

Labor

**Labor's plan for
secure jobs, fair
conditions and
safe workplaces**



Background

Labor will protect the dignity and safety of workers

Around 4 million people work in NSW.¹

While the *Fair Work Act 2009* (Cth) governs many aspects of employment in NSW, the NSW Government retains the ability to enact laws which affect many aspects of employment:

- The NSW Government is the largest employer in Australia, with almost 400,000 people working in the NSW public sector;²
- Almost 1 in 10 employees in NSW work in the NSW public sector;³
- The *Fair Work Act 2009* (Cth) does not override NSW laws such as:
 - The Anti-Discrimination Act 1977 (NSW);
 - Laws relating to occupation health and safety;
 - Laws relating to leave for victims of crime;⁴
- The NSW Government can use its procurement policies to require businesses to adhere to ethical standards, provide safe workplaces and provide decent conditions for their workers; and
- The NSW Government continues to be able to regulate contracts through legislation such as the *Contracts Review Act 1980* (NSW).



Labor's plan

Labor will enact a five-point plan to combat wage theft

Research has estimated up to \$1 billion has been stolen by rogue employers who have systematically underpaid their workers.⁵

The Commonwealth Fair Work Ombudsman has stated existing laws do not provide a sufficient deterrent to these rogue employers.⁶

Labor will implement a five-point plan to combat wage theft:

1. Labor will introduce a new law to criminalise the deliberate failure to pay wages and entitlements

Labor will introduce a new law to punish individuals and companies who deliberately and systematically underpay their workers.

The maximum penalty for an individual found guilty under this law will be 14 years imprisonment. This is consistent with the maximum penalty for stealing provided by s. 94 of the *Crimes Act 1900* (NSW).

New research reveals at least \$1 billion owed in lost pay to workers in Australia

News.com.au
30 October 2018

Labor's new law will also:

- Include tough penalties for companies who systematically underpay workers; and
- Allow prosecutions to be brought by law enforcement agencies, affected persons and unions.

Labor's new law:

- Will not impose punishments on employers who have made genuine and reasonable mistakes; and
- Will help employers who pay their employees correctly by preventing rogue employers under-cutting prices by stealing from workers.

2. Labor will introduce new laws to hold head franchisors accountable for the actions of franchisees

Labor will introduce new laws to make head franchisors liable for what takes place in their franchise network. The new laws will hold head franchisors accountable for matters including:

- Workplace safety;
- Wages; and
- Other employment conditions.

3. Labor will expand the powers of NSW workplace inspectors

Labor will expand the powers of NSW workplace inspectors to allow them to proactively undertake wage audits.

These expanded powers will:

- Improve compliance with requirements to pay workers' compensation insurance; and
- Assist in the recovery of unpaid wages and superannuation.

4. Labor will introduce a new licencing scheme for labour hire companies

Labor will introduce a new licensing scheme for labour hire companies. The scheme will require labour hire companies to comply with existing labour laws, including requirements to:

- Provide a safe workplace;
- Provide fair and reasonable working conditions; and
- Provide the same pay and conditions to labour hire employees as workers who are directly employed at a workplace.

5. Labor will promote accountability and improve dispute resolution

Labor will:

- Require businesses to publicly display minimum wage rates paid to staff alongside their business registration (where patrons and the public can see);
- Place businesses found to have breached the law on a public "name and shame" register, and potentially make them ineligible to participate in future contracts with the NSW Government;
- Ensure disputes and other issues regarding apprenticeships and vocational training can be heard in the Industrial Relations Commission; and
- Give the Industrial Relations Commission the power to order the payment of any unpaid superannuation, together with any unpaid wages and other employment benefits which have not been provided.





Labor will protect workers in the “gig economy”

An increasing number of Australians work in the “gig economy”. While the gig economy is difficult to define:

- It is commonly associated with apps such as Uber, Deliveroo and AirTasker; and
- It has been estimated more than 90,000 people in NSW generate income through these services.⁷

There have been widespread reports of gig economy services failing to provide workers with the pay and conditions they would receive under a conventional employment relationship.

Labor will introduce a new regulatory framework in NSW to protect workers in the gig economy.

