC to hear test cases, on paid maternity leave for example, and alter awards.



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## **Australia needs a single national strong independent workplace regulator**

- agreed to by federal and state governments;
- absorbing the regulatory functions of state departmental inspectorates;
- absorbing the regulatory functions of the Employment Advocate, Office of Workplace Services and the Australian Building and Construction Commission.

Like competition law, tax law, finance law, and corporations law that each have their own national regulator - IR should too. A national IR regulator must be created, negotiated with the states and territories. It should replace the numerous state departmental inspectorates and federal regulators.

The new regulator should absorb (under revised functions) the Office of Workplace Services and the Australian Building and Construction Commission. The Democrats would abolish the Office of the Employment Advocate, and give its tribunal like powers and agreements management to the AIRC and its regulatory powers to the National Regulator. The Democrats would claw back the federal Minister's discretionary and interventionist powers.

A National Regulator is needed to help unions and employers ensure that people do not defy the law or defy court and commission orders, and ignore awards and agreements. Without an effective independent regulator employees and employers are forced to the industrial relations commission or the courts, which means time and money, and it is the employee and small employer that are often disadvantaged.

## **Australia must have a genuine safety net**

- with a fair and balanced minimum wage awarded annually;
- with at least 8 minimum conditions for all workers, whether on statutory or common law agreements;
- with national or industry based simplified awards with at least 16 allowable matters.

The minimum wage underpins the safety net. To achieve a fair and balanced minimum wage the Democrats would amend the guidelines of the Australian Fair Pay Commission so that decisions are annual; AFPC decisions take into account Australian living standards, skills, training arrangements, people with disabilities, and anti-discrimination provisions; provide for pay equity; and have regard to relevant taxation and government transfer payments.

Minimum conditions are those that every worker can expect. The present five minimum conditions - minimum wage, annual leave, parental leave, personal leave, and hours of work – should at least be expanded to carers and compassionate leave, public holidays, and termination of employment and redundancy.

The third safety net underpinning is provided by awards. Awards should underpin collective or individual agreements or operate in the absence of a collective enterprise agreement. Awards should be national or industry based not state based, with as few awards as possible within the bounds of flexibility and adequate coverage.

Awards governing conditions of employment should not be open-ended but should be limited in scope and be based on a suggested 16 allowable matters (there were 20 pre-WorkChoices). This is subject to further consultation with unions and employers. Awards should be up to date, simplified and user friendly.



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## Australia must have a genuine flexible bargaining system

- with a mix of industrial instruments available - union and non-union; collective and individual agreements; statutory and common-law;
- enshrining the right to collectively bargain genuinely and in good faith;
- enshrining freedom of association;
- abolishing WorkChoices AWAs and replacing them with statutory individual agreements with a global no-disadvantage test, referenced back to the relevant award.

Our IR legislation must enshrine collective bargaining and the right to collectively bargain, including the legitimate role of unions in protecting the interests of workers who wish to be represented by them. The Democrats would continue to uphold freedom of association – the right to join or not join a union or employer organisation, without duress or compulsion.

There should continue to be both a non-union and union collective enterprise agreement system, negotiated between employer and employees, with certification by the AIRC. There should be a requirement to collectively bargain genuinely and in good faith. Australia should abide by ILO Conventions 87 and 98, so that if a majority of employees in a workplace doing similar work want to be dealt with collectively, they should have that right.

We would abolish WorkChoices AWAs. They are often take it or leave it contracts; duress is hardly policed; there is no global no disadvantage test; there is no requirement to bargain in good faith; and the minimum conditions underpinning the contract are derisory. However, statutory individual agreements should remain available as an alternative to common law individual agreements, underpinned by the applicable award and minimum conditions, and subject to a global no-disadvantage test. Negotiations must be genuine, and there should be mechanisms to ensure that employees are not coerced.

## The Democrats will be a check on the IR excesses of the major parties

*The Democrats in the balance of power in the Senate, will bring back balance, decency and fairness, for workers and employers, for a modern, civilised economy, for families, and for small business*

The Democrats have always been IR modernisers, but have followed clear principles.

The Democrats supported the important advances made by the first wave of the Keating Labor industrial relations reforms in 1993, and supported many of the second wave initiatives in the Howard Coalition reforms of 1996.

In 1996 the Democrats negotiated 176 fair and balanced changes to the Workplace Relations Act, which then contributed materially to our economic success, jobs growth and productivity.

From 1996-2005, 18 IR bills were passed, the majority of them only after fair and balanced amendments negotiated by the Democrats. But, to the chagrin of members of the Coalition who were ideologues, we never let them go too far.

**Caveat:** this statement is not intended to cover all the components of our IR proposals. See our IR Action Plans which will be released in the run-up to the 2007 federal election.



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