MCA briefing note

THE ALBANESE GOVERNMENT'S SECOND TERM AGENDA: WORKPLACE RELATIONS

May 2025

'We're in discussions with the ACTU right now about what policies we could take to the next election, because we recognise that more needs to be done, and I'd encourage you to have these discussions, as you probably are, with the ACTU on behalf of your union.'

- Minister Murray Watt, speech to AWU national conference, 15 November 2024

'I think governments always take items to an election and then deliver extra things after they are elected.'

- Minister Murray Watt, speech to National Press Club, 18 September 2024

Background

This analysis is informed by the most recent comments of senior government figures, including comments by the Prime Minister in support of union goals to 're-unionise the Pilbara', which are reproduced below.

The West Australian

BOY OH BOY WHAT A MIRACLE
PAGE 3

EXCLUSIVE
KINDY CHAOS HAS TEACHERS ON BRINK
BETHANY HIATT

Violent, swearing, "out of control" three and four-year-olds are forcing educators to quit WA schools according to an "exhausted" kindergarten teacher.

The anonymous staff member, who works at a public school in a high socio-economic area, claims she is experiencing children "hitting, punching, kicking" and "wiping poo on walls and themselves".

"I have one education assistant in each of the sessions and we are all at a loss and exhausted," the teacher wrote.

"My blood pressure is at an all-time high and my team no longer want to come to work."

Early childhood educators say the teacher's plight highlights a broader problem, as schools push formalised teaching on their youngest pupils, despite them being in nappies or suffering speech delays.

FULL REPORT PAGE 9

REWIND TO THE BAD OLD 1980s

PM BACKS UNIONS IN THE PILBARA

Albanese says workers have the right to fight major mining companies

EXCLUSIVE JESSICA PAGE

Anthony Albanese has backed unions in the Pilbara as it's revealed the resources sector has seen a dramatic increase in entry to sites since he was swept to power in May 2022.

Figures obtained by The West Australian reveal "right of entry" visits to a mine site in WA peaked in November — a 381 per cent jump compared with the month Mr Albanese took the top job.

Since the Prime Minister was sworn in, visits to that same site increased 233 per cent to January 2025. "People have a right to join unions," Mr Albanese said in Perth on Friday.

"But people should, of course, behave properly and in accordance with the law and people have been organising since the 19th century. Workers have come together.

"One of the things that my Government has done is back workers' wage increases... I'm very proud of our economic management that has seen real wages increasing."

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Picture: Justin Benson-Cooper

The government's likely second term agenda

Based on its previously expressed positions, current union priorities and the recommendations of a recent government-initiated review, a second-term Albanese government is likely to pursue the following measures:

1. Forced bargaining – expanding union powers to force employers into bargaining without any need to show employee support
2. Extending forced bargaining powers to multi-employer bargaining
3. Expanding 'same job, same pay' to fully capture service contractors
4. Legislated constraints on rostering
5. Regulating the use of 'Artificial Intelligence'
6. Expansion of 'portable' leave schemes

This list is not exhaustive and is limited to measures which, at this stage, will have the most impact on the mining industry.

1. Forced bargaining – expand union powers to force employers into bargaining without any need to show employee support

The Albanese government's second-term agenda will almost certainly include new legislation to further its stated objective of 'removing barriers to collective bargaining'.

The government's goal is to 'revitalise' collective bargaining wherever it can. Under its 2022 legislation, majority support is not required when initiating bargaining for a single enterprise agreement within 5 years of its expiry date. This gives unions the power to force employers into bargaining without needing to demonstrate majority – or indeed any – employee support. It has so far been used against BHP iron ore operations in the Pilbara, but other similar businesses have been spared as they do not have agreements that have expired in the past 5 years.

Since its introduction, the 5-year limitation has been described as a 'loophole' and a 'legal technicality' by the AWU, which passed a resolution at its 2024 conference commending changes that '*allow unions a way to return to the sector*'.[1] Removing the 5-year limit would mean unions would have the power to unilaterally force bargaining without employee support anywhere – including anywhere in the Pilbara.

The AWU has advocated for exactly this outcome:

> *'We commend the Labor Government for allowing unions a way to return to the sector through reform, call on BHP to bargain in good faith with us, and condemn Rio Tinto for refusing to bargain.'* [2]

This change is also being called for by the Mining and Energy Union. The MEU's submission to the government's review described the democratic requirement for 'majority support' as:

> *'the lengthy and complex processes associated with making an application for a majority support determination'.*[3]

It described unilateral forced bargaining as a *'straightforward and practical process to start bargaining'*.[4]

It argues that the 2022 amendments to introduce unilateral forced bargaining 'remove the complexity and delays associated with commencing bargaining.' [5]

[1] AWU conference resolution, November 2024.
[2] AWU social media post, 14 November 2024.
[3] MEU submission, p. 7.
[4] MEU submission, p. 7.
[5] MEU submission, p. 8.

