Industrial Relations

Ensuring workers get their fair share

1. Our industrial relations framework should address the inherent power imbalance between employers and workers so that working people are paid fairly and are safe and respected at work.

2. These goals had been steadily eroded by successive Coalition governments at the behest of big business and the employer lobby groups. Wage growth had stagnated in Australia for nearly a decade before the pandemic and global inflation hit. As a result, workers have seen their wages go backwards in real terms and missed out on their fair share of the wealth and productivity they have helped to generate.

3. Collective agreement coverage had declined and more workers are reliant on award rates and conditions which were only meant to be a safety net.

4. The traditional employment relationship had been undermined and circumvented by business models that include labour hire, sham contracting, outsourcing, franchising, casualisation, wage theft, corporate phoenixing and expanding the gig economy.

5. Sexual harassment and discrimination at work have been rife, and those with caring responsibilities, especially women, have not received the support that employers should provide.

6. While the Fair Work Act set out to address the damage done to working people and unions by the Howard Government and its WorkChoices legislation, over time it has failed to ensure balanced workplace relations. The Abbott, Turnbull and Morrison governments either deliberately turned a blind eye to employers creating and exploiting loopholes in our workplace laws, or actively weakened them, all to the detriment of workers.

7. Congress warmly welcomes key reforms to industrial relations by the Albanese Government in its first term to begin to address these many challenges.

8. These reforms have already helped to get wages moving and to restore collective bargaining. They are also expected to improve wages in sectors and occupations suffering from the undervaluation of women's work, reduce the use of insecure work arrangements and begin to deliver respect at work, especially for women, among many other positive changes.

9. The full benefits of these reforms will take time, as will an assessment as to whether they are sufficient to address the power imbalance at work to ensure workers' living standards are again rising. While wages are now growing in real terms, much needs to be done to recover the real income lost over the past decade.

10. While welcoming these reforms, Congress recognises that they will need regular review and updates to address any emerging issues, especially as employers look for new loopholes and reform is still needed to ensure our legal framework adequately supports workers.

A living wage, secure work and decent working conditions

A System for all Workers

11. The traditional employment relationship has been undermined and circumvented by business models that include labour hire, sham contracting, franchising, casualisation, wage theft and expanding gig work.

12. Congress welcomes recent Fair Work Act changes to close these loopholes.

13. Congress notes the use of the corporations power under the Constitution to regulate work done for corporations and recognises that this power means that our laws need not be constrained by narrow

historical common law notions of employment. Congress calls on the Commonwealth Parliament to legislate using this plenary power to ensure that workplace laws aimed at protecting the interests of workers keep pace with the variety of ways in which corporations organise their workforces.

14. Congress will lobby Federal and State governments to ensure State referral agreements are updated, where appropriate, to ensure all workers are receiving the full benefits of the Fair Work Act.

Insecure Work

15. Australia has some of the highest levels of insecure work in the developed world. For too long employers have been able to exploit loopholes in the law to turn secure jobs into insecure ones. This has put lives on hold: workers in insecure work arrangements suffer from greater levels of financial insecurity, stress and other risks to health and safety, wage and super theft, and an inability to balance work and life. Insecurity falls particularly on women, younger, migrant and First Nations workers.

16. Congress welcomes significant progress made by the Albanese Government in supporting job security for working people by:

    a. Introducing a job security objective into the Fair Work Act;

    b. Properly defining casual employment and providing a pathway for a worker who is no longer casual to change to permanent;

    c. Ensuring that labour hire workers receive the same pay as directly employed workers on agreements doing the same work;

    d. Enabling “employee-like” workers engaged by a digital labour platform or in the road transport industries to be covered by minimum standards;

    e. Restricting the use of fixed term contracts; and

    f. Introducing a fair definition of “employee” and strengthening unfair contract and sham contracting laws.

17. While good progress has been made with these reforms, Congress calls for further action to reduce insecure work by:

    a. Tightening exemptions to the limitations on fixed term contracts especially by removing exemptions around government and charitable or philanthropic funding and the exclusion of employees covered by certain awards from the operation of the provisions;

    b. Ensuring all “employee-like” workers are covered by minimum standards regardless of whether or not they are engaged by a digital labour platform; and

    c. Ensuring that same job same pay labour hire laws apply to all labour hire workers including those working for small businesses, and those who are engaged indirectly or working as independent contractors, those doing a traineeship or apprenticeship or working for a host entity that is not a constitutional corporation (including state system local government or public sector employers). The laws should apply from their first day of work and extend to EBA conditions (and not just wages).

18. Congress notes labour hire, franchising, sub-contracting and other corporate arrangements and structures are used by some host or principal employers to screen themselves from legal responsibility for the people performing work for them. The use of these mechanisms to avoid employment legislation has proliferated in recent years. These mechanisms are also a common feature of the rising ‘gig’ economy.

19. Congress considers that the current National Employment Standards fail to account for the changing nature of work by providing limited coverage for workers who do not meet the traditional definition of employee. We welcome progress in covering some “employee-like” workers with minimum standards but believe these benefits should be extended.

20. Congress notes that the level of the casual loading has not been increased since the 2000 metal industry award case. Casual employees must be properly compensated for the loss of conditions and

security. Congress calls for a thorough review of the level of the casual loading and NES entitlements to improve them, considering contemporary considerations.

A Living Wage

21. Congress affirms the need for a national living wage. A living wage would reduce poverty and inequality, improve the absolute and relative living standards for award dependent workers and reduce the gender pay and retirement gaps as well as the gap between award and agreement rates of pay. Living wages should also be paid to apprentices and trainees. Earning a living wage also requires workers to have secure, stable and sufficient hours for all workers who need them.

22. Congress believes that a living wage is an essential requirement of a fair society and must be accepted as a legitimate cost of doing business. A living wage should be fixed by the Fair Work Commission in genuine and detailed consultation by reference to:

    a. What workers need to maintain a decent standard of living, as judged by contemporary norms and not dependent on family structures;

    b. The need to reduce inequality, having regard to relative living standards and the adoption of relative income targets over the medium term, of at least 60% of median full time weekly earnings; and

    c. The need to prevent real wage cuts and ensure workers gain their fair share of productivity growth.

23. The Fair Work Commission must be adequately resourced to continue to maintain its internal expert research capacity as well as partner with the university sector as required to support its function.

24. Under these policy settings, the national minimum wage should increase annually along with award wages set with reference to classification structures which properly value the nature of the work, the skills and responsibility of the work and the conditions under which it is performed, free of gender-based assumptions and undervaluation.

25. Congress also recognises that the living standards of low paid workers (a disproportionate number of whom are women) are particularly reliant on the social wage, which includes tax and social security policy and the provision of public services including health, education, housing and transport. Congress will campaign for social wage improvements to lift the living standards of low-income households, as a complement to – but not substitution for – real increases in Award rates and a minimum wage that is a living wage.

National Employment Standards

26. Congress acknowledges that the National Employment Standards (NES) have been in place for almost thirteen years and that many issues have arisen as to how it applies. There should be a review of the operation of the NES to ensure its provisions are operating as intended.

27. Congress notes that the existing redundancy provisions do not provide adequate protections for employees and obligations on employers for 'technology induced' (automation) job losses, and that this must be rectified. This matter is given more urgency with the emergence of generative AI.

28. Congress welcomes recent improvements to the NES including the inclusion of:

    a. 10 days paid family and domestic violence leave;

    b. Superannuation;

    c. Flexible unpaid parental leave to support the expansion to 26 weeks of paid parental leave by 2026 and other flexibilities in the Paid Parental Leave Act; and

    d. Improvements to the right to request flexible work arrangements.

29. Congress advocates for the expansion of the NES to provide universal standards for:

a. Guaranteed and enforceable access to flexible working arrangements (unless an employer can demonstrate “unjustifiable hardship” in doing so) which includes access to dispute resolution, including the right for parents to work on a part-time or reduced hours basis after parental leave, until the child is school aged, with the right to revert back at the end of that period, and the same right for carers for a period of two years.

b. Access to 10 days paid reproductive leave.

30. Reproductive Leave is an entitlement that provides leave and flexibility for workers to address reproductive health issues that impact on their capacity to work or take preventative measures like health screening.

31. Reproductive health can impact all workers; it affects everybody, at every stage of their working life examples include menstruation, managing chronic conditions such as endometriosis, managing fertility related issues, breast and prostate screening, and issues related to perimenopause and menopause. This list is not exhaustive; these issues can be complex and unique.

32. Reproductive health impacts on work are particularly significant in affecting women’s workforce participation, career progression and the gender pay gap.

33. Congress advocates for improvements to redundancy provisions in the NES to provide for:

a. Removal of the 4-week decrease in redundancy payments after a worker has completed ten years of service. The underpinning logic for this reduction is no longer relevant as most workers can access pro-rata long service leave at 7 years of service or earlier.

b. Removal of the small business exemption to pay redundancy;

c. Entitlement to redeployment and redundancy pay for employees upon the termination of a fixed term contract, or working as a regular casual;

d. Restrictions on an employers’ ability to seek reductions in redundancy payable under the “incapacity to pay” provision of the Act; and

e. Removal of the archaic and confusing exception in relation to the “ordinary and customary turnover of labour”.

