Chapter Three

Productive partnerships through enterprise bargaining

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The past three decades have seen dramatic changes in Australia's economy. Our days as a mine and a farm for the rest of the world are long gone. Our economic prosperity and standard of living is dependant upon our ability to develop new industries and to add value to our natural abundance of raw materials.

Accompanying these changes has been a growing awareness of the significance of human capital as a generator of national wealth. In one sense, Karl Marx's vision of workers controlling the means of production has come to fruition – the most vital input in production in the modern economy is workers' minds. The economies that will prosper will be those that most effectively develop and harness the talents and skills of their workforce.

That is the most important challenge for modern government. The increased focus of industrial relations policy on individual enterprises has been important in meeting this challenge, but is plainly not enough. For many, enterprise bargaining is still seen as a means of securing regulation, albeit at a local level, of two antagonistic rivals.

If we want to maximise our individual, enterprise and national economic potential we have to achieve an enterprise bargaining system which involves workers in the enterprise decision-making process – not merely as 'inputs' but as partners in production.

Achieving greater enterprise productivity has been tremendously important in Australia's recent economic history. Leadership and co-operation were required and fortunately they were found. Those involved in the process of reform in the 1980s and early 1990s sought to bring people towards common ground rather than driving them apart. History will judge the achievements of the

players both from the trade union movement and from industry in that period with respect and admiration.

The challenge for us is to maximise and build upon those gains. But we cannot do so without an honest assessment of all the consequences of enterprise bargaining. Sustainable productivity growth can only be built on greater employee consultation and involvement through the enterprise bargaining process.

Change has meant trauma for many

The simple truth is that while some people have been presented with opportunities from the new global environment, others have not done so well. The manufacturing sector, for instance, has had to meet the severe challenges of global competition with new manufacturing centres emerging in developing economies in the Asia-Pacific region which are often sustained by cheap labour.

In short, many individuals and communities have been affected by the dramatic and quite devastating change that globalisation and associated restructuring bring. (United Nations Research Institute for Social Development 1995; Organisation for Economic Co-operation and Development 1997). Unless and until we understand that, we are not going to be able to engage all Australian workers in a focus on productive enterprises or maximising our productive capacity. For those who have been victims of globalisation, greater efficiency is seen as meaning one thing – loss of jobs.

In many sectors much needs to be done to turn around a culture of insecurity and resentment. The issue is significant – unless we are able to involve all Australians in developing a culture of maximising our productive capacity in growth industries we risk falling behind the rest of the world, with consequent effects on our living standards. In short, we must get enterprise bargaining right or we are in trouble. As with so many areas of public policy, we can't get enterprise bargaining right unless we understand its history.

The development of enterprise bargaining

Enterprise bargaining evolved in the 1980s from the series of agreements between the Federal Labor Government and the Australian Council of Trade Unions known as the Accord. A fundamental part of the Accord process, as reflected in the various

national wage case decisions through the 1980s and the early 1990s, was that workers generally received a first-tier wage increase based on inflationary pressures, but the second-tier increase was preconditioned on achieving productivity offsets. Those productivity offsets included both award[1] restructuring and alterations in work practices. The wage increases during the 1980s and early 1990s were heavily regulated, at least in the sense that the Commission's consent was required for any wage increase based on those negotiated outcomes.

I can personally recall appearing before the Australian Industrial Relations Commission on a number of occasions where the parties were sent away because the Commission was not satisfied that the productivity offsets obtained from the second tier reforms justified the agreed wage increase.

In other words, the process itself instilled in the parties the recognition that productivity improvements and, indeed, the development of best practice production techniques, were essential not only from the point of view of the immediate goal of obtaining higher wages but also from the point of view of developing Australian industry. Any fair analysis of that period would come to the conclusion that the trade union movement as a whole was intimately involved. The changes in workplaces which occurred at an enterprise level occurred with the consent of trade unions and, in many cases, at the initiation of trade unions (National Wage Case 1989).

I do not make that statement lightly. In many cases trade unions literally went to employers to say: 'Listen, our members deserve an increase. We have experience working with other employers who have adopted reform models and we are prepared to sit down to work these matters through with you.' In other words, in many instances, trade unions cross-fertilised industries with best practice models through these sorts of negotiations. To ignore that phenomenon does a great disservice to many decent Australians, both on the employer and organised labour side of the equation.

