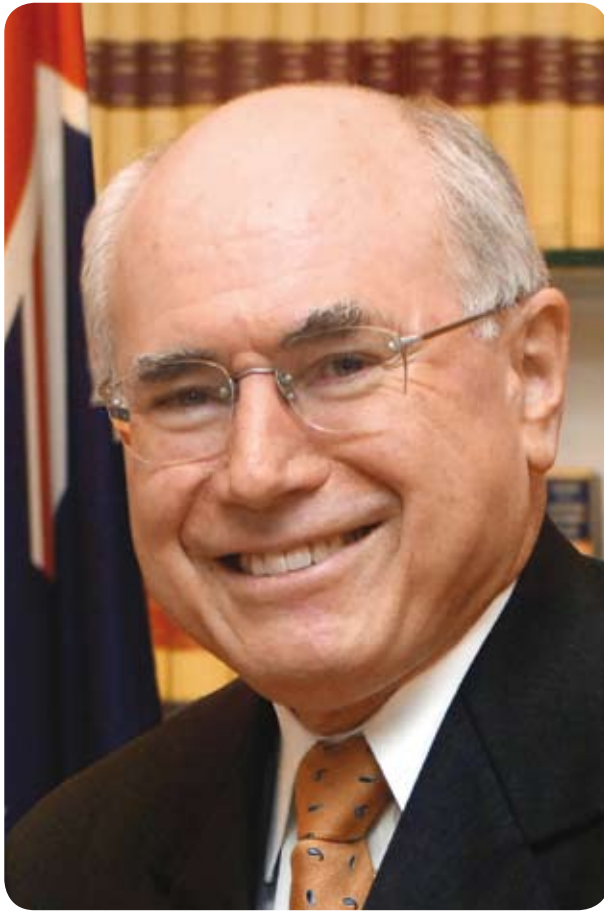


Invigorating Business Representation



Federal Election: Workplace Relations Briefing



Invigorating Business Representation

Policy Issue	Coalition Position	ALP Position	Commentary
National and State IR systems	<ul style="list-style-type: none"> > Coalition has actively pursued a national system of WR regulation using the Corporations power 	<ul style="list-style-type: none"> > ALP will rely upon all Constitutional powers available to create a national system for the private sector > ALP will work with States to deliver a uniform WR system 	<ul style="list-style-type: none"> > NSW BC supports progress toward a single, national system of WR > There is no certain prospect of all of the States cooperating even with an ALP Government (particularly NSW and Qld) > There seem real risks for business in any system based on the use of the external affairs power, through external treaties
Institutions in the system and their role	<ul style="list-style-type: none"> > Australian Industrial Relations Commission (AIRC) retained, but with specific and limited powers > Workplace Authority (WA) responsible for the administration of agreement making, and for the provision of information and advice to employers and employees > Workplace Ombudsman (WO) responsible for ensuring compliance with the legislation > Courts continue to determine prosecutions for breaches, unlawful behaviour and unlawful dismissal 	<ul style="list-style-type: none"> > Fair Work Australia (FWA) – the 'new independent umpire' will be established > FWA will provide a 'one-stop-shop' for IR issues – and will essentially replace the Australian Fair Pay Commission (AFPC), WA, WO, Australian Building and Construction Commission (ABCC) and the AIRC, all of which will be abolished, and replace the courts' role > Focus on accessibility – offices in suburbs and regional centres, e.g. in Centrelink offices and shopping centres 	<ul style="list-style-type: none"> > It may breach constitutional validity to have both compliance and judicial powers centred in the one body, and fair justice in having advice, dispute resolution, prosecution and determination processes all in the one body > This creation of this agency would mean a huge centralisation of power and functions > The flip-side of accessibility is pervasiveness



