

## **LABOUR POLICIES**

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There was little public focus on potential industrial relations reform during the lead-up to the 2022 Federal election. The ALP advanced relatively incremental commitments on labour policy matters, including promises to act on gender inequity and job insecurity, introduce minimum standards for ‘employee-like’ workers such as gig workers, and ensure same pay for labour hire workers (Australian Labor Party 2022). These commitments were less specific and less far-reaching than the ambitious industrial relations platform the ALP took to the 2019 election – which the party entered well ahead in the polls, but then lost. Many party strategists concluded from that experience that the ALP should adopt a ‘small target’ approach in future elections; and this thinking was evident in the party’s modest industrial relations platform (and on other key issues, such as tax policy).

Nevertheless, labour policy issues took on greater significance in the latter days of the campaign, as much by accident as design. An important debate occurred around the Fair Work Commission’s annual minimum wage review (which would culminate a month after the election). With inflation accelerating to over 5% (and later peaking, by end-2022, at almost 8%), observers debated whether the minimum wage should keep up with surging prices. The Australian Council of Trade Unions (ACTU) argued it should: the central labour body asked for a 5.5% increase to keep pace with prices. When questioned about the ACTU’s position, Anthony Albanese responded that people on ‘minimum rates of pay can’t afford to go backwards,’ and that minimum wages ‘absolutely’ should be adjusted upward to match inflation (Jericho 2022; Karp 2022). This incited a flurry

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of media and political scrutiny about the wisdom of increasing wages in line with inflation. Business leaders and orthodox economists argued this would unleash a much-feared ‘wage-price spiral,’ and then-Prime Minister Scott Morrison seized on the issue, claiming Albanese’s view was ‘reckless’ and that he was a ‘loose unit on the economy’ (Evans 2022). Despite opposition from economic orthodoxy, however, the general idea proved popular with the public: exit polling showed an overwhelming majority of voters (83%, with large majorities across all party allegiances) agreed wages should at least keep up with inflation (Raynes 2022). So in this indirect way, industrial issues proved important to the ALP’s eventual victory, despite a lack of detail in its platform.

Unions’ engagement with the Albanese government has been informed by disappointment at the industrial relations legacy of the previous Labor governments of Kevin Rudd and Julia Gillard. The *Fair Work Act (FWA)*, implemented by Labor in 2009, in retrospect embodied more continuity than change, relative to anti-union laws passed by previous Coalition governments. Under the *FWA*, union density has continued to plummet, strike frequency fell to all-time lows, and wages experienced the weakest sustained growth in the postwar era (Stewart *et al.* 2022). Unions are hoping for more significant labour policy changes from this ALP government.

The first year of the Albanese government realised some of those hopes. The government has implemented several important initiatives to strengthen wages and reform labour law. Legislative changes have required tricky negotiations in the Senate (where the government needs support of the Greens and at least two cross-bench Senators to pass bills), resulting in some compromises as legislation worked through Parliament. This article will review the government’s major labour policy initiatives: including reforms to the *FWA*, stronger minimum wage awards, and several initiatives in the area of gender equality. At time of writing, another composite tranche of legislative amendments to the *FWA* (in the *Closing Loopholes Bill*) was being debated, with the government once again negotiating with reluctant crossbench Senators. Other non-legislative labour policy initiatives launched by the government include new appointments to the Fair Work Commission, a new White Paper on employment policy, and a new approach to collective bargaining with federal public servants; these are also reviewed below.

On the whole, the Albanese government deserves positive marks for achieving significant improvements in labour policy as a central component of its overall political and legislative agenda. These changes will make an incremental but important difference to wages, equality, and representation for workers in future years. On the other hand, the most important barriers to future economic and democratic progress for workers have not been adequately addressed in these reforms – including remaining effective barriers to broader multi-employer and sectoral collective bargaining, and Australia’s uniquely repressive rules regarding industrial action and union membership. Addressing those barriers will require both more courage from legislators, and a stronger and sustained political mobilisation among Australian workers. Until then, the imbalance in Australian industrial relations, tilted decisively in favour of employers, will not be fundamentally improved.

