# The Ron McCallum Debate 2013: Background Briefing Note

## Theme: Justice @Work - Should the IR Pendulum Swing Again?

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# A. Introduction

1. This year is the 20th anniversary of the 1993 Industrial Relations Reform Act, which may be seen as the first of an almost constant series of major legislative changes to Australia's industrial relations law and systems.

2. The 2013 Ron McCallum Debate asks participants to consider whether, after 20 years of change in Australian labour legislation

   Is there a need or even mood for further change?

   What is the most important action Australia can take to improve workplace outcomes for employers and employees?

   What outcomes are most desirable?

3. The Australian Institute of Employment Rights [AIER] takes as its reference point in consideration of the appropriateness of Australia's industrial laws and systems the AIER's own *Australian Charter of Employment Rights* ["the Charter"] and the accompanying *Australian Standard of Employment Rights* ["the Standard"].

4. Developed from a deep consideration of international labour standards applied to Australia's industrial and social history, the Charter and Standard provide a standards based measure of the success of any legislation in addressing essential employment rights. [i]

5. AIER's approach is a rights based approach but one which looks at these issues both from the perspective of employers and employees [as well as society as a whole] and seeks to encourage co-operative workplace relationships and positive workplace cultures which AIER believes are the key to the most productive and beneficial outcomes for employees, enterprises and economic development and a micro- and macro-economic level.

6. In recent years, AIER has focused on the development of secure and decent work, of enterprise leadership and performance and the elimination of poor and destructive workplace cultures, such as those associated with bullying. AIER believes that legislation can only do so much.

7. Equally important to the future of Australian enterprises is a positive workplace culture, management and leadership in developing and supporting progressive approaches in line with the Charter. AIER believes these factors are critical to enterprise success and employee well-being.
8. While AIER's approach is rooted in internationally recognised and agreed labour standards, including those adopted by the International Labor Organisation, it is also firmly based in Australia's long-developed national institutions and traditions.

9. The framework of Australia's industrial relations laws and systems have been constantly evolving since Federation gave the Commonwealth Parliament the constitutional power to make laws in prevention and settlement of disputes extending beyond the borders of any one State.

10. For most of the past 110 years, the central thrust of Commonwealth laws largely rested on the conciliation and arbitration power, although the Territories, foreign affairs and other powers have also been used. The power was a shared one as the Commonwealth's authority was untrammelled only in respect of the two Territories.

11. While differing approaches to industrial relations have existed historically, there was also a degree of bi-partisanship in regard to this part of the "Australian settlement", that is, the unique Australian approach to the role of law in this "new province of law and order" envisaged by the writers of the Constitution. In particular, the system of compulsory arbitration as a key element of the prevention and resolution of industrial disputes and the award system were seen as cornerstones of the Australian system, both at the State and Federal levels.

12. For the past 20 years however, since the Industrial Relations Reform Act 1993, change has been constant and, at times, radical.

13. Some of this change has had bi-partisan support in its essentials, if not the details, and unlikely to be wound back by any future government. This includes
    - The trend to enterprise level agreements – including in respect to a non-union stream of bargaining - and away from award reliance for the majority of employees
    - The use of the corporations power as the basis for industrial legislation, at first in part and now exclusively
    - The creation of a single Australia-wide system based on the corporations power in all key respects [although States, especially WA, still have systems with reduced coverage]
    - The use of legislation to prescribe certain core terms and conditions rather than through awards
    - Key aspects of protected industrial action legislation and right of entry provisions.

14. Other changes have been greatly favoured by one side of politics and the industrial divide and bitterly opposed by the others, leading to significant swings of the industrial pendulum depending on the numbers in Federal Parliament, both in the House of Representatives and in the Senate.

15. The most significant example of this is of course the use of statutory individual agreements (AWA's) able to override collective instruments to set wages and conditions. Favoured first by Liberal Governments in WA and Victoria, individual workplace agreements became a centrepiece of the Howard Government's 1996 *Workplace Relations Act*, but not greatly used initially, since they still had to pass the same "No disadvantage test" as other agreements [as a result of a deal to get the legislation through the Senate].

16. Re-elected in 2004, the Howard government saw itself at the zenith of its power and radically reduced the safety net, making AWAs much more attractive to employers under the WorkChoices regime. Becoming deeply unpopular with the Australian people, the WorkChoices name and key parts of the policy were abandoned or softened but not sufficiently to appease the electorate. The Howard Government lost the 2007 election, and the Prime Minister his seat, to an Opposition pledged to repeal the WorkChoices legislation and to abolish AWAs.

17. It was the second time in the history of the Federal parliament that the Prime Minister had lost power and his own seat as a result of unfavourable industrial legislation.

18. Despite a significant win based largely on unpopular industrial legislation, the Rudd/Gillard governments did not repeal all of the WorkChoices legislation, retaining the exclusive use of the corporations power, for example, as well as key elements of protected industrial action requirements and right of entry provisions.

19. The *Fair Work Act* retained and extended the use of direct legislation to set standards of employment, minimum wage setting not dependent on Union applications to vary, and a greatly expanded role for a Fair Work Ombudsman.

20. The Act also retained enterprise bargaining as the core of workplace relations with union rights restricted to those enterprises where they could function as bargaining agents for members, if they had any. A new feature of the Fair Work Act was a requirement to bargain "in good faith".

21. The ability to make AWAs were abolished (although they remained in force), however individual flexibility agreements with more limited scope were retained.

22. Doing something that the Howard Government promised but failed to deliver, the Rudd/Gillard government requested the former AIRC to radically overhaul the award system. It did so over an intense two-year period, replacing thousands of pre-existing State and Federal awards with just 122 modern awards. This process was driven relentlessly [as was necessary] by a Full Bench headed by the President of the tribunal and should rank as one of the most considerable achievements of the tribunal ever, despite the predictable grizzles about the process endured by all, and complaints about the outcome by some.

23. Transitional provisions smoothed the change for most and take home pay protection orders were much heralded but hardly used.

24. Regular modern award applications to vary and award reviews are a current feature of the system, but have so far resulted in little change to the awards which came into operation 2010. There will be a substantive review in 2014.

25. Late in its term, the Gillard Government made a number of amendments to the Act supported by Unions but, overall, many non-partisan observers believed that under the Fair Work Act, the IR pendulum had moved closer to the centre than it was under the Howard government.

26. Somewhat chastened by its 2007 experience, the Abbott-led Opposition in 2010 and in 2013 declared WorkChoices to be "dead, buried and cremated" and its 2013 pre-election IR policy was limited in its scope. The centre-piece of Coalition strategy, as shown below, is an inquiry into industrial relations laws by the Productivity Commission ("the PC"), with any recommendations arising from that investigation to go to the 2016 election. However employer associations appear to be lobbying for changes prior to this time frame.

27. Initial legislation from the new Government of Prime Minister Abbott has focused on unions [the Registered Organisations Commission] rather than broader aspects of the system. This includes the re-establishment of the Building and Construction Commission and the Registered Organisations Commission.

**Developments in statutory and individual employment contract law – something to think about also**

28. With the relatively recent exception of the unfair dismissal regime, industrial relations in Australia was traditionally a collective activity, that is one undertaken by representative bodies of employees and employers engaged in the process of making collective instruments such as awards and agreements through the tribunal. The AWA era was an exception to this rule.

29. Now, notwithstanding the fact that the current Act does not allow for individual statutory contracts, individual employment matters are becoming increasingly prominent particularly before the tribunal and the Courts. This is for two main reasons:
    - The increasing use of the statutory protections against adverse action
    - Developments in common law contract of employment.