The government's own review has expressed support for such changes:

On 3 February 2025, the government released a draft report of its review of its 2022 legislation. The review considered these issues in some detail and produced 'findings' and recommendations which the government will use to justify these new pro-union changes.

The report expressed the view that, prior to 2022, '*employers had **so much power** over the bargaining process, including initiating bargaining…*'.[6]

It rejected all employer concerns that removing the requirement for 'majority support' was undemocratic and a negative change. Instead, adopted the position of the ACTU, stating the requirement:

> *'in some cases, where it is opposed may impose administrative burden on unions and employees'.*[7]

This was essentially a 'cut and paste' of the ACTU's argument in its submission:

> *'The requirement to demonstrate majority support as a condition for gaining an authorisation that is opposed places a considerable administrative burden on unions and employees.'* [8]

The report then concluded that the power to force unilateral bargaining within 5 years had been successful:

> *'Having considered the Australian Government's legislative intent (to streamline bargaining and reduce barriers to collective bargaining) and the early evidence, which shows the provisions are being used, the Review Panel concludes that the amendments have so far been effective.'*[9]

Given that the review concluded that these amendments were 'working well', it will be seen as a small step – removing another 'loophole' – for the government to remove that current 5-year limitation period.

In reality, it would be a massive change that would provide unions with enormous leverage to impose their agendas on businesses without the support of a single worker.

2. Extending forced bargaining to multi-employer bargaining

The ACTU has proposed that the power to force unilateral bargaining without employee support should also extend to multi-enterprise bargaining.[10] Its submission to the review recommends:

> *'Expand the new provisions that allow for the re-initiation of bargaining within five years of the nominal expiry date to multi-employer agreements.'* [11]

The government's recent review expressed a strong preference for an expansion of multi-employer bargaining. It argued that '*the international experience points to potential economic benefits',* and described Australia's system of single-enterprise bargaining as 'extreme'.[12]

Minister Murray Watt has also expressed a view that there are 'strict criteria' or 'hurdles' that apply to multi-employer bargaining.[13] A removal of these criteria would further the government's general objective to 'streamline' bargaining and 'reduce barriers'.

An important consequence of such a change is that the *Fair Work Act* already prohibits an employer from attempting to bargain for a single-enterprise agreement whilst a multi-employer authorisation is in force. As a result, a union could unilaterally force an employer into multi-employer bargaining,

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[6] Draft report, p. 86. (emphasis added)

[7] Draft report, p. 92

[8] ACTU submission, p.96.

[9] Draft report, pp. 91-92.

[10] ACTU submission, recommendation 22, pages 8.

[11] ACTU submission, recommendation 22, page 8.

[12] Draft report, p.70

[13] Senator the Hon Murray Watt, Minister for Employment and Workplace Relations, Address to the Australian Workers Union National Conference 2024, 14 November 2024.

without employee support, even when both the business and the workers would rather bargain for a new single-enterprise agreement.

ACTU policy would also allow for subsequent replacement multi-employer agreements to also be expanded to cover additional cohorts of workers with no need to demonstrate majority support.[14]

This proposal would mean that multi-employer bargaining becomes as non-democratic as forced bargaining against a single employer, and that even employers who wished to enter into a new single-enterprise agreement would be prevented from doing so.

The implications of such a change are enormous. They would mean that multi-employer bargaining could be imposed on competing iron ore producers in the Pilbara. The first 'test case' on multi-employer bargaining in 2024 covering NSW coal mines found that the fact that three competing businesses mined the same commodity in the same state was sufficient to determine they had a 'common interest', which could force them into multi-employer bargaining. This precedent, which was contrary to prior government assurances, can now be extended to iron ore producers in Western Australia. The removal of any need for employee support would mean that any and all iron ore producers in the Pilbara could be captured in this way.

3. Expanding 'same job, same pay' to fully capture service contractors

In the BHP Operations Services 'test case' that was heard by the Fair Work Commission in January and February 2025, counsel for Minister Watt argued that it had never been the government's intention to 'exempt' service contractors from 'same job, same pay'.

