

Change the Rules for Working People

6. INDUSTRIAL RELATIONS

REDUCING INEQUALITY SO WORKING PEOPLE HAVE THEIR FAIR SHARE

1. Congress believes that our current work rights are not adequate to protect and enhance the wages and conditions of working Australians and that this is a major contributor to historically high levels of inequality.
2. Congress observes that the *Fair Work Act* tried to redress the damage done by the many attacks on unions and working people during the Howard Government era which culminated in the *WorkChoices* legislation.
3. Since the introduction of the *Fair Work Act* there have been significant changes affecting working Australians. Despite strong and sustained levels of economic growth, inequality is rising. Insecure work has proliferated. For the first time, fewer than 50% of working Australians are in full-time employment with a right to the full suite of entitlements and working conditions that union members have fought for and achieved over many decades.
4. Wages growth has been at historically low levels for a number of years. Labour productivity is outstripping growth in real wages. Total gross operating profits soared in 2017 to levels that were 21% higher than the previous year. Collective agreement coverage is declining and more workers are reliant on award rates and conditions which were envisaged to be a safety net for the few, not the sole determinant of wages and conditions for the many.
5. The traditional employment relationship is being undermined and circumvented by business models that include labour hire, sham contracting, franchising, wage theft and the expanding gig economy. The *Fair Work Act* has not kept up with these developments leaving many workers outside the basic framework of statutory protections.
6. The *Fair Work Act* is complex and inflexible. Congress believes that the shortcomings of the current industrial system have been exposed and many employers have exploited these shortcomings to the detriment of workers. We need a system that meets these challenges and delivers fairness in the workplace.
7. There is now a pressing need for fundamental change.
8. Congress affirms the need for a new set of industrial rules which will include:
 - a) a broad scope to cover all current and emerging forms of work;
 - b) proper mechanisms for workers to achieve secure jobs, fair wage increases, improved conditions and gender equity;
 - c) a system of collective bargaining which allows workers to have the necessary bargaining power to counteract that of employers;

- d) access to arbitration through an independent umpire;
 - e) the right to strike;
 - f) guaranteed access to union representation and proper protections for union activity; and
 - g) simplified and effective enforcement mechanisms.
9. Congress notes the use of the corporations power under the Constitution to regulate work done for corporations and recognises that this power means that our laws need not be constrained by narrow historical common law notions of employment. Conference calls on the Commonwealth Parliament to legislate using this plenary power to ensure that workplace laws aimed at protecting the interests of workers keep pace with the variety of ways in which corporations organise their workforces.

A LIVING WAGE AND DECENT WORKING CONDITIONS

A Living Wage

10. Congress affirms the need for a national living wage. A living wage should reduce poverty and inequality, improve the absolute and relative living standards for award dependent workers and reduce the gap between award and agreement rates of pay.
11. Congress affirms that the National Minimum Wage (NMW) ought to be set at a level that provides a living wage. Congress commits to the pursuit of a NMW which is a living wage at 60% of the full-time median wage as the means of achieving this objective, with the Commission hearing applications to have NWM wage movements reflected in awards.
12. Congress believes that the NMW should move annually. There should be a return to an arbitrated national wage case heard by the Commission. The NMW should flow on to all workers through the award system.
13. Congress also recognises that the living standards of low paid workers are particularly reliant on the social wage, which includes tax and social security policy and the provision of public services including health, education, housing and transport. Congress will campaign for social wage improvements to lift the living standards of low income households, as a complement to – but not substitution for – real increases in Award rates and a minimum wage that is a living wage.

A Fair Award System

14. Congress is concerned at growing disparity between the wages and conditions of award dependent workers and those covered by agreements. This disparity undermines the bargaining system.
15. Congress acknowledges the large and growing number of workers who depend on minimum and award wages and for whom enterprise bargaining is unlikely to be a means to ensure decent living wages and fair wage increases. Congress resolves to pursue a mechanism to combat growing inequality between award rates and market rates and

allows the Commission to arbitrate on the merits of award claims so that awards more closely reflect industry standards.

16. The ACTU and unions are committed to raising and restoring the relevance of awards through test cases before the Fair Work Commission to effect widespread improvements to existing standards.
17. Congress notes that the *Fair Work Act* unnecessarily restricts the content of modern awards. Restrictions on the content of awards need to be lifted to ensure that the award system can develop in the interests of workers without being confined by unnecessary technical limitations and can remain relevant and modern.
18. Congress affirms the need for awards to operate on a common rule basis and for the concept of parties to awards to be reinstated with unions having standing as parties to seek, vary and enforce awards.
19. Congress notes that the *Fair Work Act* has not been successful in stamping out exploitative individual agreements and that there are some parallels between the uses of *WorkChoices* era AWAs and *Fair Work Act Individual Flexibility Arrangements*. IFAs should be abolished.
20. Congress acknowledges that the award system has been thoroughly reviewed on numerous occasions over more than two decades and the total number of Awards reduced from many thousands to 122 Modern Awards. More often than not, these reviews have resulted in a reduction in workers' entitlements. Congress affirms that the compulsory four yearly review process should be abolished and where award reviews have led to significant cuts to pay and conditions, such as penalty rates or redundancy pay, they should be restored.
21. Congress reaffirms that employees must be appropriately compensated for working at inconvenient and unsociable hours. Congress acknowledges that some of the lowest paid workers rely on penalty rates to make ends meet. Congress notes the negative effects of non-standard work hours on family and social interaction apply equally to all employees who work during unsociable times. Congress recognises that most societies have regulated patterns of work with distinct days of rest and cultural significance when it is expected that individuals will be able to participate in activities other than work. Penalty rates form an important part of a broad community consensus of when work activity should mainly take place. Congress acknowledges there is longstanding historical precedent and broad public support for distinguishing weekend and weekday work.
22. Congress calls for a specific legislative mechanism to require the Commission to restore conditions such as penalty rates which were removed from awards through the award review process.
23. Congress further calls for the reinstatement of meaningful, broad and merit-based powers of arbitration in the Commission, including in the determination of award and agreement matters. Congress affirms that applications for variations should not result in a reduction in employee conditions.
24. Congress recognises that both occupational and industry structures have built-in gender biases, something evident during the long struggle over equal pay for work of comparable

worth. Congress will continue to campaign for equality in actual rates of pay for work of equal or comparable value, across workplaces, sectors and industries.

