Forward with Fairness

Policy Implementation Plan

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Executive Summary

This document sets out Labor's Policy Implementation Plan for *Forward with Fairness* – a new industrial relations system for Australia that gets the balance right in the workplace and achieves both fairness and flexibility.

Mr Howard's unfair Work Choices laws have gone too far. Under Labor:

- The Howard Government's unfair Work Choices laws will be abolished;
- Australian Workplace Agreements will be scrapped (AWAs have resulted in working Australians losing penalty rates, overtime, shift allowance and redundancy entitlements with no compensation); and
- Employees will have rights if dismissed unfairly.

Labor will get the balance right by introducing a fairer and more flexible industrial relations system with sensible transition arrangements from Mr Howard's Work Choices laws.

Fairness in the workplace

Fairness in Labor's new system will be built on the following key foundations:

- We will implement a universal safety net of 10 National Employment Standards;
- We will modernise the award system based on 10 basic award conditions so that conditions such as penalty rates and overtime are properly protected; and
- We will ensure that the right of all Australians to join together and bargain for fair pay and conditions is protected.

Flexibility in the workplace

Labor will ensure there is also genuine flexibility for both employers and employees in these new arrangements. Labor's plan for flexibility has three main elements:

- More flexible common law agreements for employees earning $100,000 or more per year. The award system will not apply when employees are on pay arrangements above $100,000;
- There will be new flexibilities in the award system through a model flexibility clause but with a strong safety net which will prevent award conditions being stripped away; and
- Enterprise agreements will also have new flexibility clauses.

Sensible transition arrangements

Throughout the year we have been consulting widely with businesses, employer groups, the union movement and the wider community to ensure that we get the transitional arrangements to the new system right. These consultations will continue in the implementation of this plan.

Labor's new system provides sensible transition arrangements for those businesses that are currently using AWAs. Labor is conscious of the fact that businesses have entered into these employment arrangements in good faith based on the industrial relations law of the day. Labor is equally conscious of the fact that to repeal these arrangements overnight would undermine reasonable business planning, creating unnecessary certainty for employers and their employees.

Labor also understands employers who have used AWAs need a finite, transitional period to adjust to the new system. Indeed, some employers have never employed people in any other

way and based on Labor's consultations these employers may not even be aware of the applicable industrial award. Therefore, such employers need sensible transitional arrangements before making decisions on replacement employment arrangements – either through Labor's modernised award system, enterprise agreements or the new flexibilities offered by common law contracts.

There are two parts to Labor's transitional arrangements:

- Existing AWAs (which cover approximately 5 per cent of total employees at present) will be able to continue to operate for their full term; and
- In addition, for those businesses currently using AWAs, during the two year transition period to the full implementation of Labor's new industrial relations system in January 2010, individual transitional employment agreements can be made available for new employees or those already on AWAs. These finite transitional employment arrangements must ensure that employees are not disadvantaged against the relevant award or enterprise agreement.

Certainty and stability for business

Labor's new system builds certainty and stability into our workplaces by ensuring that:

- Existing right of entry laws will be retained;
- Existing secondary boycott provisions in the *Trade Practices Act* will be retained;
- Tough restrictions on industrial action will be kept, including mandatory secret ballots to be conducted in workplaces before protected industrial action can occur;
- Labor will not allow industrial action to be taken in pursuit of pattern bargaining.

Forward with Fairness is about getting the balance right. The Howard Government's Work Choices laws went too far in tilting all the rules in favour of one side.

It's possible to have both fairness and flexibility in the workplace, and this implementation plan sets out how Labor will do that.

Under Labor, fairness is not a thing of the past. Fairness has a place in Australia's future – and in the future workplaces of all Australians.

Table of Contents ..... page

1. SENSIBLE TRANSITIONAL ARRANGEMENTS

Labor will introduce our industrial relations laws in a fair and sensible manner. We will ensure that existing workplace agreements can continue to operate for their full term. This reflects Labor's view that existing employment arrangements should be honoured. Employers will have up to five years to make suitable workplace arrangements for the five percent of the Australian workforce on AWAs. Labor's plan also provides employers and employees time to work through their transition to Labor's new industrial relations system.

Labor reaffirms its commitment that Australian Workplace Agreements and any other form of statutory individual employment agreement will not be available under Labor's new industrial relations system.

As detailed in this document, Labor believes that Australian Workplace Agreements should not be part of Australia's future. These individual contracts have been used to undermine the award safety net.

As set out below, Labor will have sensible transitional arrangements to our new industrial relations system, including for employers and employees who currently use Australian Workplace Agreements.

Australian Workplace Agreements are the least used industrial instrument in Australia today.

The latest ABS data from May 2006 tells us that 38.1% of Australian employees are on registered collective agreements, 31.7% are on common law individual arrangements, 19% of employees are covered by awards and only 3.1% are on registered individual arrangements like Australian Workplace Agreements. A reasonable estimate is that today approximately 5% of Australian employees have an Australian Workplace Agreement.

Mr Howard's Australian Workplace Agreements have hurt working families and stripped away basic pay and conditions.

The difference between Australian Workplace Agreements and individual common law agreements is that an Australian Workplace Agreement enables award conditions to be stripped away without compensation, whereas a common law agreement ensures an employee cannot lose the protection of the safety net.

