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## Speech – Australian Industry Group, Canberra

Ministers:

The Hon Tony Burke MP

Minister for Employment and Workplace Relations

Minister for the Arts

### **TONY BURKE, MINISTER FOR EMPLOYMENT AND WORKPLACE**

**RELATIONS:** Workplace relations, the key, I guess, to the essence of the portfolio is in the name. It's about relationships. The stronger the relationships the better the outcomes – for workers, for employers, for our communities and for our nation. The International Labour Organisation talks about a social dialogue. It talks about tripartism. What it's talking about is relationships – the constructive exchange between representatives of governments, employers and workers, civil society on issues of common interest to all.

Labor governments have always worked to bring employer and worker representatives together to find common ground in the national interest. And we've always had a view you have to bring something to the table. Part of the presentation, I think, on the working groups a couple of years ago was that everyone was around the table but what the government provided was the table and we're wanting to make sure with the summit that we are bringing policies to the table, hopefully to make it easier, in some instances to broker a complete consensus and in others to at least bring people closer together than they otherwise would have been.

Consensus won't always be possible, but under this Government good faith, tripartite dialogue will be prioritised. That's at the heart of the way I approach workplace relations as your new minister.

Now, you're all uniquely attuned to the difficulties that the pandemic has caused Australian businesses, workers and our economy. Now it's the time to acknowledge the pandemic's not over, but at the same time to start the work of making sure we rebuild and to imagine how we intend to grow the economy together.

The Government is committed to boosting job security, to providing shared gains to business and workers through increased productivity and wages. We need to address the problem of job insecurity and we want to do it urgently. It affects too many Australians, including those with families to support and a

mortgage to service or rent to pay. And this is one of the differences that is not often discussed. It's not simply how many people are in insecure work – and while AI Group will often say the number of casuals might not have shifted much, we've had new areas emerge – the gig economy – increase in the number of people on short-term contracts, different ways in which labour hire can now be used – but we've also seen a change in who has insecure work. The days of people in insecure work simply being students isn't the world anymore. Increasingly people are in insecure work where they are trying to maintain a household, often with dependents. All the bills coming in are completely reliable, even if the income is not.

So 23 per cent of all workers are defined as casuals. But over a third of these workers are working full-time hours. Almost one in three work regular working arrangements. Many casuals are women working in critical but undervalued sectors such as health care and social assistance. 58.3 per cent of employees working on fixed-term contracts are female. Almost one-quarter report having no paid leave entitlements. Two in five fixed-term contractors have been with their employer for two or more years.

The gig economy is growing, increasing rapidly over the past decade. In 2019 it was estimated at being a quarter of a million. Exactly where that will be in a couple of years' time we don't know, but we know the number will be high. 85 per cent of employees paid by a labour-hire firm are casuals and median hourly earnings for labour-hire employees are lower than median hourly earnings for all employees.

Each of these forms of work has a place in the economy. None of them can be nor should be sought to be abolished or obliterated in any way. But making sure that these different forms of employment are not abused, that they're not being used for purposes other than their appropriate use in the economy is a legitimate question for public policy.

And it was on this basis that we committed to the Secure Australian Jobs Plan. Secure jobs, better pay. You'll be hearing that refrain a lot. Secure jobs, better pay. We do want job security to be available for those who want it. We do want to get wages moving again. The economy has needed wages to get moving for a very long time, and we intend to put together the policies to make that happen.

There's effectively three ways of getting wages moving that we're looking at. The first is the use of formal structures under the Fair Work Commission. The second is to get bargaining moving again, and that's one of our key focuses at the jobs summit. And the third is to close loopholes which exist which are allowing wages to be undercut or for wages to be driven down.

In terms of the formal structures through the Fair Work Commission, the first job for the Government – in fact, the first decision formally made by the new Government – was to make a submission to the annual wage review arguing that the real wages of our lowest paid workers should not go backwards. The Fair Work Commission subsequently increased the national minimum wage by \$40 a week.

We've repeatedly said we wanted to see an improvement in wages because we'd seen a decade of wages where in the words of the previous government they had wanted to deliberately keep wages low. Remember hearing some fairly extraordinary speculation as to what would happen if we advocated for an improvement in the annual wage review. But as a result of that \$40 increase there are now workers all around Australia being paid more than they would have been had the Government not advocated in that way.