25. Congress acknowledges the need for strong and focussed action in relation to gender equity. Gender equity should be a legislated principle that informs the exercise of all of the powers of the Commission.
26. Congress calls for specific and effective legislative provisions which provide for the making of equal remuneration orders based on pay equity principles and the establishment of a gender equity panel to deal with equal remuneration orders and gender equity issues.
27. The Commission should be given power to resolve, by conciliation and arbitration if necessary, sexual harassment disputes and sexual discrimination claims.
28. Congress notes that the level of the casual loading has not been increased since the 2000 metal industry award case. Casual employees must be properly compensated for the loss of conditions and industrial citizenship. The increased use of labour hire, long term casual work and rising inequality require that Congress conduct a thorough review of the level of the casual loading having regard to contemporary considerations.
29. Congress recognises the importance of skill based career paths and wage progression for productivity, equity and social inclusion.

National Employment Standards

30. Congress acknowledges that the National Employment Standards have been fixed for almost ten years and that many issues have arisen as to how the NES applies.
31. Congress considers that the current standards fail to account for the changing nature of work by providing little or no coverage for workers who do not meet the traditional definition of employee.
32. Congress calls for the definition of employee to be changed to ensure workers who are not in traditional employment relationships are protected and provided for equally. Congress notes that the extended definition in the Superannuation Guarantee legislation provides an appropriate starting point for this reconsideration.
33. Congress advocates for the expansion of the NES to provide universal standards for:
 - a) secure employment;
 - b) 10 days paid domestic violence leave and additional unpaid leave as necessary,
 - c) the inclusion of superannuation as an industrial entitlement which is enforceable through the industrial system,
 - d) 6 months paid parental leave, and
 - e) flexible working arrangements, including a dispute resolution process to resolve claims relating to flexible arrangements in the FWC.

34. Congress also proposes that the new national employment standards address the problem of insecure work by:
- a) properly defining casual employment and providing a right for casual employees to convert to permanent employment after six months where they so choose;
 - b) ensuring that labour hire workers receive the same pay and conditions as are afforded to other workers doing the same work and have a right to employment by the host after six months continuous employment;
 - c) regulating the use of fixed term contracts to prevent them being used to avoid the benefits of permanent employment and limiting the use of fixed term contracts to two consecutive fixed terms or five years, whichever comes first.
35. Congress further calls for a comprehensive review of the operation and application of the existing NES standards for appropriate amendments where these standards have failed to provide the protections for workers.

Anti-Avoidance Mechanisms

36. Congress notes labour hire, franchising, sub-contracting and other arrangements are used by some host or principal employers to screen themselves from legal responsibility for the people performing work for them.
37. The use of these mechanisms to avoid employment legislation has proliferated in recent years. These mechanisms are also a common feature of the rising 'gig' economy.
38. Congress supports measures to ensure employers, including host employers, cannot avoid responsibility for the people performing work for them through legal arrangements, including:
- a) making principal or host employers responsible for keeping employment records for all of the workers performing work for them (whether directly employed or not); and
 - b) making principal or host employers responsible for all work related matters including unfair dismissal and underpayments, in relation to all of the workers performing work for them (whether directly employed or not).
39. Congress proposes that the Commission be given the power to make orders to prevent schemes that result in worker entitlements being eroded and that civil remedies be available through the courts where schemes or arrangements have been established to avoid worker entitlements.

Portable Entitlements

40. Congress affirms that employment mobility and insecure work requires workers' entitlements to be based on the number of years of service in an industry rather than on the service with an employer.
41. Congress notes that leave performs an important function as part of the framework of worker entitlements that:

- a) helps to maintain a balance between work and private life;
 - b) supports employees wellbeing and maintains healthy workplaces;
 - c) is an incentive to reduce labour turnover; and
 - d) is a means to enable employees to recover their energies and return to work renewed, refreshed, and re-invigorated.
42. Congress supports working toward:
- a) the adoption of a nationally uniform minimum standard for long service leave, based on the highest common denominator;
 - b) access to portable long service leave, based on the new national minimum standard, for all industries that currently do not have access to industry portable long service leave; and
 - c) portable access to other forms of leave by all workers.
43. Congress calls for an inquiry into the feasibility and options for a national long service leave standard and the portability of long service and other leave entitlements.

Improved Unfair Dismissal Rules

44. All employees should be entitled to a remedy for being unfairly dismissed or threatened with dismissal. Employees shall be entitled to union representation and paid time where allegations are being investigated or disciplinary measures are being considered.
45. Congress calls for the current restrictions on access to the Commission for unfair dismissal remedies to be removed.
46. Congress advocates for broader unfair dismissal remedies. Compensation for unpaid wages is insufficient. An employee should be able to receive other forms of compensation and an employer should be exposed to punishment such as civil remedy provisions. Other forms of compensation should include monetary compensation that is in addition to the compensation for lost income, including superannuation. The cap on compensation particularly disadvantages workers involved in lengthy proceedings and should be removed. There should be a power to order interim reinstatement.
47. The unfair dismissal provisions should allow claims from employees of labour hire firms or other contractors dismissed through the actions of a third party including a host employer.
48. Congress notes that where redundancies are proposed, employees should have a right to meaningful consultation. Consultation should be genuine and be undertaken prior to any final decision being made and before the implementation of any changes. The restriction on the orders the Commission can make to remedy a failure to consult on terminations due to restructuring should be removed.