A Fair Award System

34. Congress is concerned at the growing disparity between the wages and conditions of award dependent workers and those covered by agreements. This disparity undermines the bargaining system, creates unfair competition and increases the gender pay and retirement gaps.

35. Congress believes that Awards much not lose touch with industry and/or community standards and there needs to be a mechanism for unions to seek adjustments to prevent this. Congress recognises the importance of skill-based career paths and wage progression for productivity, equity and social inclusion.

36. Congress notes that the Fair Work Act unnecessarily restricts the content of modern awards. Restrictions on the content of awards need to be lifted to ensure that the award system can develop without being confined by unnecessary technical limitations. As with the NES, and the public sector, award coverage should be universal to all private sector employees, including all professional employees and new or rare occupations.

37. Congress affirms the need for the concept of parties to awards to be reinstated with registered unions having standing as parties to seek, vary and enforce awards.

38. Congress notes that the Fair Work Act has not been successful in stamping out exploitative individual agreements and that there are some parallels between the uses of WorkChoices era AWAs and Fair Work Act Individual Flexibility Arrangements (IFAs). IFAs should be abolished.

39. Congress acknowledges that the award system has been thoroughly reviewed on numerous occasions over more than two decades and the total number of Awards reduced from many thousands to 122 industry Modern Awards and a number of enterprise awards. Congress affirms that where award reviews have led to significant cuts to pay and conditions, such as penalty rates or redundancy pay, they should be restored.

40. Congress reaffirms that employees must be appropriately compensated for working at inconvenient and unsociable hours. Appropriate penalties must be paid for excessive working hours and overtime. Congress acknowledges that some of the lowest paid workers rely on penalty rates to make ends meet. Congress notes the negative effects of non-standard and unsociable working hours on family and social interaction apply equally to all employees who work during unsociable times.

41. Congress further calls for penalty rates to be paid on personal leave, if such rates would have otherwise applied, to ensure that workers are not disadvantaged when taking leave.

42. Congress calls for an end to the exploitation of offsetting in employment contracts to avoid modern award entitlements, including overtime, penalty rates and annual leave loading. This mechanism has evolved into a form of wage theft.

43. Congress is also critical of employers who deny employees earning above the high-income threshold key award entitlements, such as redundancy pay, because they are currently excluded from modern awards. Congress calls for this exclusion to be removed from the Act.

44. Congress calls for the end of junior rates of pay which are discriminatory and add to the financial insecurity of young workers.

45. Congress recognises that the occupational and industry structure of the award system has resulted in built- in gender biases and historical undervaluation of work predominately done by women and the mechanisms available to remedy this have failed. In this regard Congress welcomes the changes to the Fair Work Act that seek to remedy this including the new object of achieving gender equality, and a new and fairer test to determine whether there is equal remuneration for work of equal value. Future reforms should address outdated classification structures and pay point progression in awards covering work predominantly done by women.

46. Congress also welcomes the establishment of the Pay Equity and Care and Community Sector Expert Panels within the Fair Work Commission to make determinations on equal remuneration and certain award cases. Given the issue and sector specific expertise of the Panels, Congress also calls for their scope to be expanded to include the power to resolve disputes, including through arbitration.

47. Congress welcomes the Fair Work Commission's active research agenda on gender pay equity. Congress calls for additional research to inform decisions in modern awards and minimum wages jurisdictions. The Fair Work Commission should be resourced to conduct similar research projects addressing all areas of industrial relations.

Anti-Avoidance Mechanisms

48. Congress proposes that the Commission be given the power to make orders to prevent schemes that result in worker entitlements being eroded and that civil remedies be available through the courts where schemes or arrangements have been established to avoid worker entitlements.

49. Congress welcomes the inclusion or improvement of specific anti-avoidance provisions in recent reforms to the Fair Work Act, but notes that they are limited to specific cases. Congress therefore also calls for a general anti-avoidance provision to be inserted into the Fair Work Act to ensure that arrangements that are entered into for the purpose of avoiding its provisions are prohibited, and that the employers and officers responsible for such arrangements are sanctioned appropriately.

Portable Entitlements

50. Congress affirms that employment mobility and insecure work requires workers' entitlements to be based on the number of years of service rather than on the service with an employer.

51. Congress notes that leave performs an important function as part of the framework of worker entitlements that:

    a. Helps to maintain a balance between work and private life;

    b. Provides financial support for employees critical for their recovery from illness or injury and ultimate return to work;

    c. Supports employees' wellbeing and maintains healthy workplaces;

    d. Is an incentive to reduce labour turnover;

    e. Is a means to enable employees to recover their energies and return to work renewed, refreshed, and re-invigorated; and

    f. Provides workers with the time and opportunity to reskill and retrain, driving increased productivity.

52. Congress supports working toward:

    a. The adoption of a nationally uniform minimum standard for long service leave, based on the common denominator most favourable to workers. This includes ending any "Zombie" awards that have the effect of providing long service leave conditions which are less beneficial than relevant state legislation;

    b. Access to portable long service leave, based on the new national minimum standard, for all industries that currently do not have access to industry portable long service leave and a consideration of a national portable long service leave scheme, and;

    c. access to:

        - Portable paid annual, paid sick leave and other paid leave entitlements for all industries that do not currently have access to portable paid leave schemes.

        - Industry-based income protection insurance schemes for workers in industries where there are high rates of insecure work and fixed-term employment resulting in associated low rates of sick leave accruals;

        - Award-based mandated payments into industry-based redundancy trusts where appropriate; and

        - A portable parental leave scheme.

53. Congress calls on the Government to commence consultations into the feasibility and options for a national long service leave standard and the portability of long service and other leave entitlements.

54. Congress calls on the Government to implement the recommendation of the NDIS Review to establish a portable training entitlement scheme with portable training leave entitlements for NDIS workers as soon as possible. The Federal Government should support any variations to the Social, Community, Home Care and Disability Services Industry Award necessary to implement a portable training scheme.

Improved Unfair Dismissal Rules

55. All employees should be entitled to a remedy for being unfairly dismissed, demoted or threatened with dismissal. Employees should be entitled to union representation and paid time where allegations are being investigated or disciplinary measures are being considered.

56. Congress calls for the current restrictions, including qualifying periods, on access to the Commission for unfair dismissal remedies to be removed. Congress further calls for the FWC's unfair dismissal jurisdiction to involve hearing of matters and making orders prior to a termination taking effect, to prevent unfair outcomes.

57. Congress believes that reinstatement should be the primary remedy for unfair dismissal.

58. There should be no cap on the remedy for lost income. Other forms of compensation should include monetary compensation that is in addition to the compensation for lost income, including superannuation. The cap on compensation particularly disadvantages workers involved in lengthy proceedings and should be removed. There should be a power to order interim reinstatement.

59. The unfair dismissal provisions, along with redeployment and redundancy obligations should also be extended to provide remedies against third parties, including host employers, whose actions lead to the unfair dismissal or removal of employees engaged through labour hire or other contractors; and

60. Congress condemns non-union businesses or organisations that seek to profit from workers protections, such as general protections and unfair dismissal rights. Those organisations who have developed business models that unfairly profit from such proceedings by taking from workers compensation that is rightly theirs should not be afforded the opportunity to do so.

Protections for Freedom of Association, Representation and the Exercise of Workplace Rights

61. Congress notes that the current General Protections provisions in the Fair Work Act are supposed to protect workplace rights, ensure freedom of association and protect involvement in lawful industrial activities. However, Congress observes that the provisions are complex and overly technical. They need to be simplified to provide positive rights to workers. The Courts have read down the provisions by applying a test that allows employers to avoid liability too easily. The test makes it practically impossible to enforce the provisions. The general protections jurisdiction should rely on an objective test rather than the subjective intention of the employer.

62. Congress calls for meaningful positive rights to be provided for in the Act and the means of protecting those rights to be simplified and enhanced. Those rights should include:

    a. Workers' rights to union representation and to raise workplace issues and engage in union activity;

    b. Express rights for permit holders to enter premises, including RTO and FIFO/DID camps, to undertake the full scope of their statutory role, including with reference to the objects of the Act and the functions of unions as registered employee associations under the Act;

    c. Collective rights to participate in union activities, as well as rights that vest in the individual; and

    d. Protections for workers from discrimination including on the basis of sex, race, national or ethnic origin, marital status, pregnancy, breastfeeding, family responsibilities, disability, political or religious belief, age, trade union activities, sexual orientation, subjection to family and domestic violence, gender identity or intersex status.

63. Congress welcomes the passage of the Secure Jobs Better Pay and Closing Loopholes legislation, which provides positive rights including:

a. The right for delegates to represent workers;

b. The inclusion of breastfeeding and being subject to family and domestic violence as attributes protected from workplace discrimination.

