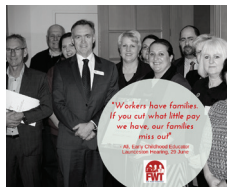




KEY ISSUES PAPER

OCTOBER 2016





FAIR WORK TASKFORCE

FEDERAL LABOR OPPOSITION ISSUES PAPER

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1. INTRODUCTION

Inequality is at a 75 year high and rising. Instead of growing inequality, Labor wants to grow quality jobs that grow our nation.

Labor wants to ensure the benefits of economic growth and prosperity are shared through inclusive growth and decent jobs with fair pay, good conditions and job security.

During the life of the Abbott-Turnbull Government wages growth has been at its lowest since 1998. At a time of record low wage growth, the Abbott-Turnbull Government attempts to reduce the minimum wage and cut penalty rates, which will hurt low and middle income earners.

Malcolm Turnbull has also failed on employment with there being fewer full time jobs than when he took over as Prime Minister, and underemployment is at crisis levels with over one million Australians who want to work more.

Underemployment, insecure work, and low wages growth is of concern to Labor because it is not good for people and it is not good for economic growth.

The purpose of this paper is to outline matters raised by participants during the Federal Labor Caucus' Fair Work Taskforce (FWT) hearings.

Labor established the Fair Work Taskforce because we believe that everyone should have the opportunity to talk about the impact of the Abbott-Turnbull Government's detrimental policies on jobs, families and communities.

The Abbott-Turnbull Government has engaged in a sustained ideological pursuit of attacking workers' rights and conditions. This is a Government that will not relent in their attempts to undermine the rights of workers.

The Abbott-Turnbull Government-funded industrial relations reviews, inquiries, committees and commissions have largely excluded workers from contributing to the debate on the policies that directly affect their livelihoods.

Since the Liberals took office, we have seen:

- The Commission of Audit recommend radical changes to current entitlements including cutting the minimum wage every year for a decade.
- A Productivity Commission Review into the Fair Work Act that recommended cutting penalty rates and other working conditions.
- The introduction and reintroduction of unfair industrial relations Bills, which will have negative effects on workers.
- A co-ordinated attack on penalty rates by deliberately placing enormous pressure on the Fair Work Commission to rule against the interests of hard working employees.
- The Abbott-Turnbull Government's submission to the Minimum Wage Review argued against increasing the minimum wage despite record low wage growth, increasing inequality and falling living standards.

When it comes to a jobs' plan for Australians, this Government has absolutely no agenda, just a slogan that they are crab walking away from.

Australian workers have been met with silence and inaction from the Abbott-Turnbull Government: No legislation to protect vulnerable workers; no plan to arrest the decline in full-time jobs; no plan to



include workers and their representatives in a national discussion about the future of work, job and income security, unemployment, increasing casualisation of work and falling living standards.

This is either a lazy and incompetent Government that has failed to respond to the review into workplace relations that they themselves commissioned, or they were too scared to take any proposed changes, such as their plan to slash penalty rates, to the Australian people.

As such they have absolutely no mandate for introducing changes to Australia's Fair Work system and any changes will be a broken promise, something this Government knows more than a thing or two about – WorkChoices 2.0.

They have, however, engaged in an \$60 million witch hunt designed to demonise the labour movement and silence any critique of their anti-worker and anti-local jobs agenda.

Malcolm Turnbull pro-rogued the Parliament and then forced the country to a double-dissolution election on the Australian Building and Construction Commission bill and the Registered Organisations bill, which they proceeded to mention just four times during the entire election campaign.

Upon scraping through the election, their first IR order of business was interfering in an issue only relevant to the State of Victoria – the CFA legislation.

A stark omission from their 25 priority policies plan was the failure to mention any policy to protect workers from exploitation.

In fact, not one 'policy' in this so-called plan was pro-worker.

The aim of the Fair Work Taskforce was to highlight some of the key workplace issues facing Australian workers, employers and industry and outline some of the many questions that the Abbott-Turnbull Government must address to ensure that Australian workers and their families are able to maintain their quality of life.

Labor will continue to talk to employers, workers, unions and employer bodies to try to understand the concerns of Australians when it comes to employment, but we won't hold our breath for the Abbott-Turnbull Government to introduce or implement a plan for Australian jobs.



2. LABOR IS LISTENING TO WORKERS

The Abbott-Turnbull Governments have shown little interest in the rights of workers and have denied them the opportunity to have a say in the important industrial relations matters that directly affect them. In contrast, the Labor Party established a Fair Work Taskforce (FWT) so that workers and their representatives, as well as other stakeholders ignored by this Government, could participate in the national conversation.

We believe that everyone should have the opportunity to talk about the impact of the Abbott-Turnbull Government's policies on jobs, families and communities, as well as important workplace entitlements like penalty rates and the minimum wage.

One of the key matters the FWT identified is that the national landscape for workers is becoming more and more insecure. Regardless of whether it's casual retail or hospitality workers fearing a cut in penalty rates or skilled workers being sacked and replaced with temporary workers employed by subcontractors, the lack of job security and a regular income is generating fear across the Australian workforce: fear that good jobs no longer exist and that all workers are expendable.

The Labor FWT held 20 hearings across regional Australia, outer metropolitan suburbs and in every capital city listening to people from all walks of life – from retail staff, public servants and manufacturing workers to lawyers, teachers and cleaners. Contributions were also received from union organisers and delegates, academics, industry groups, peak organisations, state and local governments and not-for-profit organisations.

One of the key concerns of participants was the Abbott-Turnbull Government's apparent disregard for the working men and women of Australia. This paper will outline their concerns in detail. The Abbott-Turnbull Government has failed to consult Australian workers resulting in the development of policies that will undermine their livelihoods and their sense of self-worth.