Protections for Freedom of Association, Representation and the Exercise of Workplace Rights

49. Congress notes that the current General Protections provisions in the *Fair Work Act* are supposed to protect workplace rights, ensure freedom of association and protect involvement in lawful industrial activities. However, Congress observes that the provisions are complex and overly technical. They need to be simplified to provide positive rights to workers. The Courts have read down the provisions by applying a test that allows employers to avoid liability too easily. The test makes it practically impossible to enforce the provisions.
50. Congress calls for meaningful positive rights to be provided for in the Act and the means of protecting those rights should be simplified. Those rights should include:
- a) delegates' rights to represent workers, engage in broader union activity, and participate in bargaining;
 - b) workers' rights to union representation and to raise workplace issues and engage in union activity; and
 - c) protections for workers from discrimination including on the basis of sex, race, national or ethnic origin, marital status, pregnancy, family responsibilities, disability, political or religious belief, age, trade union activities, sexual orientation, gender identity or intersex status.
51. Congress affirms the need for the test for establishing a contravention of these protections to be amended and be based on the effect on the workplace rights of the conduct in question. Congress advocates for the Commission to have power to expand the matters subject to protection as necessary and to conciliate and where necessary, arbitrate disputes over general protections.
52. Congress also calls for the courts to have power to issue injunctions, penalties and order compensation or make other remedial orders, such as reinstatement or orders that certain conduct cease in general protection matters.

Improving Workers Rights to Representation

53. Congress reaffirms the importance of working people having the right to access independent information, advice and representation.
54. The provisions of the *Fair Work Act* must provide a legal right for workers to have access to union representation in their workplaces with a positive obligation on employers and occupiers of premises to:
- a) facilitate worker access to union representation in all areas of the workplace, including areas where workers choose to congregate such as a lunch room or canteen, subject to there being no unreasonable disruptions of work or bona fide safety concerns;
 - b) continue to require the employer to facilitate transport and accommodation for authorised officers where the workplace is in a remote location and provide for workers to have appropriate and timely access to the permit holders on site;

- c) notify their workforce when union officials will be on site and where they will be located;
- d) inform workers that they have a right to participate in discussions with the union official;
- e) provide a private room for discussions where this is requested by employee(s) or the union;
- f) ensure that any discussions between workers and unions are not subject to any form of intimidation, surveillance, monitoring or any behaviour which might dissuade a worker from choosing to engage with a union official;
- g) ensure workers have the opportunity to speak to their union officials without fear, particularly as they first enter the workplace and that workers have access to translators or other services necessary for effective union representation;
- h) allow union delegates the right to participate in union officials' visits to the workplace; and
- i) ensure employee access to advice, information and union representation at work, including the provision of periodic paid union meetings at the workplace.

55. Further, Congress affirms that these provisions of the Act must:

- a) prohibit employers from requiring, directly or indirectly, that workers seek permission or identify themselves to the employer before accessing a union official who is on the premises;
- b) confer all the powers of investigation currently available to workplace inspectors and ensure that unions have a right to enter and inspect records relating to suspected contraventions affecting former, as well as current, workers;
- c) not require the giving of notice to access documents relevant to the investigation of workplace safety, irrespective of the class of documents that might be required in the course of that investigation;
- d) not require 24 hours' notice for access to worksites as this restricts employees' ability to access information and representation from their union; and
- e) remove the requirement to hold an entry permit and replace with a requirement that officials be authorised by the governing body of their union.

56. Congress calls for the right of workers to be free to bargain about access to union representation.

57. Union delegates are the elected or appointed representatives of workers in their workplace. The role and responsibilities of union delegates should be guaranteed and promoted through legal rights which:

- a) recognise union delegates' rights to actively represent union members, including by being participants and advocates in any workplace matter;

- b) recognise union delegates' rights to communicate with employees, particularly new employees and give them the choice of being represented by the union;
- c) provide delegates reasonable paid time at work to perform their role;
- d) provide delegates reasonable paid time to represent union members at union forums and industrial tribunals;
- e) provide paid training for union delegates;
- f) confer the right to investigate workplace contraventions and be provided with all relevant information regarding disputes; and
- g) provide union delegates access to facilities at the workplace to perform their role.

58. Honorary officials must be allowed paid time off work to fulfil their duties as officers.

Security of Entitlements

59. Congress believes that the primary responsibility for the payment of employee entitlements rests with employers. Congress is concerned to ensure that no employee should be left short-changed when their employer becomes insolvent. The ACTU and its affiliates will continue to advocate for reforms to the Fair Entitlements Guarantee, the *Corporations Act* and the *Fair Work Act* to ensure that:

- a) all employee entitlements, including all deductions and contributions, are fully recoverable from the Fair Entitlements Guarantee;
- b) the Commonwealth is armed with the laws and resources it needs to maximise its recovery in insolvencies, including from individuals and related entities in appropriate circumstances;
- c) irresponsible dealing with and avoidance of employee entitlements and trading when insolvent is more effectively detected and deterred;
- d) employees and their unions are better informed about the financial activity and performance of employers and are able to take meaningful action to protect and recover entitlements;
- e) there are strong incentives through supply chains to encourage timely payment of entitlements;
- f) the priority status of employee creditors is further elevated;
- g) there are more accessible options to secure employee entitlements against the assets of an employer or place them in trust; and
- h) individuals involved in phoenix operations are put out of business for good.

Clubs Australia

60. Congress considers that the Fair Work Commission's decision to allow Clubs Australia to re-prosecute its failed case to cut penalty rates shows how the rules are stacked against working people and why those laws need to change.
61. Congress condemns the continued attack by Clubs Australia on the penalty rates of clubs workers. The actions of Clubs Australia are out of step with the ethic of the clubs sector and out of touch with the support that many local clubs have expressed for their community and their workforce.
62. Congress expresses support for United Voice in its ongoing legal defence on behalf of clubs workers, and notes the support that has been received from trade union and worker controlled clubs, amongst numerous others.
63. Trade unionists commit to raising further awareness of Clubs Australia's actions at their local clubs with workers and Board Members.
64. Australian workers need a wage rise, not continued attacks by out of touch peak employer groups on their penalty rates and living standards.

