



A NEW BETTER TAX SYSTEM FOR AUSTRALIA

With the introduction of the new tax package on July 1, Australia will be entering the twenty-first century with a tax system as good as if not better than the systems now found in most nations of the world. If our interest as Australians is in having a strong and competitive economy while promoting social equity at the same time, these reforms to our tax system will be of immense importance in helping to achieve those ends.

The most widely discussed feature of tax reform is the introduction of the Goods and Service Tax, the GST. It has been so extensively discussed because of the concerns many have had about moving from the system they have known to something new and different. Yet if the experience of other countries can be relied on, once the GST is in place and operating smoothly it quickly moves into the background and is hardly noticed by anyone.

The one major matter of regret remains the fact that the GST is not being universally placed on all goods and services. The revenue will therefore be less than it would have been so that certain state taxes that were to be removed will now remain. And because there will be businesses in which both taxed and non-taxed items will be sold along side each other, the system will be more complex than it needed to be.

The most visible part of the changes taking place will be the movement in the price level. However, the introduction of the GST will be only one part of the reform process. From July 1, the government will also be reforming much more than the indirect tax base by removing the Wholesale Sales Taxes (WST). In addition, there will be a \$12 billion annual cut in personal income tax, increases in government benefits such as the age pension and family assistance, and once-off payments to retirees.

The implementation of the tax reform package provides the most thorough change to the tax system since Federation and will be the culmination of over thirty years of debate

I N S I D E

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Globalisation and Developing Countries. Broader and deeper globalisation of commerce and industry, and of the world economy, are essential to strengthen the economic performance and prospects for many of the world's developing economies, and through this lifting the living standards of their peoples. Closed economies, and those burdened by protectionism, are certain to underperform against their potential. [PAGE 7](#)

The Metals Casuals Case – An Attempt to Eliminate Casual Employment in the Metals Industry. The AMWU has applied to vary its award to heavily restrict, and in effect eliminate except for short term use, the employment of casual employees. The intent is to make the Australian economy more rigid and would do their own members far more harm than good. [PAGE 10](#)

over which tax package would be able to replace the current WST. It will also go a long way to improving the incentives to work, save and invest. In the face of growing globalisation of business and the associated intensification of competition, there is no doubt that improving the competitiveness and broadening the base of the tax system is paramount for the long-term health of both business and the Australian community.

REDUCING COMPLEXITY

The replacement of the distorting and arbitrary WST with a broad based GST will go a long way to alleviating the complexity associated with this tax. The current WST applies to a set of products comprising only around 20 per cent of total household expenditure and its multiple, selective rate structure distorts consumption decisions based on individual preferences and imposes inequitable burdens among taxpayers.

From a business perspective the WST has an even greater negative effect as it derives half its revenue from taxing business inputs. Unlike under the GST, where the availability of input tax credits is vital to ensuring that the incidence of the tax is levied at the point of consumption, under the WST there has been no opportunity for producers to offset taxes on inputs at later stages of production.

Producers have had no option but to pass the tax on, adding to the cost of inputs and resulting in high and arbitrary effective tax rates at the point of sale. The GST will overcome the inherent problems of

the WST by protecting and broadening the tax base, allowing more revenue to be collected at a lower uniform rate.

PERSONAL TAXATION

The inadequate revenue raising capability of the WST – which has continued to diminish in relative importance as the production of manufactured goods has become relatively less significant – was also partly responsible for a build-up of pressure on the income tax side. Broadening of the indirect tax base arising from the introduction of the GST has allowed for the reduction in income tax rates and remodelling of the tax-social security interface.

From July 1, all Australian taxpayers will benefit from income tax reductions so that 80 per cent of all income tax earners will be paying a marginal rate of only 30 per cent. Not only will 80 per cent of all workers have more disposable income, but the new tax package encourages families to undertake paid work by increasing the income test threshold and reducing the income test taper rate.

These changes will reduce the effective marginal tax rate for many low income families and increase incentives for low income working families to re-enter the workforce encouraging activity and increasing output.

