



# A POLL ON WORKPLACE POLICY



**Member Guide to the  
2019 Federal Election**

**May 2019**



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## FOREWORD

While every Federal Election has the potential to change the direction Australia is headed, there has not been an election in recent memory where one of the major parties is seeking a clear mandate to radically overhaul our national workplace relations system.

Since being elected to government in 2013, the Coalition has opted to be a 'small target' on workplace relations policy, making mostly small practical improvements to the Fair Work system and focusing any more serious reforms at regulation of union behaviours and governance standards.

Today, the ACTU's 'Change the Rules' campaign has not only profoundly influenced the ALP's pre-election workplace policy platform, but successfully wedged many in business and government into the position of defending the current legislative framework against further, more extreme reforms.

Given the business community, at many times led by AMMA, has for the better part of a decade argued the Fair Work system has failed to provide the competitiveness and productivity we need, defending the status quo is a trap to be avoided.

As an organisation renowned for holding the line on our principles when it comes to workplace relations policy and regulation, AMMA will actively promote our members' vision for workplace relations in Australia to the 46<sup>th</sup> Parliament of Australia, regardless of which party is in government.

This *Guide to the 2019 Federal Election* explores these themes, providing AMMA members with all you need to know on the workplace relations policies of the major and minor parties; key areas of the union campaign driving the public debate; a summary of workplace relations achievements of the current government; and other skills and industry policy announcements.

For further information please do not hesitate to contact us via the details below. We look forward to carrying out the privilege of representing your workplace policy priorities throughout the next term of government.

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## **THE COALITION:**

### Minor tweaks to a failed system

**Despite making some improvements to the Fair Work system, undertaking two large-scale inquiries into workplace issues and using two union governance-related Bills as triggers for the 2016 double dissolution election, workplace relations reform has not been a key priority of the Coalition Government.**



### **The Coalition's record on workplace reform**

The Howard Government of 1996-2007 undertook some of the most significant reforms to workplace relations in Australia's history. However, its loss of the public debate in the lead-up to the 2007 Federal Election continues to influence the Coalition's approach to this day.

Since 2013, workplace relations changes implemented by the Coalition Government have largely focused on the governance and conduct of trade unions; and some minor changes to the practical operation of the Fair Work Act, changes that were largely supported by employers and unions alike.

#### Governance, compliance and the institutions

The primary workplace relations achievements of the Coalition Government have related to governance of registered organisations, compliance with Australia's workplace laws and the institutions that uphold and administer them. Achievements include:

- Restoring the Australian Building and Construction Commission (ABCC) in 2016.  
The ABCC was the Howard-era watchdog charged with tackling union lawlessness in the building and construction sector. After its abolition by the ALP in 2012, restoring the ABCC was a longstanding policy priority of the Coalition, which it used as one of four double dissolution triggers in 2016.
- Established the Registered Organisations Commission (ROC) in 2016.  
Another 2016 double dissolution trigger, the ROC was established in 2016 to enforce greater standards of governance, lawfulness and transparency amongst all registered organisations including both trade unions and employer groups.
- Abolished the Road Safety Remuneration Tribunal (RSRT) in 2016.  
From 2012 to 2016 the RSRT set pay and conditions for independent owner-drivers in the road transport industry. Given its orders controversially did not extend to large transport companies, providing them a competitive advantage over small business operators, abolishing the RSRT was a key policy priority for the Coalition to level the playing field.
- Appointments to the Fair Work Commission.  
During this term of government the Coalition made 12 high quality appointments to the Fair Work Commission, adding greater balance to the tribunal's composition and responding to calls for more resources from the business community. The addition of more female members and members with business experience was particularly welcomed by employers.
- Commissioned the Heydon Royal Commission into Trade Union Governance and Corruption.  
The Heydon Royal Commission handed its final report to the government in December 2015. Its recommendations saw 30 individuals referred to government agencies and, as of May 2018, nine criminal convictions and three civil penalties recorded.

#### Amendments to the Fair Work system

While not pursuing serious reform of the Fair Work system the Coalition did successfully pass several legislative amendments that resulted in some improvements for all users of the system including employers and unions.

Changes passed by the Coalition to the Fair Work system included:

- The *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2017*, which passed both Houses in December 2018, 21 months after being introduced to Parliament, having the effect of:
  - Repealing the requirement of the Fair Work Commission to conduct four-yearly modern award reviews, which was agreed by unions and employers to be unnecessary and cumbersome; and
  - Providing the Fair Work Commission with discretion to overlook minor procedural or technical errors when approving an enterprise agreement, if it is satisfied that those errors were not likely to have disadvantaged employees. For example, AMMA had for some time brought to the Minister's attention the problematic nature of requiring strict compliance with the Notice of Representational Rights (NERR) requirements.
- The *Fair Work Amendment (Corrupting Benefits) Act 2017* took effect on 11 September 2017, which introduced new provisions that prohibited the payment of certain benefits to employee organisations. Arising from recommendations of the Heydon Royal Commission, the changes were aimed at better protecting members of registered employee organisations from potential corruption within the organisation and by its officers.
- Introducing an entitlement to five days' unpaid family and domestic violence leave in the National Employment Standards (the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018*). This was the recommendation of the Fair Work Commission and fell short of the ALP's and ACTU's policies of 10 days' paid leave for family and domestic violence.
- Clarifying rights and responsibilities in relation to casual employment through the *Fair Work Amendment (Casual Loading Offset) Regulations 2018*. Intended to stop the potential for casual employees to 'double dip' on loadings and entitlements, these Regulations clarify that if a loading has been paid to casual employees in lieu of entitlements afforded to permanent employees (i.e. a 'casual loading'), such as annual leave and redundancy, it may potentially be set off against any subsequent claim to be paid those entitlements.