### **Secure jobs, better pay**

Immediately after the election, the Albanese government convened a ‘National Jobs and Skills Summit’, which engaged unions, business leaders, and selected civil society organisations in discussion about the need for fairer workplaces and stronger collective bargaining. The Summit was intended to lay a political foundation for subsequent reforms to industrial relations reforms. Within a month, the government then tabled a first package of such reforms, in the *Secure Jobs, Better Pay Bill* (containing numerous amendments to the *FWA*). In introducing the legislation, Minister for Industrial Relations Tony Burke (2022b) said it would ‘promote job security, help close the gender pay gap, modernise the workplace bargaining system and get wages moving after a decade of stagnation.’

Business and employer groups expressed concern about the speed of reform and complained they had not been consulted on the detail. That soon turned into full-scale opposition to some of the reform proposals. In particular, business groups including ACCI, the Australian Industry Group, and the Business Council of Australia objected to reforms designed to stop the decline of collective bargaining. Business-friendly editorialists raged that the changes represented a ‘seismic shift’ and would give ‘absolute power’ to unions (*The Australian* 2022a, 2022b).

In contrast to these exaggerated claims, business groups were less agitated about other proposals in the legislation, some even welcoming the *Bill's* gender equality reforms. Meanwhile, the ACTU (2022: 4) described the *Bill* as 'a critical and welcome measure to get wages urgently moving,' while acknowledging the legislation would leave in place past restrictions on representation, bargaining, and industrial action. Similar assessments were offered by industrial relations and labour law experts (Forsyth and McCrystal 2022; Wright 2022).

The bargaining reforms, including enhanced opportunities for multi-employer bargaining and various measures to prevent employers from avoiding new enterprise agreements, were intended to address the rapid decline in rates of collective bargaining, and the associated record slowdown in wage growth. Between 2013 and 2022 the number of current enterprise agreements registered under the *FWA* halved; and the proportion of employees covered by them fell accordingly (Stanford, Macdonald and Raynes 2022). The decline of enterprise bargaining has been especially evident in the private sector; contributing factors include the termination and non-renewal of enterprise agreements, and far-reaching restrictions on union activity and industrial action.

Following a Senate inquiry and negotiations with Independent Senator David Pocock (whose vote was needed for Senate approval), a slightly amended bill passed into legislation in December 2022. The amendments included several concessions to employers, such as restrictions on proposed multi-employer bargaining arrangements and the exclusion of the building and construction industry from multi-employer bargaining.

The most controversial elements of the *Secure Work, Better Pay* reforms were measures to expand opportunity for collective bargaining across multiple workplaces or employers. These reforms were informed by the growing view among industrial relations experts and trade unionists that negotiating improved wages and working conditions at individual, small worksites is extremely difficult, if not impossible, given the fragmentation or 'fissuring' of employment practices. Instead, broader sector-, region-, or occupation-wide bargaining structures are required to set benchmarks that can be sustained in the face of competition, outsourcing, and union avoidance strategies (Madland 2021). The *Secure Jobs, Better Pay Bill* expands access to multi-employer bargaining (which had been nominally permitted under the *FWA*, but with onerous restrictions that made it effectively impossible) through two separate streams.

The first is an expansion of the previous ‘single interest employer bargaining’ stream, to widen options for unions to bargain with multiple employers. At time of writing, an initial application of the new rules was proceeding, launched by unions representing general education and support staff at Catholic schools in Western Australia. Enterprise bargaining for those schools had long been resisted by employers, leaving employees on agreements that expired in 2016 (Workplace Express 2023a). In this first case, unions did not have difficulty proving that Catholic school employers in WA had sufficient common interests (a criterion for access to the multi-employer bargaining stream), since these employers had already demonstrated their willingness to bargain jointly with teachers’ unions under earlier, more restrictive bargaining arrangements (Workplace Express 2023a). Nevertheless, labour law experts suggest that remaining restrictions on access to this multi-employer bargaining option are ‘likely to limit its practical effectiveness’ (Forsyth and McCrystal 2023: 7). Dire business warnings that employers will be roped into sector-wide agreements will not come to pass; this new single interest stream will likely have limited application.

The *Secure Jobs, Better Pay* reforms also featured a second multi-employer ‘supported bargaining’ stream, intended expressly for low paid workers – especially in feminised, publicly-funded care and community services sectors. This stream replaced a previous low-paid bargaining stream in the FWA which was never successfully used; the new supported bargaining stream was not opposed by business groups. In August 2023, the FWC authorised the first supported bargaining application: launched by the Australian Education Union (AEU) and the United Workers Union (UWU) for a multi-employer agreement to cover early childhood education and care (ECEC) workers. This case will be a key test of the supported bargaining arrangements. It is expected that the unions and employers will also use this process to seek funding for negotiated pay rises from the federal government.