64. Congress affirms the need for the test for establishing a contravention of these protections to be amended and be based on the effect on the workplace rights of the conduct in question to ensure that discrimination, in its widest sense, is prohibited. Congress advocates for the Commission to have power to expand the matters subject to protection as necessary and to conciliate and where necessary, arbitrate disputes over general protections.

65. Congress also calls for the courts to have power to issue injunctions, penalties and order compensation or make other remedial orders, such as reinstatement or orders that certain conduct cease in general protection matters.

66. Congress calls on the Government to continue to give further effect to the provisions of ILO Freedom of Association and Protection of the Right to Organise Convention (no. 87), Right to Organise and Collective Bargaining Convention, 1949 (no. 98) and the ILO Declaration on Fundamental Principles and Rights at Work (1998) as amended in 2022, as well as to sign, ratify and give effect to the ILO Labour Relations (Public Service) Convention, 1978 (no. 151).

Improving Workers' Rights to Representation

67. Congress reaffirms the importance of working people having the right to access independent information, advice and representation.

68. Congress welcomes the introduction of delegates' rights into the Fair Work Act, which recognise and protect the important representative role of workplace delegates and provides them with access to workplaces, facilities and training.

69. Congress affirms that delegates should have:

a. Reasonable paid time to represent union members at union forums, industrial tribunals and courts;

b. The right to investigate workplace contraventions and be provided with all relevant information regarding disputes;

c. Additional paid time off work should they be honorary officials to fulfil their duties as officers.

70. Congress supports the provision of information to workers about their workplace rights. The current "Fair Work Information Statement" should inform workers about their right to join a union. Employers should provide new workers with short information sessions on their rights at work when this Statement is distributed. Union representatives should be entitled to participate in these sessions.

71. Workers should have access to union representation in their workplaces and employers and occupiers of premises should do such things as:

a. Facilitate worker access to union representation in all areas of the workplace, including areas where workers choose to congregate such as a lunch room or canteen or other place of the union's choosing, at any time, subject to there being no unreasonable disruptions of work or bona fide safety concerns;

b. Respect the right of workers to be represented by the union in all matters affecting them.

c. Provide, without limitation appropriate transport and accommodation for authorised officers where the workplace is in a remote location and provide for workers to have appropriate and timely access to the permit holders on site, including by ensuring that such access and transport is genuinely facilitated at no cost to the union;

d. Notify their workforce when union officials will be on site and where they will be located;

e. Inform workers that they have a right to communicate with the union official and take such positive steps or acts which are necessary for the union to exercise its functions under the Act including the signing of petitions for the purpose of a majority support determination;

f. Make available a private room for discussions where this is requested by the union;

g. Ensure that any communications between workers and unions are not subject to any form of intimidation, surveillance, monitoring or any behaviour which might dissuade a worker from choosing to engage with a union official;

h. Ensure workers have the opportunity to communicate with their union representative without fear, particularly as they first enter the workplace and that workers have access to translators or other services necessary for effective union representation;

i. Allow union delegates the right to participate in union officials' visits to the workplace; and

j. Ensure employee access to advice, information and union representation at work, including the provision of periodic paid union meetings at the workplace.

72. Further, Congress affirms that:

a. Workers should have free access to their union which means their Unions must have reasonable access workplaces for the purpose of conducting union business, including organising, bargaining and representation. Notice periods should not be a requirement provided that any genuine health or safety requirements are met;

b. Employers should not engage in behaviour that discourages workers from talking to union representatives, including requiring them to identify themselves or seek permission before talking to a representative;

c. Properly authorised union officials should have the powers of investigation currently available to workplace inspectors to lift the rates of compliance and to prevent wage theft, for current and former employees

d. Access to all documents relevant to the investigation of workplace safety should be provided without requiring notice.

Security of Entitlements and Transmission of Business

73. Congress welcomes changes to the Fair Work Act which will entitle a worker to redundancy pay if they work for a business that has become a small business because of downsizing related to insolvency.

74. Congress believes that the primary responsibility for the payment of employee entitlements rests with employers. Congress is concerned to ensure that no employee should be left short-changed when their employer becomes insolvent. To support this principle, investigation into potential statutory mechanisms to secure and protect employee entitlements (including entitlements trust funds and entitlements insurance schemes) for all workers should be considered.

75. The ACTU and its affiliates will continue to advocate for reforms to the Fair Entitlements Guarantee Scheme (FEGS), the Corporations Act and the Fair Work Act to ensure that:

a. All employees, including those on bridging visas, have access to the FEGS;

b. All employee entitlements, including all outstanding wages, deductions and contributions, are fully recoverable from the FEGS. This includes ensuring that any reduction in redundancy pay under s.120 of the Act should not affect an employee's entitlement to such pay via the FEGS;

c. The Commonwealth is armed with the laws and resources it needs to maximise its recovery in insolvencies, including from individuals and related entities in appropriate circumstances;

d. Employers cannot use the availability of the FEGS to avoid paying entitlements when workers are made redundant.

e. Irresponsible dealing with and avoidance of employee entitlements and trading when insolvent is more effectively detected and deterred, and employers are not simply able to cease trading but remain solvent as a means of avoiding redundancy obligations or denying workers access to the FEGS;

f. Employees and their unions are better informed about the financial activity and performance of employers and are able to take meaningful action to protect and recover entitlements;

g. There are strong incentives through supply chains to encourage timely payment of entitlements;

h. The priority status of employee creditors is further elevated;

i. There are more accessible options to secure employee entitlements against the assets of an employer or place them in trust; and

j. Individuals involved in phoenix operations are put out of business for good.

76. Corporate insolvency is at a crisis point in the building and construction industry. Congress notes the recommendations that John Murray made in 2018 in the Review of Security of Payments Laws: Building Trust and Harmony report. That report made 86 recommendations to improve consistency in security of payment legislation nationally, and to enhance protections to ensure that building industry subcontractors get paid on time for work they have done. One of the key recommendations was that progress claims and retention monies be held in cascading statutory trusts. This would protect workers by making it harder for builders to avoid payment to sub-contractors (and the sub-contractors' employees) in favour of their own bottom line. Congress calls for the immediate implementation of these recommendations, along with other targeted reforms (such as the implementation of national mandatory contract terms and the implementation of direct obligations on employers akin to s.127 of the Industrial Relations Act (NSW)) to address this worsening crisis.

77. Congress believes that workers' job security, pay and conditions should be protected when a business changes hands. Unfortunately there are key weaknesses in the law regarding transmission of business. A new employer has some discretion as to whether or not it recognises prior service for the purposes of calculating continuous service for annual leave, redundancy pay, and eligibility for protections from unfair dismissal. Congress calls for the law to change ensure that the new employer is legally obliged to recognise continuous service for transferring employees for all purposes under the Fair Work Act, including, but not limited, to all NES entitlements and unfair dismissal eligibility.

78. Further, while an enterprise agreement will transfer from an old employer to a new employer, it will only cover those employees who have transferred, and not new employees of the new employer. This often creates the unfair situation of staff doing the same job but receiving different rates of pay. Congress calls for the enterprise agreement in this scenario to instead cover both transferring and new employees.

Safe road transport & on demand

79. Congress commends the reestablishment of the Road Transport Division of the Fair Work Commission

80. Congress further commends the implementation of additional legislative reform aimed at addressing the economic pressures posed by the emerging "gig" economy and on demand sectors of both the road transport and other industries.

81. The systems that have now been put in place will go some way to ensuring that unsustainable economic and contracting pressures that lead to unsafe work practices in both the road transport and on demand sectors are addressed.

82. Congress will continue to monitor the progress of these provisions with a view to ensuring that:

a. There is universal application of a system of binding, enforceable and safe standards. The standards must cover all parties in the transport supply chain/contract networks to ensure safe performance, planning and appropriate payments. The standards will focus on eliminating economic and contractual practices that place undue pressure on transport supply chains/ contract networks;

b. Appropriate, enforceable payments and related conditions for all operators and workers in the road transport and on demand sectors;

c. The capacity to resolve (including where necessary through binding decisions) transport supply chain/ contract networks disputes in a timely fashion; and

d. Appropriate resourcing of supply chain/ contract networks auditing, training and education through an industry fund.

83. It is imperative that a safe, fair and sustainable road transport and "employee-like" system as established ensures the safety of transport workers and the general public.

Fair bargaining

Our Bargaining Agenda

84. Congress commits to a bargaining system that delivers to working people the power they need to adequately balance the power of employers to win fair outcomes.

85. Congress rejects the notion that improved productivity relies on cuts to jobs and workers' pay, rights and conditions. Congress notes that such notions, often advocated by employers and the Federal Coalition, do not increase productivity and would decrease our standard of living. Congress further notes that the real drivers of productivity are, at the macro level, investment by government and employers in social capital, and physical and social infrastructure, and, at the enterprise level, development of a management culture that values the knowledge and input of workers.

86. Congress affirms the need for adequate resourcing for wage increases achieved through bargaining for workers in the public sector or publicly funded sectors. Government funding for services should be resourced to provide for pay equity outcomes for women workers. A gender pay equity lens should be applied at the commencement of bargaining to facilitate pay equity outcomes for women workers.