RATIONALISING STATE TAXES

The tax reform package also provides the opportunity for further rationalisation of the narrow-based State and Territory

taxes and stamp duties and may in future provide the catalyst for a reduction in the distortionary and inefficient payroll taxes. Under the tax reform package Federal-State financial relations will be totally revamped with the States now having the opportunity to access a broad tax base to fund social and community services, reducing their reliance on the Commonwealth to provide financial grants.

However, the deal struck between the Government and the Democrats has seen the postponement of the abolition of State financial transaction taxes and stamp duties on financial transactions (in the case of stamp duties the postponement has been indefinite).

THE BLACK ECONOMY

Currently, 2.6 million businesses have applied for an Australian Business Number (ABN), far more than the number originally expected, which augurs well for the Government's objective of capturing the so-called 'black economy' in the GST net. The higher than expected applications may be a by-product of the introduction of a key element of the tax package – a one-tax instalment system known as Pay-As-You-Go (PAYG).

Under the PAYG arrangement, a business entity making a payment must deduct tax at 48.5 per cent if the supplier has not quoted an ABN, where the supplier is carrying on an enterprise in Australia. This withholding arrangement will certainly have an impact in capturing the 'black economy'.

But beyond addressing the issue of tax avoidance, the second major benefit of the PAYG payment arrangement will be the improvement in administrative efficiency. All businesses will be able to use a single compliance statement in which they will be able to include withholding obligations, payment of GST and Fringe Benefit Tax (FBT) submitted to the Tax Office. This will ease the compliance burden on businesses (especially small businesses) by establishing a simple, integrated tax return enhancing revenue collection.

EXPORTS

There will be an unambiguous benefit for exporters in particular. In the face of the increasing globalisation of business and the associated intensification of competition there was a clear need for improving the competitiveness of the tax system. Part of this improvement will see all exports becoming 'GST-free' enhancing Australian export price competitiveness in the global market. The tax reform package also offers exporters further opportunities for savings by reducing the embedded taxes associated with transport.

Given Australia's huge land area, transport costs add significantly to the final price of domestic and exported goods and services. The Diesel and Alternative Fuels Grants Scheme (the on-road scheme) will cut fuel costs for a range of businesses. The scheme will operate from 1 July 2000 and businesses can register to claim a grant.

The on-road scheme will help regional and rural Australians in particular, with the benefits of lower transport and production costs expected to flow on to all Australians.

PRICE EFFECTS

The introduction of the GST will push many prices higher. However, there is no reason to expect that these amendments to the package will have a major impact on inflation even if it does push the inflation rate upwards over the short term.

The effects of tax reform on the Consumer Price Index (CPI) are essentially time dependent, with a clear distinction between short and long run price effects. Price increases resulting from the GST related spike in the CPI are expected to be one off, with secondary impacts flowing from lower, less distorted industry costs expected to reduce inflationary effects in the longer term.

There is therefore no justification for any GST related wage increases especially given that the compensation package is adequate to ensure no one is worse off under the new package.

BUSINESS TAX REFORM

There is also one additional matter in the tax reform process which is often overlooked which are the changes being made to business taxation. Although these changes will not be introduced this year, they should be seen as part of the total package of reforms.

These changes encompass the reductions in the level of company tax, the introduction of the tax value method and the changes which have been made to the structure and rate of Capital Gains Taxation.

These changes will go much of the way in improving the structure of the tax system and make the economy more productive and internationally competitive. They will also make Australia a more attractive destination for international capital flows. While for most Australians these will be changes almost entirely behind the scenes, their presence will be felt in the continued resilience of the economy and the steady improvements made in our communal standard of living.

THE ACCC

The one seriously negative feature of the tax reform process has been the role given to the Australian Competition and Consumer Commission (ACCC). The very notion that price exploitation can occur as part of the introduction of the GST was always lame. In a market economy, with genuine competition in virtually every market, there is little prospect that prices will be anything other than a reflection of genuine costs of production. If someone is really creaming, there are other businesses more than willing to take some of those supposedly excess profits for themselves.

It is one thing to have a watchdog whose role should be more or less to confirm what any good

economist will know, that the prices in the market are the market prices. What makes the intrusion of the ACCC so unsettling is the very fact that so many changes will be happening that absolutely no one is in a position to say what any particular price ought to be.