30. For example according to the quarterly statistical reports of the FWC, there have been 3,182 applications under either s.365 or s.372 ("the General Protections provisions") of the Fair Work Act in the year ended September 2013, as the table below shows:

| Period | Applications under s.365 (General protections dismissal related claims) | Applications under s.372 (General Protections matters other than dismissals) |
|---|---|---|
| Q1 – 2013-14 | 691 | 188 |
| Q4 - 2012-13 | 578 | 150 |
| Q3 - 2012-13 | 740 | 148 |
| Q2 - 2012-13 | 563 | 124 |
| Total four quarters | 2,572 | 610 |

31. Growing common law recognition of deeper and implied obligations in the employment relationship will also be a factor in the future. The decision of the Full Federal Court in the matter of *Barker vs the Commonwealth Bank of Australia*, subject to the outcome of any High Court challenge, is a current example.

## B. The argument for stability

32. In his keynote address to the 21st Annual Labour Law Conference, The Hon G Giudice, AO, former President of Fair Work Australia and the AIRC called for more stability in industrial relations

> "*The question which is most often asked by industrial relations policy makers is: what needs to be changed? A more important question, which is rarely posed, is: how can greater stability be achieved in our industrial relations system? Stability is important from an economic and social viewpoint, but is not always given a high value by union and industry representatives or by political advisers. After two decades of change, a great deal of which has been beneficial, further change is unlikely to lead to a net benefit for our economy unless there is an improved policy formulation process in which stability is a principal objective…*
>
> *"Is there a need for further reform? At one level the answer to that question must be yes. Society is always changing and to be effective the legal framework must also change and keep up to date. The liberalisation of labour market regulation in the early to mid-1990s is a good example of the Government of the day responding to changing domestic and international economic conditions. However, it might also be said that after 4 major reform Acts in the last 20 years, further change should be approached with some caution. There are good reasons to be cautious…*
>
> *"It seems legitimate to ask whether our policy formulation process serves our economic and social objectives as well as it might. The aim of policy is to improve economic and social conditions, yet it seems that when it comes to the industrial relations system, the debate is generally narrow and politicised and, to some degree, simplistic as well. The result is that a reform bill pops up whenever the numbers in Parliament are favourable and sometimes when they are not. The creation of a durable system, reducing the frequency of change and permitting the users of the system to reap the benefits of a stable legislative regime, does not seem to be a policy objective…*
>
> *"But if it is accepted that greater stability is a desirable goal, what are the obstacles to achieving it? There are a number of factors. I mention some which appear to me to be important.*
>
> *"The first one is the alignment of the major political parties with the major interests in industrial relations. While this is not unexpected, it can be an impediment to good policy. Governments tend to be the patron of one side or the other and to give the perception of favouritism on important policy issues…*
>
> *"A second factor is that many opinion leaders, because conflict between employer and employee interests is inevitable, find it difficult to function without an adversarial mindset. The unions/employers/Government, depending on the alignment of the body in question, are hostile forces that must be engaged in combat…*
>
> *"A third and related factor is that the process for policy formulation is, with some exceptions, based on policy differentiation. At the political level, it is seen as important to provide an alternative to current arrangements*

*to attract the support of those voters who are dissatisfied with them. Office holders in many representative organisations tend to demonise opposing industrial interests…"*

33. Significantly, His Honour noted that

*"Examples of real cooperation in industrial relations policy are relatively few. Employers and unions have been able to reach a common position in relation to matters such as discrimination, workers with disability and some training matters. The recent amendments dealing with bullying are also in this category. Perhaps the intensive Government-sponsored consultation process in relation to the drafting of the Fair Work Bill in 2008 should also be mentioned. Participants generally appreciated the opportunity to have direct input and it is likely that the process resulted in a number of contested issues being resolved when they otherwise would not have been…"*

34. His Honour made a number of suggestions about how a more stable approach to IR legislation might be achieved:

"*There is a realistic chance of identifying significant common ground if parties adopt the objective of a more stable workplace and industrial relations system. While complete agreement cannot be achieved, attempting to narrow the areas of difference would be a good start. It will take strong leadership from employers and unions, and Government, to shrug off the dispute culture and the political influences – which are both deeply ingrained.*

"*A broadly based inquiry has the potential to result in sound policy proposals. The prospects of it doing so would be enhanced if there were some consensus about the terms of reference and who is to conduct it. The terms should be broad enough to encompass agreed economic and social objectives such as growth, inflation, productivity, employment and income levels. The recent Review of the Fair Work Act was limited in scope and was not embraced by some of the major interests, who tended to pick and choose the recommendations that suited them, rejecting the rest. It would be desirable that the composition of the inquiry and the terms of reference, so far as possible, be negotiated or at least the subject of consultation with the major interests*.

35. What is at stake? His Honour concluded

*"The Australian economy has proved to be extremely resilient over the last 20 years and robust enough to protect us from a number of external crises. A commonly asked question is how long can it last? Others can give a better assessment than I, but there is no doubt that the nature of our industrial relations system has the potential to affect economic performance and therefore living standards. There are signs that, increasingly, economic conditions are likely to provide an incentive for representative bodies on both sides to work more constructively to increase national prosperity. The stability of industrial relations regulation is an important element from that point of view. It might be better to make a start in the common pursuit of a more stable system now rather than wait for a significant negative shift in economic fortunes."*

36. AIER, for its part, has long argued for a "standards based" approach to employment rights and responsibilities in Australia [and elsewhere] based on the Charter and International Labour Standards. Where current law and practice falls short of this AIER has called for change. AIER's approach, rooting itself in the Charter as a mooring

point, ensures that proposals for changed do not lurch with changes in politics or the expressed needs of any interest group or groups. It is an approach that favours incremental advancement towards what have been internationally acknowledged fair benchmarks.

37. Given that current legislation falls short of AIER standard we continue to call for change in the legislation. Our arguments to support changes to ensure greater protection for those experiencing work insecurity are a case in point. These argument were contained in our submission to the Fair Work Act Review Panel and in the recently published Chapter in the book *Pushing Our Luck: Ideas for Australian Progress*[ii] written by AIER Executive Director Lisa Heap.

38. What is particularly concerning however is the groundswell of public comment by business/employer sources in favour of lowering labour standards in order to address productivity concerns. Numerous Australian and overseas sources have concluded that there is no direct causal link between a reduction in labour rights and an increase in productivity.[iii] In fact the evidence of bodies such as the OECD confirms the opposite, that protecting labour rights is an important trigger towards economic development.

39. AIER is concerned that whilst industrial parties continue the "fight" of legislation real opportunities to address productivity including via, development of management/leaderships skills, creating opportunities for innovation and building cultures of trust and cooperation at work, are going begging.

## C. Improved competitiveness/productivity as a driver for IR change

40. The 2012 Ron McCallum Debate extensively considered the importance of productivity as a driver of change in industrial relations. The 2012 Debate was held on the day that the Report of the Review Panel, headed by Professor Ron McCallum AO, inquiring into the operation of the Fair Work Act, released its report. The Full Report can be found here.

41. The inquiry made a number of recommendations for change to the Fair Work Act, some of which were intended to improve productivity and others to improve equity. The Report also recommended that the Fair Work Commission be tasked to work with parties to improve productivity at the enterprise level that did not involve or require changes to the Act:

> "*The Panel recommends that the role of the Fair Work institutions be extended to include the active encouragement of more productive workplaces. This activity may, for example, take the form of identifying best-practice productivity enhancing provisions in agreements and making them more widely known to employers and unions, encouraging the development and adoption of model workplace productivity enhancing provisions in agreements, and disseminating information on workplace productivity enhancement through conferences and workshops. The Panel does not consider that amendments to the FW Act are required to implement this recommendation.*"[iv]

42. This recommendation has had a mixed response, but highlights the notion that much can potentially be done to improve productivity by improving workplace culture at the enterprise level that does not necessitate legislative change or reductions in employment rights.

