

Workplace Relations

Action Plan FOR FUTURE PROSPERITY

Australia is in the midst of one of its most prosperous years. Profitability is high, inflation are low, income

and wealth per capita is rising. These buoyant times have led to a strong sense of security and confidence in the present. Yet they have also led to a level of complacency about the future. While in an ideal world, Australia's 'miracle economy' would remain at its current state of high performance indefinitely, the reality is more sobering. Past improvements in productivity growth have been central to Australia's current success and a major reason for our rising living standards. Yet in the face of increased competition from overseas, the impacts of reforms made over the past 20 years have a limited shelf life. On key measures of investment and workplace productivity, we lag well behind many of our major competitors. Debt has taken over as a major driver of our economic growth. These and other vulnerabilities lie beneath the surface of our current economic well-being. We need to look at new ways to lock in and build on our current prosperity.

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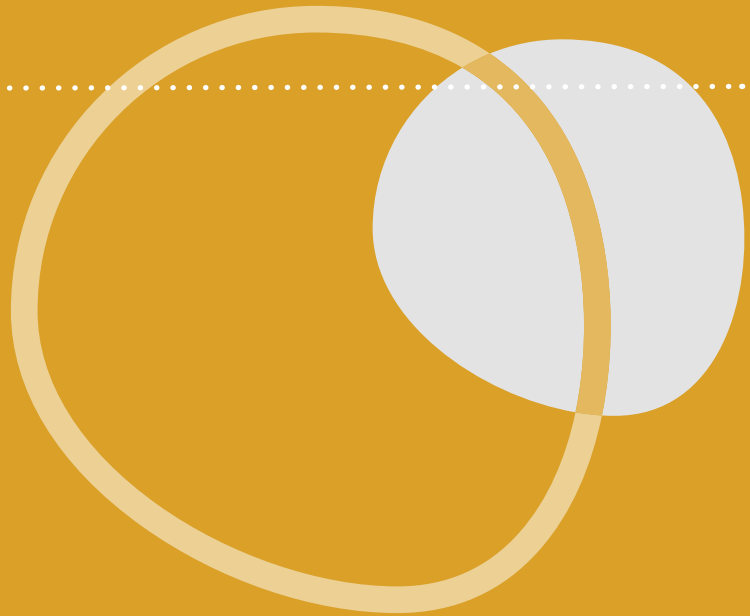
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Introduction



Australia needs to look at new ways to
lock in and build on its current prosperity.

Australia is in the midst of one of its most prosperous periods in many years. Profitability is high, unemployment and inflation are low, income growth is strong and wealth per capita is rising.

These buoyant times have led to a strong sense of security and confidence in the present. Yet they have also created a measure of complacency about the future. While in an ideal world Australia's 'miracle economy' would remain at its current state of high performance indefinitely, the reality is more sobering. Past improvements in productivity growth have been central to Australia's current success and a major reason for our rising living standards. Yet in the face of increased competition from overseas, the impacts of reforms made over the past 20 years have a limited shelf life. On key measures of investment and workplace productivity, we lag well behind many of our major competitors. Debt has taken over as a major factor behind our economic growth. These and other vulnerabilities lie beneath the surface of our current economic well-being. We need therefore to look at new ways to lock in and build on our current prosperity.

In particular, Australia urgently requires a considered and comprehensive workplace relations reform program. A decade has passed since major changes to Australia's workplace relations system were implemented. Given the importance of productivity and workplace flexibility to our economic success and prosperity, a new reform program is imperative to consolidate the gains of the past and give Australia greater scope to grow in the future.

The Business Council of Australia (BCA) represents the Chief Executives of 100 of Australia's leading companies. The BCA develops and advocates, on behalf of its Members, public policy reform that positions Australia as a strong and vibrant economy and society. The companies that our Members represent are among Australia's largest employers and represent a substantial share of Australia's domestic and export activity. Therefore, they have a significant interest in

the scope and direction of economic reform. Within this context, ensuring Australia's workplaces exhibit world-standard productivity and competitiveness is a major priority.

This Action Plan sets out what Australia's business leaders and leading companies believe is the best way forward for reform in the workplace.¹ It advocates a continuation of changes and reform in the workplace that have played a major part in Australia's recent economic success and improved living standards.

Change of this nature has long-term benefits, but requires long lead times. If we do not act now, or if we wait until Australia's economic performance wanes, we will have fewer choices – and those choices are likely to be more austere than they would otherwise be when the economy is performing well.

BCA Members recognise that best practice needs to be modelled by Australia's leading employers and their employees. There is a leadership role that can be played by BCA Members in advocating positive reform and using the options and flexibility provided to achieve more innovative outcomes. They are prepared to exercise the necessary leadership to this end.

¹ The recommendations in this paper are consistent with long-held principles and views advocated by the BCA. See for example: BCA (1989) *Enterprise-based Bargaining Units: A Better Way of Working*; BCA (2000) *Towards a Unitary National Workplace Relations System*, *BCA Papers* Vol 2, No 2; and BCA (1991) *Avoiding Industrial Action – A Better Way of Working*.

Achieving Growth and Prosperity



Australia urgently requires a considered and comprehensive workplace relations reform program. A decade has passed since major changes to Australia's workplace relations system were implemented.

To guide the development of a specific agenda for workplace relations reform, the BCA commissioned Access Economics ('Access') to prepare a report assessing the economic benefits of past workplace relations reform and the possible scope and direction for future reform. The Access Report '*Workplace Relations – The Way Forward*' is being released in conjunction with this Action Plan.

As a starting point in considering Australia's workplace relations policies and their objectives, it is reasonable to assume the vast majority of people in the community want an Australia that is both prosperous and fair. In attempting to address these objectives, workplace relations policies in Australia have typically targeted 'fairness.' As Access concludes, however, the results of using workplace relations to achieve fairness through restrictive workplace practices are often the opposite of those intended: fewer jobs are created; unemployment is higher than it would otherwise be (especially for the low-skilled, women and teenagers); and average incomes are lower.

In short, workplace relations policies are better targeted towards creating opportunities, growth and prosperity – in other words, growing the economic pie. Fairness is better achieved in a more direct manner through the tax-transfer system, which seeks to divide the pie into more equitable shares.

The BCA strongly agrees with this assessment and the concluding principle that workplace relations policies are best directed at prosperity – that is, sustained economic growth. Consistent with this analysis, the BCA's objective is to ensure workplace relations policies support:

- **strong productivity growth;**
- **high levels of employment through job creation and high levels of workforce participation; and**
- **people working to their potential and being rewarded for effort and capability.**

It is important to acknowledge in this context that education, training and skill formation policies should be pursued in parallel with workplace relations reform to ensure the best outcomes. This is discussed further in Figure 1 (page 7).

If we can achieve our workplace relations objectives, the outcome will be higher levels of income, sustained strong income growth, lower unemployment and an enhanced capacity to address fairness through the tax-transfer system.

FIGURE 1

The Importance of Education, Training and Skill Formation

Education, training and skill formation are fundamental to producing the best possible outcomes for the economy, business and individuals from workplace relations reforms.

For business, sustained competitiveness is increasingly driven by innovation and productivity improvements that in turn are dependent on the availability and employment of people with appropriate skills and capabilities.

In short, a better-skilled workforce supports productivity improvements and a more competitive economy. Current skill shortages across the economy, including in both trade and professional areas, highlight the ongoing demand for skilled employees.

For employees, higher skills and productivity yields higher incomes and provides the capacity to sustain strong income growth over time. In addition, workforce participation from youth through to retirement age is significantly higher among skilled than unskilled workers.

The unskilled face fewer employment opportunities; find it more difficult to sustain ongoing employment; and are more likely to suffer periods of extended unemployment. Associated with this are lower incomes, an increased incidence of poverty and adverse implications in terms of broader well-being.


It is critical therefore that education and training systems in Australia support:

- **more young people completing an initial 12 years of education and training;**
- **the development of employability and enterprise/industry skills in a flexible and timely manner within a more supportive (ie less restrictive) regulatory environment; and**
- **ongoing skills development for those in work through workplace training.**

These are key priorities that the BCA will continue to advance through the work of its Education, Skills & Innovation Task Force.

The Workplace Relations Action Plan: Objectives

The BCA considers further reform in three key areas of workplace relations is essential to improve productivity and support high levels of employment through supporting job creation and workforce participation:

- **greater flexibility in agreement making (processes and outcomes);**
 - **reduced barriers to job creation and workforce participation; and**
 - **more efficient workplace regulation.**
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OBJECTIVE ONE**GREATER FLEXIBILITY IN AGREEMENT MAKING**

Sustained enterprise performance provides the best outcomes for employers, employees and the broader economy. This in turn requires employment terms and conditions that maintain productivity and competitiveness.

In increasingly competitive and dynamic global markets, it is less and less likely that uniform conditions are able to address the requirements and circumstances of individual enterprises or the individuals working in these enterprises. Companies increasingly rely on diverse, skilled labour input as a source of competitive advantage and must continually adapt methods, patterns and processes of production. This in itself is an important element of innovation.

In addition, to support greater workforce participation of younger unskilled individuals, mature-age individuals and women – of fundamental importance against the backdrop of Australia’s ageing population – greater flexibility in the range of employment options is required.

The BCA believes employers and employees are best placed to determine workplace arrangements that most effectively suit each other’s ongoing needs. Enterprise-based agreement making, whether it is individual or collective, must therefore form the core of Australia’s workplace relations system. Agreement processes and outcomes should be subject to minimal regulation or intervention from outside parties and should support strong ownership of bargaining outcomes for both employers and employees. The BCA considers further award simplification, changes to the no-disadvantage test and processes around Australian Workplace Agreements (AWAs) and certified agreements could enhance the flexibility of agreement making. In short, it should be easier to make agreements.

Award Simplification

Despite past reforms aimed at making Australia's workplaces more flexible and responsive to change, overly complex, operationally detailed and prescriptive awards remain at the heart of Australian workplace relations. This is inhibiting the development of workplace arrangements that best suit the ongoing needs of employees and employers at individual workplaces. Many individual employment relationships are still determined by an award where companies do not seek to engage in the development of collective or individual agreements.

Awards are a legal instrument incorporating a high level of specificity about a range of matters that are not core to the employment relationship. The prescriptive nature of these awards makes them blunt instruments of employment with little scope to differentiate arrangements with individual employees in response to their roles, efforts and capabilities.

As well, there are still significant numbers of awards relating to a large number of classes of employees, which contain overlapping and conflicting terms and make it difficult to establish logical employment arrangements in many workplaces.

The use of awards as the basis for implementing safety net decisions leads to flow-on costs beyond the minimum hourly rate and entrenches wage relativities irrespective of performance and productivity.

- **The BCA supports further award simplification through the reduction of allowable matters and consolidation in the number of awards.**

The BCA further considers employers and employees can be relied upon to reach appropriate outcomes on the range of factors relevant to the individual workplace. These factors should be left to employers and employees to determine in accordance with their needs and circumstances.

A further reduction in allowable matters will send a clear signal to employers and employees to take more responsibility for determining the terms and conditions of employment and will create greater incentives to bargain.

- **The view of the BCA is that the allowable matters in Federal awards could be reduced from the current 20 matters to six:**
 - Minimum rates of pay – adult, junior, apprenticeship
 - Sick leave
 - Annual leave (excluding loadings)
 - Personal/carers leave
 - Parental leave
 - Dispute resolution

Existing awards should be reviewed against the narrowed range of allowable matters and their content reduced accordingly. In addition, there should be a reduction in the overall number of awards.

- **The BCA considers Australia should move over time to adopting a single, statutory minimum set of conditions to replace the award system.** (The rationale for this is discussed further below.)

Simplification of the No-Disadvantage Test

In addition to being a direct means of determining wages and conditions for some employees, awards play a key role in the workplace relations system as the benchmark for application of the no-disadvantage test. In other words, awards continue to provide the foundation for all other agreement making within the current system.

However, the vast majority of awards go well beyond setting a safety net of core employment conditions. This is not an appropriate basis for the application of the no-disadvantage test. In addition, the breadth of allowable matters, and complexity and prescription of awards, makes application of the no-disadvantage test difficult and time-consuming, and significantly limits the flexibility and individual workplace relevance able to be achieved through agreement making.

- **The BCA considers that the no-disadvantage test applying to Australian Workplace Agreements (AWAs) and certified agreements should be assessed against a less restrictive set of requirements.**
- **Specifically, the no-disadvantage test should be applied against a standard set of statutory minimum requirements covering the six allowable matters listed above (page 10).**

Australian Workplace Agreements

The advent of Australian Workplace Agreements (AWAs) has been a positive development. While AWAs represent only a small number of total workplace agreements, they play an important part in boosting productivity and performance in key sectors of the economy.

However, substantial administrative and compliance burdens are associated with the filing and approval processes for an AWA. As these processes apply to each individual AWA, large employers can incur heavy costs.

The BCA considers the take-up of AWAs would be higher if further improvements were made to AWAs and the processes required for their filing and approval. As a result, the BCA advocates the following changes to enhance the operation of AWAs and support greater take-up.

- **Processes for filing and approval should be streamlined.** Difficulties have been experienced with the requirements to issue AWAs five days (for new employees) and 14 days (for existing employees) prior to them being signed. These requirements and the legislation regarding the commencement date of AWAs make the offering procedure difficult and confusing in practice.
 - The stringent requirements for advance notification periods should be truncated and/or made more flexible.
 - AWAs (or variations of existing AWAs) should be allowed to take effect from the date signed. Compensation would be provided in the event of any shortfall between commencement and approval.
- **The life of AWAs should be extended to a maximum of five years to provide for greater certainty and to reduce administrative burdens.**

Many AWAs provide substantial remuneration, well in excess of average earnings. It is fair to conclude that employees attract high levels of remuneration in line with their skills, experience, and high levels of productivity. Such employees can be expected to possess reasonable bargaining power. It is less than clear that the protection of the no-disadvantage test is required or appropriate in these circumstances, particularly in light of the associated approval costs.

- **AWAs that involve remuneration in excess of the top income tax threshold should not be subject to a no-disadvantage test. They should be automatically approved by the Employment Advocate.**

To address concerns that not all employees are aware of their rights or the processes that surround the negotiation, filing and approval processes for AWAs, the BCA recommends employers be required to direct employees to the advice available on the website of the Office of the Employment Advocate (OEA) and/or provide a hard copy of the information available to employees. In this respect, appropriate summary advice should be prepared by the OEA for circulation to employees.

- **Approval of an AWA should require a declaration from employees that they have received or had access to OEA information on their rights and AWA filing and approval processes.**

An alternative to improving the operation of AWAs would be to improve the flexibility of common law contracts, where once again the key issue would be the application of the no-disadvantage test and the constraints of the Safety Net.

Certified Agreements

As a matter of principle, the requirement for third-party certification of a collective agreement that has been reached voluntarily, is supported by a majority of employees, and around which there is no dispute, is questionable and unnecessary.

- **The BCA considers where the majority of employees endorse an agreement and where there is no dispute, the agreement and signed statutory declarations from each party should be lodged with the Australian Industrial Relations Commission (AIRC) as a matter of record without the need for formal certification. Such an approach would free up resources within the AIRC and increase the efficiency of agreement making.**
- **As recommended previously, the only role for the AIRC will be to check the agreement meets the no-disadvantage test.**

Additionally, in the BCA's view:

- **The terms and conditions of a collective agreement should not limit the agreement making options of future employees.**
- **Consideration should also be given to allowing collective agreements to be approved by either the AIRC or the Employment Advocate, as a matter of customer choice (that is, it should be an issue for the parties involved to determine). This proposal would remove perceptions that there are different standards applied to AWAs and certified agreements and increase the contestability of the AIRC's service delivery functions.**

Dispute Resolution – A Greater Role for Mediation

The Australian Industrial Relations Commission is the dominant institutional player in the workplace relations system. While the *Workplace Relations Act 1996* sought to significantly modify the role of the AIRC, particularly through the limitations on its powers of arbitration, the activity of the AIRC and its importance as a focal point has not been much reduced.

The AIRC also often deals with disputes outside of its jurisdictional power.² While the composition of the workload of the AIRC has changed, Lewin³ concluded that the total volume of proceedings involving the exercise of conciliation and arbitration powers by the AIRC remained relatively constant from 1993 to 2001.

The tribunal structure is legalistic, bureaucratic and, more broadly, continues to convey the idea that ultimately a third party can and should be relied upon to sort things out. As such, the central role of AIRC/tribunal structure continues to reinforce a culture of referring disputes to a third party.

The BCA believes ownership of dispute resolution should not be assumed by a public agency.

- **Accordingly, the BCA considers mediation services should have a statutory basis within the *Workplace Relations Act 1996* and accredited external mediators should be firmly placed to provide an alternative to the dispute resolution services provided by the AIRC.**

External mediators would add to the general mix of skills and processes by which services can be delivered quickly and effectively. It is also likely that such services can be better tailored to local circumstances. In these situations, the availability of alternative avenues for dispute resolution is likely to increase the potential for resolutions that are genuinely owned by the parties.

In a 2004 Election policy announcement, the Federal Government committed to establish mediation services for small business in recognition that mediation is a low-cost, informal, and less adversarial method of dispute resolution that provides parties with more direct ownership of the outcome. The BCA proposal is consistent with this commitment, but aims to broaden the potential benefits that could flow from recourse to greater mediation.

2 Alexander, R., and Lewer, J. (2004), *Understanding Australian Industrial Relations*

3 Lewin quoted in Forbes-Mewett, H., Griffin, G., and McKenzie, D., (2002), 'The Australian Industrial Relations Commission: Adapting or Dying', *Melbourne University Working Paper Series No.82*

OBJECTIVE TWO**REDUCED BARRIERS TO JOB CREATION AND WORKFORCE PARTICIPATION**
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High minimum wages and excessive regulations relating to hiring and dismissing employees create barriers to job creation, particularly for low-skilled individuals or those who have been out of the labour force for an extended period of time.

With unemployment rates at their lowest level for decades, Australia has the opportunity to structure workplace relations policies to improve opportunities for low-skilled, discouraged and disadvantaged job seekers to participate in the workforce.

While the interaction of taxation arrangements and benefit payments and the resultant high effective marginal tax rates faced by people moving from welfare to work is not an issue that bears directly on workplace relations policy, it is addressed below as an important factor influencing workforce participation.

Reforming the Safety Net Wages

Compared with other OECD countries, Australia's minimum wages are high relative to median wages. Research by Access Economics shows higher minimum wages are associated with higher unemployment. This is important to acknowledge, because while higher minimum wages are seen as a means of enhancing fairness, no amount of increase in the minimum wage will improve the living standards of those unemployed or who are discouraged from seeking work. Research also shows that in Australia, unemployment and non-participation in the labour force are the most important predictors of household poverty.

In addition, for those who receive minimum (Safety Net) wage increases, the net benefit is substantially smaller when taking into account tax and lost benefits. For example, the 2004 increase of \$19 resulted in a net gain of just \$3.99 per week for many families.⁴

Australia has a significant number of minimum wages operating through awards. If the aim of the system is to provide a legitimate safety net for workers, it is not clear what the justification is for so many minimums and such differentiation. As noted above, the BCA considers further significant consolidation in the number of awards would simplify workplace relations and reduce compliance and approval costs for agreement making, as would a minimum set of statutory requirements that form the basis for the application of the no-disadvantage test for AWAs and Certified Agreements.

- **Minimum standards and minimum wage increases should be determined by a minimum wage board or committee, which would then be required to make recommendations to the Federal Government for their approval.**
- **This board or committee would need to be comprised of individuals with significant economic expertise and an appreciation of the employment market and factors influencing people's employment prospects to guide the determination of minimum wage increases. A key factor influencing the determination of minimum wage increases should be the employment prospects of the unemployed.**

Consideration could also be given to enhancing the ability for enterprises to be exempt from awards or certain provisions of awards, particularly if they are facing exceptional hardship or are located in areas of high unemployment.

⁴ See Tsumori, K. (2004), *The Road to Work – Freeing Up the Labour Market*, Centre for Independent Studies

Unfair Dismissal

When regulation makes it difficult to dismiss someone who is not performing, employers become more reluctant to hire new employees. This limits job opportunities, particularly for the less-skilled and those looking to change career paths. Put simply, unfair dismissal regulation favours those with jobs at the expense of the unemployed or those looking for new jobs. Research by the OECD and World Bank supports this conclusion. Proposals to exempt small business from unfair dismissal claims recognise the adverse implications of these types of regulations on employment.

The BCA is concerned that current unfair dismissal procedures remain relatively easy to initiate; are available after a relatively short probationary period; and are excessively bureaucratic. Of particular concern is the pursuit of non-meritorious claims and the costs and time associated with having them resolved. The potential costs and disruptions of unfair dismissal procedures can be significant and are especially burdensome when there is clearly no case to answer – both to large and small employers alike.

- **Therefore, more effective procedures for identifying and filtering out non-meritorious and frivolous claims need to be developed to provide greater confidence in the system and processes, reduce costs, and free up resources to deal with genuine cases in a timely manner.**
- **More broadly, given the large number of unfair dismissal matters that are dismissed or settled prior to arbitration, the BCA proposes the Government should review the costs and benefits of Australia's unfair dismissal provisions and identify the scope for further reform.**

High Effective Marginal Tax Rates

Issues of fairness are better addressed directly by the tax-transfer system. However, as currently structured, the tax-transfer system can often operate to the relative disadvantage of low-income earners and discourage welfare recipients from seeking employment.

Australia's tax system, combined with its means-tested social security arrangements, result in high effective marginal tax rates (EMTRs); that is, the proportion of an additional dollar of income that is paid in tax or lost through a reduction in entitlement payments. High EMTRs mean much of the benefit of wage increases at low-income levels is lost through higher tax and lower benefits. This can discourage workforce participation in terms of additional hours worked for those employed, or in taking employment for those who are unemployed.

- **The BCA supports the recommendation in the Access Report that an earned income tax credit scheme (or an alternative) should be adopted to offset the barriers to workforce participation associated with EMTRs. The BCA recognises that all policies to address EMTRs have limitations, but it is important for the Government to articulate a clear response to this issue as a priority.**

OBJECTIVE 3**MORE EFFICIENT WORKPLACE REGULATION**

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Poorly designed regulation and regulatory overlap or duplication imposes a deadweight cost on the economy. Improving the structure and content of regulation and reducing the overall burden of regulation can contribute to higher productivity and employment; more flexible employment options; and greater accountability for performance and outcomes. A number of specific areas of regulation are dealt with in this section, while in more general terms a key priority for the BCA is removing inconsistencies in State and Federal workplace relations regulation.

A National System of Workplace Relations

The benefits of a national system of workplace relations reform have been long recognised.

A unified system would reduce the regulatory burden facing the many enterprises operating across jurisdictions and the administrative costs for Governments associated with operating multiple distinct systems. There would also be greater clarity about the objectives of workplace relations policies and greater accountability in terms of outcomes.

Despite these clear benefits, with the exception of the referral of powers by Victoria, there has been little progress towards a unitary system. If anything, over recent years it appears Australia has moved towards less consistency across State and Federal systems.

Australia's six different jurisdictions each influence workplace relations practices and outcomes. Duplication of regulations across these jurisdictions and the unique characteristics of each system increase costs, complexity and uncertainties for businesses operating across those jurisdictions. In addition, there remains a lack of clarity and indeed confusion about roles, responsibilities, rights, accountabilities and ultimately the aims and objectives of workplace relations in Australia.

The dual system is by no means ideal for the Federal or State Governments. The Federal Government faces constitutional limitations, while State Governments face limitations related to the fact that awards and agreements under the Federal system normally prevail over those in their jurisdictions.

The dual system is also not ideal for those enterprises operating across jurisdictions where some employees are covered by one system and some by another.

The costs associated with the duplication of workplace regulation and the lack of harmonisation across jurisdictions undermine enterprise performance, productivity, job creation and, ultimately, Australia's economic performance. And duplication quite literally costs money in terms of higher taxes than would otherwise be needed.

