



ALP AND COALITION INDUSTRIAL RELATIONS POLICY SNAPSHOT

As the 2007 Federal Election approaches, the policy battle-lines on industrial relations have been drawn. In short the Coalition Government seeks to preserve its *WorkChoices* system, while the ALP proposes to dismantle it and substitute a system that bears close (but not identical) characteristics to the laws of 1993-1996 when Labor was last in government. Although this article compares only Coalition and ALP policy, employers should also note the policies of the Democrats, Family First and Greens, which differ on industrial relations. These minor parties seek to hold the balance of power in the Senate, enabling them to wield some political control over workplace legislation proposed by whichever major party wins the election.

INTRODUCTION

In this term of government, the Coalition has made major reforms to workplace arrangements in March 2006 (*WorkChoices*), before modifying parts of them just over a year later (May 2007).

It is yet to announce its plans for industrial relations should it be re-elected.

Its March 2006 changes were supported by industry (although not in every detail) but business has been much more equivocal about the May 2007 changes that introduced more regulation into agreement making and built into labour costs the value of penalty rates and additions inherited from the old award system.

In contrast the ALP released a major policy statement in April 2007 *Forward with Fairness* before announcing changes four months later (August 2007) that would delay its full policy implementation until 2010.

Industry reacted very negatively to the ALP policy of April 2007, which proposed a very significant roll-back, not just of *WorkChoices*, but also of many other legislative and structural reforms of the past decade (including for example, the system of Australian Workplace Agreements). Concerned by that reaction, the ALP reviewed its announcements over the ensuing four months, and has sought to present the resultant Implementation Plan of August 2007 as its earlier policy in a moderated form.

Although there are a number of welcome clarifications and additions which reflect a desire to maintain a focus on enterprise bargaining and a control over unlawful strikes,

the Implementation Plan dealt primarily with transitional matters and did not make sufficient structural changes to the April 2007 policy.

These are important issues for employers, employer bodies and the overall economy, given that workplace laws and systems bear directly on costs, competitiveness, productivity and jobs. Notwithstanding the changes made by the Coalition Government in May 2007 and the revision of its policy announced by the ALP in August 2007, at least 30 major differences exist between Coalition and ALP plans.

Set out below is a snapshot of Coalition and ALP industrial relations policies, taking into account announcements up to September 2007.

INDIVIDUAL AGREEMENTS

Coalition

Keep Australian Workplace Agreements (AWAs). 1.3 million AWAs have been made since 1996. All award provisions able to be varied but fairness test requires fair compensation if certain award provisions are varied.

ALP

Abolish AWA system. Ban any statutory individual bargaining. Only allow common law agreements or collective bargaining. Common law agreements above \$100,000 per year not award regulated. A facilitation clause in awards will allow individually written agreement to the variation of some but not all award provisions.

Effect

ALP policy will mean that only employees who earn \$100,000 per year or more can freely negotiate individual

agreements to exclude award conditions. Individual agreements with other employees must comply in every detail with wages, conditions or work practices regulated by applicable industry-wide awards or by applicable collective agreements, unless individual facilitation rules in awards are adhered to. Abolition of AWAs weakens choice and, depending on the terms of awards and collective agreements, could weaken flexibility and productivity.⁴

COLLECTIVE AGREEMENTS

Coalition

Collective union or non-union bargaining allowed, plus a choice of individual bargaining, with AWAs taking precedence if collective agreements are made. All award provisions able to be varied but fairness test requires fair compensation if some protected matters are varied.

ALP

Only form of statutory bargaining to be allowed is collective union or non union bargaining.⁵ This is only allowed if the agreement is overall better off for employees than the award. Abolish AWA system. A facilitation clause in collective agreements will allow individually written agreement to the variation of some but not all collective provisions if employees overall are not disadvantaged compared to the agreement. Greenfields agreements on new projects must be with unions.

Effect

Unions get more power if only a collective bargaining system exists. Employers will have to deal with the trade union if one union member in a business wants union representation but agreements are based on majority vote. ALP policy denies choice and forces any variation to wages, conditions or work practices in awards to be collectively determined unless individual facilitation rules are adhered to. The will of the majority and/or the union would override the choices of individuals who would then be left to facilitation rules set by the majority. Major infrastructure projects rely on workable greenfields agreements. Collective bargaining where employees have to be better off will require overall wages and conditions to be higher than award requirements, resulting in increased labour costs.