“ With the loss of so many permanent-based Australian ships, any prospect of a permanent job is non-existent now. So for someone like me who wants to buy a house or start a family there's no job security whatsoever. I could be out of a job just like that. ”

YOUNG SEAFARER - HOBART



3. KEY ISSUES

The FWT identified nine key issues affecting the lives of Australian workers. These are issues that workers have little or no control over - issues that are directly related to the Abbott-Turnbull Government's policies, legislation and anti-worker agenda.

3.1 THREATS TO PENALTY RATES

It is widely expected that the Fair Work Commission (FWC) will release its review into penalty rates in a number of awards in the hospitality and retail sectors in the coming weeks.

The FWC decision to review penalty rates and in particular the Sunday penalty rate as part of the four yearly review of modern awards under s.156 of the Fair Work Act 2009 comes hot on the heels of the Productivity Commission Review into the Fair Work Act in which it recommended reducing Sunday penalty rates for some industries.

At one of the Labor Fair Work Hearings, a small business owner told us that penalty rates account for less than two per cent of her annual turnover. She said she was happy to pay penalty rates because she wanted the best people to work on Sunday and penalty rates are fair compensation for working irregular hours.

“ After twenty five years of working nights, you start to look and feel like a vampire. Recently, I went through the family photo albums and noticed there are only two Christmases with photos of myself and my family. I realise my job has kept me away from what you should hold most dear and that's your family. Penalty rates compensate you for that. ”

AGED CARE ASSISTANT - PERTH

There is only one political party in the Federal Parliament that has made a submission to the Fair Work Commission arguing in favour of penalty rates and that is Labor.

Unfortunately, we won't hold our breath for the Liberals to suddenly understand the need to support middle and working class families, particularly when the majority of Liberals continue to argue that penalty rates should be cut.

Malcolm Turnbull and the Government have often said they have the same position as Labor on penalty rates. Until the Liberals join with Labor to make a submission to retain penalty rates nothing could be further from the truth.

Malcolm Turnbull's plan to cut penalty rates for Australia's lowest paid at a time when we are facing record low wages growth shows how out of touch he is.

The Liberals' only plan for Australia is to preside over wage cuts for working and middle income families, while giving big business a tax cut.



3.1.1 LOW PAID WORKERS RELY ON PENALTY RATES

The average weekly earnings of workers in penalty rate occupations are already exceptionally low relative to overall average weekly earnings.

In 2014, the average weekly earnings of café workers (\$423) and waiters (\$426) were equivalent to just 36 per cent of overall average weekly earnings (ABS 2016a). Checkout operators earned, on average, just one third of average weekly earnings. The average weekly earnings of fast food cooks were even lower at \$208 or just 18 per cent of overall average weekly earnings

These are the workers that will be hurt the most if the Abbott-Turnbull Government succeeds in reducing penalty rates. The impact of further reducing the wages of these people could mean they are forced into poverty despite being employed.

“ When I’ve worked on Christmas Day, I’ve listened to the kids opening presents over the phone or watched a home-made video later that evening. It’s hard on everyone but we need the money.”

FOOD MANUFACTURING WORKER - HOBART

“ I regularly work on weekends as my husband does not work at this time and can therefore care for our children (10, 14 and 19 years old). I depend on my penalty rates to make ends meet and these compensate me for lost family time. Without the additional income from my penalty rates our family life would suffer. At present my penalty rates pay for family activities and outings. To lose penalty rates would mean staying at home as we simply would not have the money to go out after paying the bills.”

RETAIL WORKER - GOSFORD

“ I work full time, working every night until close. By the time I get home, my son is in bed so I don’t get to see him. We are a single income family. We have \$50 left after all bills and all that goes to groceries. Without penalty rates we wouldn’t be able to pay the bills.”

RETAIL WORKER- LAUNCESTON

3.1.2 CUTTING PENALTY RATES WILL NOT CREATE NEW JOBS

Despite claims from some industry groups, Commerce and Industry Chambers, large employers and the Liberal-National Government, there is only anecdotal evidence that cutting penalty rates for the lowest paid workers will increase the number of jobs. Rather, it seems more likely that current employees will be required to work more hours to maintain their income.

When she was the CEO of the Australian Chamber of Commerce and Industry, Kate Carnell argued that reducing Sunday rates would help ease youth unemployment and help grow the economy (Bourke 2015). However, John Hart (2015), from the Restaurant and Catering Association contradicts this claim, arguing that if penalty rates were cut, “staff would not take home any less pay – just work additional hours.”

Hart estimated that the penalty rate reform would create 60,000 additional hours on each Sunday/ Public Holiday and that most staff would work extra hours so that their pay would not be any lower. In other words, rather than create new jobs, reducing penalty rates would increase the hours worked by existing employees without increasing their pay.



Carnell also claimed that Sunday penalty rates restrict the opening hours of cafes and restaurants (Bourke 2015). However, a submission to the Senate Economics Legislation Committee stated that penalty rates had little to no effect on overall long-term profitability of enterprises (Commonwealth of Australia, 2015).

3.1.3 WILL THE ECONOMY BENEFIT IF PENALTY RATES ARE CUT?

The Coalition Government's ideological agenda to cut the take home pay of millions of low paid Australians will have a severe impact on consumer demand, particularly in regional and rural Australia.

A report published by the McKell Institute (2014) examined the economic impact that a reduction in penalty rates would have on rural communities in NSW. Rather than being a catalyst for growth, rural economies will contract as retail workers lose between 5 per cent and 16.5 per cent of their salaries, meaning that they would have less disposable income to spend in their local communities.

