

FWD: THINKING

Where to next for workplace relations in Australia

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EDITORIAL

With a Federal election due by May 2019, the Australian Labor Party is beginning to release its policy platforms, and three states having passed laws to introduce labour hire licensing, now is a good time for businesses to review their IR strategy.

In this edition of *Fwd: Thinking*, Geoff Giudice considers some of the political and economic factors that may impact the future direction of workplace relations and Trent Sebbens and Ian Humphreys provide guidance for employers managing transformational workplace change in this context.



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What could impact the next chapter of workplace relations in Australia?

It goes without saying that many factors impact on workplace relations in Australia. The key indicators, however, are sending mixed messages about what might come next:

ORDINARY TIME EARNINGS

Since the Global Financial Crisis, growth in ordinary time earnings has collapsed from 5% or more per year to not much more than 2%.

DECLINE IN ENTERPRISE BARGAINING

The slowdown in wages growth has gone hand in hand with a decline in wage increases achieved through enterprise bargaining. And fewer employees are covered by enterprise bargaining. In 2010, 44% of employees had their wages directly set by collective agreements. Six years later, in 2016, only 36% of employees were covered by collective bargaining agreements. The other side of this development is an increase in the number of employees who have their wages directly set by awards. In 2010 only 15% of employees had their wages directly set by awards. By 2016 that figure had risen to 24% - an increase of more than half. It is fair to say that enterprise bargaining is experiencing a real decline.

REDUCED UNION INFLUENCE

The decline in wages growth is often related to the decline in the bargaining power of organised labour. A number of factors have worked in combination to reduce union influence. The exposure of many of our industries, particularly manufacturing, to international trade pressures and the related transfer of employment into industries which are less likely to have high rates of unionisation have been very significant. There have been other factors. Many basic employment conditions are provided through awards and legislation, including superannuation. Other changes in the industrial relations framework, such as the whittling away of compulsory arbitration, the legitimization of collective bargaining confined to the enterprise level and limitations on strike action, have also played a part. When you take into consideration the low level of union membership and the relative rarity of industrial action, it appears unlikely that the enterprise bargaining system will generate higher wages growth, at least within the current economic and regulatory settings.



OVERSEAS EXPERIENCE

Many other countries are also experiencing low wages growth. The OECD has recently noted that while real wage gains are the most direct mechanism for transmitting labour productivity increases, over the past two decades wage growth in most OECD countries has decoupled from labour productivity growth. The trend away from enterprise bargaining is not confined to Australia. According to the OECD, even in countries where enterprise bargaining coverage remains high, there are concerns about the ability of enterprise bargaining to deliver good jobs in a time of global competition, technological change and a trend towards decentralisation of bargaining.

FEDERAL GOVERNMENT REFORM

The current Federal Government has made limited progress in reforming the workplace relations system. Successes include some changes in the regulation of union and employer organisations, alterations in the transmission of business rules and measures to provide greater protection for vulnerable workers. The Government has introduced a bill for a Modern Slavery Act, which has a measure of bipartisan support. Other proposals have foundered in the Senate.

The Government is relying primarily on economic growth rather than changes in the workplace relations framework to promote wage growth.

ACTU AGENDA

The ACTU has an extensive agenda for legislative intervention including increased security of employment, greater access to protected industrial action, permitting industry and sector level bargaining and an expanded

arbitral role for the Fair Work Commission. The ACTU claims these measures will counter low wage growth although that is only one of its objectives. A key issue here is how to achieve higher wages growth without adverse effects on productivity and, incidentally, wage inequality.

ALP PLATFORM

It remains to be seen how much of the ACTU agenda finds its way into the ALP election policy. Should the ALP win government at the next election, its appetite for fundamental reform of the kind advocated by the ACTU, and the make-up of the Senate, will be important factors. It is rare for a government to have the numbers in the Senate and history shows that, more often than not, political parties which embrace major workplace relations change do so at their electoral peril.

IS PUBLIC INTEREST ENOUGH?

In the absence of political solutions, do we have a public policy-making process which can address the problems of low productivity and low wages growth? Is there a chance that the point-scoring and deal-making of the political process will be replaced by serious bi-partisan discussion of the public interest? Maybe one day, if things get bad enough. In the meantime we will just have to hope that the market yields the answers.

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Managing transformational workplace change – the road ahead

The dynamics of industry and the economy remain challenging. The [OECD](#) has reported that globalisation, technological progress and demographic change are having a profound impact on labour markets. Employers face the triple threats of stagnant labour productivity, persistent cost pressures and disruptive change.

Transformational change is necessary to obtain a competitive edge in this landscape. Achieving that change may become more challenging as Australia moves towards the next Federal election, and industrial relations firms as a key battleground.