PATTERN BARGAINING

Coalition

Does not allow unions to bargain common claims against multiple employers across an industry. Strikes in support of pattern bargaining not permitted.

ALP

Prefers collective enterprise bargaining, but would allow pattern and industry bargaining in some instances. Strikes in support of other pattern bargaining not permitted.

Effect

Pattern bargaining means unions get more power. Pattern bargaining reduces scope to eliminate inefficient work practices in an enterprise. Productivity declines and inflation is fueled if this occurs. Even where pattern bargaining is prohibited, unions likely to structure claims with minor differences to have similar effect to industry-wide claims.

FORCED BARGAINING

Coalition

No compulsory bargaining. Bargaining above minimum standards only by a free choice of both employer and the employees/union.

ALP

Unions can, if supported by a majority of employees, force an employer to bargain on union demands for wages and conditions above minimum standards.

Effect

When unions/employees can force bargaining, employers must bargain. Employers will have to deal with the trade union if one union member in a business wants union representation. This means they must meet with unions/employees, discuss claims, exchange non-confidential business information, and let unions meet staff. In some cases unions can be party to agreements. If an employer refuses to enter into bargaining it can be forced to do so by ALP's Fair Work Australia tribunal. If the employer refuses union or employee demands, strikes are allowed if pre-conditions are met.

STRIKES

Coalition

Strikes only allowed when negotiating a new collective agreement, only on employment matters, and only after a secret ballot. Secondary boycotts prohibited and enforced by ACCC. No strike pay. Civil remedies against unlawful strikes.

ALP

Will keep some limits on strikes (only when negotiating agreements and after secret ballots) but will allow strikes over any lawful union demands. Secondary boycott laws to be retained under ACCC jurisdiction. No strike pay. Current remedies against unlawful strikes to be retained.

Effect

ALP policy retains some important limits on strikes but still expands the scope for strike action, meaning that some currently unlawful strikes would be lawful. Unions can strike over wider demands, (e.g. union involvement in business restructuring, union picnic days, deduction of union fees and union training). Union strike powers also extended because unions would be allowed to strike over collective bargaining demands in workplaces where AWAs are converted to common law contracts (strikes during AWAs are not currently permitted in those workplaces).

LEGISLATED EMPLOYMENT REGULATION**Coalition**

Maintain minimum standards (wages, 38 hour week,⁶ parental leave, sick leave, annual leave) and other parts of safety net (including fairness test and its information sheet).⁷

ALP

Will add new legislated employment standards, including mandatory redundancy payments, a cap on hours, tighter limits on the ability to average hours, right to request flexible work arrangements for parents with pre-school children, national long service leave (with no disadvantage to any employee).

Effect

New employment standards will apply to all employment categories (even those over \$100,00 per year) and add cost and additional regulation to business, especially small business. Flexibilities will be lost, and the creation of new jobs will become more expensive and complex.

AWARD REGULATION**Coalition**

Retains awards, but has frozen scope for new award regulation. Rationalise over time.

ALP

Will re-create compulsory arbitration powers over hours, rosters, meal breaks, overtime, penalty rates, allowances, leave loadings, superannuation and employee and union consultation, and add new employment conditions on these topics on an industry by industry basis. Rationalise over two years.

Effect

New employment conditions on an industry basis will add cost and regulation to business, especially small business, and limit flexibility in making agreements. In total

(awards plus legislation) the ALP proposes 20 minimum conditions (plus employees 'better off' test if making agreements), whereas the Coalition proposes 5 (plus a 'fairness test' if making agreements).

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION (AIRC)**Coalition**

Retained but with limited powers.

ALP

Will abolish but replace with new super agency (Fair Work Australia), with greater powers, and with all judges, commissioners and staff newly appointed by the ALP. During transition AIRC will exercise award arbitration and rationalisation powers.

Effect

If ALP policy implemented, compulsory conciliation and arbitration will be reinstated and power will be exercised by new people in Fair Work Australia selected by an ALP government after a structured appointment process.

MINIMUM WAGES**Coalition**

Retains minimum wages administered by a specialist body, the Australian Fair Pay Commission and seek to simplify the number of minimum wage classifications over time.

