ACTU D No. 115/2014

'Unions and the productivity argument into the future'

Ged Kearney address to the 2014 Australian Labour and Employment Relations Association National Conference
29 August 2014
Gold Coast

*** CHECK AGAINST DELIVERY ***

Thank you for that warm welcome.

I would like to pay particular thanks to the unsung heroes of all conferences like this one - the hardworking staff who make an event like this a success: the caterers and food and beverage servers, cleaners, hospitality and function staff.

I am here as the proud representative of a movement of almost two million members that has historically performed a central role in protecting and advancing rights in the workplace and in building a fairer and more equitable society.

Can I say just how much I appreciate the opportunity to address you today and to share some perspectives from Australian workers, whose voices are all too often marginalised or muted about the big issues facing our nation.

It is vital to Australia's future that working people are represented and heard when we talk about issues that will impact on them, such as economic growth and productivity.

Workers have much to contribute to the public debate.

***

I believe this is the second time I have been invited to address your conference.

The last occasion was in 2012, and much has changed since then.

Most notably, we have a different national government.

Yet, as I consider our industrial relations landscape and the debates within, so much is depressingly familiar.

As I began preparing my speech for today, it occurred to me that there is nothing more certain in Australian political life than yet another debate about industrial relations reform.

And I asked myself: is there any other country in the world that is so obsessed with this issue?

Is there any other country that spends so many resources of time and energy on review after review after review of its workplace system?

And then the merry-go-round continues with wave after wave of legislative change.

For both employers and workers, it feels a bit like a game of musical chairs.

The last time I addressed you, we just gone through an exhaustive review of the Fair Work Act.

Do you remember that one?

The review chaired by Ron McCallum.

The ink was barely dry on the Act at that time, but employers were already starting to complain about the unfairness of it all, and in the end, the government appointed a review.

And do you remember what it found?

I quote: "In our view, the current laws are working well and the system of enterprise bargaining underpinned by the national employment standards and modern awards is delivering fairness to employers and employees."

But here we are once again, and you have just heard from Senator Abetz about the government's plan for Australia's workplaces.

For the most part, Australian workers and employers have worked within an industrial relations system which rests on a basic and enduring, if sometimes fragile, consensus struck soon after federation between capital and labour.

For most of the 20th century, this consensus endured, underpinned by a shared recognition of the importance of combining economic competitiveness with fairness.

Changes to our industrial relations system, when they occurred, have generally taken place within the framework of this consensus.

The shift in the late-1980s and early-1990s away from centralised conciliation and arbitration towards a system based on enterprise bargaining underpinned by an Award safety net is but one example.

And by and large, the consensus has fostered industrial harmony and common purpose.

But the last 30 years or so have been a period of constant change in workplaces. And not always change for the better.

There are far more informed historians of Australian industrial relations than me in today's audience, but just to recap a little, I believe that today's debates have their origins in the far-right neo-liberal economics of the 1970s.

That thinking arrived in Australia in the early-1980s, a period which ironically saw some of the most farsighted and lasting genuine economic reforms overseen by the Hawke-Keating Labor governments.

From a fringe group centred around the New Right and the HR Nicholls Society, this radical agenda took hold within the Liberal Party so that when John Howard was elected in 1996 we experienced the Workplace Relations Act, Australian Workplace Agreements, the attempted destruction of the MUA, and the Cole royal commission.

For many years, the Senate remained a barrier to Howard's most extreme policies, knocking back numerous times attempts to water down unfair dismissal protections.

But from 2004, that was no longer the case, resulting in WorkChoices.

The introduction of WorkChoices shook the longstanding industrial consensus to its core.

Through slashing the safety net upon which so many Australian workers rely on, encouraging unfair individual contracts, undermining collective bargaining, and stopping workers from

accessing union help, the legislation challenged a number of the very precepts upon which Australia's industrial relations system rested.

Fortunately, WorkChoices was short-lived, an aberration.

The Australian people – in ousting the Coalition Government at the ballot box in 2007– firmly rejected this model as the way forward.

Australians clearly voted *against* a system which pitted worker against worker and saw economic progress and fairness as mutually exclusive and *in favour* of the enduring consensus upon which our industrial relations system stands, and its values of fairness and a decent safety net.

For all its faults – and I won't deny it has some – unions see the Fair Work Act as representing a continuation of the longstanding consensus in Australian industrial relations.

The Act represented a significant step forward in terms of rights for working people and fairness in Australian society.

It has restored a decent safety net and returned unfair dismissal rights. It ended AWA-style individual contracts, provided for good faith bargaining and restored a central role for the independent umpire in resolving disputes.

The rejection of WorkChoices in 2007, and the passage of the Fair Work Act in 2009, appeared to usher in a new period of stability.

But in retrospect, it's now clear that the ideological warriors in the business community were only catching their breath before relaunching their assault on our workplace system.

To them, WorkChoices was never 'dead, buried and cremated'; the Fair Work Act was merely a hiccup on the path to their unfinished project.