Other changes in the *Secure Jobs, Better Pay* package remove barriers to creating new enterprise agreements. These include the automatic termination of thousands of so-called ‘Zombie’ enterprise agreements by end-2023. Many workers under these Zombie agreements (mostly inherited from the Howard era) have been worse off than they would have been according to minimum award wages and conditions (Forsyth and McCrystal 2023: 9). Another important reform allows the FWC to send employers and unions to arbitration to end intractable bargaining disputes.

Notably, in opting for arbitration to resolve disputes, the government rejected the more politically difficult option of enhancing and protecting workers' right to strike (Forsyth and McCrystal 2023: 12); this approach also opens the possibility of employer-friendly arbitration decisions to end disputes (Workplace Express 2023b). On this issue, Greens members of the Senate Committee inquiring into the *Bill* expressed disappointment that workers' 'very limited' ability to exercise the right to strike had not been addressed (Parliament of Australia 2022a: 97).

Other *Secure Jobs, Better Pay* reforms were less contentious than those addressing collective bargaining. These included measures to streamline the process for the FWC to approve newly negotiated enterprise agreements, new limits on the employment of workers on successive fixed-term contracts, and amending the objects of the FWA to include job security and gender equality (the latter discussed further below).

Following the passage of the *Secure Jobs, Better Pay* package, a second tranche of industrial relations reforms was tabled by the government, through the *Protecting Worker Entitlements Bill*. This second package included improving protections for migrant workers, making employer superannuation contributions a guaranteed entitlement under the National Employment Standards (NES), and further measures to address gender inequality. This second package of FWA amendments was passed into law in June 2023, without the same political or legislative controversy as occurred with the *Secure Jobs, Better Pay* package.

### **Closing loopholes**

In September 2023, after extensive consultation with unions and employer bodies, the government introduced a third set of reforms to the FWA, the *Closing Loopholes Bill*. This package was still being debated at time of writing, and will likely prove the most contentious of the government's industrial relations initiatives to date. The original package contained 18 parts; the most important and controversial sections addressed labour hire, 'gig' or platform workers, casual work and wage theft.

A few large companies (such as BHP and Qantas) have infamously used widespread labour hire and outsourcing arrangements to cut wages and labour costs, and circumvent collective agreements with direct employees. The *Closing Loopholes Bill* proposes to require firms with an enterprise agreement to pay labour hire workers the same wage rates as their own

employees covered by that agreement. Seemingly targeted at large, egregious employers, these provisions are weaker than parallel measures already in force in the UK and the European Union (where a 2008 EU Directive requires that any labour hire workers receive the same ‘basic working and employment conditions’ as direct employees, regardless of whether a collective agreement was in place).<sup>1</sup> Unlike those international approaches, the *Closing Loopholes Bill* would also require that labour hire employees or their representatives apply for an order from the FWC, before this obligation for equality of treatment was activated.

A more radical rethink of labour law is evident in the *Closing Loopholes Bill*'s provisions regarding what it terms ‘regulated workers’: including road transport owner-drivers and digital platform workers, two groups of workers (currently treated as independent contractors) that are widely acknowledged as vulnerable.<sup>2</sup> The new legislation would enable the FWC, which previously could only intervene on issues affecting employees, to set standards for contractors in these specific industries, with the goal of setting comparable standards to those enjoyed by equivalent employees. In road transport, the reforms would also enable the FWC to make orders affecting firms higher-up in the supply chain, even if they do not directly hire the contractors in question. Business, naturally, criticises this approach for its alleged impact on innovation, consumer prices, productivity, and employment; meanwhile, many labour advocates would prefer that these workers were redefined as employees and regulated that way.

However, many (but not all) of these ‘self-employed’ workers would prefer to remain that way – although surveys show that many do want additional protections for their work and income regardless of their formal employment status.<sup>3</sup> Relatedly, the *Closing Loopholes Bill* does propose a new definition of ‘employee’ that repudiates recent High Court decisions (which virtually give corporations free reign to define any worker as a ‘contractor’ simply through the wording of their contract of engagement). On the whole, the ‘regulated worker’ provisions of the *Closing Loopholes*

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<sup>1</sup> See: House of Representatives (2023: 24).