In an increasingly competitive global market, Australia simply cannot afford such unnecessary and punitive costs. This is an area of important unfinished business and it is imperative that all levels of Government work towards establishing a unitary, national system of workplace relations.

- **Voluntary resolution to this problem – most likely based around the referral of existing State powers – is the preferred approach. It would achieve the most comprehensive outcome.**

Such an approach would enhance the efficiency of workplace regulation; improve labour market outcomes; and importantly, free up fiscal resources for the States.

The BCA considers that Federal and State Governments have a responsibility to achieve greater labour market efficiency in the interests of a more prosperous Australia and would reap the benefits of doing so.

If progress toward a national workplace relations system cannot be made voluntarily, the Federal Government should explore the use of its Corporations powers to achieve the broadest possible harmonisation and ultimately a national, unitary system of workplace relations. While the vast majority of businesses would be covered under a single system, the BCA considers the opportunity for a more comprehensive and constructive outcome would be lost through this approach and consideration of this option should be viewed as a second-best solution.

Unlawful Industrial Action

One of the key features of improved labour market outcomes over the past decade has been the sharp decline in industrial action. Industrial action is costly. It also disrupts workplace stability and harmony, erodes business productivity and competitiveness, and ultimately costs jobs, not only in the business affected but also in other businesses that supply or are supplied by a company where action is occurring.

Notwithstanding the decline in industrial action, BCA Members continue to have concerns regarding unprotected – that is, unlawful – industrial action, the availability and timeliness of remedies and compliance. At the highest level, there is a strong view that a deal is a deal and there should be no action during the life of an agreement.

More specifically, there are two broad concerns. The first relates to the processes around the determination of whether action is protected or not. In practice there can be significant delays in listing, procedural delays in decision making and conciliation and this is all while industrial action is continuing.

Secondly, the need for AIRC certification and the requirement that the AIRC be given 72 hours to resolve the dispute before common law actions can be initiated hampers the timely conclusion of unlawful action. Short stoppages are effectively sanctioned by such processes, and businesses are unable to seek damages for unlawful short stoppages. The system does nothing to discourage irresponsible recourse to such unlawful action.

- **Processes around unprotected action should be strengthened and streamlined to ensure swift resolution and the ability for business to seek damages in all cases of unprotected action.**
- **Protected action should not be able to cause irreparable or long-term damage to an enterprise. Such damage is not in the interest of employees to the extent that it erodes business performance and therefore reduces employment opportunities.**
- **Special provisions and limits need to be applied in regard to industrial action in the area of essential services. As a starting point, continuity of supply, at least with regard to the provision of agreed minimum services, must be able to be ensured from the perspective of both the supplier and customer(s).**

Transmission of Business

An employer acquiring a business should have the flexibility to determine, with its new employees, the terms and conditions of employment in line with the employer's objectives for the enterprise and its ongoing sustainability. Accordingly:

- **The BCA considers employment agreements should not transmit to an employer who does not expressly agree.**

Multi-Unionism

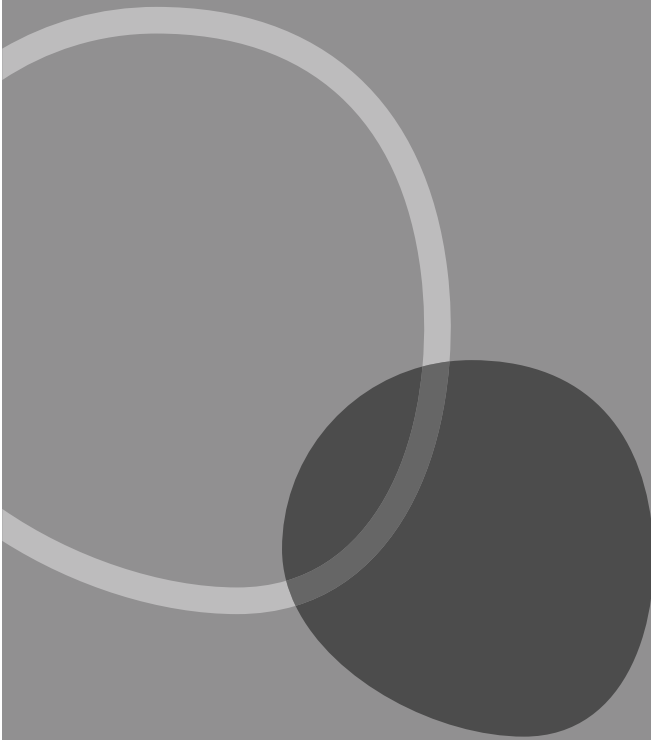
For large enterprises in particular, multi-union bargaining complicates agreement making processes, makes it more difficult to remove inefficient work practices, and restricts the flexibility of outcomes in agreement making.

- **The BCA supports further consideration being given to rationalising representational rights in agreement making.**

Case study

The Benefits of Greater Flexibility in Workplace Relations

To fully understand the benefits to be gained through greater flexibility in workplace relations regulation, it is useful to look at the experiences and outcomes in the mining sector in Australia which has led to the adoption of more flexible practices.



Mining – An Outstanding Example of Workplace Flexibility

The mining sector accounts for just under 5 per cent of output in Australia, over \$52 billion of exports (accounting for around 37 per cent of total exports of goods and services) and 105,000 jobs.⁵

It is a sector that makes a substantial contribution to Australia's economy. It is also a sector highly exposed to international competition. It is a global price taker – global trends determine prices, not Australian producers – and as a result, productivity and cost competitiveness are fundamental to ongoing competitiveness and success.

Against this backdrop, it is not surprising that the mining sector has led most other sectors in the adoption of more flexible workplace arrangements as labour market deregulation has progressed.

The mining sector has a very low reliance on awards and a very high reliance on more flexible agreements including AWAs.⁶

In fact, around 50 per cent of mining sector employees covered by Federal agreements are on AWAs, while in some parts of the sector AWA coverage is as high as 80 per cent.⁷

Greater flexibility in workplace arrangements in the mining sector has delivered significant benefits. It has supported innovation; greater accountability for performance; high levels of productivity as well as sustained, strong productivity growth; high levels of wages; and outstanding returns to shareholders.

5 Data is sourced from the ABS and ABARE.

6 Refer to the Access Economics assessment of the ALP Policy Platform prepared for the Business Council of Australia and released in July 2004.

7 Australian Mines and Metals Association, (2004), *'What if AWAs Cease to Exist?'*

Mining – An Outstanding Example of Workplace Flexibility

Robust Productivity

The level of productivity in the mining sector is very high. Looking at comparisons with the United States as an example, the mining sector in Australia is more than twice as competitive as the mining sector in the US. The mining sector is one of only a few sectors where Australia is more productive than the US.⁸

Australia's competitiveness has been sustained by ongoing strong productivity growth. Over the period from 1994 to 2002, productivity growth in the mining sector averaged around 6 per cent per annum, outpacing all other sectors in the economy.⁹ What does this equate to in practice? Reduced turnaround times, less downtime, the ability to move larger quantities, mines being commissioned early and under budget, more output, less disruption and lower costs.

Strong Investment

Importantly, these developments increase the preparedness of companies to continue to invest in mining activities in Australia, which in turn supports ongoing production and export activity, more jobs and incomes, and higher Government revenues than would otherwise be the case. In the two years to 2003-04, capital expenditure in the mining sector grew by 28 per cent.

High Incomes

In line with the productivity of the sector and the employees working in it, wage levels for mining employees are significantly higher than in the rest of the economy, and wage/income growth has been strong. At just over \$1500, average weekly earnings in the mining sector are more than \$550 above the economy-wide average.

Improved Safety

There have also been broader benefits for employees and employers. BCA Members in the sector consistently report a substantial improvement in safety performance as evidenced by reduced lost time injury rates. In some cases, injury rates have fallen by 90 per cent over the last decade. BCA Members attribute this to their ability to better align performance with reward, which in turn cultivates greater responsibility and accountability for important issues like workplace safety.

Wealth Creation

Finally, it is important to acknowledge that the ongoing performance of the mining sector in Australia has contributed significantly to the wealth of Australians, including through their superannuation funds. This has been evident in the recent performance of the Australian stock market, but is true over the longer term as well. According to the Australian Stock Exchange, over the past 20 years the mining and minerals sector has contributed some \$500 billion directly to Australia's wealth.¹⁰

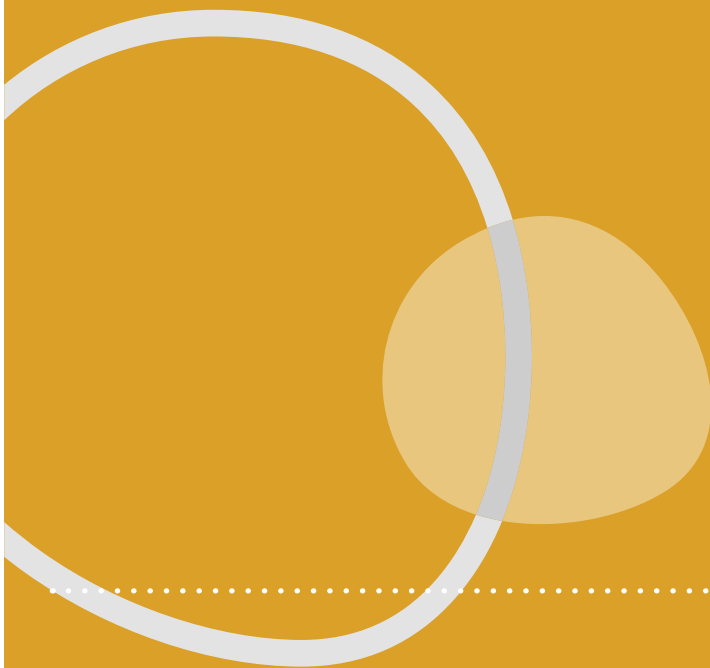
The mining sector provides a clear and excellent example of the benefits of workplace reform and greater flexibility that allows workplace arrangements and requirements for an enterprise to be determined by those who understand them best – employers and their employees.

⁸ Based on analysis undertaken by the Federal Treasury.

⁹ See Access Economics (2004).

¹⁰ Sourced from www.asx.com.au

The Workplace Relations Action Plan: Conclusions and Recommendations



The BCA believes the recommendations outlined in this Workplace Relations Action Plan will significantly increase labour market efficiency and build on and extend Australia's sound performance in terms of productivity, income growth and low unemployment. These changes are of prime importance to our economic prospects and should be introduced in the current year.

Against the current backdrop of low unemployment and low levels of industrial disputation, it is tempting to argue that now is not the time to embark on further workplace relations reform. On the contrary, the BCA argues that these circumstances mean it is precisely the right time for further reform. Low unemployment and high rates of productivity growth are the results of past workplace relations reform.

The choice is clear. We can build on these benefits through further reform now, when we have more flexibility and capacity to address issues of fairness through the tax-transfer system. Alternatively, we can wait until growth has slowed, unemployment is higher, and we are facing intense competition from others with more flexible labour markets – an environment in which the necessary adjustments in workplace relations will be more difficult and harsh.

The need to sustain competitiveness and further lift our productivity performance will not diminish. All participants who help to shape Australia's workplace relations practices – business, employees, unions and Governments – need to recognise this, and be prepared to take the steps to ensure Australia sustains the levels of prosperity we have become accustomed to and that will be needed to respond effectively and fairly to future challenges.

Key Conclusions

Reforms should focus on ensuring a prosperous Australia.

This can be achieved by:

- strong productivity growth;
- high levels of employment through job creation and high levels of workforce participation; and
- people working to their potential and being rewarded for effort and capability.

Issues of fairness are best dealt with through the tax-transfer system.

Education, training and skill formation policies must be pursued in parallel with workplace relations reform.

Specifically, these policies should aim to support:

- more young people completing an initial 12 years of education and training;
- the development of employability and enterprise/industry skills in a flexible and timely manner within a more supportive (ie less restrictive) regulatory environment; and
- ongoing skills development for those in work through workplace training.

Three key areas of workplace relations are vital to improving productivity and supporting job creation and workforce participation.

They are:

- greater flexibility in agreement making (processes and outcomes);
- reduced barriers to job creation and workforce participation; and
- more efficient workplace regulation.

A key aim for workplace reform should be to further strengthen agreement making at the enterprise level and to limit the roles of and scope for third-party intervention in the determination of terms and conditions of employment.

Key Recommendations

GREATER FLEXIBILITY IN AGREEMENT MAKING

Award Simplification

- Reduce allowable matters.
- Consolidate the number of awards.
- Replace awards over time with a single set of statutory minimum standards.

Simplify the No-Disadvantage Test

- Apply the no-disadvantage test against a less restrictive set of requirements – ideally a set of statutory minimum standards.

Reform AWAs

- Streamline filing and approval processes.
- Maximum length of AWAs extended to five years.
- AWAs incorporating remuneration in excess of the top income tax threshold should not be subject to a no-disadvantage test.
- Approval of an AWA should require a declaration from employees that they have received or had access to OEA information on their rights and AWA filing and approval processes.

Reform of Certified Agreements

- Agreements around which there is no dispute should be filed with the AIRC. The role of the AIRC should only be to confirm that the agreement meets the no-disadvantage test.
- Extend the maximum length of agreements to five years.
- Terms of agreements should not limit agreement making options of future employees.

Dispute Resolution – Greater Role For Mediation

- Mediation services should have a statutory basis within the legislation.

REDUCED BARRIERS TO JOB CREATION AND PARTICIPATION

Reforming Safety Net Wages

- Move to replace awards with a single set of statutory minimum conditions.
- Establish a wage board or committee to recommend minimum standards and wage increases.
- Ensure the recommendations take into consideration the employment prospects of the unemployed.

Unfair Dismissal Processes

- Review the costs and benefits of current processes.
- Enhance the efficiency of current processes including in terms of quickly and efficiently filtering out claims without merit.

Address High Effective Marginal Tax Rates (EMTRs)

- The Government should address EMTRs as a priority, possibly through a tax credit or alternative.

MORE EFFICIENT WORKPLACE REGULATION

A National System for Workplace Relations

- Federal and State Governments should determine a voluntary solution to achieve a unitary system.

Strengthen and Streamline Procedures Regarding Unlawful Industrial Action

- Processes around unprotected action should be strengthened and streamlined.
- Protected action should not be able to cause irreparable or long-term damage to an enterprise.
- Special provisions and limits are needed in the area of essential services.

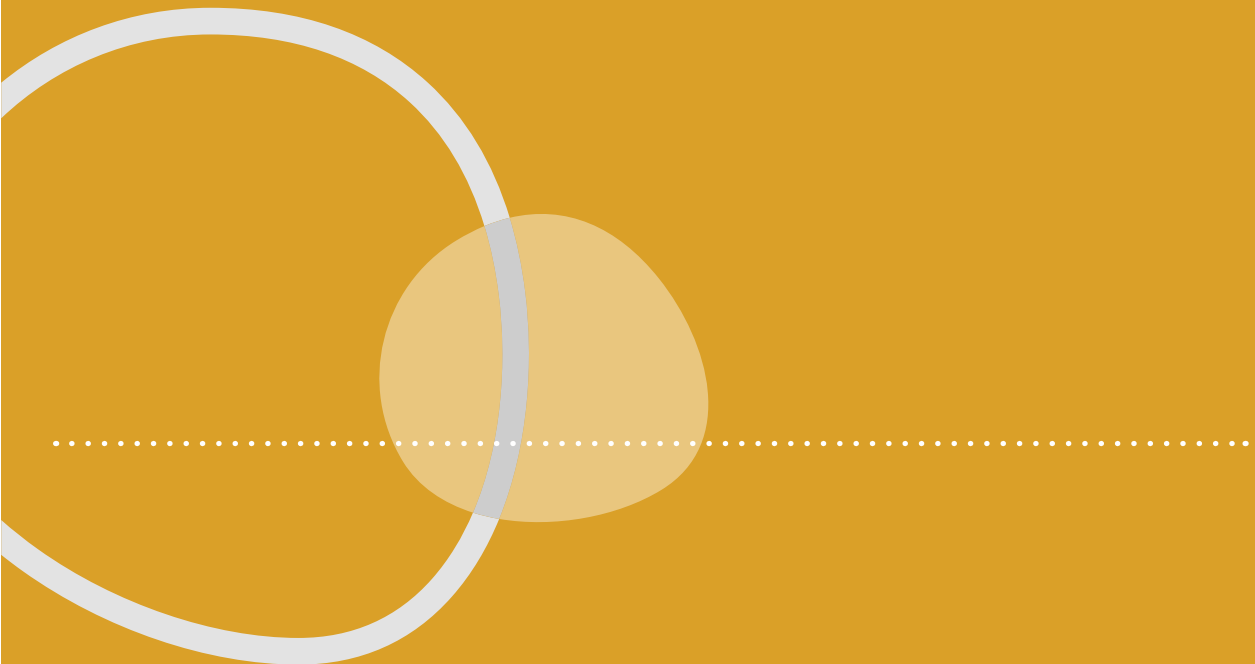
Transmission of Business

- Employment agreements should not transmit to an employer who does not expressly agree.

Multi-Unionism

- Further consideration needs to be given to rationalising representational rights in agreement making.

All participants who help to shape Australia's workplace relations practices need to be prepared to take the steps to ensure Australia sustains the levels of prosperity that will be needed to respond effectively and fairly to future challenges.



WORKPLACE RELATIONS –

The Way Forward

An Access Economics Pty Ltd report
commissioned by the **Business Council of Australia**



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EXECUTIVE SUMMARY

INTRODUCTION TO THE REPORT

Australia is experiencing one of its most prosperous periods for decades. For many Australians the economy has never performed better or more reliably. Against this backdrop some might question the need for further reform.

Members of the Business Council of Australia (BCA) are concerned, however, that beneath the surface of prosperity and continuing economic growth there are imbalances as well as future challenges that, if left unaddressed, are likely to become major obstacles to future prosperity and growth. Access Economics shares these concerns.

The BCA has identified a number of areas where there is an opportunity now to implement change that will deliver the prosperity that Australians want and have become accustomed to. Workplace relations is one of the key areas identified by the BCA.

Accordingly, the BCA commissioned Access Economics to examine the benefits of past reforms to workplace relations and the scope for future reform, taking into account the need to address sustained prosperity as well as important issues and concerns about the fairness of workplace relations regulation and outcomes.

This Report is Access Economics' response to the BCA.

BACKGROUND

Reflecting the request of the BCA, this report asks:

- ❑ What sort of Australia do we want?
- ❑ What policies can help achieve those targets?
- ❑ What does that imply as the key target for workplace relations policy?
- ❑ How do today's workplace relations policies stack up against what we want them to achieve?
- ❑ What future reforms does that suggest?
- ❑ What past changes have worked well?

We focus on these basic questions because the answers to them reveal the fundamental flaw in today's workplace relations policies – that they are poorly targeted.

Australians want a nation that is both prosperous and fair, and often want their policymakers to set policies to achieve both those targets.

To this end, Australia has a century-long history of using workplace relations policy as an instrument to improve fairness and prosperity, yet those policies are most effective when targeted at the latter only.

PAST FAILURES IN WORKPLACE RELATIONS POLICY

- ❑ **Workplace relations policy is better at achieving prosperity than fairness.**
- ❑ Fairness is better achieved through the tax and welfare system.
- ❑ Why? Because, at its simplest, the private sector is best suited to the job of creating wealth ('prosperity'), and the public sector's tax/transfer system is best suited to the job of redistributing that prosperity ('fairness').
- ❑ Australia is trying to use the wrong instrument - workplace relations policy rather than the tax/transfer system - to achieve fairness. As a result, we often do the opposite of what we intend. The World Bank and others note that directing workplace relations policy at fairness typically results in:
 - Fewer jobs being created.
 - Lower average incomes.
 - A bigger black economy.
 - Higher unemployment, notably among women, teenagers and the less skilled.

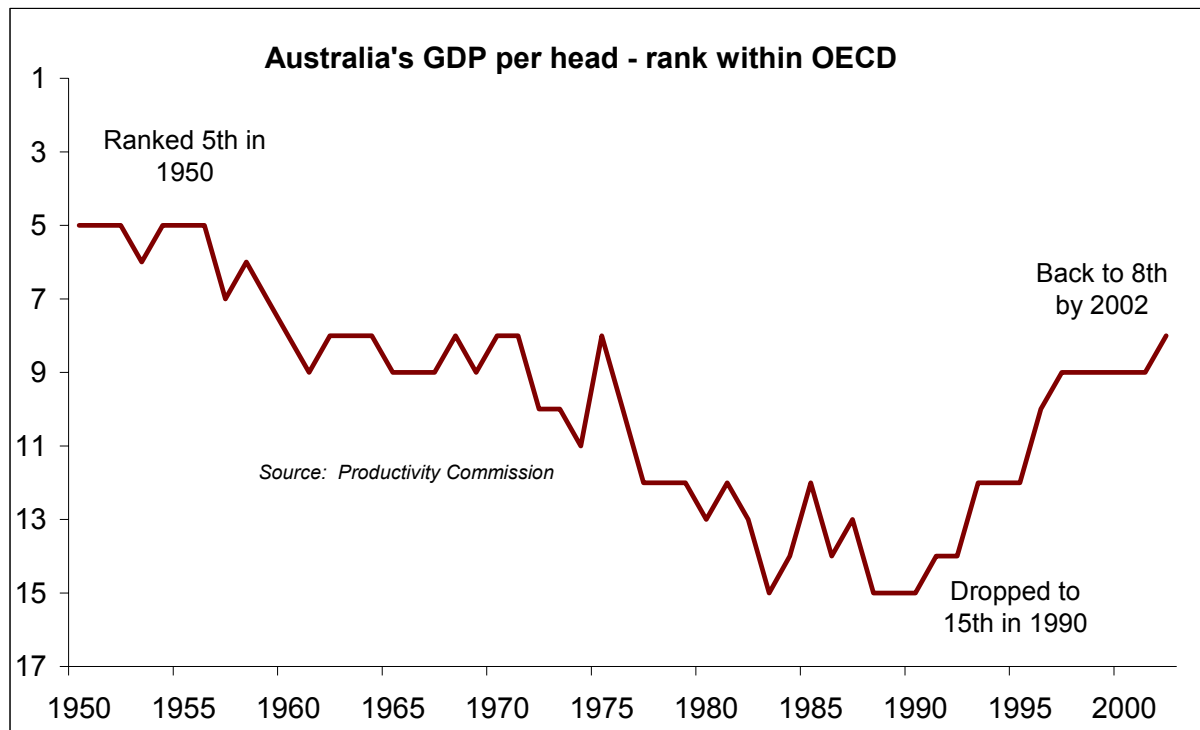
Indeed, as the World Bank has pointed out in a recent landmark study, many developing nations are making the same mistakes Australia started to make a century ago, trying to achieve fairness through heavy workplace regulation, and failing miserably.

WE CAN DO BETTER

The good news is that means **we can do better – better structured workplace relations policies can support productivity and business competitiveness, boost job growth, reduce unemployment (and under-employment), as well as boost average incomes and help clamp down on the black economy.**

That is, we can make Australia more prosperous, simply by redirecting workplace relations policies towards prosperity.

WE HAVE DONE BETTER BY REDIRECTING OTHER POLICIES TO PROSPERITY



Such potential gains in prosperity should come as no surprise. Australians had the highest incomes in the world a century ago, but a clutch of failed policies (mostly aimed at protecting manufacturing, mollycoddling government enterprises, and restricting competition in key sectors such as banking and telecommunications) saw us drop down the global rankings.

Only in the past decade or so – after two decades of reform - have Australians once again moved up the global league table of incomes per head, from 15th in the OECD to 8th – as the above chart shows - on the back of a marked improvement in our productivity performance.