Bear in mind all of the changes which will be happening at one and the same time. There will be the introduction of the GST, the removal of the WST, major reductions in personal income taxes and large increases in welfare payments. In this environment some prices will rise and others will fall. Of those prices that go up, some will go up to a greater extent than others. The same with prices that fall, some will fall more than others.

What will happen to profit margins for any business or on any product is unknown. With more money in their hands, some goods or services will find a flood of demand coming their way. Other products will suddenly find less interest from consumers. There is therefore absolutely no basis for the ACCC to decide in either advance, or while it is happening, or finally in retrospect, what should happen to the profit margin for any business in Australia and what the price of any good ought to be.

Business supported tax reform because it would make the economy more efficient. It would create an environment less distorted by the tax system. It would therefore be a tragic irony if the process of tax reform brought with it an even greater problem for

business and the economy by introducing the actions of an overbearing price regulator which continually tried to undo the directions that the market wished to take.

SUMMING UP

If the coming tax reform is less than it might have been, it will still leave us with a tax system far better than the one it is replacing. The one regrettable flaw is that the GST is not universal with food as well as a narrow range of services having been excluded from its net. The range of state taxes that might have been eliminated is therefore not as wide as it ought to have been and the implementation of the GST will be more complex than it otherwise would have needed to be.

Yet with all the uncertainties before us, it is still possible to say that the Australian economy will be more efficient, competitive and equitable because of the tax changes which are about to be introduced.

There is, finally to be after years of national debate, the introduction of the GST. This is the most visible aspect of the tax reform package and is the one part most often discussed. Although the GST rate is 10 per cent, this will not mean, as some seem to think, that the GST will therefore add 10 per cent to the prices of all products and services sold throughout the economy.

Because even leaving aside the fact that basic food items will not be taxed, coming with the GST will be the removal of the Federal Government's Wholesale Sales Tax

(WST) as well as a number of hidden but costly state imposts. The net effect of the tax changes will thus be a good deal less than the ten per cent that will be added to most products.

But even then, accompanying the introduction of the GST will be extraordinarily large personal tax reductions which will affect the economy in two ways. It will firstly lower the total tax payable at every level of personal income, with the intent of the tax reductions specifically designed to compensate for the increases in GST. This compensation package is supplemented by changes to the level of welfare payments which is also intended to ensure that no one is out of pocket because of the changes to taxation.

But beyond the shifts in after-tax incomes, what is most crucial about these tax changes are the reductions in marginal tax rates. No economy is static. High marginal tax rates make individuals more reluctant to undertake additional economic activity. No one is unaware that what matters to them is not the gross amount they are paid, but the actual amounts they receive after tax. By lowering marginal tax rates for the vast bulk of the working population, the effect is to add to the incentives to create additional wealth. It is this wealth creation that will make the crucial difference, and it is this tax package which will help ensure this outcome occurs.

And even more invisible than pretty well all other aspects of tax reform will be perhaps the most

important reform of all. It is the change in Commonwealth-State financial relations which will largely end the problems the states have faced in funding their own levels of activity.

All of the funds raised by the GST will go to the states. This will

provide the secure revenue base that has eluded the states since Federation a century ago. And with this use of the GST revenue stream, there should be no incentive for the Commonwealth Government to seek to raise the rate. While one should never say never, at least here we find a brake on the rate

continually rising because the body with the authority to put the rate up has little if any incentive to do so. This is a reform truly worthy of the name reform.

BIOSAFETY PROTOCOL PROTECTING THE ENVIRONMENT OR PROTECTING TRADE?

The Biosafety Protocol on living genetically modified organisms is an incomplete treaty hastily adopted without having finalised key issues. Its great danger is that it will become a further barrier to trade. Australia was right not to sign the treaty and should continue to be vigilant to ensure it is not used for purposes other than which it was intended. There is need for concern that the Biosafety Protocol does not undermine the WTO on the grounds that it is protecting the environment when it is in fact being used as a barrier to trade.