The major reform and essential underpinning of the current enterprise bargaining framework was the 1993 amendments to the Industrial Relations Act 1988 (Cth) which required the Commission to certify enterprise agreements but only against a 'no disadvantage' test – not the prescriptive requirements of the

previous national wage case decisions. In exchange for enterprise bargaining, employers accepted that workers should enjoy a right to withdraw their labour to support their negotiating position.

At the time, it was generally acknowledged that negotiated outcomes were, to a degree, limited by the underlying award structure, which in many instances, reflected 90 years of history. Accordingly, the former Labor Government recognised that an essential part of an effective bargaining process was the revision and modernisation of awards.

Section 151 of the Industrial Relations Act 1988 (Cth) introduced a requirement that the Australian Industrial Registrar review federal awards over a five-year period to check that they were still active and had not been dispensed with or superseded by other instruments or arrangements. More significantly the Industrial Relations Reform Act 1993 (Cth) incorporated an additional award review requirement in the form of section 150A. That section required a three-yearly review of federal awards to ensure that they remained up to date and relevant, and complied with anti-discrimination principles.

The Commonwealth submissions to the AIRC Safety Net Adjustments and Review Case 1994 made it clear that the Government saw the section 150A award review procedure as assisting the transition to enterprise bargaining. The Government in its submission stated that the provision would assist in:

> encouraging bargaining over a wide range of issues [which] will help ensure that arrangements are appropriately tailored to the enterprise or workplace so that productivity gains and associated benefits are maximised.

The Keating Government's Working Nation policy (Commonwealth Government 1994) also emphasised the importance of modernising of awards and provided more detail on the government's objective which included reviewing awards to remove detailed prescription, overhauling classification structures, allowing for multi-skilling, flexible job design and clearer career paths.

Essentially, however, the review of awards was one that was based on consultation and negotiation, and provided incentives for reform by way of improved remuneration.

Conflict is precisely the wrong policy

There can be no doubt that the changes to Australian industry achieved between 1983 and 1996 were more dramatic than any period in Australia's history. As I have said, those changes in themselves, in conjunction with the processes of globalisation, have had dramatic consequences.

> The changes to work structures, in the context of an all-embracing environment of mergers, acquisitions, contracting out, restructuring and associated lay-offs, produced tremendous insecurity and, in many instances, resentment. (ACIRRT 1999)

It would be naïve to suggest that that resentment was not a factor in the change of government in 1996. It has even been suggested that at least some of the decline in trade union membership, during the Accord period, may have resulted from some workers seeing the trade union movement as collaborators in – rather than protectors against – the forces of change.

I mention these things not for the purpose of justification or explanation of political change, but in order to establish the framework through which we must continue to assess the progress of and attitudes towards enterprise bargaining and, dare I say, the respect we pay to all relevant participants.

In that context we cannot overlook the significance of the legislative and institutional changes that occurred in 1996. Nor can we ignore the language and politics of conflict that have regrettably permeated the post-1996 period.

The introduction of the Workplace Relations Act 1996 (Cth) saw people pushed towards even more dramatic change at an enterprise level, essentially, through the gutting of award conditions and the active promotion of individual rather than collective agreements. Most workers are now all too familiar with the provisions of section 89A, which reduced industrial awards to 20 core conditions. Some no doubt welcomed that change as replacing the section 150A procedure with a quicker one. Others recognised the tremendous arrogance involved in taking away conditions from those entitled to benefits under a contract of employment based on an award. We are entitled to ask in what other area of contract law would you tolerate a situation where the government came in over the top, rewrote the contract and deprived the employee of significant rights?

Whichever side of the competing argument you are on,

common sense suggests that we cannot ignore the effect that those changes had on workforce attitudes. Anyone who is of a fair mind would concede that having their own terms and conditions of employment varied by such significant and direct government intervention would provoke resentment and indeed result in an antagonistic attitude towards further change.

