

Industrial Agreement Making

AUSTRALIAN DEMOCRATS ACTION PLAN INDUSTRIAL AGREEMENT MAKING WORKPLACE RELATIONS

“The Australian Democrats believe a mix of agreement making between employers and employees – industry awards, collective enterprise bargains and individual agreements – will provide the necessary flexibility and choice in a modern economy.”

Senator Andrew Murray
Spokesperson for
Workplace Relations

The Australian Democrats believe a mix of agreement making between employers and employees - industry awards, collective enterprise bargains and individual agreements - will provide the necessary flexibility and choice in a modern economy. All agreements must be fair to both employees and employers. There must be an adequate safety net for employees based on an award prescribing employees' minimum wages and conditions.

The federal government's 2006 WorkChoices legislation has undermined both awards and collective agreements, making it easier for employers to shift employees from a minimum of 20 conditions to 5 basic minimum standards, and making it harder for employees to collectively bargain. WorkChoices has swung bargaining power much further towards employers. At worst it leaves 'check-out kids' to bargain with corporate giants. WorkChoices has reduced award coverage drastically, and resulted in a cut in many established conditions.

Democrats Action Plan

- **National Unitary System:** Legislate a genuine single national system negotiated with the states and territories; introduce a national regulator.
- **Restore** the essential features of the pre-WorkChoices regime.
- **Minimum conditions:** Minimum standards will apply only in the absence of an applicable award. Expand the 5 minimum standards so that a safety net of at least 8 minimum standards can apply.
- **Awards:** Reinstate Awards as the minimum safety net that operates in the absence of a collective enterprise agreement, or that underpins collective or individual agreements.
- **Awards:** An Awards system that is national or industry based, not state-based, with as few awards as possible within the bounds of flexibility and adequate coverage; one that is comprehensive, up to date, simplified and useable.
- **Awards:** Awards governing conditions of employment will be limited in scope, based on a suggested 16 allowable matters, subject to further consultation with representative employer and employee groups. The Australian Industrial Relations Commission will be the final arbiter.
- **Collective Agreements:** Continue both a non-union and union enterprise collective agreement system, negotiated between employer and employees, with certification by the AIRC.

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- *Collective Bargaining:* Provide a right to collectively bargain genuinely and in good faith.
- *Collective Bargaining:* Ensure the legitimate role of unions in protecting the interest of workers who wish to be represented by them, and of employer groups for employers that wish to be represented by them.
- *Individual Agreements:* Statutory individual agreements must be available as an alternative to common law individual agreements, underpinned by the applicable award and minimum conditions and subject to a global no-disadvantage test.

Issue One: Minimum Conditions

In the absence of an award, and as the starting point for any industrial agreement award, a modern liberal democracy must enshrine fair minimum standards of wages and conditions for workers.

WorkChoices is too limited in that it has a minimum of 5 conditions, but it is correctly in stating that minimum conditions should be just that, a minimum applicable to the most disadvantaged lowest income worker.

The WorkChoices 5 minimum conditions are minimum wages, annual leave, parental leave, personal leave and hours of work. The Democrats think there should be at least 8 minimum conditions, subject to further consultation with unions, employers and other relevant interested parties.

Other possibilities the Democrats think appropriate for adding to minimum conditions include carers and compassionate leave, public holidays, and termination of employment and redundancy.

Issue Two: Awards

The Australian industrial relations system was built around a framework that provided a safety net for the most vulnerable, a fair go for all. The safety net tried to balance community standards with individual and employer needs, and the nature of the market. Awards have covered about 20% of all employees, and primarily apply in the private sector.

In 1996 the Australian Democrats supported federal awards being restricted to 20 allowable matters. We supported a much-needed award rationalisation and consolidation that saw the number of federal awards reduced by two-thirds, but overall award coverage maintained. The new modernised system worked well. The same rationalisation was necessary in the States IR systems but did not occur.

The Democrats opposed the new WorkChoices regime, introduced in 2006. Pre-WorkChoices, awards served as a safety net, as the starting point for agreement making, as a global no-disadvantage test for Australian Workplace Agreements (AWAs), and as a means to update community standards. WorkChoices essentially aims to destroy the award system. It took away the ability of the AIRC to make and vary awards, it removed the AWA no-disadvantage test based on the awards' 20



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allowable matters, replaced it with 5 minimum conditions as the reference point, and made it easier to bypass awards for individual agreements.