Further research conducted by the McKell Institute (2015) found that if penalty rates were reduced, workers in the retail and hospitality industries would work longer hours, spend less on discretionary items and cease saving. This could mean no holidays away from home, cancelling children's activities such as dance lessons and sports and struggling to provide for their families.

“ I am a single mum, the sole provider to my 12-year-old daughter. I work as a cafe attendant and cook on the minimum wage. My hours are unsociable, with early starts, late finishes, weekends and public holidays. I have missed seeing lots of events and milestones... birthdays, Christmases, school concerts, dance recitals, netball games. But by working and missing some things, I can afford the dance lesson once a week, the netball fees and costs and I can afford fresh fruit and vegetables instead of frozen. Take away my penalties and those little extras are gone. I won't be able to afford the dance lesson with her dance instructor, whose income is derived from teaching at her small studio. Nor will I have the luxury to buy fruit and vegetables from the local Farmers Market, from the hardworking farmers that rely on people like me to make a living. So I guess at the end of it, not only will the loss of penalty rates on my shoestring budget affect myself, my family and others like me, but it will also affect the livelihood of the people that operate the small businesses I support. ”

HOSPITALITY WORKER - HOBART

Summing up, the negative effects on workers and their local communities over the longer term far outweigh the fleeting benefits of larger profits that some employers may enjoy. Cutting the take home pay of workers will impact on their lives and the communities in which they live and spend their incomes. If workers try to compensate for their reduced earnings by increasing their hours of work, they will be forced to forgo family time which can only have a detrimental effect on their children.



3.2 YOUNG PEOPLE LACK OPPORTUNITIES TO PARTICIPATE IN SOCIETY

Currently young people transitioning from education into employment are experiencing a perfect storm: the economy has slowed down, employers are turning to cheap labour, including backpackers, and there has been a collapse in university graduate positions, traineeships and apprenticeships.

Under Malcolm Turnbull's watch, apprenticeship numbers continue to plummet, down 10 per cent. Since coming to power the Liberal-National Government has cut \$1 billion from apprenticeship support, seeing apprenticeship numbers fall by more than 128,000.

Unfortunately the Government has no plan for skills and apprenticeships other than to force apprentices into crippling debt, privatise the provision of vocational education and destroy the iconic TAFE system.

Townsville FWT participants blamed a surge in the number of backpackers in the region for their high youth unemployment rate with one participant saying, "Our kids are just not getting a look in. I know cafes who recruit from the hostels".

The FWT heard that young people, regardless of their educational achievement and skills, are feeling a sense of helplessness about the future.

" I have a university degree but there is just nothing in my field. I've applied for a few jobs but failed to get to the interview stage because they are looking for someone with at least two years' experience. I'm ready to start the rest of my life but it feels like I am still trapped in a university time-warp. I am working casual retail jobs and taking any shift I can get. I'm still eating two-minute noodles and sneaking home to my parents' house to do my washing."

UNIVERSITY GRADUATE - GEELONG

The Youth Network of Tasmania (YNOT) submission to the FWT said that it is becoming increasingly difficult for Tasmania's youth to obtain meaningful, secure employment (Youth Network of Tasmania, 2014, p. 7).

A large proportion of the employment that is available to young people is casual or part time work. Casual work is often associated with limited training and qualifications, with few opportunities to undertake on-the-job training, less pay protection and no access to paid leave if it is needed.

Figures published by the ABS (2016b) illustrate the depth of the problems facing young Australians. In May 2012, the labour force underutilisation rate (the combination of the unemployment rate and the underemployment rate) for young people aged between 15 and 24 years was 25.7 per cent. By May 2016, the rate had increased to 29.1 per cent (ABS 2016b).

For a government to preside over an economy in which 615,000 young people are either unable to find a job or are employed part-time but seeking to work more hours is a tragedy, not just for those young people and their families, but also for the economy.

According to the ABS (2016c), almost 28,000 young people aged 15-19 years, and more than 35,000 young people aged 20-24 years who were employed part-time experienced a period of at least 52 weeks of insufficient work. The average duration of having insufficient work for young people aged 15 to 19 years who were employed on a part-time basis was 52.4 weeks. For those aged 20-24 years who were employed on a part-time basis the average duration of having insufficient work was 70.7 weeks.

Prior to the 2014 Budget, the Abbott-Turnbull Government cut a number of Labor's successful youth employment programs, including Youth Connections, Partnership Brokers and National Career



Development services. These were important programs designed to prevent young people falling into a cycle of long-term unemployment.

The Abbott-Turnbull Government's exploitative Youth Jobs PaTH program does not create additional jobs. Instead, it subsidises employers to place job seekers on internships without sufficient protections.

Malcolm Turnbull is promising a four-week supermarket "internship". At the election, Labor promised a six-month work placement with accredited training.

To this day the Abbott-Turnbull Government continues to push the Parliament to agree to deny young people access to Youth Allowance and NewStart Allowance for the first four weeks of any unemployment spell. It will sentence young people to a cycle of poverty when they should be getting a hand to find a job.

3.3 CASUALISATION, LABOUR HIRE AND FIXED TERM CONTRACTS

The issue of the ongoing casualisation of jobs across a range of industries was also raised during many of the FWT hearings. When permanent jobs are replaced by casual jobs, labour hire or fixed-term contracts, workers lose the right to security of work and pay.

“ Seafarers have no job security. At one site, 76 workers ring on Friday to see if there is work on the weekend and next week.”

