



# WORKPLACE RELATIONS

## The Future of Workplace Relations Under the New Government?

**Bus Industry Confederation - National Conference**

17 November 2019

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# OUTLINE



Government's WR agenda

Attorney General  
Hon. Christian Porter MP

What's next for unions



Implications

*Work health and safety, rehabilitation and compensation; workplace relations policy, advocacy and implementation; promotion of flexible WR policies and practices, including workplace productivity*

# TESTS FOR ANY WR CHANGES



## 5 GUIDING CRITERIA - FROM THE PM / MINISTER

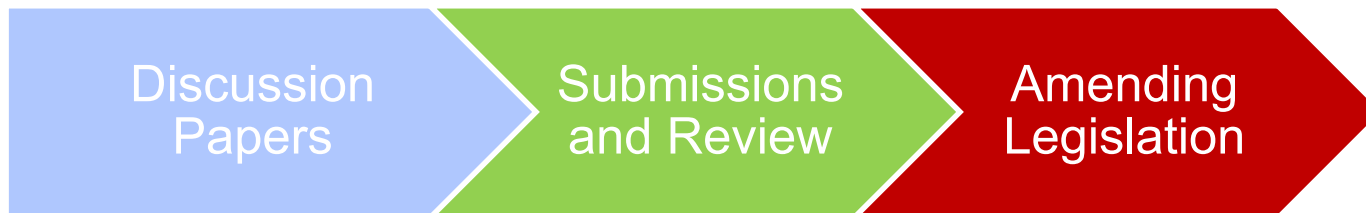
1. **Driving jobs**
2. **Driving wages growth**
3. **Boosting productivity**
4. **Strengthening the economy**
5. **(While also) Ensuring protection of employees' rights**

# WHAT GOVERNMENT IS DOING



- **Re-prosecute Bills stalled in last Parliament**
- **Implement election policies**
- **Commence an 'IR Consultation' process**
  - About how to implement Coalition policy (not whether)
  - As part of this ... Raising allied / related matters

# IR CONSULTATION PROCESS



Discussion Paper 1

- **Compliance:** Fines, criminal penalties  
Sham contracting

Discussion Paper 2

- **Greenfields Agreements:**  
Major resource industry projects

Further Papers (?)

- Small claims / recovery of wages
- Agreement process, casuals, labour hire, dismissal

# COALITION ELECTION POLICIES



Criminal sanctions

Criminal sanctions for serious / deliberate underpayment

Increased penalties

- Even higher fines – empower courts to make adverse publicity orders

Sham contracting

Even tougher penalties

Enterprise bargaining

Focus on options to improve paperwork and processes

Casual conversion

Bill before previous Parliament

Unfair dismissal

Small business fair dismissal code / responses to employee conduct

Paid parental leave

- Expand flexibility in how paid parental leave can be taken

Labour Hire Registration Scheme

National Labor Hire Registration Scheme (funded in 2019 Budget)

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# POST ELECTION MESSAGES



***“Sensible, evidence-based incremental reform that you can demonstrate that all parties benefit” - Minister Porter 27 June 2019***

## PROCESSES AND PROCEDURES

*“I am asking Christian Porter to take a fresh look at how the system is operating and where there may be impediments to shared gains for employers and employees.”*

Prime Minister Morrison 24 June 2019

## LAW ENFORCEMENT

*“My initial focus will be on the law enforcement aspects of the portfolio”*

Minister Porter 26 May 2019

*“Mr Porters new role will be focusing on...the rule of law in industrial relations”*

Prime Minister Morrison 27 May 2019

## ENTERPRISE AGREEMENTS

*“Without considering any of the tests and the legislative underpinnings, they take too long, they're too complicated, the process is slow and unfortunately trending in the wrong direction”*

Minister Porter 27 June 2019

## SMALL BUSINESS FAIR DISMISSAL CODE

*“This was a code designed at a time that is now a little while ago and workplaces, the nature of small business and the pressures and challenges they face, the way they interact with employees, has also changed.”*

Minister Porter 27 June 2019

## CASUAL ENTITLEMENTS

*“The government has got responsibility to say we appreciate this [ruling] further clarified the definition of casual employee but we think the unintended consequence of that is that someone reclassified properly ... should not be able to get both benefits of being a casual employee as well as benefits of other defined work”*

Minister Porter 26 May 2019

## WHOLE-OF-LIFE GREENFIELD AGREEMENTS AND BUILDING CODE REVIEW

*“We've got a \$100 billion infrastructure program that's being rolled out...it's only reasonable the code meets expectations.”*

Minister Porter 27 June 2019

# COMPLIANCE / UNDERPAYMENT



## Pressing WR Concern

- Dominating media on WR

## Criminal sanctions

- Jail and criminal convictions

## Increased penalties

- Increase fines for underpayment

## Accessorial liability

- Expanded liabilities / contracting out

## Enforcement orders

- Publicity orders and banning orders

## Small Claims

- Fast track to recover \$\$ owing (?)



