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“THE FUTURE OF ENTERPRISE BARGAINING AND WAGE SETTING”

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Address by Scott Barklamb, Director – Workplace Relations

***** CHECK AGAINST DELIVERY *****

I want to start by acknowledging the traditional owners of the country on which we meet today, and extending my respects to their elders, past and present.

We appreciate the opportunity to join you today.

Thank you in particular to the organisers. IR societies are a real positive for our profession and rely on volunteers. So, it’s a genuine pleasure for the Australian Chamber to be able to contribute to the program today.

You invite us here at a critical time – in the lead up to potentially one of the most significant elections since federation for the future of our industrial relations system – and for jobs, living standards, and what we can achieve in future as a community.

The fundamental direction for our industrial relations system will genuinely be in play in the 2019 poll.

MINIMUM WAGE SETTING

Employers support the role minimum wages play in Australia – as a safety net, as a pillar of our economy and of jobs, and as a foundation for social inclusion and opportunity.

Australia has chosen to be a high minimum wage country. We also set more minimum wages than any other country – Neither of these fundamentals are going to change.

However, we are utterly flummoxed,... genuinely dumbstruck,... that anyone could be calling for radical changes in how Australia sets minimum wages... other than the employers, and the small businesses in particular, that must pay them.

It is simply extraordinary that anyone could try to argue that Australian minimum wages are not high enough.

We have the second highest minimum wage in the world – behind only Luxembourg¹.

Australian minimum wages have consistently increased by more than inflation, year in year out, under the Fair Work Act – 9 straight increases in the real purchasing power of minimum wages in Australia.

But that is only half the story – minimum wages have increased by more than inflation in 15 of 19 decisions since 2000.

Minimum wage rises exceed inflation in Australia more regularly than Port Adelaide won the SANFL Grand Final in the 80s and 90s.

¹ Luxembourg minimum wage = €1998 per month, the highest in Europe / the World. [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Minimum_wages_July_2008_and_July_2018_\(EUR_per_month_and_%25\).png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Minimum_wages_July_2008_and_July_2018_(EUR_per_month_and_%25).png)

And even this is not the complete story. The minimum cost of actually employing someone in the key industries that apply minimum wages is higher than the nominal minimum wage.

The minimum cost of hiring a retail employee is \$70.70 higher than the national minimum wage.²

And the minimum ongoing, non-introductory, wage under the Hospitality Industry (General) Award is \$20.70 higher.³

Not only was last increase of 3.5%⁴ well in excess of inflation (2.1%⁵) it also exceeded average wages growth (2.6% to May⁶).

Yes, times are tough for many in our community – but it is very difficult to argue that minimum wages are not more than keeping pace.

Union Position

My favourite part of question time is when ministers are asked whether they are aware of any policy alternatives. In this case I am, from the ACTU through its ‘Change the Rules’ campaign.

The ACTU claims Australia’s rules for setting minimum wages are ‘broken’⁷ and “need to change”⁸.

² General Retail Industry Award 2010, cl.17

³ Hospitality Industry (General) Award 2010, cl.20

⁴ [\[2018\] FWC 3500 Summary of Decision \(PDF\)](#), at [50]

⁵ 6401.0 - Consumer Price Index, Australia, Jun 2018, All Groups CPI

⁶ 6302.0 - Average Weekly Earnings, Australia, May 2018, Full-time adult average weekly ordinary time earnings – annual change

⁷ [ACTU calls for Living Wage on 110th anniversary of Harvester Decision](#), (ACTU Media Statement), 2 November 2017

⁸ Sally McManus, Secretary ACTU: Per Capita Reform Agenda Series Speech - [27 April 2018](#)

The ACTU has described the national minimum wage as “in decline”⁹, and claims we need to “restore”¹⁰ the minimum wage to a level that is “fair and reasonable”¹¹ – pretty ambitious claims given Australia has the world’s second highest minimum wage that grows in real terms, year on year.

The ACTU argues minimum wages are not keeping up with prices¹². This is just not factually accurate - this years’ 3.5% rise exceeded growth in the CPI, average weekly earnings and the Wage Price Index.

I could go on, giving you quote after quote and rebutting them, but rarely have straw men been beaten so mercilessly as by the ACTU on minimum wages.