In Montreal in January this year, over 130 governments, including Australia, adopted the Cartagena Protocol on Biosafety, (the Biosafety Protocol); a global Treaty for addressing the potential environmental impact through the movement of living genetically modified organisms (LMOs) across national boundaries.

The Protocol arose out of the Convention on Biological Diversity to cover the release into the environment of LMOs such as seeds, fish, animals, trees and agricultural commodities but not processed foods. Its objective is to promote the conservation of biological diversity through the safe transfer and handling of LMOs across international boundaries.

Negotiations on the Protocol on Biosafety began in 1996 and

Australia worked along with other major agricultural exporters to protect both our WTO rights and sovereignty to maintain our own regulatory arrangements for gene technology. Negotiations on the Protocol were protracted but eventually a view emerged that such a Protocol would reassure consumers of LMO products.

As a result, this view exerted pressure on the USA and Canada, the major LMO exporters, to conclude a Protocol. This is the first such Protocol dedicated to the environmental impact assessment of the trade in genetically modified organisms.

The Protocol establishes a regime for countries to notify whether they are willing to accept imports of LMOs. An international clearing house is to be established and labelling requirements are also

part of the Protocol. However, doubts arise about how particular countries might apply the Biosafety Protocol and what their motives might be in utilising it.

During negotiations, the European Union saw the Protocol as an instrument to pursue its own trade and environment agenda. It was also seen as a way to address domestic issues such as inadequate food safety regulations. Developing countries on the other hand see the Protocol as a means of helping them deal with their lack of regulatory capacity of LMOs.

Despite the Protocol opening for signature in Nairobi during the latter half of May this year, several important issues remain for further negotiation. These include the negotiation of detailed requirements for documentation for LMO shipments and for

compliance and liability issues.

Australia, while voting to adopt the Protocol, has not yet signed it. It will enter into force following the ratification by at least 50 countries. This is likely to take at least 2 years. Australia wishes to see the outstanding issues negotiated prior to any consideration of ratification.

The key issue of the Biosafety Protocol is whether it is an environmental treaty as it purports to be or a de-facto trade agreement. While the Protocol defines its relationship with other international agreements including the WTO as being "mutually supportive", it also includes language on the precautionary approach, "risks to human health" and "socio-economic considerations" as factors that should be taken into account.

The precautionary approach or principle states that "where there is the threat of serious damage, the lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation". The Biosafety Protocol has enshrined this principle in provisions whereby the lack of scientific certainty does not prevent parties from taking decisions on the import of LMOs. The WTO on the other hand requires sound science and a risk assessment approach as the basis for decision making.

The concern is that application of the precautionary approach of the Protocol as opposed to the more rigorous science based approach of

the WTO, may be seen by some countries as a means to restrict trade.

NEED FOR CAREFUL EXAMINATION

It is therefore the relationship between the Biosafety Protocol and the WTO, which needs careful examination. In principle the Protocol and the WTO should be able to coexist without conflict. Nor does it appear that there is anything in the Protocol which says that a party to it which is also a WTO member would not need to act in a manner inconsistent with its WTO obligations.

However, the relationship between Multilateral Environment Agreements (MEAs), of which the Biosafety Protocol is one, and the WTO is not fully explored and no consensus has yet been reached by the WTO Committee on Trade and the Environment on the WTO rules relevant to the relationship with MEAs.

Avoidance of conflict between the two agreements will, therefore, rely on countries' respect for both treaties in their national decision making. The question must be raised – is it sensible to be a signatory to a treaty that could undermine the WTO?

The idea behind the Biosafety Protocol, to protect the environment from the premature release of LMOs, is sound, but it is questionable whether an international agreement will achieve this end without some unintended consequences. It surely

would be easier to adopt domestic regulation to ensure the control of LMOs in the national environment.

Australia is already addressing this issue through the draft Gene Technology Bill – a national regulatory system for GMOs. Under the proposed legislation, a person wishing to deal with a GMO will first require a licence from the Gene Technology Regulator. The scope of dealings covers the research, manufacture, production, commercial release and import of LMOs. The sort of issues that the Biosafety Protocol has been set up to undertake.

