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SPEECH

INTRODUCING AUSTRALIA'S NEW WORKPLACE RELATIONS SYSTEM

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Introduction

The signature values of nations are often defined by the circumstances of their birth.

This is as true for Australia as for other countries.

And for us there's one value above all others that we identify with as truly our own.

It's the value that emerged out of the circumstances of Federation, which coincided with the industrial turbulence of the late nineteenth and early twentieth centuries.

That value is fairness. Or as we like to put it: 'the fair go'.

It inspired us to establish a society that aimed to give every citizen a decent standard of living.

And it led us in 1907 to establish the principle of the living wage.

100 years later, on election day 2007, our world had changed almost beyond recognition.

Our population had increased five-fold.

Life expectancy had increased by 50 per cent.

The proportion of women in the paid workforce had more than doubled.

Our GDP had risen from just over $500 million to more than one trillion.

And the basic wage had increased from just 2 pounds and 2 shillings per week to $522 per week.

In almost every way imaginable, our world had been transformed between 1907 and 2007.

But one thing didn't change. In both years our nation was asked to answer the question of how best to combine prosperity with fairness.

In 1907 Australians answered it by settling for conciliation and arbitration combined with protectionism.

And in the early 1990s they answered it by bringing together enterprise bargaining, an open economy and a new approach to productivity.

But in 2007 the Liberal Party invited the Australian people to forget 100 years of history and conclude the question was unanswerable; that the nation had to choose between prosperity and fairness by accepting Work Choices.

It was a false choice involving a wicked pretence.

Because Work Choices was neither a recipe for fairness nor for prosperity.

In fact after its introduction annual productivity fell by two-thirds.

To conceal this problem, the Howard Government generated an economic smokescreen, crediting all the good news like low unemployment to Work Choices. But they distanced Work Choices from all the bad news – like rising inflation, high interest rates as well as stagnating productivity.

The deception was necessary because Work Choices was never about strengthening the economy; it was all about foisting the values of the Liberal Party on a nation that didn't want them. It was about rejecting the national value of the fair go.

The Liberal Party had forgotten that the values that give birth to a nation are the ones that endure.

And they paid the democratic price.

In 2007, Labor answered the question about how to combine prosperity with fairness in a new way, with our policy *Forward with Fairness*.

And the Australian people gave us an overwhelming mandate to introduce it.

Australians have spoken.

And now the Liberals in the Senate must listen.

Last week the Deputy Liberal Leader Julie Bishop intimated the Opposition would vote against the Government's new workplace relations legislation unless it contained some form of statutory individual contract.

Could there be anything more absurd? The Liberal Party is threatening to vote against the *Forward with Fairness* policy the Australian people endorsed unless it contains the Australian Workplace Agreements the Australian people rejected.

Is Malcolm Turnbull going to ignore the Australian people's wishes and act as if the election never took place?

Keeping AWAs may be the Liberal Party's test. But it is not the people's test.

The only true test is the one the Australian people actually voted for: *Forward with Fairness*.

A policy that is consistent with our national value of the fair go.

And just as importantly, a policy that remains faithful to Australia's economic reform needs.

There is a growing international economic consensus that good employment practices are fully consistent with continuing economic reform.

In the US, the UK and the European Union policy makers are now debating how best to maintain community support for the global market economy by improving fairness at work.

The US Congress, for instance, currently has before it an *Employee Free Choice Act* which aims to enhance collective bargaining.

In other words, legislators in the largest free market economies in the world are now examining how to get the balance right between employee fairness, business flexibility and national economic competitiveness.

This is what the Government's new workplace relations laws will also do.

They have been developed with an unprecedented level of consultation, involving all major stakeholders.

And they will get the balance right by:

- providing a strong safety net for employees;
- promoting workplace flexibility;
- delivering an enterprise-level collective bargaining system to drive productivity;
- creating good faith bargaining rules;
- ensuring tough sanctions against unprotected industrial action; and
- providing strong but simple protections against unfair dismissal.

They will give employers and employees certainty about the future.

They will build a stronger, fairer and more secure Australia that is capable of handling the great challenges of the Twenty-First Century.

1. **The safety net**

The first, and for many people, most important element of Labor's new workplace relations system is going to be a strong safety net for all employees.

Its bedrock is a new set of 10 minimum **National Employment Standards** that cannot be stripped away.