FAIR BARGAINING

Our Bargaining Agenda

65. Congress commits to a bargaining system that delivers to working people the power they need to adequately balance the power of employers.
66. Congress rejects the notion that improved productivity means cuts to jobs and workers' pay, rights and conditions. Congress notes that such notions, often advocated by employers and the Federal Coalition, do not increase productivity and would decrease our standard of living. Congress further notes that the real drivers of productivity are, at the macro level, investment by government and employers in social capital, and physical and social infrastructure, and, at the enterprise level, development of a management culture that values the knowledge and input of workers.
67. Congress affirms the need for adequate resourcing for wage increases achieved through bargaining for workers in the public sector or publicly funded sectors.
68. Congress believes that a system of collective bargaining should give parties the flexibility to reach agreement on terms and conditions appropriate to their circumstances. We need a bargaining system that encourages and promotes collective bargaining.
69. Congress affirms the need for a system of bargaining that is flexible enough to allow for agreements to be reached with varying scopes. Bargaining should not be confined to enterprises but should include bargaining across industries, in sectors of industries, based on regions, to cover work sites or projects, in relation to occupations, in enterprises, or based on other scopes that parties propose. Agreements should only be made with unions representing workers. All agreements should involve a union or unions with a right to represent workers covered by the agreement.

Freeing Up Bargaining

70. Congress notes that imposing restrictions on the content of collective agreements is inconsistent with international obligations and in particular article 4 of the Right to Organise and Collective Bargaining Convention No 98 and article 3 of the Freedom of Association and Protection of the Right to Organise Convention No 87.
71. Workers should be free to make a judgment on the merits of the matters they seek to protect and the interests they seek to advance when bargaining with their employer. This assists in accommodating the changing needs and circumstances of different types of businesses, employment relationships, workers and communities.
72. Congress is firmly of the view that there is no place in our industrial relations laws for restrictions on the content of collective agreements.

Scope of Bargaining

73. Congress notes that the primary focus of our bargaining laws has been on enterprise level bargaining. These laws have severely limited bargaining across sectors or industries. They have also inhibited bargaining at the source of power in fragmented workplaces or supply chains. This is at odds with international practice amongst most other developed economies around the world.
74. Congress notes that the OECD's Employment Outlook Report 2018 highlights the fact that Australia's focus on enterprise level bargaining is uncommon amongst OECD nations and that coordinated industry and sector level bargaining in other OECD countries promotes stronger employment outcomes, reduces wage inequality and strengthens the resilience of these economies to economic downturns.
75. An inability to negotiate on a sectoral or industry wide basis limits outcomes of bargaining to specific enterprises, is resource intensive and inefficient, it restricts the capacity of workers to determine who they should bargain with and does not assist with industry-wide improvements including skills development, training and apprenticeships.
76. In particular, collective bargaining across an industry and/or with parties who have the capacity to determine workplace outcomes is more reflective of the modern organisation of industries. Further, individual agencies in the public sector do not generally have the powers of an independent enterprise but are subject to Government policy in relation to bargaining.
77. In many industries, enterprise-level bargaining can encourage competition based almost entirely on the capacity of a single enterprise to undercut industry standards and reduce labour costs which results in a "race to the bottom" and the exploitation of the most vulnerable workers rather than competition on the basis of productivity, service or quality.
78. Congress believes that workers have a right to organise and negotiate their terms and conditions of employment at the level which achieves the best outcomes for them, which allows them to bargain with the actual decision-maker that has an impact on their working arrangements, and which is efficient and delivers consistency in outcomes.
79. In particular, Congress advocates for law reform to address the joint employment nature of arrangements between host employer, labour hire provider and worker. The *Fair Work Act* should be amended to recognise that both the labour hire operator and host employer have a role in observing workers' rights and entitlements.

80. Congress calls for amendments to the *Fair Work Act* to facilitate and support parties negotiating arrangements which have industry-wide, multi-employer and sector-wide impact. Agreements should be permitted to determine working conditions and/or regulate relations between employers or their organisations and unions. Once set by collective agreements, it should not be possible to undercut and undermine these standards.
81. Congress supports the development of industry based councils which aim to collaboratively address the key issues facing both employers and employees and develop strategies to promote and progress the industry.
82. Congress believes legislation should require all employers and supply chain participants to be accountable to their workers, unions and the community on how their supply chains are structured and operated. This should extend to ensuring a transparent and public disclosure of supply chain arrangements with appropriate penalties for failure to do so.
83. Congress will lobby Federal and State governments to work together to amend the *Fair Work Act* and State referral legislation to expressly permit the federal system, including the Fair Work Commission, to deal with all public sector employment matters that State governments have argued are subject to constitutional limitations, such as job security and staffing levels.
84. Congress believes that the approval of all agreements must involve a strong emphasis on ensuring that every worker is better off. The Commission should have a general discretion to refuse approval if an agreement is unfair. The Commission should also have the power to prevent employers' misuse of any approval processes to change the effect of agreements as negotiated and agreed by the parties. Gender equity issues should be considered as part of the agreement approval process.

Parties to Agreements

85. Consistent with the principle that parties should be free to determine the level at which they bargain, bargaining for multiple employer agreements and multi-agency public sector agreements should involve the same rights, processes and facilitation from the Fair Work Commission as applied to other agreements in all cases. Consistent with the principle that an agreement should not confer rights on any person who is not party to the agreement, Congress calls for the repeal of s195A of the *Fair Work Act*.
86. Congress calls for the *Fair Work Act* to be maintained and improved to ensure that:
 - a) it continues to contain clear prohibitions on individual employers or employees opting out of a collective agreement;
 - b) collective agreements continue to not be permitted to cover only one employee; and
 - c) collective agreements are not able to be made with a small number of employees prior to the engagement of the rest of the workforce.