Online food delivery company Foodora facing legal action over alleged underpayment of staff

ABC News, 13 June 2018

Deliveroo and Foodora accused of using sham contracts for bicycle delivery riders

Sydney Morning Herald, 30 March 20

App delivery riders say they are paid as little as \$6 an hour in Australia

The Guardian, 14 March 2018



Labor will insert a new Chapter into the *Industrial Relations Act 1996* (NSW) which will:

- Define a “gig” worker;
- Define “platforms” and “networks” through which gig work is provided;
- Empower the NSW Industrial Relations Commission to make orders for:
 - o Minimum rates of pay;
 - o Superannuation;
 - o Annual holidays;
 - o Sick leave; and
 - o Any other benefits employees are generally entitled to.

Labor will also:

- Ensure gig workers are eligible for workers compensation if they are injured; and
- Require platforms and networks which provide gig work to pay insurance premiums for workers’ compensation.

Labor will establish a new mechanism to allow the NSW Industrial Relations Commission to quickly and fairly resolve disputes regarding gig workers.

Labor will ban exploitative unpaid internships

Legitimate work place placements and volunteer opportunities can allow young people to develop their skills and work toward obtaining a recognised qualification.

However, unpaid “internships” can be used by unscrupulous employers to avoid paying employees in entry-level positions.

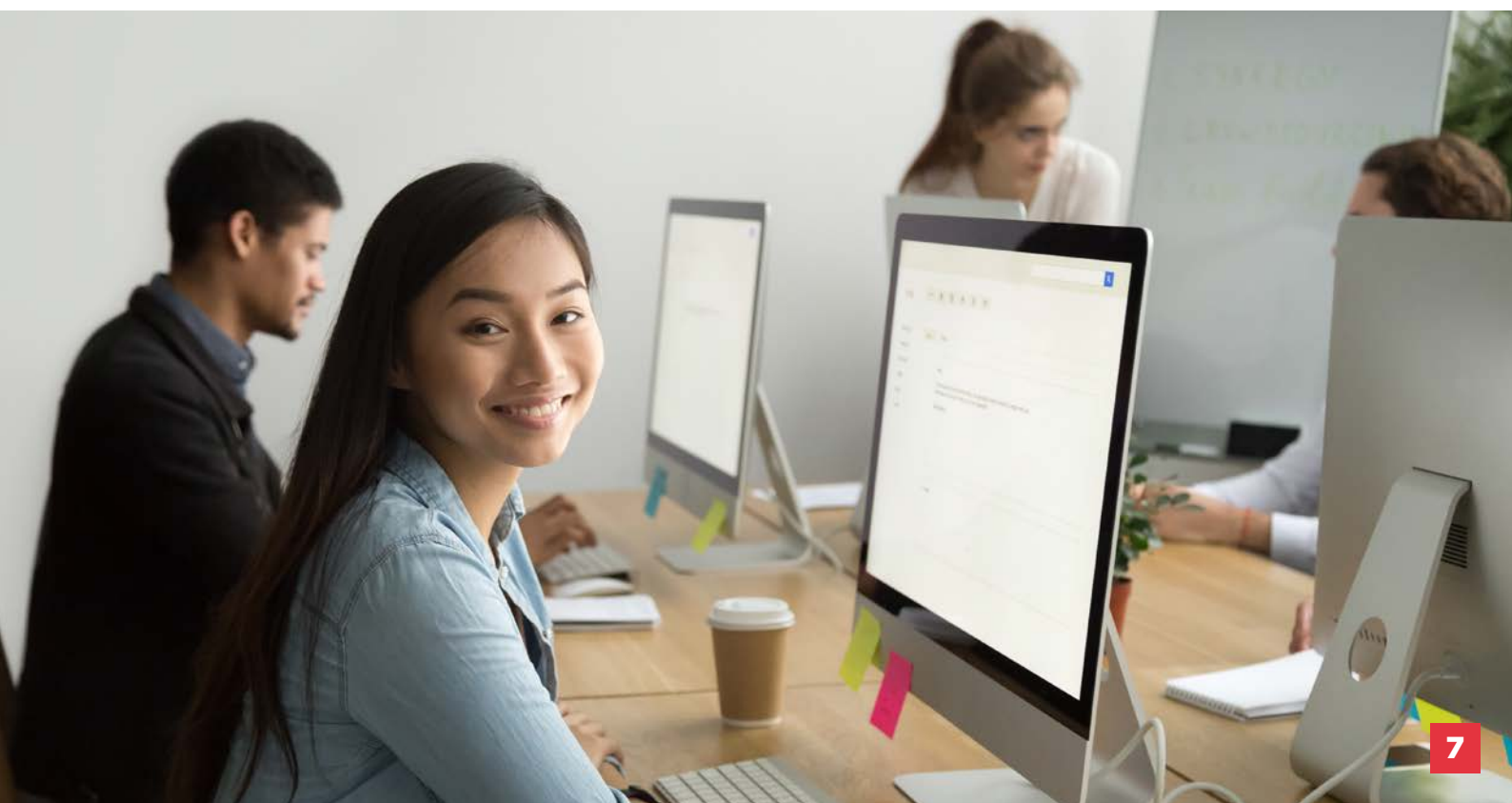
Labor will:

- Ban unpaid internships which last more than two weeks, unless:
 - The internship is part of a structured learning program; or
 - The internship contributes to a recognised qualification;
- Require internship brokers to obtain a licence;
- Crack down on operators who charge high administrative fees to place applicants in unpaid internships;

Unpaid internships: how working for free went mainstream

News.com.au
30 October 2018

- Enforce standards for ethical and fair treatment of interns by brokers and firms; and
- Direct the NSW Industrial Relations Commission to set pay and conditions for internships which last more than two weeks and are not part of a structure learning experience on a similar basis to the minimum conditions which apply for apprentices and trainees.





Labor will restore protections for Boxing Day

More than 326,000 people work in the retail sector in NSW.⁸

Because retail trading increasingly operates 24 hours a day, 7 days a week, it can be difficult for workers in the retail sector to take time off when their family and friends are also not at work.

In 2015, the Liberals and Nationals introduced a “trial” which permitted trading on Boxing Day for 2015 and 2016. Labor opposed this trial. In 2017, the Liberals and Nationals extended the trial indefinitely.⁹ Labor opposed that extension.

While the Liberals and Nationals’ law notionally requires that staff must choose to work on Boxing Day, these provisions do not provide effective protection against retaliation if an employee refuses to work.

There is no evidence trading on Boxing Day increases economic productivity or generates any additional economic output.

However, it is certain that by allowing trading on Boxing Day, thousands of retail workers miss one of the few days in the year which had been reserved for them to spend with the family and friends.

Labor will repeal the Liberals and Nationals’ Boxing Day trading legislation to ensure retail workers can spend Boxing Day with their family and friends.

Labor will protect Sunday penalty rates

Labor will pass new laws to ensure penalty rates and any other “above ordinary hours” payment for Sunday work under NSW Awards and Agreements cannot be cut.

Labor will give all NSW workers 10 days of paid domestic violence leave

There were more than 29,000 domestic violence related assaults in NSW in the past 12 months.¹⁰

Labor will pass legislation to give all workers in NSW a right to ten days of paid domestic violence leave.

Currently:

- The Commonwealth workplace relations system provides five days of unpaid domestic violence leave;¹¹ and
- The NSW Government provides ten days of paid domestic violence leave, but only for NSW Government public sector workers.¹²

A Labor Government will give all workers in NSW a right to ten days of paid domestic violence leave.

This will help people who have been affected by domestic violence to attend court, obtain legal advice and receive counselling while maintaining their employment.

Labor will amend anti-discrimination laws to protect women at work

Labor will amend anti-discrimination laws in NSW to:

- Ensure employers reasonably accommodate the needs of employees who require flexible working arrangements because they:
 - o Are pregnant;
 - o Have family responsibilities;
 - o Have responsibilities as carers; or
 - o Are older or are returning to work following an illness;
- Protect employees and others from sex discrimination in areas such as redundancy, dismissal and the non-renewal of work contracts due to pregnancy, parental leave or other family and caring commitments; and
- Improve pay discrimination laws, including mechanisms for inquiry, evaluation and correction of gender pay discrimination.

