PAPER 01

EMBEDDING WORKPLACE COLLABORATION

PREVENTING DISPUTES

BUSINESS COUNCIL OF AUSTRALIA

ABOUT THIS PAPER

The Business Council of Australia (BCA) is an independent leadership group comprising the chief executive officers of 100 of Australia's largest and most economically significant companies. Through research, communication and advocacy, BCA members pursue economic, social and environmental policy outcomes for the benefit of all Australians.

This paper, titled *Embedding Workplace Collaboration: Preventing Disputes*, is the first in a series of discussion papers to be published by the Business Council of Australia exploring more collaborative approaches to workplace relations. It comprises a policy discussion paper written by Associate Professor Anthony Forsyth, Director of the Workplace and Corporate Law Research Group in the Department of Business Law and Taxation at Monash University, titled "Promoting Cooperative Workplace Relations in the New 'Fair Work' System", as well as a foreword containing recommendations by the BCA.

FOREWORD: THE CONTEXT AND THE CHALLENGE

Australia's economic challenges go beyond those arising from the current global financial crisis. Our productivity growth has deteriorated sharply, population ageing will weigh on workforce participation, and globalisation and technological innovation will contribute to new and greater competition. These are potentially significant headwinds to future growth.

The ability of businesses to adapt and respond to these kinds of challenges is fundamental to Australia's future economic prospects. But adaptability alone is insufficient. The speed with which that adaptability can be executed is also important, as demonstrated by the current global financial crisis and the speed with which it has affected international markets.

Having a flexible and market-focused workplace relations system that allows businesses to respond and adapt quickly to changed conditions is an important part of the armoury Australia needs to protect its economic and social prosperity. Our workplace relations laws and system must support and enable productivity and competitiveness if long-term prosperity and fairness are to be assured.

The workplace relations system comprises two elements: the legal/industrial framework, which sets the framework within which businesses conduct relationships with their workforces, and the way in which those relationships are pursued in each business. Although conflict can sometimes lead to innovation, constructive relationships between management and employees that respect differences and build upon common interests are generally believed to contribute to long-term business success.

The BCA has long argued for greater workplace collaboration. BCA research published in the early 1990s highlighted particular structural and institutional characteristics of the Australian industrial relations system that promoted disputation and adversarial workplace relationships. As a consequence, the prevailing management culture was not focused sufficiently on productivity and performance improvement.

The BCA concluded that changes in the legislative and institutional framework, together with changes in management practice and the behaviour of key players, were needed to improve the quality and outcomes of workplace relationships. This has underpinned the BCA's consistent support for legal and industrial frameworks that allow and encourage genuine enterprise-level bargaining.

Much has been achieved by reforms since this early research, with workplaces characterised by greater levels of cooperation than previously. And the benefits of these developments are reflected in Australia's productivity growth of the 1980s and 1990s, the reduced level of disputes and associated losses, the spread of flexible working patterns that have benefited both employers and employees, and the improvements made in workplace health and safety.

But the job of reform is not complete. Not only has the international competition continued to evolve with changes in workplace regulation of competitors and trading partners alike, but the transformation of the industrial climate within Australia is also far from complete. While the structures of the workplace relations system do not predetermine outcomes, they are important in guiding behaviors and setting expectations of future behavior. It is important therefore that all opportunities are taken to ensure that the institutional settings maximise the chances of the behaviors we seek. As argued by Dr Anthony Forsyth in his policy discussion incorporated within this paper, the failure to equip Fair Work Australia or the Office of the Fair Work Ombudsman with a more innovative dispute prevention role represents a missed opportunity.

The BCA believes that further action, both in the institutional settings and in cultural change within the system, is needed to ensure that the Fair Work Act's objectives relating to greater workplace cooperation and productivity-based bargaining are realised. Without action, the potential to use the Fair Work reforms as a major contributor to the next and essential round of productivity growth will be lost. This is at a time when the Australian economy and Australian businesses face serious, immediate medium- and long-term challenges.

This paper is the first in a series planned by the BCA that will take up the themes of cultural change in workplace relations. It concentrates on the continued enhancement of institutional settings. Future papers will take up organisational issues and, in particular, the experience of those businesses that have adopted alternative approaches to the traditional adversarial approaches to workplace relations.

The new *Fair Work Act 2009,* that progressively takes effect from 1 July 2009, seeks to balance fairness for employees, greater workplace cooperation, national competitiveness, and the productivity needs of businesses. These reforms re-establish the importance of collective bargaining and the rights of employees to representation in the bargaining process. The National Employment Standards, together with modern awards, seek to establish a strong base level of conditions to ensure that the quality of life and work–family balance seen as the social norm is assured. To ensure the establishment and future improvement of those standards, they must be grounded in the underlying viability and productivity of business and hence the wealth of the economy.

The *Fair Work Act* is predicated on the assumption that workplace relationships must be built on collaboration, constructive dialogue, and (in the bargaining context) 'good faith'. For many, this is the workplace culture for which they have striven. But at a time of system disruption and attendant uncertainty – and with many others not committed to the ideal of constructive relations – there is a real risk of a return to strongly adversarial and/or centralised approaches. Such a development would threaten the capacity to link productivity and rewards at the enterprise level.

International experience shows that strong institutional and policy support is an important element in assisting a shift to workplace cooperation. The extent of the prescriptive bargaining provisions in the Act could be seen as an attempt to provide such support. However, in reality such prescription will be insufficient to generate a collaborative approach and instead may only operate to contain anticipated conflict.