In May 2006, the following information was obtained from Senate Estimates about what had been lost by Australians on Australian Workplace Agreements:

- 100 per cent of AWAs cut at least one so called 'protected award condition';
- 64 per cent cut annual leave loading;
- 63 per cent cut penalty rates;
- 52 per cent cut shift work loadings;
- 51 per cent cut overtime loadings;
- 48 per cent cut monetary allowances;
- 46 per cent cut public holiday pay;
- 40 per cent cut rest breaks;
- 36 per cent cut declared public holidays; and
- 22 per cent provided employees with no pay rise, some for up to 5 years.

In April this year, leaked information revealed that 44 per cent of AWAs excluded all eleven protected award conditions and that, in some cases, AWAs were eroding pay and conditions to a greater extent than had been previously revealed:

- 75 per cent cut shift work loadings – up by 23 per cent;
- 68 per cent exclude penalty rates – an increase of 5 per cent;
- 57 per cent cut monetary allowances – up by 9 per cent; and
- 52 per cent exclude public holiday pay – up by 6 per cent.

It is impossible to know the full picture because Mr Howard and his Government have stubbornly refused to release the details of what is happening to award conditions under Australian Workplace Agreements.

What we do know is that Mr Howard designed Australian Workplace Agreements to undermine the award safety net and he invited employers to strip away pay and conditions by using them.

Interim employment arrangements

As detailed in this document, Labor believes that Australian Workplace Agreements should not be part of Australia's future.

But Labor cannot repair overnight all the harm that has been done to Australian working families as a result of Mr Howard's Work Choices laws.

Labor understands that, under Mr Howard's laws, Australian Workplace Agreements which cut award conditions without compensation were completely legal on the day that they were made.

Under Mr Howard's laws, businesses have factored their labour costs on the basis that these agreements will continue for their agreed term.

Labor understands that Australian employers and employees need certainty and that it would create great concern and confusion if Australian Workplace Agreements were suddenly terminated.

This means that there will have to be arrangements in place that allow employees and employers to move to Labor's new fairer industrial relations system in ways that do not leave employees in limbo or cause unnecessary disruption to businesses.

Labor also understands that it will take some time for Labor's simple and fair safety net to be put into place. Therefore, as Australian Workplace Agreements are being removed from Australia's industrial relations system, Labor will ensure that awards are modernised and simplified. Labor expects that this process will be overwhelmingly completed within a 2 year period.

Labor has consulted widely with employers and employees on transitional arrangements.

Labor wants to ensure that employees can no longer be forced off the safety net. And Labor understand employers who have used AWAs need time to adjust to the new system.

Some employers have never employed people in any other way than on AWAs and based on Labor's consultations these employers may not even be aware of the applicable industrial award. Therefore, such employers need sensible transitional arrangements before making decisions on replacement employment arrangements – either through Labor's modernised award system, collective enterprise agreements or the new flexibilities offered by common law contracts.

Drawing on consultations since April, Labor has designed transition arrangements to make it easier for everyone to move to our new fairer industrial relations system and provide them with certainty during the time it will take to put the system in place. Labor wants to make

sure no one is caught between the two systems, so these transitional arrangements will end once Labor's new system is fully implemented.

A key feature of the transition arrangements will be the availability of a special instrument called Individual Transitional Employment Agreements (ITEAs) which may be made during the two year period of award simplification.

Individual Transitional Employment Agreements (ITEAs) may be made:

- during the 2 year period of award simplification;
- between:
    - an employer who has any employee engaged on an Australian Workplace Agreement as at 1 December 2007; and
    - a new employee or an existing employee whose terms and conditions are governed by an Australian Workplace Agreement;
- with a nominal expiry date of no later than 31 December 2009, provided;
- the ITEA does not disadvantage the employee against a collective agreement applying to the work the employee will perform at the workplace or, where there is no collective agreement, the applicable award and the Fair Pay and Conditions Standard.

Existing AWAs

AWAs made prior to the implementation date of Labor's Transition Bill will remain in force and may only be terminated in accordance with current rules which allow termination by agreement between the parties during the term of the AWA or by one party providing 90 days' notice to the other after the nominal expiry date of the agreement.

Minimum wages paid under AWAs and ITEAs must reflect any adjustments to minimum wages during the transition period.

Labor's future system

Labor will ensure that in the future Australian workers have a strong, fair safety net as part of our new balanced industrial relations system. Under Labor, employers will not be able to make workplace arrangements which undermine the safety net.

Labor believes that collective enterprise bargaining can offer employers and employees the flexibility they need. Common law agreements can also offer flexibility provided that the award safety net is simple, modern and enables fair and flexible arrangements. Labor will genuinely modernise and simplify awards and ensure they are suited to the efficient performance of work.

This means that for those employers and employees who want flexible individual arrangements, under Labor's new system common law agreements will meet their needs.

Common law agreements will be required to respect Labor's modern, simplified safety net. Common law agreements will not be able to undermine the safety net as Australian Workplace Agreements have done.