Labor's revised anti-discrimination laws will apply to all workers in NSW, including workers in:

- The NSW public sector;
- The local government sector; and
- The private sector.

A Labor Government will give the Industrial Relations Commission jurisdiction under the *Anti-Discrimination Act 1977* (NSW).





Labor will take action to improve workplace safety

Work-related injury and disease is estimated to cost the Australian economy around \$62 billion each year.¹³

The cost of work-related injuries is mainly borne by workers:

- Injured workers bear around 77 per cent of costs associated with work-related injuries;
- The community bears around 18 per cent of costs associated with work-related injuries; and
- Employers bear the remaining 5 per cent of costs.¹⁴

More than 160,000 people in NSW experienced a work-related injury or illness in the 2017-18 financial year.¹⁵

Despite the unacceptably high number of work-related injuries and illnesses in NSW, the Liberals and Nationals have reduced actions to enforce workplace safety since they came to office (as set out in the table below).

To improve workplace safety, Labor will:

- Double the compliance functions of Safe Work over the first term of a Labor Government;

- Return work health and safety matters from the District Court to a re-established Industrial Court;
- Confer new mechanisms to enforce rights and responsibilities that currently exist in work safety and workers' compensation laws on the Industrial Relation Commission;
- Ensure workers and their representatives can enforce workplace safety laws, including obligations on employers and insurers for work safety, rehabilitation and return to work;
- Strengthen employer obligations to provide employment opportunities for injured workers;
- Provide incentives for employers to return injured workers back to the workplace;
- Complete implementation of the Ten Year Framework for Prevention emerging from the National WHS Strategy 2012-2022; and
- Ensure all successful tenderers for government contracts have workplaces that have the highest standards of workplace safety.

	2010-11 (Labor)¹⁶	2017-18 (Liberals and Nationals)¹⁷	Percentage Change
Notices issued	14,854	13,703	-8 per cent
Fines recovered	\$6 million	\$4.1 million	-32 per cent
Successful prosecutions	109	59	-46 per cent



Labor will protect workers from bullying

It is estimated 5 million Australians will experience some form of bullying in the workplace during their working lives.¹⁸ Workplace bullying is estimated to cost the Australian economy as much as \$36 billion each year.¹⁹

To address workplace bullying, Labor will:

- Enact new laws to protect all workers from physical and psychological bullying in the workplace;
- Implement a Charter of Rights to ensure injured workers are treated fairly by employers, Safe Work NSW and insurance companies;
- Ensure Safe Work NSW is properly resourced to deal with workplace bullying complaints;
- Make the Industrial Relations Commission the independent umpire for deciding allegations of bullying that are not resolved at the workplace or by an independent investigation; and
- Ensure all investigations of bullying complaints within Safe Work NSW are investigated independently.

Labor will enact a new law to deal with workplace deaths

More than 300 workers have died at work in NSW since 2012.²⁰

This inconsistency creates uncertainty as to which legislation should govern the investigation and prosecution of workplace deaths.

Labor will enact a new law to deal specifically with workplace deaths. The maximum sentence under this law could be 25 years imprisonment, consistent with the penalty for manslaughter under the *Crimes Act 1900* (NSW).

Labor will protect whistle-blowers

Currently, the *Public Interest Disclosure Act 1994* (NSW) provides limited protections for whistle-blowers who make a disclosure revealing misconduct.

This law is problematic because it:

- Only applies to people working in the NSW public sector;²¹ and
- Is poorly structured, leading to confusion over how a disclosure should be made and the protections which would apply.

Restricting protections to people who are directly employed in the public sector can prevent contractors or people working for non-government organisations from disclosing misconduct, even if the misconduct is connected to a NSW Government program or initiative.

Labor will amend the *Public Interest Disclosure Act 1994* (NSW) to:

- Provide clear and effective protections for those who disclose wrongdoing;
- Make clear these protections apply if a disclosure is made to a Member of Parliament or a journalist; and
- Expand these protections as far as constitutionally possible to the private sector.