<sup>2</sup> See: Macdonald (2023), and Peetz (2022) for more discussion of the risks faced by platform workers.

<sup>3</sup> See: D’Arcy and Gardiner (2014) and Berger *et al.* (2019) for more on the attitudes of platform workers and other self-employed.

*Bill* are relatively limited in the range of workers they will cover (self-employed and contractor workers outside of the two specified sectors will not fall under its protections), the scope of issues addressed (many issues like overtime pay are excluded from FWC orders), and its ability to regulate broader supply chains (other than in the case of road transport). Nevertheless, these reforms constitute an important step toward providing more protection to these specific groups of vulnerable workers, and could set a precedent to be applied to other insecure or non-standard employment situations.

The *Closing Loopholes Bill* also contains several additional measures: further changes to the definition and rights of casual workers (above and beyond reforms in the 2022 legislation), stronger rights for union delegates, increased penalties and administrative powers to prevent and police wage theft, and a new ‘industrial manslaughter’ offence to penalise employer negligence around workplace health and safety issues. The reforms have been fiercely opposed by business groups, who pledged to undertake multi-million-dollar advertising campaigns to undermine public support for the government.<sup>4</sup> At time of writing, the *Bill*’s fate in the Senate was unclear; key cross-bench Senators David Pocock and Jackie Lambie had moved to split the *Bill* into several components. The ACTU and its affiliated unions were mobilising to support passing the *Bill* in its entirety. Minister Burke was negotiating with targeted business interests, amending parts of the *Bill* to dilute opposition. The end product remained unpredictable.

### **National minimum wage**

As noted above, the minimum wage was an important flashpoint during the latter days of the 2022 election campaign. Anthony Albanese supported a minimum wage increase to protect low-wage workers against inflation. In the end, the FWC broadly accepted that goal. One month after the election, it announced an increase in the minimum wage of 5.2%<sup>5</sup> – just

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<sup>4</sup> These threats were intended to evoke memories of the infamous \$22 million campaign undertaken by the Minerals Council and allied groups to defeat the Rudd government’s proposed excess profits tax on mining companies in 2010; see: Davis (2011).

<sup>5</sup> The Commission’s award provided for an increase of 4.6% in all Award wages, with a minimum increase of \$40 per week; this corresponded to an increase in the national minimum wage of 5.2%, and increases ranging between 4.6% and 5.2% for other Award wages.

slightly above the latest year-over-year increase in consumer prices known at the time of the decision.<sup>6</sup> A year later, in June 2023, the FWC announced another strong minimum wage award: an increase of 5.75% in all Award wages, with an even larger 8.65% increase for the small proportion of workers (under 1%) receiving the bare minimum.<sup>7</sup>

While employer groups stated their usual concerns about negative impacts on employment and inflation,<sup>8</sup> the economy and overall employment held up well after these relatively large increases in the minimum wage. Employment and GDP growth remained positive, and the unemployment rate hovered at or near 3.5% – the lowest in decades. Nor did the minimum wage increase spark any surge in prices. Inflation accelerated in the second half of 2022, but clearly driven by global and energy market effects, not rising wages. To the contrary, wages continued to lag well behind consumer prices, discrediting predictions of ‘wage-price spiral.’ For nine straight quarters (beginning June 2021), the year-over-year increase in the Wage Price Index published by the ABS lagged below the corresponding increase in the Consumer Price Index, marking the longest continuous ‘losing streak’ for wages in postwar Australian history (and producing a cumulative decline in real wages of about 6%). By early 2023, inflation was decelerating rapidly, reflecting a fallback in world oil prices (and corresponding declines in petrol and other fuel prices in Australia) and the chilling impact of high interest rates – yet wage growth continued to lag behind prices, and real wages continued to decline. Given the small share of the national wage bill covered by the minimum wage and associated Awards, even a substantial minimum wage hike could not be expected to have a major impact on economy-wide prices (Jericho and Stanford 2023; Fair Work Commission 2023). If anything, higher wages (and hence stronger purchasing power) for low-wage Australians likely contributed incrementally to better macroeconomic performance, modestly countering the chilling effects of higher interest rates imposed by the RBA.