***

Over the past year or so, the business community, encouraged by the Liberal and National parties, has engineered a sense of crisis around Australia's workplace system as a smokescreen for more radical change to workplace laws.

Among many exaggerated claims, is the one often made that under the Fair Work Act, we have gone back to the "dark days" of the 1970s and early-1980s.

This is palpably untrue: today, most workplaces operate in one national industrial jurisdiction, not a multi-layered system of many states and territories; today bargaining and wage fixing are done at an enterprise level, not through centralised wage fixation. In the 1980s, most workers had their pay set by an Award. Now, only 16% of workers are paid according to an Award.

Additionally, the business case to change workplace laws and scrap penalty rates has been blown out of the water by recent economic data.

Business groups regularly cite overheated wages, wage explosions, wage breakouts – whatever they choose to call it – as the rationale for workplace changes.

Yet figures released by the Australian Bureau of Statistics this month show wages are growing slowly, so there is no economic pressure for change.

Wage growth has hit a record low of 2.6 percent. Private sector wage growth is a very low 2.4 per cent – the lowest growth figure since data started being collected in 1997. Similarly, full time adult average weekly earnings increased by just 2.4 per cent – again well below inflation.

Put simply, wages are not keeping up with inflation, which means real wages and living standards are falling.

The data clearly refutes employer claims that the Fair Work Act causes unsustainable and inflexible wage growth.

Yet despite the evidence, ACCI's chief operating officer John Osborn claimed the figures demonstrate the need to cut wages even further by overhauling the awards system to cut weekend penalty rates.

It completely defies all logic and demonstrates the kind of alternative reality employer groups are living in.

We hear similar hyperbole around industrial disputes.

Industrial disputes are half what they were under the Howard Government. Each quarter since the Fair Work Act came into effect, there has been an average of 4.5 working days lost to disputes per 1000 workers, compared to an average 13.7 over the life of the Howard Government.

Over the same period, Australia has experienced real GDP growth of 14.2%, while labour productivity has risen by 7.5%.

Unemployment is currently at 6.4%, and while it has risen in recent months, this is due to the softening of the mining boom and decline of manufacturing and not related to our workplace system.

So, these comparisons with the so-called "dark days" are false.

***

So I really question the case for more reform of our industrial relations system.

It has not been proven on economic grounds.

Business has been caught out crying wolf.

But I would also argue that if you step out of the hothouse of national politics and the editorialising of our national newspapers, there is no great clamour in the real world for more change either.

In fact, quite the opposite.

Most employers I speak to are sick of this game of IR musical chairs, they just want to get on with the job and want stability, not the constant uncertainty created by the business lobby

This debate doesn't reflect the world in which they operate.

There are some very questionable agendas being advanced under the guise of industrial relations reform, and I think we should all be asking more questions about what is the real motivation here.

What is the real motivation of the resources lobby in calling for "major project agreements" that can operate outside of the framework of the rest of our industrial relations system?

What is the real motivation of the NSW electricity distribution CEO who made the totally erroneous claim that high labour costs were the main reason for high retail energy costs?

I think we would all benefit from being a bit more sceptical of the hidden agendas of many of the people who are given a platform to call for radical changes.

We should all be wary of being seduced by snake oil salesmen who are seeking to exploit grievances for political ends, cloaking ideology in policy, and trumpeting "solutions" to problems that don't really exist – short-term fixes that provide no lasting solution.

With due respect to many of you in the audience today, I also believe that there is a fringe element among legal firms who are often responsible for fanning the flames by proposing overly legalistic response to bargaining disputes that do not reflect the reality of life on the shop or factory floor.

An example is the just-ended lockout at a plant owned by the building products supplier Ausreo in the western Sydney suburb of Wetherill Park.

Two dozen low-paid workers were locked out for two months.

And what was this dispute about?

The workers were simply seeking to be paid the same as their colleagues in other states; effectively a $3 an hour pay rise.

Who wins from this type of employer militancy, this kind of lockout first and talk later attitude?

It's not the workers, who endured two months without pay in the middle of winter.

Is it really in the interests of the business to employ such a strategy that flies in the face of any ambition to have a constructive working relationship with its staff?

It is unhelpful to have law firms advising companies like this to look at things from the perspective of what their legal rights are and what the legal possibilities are rather than what is the right strategy to bring a difference between the parties to an end.

And of course, it is not helped by the political environment where an ideological government is encouraging an adversarial approach from employers to muscle up to workers wanting to improve their pay and conditions.

***

We can't build a fairer, more prosperous Australia without an industrial relations system that promotes job security, facilitates collaboration and co-operation among employers, employees and their unions, and provides a decent safety net for all workers.

By and large, the system we have now is delivering this.

And yet, we are all bracing for yet another review, this time by the Productivity Commission.

We have consistently rejected that another inquiry is necessary, so soon after the comprehensive review by the panel chaired by Ron McCallum.

Without any plausible justification for the Productivity Commission review, we can only conclude that this will be a Trojan horse to provide the political cover for the Coalition to drive even greater use of individual contracts and attacks on workers' rights and conditions.

