

# A Unitary IR System

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AUSTRALIAN DEMOCRATS ACTION PLAN  
A UNITARY IR SYSTEM  
WORKPLACE RELATIONS

*A unitary IR system has three prime motivations. One is achieving common human rights across Australia. At present they differ. The second motivation is economic. Efficient, competitive, productive enterprise requires common, easily administered rules and laws. The third is achieving comprehensive coverage.*

*"It will not be a national regime, because of the employers omitted from its coverage."*

We need one industrial relations system not six. We have a small population, yet we have nine governments and a ridiculous overlap of laws and regulations. There are areas of the economy that genuinely require a single national approach.

Like finance, corporations or trade practice law, labour law is one of those areas.

## Democrats Action Plan

- *National Unitary System:* Legislate a genuine single national system negotiated with the states and territories; and,
- Introduce a *National Regulator* negotiated with the states and territories, which would absorb the functions of the OWS, the Employment Ombudsman and ABCC on a revised basis, and take over state inspectorates.

Professor Andrew Stewart  
to the Senate Committee  
inquiring into  
WorkChoices in 2005

## Issue One: WorkChoices is not a Unitary System

Long before the federal Coalition gathered the courage to adopt a unitary system as policy, the Democrats had been advocating one industrial relations system, not six. The Democrats have supported a national unitary IR system to provide simplicity and common rights and obligations, to reduce costs and to improve efficiency, domestic and international competitiveness, and productivity.

The current WorkChoices IR system is not a truly national system with broad acceptance because the federal Coalition Government made a hostile takeover from the states using the constitutional corporations power and the external affairs power. Even the use of such federal powers could still not 'cover the field'. State public sector employees and unincorporated for-profit and not-for profit entities mean some 25% of the workforce is still left under state systems.

The Democrats would support a unitary single national IR system that is negotiated between the states and federal government and one that is based on fairer legislation.

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Workers doing similar work in different states had, and often still have, different statutory employment agreements or awards. The same employer can face different employment contractual arrangements in various jurisdictions. This creates several problems:

- **Inequity:** similar workers and employers face different legal regimes in relation to all kinds of workplace issues;
- **Inefficiency:** employers and employees can be unsure which laws, awards or agreement-making systems apply to them. Inefficiency is amplified by the straightforward duplication of certain provisions, with more than one law potentially applicable to different workplaces. Sometimes different federal and state laws apply to workers on the same site. The result of such inefficiencies is higher costs and lost productivity;
- **Forum shopping:** Some parties to the industrial relations system take advantage of the existence of different legal regimes by 'shopping around' from one jurisdiction to another in pursuit of 'better deals'; and,
- **Coverage:** Many workers are still not covered for state or federal industrial relations legislation.

However, without a federal government that can negotiate a national compact with the states and territories, moves towards a genuine, comprehensive, unitary industrial relations system in Australia are likely to be slow.

Referenda aimed at extending the Commonwealth's industrial relations powers failed in 1911, 1913, 1926, 1944 and 1946. It seems unlikely that anyone would attempt a unitary system by referendum again.

The most effective way to get a single industrial relations system would be by referral of powers to the Commonwealth by the States. Victoria successfully did this in 1997, with the support of the Democrats. With that referral came a category of several hundred thousand Victorian employees under inferior employment conditions under the State law of the time.

## Issue Two: A National Regulator is needed

A national IR regulator must be created, negotiated with the states and territories.

Australia needs a well resourced national independent workplace relations regulator to properly regulate and oversee a national unitary system. Other sectors of the economy have regulators like ASIC, APRA, the ACCC - and so should work arrangements.

The Australian Industrial Relations Commission is not a regulator and needs its work to be complemented by a national regulator with specific powers of monitoring and enforcement. Like competition law, tax law, finance law, and corporations law - that each have their own regulator - IR should too. The existing regulators include federal and state departmental inspectorates and task forces. These diverse regulators are diffuse, dispersed, under-resourced, and importantly, insufficiently



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independent. One properly resourced national regulator to enforce national workplace law would be a significant improvement on the existing situation.

The new regulator would absorb (under revised functions) the Office of Workplace Services and the Australian Building and Construction Commission. The Democrats would abolish the Employment Ombudsman and give its regulatory powers to the National Regulator.

With greater emphasis on the court system as a result of WorkChoices, now more than ever a National Regulator is needed to help unions and employers ensure that people do not defy the law or defy court and commission orders, and ignore awards and agreements. Without an effective independent regulator and an active AIRC employees and employers are forced to the courts, which means time and money, and it is the employee and small employer that is often disadvantaged.

The Democrats would claw back the federal Minister's discretionary and interventionist IR powers, and restore greater independence to the system.