And how did we do that? By redirecting a series of policies towards prosperity. For example:

- ❑ No longer do politicians set tariffs so as to pick industry winners. Markets pick the winners, boosting the overall size of the economy – and therefore boosting prosperity.
- ❑ Privatisation and/or deregulation has seen less Government direction (and more market discipline) in industries such as telecommunications, transport infrastructure (road, rail, air and sea ports), transport providers, financial providers and the utilities (electricity, gas and water).
- ❑ No longer do indirect taxes misdirect buying choices (with sales taxes high on consumer electronics, but zero on services). Rather, the GST has been struck at low rates on a broad base, replacing not merely sales taxes, but a number of inefficient State taxes as well.
- ❑ Exchange rates are no longer set by bureaucrats, or home loans handed out on the basis of who is nicest to the local bank manager. Rather, markets now make those decisions, and the resultant more efficient allocation of credit and pricing of exchange rates adds to prosperity.

- ❑ Nor do politicians set short-term interest rates. The Reserve Bank is now independent, and can set rates with the aim of keeping inflation low. That tends to keep real (inflation-adjusted) interest rates low, which allows the economy to grow faster than it would otherwise – which aids prosperity.

So, in other words, many policies have been refocussed on prosperity over the past two decades. Where past policies were trying to use the public sector to create wealth, the new focus was on the private sector. And, where past policies tried to use the private sector to achieve social policy objectives (fairness), that task was switched to the public sector's tax/transfer system.

WE HAVE DONE BETTER THROUGH PARTIAL TARGETING OF WORKPLACE RELATIONS POLICIES TO PROSPERITY IN THE PAST DECADE

Nor should such potential gains in prosperity come as any surprise given the excellent returns to workplace relations policy reform over the past decade. The key characteristic of those reforms has been to redirect workplace relations policy towards prosperity.

As Chapter 2 discusses, reforms to workplace relations policies:

1. **Boosted the pace of productivity growth**, mostly by linking wages more closely to enterprise-level productivity, and by reducing the role given to third parties with agendas linked to something other than prosperity. It has been the sectors with the most flexible workforce arrangements that have seen the fastest productivity gains.
2. **Helped to cut unemployment**. Although most of the gains from reforming workplace relations policies to date have been via better productivity (and so higher wages), there have been other gains too. Prosperity has been boosted via lower unemployment.
3. **Encouraged higher participation** by cutting the unemployment rate and raising wages (thanks to better productivity), with both factors encouraging more people into the workforce. An additional boost to participation comes from the greater availability of more flexible work options, including part-time and casual positions.

MIGHT THERE BE A COST TO FAIRNESS?

If Australia redirects its workplace relations policy to focus on prosperity rather than fairness, might that mean some losses on the fairness front?

No.

Fairness would improve as we wind back the unintended consequences of past policies – that is, as unemployment falls and incomes rise. Further, that improvement in fairness should gather pace over time. And, where there is a risk of fairness suffering, we should use other policies to avoid that. Most notably, Australia's welfare and tax systems are tightly targeted to improving fairness, so they are the obvious candidates to address any lingering fairness issues.

WHAT DOES TODAY'S WORKPLACE RELATIONS SYSTEM LOOK LIKE?

Workplace relations policies are nothing more than the way in which nations regulate the determination of wages and employment conditions.

The more heavy handed the regulation, the more complex is the burden it creates, the more it distorts the relationships between employers and employees, and between performance and reward.

In Australia's case our workplace regulation has created a need for complex *administration* (separate Federal and State systems and, within the Federal system, institutions such as the Australian Industrial Relations Commission, Australian Industrial Registry, Federal Court of Australia, and the Office of the Employment Advocate). This in turn has entrenched the roles of various players and the complexity of the system.

It has also created a complex *compliance* burden (absorbing much of the time and energy of unions, business groups, and part of the role of personnel departments within larger organisations).

WHAT ARE THE BENCHMARK TESTS FOR TODAY'S SYSTEM?

Given the above, there is an obvious and simple benchmark test to act as a yardstick against which to measure current institutions and processes.

Can we reform workplace relations policy so as to make Australia more prosperous and at least as fair?

The suggested reforms sketched out in this report are tested against that benchmark.

All reform proposals (or counterproposals to do nothing) should be judged against that benchmark.

After all, such a benchmark is no more than common sense. Yet establishing such a benchmark is all the more vital given that public discussion of workplace relations policy is often muddled. If others don't spell out much the same benchmark, their ideas should still be assessed against it.

SOME DEFINITIONS

The above discussion raises the need for definitions. Chapter 2 provides them for both 'prosperity' and 'fairness'. On the latter, it is worth mentioning that we see no advantage whatsoever in getting bogged down in the same morass that accompanied the GST reform debates, pretending that reform should not be adopted unless every individual has the capacity to be immediately better off.

That is almost always impossible, and would have ruled out most (if not all) of the vital reforms of times past. Rather, we define 'fairness' here to mean that the bottom 20% of families at least maintain their share of a now larger national income pie.

RECOMMENDATIONS

We focus here on three general policy recommendations. Access Economics' analysis suggests that workplace relations policy should:

- ❑ **Create new jobs** (reduce unemployment and underemployment) by changing the way we set minimum wages – moving that in line with the minimum wage policies adopted in those nations with the lowest unemployment. That can be done slowly over time,

with any risks on the fairness front offset by lowering the tax paid and/or benefits lost by low income workers (the very policy adopted by both the UK and the US).

- At the moment Australia pretends that the AIRC is being fair through granting Safety Net wage decisions to lift minimum wages.
 - Yet most low income workers are not in low income households.
 - Safety net wage adjustments do nothing to assist those with no job.
 - Effective marginal tax rates are so high that many workers on minimum wages lose more than half of any gains in higher taxes and lost benefits.
 - **That runs the risk of workers (and potential workers) lacking an incentive to work.**
 - The cost to employers is higher still than the wage increase, given wage-related costs such as workers' compensation and superannuation. That makes Safety Net wage adjustments a very direct instrument for undercutting prosperity **as it runs the risk of workers being priced out of their jobs.**
 - A far better option is to raise the incomes of low-income workers who are in low income households through tax credits or similar mechanisms.
- ❑ **Boost productivity** by encouraging more direct negotiations at the enterprise level and strengthening the link between wages and productivity through more flexible, less regulated agreement making, including by reducing the number of allowable matters within awards, and reforming the current unfair dismissal legislation. Arguably most of the gains to productivity (and therefore prosperity) from the reduction in job market regulation which has already occurred in Australia since the early 1990s comes down to the degree to which third parties (such as the AIRC) now have a smaller role than they once did. As a result, productivity growth has been excellent in sectors that have seen the greatest degree of adoption of flexible workplace relations policies.
- ❑ **Harmonise State and Federal workplace relations systems** – preferably reducing them to a 'single national rail gauge' so that national regulation of workplace matters suffers less from the current degree of duplication, as well as the resultant games played by participants.
- There is a risk that a single system becomes the wrong system – one still focussed on fairness (a focus that has long since failed) rather than prosperity (where the reforms of the past two decades have already had a large payoff).

- Access Economics suspects that the passing of time would reduce the risk that a single system would perpetuate the failed policies of the past. History is moving strongly against the old system, with workers and investors voting consistently in favour of less heavily regulated parts of the job market. For example, for every blue collar job created in the past decade, 2¾ white collar jobs have been created. And the rate of growth in part-time employment has been 2¾ times that in full-time employment. The trend is likely to continue as we seek to encourage higher levels of participation among mature-aged Australians and women.

WORKPLACE RELATIONS POLICIES – THE WAY FORWARD

Australia's recent past is mapped out in the chart on page 3. To turn the tide of history required the courage to reform – in particular, the courage to refocus some badly targeted policies back on prosperity.

What comes next? If Australians fail to grasp the nettle of further reform, we will fail to lock in the prosperity brought by past reforms and resume the downward path of lost relative prosperity that characterised much of last century.

That points to the need to refocus on prosperity – a need all the more urgent as the economic challenges of baby boomer retirement and ageing creep ever closer.

Access Economics
February 2005

1. CAN WORKPLACE RELATIONS POLICY WORK BETTER?

1.1 WHAT SORT OF AUSTRALIA DO WE WANT?

The question ‘what sort of Australia do we want?’ could start a lot of arguments.

But almost everyone would agree with two key targets – **most of us want to see an Australia that is both prosperous and fair.**

Economists talk of these two targets as efficiency and equity. They usually define them as *strong, sustainable growth* on the one hand, and *a fair distribution of the nation’s income* on the other. Alternatively, think of these targets as *the size of the national income pie* and *who gets what slice of that pie*.

There can be tension between those two targets – for example, some decisions to increase fairness today could come at the cost of slower growth in the pie in the future. Alternatively, sustained business competitiveness may entail job losses – ‘unfair’ for those who lose their jobs, but not for those who, as a result have more secure ongoing employment. Any tension between the objectives of fairness and prosperity does not mean, however, that both targets are not vitally important, rather it raises questions of how best to address them.

1.2 WHAT POLICIES CAN HELP ACHIEVE THOSE TARGETS?

1.2.1 THE THEORY OF ‘TARGETS AND INSTRUMENTS’

Through their governments, Australians have a number of policy instruments to help achieve the targets of prosperity and fairness. These instruments include interest rates, workplace relations policy (the regulation of wages and employment conditions), other regulations, industry policy, budget policy (including taxes and welfare, referred to here as the tax/transfer system), education policy, and/or health policy.

That list is long, and it could easily be longer still.

It is worth examining such a list against one of the most basic tenets of economics: the principle of *targets and instruments*, also known as the principle of *goals and policies*.

The underlying rationale here is simple – **you can’t kill two birds with one stone.**

- ❑ Some policy instruments are most effective when aimed at one particular target rather than another.
- ❑ For example, economists are hardly likely to recommend that interest rate policy focus on achieving fairness – that simply is not its strength. Rather, it is better aimed at keeping inflation low, which thereby tends to keep real (inflation-adjusted) interest rates low, which allows the economy to grow faster than it would otherwise, which aids prosperity.
- ❑ Nor would economists recommend that, say, trade policy should be directed at fairness rather than prosperity. Free trade is a particularly strong instrument for achieving prosperity, so loading up trade treaties with social policy objectives risks failure on both targets.

1.2.2 WHAT DOES THAT IMPLY AS THE KEY TARGET FOR WORKPLACE RELATIONS POLICY?

That raises the fundamental question – is workplace relations policy better suited to achieving prosperity or fairness?

The answer to that question – assigning the instrument of workplace relations policy to the appropriate target – will determine the reform path that workplace relations policy needs to take.

Historically, Australia has tended to target workplace relations policy at fairness. In the *Harvester* wage decision of 1907, the basis of determining the minimum wage for working men was moved away from skill to family need, by calculating the lowest wage on which a working man, his wife and children would need to survive. That represented a shift from tying wages to skill (a proxy for productivity, and so for maximising prosperity) to tying wages to family need (and therefore fairness).

Yet fairness is better achieved through taxes (direct and indirect) and transfers (such as family benefits, or disability pensions), while workplace relations policies are better at achieving prosperity (maximising economic growth and minimising unemployment).

Why? Because, at its simplest, the private sector is best suited to the job of creating wealth ('prosperity'), and the public sector's tax/transfer system is best suited to the job of redistributing that prosperity ('fairness').

Aiming the wrong instrument at the wrong target usually results in unintended (and often perverse) outcomes.

Because we have been using the wrong instrument (workplace relations policy rather than the tax/transfer system) to achieve fairness, the outcome can often be the opposite of that intended.

The World Bank and others note that directing workplace relations policy at fairness typically results in:

- Fewer jobs being created.
- Lower average incomes.
- A larger black economy.
- Higher unemployment, notably among women, teenagers and less skilled workers.

Australia's attempts to use workplace relations policies to achieve fairness are understandable from an historical perspective. When we embarked on that path in the *Harvester* decision, (1) the tax/transfer system was in its infancy, and (2) we simply didn't realise that we could end up making fairness worse rather than better.

Indeed, as the World Bank has pointed out in a recent landmark study¹, many developing nations are busily making the same mistakes Australia started to make a century ago, trying to achieve fairness through heavy workplace regulation, and failing miserably.

¹ *Doing Business 2005*, World Bank, Washington DC, 2004.

In Australia we have come to know better. As the World Bank noted, “Flexible labour markets... provide job opportunities for more people, ensuring that the best worker is found for each job. Productivity rises, as do wages and output.”

And if productivity rises, then so does prosperity: in fact productivity sustains prosperity and living standards.

The underlying rationale for the World Bank’s results is simple enough – that markets work.

Our failure to make markets work for us comes at a cost. The *Harvester* decision came at a time when Australians had the highest incomes in the world, and when we had an export to national income ratio that we are only close to again, nearly 100 years later, after 20 years of reform and re-engagement with the world economy.

That Australia’s move to focusing workplace relations policy on fairness rather than prosperity coincided with the start of a long slide in relative national income is largely a coincidence.

But it is by no means a complete coincidence.

2. HOW PAST REFORMS HAVE SUCCESSFULLY REDIRECTED POLICIES TO TARGET PROSPERITY

Chapter 1 might sound like bad news – that we have misdirected our policies. Yet its message is good news: that our efforts have been misdirected means **we can do better in the future – better structured workplace relations policies can support productivity and business competitiveness, boost job growth, lower unemployment, as well as raise average incomes and help clamp down on the black economy.**

That is, we can make Australia more prosperous yet at least as fair, simply by redirecting workplace relations policies at prosperity rather than fairness. Indeed, the history of the past two decades has been one of Australians redirecting misguided policies back towards prosperity – letting the private sector concentrate on creating wealth. As a result, the past decade saw Australians move up the global table of incomes per head, from 15th in the OECD to 8th.

Why? Because intelligent policies allowed ordinary Australians to transform their economy. Governments took a step back from those areas where private agents do better (such as in managing businesses) and took a step forward in those areas where Government leadership was essential (such as ensuring fairness, as well as in taking responsibility for its finances and for inflation).

And we changed our workplace relations policies and cultures as well. Again, the changes to date can be characterised as a redirection of policy towards prosperity:

- Greater scope for direct negotiations between employers and employees has helped deliver higher productivity.
- Higher productivity has underpinned higher real wages for workers and greater profits for owners of capital (including workers' superannuation funds).
- Job creation has been sustained and unemployment continues to fall.
- Lower unemployment has encouraged people into the workforce.
- The greater flexibility of current arrangements provides employers with the capacity to offer a range of part-time and casual jobs where there may otherwise be no job available at all.
- Higher incomes have more than proportionately lifted tax revenues. That lift in revenues gives the Government vital financial firepower – so Australian Governments today have a greater capacity for ensuring fair outcomes for all Australians.
- Greater labour market flexibility has helped (1) Australia withstand domestic and global shocks (thereby reducing the likelihood of recessions, the prime cause of lingering high unemployment rates), and (2) Australian industries to compete in more volatile global markets.
- Greater decentralisation of workplace relations has seen a sea change in the culture of Australian workplace relations. That is vital in facilitating the

employment of high technology/knowledge workers – the growth segment of Australian job markets. These do not easily fit traditional models of automated mass production and mass representation. Rather, they are better served by individualised arrangements, not collective arrangements.

- The benefits of enterprise bargaining arise via allowing firms to adopt productivity enhancing practices specific to the needs of the enterprise and expertise of its employees (thereby moving towards best practice), and by promoting a more co-operative working environment where performance and reward are more closely linked (thereby resulting in ongoing productivity enhancements).
- The underlying relationship is that **the greater the decentralisation, the greater the productivity growth.**

In short, changes to our workplace relations policies since the early 1980s have both increased the size of the Australian income pie, and made its distribution fairer. Yet we can do better still – our workplace relations system is unfinished business, and remains a key priority on the reform agenda.

But if Australia redirects its workplace relations policy to focus on prosperity rather than fairness, might that mean some losses on the fairness front?

No. Fairness would improve as we wind back the unintended consequences of past policies. Further, that improvement in fairness should gather pace over time. And, where there is a risk of fairness suffering, we should use other policies to avoid that. Most notably, Australia's welfare and tax systems are tightly targeted to improving fairness, and they are the obvious candidates to address any continuing fairness issues here.

2.1 WE CAN DO BETTER

- ❑ The message from Chapter 1 is good news: **we can do better** we can make Australia more prosperous yet at least as fair, simply by redirecting workplace relations policies at prosperity rather than fairness.

Indeed, much can still be done to raise Australia's prosperity.

We can probably all agree that prosperity is desirable as an overall performance indicator for our economy and our institutions. But we need to know how to measure it before we can judge how and to what extent past reforms have already boosted Australian prosperity.

2.2 MEASURING PROSPERITY AND FAIRNESS

The total amount of goods and services produced per person (or GDP per head) is the standard measure for making international comparisons of prosperity. That measure is a strong and practical predictor of a range of indicators of society's well-being:

- ❑ People from prosperous nations have more access to more goods and services. While prosperity doesn't guarantee happiness, it does offer one less excuse for being unhappy.
- ❑ Prosperity allows more people to drop out of the material 'rat race' should they wish, without falling into extreme poverty: a choice not available to those on the 'bread line' in low GDP per head economies.

- ❑ Prosperity is a good predictor of life expectancy. People living in rich, advanced economies live longer. World class nutrition and health care comes at a price.
- ❑ Prosperity provides the means for a cleaner local environment. Rich people are more willing and able to bear the cost of anti-pollution measures, for example. Australia's big cities have cleaner beaches, waterways and air than many smaller cities in poorer countries. Economic growth and new jobs are increasingly geared to 'clean' industries. And although economic activity and car numbers have grown, air quality is considered to have generally improved.² Technology and strategies designed to control air pollution have countered the rises that would have been expected given the increases in pollution sources.³ Water quality and soil degradation are issues receiving national priority currently – partly as we now have the prosperity to afford to 'buy' long-term solutions in these areas.
- ❑ GDP per head is a good predictor of where people would like to live if they were allowed to 'vote with their feet'. That is why international migration flows are predominantly from poor countries to rich countries and not the other way around.
- ❑ Perhaps most importantly, **prosperity and fairness are correlated**, with higher income nations typically seeing a more even sharing of national income than poorer nations.⁴

That is not to say that GDP per head is the perfect or only measure of prosperity:

- ❑ GDP is boosted when we run down our fossil fuels, or by the cost of motor accident repairs. But for the issue at hand here – the best target for Australia's workplace relations policies – these concerns do not affect the answers we arrive at.
- ❑ Net measures of domestic income per head (which take out the effects of capital depreciation and distinguish between output and income) are theoretically preferable to GDP per head or other 'gross' measures.⁵ The preferred ABS 'headline' measure of material prosperity is 'net national disposable income'.⁶ But global comparisons of this 'net' measure are not readily available and, in practice, such measures do not provide significantly different conclusions to the GDP per head measure.
- ❑ Some indicators of broader human progress are available⁷ but, as noted above, they are highly correlated with GDP per head. Or as the ABS notes, "Australia's national income provides the basis for many other dimensions of progress."⁸

² At least during the 1990s for which it was measured. See State of the Environment Advisory Council (SEC) 2002, *Australia – State of the Environment Report 2001*, SEC, CSIRO Publishing, Melbourne.

³ Australian Bureau of Statistics 2001, *Australia's Environment: Issue and Trends*, Cat. no. 4613.0, ABS Canberra.

⁴ See the United Nations' *Human Development Report*, 2004. In brief, the Gini coefficients (a measure of inequality) are lower for high income nations than low income nations – see Table 14 at pages 188-191.

⁵ Such as Gross National Income (GNI) which is a refinement on GDP and is used in *World Development Indicators* which is published by the World Bank.

⁶ ABS cat. 1370.0, 2002.

⁷ Perhaps the best known measure is the UN's *Human Development Index* which combines in one index: (i) GDP per head, (ii) literacy and education enrolment rates, and (iii) life expectancy.

⁸ p39, ABS Cat. 1370.0, 2002

So prosperity (as measured by GDP per head) has its benefits – it provides choices otherwise not available. We don't know what choices future generations of Australians will make. But we can be confident that they would be happier to have more choices than fewer, and to be living in an economy that is richer than one which is poorer.

So a high level of GDP per head is desirable in its own right, but how can we ensure that it continues to grow over time? To answer that question, it is worth examining the 'recipe' for GDP per head – the sources of prosperity.

The recipe for prosperity is as easy as 'ABC' where: ⁹

Prosperity = A x B x C

- ❑ Prosperity is defined as above as 'GDP per head'.
- ❑ **A** is the share of the population who want paid work; or, broadly, 'labour force participation'.
- ❑ **B** is the share of those who want paid work who have a job. It is a measure of the effectiveness of the labour market in matching willing workers to willing employers.
- ❑ **C** is output per worker; that is, 'productivity'.

The higher is '**A**' and/or '**B**' and/or '**C**', the greater is prosperity. The more that '**A**' and/or '**B**' and/or '**C**' grow over time, the greater is the *growth* in prosperity.

⁹ The analysis here draws on the standard growth decomposition, as recently used by the Treasury Secretary – see *Policy Strategies for Future Growth*, a speech by Ken Henry delivered on 9 August 2004.

The Detailed 'ABC' of Prosperity

For those who like a bit more detail the 'ABC' of prosperity can be broken down as follows:

$$\text{Prosperity} = ((E + U) / \text{POP}) \times (E / (E + U)) \times (\text{GDP} / E)$$

Where: E = number employed, U = number unemployed, (E+U) = labour force, and

POP = population

The three bracketed terms define (respectively): 'labour force participation', 'labour market efficiency' and 'productivity'.

Note also that 'labour force participation' can be further decomposed into:

$$((E + U) / \text{WAP}) \times (\text{WAP} / \text{POP})$$

The first bracketed term is the conventional measure of the 'labour force participation rate' – the labour force as a share of working age population (or WAP) defined as those aged 15 and over. Note as well, that 'labour market efficiency' is equal to 1 minus the unemployment rate.

We also need to define '**fairness**'. We see no advantage whatsoever in getting bogged down in the same morass that accompanied the GST reform debates, pretending that reform should not be adopted unless every individual has the capacity to be immediately better off.

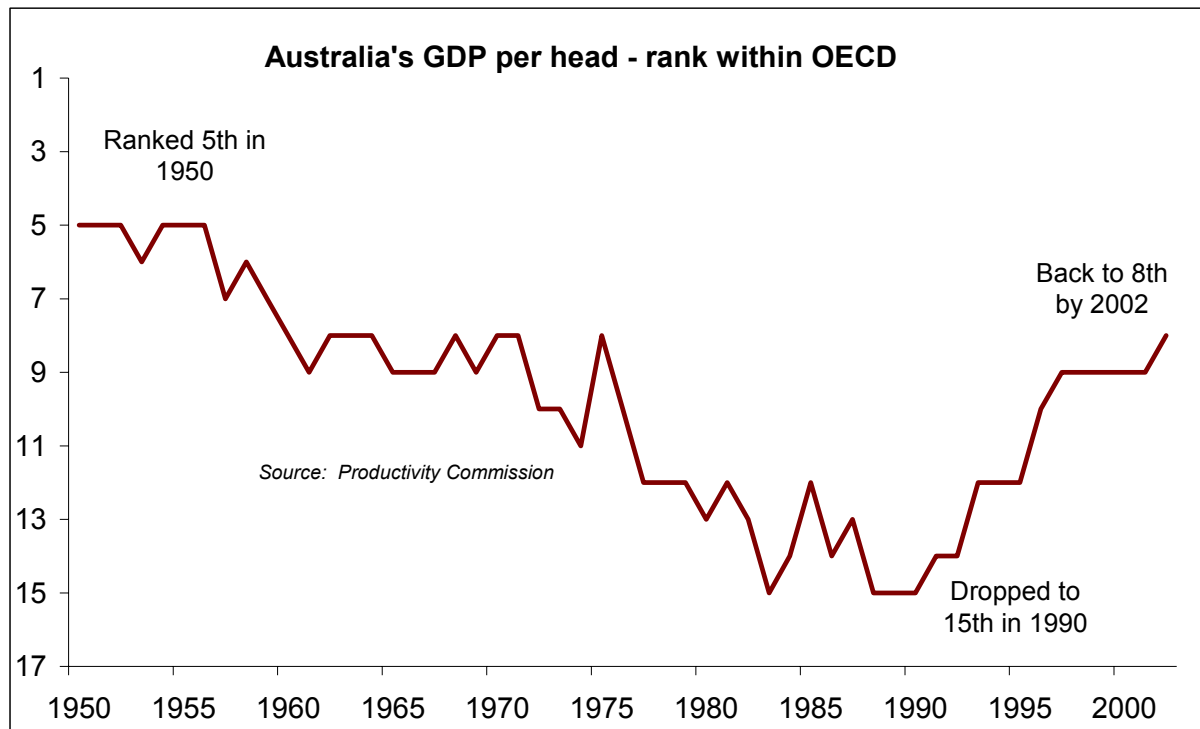
That is almost always impossible, and would have ruled out most (if not all) of the vital reforms of times past. Rather, we define 'fairness' to mean that the bottom 20% of families at least maintains their share of the (now larger) national income pie. And we define this test of 'fairness' as being applied several years after the reforms are introduced, so as to allow time for the national income pie to grow in response to the reforms proposed here.