The final draft of the Standards was published in June this year after extensive consultation and is now well known.

For those earning under $100,000 a year, the Standards will be complemented by **Modern Awards,** tailored to the needs of particular industries or occupations.

These Modern Awards will include up to ten additional entitlements, including: minimum wage rates, overtime and penalty rates, provisions about when work is to be performed and procedures for consultation, representation and dispute resolution.

Modern Awards will be fewer in number, simpler to understand and easier to apply in the workplace.

For example, last Friday, the AIRC published exposure drafts of a number of Modern Awards, including a new award for the coal mining industry. It replaces 14 pre-reform awards totalling more than 500 pages with a single document just 26 pages long.

Australia's new Modern Awards will be finalised and in operation from 1 January 2010.

The process won't be easy, but it will benefit Australia for decades to come. And I encourage everyone to be part of the AIRC consultation process as it finalises the drafting of the Modern Awards.

Minimum Wages Panel

To keep the minimum wages in Modern Awards up to date, minimum wages and associated casual leave loadings will be reviewed every year by a specialist **Minimum Wages Panel** within Fair Work Australia.

The Panel, headed by the President of Fair Work Australia, will comprise up to seven full and part-time members, both specialists and generalists, drawn from the wider community with relevant experience in economic and social policy.

It will take a non-adversarial, inquisitorial approach to determining the minimum wage and welcome submissions and responses from all interested parties.

And its decisions will take into account a range of important relevant factors, including the needs of the low paid and the performance and competitiveness of the national economy.

There's no more important way to combine prosperity with fairness and give real meaning to the value of the fair go than getting minimum wages right.

Review of awards

Fair Work Australia will review Modern Awards every four years to ensure they are responsive to the needs of Australia's dynamic market economy and are keeping up with community standards of what constitutes a fair minimum safety net.

The first such review is set to take place in 2014.

These Modern Award reviews will balance public interest, social and economic factors.
Outside these four-yearly reviews, awards will only be varied in limited circumstances, such as to remove ambiguity, uncertainty or discriminatory terms.

This means for the first time employers will have the benefit of being able to know and plan for revisions of the safety net.

Labor said in *Forward with Fairness* that we'd give Australians a guaranteed safety net of wages and conditions; and we have.

2. A New Bargaining System

Importantly, our new system will put an emphasis on enterprise-level collective bargaining.

Genuine, good faith bargaining at the enterprise level allows employees and employers to examine the way they work, discover new ways to improve productivity and efficiency, and share ideas that make workplaces more harmonious and flexible. And by doing so it will help lift national productivity.

Good faith bargaining

Under the new system employers and employees will be required to bargain in good faith for a mutually acceptable outcome.

Of course most workplaces already bargain in good faith without intervention.

They meet; they exchange positions; they provide relevant supporting information; they respect each other's right to be represented in the bargaining process; and they consider and respond to each others' positions.

Occasionally, though, this doesn't happen.

In these circumstances, our independent industrial umpire Fair Work Australia will be able to make **good faith bargaining orders** that can direct parties to meet; disclose relevant information; consider proposals and respond to them; and refrain from unfair or capricious conduct.

Good faith bargaining will not require parties to make concessions, or to sign up to an agreement when they don't agree. Parties will still be able to take a tough stance in negotiations.

Compulsory arbitration will not be a feature of good faith bargaining.

Arbitration will be limited to exceptional circumstances only – where industrial action is causing a threat to safety or health, a threat to the economy, or significant harm to the parties.

Agreement content

Under Labor's new legislation parties will be able to bargain over a wider range of content than they can at present under Work Choices.

The former Liberal Government dictated a list of 'prohibited content' that could not be included in an agreement regardless of the wishes of the parties.

But under the new legislation all matters that properly relate to the work performed and the entitlements of employees in the workplace, as well as

their effective representation, will be able to be the subject of bargaining, as they should be.

Agreements will be able to include matters like salary sacrifice arrangements, health insurance, child care and payroll deductions of union dues for union members.

Terms dealing with the operation of the agreement will also be allowed.

But matters that are properly the prerogative of management – like decisions about closing an unprofitable plant or using a preferred supplier – will not be included in enterprise agreements, as has always been the case.

Industrial action

An important feature of the new legislation will be tough rules on industrial action.

