

The 10 Principles of the Australian Charter of Employment Rights Compared to the 2016 Election Policies of the Major Parties

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<p>1. Good Faith</p> <p>No Party has explicitly adopted the Charter principle of a general requirement for employers and workers to act in good faith. Good faith obligations remain restricted to bargaining. After the High Court rejected an obligation of good faith as being part of our employment laws, it is disappointing that no Party has proposed legislating such a requirement, which AIER argues underpins the notion of a “fair go”.</p>		
<p>Coalition</p> <p>No policy to remove the status quo good faith bargaining provisions of the FWA.</p>	<p>Labor</p> <p>Supports the status quo good faith bargaining provisions of the FWA.</p>	<p>Greens</p> <p>Supports the status quo good faith bargaining provisions of the FWA.</p>
<p>2. Work with Dignity</p> <p>Requires recognition of the essential humanity of people who work and that labour is not a commodity. Numerous cases of extreme workplace exploitation have recently come to light, notably the cases of 7-Eleven and foreign workers in the horticultural sector. These cases demonstrate how workers are denied dignity. Each of the parties has announced policies in response to these cases of exploitation.</p>		
<p>Coalition</p> <p>Committed to:</p> <ul style="list-style-type: none"> higher penalties for employers who deliberately and systematically underpay workers and new offence to cover when an employer pays the correct wages to employees, but then forces them to repay a proportion of their wages in cash amending the Fair Work Act to make franchisors and parent companies liable for breaches of the Act by their franchisees or subsidiaries in certain situations giving compulsory evidence gathering powers to the Fair Work Ombudsman and introducing a new penalty for obstruction of and providing false or misleading information to Fair Work Inspectors 	<p>Labor</p> <p>Committed to:</p> <ul style="list-style-type: none"> Cracking down on the underpayment of workers, with increased penalties for employers who deliberately and systemically avoid paying their employees properly; Introducing reforms to ensure that temporary overseas workers are not being exploited and underpaid and that there is a level playing field for all workers in Australia, including a new criminal offence for employers who exploit temporary overseas workers. <p>A similar approach to the Coalition with the same reservations. Significant resources will</p>	<p>Greens</p> <p>Referred the 7-Eleven allegations to a Senate inquiry.</p> <p>Introduced legislation to provide for employees employed by a franchisee to recover unpaid remuneration from the franchisor or head office entity. This legislation will also help make contracts fairer for small business franchisees, many of whom say that turning a profit and paying the legal minimum wage are often incompatible under the terms and conditions of their franchise arrangements.</p> <p>A different approach to the other parties by giving workers the power to take action and seeking to address the issue that it is the</p>

<ul style="list-style-type: none"> establish a Migrant Workers Taskforce in the Fair Work Ombudsman that will target employers who exploit migrant workers. <p>The Coalition’s policy is directed at enforcement which is positive as far as it goes. However, the policy does not address the structural issues that lead to exploitative work practices.</p>	<p>need to be allocated to the Fair Work Ombudsman and Commission if higher penalties and new offences are to be effective.</p> <p>Licensing regime for labour hire providers making it more difficult for labour hire workers to be exploited.</p>	<p>business model of many of these enterprises that drives the exploitation. This approach will require workers to understand their entitlements to avoid exploitation.</p>
<p>3. Freedom from discrimination and harassment</p> <p>The Fair Work Act largely meets the Charter principle on providing for freedom from discrimination and harassment. The adverse action protections cover most areas of potential discrimination. However, the interpretation of the provisions requiring intention by the employer and a causal link to demonstrate discrimination limit the extent the provision protect against workplace discrimination. The Productivity Commission’s recommendations on the adverse action protections have the potential to weaken the protections.</p>		
<p>Coalition</p> <p>No stated intention to remove or modify existing protections.</p>	<p>Labor</p> <p>Support existing protections.</p>	<p>Greens</p> <p>Advocate removing religious exemptions from current discrimination laws.</p>
<p>4. A safe and healthy workplace</p> <p>The harmonisation of occupational, health and safety laws (OHS) has provided an OHS regime that largely complies with the Charter. Remaining concerns include health and safety include restrictions on right of entry for union officials and recommendations from TURC for further restrictions, the precarious position of many workers engaged in insecure work, and the attempt by the Government to open up Comcare, undermining state-based workers compensation schemes. No Party has announced specific policies to address the increased safety risks faced by insecure workers.</p>		
<p>Coalition</p> <p>The Coalition opportunistically introduced legislation at the special sitting of Parliament prior to the election being called to abolish the Road Safety Remuneration Tribunal. The Tribunal was intended to improve road safety by providing reasonable contract rates for owner drivers.</p> <p>Introduced legislation to allow national employers to access Comcare.</p>	<p>Labor</p> <p>Supported the Road safety Remuneration Tribunal and the principle of minimum rates.</p> <p>Opposed government attempts to allow national employers to access Comcare.</p> <p>Support the model OHS laws.</p> <p>No stated policy to change right of entry laws.</p>	<p>Greens</p> <p>Supported the Road safety Remuneration Tribunal and the principle of minimum rates.</p> <p>Opposed government attempts to allow national employers to access Comcare.</p> <p>Support the model OHS laws.</p> <p>General policy to strengthen right of entry laws.</p>