43. The Inquiry also extensively considered the links, if any, between productivity growth in Australia and swings of the industrial legislation pendulum and found little evidence to support the proposition that legislation was a driver of productivity in Australian workplaces.

44. Nevertheless, some employers and employer organisations continue to invoke the need for improved productivity as a basis for further change in either industrial legislation or awards or both. Recent attempts by employers in the restaurant and catering sector to amend weekend and evening penalty rates are a case in point.

45. The Gillard Government, with new Opposition leader Bill Shorten as Workplace Relations Minister, enacted a number of changes recommended by the Review panel, but not all.

46. The workplace relations policy of the incoming Government includes the adoption of a number of the unimplemented recommendations of the Review Panel.

**Minimum wages**

47. Maurice Newman, head of the new Coalition Government's Business Advisory Group has recently criticised the level of minimum wages in Australia and called on the new Government to act to reduce them. According to a report in the on-line newspaper, *The Guardian*

> *"The former ABC chairman said* Australia's minimum wage was higher than those in the US, Britain, Canada and New Zealand*, calling workplace reform an "important area" for the government to tackle.*
>
> *"While any discussion in Australia about industrial relations evokes* screams of outrage and the spectre of WorkChoices*, we cannot hide from the fact that Australian wage rates are very high by international standards, and our system is dogged by rigidities*," Newman said.
>
> "*We have long since breached our salary cap, not just by the standards of our low-cost regional neighbours, but also our peers. In the end, regardless of union pressure and criticism from political progressives, relative international wage alignment will occur, either through exchange rate adjustment, unemployment, technology inflation or a combination."*
>
> *Newman said the Coalition's task to reform the economy was a "long-term project" which required a reduction in business regulations to boost competitiveness.*
>
> *"The required direction will disturb the comfort zones of many," he said. "But the consistent narrative is simple. It is to make Australia an efficient world-class competitor.*
>
> *"Defiant rejection along the lines that we won't compete with low-wage countries don't stack up anymore. As I have demonstrated, we don't even compete with developed countries*.[v]

48. The former head of the Fair Pay Commission, Prof Ian Harper, a Howard Government appointee, took a different view. He was reported as saying that:

> *"… while Newman was correct to point out that Australia's minimum wage was much higher than elsewhere in the world, that was a matter of "deliberate policy".*
> *"When it comes to the competitiveness of the Australian economy, really the minimum wage is not a big deal. Very few Australians are paid the absolute minimum wage," he said.*
> *"What we wouldn't want to do, I don't think, is to so slash Australian working conditions and wages as a way of improving our competitiveness that we would reduce our living standards without any real gain in terms of Australian productivity."*

Harper also appeared to be on the same page as the ACTU in his comments about labour's falling share of output:

> "*If you ask yourself, what's happened to real unit labour costs, that is to say, have wages grown faster than labour productivity, the answer's 'no', as a result of which, the labour share of output's fallen, profit share has risen, and Australia, at least at that level, has become more competitive, not less,*" he said.[vi]

49. The ACTU conclusions referred to were found in a paper issued by the ACTU in March 2013:

"*The economic policy debate in recent years has been dominated by periodic suggestions from business groups and others that Australia is experiencing, or is about to experience, a 'wages breakout'. Such a breakout would presumably entail hourly real producer wages rising faster than productivity for a prolonged period, such that the labour share of national income would rise. This is how the existence of the 'real wage overhang' was identified in the 1970s. This paper thoroughly demonstrates that not only has such a 'breakout' or 'overhang' not occurred, but we have experienced the opposite phenomenon: decoupling of wages and productivity, with a fall in the labour share. The fall in the labour share has been broad based; it is not merely the result of a shift towards low-labour share industries such as mining. We would now need to experience a prolonged period of real wage growth greater than productivity growth merely to restore the labour share of the 1990s.*

*"This fact alone should put to rest the suggestions that Australian wages growth has been unsustainably high. Suggestions that Australia has a 'labour costs' problem are not only ill-founded, but are diametrically opposed to the facts. Australian labour costs may appear high when converted to a foreign currency at market exchange rates, but it is disingenuous to implicitly blame domestic labour market institutions for the large shock to the Australian exchange rate in recent years."*[vii]

50. The establishment and maintenance of a decent level of minimum wages in Australia has been a key element of Australian employment and social policy since Federation, or shortly thereafter, as a result of the Harvester decision. At times, Australia has been unique in requiring not just a more egalitarian approach to wages but a minimum wage policy designed to at least meet the modest needs of Australian workers and their families.

51. While debate may rage about the exact level of minimum wages in this country, it has never been left to the impersonal and unfeeling market to set the floor for wages in Australia. Wages policy, combined with social security has attempted to set a decent wage.

52. This too, was part of the "Australian Settlement" as Federation and since and remains a key part of Australian industrial and social policy. As former Prime Minister, Paul Keating noted in his Remembrance Day speech this year, at Federation Australia was attempting to build a new society based on new notions of equality and fairness, not the values of the Old World. This included industrial fairness

"*While a century ago Australia was an outreach of European civilisation, here we had set about constructing an image of ourselves, free of the racial hatreds and contempts that characterised European society. Though White Australia institutionalised a policy of bias to Caucasians; within Australia we were moving through the processes of our federation to new ideas of ourselves. Notions of equality and fairness - suffrage for women,* ***a universal living wage****, support in old age, a sense of inclusive patriotism."*[viii] [emphasis added]

53. In the current issue of AIER's journal, *The Debate*, Brian Lawrence, Chair of the Catholic Commission for Employment Relations [ACCER], has documented the decline in the value of real minimum wages in Australia as well as noting that award dependent workers were failing to share in the value of their increasing productivity.

54. Suggestions that Australia is uncompetitive based on high minimum wages need to be treated cautiously. The ACTU's Matt Cowgill, writing privately, has shed some light on how Australia's minimum wages compare with those of other OECD countries. Dollar for dollar comparisons only take the analysis so far, and a proper consideration must include a 'whole of society' approach.

55. In any event, despite what observers may think of Australia's level of minimum wages, it is clear that Australia's recent economic performance has outstripped that of all or nearly all comparable countries. If high real wages are argued to be a drag on economic performance and growth, this assertion does not appear to be supported by the evidence. Matt Cowgill notes:

> "*Finally, I'll just note that there are countries that have relatively high minimum wages and low unemployment (The Netherlands, Luxembourg, Australia), some that have high minimum wages and high unemployment (Ireland, France), and some that have a low minimum and high unemployment (Spain, Greece). By presenting this chart, I'm not trying to suggest that a higher minimum wage lowers unemployment, nor am I trying to pretend that this simple scatterplot controls for all differences between countries. I'm just pointing out that there isn't much of a relationship across countries between the level of the minimum wage in a country and its unemployment rate."*

56. Certainly, in respect to the four countries nominated by Maurice Newman, Australia had the lowest unemployment rate in 2012, according to the OECD:[ix]

| **Country** | **Unemployment rate** |
|---|---|
| Australia | 5.2 |
| New Zealand | 6.9 |
| Canada | 7.2 |
| USA | 8.1 |

57. Coalition government spokespersons have distanced themselves from Maurice Newman's remarks.

# D. Election 2013 and beyond- Workplace relations policy changes checklist

58. By contrast to recent elections and in particular that in 2007, industrial relations policy did not feature prominently in the 2013 election campaign, unless an unusual focus on the cost of the Coalition's paid parental scheme is included in the analysis. What did the major parties say about the need for further change in IR laws?
59. Labor said little, other than a last minute attack on the Coalition Parties' paid parental leave policy.
60. The Coalition issued a policy with limited proposals for change, anxious; it would appear, not to have the WorkChoices debate again. Despite this, there were some Liberal/National proposal for significant change and there were differences between the parties, although most voters may have been unaware of them.
61. The brief analysis below was prepared by AIER mid-way through the election campaign. Little changed in the last two weeks of campaigning. Table 1 below seeks to highlight the differences between Coalition and ALP policy on a number of key issues.