Having painted an inaccurate picture of minimum wages in Australia – the polar opposite of where the real problems lie – the ACTU then advances its chosen solution.

The ACTU is demanding government “force a substantial rise to the minimum wage”.¹³

And we know the magnitude of the rises unions want to force on the system – a minimum wage pegged at 60% of the median wage.¹⁴

I haven’t got time to recount this in detail, but we understand this equation has its genesis in anti-poverty campaigning globally and

⁹ [ACTU calls for Living Wage on 110th anniversary of Harvester Decision](#), (ACTU Media Statement), 2 November 2017

¹⁰ [Minimum wage increase another hard-won step towards fairness](#) (ACTU Media Statement), 1 June 2018

¹¹ [Minimum wage increase another hard-won step towards fairness](#) (ACTU Media Statement), 1 June 2018

¹² [Minimum wage increase another hard-won step towards fairness](#) (ACTU Media Statement), 1 June 2018

¹³ [Australia needs a pay rise – ACTU makes its final arguments to commission](#) (ACTU Media Release) 16 May 2018

¹⁴ Sally McManus, [Press Club Speech](#), 21 March 2018

minimum income policies, and doesn't appear to ever have been designed to set minimum wages.

60% of the current median (\$1,261¹⁵) is \$756.60 per week, or \$37.40 (5.2%) higher than the current minimum wage.

Noting that this will be a moving target, the only way to reach it would be a series of artificially inflated minimum wage increases even further in excess of inflation and prevailing wages growth.

To implement ACTU policy, we would be looking at multiple minimum wage increases with 4s or 5s in front of them - in an economy with ongoing vulnerabilities and 1.8 m Australians unemployed¹⁶ or underemployed¹⁷.

It is SMEs that disproportionately pay award wage increases and it is SMEs that would be asked to fund the ACTU's arbitrary minimum wage target. Let me be very clear – they tell us loudly and passionately that they already struggle to pass on the existing, over inflation rises.

The Expert Panel has already rejected moving towards a multi-year target, and rejected the ACTU's ambit claim for a \$50 per week rise.

It is in this context that the ACTU now demands to 'force' its prescription on the system, and to effectively rob our minimum wage setters of discretion.

¹⁵ 6333.0 - [Characteristics of Employment, Australia](#), August 2017

¹⁶ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0?opendocument&ref=HPKI>

¹⁷ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0>

The ACTU needs to force its so called living wage model on the system because it knows it would not be handed down on merit.

And the ACTU should know that discouraging employment and making more jobs genuinely insecure – the inescapable impact of its so called ‘living wage’ model – will detract from rather than protect liveable incomes for more Australians.

I could address a range of arguments against this, but I am going to focus on just one.

If increases in excess of inflation, year in year out for two decades haven’t addressed working poverty to this point (to use the union shorthand) – why would they do so now?

If the same evidence of unmet employee needs is presented to the Expert Panel year on year, and repeated above inflation increases are not meeting these needs, might it be that we are pulling the wrong lever? Perhaps minimum wages are a very poor redistributive tool?

Might it be that the problems the ACTU uses to justify its ambit wage claims would be better addressed by the tax and transfer systems?

The ACTU seem to be telling us that we must double down on inflated minimum wage increases to secure their beneficial effect – that the only reason we haven’t seen change is that we haven’t yanked the lever hard enough - something which doesn’t seem grounded in experience or to apply in any comparable country.

It is telling that the ACTU says absolutely nothing about the impact of its living wage target on business, especially small business, or on

jobs. Their prosecution of this proposal is entirely, and tellingly, one sided and rhetorical.

Taking away discretion from minimum wage setters and replacing them with a calculation reflects a broader thread running through the ACTU's Change the Rules campaign.

The ACTU increasingly demands to overturn independent decision makers when it doesn't like their decisions.

- Penalty rates.
- Domestic violence leave.
- The right to request changes in hours.
- And now minimum wage increases that fall short of an arbitrary target dreamed up by the ACTU...

In each case unions are demanding to have the rules changed in their favour because they don't like the outcome delivered by the independent umpire. I could have mentioned other examples.

I am reminded of the change.org petition launched by Collingwood supporters after the Grand Final trying to have the result reversed.¹⁸

Unfortunately I am not confident the ACTU will ultimately get the same short shrift the AFL gave the Pies fans.

