

August 2010

Election 2010 media briefing: What is Tony Abbott cooking up with employers?

The 'real' Tony Abbott has been in hiding in the 2010 election. This is the Tony Abbott who laid the foundations for WorkChoices when he was Workplace Relations Minister in the Howard Government.

But once the election is out of the way, the real Abbott is certain to return.

Employer groups are on the record as seeking major changes that would take us backwards to WorkChoices. And the real Tony Abbott is the one who says he will listen to employers, not working Australians, on WorkChoices.

During the election, the Liberals have sought to hide their real intentions by denying they will make changes to legislation but the fact is they could still make major changes to workplace relations through other means. Even the extreme right wing organisation the HR Nicholls Society has confirmed that changes to regulations could deliver big businesses all the deregulation and greater power for employers they seek. (*The Age*, 13 August)

TONY ABBOTT – LISTENING TO EMPLOYERS NOT WORKERS.

At the 2007 Federal Election, Australians voted against the extreme WorkChoices policy of the Howard Government. Julia Gillard, as Minister for Workplace Relations, abolished WorkChoices and replaced it with the Fair Work Act, which abolished unfair individual contracts, restored unfair dismissal rights to 1.4 million workers, and protected wages and working conditions like annual leave, sick leave and penalty rates.

Labor has promised to maintain the Fair Work Act. But employer groups loved WorkChoices and continue to want ways to undercut the rights enshrined in the Fair Work Act. They have continued to call for the re-introduction of the extreme workplace laws that Australians rejected in 2007. And their objective is to have a Coalition Government elected that will begin to dismantle the Fair Work Act.

With the election tightening and the Coalition a good chance to win, business is ramping up the pressure. Just what has Tony Abbott promised employers behind closed doors?

EMPLOYERS WANT A RETURN OF WORKCHOICES.

Employer groups are continuing to push for a return to the worst aspects of WorkChoices.

Across all the key issues – unfair dismissal, minimum standards (like wages, leave and penalty rates), collective agreements and individual contracts – employers are pushing Tony Abbott to change Labor's Fair Work system and return to WorkChoices.

The ACTU has analysed hundreds of pages of policy documents, submissions, media releases, news reports and other public statements to identify the areas where employer and business groups are pushing for change (footnotes are attached).

WHAT EMPLOYERS ARE ASKING FOR

In essence, employer groups are calling on Tony Abbott to go backwards on workers' rights and restore virtually all the power employers were given under WorkChoices. This can be achieved without the changes to legislation he has appeared to rule out. Given he says he will "listen to business" this leaves some major questions for Tony Abbott:

- Employers want a unfettered right to hire and fire as they see fit.

Will Tony Abbott rule out any changes to the Small Business Fair Dismissal Code?

- Businesses want to cut or cash out minimum employment standards such as penalty rates, minimum pay, sick leave, annual leave, overtime and public holiday pay.

Will the Liberals maintain a robust safety net of the current National Employment Standards and awards and oppose employer moves to undermine them?

- Employers want to wind back workers' rights in redundancy situations.

Will Mr Abbott guarantee to maintain the current minimum redundancy entitlements for workers, including rights to consultation and rights to be considered for redeployment? Will he rule out using regulations to prevent workers from reaching agreement with their employer on more generous redundancy entitlements?

- Major employers are pushing to undermine collective bargaining and promote individual negotiation of pay and conditions.

Will the Liberals rule out the increased use of or scope for individual contracts or individual flexibility clauses in agreements or awards or other mechanisms?

- Big and small businesses alike are seeking to cut workers' access to advice and representation by their union.

Does Mr Abbott now repudiate his abuse of government funding when he was a Minister to reduce workers' rights to union representation and guarantee he will maintain workers' collective rights?

Strip unfair dismissal rights from workers

Business groups (including the BCA, AMMA, ACCI, MBA, CSBOA, VACC, ARA, NECA) want up to 5 million workers employed in small and medium sized business to be excluded from unfair dismissal protection.

There have also been calls for 1 million long-term casual workers to be excluded completely (ARA), and for daily hire workers in the construction industry to be excluded (a further 110,000 workers) (AMMA).