We know that the business community has an unfulfilled wish list for IR changes that goes well down the path of a return to WorkChoices.

This includes abolishing weekend and public holiday penalty rates and exempting small business employees from unfair dismissal laws.

We have also stated that we do not believe the Productivity Commission is not an appropriate body to conduct an inquiry of this sort.

The union movement has very little confidence in the Productivity Commission as an impartial or independent body that has any great understanding of Australian workers.

The Productivity Commission has always unashamedly championed deregulation, unfettered free markets and the kind of economic ideology that has produced wide inequality, high unemployment, low wages and stagnant growth in the northern hemisphere.

Its policy prescriptions invariably are for further deregulation, artificial competition, and privatisation.

The Productivity Commission has a track record of recommending cuts to penalty rates and the wider use of individual contracts, and it is our fear that any inquiry will be dominated by the voices of business groups.

***

But the government has not even waited for the Productivity Commission review to begin its dismantling of the Fair Work Act.

Currently before Parliament is the Fair Work Amendment Bill, a grab bag of amendments all to the detriment of workers.

Unions believe that the changes in the Bill, although incremental to the untrained eye, will substantially erode the rights and protections afforded to Australian workers under the Fair Work Act.

The most glaring example of this is making it easier for employers implement unfair individual contracts by broadening the access to and terms of individual flexibility agreements.

Our own analysis has clearly demonstrated that individual contacts under the Howard Government resulted in the exploitation of workers, and the limited safeguards which were introduced by the Fair Work Act have proven to be largely ineffective and poorly observed.

Nevertheless, legal mechanisms do exist in the current Act to compensate workers if exploitative agreements are made unlawfully in breach of those safeguards.

This new Bill undermines those legal mechanisms and safeguards, and goes well beyond what the Coalition disclosed in its pre-election policy.

The practical effect of this is abundantly clear: a worker who signs on the dotted line will be held to their “agreement” whatever the circumstances – even if it demonstrably and unfairly cuts their pay and conditions.

Employers will have free rein to force employees to trade off overtime, penalty rates, or allowances in return for a non-monetary “benefit”.

As an example, this will enshrine in law the ability for a fast food employer to pay their workers in pizza rather than overtime rates, under the guise of greater "flexibility".

Another of the amendments will give a green light to sham arrangements by allowing employers to restructure their business or outsource work to a related company, and then effectively re-employ their staff on lower pay and conditions.

In this way, the Bill rips off workers who would be forced to apply to the restructured or outsourced subsidiary for what is in truth their *existing* job.

This is a loophole by design.

Another of our concerns is over the ease with which employers will be able to negotiate greenfields agreements with themselves.

The Bill allows an employer to give unions just three months' notice that it will be writing an "agreement", and at the expiry of that period, it can have the "agreement" approved by the Commission, regardless of whether genuine negotiations have taken place or not.

At that stage, all employees will be bound by the pay and conditions which the employer has negotiated with itself.

This is akin to giving greenfields employers the power to make their own laws.

One final example: the so-called "strike first, talk later" amendments.

These have been written to deal with the matters raised in the JJ Richards case, where courts upheld the right of workers to hold a ballot for protected industrial action at the commencement of bargaining.

This right exists for workers to take lawful industrial action when an employer is not genuinely trying to reach agreement.

As catchy as the phrase "strike first, talk later" may be, the truth is that our laws have never allowed anyone to engage in industrial action unless they are genuinely trying to reach agreement.

But this Bill will reward intransigent employers with an immunity from industrial action.

These amendments are likely to be debated in Parliament over the next few weeks, and the ACTU has begun making the case as strongly as possible to the Opposition and crossbench Senators that they are unnecessary, unjust and should be voted down.

Conclusion

So, to return to the original topic of this speech, what is the solution to lifting Australia's rate of productivity growth?

The union movement has always been and will always be prepared to discuss workplace changes and productivity.

We understand that improving productivity benefits everyone because it creates economic growth and wealth, and employment.

But permanently higher productivity will not be gained by cutting wages and conditions, or creating a more insecure workforce.

The problem with the productivity debate in Australia today is that it has been hijacked by a narrow big business lobby fixated on more changes to our workplace laws.

This is a debate where “productivity” is confused with “profitability”.

Instead of an endless roundabout of agitation for legislative changes, the answers to how to achieve higher productivity are the same as always.

We need to focus on innovation and improving the skills of our workforce, investment in technology and – dare I say it – better quality management.

As the economics writer Ross Gittins wrote in a recent column: “productive workplaces are not the outcome of legislation but of the quality and leadership at the workplace”.

Governments can’t solve all your problems for you.

So to everyone in this room, I say our door is always open, but we will not make progress on a national productivity agenda until we can have a mature discussion that moves beyond industrial relations laws and cutting people’s pay and entitlements.

Thank you.

Media contact: Kara Douglas 03 9664 7359/0418 793

*** ENDS ***