87. Congress believes that a system of collective bargaining should give parties the flexibility to reach agreement on terms and conditions appropriate to their circumstances. We need a bargaining system that encourages and promotes collective bargaining. In this regard, Congress welcomes the significant improvements to multi-employer bargaining under the Fair Work Act.

88. Congress affirms the need for a system of bargaining that is flexible enough to allow for agreements to be reached with varying scopes, including across industries, sector, regions, enterprises and occupations. In this regard Congress welcomes the significant improvements to the Fair Work Act to enable multi-employer bargaining under the Secure Jobs Better Pay legislation.

89. Bargaining should also be broadened to cover all workers, including those in dependent contracting and gig economy work. Congress welcomes the ability to collectively bargain for "employee like" workers under recent reforms, but calls for such bargaining to be able to cover all "employee like workers", and contain the rights, obligations and procedural safeguards of other streams of bargaining in the Fair Work Act.

90. Agreements should only be made with unions representing workers. All agreements should involve a union or unions with a right to represent workers covered by the agreement.

Freeing up Bargaining

91. Congress notes that imposing restrictions on the content of collective agreements is inconsistent with international obligations and in particular Article 4 of the Right to Organise and Collective Bargaining Convention No 98 and article 3 of the Freedom of Association and Protection of the Right to Organise Convention No 87.

92. Workers and employers should be free to make a judgment on the merits of the matters they seek to bargain. Governments putting limitations and interfering in the free bargaining process is not a feature of bargaining elsewhere in the world and just makes the process more restrictive. Workplaces and work will continue to change, as well the priorities and needs of both employers and workers. Restrictions on content such as "permitted matters" should be removed so all issues of importance to workers and employers over time can be subject to negotiation, such as:

a. Target on the number or proportion of apprentices and trainees taken on by the employer;

b. Actions to reduce emissions and waste, plan transition and consultation over environmental matters more broadly;

c. Obligations on the employer regarding the procurement of goods and services; and

d. Obligations on the employer to be accredited with certain accreditation bodies, for example, Ethical Clothing Australia in the textile clothing and footwear industry.

e. Responses to emerging issues regarding the use of AI;

f. Conditions for third parties and conversion to direct employment without complicated requirements to link these to the job security of employees covered by the agreement.

93. Congress firmly believes arbitrary and unfair wage caps limiting public sector bargaining must never be adopted and be repealed where they still exist.

Scope of Bargaining

94. Congress notes that the primary focus of our bargaining laws has been on the level of the single enterprise. These laws have severely limited bargaining across sectors or industries resulting in a race to the bottom on terms and conditions. They have also inhibited bargaining at the source of power in fragmented workplaces or supply chains. This is at odds with international practice amongst most other developed economies around the world, which delivers stronger employment outcomes, reduces wage inequality and strengthens the resilience of these countries during economic downturns.

95. Congress therefore welcomes recent improvements to the Fair Work Act to enable multi-employer bargaining in some circumstances, under the Secure Jobs Better Pay reforms. In particular, Congress welcomes the replacement of the ineffective and largely inaccessible low-paid bargaining stream with the supported bargaining stream, as well as the changes to single interest bargaining which will facilitate greater levels of multi-employer bargaining. Congress also welcomes the introduction of contractual chain provisions in the Fair Work Act that set minimum standards across participants in road transport supply chains.

96. Congress advocates for further law reform to improve bargaining to:

a. Address the joint employment nature of arrangements between host employer, labour hire provider and worker. The Fair Work Act should be amended to recognise that both the labour hire operator and host employer have a role in setting and observing workers' rights and entitlements.

b. Further facilitate and support parties negotiating arrangements which have industry-wide, multi-employer and sector-wide impact. Agreements should be permitted to determine working conditions and/or regulate relations between employers (including economic employers) or their organisations and unions.

97. Congress believes that all workers have a right to organise and negotiate their terms and conditions of employment at the level which achieves the best outcomes for them, which allows them to bargain with the actual decision-maker that has an impact on their working arrangements, and which is efficient and delivers consistency in outcomes. This should include a right for workers to bargain at a scope which makes sense, and to avoid the fragmentation of bargaining within an enterprise.

98. Congress supports the development of industry-based councils which aim to collaboratively address the key issues facing both employers and employees and develop strategies to promote and progress the industry.

99. Congress believes legislation should require all employers and supply chain participants to be accountable to their workers, unions and the community on how their supply chains are structured and operated. This should extend to ensuring a transparent and public disclosure of supply chain arrangements with appropriate penalties for failure to do so.

100. Congress believes that the approval of all agreements must involve a strong emphasis on ensuring that every worker is better off. The Commission should have a general discretion to refuse approval if an agreement is unfair. The Commission should also have the power to prevent employers' misuse of any approval processes to change the effect of agreements as negotiated and agreed by the parties.

101. Bargaining should address the issue of eradicating any gender pay gap, and gender equity more broadly including the provision of all relevant information requested by a union to ensure bargaining in good faith. So too relevant information on job security should be provided and the Fair Work Commission should ensure this occurs where necessary.

102. COVID-19 has demonstrated the inherent volatility of the aviation sector and vulnerability to external shocks, with reasonably paid secure jobs being replaced by low paid, unsafe and insecure jobs. Power imbalances and their impact on workers throughout the supply chain have been brutally highlighted. Aviation is a public good which warrants effective government regulation, oversight, planning, investment and equity in order to create and maintain good Australian jobs in our cities and our regions and protect essential transport routes to Australian businesses and communities.

Improving the Bargaining Process

103. Congress notes that all affiliates are committed to working co-operatively in single bargaining units that represent the collective interests of workers.

104. To ensure equal access to collective bargaining for all workers, Congress calls for amendments to competition and consumer legislation to remove any restrictions on independent contractors being able to access union representation and collective bargaining, acknowledging the progress that has been made enabling workers on digital platforms and in road transport to conclude collective agreements.

105. Congress affirms that union representation is an essential element of good collective bargaining. To ensure workers are represented employers should be obliged to notify relevant unions before the commencement of bargaining.

106. Congress affirms that in any bargaining process, workers have a right to be informed and represented and advocates that:

a. where the workforce to be covered by the agreement comprises one or more short or long term visa holders, the employer must facilitate for the workers to meet and confer with a representative from the relevant union within 14 days of the notification time for the agreement; and

b. Congress welcomes recent legislative improvements to the bargaining process, including:

- restricting the circumstances by which an employer can seek to unilaterally terminate an enterprise agreement which has been used extensively as a tactic to undermine bargaining and workers' pay and conditions;
- enabling the reinitiation of bargaining within five years of the nominal expiry date of an agreement without the need to demonstrate further majority support; and
- ensuring that genuine agreement has been reached, preventing the employer tactic of using "small cohort agreements" to undercut pay and conditions.
- Restrict a multi-employer agreement from being put out to vote where the ballot is opposed by union bargaining representatives.

Good Faith Bargaining

107. Employers should bargain in good faith, but the good faith bargaining obligations in the Fair Work Act have not worked effectively, and the inability of the FWC to arbitrate where an employer refuses to enter into a collective agreement has enabled employers to undermine the bargaining process.

108. In this regard Congress welcomes recent reforms to enable the FWC to make a determination where bargaining between the parties has become intractable, and that such a determination must build on terms agreed between the parties during bargaining, and that each term in a declaration must be more favourable to the employee than the equivalent term in the relevant agreement.

109. Congress believes that the statutory good faith bargaining obligations should regulate conduct in a way that is simple and be seen as constituting substantive and not merely procedural obligations. Employees should be protected from capricious behaviour, such as withdrawing an enterprise agreement from approval or refusing to continue negotiations after bargaining has commenced or putting an agreement to a vote before agreement has been reached at the bargaining table.

110. Congress welcomes a more active role of the Fair Work Commission in facilitating bargaining and believes that entities that have economic power over the ultimate outcome (such as funding bodies) should be involved. Congress notes progress in this regard, in being able to require funders to attend meetings to under the supported bargaining stream of multi-employer bargaining.

Fair, simple and democratic rules for industrial action

111. Noting that the International Labour Organisation (ILO) has described the Fair Work Act's processes for regulating access to industrial action as 'excessive', Congress insists that all workers must have their right to take industrial action recognised and enshrined in law. Such a right must be in accordance with well-established international norms, including the ILO Freedom of Association and Protection of the Right to Organise Convention (no. 87), Right to Organise and Collective Bargaining Convention, 1949 (no. 98) and the ILO Declaration on Fundamental Principles and Rights at Work (1998) as amended in 2022, and not merely be confined to certain circumstances in connection with enterprise bargaining. No worker or union should be threatened with coercive, punitive or compensatory orders from a Court due to exercising their right to strike or engage in legitimate political protest.

112. Industrial action should be available to workers without State prescribed processes beforehand. Workers should be able to democratically determine when and how they exercise their right. In the interim, the Australian Electoral Commission (AEC) must be empowered to conduct electronic ballots for protected industrial action so that unions do not have to workers resources using private agents to comply with the law.