But here we now turn to the obvious next question.

2.3 WHAT HAS BEEN HAPPENING TO PROSPERITY IN AUSTRALIA?

The news is good – Australia has been moving up the global prosperity rankings since 1990 (see Figure 1).

FIGURE 1: AUSTRALIA RETURNS TO RELATIVE PROSPERITY



A century ago, Australians had the highest prosperity in the world – as measured by GDP per head. However, failed policies – mostly aimed at protecting manufacturing, mollycoddling government enterprises, and restricting competition in key sectors such as banking and telecommunications – saw us drop down the global rankings until 1990.

Only in the past decade or so – after two decades of reform - have Australians once again moved up the global prosperity rankings, from 15th in the OECD to 8th.

How did Australia turn back the tide of history? In the past two decades Australia redirected some misguided policies back towards prosperity.

What policies did we change to achieve that turnaround? The list is long and varied, including:

- ❑ tariffs and other forms of protection were wound back (allowing markets to pick winners rather than governments);
- ❑ financial markets were deregulated and the dollar floated (allowing credit to be efficiently priced and to be allocated by markets rather than government policy);

- ❑ public enterprises were privatised or corporatised (allowing competition to get better results for taxpayers' money); and
- ❑ the tax system was reformed (with a ramshackle set of taxes replaced by one with a broad base and a low rate – the GST).

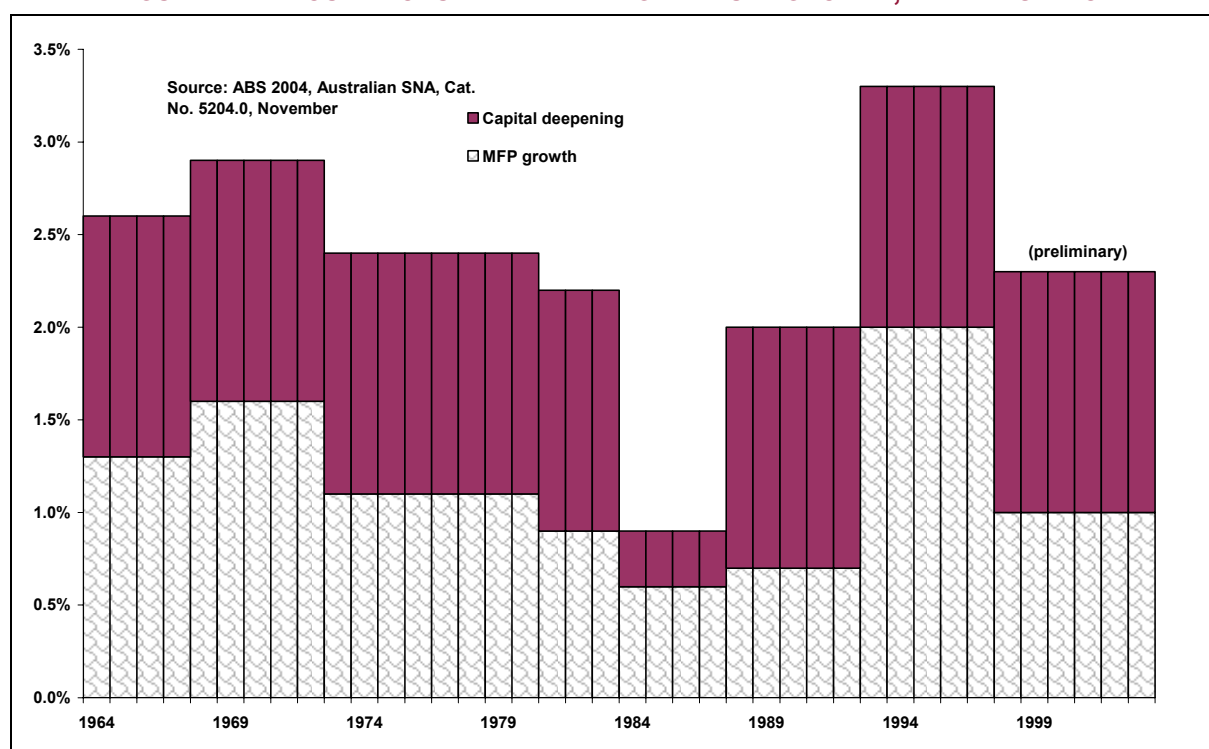
In other words, many policies have been refocused on prosperity over the past two decades. Where past policies were trying to use the public sector to create wealth, the new focus was on the private sector. And where past policies tried to use the private sector to achieve social policy objectives (fairness), that task was increasingly switched to the public sector's tax/transfer system.

2.4 HOW PAST REFORMS HAVE SUCCESSFULLY REDIRECTED POLICIES TO TARGET PROSPERITY

Australia has changed workplace relations policies as well. Again, the changes since the early 1990s can be characterised as a redirection of policy towards prosperity.

As noted above, for the reforms to workplace relations policies over the past decade or so to be considered successful in lifting Australian prosperity, then they need to have been successful in either boosting productivity growth ('C' above), and/or participation or the employment rate ('A' and/or 'B' above).

FIGURE 2: LABOUR PRODUCTIVITY AVERAGE ANNUAL GROWTH, MARKET SECTOR



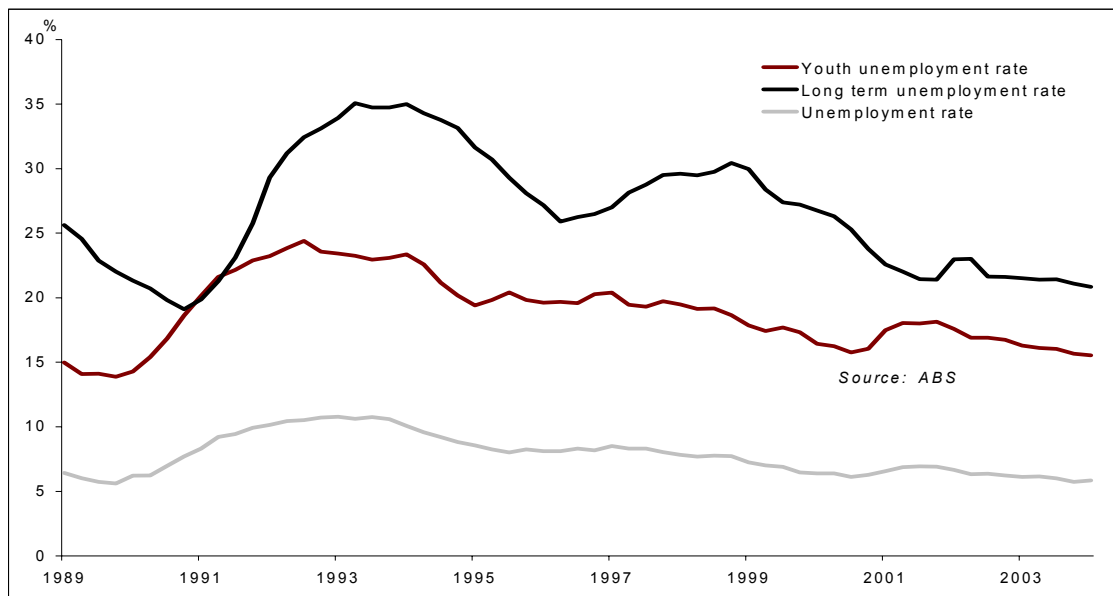
Access Economics' assessment¹⁰ is that it has done just that. That is, those reforms to workplace relations policies have:

1. **Boosted the pace of productivity growth**, mostly by linking wages more closely to enterprise-level productivity, and by reducing the role given to third parties with agendas linked to something other than prosperity. The sectors with the most flexible workforce arrangements have seen the fastest productivity gains.
 - Productivity growth has accelerated significantly since the 1980s. In the last complete economic cycle, labour productivity growth (hours-based, market sector) grew at an annual rate of 3.2% compared with 2% in the previous cycle and less than 1% in the 1980s – see Figure 2.
 - Labour productivity growth can be broken down into its capital deepening and multi-factor productivity (MFP) growth components. (Multi-factor productivity captures the effectiveness with which we combine capital and labour in producing goods and services.) These components are also shown in Figure 2.
 - The growth from capital deepening is available to all nations that are prepared to save and invest in new capital.
 - However, MFP growth is only available to those nations which are allocating capital and people better by giving them incentives to innovate and adapt processes and products/services in response to opportunities and threats, and in the process achieving more and/or higher value outputs from given labour and capital inputs.
 - As seen in Figure 2, Australia has done particularly well in lifting MFP growth to 2% a year in the last complete economic cycle – a growth rate not previously achieved. The latest estimates for MFP – which suggest a slowing down – need to be treated with caution as they are preliminary. That said, we need to be alert to signs that the benefits of past reform are beginning to wane.
2. **Helped to cut unemployment**. Although most of the gains from reforming workplace relations policies to date have been via better productivity (and so higher wages), there have been other gains too. Prosperity has been boosted via lower unemployment. Changed policies have assisted that development by (1) boosting average incomes through higher productivity, thereby aiding demand, and (2) reducing the likelihood of recessions by making the economy more flexible.
 - The unemployment rate is now just over 5%, around the lows last seen in 1976.
 - Unemployment rates among those aged 15 to 19 years have tracked down since the early 1990s (partly due to increased skills).
 - Long-term unemployment (the ratio of those which have been unemployed for a year or more to the total) now stands at a little over 20%, a major improvement over the early 1990s.

¹⁰ Detailed in our report for the BCA which was released on 2 July 2004.

3. **Encouraged higher participation** by cutting unemployment and raising wages (thanks to better productivity), with both factors encouraging more people into the workforce. An additional boost to participation comes from the greater availability of more flexible work options, including part-time and casual positions (which also supports scope for greater diversity in the workforce).
4. **Reduced industrial disputation.** In 2002 Australia recorded the lowest strike rate reported for any calendar year since 1913 (when records were first kept). The number of working days lost through strikes is only around one-quarter of the level it was 20 years ago.

FIGURE 3: UNEMPLOYMENT RATES



In general:

- ❑ Greater scope for direct negotiations between employers and employees has helped deliver higher productivity in nearly all sectors of the economy (see below). The benefits of enterprise bargaining arise via allowing firms to adopt productivity enhancing practices specific to the needs of the enterprise and the expertise of its employees (thereby moving towards best practice), and by promoting a more co-operative working environment where performance and reward are more closely linked (thereby resulting in ongoing productivity enhancements). The underlying relationship is that, **the greater the decentralisation, the greater the scope for productivity growth**. If, on the other hand, workplace practices are required – as a matter of principle – to be applied uniformly, the capacity to innovate for local circumstances must inevitably be constrained.
- ❑ **High technology/knowledge workers are the growth segment of Australian job markets.** Their skills and responsibilities are more diverse. As a result, they do not easily fit traditional models of automated mass production and mass representation. Rather, they are better served by individualised arrangements, not collective arrangements.
- ❑ Moreover, these boosts to prosperity have also aided fairness. For example, not only is unemployment lower, but higher incomes have more than proportionately lifted tax revenues. That lift in revenues gives the Government vital financial firepower – so Australian Governments today have a greater capacity than ever for ensuring fair outcomes for all Australians.

Furthermore the rise in prosperity has not obviously been associated with increased inequality.

- ❑ In its 2002 safety net wage decision, the AIRC concluded that there has been “no significant change in **income** inequality since 1994-95”.
- ❑ NATSEM¹¹ found that there was no overall change in **wealth** inequality¹² between 1986 and 1998.¹³

With inflation, interest rates and unemployment largely under control, Australia is well placed to find new ways to make our economy more productive to meet future challenges and demands, most notably associated with population ageing and an increasingly competitive global market. A carefully considered reform program that builds on our strengths and successes will give Australia the scope to grow and prosper in the long term. At the same time, it will help to avoid the prospect of sharp downturns that have plagued countries such as Japan.

2.5 PRODUCTIVITY GAINS ARISING FROM PAST CHANGES TO WORKPLACE RELATIONS POLICIES

Productivity is perhaps the most important of the concepts here, as it is the means by which workers achieve sustained growth in prosperity (and so living standards) over time. Past reforms to workplace relations policies have boosted productivity growth since the early 1990s.

As the Productivity Commission and others have noted, the benefits of reform are magnified when reforms occur across a broad front. In Australia that has been evident in particular in the performance of productivity growth in the 1990s.

As Figure 4 and Figure 5 show, the sectors with the most flexible workforce arrangements have seen the fastest productivity gains. More flexibility equals faster productivity growth, both directly and by strengthening the positive interaction with other reforms:

- ❑ Figure 4 and Figure 5 indicate a link between the degree of take-up of decentralised labour relations agreements and the rate of sector-by-sector productivity growth.
- ❑ They point to a simple but compelling relationship: **the greater the decentralisation, the greater the productivity growth.**
- ❑ Both charts track the relationship between labour market ‘flexibility’ and productivity growth. The R^2 s are 0.34 in Figure 4, and 0.14 in Figure 5. Were these relationships to be expressed in level form, the average percentage errors in predicting the productivity across industries in 2002, based on these proxies for labour market flexibility, would be 8.1% and 10.0%, respectively.

¹¹ The NATSEM’ paper (see Kelly S., *Trends in Australian Wealth – New Estimates for the 1990s, (2001)*) was part of the ACTU submission to the 2002 safety net adjustments and a discussion of its conclusions are at p52 of the AIRC’s decision.

¹² That is, the “Gini-coefficients for overall wealth show no change in the distribution of wealth”.

¹³ Trends in income inequality prior to 1994-95 are less clear. For narrower and less relevant ‘earnings’ definitions, inequality was found to have increased, with this increase concentrated in the first half of the 1990s. The conclusion on wealth inequality comparisons is much more clear cut than with income inequality comparisons. Nonetheless, the AIRC in its 2002 safety net judgement was able to conclude that there was “evidence which suggests that wealth inequality has increased”. This conclusion doesn’t fit AIRC’s own summary of the facts. (NATSEM found that when the definition of wealth was redefined so as to exclude superannuation wealth then wealth inequality increased.) This new, narrow and indefensible definition of wealth was criticised by the Commonwealth as ‘nonsensical’.

Econometric analysis of these relationships suggests that the absence of Federal enterprise/AWA arrangements over the period 1994-2002 could have reduced Australian productivity growth by 0.8% per year (everything else equal). That result is heavily qualified, but it mirrors a similar result in Federal Treasury analysis that a reduction in award-reliance is associated with an increase in productivity. A 10 percentage point reduction in award-reliance in an industry between 1990 and 2002 was associated with an increase in the average annual productivity growth of 0.5 percentage points.

And when productivity growth is high, then real (or inflation-adjusted) wage growth is also high. So the stronger productivity growth of recent times has seen real wage growth accelerate, as shown in Figure 6.

- The growth in real wages over the 1990s (and since then) hasn't undermined profits and job growth because the growth in real wages was enabled by the growth in productivity.

