

Election 2019 – Award safety net

WHY IS THIS AN ISSUE FOR WOMEN?

Women are significantly more likely than men to rely on the award safety net than agreements ([Fair Work Commission, 2014](#), ix). This is because women tend to be in industries, workplaces and jobs that are hard to unionise – contracted ‘caring’ and service delivery industries, small and decentralised workplaces, shops and restaurants, and casualised work.

When enterprise bargaining was introduced, the legislated function of awards was to protect those who could not bargain (*Industrial Relations Reform Act 1993* s.3(b)). Now, the legislated function of awards is to *protect bargaining* by maintaining a wide gap between award rates and agreement rates, and so ‘encouraging’ people to bargain (*Fair Work Act* s 134(1)(b)).

The rationale for suppressing award rates of pay wages to push workers into bargaining has not stood the test of time. The award/agreement gap is now large enough for employers to find it more profitable to terminate old agreements and decline to make new ones, leaving employees on old agreements or awards. In some cases, threatened EA termination implies dramatic potential wage cuts for workers of as much as 60 per cent ([Pennington, 2018](#), p.6).

The bargaining stream is collapsing; more and more employees are being left on expired agreements or returned to the award system. In the private sector the number of current enterprise agreement has almost halved since the end of 2013, and the number of employees covered by them has dropped by 34 per cent. Only 12 per cent of Australians employed in the private sector are now covered by current EAs. There has been a corresponding increase in the number of workers operating under an award – up from 10% in 2010 to 24% ([Pennington, 2018](#), p.6, [The Guardian, 2017](#)).

- At the same time, employers are taking a range of measures to decrease access to the safety net itself. These measures include labour hire, insourcing or outsourcing arrangements, sham contracting, the use of gig economy workers and unnecessary or contrived casualisation (casuals have fewer award entitlements).
- The withholding of award wages (“wage theft”) is now a considerable, if unquantified, issue. Underpayment of workers is the responsibility of the Commonwealth, with the law meant to be enforced by the Fair Work Ombudsman, which can take offenders to the civil courts and can mount criminal prosecutions only in limited circumstances. The Ombudsman received more than 14,000 allegations relating to underpayment in a single year but launched only 42 litigations on the issue.

The union movement has argued that access to the safety net should be safeguarded and that the Fair Work Act should be amended to ensure that wage rates for the lowest paid are improved over time relative to average earnings. It has submitted that the best mechanism for achieving this follows the model adopted by the UK Low Pay Commission, which is to set a medium term target for the ratio of the national minimum wage to average earnings ([ACTU, 2017](#)).

ELECTION COMMITMENTS

The table below sets out how fully parties' current election commitments address NFAW recommendations: **Full implementation** **Partial implementation** **No or negative response**

NFAW RECOMMENDATION		
Support proposals to amend the Fair Work Act to ensure that wage rates for the lowest paid are improved over time relative to average earnings, and that the best mechanism for achieving this is to amend the act to enable the Commission to set a medium term target for the ratio of the national minimum wage to average earnings.		
PARTY COMMITMENTS		
ALP	LNP	GREENS
Labor will fix the law so that the Fair Work Commission has the tools to deliver a living wage for Australia's low-paid workers.		The Greens endorse labour laws that reduce inequality including increasing the minimum wage to a living wage and stronger awards.
NFAW RECOMMENDATION		
Insertion into the Fair Work Act of definitions and penalties aimed at eliminating employment arrangements contrived to deny employees access to the industrial safety net.		
PARTY COMMITMENTS		
ALP	LNP	GREENS
Labor will: <ul style="list-style-type: none"> – stop companies using sham contracts and dodgy labour-hire arrangements to cut people's pay (Budget reply); – introduce a national labour hire licensing scheme to set a floor for standards and to protect workers from exploitation and require all labour hire companies to be licensed; – introduce new laws to ensure labour hire workers receive the same pay and conditions as those who are employed directly. The new policy would not affect small businesses using labour hire companies to source workers on a temporary basis or to deliver specialist skills; and – change the legal test for sham contracting to stop employers forcing their workers to get ABNs. 	\$26.8 million over four years from 2019-20 is being provided to establish a National Labour Hire Registration Scheme (the Scheme) to protect vulnerable workers, including migrant workers by regulating entry of labour hire operators in high-risk sectors, such as horticulture, cleaning, meat processing and security sectors.	The Greens measures to tackle job insecurity and give workers more control including restricting casualisation and contracting out.
NFAW RECOMMENDATION		
Resource and prioritise robust measures to identify and address underpayment of wages.		
PARTY COMMITMENTS		
ALP	LNP	GREENS
Labor will <ul style="list-style-type: none"> – change the law so that big companies are liable for exploitation and underpayment which occurs in their supply chain. Penalties for companies that 	\$10.8 million over four years from 2019-20 is being provided to enhance the Fair Work Ombudsman's capacity to conduct investigations into underpayment and related issues, and deliver	

<p>underpay their workers will be increased to the higher of three times the amount owed or \$1,260,000 in addition to the wages owed</p> <ul style="list-style-type: none"> – change the law to include superannuation in the National Employment Standards, giving all workers the power to pursue unpaid super, and increase employer penalties for unpaid or underpaid superannuation – implement a series of reforms to detect, deter and punish phoenix operators and ensure employees are paid on time – require commonwealth construction projects to use project bank accounts to ensure payments to sub-contractors – provide funding to take those who do not pay entitlements to court. 	<p>information and education activities.</p>	
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NFAW RECOMMENDATION

Amendments to the Fair Work Act to ensure that penalty rates are protected for all workers and all workers are properly compensated for working unsocial, irregular or unpredictable hours issues.

PARTY COMMITMENTS

ALP	LNP	GREENS
<p>Labor will legislate to restore the arbitrary cuts to Sunday and public penalty rates in our first 100 days. (Budget reply)</p>		<p>The Greens stand for restoration of penalty rates.</p>

NFAW RECOMMENDATION

Reforms to flexible work provisions that will increase access for men and women and make meaningful provision for employees to appeal decisions.

PARTY COMMITMENTS

ALP	LNP	GREENS
<p>Labor will: legislate to extend the Fair Work Commission model clause on casual conversion to all awards.</p>		<p>All employees with caring responsibilities will have a right to request flexible work arrangements, which an employer can only refuse on reasonable business grounds.</p>

NFAW RECOMMENDATION

A requirement that the Commission take pay equity into account when conducting reviewing awards.

PARTY COMMITMENTS

ALP	LNP	GREENS
<p>Labor will:</p> <ul style="list-style-type: none"> – change the Fair Work Act to make it clear that the Commission must consider pay equity a central objective of the workplace 		<p>The Greens will set gender pay equality as an objective of awards and the Fair Work Act. We also support measures to ensure appropriate classification and pay for work in traditionally low paid</p>

relations system, and fund the Commission to establish a Pay Equity Unit that will provide expert research support during equal remuneration matters, and more generally.		industries where the majority of workers are women and/or migrants.
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OTHER ELECTION COMMITMENTS		
Commitment	Party	Comments
Labor will – work with state and territory governments to establish an industrial manslaughter offense across Australia – establish a national advisory committee made up of affected workers and their families, and – ensure silicosis and other dust diseases are tracked, and prevention and treatment are ensured.	ALP	Endorsed.
	Choose an item.	
	Choose an item.	

Authorised by Kate Gunn, Sydney.