> *'… the intent of sub-ss 306E(1A) and (7A) was not to "excise" any particular employer from the operation of Part 2-7A'* [15]

The Minister's submission also stated that the government believes that there is no clear distinction between labour hire and service contractors and that it is a 'matter of degree':

> *'… the ordinary meaning of these two concepts are not mutually exclusive, which lends support to a construction of sub-s (1A) which directs the Commission to satisfy itself whether as a matter of degree – the performance or work is properly or more readily to be characterised as for the provision of a service or the supply of labour.'* [16]

The government's current position, as argued to the Fair Work Commission, is a repudiation of previous assurances given by Minister Burke that there would be a 'straight exclusion' of service contractors:

> *'The new wording, we'll just have a straight exclusion, that if it is a service other than the provision of labour, then they are excluded'* [17]

> *'And that just gives a really clear line drawn that it it's labour hire, it's covered, if it's service contractors, it's not.'* [18]

The question of where to 'draw the line' between labour hire and service contractors was strongly contested in this proceeding and the Commission is yet to hand down its decision. In the event that the Commission rules that Operations Services is not covered by 'same job, same pay', the government will inevitably seek to amend the *Fair Work Act* to ensure that it is, as this was a key policy rationale for the legislation in the first place.

The Mining and Energy Union's position has always been very clear – it sees no difference between labour hire and service contractors and believes they should both equally be subject to 'same job, same pay'. The MEU's Mitch Hughes expressed this view to the Senate Committee inquiry into the legislation:

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[14] ACTU submission, recommendation 21, p. 8.
[15] Minister's submissions, para 17
[16] Minister's submissions, para 34
[17] Minister Burke, interview with ABC RN, 22 November 2023
[18] Minister Burke, interview with ABC RN, 22 November 2023

Senator McDONALD: Do you agree that service contractors in the mining industry should be covered by a regulated labour hire arrangement order under the bill?

Mr Hughes : What do you class as a service contractor, because we might have different—

Senator McDONALD: Well, it's an industry term, isn't it. Do you want to tell me what you would define as a service contractor?

Mr Hughes : I class them all the same, to be honest. Labour hire and service contractors—they're all there to provide, more often than not, the same role that's provided for under the enterprise agreement at the mine.

Senator McDONALD: So you would want to see them covering service contractors in the coalmining industry as well as labour hire? That's what I'm trying to understand.

Mr Hughes : The bill should apply to anyone that works at the site where the host has the agreement in place. [19]

This position is also consistent with ACTU policy, which calls for 'same job, same pay' to '*apply to all labour hire workers, including 'those working for small businesses, and those who are engaged indirectly or working as independent contractors'*. [20]

4. Legislated constraints on rostering

The Labor Party is committed to introducing legislation to impose limits on employee rostering arrangements. The ALP platorm states:

'Labor will : '…work to ensure rostering practices that are predictable, stable, and focused on fixed shift scheduling'; and ensure the FWC can address concerns related to 'rostering guaranteed shifts, and the interaction of permanent, part-time, and casual work'.[21]

The ACTU's policy also calls for:

'better rights for all workers to secure and stable rosters with meaningful hours that provide workers with job security and work life balance, and that accommodate caring responsibilities'.[22]

The ACTU has also called for:

- *28 days notice of roster changes for permanent employees*
- *An employee 'right to say no' to extra hours*
- *A positive obligation to provide employees with rosters that accommodate caring responsibilities*
- *Access to FWC arbitration to resolve disputes*

All of these measures would be implemented through legislation, rather than awards and agreements, as can currently be done.

If implemented, the ACTU policy would generate regular disputes about roster changes that would be resolved by arbitration in the FWC. This would cause significant operational challenges for many mining operations.

Compulsory arbitration would become a dominant dispute resolution method and it would no longer be a matter for employers to determine whether to include it in dispute-settling provisions of enterprise agreements.

The ALP National Platform confirms an intention to implement some version of the ACTU policy. There is also alignment with Greens policy, which calls for:

'Predictable, stable rosters with enforceable rights to consultation and to advance notice of rosters and changes'.

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[19] Mitch Hughes, Acting District President, Mining and Energy Union, Queensland District, evidence to Senate Education and Employment Legislation Committee inquiry: Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, Rockhampton, 31 October 2023.

[20] ACTU Congress 2024, policy statement, *Industrial relations*, para. 17(c)

[21] ALP Platform, Ch. 2, para. 32.

[22] ACTU Congress 2024, policy statement, *Industrial relations*, para. 203.

Notice periods of 28 days for roster changes are impossible to manage in unforeseen or emergency situations. For example, many such requirements had to be varied during the COVID period when it was necessary to make changes to preserve jobs and adjust to new circumstances, even when a business and its workers agreed.

5. Regulating the use of Artificial Intelligence

A recent report by a House of Representatives committee inquiry commissioned by former Minister Tony Burke made a number of recommendations to amend the *Fair Work Act* to 'regulate' artificial intelligence in workplaces.