Improving the Bargaining Process

87. Congress notes that all affiliates are committed to working co-operatively in single bargaining units that represent the collective interests of employees.
88. To ensure equal access to collective bargaining for all workers, Congress calls for amendments to competition and consumer legislation to remove any restrictions on independent contractors being able to access union representation and collective bargaining.
89. Congress affirms that in any bargaining process, workers have a right to be informed and represented and advocates that:
 - a) the requirement for genuine agreement creates a practical obligation to provide all relevant information related to bargaining and the agreement in a format which will be accessible and understood by all workers;
 - b) where the workforce to be covered by the agreement comprises of one third or more of short or long term visa holders, the employer must facilitate for the workers to meet and confer with a representative from the relevant union within 14 days of the notification time for the agreement; and
 - c) where the number or identity of the workforce changes significantly within one year of a non-greenfields agreement being approved, the workers, upon demonstrating majority support, should be able to bring forward the nominal expiry date of the agreement. When approving agreements the Commission must ensure that the agreement is genuine and involves a representative cohort of workers to be covered by the agreement.

Good Faith Bargaining

90. Congress believes that the statutory good faith bargaining obligations should regulate conduct in a way that is simple and be seen as constituting substantive and not merely procedural obligations. The legislation should make clear that a party is not acting consistently with good faith bargaining obligations if the intention is to simply avoid the making of a collective agreement, regardless of its terms.
91. Congress believes that clear rules of conduct are essential to the proper operation of a good faith bargaining system and calls for a more detailed statement of desirable bargaining conduct which reflects the substantive obligations of parties.
92. Congress notes in particular the systemic failure in the operation and proper application of the good faith bargaining framework and the inadequacy of existing mechanisms to provide for arbitration when employers refuse to enter into a collective agreement.
93. The current legislation allows large employers who are able to create significant damage to the Australian economy or an important part of it to access arbitration to resolve a dispute about bargaining, at the significant disadvantage of workers in smaller enterprises or with little bargaining power.
94. Congress advocates that the Fair Work Commission should be empowered to adopt an expansive approach to pro-actively facilitate bargaining parties in reaching agreement.

Those powers should include the ability to require entities that have the power over the ultimate outcome to be involved in the bargaining process.

95. Where appropriate, the Fair Work Commission should be able to conciliate and arbitrate bargaining disputes over process or content, including where a party surface bargains or refuses to negotiate a collective agreement. Arbitration should be seen as a last resort and only if the Commission determines that there is no reasonable prospect that conciliation or negotiation will result in agreement being reached.
96. Congress recognises that public and government employees may require specific solutions to deal with intransigent employers and calls for the *Fair Work Act* to be amended to provide access to arbitration in public sector bargaining.

Termination of Agreements

97. Congress notes the decision in *Aurizon Operations Limited; Aurizon Network Pty Ltd; Australian Eastern Railroad Pty Ltd* [2015] FWCFB 540 terminating 12 enterprise agreements covering over 6,000 QLD workers.
98. Congress believes that the interpretation of s226 in this case has provided a disincentive for employers to negotiate in good faith – by providing a mechanism for employers to drag out negotiations, apply to terminate nominally expired agreements, force workers down to the relevant award, and renegotiating terms up from award rates and conditions.
99. Congress calls for changes to the *Fair Work Act* to ensure that s 226 can only be used in exceptional circumstances and not in any circumstances where bargaining is underway or is sought.
100. Agreements made prior to the *Fair Work Act*, including old agreements from the *WorkChoices* period, should be terminated on application by unions.

FAIR, SIMPLE AND DEMOCRATIC RULES FOR INDUSTRIAL ACTION

101. Congress affirms that all workers must have the right to take industrial action. No worker or union should be threatened with coercive, punitive or compensatory orders from a Court as a consequence of exercising their right to strike or engaging in legitimate political protest.
102. Congress notes that the International Labour Organisation (ILO) has described the *Fair Work Act*'s processes for regulating access to industrial action as 'excessive'.
103. Statutory penalties for taking industrial action should be repealed and common law restrictions on the right to strike should be abolished.
104. Industrial action should be available to workers without the need for a secret ballot.
105. Congress notes that workers are unduly prejudiced by lockouts and that it is not a legitimate function of industrial relations law to provide employers with legal rights to combat worker collectivism and solidarity. The *Fair Work Act* should therefore prohibit employer lockouts.

106. In line with ILO recommendation 188, international best practice and previous Congress policy, employers should not be permitted to engage replacement labour during periods of industrial action.
107. The right to take industrial action should not be subject to administrative interference other than in the exceptional circumstances of genuine threats to life, personal safety or health, or the welfare, of the population or part of it.
108. Engaging in bargaining in sectors or across an industry should not diminish the right to take industrial action.
109. There should be no power for a Minister to terminate industrial action. Orders to stop or prevent industrial action must be the domain of an independent Fair Work Commission and the Fair Work Commission must have discretion as to whether it issues those orders.
110. Congress calls for loopholes that permit employers to coerce workers to stop or cease exercising their rights to take any form of industrial action to be closed. In particular, employers should be bound to make full or proportional payments for work performed in the event of industrial action constituted by partial work bans. Further, employers should be prohibited from dismissing, or using codes of conduct to threaten or limit workers from taking industrial action.

Boycotts and Political Action

111. Congress notes that Australia's secondary boycott provisions do not conform with the *Freedom of Association and Protection of the Right to Organise* Convention of the ILO (Convention No. 87).
112. Congress also notes that Australia's current industrial relations laws do not provide a proper framework for resolving disputes involving secondary boycotts.
113. Congress calls for the removal of the secondary boycott provisions of the Competition and Consumer Act 2010.
114. Congress notes the breadth of issues working Australians face and calls for the right for all workers to take industrial action in support of broader industrial, economic and political objectives.
115. Congress recognises that government and public sector employees are members of the Australian community and should have the same rights to participate in political and union activity as other workers.