<p>No stated position to further restrict right of entry laws, except notably for building and construction workers. The ABCC will, as it did previously, adversely affect the safety of building sites.</p>		
<p>5. Workplace Democracy Workers have the right to be involved in decisions that affect them in the workplace. Concepts of workplace democracy are relatively under-developed in Australia, relying primarily on union representation, rather than consideration of work councils or representation on corporate boards or worker cooperatives. In an age of declining union membership, many workers have no voice in their workplaces.</p>		
<p>Coalition Does not value the principle of workplace democracy as evidenced by its insistence on re-establishing the ABCC and seeking to further limit the voice of workers.</p>	<p>Labor Focus is primarily on unions to represent workers in their workplace.</p>	<p>Greens Focus is primarily on unions to represent workers in their workplace.</p>
<p>6. Union membership and representation The right for workers to form and join trade unions for the protection of their occupational, social and economic interests is fundamental for a fair and just society. The core rationale of any workplace relations system is to address the power imbalance between employers and workers. Unions are the primary vehicle for addressing that power imbalance. The Royal Commission in Trade Union Governance and Corruption did find instances union-wrong doing. However, its recommendations pose a substantial threat to freedom of association. Unions must be democratic to be legitimate and accountable to their members and commit themselves to putting the interests of members first.</p>		
<p>Coalition Introduced the Registered Organisations Bill to</p> <ul style="list-style-type: none"> introduce an independent watchdog, the Registered Organisations Commission, to regulate unions and employer associations. increase the obligations of office-holders in registered organisations with respect to the disclosure of material personal interests, and decision-making where officers may have such interests; strengthen the financial, disclosure and transparency requirements applicable to officers in financial management matters; 	<p>Labor Opposed establishment of Trade Union Royal Commission.</p> <p>Opposed Registered Organisations Bill but released its own policy on addressing union governance.</p> <p>Committed to:</p> <ul style="list-style-type: none"> providing the General Manager of the Fair Work Commission with an additional \$4.5 million over four years to monitor the 109 employer and employee organisations 	<p>Greens Opposed establishment of Trade Union Royal Commission.</p> <p>Opposed Registered Organisations Bill.</p>

<ul style="list-style-type: none"> increase civil penalties and imposing criminal liability for serious breaches by officers of their statutory duties. <p>The provisions of this Bill run counter to the Charter principle that workers have the right to require their union to perform and observe its rules, and to have the activities of their union conducted free from employer and governmental interference.</p> <p>Implementation of 47 or the 79 Trade Union Royal Commission recommendations, many of which will further encroach on freedom of association.</p>	<p>presently registered;</p> <ul style="list-style-type: none"> introducing tougher penalties for union officials who break the law; requiring registered organisations to rotate their auditors every 5 years, consistent with the Corporations Act; extending current electoral funding laws to donations and expenditure relating to all elections managed by the Australian Electoral Commission, including union elections; and reducing the current disclosure threshold in the Commonwealth Electoral Act for election funding from \$13,000 to \$1,000. 	
<p>7. Protection from unfair dismissal</p> <p>The Fair Work Act’s unfair dismissal provisions generally meet the Charter principle and provide employees with a degree of job security. The primary gap in the laws is their limited coverage. Many workers face insecurity by not being covered by unfair dismissal protections.</p>		
<p>Coalition</p> <p>No stated intention to change the existing unfair dismissal laws.</p>	<p>Labor</p> <p>Support the existing unfair dismissal laws.</p>	<p>Greens</p> <p>Support strengthening unfair dismissal laws with regards to employees of small businesses and casual, fixed term and probationary workers.</p>
<p>8. Fair Minimum Standards</p> <p>Minimum standards are protected by the National Employment Standards and awards. AIER’s concerns about minimum standards focus on the ability to avoid minimum standards, particularly through the significant use of casual workers, and loopholes such as working hours, the right to request provisions and individual flexibility arrangements. The debate on Sunday penalty rates has also raised questions on how standards are best protected.</p>		
<p>Coalition</p> <p>Penalty rates</p> <p>Stated it will respect the decision of the Fair Work Commission on penalty rates. Supports status quo on process. However, key business groups are still lobbying for a reduction penalty rates which will place pressure on the Coalition after the election, if they continue to be in</p>	<p>Labor</p> <p>Penalty rates</p> <p>Made a submission to the Fair Work Commission urging the retention of Sunday penalty rates. Committed to making a further submission if elected to Government. Stated it will respect the decision of the Fair Work Commission on penalty rates. Supports status</p>	<p>Greens</p> <p>Penalty rates</p> <p>Committed to legislating to protect weekend penalty rates. Exact nature of the legislative protection is unclear.</p>