The way in which the institutions created to oversee the implementation and operation of the new legislation – Fair Work Australia and the Fair Work Ombudsman – are set up and the way they approach their task will be critical to determining the extent to which the objective of constructive workplace relations succeeds. Should they operate on the assumption of adversarial relations, relying on past precedents, practices and activities to interpret and administer the legislation, the potential for ushering in a new era promoting both fairness and productivity will be lost.

The paper provides an overview of how workplace relations agencies in the United Kingdom, Ireland, Canada and the United States have extended their traditional arbitration and/or conciliation roles. Those agencies assist parties to build positive employment relationships, focusing on dispute prevention rather than solely on dispute management.

The BCA recommends that the government look closely at the measures adopted by those overseas agencies and that it undertake a careful evaluation of those initiatives to determine whether they could be adapted to enable Fair Work Australia and/or the Fair Work Ombudsman to facilitate the kinds of systemic and cultural changes so urgently required in Australia.

In the transition to the new 'Fair Work' system, appropriate recognition and support must be given to the cooperation and productivity dimensions of the reform equation. The government's stated commitment to these objectives needs to be matched by properly resourced initiatives aimed at moving workplace relations parties away from the adversarial approaches of the past. We cannot afford to lose the advances already made and we must work together to ensure the productivity growth needed to underpin our quality of life.

PROMOTING COOPERATIVE WORKPLACE RELATIONS IN THE NEW 'FAIR WORK' SYSTEM

POLICY DISCUSSION PAPER FOR THE BUSINESS COUNCIL OF AUSTRALIA

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CONTENTS

1. INTRODUCTION*

Since the mid-late 1990s, there has been a significant shift internationally away from traditional forms of third party intervention by public dispute resolution bodies in respect of workplace disputes. Over this period, dispute resolution agencies in the UK, Ireland, Canada and the USA have increasingly taken on mediation, facilitative, advisory and training functions, among others. These new roles are aimed at preventing workplace disputes from arising, by encouraging employers, employees and unions to adopt 'model' or 'best practice' employment arrangements.

The transformation of public agencies in these four countries, from their past focus on dispute *resolution* to a greater focus on dispute *prevention*, reflects a broader departure from conflict-oriented industrial relations processes in favour of cooperation and partnership. Section 2 of this paper outlines several arguments as to why a similar shift is necessary in the Australian workplace relations system.

The various measures adopted by relevant overseas agencies to facilitate cooperative workplace relations are examined in the Appendix to this paper. This includes analysis of the more successful initiatives, and evidence as to the firm-level and broader economic benefits they have produced.

Section 3 of the paper considers the adaptability of these measures in the Australian context – specifically, how the new institutions created by the *Fair Work Act 2009* can play a role in developing better workplace relationships that will sustain business productivity and competitiveness into the future. Section 4 outlines the paper's conclusions.

2. THE CASE FOR WORKPLACE COOPERATION

Conflict has been a pervasive feature of labour relations in Australia. The traditional conciliation and arbitration system spawned a highly adversarial industrial relations culture, with parties adopting extreme positions in the knowledge that formal tribunal processes would always be available to resolve their disputes. Since the decline of conciliation and arbitration, and the advent of enterprise bargaining, conflict has taken on new guises. Reported levels of strikes and other forms of industrial action have fallen to record low levels. However, the last ten years or so have seen a rise in the incidence of bitter and protracted disputes, mainly centred around bargaining issues and employer resistance to collective bargaining. In a number of cases, judges and tribunal members have observed that the legal framework for bargaining (prior to the Fair Work Act) actually encouraged overt hostility between employers, employees and unions.[1]

The government is seeking to move away from the conflict-based approach of the past, replacing it with a new workplace relations system aimed at promoting cooperative and productive workplace relations (see 3.1 below). Part of the rationale for this shift is to avoid the negative effects on productivity arising from drawn-out disputes of the type discussed above (primarily, through the new 'good faith bargaining' provisions; see 3.3(iv) below).

A broader case can be made out for the transition to a more collaborative model of workplace relations in Australia. In addition to the evidence of economic and firm-level benefits of initiatives adopted by public agencies overseas to promote workplace cooperation (see 3.2 below, and the Appendix), the 'business case' for partnership-style/cooperative employment relations is well recognised internationally. For example, a 2008 study showed that cooperative employment practices (such as employee participation and 'high involvement' strategies) are positively associated with employee attraction, retention, job satisfaction and commitment, business innovation, and (ultimately) improvements in the profitability and sustainability of firms:

> 'The quality of the industrial relations climate within a workplace, and the development of a partnership approach to employment relations may provide the pre-conditions for the implementation of large scale change and organisational innovations which would otherwise create conflict in a more adversarial climate.' (Gahan et al., p. 86)[2]

There is also evidence of 'unmet demand' for cooperative relationships between management and unions in Australia, at least on the part of unionised employees.

The Australian Workplace Representation and Participation Survey, carried out by Teicher et al., found that 82% of union members surveyed felt management should cooperate more closely with unions; while 70% agreed that unions should be more focused on the success of the organisation, and 62.2% thought that unions should cooperate more with management. On the other hand, Thompson and Booth/CoSolve's recent evaluation of the 'Smart Workplaces' initiative in Queensland found that:

> '... considerable work will need to be done before there is any widespread appreciation amongst the Queensland (and Australian) workplace parties – employers, employees and unions – of the value of the cooperative workplace model. Employers see little scope for a positive union contribution to their businesses, while unions still operate largely within a conflict model of industrial relations.'

This highlights the need for the government to take definite measures, to match its rhetorical commitment to workplace cooperation with robust institutional and regulatory support – along the lines outlined in this paper.