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<sup>6</sup> Year-over-year consumer price inflation in the 12 months ending in the March quarter 2022, the most recent ABS inflation data available at the time of the decision, was 5.1%. However, inflation accelerated in subsequent months, reaching a peak of 7.8% for the December quarter of 2022, and hence the real minimum wage declined in 2022-23 despite this relatively strong increase.

<sup>7</sup> The higher increase for those on the national minimum wage resulted from a reclassification of the wage category for minimum wage workers.

<sup>8</sup> As reported, for example, by Hutchinson and Durkin (2023).

These two relatively strong minimum wage increases announced by the FWC since the 2022 election were not the direct result of changes in explicit legislation or policy directives given to the Commission by the new government. Except for the inclusion of gender equality as an explicit object in the minimum wage process (discussed below), the minimum wage continues to be set as it was before the election: by a nominally independent industrial tribunal, receiving input from a variety of stakeholders, and instructed to balance goals of minimum living standards and fairness against conventional concerns with employment growth and macroeconomic stability. Nevertheless, it seems reasonable to conclude that the new government has influenced these minimum wage decisions in indirect ways – including by indicating its support (in formal submissions to the Commission, as well as public statements) for stronger minimum wage growth, and through more worker-friendly appointments to the Commission and its expert minimum wage panel (discussed further below).

### **Employment white paper**

A key promise of the Labor Party in opposition was to deliver a *Full Employment White Paper* (Albanese 2021) – the first of its kind since the landmark 1945 paper chaired by H.C Coombes. After assuming government, the reference to ‘full employment’ was excised from the paper’s title. Nevertheless, the final *White Paper on Jobs and Opportunities* (delivered in September, 2023; Treasury 2023) devoted considerable attention to the subject of full employment, and signaled important shifts in perspective on employment and macroeconomic policy.

The White Paper revisited an ongoing debate between a common-sense understanding of full employment (meaning a condition in which any willing worker can quickly find work), and the neoliberal meaning of the term – reflected in the doctrine of the ‘non-accelerating inflation rate of unemployment’ (NAIRU). In the NAIRU model (whose intellectual heritage traces back to Milton Friedman’s ‘natural rate’), unemployment must be deliberately kept sufficiently high (through monetary policy interventions) to restrain wage demands of workers and thus control inflation. This view assumes both that inflation normally arises from rising labour costs, and that central banks can effectively use interest rate adjustments to attain a level of unemployment just sufficient to maintain

inflation at a stable, target rate. Both the theory and the policy practice of NAIRU have been subject to strong critiques in recent years.<sup>9</sup> Its relevance is especially dubious in the context of the supply-side and global factors that were the primary spurs for inflation following the COVID pandemic (Quiggin 2023). Nevertheless, orthodox NAIRU thinking has maintained a strong grip on policy makers' attention in Australia. For example, prior to being appointed Governor of the RBA, then-Deputy Governor Michele Bullock suggested an unemployment rate of 4.5% was likely necessary to reduce inflation back to the RBA's target range (Bullock 2023).

In practice no systematic relationship between unemployment and inflation has been visible since the pandemic, confirming long-standing criticisms that the NAIRU is unobservable and unstable. Most recently, year-over-year inflation decelerated from 7.8% in December 2022 to 4.9% in October 2023, with almost no change at all in unemployment (which remained around 3.5% throughout). But this experience does little to dissuade the RBA and similar true believers in Treasury from their faith that the NAIRU is a robust and legitimate guidepost for macroeconomic policy. Like other central banks, the RBA's response to evidence that below-NAIRU unemployment is having no impact on inflation, is to simply change its estimate of what the NAIRU is!

The White Paper adopted a more pragmatic and literal definition of full employment: stating that it exists when 'everyone who wants a job should be able to find one without having to search for too long' (Treasury 2023: 17). Importantly, it also noted that job quality matters, not just quantity. 'What defines the right job will be different for different people, but there are common characteristics including job security and fair pay underpinning the wellbeing of workers' (Treasury 2023: 17). The White Paper also noted the importance of equity, 'giving attention to employment outcomes for specific groups and regions, as well as the aggregate national outcome' (Borland 2023).

The White Paper made clear that full employment is not solely about an absence of unemployment. Instead, policy also must take into account 'indicators that capture different groups, regions and aspects of labour market underutilization.' Meanwhile, the paper explicitly rejected the NAIRU as a policy goal, noting that it 'does not capture the full extent of spare capacity in our economy or the full potential of our workforce'

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<sup>9</sup>See: Richardson (2019) for a recent critical review in the Australian context.