## Report of the Migrant Workers' Taskforce

March 2019

*"The Coalition Government has **accepted in principle** all 22 recommendations of the Migrant Workers' Taskforce Report"*

**Kelly O'Dwyer, former Minister for Jobs and Industrial Relations, 7 March 2019**



# COMPLIANCE / UNDERPAYMENT



**IT IS TIME TO DOUBLE CHECK YOU ARE GETTING IT RIGHT ON PAY, HOURS, TIME AND WAGES RECORDS**



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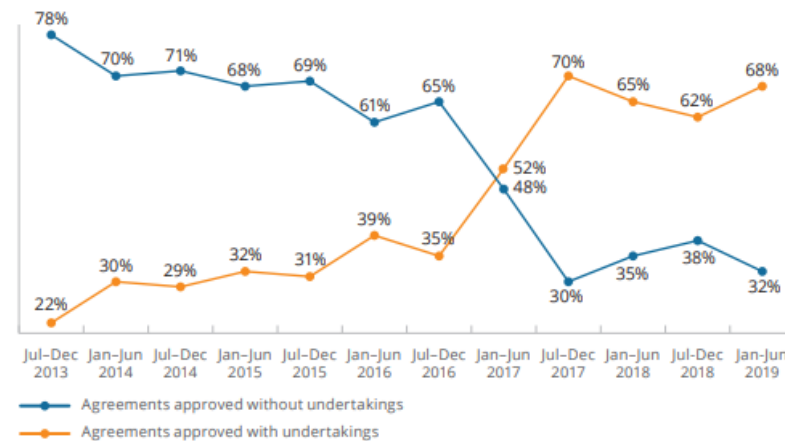
- Concern will not go away
- Will be a key WR trend 2019-22
- Coalition committed to act
- Risk jail / massive fines
- FWO will act / get new powers

# ENTERPRISE AGREEMENT APPROVALS



- **Undertakings:** required in 68% of matters
- **Timeliness:** all-time high of 122 days for EBAs with undertakings (median)
- **Coverage:** ↓ 41% / 5 years (private sector)

Figure 5: Enterprise agreements – agreements approved with and without undertakings



*"I think what we'll be looking for initially is ways inside the architecture to make the system more efficient. There's clearly, I think – particularly with enterprise agreements complexities that are not always well understood. Sometimes the system is very difficult to navigate. So we'll be looking at those types of ways to increase the efficiency of the system in the immediate term." – Christian Porter, Minister for Industrial Relations, 30 May 2019*

# CASUAL EMPLOYMENT

- Major concern for buses?
- Workpac v Skene
- Casual Loading Offset Regulations
- Legislative solution – defining a casual?
- Casual conversion



*“The consideration of the law and the meaning of what a casual employee is, is not confined to the particular facts of the case or to the mining industry.”*

**- Frank Parry, QC**

# STALLED BILLS FROM LAST PARLIAMENT



## Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017

*"There's no evidence the CFMEU has taken any efforts internally to rectify the culture of unlawfulness, which is why we think it's necessary for the integrity of registered organisations bill to make quite clear the rational, reasonable standards that are expected"*

– Minister Porter 26 June 2019



## Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017

Worker entitlement funds - construction industry concern

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# SENATE CRUCIAL TO WHAT HAPPENS



## Composition

Coalition: 35



Labor: 26



Greens: 9



Others: 6

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The Government needs the support of 4 of the 6 cross-bench Senators

## Cross-bench

Stirling Griff and Rex Patrick (Centre Alliance SA)



Pauline Hanson and Malcolm Roberts (One Nation QLD)



Jacqui Lambie (Ind, Tas)



Cory Bernadi (SA / Independent)

# WHAT GOVERNMENT IS NOT DOING



2019

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Fair Work Amendment  
(Change the Rules) Bill**

**No. , 2019**

*(Employment)*

**A Bill for an Act to further reregulate the  
Australian labour market, inflate union power and  
increase the costs of doing business and creating  
jobs in Australia**

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# What's next for Unions?

# WHAT MIGHT HAVE BEEN



Labor vows to restore penalty rates and address gender pay gap - as it happened



*"We're not putting all this effort into this because of any other reason than wanting the actual laws changed."*

Labor conference: ALP backs unions in overhaul to wages bargaining

'Second class citizens': ALP pledge to lift pay for labour hire workers

ALP vows to tackle stagnant wages and underpayment of workers

Bill Shorten promises changes to increase labour hire pay and conditions

ALP looks at right to strike for industry-wide pay claims



# CHANGE THE RULES



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# UNION PRIORITIES / GOALS WON'T CHANGE



- Limiting the definition of casual employee
- Intervention in non-union EAs
- Voting group and numbers for EAs
- Termination of EAs
- New expanded definition of employee
- Challenging content restriction for EAs
- Use of Labour Hire



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# CHANGE THE TACTICS?