This clarification was necessary following a Full Federal Court decision (*Workpac v Skene*) in 2018 that found a casual employee working on an ongoing basis was in effect a permanent employee and thus entitled to be back-paid annual leave and other full-time employee entitlements. These Regulations were subject to an ALP Senate disallowance motion which lapsed at the dissolution of Parliament and would need to be reintroduced if the ALP continues to seek its disallowance.

#### Unresolved workplace relations matters from the 45<sup>th</sup> Parliament

The Coalition has three outstanding workplace relations Bills that were not passed before the Prime Minister called the 2019 election and subsequently dissolved the Parliament.

- The *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017* intended to ensure unions and registered employer organisations are run by 'fit and proper' people; can be deregistered or placed under administration by the Federal Court in certain circumstances, for example, where there is widespread lawlessness; and can only amalgamate when this is deemed to not be a risk to the public interest.

AMMA's lobbying was a driving force behind this amendment bill throughout 2016-18, with the introduction of a public interest test for registered organisation amalgamations particularly important to AMMA members given the proposed merger of the nations' most recidivist unions, the CFMEU and MUA. Without this public interest test in place, the unions were able to amalgamate despite the CFMEU having accumulated more than \$11 million in fines from the courts for continued law-breaking.

The failure to gain support for the passage of this Bill, despite strong evidence for its necessity and a long lead time to lobby the Senate Crossbenchers for their support, represents one of the biggest failures on workplace relations of the 45<sup>th</sup> Parliament. To ensure any future amalgamations properly consider the public's interest, AMMA will continue to prosecute these reforms regardless of which party is in government.

- The *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017* was designed to protect worker entitlements that, through various different arrangements, are held for their benefit, whether that be for redundancy pay, sick leave or other employment benefits and to provide oversight of the governance and conduct of the worker entitlement funds. AMMA supports these reforms and would encourage the Coalition to continue their pursuit.
- The *Fair Work Amendment (Right to Request Casual Conversion) Bill 2019* would have extended the right for regular casuals to request conversion to permanent employment after 12 months of continuous service, by inserting it into the National Employment Standards (NES). This was introduced partly in response to a Fair Work Commission decision to include the right to request conversion in 85 modern awards. If the Coalition is re-elected, it is expected to reintroduce this Bill into Parliament.

### **What happened to the Productivity Commission review?**

As per its commitment from Opposition, in December 2014 the Coalition Government established the Productivity Commission Review into Australia's Workplace Relations Framework.

Handed to the government in November 2015 and released to the public one month later, the review's Final Report made 69 recommendations for change, many reflecting the significant submission of AMMA, backed by the findings of a KPMG economic research report.

Despite being intended to build the case for a more substantive workplace relations policy to take to the 2016 election, almost none of its recommendations have since been pursued by the Coalition, which took restoring the ABCC and establishing the ROC as its only workplace relations policies to the 2016 Federal Election.

This has been disappointing to the business community, including AMMA and our members, which urged the Coalition to revisit key recommendations from the Productivity Commission review that would be of great benefit to our industry and all employers, such as:

- Ensuring enterprise agreements can only contain matters pertaining to the direct employment relationship between employers and employees.
- Introducing alternative avenues for employers to pursue approval for a greenfields agreement for a new project when agreement has not been reached after three months (down from six months legislated in 2015), and allowing for the establishment of a new form of project proponent agreement for head contractors.
- Providing the Fair Work Commission with greater powers to suspend industrial action that would cause significant economic harm, and introducing measures to deter threats of, or last minute withdrawal of industrial action.
- Requiring the Fair Work Commission to take into account the cumulative impact of union entry on employers' operations.
- Removing the emphasis on reinstatement as the primary goal of unfair dismissal provisions, and changing the penalties regime under which employees can receive both compensation and reinstatement.
- Amending the general protections provisions to remove ambiguity around workplace rights and prevent employers from facing costly adverse action claims.

As part of AMMA's advocacy program for the next term of government, we will continue to revisit recommendations of the Productivity Commission when aligned to the priority reform needs of AMMA members.

## **Policies taken to the 2019 Election**

As of 9 May 2019, the Coalition has not yet released any substantive workplace relations policy platform heading into the 2019 Federal Election. While it's reluctance to do so may be understandable from a political strategy perspective, such a position remains disappointing to many in the business community.

Despite the lack of a clear workplace relations agenda, the Coalition has announced some relatively minor workplace relations policies, with most continuing its focus on the governance and conduct of unions:

- Retaining the ABCC and ROC to continue to prosecute union lawlessness.
- Introducing responsible safeguards on how unions spend their members' money.
- Introducing tougher penalties for sham contracting and establishing a dedicated sham contracting unit within the Fair Work Ombudsman (funded in the 2019 Federal Budget).
- Modernising the paper-system union right of entry permits to a photo ID card format.
- Responding to the Migrant Workers Taskforce by:
  - Criminalising serious worker exploitation; and
  - Establishing a National Labour Hire Registration Scheme (funded in the 2019 Federal Budget).
- Continuing to prosecute the outstanding workplace relations Bills not passed before Parliament was dissolved.

In addition, the Liberal Party website lists a number of basic principles related to 'Tackling Union Lawlessness', which primarily reinforce existing positions on matters such as the ABCC, ROC, RSRT and corrupting payments.

## **AMMA Comment**

With the lack of a workplace relations policy platform outside the piecemeal announcements outlined above, it can only be assumed that the Coalition has few plans to change the status quo if re-elected. While this may be highly preferable to the radical, anti-business changes being taken by the Federal Opposition to this election, such a position is disappointing particularly given the opportunity presented by the 2015 Productivity Commission Review to make some meaningful changes.

Perhaps more to the point, maintaining the status quo is not sustainable for Australia's future.