It specifically recommended the following amendments:

> *'…amend the Fair Work Act… to improve transparency, accountability and procedural fairness regarding the use of AI and ADM systems in the workplace by:*
>
> - *requiring all organisations that use AI or ADM systems to disclose this to existing and prospective workers and customers*
> - *developing a legislative right to an explanation, based on the European model*
> - ***banning the use of technologies** like AI and ADM systems for final decision making without any human oversight, especially human resourcing decisions.'* [23]

It also recommended a major change to existing consultation obligations that are set out in the Act, which currently require employers to consult with employees after a definite decision has been made to introduce 'major change' that is likely to have a significant effect on employees. Instead, under this proposal, the Act would be amended to:

> *'…strengthen obligations on employers to consult workers on major workplace changes **before, during, and after** the introduction of new technology. This should include consideration of whether the introduction of a technology is fit for purpose and does not unduly disadvantage workers.'* [24]

The report is a further indication that, consistent with the ACTU's policy on artificial intelligence, the government's second term agenda is likely to include measures that aim to entrench unions in business decision-making and expand the role of the Fair Work Commission with new arbitration powers in respect to the adoption of digital technology – with potential negative impacts on technology uptake and innovation.[25]

6. Expansion of 'portable' leave schemes

The government's 2022 election policy included the following commitment:[26]

> *'Consult with state and territory governments, unions and industry to develop, where it is practical, portable entitlement schemes for annual leave, sick leave and long service leave for Australians in insecure work..'*

The government remains committed to implementing this election policy, as does the union movement.

The Australian Workers Union has proposed a 'universal' long service leave scheme. This was passed as a resolution at its most recent national conference in November 2024:

> *Long service leave is no longer working for Aussie workers…*
>
> *The AWU strongly commends portable long service leave policies adopted by state and territory governments across Australia, and calls upon the federal government to ensure portable long service leave is available to all Australian workers.*

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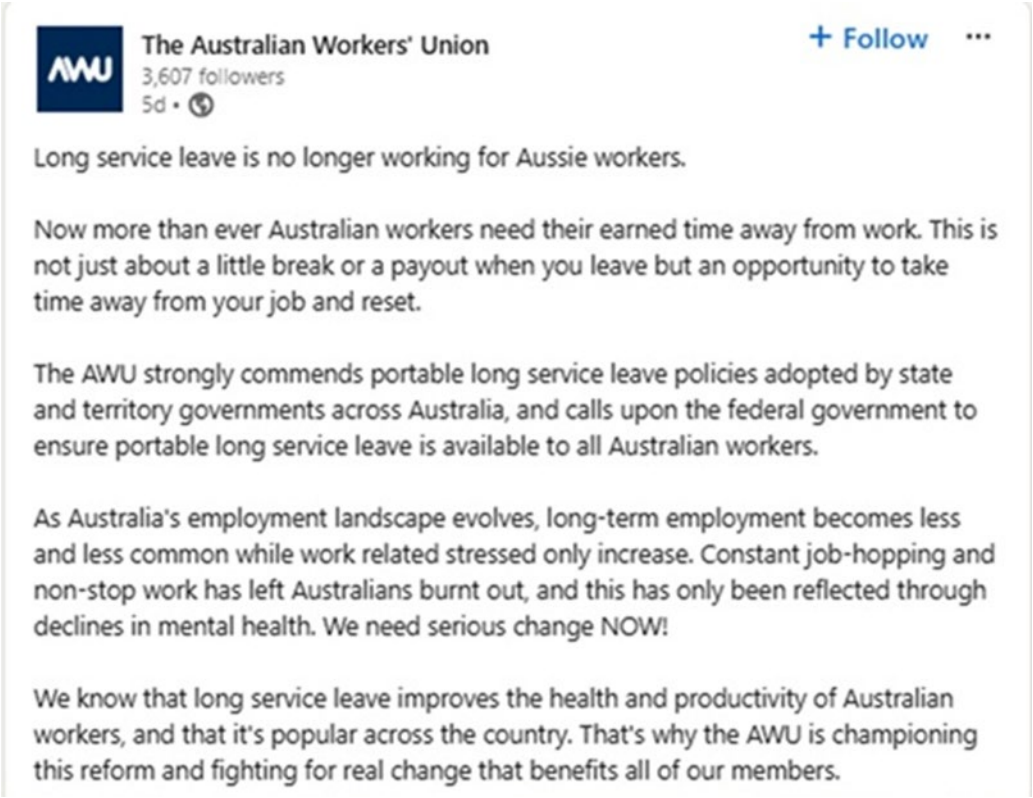
[23] House of Representatives Standing Committee on Employment, Education, and Training, Inquiry into the Digital Transformation of Workplaces, report, Future of Work, released 11 February 2025, page 78.
[24] Ibid.
[25] ACTU, policy, artificial intelligence, June 2024.
[26] 'Labor's Secure Australian Jobs Plan – Background Fact Sheet', February 2021



This will also extend to casual workers. The ALP's 2022 election policy referred to:

> *'portable entitlements for annual leave, sick leave and long service leave for Australians in insecure work'*

According to the government, casual employees are in 'insecure work' so should have access to portable long service leave. This is also consistent with the AWU's policy for a 'universal' scheme.

