

WORKPLACE RELATIONS AND PRODUCTIVITY

This is the fourth and final of a series of ACCI Review articles on Australia's productivity challenge.

In a time of economic uncertainty and only early signs of a global recovery, every effort will need to be made in 2010 to secure employment opportunities and drive productivity gains across industry.

Workplace regulation remains a critical contributor to the achievement of these outcomes. In this article, ACCI examines the processes of change and reform over the past two decades and considers what is required to drive productivity growth.

We conclude that:

- *labour market reform is an important sub-set of microeconomic reform;*
- *it is essential that labour market regulation be flexible and adaptable to changes in the domestic and global economy; and*
- *in today's modern economy, these changes take place much more quickly and dramatically and firms must be able to react with respect to their workforce in a similar fashion.*

The history of industrial relations reform in Australia spans over 100 years.

Significant reform started in the 1990s by virtue of the 1992 and 1993 reforms which entrenched collective-based enterprise agreements as an alternative means of labour regulation, compared to industrial awards.

The three most significant recent policy reforms occurred in 1993, 1996 and 2005 by amendments to the (now) *Workplace Relations Act 1996*, and the passage of building and construction industry laws, as contained in the *Building and Construction Industry Improvement Act 2005*. In addition, the former Coalition Government's *Independent Contractors Act 2006* also went some way to frame laws applying to independent contractors.

These reforms had a positive impact on productivity, as well as levels of unemployment across Australia.

In 2008 and 2009, further significant changes were made, through the passage of the *Fair Work Act 2009* and associated legislation. This was the first time in over 100 years that workplace relations regulation was completely re-written.

Whilst most provisions commenced on 1 July 2009, new 'modernised' industrial awards and National Employment Standards (NES) will commence on 1 January 2010. There is also legislation before the parliament to substantially amend the *Building and Construction Act*.

IMPACT OF PAST REFORMS

In August 2007 ACCI released an independent report, *The Economic Effects Of Industrial Relations Reforms Since 1993*.¹

The terms of reference of the study were to analyse what would be the economic impact should all the major industrial relations reforms in Australia from 1993 onwards be reversed. These reforms include the *Industrial Relations Reform Act 1993*, the *Workplace Relations Act 1996* and the *Workplace Relations Amendment (WorkChoices) Act 2005*.

In summary, the report found that:

- the Australian industrial relations reforms from 1993 onwards are estimated conservatively to have reduced the structural unemployment rate by at least **1.77 percentage points**; and
- the industrial relations reforms from 1993 onwards are estimated to have increased labour productivity by **1.4 per cent**. Reversing the reforms would subtract the same amount of 1.4 per cent from the level of productivity. The

INSIDE

Education and Economics Policy in 2010

2010 will be a busy year for ACCI and the Australian business community.

The heads of ACCI's Economics and Education policy divisions have shared their thoughts on what will be some of the key policy challenges once the new year ticks over.

Pages 8 & 9

No Handwringing from Copenhagen

The failure of world governments to come up with a binding greenhouse agreement in Copenhagen is an opportunity for Australia to revisit its approach.

Page 11

1. http://www.econtech.com.au/information/Industry/EcontechAugust2007_ACCI.pdf

report stated that “some of this increase is still developing as it reflects the recent liberalisation of unfair dismissal laws as part of the introduction of WorkChoices”.

The strong growth in labour productivity since 1992/93 supports the view that industrial relations reform has boosted productivity.

Whilst the ACCI-commissioned research was published before the Rudd Government implemented its ‘fair work’ system, many elements of the former reforms were retained, including prohibitions on unlawful industrial action, pattern bargaining, secondary boycotts, strike pay, and qualifying periods for unfair dismissal.

However, new bargaining and transmission of business rules, removal of small business exemptions for unfair dismissals, wider right of entry, re-regulation of awards and removal of individual agreements, were identified by business as likely to have negative implications for employment and labour flexibility.

The International Monetary Fund has also commented on Australia’s workplace relations reforms, commenting that “... inflexible labor markets have been among the most important causes of Australia’s declining productivity performance and have contributed to the increase in structural unemployment.”

The OECD’s 2006 *Employment Outlook and 2004 Country Report* for Australia provided support for continuing reform to Australia’s labour market of the character pursued by former reforms.

Although full time employment grew considerably under the *WorkChoices* reforms, they did not have a sufficient period of time for their effect on longer term productivity to be measured. However, ACCI did undertake a preliminary analysis of the first 18 months of *WorkChoices* which suggested some demonstrated increases in productivity, though definitive conclusions could not be drawn.³

What is undisputed is that the combined past reforms did correlate with a significant decline in the unemployment rate⁴ and industrial disputes. OECD reports also indicate that a level of flexibility in Australia’s labour laws would have positive effects on productivity.⁵

The former reforms attempted to address numerous OECD studies and reports⁶, which consistently recommend countries⁷:

- increase flexible work practices through flexible labour markets;
- increase flexibility of working time (both short-term and lifetime) voluntarily sought by workers and employers;
- make wage and labour costs more flexible by removing restrictions that prevent wages from reflecting local conditions and individual skill levels, in particular of younger workers;

- reform employment security provisions that inhibit the expansion of employment in the private sector; and
- reduce payroll taxes.