**Table 1: Summary of the key policy differences in 2013 between the major parties.**

**Sources: Coalition's policy document released in May 2013: Labor Government legislative record**

| **Coalition policy pledges:** | **ALP policy/record of action:** |
|---|---|
| A review of the Fair Work Act to be conducted by the Productivity Commission with a view to taking changes to an election due in 2016. | The ALP Government reviewed the operation of the Fair Work Act via an independent review panel which amongst other things considered extensively the productivity implications of the Act. |
| Introduce a new Paid Parental Leave scheme which provides mothers with six months leave paid at "full replacement wage" plus superannuation. | The ALP introduced paid parental leave which provides 18 week's pay at the level of the national minimum award wage without superannuation. |
| Right of entry: the Coalition says that it will ensure that right of entry laws are returned to the 'promise' made by the ALP in 2007 that the Howard government's right of entry laws would be maintained. | The Government has legislated to provide for interviews and discussions to be held in rooms or areas agreed to by the occupier and permit holder, or in the absence of agreement, in any room or area in which one or more of the persons who may be interviewed or participate in the discussions ordinarily take meal or other breaks and is provided by the occupier for that purpose; to give the FWC capacity to deal with disputes about the frequency of visits to premises for discussion purposes; and |

| | |
|---|---|
| | to facilitate, where agreement cannot be reached, accommodation and transport arrangements for permit holders in remote areas |
| Re-establish the Australian Building and Construction Commission. | The ALP abolished the ABCC and established the Fair Work Building and Construction Agency to promote cooperative, productive and harmonious workplace relations in the building industry and promote and monitor compliance with designated building laws and the Building Code by building industry participants |
| Legislate to provide that union officials who misuse members' funds are liable to the same penalties as company directors who breach provisions of the Corporation Act, including large fines, and criminal penalties including jail. The Coalition also plans to establish a new regulator, the Registered Organisations Commission to enforce and police accountability rules and to act as a body to which members may make complaints about their union. | In 2012, the ALP Government increased penalties for union officials misusing their position but did not introduce criminal sanctions into the legislation already governing unions and their office holders. The Government amended the Act to require that the rules of all registered organisations deal with disclosure of remuneration, pecuniary and financial interests; increased civil penalties; strengthened the investigative powers of Fair Work Australia; and required education and training to be provided to officials of registered organisations about their governance and accounting obligations. |
| Individual flexibility agreements: Coalition policy says that collective agreements will not be able to limit the range of matters dealt with in IFAs. AWAs as such will not re re-introduced. | The Fair Work Act abolished AWAs but allowed employees to enter in individual agreements about certain matters as provided for in collective agreements or a broader default list if not otherwise restricted. |
| Workplace bullying: the Coalition policy supports the ALP's measures on bullying but only if independent advice is first sought by a complainant and if the measure includes reference to conduct of union officials towards employees and business owners and managers | The ALP has legislated for a new "one stop shop" jurisdiction to deal with claims of bullying which is due to commence operation on 1st January 2014. An employee who is bullied at work may apply to the FWC for an order to stop the bullying. |
| Greenfields agreements: three month deadline for | Under Labor's Fair Work Act, greenfields |

| | |
|---|---|
| negotiations for greenfields agreement – if not resolved in that time the FWC to be able to "make and approve" agreements in line with industry standards. | agreements must be made with a union or unions – the WorkChoices option of employer greenfields agreements is not available. Otherwise, there are no special requirements for such agreements. |
| Industrial action: protected industrial action to be allowed only after "genuine and meaningful" negotiations between the parties about claims that are "sensible and reasonable". | The ALP has largely retained the WorkChoices requirements for industrial action, requiring secret ballots before industrial action can commence and provides that parties must be genuinely trying to reach an agreement. |

**Coalition policy objectives in 2013-14**

62. The Coalition has said that the changes specified in the May 2013 policy document are the only IR changes that will be made in its first term of a new government; there will be "no other changes" to legislation or regulations not specified in the policy document. However, some of the detail of the policy includes a number of significant provisions and policies not captured in the 'headline' policy points noted in the Table above. For example, while the Coalition has promised to retain the "Better Off Overall Test" for collective agreements and IFAs, one of the Review Panel's recommendations to which the Coalition policy draws attention, calls for changes to the BOOT to allow it to take into account "non-monetary benefits" in establishing whether workers are in fact better off.

63. This raises the possibility of workers being compensated for lost terms and conditions of employment other than by wages and salaries, for example by discounts on company products and services.

64. Coalition policy prior to the election attacked the Fair Work Act Review panel as "deliberately weak" and carried out by a "handpicked panel of people". Despite its criticisms of the Panel, the Coalition policy said that it will "if necessary" implement a number of other recommendations of the Panel – it lists 13 such recommendations - which the Labor Government has not picked up.

65. The new Minister for Employment, Senator Abetz, outlined the new Government's IR agenda in a speech to the Australian Mines and Metals Association in Hobart recently. He confirmed key aspects of the Coalition's election policy, including a Productivity Commission inquiry, the terms of reference for which are to be finalized by March 2014. Any outcome from the inquiry will be taken to the next election. The full speech is Appendix 2 of this Paper

66. Legislation proposed by the Government re-establishing the Building and Construction Commission can be found here and that seeking to establish the new Registered Organisations Commission is here.

67. Coalition policy is generally seen as setting up a future agenda for further and more significant changes to industrial legislation following the proposed Productivity Commission inquiry. The policy is unclear on what is intended to come from this inquiry, but some employer groups a more detailed list of changes to industrial laws for the future – see Appendix 1 of this Paper.

68. The Productivity Commission has a reputation for free market economics and the Coalition may expect that any recommendations would favour greater deregulation of the labor market.
69. As the Fair Work Review Panel Report noted last year, industrial relations legislation appears to have little if any correlation with productivity outcomes. Productive workplaces are driven by a number of factors including positive workplace cultures which support and encourage innovation and improvement through collaboration and cooperation, education and skill enhancement.
70. The Minister for Employment has asked interested parties for their views on the proposal to create an appeals tribunal to hear appeals from decisions of the tribunal. The Minister says that the Government is not committed to this idea and will consider submissions received by Christmas 2013 and make a decision in the New Year. The Australian Mines and Metals Association has strongly supported the concept.

**Other parties**

71. The Greens updated their IR policies prior to the election. Workplace Relations spokesperson Adam Bandt released a Workplace Rights initiative *Working to Live, Not to Work* a week out from the 2013 poll.
72. The Greens say that the initiative focuses on tackling job insecurity and improving work / life balance, as well as outlining a plan to improve the participation of disadvantaged groups in the Australian Public Service.
73. The IR policies of the minor parties, a number of which will have an important role in the Senate after July 2014, did not rate a mention during the election and, indeed, an examination of their party websites revealed little. The most important of these, as it turns out, was the Palmer United Party, which had some broad statements to make about workplace relations, but little or no detail.

## E. What do unions and employers want?

74. In May 2013, when the Federal Coalition released its industrial relations policy for the 2013 election, most employer associations in Australia endorsed the policy with only faint praise and many indicated that the policy did not go far enough in the opinion of their organisation.