ALP

Returns minimum wages to compulsory arbitration body and abolishes Australian Fair Pay Commission.

Effect

If ALP policy is implemented, the minimum wage system returns to former award system of arbitration, rather than a process of inquiry by an expert group.

YOUTH WAGES**Coalition**

Support and retain age-based youth wages.

ALP

Retain in first instance but allow abolition of age-based youth wages on a case by case basis if a skill-based alternative exists (per resolution).

Effect

Abolition of age-based youth wages was estimated to put over 200,000 jobs at risk when last examined in 1998.

UNFAIR DISMISSAL

Coalition

Limit unfair dismissal claims by allowing small and medium business exemption, (where less than 100 employees) and exemption where dismissal made for genuine operational reasons (all businesses). Public hearings, testing of evidence.

ALP

Put unfair dismissal claims back on small and medium businesses, remove the genuine operational reasons exemption, but extend the qualifying period before claims can be made to 12 months, and create a Fair Dismissal Code. Private informal hearings, limited testing of evidence.

Effect

Reintroducing unfair dismissal laws will become a cost and deterrent for employment among small and medium employers. The introduction of a Fair Dismissal Code will regulate what employers can do in relation to all dismissals, not just unfair dismissals. Disputes are likely about whether its requirements are met. Informal private hearings where employees are not publicly cross-examined could reduce the deterrent against suing an employer and be likely to result in more claims than the previous system. A 12 month period of employment before claims allowed makes no allowance for justified dismissals after 12 months.

UNION RIGHT OF ENTRY

Coalition

Keep strict limits on union powers to enter businesses.

ALP

Policy will retain existing right of entry law (but AWA abolition has implications for union entry limits).

Effect

While ALP will retain the existing right of entry law, the ALP policy to abolish AWAs removes limits on union right of entry in workplaces where AWAs exist. Any widening of union right of entry is likely to increase bargaining demands on employers and union membership demands on employees. Unclear or ambiguous right of entry laws have previously been associated with disputes and industrial unrest. Union entry is also likely for compulsory collective bargaining purposes if a union member is on staff.

NATIONAL IR SYSTEM

Coalition

Actively move to a national system of IR regulation using the corporations power in the Constitution.

ALP

Support national system using all constitutional powers but seeks negotiation with States, and exclusion of public sectors.

Effect

Both parties support the objective. States are unlikely to collectively agree. Retaining exclusions allows State systems to re-emerge and duplicates cost.

WORK AND FAMILY

Coalition

12 months parental leave, paid maternity leave and flexible hours/workplace by agreements only. Sick leave can be used for sickness of child or family member. Other measures on leave or hours by AWAs or collective agreements.

ALP

Flexible workplace arrangements for employees (hours/location) until child reaches school age and parental leave can both be extended to 2 years on reasonable request unless reasonably refused. Existing 12 month parental leave extended to apply to both parents, meaning (say) mums can take leave at birth and (say) dads when same child turns 1. Sick leave also used for child/family care. Paid maternity leave an objective over time in medium and large businesses.

Effect

More frequent and longer absences from work on account of parental leave. Extended parental leave adds cost to small and medium businesses in particular. Some employee requests for their preferred hours, rosters, part time work, change of location or work from home are impractical, and disputes may arise when employers say no.

PORTABILITY OF LEAVE

Coalition

Leave obligations apply to employment with each separate employer only.

ALP

National long service leave system (per policy). Leave obligations, such as long service leave, portable across multiple employers, and on sale of business (per resolution).

Effect

Portability of leave increases leave costs throughout the economy and misuses the purpose of leave being granted.

EMPLOYEE ENTITLEMENTS**Coalition**

Government funded GEERS scheme of safety net payments in cases of employer insolvency.

ALP

Wider powers for unions to seek protections through trust funds and insurance-bonds (per resolution). Silent on whether past ALP policy of a 0.1 per cent new payroll tax to fund employee entitlements is maintained.

Effect

An industry-wide 'solution' will add cost to employers and the economy. Any new payroll tax will cost jobs.

SUPERANNUATION**Coalition**

Retain existing 9 per cent employer obligations.

ALP

Supports existing 9 per cent obligations, but considers this 'insufficient', and will 'over time work to achieve a 15 per cent contribution level' with funding basis unclear (per resolution).