Guided by the need for certainty, if elected Labor will have the following measured transitional arrangements:

Date	Event
After 2007 election	Labor makes arrangements for an award simplification process to commence on 1 January 2008. Labor legislates for a Transition Bill. Labor's Transition Bill will be limited to the arrangements necessary to initiate the transition to Labor's new system. Labor anticipates the implementation date of the Transition Bill will be in early 2008. After Labor's Transition Bill is passed Labor will commence drafting the substantive legislation required to create Labor's new industrial relations system. Labor will take a measured approach to drafting the new legislation, including working with a range of stakeholders including our Business Advisory Group and publishing an exposure draft for public comment. Labor has been and will continue to discuss matters of detail about Labor's industrial relations system. The Transition Bill will contain: • Labor's 10 National Employment Standards This will mean the AIRC will know what the 10 National Employment Standards are when modernising and simplifying awards. The 10 National Employment Standards will come into operation on 1 January 2010, the same date Labor's new awards will come into operation. • AWA Transitional Arrangements Because AWAs will not be a feature of Labor's new industrial relations system, transitional arrangements are required. The transition arrangements for Australian Workplace Agreements will be: ▪ AWAs made prior to the implementation date of Labor's Transition Bill will remain in force and may only be terminated in accordance with current rules which allow termination by agreement between the parties during the term of the AWA or by one party providing 90 days' notice to the other after the nominal expiry date of the agreement. ▪ Individual Transitional Employment Agreements (ITEAs) may be made: o during the 2 year period of award simplification; o between: ▪ an employer who has any employee engaged on an Australian Workplace Agreement as at 1 December 2007; and ▪ a new employee or an existing employee whose terms and conditions are governed by an Australian Workplace Agreement; o with a nominal expiry date of no later than 31 December 2009, provided; o the ITEA does not disadvantage the employee against a collective agreement applying to the work the employee will perform at the workplace, or where there is no collective agreement the applicable award and the Fair Pay and Conditions Standard. Minimum wages paid under AWAs and ITEAs must reflect any adjustments to minimum wages during the transition period. During the transitional period awards and collective agreements will not be able to override an AWA or ITEA whilst either an AWA or ITEA remains in operation. Labor's Transition Bill will provide that if an Australian Workplace Agreement is terminated and the employer and employee have not made new arrangements then the employee will return to the award and Fair Pay and Conditions Standard or a collective agreement applying at the workplace.

Date	Event
1 January 2008	As instructed by the incoming Labor Government, the Australian Industrial Relations Commission commences a two year award simplification process.
Early 2008	Anticipated implementation date for Labor's Transition Bill. As noted above Individual Transitional Individual Employment Agreements can be made from this time for a 2 year period.
2008/2009	• Labor continues to consult on the detailed drafting of its substantive industrial relations legislation. • Labor releases exposure draft of industrial relations legislation for public comment. • Parliament deals with Labor's legislation for its new industrial relations system in preparation for the implementation of Labor's new system. • Administrative and institutional arrangements for Labor's new industrial relations system made. • Labor's new industrial relations system in operation.
31 Dec 2009	Overwhelmingly the award simplification process is completed. Last possible nominal expiry date for ITEAs.
1 Jan 2010	New simplified awards and National Employment Standards commence operation. Fair Work Australia commences to operate.
31 Dec 2012	Last possible expiry date for all Work Choices AWAs.

2. INDIVIDUAL FLEXIBILITY FOR EMPLOYEES EARNING OVER $100,000

In Labor's new industrial system employees earning above $100,000 will be free to agree their own pay and conditions without reference to awards. This will provide greater flexibility for common law agreements which have previously been required to comply with all award provisions, no matter how highly paid the employee.

Labor's industrial relations safety net has two parts. First, there will be ten National Employment Standards, a set of legislated minimum conditions which guarantee basic conditions.

Labor's 10 National Employment Standards are:

- Hours of Work;
- Parental Leave;
- Flexible Work for Parents;
- Annual Leave;
- Personal, Carers and Compassionate Leave;
- Community Service Leave;
- Public Holidays;
- Information in the Workplace;
- Notice of Termination and Redundancy;
- Long Service Leave.

Second, Labor's safety net will also include modern, simple awards. Under Labor, awards will contain a safety net of a further 10 minimum conditions and entitlements and may provide industry relevant on Labor's 10 National Employment Standards.

Labor has listened to the views of employers and employees about who needs the protection of Labor's new award system.

Labor has concluded that minimum award terms have less relevance to those employees whose salary exceeds $100,000.

Labor in Government will legislate to confine the application of Labor's new award system to employees who earn less than $100,000 per year when the new award system commences on 1 January 2010.

The calculation of the $100,000 threshold will be the employee's guaranteed ordinary earnings. The threshold will be indexed to annual growth in ordinary time earnings for full time adult employees.

This will include the pay received for ordinary hours of work, guaranteed overtime and any other monetary allowances that are a guaranteed part of an employee's normal remuneration arrangements.

Fair Work Australia can provide advice to employers and employees about whether the award threshold applies to their employment arrangements.

Labor will ensure the application of the $100,000 threshold exemption will not extend to artificial arrangements that involve manifestly unreasonable rostered overtime hours just to take employees over the threshold.

Employees who earn over $100,000 per year will be covered by Labor's 10 legislated National Employment Standards.

Where an employee earning over $100,000 is currently employed under award conditions those entitlements will continue following the commencement of Labor's new award system.

An employee in this position will then be able to choose whether to negotiate with their employer about their future terms and conditions of employment under Labor's new system or to remain on their existing terms and conditions of employment.