75. Subsequently, a number of major employer associations have released policy documents and have made media comments calling for more extensive change. These include the Business Council of Australia [BCA], the Australian Chamber of Commerce and Industry [ACCI] and the Master Builders Australia [MBA].

76. ACCI has called for a number of changes to the Fair Work Act to occur in the first term of an incoming Coalition Government and for the outcome of an urgent interim Productivity Commission [PC] review of industrial legislation to be completed by mid-2014 in order to inform the first substantial review of modern awards which is due in 2014.

77. As Appendix 1 shows, the employer agenda for change is now more clearly emerging and there is a considerable degree of commonality of concern and policy directions being articulated by major employer organisations. Some employer organisations have detailed and fully articulated agendas for change. The views of the important Australian industry Group [AiG] are expressed in its detailed submissions to the Fair Work Review Panel and in a recent speech by National IR Director, Stephen Smith.

78. Both the BCA and ACCI expressly support the Coalition's policy for a review of Industrial legislation to be carried out by the Productivity Commission. The Coalition policy does not go into detail as to the terms of reference of any such inquiry, but ACCI has articulated an agenda, including a call for the PC to:

    - conduct a parallel micro-economic inquiry into the operation of modern awards on firms in priority services sectors (retail, restaurants, hospitality and tourism)
    - consider how small business, workers and the community are impacted by modern awards in key sectors
    - recommend options to amend provisions that are negatively impacting productivity, the ability for a business to trade at times to suit consumer demand, competitiveness and employment.

79. The BCA also has proposed terms of reference for the PC inquiry [see Appendix 1]. All employer groups are likely to be express their views more fully in submissions to any Productivity Commission inquiry including a more extensive agenda for a first or second term Abbott government.

80. ACCI is generally alone in calling for measures that would affect the content of modern awards [although the BCA's agenda for the PC review may have the same effect]. The other major employer organisations have concentrated their attention on issues relating to agreement making. However, AiG has also proposed expanding the list of prohibited award matters "to reduce the risk of unproductive outcomes arising from the 4 yearly reviews". Other smaller employer organisations in sectors more reliant on awards, such as those in restaurants, retail, tourism and hospitality, can be expected to weigh into the debate for change to penalty rates and other award terms and conditions, both as part of any PC review and as part of the 2014 modern awards review.

81. ACCI appears to be the only major employer group at the present time to explicitly support the re-introduction of individual statutory employment agreements, although the BCA also wants this matter considered as part of the PC review. Most contemplate relaxation of the rules around individual flexibility agreements provided for in the Fair Work Act. AiG has proposed allowing individual enterprise agreements.
82. Other key issues around which the major employer organisations are united are:

    - Industrial action: reverse JJ Richards decision: no "strike first talk later" industrial action; other limitations on when protected action may be taken
    - Employer only greenfields agreements
    - Limiting the content of workplace agreements to employment related matters only
    - Returning right of entry provisions to the pre-Fair Work Act situation
    - Re-introduction of limitations on unfair dismissal claims and limitations on general protections applications
    - Changes to the transfer of business rules, including a 12 month sunset provision
    - Further encouragement of independent contractors for performance of work outside the scope of mainstream protective regulation
    - Re-establishment of the Australian Building and Construction Commission and its coercive powers.

83. Key proposed changes advanced by major employer organisations centre around the issues identified in Appendix 1. In addition, most employer organisations strongly opposed the 2013 amendments to the Fair Work Act and would be expected to press for their immediate repeal by an Abbott Government.

84. At least one other employer association has taken another tack, focusing on the tribunal itself. In a strongly-worded speech on 21st November 2013, AMMA CEO Steve Knott criticized the existing composition of the Fair Work Commission and the consistency of its decisions. AMMA has supported the creation of a new appeals body but within the Commission, not outside of it [for cost reasons]

    "*AMMA envisages that all appeals and test cases could be heard by the independent appeals panel / bench of experts, helping enormously to move towards a system reflecting modern business practices and moving away from the recent politicisation of the role and functions of what should be an independent industrial umpire…*

"*In addition to the politicisation of appointments to and the structure of the tribunal under Labor, including the demotion of existing members to make way for new Labor appointees, the inconsistent nature of some decisions being handed down by different members of the commission also signal the need for an independent appeal jurisdiction.*

*This would hopefully have the effect of bringing some much-needed rigour and accountability into the decision-making process by single commissioners. "*

85. Knott speech criticised recent appointments to the tribunal and drew a link between the number of recent appointees with Union backgrounds and a rise in the success rate for unfair dismissal applications:

"*While some will argue that the biased appointments to the tribunal under Labor have had no effect on outcomes, the latest statistics from the commission paint a different picture, particularly in relation to unfair dismissal outcomes.*

*In the latest quarterly statistical report released by the Fair Work Commission on 12 November, covering the period from 1 July 2013 to 30 September 2013 shows that the longstanding pattern of the majority of unfair dismissal cases being unsuccessful shows a radically different picture. In 2012-13, the success rate for unfair dismissal claims was around 36% whereas for the first time in the latest figures, that success rate is around 68%.*

*As experienced IR practitioners will be aware, the IR test in the Fair Work Commission in deciding cases is "on the balance of probabilities", not the "beyond reasonable doubt" threshold. But whichever way you cut it, these latest publicised unfair dismissal figures speak for themselves in terms of the uncertainty creeping into outcomes due to the strong influence of ex-union appointees*."

86. There have been a number of public comments critical of this attach on the tribunal by the AMMA and pointing out that in fact the process they propose hints at 'political' manipulation of those appointed to the senior tribunal hierarchy.

87. To date, unions have been relatively silent on the question of change to industrial legislation. The ACTU and its affiliates have come out strongly in opposition to the re-establishment of the Building and Construction Commission and are likely to oppose the creation of a Registered Organisations Commission.

## F. Legislative change or improved workplace culture?

88. In recent years, Australia has witnessed a close emphasis by some on the provisions, or changes to those provisions, of industrial laws, awards and agreements as the drivers of needed reform in workplaces.

89. Clearly, the provisions of legislation and systems [as well as the content of awards and other standards] are important. Equally important, in AIER's view is the promotion of positive workplace culture based on mutual respect and recognition in the building of high performance workplaces.

90. AIER has played a prominent role in attempting to eliminate certain negative aspects of workplace culture, such as workplace bullying. AIER welcomes the commencement of federal anti-bullying laws from 1st January 2014.

91. Beyond eliminating the negatives in workplaces is the equally important task of developing positive cultures based on trust, security and a willingness to change, innovate and develop workplaces and outcomes.

92. AIER has called for the development of a culture of workplace citizenship in which all parties have an equal stake in improving outcomes. This requires improved attitudes and application of workplace leadership in an intelligent manner which rejects traditional adversarial approaches.

93. Enterprise bargaining was designed to promote productivity at an enterprise or workplace level and has had some success in this endeavour. However, enterprise bargaining can also lead

    - *"take it or leave it" agreement offers in some non union environments which do little but cut costs and reduce rights or*
    - *a resort to the "cruel and unscientific " methods of industrial confrontation [strikes and lockouts] more typical of the USA or Australia in the 1890s – behaviour Australia sought to eliminate 110 years ago*.

94. All parties – encouraged by legislators – should seek ways and means to harness the creative powers of both capital and labor in the interests of both and society as a whole. AIER believes that a rights based approach is fundamental to the development of such healthy and productive workplaces.

95. At the 21st Annual Labour law Conference in July, Maurice Blackburn partner Josh Bornstein noted that his law firm was, of course, an employer in its own right and required to respond to competitive and other pressures. He briefly described the process of change in his organisation and concluded:

> "This brief glimpse into my other life is intended to underline the importance of the many measures available to the private sector to improve workplace performance and productivity: involving education, skills, training, innovation, managerial capacity and experimentation.