MUA SEAFARER - PERTH

According to the Australian Bureau of Statistics (ABS 2015a), in 2014, over 2.3 million Australian workers had no access to paid leave. Although these workers are entitled to extra pay in the form of casual loadings, they have no security of tenure. Casual workers cannot take days off when they are ill or plan family holidays with any certainty that their job will still exist when they are ready to return to work. Employers are under no obligation to re-employ casual workers after a leave of absence.

For casual employees, particularly the 1.6 million who are employed part-time, it is exceptionally difficult to budget or to make any plans for the future, let alone achieve their dreams and aspirations.

FWT participants with casual employment reported being unable to undertake long-term financial commitments, such as a mortgage because financial institutions are reluctant to lend money to those employed on casual and/or irregular contracts.

“ One week I only received 4 hours' work, another time it was only 8 hours in a week. Luckily my husband owns our house outright so we don't have a mortgage or rent, but it's still a struggle to keep up.”

LABOUR HIRE CONTRACT WORKER FOR CHEMIST WAREHOUSE – MELBOURNE

Insecure casual work negatively affects workers and their families due to their unpredictable and fluctuating pay and reduced control over working arrangements. Furthermore, workers with caring responsibilities continually face the challenge of choosing between their unpaid care work and their paid work often with very little time to make alternative arrangements for those they are caring for.



“ I was employed through a labour hire agency. I get my roster on a Friday and I pay a baby sitter to watch my children. I’ve had my shifts cancelled the night before I start but I still have to pay my baby sitter.”

LABOUR HIRE CONTRACT WORKER FOR MARS PETCARE- WODONGA

Another insidious trend is that of offering fixed-term contracts rather than permanent positions. Often these contracts are rolled over but employees face a stressful period at the end of each contract unsure of whether they will be renewed or “just let go”. It’s for this reason Labor announced during the election that we would examine the definition of “casual” work and set an objective determining when a worker is “casual”.

While the ability to use casual work is a component of the labour market, it has been increasingly exploited. Workers should not be “casual” just because their employer tells them they are.

Labor will put an end to the increasing prevalence of this practice. Labor will work with all affected stakeholders including employers, employer groups and unions in developing the objective test, which will ensure certainty for all parties.

“ I’ve worked at the same university in the same department doing the same work for 17 years on fixed term contracts. After 17 years it’s hard to argue my employment is not systematic and regular. There is no reason why I need to be casual. What’s frustrating is that 20 years ago there were permanent research assistants employed by Australian universities. Today, we’re all casuals on fixed-term contracts.”

UNIVERSITY RESEARCH ASSISTANT - HOBART

3.4 OUTSOURCING

There is also a developing trend of employers across the nation outsourcing work to consultants, sub-contractors and labour hire contractors. Outsourcing increases instability in the labour market, undermines enterprise bargaining and allows employers to distance themselves from the exploitation of the workers that generate profits for their companies.

Employees told the FWT hearings they had experienced anxiety linked to increasing levels of insecurity when new employees were contracted via labour hire companies on lower rates of pay and conditions. This experience was not industry or sector specific, with workers from multiple sectors raising this issue with Labor’s FWT.

“ Contract workers have slowly eroded my workplace over the last three years. When people have left or been terminated, they have been replaced with labour hire as they work for considerably less pay. It doesn’t create a very harmonious workplace. One person could be on \$17.80 an hour and the person next to him is on \$24. It has the potential to create a lot of animosity. When our agreement expired and we entered bargaining, the company said if we were not entertaining the idea of negotiating around wages and conditions, they’ll just use labour hire. The new enterprise bargaining agreement meant we lost 30 per cent of our wages.”

MEAT FACTORY WORKER- BRISBANE



“ I feel if I get called into work that I have to take it otherwise I will lose my shifts or job. Every week I worry about if I’m going to get shifts or not. I have three children to support and working one or two days a week is hard on us financially.”

LABOUR HIRE CONTRACT FOOD & BEVERAGE WORKER – REGIONAL VICTORIA

One not-for-profit organisation informed the FWT that there was a disappointing company culture developing of “hire, fire and outsource”.

“ The government should put themselves in those disadvantaged workers’ shoes, and learn about the difficulties they might face especially those treated unfairly by the factory owners as well as the contractors or agents.”

LABOUR HIRE WORKER – METRO MELBOURNE

The ongoing Carlton and United Brewery (CUB) dispute is a case in point. By outsourcing its maintenance operations, the management of CUB claim that they are no longer responsible for their workers - the same workers, doing the same job but no longer directly employed by CUB and now at the mercy of the whims of the contractor engaged by CUB (Arnold 2016).

The labour hire company at the centre of the CUB dispute, Catalyst Recruitment, set up the Catalyst Services Enterprise Agreement 2014 which was voted on by just three casual workers in Perth before being approved by the Fair Work Commissioner (ABC 2016). The “agreement” applies to jobs in manufacturing and associated industries, building and construction, joinery and building trades, electrical and communication fields and mining.

Dave Oliver, the Secretary of the ACTU, labels this approach to enterprise agreements “gaming the system”. Rather than negotiating an agreement with the relevant workforce, the labour hire company “negotiates an agreement” with just three employees and then rolls it out across the nation impacting on hundreds of workers who had no say in the “terms and conditions that govern their employment” (Arnold 2016).

These antics were rife under the WorkChoices regime and have become even more common in recent years. That’s why Labor has written to the Government asking it to support a Senate Inquiry into corporate avoidance of the Fair Work Act.

3.5 NEW LOWS IN WORKER EXPLOITATION

From the evidence presented at the FWT hearings, it appears to have become common practice for Australian businesses to class employees as contractors and pay a flat hourly rate rather than the relevant award wage.