The competitiveness of Australian businesses in the present and future global economy requires a workplace system that properly balances workplace protections with productivity and efficiency considerations. Such a system is further explored in the final section of this guide.

On a positive note, the past two terms of government have proven the Coalition to be willing to engage with practical changes that improve the efficiency and cost for employers navigating Australia's workplace relations system. The Coalition's focus on upholding the rule of law is also welcome, especially with other parties seemingly willing to overlook law-breaking if it's related to industrial activities.

## **THE ACTU CAMPAIGN:**

A platform to change the rules

**To appreciate the central role workplace relations is playing in the 2019 Federal Election campaign, the dominant union campaign driving the ALP's policy agenda, seeking to divide the community, and building a platform to change its own rules, must be understood.**



The ACTU's 'Change the Rules' campaign is the most highly coordinated and heavily resourced union campaign since the 2005 'Your Rights at Work' movement that helped the ALP win government in 2007, and subsequently introduce an entirely new workplace relations system in Australia – the Fair Work Act.

'Change the Rules' is however, notably more extreme both in its rhetoric and policies. The present campaign promotes radical workplace relations changes more reminiscent of a 1970s style of regulation than one fit for Australia's place in a modern, globally competitive economy.

It heavily relies on class warfare theme, with the use of 'us versus them' language and emotive slogans characterising work as increasingly 'insecure', with employers seeking the 'casualisation' of the workforce and/or engaging in 'wages theft'. While some elements of the campaign are more relevant than others to AMMA's members in the resources and energy industry, the divisive anti-business agenda is a concern for all.

### **Priority themes for the resources and energy industry**

#### Free and Fair Bargaining

Agreement making at the enterprise level is the foundation of modern-day Australian workplace relations, recognising the importance of the direct employee-employer relationship and unique business considerations. Despite this, the ACTU is campaigning for a return to heavily centralised workplace regulation, including providing the Fair Work Commission with greater arbitration powers and unions with the ability to bargain across entire industries.

This 'one-size-fits-all' approach fails to recognise nuances within an industry and different workforces. It would erode any opportunity for individual businesses to leverage strong, positive employee relations as a source of competitive advantage and benefit for all stakeholders in the enterprise.

#### The Right to Strike

The ACTU is pursuing radical changes to Australia's strike laws that would allow striking at any time, over any matter, and across entire industries rather than confined to individual workplaces. Its justification is that current laws do not provide enough powers for employees to take industrial action. It has even incorrectly claimed Australia is not meeting international human rights obligations on the right to strike.

In reality, an absolute right to strike has never existed in Australia nor internationally. Like other developed nations, laws that allow employees to legally go on strike are balanced with certain rules, timeframes and conditions that must be met. Further, a historically low level of industrial action is not indicative of a lack of rights to strike, rather that workplace relations between employers and employees are healthy and productive.

#### Terminating Enterprise Agreements

The ACTU is campaigning for employers to lose the ability to apply to the Fair Work Commission for termination of an enterprise agreement. This has been a feature of enterprise bargaining since the mid-1990s and an important circuit breaker in rare cases where an enterprise agreement is objectively assessed as contributing to unproductive and/or unsustainable workplace practices.

#### An Independent Workplace Umpire

Despite the Fair Work Commission being established by the Labor Party in close consultation with the ACTU, the union movement is seeking to push this influence further. Alongside its push for more appointees from union backgrounds, the ACTU is also calling for the tribunal to have greater powers to arbitrate disputes.

Increasing the Fair Work Commission's compulsory arbitration powers would only encourage and reward unions for intransigence in bargaining and taking strike action, impacting on productivity, competitiveness and investment. Australia needs a strong, independent workplace umpire free from political interference.

#### Insecure Work

The 'Change the Rules' campaign heavily uses the emotive term 'insecure work' to undermine longstanding, legitimate forms of work including casual employment, labour hire and independent contracting. Australian workplaces are more diverse and flexible than ever with individuals similarly seeking greater flexibility and options in how they work being covered by substantial rights and protections.

#### Labour Hire

The union campaign is particularly targeting labour hire, pushing for excessive regulation and disincentives for employers to use labour hire providers. This would be very damaging for resources employers and the economy. Labour hire is a legitimate and essential mode of engaging skilled workers for short-term or contract work. It has been used responsibly and effectively in the resources and energy industry for decades.

#### The Australian Building and Construction Commission

The ACTU campaign has heavily attacked the ABCC, which it wants abolished under an ALP Government. The ABCC is necessary to ensure a lawful, productive and fair building and construction industry in Australia. It provides great benefits for all industry participants and the Australian economy as a whole.

#### Skilled Migration

Union campaigns are constantly attempting to undermine public confidence in Australia's skilled migration systems. Skilled migration has played a long and significant role in Australia's growth as a nation, its economy and the development of industries including the resources and energy sector. Responsible, appropriate use of international skilled labour must be defended against such attacks.

#### Industrial Manslaughter

The ACTU is calling on all states and territories to introduce industrial manslaughter into their workplace health and safety (WHS) laws. Despite no evidence supporting this assertion, they argue this is necessary to hold employers to account when fatalities occur at work.

### **Other high ticket union campaign issues**

There are other highly publicised areas of the ACTU's campaign that would have less impact on AMMA members but are of great significance to the national economy and businesses large and small. These include:

- Interfering with the independence of the Fair Work Commission to restore penalty rates in the hospitality, retail pharmacy and fast food industries.
- Significant increases in the minimum wage to create a 'living wage'.

### **AMMA Comment**

While the ACTU's 'Change the Rules' campaign appears to have gathered momentum since mid-2018, this narrative - loose with the facts, highly-emotive, laden with slogans and revolutionary in tone - has been deliberately and strategically building since March 2017, when then-new ACTU secretary Sally McManus famously said she saw 'no problem' with people breaking 'unjust laws'.