113. Congress notes that legally sanctioned lock outs are not a feature of workplace laws elsewhere in the world and we do not believe it should be in Australia. The Fair Work Act allows employer action without the same requires imposed on workers. The Fair Work Act should therefore prohibit employer lockouts, or, at a minimum, mandate that they be proportionate, time limited and impose equivalent requirements on employers that apply to workers before such action is taken. In line with ILO recommendation 188, international best practice and previous Congress policy, employers should not be permitted to engage replacement labour during periods of industrial action.

114. The right to take industrial action should not be subject to administrative interference other than in the exceptional circumstances of genuine threats to life, personal safety or health, or the welfare of the population or part of it. In this regard, the requirement to attend compulsory protected action ballot conferences should be removed.

115. The current law that invalidates any protected industrial action if any contravention occurs is deeply flawed and must be changed. A fairer approach could be a time-limited removal of protected industrial action based on the gravity of any non-compliance.

116. Engaging in bargaining in sectors or across an industry should not diminish the right to take industrial action.

117. There should be no power for a Minister to terminate industrial action. Orders to stop or prevent industrial action must be the domain of an independent Fair Work Commission exercising discretion as to whether it issues those orders.

118. Congress calls for loopholes that permit employers to coerce workers to stop or cease exercising their rights to take any form of industrial action to be closed. In particular, employers should be bound to make full or proportional payments for work performed in the event of industrial action constituted by partial work bans. Further, employers should be prohibited from dismissing, or using codes of conduct to threaten or limit workers from taking industrial action, and annual leave should continue to accrue during lockout periods.

Boycotts and Political Action

119. Congress notes that Australia's secondary boycott provisions do not conform with the Freedom of Association and Protection of the Right to Organise Convention of the ILO (Convention No. 87).

120. The secondary boycott provisions of the Competition and Consumer Act 2010, including s45E, should be removed. Congress welcomes the call of Professor Alan Fels in his Price Gouging Inquiry Report to limit restrictions on secondary boycotts to those that substantially lessen competition.

121. Congress notes the breadth of issues working Australians face and reaffirms the right for all workers to take action in support of broader industrial, economic and political objectives.

122. Congress recognises that government and public sector employees are members of the Australian community and should have the same rights to participate in political and union activity as other workers.

Effective Consultation at the Workplace

123. Congress supports the involvement of workers, through their unions, in decision making processes at the workplace which impact on the work they do and how it is performed and considers this contributes to better workplaces. Consultation of union officials about decision-making processes in the workplace also contributes to better workplaces.

124. Consultation obligations should not be limited to "major" changes or occur only after a decision has been made. Congress calls for minimum standards for workers to be genuinely consulted about issues of significance or potential changes to their own personal work circumstances prior to final decisions being made, as well as minimum standards about what specific actions constitute genuine consultation in the workplace.

125. Congress notes that where redundancies or restructuring are proposed, employees should have a right to meaningful consultation. Consultation should be genuine and be undertaken prior to any final decision being made and before the implementation of any changes. The restriction on the orders the Commission can make to remedy a failure to consult on terminations due to restructuring should be removed. There should be a positive obligation on employers to explore all opportunities for retraining and redeployment prior to forced redundancies.

126. Congress notes recent legislative reform requiring the Fair Work Commission to update model terms in agreements on consultation, dispute resolution and flexibility and that this should be an avenue to improve consultation processes. This includes, but is not limited to, mandating the requirement to include arbitration as a last resort, and the ability to bring any dispute arising between the employer and the employee, or the union and the employer.

Aboriginal and Torres Strait Islander workers

127. Congress acknowledges that during the history of the country now known as Australia as a function of the industrial relations system and institutions has been to legalise and legitimise the racist exploitation of Aboriginal and Torres Strait Islander workers.

128. Such exploitation included slavery, indentured servitude, payment in scrips and rations, race-based pay rates, unpaid and underpaid work, and racist work-for-the-dole schemes and a race-based pay gap. Many of these practices occurred late into the 20th century; some are ongoing today.

129. Congress stands in solidarity with First Nations workers, and unequivocally supports Aboriginal and Torres Strait Islander workers' calls for justice at work and for the decolonisation of Australia's industrial relations system and institutions.

130. Congress calls for urgent action to:

    a. Eliminate the pay gap between Aboriginal and Torres Strait Islander workers and all other workers;

    b. Recognise and eliminate or remunerate Aboriginal and Torres Strait Islander workers' colonial load and cultural responsibilities;

    c. Ensure industrial tribunals and regulators appropriately and safely engage with Aboriginal and Torres Strait Islander workers;

    d. Improve job security and rates of employment for Aboriginal and Torres Strait Islander workers; and,

    e. Eliminate racist work-for-the-dole schemes.

131. Address the casualisation and the inappropriate use of fixed-term contracts for Aboriginal and Torres Strait Islander workers by both mainstream and Aboriginal and Torres Strait Islander employers.

Work, life, care and family

132. Balancing work, life, care and family is a key industrial priority for union members and calls for the implementation of rights and entitlements that enable employees to balance their work and caring responsibilities.

133. Congress acknowledges that women bear a disproportionately high amount of the care provided to dependent children as well as those with a disability, a medical condition, a mental illness or who are frail and age. Many workers also have a wider range of caring responsibilities, particularly the generation of workers who care for both children and elderly parents.

134. Congress recognises the importance of enabling an equal sharing of caring responsibilities, and in particular the need to increase the participation of men in caring for dependents.

135. Congress welcomes recent progress in better legislated rights for workers to enable them to securely participate in the workforce while meeting family and caring responsibilities, and notes that further reform is necessary.

136. Congress recognises that inadequate support provided by our industrial framework to working parents and carers has an adverse impact on the participation of women in the workforce, and the gender and retirement income gaps.

Right to Family and Carer Friendly Working Arrangements

137. Congress notes that the NES right to request a change to working arrangements was extended in 2013 and 2023 to enable a wider range of employees with caring responsibilities and attributes to request flexible working arrangements.

138. Congress welcomes recent changes to the Fair Work Act that include new requirements on employers relating to requests for flexible work and extended unpaid parental leave and give employees a right of review in the Fair Work Commission. While these changes should significantly improve workers' access to changed work arrangements and extended unpaid parental leave, they are still limited by employers being able to refuse such requests on 'reasonable business grounds' which is used in some industries and workplaces as an excuse to not review or change business practices that have traditional negatively impacted women and carers.

139. Congress calls for the strengthening of workers' rights so that employers must reasonably accommodate flexible work requests unless it causes them unjustifiable hardship.

140. Congress also welcomes the recent extension of the right to request flexible working arrangements for a wider range of employees with caring responsibilities and attributes.

141. Congress acknowledges the prevalence of mental health issues and how important it is that they are recognised as disabilities, and legitimate grounds on which employees may request flexible working arrangements. Congress acknowledges how difficult it can be for workers to "prove" the existence of a disability to their employer. Workers should not need to obtain and provide expensive specialist reports in order to demonstrate the existence of a disability (regardless of it's type) to their employer. Other forms of evidence should be sufficient.

142. Congress acknowledges that many workers, disproportionately women, require changes to working arrangements for reasons related to their reproductive health. An employer failing to accommodate an employee's reproductive health can contribute to lower rates of workforce participation for women. The circumstances in which an employee can make a request for flexible working arrangements should be extended to employees for reasons relating to their reproductive health.

143. Congress notes that the definition of carer in many laws are outdated as there are many types of family groups (including kinship) and that the full spectrum of relationships are not recognised and calls for laws to be updated to include all workers with caring responsibilities.

144. Congress calls for the Government to consider following the lead of other countries and extending the right to request flexible working to all employees, regardless of their length of service or the reason for the request.

145. Congress notes with concern the increasing encroachment of work into what should be private time. Congress reaffirms the right of all workers to rest and recreation including a 'right to disconnect' from out of hours contact from an employer. Congress welcomes recent changes to the Fair Work Act which give employees a right to refuse to monitor, read or respond to employer or work-related contact unless that refusal is unreasonable.

146. Congress notes with concern the increasing collection and use of data by employers, including that which occurs on social media, and the increasing number of data breaches. The collection and use of data should be necessary, reasonable, and be undertaken consistent with a clear and appropriate objective.

147. Where used for performance and surveillance, this should be declared to employees prior to the data collection occurring. Employers must ensure the absolute security of all data collected. Congress calls for all employers to have data collection and use policies that include strong consultation provisions prior to collection of data for use in employment arrangements.

148. Congress will advocate and campaign for:

    a. Greater employee control over their work arrangements, including shift patterns, rosters, targets and workloads in order to meet their caring responsibilities; and

    b. Equality of opportunities for casual and part-time employees in the workplace, including access to paid leave and working time entitlements.

149. Workers with family and caring responsibilities are particularly vulnerable to pressure to agree to make concessions in other areas of their rights and entitlements in order to access flexible work arrangements. Congress asserts the right of workers to elect to access flexible work arrangements in order to meet their carer responsibilities and rejects notions of individual trade-offs to secure these rights. Such a practice reinforces the need to abolish IFAs.