Such a uniform, transparent and efficient regulatory system for gene technology will underpin the development of a world class biotechnology industry. Australia already supports extensive research into developing new and better varieties of primary products. Genetic engineering is an extension of this technology.

Australian States have backed the development of biotechnology strategies, so clearly this is an area that will continue to be developed. It is therefore right that Australia has a proper framework that meets the expectations of the community as far as health and environmental safety are concerned. Within such a framework there should be the option for markets to determine whether commercial opportunities are viable and worth exploiting.

UNDERMINING WORLD TRADE

However, treaties governing the transboundary movement of goods

have the potential to be misused, despite their best intentions. The WTO already gives members rights to restrict imports where they can show scientifically that it poses a risk to human health and safety or to flora and fauna. Unfortunately, this has been exploited by countries in attempts to restrict goods on economic grounds.

As a result, a new WTO agreement was negotiated to ensure that if a country was restricting goods on quarantine grounds, it had to be demonstrated that it was following established international standards. If the standard was above international best practise then it had to demonstrate that it was scientifically based and that such a decision was taken following a risk assessment.

The WTO tries to ensure that trade is subject to transparent and objective rules, applying equally to all member countries.

The Biosafety Protocol, however, gives far greater discretion to a

government to restrict trade of LMOs on the grounds that it is consistent with the objective of the precautionary principle, thereby injecting a political judgement into a decision rather than a scientific judgement. This is likely to create uncertainty in trade and commerce. Exporters can be required to undertake a risk assessment by the importing country and have no rights of appeal if a decision is taken to restrict imports.

The Biosafety Protocol could provide the means for countries to undermine the principal tenets of the WTO. Indeed there are countries that will welcome this general right to distort and/or restrict trade.

An analysis of the Protocol has concluded that its language is imprecise and as a result it is impossible to determine its impacts on the WTO. This is unsettling, as Australia has worked hard to open up international trade and reduce barriers. Any attempt to undermine the WTO will work against

Australia's interests.

As the demonstrations at Seattle showed, there are vocal lobby groups who will go to any lengths to use the WTO to address environmental impacts. The Biosafety Protocol will provide them as well as others with another element to try to disrupt free trade, which they believe causes environmental degradation.

The Biosafety Protocol is an incomplete treaty; hastily adopted without finalising key issues. It is hard to see what it will achieve other than further barriers to trade. Australia was correct in not signing it and should continue to be vigilant to ensure that it is not used for purposes other than which it was intended. Australia also needs to work to ensure that the Biosafety Protocol does not usurp the WTO on the grounds that it is protecting the environment when it is in fact being used as a barrier to trade.

GLOBALISATION AND DEVELOPING COUNTRIES

Broader and deeper globalisation of commerce and industry, and of the world economy, are essential to strengthen the economic performance and prospects for many of the world's developing economies, and through this lifting the living standards of their peoples. Closed economies, and those burdened by protectionism, will underperform against their potential, imposing substantial costs, in terms of lost opportunities, on their business communities and ordinary citizens.

Globalisation means governments' maintaining competitive and open economies, building upon market-oriented policies. It also means recognising the constructive role global enterprises and electronic commerce can play in creating new opportunities, and through this

stronger economic growth and faster development.

The importance of globalisation and economic development is underscored by a recent OECD study which looks at the potential for five of the world's big emerging

economies, namely Brazil, China, India, Indonesia and Russia.

The OECD projects a massive shift in global commercial and economic weight over the next 20 years, with the output of those 'big 5 emerging economies' rising to equal that of

the industrialised OECD nations – which includes the United States, much of the European Union, as well as Japan, South Korea and Australia.

Understandably, the ‘big 5’ will expect comparable standing in issues – commercial, economic and political – affecting the world economy and community of nations to that of the existing industrialised nations.

The dramatic transformation of the dynamic East Asian economies over the past half-century clearly demonstrates the commercial, economic and social dividends of globalisation.

ECONOMIC DEVELOPMENTS

On the economic front, economic, employment and export growth have grown strongly, while the social dividends include declining rates of illiteracy and poverty, and longer life expectancies. Per capita incomes in the dynamic East Asian economies have shown faster long term growth than many western industrialised nations.