In response to this campaign AMMA provided members with an information kit outlining in detail the key union issues relevant to the resources and energy industry, and providing honest arguments backed by facts that counter the highly emotive and often factually incorrect union campaign.

This information has effectively supported AMMA members in a range of activities including public affairs messaging, employee communications, investor and other stakeholder relations and general dealings with the community in exercising social license to operate initiatives. Email [policy@amma.org.au](mailto:policy@amma.org.au) for a copy.

## **THE AUSTRALIAN LABOR PARTY:** A mandate sought for radical change



**In stark contrast to the Coalition's approach, the ALP is seeking a mandate from the Australian community for radical workplace relations changes, mirroring much of the ACTU's 'Change the Rules' campaign and looking to put more workplace relations decision making in the hands of trade unions and third parties such as the Fair Work Commission.**

The Australian Labor Party (ALP) policies were first outlined in its April 2018 National Platform (consultation draft) that was later endorsed at the December 2018 ALP National Conference. These policies strongly resemble the ACTU campaign and can be categorised as: institutional changes; minimum standards, protections and entitlements; the agreement making framework; and new areas of workplace regulation.

### **Institutional changes**

#### Abolish the Australian Building and Construction Commission

The ALP's policy to abolish the ABCC is essentially gifting the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), immunity from the lawless conduct and thuggish behaviour its officials and delegates often exhibit on Australian building sites. This policy is hardly a surprise, given the CFMMEU is a major political influence and financial donor to both the ALP and ACTU.

As one of the worst recidivist offenders in Australia's history, having accumulated more than \$11 million in fines and penalties from the Courts over the past decade, the union is also the primary target of the ABCC's work in addressing unlawful conduct in the building and construction industry.

AMMA's strong view is that the retention of the ABCC is critical to addressing issues for resources, energy, infrastructure and other commercial projects of national significance, ensuring productivity, competitiveness, costs and safety are not detrimentally impacted.

#### Abolish the Registered Organisations Commission

The abolition of the ROC would remove any proper oversight and regulation of the conduct of unions and employer associations. Improved governance of registered organisations is very important for employers and employees alike, including AMMA's members and their employees throughout the resources and energy industry. Corruption and misuse of member money entrenches cultures of entitlement and industrial belligerence, and further disconnects union agendas from the needs of employees and employers at the workplace level.

#### Reinstate the Road Safety Remuneration Tribunal

Reinstating the RSRT would be another gift to the ALP's union constituents – the Transport Workers' Union (TWU) in this case, given the TWU stands to benefit from uncompetitive policies and practices being enforced on independent owner drivers and not large transport companies where the union has coverage.

From a safety perspective, the RSRT is ineffective and unnecessary, given additional resources could be provided to existing regulators to properly address safety issues for the road transport sector. A reinstated RSRT would threaten the viability of a number of small communities the resources industry relies upon.

#### Other institutional changes

Other ALP proposals include establishing an equal pay division within the Fair Work Commission and introducing a National Labour Hire Licensing Scheme. While AMMA does not support labour hire licensing, especially in industries where wrongdoing has not been found (such as resources and energy), a single national scheme would be preferable over multiple state jurisdictions, such as in Victoria and Queensland.

## Minimum standards, protections and entitlements

The ALP is taking to the Federal Election a number of changes to the minimum standards, protections and entitlements within the Fair Work Act. These changes include:

- Raising the minimum wage to a 'living wage' level.
- Restoring penalty rates to July 2017 levels in retail and hospitality.
- Amending the Act to ensure award variations can never reduce an employee's take home pay.
- Varying the NES to include 10 days of paid domestic violence leave.
- A 'goal' of 26 weeks paid parental leave plus superannuation.
- Providing pay parity for labour hire employees and directly-employed workers.
- Ensuring flexible working arrangements to accommodate unpaid caring responsibilities.
- Working with the states and territories to achieve national long service leave minimum standards, industry-wide entitlement portability schemes and consistent treatment of public holidays.

Some of these changes may impact AMMA members directly, particularly smaller businesses and operators in the supply chain that do not have enterprise agreements and rely on modern awards and the NES to provide key terms and conditions for their employees. However, generally speaking, the ALP's reforms in relation to minimum standards, protections and entitlements are primarily aimed at lower-paying sectors of the economy and will have the least impact on the resources and energy industry, being Australia's highest-paying sector.

Nonetheless, it is important to understand that such proposals would likely be devastating for the wider business community and especially small businesses operating in low margin sectors. Further, the negative effects of these reforms could have an adverse impact on investor confidence and general economic activity which, as a flow-on effect, may be felt in the resources and energy industry.

Other proposals, such as overturning the 2017 penalty rates decision of a Full Bench of the Fair Work Commission and subsidising the pay of childcare workers with tax dollars, could open the door for an unprecedented level of government interference in wage setting and other employment issues.

### Pay parity for labour hire workers

An area of great concern for AMMA members is the ALP's commitment to legislate for labour hire employees to receive the same pay and conditions as directly employed workers. This reflects a recommendation by the Labor-dominated Senate Committee on the Future of Work and Workers in September 2018 to address purported growth in so-called 'insecure work'.

AMMA's view is such a proposal is not only devoid of evidence, but based on a lack of understanding of how labour hire and other contingent workforce strategies are applied in practice in complex, cyclical industries such as the resources and energy industry. It is unclear how the policy would work but the ALP has stated that it would consult with labour hire companies, host employers, unions and other stakeholders on the legislative scheme and transitional arrangements.

AMMA will advocate against pay parity regulation, arguing that if pursued it could have a significant impact on the ability of members to meet short term labour requirements, delaying projects and activities thus decreasing the productivity and competitiveness of the resources and energy industry.