Extending Personal and Carer's Leave

150. Congress will advocate and campaign for entitlements to better assist workers with caring responsibilities and increase women's workforce participation, including:

    a. Providing a separate entitlement of paid carer's leave while retaining existing entitlements for paid personal and carer's leave;

    b. Ensuring that casual workers have an entitlement to compassionate leave;

c. Ensuring paid personal/ carer's leave is available to all employees who care or expect to care for a dependent or any other person significant to the employee to whom the employee provides regular care or is in palliative care;

d. Ensuring the scope of personal/carer's leave includes a broader range of carer responsibilities not limited to illness, injury or emergencies;

e. Ensuring that workers taking paid personal/carer's leave are paid at the rate they would have been paid had they been working, (for example, inclusion of penalty rates);

f. Ensuring the ability for workers to provide enduring evidence for enduring illness, injury or caring responsibilities to demonstrate their need to take personal or carer's leave, rather than being required to produce evidence on each occasion such leave is requested;

g. Extending the scope of personal/carer's leave to foster parents to ensure they have access to entitlements to provide the necessary care and support to foster children in their care;

h. Working arrangements that provide respite for working carers (such as a purchased leave arrangements);

i. Resource support for carers (including workplace information and referral services) and workplace based care (where appropriate);

j. Reproductive leave and associated entitlements such as flexible working arrangements and workplace adjustments and accommodations.

Paid parental leave

151. Congress welcomes the recent expansion of Paid Parental Leave (PPL) to 26 weeks by 2026 (increasing by two weeks each year), and changes to make it more flexible, accessible and gender equitable. The concept of primary and secondary carers has been removed, and families are able to decide who will take leave first and how they will share the entitlement. By 2026 there will be a reserved period for each parent of 4 weeks, and parents can take up to 4 weeks of concurrent leave.

152. Congress welcomes these reforms, but recognises that more needs to be done to advance gender equality. The delay to the increase to 26 weeks will disproportionately impact low income workers and families, for whom the length of paid leave available largely dictates the amount of time in total that they can take as parental leave to care for children.

153. Even once the PPL reforms are fully implemented and the scheme is expanded to 26 weeks from 1 July 2026, Australia's paid parental leave scheme will remain amongst the least generous schemes internationally, ranking in the bottom third. The rate of payment of PPL at the National Minimum Wage is likely to impede high take up rates by fathers and partners. Compounding this inadequacy, the superannuation guarantee is not applicable during either paid or unpaid parental leave. Congress calls on the Government to maintain momentum and ambition in expanding the PPL scheme, being a critical lever for driving gender equality in Australia.

154. Congress recognises the importance of fathers and partners taking parental leave, and the many benefits for children and gender equality when they do. Congress believes that all workplaces should support and encourage fathers and partners to take significant periods of parental leave.

155. There is strong and clear evidence of the significant child and maternal health and welfare benefits of an absence from work for parents of 6-12 months. Fathers' involvement in childcare has been linked to improved wellbeing, happiness and commitment to family. Both parents' participation in the early care of children has beneficial impacts for the long-term sharing of the care of children and household duties. This in turn supports the health and well-being of children and both parents, and improves gender equity in the workplace, home, and society.

156. Best practice PPL systems are for at least 52 weeks, include a reserved and non-transferable (use it or lose it) portion of paid parental leave for fathers and partners, and are paid at or close to full wage replacement wages. The evidence shows that such schemes result in men increasing their uptake of

parental leave and unpaid care, which over time changes gender norms around the division of paid and unpaid work.

157. Australia should ratify the ILO's Maternity Protection Convention (C183).

158. The inadequacy and inequity in Australia's PPL scheme is holding back women's participation and driving the ongoing gender pay gap and retirement income gap. Australia needs an expanded and more equitable paid parental leave scheme.

New Standards

159. Congress calls on the Government to incrementally expand and improve the PPL scheme, and strengthen the rights of working parents and carers, to align Australia with best practice in other OECD and European nations. As a first step, the full 26 week entitlement should be available to workers from 1 July 2024, which would make a significant difference to low income workers and families.

160. By 2030, every employee should have access to 52 weeks paid parental leave at full-wage replacement (including penalty rates) or the national minimum wage, whichever is greater. Superannuation should be paid at the Superannuation Guarantee rate on all periods of paid and unpaid parental leave.

161. Under this proposed system, a single parent could access up to 52 weeks paid leave and a two-parent household could access up to 104 weeks paid leave, which they could share between them as they see fit. This aligns with the amount of unpaid parental leave parents currently have the right to access under the National Employment Standards.

162. Parents should have full flexibility to take their paid parental leave entitlements as they choose, including double the time at half-pay. The scheme should incentivise parents to share care more equally though providing expanded 'use it or lose it' portions for fathers and partners, and by providing access to an additional two weeks leave for each parent where paid parental leave is shared equally between them.

163. Congress will campaign to ensure timely access to paid parental leave for every worker who needs it, including:

    a. Workers on casual, temporary or fixed term contracts

    b. Workers on visas

    c. Workers on any period of paid or unpaid leave (including employer directed stand down)

    d. Parents of children on permanent care orders

    e. Parents who need paid parental leave for pregnancy, childbirth, assisted reproduction or fertility treatment, adoption, bonding, surrogacy, fostering, kinship placements and breastfeeding.

    f. Workers with any length of service – the work test should be abolished, and there should be no minimum period required to qualify for paid parental leave.

164. Congress notes that workers who are pregnant, on parental leave and returning to work from parental leave are often discriminated against resulting in termination, redundancy, demotion or adverse action. Congress will advocate and campaign for change that ensures workers can access parental leave entitlements, and they are not discriminated against when accessing them or when seeking to return to work, including:

    a. Requiring an employer to demonstrate that a redundancy is bona fide, and reasonable accommodations cannot be made, where the redundancy is for an employee during or returning from a period of parental leave.

    b. Increased protection for employees taking parental leave.

    c. Ensuring employers reasonably accommodate the needs of workers who are pregnant/have family responsibilities.

165. Congress will advocate and campaign for improved rights and protections of working parents and carers, including:

    a. Recognition of periods of unpaid parental leave as active service to ensure the accrual of all entitlements including personal leave, long service leave, annual salary increments, superannuation and payment of public holidays during periods of paid and unpaid parental leave.

    b. Paid lactation breaks and appropriate lactation facilities.

    c. Entitlements to paid leave to attend appointments associated with adoption, surrogacy and permanent care orders (including attending ante-natal appointments with a partner who is pregnant).

    d. Access to paid bereavement leave for parents who have lost a child through miscarriage.

    e. Access to Grandparental Leave would provide for an eligible employee to access 52 weeks unpaid leave for each grandchild until the child's 5th birthday.

    f. Ratification of ILO Maternity Protection Convention (C183) and compliance with the guidance in accompanying Recommendation 191.

Human Rights and Anti-Discrimination Law

166. Congress has a significant interest in the effectiveness of Australia's anti-discrimination and human rights framework. Since the commencement of anti-discrimination laws, the majority of complaints have related to employment. Ensuring that all people have safe, respectful and decent working lives should be a central and fundamental goal of our human rights and anti-discrimination law framework.

167. Congress welcomes the recent improvements to the anti-discrimination framework, including the new positive duty in the Sex Discrimination Act and enforcement powers for the Australian Human Rights Commission; the ability for the AHRC to inquire into systemic unlawful discrimination; giving the Fair Work Commission jurisdiction to hear sexual harassment disputes and issue stop orders; and the addition of new protected attributes to the anti-discrimination framework in the Fair Work Act (breastfeeding, gender identity, intersex status and subjection to family and domestic violence).

168. Congress notes however that the current Commonwealth and State anti-discrimination legislation, the complaints process and outcomes are still not sufficient to prevent and eliminate discrimination.

169. Congress notes that the adverse action provisions of the Fair Work Act apply only to the extent the adverse treatment is a breach of the relevant state anti-discrimination law and therefore are subject to the state-based inconsistencies in protection against discrimination. Congress further notes that anti-discrimination provisions vary from jurisdiction to jurisdiction, meaning workers have different levels of protection depending on where they live. Everyone should have the same protections regardless of where they live and work.

170. Congress further notes that many complainants are discouraged from using anti-discrimination provisions due to the onerous burden of proof requirements and costs provisions.

171. Congress recognises that discrimination against women, particularly in relation to pregnancy, parental and caring responsibilities is pervasive and widespread and despite decades of legislation making it illegal, the level of discrimination remains relatively unchanged.