3. THE AUSTRALIAN CONTEXT: PROMOTING COOPERATIVE WORKPLACE RELATIONS THROUGH FAIR WORK AUSTRALIA AND THE FAIR WORK OMBUDSMAN

3.1 INSTITUTIONAL FRAMEWORK OF THE NEW 'FAIR WORK' SYSTEM

The Rudd Government's commitment to 'cooperative and productive workplace relations' (*Fair Work Act 2009*, section 3) is to be advanced by two new institutions that commenced operations on 1 July 2009: Fair Work Australia (FWA) and the Office of the Fair Work Ombudsman (FWO).

Fair Work Australia's role is to oversee key aspects of the new system, including modern awards, minimum wage-setting, enterprise/good faith bargaining, industrial action, union right of entry, unfair dismissal and dispute resolution. The government intends FWA to be a modern, user-friendly body that is not overly formal, legalistic or adversarial. FWA must perform its functions and exercise its powers in a way that promotes harmonious and cooperative workplace relations (*Fair Work Act*, section 577(d)). While it is not given any specific function in that respect, FWA is required to provide assistance and advice about its role and activities and promote public understanding of them (section 576(2)(b)).

The Deputy Prime Minister and Minister for Employment and Workplace Relations recently stated, in her address to the Inaugural Sitting of FWA, that:

> '... for those who need its help, [FWA] has the opportunity under the *Fair Work Act 2009* to find new ways of working with employers, employees and their representatives to foster cooperative, constructive and productive workplace cultures.
>
> ... [FWA] can be creative in how it assists employers and employees. It can tailor the means by which it assists parties to bargain for the first time or helps [them] to move on from an adversarial or destructive relationship.'

The Fair Work Ombudsman is primarily responsible for compliance with the *Fair Work Act* and fair work instruments (i.e. modern awards, enterprise agreements, etc.). This is to be achieved through a combination of educative/preventative, cooperative/voluntary, and traditional (investigative/prosecution) enforcement strategies. The FWO is also charged with the function of promoting harmonious and cooperative workplace relations, by providing education, assistance and advice to employees, employers and organisations (*Fair Work Act*, section 682(a)).

The educative and advisory aspects of the FWO's role involve providing general information (e.g. fact sheets, guidance notes, 'best practice' guides), targeted education campaigns for specific industries or groups of employees, and responding to specific requests for advice or information. The FWO may also provide training programs in conjunction with some of the enforcement mechanisms available under the *Fair Work Act* (e.g. where an employer agrees to participate in such a program in an enforceable undertaking given in response to an alleged breach of a fair work instrument, rather than facing court proceedings).

Education about the new system is also being provided by employer, union and community organisations, under the government's $12.9 million 'Fair Work Education and Information Program'.

3.2 GIVING FWA AND THE FWO AN INNOVATIVE DISPUTE PREVENTION CAPABILITY

In the Explanatory Memorandum to the *Fair Work Bill,* the government pointed to the example of the Advisory, Conciliation and Arbitration Service (ACAS) in the UK as the basis for asserting 'that the changes to be implemented with the establishment of FWA are likely to result in economic benefits for Australia.' The National Institute of Economic and Social Research's 2007 report on the economic impact of ACAS (see A.2 in the Appendix below) was relied upon to support this assertion.

However, the government also stated that: *'While FWA will not have the same expansive dispute prevention capacity as ACAS*, it will provide information and advice to employers and employees and it will have a greater capacity to mediate disputes than the AIRC [Australian Industrial Relations Commission].' (Emphasis added).

The decision not to equip FWA, or the FWO, with a more innovative dispute prevention role represents a missed opportunity to move away from the traditional Australian model of industrial tribunals that are mainly focused on resolving disputes brought before them by the parties. In contrast, a number of the programs administered by public dispute resolution agencies in the countries examined in the Appendix to this paper stand out as particularly successful examples of regulatory support for dispute prevention and, in turn, workplace cooperation and partnership.

ACAS has by far the best track record in this respect. Its dispute prevention programs are highly developed and varied, covering advice, training, mediation, benchmarking, and 'hands on' assistance within firms. There is also considerable evidence that ACAS's programs are highly regarded by employers, employees and unions; that they are effective in improving employment relationships at the workplace; and that they have produced many positive outcomes, including significant economic benefits at both the firm and national levels.

The Advisory Services Division of Ireland's Labour Relations Commission (LRC) also provides a useful model for structuring an integrated 'menu' of dispute prevention initiatives (although the evidence to date does not indicate the same level of take-up/effectiveness of these services as for ACAS). The programs run by the Federal Mediation and Conciliation Services (FMCS) in both Canada and the USA are heavily focused on union–management relationships, and have been successful in transforming traditionally adversarial collective bargaining practices through interest-based negotiations and other more cooperative approaches.

These programs should be more closely examined by the Australian Government, and adapted to form part of a specific dispute prevention function of the FWO, supported by FWA. This will enable these bodies to play a central role in developing better workplace relationships, which will contribute to business productivity and national competitiveness.

3.3 IMPLEMENTATION ISSUES

(i) Which Agency Should Be Responsible?

Ideally, the government should establish a specialist, properly resourced advisory division within FWA to carry out dispute prevention activities and promote workplace cooperation. This would require a legislative amendment to add these roles to the designated functions of FWA in section 577 of the *Fair Work Act.* It would also reflect the model that has worked well in the overseas agencies examined in this paper – i.e. locating information/advisory services within the same body that provides traditional dispute resolution services to the parties. For example, much of the dispute prevention work of ACAS and the LRC involves establishing and developing relationships with industrial relations parties, in order to address the root causes of workplace problems and avoid the need for later recourse to dispute resolution or enforcement agencies. At the same time, it is their dispute settlement work that often enables ACAS and the LRC to identify difficulties between parties that can be addressed by their dispute prevention services.