3.5.1 SHAM CONTRACTING

Some cleaners told FWT that their employer had deliberately circumvented workplace laws by engaging cleaners as “independent contractors” with Australian Business Numbers (ABNs) despite the fact that they performed all their work for a single principal contractor; they wear the uniforms provided by the company; they operate the company’s equipment, but the company accepts little or no commercial risk.

According to Fair Work Act these cleaners could not be defined as anything other than employees and have been engaged in a “sham contracting arrangement” where their employer has attempted to disguise an employment relationship as an independent contracting arrangement. This is usually done for the purposes of avoiding responsibility for employee entitlements.

Although subcontractors inappropriately employing cleaners on ABNs face the risk of legal action for any unpaid entitlements, prosecutions are rare.

Well before the 2016 election, Labor introduced plans to increase penalties for employers who fail to pay their workers properly, to provide greater protection from sham contracting, and to make it harder for dodgy bosses to “phoenix” their companies to avoid paying workers what they’re owed.

“ We completed the employment forms and gave them to the [company] supervisor. We have [company] IDs, uniform and report to [company] supervisors. We thought we were [company] employees. It was only after we started working side by side with people who were directly employed by [company] that we discovered we were being paid much less than them.”

SUB-CONTRACTOR CLEANER - INTERNATIONAL STUDENT

3.5.2 TEMPORARY VISA WORKERS

FWT participants raised concerns about the impact that the temporary work visa program has had on employment opportunities, skills and training development for Australian workers. They were also concerned about the exploitation and mistreatment of people on temporary work visas.

Workers and not-for-profit organisations suggested that companies were choosing to employ temporary visa workers because they were cheaper, less likely to know their rights and therefore stand up for themselves. Foreign workers on various temporary work visas including back packers, international students and 457s are being exploited. Unscrupulous employers are replacing Australians with temporary migrant workers as most temporary work subclasses have no requirement for labour market testing.

“ I was not employed directly but through a contractor who set the wage rate as low as \$12.50 per hour. We had no choice but to accept the rate. Although some of us workers requested the contractor to increase their wage to \$13.00-\$14.00 an hour, the contractor didn’t care and said “if you don’t want to work just let me know.”

LABOUR HIRE FOOD PROCESSING WORKER – REGIONAL VICTORIA



The Salvation Army (2015) is calling for an end to modern slavery stating that, “It is broadly acknowledged that migrant workers are more vulnerable to exploitation for a variety of reasons, including limited language skill, limited understanding of rights, and limited social networks that could empower them to advocate for themselves”.

“ Visa workers are just being ripped off and it’s not right. These blokes have families here in Australia or back in their home country to support just like we do. It’s not fair they are paid much less and treated so appallingly by their employer. They fear speaking up because they fear being deported.”

CONSTRUCTION WORKER, BRISBANE

According to the Fair Work Ombudsman, “unlawful employment practices impose significant costs on individuals and society. These behaviours create barriers to workforce participation, weaken the integrity of the workplace relations system, distort the labour market and undermine the principles of fair competition” (FWO, 2013)

That is why Labor developed a comprehensive plan to ensure the temporary work visa system prioritises Australian jobs and addresses temporary worker exploitation. Labor believes the temporary work visa system must have robust safeguards in place to protect all workers and must not be used as a back door avenue to source cheap labour.

This means that we need policies and systems in place that support a growing economy, prioritise Australian workers, allow industry to access the skills they need, and importantly, ensure workers are not disadvantaged or exploited.

3.6 WORKCHOICES ZOMBIE AGREEMENTS

The FWT heard there are still some WorkChoices Agreements in existence enforcing low wages and poor conditions across the country, particularly in less unionised industries such as food processing, administration services, retail and any form of contract services such as call centres, cleaning and security.

Typically, employees are locked into enterprise agreements set between 2006 and 2008. In some cases, companies used the WorkChoices legislation to create enterprise agreements without having a single employee at the time of the agreement, therefore, no actual employees who were to be covered by the agreement voted to accept the agreement.

“ I, along with my union, mounted a challenge to the Fair Work Commission regarding the [company] when talks started for the renewal of our [company] Horticultural Production Employment Agreement. This agreement was registered during WorkChoices. A hearing was conducted at the Fair Work Commission and a decision was handed down stating the work force at the [company] should be paid under the Storage and Services Award. [the company] mounted an appeal and this was held during February in Sydney before the Full Bench. The decision was upheld. We are now seven months past winning this appeal and the company has chosen to ignore the decision of the Full Bench. We are still being paid the agreement rates. How can this happen?”

FOOD PROCESSING WORKER, SOUTH AUSTRALIA



The ability to pay workers substantially less than the Modern Award or market rates, not only exploits workers, it gives these companies a price edge over their competition.

Several participants also raised concerns about the Abbott-Turnbull Government's plan to introduce individual enterprise contracts and weaken safeguards fearing the return of individual workplace agreements, widely regarded as one of the worst aspects of the Howard Government's WorkChoices.

3.7 SACKED FOR BEING AUSTRALIAN

Several FWT participants told us, "I was sacked for being an Australian", highlighting a worrying trend. Enabled by the Abbott-Turnbull Government's legislation, corporations no longer have a responsibility to employ Australians, even in key industries such as shipping.

In the act of sacking almost 100 workers via text and email in the middle of the night, Hutchinson Port Holdings showed their total disregard for their employees and the families dependent upon them. The workers had been informed that the company was downsizing and that there would be some redundancies (Aubusson et al 2015), but to be notified via text that they were not required for their next, or any other, shift was totally inappropriate.

To add insult to injury, Hutchinson Port Holdings is owned by one of the world's richest men, Li Ka Shing, who reportedly has a personal fortune of \$32 billion (Aubusson et al 2015).