It seems very telling that the ACTU has called on government to “use its power to force a substantial rise to the minimum wage”. I emphasise again that word – ‘force’.

I invite you to consider the implications for the independence of our national tribunal, and how comparable calls from employers to force the Fair Work Commission to take or not take particular actions would be greeted.

¹⁸ <https://www.msn.com/en-au/sport/afl/collingwood-magpies-fan-starts-petition-to-reverse-afl-grand-final-result/ar-BBNONTF>

Alternatives

So how would employers change minimum wage setting?

A few directions might be worth considering to improve the minimum wage review process, including:

- Greater weight being given to the circumstances and capacities of small to medium sized enterprises.
- Greater weight being given to the needs of the lower paid, and less to relative comparisons with other cohorts of employees.
- Better clarification on who the low paid are and are not.
- More focus on those actually paying minimum wages, and not diluting the impact of cost increases across the macro economy.
- Better addressing genuine incapacity to pay, particularly outside Sydney and Melbourne.
- Reinforcing the importance of encouraging bargaining when setting minimum wages.
- Ensuring we have the right structure in place for setting minimum wages.

What we employers are definitely not saying is that government should try to “force” outcomes on any body charged with setting and varying minimum wages.

...

Before moving on it is also worth recalling that when Australia has used automatic formula to set of minimum wages, as the ACTU now proposes... it hasn't gone well.

I am of course referring to indexation in the 1970s and early 1980s – a period that the ACTU, and only the ACTU, seems to think was a golden age for industrial relations that Australia should return to.

AGREEMENT MAKING

This is a neat segue to our second topic – the future for enterprise bargaining.

We are talking about this because enterprise bargaining is going backwards.

The problem¹⁹

959 agreements were approved in March quarter 2018.

- Over 1,200 agreements were approved in the same quarter of 2015.
- More than 2,000 agreements were regularly approved quarterly as recently as 5 years ago.

¹⁹ Data sourced from: <https://www.jobs.gov.au/trends-federal-enterprise-bargaining>

12,734 agreements were current on 31 March 2018.

- This was 18,720 in March 2015...
- And we peaked at more than 25,000 current agreements in December 2010.

Employee coverage by current, in term, agreements has also fallen:

- In March 2018, 1.7 million employees were working under in term agreements.
- In 2015, this was 2.4 million.

An industry that acutely illustrates this decline is retail.

200 retail agreements were current in March this year. This was more than 2,000²⁰ shortly after the Fair Work Act commenced. 41,000 retail workers now work under in term agreements, down from more than 380,000 five years ago.

Enterprises and employees that previously negotiated agreements, often multiple generations of agreements, are no longer participating in the system.

The proportion of employees whose pay is set by agreements is falling, and the proportion whose pay is set by awards is also rising. This should not happen – and it should be a canary in the coal mine for the future of our bargaining system.

²⁰ [Trends in Federal Enterprise Bargaining, Historical Trends data - current by quarter](#)

Why? - What has caused this decline in bargaining?

I could spend much longer on this, but we think explanations probably lie in factors such as (and this far from an exhaustive list):

- The labour market not generating sufficient pressures on wages generally that would drive bargaining claims.
- The substantial transactional and administrative costs of bargaining, which increased under the Fair Work Act.
- Delays in having agreements approved, which threaten rather than improve trust between employers and employees.
- The risks of attempting to bargain discouraging employers from even attempting it. Bargaining has become simply too unreliable for many businesses to embark upon – and it doesn't stack up on a cost benefit analysis.
- Perceptions that the current statutory test has replaced fair give and take, with award plus outcomes. If lengthy approval processes and myriad undertakings ultimately serve to render each agreement more and more indistinguishable from awards - why bother? Employers can pay over award without an EBA.
- Perceptions that initiating bargaining will introduce unions into long un-unionised workplaces.
- The decline in union membership and in unions' capacity to organise in the private sector.

- Perhaps much of the decline in enterprise bargaining is as simple as fewer unions knocking on employer doors trying to have previous agreements renewed.
- Or fewer employees wanting to be represented by unions or to be covered by union authored standard agreements.

So, how would employers fix enterprise bargaining?

To be clear, there is nothing inherently wrong with employers and employees choosing not to replace an expired agreement.