In 2008, the OECD’s Economic Survey of Australia noted (at p.8):

“The simplification and gradual decentralisation of industrial relations since the early 1990s has made the economy more resilient. But the pursuit of reforms towards a greater individualisation of labour relations, following the WorkChoices Act in March 2006, did stir much controversy, because of equity concerns. ... While equity concerns need to be addressed, care should be taken not to undermine labour market flexibility. To maintain a close link between productivity gains and wages, the future organisation of collective bargaining must remain within the company framework, as recognised by the government. Harmonising the system of industrial relations across the states is an important goal, but the result must not be alignment on the most restrictive standards.”

The OECD was specifically critical of the repeal of individual contracts, urging “policymakers should be prepared to take steps to amend the new rules if sizeable negative effects are detected.”⁸

As the ‘fair work’ reforms only (partially) commenced in July 2009, no studies can yet be conducted to measure their effect on productivity. Their impact will be felt more acutely over time.

Notwithstanding, there are aspects of the fair work policy which suggest a level of inflexibility which is likely to have implications on firm productivity in certain scenarios.

RECENT POLICY REFORM MEASURES

ACCI’s *Modern Workplace: Modern Future Blueprint for the Australian Workplace Relations System 2002 – 2010* called for substantive reforms to workplace relations.

However, the centralised industrial relations structures which dominated the policy landscape pre-1990s, and the subsequent shift to a more hybrid mix of collective and

2. Singh, A, Felman, J, Brooks, R, Callen, T & Thimann, C (1998), *Australia: Benefiting from Economic Reform*, IMF, p.3.3. Australian Bureau of Statistics. *Adult Literacy and Lifeskills Survey*, Canberra, 2006

3. ACCI Review, (September 2007), *Workchoices - Good Signs For The Economy* <http://www.acci.asn.au/text_files/review/r151.pdf>

4. *An increase that cannot be solely attributed to the mining boom, given that only a small proportion of total employment growth has come from mining, and almost half of the employment growth is in ‘non-mining states.’* OECD *Employment Outlook for 2006*. ACCI commented on this report in “*OECD Support for Labour Market Reform*” can be found here: http://www.acci.asn.au/text_files/issues_papers/Trade/June%2006%20-%20OECD%20Labour%20Market%20Reform.pdf

5. *OECD Report, Implementing The OECD Jobs Strategy Lessons From Member Countries’ Experience (2002)* <<http://www.oecd.org/dataoecd/42/52/1941687.pdf>>; *OECD Report, Micro-Policies for Growth and Productivity, (2007)* <<http://www.oecd.org/dataoecd/6/40/38151918.pdf>>

6. *OECD Report, Implementing The OECD Jobs Strategy Lessons From Member Countries’ Experience (2002)* <<http://www.oecd.org/dataoecd/42/52/1941687.pdf>>; *OECD Report, Micro-Policies for Growth and Productivity, (2007)* <<http://www.oecd.org/dataoecd/6/40/38151918.pdf>>

7. *These policy goals are re-affirmed by subsequent reports. See for example, the OECD’s Boosting Jobs And Incomes – Policy Lessons From Reassessing The OECD Jobs Strategy (2006)* <<http://www.oecd.org/dataoecd/47/53/36889821.pdf>>

8. *The Australian, “Labor risk to youth jobs says OECD as PM Kevin Rudd calls recession ‘inevitable’* (21 April 2009) <<http://www.theaustralian.news.com.au/story/0,25197,25362737-601,00.html>>

9. This can be accessed on ACCI’s website: www.acci.asn.au

individual-based arrangements for employers and employees and reduced third party involvement in setting wage and conditions, have been restored in part.

Collectivist structures are now encouraged under the new industrial relations laws, even though most modern workplaces do not organise themselves in such a manner.

Private sector union coverage is only 14 percent, yet recent reforms provide many avenues of union intervention in workplace arrangements.

Collective-based awards have also been given an enhanced role together with a comprehensive range of legislated employment standards.

If more regulation is imposed on business, there will always be doubt that productivity can be improved. However, productivity can be lifted if there is a consensus between employers and employees and a direct relationship between the nature of that regulation and the needs of the workplace. Just as a tribunal or government has limited capacity to grow jobs in the private sector, it also has limited capacity to direct employers and employees to work productively and efficiently in exchange for higher pay and conditions.

Business is concerned about the potential impact of the fair work changes, including the impact of regulating bargaining processes, increased costs under new awards and employment standards, and the re-introduction of unfair dismissal laws on smaller firms. Many *“... are also worried that they will bear the brunt of the government’s reforms in the form of higher labour costs and reduced flexibility”*.¹⁰

Industry has consistently argued that reforms in workplace relations should:

- allow for flexible employment regulation but also provide an appropriate safety net of terms and conditions for employees;
- provide a basis for collective or individual agreements to apply on a voluntary basis and provide wage structures or conditions that reflect the local circumstances of employers and employees and eliminate inefficient work practices;
- prevent minimum wage levels impacting negatively on jobs, inflation or the economy;
- allow appropriate exemptions for smaller firms from unfair dismissal laws;
- restrict third party intervention in the workplace;
- only allow industrial tribunals to arbitrate in disputes seriously prejudicing the public or economy; and
- target particular areas in the economy that require specialised laws to deal with systemic unlawful behavior.

Such reform measures would ensure that living standards, productivity, efficiency and employment levels grow, whilst also providing employees with an appropriate safety net of employment conditions.