172. Congress supports improvements to anti-discrimination laws and the Fair Work Act to:

    a. Provide for positive, enforceable legal duties on employers and other duty holders to take proactive measures to eliminate all forms of discrimination and harassment and advance equity, including a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities;

    b. Enable workers and unions to make complaints and bring claims regarding non-compliance with positive duties;

    c. Ensure that all complaints processes are accessible, low cost and provide remedies which are sufficient to act as a deterrent against discrimination;

d. Ensure the Fair Work Commission can deal with disputes relating to all forms of discrimination and harassment, including issuing stop orders;

e. Provide for an equal access costs model for all matters relating to discrimination and harassment;

f. Include reproductive health as a protected attribute, in recognition that many workers are discriminated against in employment for reasons related to their reproductive health and that this adversely affects women's workforce participation;

g. Clarify that only conduct which is specifically sanctioned by discrimination legislation is 'not unlawful' for the purposes of the Fair Work Act to ensure workers have the highest levels of protection from discrimination;

h. Adopt a reverse onus of proof model in State and Federal anti-discrimination legislation consistent with the Fair Work Act;

i. Ensure consistent application of anti-discrimination laws at the State and Federal level to the highest level of protection, in line with the reverse onus in the Fair Work Act;

j. Ensure the Fair Work Commission can address indirect discrimination, including in awards and enterprise agreements; and

k. The removal of unfair exemptions which do not meet community standards, including those which allow discrimination against employees and students on religious grounds. Further protections should be legislated as necessary to prevent discrimination on these grounds.

Workplace Gender Equality Agency and Other Data Collection on Gender Equality

173. Congress welcomes the recent changes to the Workplace Gender Equality Act 2012 and the gender equality indicators (GEIs), including requiring WGEA to publish the gender pay gaps of organisations, requiring the Commonwealth public sector to report to WGEA, and making sex-based harassment and discrimination a GEI.

174. Congress will advocate and campaign for further improvements to the Workplace Gender Equality Act 2012 and the gender equality indicators (GEIs) to:

a. Strengthen and broaden reporting requirements, including:

- Extend reporting obligations on all gender equality indicators and compliance with the gender equality standards to all employers who are not small businesses.
- Require employers r to have a policy and/or strategy in place to support all gender equality indicators and require employers to take action against all the GEIs.
- Develop a set of outcomes-based gender equality standards which set clear and objective minimum benchmarks against which to measure progress towards gender equality year on year.
- In relation to the gender pay gap, require reporting of both salary and total remuneration packages of all employees, including CEOs and partners.
- Require reporting organisations to provide the relevant union/s with a copy of the report to WGEA, as well as notification of lodgement.
- Improve transparency by requiring large companies with multiple subsidiaries or entities to report separately where they employ 100 or more employees.
- Require employers to provide additional data on paid parental leave, superannuation benefits, terminations/redundancies, part time and casual work, and worker diversity (where such information is provided on a voluntary basis by employees).

b. Provide increased power and funding to WGEA or empower another appropriately qualified body to conduct detailed remuneration and gender equality audits where needed to monitor actual year on year progress towards gender equality.

c. Provide greater enforcement powers to WGEA, including penalties for organisations who fail to comply with their obligations.

d. Require employers to consult with workers (and specifically women workers) and their unions on measures to improve gender equality; and to report on the action taken as a result of such consultation.

e. Broaden existing GEIs to include other work health and safety related barriers to women's workforce participation and hostile workplace environments.

175. Congress acknowledges that data and information regarding gender equality is also collected by the ABS, the Hilda Survey, and the Fair Work Commission, and it is important that such data and information is regularly reviewed to ensure there are no gaps, and that progress on gender equality can continue to be measured.

Gender-Based Violence

176. Congress recognises that gender-based violence remains one of the most tolerated, pervasive and persistent violations of workers' human rights and workplace health and safety laws in Australia and worldwide. Congress further recognises that gender inequality is inextricably bound to the prevalence of violence against women, and that the specific gendered drivers of violence against women are: the condoning of violence against women; men's control of decision making and limits to women's independence in public and private life; rigid gender stereotyping; and male peer relations and cultures of masculinity that emphasise aggression, dominance and control.

177. Congress recognises the disproportionate impact of gender-based violence against LGBTQIA+ workers and others who do not confirm to stereotypical gender norms and will work to eliminate workplace gendered violence of all forms.

178. Congress recognises that violence against women is preventable, not inevitable, and that international evidence supports a primary prevention approach. Primary prevention addresses the underlying drivers of gendered violence by shifting the systems, structures, attitudes, norms, practices and power imbalances that drive violence. The provision of a whole school comprehensive respectful relationships education is a crucial element of primary prevention. This must be nationally mandated and fully resourced from additional funding sources.

179. Congress acknowledges that gender-based violence disproportionately impacts workers from marginalised and excluded communities, and the importance of an intersectional approach to address these impacts. Congress recognises the significant role unions have played in protecting workers from gender-based violence, and the importance of continuing to do so.

180. Congress welcomes the significant changes to Australia's regulatory framework aimed at keeping workers safe from gender-based violence, including; the introduction of 10 days paid family and domestic violence leave; implementation of the Respect @Work legislative recommendations, including the introduction of a positive duty under the Sex Discrimination Act; and a clear requirement on employers to proactively address violence and harassment as a work health and safety hazard. Congress notes the Respect@Work Recommendations regarding the misuse of non-disclosure agreements and calls for an end to their misuse in cases of workplace sexual harassment. Congress also welcomes the ratification of the ILO Violence and Harassment Convention, 2019 (No. 190).

Sexual Harassment

181. Congress recognises that sexual harassment is prevalent across all industries and all levels of work. The previous legal framework failed to protect workers, and in particular women.

182. Congress welcomes the implementation by the Government of all 55 recommendations of the Respect@ Work Report. In particular, Congress welcomes the implementation of the Respect @Work legislative reform recommendations, including the prohibition of hostile workplace environments; the introduction of a positive duty under the Sex Discrimination Act to prevent sex discrimination, sexual and sex based harassment and hostile workplace environments; enforcement powers for the Australian Human Rights Commission; the ability for the AHRC to inquire into systemic unlawful discrimination; and the prohibition of sexual harassment in the Fair Work Act and giving workers access to the Fair Work Commission, which now has powers to hear sexual harassment disputes and issue stop orders.

183. Congress also welcomes the implementation of Recommendation 2 of the Boland Review to introduce a model code of practice on managing psychosocial hazards at work, as well as the new model code of practice on sexual and gender based harassment.

184. Further reform is needed to make work safer for women, including:

Work Health and Safety Legislation

a. Stronger work health and safety laws to make sure that employers are obliged to tackle the underlying causes of sexual harassment at work.

Fair Work Act

a. Give the FWC stronger powers with regard to sexual harassment disputes, allowing it to arbitrate where the worker or their union requests this.

b. Give the FWC the ability when dealing with applications to stop sexual harassment to make orders designed to put the worker back into the financial position they were in prior to the commencement of the harassment.

c. Extend vicarious liability for employers to include sexual harassment perpetrated by third parties.

d. Ensure the FWC can have regard to the general risk that a person will continue to be sexually harassed by others in a workplace and make orders that will reduce the risk of future harassment occurring.

e. Include reinstatement as a remedy.

Federal anti-discrimination framework

185. Industry specific guidance and resources should be developed by the Australian Human Rights Commission in consultation with the Respect@Work Council, unions and industry on how to comply with the positive duty.

186. Guidelines published by the AHRC should be enforceable and taken into account in any application under the law, as well as reviewed and updated regularly.

187. Provide funding and resources to the AHRC, unions and industry to support the effective roll out of the new laws.

188. Allow workers and trade unions to make complaints and bring claims regarding non-compliance with the positive duty.

189. Provide for independent enforcement of compliance notices in the courts by trade unions and workers where the AHRC does not do so within a period of time.

190. Require the AHRC to notify, consult with, and give an opportunity to make submissions, to workers (former and current) and trade unions when exercising its compliance functions.

191. Make directors and officers liable for breaches of the positive duty.

Other

192. Congress recognises that there are insufficient protections against sexual abuse and grooming for workers under the age of 18. Workplaces employing minors should not be exempt from working with children checks, and there should be appropriate legal protections (for example, exemptions to privacy law) to ensure minors are protected from working with people with a history of grooming and/or abuse.

Family and domestic violence

193. Congress advocates for workers' rights to a safe home, community and workplace and takes a stand against family and domestic violence. Congress acknowledges the importance of family friendly, inclusive, respectful and gender equal workplace cultures in preventing and responding to gender-based violence. For example, evidence shows that such workplace cultures enable workers to disclose family and domestic violence and seek appropriate workplace supports.

194. Congress supports the principle that family and domestic violence is a workplace issue and a form of gendered violence and that paid family and domestic violence leave can:

    a. assist employees experiencing family and domestic violence maintain paid employment;

    b. support them through the process of escaping family and domestic violence; and

    c. promote safe and secure workplaces.

195. Congress congratulates the Albanese Government for legislating 10 days paid family and domestic violence leave as a universal entitlement for all employees. Unions will continue to bargain for improved protections and supports for employees who are subjected to family and domestic violence which include:

    a. Improved additional paid leave

    b. Measures to protect the confidentiality of employee details;

    c. Workplace safety planning strategies to ensure the protection of employees;

    d. Referral of employees to appropriate family and domestic violence support services;

    e. Appropriate training and paid time off work for agreed roles for nominated contact persons (including union delegates or health and safety representatives); and

    f. Access to flexible work arrangements where appropriate.