But for others, the bargaining system does need to be repaired – and more enterprises and employees that want to make agreements need to be able to do so.

I only have time to float a few possible reforms that might achieve this, including:

1. Better empowering the independent experts on the Commission to deal with paperwork and procedure pragmatically and to approve agreements unless there are genuine risks in doing so.
2. Giving the Commission more power to assess whether a proposed agreement will be fair, on balance across a workforce.
3. Focussing on the fairness of agreements collectively for typical cohorts of employees, working typical rosters.
4. Reviewing bargaining paper work and procedures and paring them back to the minimum necessary to actually protect employee and employer interests against genuine risks.

5. Fast tracking agreements that on any fair reading pay sufficiently above awards, without finding reasons to make approval more complicated.
6. Restoring an express avenue for agreement making without the involvement of unions – where that is how employees want to proceed. Yes – I am saying we need to look again at what were s.170LK agreements.
7. Ensuring more agreements can be approved without masses of undertakings. Undertakings should be the exception not the rule – and there should be more scope for consent variations to the terms of agreements as they are approved.
8. Perhaps we could ultimately do a lot worse than looking again at the rules that applied prior to both Work Choices and the Fair Work Act – they were a lot simpler and delivered more agreements, paying higher wage increases, that people wanted to renew.

These are not criticisms of the Commission – they are indicative of possible improvements to legislation that we should be discussing.

They offer a far better starting point for good policy than throwing out enterprise bargaining in favour of a return to industry wide disputation and arbitration – which seems to be the ACTU's plan.

ACTU - Change the Rules

Let me turn to that ACTU proposal – recentralising bargaining at the industry rather than enterprise level.

There is much we don't know about how this would work – and it will be essential that the ACTU fills in the gaps before there could be any serious consideration of such a proposal by any party.

Employers have a number of significant concerns at this stage. I will mention just a couple:

- Industry wide bargaining can only move our agreement making system further away from improving productivity, and further remove the organisation of work from the productive needs of each enterprise.
- Industry wide bargaining can only move our agreement making system further away from addressing the priorities of particular groups of employees, including parents, carers, students etc
- If you open up industry wide bargaining, you must discourage and diminish enterprise bargaining. Unions are going to pursue the easiest course that accords with their corporate structures – why would they bother to organise a ground game when they are going to be offered pattern bargaining on steroids.

- Industry bargaining threatens to create a moral hazard – more unions will pursue industry wide claims, threaten strikes and create greater uncertainty, if they have the carrot of arbitration in front of them. Arbitration above award levels will surely encourage more unions to pursue industry claims and threaten industry strikes.
- We are not clear that this will be restricted to any particular set of industries – as prosecuted to date this seems a recipe for giving new coordinated strike powers to the usual suspects – large, militant unions in construction, maritime, coal mining and transport.

And we do need to engage with how this is going to work when unions only have the support of 9% of the private sector – how will they stop an industry without the support of sufficient numbers of employees? Will they focus on logistical facilitators or choke points such as transport, ports or airlines to get at their true targets? Do unions need secondary boycott powers to achieve their ends?

It's also worth mentioning that we understand unions also want the powers of the Commission to stop industrial action threatening economic harm or harm to health and welfare to be curtailed – which will become more rather than less of a risk with industry wide strikes. This was made pretty clear at the time of the Sydney Trains dispute earlier this year.

Why should our system give unions a leg up because they lack sufficient support across enterprises to pursue their claims?

Why should our system allow unions to impose the will of a small minority on the majority of employees in any industry?

Why would we disempower and silence employees and employers in workplaces and put their choices into the hands of the officials of big unions?

Australia suffered considerably last time we were exposed to whole industries being shut down, or to mass uncertainty. I am old enough to remember the massive uncertainty and disruption of power strikes, airline refueller strikes, milk strikes and school strikes, and even beer strikes.

A quick show of hands who remembers the days when odds and evens number plates could fill their cars with petrol on alternate days? Do we really want to go back to that?

The 1970s and early 1980s were not a better Australia – far from it.

Industry-wide bargaining raises the threat of industry-wide strikes, which would once again irreversibly damage Australia's investment attractiveness in a globalised marketplace.

