

Australia's Workplace Law Summit - Day 2 (Feb 23) Keynote Summaries

Session	Summary
<p>The economy and the conundrum of productivity Chris Richardson - Economist</p> <p>The legislative changes are complex and reactions from practitioners varied, but what does it mean for the economy?</p>	<p>Living standards in Australia are driven by three things: productivity, participation, and what the world gives us for what we've got. Economist Chris Richardson considered the impacts of the legislative changes on the economy. In the modern workplace, flexibility is more valuable than ever for two key reasons: rapidly changing technology means we need the skills to keep up, while the number of "shocks" we are experiencing (take COVID-19 as an example) requires agility to respond and adapt.</p> <p>The latest changes to the Fair Work Act in the Closing Loophole (no.2) legislation, while there is a genuine argument in favour for each change individually, as a group, reduce flexibility. Take the amendments to intractable bargaining declarations as an example. The incentives of the bargaining players have changed: employers are not incentivised to compromise, and employees and their unions are incentivised to be intractable. Far from a win/win approach to negotiations – this is a lose/lose. When wages are low relative to prices, the way to fix that is to bring down inflation, not to increase wages. The legislative changes turn the industrial relations system into a social security system, and that is an economic solution that does not work.</p>
<p>The Fair Work Commission Perspective Hon Justice Adam Hatcher SC - President, Fair Work Commission</p> <p>What do the new rules mean for the independent umpire?</p>	<p>Justice Hatcher, President of the Fair Work Commission, reflected on the impact of the new rules for the independent umpire. Justice Hatcher shared that the biggest practical effect on the Commission's processes and practices is the changes to protected action ballot orders. The compulsory conferences that are conducted to see if the parties to bargaining can reach agreement in relation to the enterprise agreement before protected industrial action can be taken has been generally embraced by all parties.</p> <p>The Commission has seen engagement to a high degree and in a significant number of instances, agreement has been reached on the terms of the new enterprise agreement – avoiding protected industrial action all together. In one case, this process resulted in a recommendation from the Commission that employees vote to approve the enterprise agreement, which is ultimately what occurred.</p> <p>Whether this level of engagement and conciliatory approach between the parties will remain following the Closing Loopholes (no.2) amendments is yet to be seen. To date, applications for multi-employer bargaining have not had the impact that perhaps justified the initial level of concern. The unions' ability to mobilise and bargain in such a largescale way will be limited</p>
<p>The Department Perspective Natalie James - President, Department of Employment & Workplace Relations</p> <p>How will the policy agenda be delivered?</p>	<p>Speaking to the Department perspective, Natalie James, Secretary of Department of Employment and Workplace Relations cautioned that it would be a mistake to think that the length or size of changes to the Fair Work Act are an indicator of their importance. One of the most crucial changes in the simple introduction of gender equality to the objects of the Act. The gender pay gap is at its lowest on record at 12 per cent, having fallen by 2.1 per cent since the last federal election according to data from the Australian Bureau of Statistics.</p> <p>Ms James, spoke to the Department's role in the lengthy consultation with industry and unions in the drafting of the latest traches of amendments to the Fair Work Act - a process which is an exception to the norm where draft legislation is not shared with anyone until the Prime Minister approves the document - saying that "collaborative policy making works". To those concerned about the work required to implement the changes which come from Closing Loopholes (no.2), lengthy lead times, including 6 months for changes to casual employment and the right to disconnect (longer in some instances for small businesses), allow ample time for businesses to prepare themselves.</p>