### Introduction of industrial manslaughter into WHS laws

The ALP has pledged its support for the various states and territories to introduce industrial manslaughter laws into their workplace health and safety (WHS) frameworks. Queensland and the Australian Capital Territory have already introduced industrial manslaughter laws, while Victoria intends to do so in the near future.

Industrial manslaughter laws attach criminal responsibility to a director or officer of an employer that causes the death of a worker, where gross negligence is found. The trend towards such laws nationally was reflected in Safe Work Australia, the federal statutory WHS body, recommending widespread adoption of industrial manslaughter in its 2019 revised model WHS laws, presented to each state and territory.

AMMA's view, consistent with other business representative groups, is that there are existing, appropriate avenues within Australian criminal law for individuals to be prosecuted for gross negligence that has led to a workplace death. There is no evidence that the current legislative framework is ineffective in dealing with serious offences, nor is there any evidence that imposing greater criminal liability on individuals for workplace accidents would have a positive impact on safety outcomes.

## **Overhauling the enterprise agreement making framework**

The ALP's workplace relations policies contain significant changes to enterprise agreement making. Based on the ACTU's narrative that the current system is 'broken' and provides an unfair advantage to employers, the changes aim to bolster the negotiating power of unions and reduce employers' ability to negotiate workplace agreements at the enterprise level, unique to their operating environments and employment needs.

### Permit multi-employer or 'industry-wide' collective bargaining

The ALP has committed to 'improving access to collective bargaining' which controversially includes permitting multi-employer or 'industry-wide' collective bargaining in some circumstances. The circumstances where multi-employer bargaining would be deemed appropriate remain ambiguous, however Labor's workplace relations spokesperson Brendan O'Connor has stated this policy would be directed at lower-paid sectors where wages have been stagnant. This indicates there may be scope for resources workplaces to be excluded.

AMMA rejects the logic behind a policy allowing multi-employer bargaining. With enterprise-level bargaining being the foundation of Australian workplace relations since the early 1990s, this policy would be a major backwards step for Australia. Facilitating industry-wide bargaining, including by permitting legal strikes in pursuit of industry-wide claims, would have dire outcomes for the economy and wider community.

### Require 'representative cohorts' for enterprise agreement making

Labor has promised to 'stop sham enterprise agreements' by ensuring enterprise agreements are agreed to by a 'representative cohort' of employees. This policy is in response to a small number of isolated cases in which enterprise agreements have been found by the Fair Work Commission to have not been genuinely agreed to, by reason of the lack of representative employee parties reflected by the minimal number of employees covered by the enterprise agreement at the time of a vote.

While a workable solution could be found, there is no detail on what a 'representative cohort' for enterprise agreement making may look like. The danger is this policy may erode an employer's ability to establish enterprise agreements at a time when only a small number of employees are employed, for the purpose of providing commercial certainty and competitive tendering abilities while the business grows.

### Prohibit unilateral termination of enterprise agreements

The ALP has adopted the ACTU's position to remove the ability for any party to unilaterally terminate an expired enterprise agreement. This would mean the only way for an employer to re-set wages and conditions at an unsustainable project with an expired agreement, would be to seek the agreement of employees and any unions covered by that agreement. This would be unworkable in practice, removing one of the last remaining options available to employers when negotiations to replace an expired agreement have become protracted.

### Good faith bargaining and the Fair Work Commission

The ALP's workplace policies include a number of statements about promoting good faith bargaining and providing greater powers for the intervention of the Fair Work Commission. The policy says: "Labor will develop guidelines on good faith conduct in negotiations to allow access to and assistance from the independent umpire

to resolve disputes.” This would likely make recourse to the Fair Work Commission more readily available in bargaining and thus allow scope for unions to utilise such provisions to force arbitrated outcomes.

Further, the ALP has stated it would; “provide the Fair Work Commission power to arbitrate intractable disputes.” Like the rest of its policy platform, there is a notable lack of detail on what would constitute an ‘intractable dispute’. The risk is that a low bar for Fair Work Commission intervention would only encourage and reward unions for intransigence in bargaining and for threatening or taking strike action. Any compulsory arbitration laws would further undermine employers’ ability to make unimpeded decisions about their operations, impacting on productivity, competitiveness and investor confidence.

## **New areas of workplace regulation**

In addition to the significant changes proposed for existing principles of Australian workplace relations, the ALP is also taking to the Federal Election a number of policies focused on new areas of workplace regulation. Many of these new focus areas relate to ‘future of work’ themes identified by unions as problematic, and include conditions in certain industries, safety and the use of technology:

- Work with State and Territory Governments to set minimum standards for fly-in, fly-out (FIFO) industries. This may see governments (both state and federal) seek to legislate principles included in various codes of practice, such as mandating even-time rosters and certain accommodation arrangements. This ALP policy is clearly a red flag for resources employers.
- Set an objective test to determine who is a casual employee. This policy is derived from the union movement’s campaign against the use of casuals in ongoing employment arrangements such as that at the centre of the high profile *Skene v WorkPac* matter. The prospects of such a test make retaining the casual offset ‘double dipping’ regulations introduced by the Coalition critical to protecting employers from mass claims for back-paid entitlements.
- Make sure the ‘gig economy’ is not used to undermine employment conditions, the right to organise and the right to join a union.
- Develop a national regulatory framework for WH&S and workers compensation in the shipping, offshore oil and gas, and stevedoring industries. Based on the partisan recommendations in the 2018 Senate inquiry into offshore safety, this policy would almost certainly be used to provide union officials expanded rights to enter offshore platforms and other remote workplaces under the guise of safety.
- Commit to improving safety and regulation in the national stevedoring industry.
- Protect the rights of employees and unions to communicate through websites, social media and email.
- Work with the states to develop a truly national workplace relations system for the private sector.