(Treasury 2023: 18). As a result, the paper concluded, ‘the NAIRU should not be confused with, nor constrain, longer-term policy objectives’ (Treasury 2023: 18).

While rejecting NAIRU doctrine, the White Paper did not define what unemployment rate would correspond to its more pragmatic vision of full employment. This could allow NAIRU thinking to remain dominant in practice, with organisations like the RBA and Treasury continuing to use (even implicitly) NAIRU-like targets to guide their forecasts and policy interventions. Moreover, there is no concrete vision in the White Paper for how to attain and maintain genuine full employment. It is certainly a welcome change to see the federal government championing a more expansive and hopeful understanding of full employment. But without a specific, actionable commitment to implementing that vision, the White Paper will likely be relegated to a symbolic role in the government’s labour market strategising.

### **Public sector jobs and pay**

The ALP’s election platform also included an ambitious agenda of public service reform. Pledging to repair the damage caused by cuts and mismanagement under previous Coalition governments, the incoming government pledged to transform the Australian Public Service (APS) into a ‘model employer’ (Albanese 2022b; Gallagher 2022).

Notably, this included a commitment to engage in public-service-wide enterprise bargaining. Since 1999, APS bargaining has been conducted on the level of individual agencies, replacing the previous model of centralised APS-wide bargaining. The move to agency-level bargaining reflected the embrace of New Public Management (NPM) across the public service, which sought to make the public sector more like the private sector – including through purported ‘flexibility’ in employment and compensation practices.

In practice, however, agency-level bargaining has proved costly and inefficient, leading to a fragmentation of conditions across the APS (Williamson and Roles 2023). Through APS-wide bargaining, common core conditions could be established across all department enterprise agreements, facilitating both inter-agency mobility and greater fairness.

In addition to ameliorating fragmentation in bargaining, pay, and conditions, the Albanese government also pledged to reduce casualisation and outsourcing within the public service. The Coalition government had, since 2016, imposed an arbitrary cap on public sector staffing: keeping it at or below 2006-07 levels, despite the growth in Australia's population and corresponding demands on the federal public service. This led to a massive increase in insecure and contract work (Hamilton 2021). By investing in more secure and permanent jobs, the government pledged to rebuild public sector capacity (Gallagher 2022).

Additionally, the government committed to improving working conditions across the APS. Flexible working arrangements are to be offered to all APS staff members, regardless of length of service. As well, an APS-wide right to 18 weeks paid parental leave for primary and secondary caregivers has been offered by the government, with a removal of qualifying periods (APSC 2023).

By committing to establish public-sector-wide standards and conditions, reduce outsourcing, and transform the APS into a model employer, Williamson and Roles (2023) argue the Albanese government has repudiated NPM principles, and is moving towards a renewed ethos of public value. However, despite these promising initial steps, goodwill between the government and the Community and Public Sector Union (CPSU) has been strained over the question of pay. APS wages have not risen in line with inflation, with real pay (after inflation) declining close to 10% since 2013 (Mannheim 2023). APS salaries are also increasingly uncompetitive with private sector pay rates, causing difficulties with recruitment and retention (Bajkowski 2023).

In response, the CPSU demanded a 20% pay increase over 3 years. But this was branded 'impossible' by Senator Katy Gallagher, Minister for the Public Service – herself a former CPSU official (Barlow 2023). The government responded with successive counter offers, which would not even match forecast future inflation, let alone make up for past real wage losses and address the structural underpayment of public servants. Eventually the two sides reached an agreement that the CPSU recommended to its members in November 2023. However, broader aspirations of public service reconstruction continue to clash with the government's overarching commitment to fiscal conservatism, and hence it remains to be seen whether the promise of making the APS a model employer will be fulfilled.

### Addressing the gender gap

In its first year the Labor Government also implemented a number of reforms directly addressing gender inequality at work. As well as including gender equality in the minimum wage and modern awards objectives (noted above), the *Secure Jobs, Better Pay* reforms inserted the promotion of gender equality into the objects of the *FWA* itself, thus elevating this as a core priority shaping the FWC's decision-making on any matter. This is a significant amendment; the gender equality objective is 'intended to reflect the policy objective of both formal and substantive gender equality,' meaning the FWC is instructed to promote equality of outcomes, not just opportunity (Charlesworth and Macdonald 2023).