However, the current statutory limits on FWA's functions limit its capacity to act as the agency *primarily* responsible for fostering constructive workplace relationships. In contrast (as indicated in 3.1 above), the FWO is specifically charged with the function of promoting harmonious and cooperative workplace relations. As part of its focus on preventative and voluntary compliance, the FWO is also intended by the government to be the main source of education, assistance and advice to the parties about the new workplace relations system. It should therefore take the lead role in driving workplace cooperation initiatives, reflecting the new Fair Work Ombudsman's recently-stated objective of 'helping Australians to develop more positive working cultures that help build sustainable improvements in productivity'. To enable this to occur, the government needs to ensure that the FWO's educative/advisory role is focused as much on promoting workplace cooperation and dispute avoidance as it is on compliance, through appropriate structural, staffing and funding arrangements. The FWO should also be supported by FWA in carrying out dispute prevention functions, to the extent that FWA's statutory functions and powers will allow it do so. For example, FWA could perform its dispute-settlement role in a way that promotes workplace cooperation, by referring the parties involved in a matter before it to the advisory/education services of the FWO. This type of approach fits with the government's stated intention to have FWA and the FWO operating as practically integrated agencies, providing seamless service delivery.

(ii) Planning, Awareness Building and Evaluation

International experience suggests that significant planning needs to be undertaken before any new initiatives supporting collaborative employment relations are introduced. In the Australian context, this would involve the FWO and FWA examining the successful programs implemented by overseas agencies, assessing their adaptability, and engaging with major stakeholders in the process of implementation to ensure that the services offered meet their real needs. Attention would also need to be given to publicising the new programs, particularly among key target groups. Finally, ongoing monitoring and evaluation of the effectiveness of the programs would have to be undertaken. Teague and Thomas's 2008 study of the introduction of new initiatives by FMCS Canada, ACAS and the LRC provides especially helpful insights in all of these areas.

(iii) Staffing and Resources

Another important issue highlighted in the Teague and Thomas study is the need for advisory bodies to be staffed by highly-skilled and experienced personnel; for example, they identify a strong link between the quality of the LRC's staff (knowledge levels, commitment, etc.), and its high standing and reputation in the Irish industrial relations community. For the FWO and FWA, this means ensuring that there is firm support from government in terms of resources for appropriate staffing levels, training and career development. Ideally, the staff should be drawn from a range of existing agencies (e.g. AIRC, Workplace Ombudsman, Workplace Authority), and open recruitment (e.g. from practitioner constituencies), to ensure a mix of experience and approaches is brought to the advisory function. Close links should also be developed with staff in overseas agencies with established advisory services, to facilitate the exchange of knowledge and best practice.

(iv) Preparing for Good Faith Bargaining

The government maintains that the new collective bargaining provisions of the Fair Work Act, based on good faith bargaining, will promote cooperative workplace relationships leading to improvements in productivity and innovation (see for example the objective stated in section 171). The good faith bargaining requirements are also expected to facilitate improved communication between bargaining representatives, and thereby reduce the likelihood of industrial action.

However, for good faith bargaining to have such transformative effects, significant resources will need to be channelled into changing Australia's adversarial bargaining culture and the 'positional' mindsets of the parties (see further Gailey; Schneider and Ralph; Thompson and Booth/CoSolve). As the Director of FMCS USA, Arthur Rosenfeld, stated in the agency's 2007 *Annual Report*:

> 'Building a new labor-management model based on cooperation, trust and joint problem-solving requires a sustained level of effort. Changing long-held attitudes and behavior is always difficult, but I would argue that the complexity of the issues and the stakes that both sides face today demands a new way of thinking.'

More recently, he has argued that the 'tough times' wrought by the global financial crisis call for 'labor–management collaboration, not confrontation' (FMCS USA, 2008 *Annual Report*).

The initiatives adopted by FMCS USA, FMCS Canada, and (more recently) the LRC and ACAS to promote interest-based, 'mutual gains', and other cooperative approaches to bargaining should be closely considered for adaptation as part of the FWO/FWA's support programs for the transition to good faith bargaining in Australia. This will help the workplace relations parties move beyond a simple compliance-oriented approach to good faith bargaining obligations, instead using the new laws to build sustainable, productive relationships.

(v) 'Transplanting' Overseas IR Models

Finally, a brief caution should be noted on the issue of 'transplanting' approaches adopted overseas to the Australian context. Difficulties can arise in attempting to transfer laws and institutional models from one industrial relations system to another, because they are embedded in the specific economic, political and social contexts of their countries of origin. Put simply, what works in, for example, Ireland or the UK, will not necessarily work as well in Australia. That said, it is suggested in this paper that the dispute prevention initiatives adopted in the UK, Ireland, USA and Canada may transfer quite well to Australia – because these overseas countries all share a history of adversarial industrial relations, and have enjoyed some success in experimenting with more cooperative approaches.

4. CONCLUSIONS

The key conclusion of this paper is that a focused delivery mechanism is needed to assist in achieving the government's stated objectives for the new 'Fair Work' system of workplace regulation: fairness for employees, greater workplace cooperation, national competitiveness, and the productivity needs of businesses. FWA and the FWO, as presently conceived, could contribute to achieving these objectives. However, the international evidence suggests that giving the FWO an explicit, innovative and proactive role in promoting workplace cooperation – supported by FWA – would produce significant benefits for both workplaces and the national economy.