10. *The Australian Financial Review*, “Why Businesses are so wary of labour reforms”, (19 August 2009), pp.60-61.

Industrial Awards

The Australian Industrial Relations Commission is currently rationalising thousands of federal and state industrial awards into fewer industry and occupational-based awards.

Whilst problems of overlapping coverage and the unclear application of industrial instruments should be ameliorated, and could benefit productivity, there still remains the problem of inflexibility in the ‘one size fits all’ content of awards, with only limited individual flexibility. Awards will continue to largely reflect content that was imposed by industrial tribunals in past years.

While the AIRC must have regard to statutory obligations when it creates these awards, including productivity, the process to date has generated instruments that are derived mainly from existing terms and conditions and as such, the so-called ‘modern’ awards do no more, in many cases, than preserve existing regulation, albeit in a more limited number of awards.

Industrial awards do not cater for specific differences in individual workplaces or firms. All types of firms must comply with and abide by these instruments, and under all business conditions. As such, an award does not differentiate for example between:

- a firm that has 5 employees or 500;
- a firm that operates in regional Victoria or one that operates in Sydney;
- a firm that operates in prosperous times and one that operates during a recession; or
- firms that operate during late nights, early mornings or weekends to those that operate Monday to Friday, 9 am to 5 pm.

The operational and financial capacity of firms will differ and this is what makes awards inflexible employment regulation, despite their acknowledged safety net role.

Some modern awards have the potential to introduce significant new costs and inflexibility for employers. This will likely impact on firm and industry productivity levels.

The following are a small number of examples that provides an illustration of inflexibility in award regulation under ‘modern’ awards:

Part-Time Employment: Modern awards have provisions that restrict the flexibility of part-time employment, including engagement and roster changes.

Casual Employment: The casual loading across all modern awards has been set at 25%, which is significantly higher than the common loading of 20% in service industries. A higher casual loading, like any business cost related to labour, acts as a disincentive to offer employment. Many awards also prescribe a minimum engagement period of 3 hours.

Hours: Modern awards ingrain inflexible arrangements when it comes to establishing hours of work. The maximum number of hours an employer is able to roster an employee is often capped at eight, or possibly ten, per day. The inability to agree to longer hours per day can inhibit productivity. Modern awards also do not contain flexible provisions enabling employees to average their hours of work across an extended period, for instance 6 months. These types of provisions are useful in workplaces that have seasonal or fluctuating workloads. They enable employees to work extra hours in some weeks, but less in others.

Penalty Rates: Late night and weekends are significant trading periods in many Australian businesses. Typically awards have adopted a series of penalty rates which compensate employees for working 'unsociable' hours. This original justification for a penalty rate regime in an award has limited ongoing relevance, particularly in the retail and restaurant sectors. Modern awards have adopted a more restrictive span of ordinary hours (that is, hours where employers are not required to pay higher rates of pay) and maintained the penalty rates. These penalty rates are a deterrent to operating outside of designated ordinary hours.

Dual Regulation: Modern awards also deal with matters already dealt with by legislation, such as superannuation legislation. Dual regulation increases red tape for firms and may impose additional costs.

As modern awards will operate on a common rule basis from 1 January 2010, more employees will be subject to award regulation than has previously been the case.

Some (but not all) employees previously award-free will now be award-governed. The extension of regulation can have negative effects on productivity where new inflexible work rules apply.

Minimum Wages

Australia is the only country to have a framework of multiple minimum wage rates which range from \$543.00 per week to over \$1700.00 per week.¹¹

It now has the highest minimum wage in the OECD. On top of these are related on-costs, such as workers' compensation premiums, payroll tax and superannuation.

We need to consider the impact of Australia's minimum wage classification system and its effect on productivity.

In the Australian Fair Pay Commission's decision in July 2009, it stated that "its main priority in this decision is to protect jobs in the short term and help job seekers to be competitive in the labour market" (pp.23). In the midst of a global recession, it sensibly did not award an increase to minimum wage rates. However, the new statutory criteria under s.284 of the *Fair Work Act* includes new considerations that may shift the emphasis from ensuring that job seekers remain in and obtain employment, to awarding higher increases.

A minimum wage set above the level of the value that the worker contributes to production will discourage employment and lead to higher unemployment. Increases in pay funded by higher labour productivity is the only sustainable way of maintaining and increasing real wages without negatively impacting inflation. This is also true for agreements made between employers and employees, which should ideally link wage increases and benefits to higher productivity gains, rather than being a response to actual or threatened industrial action or orders by an industrial tribunal.

If minimum wage rates for various classifications are higher than the equilibrium, then a firm will not engage additional workers. Firms may often cut costs in other areas, if there are increases in wage rates, to pay for workers already engaged. If they cannot absorb those costs, they will reduce staff numbers or firm owners increase their own hours of work.

Enterprise Agreements

Workplace policy reforms in Australia since the 1990s were based on the premise that the primary responsibility for determining workplace matters should be with employers and employees at the workplace level.

Under the new *Fair Work Act*, only (collective) enterprise agreements are available, with the ability to make statutory individual agreements removed. There is also an enhanced supervisory role for the tribunal in agreement making, with unions having more capacity to become involved in bargaining, even in a largely non-unionised workforce.