"These sorts of measures can't be legislated. A productive, fair and dynamic work place can't be legislated."

96. AIER encourages all parties to approach this debate in a way which maximises the best possible outcome for all sections of Australian society.

## G. AIER Conclusions

97. In AIER's view, the need for further wholesale change to Australia's industrial legislation and systems is not supported by convincing evidence. We have argued for some change in order to that the minimum standards contained within the legislation apply to all who work and to provide greater support to those experiencing work insecurity.

98. AIER opposes any changes that operate to reduce employment rights and would see the legislation move further away for the Charter standards and those contained within International Labour Standards.

99. There is no evidentiary link between reduction in labour rights and increases in productivity. AIER is concerned that whilst industrial parties continue the "fight" of legislation real opportunities to address productivity including via, development of management/leaderships skills, creating opportunities for innovation and building cultures of trust and cooperation at work, are going begging.

100. AIER regrets the decline and loss of genuine tripartism in Australian industrial relations and supports measures to see this situation rectified.

AIER – November 2013

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[i] AIER, Australian Charter of Employment Rights, Australian Standard of Employment Rights.
[ii] Lyons (ed) 2013 Centre for Policy Development, Sydney
[iii] See for example Green et al (2012) Understanding Productivity Australia's Choice, McKell Institute, University of Technology Sydney.
[iv] *Towards more productive and equitable workplaces*, page 85
[v] http://www.theguardian.com/world/2013/nov/11/tony-abbotts-top-business-adviser-warns-australia-may-face-spending-cuts?CMP=ema_632
[vi] ABC, *The Business,* quoted by *Workplace Express, 13 November 2013 4:33pm*
[vii] Matt Cowgill, ACTU, Working Australia Papers No 1 of 2013, *A Shrinking Slice of the Pie,* page 28-29; http://www.actu.org.au/Images/Dynamic/attachments/7852/Shrinking%20Slice%20of%20the%20Pie%202013%20Final.pdf
[viii] http://www.theage.com.au/comment/the-flower-of-our-youth-20131111-2xcam.html
[ix] http://stats.oecd.org/ ALFS Summary tables : *Annual labour force statistics*

**Appendix 1**

**Table: specific proposal for change advance by key employer associations in 2013.**

[Note: Source documents including hyperlinks are shown at the foot of the table. In most cases, the text is drawn directly from the source documents. This text does not reflect AIER's view of these issues nor is an endorsement of them by AIER.]

| **Issue** | **BCA** | **ACCI** | **MBA** | **AiG** |
|---|---|---|---|---|
| Productivity Commission inquiry into Fair Work Act | Commission the Productivity<br><br>Commission to conduct an inquiry into the impact<br><br>of the workplace relations system on productivity<br><br>and competitiveness, including examining:<br><br>• the extent to which the high minimum wage prevents new labour market entrants from gaining initial experience, to inform future wages policy directions<br>• the impact of penalty rates on business competitiveness and employment growth, particularly in the retail and hospitality sectors | Commission the Productivity Commission to conduct a comprehensive review of the Fair Work Act 2009 and associated federal laws and to provide an<br><br>interim report by mid-2014 on priority areas of urgent reform that should be implemented within the first term of the next Australian Government.<br><br>As part of the inquiry, the Productivity Commission should:<br><br>• conduct a parallel micro-economic inquiry into the operation of modern awards on firms in priority services sectors (retail, restaurants, hospitality and | | |

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| | • workplace arrangements in the market and nonmarket sectors, and identifying arrangements that increase the take-up of innovative practices that make fuller use of workers' skills and expertise<br>• the issue of individual agreements and their influence on productivity at the firm level. | tourism)<br>• consider how small business, workers and the community are impacted by modern awards in key sectors<br>• recommend options to amend provisions that are negatively impacting productivity, the ability for a business to trade at times to suit consumer<br>demand, competitiveness and employment. | | |
| Industrial action/agreement making:<br>• overturn JJ Richards decision<br>• no protected action unless bargaining in good faith | Limit access to protected industrial action where there has been unreasonable or capricious use of such action | Prevent unions adopting a strike first, bargain later approach in the pursuit of demands. | Protected industrial action should not be available before bargaining has commenced. Protected industrial action should only occur in support of claims made in bargaining.<br>Reverse the outcome of the JJ Richards case which allows the unions to sidestep good faith proviso. The Fair Work Act to be amended to make it clear that parties must be acting in good faith in order to take protected industrial | Protected industrial action should be defined so that it is taken only as a last resort. Secret ballots should be required to determine majority support.<br>Majority support determinations, bargaining orders and scope orders are not necessary.<br>Unions should only be covered if the agreement so specifies. |

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| | | | actions. | |
| Employer only or non-union Greenfields agreements | Provide access to employer-only greenfield agreements | Eliminate the trade union veto and monopoly over the establishment of greenfield agreements for new projects | Non-union greenfields agreements to be introduced | Address the greenfields agreement provisions which currently enable unions to hold employers to ransom until their claims are met. Employer greenfields agreements should be permitted. Greenfield agreements should be allowed with any union able to represent project employees. |
| Individual agreements/IFAs | Enhance the capacity to agree to flexibility arrangements with employees including through individual flexibility arrangements | Restore the pre-WorkChoices version of individual statutory agreements or, at a minimum, ensure that Individual Flexibility Arrangements (IFAs) are<br><br>able to flexibly deal with all award or enterprise agreement matters and provide certainty by extending the duration of IFAs | Recommendation 10 and 11 of the {Fair Work Act Review] Panel's report on individual flexibility agreements should be introduced into legislation immediately | Implement a more workable structure for Individual Flexibility Arrangements (IFAs); The framework for Individual Flexibility Arrangements has enabled unions to block meaningful flexibility in workplaces with enterprise agreements.<br><br>Individual employee agreements should be allowed. |
| Agreement making and content | Reduce the range of matters that can be bargained over to ensure they are directly related to | Limit the regulatory system to industrial matters only, so as to not interfere with the decision-making | | Narrow the scope of bargaining claims to matters that fall within the employment |

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| | wages and conditions in the employment relationship | responsibilities of business.<br><br>Ensure that enterprise bargaining is truly voluntary by restoring union and non-union enterprise agreement options and removing the ability for unions<br><br>without a majority of union members in an enterprise to force an employer and non-union workers to bargain for a collective agreement | | Relationship only.<br><br>Unions can organise industrial action over a broader range of bargaining claims, rather than simply matters pertaining to the employment relationship, and to include an even wider range of matters in enterprise agreements.<br><br>Expand unlawful terms to include terms which impose restrictions on outsourcing, contractors or on-hire arrangements. |
| BOOT | Modify the 'better off overall test' to provide for a broadening of matters that may be taken into account in the application of the test | | | |
| Right of entry | Limit union entry rights to employer premises | Restore restrictions on trade union right of entry that were promised by the government in 2007 but which have since been compromised | Application of real and substantial penalties against unions if they do not comply with strict right of entry laws | |
| Unfair dismissal | | Eliminate once and for all 'go | Reintroduction of a true | |

