Proposed Framework for Liberal Party Industrial Relations Policy

Liberals believe that employers and employees are the best judges of their own interests. We understand that labour market regulation imposes both economic and social costs and often has unintended consequences. Accordingly, we believe that such regulation should be kept to a minimum consistent with standards of fairness and primarily be designed to protect individual rights and facilitate the making of agreements between employers and employees (whether on an individual or collective basis).

Liberals recognise that lower paid, lower skilled workers require additional protection to prevent exploitation and that some regulation is desirable to protect the public interest, for example by placing rules around the right to strike.

Liberals also understand that living standards are largely determined by the level of productivity – therefore any regulation should as far as possible be consistent with higher productivity as well as low inflation and unemployment.

Proposed reforms to the current industrial relations system

Consistent with the above principles, the Industrial and Workplace Relations Policy Branch (NSW Division) propose that the following reforms should be adopted as Liberal Party policy.

The Better Off Overall Test for enterprise agreements should be replaced by a No Disadvantage Test (NDT).

The Fair Work Commission should be required to approve enterprise agreements that overall do not disadvantage the employees compared to any relevant award that would otherwise apply. In deciding whether an agreement passes the NDT the Fair Work Commission (FWC) should have regard to any evidence concerning the practical effects of the agreement for the employees as well as the preferences of those employees. The NDT should assess the effect of the agreement on the employees as a collective – rather than insisting that every single employee be made better off. This would restore the scope for employers and employees to make genuine win-win agreements that suit the needs of their own enterprise, helping boost productivity and living standards.

The approval requirements for enterprise agreements should be simplified.

Apart from the NDT, the only other requirement for approval of an enterprise agreement by the FWC should be whether the agreement has been genuinely agreed to by most of the employees covered by the agreement. This would remove a lot of red tape and make the process of making enterprise agreements much easier.

Individual Flexibility Arrangements (IFAs) should be made more effective

The Fair Work Act provides in principle for individual employers and employees to vary the effect of awards and enterprise agreements by consent. However, the current provisions are largely unworkable, particularly because of uncertainty over how the Better of Overall Test BOOT would be applied if an IFA was challenged in court.

There should be scope for Individual Flexibility Arrangements (IFAs) to be negotiated prior to the commencement of employment and included as part of the employment contract. They would be subject to the same NDT as enterprise agreements. While it would not be mandatory to do so, IFAs could be submitted for review by the FWC to check whether they meet the NDT. If the FWC finds that the NDT is met, this would provide a bar to any subsequent legal action based on the argument that the NDT was not met. This could be extended to any similar IFAs.

IFAs could include terms providing for the cashing out of paid personal/carer's leave as long as access to at least 15 days paid leave remains (in the same way as currently applies to awards and enterprise agreements)

Awards should no longer apply to high income earners.

Awards should be focussed on protecting low- and middle-income earners. The Fair Work Act recognises the principle that awards should not apply to high income earners; however, the current provisions involve an excessively high threshold and unnecessary red tape.

In future awards should no longer apply to employees who receive a certain level of annual remuneration (in the same way that certain employees do not have access to unfair dismissal). The 'cap' should be set at the level of full time average weekly earnings (currently $99,216). The cap would be indexed annually in line with movements in Average Weekly Earnings (AWE).

Simplification of unfair dismissal

Too many dismissals are subsequently found to be unfair by the FWC even though the reason for the dismissal was sound, due to other factors being given weight, such as procedural fairness, 'harshness' etc.

The criteria for determining whether a dismissal is unfair should be amended so that the only question to be determined in cases of misconduct would be whether the employer had a valid reason for the dismissal. This would include whether the misconduct occurred and whether the misconduct justified dismissal. Procedural fairness considerations would only be applicable in relation to performance-based dismissals.