Following the commencement of Labor's new award system a new employee may therefore negotiate their terms and conditions of employment with their employer without reference to the award and by reference only to Labor's minimum employment standards.

Whilst Australian Workplace Agreements have been used to undermine the award safety net for all employees, Labor preserves the award safety net for those who really need it.

These employees will be free to have common law agreements in any form that suits them, building on the base of Labor's ten legislated minimum conditions.

An employer and employee may of course agree to include some or all provisions from a relevant award into a common law agreement or may agree to make a collective agreement.

3. FLEXIBILITY IN AWARDS

Labor is committed to modernising and simplifying Australia's award system. Under Labor awards will contain 10 matters and will provide industry relevant detail about Labor's 10 National Employment Standards. Labor will enhance the scope for upwards flexibility by ensuring that as part of the award modernisation process all awards contain a flexibility clause. An award flexibility clause will enable arrangements to meet the genuine individual needs of employers and employees.

Awards will be a key part of the safety net under Labor's new industrial relations system. That is why Labor is committed to modernising and simplifying Australia's award system as a priority.

The Australian Industrial Relations Commission, as part of Labor's award modernisation and simplification process, will include in each and every award a flexibility clause that enables arrangements to meet the genuine individual needs of employers and employees.

The Australian Industrial Relations Commission will prepare a model flexibility clause to be included in each award, subject to industry adaptation where required. The Australian Industrial Relations Commission must ensure that the flexibility clause cannot be used to disadvantage individual employees.

Labor has always believed in enabling employers and employees to make flexible work arrangements which achieve upwards flexibility.

Labor has opposed Mr Howard's Australian Workplace Agreements because they enable downwards flexibility below award conditions. Despite Mr Howard's pre-election changes, Australian Workplace Agreements still enable award conditions to be stripped away without any compensation at all.

Labor believes the safety net should help employers and employees to implement family friendly flexibilities. That's why Labor's *Forward with Fairness* policy provided a new family friendly provision in its National Employment Standards, which will help families exercise the choice to have a parent stay at home with a new child for the first two years of the child's life. And that's why Labor will ensure that in simplifying and modernising the award system one of the key goals of the Australian Industrial Relations Commission will be to ensure family friendly flexibilities.

However, Labor recognises there is a need for further flexibility beyond family friendly flexibilities and special arrangements for upper income employees.

Under Labor's new system, awards will provide the parameters within which flexibility arrangements can be made under an award flexibility clause. This may include matters such as:

- rostering and hours of work;
- all up rates of pay;
- provisions that certain award conditions may not apply where an employee is paid above a fixed percentage as set out in the award; and
- an arrangement to allow the employee to start and finish work early to allow them to collect their children from school without the employer paying additional penalty rates for the early start.

Under Mr Howard, employees have been forced on to take it or leave it AWAs and they have been stripped of basic protections like penalty rates and redundancy pay under the guise of flexibility.

In contrast, Labor's award flexibility arrangements will ensure that there is genuine flexibility and that individual employees cannot fall through the safety net.

The clause must be as simple as possible for an employer and employee to understand and implement and will be subject to the genuine agreement of the employer and employee without any coercion or duress.

Fair Work Australia will publish Labor's new awards and will be required to provide employers and employees with information about what individual flexibilities are available under awards.

Fair Work Australia will also be available to provide advice to employers and employees about how particular award flexibility clauses can work.

If an individual flexibility arrangement is made, the employer and employee will have to put it in writing and a copy must be given to the employee.

An employer or employee will be able to have Fair Work Australia check a proposed arrangement to ensure it has complied with the flexibility clause of the award.

4. FLEXIBILITY IN COLLECTIVE AGREEMENTS

Collective enterprise bargaining will be at the centre of Labor's modern industrial relations system. Labor will support collective enterprise bargaining regardless of whether employees choose to negotiate through a union or without a union. Labor will also ensure that within the framework of collective enterprise agreements, there is the flexibility for an employer and employee to make additional arrangements on an individual level.

Supporting collective enterprise bargaining

In many workplaces employees work as a team and they would prefer to work together as a team to agree their terms and conditions of employment with their employer. This is fair to the employees involved and there is plenty of evidence that collective enterprise agreements are drivers of productivity growth.

When Labor first introduced enterprise bargaining to Australia it was associated with unions bargaining for unionised workers. In our modern dynamic economy a range of bargaining options are required and, as detailed in *Forward with Fairness,* Labor will ensure there is a simple, fair system in which bargaining can take place.

Labor has made it clear that working people have the right to choose whether to be or not to be a member of a union.

An employee's choice will be respected. It will be prohibited for anyone, employer or union or anyone else to subject an employee to any pressure in making that choice.

Labor has also made it clear that under our proposed system, a union does not have an automatic right to be involved in collective enterprise bargaining.

Genuine non union agreements

Consistent with that choice, in non unionised enterprises an employer and its employees will be free to collectively bargain together where they choose to do so and this will result in a genuine non-union collective agreement that has no union input at all.

Under the system of the former Labor Government, an employer was required to notify an eligible union that it had commenced negotiations with its employees for a "non-union" agreement and required to provide each such union a reasonable opportunity to take part in the negotiations for the so-called "non-union" agreement.

