12th Annual Ron McCallum Debate

How can we future-proof work relations in these times of crisis and change

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Opening comments from Stephen Smith, Principal of Actus Workplace Lawyers

The best way to future-proof our workplace relations system is to ensure that the system is as flexible as possible, while preserving fairness for all.

The last thing that is needed is ill-conceived regulations strangling workforce participation, stifling productivity and deterring investment.

We also do not need laws that will lead to uncertainty. Uncertain laws are unfair, particularly when employers are exposed to hefty penalties for non-compliance.

The pandemic showed that our workplace laws and awards were not suited to the environment that we found ourselves in and fortunately Parliament and the Fair Work Commission moved quickly to implement more flexible arrangements. That flexibility has now been removed and we are left with an extremely and unnecessarily complex workplace relations system.

No-one is arguing that there is no need for any regulatory changes, but the changes need to be very carefully considered. Sweeping changes to the workplace relations system are not the answer.

There is no doubt that the award system is far too complex and inflexible for modern workplaces and a lot more needs to be done to increase flexibility within awards.

There is also the need to ensure that any changes to workplace laws do not result in the loss of existing flexibility that is highly valued by businesses, workers and the community.

The gig work reforms are a good example. The reforms need to be focussed on determining what light-touch minimum standards are appropriate for the cohort of independent contractors who work for on-demand platforms, not on disturbing the meaning of an employee or an independent contractor. The High Court has recently clarified the meaning of an independent contractor[1] and it is important that this meaning is not disturbed.

[1] *CFMMEU v Personnel Contracting* (2022) 96 ALJR 89; *ZG Operations Australia Pty Ltd v Jamsek* 2022) 96 ALJR 144.

Hundreds of thousands of Australians have found jobs in the gig economy and the on-demand platforms appear to be having far less problems attracting staff than many other businesses. This is because of the flexibility that workers enjoy with this type of work.

Another good example is enterprise bargaining. Reforms are needed to address the overly complex enterprise agreement approval requirements and to once again encourage employers and employees at the enterprise level to reach win-win arrangements involving higher wages and higher productivity.

In the 1990s, enterprise bargaining delivered major benefits to employees, businesses and the community. Two key developments largely destroyed those benefits:

1. The unions' opposition, from the late 1990s, to what they called productivity trade-offs.

2. The overly complicated Better Off Overall Test and other approval requirements in the Fair Work Act, which have been exacerbated due to the unintended interpretations placed on those provisions by the Federal Court and the Fair Work Commission.

With some simple amendments to the Fair Work Act and a renewed, shared commitment to focussing on win-win bargaining solutions, the problems could be readily resolved.

The last thing that is needed is an expansion of multi-employer agreements, wider industrial action rights and wider arbitration powers for the Fair Work Commission. This is a recipe for reduced economic growth, reduced investment, fewer jobs, higher inflation and higher interest rates.

Ultimately workers will lose the most if ill-conceived changes are made to workplace laws.