Effective Consultation at the Workplace

116. Congress supports the involvement of workers in decision making processes at the workplace which impact on the work they do and how it is performed and considers this contributes to better workplaces. Congress calls for legislated minimum standards for workers to be genuinely consulted about issues of significance or potential changes to their work prior to final decisions being made.

117. Congress supports the provision of information to workers about their workplace rights. The current “Fair Work information Statement” should ensure workers are informed about their right to join a union. Employers should provide new workers with short information sessions on their rights at work when this Statement is distributed. Unions should be entitled to present at these sessions.

WORK, LIFE AND FAMILY

118. Congress recognises that changes in social, family and labour market structures mean that both partners of couple families are now likely to be employed, making balancing work, life and family a key industrial priority for union members.
119. In addition, Congress acknowledges that higher participation in the workforce for women and the trend towards de-institutionalisation of care for dependents with a disability, or frail, elderly dependents has increased the need for support for workers with a wider range of caring responsibilities, particularly the generation of workers who care for both children and elderly parents.
120. Congress recognises the importance of enabling men and women to share caring responsibilities and the need to promote the increased participation of men in caring for dependents.
121. Congress believes that unions, employers and governments have a responsibility to support employees to balance their work and caring responsibilities.
122. Congress advocates for a suite of complementary policy and industrial measures to assist parents, carers and other employees to participate in the workforce and accommodate their other responsibilities.
123. Congress recognises the adverse impact that parenting and caring responsibilities have not only on the participation of women in the workforce but also on the gender pay and retirement gap.

Family Friendly Work Arrangements

Improved Right to Request Family Friendly Working Arrangements

124. Congress notes that the NES right to request a change to working arrangements to meet caring responsibilities was extended in 2013 to include a wider range of caring responsibilities.
125. However, Congress is deeply disappointed that the right to request still does not clearly set out an employer’s obligations to properly consider and make reasonable efforts to accommodate a request and does not provide employees with a right to appeal an employer’s unreasonable refusal of a request.
126. Congress notes in particular that the right to request a change to working arrangements to meet caring responsibilities or to extend unpaid parental leave are the only two provisions of the *Fair Work Act* which specifically deny workers the procedural justice of a right to appeal an unreasonable refusal unless they are able to negotiate the right as part of their

workplace agreement. Congress regards this as out of step with community standards of equity and fairness.

127. Congress calls for the inclusion in the NES of a right to flexible working arrangements and where disputed, the Fair Work Commission should be able to intervene to resolve the dispute by conciliation and where necessary, arbitration. This right should be provided on the basis that workers can revert back to their previous hours following the period of part-time or reduced hours of work.
128. In addition, Congress will continue to pursue:
- a) greater employee control over their work arrangements, including shift patterns, rosters, targets and workloads in order to meet their caring responsibilities; and
 - b) equality of opportunities for casual and part-time employees in the workplace, including access to paid leave and working time entitlements.
129. Workers with family and caring responsibilities are particularly vulnerable to pressure to agree to make concessions in other areas of their rights and entitlements in order to access flexible work arrangements. Congress asserts the right of workers to elect to access flexible work arrangements in order to meet their carer responsibilities and rejects notions of individual trade-offs to secure these rights. Such a practice reinforces the need to abolish IFAs.

Extending Personal and Carer's Leave

130. Congress will continue to bargain and campaign for improved safety net entitlements to better assist workers with caring responsibilities including:
- a) extending the scope of paid personal/carer's leave so that it is available to employees who care or expect to care for a dependant who reasonably relies on the employee for care;
 - b) extending the scope of personal/carer's leave to include a broader range of carer responsibilities not limited to illness, injury or emergencies;
 - c) increasing the amount of (dedicated) paid carer's leave by 5 days;
 - d) including the provision of paid leave as a minimum standard for workers dealing with palliative care for a dependent;
 - e) ensuring that workers taking paid personal/carer's leave do not suffer diminution in the amount they ordinarily earn;
 - f) providing an entitlement to paid leave to attend appointments associated with pregnancy, adoption, surrogacy and permanent care orders (including attending ante-natal appointments with a partner who is pregnant) in addition to personal and other forms of leave;
 - g) extending the scope of personal/carer's leave to foster parents to ensure they have access to entitlements to provide the necessary care and support to foster children in their care; and

- h) providing an additional entitlement to unlimited unpaid carers/personal leave where paid personal/carers leave has been exhausted.

131. Congress will also continue to bargain for:

- a) working arrangements that provide respite for working carers (such a purchased leave arrangements);
- b) resource support for carers (including workplace information and referral services) and workplace based care (where appropriate); and
- c) other additional leave entitlements aimed at assisting employees balance work with caring responsibilities.

Building on the Paid Parental Leave Scheme

132. Congress recognises that paid parental leave is a workplace right and should be codified as an NES entitlement of 26 weeks paid leave.

133. Congress also calls for a parental leave scheme that is for parents, not just for mothers. Time to care for our kids is something we want to share and we need to have a system that supports this for all working parents, no matter what your family structure. Equal access to paid parental leave must be included in the minimum safety net of entitlements for all working Australians. Supporting couples to balance paid work with shared time to care would lessen the gender pay gap in retirement savings for women, be more inclusive of LGBTI families and give male workers an opportunity they currently lack in accessing paid parental leave to allow them to spend more time with their children.

134. To this end in addition to the introduction of 26 weeks paid parental leave in the NES, Australia must move to a paid parental leave scheme that takes the form of a shareable family entitlement apportioned according to family needs.

135. Congress notes that the Commonwealth Government's Paid Parental Leave Scheme established in 2011 operates as a separate and supplementary scheme to parental leave rights established under the *Fair Work Act* and awards and agreements made under that Act. Congress further notes that the Turnbull Government has failed to deliver on its promise to improve the Commonwealth Government's Paid Parental Leave Scheme.