Real economic growth in East Asian economies averaged over 7 per cent annually during the 15 years to 1980, and then over 8 per cent annually in the following 18 years to 1998, more than double the rates of western industrialised countries.

The primary engines of these superior growth rates were a strong export orientation and pro-foreign investment policies. Seven of the world’s top 10 exporting countries, measured by shares of exports in GDP, in 1997 were located in Asia – including all of the top 5, in descending order,

Singapore, Malaysia, Hong Kong, Indonesia and Thailand.

For many developing nations, the most cost-effective social safety net is the depth and breadth of the country’s linkages with the global economy, allowing them to respond flexibly and quickly to economic ill-winds through new exports and capital inflows.

Governments have a substantial role to play in facilitating globalisation. Policy settings must be adaptable, reinforcing competitive markets and emphasising market-oriented measures.

Sound economic policies must be accompanied by balanced and transparent laws and regulations, which are administered without fear or favour by an impartial judiciary, and an adequately resourced and honest constabulary.

Corruption in all its forms undermines broad and soundly based economic development, and its elimination should be a high priority for all governments. At the same time, democracy and good governance, as well as respect for civil liberties, can help to reinforce competitive, market mechanisms.

Near term economic development priorities should include promoting economic stability, removing price controls, and liberalising production and marketing system, especially for agricultural products, while medium to longer term strategies should embrace privatising state owned enterprises, reforming sclerotic financial systems, and rethinking the role of the state.

Business can also play a constructive role in assisting developing countries to realise the benefits of globalisation.

Global businesses, whether large or small, bring many benefits to host countries, particularly developing nations, including greater access to foreign capital, technology and export networks, through which they generate flow-on benefits to local firms and people.

Research by the OECD shows foreign firms create new jobs faster, and pay wages higher than, domestic firms (up to 25 per cent more in some cases). Other benefits include superior training and career opportunities for local people.

Export-oriented manufacturing and services also perform a valuable role in developing the labour skills, technology and general market experience and expertise which can move developing countries into a virtuous upward cycle of productivity and income growth.

A simple example suffices: while westerners once derided Asian economies for producing simple garments, footwear and toys, they now confront fierce competition from high-brand name players in computer equipment and electronics, and increasingly from software and other information technologies.

Global enterprises also play a valuable role in promoting the upward, not the downward, convergence toward world standards of labour and environmental practices in developing countries.

Developed countries can constructively assist developing countries to build local capacities to realise the commercial, economic and social dividends of globalisation.

For the least developed countries, this should include targeted foreign aid programs which help those nations build fundamental capacities for self-sustained economic growth and development.

For other developing countries, this should also include developed countries widening and deepening efforts to liberalise domestic and international markets for trade and investment, so emerging economies can better realise their competitive advantages in trade and commerce.

THE APPROPRIATE RESPONSE

In so far as developed countries feel threatened from new found competition from developing countries, the appropriate response must not be to raise protective barriers, but rather to improve the flexibility of labour and product markets, and focus on rationalising and reducing government intervention in national economies.

An ambitious and comprehensive multilateral round of trade and investment liberalisation negotiations, would assist developed countries to realise the dividends of globalisation by strengthening the binding rules of the global trading system.

The multilateral trading system advantages developing countries by levelling the playing field so both large and small, industrialised and developing, countries all compete on a similar footing. For many developing countries, an effective multilateral regime is a solid defence against unilateralism from larger, more aggressive nations.

If anything, the comparatively small commercial and economic size of most developing countries means they gain proportionately more than larger countries from the rules-based system.

The benefits of freer trade for developing countries are substantial. The OECD has estimated eliminating tariff barriers alone to trade would raise world economic growth by 3 per cent per annum, with even larger gains accruing to developing countries both in Asia and Africa.

For example, India would gain a 'free kick' equivalent to almost 10 per cent of its GDP, while for China the benefits would be a still-substantial nearly 6 per cent, both of which would greatly assist to reduce pressures on unemployment and poverty in these mega-economies.

Those developing countries which have embraced economic liberalisation and openness have enjoyed economic growth rates much faster than those who have maintained closed or protectionist policies.