Our new laws will distinguish between *protected* industrial action which may legitimately occur during the bargaining and *unprotected* industrial action taken outside of bargaining.

Protected industrial action will be allowed in the course of bargaining, in accordance with strict rules, including a secret ballot of employees and three days' notice of intention to take the action.

But *unprotected industrial action* will not be tolerated under any circumstances.

Even short unplanned stop work actions can have devastating effects on employers with time-critical processes. For this reason, employees who engage in "wild-cat" snap strikes or bans instead of following proper dispute resolution processes will face significant consequences.

Employees will face a mandatory minimum deduction of four hours' pay for any incident of unprotected industrial action and it will be unlawful to pay or demand to be paid for this period.

In the case of protected industrial action, our system will provide proportional, sensible and workable options for employers to respond.

Employers will not be permitted to pay strike pay, as is the case at present. If an employee stops work and the action is protected, their pay must be deducted, but only for the *actual* period of time the employee stopped work, not for any mandatory minimum period – as under Work Choices. It will still be unlawful to claim or pay strike pay.

But in the case of partial work bans, employers will be able to use their discretion to either: tolerate the bans; stand down or lock out employees; or issue a 'partial work notice' and make deductions proportional to any work not performed. Fair Work Australia will be able to review whether the amount deducted is proportional if required.

As the ultimate response to industrial action, employers will be able to lock out employees. But offensive, pre-emptive lockouts – taken by the employer when employees haven't taken any industrial action – will no longer be permitted.

Labor said in *Forward with Fairness* that we'd return the emphasis to enterprise-level collective bargaining whilst keeping clear, tough rules for industrial action; and we have.

3. Multi-employer bargaining for the low paid

We support enterprise bargaining because it's good for the economy and we want more Australians to benefit from it.

Currently, many employees in industries like child care, community work, security and cleaning, which typically employ women, part-timers, casuals or recent migrants, struggle to effectively bargain with their employers. As a result they often remain stuck on award rates and unfavourable conditions.

Under the new legislation low-paid workers like these may be empowered to bargain on a multi-employer basis.

A union or bargaining representative will be able to apply to Fair Work Australia for entry into a new "low-paid stream" to bargain with a specified list of employers.

They will not be able to undertake protected industrial action, but they will be able to utilise Fair Work Australia's good faith bargaining rules and powers of mediation and conciliation.

And Fair Work Australia will only be able to make a binding determination if the parties agree.

To understand what this means in practice, take the example of a cleaner for a small city-based cleaning company who is currently paid just $14.71 per hour for two separate 2-hour shifts at the beginning and end of each day.

Understandably, she and her colleagues across a number of separate sub-contracting firms want to discuss a new way of working, so they can consolidate their working day into a single four-hour shift, effectively shortening their working day so they can spend more time with their families.

But the small cleaning contractor companies say they can't make any changes to the current arrangements because "that's what the head contractor wants".

Under our system of multi-employer bargaining for the low paid, the cleaners' union will be able to bring together the small cleaning

companies and the head contractor into the one room, under the auspices of Fair Work Australia, to negotiate new work and pay arrangements across the group.

This is the sort of fair play that I believe will be strongly endorsed across the community.

We said in *Forward With Fairness* that we'd do it; and we have.

4. New freedom of association protections

As promised in *Forward With Fairness* our new laws will also guarantee Australians important rights at work.

All Australian workers will be free to join a union and make their own choice about whether or not to participate in activities like collective bargaining and protected industrial action.

And it will be unlawful to try to stop them exercising this free choice by threats, pressure, discrimination, inducements, victimisation or dismissal.

It will also be unlawful for an employer to discriminate against anyone who represents their colleagues in a dispute, or to sack or otherwise disadvantage an employee for making inquiries about their pay or entitlements.

Many of these rights already exist but our new legislation will make them easier to follow and simpler to enforce.

5. Unfair dismissal

Our new laws will also bring some good old fashioned common sense and balance to the issue of unfair dismissal.

In the past small business operators have raised genuine concerns about the impact of unfair dismissal laws on their business activities. The Government agrees with them that they should be allowed to get on with running their businesses, making a profit and giving people jobs.

The previous Liberal Government swept aside all unfair dismissal protections for employees of businesses with fewer than 100 employees. And if various

former Liberal Ministers are to be believed, the Liberal Party wanted to go further and junk protection for every one.