In addition to examining the new roles being played by public dispute resolution agencies, the government should consider other initiatives that have been adopted internationally to promote harmonious and cooperative workplace practices. In particular, the institutional and policy support for social partnership in Ireland and New Zealand[3] further illustrate the beneficial impacts that can flow from public investment in developing national, industry and workplace-level collaboration (see further Forsyth and Howe, 2008).

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* Selected references are provided in the text and at the end of this paper; further references can be found in the published version of this research: Anthony Forsyth and Holly Smart, 'Third Party Intervention Reconsidered: Promoting Cooperative Workplace Relations in the New 'Fair Work' System' (2009) 22 *Australian Journal of Labour Law* (forthcoming).

[1] See for example *National Workforce Pty Ltd v AMWU* [1998] 3 VR 265 at 278; *CFMEU v Coal and Allied Operations Pty Ltd* (1999) 93 IR 82 at 88-89; *BHP Coal Pty Ltd v CFMEU* (AIRC, Bacon C, 17 April 2001, PR903492) at [60–64].

[2] Gahan et al. (2008). This study examined the contribution of fair and cooperative employment practices to business performance.

[3] Ireland: through the National Centre for Partnership and Performance, National Workplace Strategy and Workplace Innovation Fund; New Zealand: for example, through the Partnership Resource Centre, Workplace Productivity Project, and Partnerships for Quality in the public sector.

APPENDIX

INITIATIVES ADOPTED BY PUBLIC AGENCIES IN UK, IRELAND, USA AND CANADA TO PROMOTE WORKPLACE COOPERATION

A. UK: ADVISORY, CONCILIATION AND ARBITRATION SERVICE (ACAS)

A.1 Dispute Prevention Services

ACAS has a statutory duty to promote the improvement of industrial relations in the UK, and interprets this objective as follows:

> 'Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance. ...
>
> We help prevent or resolve both large-scale and individual disputes by providing a range of services such as conciliation, mediation and arbitration.'

ACAS carries out two main types of dispute settlement work. First, it offers conciliation services on a voluntary basis for collective labour disputes between unions and employers (e.g. about negotiations over pay and conditions, union recognition, and redundancies). ACAS is involved in the resolution of most high-profile industrial disputes in the UK.

Secondly, ACAS provides conciliation services in individual employment rights disputes/Employment Tribunal (ET) claims, such as unfair dismissal/disciplinary matters, discrimination/ sexual harassment cases, breach of contract, minimum wage and redundancy pay claims. Under legislative reforms effective from 6 April 2009, ACAS has been given an expanded role in pre-claim conciliation of these claims (with additional government funding of up to £37 million in 2008–2011); and greater weight is now attached to compliance with the revised ACAS Code of Practice on Dispute Resolution.

Dispute prevention has become an increasingly important area for ACAS, reflecting the changing context of employment relations as employers seek assistance in managing their human resources more effectively. The following are its main dispute prevention activities:

- *Advice*: ACAS operates a national telephone helpline for workplace-related enquiries from employers, employees and their representatives, and the 'Equality Direct' helpline. Information and advice are also provided through ACAS's website, including interactive training packages and a range of publications, guidelines and factsheets on various employment issues.
- *Training*: ACAS training includes a series of public events designed to help parties keep up to date with good employment practices and new employment legislation, covering topics like conflict management, discrimination, absenteeism, work–life balance and (most recently) managing through the recession. The agency also provides customised training, on request, to address particular issues that workplaces are facing (e.g. combating harassment and bullying, improving information and consultation processes). While many ACAS services are provided free of charge, training is one of the main areas in which it has introduced 'charged-for services' in recent years.
- *Workplace Projects*: ACAS advisers assist employers and employees to get to the root causes of workplace problems, through workshops and joint working group techniques. The types of issues that are focused on in Workplace Projects include improving working relationships, communications/consultation, pay and reward systems, management of change, and collective bargaining/trade union recognition.

  Mediation: the mediation services offered by ACAS are designed for conflicts between employers and individual employees, or between individuals or groups of colleagues. ACAS also helps enterprises to embed a culture of dispute prevention, by designing, implementing and evaluating workplace mediation arrangements, and training in-house mediators (the Certificate in Internal Workplace Mediation).
- *The ACAS Model Workplace:* a diagnostic tool that businesses can adapt as a benchmark for improving employment relationships. It is based on three key principles: (1) putting the right systems/procedures in place (e.g. in relation to discipline, grievance resolution, performance pay, health and safety); (2) developing good relationships between managers and employees (e.g. by establishing processes to encourage and reward employee initiative, flexible working hours, skills development); (3) creating a 'climate of trust' (e.g. through joint working or consultative groups).
- *Research:* ACAS conducts employment relations research, both independently and in partnership with other organisations.

ACAS ACTIVITIES	2004–05	2005–06	2006–07	2007–08
Conciliation in collective disputes (requests)	1,123	952	912	896
Conciliation in individual disputes	81,833 ET claims 4,983 non-ET claims	109,712 ET claims 31,576 non-ET claims	105,177 ET claims 57,476 non-ET claims	151,249 ET claims 51,935 non-ET claims
Advisory visits	1,923	2,002	1,343	1,972
Workplace Projects started	331	245	221	237
Training sessions	2,989	2,964	2,707	2,500
Calls to ACAS national helpline	880,787	908,553	839,335	885,353
Calls answered by Equality Direct	4,736	5,061	6,181	5,238

Source: ACAS, *Annual Reports*, 2005/06, 2006/07, 2006/08

A.2 ACAS: Effectiveness of Services

ACAS's workload in recent years has seen a significant increase in conciliation of individual employment disputes, declining involvement in collective disputes, and continued strong demand for its information and advisory services.