Some employers want all workers to have to prove their case upfront before the employer responds, and want Fair Work Australia to ignore dismissals that are unfair because of their effects on the worker (AMMA, ACCI). Some even want to remove the right to re-instatement even if a worker proves they were unfairly dismissed (ACCI) and a reduction in the compensation that can be awarded (Ai Group).

Cut minimum standards

Employer organisations (COSBOA, NRA, RCA) want to undermine the minimum standards for workers by having a different, lower standard of wages and entitlements like leave and penalty rates apply to small business.

In the retail sector, which employs more than 1 million Australians, employers (ARA, ANRA, ACCI) want to reduce minimum standards such as penalty rates and minimum engagement periods from Awards. VECCI has applied to vary 81 modern awards to allow the minimum hours provisions to be reduced.

Other employer organisations (AMMA, ACCI) are also seeking changes to the National Employment Standards that would let employers require workers to work unreasonable hours, to deny requests for flexible working arrangements, and to dock workers' pay if they fall sick on a public holiday. Others want "cash-out" of core conditions like annual leave and sick pay.

Many employer groups want whole groups of employees excluded from the minimum protections of Awards, including labour hire workers (ACCI) and those on middle incomes (Ai Group). Various employers (including the BCA, ACCI, Ai Group) want to make "exceptions" to the safety net, including allowing agreements to override minimum conditions like leave and penalty rates if a worker "chooses" to be paid less.

Remove redundancy protections

Business (BCA, MBA, ARA, ACCI, Ai Group) also want employers to be exempted from the requirement to try and redeploy workers to avoid job losses and redundancies. They also want to water down an employer's obligation to consult workers about impending redundancies (ACCI, MBA, VACCI, Business SA). Some groups say that there should be no redundancy benefits for workers in small business under any circumstances (ACCI).

Reintroduce Individual Contracts

Most employer groups (BCA, ACCI, MBA, AHA, CCF, AHA) continue to call for the reintroduction of statutory individual contracts like AWAs, possibly the worst and most unfair aspect of WorkChoices. Under WorkChoices, thousands of workers were pushed onto AWA individual contracts that resulted in cuts to pay and conditions.

- 70% lost shift loadings
- 68% lost annual leave loadings
- 65% lost penalty rates
- 49% lost overtime loadings
- 25% no longer had public holidays

Many employer groups want an extension to the flexibility arrangements in the Fair Work Act to allow for the undermining of minimum conditions including penalty rates, public holiday pay, and annual leave. Business wants these individual job contracts to be offered to workers 'take it or leave it' as a condition of employment, like the old AWAs (Ai Group).

Right to Representation

Business has a consistent agenda to reduce the rights of workers to receive representation at work if they need it, including around unfair dismissal, enterprise bargaining and the implementation of change at work (Ai Group, AMMA, ACCI, BCA).

IN THEIR OWN WORDS

Business/employer groups want changes to the Fair Work laws

“There are areas in the Fair Work Act where it has been demonstrably shown that amendments are required.”

Heather Ridout, CEO of Australian Industry Group, AIG media release, 18 July 2010

“The biggest problem is the new standards are mostly one-size-fits-all. There is almost no flexibility for businesses of different types or different health to make changes.”

Peter Anderson, CEO of ACCI, ACCI media release, 1 January 2010

“My office has been in discussions as recently as today with Opposition Leader Tony Abbott’s office, on the topic of IR and what small business needs moving forward.”

Scott Driscoll, National Executive Director of United Retail Federation, media release, 19 April 2010

“AMMA has identified, through its members’ experiences, serious deficiencies with the operation of the FW Act. Its industrial agreement making options and processes are not conducive to maintaining or expanding workplace efficiencies, which have been achieved in the sector over the past decade of industrial relations reform. As such, the ability of employers to engage directly with their workforce – where most efficiencies can be gained – is being eroded by the FW Act.”

Steve Knott, CEO of AMMA, media release, 11 August 2010

“Ongoing reform is a necessity for a resilient economy. The workplace relations system must not put up barriers to labour market efficiency and flexibility.”