Labor will protect workers' privacy

In 2005, the Carr Labor Government enacted the *Workplace Surveillance Act 2005* (NSW). The aim of this law was to protect the privacy of employees by prohibiting or restricting surveillance at work.

Technological developments over the past 14 years mean it is time for a comprehensive review of this law.

Labor will commission an expert review of the *Workplace Surveillance Act 2005* (NSW)

Labor will commission an expert review of the *Workplace Surveillance Act 2005* (NSW). The review will examine issues including:

- Whether the *Workplace Surveillance Act 2005* (NSW) has been successful in achieving its objectives;
- Whether the *Workplace Surveillance Act 2005* (NSW) should be updated to take account of technological developments, such as social media; and
- How laws in NSW should be updated to protect the privacy of employees and former employees outside work.

Labor will protect the privacy of employees outside the workplace

Currently, employers or their insurers may invade the privacy of employees and former employees outside the workplace. These intrusions often occur in the context of contested insurance claims.

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry heard of multiple instances of inappropriate surveillance by insurers.

The Spying Racket: how life insurers target mentally ill policyholders

Sydney Morning Herald, 27 May 2018

'OMG ... I want results': TAL hired investigator to dig dirt on nurse

Sydney Morning Herald, 13 September 2018

Banking royal commission finds Suncorp's spies drove dangerously and lied

The Guardian, 14 March 2018

Labor will introduce new laws to protect the privacy of employees and former employees outside the workplace. These laws will:

- Require an employer or their insurer to obtain a court order before undertaking any covert surveillance of an employee or former employee; and
- Require that the storage, use and disclosure of any records generated as a result of covert surveillance also be subject to court approval.

COURT

Labor will re-establish the Industrial Court of NSW

In December 2016, the Liberals and Nationals abolished the Industrial Court of NSW and transferred its remaining jurisdiction to the Supreme Court of NSW.

The decision affected thousands of teachers, police, paramedics, nurses, public hospital salaried doctors and council workers who could no longer have their case heard by a specialist industrial court.

A Labor Government will re-establish the Industrial Court of NSW, either as:

- A division of the Supreme Court (like the Court of Appeal); or
- As a stand-alone Superior Court of Record, as it was previously.

The Industrial Court will have jurisdiction

under the *Industrial Relations Act 1996* (NSW). Work health and safety prosecutions will be returned to the Industrial Court from the District Court.

All matters involving employment contracts, restraints of trade and any contract whereby work is performed will also be heard by the Industrial Court.

In addition, shareholder disputes where one or more shareholders work in the business will be conferred upon the Industrial Court.

Judges of the Industrial Court will also be senior members of the Industrial Relations Commission of NSW.



Labor will restore integrity to the NSW public sector

In 2013, the Liberals and Nationals introduced the *Government Sector Employment Act 2013* (NSW). This law undermined the independence of the NSW public sector by:

- Weakening job security protections;
- Weakening merit-based selection appointment processes; and
- Enabling greater use of contractors, casual workers and temporary employees to circumvent public sector recruitment practices.

In 2018, more than 170,000 people across the NSW public sector responded to the *People Matter* survey conducted by the NSW Public Service Commission. The survey found:

- Only 37 per cent of respondents felt confident about the way recruitment decisions are made;²²
- 18 per cent of respondents reported being bullied in the past 12 months;²³ and
- 23 per cent of respondents felt they were unable to move to a new role because the application process is too cumbersome or time consuming.²⁴

Labor will address problems in the public sector by establishing a new Department of Industrial Relations. This new Department will consolidate functions currently performed by the Industrial Relations Secretary, Office of Industrial Relations and the Public Service Commission.

Labor will consult public sector unions and managers to develop new laws to replace the *Government Sector Employment Act 2013* (NSW). The new laws will:

- Be simpler and fairer; and
- Allow Parliamentary scrutiny of regulations.

Labor will also:

- Restore the right to appeal promotion decisions to the NSW Industrial Commission;
- Review the use of contractors, casual workers and temporary employees to ensure these arrangements are only used when absolutely necessary; and
- Gradually convert temporary or casual staff (other than Senior Executive Service staff) who have been employed for more than two years to permanent employment.