<p>Government.</p> <p>No stated position on changing any minimum standards.</p> <p><u>Interns and social security</u> The Coalition’s plan for young people receiving unemployment benefits to undertake “internships” undermines minimum standards. The Coalition has indicated it these “internships” will not be considered employment thus minimum standards will not apply. While young people who undertake these “internships”, which will be compulsory, will receive an additional \$200 a fortnight for working 25 hours a week, this amounts to working for \$4 an hours – significantly less than the minimum wage. Active labour market policies like these and “work for the dole” normalise low paid insecure work for young people. As more groups of people fall outside the protection of minimum standards, those standards are undermined.</p>	<p>quo on process.</p> <p><u>Enhanced protection of entitlements</u> Committed to</p> <ul style="list-style-type: none"> • Ramping up protections for workers from sham contracting; • Giving the Fair Work Ombudsman the powers and resources to pursue employers who liquidate their companies in order to avoid paying the money they owe their workers <p><u>Enhancing National Employment Standards</u> Advocate including in the National Employment Standards five days paid domestic and family violence leave.</p> <p>Support in principle national minimum standards for long service leave and the portability of entitlements</p> <p>Support in principle that the right to request flexible work arrangements should include an effective right of review for unreasonable refusals.</p> <p><u>Casuals</u> Proposal to provide an objective definition of a casual, after consultation with employers, employer groups and unions.</p>	<p><u>Extending minimum standards protections</u> Committed to</p> <ul style="list-style-type: none"> • Legislating to give casuals and employees on successive fixed-term contracts who have been in a workplace for more than 12 months a right to request secure and ongoing work. Employees whose request for permanent work is refused would be able to ask the Fair Work Commission to order their employer to give them a permanent full-time or part-time job. • Unions and employer organisations could apply to the Commission for orders that prospective employees, casual employees or those on rolling contracts be given permanent work. The orders could apply to individual workers, groups or whole classes of workers in any industry, with any kind of work or type of employer. Small businesses with fewer than 15 employees would be exempt from the legislation. <p><u>Enhancing National Employment Standards</u> Support domestic and family violence leave being included in the National Employment Standards.</p> <p>Support in principle portability of entitlements, including long service leave. Instigated a Senate inquiry in portable long service leave.</p> <p>Support right to request provisions should be enforceable and able to be arbitrated.</p>
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<p>9. Fairness and balance in industrial bargaining</p> <p>The Fair Work Act does not adequately provide for rights to collective bargaining and the taking of industrial action. Limitations on the level of bargaining and content of bargaining, along with restrictions on the right to strike, mean the Fair Work Act does not meet the Charter principle. The focus on bargaining at the enterprise level in particular is preventing many workers from accessing collective bargaining.</p>		
<p>Coalition</p> <p>Restricted union involvement in greenfields agreements.</p> <p>Proposed further restrictions on the content of bargaining.</p> <p>Indicated consideration of the Productivity Commission’s recommendation for enterprise contracts, which would undermine collective bargaining.</p>	<p>Labor</p> <p>Opposed changes to bargaining for greenfields agreements.</p> <p>Oppose PC recommendations to further restrict content of bargaining.</p> <p>Oppose PC recommendation for enterprise contracts that would undermine collective bargaining.</p> <p>Supports existing FWA collective bargaining and industrial action provisions.</p>	<p>Greens</p> <p>Opposed changes to bargaining for greenfields agreements.</p> <p>Oppose PC recommendations to further restrict content of bargaining.</p> <p>Oppose PC recommendation for enterprise contracts that would undermine collective bargaining.</p> <p>Called for amendments to the Fair Work Act to give the Commission power to resolve disputes by arbitration, rather than cracking down on workers taking collective action.</p> <p>Support in principle amending Fair Work Act to enable workers to take industrial action in their economic and social interests, including repealing secondary boycott restrictions.</p>
<p>10. Effective dispute resolution</p> <p>Charter requires the FWA to provide a structure for determinative and final dispute resolution. Safeguarding the independence of the Commission is important as is ensuring it continues to consist of people with experience of workplaces relations.</p>		
<p>Liberals</p> <p>No stated position to change the role or make-up of the FWC.</p>	<p>Labor</p> <p>Support in principle the Fair Work Commission having broader arbitration powers</p>	<p>Greens</p> <p>Support in principle the Fair Work Commission having broader arbitration powers.</p>