The union was also entitled to be heard by the Australian Industrial Relations Commission in connection with the approval or extension of the agreement.

None of these requirements are in place under *Forward with Fairness*.

As acknowledged in *Forward with Fairness*, there are many workplaces where no employee is a union member and where employees would still like to bargain their terms and conditions of employment as a team. Indeed, there are many workplaces where the employer will want to bargain with all of the employees in order to drive productivity improvements.

Such non-union workplaces would have been concerned in the past that by engaging in a collective enterprise bargaining process a union would necessarily become involved in their workplace when neither the employer nor the employees wanted a union involved. Under Labor's industrial relations system that will not occur. Where the employees do not wish to

be represented by a union, employers and employees will be able to bargain collectively, reach an agreement and have that agreement approved by Fair Work Australia without any union involvement.

Assistance with collective enterprise bargaining

Labor will ensure that employers and employees, whether union members or not, will have the skills to bargain collectively if that is what they choose.

Labor will ensure Fair Work Australia has staff who assist employees, particularly those who are not members of a union, to understand how to collectively bargain. Labor will also provide funding to employer organisations to enable those associations to assist their members with collective enterprise bargaining.

Fair Work Australia will be able to provide employers, unions and employees with samples of collective agreements as an aid to understanding the sorts of provisions that can be included in collective agreements.

Individual flexibility

Whilst collective enterprise agreements cover the common conditions of work of employees in the enterprise, that does not mean that individual employees cannot have their own flexible arrangements.

Under Labor's new collective enterprise bargaining system all collective agreements will be required to contain a flexibility clause which provides that an employer and an individual employee can make a flexibility arrangement.

The aim of the flexibility clause is to enable individual arrangements which are genuinely agreed by the employer and an individual employee.

The terms of the clause are best decided at the enterprise level in the bargaining process.

Fair Work Australia will also publish a model flexibility clause to assist employers and employees in bargaining.

The matters covered and the scope of the flexibility clause will be considered by Fair Work Australia when approving the collective agreement to ensure:

- the clause provides for genuinely agreed individual flexibilities;
- the collective agreement, as a whole, is better off overall than the relevant award;
- an individual employee cannot be disadvantaged with respect to the collective agreement by entering into an individual flexibility arrangement.

If an individual flexibility arrangement is made the employer and employee will have to put their agreement in writing and a copy must be given to the employee.

5. AWARD MODERNISATION AND SIMPLIFICATION

Australian employees need a safety net that is strong and relevant to the needs of a modern economy. Labor will modernise and simplify awards to cover just ten matters such as rostering, overtime and penalty rates and industry relevant detail of the Labor's 10 National Employment Standards. The Australian Industrial Relations Commission will identify a priority list of key awards that will be simplified within a 12 month period and Labor will aim to have the process of modernising and simplifying awards overwhelmingly completed within a two year period.

Awards set minimum terms and conditions for particular industries, occupations and enterprises.

Under Labor awards will be relevant to our modern economy. Awards will not be prescriptive; they will be flexible. Awards will not enshrine inefficient work practices; they will promote flexible and family friendly work arrangements.

Under Labor, awards will not cover those who are historically award free, such as managerial employees. In addition, from January 2010 awards will not apply to employees earning more than $100,000 who agree their terms and conditions under Labor's new system.

The Howard Government has twice tried and twice failed to fix Australia's award system.

Because awards will be a key part of the safety net under Labor's new industrial relations system, Labor is committed to fixing Australia's award system as a priority.

Labor's award modernisation process will start on 1 January 2008.

The Australian Industrial Relations Commission will play an integral role in the award modernisation process while the legislation required to create Fair Work Australia, Labor's new industrial umpire, is finalised and the necessary administrative arrangements made.

The Australian Industrial Relations Commission will identify a priority list of key awards that will be simplified within a 12 month period.

Priority will be given to industries and occupations currently covered by instruments that will not be a feature of Labor's industrial relations system. This includes industries with high numbers of Australian Workplace Agreements and to industries and occupations covered by commonly used old State Awards (known in current legislation as NAPSAs). Labor will aim to have the process of modernising and simplifying awards overwhelmingly completed within a two year period.

Labor will give the highest priority to ensuring the Commission can conduct the award modernisation process rapidly, efficiently and fairly. Labor will ensure the Commission is provided with sufficient resources that recognise the urgency of the task and ensure the modernisation process is underpinned by the best available evidence.

The process will involve the Australian Industrial Relations Commission receiving submissions and hearing from those who will be affected by Labor's new modern award system in an open and transparent manner and considering:

- which industries and occupations require separate awards;
- how minimum terms and conditions for Labor's 10 award matters can be set for particular industries and occupations;

- how details of Labor's National Employment Standards can be provided on an industry/occupation basis;
- which industries and employers have extensively used Australian Workplace Agreements to override prescriptive and complex award terms;
- how to address State awards that currently apply to federal system employers and employees as Notional Agreements Preserving a State Award or Preserved State Agreements; and
- family friendly provisions.

The Australian Industrial Relations Commission will then prepare draft awards with a focus on:

- ensuring awards provide minimum entitlements which are simple to understand, so employees and employers have certainty regarding their rights and obligations;
- ensuring awards promote the efficient performance of work, having regard to the nature of the work, characteristics of the workforce and the size and needs of businesses in the industry covered by the award;
- ensuring awards contain the model flexibility clause with any industry adaptation required; and
- encouraging work-family balance.