Labor will make the NSW Government a model employer

Labor believes the NSW Government should be a model employer.

To achieve this goal, Labor will address workplace discrimination and gender inequality by:

- Creating a dedicated unit in a new Department of Industrial Relations to develop practical solutions to address workplace discrimination;
- Ensuring public sector agencies implement all six recommendations of the *Advancing women: Increasing the participation of women in senior roles in the NSW public sector* report prepared for the NSW Public Service Commission; and
- Identifying and ending behaviours which perpetuate harmful stereotypes at work.

Labor will require employers who conduct business with the NSW Government to treat their workers fairly and provide safe workplaces

Labor will amend the NSW Government's procurement policies to require that NSW Government agencies are only permitted to conduct business with companies which:

- Adhere to ethical employment practices;
- Comply with their legal obligations as employers; and
- Provide safe workplaces with fair conditions for their employees.

Labor will consult unions, businesses, industry groups and non-government organisations to develop specific changes to the NSW Government's procurement policies to give effect to these goals.





Labor will take action to eradicate modern slavery

Modern slavery describes a variety of practices including forced labour, debt bondage and deceptive recruiting.²⁵

Globally, around 40 million people are held in some form of modern slavery.²⁶

A major factor which contributes to the persistence of slavery is the complexity of global supply chains.²⁷

To address this problem, the United Kingdom enacted a *Modern Slavery Act* in 2015. This Act introduced new provisions which require the UK Government and businesses to ensure their supply chains are free from slavery. Similar laws were passed by the NSW and Commonwealth Governments in 2018.²⁸

While Labor supports the laws which have been introduced in Australia, these laws are not sufficient to achieve the goal of eradicating modern slavery.

A Labor Government will:

- Reform NSW Government procurement policies to ensure no goods or services purchased by the NSW Government have been tainted by modern slavery;
- Expand the powers of the NSW Anti-Slavery Commissioner to develop action plans to address modern slavery practices in NSW and to monitor and report on anti-slavery initiatives across the whole supply chain; and
- Develop and implement a public awareness campaign regarding forms of modern slavery.

Labor will promote awareness of the rights of pregnant workers

Labor will work with businesses, unions and the community to ensure:

- Employers are aware of their legal obligations in relation to employees who are pregnant; and
- Employees are aware of their legal rights if they are pregnant.

Labor will collaborate with peak bodies from businesses, unions and the community to develop and deliver information regarding:

- Employer obligations;
- Employee rights; and

- Leading practices and strategies in relation to pregnant employees.

Labor will focus on developing materials for employers regarding their legal obligations in relation to:

- The work health and safety needs of pregnant employees;
- Employees undergoing fertility treatment; and
- Employees returning to work after childbirth, miscarriage or stillbirth.



Labor will protect sub-contractors in the construction industry

A constant problem faced by sub-contractors in the construction industry is the risk their head contractor will become insolvent. This can leave the sub-contractor unpaid for their work.

The problem of sub-contractors being left unpaid is particularly acute in the construction industry:

- The construction industry consistently has one of the highest rates of insolvency of any sector of the economy;
- Insolvencies in the construction industry account for around one quarter of all insolvencies in Australia each year; and
- Nationally, the construction industry is burdened with around \$3 billion of unpaid debts.²⁹

Following a series of high profile insolvencies in the construction industry, the Liberals and Nationals commissioned Bruce Collins QC to undertake an independent inquiry into construction industry insolvencies in NSW. Mr Collins completed his report in November 2012.³⁰

A key recommendation made by the Collins Inquiry was the establishment of a new system where payments made to head contractors for building projects valued at more than \$1 million would be held on trust.³¹ This would ensure money would be available to pay sub-contractors for work they have performed.

While the Liberals and Nationals initially supported this proposal,³² they never implemented it.

Labor will:

- Implement the recommendations of the Collins Inquiry;
- Enact new laws to ensure sub-contractors receive money they are owed; and
- Create a special unit in the Department of Industrial Relations to deal specifically with problems in the construction industry, such as the non-payment of subcontractors.





**Labor will ensure all workers in NSW are paid fairly,
receive decent conditions and have safe workplaces.**

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