" I am an everyday working-class man with a fantastic wife and a beautiful nine-year-old daughter. These two ladies rely on me to provide them with a home, food, clothes and all the essentials, and I have been fortunate enough to do this successfully until now. Because I was terminated in the middle of the night by email, our family had little time to financially prepare. Our family had no time to mentally prepare. If there was proper consultation and negotiation between the company and its employees none of this would have happened."

SACKED HUTCHINSON PORT WORKER - BRISBANE

Unbelievably, this type of treatment by employers is all too common. Several community legal centres and advocacy groups told the FWT that dismissing workers or cancelling rostered shifts via text occurred all too frequently in Australian workplaces.

With this cavalier approach to the welfare of working Australians, it is little wonder that almost 1.8 million Australians are currently either unemployed or underemployed (ABS 2016b). That is 1.8 million workers and their families existing on either meagre welfare payments or low incomes that fluctuate on a weekly basis.

Should we be surprised by the actions of corporate Australia when the Liberal-National Government shows such little regard for its own workforce?



3.8 LEADING BY EXAMPLE?

The way that the Abbott-Turnbull Liberal Government treats its own workforce says a lot about their understanding of workplace relations.

The Abbott-Turnbull Government's failure to genuinely engage in enterprise bargaining with its own workforce is another reminder of how ideologically driven they are. The use of a rigid 'bargaining framework' has made a mockery of the 'good faith' principle enshrined in the Fair Work Act.

Nadine Flood, the Commonwealth Public Service Union (CPSU) National Secretary, points out that the Abbott-Turnbull Government's policy is to remove consultation rights and a fair performance management system as well as family-friendly conditions such as reasonable control over working hours (Belot 2016) and domestic violence leave, suggesting that the Abbott-Turnbull Government is not just anti-worker it is also a non-family-friendly employer.

Instructing Departmental Secretaries to take a 'no compromise' stance, the Abbott-Turnbull Government has insisted that the working conditions of public servants, those fortunate enough to still be employed, are to be sacrificed for a paltry 1.5 per cent pay increase (Towell 2016).

In every state and territory and across various government agencies and departments, Labor's FWT heard evidence that the Bargaining Framework is very restrictive and impedes the ability for bargaining committees to genuinely bargain in good faith as is enshrined in the Fair Work Act.

“ The Department's bargaining reps effectively told us to identify the employment condition they could cut to offset any wage increase. This is not good faith bargaining.”

COMMONWEALTH GOVERNMENT BARGAINING REP – CANBERRA

If the Abbott-Turnbull Government is successful in cutting the real wages of public servants and stripping back the conditions of their employment, they will be setting the standard - a very low standard - for all other employers.

Rather than being a model employer and setting the highest standards by promoting workforce participation and supporting workforce diversity, the Abbott-Turnbull Government is leading the race to the bottom, encouraging the more militant sections of corporate Australia to undermine the very people that keep their corporations operating.

Labor will have an approach to enterprise bargaining that actually improves the capability of staff and provides fairness in the workplace, work-life balance and secure, meaningful jobs. An approach that does not force agencies to strip rights and conditions. Labor will ensure our hardworking public service delivers better services and policy capability for our community.

3.9 DEMONISING UNIONS

The principles of the right to organise, freely associate, and collectively bargain have long been recognised in international conventions to which Australia is a signatory (International Labor Organisation, 1948).

These principles rely on employees' access to representation and the ability of union delegates to perform their role unencumbered by obstruction from the employer. However, in practice, Australian workers are regularly prevented from freely accessing such representation.



“ When a union organiser or delegate is talking to an educator at my centre, the director stands right next to us (educators). It’s intimidating. They’re not going to join the union with the director right there saying, “I wouldn’t if I were you.”

ECLC EDUCATOR - TOWNSVILLE

In workplaces and industries where there appears to be widespread breaches of basic employment rights, workers who become active in their union are targeted by their employer.

“ From the day we joined the union, things at work became more complex and harder. The manager started to put pressure on us and said that we were not working hard enough. One of our friends was terminated. He was the first to join the union and he encouraged us to join the union to fight for our pay and our rights. They suspended him for a week and then sent him a letter to say he was terminated and not to come back.”

SUBCONTRACTOR CLEANER – MELBOURNE

Labor has always been the political party to advocate for a fairer, safer workplace and critical to achieving this goal is Australian workers having the right to workplace representation enshrined and reinforced by law.

Workers have fundamental democratic rights to representation in the workplace, to freedom of association, to collectively bargain, and to organise and be represented by their union.

Unions play a critical role representing workers in a democratic society. It is unions we have to thank for superannuation, universal health care, the eight hour day, and the minimum wage amongst many other achievements.

3.10 COMPANIES BEHAVING BADLY

The exploitation of migrant workers highlights the changing industrial landscape. In the past year, the media have exposed the unscrupulous behaviour of several large Australian companies.

One example is the ongoing saga of the 7-Eleven chain. Although investigations by the Fair Work Ombudsman into the operations of 7-Eleven have been ongoing since 2008-2009 (FWO 2016), it wasn’t until 2015 that the story captured the attention of the media and the Australian public.

Former 7-Eleven employees told Labor’s FWT they “knew what was happening was wrong but they needed the job.” Others said that they “feared deportation” or being “physically attacked” if they spoke to a union representative or a Government agency about what was happening.

The exploitation of international students by franchisees caught out by investing in an unsustainable business model overseen by billionaires Russell Withers and Beverly Barlow has yet to be settled (Ferguson et al 2015) with fresh investigations launched by the Fair Work Ombudsman in August 2016 (The Herald 2016).