The government's Regulatory Analysis to the Fair Work Bill provided some detail on why it was shifting the emphasis of workplace determination from a flexible mix of collective and individual instruments to collective:¹³

"r.186. This Bill will place collective bargaining at the enterprise level at the heart of the workplace relations system.

r.187. Enterprise agreements can ensure that increases in pay and entitlements are linked to productivity increases at the enterprise. This is due to negotiations at the level of the enterprise better reflecting the financial situation of the enterprise. Furthermore, collective bargaining will shift the focus of negotiations towards boosting productivity.

r.188. Collective bargaining under the Bill will be less bound by regulation and red tape and is designed to have a positive impact on labour productivity.

r.189. The post-implementation review of the new system will be an important means of assessing the effectiveness of the new bargaining system."

11. See for example the *Medical Practitioners Award*.

12. *Econtech report (August 2007)*, p.9.

13. See further studies quoted in the *Regulatory Analysis*, at r.194-r.198.

This was further reiterated in the Deputy Prime Minister's Second Reading Speech accompanying the introduction of the bill:

"The Bill aims to achieve productivity and fairness through enterprise-level collective bargaining underpinned by the guaranteed safety net, simple good faith bargaining obligations, and clear rules governing industrial action."

The above rationale appears to provide, in part, the policy basis for creating a new system based on collective structures and on enterprise agreements. It seeks to justify the system design of associated orders (i.e. majority support, scope orders, good faith bargaining), union involvement in bargaining, and new streams of bargaining (i.e. 'low-paid' bargaining).

However, a correlation between some collective bargaining agreements and productivity outcomes, does not mean *ipso facto* that it is beneficial for all firms, or should justify the design of the entire bargaining framework.

The studies cited by the Government occurred under a very different regulatory environment and under former reforms – not under the fair work system.

Despite collective bargaining being the focus of the *Fair Work Act*, a collective agreement doesn't guarantee increased productivity or efficiency, or indeed any other benefit.

It is the extent and nature of collaboration between employers and employees and the content that is agreed upon that ultimately determines whether productivity and efficiency is improved. This can be achieved by individual or collective instruments, either registered or unregistered.

Under the previous system, an employer did not have to bargain with a union for an enterprise agreement. However, under the fair work changes, an employer can be required to bargain with their employees and unions regardless of their capacity or desire to do so. This can happen where a bargaining representative obtains "majority support" by employees in a firm. In that case, the employer must bargain with the employees and the bargaining representatives. Even where an employer and their employees wish to bargain together for an agreement, the union can be entitled to be part of that process. A union can also obtain "good faith bargaining orders" against the employer to stop an employer and employees voting on an agreement. This has the effect of interfering with the rights of employees and their employer who may wish to implement an agreement, including agreements with productivity improvements.

Under the changes, an employer must bargain "in good faith" or face bargaining orders being made. If an employer breaches a bargaining order, Fair Work Australia can impose an arbitrated outcome. This ultimately places undue pressure on employers to reluctantly agree to bargain and make an agreement where there may not be productivity benefits, rather increased wages and conditions.

Multi-employer Bargaining: Under the previous system, agreements that covered multiple businesses could only be approved if it was in the "public interest." The rationale was to limit pressure of unions on firms to pattern bargain where common conditions applied to multiple businesses across an industry. Limited, multi-employer bargaining is authorised by the new system, and encouraged for "low paid" workers.

The Minister's second reading speech stated:

"The Bill provides a new scheme of bargaining for low paid employees. There is significant evidence that enterprise bargaining benefits employees, employers and the economy and we want more Australians to benefit from it ... The Bill provides for the possibility of a workplace determination in the low-paid stream ..."

Therefore, the *Fair Work Act* allows industry-wide pattern bargaining and tribunal-ordered agreements to be imposed for so-called "low paid" sectors. This is an entirely new creation in the industrial relations system that will need to be closely monitored over time.

There are a number of potential problems with this new feature. There is no definition of "low-paid" under the *Fair Work Act* which means it could include any sector where employees are covered by awards. Different firms within one sector, such as "child care, community work, security and cleaning" as mentioned in the second reading speech, have different operational and financial capacities.

The actual process for unions to force employers into this process, appears similar to the old log of claims system of award making. Employers do not seem to have a choice whether to be part of this process, which is ultimately determined by the tribunal. Whilst there are a broad range of criteria for the tribunal to consider before it imposes an industry-wide agreement on employers and their employees, only one of those criteria requires the tribunal to consider "how productivity might be improved in the enterprise or workplace concerned."

Once a union's application is accepted by the tribunal, employers are also subject to "good faith" bargaining requirements, which will put pressure on some firms to settle an agreement with unions, in lieu of being roped into proceedings before the tribunal. Once again, there is no guarantee that an agreement forged in these circumstances will do anything to enhance firm-specific productivity.

Agreement Content: Under the previous system, agreements could only include matters that pertained to the employment relationship. As a result lawful industrial action could not be taken where matters were extraneous to this relationship.

Therefore, external factors that unions often wanted included in agreements, and had no bearing on firm efficiency, were

14. *ASU v Queensland Tertiary Admissions Centre Ltd* [2009] FWA 53 (unreported); *CFMEU v Australian Precast Solutions Pty Ltd and Abigroup Contractors Pty Ltd* [2009] FWA 68 (unreported);

not able to trigger bargaining strikes. However, the new laws now allow agreements to deal with a broader range of matters that affect the relationship between an employer and union.