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The Safety Net – minimum wages, legislated minimum standards and awards	Minimum wages <ul style="list-style-type: none"> > Minimum wage increases administered by specialist body, AFPC deciding by inquiring than by adversarial arbitration > General decisions handed down in July with October operative date 	Minimum wages <ul style="list-style-type: none"> > FWA will review minimum wages annually although it is not clear whether it will be through a consultative or arbitrate process > Decisions will take effect by 1 July each year. It's not clear what advance notice there would be 	Minimum wages <ul style="list-style-type: none"> > NSW BC supports minimum wage-fixing which is truly safety net so as to not hinder employers and employees from setting their own rates. NSW BC also supports not setting minimum wages to solve disputes
	Minimum Standards <ul style="list-style-type: none"> > AFPC Standard includes minimum wages, hours, annual leave, parental leave, personal/ carers and compassionate leave which have general application. Other legislated standards include public holidays and rest breaks > Employers are also required to provide employees with a copy of the Workplace Relations Fact Sheet advising about the WA, WO agreement making and protected award conditions 	Minimum Standards <ul style="list-style-type: none"> > Guaranteed 10 national employment standards with general application including: Hours of work, Annual Leave, Public Holidays and Personal, Carers and Compassionate Leave; similar to the current standards (albeit with less flexibility eg. no cashing out of leave) > New minimum standards will also include: new parental leave entitlements, parents' right to request flexible work arrangements, community service leave, employee redundancy entitlements and long service leave > Employers will also be obliged to provide Fair Work Information Statement to employees advising amongst other things of the right to join a union 	Minimum Standards <ul style="list-style-type: none"> > NSW BC supports appropriate key minimum standards. Any proposed addition should be subject to rigorous scrutiny > Under the ALP's policy, the suite of minimum standards that cannot be contracted out of will be expanded, adding further layers of regulation to the terms and conditions of employees – adding cost, complexity and inflexibility for business > NSW BC does not support requiring employers to hand out standard employment information
	Awards <ul style="list-style-type: none"> > Awards are retained with a reduced number of allowable matters > Awards will be rationalised and no new awards may be made covering award-free employees 	Awards <ul style="list-style-type: none"> > Awards may contain a further 10 minimum employment standards in addition to the legislated minimum standards: wages, type of work performed, when work is performed, overtime, penalty rates, annualised salary arrangements, allowances, leave, superannuation and consultation, representation and dispute settlement procedures > Awards must contain a 'flexibility clause' to facilitate 'upwards flexibility', in matters such as rostering and hours of work, all up rates of pay etc > Award modernisation and simplification process will commence in early 2008, and will be 'overwhelmingly completed' within 2 years > The application of awards will be confined to employees who earn less than \$100 000 pa (base salary). Those employees will still be covered by the 10 National Employment Standards 	Awards <ul style="list-style-type: none"> > NSW BC supports the principle of fewer simpler awards > NSW BC does not support increase the detail or complexity of awards because this makes local flexibility harder to achieve > NSW BC does not support any spread of coverage to industries that are currently award-free > The exclusion of employees earning over \$100 000 from award coverage while positive, does not apply to a sufficient number of employees to be meaningful



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Agreement Making: AWAs & Collective Bargaining	AWAs <ul style="list-style-type: none"> > AWAs maintained, with the Fairness Test > AWAs have up to 5 year life 	AWAs <ul style="list-style-type: none"> > AWAs will be abolished > AWAs made prior to the commencement of the Transition Bill will be allowed to run their course, to an end date of 31/12/12 > Individual Transitional Employment Agreements (ITEAs) may be made whilst award simplification is taking place (no later than 31/12/09) between: <ul style="list-style-type: none"> > Any employer who has a pre-existing AWA; and > A new employee > ITEAs must not disadvantage the employee in comparison to the Standard, an applicable award or agreement 	AWAs and Collective Bargaining <ul style="list-style-type: none"> > NSW BC supports the right to choose whether to negotiate on an individual or collective basis and the right of individuals to seek the best mix for themselves > The abolition of AWAs is an unsurprising, but disappointing feature of the ALP's policy. AWAs provide the ability for employers and employees to develop arrangements that suit the needs of both the employee and business, and provide pay outcomes to employees that on average, far outstrip those on awards and collective agreements > The ALP attempts to pitch its policy in this regard as being about 'fairness', when in fact it is about power. Its policy increases union power by providing increased rights to become involved in the workplace > The ALP's national system policy will introduce compulsory collective bargaining for the very first time – business will no longer have a choice in the manner in which it comes to arrangements with its people.
	Collective Bargaining <ul style="list-style-type: none"> > Collective union or non-union bargaining allowed in addition to individual bargaining, with AWAs taking precedence if both are in operation > No compulsory collective bargaining > No pattern bargaining. > Collective agreements have up to 5 year life 	Collective Bargaining <ul style="list-style-type: none"> > Collective bargaining (CB) will be 'at the heart of the ALP's industrial relations system' > CB will be based at the level of an enterprise, and parties may engage in union and non-union agreements > Industry sector bargaining has not been ruled out > Where the FWA determines that majority of employees in a workplace want to negotiate a collective agreement, an employer will be required to bargain with them > Agreements may operate for up to four years > Parties will be free to reach agreement on whatever matters suit them, i.e. no prohibited content > Parties must bargain in 'good faith' > FWA will be responsible for approving the agreement, after it has determined that it has met the 'better off overall test'. > 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 – that does not disadvantage the employee with respect to the collective agreement 	