But they forgot something. And that is that in the absence of reasonable protections, very real injustices may take place.

When I worked as a lawyer my firm dealt with an unfair dismissal case for a man employed in a small Melbourne bus depot. At the depot the boss's dog roamed free. A big and unhappy dog, one day it bit one of the employees, who understandably asked the boss in future to keep the dog chained up. The boss responded by sacking the employee.

Called on to choose between a hard working Australian and a dog, the Liberal Party would back the dog.

It's time to put a common sense solution in place and to put this long running debate behind us. Our new *Fair Dismissal Code for Small Business* will allow this to happen.

Under our laws employees of a small business of fewer than 15 employees will only be able to claim for unfair dismissal after they have been employed for at least 12 months.

Twelve months is more than enough time for employees to prove they are up to a job. Once they are tried and tested, they deserve protection from unfair treatment.

To dismiss someone fairly after 12 months the employer will have to comply with a simple and short six-paragraph *Fair Dismissal Code for Small Business*.

Employees will of course still face legitimate summary dismissal for serious misconduct such as theft, fraud, violence and serious breaches of Occupational Health and Safety procedures.

And of course, if an employee is made redundant because of a business downturn or their position is no longer needed, it is not grounds for unfair dismissal.

But where dismissal is justified the Code simply requires the employer to:

- give the employee a warning, based on a reason that validly relates to the employee's conduct or capacity to do the job; and
- provide a reasonable opportunity for the employee to improve his or her performance.

It's as simple as that. Multiple warnings are not required. There is no requirement for "three strikes and you're out". It is desirable, but not necessary, for a warning to be in writing.

As long as employers comply with this Code, the dismissal will be held to be fair. But if an employer doesn't comply, and sacks a tried and tested employee harshly or unfairly, compensation will follow.

Compensation will, however, be capped at six months' pay with the full amount only available for the most serious cases.

All such disputes will be overseen by Fair Work Australia using fast and informal processes and legal representation will be allowed only in exceptional circumstances.

Tried and tested workers who have proved their worth, deserve a fair go. It's nothing less than how any of us would expect to be treated.

Labor said in *Forward with Fairness* that we'd produce a fairer, simpler and cheaper unfair dismissals process; and we've done it.

6. An independent umpire

And the new system I have outlined today will be overseen by a new independent umpire with teeth: Fair Work Australia.

Fair Work Australia will act as a one-stop shop for information, advice and assistance of workplace issues.

Its Minimum Wage panel will determine national minimum wages.

It will ensure compliance with new laws, with a new Inspectorate to investigate and enforce breaches, including where necessary through the courts.

And specialist Fair Work Divisions will be created in the Federal Court and the Federal Magistrates Court to hear matters that arise under the new laws.

Labor said in *Forward With Fairness* that we'd create an independent industrial umpire; and we have.

7. Commencement

There's one additional promise that we're keeping: delivering our changes on time.

The new workplace relations system will commence as announced on 1 January 2010.

And to give Australians relief from the harshest remaining aspects of Work Choices as quickly as possible, the new bargaining framework, unfair dismissals and associated protections will come into force six months earlier on 1 July 2009.

Conclusion

In 1907 the Australian people established the minimum wage as a way of balancing prosperity with our most important value – fairness.

100 years later at the 2007 election the Liberal Party asked them to reject fairness and destroy that balance forever.

The Australian people decided to stay true to their values and say 'no'.

Instead they trusted Labor to implement an alternative that got the balance right.

A balance that will allow us to become more competitive and more prosperous without taking away the workplace rights and guaranteed minimum standards we've historically enjoyed.

Today Labor has delivered on that promise by confirming that the detailed election commitments we set out in *Forward With Fairness* will become law.

We said we'd deliver a safety net; and we have.

We said we'd introduce a new era of enterprise-level collective bargaining along with tough rules against unprotected industrial action; and we have.

We said we'd look after the low paid; and we have.

And we said we'd get the balance right on unfair dismissals; and we have.

It's involved an unprecedented amount of consultation with business, unions and the community, which will continue.

We believe it's the best possible outcome for our economy and our people.

And other countries are reaching similar conclusions.

Now it's up to the Liberal Party to make a decision. You still believe in Work Choices but will you respect the overwhelming electoral mandate the Australian people have given the Government to create a new workplace relations system that doesn't give up on the fair go?