FIGURE 4: PRODUCTIVITY GROWTH VERSUS FLEXIBILITY OF CONTRACTS

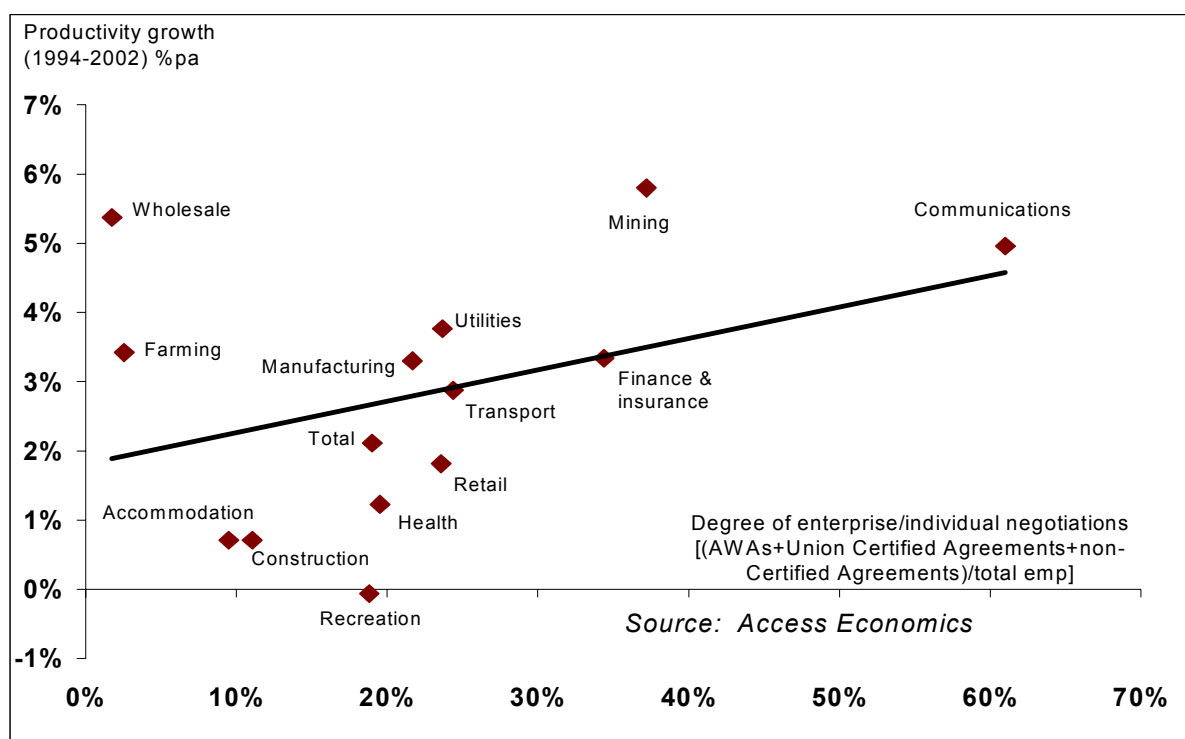


FIGURE 5: PRODUCTIVITY GROWTH VERSUS RELIANCE ON AWARDS

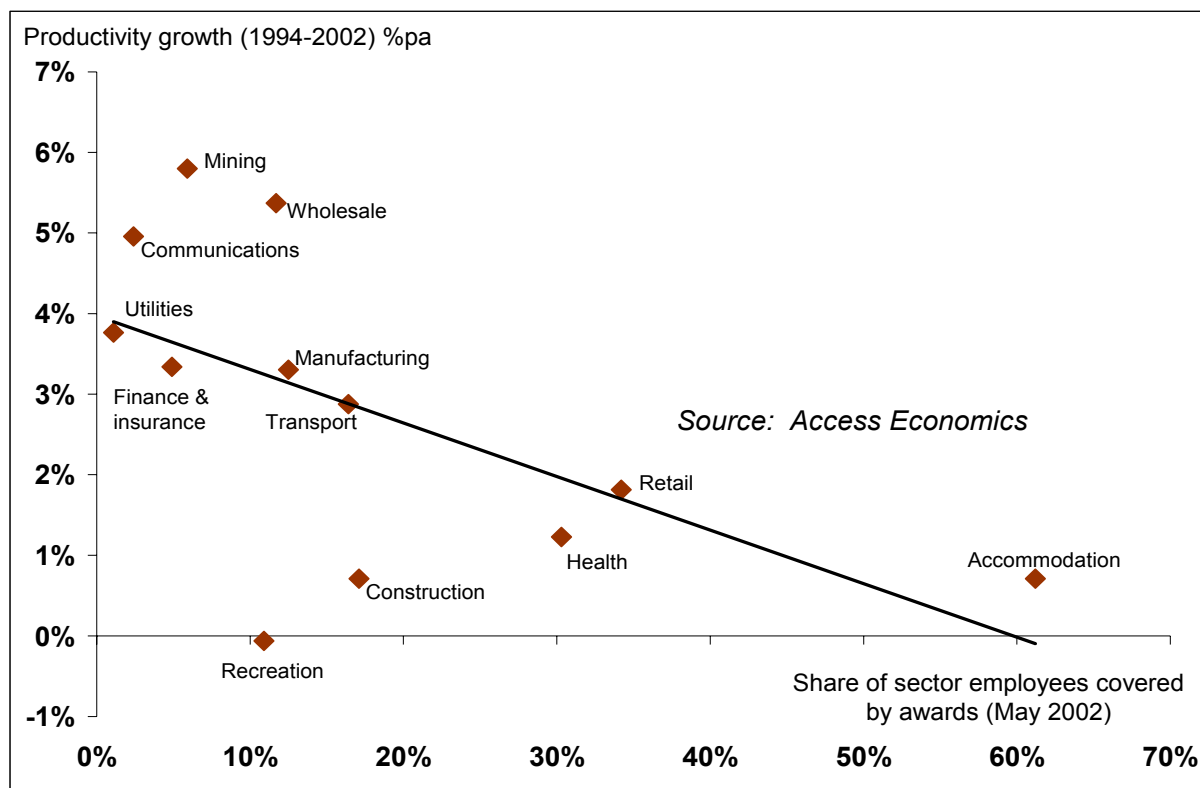


FIGURE 6: WAGES VERSUS PRODUCTIVITY

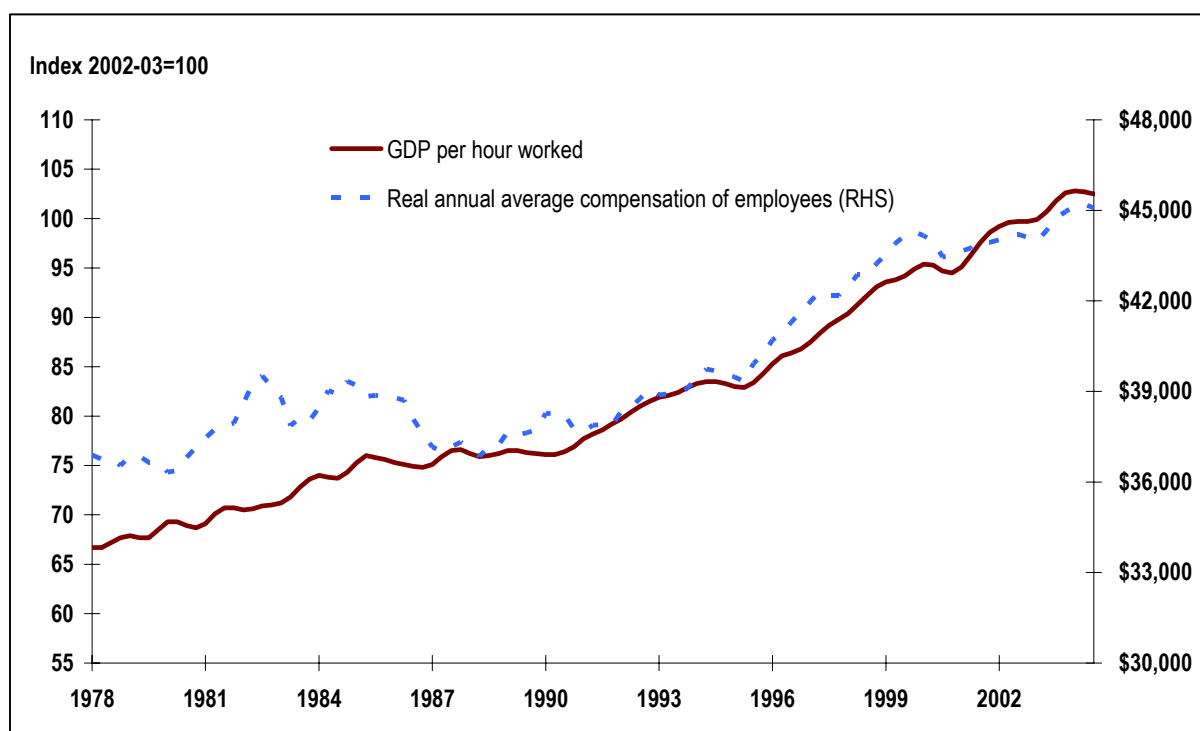
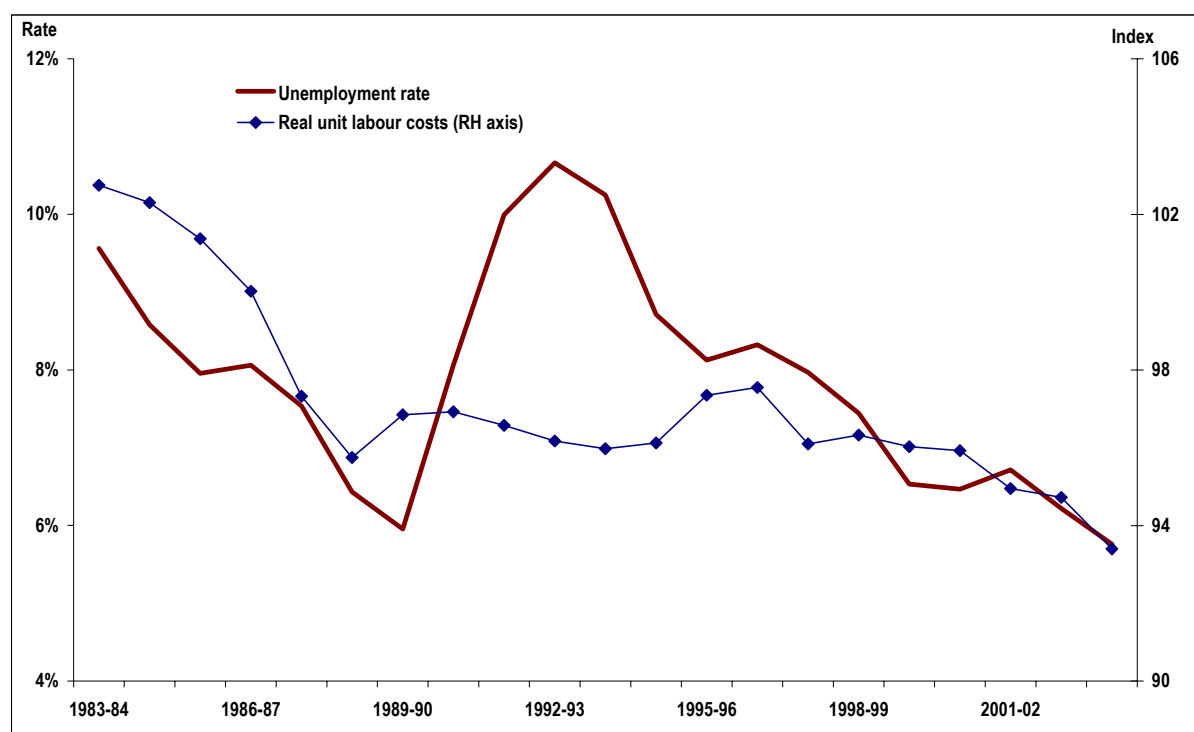


FIGURE 7 REAL UNIT LABOUR COSTS AND THE UNEMPLOYMENT RATE



However, when a workplace relations system fails by allowing real wages to grow much faster than productivity¹⁴ (as the system failed in the late 1970s and early 1980s, producing the ‘real wage overhang’ seen in Figure 6), the result is reduced profits, employment prospects and growth in prosperity. This relationship is evident in Figure 7.

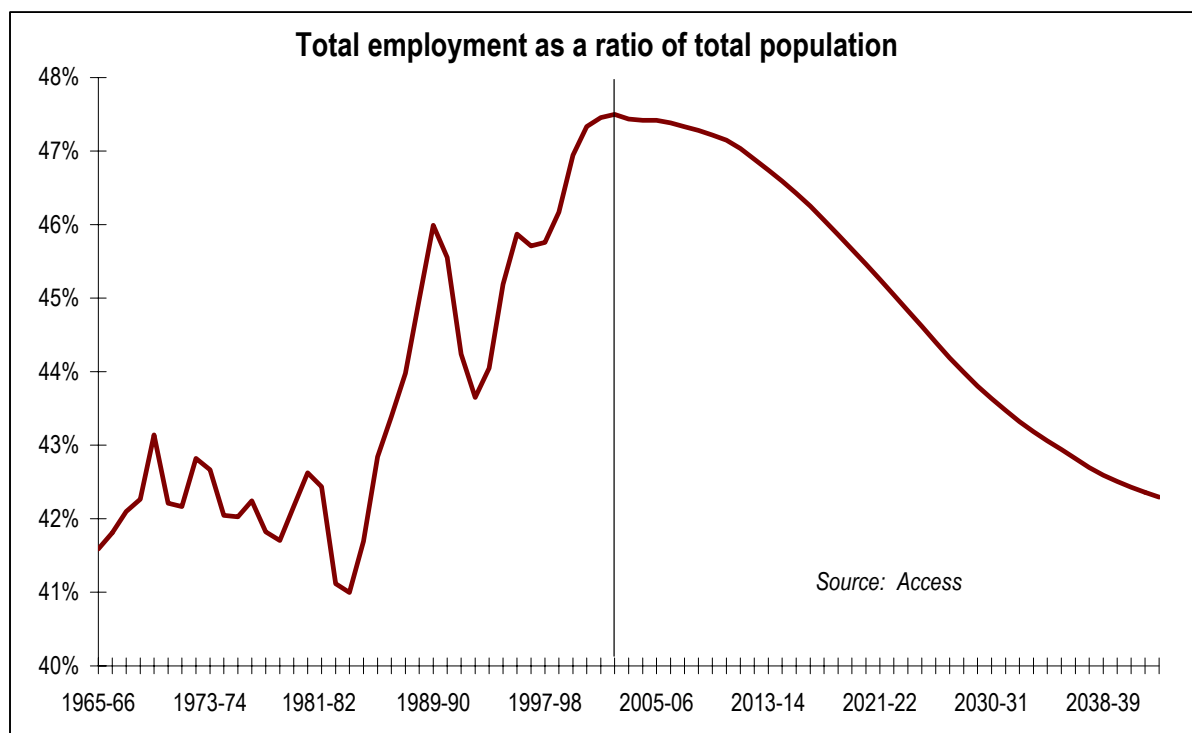
- ❑ The real wage overhang is evident in high real unit labour cost levels in the early 1980s. Earlier wage rises resulting from successful union campaigns to raise workers’ living standards were not validated by increases in productivity. The outcome was historically high rates of unemployment.
- ❑ As the real wage overhang was eroded through the 1980s, the unemployment rate declined. However, real unit labour costs rose again in the late 1980s as recession struck. Workplaces were unable to adjust quickly to deteriorating economic circumstances and unemployment rose rapidly.
- ❑ Coinciding with workplace relations reforms in the early 1990s, both real unit labour costs and unemployment rates have been declining. Nonetheless real wages have been able to increase solidly – because they were validated by growth in productivity.

¹⁴ That is, when there is a rise in ‘real unit labour costs’ (ratio of wages paid to output produced by each worker).

2.6 PARTICIPATION GAINS AND/OR UNEMPLOYMENT FALLS ARISING FROM PAST CHANGES TO POLICIES

The total employment-to-population ratio (shown in Figure 8) wraps up changes in both participation and the unemployment rate.

FIGURE 8: IT IS VITAL TO SLOW THE FALL IN THE EMPLOYMENT-TO-POPULATION RATIO



The improvement in that ratio in the past two decades reflects:

- ❑ the shift of baby boomers into prime working age;
- ❑ the rise in female participation in paid work; and
- ❑ the fall in unemployment from the peak rates seen in the early 1980s and again in the early 1990s (in both cases, following recessions).

How have the workplace relations policy reforms of the past decade or so helped cut unemployment and raise participation (and so contributed to the increase in the employment-to-population ratio)?

- ❑ Higher productivity has underpinned higher real wages for workers and greater profits for owners of capital (including workers' superannuation funds). Job creation has been sustained and unemployment (including youth and long-term unemployment) continues to fall.
- ❑ Greater labour market flexibility has helped Australia (1) to withstand domestic and global shocks (thereby reducing the likelihood of recessions, the prime cause of lingering high unemployment rates), and (2) Australian industries to compete in more volatile global markets.

- An example is an end to the vicious cycle of times past whereby a stronger economy and lower unemployment encouraged a sharp upswing in wage pressures and the passing on (through 'comparative wage justice') of wage gains in economic hot spots – sectors with high capacity utilisation and good productivity gains - to other sectors with lower capacity utilisation and lower productivity gains.
- ❑ **Lower unemployment has encouraged people into the workforce, thereby boosting participation.** The greater flexibility of current arrangements provides employers with the capacity to offer a range of part-time and casual jobs where there may be no job available otherwise.

Increased employment flexibility – including 'casualisation' – has coincided with reduced unemployment queues:

- ❑ Without a 'foot in the door', workers cannot develop on-the-job experience.
- ❑ Denying entry-level workers the opportunity for a foot in the door is not fair.

But what about fairness?

2.7 IS A MORE EFFICIENT WORKPLACE RELATIONS SYSTEM LIKELY TO BE LESS FAIR?

Fairness has many dimensions. Is the process fair? Are the opportunities fair? Are the outcomes fair?

How would moves towards a more efficient workplace relations system – one with a greater focus on achieving prosperity – likely affect each of these dimensions of fairness?

2.7.1 IMPACT ON PROCESS FAIRNESS

There is a threshold issue here – are workplace relations policies an end unto themselves? Or are they a means to an end, such as either prosperity or fairness?

That question is important as some seem to place considerable weight on processes as an end in themselves, rather than outcomes.

Processes certainly are a particular feature of the current workplace relations system in Australia.

It is possible that regulated workplace relations systems deliver more justice in terms of labour market processes than do less regulated workplace relations systems.

Yet they may do so at some cost to prosperity. And the possible benefits of fair processes accrue only to those in the system – that is, those who are employed.

And, besides, outcomes are much more important than processes. Deregulated workplace relations systems provide greater recognition for the rights of individuals over the rights of unions and employer associations. This allows the rights of individuals, in terms of matters such as freedom of association and flexible working patterns, to be given prominence over measures to protect the privileged position of institutions.

2.7.2 IMPACT ON FAIRNESS OPPORTUNITIES

Unemployment is unfair.

By promoting increased productivity and growth, a more efficient workplace relations system could be expected to provide more job opportunities, giving more people an entry level job and providing increased job security for those already in employment, and reducing unemployment.

- ❑ Entry level jobs are the first rung in a career. Recent reforms have already helped lower the youth unemployment rate. More reform will likely deliver even lower youth unemployment, especially if coupled with improved education, training and skill formation.
- ❑ The one-size-fits-all of centralised workplace relations systems provides fewer opportunities for those individuals with atypical demands and needs. On the other hand, a more flexible workplace relations system allows more employment opportunities for people with family and other commitments – caring for children or the disabled or the aged – or other aspirations.

2.7.3 IMPACT ON FAIRNESS OUTCOMES

Fairness outcomes are judged in their ‘absolute’ and ‘relative’ dimensions. For example ‘absolute poverty’ refers to the safety net available to the poorest in the community. ‘Relative poverty’ refers to the shares of income going to different groups – the more unequal the shares, the less relative fairness. It is possible for absolute poverty to decline as relative poverty rises (and vice versa).

As demonstrated above, efficient workplace relations systems maximise prosperity – GDP per head. In addition to being prosperous, economies with high GDP per head also tend to have less absolute poverty (because they can afford a more generous safety net) as well as having more equal – ‘fairer’ – income distributions:

- ❑ In advanced economies, ‘human capital’ (the wage-earning capacity of a highly educated and skilled workforce) is rewarded with most of the nation’s income. Even in Australia, despite our strong resources base, wages account for two-thirds of all income.¹⁵
- ❑ Prosperous economies that are rich in natural resources (such as the oil-rich Middle East), but which are poor in human capital, have more unequal incomes. It is possible for natural resources to be owned by a lucky few, whereas ownership of human capital, by its nature, tends to be more widespread.
- ❑ At this broad level, prosperity and fairness go hand-in-hand.

A reason given for centralised arrangements is that many low paid workers will be unable to achieve increases through more deregulated arrangements. However, the living standards of those on low award rates, and in particular the maintenance of (or increase in the value of) their take home pay, also depends on low levels of inflation, interest rates and unemployment.

More to the point, the income tax and social security transfer system (or ‘tax-transfer system’) is specifically designed to achieve fairness in the outcomes delivered by the economy as a whole:

¹⁵ See ABS catalogue 5206.0, *National Income, Expenditure and Product*, various issues.

- ❑ The Australian Taxation Office collects \$103 billion¹⁶ (12% of GDP) in individual income tax – most of it from ‘high earners’ in an effort to make take-home incomes more equal (as well as raise revenue to help fund the welfare ‘sustainable safety net’).
- ❑ The Department of Family and Community Services (DFACS) administers a \$69 billion¹⁷ (8% of GDP) programme which, among other things, is intended to “facilitate people [having] access to a responsive and sustainable safety net”.¹⁸

There will always be scope to debate how fair the impact of the tax/transfer system is.

Yet it would be hard to argue with the ‘global’ approach adopted by Australia’s tax/transfer system in assessing fairness.

The ‘global’ approach takes into account all cash income (and some ‘imputed’ income) and numerous aspects of individual and family circumstances in deciding the appropriate level of taxes and/or transfers. So whether one owns a house, lives alone, has a disability, has a well paid job, is of a particular age or has property income are all relevant to the fair outcome calculations made under the tax/transfer system:

- ❑ The tax/transfer system correctly takes a global view of fairness outcomes delivered by the economy as a whole. Someone with a low wage rate may have substantial property income, or be married to (or the child of) a billionaire.

Australia’s policy framework is currently directed towards maintaining two sets of safety nets – one set, administered by the Tax Office and DFACS uses a global approach; the other, administered through the workplace relations system by the AIRC, is partial at best. Australia’s degree of minimum wage legislation is anachronistic and mistaken in its fairness aims. If we really thought that the AIRC (with its \$51 million budget) does a better job in providing safety nets and in helping to determine relative incomes, then Australians could potentially save billions by transferring those administrative roles relating to ‘fairness outcomes’ within the Tax Office (with total running costs of \$2.3 billion a year) and DFACS (with total running costs of \$2.6 billion a year) to the AIRC.¹⁹

Or, somewhat more sensibly, Australia could limit the scope of the operations of the AIRC to those goals to which it is best suited.

In conclusion, if Australia redirects its workplace relations policy to focus on prosperity rather than fairness, this does not mean some losses on the fairness front will follow. To the contrary:

- First, fairness would improve as we wind back the unintended consequences of past policies (that is, as unemployment falls and incomes rise). Further, that improvement in fairness should gather pace over time.
- Second, where there is a risk of fairness suffering, we should use other policies to avoid that. Most notably, Australia’s welfare and tax systems are tightly targeted to

¹⁶ Projection for 2004-05, p5-23, *Budget Paper No. 1*, 2004-05.

¹⁷ *Budget Paper No. 4*, 2004-05.

¹⁸ See p117, *Budget Paper No. 4*, 2004-05.

¹⁹ Administrative running costs are identified in *Budget Paper No. 4*, 2004-05.

improving fairness, so they are the obvious candidates to address any lingering fairness issues.

2.7.3.1 REFORMS HAVE NOT MADE AUSTRALIA LESS FAIR

Does casualisation make the Australian labour market less fair?

A large and growing share of the workforce – now one in four workers – is employed on casual and contract arrangements.

Casual employees are defined by the ABS as those who are entitled to neither paid holiday leave nor paid sick leave. Note that the ABS definition of casual employees includes many owner-managers of incorporated enterprises who have chosen not to have paid sick or annual leave. There has been substantial growth in this category in recent decades.²⁰

Casual employment is often, and easily, demonised. Yet there are considerable advantages to both employees and employers from casual employment.

For **employees**, casual employment allows more flexible working hours. These are often highly valued by those who may be combining work with study or caring for family members or other activities.

- **Casual job status need not imply ‘poor’** – as the results from the HILDA survey show (see the discussion below). Casual employment involves a trade off for the employee – higher hourly rates for less other entitlements. That allows for higher direct wages (in comparison with permanent employee equivalents), which casual employees may value more highly than the additional entitlements that permanent employees receive. Casual loadings range from 20% to 30% and may exceed the value of leave they would otherwise be entitled to.²¹
- **Casual job status need not imply ‘insecure’**. Despite popular belief, in 2001 the average duration of casual employment was 2½ years.²² Individual perceptions of job security are closely linked to changes in unemployment.²³ With unemployment trending down, it is reasonable to suppose job security is trending up, notwithstanding the growth in casualisation.

For **employers**, casual employment allows flexibility in dealing with variable workloads owing to seasonal and other factors. Some Australian businesses have found that this flexibility has allowed them to be competitive in certain volatile export markets²⁴. The rising globalisation of world trade and the flexibility of Australia’s casual

²⁰ See page 65, *Innovations in Labour Market Policies, The Australian Way*, OECD, 2001.

²¹ Kayoko Tsumori, *How Union Campaigns on Hours and Casuals are Threatening Low-skilled Jobs*, The Centre for Independent Studies, January 2004.

²² Ibid.

²³ Borland, J. 2001, *Job stability and job security* in Borland, Gregory and Sheehan (eds), *Work Rich, Work Poor: Inequality and economic change in Australia*, Victoria University.

²⁴ See Business Council of Australia, Access Economics, *Assessment of the Australian Labor Party Workplace Relations Policy Platform*, July 2002 (Appendix C)

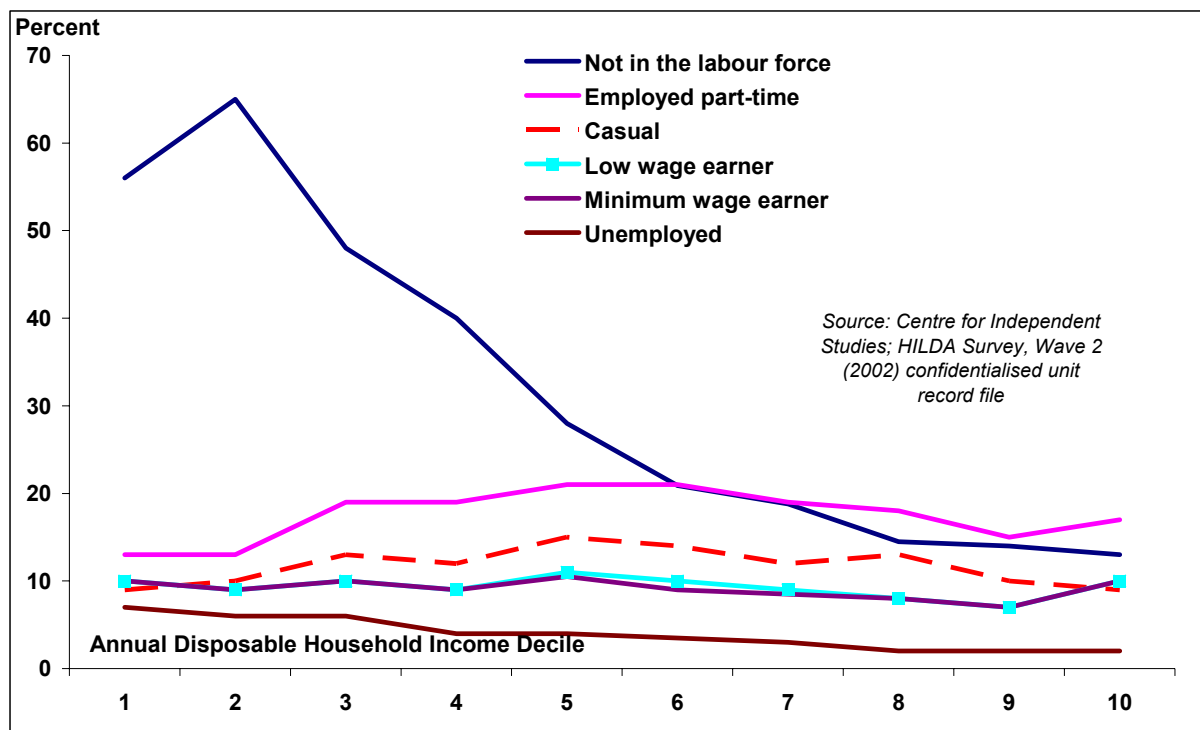
arrangements have therefore created opportunities for Australian profits and jobs where they would otherwise not exist.

Australian fairness outcomes following the reforms of recent decades have been promising.

- ❑ Measures of real income growth have risen strongly in the wake of the reforms. Real wages have risen notably since 1990 – as shown in Figure 6 above. This growth in real wages has been enabled by growth in productivity, and the lift in productivity growth has been enabled by workplace relations reforms.
- ❑ It is not just workers who have benefited from higher levels of absolute income. The productivity growth sparked by the reforms has also enabled real increases in the safety nets which are linked to wage movements – such as the age and disability pensions – to the benefit of millions of Australians not in the workforce. And future productivity growth flowing from further workplace relations reforms would provide further real lifts in these safety nets.

It is also important to recognise that low income workers are not particularly over-represented among low income families. Rather, low income workers are scattered across the Australian socio-economic landscape (see Figure 9). Why is that important? Because it means that reforms have not created an underclass of working poor. And because it also means that trying to make low income families better off by raising minimum wages – a key fairness target of the AIRC in practice – is next to impossible even before allowing for the punitive losses in benefits and increases in tax paid that strip Safety Net wage increases of their effectiveness for those they are aimed at helping.

FIGURE 9: LOW INCOME WORKERS ARE NOT NOTABLY OVER-REPRESENTED AMONG LOW INCOME FAMILIES



Note - the components shown in Figure 9 do not sum to 100 per cent because full-time employees are not shown. There is also some overlap in the categories shown, such as between casuals and part-timers.

Analysis of the Household Income and Labour Dynamics in Australia (HILDA) Survey indicates that.²⁵

- ❑ Low-wage and minimum wage earners are found in more or less *equal* proportions across household income deciles from the poorest to the richest. So ‘the poor’ and ‘the low-paid’ are by no means synonymous. A large proportion of low-paid individuals live in households, families or income units that have relatively high standards of living.²⁶
- ❑ The proportion of casual employees is *smaller* in the bottom two deciles than in most other deciles, and so is the incidence of part-time employment.
- ❑ Unemployment is rather higher in the bottom three deciles, so cutting unemployment can do more for Australia’s poor than raising minimum wages (which can have the perverse effect of adding to unemployment by pricing workers out of jobs).
- ❑ Not participating in the workforce (due to retirement, discouragement, family commitments) is easily the most important predictor of a household in relative poverty.

Because the jobless, by definition, receive no wage, then no amount of minimum wage increase can help to improve their living standards – rendering the AIRC relatively helpless in achieving fairness.