196. Congress also welcomes the creation of a new protected attribute in the Fair Work Act of subjection to family and domestic violence which will better protect workers against adverse action. In addition, Congress supports:

    a. The creation of a new protected attribute in all anti-discrimination legislation to better protect employees who are or have been subjected to family and domestic violence;

    b. Initiatives to generate greater awareness and adoption of workplace initiatives to support cultural changes aimed at eliminating family and domestic violence;

    c. The conduct of appropriate further research to identify the key issues relating to the interface of family and domestic violence and the workplace;

    d. Running education and awareness raising programs in partnership with union and employer organisations to ensure the effective implementation of these changes;

    e. Adequately fund community organisations to address family and domestic violence and support victims; and

f. Funding programs to address gendered violence in all workplaces which apply adult education principles and are delivered by people with the appropriate expertise.

Access to early childhood education and care

197. Congress recognises that access to free universal high quality early childhood education and care is central to enabling families balance work and care for children and notes the Congress policy on Early Childhood Education and Care. Confidence in care for children and good access enables increased labour market participation by women, as despite endeavours to encourage men to take up the role of primary carers of young children, women are still disproportionately primary carers.

198. Free and universal quality early childhood education and care should be delivered by highly skilled, properly paid and securely employed educators.

199. Congress welcomes the improved childcare subsidies that came into effect from 1 July 2023.

Rostering

200. Congress notes that secure, stable predictable and meaningful rosters are vital to support workers who care, particularly in light of:

a. Limited access to affordable, quality early education and care;

b. The use of punitive rostering to discriminate against workers particularly pregnant employees and those with caring responsibilities;

c. The impact of precarious work, insecure work and casualisation on low paid workers and women workers; and

d. The lack of control workers have over their hours of work, changes to their rostered hours, and the ability to take their accrued leave entitlements.

201. Congress further notes that due to advances in technology and the use of personal electronic devices workers are commonly required to work beyond their rostered hours without appropriate compensation.

202. The ACTU will establish a working group to consider the impact that rostering and technology has on work life balance across all industries and develop strategies to address these widespread issues.

203. Congress calls for better rights for all workers to secure and stable rosters with meaningful hours that provide workers with job security and work life balance, and that accommodate caring responsibilities. Workers need to have more control over their hours of work, the right to be consulted over changes to their rostered hours, and the ability to access their accrued leave entitlements. Congress will campaign and advocate for improved rostering rights for workers. including:

a. Ensuring employers consult on the impact of proposed roster changes and take the employee's views, including working carers, into consideration when changing rosters and other work arrangements. Workers should have a right of appeal to the Fair Work Commission if the issue cant be resolved.

b. Ensure all permanent workers have access to regular, predictable patterns and hours of work

c. Ensure employers give permanent workers advance notice of 28 days of rosters and roster changes (except in exceptional circumstances), and genuinely consider employee views about the impact of proposed roster changes and to accommodate the needs of the employee.

d. Restrict the use of low base hour contracts which can be ‘flexed up’ without incurring any penalty rates for additional hours worked beyond contracted hours.

e. Other workplace specific measures to increase roster justice such as specific rosters for those with caring responsibilities.

204. Congress acknowledges that modern awards covering work predominantly done by women often have poorer working time protections than those covering male dominated industries. Congress will work to ensure all workers' time is equally valued.

FIFO and Long Distance Commuting

205. Fly-in Fly-out and other forms of long-distance commuting are becoming more widespread across the resources and other industries. Employers' growing preference for itinerant over residential workforces is having severe impacts on workers, families and communities including:

    a. Discrimination against local workers in regional areas;

    b. Lack of investment in training;

    c. Decline of population, economic activity and social amenity in regional communities;

    d. Punishing rosters leading to fatigue, family breakdown and mental illness; and

    e. Lack of standards and personal freedoms in accommodation camps.

206. Workers in mining and resources projects increasingly have no choice about their commuting and accommodation arrangements.

207. Congress calls on all levels of government to work together to ensure:

    a. FIFO is limited to genuinely remote and temporary operations;

    b. Worker accommodation camps and facilities (including accommodation, meals and access to communication) meet minimum standards with rights and freedoms for workers and is an industrial and workplace health and safety right;

    c. Companies may not discriminate against local workers, including in rates of pay;

    d. Shifts and rosters are developed in agreement with employees and their unions to encourage family time and reduce fatigue and psycho-social harm;

    e. Workers are appropriately compensated for the time taken to travel to the site, including having the cost of travel fully covered;

    f. Tax arrangements do not favour the employment of itinerant over residential workforces.

Enforcement

208. Congress recognises the central role that unions have in ensuring compliance with workplace laws but they face significant barriers under the current system to accessing justice for members. Those barriers have included a lack of Commission powers to resolve disputes over compliance, a lack of penalties to deter wage thefts, a lack of power for union officials, delegates and members to investigate underpayments and a court system that is expensive, slow and complex.

209. In tacking these barriers to justice, Congress welcomes recently improvements to the law that:

    a. Raise the threshold to access the small claims jurisdiction;

    b. Increase the civil penalties applicable in the case of wage theft; and

    c. Improve right of entry for the purposes of investigating contraventions.

210. Working people need an accessible and effective dispute about matters arising under agreements, awards or the NES. Without recourse to arbitration the only way of settling disputes about these matters is a court system which is slow and expensive.

211. Congress calls for dispute resolution procedures which include arbitration. In this regard, Congress welcomes the introduction of the Fair Work Commission arbitral powers in relation to a worker's right to request flexible work, to request extended unpaid parental leave and casual conversion.

212. Congress believes that the Commission should be able to deal with, and resolve by arbitration, and where the Commission cannot resolve disputes over existing rights and courts are required to orders to remedy underpayments there should be quick, easy and inexpensive access to judicial officers.

Registered Organisations

213. Congress emphatically rejects the use of politicised statutory agencies in the regulation of Australian workplaces.

214. Congress affirms the need for unions to be able to operate in an open and transparent fashion without political interference and excessive layers of regulation that deprive them of their capacity to function effectively.

215. Congress welcomes the change to registered organisations regulation brought by the Secure Jobs, Better Pay legislation, which abolished the Australian Building and Construction Commission and Registered Organisations Commission, with the powers of the ROC being transferred to the Fair Work Commission.

216. International labour standards recognise the organisational autonomy of industrial organisations as a core element of freedom of association. The primary goal of any regulation should be to reinforce the democracy of unions and enhance transparency and accountability to members.

217. Congress further welcomes the review of registered organisations regulatory functions carried out on behalf of the Fair Work Commission General Manager, which recommended a range of changes to union regulation.

218. Congress calls for:

a. Streamlining current reporting requirements, which at present are onerous and contain multiple duplications;

b. Revising the current definition of "officer" and the obligations and penalties that attach to office holders, which currently dissuade rank-and-file participation;

c. Removal of criminal offences from the Registered Organisations Act;

d. Examination of the current "whistleblower" provisions to prevent frivolous, vexatious or politicised complaints;

e. Such further amendments to the law as would enable and promote the democratic and efficient functioning of trade unions.

219. Congress notes with concern the recent rise in entities which purport to be representative of workers, but which are not democratic, accountable or transparent. Congress affirms that industrial laws should provide rights to unions and union members that do not extend to non-union or unregistered entities.

Meeting community expectations

220. Australian governments must recognise their public responsibility to provide a model of fairness in the workplace for those who are performing work for government whether as public service employees or as employees of contractors to government. Government procurement and direct public sector employment should play a significant role in reducing inequality while increasing productivity and national prosperity by providing secure local jobs, with fair pay and positive industrial relations.

221. Commonwealth Procurement Rules and relevant state and local government policies must be written to explicitly preference those suppliers, manufacturers and service providers who have positive records in connection to the following:

a. Having up to date collective agreements in place securing jobs, pay, terms and conditions of the workforce together with effective dispute resolution procedures which include access to independent arbitration;

b. Closing the gender pay gap;

c. Positive record on eliminating gender-based violence including sexual harassment;

d. Regional renewal and minimum numbers of apprentices;

e. The employments of ATSI workers;

f. Positive record on rehabilitation and return to work;

g. OHS records; and

h. Corporate tax and industrial relations records.

222. Recognising the industry knowledge possessed by unions, Congress calls for consultation requirements in relation to Commonwealth Procurement Rules and relevant state and local government policies.

223. While Congress recognises that in civil litigation the Commonwealth has a duty at law to act as a model litigant, these obligations can only be enforced by the Attorney General, not by private individuals or organisations such as unions. The current compliance framework is flawed. Congress calls for these rules to be enforceable and complaints dealt with greater transparency, to secure the consistent compliance of government bodies with their model litigant obligations.

224. Government procurement policies must include consultation with relevant unions to ensure:

a. Local content is prioritised and secured, supporting domestic jobs; and

b. Prospective contractors have a union-negotiated enterprise agreement, meet and exceed freedom of association obligations, and have no history of hostile, corrupt or questionable practices.