We do have a government that is fighting for wages to get moving. We believe that the Government should stand up for the lowest-paid workers in the community. We acted on the minimum wage, and we'll be acting on the aged-care workforce as well.

Today we'll be filing a submission to the Fair Work Commission in the aged-care work-value case to support a pay increase for all aged-care workers. Our submission to the commission acknowledges the commitment and dedication of the aged-care workforce in supporting safety and care of older Australians during the pandemic. Our submission acknowledges that the work value of aged-care workers is significantly higher than modern awards currently reflect.

The average care requirements for aged-care recipients in both residential and in-home care have markedly increased in complexity over time. It's particularly the case for the roles of personal care workers, enrolled nurses, registered nurses in residential aged-care and in-home aged-care settings, but it's also relevant to a series of categories of ancillary workers, including cooks, cleaners, administrative workers.

Importantly, our submission argues that at least part of the undervaluation of caring work in the aged-care work sector has been driven by gender-based assumptions about the work value of that work. We must ensure that the wages and conditions of the aged-care sector support the attraction and retention of sufficient workers to meet the expected growth in demand for aged-care services over the next 30 years.

As the primary funder of aged-care services, the Government is committed to ensuring that the outcome of the aged-care work value case is funded. And we won't stop there. Gender equity and women's economic security are at the

very heart of the Government's agenda. We'll enshrine gender pay equity into the objects of the Fair Work Act so the commission has to consider these impacts in its decision-making.

We'll also enhance the expertise of the Fair Work Commission by establishing two new expert panels on pay equity and on the care and community sector. We'll prohibit pay secrecy clauses, because if you are prohibited from disclosing your pay and the person next to you is not allowed to tell you what they are getting paid, how can you ever advocate for yourself?

And we've just introduced our paid family and domestic violence leave legislation. Every worker in Australia has the right to be safe at work and safe at home. This of itself obviously is only one of the things to do to improve safety at home. But it will change lives. It's why my first Parliamentary act was to legislate for paid family and domestic violence leave. Family and domestic violence devastates the lives and livelihoods of those who directly experience it. The cost to business of providing 10 days' paid family and domestic violence leave will be low. It's damaging impacts reverberate throughout our communities, our workplaces and our national economy.

We need to effectively deliver on one principle, and that entire Bill is about one principle – to create a situation where no worker has to choose between safety and pay. No worker having to choose between safety and pay. And when you then go through the detail of how we've legislated, any of the aspects where you think: "Oh, normally a leave entitlement would work that way", you get back to that principle and you can see why we've landed where we have.

I know that business will need lead-in time to adjust their payroll systems, and with a leave entitlement like this, I'll be frank, I would have loved to have been able to say it should start from day one, the moment it was proclaimed or even a year before, but the reality is if business isn't given time there are perverse outcomes that could occur.

Business needs time to be able to get its payroll systems up to date, but it also needs to – we need to work through the systems as to how family and domestic violence leave can be provided appropriately and confidentially. Simple details like, for example, as to how do you record that form of leave on a pay slip. If you get that wrong and the pay slip find its way home, what was all there for good intentions could in fact, lead to a negative outcome. So those issues are why we're making sure that the start date is not until February of next year.

Small business, in particular, will face unique challenges. Now, for many small businesses on an informal way they've always been providing this sort of

benefit. Many businesses have, and particularly small businesses, as I know from growing up, where the employees are an extension of your family in many ways. This has been provided in an informal way for a long time. But for it to be formal you still need to make sure that small business will have the extra time, and they've been given an additional six months beyond the rest of the business community.

We'll work with businesses large and small to make sure that businesses are equipped to have a sensitive conversation with employees, understand their obligations and are set up to confidentially handle leave information.

So, they're the areas of using the systems within the Fair Work Commission. The next is getting bargaining moving again. And we are very much looking to the Jobs and Skills Summit to be able to do this. The Prime Minister in a speech during the election campaign put bargaining squarely on the table for the Jobs and Skills Summit. I think, and we'll all have different views as to what are the reasons, but it's a fair conclusion no matter who you talk to that our bargaining system is broken.