## **AMMA Comment**

For the past 12 months AMMA has been working heavily to understand and mitigate the risks presented by the workplace relations policies of a potential Shorten ALP Government. This process has involved seeking greater detail and clarity from the Opposition on its policies and their intent, and communicating these to members; and establishing industry positions to immediately advocate to the ALP if it forms government.

Working alongside our members, AMMA will execute a lobbying strategy seeking to resist those policies that present the greatest risk to the ongoing prosperity of our industry, and influence the development of policies of less concern to ensure minimal disruption as they are rolled-out.

With only days until the Federal Election, it is important for AMMA members to understand the workplace relations environment they will face if the ALP forms government, one where there would be more power provided to the Fair Work Commission and greater scope for its intervention; and where there is less regulation of union behaviour, a changed bargaining dynamic and ever-increasing blending of social and safety issues with workplace relations agendas.

## MINOR PARTIES

### Influence at the fringes

**The rising number and influence of minor parties, particularly in the Senate, means it is more important than ever to understand their policies on workplace relations and industry matters.**

The minor parties rarely have clear, well-articulated policies on workplace relations and their representatives can vote especially unpredictably in this area. However, most provide some indication of their positions on workplace relations which can be helpful when targeting lobbying efforts.

### The Greens

The Greens' workplace relations platform *Good Work: The Greens' 10 industrial relations principles for re-writing our labour laws* largely mirrors the ACTU's 'Change the Rules' campaign, going even further than the ALP in adopting its radical agenda. Policies include:

- Permitting industry-wide bargaining.
- Expanding the matters permitted to be the subject of bargaining to include workers' 'social, economic and environmental' interests.
- Removing or restricting the right to terminate enterprise agreements.
- Expanding union rights of entry and freedom of association by allowing unions stronger enforceable rights to enter workplaces for what they claim to be legitimate purposes and to talk to employees.
- Abolishing the ABCC and ROC.



The Greens' approach, and as an extension the left-wing of the ALP's approach, to workplace relations can be further explored by reading the final report and recommendations of the 2017 Senate Education and Employment References Committee into Corporate Avoidance of the Fair Work Act.

### United Australia Party

Clive Palmer's national policy for the United Australia Party (UAP) is relatively simple with no specific reference to workplace relations. In its policy for "Mineral Wealth", the UAP states its support for the sustainability of the resources sector in contributing to the welfare of the Australian community.

The policy aims to create mineral wealth by utilising Australia's mineral resources to establish downstream processing across the states, and exporting products at a higher dollar value, thereby creating more revenue, jobs, tax and more facilities. When last in Parliament Clive Palmer typically voted with the Coalition on most policy issues.



### One Nation

Pauline Hanson's One Nation Party has been a significant force on the Senate crossbench. It lists the following policies under 'Australian Jobs and Infrastructure':

- Jobs for Australians first and foremost.
- Investigate the abuse of foreign work visas.
- Introduce an apprenticeship scheme that will create jobs for Australians.
- Build infrastructure projects such as a national fast rail service, dams and water projects, hospitals and upgrade major roads.



### **Katter's Australia Party**

Bob Katter's Australia Party (KAP) supports the right of workers to collective bargaining to protect and promote their economic interests and to access compulsory arbitration where practical.



This supports KAP principles that governments should develop and promote policies which maintain and advance a modern mixed economic system that will ensure economic growth, full employment, rising living standards, prosperity, opportunity and equality of access to such opportunity for all Australians.

KAP has a focus on First Australians that influences its position that migrants and long-term visa entrants should be limited to levels Australia can afford based on job creation and nation-building infrastructure.

### **Centre Alliance (Nick Xenophon)**

The Centre Alliance's Employment and Workplace Relations policy has a focus on small business and sets higher expectations on corporations that recognises high levels of workplace participation and productivity are the key to achieving a strong and prosperous economy.



The Centre Alliance supports the ongoing review of the workplace relation system to ensure living standards are maintained and small business prospers. Despite identifying the need for a framework of mutual fairness to achieve a strong economy, the Centre Alliance supports greater union power in workplaces that it believes will restore the balance between employers and workers.

### **Australian Conservatives (Cory Bernardi)**

The Australian Conservatives have a policy for supporting the Australian economy and bringing the budget back into surplus. Despite not having a specific workplace relations policy the Conservatives seek to streamline regulation to remove red tape that strangles business, investment and job creation.



### **AMMA Comment**

Understanding and influencing the minor parties' workplace relations positions becomes even more critical when the government of the day requires the support of a Senate crossbench to execute its workplace relations reform agenda.

With the Federal Election tipped to be very close, and the number of potentially influential conservative and right-wing parties increasing in 2019 over 2016, it is possible the 46<sup>th</sup> Parliament will have a Senate crossbench more resistant to the ALP's radical change agenda than the previous Senate.

This is fuelling speculation that if the ALP was to win government but be presented with a more difficult Senate composition, it is possible the party may rush through several key workplace policy commitments prior to the 1 July Senate changeover. In this event, the changes the ALP would likely prioritise are restoring penalty rates and lifting the minimum wage.

## **SUPPORTING GROWTH AND PROSPERITY**

### Industry, skills and other workforce policies

**Outside of workplace relations, AMMA members will take interest in the policies of the two major parties in other areas critical to the ongoing growth, competitiveness and prosperity of the Australian resources and energy industry.**

The four focus themes include industry development, skills and training, infrastructure and skilled migration.

#### **Industry Development**

Intended to be a bipartisan vision for the industry's future, the Coalition's *National Resources Statement* is a comprehensive plan for ongoing growth and development. AMMA particularly welcomed its focus on developing skills and workforce capabilities as one of five key actions critical to the industry's future success.