Contrast that with DFACS, whose safety net guards against absolute poverty.

- ❑ The proportion of jobless households may have peaked in the mid-1990s and declined through to 2001 (when, at 14.9%, it was the same proportion as in 1986). Continuing falls in unemployment since 2001 would no doubt have further lowered the proportion of jobless households. Similar results apply to the proportion of adults in jobless households and the proportion of children in jobless households.²⁷

Because not participating in the labour force is the most important predictor of relative household poverty outcomes, more needs to be done to make it easier for people to participate in the labour force. A simpler workplace relations system is required.

Finally, the tax/transfer system is more sustainable when more people are in jobs. A more efficient workplace relations system would deliver more jobs and put less strain on the tax/transfer system.

To sum up, **Australia can do better – and the past decade has seen us do just that.**

Why not follow it up with more of the same – more reform of workplace relations policies to better focus them on making Australia more prosperous but at least as fair?

²⁵ See pp20-21 of *The Road to Work*, Kayoko Tsumori, Centre for Independent Studies, September 2004.

²⁶ It has been separately estimated that about 40% of adults in 1994-95 receiving the minimum wage (or less) were located in the top half of the income distribution among income units. See Sue Richardson and Ann Harding, *Low Wages and the Distribution of Family Income in Australia*, Discussion Paper no. 33, NASTSEM, September 1998.

²⁷ For a survey see Kayoko Tsumori, *The Road to Work*, Centre for Independent Studies, September 2004.

3. UNDERSTANDING AND ASSESSING THE CURRENT SYSTEM

Workplace relations policies are the way in which nations regulate wages and employment conditions.

The more heavy-handed that regulation, the more complex the burden it creates.

In Australia's case, our workplace regulation has created a need for complex *administration* (separate Federal and State systems and, within the Federal system, institutions such as the Australian Industrial Relations Commission, Australian Industrial Registry, Federal Court of Australia, and the Office of the Employment Advocate).

And it has created complex *compliance* burdens (taking up much of the time and energy of unions, business groups, and part of the role of personnel departments within larger organisations).

And, as noted above, the World Bank and others have found that the heavier handed is workplace regulation, the higher are direct costs to prosperity (*deadweight losses*) and fairness through:

- Fewer jobs created.
- Lower average incomes.
- A larger black economy.
- Higher unemployment, notably among women, teenagers and the less-skilled.

This chapter sets out the structure of the existing system of workplace regulation.

It then revisits the analysis in the last two chapters to create some benchmark tests to apply to the system as laid out here.

Those benchmarks boil down to one: **Can we reform workplace relations policy so as to make Australia more prosperous while making us at least as fair?**

3.1 WHAT DOES TODAY'S WORKPLACE RELATIONS SYSTEM LOOK LIKE?

3.1.1 OVERVIEW

Constitutional underpinnings. Industrial tribunals have been established by the Commonwealth and all State Governments (excepting Victoria) to deal with industrial relations matters.

The Commonwealth's power to make workplace relations laws is in accordance with the heads of power provided in the Australian constitution:

- ❑ The **industrial relations** power²⁸ enables the Commonwealth to make laws for settling *interstate* industrial disputes. This power does not allow direct control of wages and conditions.

²⁸ s.51(xxxv)

- ❑ The **referral by States** power²⁹ allows the States to refer their law making powers to the Commonwealth. For example, the Victorian Parliament has referred some industrial relations matters to the Commonwealth.
- ❑ The **external affairs** power³⁰ enables the Australian Parliament to pass laws that are consistent with international treaties to which the government is a signatory, such as minimum worker entitlements as required by the International Labour Organisation.
- ❑ The **corporations**³¹ power enables the Commonwealth to make laws covering foreign corporations as well as domestic trading or financial corporations.
- ❑ The **trade and commerce**³² power allows the regulation of industrial relations of employees connected with intra-territory work, between States and/or Territories and international trade – including air, maritime and dock workers.
- ❑ Other powers are **incidental**,³³ **defence**,³⁴ **Commonwealth employees**³⁵ and **territories**.³⁶

The result of the first head of power is that workplace relations are split between interstate matters (Federal) and intrastate matters (dealt with by each State).

- ❑ Employees and employers have to be in dispute before they can gain access to Federal dispute settling mechanisms.
- ❑ Arbitration requires that there be identified parties to a dispute. It has not been possible to make Federal common rule awards (those that bind all employers in an industry whether named in the award or not).
- ❑ This means that safety net arrangements operating through awards are limited and inconsistent/varied. It has also necessitated costly roping-in exercises to capture a wider group of players.

²⁹ s.51(xxxvii)

³⁰ s.51 (xxix)

³¹ s.51(xx)

³² s.51(i)

³³ s.51(xxxix)

³⁴ s.51(vi)

³⁵ s.52(ii)

³⁶ s.122

Main players. Seven broad bodies regulate industrial relations: the Australian Industrial Relations Commission, Australian Industrial Registry, Federal Court of Australia, Office of the Employment Advocate, State bodies, State industrial tribunals, business organisations and union organisations. Most of the Federal agencies operate within the legal auspices of the Workplace Relations Act 1996. State counterparts operate under their own laws.

Complex relationships. These organisations interact in a complex and legalistic manner. They are often in conflict. Interactions centre on the application of rules (some legislated, others procedural), conventions and precedents. Respondents, logs of claims, roping-in and ambit claims are in part a function of the limitations of the conciliation and arbitration power.

Federal and State occupational awards are a central feature, covering workplaces in many industries. The responsible jurisdiction depends upon the location of employment, occupation of the employee, the industry they work in, whether the employer has been ‘roped into’ a Federal award, if there is a relevant State award, or whether there is membership of a relevant employer association.

3.1.2 AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION (AIRC)

The functions of the AIRC are broadly summarised as follows:

- ❑ to prevent and settle industrial disputes, so far as possible by conciliation, and, where appropriate within the limits specified by the *Workplace Relations Act 1996* [WR Act], by arbitration;
- ❑ to ensure that a safety net of fair and minimum wages and conditions of employment is established and maintained;
- ❑ to facilitate agreement making between employers and employees or organisations of employees about wages and conditions of employment;
- ❑ to conciliate claims for relief in relation to termination of employment, and if necessary to arbitrate whether a termination is harsh, unjust or unreasonable;
- ❑ to deal with matters concerning organisations, particularly registration, amalgamation, cancellation, representation rights, alteration of eligibility rules and change of name; and
- ❑ to facilitate equal remuneration for equal pay.

PREVENT AND SETTLE DISPUTES

In this functional role, the AIRC is charged with **preventing and settling industrial disputes**, so far as possible by conciliation and, failing that, by arbitration. The Commission generally restricts itself to 20 allowable matters in relation to new awards³⁷ ranging from ordinary time hours of work to jury service (Appendix A).

³⁷ Variations to awards or new awards should remove matters of detail or process, not prescribe work practices or procedures, include provisions that encourage agreement at the workplace level and are to be written in plain English.

RESPONSIBILITY FOR SAFETY NET WAGE AND CONDITIONS

The AIRC is required to balance award adjustments so that they "act as a **safety net of fair minimum wages** and conditions of employment"³⁸ while encouraging "the making of agreements between employers and employees at the workplace or enterprise level"³⁹. Nowhere is 'safety net' formally defined, but there are hints (see Appendix B). Once industry, government and union submissions have been considered, then an arbitrated safety net adjustment is decided for employees under the award system. The Federal Minimum Wage might also be increased.

The AIRC is to take account of the **public interest** in making awards to have regard to the state of the national economy and the effect any award or order may make on the level of employment and inflation.

It is also to take account of **discrimination principles and family responsibilities** (see Appendix C).

FACILITATE AGREEMENT MAKING

The AIRC's functional role here is to facilitate agreement making between employers and employees or organisations of employees about wages and conditions of employment. Under present legislation, priority is given to employers, employees and their representatives to take responsibility for their own industrial relations affairs and to reach agreements appropriate to their enterprises.

The WR Act allowed simplified agreement making processes for individuals (AWAs) and for enterprises (Certified Agreements or CAs). Both processes, although simpler than previous arrangements, remain complex and cumbersome. For details, see Appendix D and Appendix E respectively. The related AIRC functions are to:

- ❑ Sign off Certified Agreements ensuring that they meet the 'no-disadvantage' test (see Box).
- ❑ Assess whether proposed Australian Workplace Agreements (AWAs) referred by the Employment Advocate (EA) meet the 'no-disadvantage' test.
- ❑ The AIRC also reviews agreements to ensure that they have satisfactory procedures for settling workplace disputes should they arise. For example, 'protected action', including strikes and lockouts, are generally immune from sanction during a bargaining period.

³⁸ s.88A(b)

³⁹ s.88A(d)

The 'no-disadvantage' test

Before the AIRC can accept a certified agreement, the agreement must not result in a reduction in the overall conditions of employment of the relevant employee/s under any award that applies to the employee/s and any other relevant Federal, State or Territory law (s. 170XA). The no-disadvantage test also applies to AWAs.

If there is no award covering the relevant employee/s, then the AIRC or EA is required to designate a suitable award for the purposes of the test.

TERMINATION OF EMPLOYMENT

The AIRC's functional role here is to conciliate claims for relief arising from termination of employment, and if necessary to arbitrate whether a termination is "harsh, unjust or unreasonable" or "unlawful".

- ❑ The WR Act does not define the phrase "harsh, unjust or unreasonable" dismissal (**unfair dismissal**) but sets out potentially open-ended issues that the AIRC is to take into account in making its decision.⁴⁰
- ❑ For **unlawful termination**, a termination cannot contravene discrimination and family protection legislation.⁴¹
- ❑ In either event – unfair dismissal or unlawful termination – there are complex processes involved.⁴²

REGISTERING ORGANISATIONS UNDER THE WR ACT

The AIRC registers employer and employee organisations under the WR Act.

- ❑ The AIRC needs to be satisfied that an association of employers has had members for the six months prior to the application, each with an average of at least 50 employees.

⁴⁰ Specifically, was there a valid reason for termination (capacity/conduct of the employee or to the operational requirements of the employer)? Was the employee notified of the reason? Was the employee given an opportunity to respond to any reason related to his or her capacity or conduct? Was the employee warned about unsatisfactory performance before the termination? Are there other matters the Commission considers relevant?

⁴¹ Specifically, the Convention Concerning Discrimination in Employment and Occupation and the Workers with Family Responsibilities Convention (s. 170CK). It also cannot occur without the required minimum period of notice or pay in lieu of notice (s.170CM).

⁴² All applications are to be first conciliated by the Commission (s.170CF(2)). If the Commission decides conciliation is not going to work, then it issues a written certificate stating the grounds on which conciliation has failed, and assessing the merits of the case. The Commission may also advise the applicant not to pursue a particular ground in the application (s.170CF(2)). Following failure of conciliation, the applicant can pursue their claim in the Commission and/or in a court, depending on the reasons in the Commission's certificate (s.170CFA(1) to (5)). An employee cannot pursue an unfair dismissal and unlawful termination case at the same time. The Commission can proceed to arbitrate if a certificate has been issued and the applicant has so elected (s.170CG(1)). If a termination is found to be unfair then the Commission may make orders for remedies (s.170CH(2)) including reinstatement.

- ❑ The AIRC needs to be satisfied that an association of employees is free from control by, or improper influence from, an employer or by an association or organisation of employers, and has at least 50 members who are employees.

There are other criteria for registration.⁴³

Upon registration, an association becomes an organisation.⁴⁴ Organisations are required to have rules which specify the purpose for which the organisation is formed and the conditions of eligibility for membership, and may specify the industry in relation to which it is formed.

3.1.3 AUSTRALIAN INDUSTRIAL REGISTRY

The Registry essentially operates as a filing cabinet for the AIRC – see Appendix F.

3.1.4 FEDERAL COURT OF AUSTRALIA (FCA)

The FCA has jurisdiction for certain matters under the WR Act.⁴⁵

It hears matters covering: interpretation of awards or certified agreements⁴⁶ and the validity of a State law or a State award.⁴⁷

It also has power over unlawful terminations of employment, organisation matters (including rules, inquiries into elections for office or amalgamation ballots, withdrawal from amalgamation, entitlement to membership and cancellation of registration), and penalties for breaches of awards and orders of the Commission.

3.1.5 OFFICE OF THE EMPLOYMENT ADVOCATE (OEA)

The OEA was set up in 1997 to help employees and employers (especially small businesses) to navigate the WR Act, AWAs, the no-disadvantage test and the freedom of association provisions.

The OEA approves AWAs (provided they meet the no-disadvantage test requirements) and handles alleged breaches of AWAs or the freedom of association provisions, as well as assisting employees in prosecuting breaches where appropriate.

⁴³ Including a unique name, and a majority of the members at a general meeting of the association, or an absolute majority of the committee of management of the association, have passed, under the rules of the association, a resolution in favour of registration of the association as an organisation. The registration of the association also has to further the objects of the WR Act.

⁴⁴ An organisation: a body corporate; has perpetual succession; has power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with any real or personal property; has a common seal; and may sue or be sued in its registered name.

⁴⁵ Part XIV, Division 1, details are set out in s 412.

⁴⁶ Sections 413 and 413A allow the application to come from a Minister, organisation or individual bound by the award.

⁴⁷ Section 422.

3.1.6 THE STATES

There are six different workplace relations systems in Australia with their own tribunals, registries and the like. Victoria has referred its powers to the Commonwealth (other than occupational health and safety), while the ACT and the Northern Territory also operate under the Commonwealth system.

Jurisdictional fault lines. Both Federal and State systems apply in many workplaces, so in one workplace some employees work under Federal awards and some under State awards.

The basic rule is that the same industrial tribunal that established the award or approved the agreement deals with the dispute. For instance, the NSW Industrial Relations Commission would typically deal with a dispute involving NSW public servants (employees within the confines of NSW) while the AIRC would typically deal with an issue or dispute involving airline employees (employees that cross States).

State awards can also apply by 'common rule' where each employer or employer association does not have to be named, unlike under the AIRC.

The workplace: There may be multiple awards applying in a given workplace. Employers and employees can be subject to two different industrial tribunals, a State tribunal and a Federal tribunal. A business in two States could have workers covered by one or more of either of the States' awards, or both, and one or more Federal awards. This makes it hard to determine and to keep track of changes.

There may also be differences in agreement making requirements on the ground. States have also increased their focus on agreement making provisions, with Victoria, Queensland and WA allowing agreements with individuals, while others have given preference to particular types of agreements. There are also differences around consulting with employees, lodging agreements and explaining it to employees (length of time for consideration/consultation before formalisation varies). In NSW, it is a 'reasonable steps' test, in WA, a copy of the agreement must be provided to employees before registration, while in SA the interests of vulnerable employees have to be considered.

A 'no-disadvantage' style test applies in most places. In WA, minimum conditions apply. In Tasmania, a mix of minimum conditions and applying award minimums is used as the benchmark.

There are also different ways of endorsing an agreement. Most States require a simple majority for some types of agreements, while some States require that a higher proportion of employees vote in favour. Some also specify votes be conducted by secret ballot.

3.1.7 THE AUSTRALIAN COUNCIL OF TRADE UNIONS (ACTU)

The ACTU is made up of 46 affiliated unions representing around 1.8 million workers, a little less than a quarter of all Australian employees.

FIGURE 10: DECLINING UNION MEMBERSHIP

Share of employees who are members of Trade Unions			
	August 1998	August 2003	Decline
	(%)	(%)	(%)
Male	30.0	23.6	-21
Female	25.8	21.8	-16
Public	58.5	46.9	-20
Private	23.6	17.6	-25
Total	28.1	23.0	-18

Source: ABS cat. 6310.0

The ACTU has an executive of around 50 that meets three times a year. It makes submissions as an organisation under the WR Act on the minimum wage or safety net. It also runs other cases such as the Work and Family Test Case 2004. Awards subject to claim are detailed (many are underwritten by previous logs of claim) and other major Federal awards may also be relevant.⁴⁸

3.1.8 BUSINESS ORGANISATIONS

Peak business organisations also have a central role in the institutional arrangements, including by making submissions on the minimum wage or safety net and in submissions to important precedent setting areas such as the Work and Family Test case.⁴⁹

3.2 WHAT ARE THE BENCHMARK TESTS FOR TODAY'S SYSTEM?

Given the discussion in Chapters 1 and 2, there is an obvious and simple set of benchmark tests to act as a yardstick against which to measure current institutions and processes.

1. Are they already focused on prosperity rather than fairness? (If so, fine).
2. If not, do they achieve their aim? (If not, they are a clear candidate for reform.)
3. If they do achieve their aim of improving fairness, could other arms of policy, such as the welfare system, achieve fairness more efficiently? (If so, they are a candidate for reform.)

⁴⁸ In the Work and Family Test case the ACTU argued that: "The contentions and evidence of the ACTU applications are consistent with the Commission's objects, within its powers, and appropriate, taking into account the Commission's obligations (Part I); Changes in the labour force, in family and household structures, and in the rates of disability within the community mean that a significant sector of the workforce have responsibilities outside their work for the care and support of family members[1] (Part II); Changes in the organisation of work have not been met by new arrangements for the care of dependents (Part III); Workers bear the impact of these changes, and work has a negative effect on their family life (Part IV)."

⁴⁹ In such cases, business tends to argue that the objectives in sections 3(b), 3(c) and 3(d)(i) of the WR Act should be uppermost in the Commission's mind. Arguments are often advanced that awards should centre on a safety net of fair minimum wages, sensitive to the needs of particular workplaces and encourage agreements (3(c) allows for the latter to be formal or informal). Section 88A(c) appears to support this contention so that awards should be "suited to the efficient performance of work according to the needs of particular workplaces and enterprises".

Those benchmark tests boil down to one: **Can we reform workplace relations policy so as to make Australia more prosperous and at least as fair?**

The suggested reforms sketched out in this report are tested against that benchmark in the following chapter.

And we'd hope that all reform proposals (or counter-proposals to do nothing) that you see and hear about in coming months are judged against that benchmark too.

After all, such a benchmark is no more than common sense. Yet establishing such a benchmark is all the more vital given that public discussion of workplace relations policy is often muddled. (So if others don't spell out much the same benchmark as we have, we'd recommend you assess their ideas against it anyway.)

4. THE IMPLICATIONS FOR REFORM

The first three chapters have identified where we would like to be, where we are now and the benefits of changing from one to the other.

This chapter discusses three reform recommendations in particular. Each of them has the capacity to improve prosperity without worsening fairness.

Our analysis suggests that workplace relations policy should:

- **Create new jobs by changing the way we set minimum wages**, using tax credits to avoid any losses to the incomes of low income workers who are in low income households.
- **Boost productivity** by encouraging more direct negotiations at the enterprise level, strengthening the link between wages and productivity through more flexible and less regulated agreement making, including by reducing the number of allowable matters within awards, and reform of the current unfair dismissal legislation.
- **Harmonise State and Federal workplace relations systems** – preferably reducing them to a single national rail gauge so that national regulation of workplace matters suffers less from the current degree of regulation duplication, as well as the resultant games played by participants.

4.1 WHERE TO FROM HERE?

Australia's recent past is mapped out in the OECD ranking of average national incomes per head seen in Figure 1. Past reforms have turned Australia's prospects around after decades of declining living standards relative to our peers. That reform program required courage and leadership, in particular, the courage to refocus some badly targeted policies – against the grain of tradition - back on prosperity.

What comes next? If Australians fail to grasp the nettle of further reform, then we'll fail to lock in the benefits of past reform and resume the downward path of lost relative prosperity that characterised much of last century.

That points to the need to refocus on prosperity – a need all the more urgent as the economic challenges of baby boomer retirement and ageing creep ever closer. We can choose to wait until the need for reform is clear to all, but we will have fewer choices and options available.

Will history judge this decade as being one of squandered or bolstered prosperity?

Reforms to workplace relations policies can raise prosperity.

The maths is simple. Workplace relations reforms can raise average incomes further – partly by removing artificial barriers to the creation of more jobs, and partly by increasing the efficiency with which Australians work.

(That's just mathematics. Average income equals the share of the population working, times the efficiency with which we work. Our big successes in the past decade have come from a notable fall in unemployment, and a sharp pick up in productivity growth.)

So what should be the workplace relations reform agenda? Access Economics focuses on three recommendations in particular.

Each of them is designed to meet the test mapped out in Chapter 3 – to make Australia more prosperous but at least as fair.

That means each must be aimed at increasing the national income pie.

In turn, that implies lifting employment and/or boosting productivity.

4.2 LIFTING EMPLOYMENT

Workplace relations policy can **lift employment** by raising labour force participation (increasing supply – more workers available) and by reducing both unemployment and underemployment (increasing demand – more workers employed).

Figure 8 earlier shows that the projected employment-to-population ratio has peaked and is now set to decline in coming decades as the baby boomers retire. That means there will be fewer workers in future to support each person not working – a smaller pie than otherwise, with more mouths to feed.

As the baby boomers retire, it also means the scarcity value (and bargaining position) of employees can be expected to rise relative to employers.

- ❑ This long-run structural challenge for Australia has been highlighted by recent developments pointing to capacity constraints both on the capital side and in the labour market, with skill shortages emerging in some industries.⁵⁰
- ❑ As Australia ages, we can expect growing labour shortages. Given that, it becomes even more urgent to have a flexible workplace relations system that encourages more workers into the workforce.

The decline in the employment-to-population ratio is expected to come about because of likely movements in the ‘A’ and ‘B’ ingredients in the recipe for prosperity discussed earlier.

Taking ingredient ‘A’ (participation) first, as older people are generally less willing and/or able to seek paid work, an ageing population presses down on the average participation rate.

If Australia could maintain older workers’ involvement in the workforce at higher levels, then the anticipated rise in the ratio of the non-working population to the working population (and associated Government financing pressures) could be significantly lessened.

- ❑ If Australia was to attain labour force participation rates in the top 20% of OECD experience (by age group) then the national participation rate would fall only slightly from its current 63½% to about 61% by 2042 (instead of falling to 55½%, as projected in the Commonwealth’s 2002 *Intergenerational Report*), and GDP per head would be almost 10% higher than otherwise.⁵¹

⁵⁰ See Glenn Stevens, *Address to the Australian Business Economists*, Reserve Bank of Australia December 2004.

⁵¹ See Martin Parkinson, David Gruen, *Intergenerational Challenges Facing Australia and the World*, Treasury, July 2004.

That seems achievable. In September 2003, there were 835,000 'marginally attached workers', equivalent to 8% of the workforce. These are people not included in the official workforce who do want to work, but are not available to start work immediately.⁵²

Other Australians of working age who are not participating in the workforce include those who have taken early retirement, often due to redundancy, and discouraged job seekers on the Disability Support Pension (DSP). The disability pension now has more recipients than the primary form of unemployment benefit (the Newstart Allowance). Indeed, in the 20 years to 2003, the proportion of men aged 55-64 years in receipt of DSP rose from 10% to 17%. Yet:

- ❑ Less than 10% of men of that age have a profound or severe core-activity limitation.⁵³
- ❑ Disability rates have not noticeably risen, at least over the 15 years to 2003.⁵⁴

Turning to the '**B**' ingredient of the prosperity equation (unemployment), further progress in reducing unemployment is still possible, but the current low unemployment rate suggests that further significant progress in this direction may be limited (but still worth pursuing).