IFAs: Since 1996, employers and employees could make a flexible individual agreement in the form of an Australian Workplace Agreement (AWAs). The recent reforms repealed these agreements. The only form of individual agreement that is now available at the federal level is in the form of Individual Flexibility Arrangements. However, IFAs differ from statutory agreements and it remains to be seen whether they will deliver increased flexibility as promised by the Government. IFAs differ considerably from AWAs in that they:

- can only deal with a number of limited matters under awards.¹⁵ AWAs enabled an employer to roll-up all monetary entitlements (e.g. redundancy or paid leave entitlements) into a single rate of pay (or at least simplified rates of pay). This reduced the burden of managing complex payroll administration and record keeping which improves budgeting predictability;
- can deal with all, some or no matters under an enterprise agreement;
- can be terminated by either party (without any requirement to consult with the other party) by giving not less than 28 days. The power of an employee to unilaterally terminate an IFA does not give the employer the ability to manage that aspect of the employment with any long-term certainty. Once terminated the employer is forced to return to the complexities of the award; and
- cannot be made a condition of employment and thus must be agreed to by both new and existing employees and their employer.

Statutory Employment Conditions

Under the *Fair Work Act*, new employment standards (the NES) operate from 1 January 2010. These statutory minima regulate hours of work, leave arrangements and termination benefits. They operate in conjunction with any awards that may apply and cannot be overridden by either a registered or unregistered agreement. Awards may also deal with particular provisions in a certain way.

Given that statutory minima operate across different firms, ACCI has argued that it is important that they operate as flexibly as possible. They should not restrict the manner by which businesses operate as this will affect firm productivity.

Award and agreement-free employees can deal in a more flexible manner with some conditions under the NES. For example, they are able to cash out annual leave or average hours of work over a period of time. For award-regulated workers, unless the award provides for that flexibility, they must abide by the terms of the NES. Inflexible, nation-wide rules can act to inhibit flexibility.

15. Arrangements for when work is performed, overtime rates, penalty rates, allowances; and annual leave loading.

Other Policy Areas

Employment Protection: Other new employment protection laws have the potential to significantly impact upon the capacity of employers to manage their workforce. For example, the new general protections framework under the recent reforms, introduces concepts such as “adverse action.” This significantly extends existing regulation.

Employers who wish to terminate or alter the working arrangements for an employee may be liable under these laws if the employee alleges that action was taken as a result of a “workplace right.” This is an entirely new area of law and avenue for litigation that may impact on the ability of employers to structure their workplace arrangements to enhance productivity capacity.

Unfair Dismissals: Similarly, the unfair dismissal laws under the *Fair Work Act* also have the effect of limiting the capacity of a firm to terminate the employment of an employee, where an employee has a right to challenge that dismissal on procedural grounds. A firm that wishes to restructure and make redundancies, may also be required to reinstate the worker if they do not follow certain procedures under the Act.

This negatively impacts upon firm productivity in three ways:

- a firm may be reluctant to terminate an employee for fear of a claim being made and an employee being reinstated;
- the tribunal may reinstate the employee to the workplace despite not being able to adequately perform duties; and
- a firm may be reluctant to hire necessary staff for fear of not being able to terminate their employment if there are doubts about the ability to terminate those positions.

In the 2007 research commissioned by ACCI, the authors concluded that “*the assessment of the international and national evidence presented later in this section concludes that there is an adverse impact of unfair dismissal legislation in Australia on the structural unemployment rate and labour productivity.*”

Building And Construction Industry

Economic modelling of the operation of targeted laws for the building and construction sector suggests that such laws and institutional frameworks are having a beneficial and positive economic effect.

The activities of the Australian Building and Construction Commission (ABCC) have delivered real economic and industrial benefits to both the construction industry, to other industries and to the wider economy. This is again evidenced in the various *Econtech* reports published by the ABCC, and in the feedback of other industries reliant on construction.

On 6 May 2009, the third *Econtech/KPMG* report, *Economic Analysis of Building and Construction Industry Productivity*, into the impact of industrial relations reforms in the construction industry, was released. The report is an update of the analysis previously undertaken by *Econtech* in 2007 and 2008.

Importantly, the report's economic modelling estimates a number of positive economic impacts due to the ABCC's activities and industrial relations reforms including that:

- GDP is 1.5% higher than it otherwise would be;
- CPI is 1.2% lower than it otherwise would be; and
- improved consumer living standards are reflected in an annual economic welfare gain of \$5.1 billion.

Econtech also interviewed representatives from four major construction companies. These interviews reported further benefits including:

- a significant reduction in the number of days lost to industrial action;
- improved management of occupational health and safety issues and a reduction in their misuse for industrial purposes; and
- productivity gains from improving flexibility.

Although some of the powers of the ABCC are controversial, ACCI believes that it is important that existing laws and institutions are retained in a substantive way to continue to drive industry-specific productivity gains that have a positive impact on the broader Australian community.

CONCLUSION

The following conclusions derive from local and international evidence that indicates sensibly structured flexibility within a safety net context is the key to ensuring that workplace relations regulation has a positive effect on productivity, as well as other key economic outcomes.

Whilst they do not attempt to address policy reform for the long term, they should be looked at as short to medium-term microeconomic reform measures that will preserve or improve productivity gains.

Modern Awards: Consideration should be given to study the effects of modern awards on firms, certain industries and the wider economy. Provisions that are too prescriptive, inflexible or do not assist in achieving productivity should be reviewed and moderated.