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<p>The Opposition Perspective Sen Hon Michaelia Cash – Shadow Minister for Employment and Workplace Relations and Deputy Leader of the Opposition in the Senate</p> <p>What would an alternative Government do?</p>	<p>“Complexity, cost and confusion” – Senator Michaelia Cash says the current Government’s “<i>ideological and cavalier</i>” approach to industrial relations policy demonstrates that increasing productivity in Australia is not on the agenda. Small businesses, which employ almost 1 in 2 workers in Australia, are telling the Minister that the changes are having a “chilling effect”.</p> <p>The introduction of intractable bargaining disputes undermines the entire concept of employers and employees bargaining for their conditions, while employee-like forms of work will negatively impact those people who want to be their own boss. The increased ability for the Fair Work Commission to tell people how to run their businesses will only result in disharmony in the workplace. The Opposition’s workplace relations framework is founded on a need for fundamental reform, putting increasing productivity right at the centre. Increasing productivity does not come at the expense of employees. Rather, it means working smarter, not longer. It means more effective, more efficient, and more innovative workplaces and this means a prosperity agenda for all.</p>
<p>The Union Perspective Michael Kaine – National Secretary TWU</p> <p>How are the changes affecting workers?</p>	<p>As we consider the wave of workplace reform that has swept through Canberra, we see that it is motivated by good faith and good economic policy says Michael Kaine, National Secretary of Transport Workers’ Union.</p> <p>Last year alone, 54 truck drivers lost their lives on Australian roads and a further 181 people died in transport-related accidents. Many of these are due to unreasonable and unsafe deadlines, pressures to speed, and fatigue. Greater regulation of businesses in this industry, and up the supply chain, is necessary to “<i>stop the downward spiral</i>”. The opportunity is before us to put in place measures that will make the industry safer, the roaders safer, and businesses more sustainable.</p> <p>As to greater regulation of the gig economy, Mr Kaine sees an opportunity to work, with the assistance of the Fair Work Commission, to determine what rights and conditions should attach to workers in this industry, focusing on those workers who rely on other entities or platforms for their work. A fair, sustainable and viable transport industry will be the result of the Fair Work Commission’s ability to regulate the road transport industry. From the union perspective, the reforms are “<i>not an ideological incursion into the domain of free markets, but a necessary correction.</i>”</p>
<p>A Crossbench Perspective Sen Jacqui Lambie – Senator for Tasmania</p> <p>How do further changes navigate the Senate?</p>	<p>Senator Jacqui Lambie, Senator for Tasmania, shared her insights as a crossbencher seeking to influence the drafting of the latest tranches of industrial relations legislation. With cuts to resources, crossbenchers may struggle to keep up with the pace at which important legislation is being pushed through parliament. More regularly the crossbenchers are telling Parliament that it needs to wait to progress legislation to allow for the ability to complete the work required to review Bills and propose amendments with limited staff and resources. A number of the more recent changes, such as the definition of casual employment and changes to the administration of paid parental leave were not necessary – “<i>if something is not broken, don’t fix it</i>”.</p> <p>As to union right of entry, unions and delegates already have enough power that isn’t necessarily the most helpful. While delegates and officials may be requested wages and pay information, there is a lot of additional information that sits behind that that delegates and officials are not necessarily qualified to understand, and therefore use in the most appropriate or helpful way. Echoing the sentiment of a number of the speakers, small business seems to be hard done by with the introduction of the right to disconnect.</p>

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<p>The Regulator Perspective Perspective Anna Booth - The Fair Work Ombudsman</p> <p>What does enforcement look like in a new regulatory environment?</p>	<p>Wage theft and underpayments are a key priority for the new Fair Work Ombudsman, Anna Booth. The impacts, including psychological impact, of not being paid correctly can be devastating on people and their families. The FWO's approach to compliance follows a compliance triangle with a focus on "voluntary compliance" forming the largest portion (see below).</p> <p>To assist with voluntary compliance, the FWO's education materials must be up to date, correct, and fit for purpose. Achieving this is likely to involve consultation with industrial parties. The FWO can be an independent body but also listed to and understand the position of stakeholders.</p> <p>The FWO's "guided compliance" work is intended to be an extension of voluntary compliance but where more direct intervention may be required. The proactive work of the FWO will focus on industry sectors or locations where there is known non-compliance. Continuing to encourage self-reports of non-compliance, the FWO will target its investigations, and consider attitudinal factors of those self-reporting. The FWO wants to see understanding of the cause of non-compliance, remediation steps being undertaken, transparency in communications with employees and any unions, and cooperation with the FWO.</p> <p>As for "forced compliance", the majority of the FWO's work in this space will be where business attempt to deceive stakeholders and coverup their non-compliance. The FWO is working through how to navigate its role as a dual regulator of civil and criminal penalty provisions given the recent criminalisation of wage theft.</p>

FWO's 8 considerations

1. Models (to understand the cause of non-compliance)
2. Investment in remediation programs, including beyond statutory limitations
3. Take employee beneficial decisions where there is ambiguity
4. Adjustments to approach when FWO raises concerns
5. Pay interest on underpayments
6. Consult and communicate the employees and other stakeholders – take a forward facing approach
7. Introduce new time and attendance and auditing systems
8. Satisfy the FWO of governance arrangements.

