

# ON YOUR SIDE.

## LABOR'S SECURE AUSTRALIAN JOBS PLAN Background Factsheet

### **\*Making job security an “object” of the Fair Work Act 2009 so it becomes a core focus for the Fair Work Commission’s decisions**

The overarching object of the Fair Work Act is “to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians.”

Underpinning this are seven points establishing: the importance of productivity and economic growth; enforceable minimum terms and conditions; the rejection of individual employment agreements that undermine those terms and conditions; the importance of work and family balance; fairness at work; the primacy of enterprise bargaining; and an acknowledgment of the special circumstances of small and medium businesses.

When the Fair Work legislation was originally drafted over a decade ago it did not foresee the growth of the different forms of insecure work, like gig work. Including job security as an object of the Fair Work Act ensures the Fair Work Commission has to consider job security in all of its decision-making.

### **\* Extending the powers of the Fair Work Commission to include “employee-like” forms of work, allowing it to better protect people in new forms of work from exploitation and dangerous working conditions**

This change will allow the Fair Work Commission to make orders for minimum standards for new forms of work, including the gig economy.

This will ensure a greater number of Australian workers have access to employee protections and entitlements denied to them by the current, narrow definition of employee. Labor would ensure the Fair Work Commission has the capacity and flexibility to include employee-like forms of work: that is, intervene or inquire into all forms of work and determine what rights and obligations may or may not apply. It will give the FWC enough flexibility to keep up with evolving and changing models.

On-demand workers have typically been labelled as contractors on the basis they perform work on a job by job or gig by gig basis. Because of this classification they have no entitlements to annual leave, sick leave, and superannuation and in many cases, workers' compensation. They often work alone, in unsafe conditions and - because of the pressures inflicted by the algorithm of the platform they are working for - they often take risks or cut corners.

**\* Legislating a fair, objective test to determine when a worker can be classified as a casual so people have a clearer pathway to permanent work**

There is currently no statutory definition of casual employment. The meaning of casual employment has evolved and been upheld many times through common law. It has been characterised as “the absence of a firm advance commitment as to the duration of the employee’s employment or the days or hours the employee will work”.

Two recent Federal Court decisions in the matters of *Workpac v Skene* and *Workpac v Rossato* again upheld this definition. The decisions in both cases found the employees were not in fact casuals but rather permanent workers, principally because they were given rosters up to a year in advance.

The Morrison Government’s IR changes includes a new definition of “casual employee” that effectively overturns these decisions and simply preserves the employers’ right to define someone as a casual, thereby entrenching job insecurity.

**\* Limiting the number of consecutive fixed-term contracts an employer can offer for the same role, with an overall cap of 24 months**

Fixed term contracts have a legitimate purpose. They allow employers to bring in staff to add skills and expertise required for a specific time period or to manage an expected but temporary surge in work.

However the use of fixed term contracts has become another form of insecure work for many. For employees on these contracts, the lack of permanency and security makes it harder for them to plan for their future, including securing a bank loan or mortgage.

Other countries limit the number of times a person can be employed via a fixed term contract.

Labor will amend the Fair Work Act to limit fixed term contracts for the same role to two consecutive contracts or a maximum duration, including renewals, of two years. There will be a mechanism for exceptions in limited circumstances.

**\* Ensure a Labor government is a model employer**

A Labor Government would be a model employer and only utilise non-permanent employment where it is essential, and not as a way of simply minimising its permanent workforce numbers.

The Federal government employs nearly a quarter of a million people. A job within the public service used to be characterised as a potential long-term career that could bring the opportunity for promotion and security. But increasingly, public sector workplace practices have taken on some of the worst features of the private sector with respect to fostering insecure work. Casualisation, contracting, outsourcing and use of fixed term contracts have become entrenched within Government.

**\* Using government procurement powers to ensure taxpayers' money is used to support secure employment**

Labor will develop a new procurement framework that will include a provision for supporting bids from companies who favour a permanent workforce – and this will be extended down the supply chain.

This builds on the initiatives that Labor announced in last year's Budget in Reply to support A Future Made in Australia by:

- mandating that at least 1 in 10 jobs on major infrastructure projects will be filled by apprentices, trainees or cadets;
- ensuring Australia's modern energy grid will be built by Australian workers using Australian suppliers;
- developing a national rail manufacturing plan to support Australian jobs; and
- maximising the use of local content in defence industry contracting.

**\* Consult with state and territory governments, unions and industry to develop, where it is practical, portable entitlement schemes for annual leave, sick leave and long service leave for Australians in insecure work.**

One of the many lessons from the COVID pandemic has been the threat to the nation's health and the economy from the fact that such a large proportion of the workforce for example casuals, gig workers, freelancers, or contractors, had no entitlements to paid sick leave. Many casual workers not only not even receive the loading, but all too often lack the financial means to stay home when sick.

The additional complication is the number of casual employees who work multiple jobs. Because they are unable to work enough hours with a single job to meet their financial needs they are forced to string together a series of jobs. Even if they were part time and had some leave entitlements attached, they would be fragmented and difficult to coordinate if an employee needed to take time off sick.

Variants of portable entitlement schemes have existed in different industries, such as construction, mining and cleaning, for many years.

For example, the Victorian Portable Long Service Benefits Scheme covers the contract cleaning, security and community services (including the NDIS and early childhood services) industries in respect of long service leave entitlements accrued based on service in the industry as a whole.

Providing for portability of entitlements for workers in different industries and parts of the economy that are newer or emerging would also help ensure these workers have the same access to entitlements as workers in more stable or traditional industries. We will explore options through consultation with stakeholders to assess what and where it is practical.

**\* Ensuring that workers employed through labour hire companies receive no less than workers employed directly**

The Federal Court decisions referred to above have not only highlighted the issue of casual employment but also some of the employment practices within certain industries that deliberately set out to deny workers pay and entitlements.

The workers who were the subject of the court cases were hired through a labour hire company in the mining industry. They were given full time 12-month rosters fixed in advance but employed as casuals on a fixed, all-inclusive hourly rate. They were working side by side with directly employed full time permanent workers - they were performing the same work for the same hours, on the same roster and they had the same skills. But they were being paid around 30-40 percent less.

As casuals doing the same work with the same qualifications, they should have been paid more - the same hourly rate plus the 25 percent casual loading.

Labor in government will legislate to ensure that workers employed through labour hire or other employment arrangements such as outsourcing will not receive less pay than workers employed directly. The intent of the policy is to crack down on companies trying to circumvent their obligations to pay their workers directly.

**\* Abolishing the Registered Organisations Commission (ROC) and the Australian Building and Construction Commission (ABCC)**

The ROC and the ABCC were established by the LNP government in 2016. Since then they have become politicised and discredited.

The ABCC relentlessly pursues union officials over minor infractions while doing little to stamp out wage theft or sham contracting in the construction industry - or to address worksite safety and deaths.

The ROC has been thoroughly discredited by its continued pursuit of a political witch hunt against the AWU for matters going back to 2007.