The process of creating new awards should not increase costs or introduce inflexibility on employers. 'Individual Flexibility Agreements' should be monitored to ensure that they are able to flexibly deal with modifying the application of award terms, in a manner that is needed by the economy.

Enterprise Agreements: Regulation of agreement-making should be reviewed and where necessary should be moderated by amending legislation. Agreement-making between employers, employees and bargaining agents should be truly voluntary.

There should not be any ability to frustrate formal agreement making where a majority of employees and the employer wish to bargain and make an agreement. Agreement-making should be flexible to reflect both collective and non-collectivist

workplaces in Australia. This includes a statutory individual agreement subject to a no disadvantage test to protect employee interests.

Bargaining/Arbitration: There should be limited scope for a tribunal to arbitrate and impose a workplace determination.

Where the "low-paid" bargaining stream is negatively impacting on firms, this should be moderated by amending legislation. One option may be to require approval by the relevant Minister before unions can make an application.

Similarly, there should be limited scope for the tribunal to make orders that restrict an employer's ability to structure their workplaces in a manner that is beneficial to both the employer and employees.

Statutory Minima: Statutory minima, such as the NES, must be flexible and adaptable to suit a variety of workplace circumstances. They should be moderated to enable sufficient flexibility if they have any negative effects in a workplace. Modern awards should fully facilitate flexibility of the NES where allowable.

Minimum Wages: Minimum wage decisions under the new system should be closely monitored. Changes should be made where decisions are having a negative effect on the economy, including productivity, inflation and jobs.

Building and Construction Industry: Current arrangements in the building and construction industry should not be disturbed. The current Bill to repeal the provisions of the BCIIA should be withdrawn.

Transfer of Business: Rules on transmission of agreements should be flexible and fair. Inflexible agreements should not indefinitely bind an incoming employer.

Employment Protection: Unfair dismissal laws should be monitored to consider the impact of the changes on firms, jobs and the economy.

Similarly, the new general protection framework should also be monitored and where necessary, changes made where they are having a negative effect on a firm's ability to flexibly manage their workplace, and where they generate speculative litigation.

[Editor's note: This series is an edited extract of an ACCI submission to a Parliamentary Committee inquiry into National Productivity. The full ACCI submission can be found at: www.acci.asn.au]

16. 2007, 2008 and 2009 KPMG/Econtech reports, Economic Analysis of Building and Construction Industry Productivity (series). <<http://www.abcc.gov.au/abcc/PerformanceReports/Productivityandindustryreports/>>

EMPLOYMENT, EDUCATION AND TRAINING IN 2010

Mary Hicks, Director of Employment, Education & Training



Mary Hicks
Director - Employment,
Education and Training

ADDRESSING SKILL AND LABOUR SHORTAGES

Although patchy across geographic location, industry type and duration, skill and labour shortages started to return in the latter part of 2009 and will increase in 2010.

During the economic downturn, there has been a decrease in the number of commencing apprentices which will intensify this trend. Measures to

increase the number of apprentices will be needed to build the skills of Australian workers. It will be vital that apprenticeships remain a high quality training route for the workforce and that employers continue to see their value.

A flexible approach to importing skilled overseas labour in the short and medium term to supplement local demand will be essential as well as longer term planning.

BUILDING PRODUCTIVE CAPABILITY

ACCI supports a significant role for business working with governments at Commonwealth and State levels in forecasting and planning future skills needs with a balance between the domestic and overseas supply of labour.

A demand-driven approach to skills development will ensure that the available workforce has the appropriate skills mix to contribute to workplace productivity and efficiency growth.

The Intergenerational Report 2¹ highlighted the effects demographic pressures will have on the future productive capacity of Australia's economy.

As the supply of available labour decreases, and the need for servicing an ageing population increases, businesses will need to be much more proactive in attracting workers by placing a greater focus on skill development and increasing returns on investment in training.

This will require businesses to put additional effort into understanding their future skill needs and link these goals more closely to businesses' corporate goals.

Businesses will need to collaborate more extensively with schools, universities and other education and training institutions to access a diminishing supply of young people.

INCREASING LABOUR MARKET FLEXIBILITY

Ongoing reforms to Australia's education and training system are needed to ensure maximum flexibility in the labour force. ACCI will work actively to ensure that governing bodies, market structures and funding arrangements meet the needs of employers and the wider community.

Attention will be paid to ensuring entry to the labour market is supported by measures to up-skill, enhance the productivity of, and retain the employment of mature aged workers.

Young people should be better prepared for the labour market. Australia will need to increase the proportion of young people making a smooth transition from school to work or further study.

State and territory governments should examine the potential of allocating a specific element of their vocational education and training budgets to measures that will help existing mature aged workers. Considerable work needs to be undertaken to improve incentives for providers to offer recognition of prior learning which lessens the requirement for experienced individuals to undertake the same level of 'off-the-job' training.

ENCOURAGING LABOUR FORCE PARTICIPATION

Employers must take an innovative approach to future skill shortages and proactively recruit employees from those currently outside the labour force, such as People with a Disability and Indigenous persons.

It is important to involve employers in developing strategies that will ultimately lead to sustainable employment outcomes for those outside the workforce. Job Service Australia (JSA) providers need to work with employers to ensure that jobseekers have both the required skills and a work-ready attitude to ensure a smooth transition.