Labor understands that enterprise awards have a special status. Many enterprises have worked for years to get their enterprise award in a shape that suits their business. Consequently, Labor guarantees that enterprise awards will continue. Labor will instruct the Australian Industrial Relations Commission to only review enterprise awards where requested by the current parties to the award.

Federal Labor clearly set out in *Forward with Fairness* that awards will be limited to 10 matters. Under Labor awards may also provide industry relevant detail to Labor's 10 National Employment Standards.

The 10 matters that will only be dealt with under Labor's new modern, simple awards are:

1. Minimum wages - This will include skill based classifications and career structures, incentive based payments and bonuses, wage rates and other arrangements for apprentices and trainees;
2. The type of work performed - for example whether an employee is permanent or casual, and the facilitation of flexible working arrangements, particularly for employees with family responsibilities, including quality part time employment and job sharing;
3. Arrangements for when work is performed - including hours of work, rostering, rest breaks and meal breaks;
4. Overtime rates for employees working long hours;
5. Penalty rates for employees working unsocial, irregular or unpredictable hours, on weekends or public holidays, and as shift workers;
6. Provisions for minimum annualised wage or salary arrangements that have regard to the patterns of work in an occupation, industry or enterprise as an alternative to the

payment of penalty rates, with appropriate safeguards to ensure individual employees are not disadvantaged;

7. Allowances including reimbursement of expenses, higher duties and disability based payments;

8. Leave, leave loadings and the arrangements for taking leave;

9. Superannuation; and

10. Consultation, representation and dispute settling procedures.

Awards have been a key part of the safety net for Australian employees and have been in existence for 100 years. However, over time, awards have grown in number and size. Some have moved from a statement of minimum terms and conditions to lengthy and prescriptive documents which have been amended and reviewed again and again.

There are currently over 4,300 awards in Australia.

To be part of Australia's future awards must be modernised and simplified. Labor will get this task done because Labor believes that hard working Australians are entitled to a decent safety net of minimum wages and conditions.

The High Court has confirmed that the Federal Government has expanded powers to make laws about terms and conditions of employment. It is no longer necessary to use the practices of last century to make awards and Labor does not intend to do so.

6. CERTAINTY FOR SMALL BUSINESS

Labor recognises the unique circumstances of small businesses. Labor's *Forward with Fairness* policy outlines a simpler industrial relations system as well as special arrangements for small business under our unfair dismissal laws. Small business organisations have indicated a willingness to work with Labor in Government on developing our Fair Dismissal Code. In Government, Labor will consult closely with small business to develop the Fair Dismissal Code. Labor will also provide funding to small business organisations to undertake an education and information campaign about Labor's new industrial relations system and our unfair dismissal laws.

Labor recognises that small businesses have special needs.

Compliance costs place a heavier burden on small businesses than on large corporations. That is why Labor has already announced a series of measures to reduce the regulatory burden on small business, including the BAS Easy option for slashing GST bookkeeping requirements and a Superannuation Clearing House to handle the superannuation paperwork of small businesses free of charge.

Unfair dismissal

Labor understands that one worker can disrupt a business where there are only a few others at the workplace. Labor recognises that small business owners may not have the time or expertise to comply with the uncertainty and legalism associated with the old unfair dismissal system.

Labor wants balance in unfair dismissal laws and procedures. We want to protect good workers from being sacked unfairly and we want small businesses to be able to use simple processes for dealing with unsatisfactory employees.

That is why Labor's *Forward with Fairness* policy outlined a new system for dealing with unfair dismissal claims – a fast and simple system, which left lawyers out of the picture and encouraged an end to the matter after a conference, not endless days of hearings before the Industrial Relations Commission. There will be a cap on compensation to increase certainty and to discourage speculative claims. Under Labor's policy there will be no 'go away money'.

And that is why Labor's industrial relations policy, *Forward with Fairness*, included particular measures to assist small businesses with fewer than 15 employees to manage employee engagement and dismissal.

Those initiatives include:

- an extended period of 12 months before small business employees can make an unfair dismissal claim, to give small business employers time to determine whether an employee is suitable for their business;
- the provision of advice and assistance to small business through Fair Work Australia, which will have local offices in regional and suburban areas and will be able to go to a workplace or another agreed venue to conduct an unfair dismissal conference if that is suitable to the employer;
- the development of a Fair Dismissal Code in consultation with small business;
- a faster, simpler and less costly process for resolving unfair dismissal claims; and
- a guarantee that reinstatement will not be ordered where it is not in the interests of the employee or the employer's business.

Under Labor's system, employees can be dismissed in cases of redundancy. Where a small business owner has suffered a downturn and needs to reduce staff to reduce costs, the dismissal will be a genuine redundancy and not an unfair dismissal. Similarly, if a small business needs fewer employees due to the use of new technologies, this is a redundancy. Small businesses are excluded from Labor's National Employment Standard for redundancy payments.

Labor believes in balance. Labor understands that the overwhelming majority of small business employers value their employees highly and don't want to lose them and are acutely conscious of the shortage of skilled staff.