Too many workers, too many businesses are missing out on the benefits of bargaining. There's been a steady decline in collective bargaining since 2010 and reliance on awards has increased. The majority of award-dependent workers are women. So part of the pay equity story is also the decline in bargaining. Median pay for workers covered by agreements – for those who still have them – are 71 per cent higher than workers covered by an award. Only 2 per cent of workers covered by agreements are employed by small business, and bargained outcomes are higher for men than for women on average. No matter which way you look at it, this is a system in need of reform.

Worker and employee representatives need to come together to find ways to address these inequities in the national interest. Now, consensus won't always be possible, but if I can make this clear: if consensus is found, I'm not going to say, "Oh, that's not quite what I wanted to do". I'll grab it. If you're able and business and the organisation – businesses and unions, the organisations representing businesses, the organisations representing workers – are able to find pathways of consensus, I'm keen to grab it.

But we're also leaning in on closing a series of loopholes, and this is where even with bargaining where it's at, even using the formal systems of the commission, there have been loopholes that have turned up in the Fair Work Act that have not been closed. Now, I can trust this with how we deal with the tax system. If a loophole turns up in the tax system, we're pretty quick in the Parliament to close that loophole. We're in there about five times a year, sometimes more, with they're called TLAB bills – taxation law amendment

bills – where a court case happens, something that wasn't anticipated, wasn't expected, and we close the loophole fairly quickly.

For workplace relations, as loopholes have occurred the Fair Work Act has been rarely amended. We intend to close loopholes which allow wages to be undercut or go backwards. We'll ensure workers in the gig economy and other forms of employee-like work are entitled to minimum standards and protections.

At the moment what the commission does – and it's what they're meant to do under the act – is determine whether or not someone is an employee. If you're determined to be an employee you have a series of rights. If you're found not to be an employee, all those rights fall off a cliff. At the bottom of that cliff are people who in any logical sense are not small businesspeople in the sense that I view small business for the business I used to run or for the business that I grew up with and my family ran. Someone delivering pizza on the back of a bicycle with no control over whether they get a shift and no control over what they get paid if they do, that's not a small business. But I accept the Fair Work Commission has made a decision that it's not technically an employee.

So what we want to do is turn that cliff into a ramp where you might not get all the rights of an employee, but the commission has the capacity to work out what are the appropriate minimum standards. I don't want to continue to be a country where the most difficult question you could ask the previous Prime Minister was should every Australian worker be paid at least the minimum wage. I don't want to become a country like some of our allies are where you can only make ends meet if you are collecting tips.

I want minimum standards to be real, and in the gig economy we have moved away from that. I don't want to do what's been tried in other countries of constantly redefining what it is to be an employee – for a really simple reason. The gig platforms can reconfigure their algorithm much faster than we can legislate and you end up just chasing without ever reaching a conclusion. To give the commission the same level of flexibility the platforms have should be able to avoid us becoming a country where for many people work falls way below the minimum standards that we'd expect in Australia. The recent agreement between the Transport Workers' Union and Uber is a step in the right direction. It came after a similar agreement with DoorDash. It's something I hope to see replicated across the board in terms of unions and employers coming together to find solutions.

We'll be acting also on the misuse of labour hire through the same job, same pay principle. I've always accepted and as an employer from time to time I've used labour-hire. I've always accepted when you have a surge capacity that you need, when you have expertise that ordinarily would never be within your workforce labour-hire is a completely legitimate process. I don't believe it's

legitimate to use labour hire because the people are cheaper. And so same job, same pay is something that we're currently negotiating – we're in consultation with business and workers to work through how we deliver that policy objective.

But an area that I'm increasingly concerned about and is timely today is the ability of business to make unilateral cuts to workers' pay and conditions by the termination of agreements. I know this is an issue which will be further discussed at the summit, but I think it's only fair that you get a very clear sense of my disposition on this issue.

My starting point on face value is I cannot see how the tactic can be justified. The solution to a decade of wage stagnation cannot include a loophole which instead of stagnation causes wages to go backwards. Now, to be clear, I don't seek to interfere with cases before the Fair Work Commission under current law. The commission's job is to apply the current law. My job is to make sure the current law is justified and fit for purpose.