ACAS has conducted and commissioned a significant amount of research on customer perceptions and satisfaction levels, and the effectiveness of its many services. Its latest *Annual Report* provides the following performance results for 2007–08:

- collective disputes conciliation: 90% settlement rate (including large-scale disputes at Royal Mail and Fujitsu Services)
- conciliation in individual disputes: 75% of total potential hearing days saved
- publications on good practice: 90% of customers believe they are high quality, clear and easy to understand
- Workplace Projects: 81% of managers and employee representatives reported improvements in employment relations
- training: 96% of delegates satisfied or very satisfied; 97% would recommend ACAS workplace training to others; 99% satisfaction for trainees in the Certificate in Internal Workplace Mediation
- national helpline: 87% of callers able to take clear action following the call (2007 data)
- Equality Direct and other equality/diversity services: 92% of customers found ACAS advisers good or very good at helping them to decide best way forward.

A 2004 study by Dix and Oxenbridge concluded that: 'Acas' strength lies in bringing the parties to the table, both to resolve disputes and also to develop innovative strategies for improving workplace effectiveness.' More recently, Stuart and Lucio carried out an in-depth, empirical examination of ACAS Workplace Projects in five National Health Service Trusts.

They found that ACAS intervention was significant in helping parties move from poor/adversarial employment relations, to a new climate of cooperation to foster cultural and organisational change. Further examples of successful ACAS Workplace Projects are provided on the agency's website.

NIESR REPORT SHOWS SIGNIFICANT ECONOMIC IMPACT OF ACAS

In 2007, the National Institute of Economic and Social Research published a report on the economic impact of ACAS's services on the UK economy in the year 2005–06. The report showed that for every pound of taxpayers' money spent by ACAS, over £16 is returned, generating benefits worth almost £800 million a year across UK businesses, employees and the economy.

Other key findings of the NIESR Report:

- ACAS's dispute resolution work produced £313 million of savings to the economy, while the advice and guidance provided to employers and employees contributed a further £475 million
- Collective conciliation: benefit/cost ratio = 98.8
  - substantial benefits for businesses whose activities are disrupted by disputes, and customers of disputing businesses
  - longer-term benefits for parties directly involved in disputes, e.g. improved employee morale/ communication, changes to working practices, speeding up negotiations
- Individual conciliation: benefit/cost ratio = 6.4
  - lower legal fees and recruitment costs for employers, reduced management time spent on cases
  - employees receive less compensation, but gain in earnings and saved legal fees
  - savings to taxpayers from fewer cases proceeding to hearing

- Website and publications: benefit/cost ratio = 26.7
  - savings in management time in developing policies/procedures, and avoiding unnecessary mistakes, grievances and ET claims
- Workplace Projects: benefit/cost ratio = 55.3
  - productivity improvements of up to 20%, improved quality of goods and services, lower absenteeism, fewer grievances/disciplinary cases
- Open access training: benefit/cost ratio = 17.7
  - avoidance of ET claims, improved attendance, reduced disciplinary issues
- ACAS helpline: benefit/cost ratio = 53.1
  - savings to employers (e.g. management time, legal costs, unnecessary turnover), employees, third parties and taxpayers
- in addition to the direct impact of ACAS during 2005–06 measured in the report, further long-term improvements in productivity and investment can be expected as a result of ACAS's contribution to building better relationships in the workplace (e.g. higher productivity, changes in working practices, improved customer service, lower absenteeism, and employee-initiated innovations)

Source: Pamela Meadows, *A Review of the Economic Impact of Employment Relations Services Delivered by Acas,* National Institute of Economic and Social Research, November 2007

B. IRELAND: LABOUR RELATIONS COMMISSION (LRC)

B.1 Dispute Prevention Services

LRC's Mission is: 'To promote the development and improvement of Irish industrial relations policies, procedures and practices through the provision of appropriate, timely and effective services to employers, trade unions and employees'. The agency's key strategic objectives for 2008–2010 include:

- developing positive management and employee engagement on the wider agenda of sustaining quality employment practices in Ireland; and
- developing within each of the LRC's services an improved capacity for dispute resolution through sharing with clients mutual approaches towards positive, improved and continuous dispute resolution processes and structures.

LRC is structured into four service areas/divisions:

1. Conciliation Service: provides voluntary, free and informal conciliation of collective disputes arising between employers and unions, e.g. in collective bargaining negotiations, disciplinary and grading disputes, and work changes/company restructuring. LRC conciliation often adopts features of traditional/adversarial bargaining approaches, but is increasingly based on flexible, problem-solving strategies utilising due process and dialogue to achieve effective dispute resolution.
2. Rights Commissioner Service: investigates and makes recommendations/findings on disputes and grievances referred by individuals or small groups of workers under relevant employment rights legislation, e.g. relating to leave entitlements, minimum wage breaches, and unfair dismissals.
3. Workplace Mediation Service: a specialist service offered to provide quick and effective resolution of internal workplace conflicts involving individuals or small groups of employees, e.g. interpersonal disputes, breakdown in working relationships, or other issues that have not yet developed into a Rights Commissioner claim (with the aim of preventing this from happening).
4. Advisory Services Division: provides a range of free services to assist employers, employees and unions to build and maintain positive working relationships, and to develop effective industrial relations practices and structures that meet their needs. These services include:

- *IR Audits:* where there are identified workplace problems, LRC examines existing practices/procedures and conducts surveys of employee and management attitudes. It then provides a report outlining a change agenda and recommended improvements, assistance with implementation, and post-report monitoring.
- *Preventative Mediation/Facilitation*: LRC assists parties who anticipate future workplace difficulties, including advising on and developing dispute and grievance procedures, and providing guidance about implementing new work practices or other measures to enhance competitiveness.
- *Frequent User Initiative*: LRC explores with parties the reasons for their frequent use of its dispute settlement services (e.g. for bullying or harassment issues), and how their relationships can be improved to avoid this.
- *Joint Working Parties*: LRC chairs joint meetings of managers and employee representatives aimed at agreeing upon and implementing solutions to workplace problems.
- *Codes of Practice*: LRC develops statutory codes to promote 'best practice' approaches in workplaces to issues such as grievance and disciplinary processes, part-time work, rest periods, workplace bullying, voluntary dispute resolution, and (most recently) information and consultation.