Although the overwhelming majority of small business owners treat their employees fairly, situations of unfair dismissal do arise.

In Mr Howard's Australia, employees can be sacked for no reason or any reason and have nowhere to go for help. There is no balance in that approach.

The exemption from unfair dismissal laws for businesses with 100 or fewer employees is not a 'small business' policy.

Mr Howard used to talk about small businesses as those with 15 or 20 employees, but in the heady days after winning control of the Senate, the Prime Minister arrogantly changed his mind. He did not bother fixing Australia's unfair dismissal laws; he just decided to exempt the vast majority of Australian employees from them.

That is neither balanced nor fair.

Consultation on Industrial Relations with Small Business

Labor has previously announced that in Government a Business Advisory Group will be formed to work with Labor in drafting the new industrial relations legislation. Labor wants to ensure the views of business are heard at every step of the way.

Labor has consulted with small business and believes it needs its own voice in the process. Labor will ensure that small business is separately represented on the Business Advisory Group and that there is also a special small business working group.

The small business working group will provide advice from a small business perspective to ensure, for example, that the legislation has a minimum of red tape.

Fair Dismissal Code

Since the release of Labor's policy, Labor has consulted further with small business about the Fair Dismissal Code.

The purpose of the Code will be to provide small business owners with clear information so that they can easily understand their rights and obligations under the law about dismissal.

Where an employer complies with Labor's Code, the dismissal will be considered a fair dismissal.

For example where an employer has reported an employee to the police for suspected theft, fraud or for violence in the workplace the dismissal will be a fair dismissal. Employees who engage in stealing, violence or disruption at work don't deserve protection from dismissal.

It is vital that the Fair Dismissal Code is right but it is also vital that it be easy for small business employers to use and easy to understand.

Labor wants to ensure that small business is involved in writing the Code. The small business working group will be the key group charged with the task of drafting the Code.

As set out in *Forward with Fairness* Labor will remove 'go away money' from the unfair dismissal system.

If a small business complies with the Fair Dismissal Code the dismissal will be regarded as a fair dismissal and no compensation will be payable. Where a small business owner has not complied with the Code and has dismissed an employee unfairly, Fair Work Australia will seek to arrange a conference of the employer and former employee. If reinstatement is not feasible, any compensation will be capped.

Advice and Assistance for Small Business

Labor understands that small business:

- does not have the time, expertise or resources to comprehend pages of industrial legislation and case law;
- is unlikely to have the time, expertise or resources to deal with performance management issues, employee disruption in a small workplace or managing a dismissal in circumstances of suspected theft or fraud;
- does not have the time, expertise or resources to defend unfair dismissal applications in formal hearings.

Labor will ensure that small business employers have access to advice and assistance directly from Fair Work Australia in relation to the requirements of Labor's new industrial relations system.

Small business will be able to rely on this advice, which will be prompt and easy to follow. Where specific advice has been provided to a small business by Fair Work Australia about a dismissal and the employer complies with that advice, the dismissal will be considered a fair dismissal.

In addition Labor will provide resources to small business organisations to undertake an education and information campaign for their members about Labor's new industrial relations system and unfair dismissal laws.

7. UNPROTECTED INDUSTRIAL ACTION

Labor will be tough on industrial action in breach of Labor's laws. Labor's new industrial relations system will not permit industrial action being taken outside our clear, tough rules. Industrial action will only be protected from legal sanction if it is taken during a bargaining period for a collective agreement and is authorised by a mandatory secret ballot. Under Labor the current law dealing with secondary boycotts will remain. Under Labor, the current direct remedies to deal with unprotected industrial action will also remain.

Labor believes that industrial disputes are serious. They hurt workers, they hurt businesses, they can hurt families and communities, and they certainly hurt the economy.

Unprotected industrial action

Labor's new industrial relations system will not allow industrial action to be taken outside our clear, tough rules.

Under Labor industrial action will not be protected by the law except in limited circumstances during bargaining for a collective enterprise agreement.

Labor will also require that, for industrial action to have the protection of the law, it must be approved by employees seeking protection in a mandatory secret ballot.

Labor will not allow industrial action to be taken in pursuit of pattern bargaining.

Labor believes that no one should be asked to take industrial action without having had the opportunity of a democratic vote. A secret ballot should be the means of determining the views of employees about taking protected industrial action, not a way of frustrating or delaying the action. The ballot process will be fair and simple, and will be supervised by Fair Work Australia.

Labor's industrial relations policy will not protect industrial action when it occurs outside these limited circumstances.

And under Labor, where industrial action occurs outside those circumstances then it will be considered unprotected.

Labor will ensure those affected by unprotected industrial action will have ready access to fast and effective remedies, including through the courts.

Secondary boycotts

Labor's tough approach will extend to secondary boycotts, which involve people acting together to prevent others doing business because of industrial issues at another workplace.

Secondary boycotts are currently regulated by the *Trade Practices Act*.

During consultations about Labor's industrial relations policy it has become clear that the secondary boycott provisions have operated most effectively when they have been regulated in this way.

Labor will therefore retain the current secondary boycott arrangements.

Orders to stop or prevent industrial action

Where other industrial action occurs outside Labor's clear, tough rules, Fair Work Australia will be required to deal with these matters quickly, fairly and effectively.