The World Bank has estimated those developing countries which pursue liberal and open economic policies enjoyed average economic growth rates of around 4.5 per cent annually during the 1970s and 1980s, far and away in excess of the 0.7 per cent figure for those developing countries which adopted inward oriented, protectionist policies.

International agencies, both governmental and private sector, can usefully provide developing countries with advice on pro-market, efficiency-enhancing and outward-oriented commercial and economic policies. Sound education, training, health, and public finance and governance policies and structures are necessary elements of such policy frameworks.

Adjustment assistance, where legitimate and necessary, should help position developing economies to achieve self-sustained economic growth and development, and not to create ongoing welfare-dependencies.

THE METALS CASUALS CASE AN ATTEMPT TO ELIMINATE CASUAL EMPLOYMENT IN THE METALS INDUSTRY

The Australian Manufacturing Workers Union ('AMWU') has applied to vary the Metal, Engineering and Associated Industries Award to heavily restrict, and in effect eliminate except for short term use, the employment of casual employees.

The AMWU application, in seeking to eliminate the employment of casuals for time periods other than the short term, in summary specifically seeks to:

- restrict employment under the Award of casuals to meet short term needs, carry out work in emergency situations, or to perform work unable to be practicably rostered to permanent employees;
- increase the casual loading from 20% to 30%;
- require that on engagement the employer shall provide a casual with a written instrument of appointment which stipulates type of employment, duties, number of hours, rate of pay;
- deem an employee employed on a regular pattern of hours in four consecutive weeks to be a permanent employee if the regularity continues into the next consecutive week; require a minimum daily employment period for a casual to be six hours, and not more than once on each day;
- require part-timers to be rostered for a minimum of four consecutive hours on any day or shift.

THE APPLICATION SEEKS TO RESTRICT CASUAL EMPLOYMENT RESTRICTION OF CASUALS

In its submissions the AMWU expressly indicates an objective in respect of some areas of this application of restricting the employment of casual labour, for example the proposed difference in minimum engagement periods between part-time and casual employees.

The AMWU objective in these proceedings is to heavily reduce the number of casuals employed in areas covered by this Award, and the proposed limit of casuals to 4 weeks or emergencies etc., the substantial increase in the loading to 30%, the substantial increase in minimum engagement period for casuals, and deeming a casual to be a regular or ongoing employee after 4 weeks engagement would all have the effect of substantially limiting the numbers of casual employees.

These award variations have the intention and effect of breaching the provisions of the Act relating to Awards.

The proposed clause 4.2.3(b) is designed to introduce an entirely new set of restrictions on casual employment in this industry. It seeks to restrict their employment only to the following situations:

- to meet short term work needs; or
- to carry out work in emergency circumstances; or
- to perform work unable to be practicably rostered to permanent employees.

This is an approach which would have a drastic effect on employment practices regarding casuals. There is a substantial number of full-time presumably ongoing casuals in the metal sector, and despite there being in existence a fair minimum safety net for these employees the AMWU inexplicably seeks to remove them from the industry. The AMWU quite expressly seeks to substantially restructure the patterns of contract of employment in workplaces covered by this award.

It seeks to do this by introducing tests which are vague and extremely difficult to predict in

their application in practice in workplaces. Who is to decide what is and is not a 'short term work need'? Does covering an absence on annual leave of four weeks meet this test? Does covering an absence on long service leave of three months meet this test? Does covering an absence on one year's maternity leave meet this test? Where does one draw the line and by what criteria?

Similarly the phrase 'unable to be practicably rostered' is very unclear in practice, and there could quite legitimately be a debate about the application of that test to each of the situations of absence mentioned above. Ultimately the meaning of each of these phrases will have to be decided, in the absence of further explanatory provisions, by a series of AIRC cases and decisions, from which perhaps some guidance can be drawn. On the face of it, however, the meaning of these tests is very unclear.

INCREASE CASUAL LOADING

The AMWU proposes to increase the casual loading from 20% to 30%, a massive increase in labour costs.

The Commonwealth has analysed in detail the basis of the current loading and has demonstrated that the current loading is a reasonable loading having regard to the factors that are used to such loadings provide compensation for, including annual leave, public holidays, personal leave, annual leave loading, with an additional 2.5% included to account for, for example, industry/market factors.