The strategic provision of careers information, advice, support and products, needs to be integrated across all employment services to ensure better targeting of education and training dollars.

There needs to be a concerted effort to eliminate aspects of social and industrial policies that create disincentives for people with disabilities to take up employment. Both business and governments need to provide for enhanced employment opportunities through the provision of training, recognition of skill, support in the workplace and community education. In particular there needs to be consistency and ease of transition between government programs that aim to assist people with disabilities in education, training, pre-employment, employment and return to work.

To provide security of employment, an economic base for Indigenous remote and rural dwellers needs to be established and developed in country.

Further work will be undertaken in 2010 to progress these issues.

1. http://www.treasury.gov.au/igr/overview/pdf/IGR2_Overview_Web.pdf

2010 - THE YEAR OF LIVING GLOBALLY

Greg Evans, Director of Economics & Industry Policy



Greg Evans
Director
Economics and Industry Policy

As business across Australia concludes 2009 and prepares for next year, there are positive expectations for the domestic economy.

Looking internationally, there are also signs of the beginning of a slow recovery.

However amongst business there is no indication of undue complacency regarding the challenges ahead.

Patchy trading conditions faced in many parts of the economy indicate that a return to more robust performance is still some time off.

The comprehensive surveys conducted by ACCI over the past month tell a consistent story – that confidence levels and expectations have improved markedly, yet actual conditions faced by business as measured by indicators for sales and profitability are at contractionary levels.

UNCERTAIN GLOBAL OUTLOOK

The economy remains fragile, and uncertainty prevails amongst many of the world's leading economies including Japan, the United States and Britain.

Australia is of course fortunate to have well-established economic linkages to the fast developing countries in our region, yet returning to a period of sustained, above-trend growth will require a more synchronised pattern of world growth.

In the year ahead the policy priorities will differ from 2009 where most of the focus was squarely on dealing with the immediacy of the economic downturn and ensuring the economy was cushioned from the fall-out as far as possible.

2010 is the time to get back to basics by putting together strategies to restore the budget to balance and adopt plans to reduce public debt levels.

ACCI recognises that the Government has committed to offsetting all new spending with savings from the 2009-10 Budget and it has further indicated that real spending growth needs to be contained at less than 2% in years in which the economy is projected to grow at above trend rates.

In addition to these disciplines, ACCI considers that the Government should embark upon a 'root and branch' review of public expenditure to help reduce the size of government, principally by targeting waste and inefficiency and other programs where necessary.

We accept that the normal budget process goes part of the way, however our circumstances dictate we need to move more quickly to restore the national balance sheet.

Equally important over the next 12 months and beyond will be reasserting a strong commitment to microeconomic reform as a means of promoting productivity growth.

ACCI has nominated a comprehensive range of measures to this end including a commitment to:

- better regulation which is efficient and lowers compliance costs;
- a competitive tax system and expenditure reform;
- competition and free trade;
- promoting R&D and innovation;
- delivering an affordable, efficient and secure energy supply; and
- providing infrastructure which is focussed on private sector participation and subject to rigorous cost benefit analysis.

As the economy heads to recovery over the next year there are also a number of significant storm clouds hovering on the horizon where business needs to be cautious.

These concerns include reduced levels of competition in the provision of business lending, rising energy prices flowing from a new wave of 'green' regulation, and taxation changes which are skewed away from providing incentive for investment, risk taking and job creation.

In each of these areas ACCI has been active in expressing the perspective of business and will continue to be vigilant.

SECURING CAPITAL FOR DOING BUSINESS

A consequence of financial market instability over the past year has been a reduction in the number of business lending participants especially amongst foreign-owned banks and specialist non-bank lenders.

Reduced levels of competition will affect the availability of finance, which has already become evident in certain sectors of the economy and for small business in particular.

ACCI has proposed to government that a Productivity Commission inquiry in this area would be a useful and effective response and may in fact positively improve the performance of the major lenders.

It is a matter of record that ACCI has consistently raised concerns throughout 2009 that the proposed CPRS arrangements would unfairly raise the price of energy for many business users. Smaller businesses would receive no compensation and in many instances face overseas competition that is not subject to any cost disadvantage.

Apart from the CPRS, the renewable energy target and initiatives including feed-in tariffs will place pressure on electricity prices.

ACCI has used the term 'green inflation' to describe the inevitable flow-on consequence of layers of environmental regulation set to be imposed by all levels of government across Australia.

Other pressures including required network upgrades, modernising generation and fuel switching to greater gas uptake will also place upward pressure on prices. We estimate price increases in the order of at least 50% over the next 3 years are probable and this may even be conservative.

Accordingly, adopting energy efficiency measures will become critical to energy price-sensitive operations in the period ahead.

TAXATION REFORM OPPORTUNITIES

It is expected by the end of 2009 that the Henry Review of Taxation will be provided to government with an expected response in early 2010.

ACCI will be critically assessing this unfolding process and will be wary of any suggestions that reduce incentives for business and limit opportunity for wealth creation and economic growth.

In our current fiscal circumstances and in the absence of meaningful expenditure cuts, ACCI is not expecting an overall reduction in taxation in the short to medium term.

However ACCI would have major concerns if a rebalancing in taxation occurred which impacted smaller and medium sized enterprises, especially in the area of extending payroll tax, reducing capital gains tax concessions or prioritising reductions in company tax ahead of personal income tax changes.