However, one promising avenue would be to focus on **job creation** for the under-employed. Under-employment refers to the willingness and desire of employed people to work more than their current hours. Under-employment increased substantially in the early 1990s, with strong growth in part time workers actively looking for additional work. Under-employment may be about one percentage point higher than the unemployment rate.⁵⁵

4.2.1 A FIRST SET OF POLICIES TO RAISE EMPLOYMENT

What are the policy implications here? **Labour force participation (the supply of available workers) can be raised by labour market and tax/transfer system policies which:**

- ❑ Enable family-friendly flexible working arrangements for those caring for children to balance home and work life, especially mothers.
- ❑ Enable aged care friendly working arrangements for those caring for elderly dependents.
- ❑ Enable leisure-friendly working arrangements for those wanting part-time work, especially those at or approaching retirement age.
- ❑ Discourage taxpayer-funded premature retirement. Recipients of the DSP currently require a doctor to certify that they are unable to work for 30 or more hours a week. Previous legislative proposals to lower this to 15 hours a week – close to the average hours (16) currently worked by part-time workers – remain blocked in the Senate.

4.2.2 A SECOND SET OF POLICIES TO RAISE EMPLOYMENT

A second set of policy implications arises via education and training policies. Aiming at a better skilled workforce can also lift participation (in addition to boosting productivity as discussed later), though the impact is often not evident for some time.

⁵² ABS cat. 6220.0.

⁵³ ABS cat. 4430.0.

⁵⁴ ABS cat. 5530.0 and ABS cat. 1370.0.

⁵⁵ See pp34-35, *Monetary Policy Statement*, Reserve Bank of Australia, November 2004.

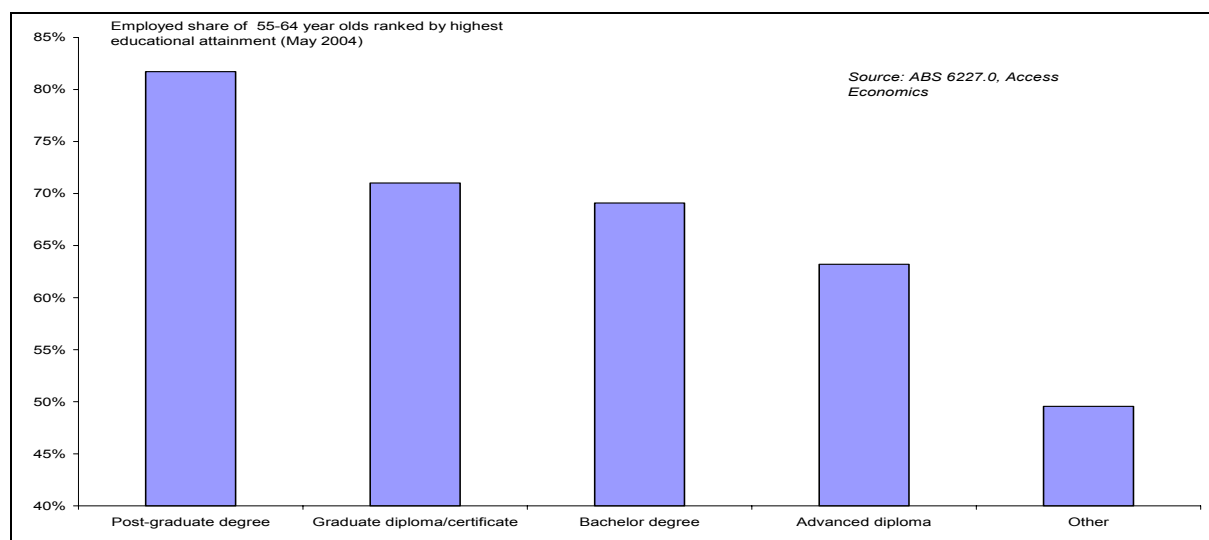
Skilled workers are more likely to remain in jobs and in the workforce longer.

Over the 1990s the labour force participation rate for those with post-school qualifications (around 85%) was about 15 percentage points higher than for those without post-school qualifications (70%). Moreover this gap was stable.

This bonus from a more educated workforce is driven by the fact that more educated workers tend to delay their retirement from the workforce, and delayed retirement equals higher measured labour force participation.

As shown in Figure 11, the chances that a worker at the border of retirement (aged 55 to 64 years) is employed rises with his or her educational attainment.

FIGURE 11: EDUCATIONAL ATTAINMENT AND JOB STATUS OF OLDER AUSTRALIANS



- ❑ Over 80% of all 55-64 year olds with a PhD were still working in May 2004, compared with less than 50% for those with more basic educational attainments.
- ❑ Between 1981 and 2001, the participation rate of males without post-school qualifications fell significantly in all age groups. The participation rate of females rose regardless of education.⁵⁶

The message is clear. A more skilled, educated workforce can be expected to deliver Australia higher participation rates than otherwise. This is in addition to the benefits of the higher productivity of a more skilled workforce.

Higher skill levels are also likely to reduce earnings disparities between households. Recall Figure 8. The most important signifier that a household is likely to be in the poorest decile is that its members are not in the labour force. Delayed retirement reduces this factor as a cause of poverty. Secondly higher skill levels are linked to higher earnings, which also reduces poverty.

⁵⁶ A Note on Educational Attainment and Labour Force Participation in Australia, Treasury Working Paper 2003-03.

4.2.3 A THIRD SET OF POLICIES TO RAISE EMPLOYMENT

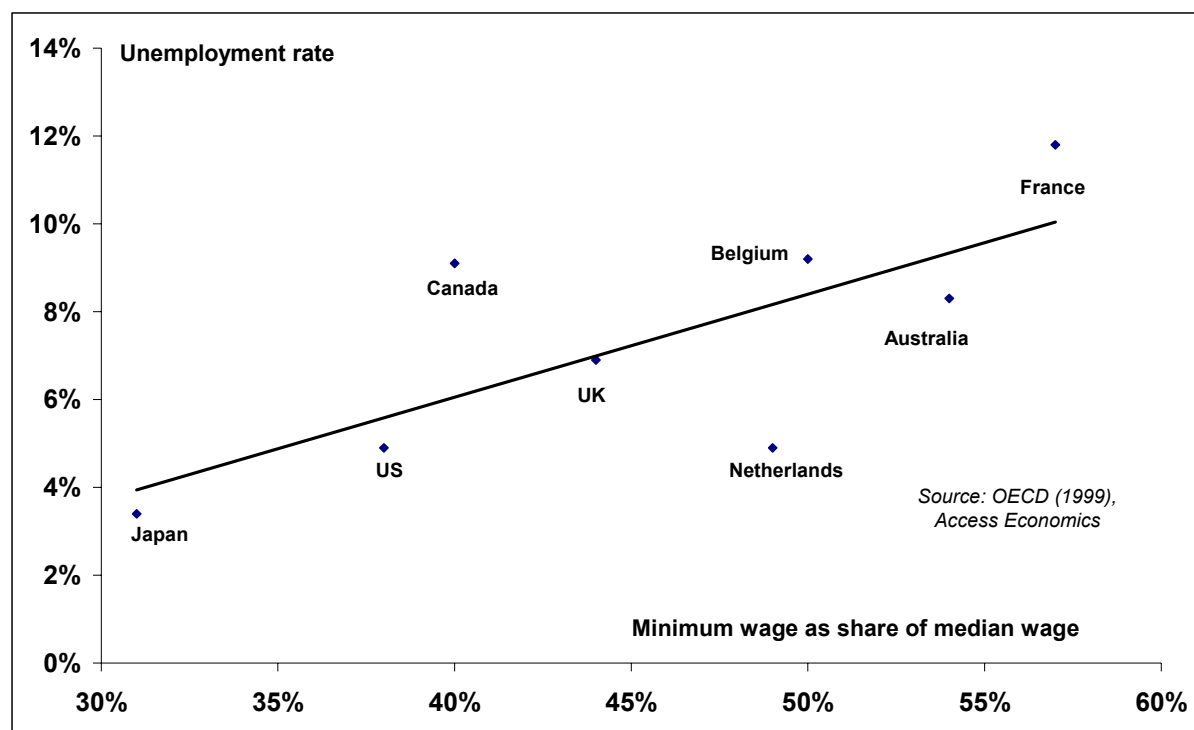
A third set of policy implications arises in reducing unemployment by changing the way we set minimum wages. The prospects of employment for those seeking work will be enhanced by changing the way Australia sets minimum wages – by aligning more closely with the minimum wage policies adopted in those nations with the lowest unemployment.

That can be done slowly over time, with any risks on the fairness front offset by lowering the tax paid and benefits lost by low income workers (the very policy adopted by both the UK and the US).

- ❑ At the moment we pretend the AIRC is being fair through granting Safety Net wage decisions to lift minimum wages.
- ❑ Yet most low income workers are not in low income households. Rather, they are relatively well scattered through the distribution of incomes by family, presumably as many low income earners have high (or higher) income spouses. That makes Safety Net wage adjustments a very blunt instrument for achieving fairness.
- ❑ And effective marginal tax rates are so high that most workers on minimum wages lose more than half of any gains in higher taxes and lost benefits.
- ❑ **That runs the risk of workers (and potential workers) lacking an incentive to work.**
- ❑ And the cost to employers is higher still than the wage increase, given wage-related costs such as workers' compensation and superannuation. That makes Safety Net wage adjustments a very direct instrument for undercutting prosperity **as it runs the risk of workers being priced out of their jobs.**
- ❑ Far better to raise the incomes of low income workers who are in low income households through tax credits or similar mechanisms.

At over 50%, Australia's minimum (or award) wages are relatively high as a proportion of the median wage relative to our OECD peers, making them a constraint on employment.

FIGURE 12: UNEMPLOYMENT RATES AND MINIMUM WAGES (IN 1999)



That is inefficient ('anti-prosperity') and drives up unemployment – see Figure 12. It is also unfair in denying opportunities for marginalised workers who miss out on a job they would otherwise have obtained.

Although Australia's unemployment rate has reached a rate not seen since the late 1970s, we can still do better:

- ❑ Australia has many under-employed workers (those who would prefer to work more hours) and discouraged workers (those who are not actively seeking work).⁵⁷ And, as Peter Dawkins of the Melbourne Institute has noted, "joblessness has become increasingly concentrated into jobless households. By 1997/98, over 16 per cent of working age households had no adult member in paid work, while nearly one in six children lived in such households. Indeed the incidence of jobless households with children [in Australia] is one of the highest in the OECD."⁵⁸
- ❑ Work at the US Federal Reserve implies that, if Australia's minimum wage regulation matched that in other 'Anglo' economies, we could cut unemployment. The results⁵⁹ translated into the Australian context suggest that our current minimum wage may mean 100,000 extra unemployed Australians compared with the equivalent minimum wages seen in the US or UK.
- ❑ Much the same figuring is implied by Figure 12. It suggests that the rough trade off is that the unemployment rate increases by one percentage point (in Australia's case,

⁵⁷ There is a significant level of remaining underemployment and discouraged employment. See the Reserve Bank's *Monetary Policy Statement* of November 2004.

⁵⁸ Dawkins, P., *Getting Jobs into Jobless Households: Tax Credits, Welfare Reform and Wage Setting*, 2002.

⁵⁹ Tulip, P, *Do Minimum Wages Raise the NAIRU?*, US Federal Reserve Finance and Discussion Series, 2000-38.

about 100,000 people) for each 10 percentage point increase in the ratio of the minimum to the median wage. If Australia's minimum-to-median wage ratio was the same as that in the UK then, other things equal, that would suggest an unemployment rate one percentage point lower.

- ❑ Note - Figure 12 uses 1999 figures. Unemployment rates are now lower in both the UK and here. However, despite rather faster average GDP growth in Australia over time, our unemployment rate is currently just over 5%, while that in the UK is 4.7%. The difference seems to lie in the way the UK has a lower ratio of minimum to median wages, but addresses any fairness implications of that via tax credits.
- ❑ Research suggests that lower unemployment would improve health,⁶⁰ boost self-esteem, and cut crime and drug use as well.⁶¹

There have been many proposals over the years⁶² for Australia to follow the path pioneered by the US and UK in letting the private sector create as many jobs as it can (by not setting minimum wages in a manner which prices many people out of a job), and letting the public sector's tax/transfer system redistribute those incomes to improve fairness.

Access Economics would commend a policy package which:

1. Boosts employment (and hence **prosperity**) by aligning Safety Net increases with gains in productivity among the workers those increases affect, and by setting up a separate Minimum Pay Division of the AIRC with the authority to consider the impact on employment prospects of the unemployed arising from changes in statutory awards of minimum pay. The membership of the Minimum Pay Division of the AIRC should include representatives seconded for fixed four-year terms from the Reserve Bank and the Productivity Commission, with those organisations (as opposed to Ministers) having the power to choose their own members of the Minimum Pay Division.
2. Ensures **fairness** is unaffected by, as required, using earned income tax credits or similar mechanisms to raise the incomes of low income workers who are in low income households. (Note there would also be a fairness benefit from the reduction in unemployment.)

⁶⁰ Borland, J. and Kennedy, S., *Dimensions, Structure and History of Australian Unemployment*, in Unemployment and the Australian Labour Market, Proceedings of a Conference, Reserve Bank of Australia, 1998.

⁶¹ Don Weatherburn of the NSW Bureau of Crime Statistics and Research, as reported in the *Sydney Morning Herald* of 23 November 2004, at page 3. In commenting on a fall in crime rates, he notes, "Low wages and long-term unemployment are significant contributors to crime. When they improve, crime tends to fall."

⁶² For example, the 'five economists' scheme was detailed in 1998 by Peter Dawkins and John Freebairn of the Melbourne Institute, Ross Garnaut and Mike Keating of the ANU, and Chris Richardson of Access Economics. Or see Business Council of Australia (2000) *Rebuilding the Safety Net: Proceedings of a Conference*, 29 April 1999.

4.2.4 HOW MANY MINIMUMS?

The foregoing discussion was in terms of the Safety Net wage adjustments made annually in Australia and passed on (typically unchanged) by the matching State tribunals.

Yet there is another minimum wage issue here – or rather, lots of them. Presently there are some 4000 award wages available in the six industrial tribunals.⁶³ A reduction in the number of such minimums would help to simplify the current award structure and reduce system compliance costs.

How many minimum wages ought there be? The fewer the better.

Take the fairness approach for example. Say for a moment Australians are of the view that there is a wage so low that people should not be allowed to accept it, even if they want to. That is, say that as a society we wish to over-ride individual choice in a manner that reduces the number of available jobs. What is that minimum to be? If it is to mimic the approach of the *Harvester* decision a century ago, then the minimum would presumably be set to the cost of living. Yet even such a fairness approach would be hard pressed to justify more than 4000 different minimum wages in Australia (let alone using fairness to justify the resultant increase in the number of the unemployed).

It is also inconsistent with the evidence – noted above – that those on low incomes are not particularly over-represented among families on low incomes.

Now ask ‘what can we do to aid prosperity without hurting fairness?’ On that basis, if the range of minimum wages available under legislation was reduced to just one (universal) statutory minimum, it would be best to set it at the lower end of the range of minimum wages presently available. Otherwise, the new minimum wage would adversely affect employment opportunities in those occupations where a wage rise was implied.

Or, in other words, **the wider award wage structure could benefit from a refocusing on prosperity, much the same as the proposal above regarding Safety Net adjustments.**

Streamlining of minimum wages could be staged – for example, phasing out over time the non-preferred set awards, and allowing general wage inflation to erode the value of the minimum(s) relative to median wages, so as to generate job opportunities. Tax credits or similar mechanisms could be used to ensure no loss of fairness.

4.3 BOOSTING PRODUCTIVITY

Workplace relations policy can **strengthen the link between wages and productivity (thereby boosting the latter)** by encouraging more direct negotiations at the enterprise level, trimming the number of allowable matters within awards, and reforming the current unfair dismissal legislation.

Arguably most of the gains to productivity (and therefore prosperity) from the reduction in job market regulation, which has already occurred in Australia since the early 1990s, comes

⁶³ Page 85 of the 2003 OECD survey of Australia notes we have 4500 awards, some 2000 of them in State jurisdictions.

down to the degree to which third parties (such as the AIRC) now have a smaller role than they once did. As a result, productivity growth has been excellent in sectors that have seen the greatest degree of adoption of flexible workplace relations policies.

This aspect of recent workplace relations reforms in Australia has delivered the greatest gains in terms of prosperity.

But more can and should be done. In the next chapter we make a number of recommendations for streamlining our complex and cumbersome workplace relations processes and for redirecting the AIRC towards the goal of maximising prosperity.

4.3.1 UNFAIR DISMISSAL

Unfair dismissal laws look like going back before the Senate sooner rather than later. The Government's proposals have been rejected a number of times already.

Those proposals won't affect many workers, because they affect only employees under Federal awards in relatively small businesses.

Most international studies find that while smoothing fluctuations in employment, protection against dismissal provisions cut average employment over time, although the size of that cut depends on a range of factors.

The World Bank⁶⁴ has conducted a thorough study across nations (rather than across time).

Its results are firm. The more restrictive the regulation of firing (such as the level of mandated severance pay), the outcomes are:

- Fewer jobs being created.
- Lower average national income.
- A larger black economy.
- A greater likelihood that female unemployment will be higher.
- A greater likelihood that youth unemployment will be higher.
- A greater likelihood that unemployment among the unskilled will be higher.

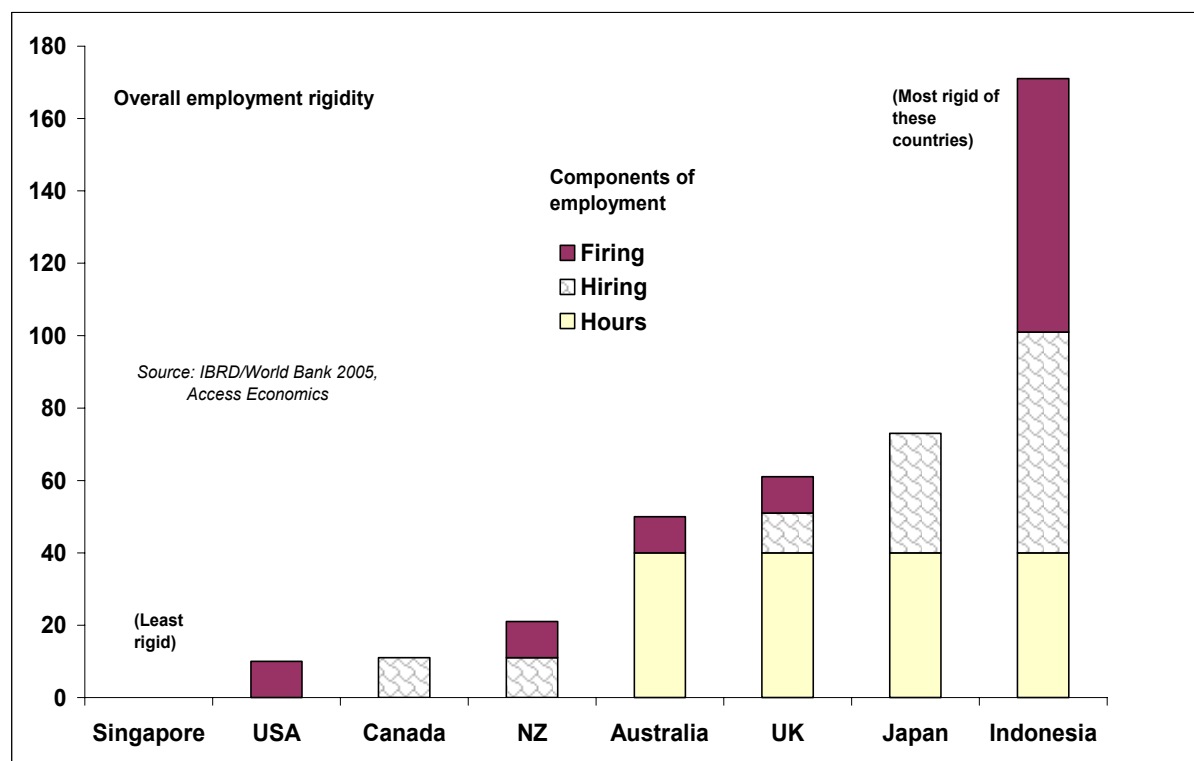
The underlying rationale for those results is simple enough – when regulations make it difficult for businesses to dismiss somebody who is not up to scratch, then they also discourage hiring. As the World Bank noted, “heavy regulation of dismissal is associated with more unemployment ... Flexible labour markets, by contrast, provide job opportunities for more people, ensuring that the best worker is found for each job. Productivity rises, as do wages and output”.

Nothing could seem ‘fairer’ than placing legal obstacles to employers unfairly retrenching workers. However unfair dismissal laws discourage the hiring of new workers and therefore undermine future prosperity. The more difficult it is to retrench people, the more reluctant employers will be to hire them.

The implication for Australian policy making is that our current unfair dismissal legislation may extract a relatively high and unnecessary cost to future prosperity and job growth.

⁶⁴ *Doing Business in 2005: Removing Obstacles to Growth*, IBRD and World Bank, 2004.

FIGURE 13: IT IS HARDER TO FIRE IN AUSTRALIA THAN IN SOME PEER NATIONS



How does Australia's current regulatory framework for hiring and firing stack up in an international comparison? In the World Bank study, Australia was ranked 11th best (among 135 nations) in terms of an index of total employment rigidity. This is a good effort, but some of our near neighbours and similar economies have a lower employment rigidity score.

In terms of the components of Australia's employment rigidities, hurdles to hiring are not a concern. But Australia's rank falls back to 13th in the world on the 'difficulty of firing' index, leaving some room for improvement because, as the World Bank notes, "a barrier to firing is a barrier to hiring".⁶⁵ The impact of this on the 'hours index' on lifting Australia's overall employment rigidity is clear – our high score here reflects the complexity of Australian unfair dismissal legislation.

The following section discusses World Bank conclusions on workplace relations in general.

⁶⁵ Page 27, *ibid.*

International experience with workplace relations regulation

The International Bank for Reconstruction and Development and the World Bank (IBRD/World Bank) has developed a summary measure (the 'Employment Rigidity Index') of employment regulation for a range of countries.

The methodology underlying this evolving index is explained in detail below. Access Economics is unaware of any other applied international methodology that has the reach and sophistication of the IBRD/World Bank approach.

The IBRD/World Bank found high degrees of employment regulation are correlated with low incomes, a large black economy, and higher unemployment among minority groups.

First, employment rigidity is associated with lower prosperity (as measured in absolute terms by 'gross national income per capita'). High income countries – such as Australia – have clearly less regulated workplace relations systems than lower income countries

Second, higher levels of employment rigidity are also associated with tougher employment prospects for weaker groups in society, such as women and younger workers. Far from protecting the vulnerable, rigid employment regulations exclude them from the market. 'Outsider' groups lose out from rigid employment laws. That is neither fair nor efficient.