This is the environment that we are looking at with respect to literally all Australian workers who are employed under federal awards that have evolved into enterprise agreements. I accept that in many industries the previous enterprise agreements simply continued on as a result of renegotiation. However, in other industries those agreements were terminated and the terms and conditions of employment were reverted to the narrow safety net of underlying award conditions.

As a result of the gutting of awards to the 20 core conditions through section 89A, the negotiating framework for enterprise agreements shifted from one which built on previous outcomes, to one where workers effectively negotiated terms of surrender to simply attempt to restore conditions stripped out of awards through the section 89A procedure.

Again, no doubt many would point to the fact that as a result of these procedures irrational, illogical and unproductive work practices have been stripped away and as a result of that fact the parties have been free to renegotiate more rational and productive outcomes. All arguments have two sides and I would accept in some instances that is the case. However, it is necessary to ask whether the removal of restrictive work practices by edict rather than negotiation is sufficient to achieve the productive outcomes that are necessary for Australian industry to compete with the rest of the world.

The need for an empowered and involved workforce

We cannot possibly hope to maximise our potential as a nation unless we have an empowered and committed workforce. In turn, we are not going to have an empowered and committed workforce if workers are treated as expendable inputs in the process of production that is devised and implemented in reverence to the creed of strict employer prerogative.

This is where I have considerable difficulty with the policy being pursued by the current Government. We must ask if we have moved

on from a century ago, when American industrialist George Baer argued before the United States Coal Commission of 1902-03 that capital could not share its management with labour because 'God in his infinite wisdom has bequeathed the management of industry to Christian Gentlemen' (Stone 1945, p. 150).

The current Government constantly espouses a similar 'holy truth' about the sanctity of managerial prerogative and cajoles employers to 'take advantage of the flexibilities' which exist in their Workplace Relations Act. This is essentially code for the promotion of individual Australian Workplace Agreements or non-union enterprise agreements.

I do not intend to embark on a discussion of the merits or otherwise of individual *versus* collective agreements, or union *versus* non-union agreements. But, to take a current example, I simply ask – how are workers and trade unions expected to regard the Government's push, supported by some industry groups, for the Australian Industrial Relations Commission to order a cooling-off period in respect to protected industrial action, with no corresponding requirement on employers to bargain in good faith? Bearing in mind the history of some employers aggressively promoting individual agreements – with the Government's encouragement – what would prevent employers, during such a cooling-off period, from undermining the collective bargaining process by picking workers off one by one with individual agreements?

What I want to emphasise is that maximum productivity in Australian enterprises will not be achieved unless we have an empowered and committed workforce. You can't achieve that with a work force that is in the trenches ready to mount an assault against any change that is heading their way. The consultation I have undertaken as shadow Minister for Workplace Relations has convinced me that, in many sectors, workers are deeply resentful of the dramatic change that has been forced upon them and not discussed. The forces of globalisation and competition policy have seen more mergers, acquisitions, restructuring and contracting out than at any time in history. Many workers have seen their colleagues and families devastated by loss of employment and, in too many cases, with loss of severance entitlements. I have had workers saying to me, 'The only reason I'm still in a job is that they haven't figured out a way of getting rid of me yet'. We must surely ask: are we going

to obtain a talented, committed and flexible workforce by ignoring economic insecurity that in itself leads to fear, resentment and even militant resistance of any and all change?

It is interesting to observe that the BHP Western Port facility, the site of a significant industrial dispute this year concerning job security, is located in a region that a 1999 Jesuit Social Services Report found to be among the most socially deprived regions in Victoria (Vinson 1999). Industrial disruption in a vital industry is clearly not in the national interest but we cannot ignore that the underlying cause of the dispute was concern about job security. That concern led to a substantial reaction in the form of rebellion against workplace change, and in particular, contracting out of work. Clearly, if you lose your job in a region such as Hastings then the future prospects of yourself and your family may be pretty limited.

Our competitors are ahead of the game

While Australia has achieved strong productivity gains since enterprise bargaining was introduced by the Labor Government, in the face of rising work intensification and job insecurity we must examine ways to ensure that productivity growth can continue in a sustainable way. In this respect, we are fools if we don't have regard to steps that our competitors are taking to enhance the commitment and productivity of their workforces and enterprises. All the indications are that our competitors, including the United States and Europe, recognise this imperative.