By any measure 2010 will be a challenging year for business as it recovers from the uncertainty that prevailed over the past year.

It will be important to persist with the reform agenda and to remind governments that sustainable recovery will only be delivered by the private sector and their policy responses need to reflect this.

NO HANDWRINGING FROM COPENHAGEN

Peter Anderson, Chief Executive



Peter Anderson
ACCI Chief Executive

Since the failure in early December of a united global front at Copenhagen on how to tackle greenhouse gas abatement there has been a further cooling by Australian industry in relation to locking in an Australian emissions trading scheme before other nations step up to the plate.

Putting the Carbon Pollution Reduction Scheme legislation back into the parliament in February, as the

Government proposes, sets up a political contest but is unlikely to produce a workable way forward.

Copenhagen did change things. It told us that nations are not operating in synch. Multilateral action on climate change is not around the corner.

The responsible course is to allow our government and politicians to adjust strategy to cater for this new reality.

The Government would be risking its own credentials if it were to negotiate an irresponsible emissions trading scheme with green groups just to get it through the Senate.

Setting targets next year without plotting a workable solution on how to reach them is to repeat the problem the world got itself into since Kyoto.

Too much ambition, not enough reality.

Although business owners, as part of the wider community, have a range of views on climate change there is a growing reluctance to impose big transition costs on the Australian economy and jobs if, for example, countries like China and the United States don't do likewise.

Yet an adjusted strategy with tempered ambition can still see us move forward. The limited outcome in Copenhagen is not a cause for national or global hand-wringing.

It's clear that a highly emotive 'we are all about to be ruined by our current way of living' debate is the wrong starting point for policy responses even if the scientific weight of opinion is accepted.

A more honest 'our job is to protect both our environment and our economy' is the reality, if not the green credo.

Leaders have an obligation to the standard of living of their people, as well as the environment.

Our world is complex. Nirvana is a state of mind, not a state of reality.

The Copenhagen Accord makes it clear that there are a multitude of carbon mitigation responses likely to come from other nations, of which an emissions trading scheme is but one.

There is no imperative that we must establish a national consensus on one approach, at least not before a national system is put in place.

Finding solutions to difficult issues is better served by creative thinking, innovation and multiple ideas.

It's also clear that the fragility of a global political consensus puts nations that want to be good global environmental citizens at real risk of carrying an unfair burden.

Our good intentions must not be abused or isolate us from the timing of others.

For example, a global market in trading carbon emissions has a different impact on Australia than a purely Australian emissions scheme.

Seeing Copenhagen as a setback would be to draw us into a negative blame game.

Seeing it as a chance to re-test some of our assumptions, think more clearly about options, and make smaller less ambitious domestic steps count for more until other nations make binding commitments is the right approach.

We must encourage industry to keep investing in new technology and energy efficiency while our politicians slug it out.

Adding green tape to meet a 5% target, as suggested by ex-public servant Alan Hawke, would simply stifle entrepreneurship.

A good practical start would be for the current tax review by Treasury head Ken Henry to recommend incentives for research, innovation and technology substitution.

That's something we can do without waiting for other nations, at low risk and potentially big gain.

[This article was printed as an Opinion Piece in the Australian on 26 December 2009]

ACCI MEMBERS

Chamber of Commerce and Industry

ACT and Region Chamber of Commerce & Industry
Australian Federation of Employers & Industries
Business SA
Chamber of Commerce & Industry Queensland
Chamber of Commerce & Industry of Western Australia (Inc)
Chamber of Commerce Northern Territory
NSW Business Chamber
Tasmanian Chamber of Commerce & Industry Ltd
Victorian Employers' Chamber of Commerce & Industry

National Industry Associations

ACCORD
Agribusiness Employers' Federation
Air Conditioning and Mechanical Contractors' Association
Association of Consulting Engineers Australia (The)
Australian Beverages Council Ltd
Australian Food and Grocery Council
Australian International Airlines Operations Group
Australian Made, Australian Grown Campaign
Australian Mines and Metals Association
Australian Paint Manufacturers' Federation Inc.
Australian Retailers Association
Bus Industry Confederation
Live Performance Australia
Master Builders Australia Inc.
Master Plumbers' and Mechanical Services Association of Australia (The)
National Baking Industry Association
National Electrical and Communications Association
National Fire Industry Association
National Retail Association Ltd
Oil Industry Industrial Association
Pharmacy Guild of Australia
Plastics and Chemicals Industries Association Inc.
Printing Industries Association of Australia
Restaurant & Catering Australia
Standards Australia
Victorian Automobile Chamber of Commerce

THE ACCI REVIEW IS A REGULAR PUBLICATION OF THE AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

ACCI Canberra

Level 3, Commerce House
24 Brisbane Avenue
BARTON ACT 2600
PO Box 6005
KINGSTON ACT 2604
Phone: 02 6273 2311
Fax: 02 6273 3286
Email: info@acci.asn.au

ACCI Melbourne

Level 3
486 Albert Street
EAST MELBOURNE VIC 3002
PO Box 18008 Collins Street East
MELBOURNE VIC 8003
Phone: 03 9668 9950
Fax: 03 9668 9958
Email: melb@acci.asn.au



www.acci.asn.au

For further information about issues raised in the publication, contact the ACCI Review Editor, Brett Hogan, at ACCI's Melbourne office.