In the absence of an enterprise collective bargain, the award negotiated between unions and employer groups played a valuable role in ensuring standards for minimum wages and conditions were available across industries for all employees. The award was particularly useful for small business employees and employers as a comprehensive minimum standard and fair reference. This system should be restored.

The Democrats believe an award is necessary as a default position - that is, it is the safety net that applies in the absence of a collective or individual agreement. The Democrats believe awards should be restricted to the main conditions required for a fair and comprehensive employment contract.

The Democrats accept that the pre-WorkChoices 20 allowable award matters could probably be now further reduced to 16, subject to consultation with unions and employer groups.

The Democrats support: reinstating awards under a single unitary industrial relations system as the safety net underpinning all agreement making, based on around 16 allowable matters; simplifying and reducing the number of awards in consultation with industry and unions; and reinstating awards as the basis for implementation of minimum community standards, such as a fairer balance between work and family, with agreement making disputes to be resolved by the AIRC.

Issue Three: Collective Bargaining

In the past, collective certified agreements have covered over 40% of employees. WorkChoices was designed to weaken collective activity and to push employees onto individual agreements with much fewer protections and conditions.

Under WorkChoices, employees have no right to collectively bargain at the workplace unless employers permit it. Instead it is possible for the employer to apply duress to the worker to place or keep them on an AWA or (once the old agreement has expired) put the workforce on AWAs. If the employer does agree to collective bargaining, it is now almost impossible for workers to take industrial action when engaging in collective bargaining, thus weakening their bargaining position.

The Democrats believe that in accordance with ILO Conventions 87 and 98, if a majority of employees in a workplace doing similar work want to be dealt with collectively they should have that right, and there should be a requirement for employers and employees to bargain genuinely in good faith. We would have a non-union and union enterprise collective agreement system, negotiated between employer and employees, with certification by the AIRC.

Issue Four: Individual Agreements

Individual agreements have always been widespread. Over 30% of all employees are on common-law agreements, commonly referenced back to the relevant award.



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Statutory individual agreements do not cover more than 3% to 5% of all employees. The Democrats' view is that while collective agreements and awards may often be better for workers than individual agreements, individual agreements are a necessary accepted common and desirable part of working life. While common-law individual agreements will remain the norm, it is our view that statutory provision should also be made for individual agreements.

Common-law agreements are most often used by small business, generally to pay over award payments. In larger business it is common for specialists, professionals, supervisors and managers to be on individual agreements. Common-law agreements are often verbal, and not written. The major advantages of unregistered individual common law contracts are their practicality, their ease of use and understanding, and their wide usage and acceptability. Their major disadvantage is that a breach of contract or dispute is hard and costly to enforce, since that requires resort to common law courts. In addition there can be confusion when a relevant award or agreement can be thought to override the terms of a common-law contract, where there is a difference in entitlement.

Registered statutory individual agreements, such as federal AWAs, presently account for around 3% to 5% of agreements. The Democrats argue that statutory protections provided in registered individual agreements will nearly always be additional to and therefore superior to common-law protections. While the basic architecture of pre-WorkChoices AWAs was right and was based on the global no-disadvantage test underpinned by the award, we were aware that there were flaws, particularly with the regulation of the system. In 2005 the Democrats set up a Senate inquiry to investigate these problems.

The inquiry revealed that workers were being presented with 'take it or leave it' contracts; that there was pressure and coercion to move from collective agreements or awards to AWAs; and that the Office of the Employment Advocate was failing to diligently apply the global no-disadvantage test and acted as both the promoter and regulator of AWAs. The new WorkChoices AWAs are much worse than pre-WorkChoices AWAs. The global no-disadvantage test was abolished and replaced with 5 minimum standards; AWAs can be approved before they are signed; and employers can effectively get out of current awards and agreements, leaving little choice to employees but to sign AWAs.

The Democrats argue that there is a place for registered statutory individual agreements, as they can offer better protection, certainty, and flexibility than common law agreements, but they must be properly regulated - specifically they must be underpinned by a no-disadvantage test based on the award, or in the absence of an award, the minimum conditions; negotiations must be genuine; there should be mechanisms to ensure that employees are not coerced; and there must be a national well resourced independent regulator to oversee and monitor agreements.