136. Congress will continue to seek improvements to the Paid Parental Leave Scheme which will ensure the scheme:

- a) promotes maternal and child well-being;
- b) assists parents to remain in the paid labour force;
- c) reduces the gender pay gap (including income adequacy in retirement); and
- d) assists families to combine work and family responsibilities.

137. Given the structure of the current paid parental leave system, Congress resolves to lobby for:

- a) a government funded parental leave scheme of 26 weeks paid at no less than the national minimum wage plus superannuation at the guaranteed contribution rate; and
- b) mandated top-up of the Government scheme to full wage replacement to ensure a co contribution from employers.

138. Unions will seek to improve the NES Leave entitlements and the Paid Parental Leave Scheme in order to:

- a) align the NES eligibility criteria for unpaid parental leave with that of the Paid Parental Leave Scheme;
- b) mandate employer superannuation contributions to be made on periods of paid and unpaid parental and secondary carers leave;
- c) provide greater flexibility for parents to take their leave entitlement including double the time at half pay;
- d) ensure eligibility for paid and unpaid leave for parents of children on permanent care orders;
- e) recognise periods of unpaid parental leave as active service to ensure the accrual of all entitlements including personal leave, long service leave, annual salary increments, superannuation and payment of public holidays during periods of paid and unpaid parental leave;
- f) introduce specific eligibility criteria which recognises the long term workforce attachment of seasonal, casual and contract workers who are required to take breaks in employment of more than 8 weeks per annum; and
- g) introduce paid breastfeeding breaks and appropriate breastfeeding facilities.

139. Where appropriate, unions will bargain for the above improvements, and also for:

- a) employer top up on the government mandated scheme to full income replacement level;
- b) increases in employer provided paid parental leave to at least 26 weeks paid parental leave;
- c) improved paid leave provisions in relation to assisted reproduction or fertility treatment, pregnancy, adoption, childbirth, bonding, surrogacy and breastfeeding; and
- d) provide employees with the right to return to work part-time from paid or unpaid parental leave.

Discrimination and Equal Employment Opportunity

140. Congress recognises that discrimination against women, particularly in relation to pregnancy, parental and caring responsibilities is pervasive and widespread and despite

decades of legislation making it illegal, the level of discrimination remains relatively unchanged.

141. Congress notes that the current Commonwealth and State anti-discrimination legislation, the complaints process and outcomes are not sufficient to prevent and eliminate discrimination.
142. Congress notes that the adverse action provisions of the *Fair Work Act* apply only to the extent the adverse treatment is a breach of the relevant state anti-discrimination law and therefore are subject to the state-based inconsistencies in protection against discrimination on the grounds of family or caring responsibilities.
143. Congress further notes that many complainants are discouraged from using anti-discrimination provisions due to the onerous burden of proof requirements.
144. Unions will campaign for improvements to Commonwealth and State anti-discrimination legislation to:
 - a) ensure consistent application of state anti-discrimination laws in line with the *Fair Work Act* general protections;
 - b) include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities;
 - c) ensure that the complaints process in anti-discrimination cases is more accessible, less costly and provides better remedies which are sufficient to act as a deterrent against discrimination;
 - d) ensure the AHRC is sufficiently funded and has powers to appropriately deal with individual complaints and to initiate investigations and claims of systemic discrimination; and
 - e) adopt a reverse onus of proof model in State and Federal anti-discrimination legislation consistent with the *Fair Work Act*.
145. Congress will continue to lobby for improvements to the *Equal Employment Opportunity for Women in the Workplace Act*, *Workplace Gender Equality Act* and the gender equality indicators (GEIs) outlined in the WGE Act (Matters in relation to Gender Equality Indicators) Instrument to strengthen reporting requirements to achieve greater equity and opportunity for employees with family responsibilities, in particular women. Congress will lobby for greater enforcement powers under the Act to ensure there are penalties for organisations who are required to report but fail to do so.

Family and Domestic Violence

146. Congress advocates for workers' rights to a safe home, community and workplace and takes a stand against family and domestic violence.
147. Congress supports the principle that family and domestic violence is a workplace issue and a form of gendered violence and that paid domestic violence leave can:

- a) assist employees experiencing family or domestic violence maintain paid employment;
 - b) support them through the process of escaping family violence; and
 - c) promote safe and secure workplaces.
148. Congress congratulates unions on achieving domestic violence leave for over 1.6 million employees through workplace bargaining. Unions will continue to bargain for provisions designed to protect and support employees who are subjected to family or domestic violence which include:
- a) dedicated additional paid leave for employees experiencing family or domestic violence, with an aim to achieving 20 days paid leave;
 - b) measures to protect the confidentiality of employee details;
 - c) workplace safety planning strategies to ensure the protection of employees;
 - d) referral of employees to appropriate domestic violence support services;
 - e) appropriate training and paid time off work for agreed roles for nominated contact persons (including union delegates or health and safety representatives);
 - f) access to flexible work arrangements where appropriate; and
 - g) protection against adverse action or discrimination on the basis of disclosure of, experience of, or perceived experience of, family and domestic violence.
149. Congress will continue to campaign and advocate for ten days paid domestic violence leave as a National Employment Standard.
150. Congress believes access to paid domestic violence leave is a right that should be secured in legislation and will campaign and advocate for it to be included in the National Employments Standards. Campaigning efforts will place pressure on the Federal Government to extend the right to paid domestic violence leave to all working Australians, including casual workers.
151. In addition, Congress supports:
- a) the creation of a new ground of discrimination (including in state and federal antidiscrimination legislation and the *Fair Work Act*) to better protect employees who are experiencing, have experienced, or are perceived to be experiencing family or domestic violence against adverse action;
 - b) initiatives to generate greater awareness and adoption of workplace initiatives to support cultural changes aimed at eliminating family and domestic violence; and
 - c) the conduct of appropriate further research to identify the key issues relating to the interface of family and domestic violence and the workplace.