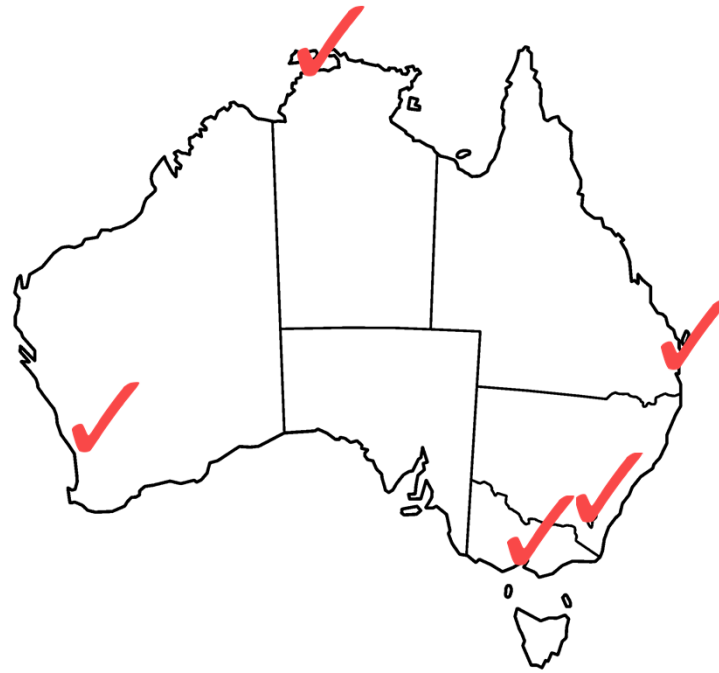


- Pursue goals through bargaining / workplace practices
- Synchronise bargaining across industries
- Homogenise WR in unionised workplaces
- Test Cases (?) – *Skene v Workpac / Mondelēz*
- Control the agenda – make their issues the issues
- The Fair Work Act is broken – how we say it is
- “Only we can fix it” / ACTU monopoly on good ideas

# USE WHAT YOU HAVE



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# UNIONS WILL PERSIST



Build their election war chest



Socialise their priorities

Use friendly academics and think tanks



Control the agenda / debate

WR is broken how unions say it's broken



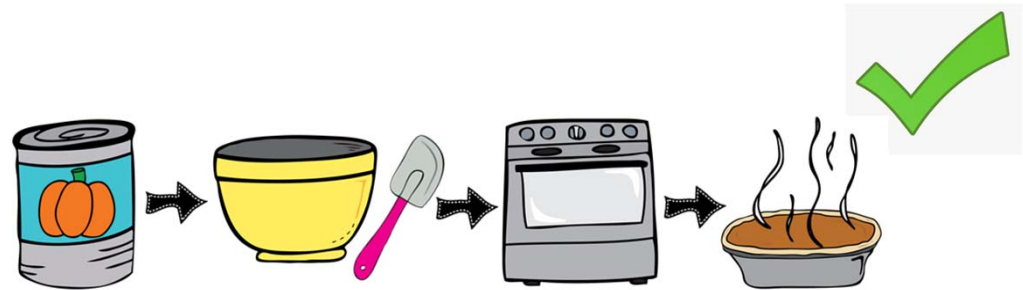
Legislate from opposition

Pressure ALP not to change policy

**What does  
this mean?**

# GRADUAL - EVIDENCED CHANGE

- Gradual / sequential
- Evidence based change
- Modest aspirations?
- Beat scare campaigns
- Prioritise trust + confidence in WR change
- Jobs + economy critical



## 2 FUTURES FOR WR 2019-2022



- Start to make positive changes
- Sky does not fall in
- Creates scope for further reform
- Focus comes back to mutual trust / our actual relationships at work
- WR again helps ↑ productivity

- No change / no real change
- Changes moderated / low impact
- Changes dominated by TU concerns / ACTU agenda
- Changes successfully attacked
- WR change then even less likely
- Further ↓ legitimacy of business



## 2 FUTURES FOR WR 2019-2022



- System becomes more useable
- More certainty in bargaining
- Better enforce expected conduct
- Become more productive
- WR helps you innovate / compete
- Compliance / certainty improves

- Even less reason to bargain
- More exposed to union claims
- Caught up in industry campaigns
- Low trust / high surveillance of bus
- Law → even more confusing
- Even higher costs
- Less scope for casuals / lab hire

# IMPLICATIONS FOR YOUR BUS?



- Don't count on the law changing
- Know your business / your WR priorities
- Have a bargaining agenda
- Engage with your people = always critical
- Pursue your day-to-day culture
- Work with BIC as system changes
- Attend industry events – help BIC advocate
- **Get compliance / pay right !! - Check it !!**

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# WHAT ACCI WILL BE DOING



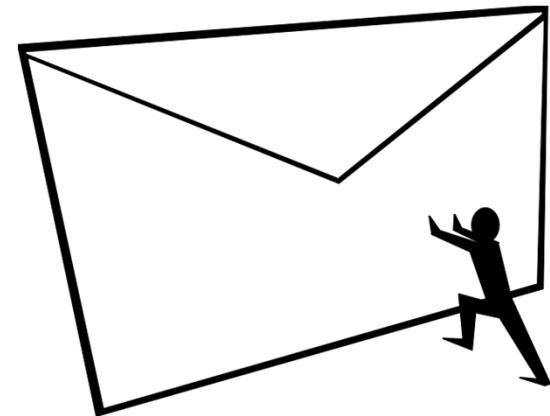
Government

Senate X Bench

Tribunals + Courts

Opposition

Public Opinion





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