Increasing the loading in the way proposed by the AMWU would have a drastic disincentive effect for the employment of casuals. Once again this appears to be an attempt to discourage the use of casuals and to deliberately restructure the approach taken to contracts of employment in workplaces. This is not an appropriate function of the casual loading, nor as earlier submitted of the award safety net.

As a precedent or flow-on effect this is also an approach which would have a drastic effect on the employment practices regarding casuals in many sectors of the economy. By increasing the costs by such a large amount, the effect would be to substantially deter use of casuals and to substantially inhibit their use even when needed.

The point has to be made again that this would be a significant restriction of the freedom of choice for both employers and employees. Many employees prefer casual employment for reasons including family reasons, and ACCI objects to attempts by the AMWU to restrict that freedom of choice.

WRITTEN STATEMENT

The AMWU proposes to introduce a requirement that on engagement the employer shall provide the casual employee with an instrument of appointment in writing which stipulates the type of employment and informs the employee of the duties required, the number of hours required, and the rate of pay.

This will have a number of harmful effects on this sector, with damaging flow on potential to other sectors. First of all it would be an expansion of the award approach to regular part-time work to casual work. If the rules for casuals are to include this aspect of the rules for ongoing or regular employment, then why should not many other aspects of the regular employment relationship not also be applied to the casual relationship?

Secondly, it would be a decision that employment of casuals by verbal contract of employment alone is no longer possible or appropriate. If that is the case then problems of interpretation arise. Given that casual employment is essentially on an hourly basis, this clause should be interpreted as a proposal that on each hour the casual is employed, that casual must be given a written statement setting out the matters specified.

Thirdly, the effect of written stipulation of hours might mean that variation of hours day by day is no longer possible. This variation of hours limitation would be a very serious restriction in this industry, and in other sectors if flow on pressures were generated as they no doubt would be. One of the key purposes of the casual employment relationship is to enable an employer to 'fill the gaps' with a casual.

Is the AMWU proposing that this no longer be possible? Does it consider that this is inappropriate as a function for casuals? It also seems to be a flat contradiction of the AMWU's own suggested tests

for casual employment which include where ongoing employment is not practicable, or to fill emergency situations, or to meet short term needs.

DEEM CASUALS AS PERMANENT AFTER 4 WEEKS OF REGULAR EMPLOYMENT

The AMWU proposes that an employee hired on a regular pattern of hours in 4 consecutive weeks shall after that time be engaged as a regular or ongoing employee.

The AMWU persists in using the phrase 'permanent' employee. That is a phrase which was specifically rejected in the Award Simplification Decision, which correctly used the phrase regular or ongoing employment. There is, of course, no 'permanent' employment in the private sector, where notice of termination can be given and upon the conclusion of which the employment relationship ceases. The phrase is in other words both contrary to accepted AIRC principle in the ASD and inconsistent with the actual nature of the employment in the real

world, and should be rejected for both of those reasons.

The phrase proposed by the AMWU is essentially to take a radically amended version of the tribunal and common law tests of whether a casual or ongoing relationship exists, and to put that radically amended version into the award for the first time. That raises the issue of whether the accepted industrial tests should be abbreviated and restricted in that manner. There is no good reason why they should be given for example, the care that has gone into the development of these approaches.

The AMWU proposes to introduce a minimum daily period of six hours for the employment of casuals.

This is a significant departure from the current rules laid down in the Award Simplification Decision, and would be a significant disincentive to employment of casuals and part-timers, particularly in small- and medium-sized businesses in other sectors of

the economy.

CONCLUSION

The AMWU application should be rejected in full. It is based on the fundamental misapprehension that there is something intrinsically wrong with casual employment, when in fact such employment is regulated by a comprehensive award system, and is a form of employment chosen and preferred by many employees and employers.

The role of the Australian Industrial Relations Commission is to provide a regulatory safety net, and that is what they have done in this area. Its role is not one of social engineering, ie. effectively eliminating casual employment from the metal industry. Yet that effectively is what the AMWU is seeking to achieve.

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