

Article

Employment, Workplace Relations & Safety



Federal Labor Government to Regulate to Achieve Its Aim of Job Security

By Ben Duggan & Nicholas De Pasquale

On 23 May 2022, Anthony Albanese became Australia's Prime Minister as the Australian Labor Party (**ALP**) returned to government after nine years in opposition.

Industrial relations did not attract much attention during the election campaign, with other issues, including climate change and a federal ICAC, the focus of interest and debate.

In the lead-up to its election win, the ALP revealed comprehensive industrial relations policies as part of its plans for future workplaces.

In summary, the ALP has committed to a suite of reforms that involve changes to the status quo of industrial relations in Australia:

- Enshrining secure work as an object of the *Fair Work Act 2009*
- Extending the powers of the **Fair Work Commission** to protect workers in new forms of work
- Legislating a fair and objective test to determine when a worker can be classified as casual
- Limiting the number of fixed-term contracts an employer can offer for the same role
- Introducing a Secure Australian Jobs Code
- Ensuring that the Labor Government is a model employer

- Consulting state and territory governments on portable entitlement schemes for Australians in insecure work
- Strengthening the ability and capacity of the Fair Work Commission to order pay increases for workers in low-paid, female-dominated industries
- Abolishing the Registered Organisations' Commission and the Australian Building and Construction Commission

Job security

The ALP government's industrial relations policy clearly focuses on job security.

The fundamental change proposed under the policy is the greater regulation of work relationships that involve casual employment, fixed-term contracts and contractor arrangements, particularly those used by labour-hire and gig operators.

These changes are justified on the basis of new forms of insecure work, such as drive sharing and gig work, that have emerged and grown since the introduction of the Fair Work laws over a decade ago.

Job security: new Fair Work objective

First, the ALP government has committed to including job security as an object of the Fair Work Act.

The change to include job security as a new object is significant as it means that the Fair Work Commission

continued overleaf...

must consider the issue in all of its decision-making, including the Federal annual wage review.

Secure Australian Jobs Code

Second, the ALP Government proposes the introduction of a Secure Australian Jobs Code.

The Code aims to ensure that taxpayers' money spent through government contracts is used to support secure employment for Australian workers.

In practice, this aim will be achieved by establishing guidelines that must be complied with by business operators engaged to work on government contracts. The guidelines will cover:

- the treatment of workers, including job security;
- fair and reasonable wages and employment conditions;
- ethical and sustainable practices such as ensuring environmentally sustainable outcomes;
- compliance with the *Workplace Gender Equality Act 2012*; and
- the consideration of local industry workforce capability and capacity, particularly in regional Australia.

Casual workers

Third, the ALP Government has committed to removing the current definition of casual employee under the Fair Work laws.

Currently, the definition of a casual employee is a worker who accepts a job offer from an employer with no firm advance commitment to ongoing work with an agreed pattern of work.

The ALP Government's policy proposes to replace this definition with the common law definition of casual. This involves considering all aspects of the working relationship.

A likely effect of this new approach is a greater number of disputes being heard by the Courts to settle the issue of whether an employee is genuinely a casual employee or a permanent employee.

In practice, an employer with no likely statutory right to set-off the casual loading against permanent

entitlements may need to meet the liability of these additional permanent entitlements where they have mistakenly characterised a worker as a casual employee when they are genuinely a permanent employee.

Equal pay

Fourth, the ALP has committed to regulating labour-hire operators to require their workers to be paid no less than workers employed directly when they work in the same workplace.

The ALP Government claims that labour-hire workers who currently work alongside direct employees while holding the same qualifications receive between 30% and 40% less pay.

Historically, unions have regularly sought the inclusion of such a requirement (equal pay) when bargaining for an enterprise agreement at a workplace.

Gig workers

Fifth and last, the ALP has also committed to expanding the powers of the Fair Work Commission to enable them to deal with "employee-like" forms of work.

The expansion of the powers aims to allow the Fair Work Commission to protect workers in new forms of work from exploitation and dangerous working conditions, particularly gig workers.

This will lead to a greater number of workers having access to entitlements and protections under the Fair Work Act.

Other reforms

A series of other reforms are also proposed under the ALP government's industrial relations policy, the most significant of which are:

- wage theft;
- women in the workforce; and
- superannuation.

Wage theft

The ALP Government intends to make wage theft a criminal offence. This follows several State ALP governments' that have moved to develop and implement wage theft laws.

continued overleaf...

The ALP Government intends to address this issue by consulting with unions, States and Territories, and employer groups to determine the best way forward.

Significantly, the ALP Government has indicated that their planned federal wage theft laws will not override existing State and Territory laws currently in operation.

Women in the workforce

A key commitment of the ALP Government is to commit to a national push to close the gender pay gap. Their policy says that women are over-represented in low-paid jobs, including critical front-line work such as aged care, and for this reason, it has committed to providing more for women in the workforce.

Again, as with the regulation for gig workers, the plan is to strengthen the ability and capacity of the Fair Work Commission, in this case, to order pay increases for low-paid, female-dominated industries.

The ALP Government has also committed to inserting all 55 recommendations of the [Respect@Work Report](#) and legislating the right to 10 days paid family and domestic violence leave as a National Employment Standard (NES).

Superannuation

Currently, the enforcement of unpaid or underpaid compulsory superannuation rests with the ATO. The ALP Government has committed to changing this by legislating a right to superannuation within the NES.

This change will give an individual employee the legal standing to pursue unpaid (or underpaid) compulsory superannuation. In addition, this change will enable unions and the Fair Work Ombudsman to pursue claims for unpaid (or underpaid) compulsory superannuation.

With the support of the Greens in the Senate, we expect that the ALP Government will be able to enact its reforms as contained in its industrial relations policy.

If you would like to know more about the commitments made by the newly elected ALP Government, please get in touch with one of our employment law experts.



MORE INFO

Ben Duggan Director

p: +61 8 **8124 1881**

ben.duggan@dwfoxtucker.com.au

DW Fox Tucker Lawyers

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 **8124 1811** e: info@dwfoxtucker.com.au **dwfoxtucker.com.au**

COMMERCIAL | CORPORATE | DISPUTES | FAMILY | INSOLVENCY | TAX | HOSPITALITY | IP | PROPERTY | ENERGY | RESOURCES
EMPLOYMENT | WORKERS COMPENSATION | SELF INSURANCE | RISK MANAGEMENT | INSURANCE | WILLS | ESTATE PLANNING

Disclaimer: The information contained in this communication does not constitute advice and should not be relied upon as such. Professional advice should be sought prior to any action being taken in reliance on any of the information.