LRC ACTIVITIES	2004	2005	2006	2007
Conciliation in collective disputes (requests)	1,930	2,054	2,095	1,926
Rights Commissioner Service (referrals)	4,749	5,598	7,179	9,077
Workplace Mediation Service (cases)	[commenced in 2005]	[commenced in 2005]	24	[figure not available]
Advisory Services Division:				
- IR Audits	6	6	13	10
- Joint Working Parties	10	11	11	10
- Preventative Mediation (projects)	11	24	30	24
- Frequent User Initiative (employers contacted)	6	[figure not available]	24	10
- Voluntary Dispute Resolution (referrals)	73	78	82	25
- Advice on Good Practice (cases)	3	5	10	8
- Training Services	[figure not available]	[figure not available]	21	16
- Visits to LRC website	" "	185,478	280,139	350,000

Source: LRC, *Annual Reports*, 2004, 2005, 2006, 2007

B.2 LRC: Effectiveness of Services

The figures above (and other evidence) point to a discernible shift away from use of LRC's traditional services for resolving collective labour disputes (i.e. the Conciliation Service), with a significant increase in notifications of individual employment rights disputes (i.e. to the Rights Commissioner Service). In comparative terms, however, there has been limited take-up of the services offered by the Workplace Mediation Service and the Advisory Services Division.

The LRC's effectiveness in conciliating collective disputes is well established, and it has considerable standing and credibility among the social partners in Ireland. For example, 89% of respondents in a 2005 User Satisfaction Survey indicated that they were satisfied or very satisfied with the LRC Conciliation Service.

The Conciliation Service secured settlements in 81% of cases referred to it in 2006, and in 2007, 80%. The year 2007 saw a continuation of the pattern of rising LRC involvement in public sector disputes (e.g. in the health and education sectors, Local Authorities and the Irish Prison Service), along with some major disputes in the semi-state sector (e.g. An Post, the DAA/Shannon Airport and the Irish Aviation Authority).

The Conciliation Service has recently moved into proactive conflict management through its 'Working Together' projects in the public sector, which aim to help parties wanting to shift away from protracted adversarial bargaining in dealing with public service modernisation. These projects, and other forms of preventative/dispute avoidance activity, increasingly involve the Conciliation Service in joint work with the LRC's Advisory Services Division.

The 2005 User Satisfaction Survey found that 81% of respondents were satisfied/very satisfied with the Advisory Services Division; 12% were neutral; and only 7% were dissatisfied. More recent data from an LRC Client Survey in 2007 showed that:

- clients perceive the Advisory Service to be 'independent and objective', and that it 'provided useful help to parties dealing with breakdowns in relationships'
- clients believe access is 'quicker to the Advisory Service than it is to the Conciliation Service', and that the Advisory Service 'give[s] more time to issues and achieves a deeper understanding of the change agenda'
- the Advisory Service was considered '[p]articularly good at handling complex issues through the establishment and chairing of joint working parties'
- while unions were more positively disposed towards the Advisory Service than managers, companies that had used it in cases of poor industrial relations or dispute situations reported positive outcomes
- 'some employers 'shy away' from the Advisory Service seeing it as part of the civil service and as intrusive'
- there was a low level of awareness of Advisory Service functions among smaller businesses.

Over time, according to Teague and Thomas (2008), the LRC's Advisory Services Division:

> '... has forged a strong identity for itself, premised on an integrated and high-quality range of services, which are focused on building and maintaining positive partnership-style working relationships and enhancing problem-solving capacity, so as to enhance the well-being of the enterprise and to assist in employment creation and retention.'

They argue that, overall, the LRC: 'has gradually, and successfully, evolved into a key public institution for the resolution of employment disputes and the promotion of co-operative, stable management-union/employee interactions within the Irish labour market.'

C. CANADA: FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS CANADA)

C.1 Dispute Prevention Services

In addition to providing dispute settlement services to assist parties in collective agreement negotiations, FMCS Canada places a significant emphasis on the prevention of labour disputes during the life of an agreement. It offers an extensive range of preventive mediation and grievance mediation services, and manages the Labour–Management Partnerships Program.

Through its *Preventive Mediation Program*, FMCS Canada provides the following services (which must be jointly requested by union and employer parties, and are provided free of charge):

- training workshops on Interest-Based Negotiation, Joint Problem-Solving, Grievances and Negotiation Practices
- analysis and improvement of parties' grievance resolution procedures
- facilitators/mediators to assist in negotiations and the resolution of conflicts
- the Relationship by Objectives Program, enabling parties to redesign labour relationships that have deteriorated
- Grievance Mediation as an informal alternative to arbitration
- assistance with change management and organisational restructuring.

The *Labour–Management Partnerships Program* provides seed funding for innovative projects, designed jointly by employers and unions, to improve labour–management relationships and 'new ways of working'. As well as leading to better relations between the funded parties, the projects must also lead to practical final results that will be useful for other workplaces. Funding of up to CAD$100,000 per project is available over a maximum two-year period.