The world has a long memory and Australia cannot afford to be seen to revert to type as a strike bound, unreliable place to do business. Millions of Australians worked very hard to repair our international reputation – we should not allow it to be tarnished again.

Empowering individual workplaces to address their unique business needs created great national wealth and prosperity for Australia – we need to make this work again, not abandon it.

It's also worth recalling that the very *Raison d'être* of our national system in 1904, and its remaking in 1993 was to avoid damaging industry wide strikes – why on earth would we revert to them now?

Wages Growth

Before concluding I want to very briefly go to an issue which ties together minimum wages and bargaining, and is fundamental to the Change the Rules campaign.

This is the claim from the ACTU that (firstly) working people are missing out on their fair share of growth, and that (secondly) this is due to faults and imbalances unique to the Fair Work Act that need to be changed.

This includes the interminable claim from the ACTU that we need to move away from so called trickle-down economics – yet another piece of 80s era rhetoric – and to recentralise wage setting.

The ACTU claimed in a media release of 5 September that:

This is not normal – other countries don't have our broken industrial laws, and working people are sharing in the profits they generate.

This isn't true.

The truth is that unions are near universally campaigning about levels of wages growth and the wages share of economic growth throughout the developed world, and across countries with very different IR systems, including those with far greater centralisation and more industry based bargaining than we have in Australia.

- A union authored study²¹ assessing wage growth among European workers has found that 9 countries recorded an overall fall in ‘real wages growth’ over the last 7 years, including Greece, Cyprus, Portugal, Croatia, Spain, Italy, UK, Belgium, and Finland.²²
- These are countries with very different IR systems – along a continuum when it comes to the centralisation of bargaining – some bargain nationally at the industry level, some are decentralised.
- Workers in six countries – Italy, UK, Spain, Belgium, Greece and Finland – earned less in 2017 than they did in 2016.

Just yesterday the UK recorded a nine year high for wages growth²³, after been very concerned at wage stagnation just 6 months ago²⁴. In the US, there is increasing discussion of a disconnect between economic growth and remuneration.²⁵

Both France which has more centralised bargaining and the UK which is less centralised seem to be generating comparatively higher levels of wages growth – indicating centralisation is not the determinative factor.

The point of all this is that levels of wage growth are a concern across very different industrial relations systems across the OECD, including those with far greater centralisation and more industry based bargaining than we have in Australia.

²¹ [Benchmarking Working Europe 2018](#), was published by the European Trade Union Confederation (ETUI)

²² <https://www.euronews.com/2018/03/22/workers-in-nine-european-countries-earned-less-in-2017-than-2010->

²³ [Pound US dollar exchange rate: GBP punches higher as UK wage growth reaches nine-year high](#)

²⁴ <https://www.theguardian.com/business/2018/jul/17/uk-wage-growth-pay-unemployment>

²⁵ https://www.washingtonpost.com/business/2018/08/10/america-wage-growth-is-getting-wiped-out-entirely-by-inflation/?utm_term=.855bfd7b87c9

The point of all this is that the ACTU is wrong to claim there is a single superior way of doing things internationally that we must apply here.

A decline in the wages share of growth is a decades old phenomenon, across developed economies, across more centralised and less centralised bargaining systems.

Whatever is causing this structural shift – it is not the level at which bargaining is undertaken and it is not the Fair Work Act which unions enthusiastically supported less than a decade ago.

CONCLUSION

Australia cannot afford to have the rules changed to further skew our system in favour of unions.

We cannot afford to put the ease of union officials doing their jobs, and the advancement of big unions, ahead of the jobs of Australians.

We cannot afford to elevate class rhetoric and a yearning for an imagined past of centralised union power over the choices contemporary generations of Australians are making at work – and the choices that Australians want to be able to make at work that industry wide bargaining would deny them.

And we cannot afford to wilfully ignore the myriad of problems actually confronting the Fair Work Act, in favour of a self-serving wish list from the ACTU.

Ultimately ladies and gentlemen – wage fixing, bargaining.....
industrial relations, generally...

.....it's not about them,

.....nor is it about us,

.....nor frankly is it about the IR insiders in this room today...

....it must always be about delivering the jobs, opportunities and
living standards to which Australians aspire, and delivering an
industrial relations system that works for all Australians, not the
narrow self-interests of the few.