Wilhelm Harnisch, CEO of Master Builders Australia, media release, 17 July 2010

“It is essential that parties remain open to amending the legislation if experience reveals its shortcomings – and some shortcomings are already evident, such as the transfer of business provisions.”

Statement by Wal King, President of Australian Constructors Association, media release, 29 July 2010

“VECCI members continually provide anecdotal evidence of the lack of flexibility in being able to engage employees in the existing context of the minimum safety net prescribed by the *Fair Work Act 2009*.”

Alexandra Marriott, VECCI Manager – Workplace Relations Policy, media release, 9 August 2010

The operation of the unfair dismissal laws will also need to be closely monitored . . . to prevent them becoming a ‘free for all’ mechanism for aggrieved employees to extract more money from their employer on their way out the door, as had often been the case in the past.

ACCI Review, May 2010

Ms Ridout said the next government would need to "keep an open mind" about introducing legislative change in a number of areas.

'Small business a victim of politics', *The Australian*, 19 July 2010, p. 1

Peter Anderson, the chief executive of the Australian Chamber of Commerce and Industry, said given the workplace laws were only a year old, "both the government and the opposition need to keep an open mind about making necessary changes to the system as it evolves".

'Small business a victim of politics', *The Australian*, 19 July 2010, p. 1

Gary Black, executive director of the National Retail Association, said small business would like to see the ALP and the Coalition acknowledge the need for legislative changes to Labor's award overhaul.

'Small business a victim of politics', *The Australian*, 19 July 2010, p. 1

Brambles and Bluescope chairman Graham Kraehe said there was a need to address flaws in Labor's Fair Work Act, and criticised the government and the Coalition for not committing to changes during the life of the next federal parliament.

'Big Business lashes timid leaders – Reserve Bank director and corporate chiefs slam risk-averse parties and call for IR reforms', *The Australian*, 20 July 2010, p. 1

"Both sides ought to be pausing and acknowledging that the current legislation is not perfect." (quote from Gary Black)

'Big Business lashes timid leaders – Reserve Bank director and corporate chiefs slam risk-averse parties and call for IR reforms', *The Australian*, 20 July 2010, p. 1

Wesfarmers chief executive Richard Goyder has urged the Federal Government to rethink its industrial relations changes, warning the new regime threatened to destabilise the country's already fragile economic recovery by increasing workplace disputes and red tape.

***The West Australian*, 11 November 2009**

[The CEO of COSBOA Peter] Strong, for instance, believes there is a strong case for a separate modernised award for the small-business sector.

'Business wants IR changes but Abbott says no', www.smartcompany.com.au, 19 July 2010

Strong says COSBOA would like to particularly see changes made to unfair dismissal rules for micro businesses and also wants the Government to consider the introduction of a special award for small businesses.

'Business wants IR changes but Abbott says no', www.smartcompany.com.au, 19 July 2010

AND THE LIBERALS' RESPONSE

“If we are going to have productive workplaces, we can never bring down the curtain on workplace reform.”

Tony Abbott, ABC 7.30 Report, 27 July 2009

“Workplace reform was one of the greatest achievements of the Howard Government.”

Tony Abbott in House of Representatives, 13 August 2009

“The concept that every worker and every employer can somehow be put into a “one size fits all” regulatory straight jacket is to misunderstand the dynamic nature of the modern employment relationship and the needs of workers and their employers in the 21st century.”

Coalition Economic Principles, May 2010, p. 21

“More and more workers and employers are seeking to structure their arrangements to suit their own specific requirements . . . The Coalition’s workplace relations policies will seek to enhance this right; allowing each worker to determine a tailor made employment opportunity with their employer with the protection that workers will be better off overall.”

Coalition Economic Principles, May 2010, p. 22

“The Labor Government’s changes to our workplace laws, whilst including some welcome initiatives, has in fact introduced an element of excessive regulation which has stifled the aspiration of workers, their unions and employers from negotiating for their mutual benefit.”