Although 680 current and former employees have been repaid \$26 million of their stolen wages, franchisees have resorted to new forms of exploitation in order to keep their shops open (SMH 2016). The business model is built on the exploitation of workers so unless a new business model is developed, the exploitation will continue. The theft of millions of dollars in workers’ wages has yet to be declared a crime.



Sadly the 7-Eleven saga is but one of the many cases of worker exploitation. In 2014, Coles admitted that the contractors collecting their supermarket trolleys were vulnerable to exploitation (Fair Work Ombudsman 2014; Tham 2016).

There is also evidence that labour hire companies are exploiting temporary work visa holders working on farms and in food processing factories that supply major supermarket chains and fast food chains (Jasper 2015; Meldrum-Hanna et al 2015).

Despite the Abbott-Turnbull Government's rhetoric that visa fraud would be investigated and that businesses hiring illegal workers would face criminal charges (DeBono 2015), there has been little in the way of action. The rorts continue, the exploitation of workers continues and the Coalition Government feigns surprise that 'slaves' exist in Australia.

Companies are able to behave badly because Governments and regulators allow it and because unions are all but sidelined. When unions do act on behalf of exploited workers, they are threatened with legal action.

That's why Labor announced a policy to protect the pay and conditions of vulnerable workers through a national licensing regime for the labour hire industry, which will make it unlawful for labour hire companies to operate without a licence and for other firms to knowingly or recklessly use an unlicensed labour hire company

Breaches of these licensing laws would carry a penalty of \$216,000 for individuals (1,200 penalty units) and \$1.1 million (6,000 penalty units) for a body corporate.

Recent examples of wrongdoing by dodgy labour hire companies that engage in unscrupulous practices and rip off workers is tarnishing employers that do the right thing, and is undercutting wages and conditions.



4 THE BROADER CONTEXT

The concerns raised by the FWT participants are part of a broader set of issues that Australia needs to acknowledge and to work towards overcoming. Australian workers are experiencing threats to their livelihoods and their identities as they struggle to remain employed and earn a living wage.

4.1 INEQUALITY IN EMPLOYMENT AND INCOME

There are worrying signs that Australia is becoming a more unequal society with a growing divide between the haves and have-nots. Inequality is at a 75 year high and rising. With an increasing proportion of jobs being part-time jobs, workers can no longer be certain that they will have the opportunity to work enough hours to support themselves and their families, let alone put aside some money for a rainy day or their retirement.

For much of the 20th century, Australian workers were guaranteed a minimum wage set by the Court of Conciliation and Arbitration/ Commonwealth Conciliation and Arbitration Commission.

In 1907, Justice Higgins, the Chair of the First Commonwealth Court of Conciliation and Arbitration, set the minimum wage by calculating the income an unskilled man would need to support a wife and three children. Companies were expected to pay their workers a living wage to ensure that the workers and their children, the next generation of workers, received the basic necessities of life: housing, food, education and healthcare.

The dismantling of these protections has created the conditions for the emergence of the working poor in Australia, people who are employed but unable to earn a living wage. According to ACOSS (2014), in 2014, one third of the 2.5 million Australians (830,000) living in poverty were living in waged households, that is, households who derived their main income from wages - the working poor.

In 2010, the minimum wage for employees working 38 hours at ordinary time was \$569.90 per week and in July 1 2016, the minimum wage for employees working 38 hours at ordinary time was \$672.20 per week - an increase of 18 per cent over the six-year period (ABS 2016d). In May 2010, average weekly earnings for 38 hours at ordinary time were \$1250 and in May 2016 average weekly earnings for 38 hours at ordinary time were \$1516, an increase of 21 per cent.

In 2010, workers on the minimum wage earned just 46 per cent of average weekly earnings and by 2016 they were earning just 44 per cent of average weekly earnings. In other words, in relative terms they started from a very low base and have fallen further behind. Yet in 2014, the Commission of Audit, set up by the Abbott-Turnbull Government in 2013, recommended that the minimum wage be cut to just \$488.90 per week.

Meanwhile, CEOs earn, on average, 93 times as much as unskilled workers and are commanding huge bonuses despite wages growth slowing dramatically (Wilkins & Williams 2016). CEO salaries and bonus payments cast a long shadow over the meagre wages of our lowest paid workers.



4.2 THE GREAT WAGE IMPLOSION AND FALLING LIVING STANDARDS

Despite Government claims that Australia faces a wages explosion, total wage growth over the last 12 months was just 2 per cent - the lowest on record (Wilkins & Williams 2016). In contrast, wages growth averaged 3.5 per cent during the Rudd-Gillard Governments, despite the global financial crisis which gave us the most difficult global economic conditions in 70 years.

After adjusting for inflation, using the Consumer Price Index calculator on the ABS website (ABS 2016e), average weekly earnings increased by just one dollar from \$1160 in May 2013 to \$1161 in May 2016 (ABS 2016b). The average weekly earnings of workers in the Retail Trade sector stagnated at around \$693 (adjusted for inflation) whereas the average weekly earnings of workers in the Accommodation and Food Services sector declined from \$567 to \$541 (adjusted for inflation). In other words, some of our lowest paid workers are surviving on \$26 a week less now than they were three years ago.

Therefore, it is little wonder that living standards have fallen by 3.5 per cent since the Coalition came to power in 2013 (ABS 2015c). Underemployment, insecure work, inadequate wages and poor working conditions are threatening living standards for many Australians. For generations, Australian labour market policy has focussed on maintaining the critical link between jobs and improving living standards.

Despite a quarter-century of continuous economic growth, inequality is at a 75-year high undermining living standards and social cohesion.

As this paper has outlined, the reality for so many Australian workers is that low wages growth, insecure work and the constant fear of underemployment is making it harder for them and their families to enjoy stability in their lives.