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| | | away' money from the unfair dismissal system and the newly created 'general protections' scheme.<br><br>Provide small business with protection from unnecessary litigation and costs by extending the Fair Dismissal Code to explicitly cover sexual harassment,<br><br>workplace bullying and breaches of occupational health and safety laws. | 'exemption' where a remedy for alleged unfair dismissal is unavailable where a small business employs fewer than 20 people.<br><br>Re-instate the legislation that substantive and valid reasons for termination will be the primary test for fairness. Termination laws must place more emphasis on the employer's prerogative to manage their business.<br><br>Unfair dismissal claimants should bear the onus to demonstrate reasonable grounds for success prior to a matter going to conciliation. | |
| General protections | Reduce the scope of the adverse actions provisions | | Adverse action provisions of the Fair Work Act abolished or 'sole or dominant reason' test reinstated.<br><br>Adverse action claims in relation to complaints be limited to those made to competent administrative authorities. | Tighten the General Protections to ensure that they operate fairly for all parties. Unlike the unfair dismissal laws, under the general protections:<br><br>• There are no exemptions for short-term employees;<br><br>• There is no cap on the amount of compensation that can be |

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| | | | Reverse onus of proof provisions required in adverse action cases be amended to provide an exemption for small business employers.<br><br>The test for whether adverse action has occurred to require a comparison of whether the action taken against an employee would have also been taken against other employees in the same circumstances.<br><br>Adverse action applicants to show reasonable grounds for their application during conciliation conferences before the Fair Work Co The reverse onus of proof provisions to be amended to provide an exemption for small business employers. | awarded; and<br><br>• There is a reverse onus of proof with the employer required to prove that the dismissal was lawful. |
| Transfer of business | Amend the transfer of business arrangements to include a sunset clause after 12 months. | Restore pre-existing workplace laws sanctioned by the High Court on the sale or transmission of business | Reinstatement of sensible transmission of business rules | Address problems with the transfer of business laws which are currently inhibiting the restructuring of businesses and are unworkable. |

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| Regulation of independent contractors | Make unlawful clauses that exclude the engagement of contractors or labour hire companies | Commission a review of the operation of the Independent Contractors Act 2006 and a broader review of all federal laws that may have the potential to<br><br>reduce the freedom of individuals to operate their own business on a commercial basis. | Regulation of independent contractors via workplace agreements should be unlawful. | Expand unlawful agreement terms to include terms which impose restrictions on outsourcing, contractors or on-hire arrangements. |
| Building industry | | Introduce legislation to restore the former Australian Building and Construction Commission and its full suite of powers as a matter of priority. In<br><br>addition:<br><br>• reinstate and improve associated federal government procurement guidelines<br><br>• commission a taskforce to conduct a public inquiry and establish whether further improvements could be made to assist the building and construction<br><br>industry sector or any other | Reinstate the Australian Building and Construction Commission (ABCC) and fully restore its powers and funding. | |

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| | | industry sector crucial to the national economy. | | |

Source documents:

BCA: *Action Plan for Enduring Prosperity*: http://www.bca.com.au/Content/102223.aspx

ACCI: *Getting On With Business: Reform Priorities For The Next Australian Government:* http://acci.asn.au/Research-and-Publications/Publications/ACCI-Policy-Blueprint-2013

MBA: *INDUSTRIAL RELATIONS POLICIES 2013: Essential Changes to the Fair Work Regime:* http://www.strongbuilding.com.au/images/strong_building/CURRENT_-_Industrial_Relations_Policies_2013.pdf

AiG: 1. Smith, S, *Speech to 21ST LABOUR LAW CONFERENCE, WORKPLACE RESEARCH CENTRE AND SYDNEY LAW SCHOOL, SYDNEY*, 22 July 2013, http://www.aigroup.com.au/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/LIVE_CONTENT/Publications/Speeches/2013/21st_Labour_Law_Conference_July_2013.pdf

2. *Ai Group's Opening Statement to the House of Representatives Standing Committee on Education and Employment Fair Work Amendment Bill 2013*, 24 May 2013: http://www.aigroup.com.au/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/LIVE_CONTENT/Publications/Speeches/2013/House%2520of%2520Reps%2520Statement_fair%2520work%2520amendment%2520bill%25202013%2520FINAL.pdf

3. Submission of the Australian Industry Group to the Fair Work Act Review, February 2012: http://home.deewr.gov.au/submissions/FairWorkActReview/Initial.htm

**Appendix 2**

**Friday 15 November 2013Speech**

**Senator the Hon Eric Abetz**

- Minister for Employment
- Minister Assisting the Prime Minister for the Public Service
- Leader of the Government in the Senate

A special welcome to interstate visitors—you can see first-hand here in Tasmania what the double whammy of Green/Labor Governments can do to an economy. Yet, here in these premises, you can see what private enterprise can achieve without government handouts.

It's a pleasure to be with you. Can I thank Steve Knott and the Australian Mines and Metals Association for their support of a more productive and efficient workplace relations system.

As the national employer group for Australia's resource industry, AMMA, like the Government, knows the importance of the resource sector to our economy.

In the weeks that the Coalition Government has put up the "open for business" sign, we've been delivering stable government that's designed to instil confidence in the business sector to invest in the workforce.

**Overview and key principles of our workplace relations agenda**

The Coalition wants a stable, fair and prosperous future for all Australians, and we see workplaces as vital to achieving that goal.

The prosperity of tomorrow is in large part determined by what's happening in our workplaces today.

This is why we're improving the Fair Work laws and restoring the balance back to the sensible centre.

We believe that those laws should provide a strong and enforceable safety net for workers while also helping businesses to expand, create new jobs and deliver higher sustainable real-wage growth.

The Government's policy to improve the Fair Work laws is based on common sense and a desire to find practical solutions to practical problems.

Just some of the measures we're pursuing include:

- re-establishing the Australian Building and Construction Commission
- providing better protection for members of registered organisations
- making sure that union right-of-entry provisions are sensible and fair, and
- giving underpaid workers a better deal.

We'll also be tasking the Productivity Commission to carry out a thorough examination of the Fair Work laws.

Draft terms of reference for the Productivity Commission inquiry into the *Fair Work Act* are currently being finalised and will be released by March 2014.

The Government will carefully consider the recommendations and findings of the Productivity Commission.

We will consider the recommendations and determine which, if any, changes we will take to an election before they are implemented.

**Subdued labour market**

The Coalition has come into government at a time of subdued economic activity with a projected surge in unemployment.

Figures released last week by the ABS reflect the underlying softness of the Australian labour market with seasonally adjusted employment increasing only modestly by 1100.

The seasonally adjusted unemployment rate increased to 5.7 per cent in October after dipping to 5.6 per cent in September. Reflecting the recent weakness in the Australian labour market, the participation rate stood at 64.8 per cent in October—and is now at its lowest rate since October 2006.

Particularly concerning is the downturn in jobs for people aged 15–24, with the unemployment rate rising from 11.7 per cent to 13 per cent in the past five months.

And here in Tasmania, while there has been a slight drop in the jobless rate in the last month, we still have the highest unemployment rate in the country, at 7.9 per cent.

You'll all be aware that last week mining machinery manufacturer Caterpillar announced that 200 jobs would be shifted from Tasmania to Thailand. That news could not have come at a worse time given the north-west has already been hit hard by plant closures and manufacturing lay-offs.

**A strategy for employment growth**

Because labour market conditions are clearly soft, it is more imperative than ever that the Coalition Government's economic strategy is delivered to achieve stronger jobs growth right across the country.

We do not underestimate the huge task of growing employment opportunities in Australia and will continue to work methodically and diligently to create an environment for strong employment growth for both its social and economic benefits.

The most important way that we can ensure job creation is by getting rid of bad policy like Labor's job destroying carbon tax. We are committed to doing exactly that, with a strong mandate but Labor has inexplicably decided to ignore the views of the Australian people, who are desperate for jobs and economic revival. And that is especially the case here in Tasmania.

We want to remove impediments to genuine employment growth to help achieve our commitment of generating one million new jobs over the next five years and two million jobs over the next decade.