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Industrial Action	<ul style="list-style-type: none"> > Industrial action lawful only during negotiation of a collective agreement – only on matters that relate directly to employment, and only after a secret ballot > Employers may take protected industrial action including locking out employees in response to industrial action by those employees > Unlawful for employers to pay strike pay and for employees to accept strike pay from the employer > Secondary boycotts are prohibited 	<ul style="list-style-type: none"> > Industrial action during the life of an agreement will not be protected > Industrial action will only be protected when it has been approved by a majority of employees in a mandatory secret ballot > Protected industrial action in pursuit of pattern bargaining will not be permitted > Employers may take protected industrial action including locking out employees in response to industrial action by those employees > Unlawful for employers to pay strike pay > Current secondary boycott arrangements will be maintained 	<ul style="list-style-type: none"> > The maintenance of secret ballot provisions, ban on secondary boycotts and strike pay, and current limits on when protected industrial action may be taken are welcome > However, unions will be able to take strike action over issues such as union rights
Right of Entry	<ul style="list-style-type: none"> > Current rules stipulate that only 'fit and proper' persons holding a permit may gain entry in specific circumstances: <ul style="list-style-type: none"> > To investigate breaches of the law, awards or agreements, where there is at least one union member relevantly covered at the workplace; > To hold discussions with employees who are members or who are eligible to become members of the union; or > To investigate OHS breaches 	<ul style="list-style-type: none"> > Current provisions governing right of entry will be maintained 	<ul style="list-style-type: none"> > The maintenance of current right of entry provisions is welcome > However, the maintenance of current provisions needs to be viewed in context of the possible expansion of award coverage > In addition, how union officials may obtain entry into workplaces in the context of the ALP's compulsory collective bargaining framework has not been detailed, and together with the expansion of awards, may provide levels of access to workplaces by union officials not seen in the last 11 years



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<p>Unfair Dismissal & Unlawful Termination</p>	<ul style="list-style-type: none"> > Small and medium businesses (100 employees or less) exempt from unfair dismissal claims > Dismissals for genuine operational reasons exempt > Dismissals during 6 month qualifying period exempt > Dismissal of an employee not covered by an award, and also earning more than \$101,300 pa exempt > AIRC able to dismiss some claims 'on the papers' > Unlawful Termination scheme applies to all employees – conciliated by AIRC heard by court 	<ul style="list-style-type: none"> > The small business exemption will be removed > For a business with 15 or more staff – dismissals during 6 month qualifying period exempt > For a business with fewer than 15 staff – dismissals during 12 month qualifying period exempt > Dismissal of an employee not covered by an award, and also earning more than \$101,300 pa exempt > A claim must be submitted with 7 days of the dismissal > FWA will review the application and call the parties together for a conference, which is informal in nature, with no formal written submissions or cross-examination > 'fair go all round' principle will apply > Primary remedy is reinstatement, unless not in the interests of the employee, or the business > In that case, compensation may be ordered, however it is capped (not specified) <p>Fair Dismissal Code (FDC)</p> <ul style="list-style-type: none"> > The ALP will develop, in consultation with small business, an FDC > The FDC will be 'tailored to the needs of small business to assist employers to meet their obligations' > Where a small business employer has genuinely complied with the FDC, the dismissal will be considered a 'fair' dismissal <p>Unlawful termination</p> <ul style="list-style-type: none"> > Separate unlawful termination jurisdiction will remain > FWA will include a separate division with jurisdiction to hear and determine claims (i.e. not Federal Court or Federal Magistrates' Court as is currently the case) 	<ul style="list-style-type: none"> > Any move away from the current system will hurt SMEs, and discourage them from taking on new employees > The removal of the 'genuine operational reasons' exemption is also disappointing > The 12 month exemption capped at 15 staff is not an adequate compromise > No apparent systemic disincentives for employees filing spurious claims in order to secure 'go-away money'
<p>Independent Contractors and labour hire workers</p>	<ul style="list-style-type: none"> > Independent contractors' legislation protects the right of business and independent contractors to freely contract, without limits being imposed by workplace relations regulation > Federal unfair contracts provisions which replace and are less unbalanced than NSW unfair contracts provisions 	<ul style="list-style-type: none"> > The ALP will introduce its own independent contractors' legislation, based on stronger anti-sham provisions and an accessible unfair contracts jurisdiction 	<ul style="list-style-type: none"> > The ALP's policy in this area will serve to restrict business' ability to freely and safely engage contractors > There is risk of deeming provisions making classes of contractors employees

