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*Practice Group(s):
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Steady As She Goes – Coalition Tweaks Fair Work Laws Creating a Glimmer of Hope for Employers

By Duncan Fletcher

The Policy

Yesterday, the Coalition released its workplace relations policy, *The Coalition's Policy to Improve the Fair Work Laws* (Policy), which promises that no Australian worker will be worse off and businesses will be encouraged to grow.

The Policy repeats the Coalition mantra that "Work Choices is dead, buried and cremated" but seeks to address a number of business concerns with current laws.

Importantly, the Coalition says that it will keep the *Fair Work Act 2009 (Cth)* and will make all changes within this framework.

The Coalition says that the Policy is aimed at creating one million new jobs over the next five years, lifting real wages and having more competitive businesses.

Objectives

The Policy has the following stated aims.

- Re-establishing the Australian Building and Construction Commission (ABCC) to tackle law-breaking on building sites and construction projects.
- Ensuring union right of entry provisions are sensible and fair, balancing the need for workers to be represented if they wish, with the need for workplaces to run without unnecessary disruption.
- Providing better protection for members of registered organisations by ensuring that the organisation and its officials play by the same rules and penalties for non-compliance, as do companies and their directors.
- Helping small businesses improve their understanding of the Fair Work laws so they have the confidence to grow and employ.
- Providing small business employers with potential immunity from Fair Work Ombudsman (FWO) penalty prosecutions when they have taken and followed advice from the FWO.
- Improving the prospects of higher real wages for Australian workers.
- Guaranteeing workers the right to ask for fair and protected flexible working arrangements.
- Creating realistic timeframes for Greenfield agreements by requiring negotiations to be completed within three months of them starting.
- Promoting harmonious, sensible and productive enterprise bargaining.
- Delivering a six month paid parental leave scheme based on the mother's actual wage.

- Lifting female participation rates in Australian workplaces.
- Ensuring workplace bullying is comprehensively addressed.
- Ensuring that workers who are underpaid receive interest on back pay held for them by the FWO.
- Urgently reviewing the operation of the Road Safety Remuneration Tribunal and the addressing need for further regulation in this area.

Not Covered by the Policy

The Policy does not introduce any changes to unfair dismissal laws or penalty rates.

Opposition Leader Tony Abbott has sought to take a cautious approach on the issue of unfair dismissal and penalty rates and has said that decisions over proposals to adjust penalty rates will continue to be a matter for the Fair Work Commission (FWC) to decide.

Good News in the Detail

Amongst the steady as she goes changes, there is some detail that is likely to be welcomed by employers.

- The reinstatement of the ABCC suggests that it will have jurisdiction over onshore and offshore building and construction and potential for more scrutiny of the maritime unions.
- The right of entry changes mean that there is no automatic right of entry for unions to hold discussions in workplaces where they have no members and are not covered or bound by enterprise agreements. Employers making agreements directly with employees should expect an increasing number of applications by unions to be covered by those agreements.
- Unions must take genuine steps in negotiating enterprise agreements before taking strike action.
- There will be a new independent regulator of unions and employer associations, the Registered Organisations Commission.
- Productivity will be a new factor that the FWC must consider in deciding whether to approve enterprise agreements.
- Small businesses will be given immunity from certain workplace prosecutions when they have followed advice from the FWO.
- Individual Flexibility Agreements will be improved so that they can only be terminated by giving 13 weeks notice and their content cannot be restricted by enterprise agreements.
- The Coalition has said it will consider establishing an independent judicial review stream for FWC matters giving greater scrutiny to decisions made by FWC.
- Union power on Greenfields projects will be reduced as the Coalition introduces a system for employers to bypass unions and seek approval for Greenfields agreements from the FWC where genuine negotiations have not resulted in agreement after three months. These agreements will be subject to the Better Off Overall test and the Public Interest test and benchmark conditions for the particular industry.

- The Coalition will modify Labor's proposed workplace bullying changes by requiring workers to seek assistance from a regulator before making claims in the FWC. The bullying laws will also be extended to union officials.
- The Coalition is also committed to adopting a number of employer friendly recommendations from the Fair Work Review Panel that have not been adopted by Minister Shorten.

Next Steps

The Coalition has left the door open for further change but not in the first term. This effectively commits the Coalition to seek a mandate for further change at a future election after 2013.

Mr Abbott has advised that there will be a Productivity Commission review into the long term operation of the Fair Work laws as they have only been in place for a few years. The Productivity Commission will be asked to make recommendations about how the laws can be improved and those recommendations will be carefully considered by the Coalition.

At this stage, the Coalition has said it will not oppose the proposed changes to the Fair Work laws introduced by the Labor government in the *Fair Work Amendment Bill 2013*. However, if Labor changes the Fair Work laws any further before the election on 14 September 2013, the Coalition reserves the right to repeal those measures.

Mr Abbott has said that the Coalition would introduce its legislative changes to Parliament within three months if it is elected.

Further Information

[The Coalition's Policy to Improve the Fair Work Laws, May 2013](#)

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