Further priorities include establishing a new critical minerals work program to boost exploration, develop a data strategy to de-risk investment decisions and build community confidence in the sector. It also acknowledges the sector's changing future skills needs driven by automation, robotics and artificial intelligence.

The ALP's position on industry development is outlined in its 'Future Mines and Jobs Plan', intended to kick-start the discovery of new mines across the country, generating new jobs and providing a much needed economic boost. While not comprehensive like the *National Resources Statement*, the plan outlines some important processes that would underpin a more detailed plan for the next term of government.

The plan includes establishing an Australian Future Mines Centre in Perth to coordinate exploration work and lead the scientific research and development necessary to explore under deep cover.

It also commits the party to a Resource White Paper process to deliver the long-term vision across an ALP government for the resource sector. Encouragingly, the ALP's announcement refers favourably to the Resources 2030 Taskforce, indicating that process would not be wasted if the ALP won government.

#### **Skilled Migration**

The Coalition's migration policy will cap permanent migration and introduce new skilled worker visas requiring three years' residence as a pre-requisite for permanent residency. The policy strongly reflects the government's focus on the integrity of the visa system that supports prioritising jobs for local workers.

Recommendations by a Senate Committee on the effectiveness of the temporary skilled visa system in targeting genuine skills shortages include more rigid labour marking testing and reviews of the skilled occupation lists.

Employers are already subject to quite onerous labour market testing to engage skilled overseas workers and uncertainty resulting from unnecessary changes to the skilled occupation lists in recent years. This is a continued focus area for AMMA to advocate for high priority occupations in the resources and energy industry to be eligible occupations listed for skilled migration to target genuine labour shortages.

The ALP plans to increase the income threshold for temporary skilled overseas workers, a policy announced under its 'Protecting Local Workers' package. The lowest wage employers can pay overseas workers would be \$65,000, an increase of more than 20% from the current threshold of \$53,900.

Opposition Leader Bill Shorten has also indicated further changes would be made to Australia's skilled migration system, unannounced as of 9 May 2019, which would be consistent with the disappointing anti-foreign worker rhetoric in both the ACTU's 'Change the Rules' campaign and the ALP National Policy Platform.

## Skills and Training

The Coalition has announced a significant skills package as part of increased Federal Budget funding for TAFE, vocational education and other training initiatives. The 'Delivering Skills for Today and Tomorrow' package aims to develop the skills needed to succeed in a changing workplace and provide businesses, including those in rural and regional areas, with a pipeline of qualified workers.

The Coalition has also pledged 10 Industry Training Hubs in key locations across regional Australia to create more jobs for young people.

Labor's policy on skills and training focuses on the rate of youth unemployment and the loss of jobs with the automotive manufacturing industry. Labor's policy guarantees TAFE funding to provide more people the opportunity to learn a trade and help workers to re-skill. The Future Mines and Jobs Plan allocates \$2 million to provide 100 scholarships for mining engineers and deliver an industry data and skills road map.

## Infrastructure

The Coalition has committed to extending its Northern Australia Infrastructure Facility, a \$5 billion lending facility to finance projects via the governments of the Northern Territory, Queensland and Western Australia. It aims to achieve growth in the economies and populations of those regions and encourage and complement private sector investment in northern Australia, with its primary purpose to accelerate infrastructure development by financing.

The ALP has proposed a Northern Australia Development Fund to help build infrastructure projects like gas pipelines across Queensland and the Northern Territory. The fund will provide financing facility and work with Infrastructure Australia to identify and support projects of national economic significance in Australia's north. The Coalition and ALP policies in this sense appear almost identical.

The *National Resources Statement*, derived from the Resources 2030 Taskforce, recommends the federal government work with industry, state and territory governments and local communities to align policies, provide information and investment services, and develop a shared vision for infrastructure.

## AMMA Comment

It is very positive for the resources and energy that both major parties have outlined strong commitments and policies to assist in further industry growth. This includes a focus on skills issues that present significant future challenges for employers. AMMA maintains that unlocking new minerals deposits and investing in the skills of the future are critically important for a globally competitive Australian resources and energy industry, and sustaining the significant value the industry delivers to our nation.

AMMA was heavily involved in the Resources 2030 Taskforce process of 2018, which underpins many of these commitments and policies. We expect to work closely with whichever major party forms government after the 2019 Federal Election to put these initiatives and priorities in place.

The area in which both major parties have disappointed is that of skilled migration. In recent years the Coalition government has made unjustified changes to the eligible skilled occupation lists, while the ALP continues to demonise the use of international skilled labour to score political points.

The cyclical nature of the resources industry means that when the next wave of multi-billion dollar construction projects comes around, there will be a shortage of skilled labour for a short period of time that will require a responsive and responsible skilled migration scheme.

## THE NEW HORIZON

### AMMA's influence and advocacy agenda

**AMMA is an unwavering advocate for employment, workplace relations and skills outcomes that are in the interests of all AMMA members across the Australian resources and energy industry. Regardless of which party forms government following the 2019 Federal Election, we will vigorously pursue the interests of our members and our vision for a future-focused system of work regulation.**

Independent of party politics, election scare campaigns, the daily news cycle and political point-scoring, AMMA applies objective, consistent criteria to assessing policies of Australia's political parties. This is aligned to AMMA's mission – assisting the industry in creating a brighter future for all Australians.

The AMMA Policy Criteria is as follows:

- A. Does the policy support the creation of high quality jobs in the resources and energy industry?
- B. Does the policy acknowledge the rapidly changing and increasingly diverse nature of work and workforces?
- C. Does the policy support our industry in attracting new project investment to Australia?
- D. Does the policy provide the flexibility for businesses to be sustainable and competitive in the long term?
- E. Does the policy properly balance the role of regulation and third parties in the workplace with the preceding objectives?