INDUSTRIAL CHANGES ON THE HORIZON?

The Australian Council of Trade Unions is pushing the ALP to the left of the current Fair Work Act, seeking a return to a pre-1990s industrial regime, on the basis that the present laws are not achieving their objectives and there is a need to “change the rules”, despite those laws being implemented by the Rudd/Gillard Government. The unions are seeking changes to provide for:

1. broader bargaining, involving negotiations with those at the top of the supply chain, or in a sector, industry, or on a project, on the basis that “enterprise only bargaining is failing to deliver in the new economy”
2. a return to compulsory arbitration powers, and restoration of the Fair Work Commission’s arbitral powers on collective and individual disputes
3. labour hire and other similar workers being paid the same as the employees of the host employer
4. making strike action easier to take, including removal of protected action ballot orders and removal of employer lock-outs
5. the removal of the Commission’s power to terminate enterprise agreements during bargaining, other than in exceptional circumstances and not where bargaining is underway or is sought
6. enhanced job security, including by providing for compulsory casual conversion to permanent employment, a national labour hire licensing regime (already in place in Queensland, Victoria and South Australia) and potential new rights for labour hire workers such as unfair dismissal style rights against host companies
7. union involvement in the bargaining of enterprise agreements, and removal of content limitations
8. providing for employee representatives on the boards of companies.

Developments at the State levels, and opposition parties’ policies, have seen changes to labour hire licensing, the announcement of regulation of new forms of working, and measures to deal with so-called “wage theft”.

Which aspects of these proposed reforms will form part of the ALP policy into the next election is yet to be seen. However, the ALP has indicated that it is committed to “restoring fairness in workplaces” and redressing “declining bargaining power of workers and insecure work”. Regulation through a nationwide labour hire licensing scheme has already been foreshadowed. The ALP has already committed to changes to the *Fair Work Act* so that employers must pay labour hire workers the same amount as direct employees. The facilitation of multi-employer bargaining will also be considered by the ALP at its next National Policy Forum in December 2018. Reform of regulatory bodies, including the FWC, ABCC and ROC, appears likely.

The rationale for each of these changes has not been fully articulated, and the views of whether they are necessary is, of course, divided. What is apparent is that if the changes are made they will provide a more substantial role for unions and the Fair Work Commission. The changes have the potential for making the management of industrial relations substantially more challenging, may impact the ability and efficiency of achieving change, and ultimately have an impact on the financial bottom line.

While there have been calls for industrial relations reform by employers, on the other side of the ledger, the likelihood of the Coalition Government pursuing substantial reforms in the present term, or as an election platform, seems unlikely. While the Coalition has taken steps to reform union conduct and regulation, the political history of Work Choices has had a chilling effect on the conservative side of politics seeking labour market reform leading into an election.

PLANNING FOR TRANSFORMATIONAL CHANGE

If there was a change of government and these proposed fundamental changes were to become law, employers considering transformational change in their businesses would need to consider carefully developing a new strategy to achieve the necessary change.

Transformational changes that employers may be considering to gain a competitive advantage may include outsourcing or insourcing significant functions or parts of a business; enhanced flexibility and rightsizing to achieve increased productivity; implementing new technology or automation (such as robotics, unmanned plant or artificial intelligence); changing customer engagement models; developing new lines of business and commencing new operations. How these changes might be achieved in a changed regulatory environment, while also establishing or maintaining a competitive advantage, and keeping disruption to business as usual to a minimum, will require a well thought out strategy and contingency plans.

An employer may need to assess:

- whether enterprise agreement terms currently contribute to inflexibility, inefficiency or making change difficult to achieve, and if so, whether change can be achieved through bargaining
- the bargaining context, with bargaining becoming potentially more robust, and agreement pre-approval and approval steps are becoming increasingly technical
- what alternate options are available if change cannot be achieved through bargaining, such as terminating an existing enterprise agreement or developing an alternative labour model, and how reforms may affect, or close off, those options at some stage
- consultation arrangements, redundancy, redeployment and potential disputes or litigation where substantial outsourcing is being considered, and how labour licensing reforms and potential “jump up” rate requirements, will impact on the viability of such proposals; and
- where new operations are planned, whether existing industrial arrangements may be extended to the new business or a greenfield approach taken, and whether seed strategies could be adopted.

A potentially reformed environment will require a well thought through but flexible and tactical approach to achieving strategic goals. Whether changed regulation will eventuate is difficult to predict with certainty, however it is clearly in the wind.

In the meantime, the best way an employer can immunise itself from any future ALP law change is to ensure its engagement and alignment with its workforce is as strong as possible. At the end of the day, if a company has a workforce that is fully engaged and if the interests of the company and its workforce are fully aligned, then it will be much better placed to withstand any changes to IR laws.

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