Effect

Any increase of employer contributions above 9 per cent will add costs to business and the economy.

EXTENT OF EMPLOYMENT OBLIGATIONS**Coalition**

Employment obligations apply to each employment contract only.

ALP

Employment obligations can in some cases be imposed on non employers if they are part of the contractual chain (per resolution).

Effect

Imposing employment obligation on non employers undermines contractual and commercial certainty.

INDEPENDENT CONTRACTING**Coalition**

Supports rights of contractors to operate in the labour market, and businesses to engage contractors without limits being imposed by the industrial relations system.

ALP

Supports independent contracting, but unclear if unions could seek to limit the use of contracting through collective bargaining claims.

Effect

Both parties recognise the legitimacy of independent contracting, but increased union power in the collective bargaining system could undermine these commitments.

BUILDING INDUSTRY**Coalition**

Retain the Cole Royal Commission system (Australian Building and Construction Commission, strong building industry laws and building industry procurement code of practice).

ALP

Abolish the Australian Building and Construction Commission (ABCC) in 2010, replaced by a division of the generic Fair Work Australia inspectorate. Retain resourcing and powers of ABCC until abolition. Beyond that, commitment to 'principles' of current system, but to consult on detail.

Effect

Construction unions will have greater scope to return to former practices if Cole Royal Commission system dismantled. Productivity gains and low dispute levels put at risk. Abolition of ABCC risks re-creation of poor workplace cultures and practices.

TRANSITIONAL ARRANGEMENTS**Coalition**

Current system continues.

ALP

New transitional system introduced in 2008 and to apply until end of 2009 (including a transitional alternative to AWAs, Individual Transitional Employment Agreements – ITEAs). ITEAs must not disadvantage employees compared to collective agreement, and are only allowed in workplaces where AWAs exist before transition commences. From 1 January 2010 full ALP system commences except AWAs currently operating able to continue their term.

Effect

ALP transitional arrangements defer commencement of some measures until 2010, while other changes commence from 2008, meaning two new systems – the transitional system (2008/2009) and the full policy (2010 onwards). Each set of changes will introduce new regulations and obligations on business. Over time this will add to cost and red tape, and in the short term require existing employment arrangements to be changed or reviewed even in non union workplaces.

RELATED ACCI PUBLICATIONS

ACCI has prepared a series of related policy analysis which add further detail to the three matters considered in this article. These are all available from the ACCI secretariat and website. They are:

- *An Inconvenient Truth: WorkChoices Delivers Workers More Than AIRC on Working Hours* (May 2007).
- *Understanding Employee Protections Under WorkChoices* (June 2007).
- *Common Law Contracts vs AWAs* (July 2007).
- *Snapshot of Coalition and ALP Industrial Relations Policies* (July 2007 and updated September 2007).
- *Compulsory Collective Bargaining: Assessing the ALP Industrial Relations Policy and ALP Collective Bargaining Policy and 20 Questions Which Arise* (August 2007).
- *Coalition and Labor IR Policies: Ready Reckoner of 30 Major Differences* (September 2007).
- *The ALP IR Rollback: How Far?* (September 2007).

¹ *WorkChoices* (March 2006 and June 2007).

² *Forward with Fairness* (April 2007) and *ALP Policy Implementation Plan* (September 2007) (the ‘policy’) and *ALP National Conference Resolution* (April 2007) (the ‘resolution’).

³ ACCI has published a more detailed analysis of *WorkChoices* ‘Labour Relations Reform in Australia: The Employer Perspective’ *IOE International Labour and Social Policy Review 2007* www.acci.asn.au. ACCI has also published a more detailed analysis of the ALP Policy *Forward with Fairness: Analysis and Briefing Notes for Employer Organisations* (May 2007), www.acci.asn.au.

⁴ For further information, see ACCI Policy Analysis *Common Law Contracts vs AWAs* (July 2007), www.acci.asn.au.

⁵ For further information, see ACCI Policy Analyses *Compulsory Collective Bargaining: Assessing the ALP Industrial Relations Policy*, and *ALP Collective Bargaining Policy 20 Questions Which Arise* (August 2007), www.acci.asn.au.

⁶ For further information, see ACCI Policy Analysis *An Inconvenient Truth: WorkChoices Delivers Workers more than the AIRC on Working Hours* (May 2007), www.acci.asn.au.

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