AMMA will apply this criteria consistently to any further policies announced in the lead-up to the 2019 Federal Election, as well as policies announced by the next Australian Government.

### Priorities for the next term of government

In the final week of the 2019 Federal Election campaign, AMMA will publicly release policy priorities for the 46<sup>th</sup> Parliament of Australia, calling on whichever party forms government to work with the resources and energy industry on the following 'Big Four' policy areas:

1. Pursuing a 'fit for purpose' system of work regulation that:
  - Addresses longstanding uncompetitive aspects of Australia's IR system;
  - Begins building a regulation system fit for the future of work;
  - Restores Australia's standing as a competitive, productive place to invest and create jobs; and
  - Ensures safety laws solely focus on improving safety in workplaces.
2. Maintaining flexible supply chain arrangements in the resources and energy industry. This includes:
  - Defending the unfair political attack on suppliers, contractors and their workforce arrangements;
  - Explaining the huge opportunities and economic value created by suppliers and contractors, including labour hire; and
  - Warning of the impacts on competition, jobs, sovereign risk and economic output of excessive regulation and inflexibilities in the supply chain.
3. Facilitating positive direct employment relationships, achieved by:
  - Ensuring appropriate checks and balances on union power and influence;
  - Acknowledging the vast majority of employees prefer a direct relationship with their employer;
  - Supporting independent institutions upholding the law and protecting people from bullying and intimidation at work; and
  - Minimising unnecessary regulation and red-tape stifling jobs and growth.
4. Building the skills of the future, by:
  - Aligning skills and training policy with industry needs through consultation and engagement;
  - Implementing the 'people areas' of the Resources 2030 Taskforce recommendations; and
  - Minimising political interference with Australia's responsible skilled migration system.

## A long-term vision for workplace regulation

Underpinning AMMA's 'Big Four' priorities for the next term of government is the long-term vision for Australia's future workplace regulatory environment, put forth by AMMA and our members in *A New Horizon: Guiding Principles for the Future of Work*.

Highlighting the way forward for Australian workplaces, *A New Horizon* is AMMA's most future-focused report in two decades and explores how technology, demographic and competitive factors are influencing the future of work in the resources and energy industry.

Based on a wide-ranging survey of AMMA members and guided by the AMMA Board Reference Group, the report's findings and principles will provide AMMA with a strong narrative to lead future of work discussions with the next Australian Government and put forward our industry's holistic vision for future work regulation.

Some of the key principles to be advocated to government include:

- Future of work regulation must move beyond outdated assumptions about workplaces and employer/employee relationships.
- The regulatory framework should align with the trend toward greater individual motivation and direct engagement in the workplace.
- Australia should adopt a multi-tiered approach to work regulation that would free employers and employees in high-income areas from unnecessary regulatory burden.
- Open and flexible regulatory models will be critical to unlocking the opportunities created by the future of work.

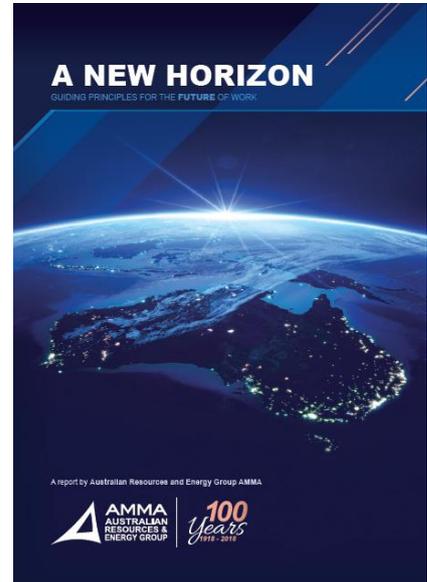
For the full list of AMMA's 12 'Guiding Principles for the Future of Work', and the supporting research and evidence of resources and energy employers, download your copy of *A New Horizon* at [amma.org.au](http://amma.org.au).

## AMMA support and engagement

As we near polling day, AMMA trusts our members across Australia's resources and energy and allied industries find this *Guide to the 2019 Federal Election* of value. We encourage you to share this guide with your human resources, employee relations, corporate affairs and executive leadership teams.

To learn more about AMMA's workplace policy activities and/or to get involved with our research, advocacy and lobbying, visit [amma.org.au](http://amma.org.au) or email [policy@amma.org.au](mailto:policy@amma.org.au).

Alternatively, individual members of the AMMA support team for workplace policy would be happy to hear directly from you. Please refer to the contact details underneath the Foreword.





## ABOUT AMMA

AMMA is Australia's resources and energy group and has provided a unified voice for employers on workforce and other industry matters for more than 100 years.

AMMA's membership spans the entire resources and energy industry supply chain, including exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to these sectors.

AMMA works to ensure Australia's resources and energy industry is an attractive and competitive place to invest and do business, employ people and contribute to our national well-being and living standards.

The resources industry is, and will remain, a major pillar of the national economy. Its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

This financial year, the resources sector is expected to generate a record \$264 billion in exports, accounting for more than 70% of Australia's goods exports. Since 2005, the resources sector has invested around \$720 billion in Australia, accounting for more than 40% of total investment over this period. At its investment peak in 2012–13, the sector attracted more private business investment than all other sectors combined.

AMMA members across the resources and energy industry are responsible for a significant level of Australian employment. The resources extraction and services industry directly employs 245,000 people. Adding resource-related construction and manufacturing, the industry directly accounts for 4% of total employment in Australia. Considering the significant flow-on benefits of the sector, an estimated 10% of our national workforce, or 1.1 million Australians, are employed as a result of the resources industry.

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