C.2 FMCS Canada: Effectiveness of Services

FMCS Canada provided mediation and conciliation assistance in 269 collective bargaining disputes in 2005–06, and settled 97% of these cases without a work stoppage occurring. FMCS mediation occurs in critical sectors of the Canadian economy, such as rail, road and air transport, shipping, banking and telecommunications. In 2005–06, FMCS was involved in key bargaining disputes relating to communications and broadcasting employees, railway workers and air traffic controllers.

Results from a 2002 FMCS Canada survey demonstrated very high levels of client satisfaction with the quality of services provided through the Preventive Mediation Program. An evaluation of this Program by the Organization of American States found that:

> 'While it is difficult to assess the number of collective bargaining disputes which have been averted due to preventive mediation efforts, it is commonly believed among industrial relations experts that constructive union–management relationships result in fewer work stoppages and increased productivity.'

Human Resources and Social Development Canada carried out a comprehensive evaluation of the Labour–Management Partnerships Program over the period 1997–2002, which found that:

- participants in the Program considered it to have produced substantial (60%) or some (34%) benefits for the quality of labour–management relations
- key outcomes included improved levels of trust, enhanced communications, reductions in long-standing difficult relationships, lower levels of absenteeism and increased employee participation in decision-making
- the Program also assisted in preventing and/or resolving ongoing and imminent labour disputes, and reducing numbers of official grievances.

Based on these findings, Teague and Thomas (2008) observe that:

> 'The positive outcomes generated by the LMPP clearly demonstrate the potential for public policy to achieve tangible improvements in organisational performance and the employment relations environment, through the provision of targeted support, designed to encourage management and unions to explore new ways of working together.'

D. USA: FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS USA)

D.1 Dispute Prevention Services

Although collective bargaining mediation is FMCS USA's core activity and its most publicly visible work, 'promoting the development of sound and stable labor–management relationships' and 'fostering constructive joint processes to improve labor–management relationships, employment security and organizational effectiveness' are also key components of its mission.

FMCS USA seeks to achieve these objectives through its various *Relationship-Development and Training* programs, which cover many topics including:

- Alternative Bargaining Processes (interest-based bargaining and alternative dispute resolution)
- Labor–Management Partnership Building (including orientation to joint labor–management initiatives, design and establishment of labor–management committees, and committee effectiveness training)
- Consensus Decision Making and Team Building
- Repairing Broken Relationships (through Relationship by Objectives strategies).

These programs involve FMCS mediators working with parties to enhance joint problem-solving and decision-making capabilities, overcome barriers to quality and productivity, manage change collaboratively, jointly address work design and enhance employee job satisfaction and employment security. In addition, the *FMCS Institute for Conflict Management* provides more general skills training and education in conflict resolution and conflict management theories and practice.

Successful labor–management committees are also supported through FMCS USA's *Labor–Management Grants Program*. Funding is available to assist with setting up and maintaining joint committees at the workplace, community, industry or sectoral levels, with a total of USD$650,000 available for these projects in fiscal year 2009.

FMCS USA mediators perform a wide range of *outreach* activities to increase public knowledge of the agency's work, including conference and seminar presentations, non-bargaining meetings with union and management representatives, and meetings with local and state officials to offer FMCS services.

FMCS USA ACTIVITIES	FISCAL YEAR 2005	FISCAL YEAR 2006	FISCAL YEAR 2007	FISCAL YEAR 2008
Collective Bargaining Mediations	5,215	5,484	5,329	4,836
Grievance Mediations (i.e. disputes arising under collective agreements)	1,675	1,625	1,753	1,728
Workplace Mediation Service (cases)	[figure not available]	2,473	2,172	2,066
Employment Mediations (i.e. for federal, state and local governments, and private sector)	1,446	1,022	1,060	1,200
Relationship-Development and Training programs	2,257	2,445	2,548	2,356
Outreach cases	3,513	3,859	3,847	3,347

Source: FMCS USA, *Annual Reports*, 2006, 2007, 2008

D.2 FMCS USA: Effectiveness of Services

The dispute prevention activities of FMCS USA constitute an increasing part of its workload. The organisation's *Strategic Plan 2008–2013* indicates that: 'On average, [FMCS] mediators are actively involved in 30 collective bargaining negotiations each year and participate in another 50 individual mediation, educational or outreach cases.'

FMCS USA's collective bargaining mediation services are highly effective, resulting in the settlement of 86% of cases in 2007 and 87% in 2008. In both years, FMCS mediated disputes in every major industry in the country. The agency calculated savings to the parties as a result of the avoidance of work stoppages through FMCS mediation at USD$1,271,762,000 in 2007, and $654,096,000 in 2008. In 2005, the Employment Policy Foundation estimated that FMCS 'saved American workers and businesses more than $9.0 billion' between 1999 and 2004.

There is limited publicly available information regarding the specific benefits and effectiveness of FMCS USA's dispute prevention activities. Its website has numerous case studies showcasing successful examples of labor–management partnering, for example at Minnesota Hospitals, and Frederick County Maryland (Emergency Services Division); and Relationship-Development and Training programs, for example in the City of Chicago Fire Department, Levi Strauss (Henderson Nevada Sky Harbor Distribution Facility), and Ameren (a large St Louis-based electrical utility).

While these case studies are somewhat dated, they report benefits to the parties involved such as better internal conflict resolution processes, significant reductions in reported grievances, more effective committee operations enabling economic challenges to be confronted cooperatively, and improved safety procedures. FMCS USA's current Strategic Plan (2008–2013) commits the agency to increased customer satisfaction with its educational products and services, and constantly seeking to improve its core curriculum through program evaluations.

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