5 SUMMING UP

One of the key matters the FWT identified is that the national landscape for workers is becoming more and more insecure. Regardless of whether it's a casual retail or hospitality worker fearing a cut in penalty rates, or skilled workers being sacked and replaced with temporary workers employed by subcontractors, the lack of job security and secure income has become a dominant fear across the Australian workforce.

Evidence presented to the FWT suggested workers were experiencing a shift to being viewed as labour cost units on company balance sheets rather than as workers with families and mortgages to pay.

The casualisation of jobs across a range of industries was also raised during many of the FWT hearings. When permanent jobs are replaced by casual, labour hire and/or fixed-term contracts, workers lose the right to security of work and pay.

Despite the growing body of evidence, the Abbott-Turnbull Government has done absolutely nothing to deal with the unscrupulous practices of labour hire companies.

For more than three years the Abbott-Turnbull Government has had the chance to legislate changes to ensure workers do not get ripped off. They failed to do that and their election policy was a lame attempt to trick Australians into believing they care about protecting Australian workers.

Another crucial issue for workers is the fear of losing their penalty rates. Workers were concerned about the Abbott-Turnbull Government's clear intention to slash penalty rates.

FWT participants recalled how they worked on Christmas Day year after year foregoing precious time with their families. It is, however, the penalty rates for working on public holidays that ensure that they can pay their bills and keep their family home.

Understanding this, Labor has taken the unprecedented step of making a submission to the FWC arguing that penalty rates must not be cut. Labor understands that for many workers, weekend penalty rates are not a luxury, it's how they pay their bills and put food on the table.

Malcolm Turnbull and his Liberals have refused to join Labor in a submission to the Fair Work Commission arguing against cuts to penalty rates. At the time of writing, there is still time for them to do this, but they have shown no indication they are even considering this.

The challenge for Mr Turnbull will be to outline how the Liberal-National Government will compensate hospitality and retail workers affected by any decision to cut penalty rates. If the FWC recommends cutting penalty rates, Mr Turnbull cannot and should not stand by and allow Australian lowest paid workers to be forced into poverty because their take home pay has been slashed.

Apart from dismantling the legal protections of workers' rights, the Abbott-Turnbull Government's anti-worker agenda is demonising unions and their members. Many participants provided examples of intimidation and warnings of the consequences of having any contact with unions - the same unions who have a very important and legitimate role in representing employees in the workplace, particularly in relation to health and safety matters.

This paper has outlined how the Abbott-Turnbull Government is leading the employer push to undermine the livelihoods of Australian workers and their families.

The Government's failure to genuinely engage in enterprise bargaining with their own workforce is another reminder of how ideologically driven this Government is when it comes to workplace relations. The stripping of rights and conditions, on top of job cuts and pay freezes, is a despicable way for the Abbott-Turnbull Government to treat its hard working public service employees and this behaviour must stop.



The Abbott-Turnbull Government must also be challenged to develop and outline their plan to address two issues that are undermining Australian living standards and increasing inequality: the “great wage implosion” and the destructive aspects of insecure work.

Denying hard-working Australians their dignity by reducing their incomes even further is hardly exciting or innovative. It harks back to the era when people were merely seen as extensions of the machines they were operating.

Buoyed by the Government’s policy and anti-worker political propaganda, it is not surprising that corporate Australia have become engaged in a race to the bottom on employment rights, conditions and pay.

During their first term, the Abbott-Turnbull Government repeatedly prioritised the voices of other parties, rather than those most affected by the Government’s workplace relations agenda: the workers. Consequently, workers are rightly concerned that their voices are not being heard.

Meanwhile, Labor is listening and developing policies that will ensure that every Australian who wants to work is afforded the opportunity and is employed in a safe workplace, with 21st century, not 19th century, working conditions; has security of tenure; and is paid a decent wage.

Labor will continue to talk to a range of stakeholders including workers, employers, employer representatives and unions to develop an understanding and policy response to the current challenges facing the jobs market.

Labor will continue to expose the devastating impact that unemployment and underemployment is having on families and their household budgets. We will also explore why Australian’s are simply not being hired in full-time secure jobs.

We need to stem the rise in underemployment, casualised labour, and depressed wages, which are making it harder for families to maintain their standard of living or even make ends meet.

Rather than engage in a race to the bottom on wages and conditions and an unfettered market approach that undermines strong safety nets, Labor will invest in the high-skilled, high-wage, decent jobs of the future.



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APPENDIX 1.

The voices of the workers, their employers and other key stakeholders were gathered at Labor's Fair Work Taskforce Hearing held across the country in the second half of 2015.

FAIR WORK TASKFORCE MEMBERS included

Lisa Chesters MP (Chair), **Senator Chris Ketter** (Secretary), **Hon. Brendan O'Connor MP** (Shadow Minister for Employment & Workplace Relations), **Hon. Julie Collins MP** (Shadow Minister for Employment Services), **Senator Catryna Bilyk**, **Rob Mitchell MP**, **Maria Vamvakinou MP**, **Chris Hayes MP**, **Sharon Claydon MP**, **Senator Sue Lines**, **Terri Butler MP**, former **Senator Jan McLucas**, **Hon. Warren Snowdon MP**, **Hon. Ed Husic MP** and **Clare O'Neil MP**

THE FOLLOWING MEMBERS & SENATORS ATTENDED HEARINGS:

Former **Senator Nova Peris**, **Andrew Leigh MP**, **Gai Brodtmann MP**, **Senator Katie Gallagher** and **Senator Helen Polley**

APPENDIX 2.

Labor would like to thank the following organisations and individuals for their contribution towards the development of this issues paper:

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