New specialist panels are also being established at the FWC to build the Commission's capacity on issues like pay inequity, feminised work, and gender-based undervaluation. FWC members with relevant expertise will sit on Pay Equity and Care and Community Services panels that will hear cases relating to pay and conditions in the care and community sector, as well as other women workers (Parliament of Australia 2022: 67). These reforms, along with changes to the *FWA*'s equal remuneration and work value provisions, aim to overcome barriers that, to date, have seen the FWC fail to effectively address gendered undervaluation. It will take time to see if these changes achieve the intended objectives.

Meanwhile, changes to other FWC processes are also under way. A targeted review of modern awards to be conducted by the FWC in 2024 includes, as one of its four priorities, to 'ensure that modern award wages are set with regard to the amended objects of the *Fair Work Act* regarding gender equality and the elimination of gender-based undervaluation of work' (Burke 2023b: 1). Another priority for this review will see a consultation and research process to consider the impact of workplace relations settings on work and care, responding to recommendations made by a Senate Select Committee on Work and Care (2023) led by Greens Senator Barbara Pocock.

As discussed above, an early test of the new 'supported bargaining' provisions of the amended *FWA* has been launched by unions in the ECEC sector. In a second major case before the FWC, unions are seeking additional wage increases for low-paid aged care workers, over and above a 15% increase awarded by the FWC. The progress of this case will test the FWC's capacity to comprehensively eliminate gender-based

undervaluation, as well as the Government's readiness to fully fund the necessary wage increases.<sup>10</sup>

The *Secure Jobs, Better Pay* reforms included other reforms promoting gender equality, including new prohibitions on pay secrecy to improve transparency and reduce the risks of discrimination in pay. Breastfeeding, gender identity and intersex status were added to the list of protected attributes under the *FWA*, meaning employers are now prohibited from taking adverse action against employees because of these attributes. New prohibitions on sexual harassment in the *FWA* include pro-active obligations on employers to prevent harassment. Along with amendments to anti-discrimination legislation, these changes also implement outstanding recommendations of the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (AHRC 2020) that had not been acted on by the previous Coalition government.

The strengthening of flexible work provisions in the *FWA* responds to evidence that existing provisions were too weak (Senate Committee on Work and Care 2022: 106). With the changes, as many as half of all employees now have rights to request flexible work, including parents of school age or younger children, carers and workers aged 55 or over, those with a disability, pregnant women, and people experiencing or supporting someone experiencing family violence. However, the changes fall short of the recommendation of the Senate Select Committee on Work and Care (Parliament of Australia 2022b: 190) that the flexible work right be available to all workers, to 'remove the stigma attached to its use when confined to carers.'

In a separate reform, the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill* was passed in March 2023, extending paid parental leave and making it more flexible. These initiatives were widely welcomed, although criticism remained that the scheme falls well below international best practices regarding length of leave and level of wage replacement – nor does it include superannuation payments. Another piece of legislation, the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill*, amended the *FWA* to provide 10 days of paid family and domestic violence leave under the National

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<sup>10</sup> The government has committed \$11.3 billion to support the initial 15% wage increase (Department of Health and Aged Care 2023), but additional funding will be required if the FWC approves further increments.

Employment Standards (NES). This is the first paid leave provision in the NES that applies to casual workers.

As a set, these measures constitute a significant commitment to addressing gender inequality in Australia's labour market. They will make a measurable difference in the lives of many women workers and their families.

### **Fair Work Commission appointments**

The most high-profile and controversial elements of the Albanese government's industrial relations agenda have been the successive packages of legislative reforms to the *FWA*. However, a less obvious way the government is working to bring better balance to the landscape of industrial relations in Australia is by renewing the make-up of the Fair Work Commission and its various panels.

In its first year in office, the government appointed 13 new members to the Fair Work Commission. All these new members hail from union or union-friendly backgrounds. Yet, even with these appointments, the tribunal remains heavily weighted in favour of employer interests since, according to the government's count, 26 of the 27 permanent appointments made by Coalition governments over the previous nine years came from employer backgrounds (Burke 2023a).