FIGURE 14: TIGHT WORKPLACE REGULATION IS CORRELATED WITH LOWER INCOMES

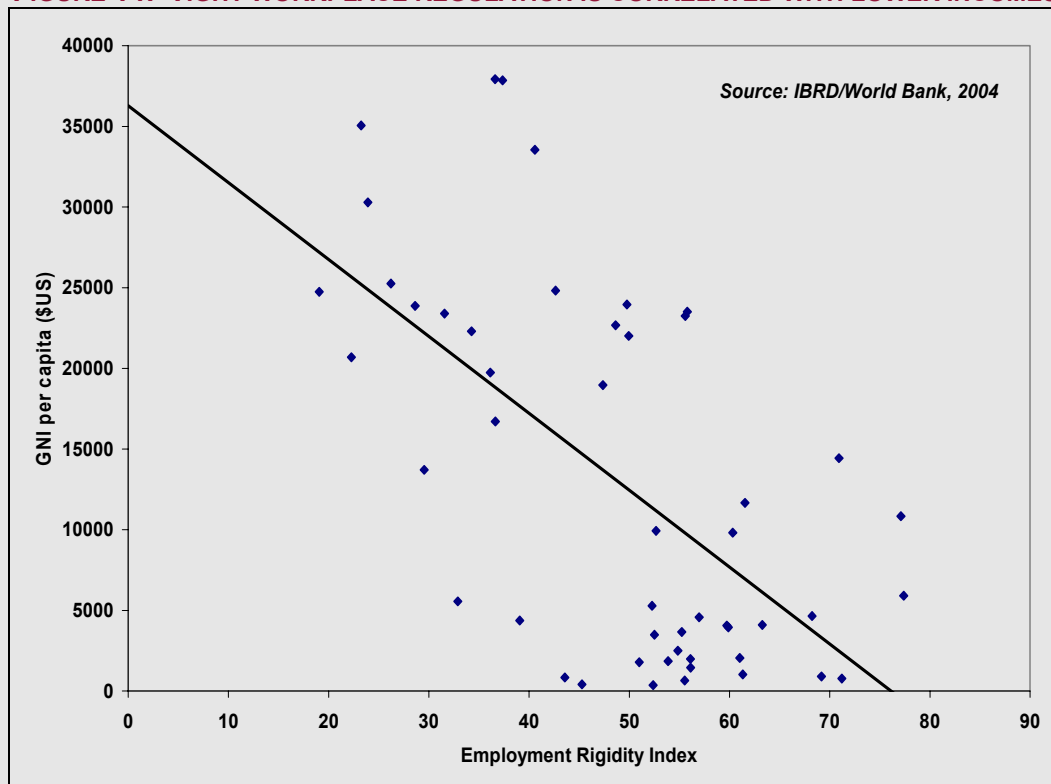


FIGURE 15: TIGHT WORKPLACE REGULATION MEANS MORE FEMALE UNEMPLOYMENT

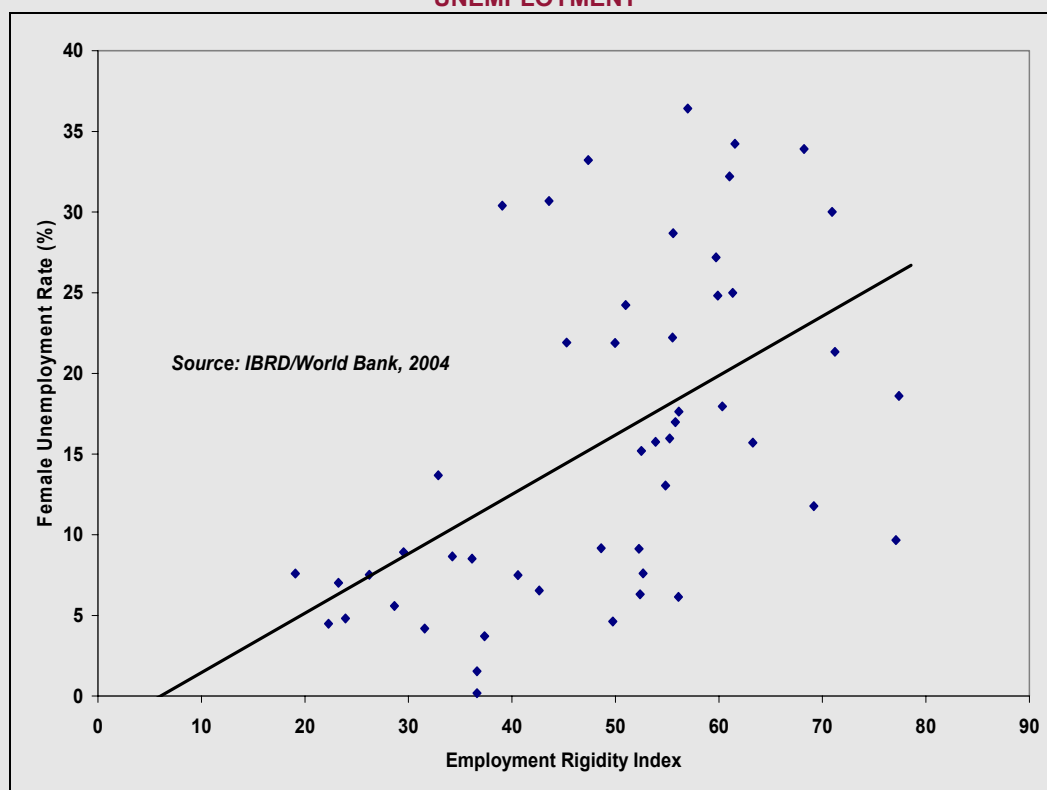
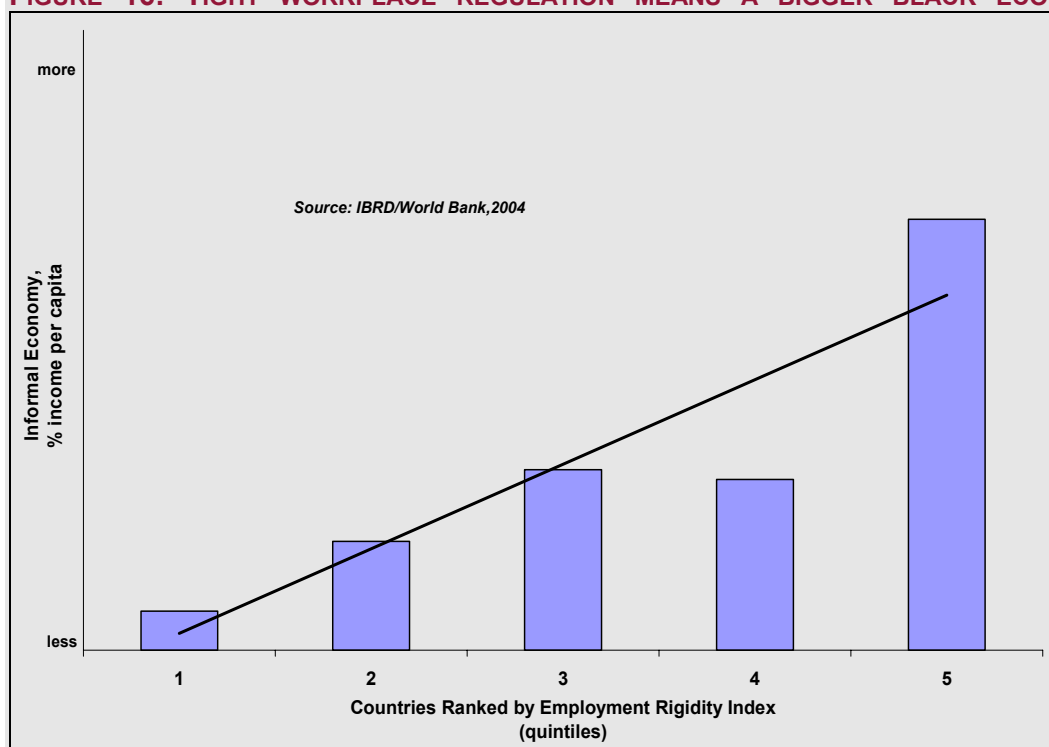


FIGURE 16: TIGHT WORKPLACE REGULATION MEANS A BIGGER BLACK ECONOMY



Finally, higher levels of employment rigidity are associated with a larger informal (black market) sector as a share of the economy. Workplace relations regulations and red tape helps drive the economy underground. That means less taxes are collected to help pay for those things which make for a prosperous and fairer society.

So higher levels of employment regulation mean less prosperity, fewer job opportunities for less powerful groups in society and a bigger black market. While Australia's degree of employment rigidity compares well internationally, that is not the appropriate benchmark. When Australia is compared with world's best practice, and with its major trading partners, there is clear room for improvement.

The methodology underlying the World Bank's "Rigidity of Employment Index" is set out in Appendix G.

Source: *Doing Business in 2005*, IBRD/World Bank

4.3.2 HOW ALLOWABLE?

As noted in Chapter 1, Australia has a long tradition of pursuing fairness through the detailed regulation of its industrial awards.

Presently there are 20 such allowable matters in Federal awards – see Appendix B. The flexibility 'escape route' offered by AWAs and CAs applies a global 'no-disadvantage' test to these 20 allowable matters.

Does such a degree of regulation make sense?

No. Economists note that regulation typically only makes sense when markets fail.

In this case, that approach would imply that the likes of jury service needs to be mandated in awards because employers and employees cannot be trusted to come to a 'market solution' on the treatment of jury service in the absence of mandated requirements.

Access Economics is less convinced that such paternalism benefits Australians. Nor is the OECD, which has argued that "... flexibility of workplace arrangements [in Australia] could be further enhanced and the potential for productivity gains raised by reducing the number of allowable award matters further... Indeed, the twenty allowable matters constitute quite an extensive list."⁶⁶ For example, the New Zealand *Employment Contracts Act 1991* showed how it was possible to have the equivalent of only 6 or 7 allowable matters.

Or, in other words, economists suggest that Australia focus its wage and employment regulation more on prosperity – and less on everything else.

And there is certainly considerable potential to do more by building on previous reforms in the streamlining of employment contracts. Access Economics recommends that the scope and number of allowable matters be reduced to a core set of eight employment conditions:

1. **Minimum hourly rates of pay** – we suggest two: a junior wage rate and an adult wage rate, common to all awards.
2. **Ordinary time hours of work** (but not including the times when they are performed, rest breaks, notice periods and variations to work hours, as currently required).
3. **Superannuation.**
4. **Annual leave** (but not including loadings, as currently required).

⁶⁶ OECD *Economic Survey Australia*, March 2004, page 98.

5. **Personal/carer's leave.**
6. **Parental leave.**
7. **Public holidays.**
8. **Dispute settling procedures.**

Federal non-discrimination legislation⁶⁷ would continue to operate on a complaints-based system across broad economic and social activities, including the workplace.

The following matters could be dropped as allowable matters in Federal awards.

- ☐ Classifications of employees and skill-based paths.
- ☐ Incentive-based payments of all kinds.
- ☐ Long service leave.
- ☐ Allowances.
- ☐ Loadings for overtime and casual rates.
- ☐ Penalty rates.
- ☐ Redundancy pay.
- ☐ Notice of termination.
- ☐ Stand-down provisions.
- ☐ Jury service.
- ☐ Type of employment.
- ☐ Pay and conditions for outworkers.

Why? Think again in terms of prosperity and fairness. These non-core employment matters:

- ☐ Are very detailed and prescriptive, thereby making them obstacles to a flexible and efficient workplace relations system – and hence obstacles to job creation and productivity growth.
- ☐ Raise issues of fairness, but do not clearly make the system more 'fair' when the latter is considered as the share of the national income pie going to the bottom 20% of Australian families.
- ☐ Would be better negotiated into individual and enterprise agreements rather than being mandated as part of a one-size-fits-all template.

How achievable is such an aim?⁶⁸ An attempt in 2003 to reduce the number of allowable matters to 17 was blocked in the Senate.⁶⁹

⁶⁷ Including *The Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Human Rights and Equal Opportunity Commission Act 1986*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*.

⁶⁸ The model presented here is loosely based on the New Zealand *Employment Contracts Act 1991*, as originally enacted.

⁶⁹ It was proposed to drop long service leave, notice of termination and jury service. It was further proposed to reduce the scope of two other provisions.

Yet a renewed emphasis on employment flexibility requires that employers manage the new found flexibility to the benefit of *both* them and their employees. With the changing dynamics of the labour market arising from a growing relative scarcity of workers, Access Economics would expect that those employers who fail to find mutual benefits of common interest with their employees will eventually come to bear a heavy burden in terms of their ability (or more correctly inability) to attract and retain employees – especially those with higher skills, experience and ability, who are the most productive and valued workers.

4.4 ELIMINATING THE DUPLICATION OF WORKPLACE REGULATION

Workplace relations policy can **boost productivity by eliminating needless duplication of workplace regulation, most notably by harmonising State and Federal workplace relations systems** – preferably reducing them to a ‘single national rail gauge’ so that national regulation of workplace matters suffers less from the current degree of regulation duplication, as well as the resultant games played by participants.

Yes, there is a risk that a single system becomes the wrong system – one still focused on fairness (a focus that has long since failed) rather than prosperity (where the reforms of the past two decades have already had a large payoff).

But Access Economics suspects the passing of time would reduce the risk that a single system would perpetuate the failed policies of the past. History is moving strongly against the old system, with markets voting consistently in favour of less heavily regulated parts of the job market. For example, for every blue collar job created in the past decade, 2¾ white collar jobs have been created. And the rate of growth in part-time employment has been 2¾ times that in full-time employment.

Australia’s dual system of Federal and State industrial laws and tribunals means that larger enterprises, and many smaller ones, have some employees covered by the Federal system and some by the relevant State system. It therefore forces employers into costly dealings with two distinct systems, and can give rise to time-consuming jurisdictional disputes.

Ideally, these wasteful transaction costs could be minimised were Australia to move to a single (or unitary) Federal system.

There are constitutional hurdles to a unitary system. The framers of the Constitution limited the Commonwealth’s specific legislative powers in regard to labour market regulation to conciliation and arbitration for the prevention and settlement of industrial disputes beyond the limits of any one State. Transfer of State powers to the Commonwealth (when the States do not want to give up those powers) requires a Constitutional amendment by way of referendum. In 1926 a referendum that would have given the Commonwealth power to settle all industrial disputes was rejected.⁷⁰

Nonetheless, the Commonwealth is increasingly finding itself central to the regulation of workplace relations.

- ❑ ‘Interstate disputes’ (which are handled by the Commonwealth) are ever more common.⁷¹

⁷⁰ In 1929 a referendum that would have transferred most of the Commonwealth’s powers back to the States was also rejected.

⁷¹ See Des Moore, *The Case for Further Deregulation of the Labour Market*, 1998, at page 152.

- ❑ Commonwealth law – provided it is valid – prevails when there is an inconsistency between it and State law.
- ❑ The High Court's broadened interpretation of the Commonwealth's power to legislate with respect to corporations has added to the Commonwealth's scope to regulate workplace relations.
- ❑ The High Court has ruled that the Commonwealth can use its external affairs powers so as to apply provisions in relevant international treaties to Australia, providing yet another potential opportunity.
- ❑ Victoria has highlighted one path to integration by transferring most of its workplace relations powers to the Commonwealth.⁷² So Victoria is now leaning towards a unitary system (although technically it remains a hybrid). Both South Australia and Western Australia have legislated some aspects of harmonisation.⁷³ And the ACT and NT are already covered by the Federal system.
- ❑ Were NSW to emulate Victoria's transfer to the Commonwealth, then almost two-thirds of the nation would be operating on a quasi-unitary system. That could well encourage the rest of the country to follow suit.

The bottom line here is clear – **almost no matter what your view on workplace regulation, few could champion Australia's current duplicated Commonwealth/State system.**

⁷² Victoria has kept control of public holidays, long-service leave, superannuation and workers compensation. The Commonwealth has taken over conciliation and arbitration, minimum terms and conditions, dismissals and freedom of association.

⁷³ Des Moore, at page 119.

5. RECOMMENDATIONS FOR A STREAMLINED WR SYSTEM

So Australia's workplace relations system is needlessly complex and has outgrown the uses for which it was originally designed. Reforms – such as those of 1993 and 1996 – have been more renovation than renewal, taking as given the shaky foundations of the previous system.

As the OECD says, “The current workplace relations model remains predominantly based on the conciliation and arbitration power and still involves considerable complexity: if anything, the reforms have added to this complexity by putting another layer of formalised bargaining agreements on top of the existing award system.”⁷⁴

Australia can do better. And, in doing so, we can boost prosperity without harming fairness.

How do we do that? Chapter 4 set out three broad recommendations – that we:

- ❑ **Create new jobs** (reduce unemployment and underemployment) by changing the way we set minimum wages – moving that in line with the minimum wage policies adopted in those nations with the lowest unemployment.
- ❑ **Strengthen the link between wages and productivity** by encouraging more direct negotiations at the enterprise level, trimming the number of allowable matters within awards, and reforming the current unfair dismissal legislation.
- ❑ **Harmonise State and Federal workplace relations systems** – preferably reducing them to a ‘single national rail gauge’ so that national regulation of workplace matters suffers less from the current degree of regulation duplication, as well as the resultant games played by participants.

⁷⁴ The OECD, p262, *Innovations In Labour Market Policies, The Australian Way*, OECD 2001.

APPENDIX A: THE WR ACT SIMPLIFIED – ALLOWABLE AWARD MATTERS

The 20 allowable award matters are:

- 1 classifications of employees and skill-based career paths;
- 2 ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
- 3 rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage system;
- 4 incentive-based payments (other than tallies in the meat industry), piece rates and bonuses;
- 5 annual leave and leave loadings;
- 6 long service leave;
- 7 personal/carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave;
- 8 parental leave, including maternity and adoption leave;
- 9 public holidays;
- 10 allowances;
- 11 loadings for working overtime or for casual or shift work;
- 12 penalty rates;
- 13 redundancy pay;
- 14 notice of termination;
- 15 stand-down provisions;
- 16 dispute settling procedures
- 17 jury service;
- 18 type of employment, such as full-time employment, casual employment, regular part-time employment and shift work (though this does not go to limit the number or proportion of employees that an employer may employ in a particular type of employment; or the power to set maximum or minimum hours of work for regular part-time employees)
- 19 superannuation;
- 20 pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises.

APPENDIX B: WHAT IS THE 'SAFETY NET'?

- ❑ Section 3(d)(ii) – "providing the means ... to ensure the maintenance of an effective safety net of fair and enforceable minimum wages and conditions of employment";
- ❑ Section 88A(b) – "to ensure that awards act as a safety net of fair minimum wages and conditions of employment"; and
- ❑ Section 8813(2) – "the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained".

APPENDIX C: AIRC MUST TAKE ACCOUNT OF MINOR ISSUES

The Commission also has to stick to the principles in the *Racial Discrimination Act* 1975, the *Sex Discrimination Act* 1984 and *Disability Discrimination Act* 1992 relating to employment (s.93). It may also insert a model **anti-discrimination** clause in an award (s.89A(8)).

An award or certified agreement can also be referred to the Commission under the *Sex Discrimination Act* 1984 and the Commission must convene a hearing to review the award or agreement. It can then vary the award.

The Commission must also take account of the principles in the **Family Responsibilities** Convention (s.93A) to prevent discrimination against workers with family responsibilities; and help workers to reconcile their employment and family responsibilities.

APPENDIX D: AWAs ARE A SIMPLIFICATION

According to the report *Agreement making In Australia under the Workplace Relations: 2002 and 2003* an AWA must:

- ❑ “satisfy the no-disadvantage test (see box on page 36);
- ❑ have anti-discrimination and dispute resolution procedures provisions, either as prescribed by regulations (otherwise the prescribed model provisions are deemed to apply);
- ❑ not include provisions that prohibit or restrict disclosure of details of the AWA by either party to another person;
- ❑ have a nominal expiry date, that is not more than three years after the AWA commencement date;
- ❑ on being filed with the EA:
 - must be signed and dated by each party, and the signatures must be witnessed;
 - must be accompanied by a declaration by the employer that it contains the necessary provisions (see above), that the employee before signing the AWA was provided with a copy of an information statement prepared by the EA. The declaration must also state whether or not the employer offered an AWA in the same terms to all comparable employees; and
 - the employer must have provided any other information which the EA has indicated is required to be provided;
- ❑ be given to a new employee, at least five days, and, to an existing employee, at least 14 days, before it is to be signed;
- ❑ have been explained to the employee regarding the effect of the AWA, between the time the employee first received a copy of the AWA and the time the employee signed it;
- ❑ have been genuinely consented to by the employee making the AWA; and have been offered, by the employer, in the same terms to all comparable employees, unless the employer did not act unfairly or unreasonably in failing to do so.”

APPENDIX E: CERTIFIED AGREEMENTS

For **certified agreements** a complex six-stage process leads to certification.

First, the agreement must pass the no-disadvantage test.

Second, the employer must have taken reasonable steps to explain the terms of the agreement to all persons to be covered by it (having regard to the individual circumstances that may apply to women, part-time employees, young persons or persons from a NESB).

Third, a valid majority of employees must genuinely approve the agreement or must have genuinely made the agreement. All employees must be given a reasonable opportunity to decide whether they want the agreement, and if the approval is by ballot, a majority of those who cast a valid vote must approve the agreement.

Fourth, the employer must not have coerced any employee not to be represented by an organisation of which they belong in meeting with the employer about the agreement.

Fifth, the agreement must contain a dispute settlement procedure.

Finally, the agreement must specify an expiry date for the agreement (no later than three years from commencement).

APPENDIX F: THE AUSTRALIAN INDUSTRY REGISTER

It keeps a register of organisations, acts as the registry for the AIRC and provides administrative support.

It also publishes decisions, orders and awards of the AIRC and provides advice to organisations on rights and obligations under the WR Act.

The Registry keeps the files and records of the AIRC as well as the rules of the registered organisations and files of the various notifications and returns required to be lodged from time to time in the Registry by the organisations.

Organisations' rules and files can be viewed and copies supplied for a fee.

APPENDIX G: WORLD BANK METHODOLOGY

The IBRD/World Bank 'Rigidity of Employment' index is the average of three sub-indices for the "Difficulty of Hiring", the "Rigidity of Hours" and the "Difficulty of Firing". The detailed composition of these three sub-indices is described as follows:

The '**Difficulty of Hiring**' index measures:

- (i) whether term contracts can only be used for temporary tasks;
- (ii) the maximum duration of terms contracts; and
- (iii) the ratio of the mandated minimum wage (or apprentice wage, if available) to the average value-added per working population.

A country is assigned a score of one if term contracts can be used for temporary tasks, and a score of zero if term contracts can be used for any task. A score of one is assigned if the duration of term contracts is three years or less; 0.45 if the duration is between three and five years; and zero if term contracts can last more than five years. Finally, a score of one is assigned if the ratio of minimum wage to average value added per worker ratio is higher than 0.75; 0.67 for ratios between 0.50 and 0.75; 0.33 for ratios between 0.25 and 0.50; and a score of zero if the ratio is below 0.25. The three sub-indices are averaged and scaled to 100 (with the worst international case scoring 100).

The '**Rigidity of Hours**' index measures:

- (i) whether night work is unrestricted;
- (ii) whether weekend work is allowed;
- (iii) whether the workweek is 5½ days or more;
- (iv) whether the workday can extend to 12 hours or more (including overtime); and
- (iv) whether the annual paid vacation days are 21 days or less.

If the answer to any of these questions is no, the country is assigned a score of one, otherwise a score of zero is assigned. Scores are summed and scaled to 100.

The '**Difficulty of Firing**' index measures:

- (i) whether the redundancy is not grounds for dismissal;
- (ii) whether the employer needs to notify the labour union or the labour ministry for firing one redundant worker;
- (iii) whether the employer needs to notify the labour union or the labour ministry for group dismissals;
- (iv) whether the employer needs approval from the labour union or the labour ministry for firing one redundant worker;
- (v) whether the employer needs approval from the labour union or the labour ministry for group dismissals;

- (vi) whether the law mandates training or replacement prior to dismissal;
- (vii) whether priority rules apply for re-employment.

If the answer to any of these questions is yes, a score of one is assigned; otherwise a score of zero is given. Questions (i) and (iv), as the most restrictive regulations, are given a double weight in the construction of the index. Scores are summed and scaled to 100.

Data used in the IBRD/World Bank calculations are based on a detailed study of employment laws and regulations, available in the NATLEX database (published by the International Labour Organisation), as well as secondary sources including actual legislation and checks with local law firms.

To make the data comparable across countries, several assumptions about the worker and company are made. **The worker:**

- (i) is a non-executive full-time male employee who has worked in the same company for 20 years;
- (i) earns a salary plus benefits equal to the country's average wage during the entire period of his employment;
- (ii) has a non-working wife and two children. The family resides in the country's most populous city;
- (iii) is a lawful citizen who belongs to the same race and religion as the majority of the country's population; and
- (iv) is not a member of the labour union, unless membership is mandatory.

The business:

- (i) is a limited liability company;
- (ii) operates in the country's most populous city;
- (iii) is 100% domestically owned;
- (iv) operates in the manufacturing sector;
- (v) has 201 employees; and
- (vi) abides by every law and regulation, but does not grant workers more benefits than what is legally mandated.

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