While not all proposed reforms have been implemented, a tremendous amount of work has been done in those countries in the area of maximising productivity through committed workforces. That commitment is achieved through workers being genuinely involved in the production process.

Who can sensibly argue that workplaces are not going to be most efficient when workers themselves have a piece of the action not only in terms of sharing in productivity gains through concepts such as shareholding and bonus arrangements but, even more significantly, in terms of having an input in the management process?

This was a strong focus of the Clinton Administration in the USA. The Administration believed that high performance technological and workplace reform could only take productivity gains so far. To

achieve maximum potential required attitudinal change by both workers and management. In 1994 the Administration, through the United States Department of Commerce and Labour, sponsored a report by the Dunlop Commission on the Future of Worker/ Management Relations. The Dunlop Commission noted evidence by many employers that employee participation and worker management partnerships are not only desired by workers but essential for businesses to be competitive in their markets and industries. (Dunlop Commission 1994).

This has very much been the experience in the European Union. The former European Commissioner responsible for Employment and Social Affairs, Padraig Flynn, has said there are two basic facts of modern industrial life:

> One is that constant industrial change and corporate restructuring is an inevitable part of remaining competitive in the world.
>
> The second is that, if this constant industrial change and corporate restructuring is to meet its objective – if it is to be a positive factor in our competitiveness – then it needs to engage the workforce, as an integral and a formal part of that process.
>
> This cannot happen if information and consultation is an afterthought, a postscript to decision making. That way, we succeed in only creating, at worst, a culture of conflict, at best a culture of cynicism.
>
> To nurture globally productive companies and workforces we must aspire to the quite opposite effect. We need to create a culture of anticipation, to actively engage the workforce in the process of change. If information and consultation mean anything, it means informing and consulting in advance, before a decision is taken (Flynn, 1999).

Partnership, not antagonism, is the way we should be going

Unless all participants are prepared to deal with each other as equals in an atmosphere of mutual recognition and respect the process of building productive workplaces will fail.

This is where I think the current Government's aggressive union-busting tactics and reassertion of unrestrained management prerogative are so counter-productive. The language of

warfare that the current Minister has used undermines the development of a culture where both management and labour aspire to be part of a productive partnership. If, where antagonism exists, we do not pull unions and management out of a cycle of conflict, or if, worse still, we throw petrol on a conflict, then affected workplaces will remain low on the productivity scale. The evidence is clear – the rewards of productive partnerships are there for all players.

We are still working through the different models for representative workplace structures that might be appropriate to Australia's industrial relations culture and practice and in particular the culture of enterprise-focused agreements.

However, I believe that the principles underpinning the European Works Councils are a sound starting point. The European Works Council model requires management and labour to work in 'a spirit of cooperation' (European Works Council Directive 1996 Article 9) to address issues such as the 'structure, economic and financial situation of the company', the 'probable development of the business', the 'situation and probable trend of employment, mergers, cutbacks or closures of undertakings, establishments and collective redundancies' (European Works Council Directive 1996 Annexure 2). These important matters should, in the twenty-first century, be the subject of consultation and a cooperative approach in Australia.

We have recently seen massive corporate collapses in Australia and abroad. Lack of appropriate accountability has played more than a minor part in those collapses, and the write-down of assets in others. If we had genuine employee involvement in management decisions we would not have seen the massive bonus payments to the One.Tel executives. We would not have seen the substantial bonus payments to the National Textile Directors in the final year of their demise. I believe we would have also seen the writing on the wall for both Ansett and HIH at a much earlier date.

We would also have a much greater ability to ensure corporate decision-making was better directed towards long-term economic growth than short-term profiteering. The latter is clearly not in the interests of workers or local communities that ultimately bear the pain of insolvencies. Greater workplace accountability would be a significant impediment to such practices.

Workplace partnerships should be high on the enterprise

bargaining agenda. They have the potential to facilitate open communication, expand the range of ideas flowing into the decision-making process and ensure that management and labour work as far as possible for a common purpose.

The task of government is not to create division but to put in place a more co-operative industrial relations framework to help build these partnerships through genuine enterprise bargaining.

Notes

1 A collective instrument made by an industrial tribunal which provides minimum legal entitlements.

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