Now, one of the disputes currently before the commission is under these very provisions where Svitzer is seeking to terminate an agreement covering its tugboat operators across Australian ports. If the termination goes ahead I'm advised it could result in pay cuts to the workforce of 40 per cent or more. So at a time we're wanting to end wage stagnation, where we're wanting to have a serious conversation about how do we get wages moving, on my desk I'm getting briefings about a section of the workforce potentially facing pay cuts of 40 per cent.

Now, who are these workers? They're the same workers who you'll remember seeing them on the TV. And we were all applauding them saying, "Extraordinary what they're doing." They were putting their lives on the line to save a bulk carrier and its crew that was stranded off the coast of Sydney after a cable had snapped. They were treacherous images. The New South Wales Premier Dominic Perrottet described the work of these crews as heroic and incredibly impressive. And rightly so.

But even where workers don't make it into the news, the principle remains the same. If we have a national objective to get wages moving, a tactic that allows for 40 per cent pay cuts is not fair and it's not in the national interest. As someone whose job is to determine whether the workplace relations framework is fit for purpose, I see this as a way to get out of freely bargained obligations, something we would not accept in the world of commercial or consumer contracts. It's more than a loophole; it's a rort. And I'm disgusted that it's even being tried. On this issue I reckon you've got my disposition now.

Now, there may be room for a narrow exception, and I want to have this conversation – I'm sure it will come under the summit – where businesses that are, for example, facing imminent collapse where agreement terminations are likely on the evidence to ensure the ongoing employment of the affected workers. But that sort of discussion about where there might be an exception I'm on for. But simply permission for unilateral termination and wage cuts I'm not interested in.

At the Jobs and Skills Summit we'll be looking at a different kind of solution to industrial issues. Rather than unilateral action I'm really hoping we find solutions that help parties conclude agreements. We want the Fair Work Commission to facilitate bargaining and to help parties make agreements, not spend its time terminating agreements against the wishes of the workforce. We want bargaining to happen in good faith. We want the bargaining system to work for all workers, including small business and for women.

I want to remove red tape and ensure that the bargaining system supports the negotiation and genuinely agreed outcomes. We want those agreements to deliver pay rises and productivity benefits. I'm hopeful we can achieve this. If we do, it will serve the national interest and the interests of both employers and workers.

So our goal across this term of government, always for any government if you're doing your job seriously, you start with what's the economic starting point. And so we're at an economic starting point where we've had a decade of wage stagnation, where Australia's productivity has been static for a very long time, where there are global forces on inflation and some domestic forces on inflation. There are levers with respect to inflation that we can't control and levers which we can, although the ones that we can, some of them have an immediate effect, some of them, such as investing in skills, such as improving transmission to be able to put downward pressure on electricity prices, take some time. But across all of that you start with what's the economic circumstances for business, what's the economic circumstances for the people they employ.

Out of that we have an ambition to build a bigger, better trained and more productive workforce. We want to boost incomes and living standards. We want to create more opportunities for Australians to get ahead and reach their aspirations. No-one being left behind.

I'm committed to delivering on the government's workplace relations election commitments quickly – in a matter of months, not years. I intend to introduce more legislation later this year. All workers in Australia deserve secure, safe, fair conditions for work, and we'll tackle serious issues like wage theft and exploitation. We've hit the ground running but we're looking to continue

making reforms. We're looking for ideas from businesses and unions about how we can improve the system at the Jobs and Skills Summit and beyond.

I've always for those who've seen me work over the years in the different portfolios I've had I've always had a view that you don't only listen to the people who are going to say the things you want to hear. If you saw me on Murray Darling and some of the meetings I attended there you had a fairly spectacular image of that. Working across the board, consulting across the board, making clear at different points what's up for negotiation, what's realistically on the table and what's not and what timelines I'm working to I think have always helped focus the conversation.

I – if there's not room for consultation on something, I'll be upfront about which parts realistically I'm quite determined to get to. And within that I always know every piece of policy – every piece of policy – is better for the more voices that have been involved. I first had my first conversations with the Australian Industry Group in 2004 as the Shadow Minister for Small Business. I've had a relationship with this organisation for a very long time, and I look forward to what's to come. Working together, there'll be times we agree, times we disagree, and we will always end up with better public policy for the nation by talking. It's great to be continuing that conversation now.