**Boosting productivity**

We have a plan to boost productivity—to make Australia more competitive in the global economy and lift our standard of living.

In a competitive world, standing still is simply not an option. That's why we must take the decisive action to boost productivity growth and encourage world's best practice to modernise and transform Australia's businesses and industries for the 21st century—and for that matter—hence our Commission of Audit.

Everything in our Better Productivity Plan is designed to make Australia more productive and our economy more competitive.

And let me digress briefly to the point—we want a strong economy not as an end in itself but because it is only a strong economy that can deliver the infrastructure, welfare, health and education that Australians rightly expect.

The plan will deliver higher productivity growth by:

- reducing the company tax rate to 28.5%
- encouraging more people into the workforce to be productive contributors in the nation's life and help make Australia a more successful country—one of the ways we will do this is through a Paid Parental Leave Scheme
- cutting government red and green tape so businesses can become more productive and devote their energies to business and jobs growth—not by $1 billion but by $1 billion per annum.
- improving competition rules so competitive forces drive productivity growth, and
- re-balancing workplace relations to reduce union militancy in workplaces and encourage higher pay for better work.

**Policies to assist the resources sector**

AMMA members are significant employers and wealth generators for our nation. Therefore, our efforts to improve current regulatory and tax arrangements to encourage and promote more productive and competitive workplaces will assist workers, enterprises and the nation alike.

We support a vibrant and competitive energy and resources sector that employs thousands of Australians and creates the wealth to fund our schools, hospitals and roads.

And we're getting on with the job of helping to protect jobs and investment by removing the unnecessary and damaging taxes weighing the sector down.

The process to abolishing the carbon and mining taxes is underway.

We will cut unnecessary red tape costs on all Australian businesses, including those in the resources and energy sectors, by at least $1 billion per year.

The Government will create a stronger economy that generates two million new jobs over the next decade.

The Coalition will introduce an Exploration Development Incentive which will allow investors to deduct the expense of mining exploration against their taxable income.

Under our scheme, the Australian Taxation Office will determine a proportion of expenses that can be claimed as tax credits by investors. Our scheme will target small exploration companies by limiting eligibility to companies with no taxable income.

The Exploration Development Incentive will start for investments made from 1 July 2014. The scheme will be capped at $100 million over the forward estimates.

We will also produce a new Energy White Paper, to be publicly released within a year. This will give industry and consumers certainty and confidence in government policy.

We will deliver a one-stop-shop for environmental approvals ensuring projects can commence as soon as possible but without compromising environmental standards.

The Coalition will work constructively with industry to monitor and upgrade an appropriate maritime surveillance regime to protect Australia's offshore oil and gas platforms.

In cooperation with relevant state governments, gas explorers and producers and gas consumers we will set in place a workable gas supply strategy for the East Coast gas market to the year 2020.

**Improving the Fair Work system**

Higher living standards, better pay and more jobs all depend on having fair, productive, and effective workplaces.

While there are many positive aspects to the Fair Work laws, there are also some problems with them. Some of these we have addressed immediately.

No doubt all of you have heard about the recent re-emergence of unlawfulness in the building and construction industry, and misuse of members' money in some unions like the Health Services Union.

We're taking strong action to address these issues through the restoration of the Australian Building and Construction Commission and the establishment of a Registered Organisations Commission to oversee a new system of registered organisations as I indicated at the start of my address.

The amendments to the Fair Work Act to be introduced early next year will further enhance the effectiveness of our workplace relations arrangements in a considered and prudent way.

AMMA's reform agenda released in March 2013 refers to areas for reform in key areas such as protected industrial action, allowable matters in agreements and bargaining, greenfields agreement-making, individual flexibility arrangements, and trade union right-of-entry.

Let me turn to right-of-entry and greenfields agreements.

We will ensure that union right-of-entry protections are sensible and fair, balancing the need for workers to be represented if they wish with the need for workplaces to run without unnecessary disruption.

The way that right-of-entry operates under the Fair Work Act is not balanced and is not based on common sense.

When I hear of one project experiencing 200 union visits in just three months it is clear there are issues with the system that need to be addressed. The Coalition has consistently identified shortcomings with the current regime

and its plans to remedy these shortcomings. The “radical and extreme” agenda we have in this area is to adopt what Labor promised in 2007—that is, no change from the Howard Government.

We will also get rid of the changes made by the previous Government, whilst in its death throes expanded union rights even further and have been of particular concern to AMMA. I refer to changes that require employers to facilitate union access to remote sites and make lunch rooms the default meeting places for union visits. On this last point, let me be clear: we will stop the lunch-room invasion and we will stop the joy rides for union bosses to offshore sites at company expense.

We will also create realistic timeframes for greenfields agreements.

Unions should not have the power to effectively veto the commencement of new projects or extract exorbitant wages and conditions by refusing to sign up to a greenfields agreement. The current model for greenfields agreements delays construction projects, is bad for jobs, bad for businesses and is bad for the Australian economy.

We will fix this problem by providing that if negotiations for a greenfields agreement have not been completed within three months then a business will be able to take their proposed agreement to the Fair Work Commission for approval. The commission will be able to make and approve the proposed agreement, but subject to strict tests, including that it must satisfy the existing ‘Better Off Overall Test’.

Consistent with our election policy, I hope to introduce legislation on these greenfields agreements and right-of-entry early next year to send a clear message that Australia is well and truly open for business.

**Australian Building and Construction Commission**

As AMMA in its own survey shows, there has been a significant deterioration in the culture of the building and construction industry since the abolition of the ABCC by the previous Government.

When the ABCC previously existed, the performance of the building and construction sector improved dramatically. The results speak for themselves:

- industry productivity up by 9.4 per cent
- Australian consumers better off by around $7.5 billion per year, and
- fewer days lost through industrial action.

We all remember the scenes at the Myer Emporium site in Melbourne in August last year, where police horses were being punched by an unruly mob of individuals who were demonstrating in circumstances where the actual workers on the site were happy with the boss and their conditions.

And just this month the Fair Work Commission found that visits by CFMEU officials to four Lend Lease sites in Adelaide last month constituted a planned and resource-intensive series of visits involving intimidatory tactics in breach of right-of-entry requirements.

The commission also found that a CFMEU official had threatened to stop work at one of the Adelaide sites unless the contractor moved a union flag to a more prominent position.

The fact that the union would disrupt a major building project over the issue of the positioning of a union flag says it all.

That's why, yesterday, we introduced a Bill to re-establish ABCC with strong powers and imposition of substantial fines.

I note comments by Dave Noonan of the CFMEU that the ABCC unfairly 'discriminates' against the building industry. I would say in response that the case against industry-specific laws would be so much stronger if the participants in that industry behaved like everyone else. Unfortunately, they don't.

The Government has already appointed Nigel Hadgkiss PSM as the Director of the current Fair Work Building and Construction Commission who will assist with the transition to the ABCC.

The former commissioner, the Hon. John Lloyd PSM has been appointed as Chairman of the Fair Work Building and Construction Advisory Board.

We also promised that a re-established ABCC will administer a re-invigorated national building code that will govern industrial relations arrangements for Government-funded projects. This step will ensure that taxpayers' dollars are used efficiently.

**New appeals body**

On 31 October I wrote to employers and unions, the states and other industrial stakeholders seeking their views on a proposal to create a new appeals jurisdiction covering the Fair Work Commission.

We certainly believe that this is an idea worth considering—and that is as strongly as we have put it.

Any input by the 13th of December will be considered.

**Conclusion**

Our agenda is not AMMA's agenda.

Our agenda is to serve the national interest.

But it is a much welcome and happy stance that AMMA's agenda has so much overlap with the national interest.

I wish you success for the nation's sake.