152. Congress supports the adoption of the proposed ILO Convention Against Violence Against Women and Men in the World of Work and believes that the Convention should recognise and call out family and domestic violence as a form of violence that impacts the workplace.

Access to Early Childhood Education and Care

153. Congress recognises that access to high quality, affordable childcare is central to enabling families balance work and care for children and notes the Congress policy on Early Childhood Education and Care. Confidence in care for children and good access enables increased labour market participation by women, as despite endeavours to encourage men to take up the role of primary carers of young children, women are still disproportionately primary carers.

Rostering

154. Congress notes the negative impacts rostering can have on work life balance, particularly in light of:

- a) limited access to affordable, quality early education and care;
- b) the use of punitive rostering to discriminate against workers particularly pregnant employees and those with caring responsibilities; and
- c) the impact of precarious work, insecure work and casualisation on low paid workers and women workers.

155. Congress further notes that due to advances in technology and the use of personal electronic devices workers are commonly required to work beyond their rostered hours without appropriate compensation.

156. The ACTU will establish a working group to consider the impact that rostering and technology has on work life balance across all industries and develop strategies to address these widespread issues.

FIFO and Long Distance Commuting

157. Fly-in Fly-out and other forms of long-distance commuting are becoming more widespread across the resources industry. Employers' growing preference for itinerant over residential workforces is having severe impacts on workers, families and communities including:

- a) discrimination against local workers in regional areas;
- b) lack of investment in training;
- c) decline of population, economic activity and social amenity in regional communities;
- d) punishing rosters leading to fatigue, family breakdown and mental illness; and
- e) lack of standards and personal freedoms in accommodation camps.

158. Workers in mining and resources projects increasingly have no choice about their commuting and accommodation arrangements.
159. Congress calls on all levels of government to work together to ensure:
- a) FIFO is limited to genuinely remote and temporary operations;
 - b) worker accommodation camps meet minimum standards with rights and freedoms for workers;
 - c) companies may not discriminate against local workers;
 - d) shifts and rosters are developed in agreement with employees and their unions to encourage family time and reduce fatigue; and
 - e) tax arrangements do not favour the employment of itinerant over residential workforces.

ENFORCEMENT

160. Congress recognises the central role that unions have in ensuring compliance with workplace laws on behalf of workers. Congress notes the significance of enforcement and compliance measures being quick, simple and affordable.
161. Congress further notes that the current system fails to provide adequate mechanisms for workers or their unions to ensure compliance with legal obligations. Wage theft is rampant, workers are obstructed from accessing representation in their workplaces, and the Commission lacks power to resolve disputes over compliance.
162. Grievance and dispute procedures have been weakened with arbitration under the *Fair Work Act* constrained and arbitration provisions in agreements now rare. The ability of workers to access representation in their workplaces and powers for union officers to investigate underpayments has been reduced by restrictive right of entry provisions. The power of the Commission to resolve disputes over compliance has disappeared.
163. Congress also observes that enforcement mechanisms are largely limited to the Court system which is lengthy, technical and costly.
164. Congress notes that the level of penalties is still significantly below that of commercial penalties under corporate law statutes. Penalties should be increased to ensure adequate deterrence where underpayment has become a business model.
165. Congress asserts that the *Fair Work Act* does not provide 'accessible and effective' dispute resolution options for disputes about matters arising under agreements, awards or the NES. Without recourse to arbitration for disputes about all agreement, award, NES and other work related matters, there is no way of guaranteeing the effective and on-going settlement of disputes about these matters. Congress calls for dispute resolution procedures which include mandatory arbitration provisions.
166. Congress calls for union delegates to be given the right to investigate disputes over payments and have the power to require production of relevant documents and be given

access to relevant information. Union officers should have the power to access workplaces, to require the production of relevant documents and to investigate breaches.

167. Congress advocates that the Commission should be able to deal with, and resolve by arbitration, all work-related disputes including disputes about the payment of wages and conditions based on the merits of the case. Where the Commission cannot resolve disputes over existing rights and courts are required to orders to remedy underpayments there should be quick, easy and inexpensive access to judicial officers. Dual appointments should be made to the Commission and Court to ensure specialist judges hear industrial matters quickly and cost-effectively. The small claims threshold should be increased from \$20,000 to \$100,000 and indexed annually and the current serious contravention penalties should apply to all breaches of the legislation or an instrument.
168. Congress emphatically rejects the use of politicised statutory agencies in the regulation of Australian workplaces.
169. Congress affirms the need for unions to be able to operate in an open and transparent fashion without political interference and excessive layers of regulation that deprive them of their capacity to function effectively. Congress calls for the immediate abolition of the Registered Organisations Commission and the return of oversight of registered unions to the Fair Work Commission.
170. Congress also calls for the immediate repeal of the *Building and Construction industry (Improving Productivity) Act 2016* (including the Code for tendering and Performance of Building Work 2016) and the abolition of the ABCC.

MEETING COMMUNITY EXPECTATIONS

171. Australian governments must recognise their public responsibility to provide a model of fairness in the workplace for those who are performing work for government whether as public service employees or as employees of contractors to government. Government procurement and direct public sector employment should play a significant role in reducing inequality while increasing productivity and national prosperity by providing secure local jobs, with fair pay and positive industrial relations.
172. Commonwealth Procurement Rules and relevant state and local government policies must be written to explicitly preference those suppliers, manufacturers and service providers who have positive records in connection to the following:
 - a) having up to date collective agreements in place securing jobs, pay, terms and conditions of the workforce together with effective dispute resolution procedures which include access to independent arbitration;
 - b) closing the gender pay gap;
 - c) regional renewal and minimum numbers of apprentices;
 - d) the proportion of ATSI employees;
 - e) OHS records; and

f) corporate tax and industrial relations records.