A changing of the guard was also apparent in the Commission's expert panels, including the new panels created to review gender equality and care work cases, and the panel overseeing the Commission's annual wage review case (Burke 2023c). In March 2023, Minister Burke appointed three new external panel members: University of Sydney professor of gender and employment relations Marian Baird, economist Leonora Risse from RMIT, and retired Treasury economist Mark Cully. In addition to the new expert panels, Baird and Cully will also serve on the FWC's panel overseeing the annual minimum wage case. These appointments shift the balance of the FWC's expert panels in favour of a more pro-active and egalitarian approach to wage setting, in contrast to the more business-oriented, neoclassical economic orientation visible in recent years.

The Commission itself has a new President, following the retirement of Justice Iain Ross (who served in that role since 2012, and was once assistant secretary of the ACTU). Ross has been succeeded by Justice

Adam Hatcher, who served as a Vice President of the FWC since 2013, and previously worked as a counsel for the Transport Workers Union.

Without doubt, industrial relations outcomes are ultimately shaped by structural, legal and economic factors; and progressive appointees to the FWC and its panels can always be replaced by a subsequent right-wing government. Nevertheless, these appointments of individuals with a clear commitment to the goals of collective bargaining and wage equity will surely have some incremental impact on the Commission's interventions, helping to shift industrial relations in a progressive direction. The Albanese government deserves credit for wielding its appointment powers in a more determined and strategic manner than past ALP governments which often adopted the rhetoric of 'balance' in making their own appointments, despite the unapologetic pro-employer bias visible in Coalition appointments.

## **Conclusion**

The Albanese government's election victory occurred amidst widespread frustration with a decade of unprecedented wage stagnation and growing inequality – topped off with a more urgent cost-of-living crisis after the COVID pandemic. While the ALP made few specific industrial relations promises in its election platform, it communicated a generic concern for the economic struggles of workers, and a broad commitment to lifting wage growth as a goal of macroeconomic policy. This orientation helped win the election. Its actions in its first year in office constitute an incremental but significant rebalancing of industrial relations in favour of workers – featuring both explicit changes to industrial laws and collective bargaining practices, as well as adjusting other policy levers in the interests of protection and equity for workers. The government has managed these initiatives while so far maintaining a cooperative relationship with the trade union movement, which is anxious to achieve more significant and lasting changes under this ALP government than was the case under the previous Rudd-Gillard regime.

One indication of the impact of these recent changes is the fact that wage growth has already accelerated notably, reaching a pace well above any period during the previous Coalition government's nine years in power. By September 2023, average wages were growing at 4% year-over-year, the fastest since the Global Financial Crisis. Some of that pick-up reflects

macroeconomic conditions well beyond the immediate purview of the new government: the fight by workers (individually and collectively) to keep up with inflation, reinforced by historically low unemployment and consequent labour recruitment and retention challenges for many employers. Relative to inflation, real wages had stopped falling by mid-2023, but still had much ground to recover from the sustained losses of the previous two years. Nevertheless, the government deserves some credit for this progress on wages – including via its successive *FWA* amendments, support for collective bargaining, encouragement for stronger minimum wage adjustments, and its other equity-promoting policy changes.

On the whole then, the Albanese government has made cautious but useful progress on industrial relations and labour issues during its first year. However, it must be acknowledged that the overall labour relations regime in Australia remains heavily skewed in favour of employers and against unions; the worrisome longer-run trends which have restructured the labour market under neoliberalism will surely continue without further, more far-reaching changes in law and policy. In particular, the erosion of union density and enterprise agreement coverage will likely persist without powerful measures to directly overcome barriers to workers' organisation, representation, and collective action. The latest ABS data indicates that union membership declined to 12.5% of employees in Australia in August 2022, the lowest in modern history. Coverage by current enterprise agreements also plumbs record lows: just 15% of all employees were covered by current federally regulated agreements as of June 2023, including only about 10% in private sector workplaces. The vast majority of Australian workers thus lack the protection and collective power that can be provided by unions – and this has been a deliberate goal of neoliberal labour market policy.

Incremental improvements in statutory protections will have only limited long-term effect as long as workers' independent power base continues to erode. Addressing the high barriers to workers' self-organisation still embedded in the *FWA* (including its full legal protection for 'free riding'<sup>11</sup>, restrictions on union rights of entry and representation, and limits on industrial action) will be essential to achieve more fulsome working class progress.

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<sup>11</sup> See Stanford (2021) for description of Australia's uniquely repressive anti-union laws.

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