Coalition Economic Principles, May 2010, p. 22

“The ‘fair dismissal code’ will create more problems for small business people.”

Tony Abbott, Liberal Party media release, 4 January 2010

“We’ll seek to take the unfair dismissal monkey off the back of small businesses which are more like families than institutions. We’ll make Labor’s transitional employment agreements less transitional and Labor’s individual flexibility agreements more flexible.”

Tony Abbott, Budget Reply speech, 13 May 2010

“Look, I think if we have reasonable individual agreement arrangements, if we keep the unfair dismissal monkey off the back of very small business, if we have a strong cop on the beat, like the ABCC, I think we’ll have a productive, a fair and a free workplace.”

Tony Abbott, Q&A ABC-TV, 5 April 2010

Media contact:

Mark Phillips (ACTU) ph (03) 8676 7266 or 0422 009 011; mphillips@actu.org.au

ATTACHMENT A: WHO's WHO?

BCA	The Business Council of Australia is the big business lobby, representing Australia's most powerful companies like the big banks.
ACCI	The Australian Chamber of Commerce and Industry is the peak council of Australian business associations and represents thousands of business through Chambers of Commerce in each State.
AMMA	The Australian Mines and Metals Association is the industrial relations lobby group for employers in the resources and energy sectors.
Ai Group	The Australian Industry Group is a prominent industry body representing employers in the manufacturing, construction, engineering, and service industries.
NFF	The National Farmers Federation.
COSBOA	The Council of Small Business Associations is the peak body representing small business.
MBA	Master Builders Australia is the major Australian building and construction industry association
NRA	The National Retail Association is a peak employer body representing retail, fast food and service businesses
ANRA	The Australian National Retailers Association represents the big supermarkets and other chains.
AHA	The Australian Hotels Association.
RCA	The Restaurant and Catering Association.
CCF	The Civil Contractors Federation represents civil construction employers.
VACC	Victorian Automobile Chamber of Commerce.
VECCI	Victorian Employers' Chamber of Commerce and Industry.
NECA	The National Electrical and Communications Association.
ACA	Australian Constructors Association, represents the nation's largest construction contracting companies.

ATTACHMENT B: SOURCES

- BCA www.bca.com.au
- ACCI ACCI Review, May 2010 No 160
(http://www.acci.asn.au/text_files/review/2010/r160_May10.pdf).
- AMMA AMMA, 'Finding Fairness', (July 2010).
(http://www.amma.org.au/home/publications/Summary_FindingFairnessReview.pdf)
AMMA Letter to Kevin Rudd and Tony Abbott (22 February 2010)
- Ai Group Ai Group, 'Fair Work Act Bargaining Provisions – The first 12 months' (14 July 2011).
Ai Group Media Release, 'Business looks to election policies that will deliver a robust, balanced and sustainable economy' (17 July 2010).
Ai Group, 'Transfer of Business Provisions of the *Fair Work Act* (July 2010) 3.
(<http://www.aigroup.com.au>)
- MBA MBA Media Release, 'Builders' Policy Priorities for Next Government' (17 July 2010). (<http://www.masterbuilders.com.au>)
- OTHER Submissions to Senate Inquiry into FW Bill (2009) see
http://www.aph.gov.au/Senate/committee/eet_ctte/fair_work/submissions.htm
Workplace Express, 'Major Corporations Fear New Transfer of Business Rules', (August 25 2009). www.workplaceexpress.com.au
Workplace Express, 'One year on, has the Fair Work Act delivered?' (1 July 2010).
Workplace Express, 'Retailers fail in bid to cut minimum hours requirement' (09 July 2010)
The Australian, 'Bosses offer politicians priorities for coming election' (19 July 2010).
The Australian, 'Politics Triumphs over Reform' (July 21 2010).
The Age, 'Employers oppose minimum hours rule' (23 February 2010);
The Age, 'Battle of the Do Nothings' (July 22).
The Age, 'Employers seek help in settling work disputes' (10 August 2009).
The Age, 'Work law alterations 'possible' (13 August 2010)
Fair Work Australia Decisions: [2010] FWA 2762, [2010] FWA 5068