Prior to the 2022 election, the then Opposition Leader, Mr Albanese, foreshadowed exactly this approach in his speech launching the ALP's election policy:

> *'And here in Queensland, the Labor Government's portable long service leave scheme for social and community services workers, campaigned for by union members in this room tonight, came into effect on 1 January… thanks to the ACT Labor Government's portable long service leave scheme, thanks to the ACT Labor Government's portable long service leave scheme, Reena now has access to long service leave. We want to find a way to recognise Reena's hard and committed work by extending this to annual and sick leave.'* [27]

Money that belongs to businesses would be confisicated and placed in union-controlled funds.

In practice, schemes such as this require businesses to contribute money to union-controlled funds that they would otherwise retain for themselves.

Long service leave is typically accounted for by businesses as a contingent liability. Businesses still retain the actual money themselves, as part of their working capital. It is an asset that remains with the business – not with a union-controlled fund.

An $18 billion hit to the economy – and a $900 million revenue stream to unions

Under this proposal, all of the money that is currently retained as an asset of the business would be transferred to a union-controlled fund. Under the proposed 'universal' scheme, a total of $18 billion

[27] *"Secure Australian Jobs Plan"*, Anthony Albanese speech, 10 February 2021

per year that is currently the property of businesses would be confiscated and transferred to union-controlled funds.

Unions would then be able to profiteer from these funds by skimming off revenue for themselves from the earnings of the funds – just as they do now with existing worker entitlement funds. The difference is that unions would be able to profiteer on an economy-wide scale:

Wages and salaries paid to employees (2023/24)	$1,123.755 billion
Ratio of full time Ordinary Time Earnings to Total Earnings[28]	0.965
Estimate of national Ordinary Time Earnings (2023/24)	$1,084.425 billion
1.67% confiscated for Long Service Leave Funds	$18.11 billion
5% interest earned on money confiscated	$905 million

Source: ABS, Australian National Accounts: National Income, Expenditure and Product, table 7, released December 2024; ABS, Average Weekly Earnings, table 3, released November 2024

It should be noted that these are conservative estimates. They assume that 'only' 1.67% of ordinary tie earnings (the current cost of long service leave contingent liabilities) would be confiscated for such funds. This is unlikely to be the case in practice, as many such funds include profit margins that inflate the amount that employers must provide. This can often be more than three times the cost of the actual leave entitlement.[29]

Over the past decade, unions have derived $528 million in income from various funds holding money in trust for workers. This includes around $40 million per year from worker entitlement funds, which include existing 'portable' leave schemes.[30] Existing government policy is to encourage the use of worker entitlement funds 'for Australians in insecure work' wherever possible.[31] Current union proposals are now extend such funds to all workers, not just those in 'insecure' work.

When this proposal was reported during the election campaign the government's response was to not rule it out.[32] The potential financial windfalls to be gained by the labour movement from the proposal will make it extremely attractive to the government.

The government's approach to legislation following an election

Prior to the 2022 election, the then-Opposition promised not to introduce multi-employer bargaining. Following the election, it promised that it would not extend to coal mining. It broke each of these promises.

In 2022, the Albanese government promised that 'same job, same pay' laws would apply only to the 'limited circumstances' in which 'labour hire' is 'misused'. In 2023, the then Minister, Tony Burke promised a 'straight exclusion' for service contractors. It broke each of these promises.

As the Albanese government's first term has shown, its second term agenda could extend well beyond what is contained in its election policy or other public commitments.

[28] Long service leave is currently payable based on an employee's Ordinary Time Earnings
[29] '*Business braces for $18bn ambush to bolster unions*'. The Australian, 1 May 2025
[30] '*Unions grow a $500m money tree from other sources, and have funneled cash to Labor*', Daily Telegraph, 28 April 2025
[31] 'Labor's Secure Australian Jobs Plan – Background Fact Sheet', February 2021
[32] '*Business braces for $18bn ambush to bolster unions'*. The Australian, 1 May 2025