The current arrangements for obtaining orders to stop or prevent unprotected industrial action will continue to apply, including the current arrangements for obtaining interim orders. Access to the courts for breaches of common law torts will continue to be available.

As is currently the case those affected also will be able to go straight to court to seek orders where unprotected industrial action affects them.

This is a new approach for Labor. Under previous approaches, parties have had to seek a certificate (it was known as a section 166A certificate) from the Australian Industrial Relations Commission prior to commencing proceedings in the courts in relation to unprotected industrial action. This meant that parties suffered delays before obtaining orders to deal with the unprotected industrial action.

8. RIGHT OF ENTRY

Labor will maintain the existing right of entry rules.

Labor therefore will ensure that only fit and proper persons hold a right of entry permit and that permit holders understand the right to enter another's premises comes with significant responsibilities.

Under Labor, Fair Work Australia will ensure there are appropriate arrangements in place to enable duly authorised permit holders to meet with those workers who are eligible and who want to meet with them, in accordance with right of entry laws.

Right of entry laws balance the right of employees to be represented by their union with the right of employers to get on with running their business.

Right of entry laws allow union officials who have a right of entry permit from the Australian Industrial Registry to visit employees in three circumstances:

- To investigate breaches of industrial law, awards or agreements;
- To hold discussions with employees who are members or who are eligible to be members of the union; or
- To investigate breaches of occupational health and safety law.

Officials cannot enter an employer's premises without giving proper notice. They must follow reasonable directions from an employer when they are on an employer's site and comply with any occupational health and safety requirements that may apply to the site.

An employer must not hinder a union official who holds a valid right of entry permit and who has entered their premises in accordance with right of entry law.

However a union official cannot abuse the rights and privileges that accompany a right of entry permit. A right of entry permit may be revoked where the Australian Industrial Registry determines that they are no longer a fit and proper person to hold a permit.

9. BUILDING & CONSTRUCTION INDUSTRY REGULATION

As previously indicated, Labor will maintain the existing arrangements for the building and construction industry, with the ABCC continuing until January 31, 2010. Following that date, responsibilities will transfer to the specialist division of the inspectorate of Fair Work Australia.

A future Rudd Labor Government will not tolerate intimidation or violence by any party in the building and construction industry.

The practices of the past are not part of Labor's future for industrial relations.

What Labor does bring from the past is our reputation for positive industrial relations reform and competent administration of industrial relations.

Labor will implement a strong set of compliance arrangements and anyone who breaks a law will feel the full force of the law.

Under a Rudd Labor Government, there will not be a single moment where our construction industry is without a strong "cop on the beat".

The current Australian Building and Construction Commission arrangements will remain in place until the 31st of January 2010. Specifically the ABCC will retain all its current powers and its full resources for this period as outlined in the budget forward estimates.

At that time, those responsibilities will be transferred to a specialist division within the inspectorate of Fair Work Australia.

Labor has always said that Fair Work Australia needs a specialist inspectorate to deal with unlawful behaviour in the building and construction industry. But we will make sure our arrangements are as simple as possible.

Under the current system, the Australian Building and Construction Commissioner, the Australian Industrial Relations Commission, the Australian Fair Pay Commission, the Workplace Authority, the Workplace Ombudsman and the Code Monitoring Group all have roles to play in the industry. This is confusing, inefficient and complex.

Labor's system will be simpler with the ABCC and then the specialist inspectorate within Fair Work Australia ensuring compliance with our tough rules on industrial action and strike pay.

Labor will consult extensively with industry stakeholders to ensure the transition to new arrangements will be orderly, effective and robust.

The principles of the current framework that aim to ensure lawful conduct of all participants in the building and construction industry will continue, as will a specialist inspectorate for the building and construction industry.

10. APPOINTMENTS TO FAIR WORK AUSTRALIA

Labor will ensure that all appointments to its new industrial umpire, Fair Work Australia, are based on merit and go through a bipartisan process.

As Julia Gillard announced to the National Press Club on 30 May, Labor intends its new industrial umpire, Fair Work Australia, will not be a return to the days of the old industrial relations club where governments of all persuasions appointed their mates to industrial courts and tribunals.

Fair Work Australia will be independent of unions, business and government because appointments will not favour one side over another.

Labor will achieve this by requiring that the Minister responsible for Employment and Industrial Relations will only be able to make an appointment after completing the following processes.

The shortlist of candidates will be scrutinised by a panel comprising:

- a senior official from the Department of Employment and Industrial Relations (who will chair the panel);
- a senior official from the Australian Public Service Commission; and
- a senior official from each State (and Territory) Department of Industrial Relations that wishes to participate.

The Minister will be required to consult with the opposition spokesperson for industrial relations and the head of Fair Work Australia prior to making any decision about appointments to recommend to Cabinet.

Labor's process will be rigorous and provide for bipartisan involvement. It will ensure that all appointments made to Fair Work Australia are themselves fair, balanced and made on merit alone.

Labor's plan is something new in Australian politics and Australian industrial relations. Never before has a political party volunteered to take the bias out of the industrial relations system as we are proposing to do.

Fair Work Australia will be a body that serves the nation because that is what Labor's balanced, centrist industrial relations system demands.

Of course, the separate judicial division of Fair Work Australia will need judicial members and those judicial members will be appointed in accordance with current processes.