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ANNUAL RON McCALLUM DEBATE

WHAT SHOULD BE THE SCOPE, LEVEL AND MODE OF BARGAINING?

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It is a pleasure to be part of an event named in honour of Professor Ron McCallum who has made such an enormous contribution to workplace relations and the law in Australia.

I'll get straight to the point.

The union movement's demands for an industry bargaining system in Australia are self-serving, not in the community's interests, and need to be completely ruled out by all political parties.

1. Industry bargaining is inconsistency with Australia's modern award system

There is no country in the world that has both an award system and an industry bargaining system.

Australia's modern award system provides a very comprehensive set of legally enforceable wage rates and conditions of employment at the industry level. Awards are constantly updated by the Fair Work Commission and the *Fair Work Act* requires that awards remain fair and relevant.

I was over in New Zealand a few weeks ago. I was invited over by the Employers and Manufacturers Association to brief their Members on Australia's award system because the New Zealand Government has announced a system of "Fair Pay Agreements" covering industries and/or occupations. Fair Pay Agreements are being promoted in New Zealand as being similar to Australia's modern awards.

The President of the New Zealand Council of Trade Unions wrote an opinion piece recently defending the proposed Fair Pay Agreements. In it he said:

> *"The difference between then and now, and between Australia and New Zealand, is sector bargaining. This used to be called awards here. In Australia, sector bargaining is called modern awards; in other parts of the world it takes*

the shape of industry agreements or tripartite national bargaining. What it is in all of these places is a system to deliver minimum standards.[1]

Exactly! In Australia, we already have instruments that set industry-wide minimum standards and they are called modern awards. The ACTU's proposed industry-bargaining system directly conflicts with Australia's modern award system.

The unions are proposing that industry agreements override awards, but what would be the point of an industry award that doesn't apply to anyone?

2. Industry-wide industrial action would be very damaging for the Australian community

The ACTU is making no secret of the fact that it wants the right to organise industrial action at the industry level, as part of its proposed industry bargaining system. If such a system was ever implemented, it would not be long before the Australian economy was crippled by strikes across the construction, maritime, mining, manufacturing, transport and other industries. These strikes would inflict widespread hardship on businesses, workers and the broader community.

In the bad old days of the 1970s when strikes were common, Australian industry operated behind high tariff walls. These days, Australia has a very open economy and this is a major reason for Australia's long run of economic success.

This success would be brought to a grinding halt by the damage that industry-wide strikes would inflict upon our international reputation.

Industry-wide industrial action has never been lawful in Australia Since 1993, there has been a right to take industrial action in pursuit of an *enterprise* agreement, but there has never been a right to take industry-wide industrial action. The industry-wide strikes that plagued the Australian economy in the 1970s were unlawful.

3. The negotiation process for industry agreements

The ACTU proposes that industry agreements be negotiated at the industry level by unions and presumably some employer representatives. These days unions represent only 9% of employees in the private sector, and there are typically a number of employer groups with members in each industry.

No union or group of employers has a legitimate mandate to negotiate a "one-size-fits all" outcome to be imposed on thousands of employers and hundreds of thousands of employees. In the award system, unions and employer groups do reach agreement from time to time, but those agreements on award variations have no effect unless the

[1] Richard Wagstaff, President, New Zealand Council of Trade Unions, *"Fair pay agreements will be good for business, as well as workers" The Dominion Post* (NZ), 8 June 2018.

Fair Work Commission is convinced of the merits of the outcome and the outcome is consistent with the modern awards objective in the Fair Work Act.

Industry agreements impede innovation and best practice employee relations. They stifle productivity and competitiveness.

4. Unions would use industry agreements to deliver lucrative financial rewards to them

These days many unions derive millions of dollars a year from products and services that employers are forced to purchase through the terms of pattern agreements that the unions coerce employers to sign.

For example, employers are often forced to purchase grossly over-priced and sub-standard income protection insurance products from insurance companies that pay huge commissions to unions.

Also, unions receive millions of dollars every year from the distribution of so called "surpluses" from some construction industry and electrical contracting industry redundancy funds. Employers have contributed to these funds for the benefit of their own employees – not for the benefit of union head offices.

Undoubtedly, the unions would use industry agreements in the same inappropriate way to enrich themselves.

Given the very large number of employers that the unions want to have covered by industry agreements, the potential financial rewards to the unions from these inappropriate sources are enormous.

5. Australia's recent slow wage growth is not due to a lack of union power

The unions would have us all believe that giving them more power to force outcomes on businesses is just the medicine that the community needs. They argue that if employers are forced to pay large wage increases this will be good for the economy and employment.

As highlighted in a recent Ai Group economics research paper, the three key reasons for Australia's recent slow wages growth are: weak productivity growth, spare labour capacity, and weak inflation.

Over recent months wage outcomes have begun to improve as skill shortages emerge.

Giving unions the power to inflict widespread damage on the Australian community would not increase incomes; rather it would destroy jobs, economic growth and living standards.

6. Australia's enterprise bargaining system is not broken; it just needs to be refreshed

Australia's enterprise bargaining system was implemented by the Hawke/Keating Labor Government, and the key merits of the system have not altered over time. The prime responsibility for determining wages and conditions needs to remain with employers and their employees at the enterprise level, on the foundation of minimum standards in the *Fair Work Act* and awards.

Enterprise bargaining has been a major contributor to Australia's strong economic performance and growth in living standards over more than a quarter of a century.

The key reasons for the recent decline in enterprise agreement making in Australia are obvious. The enterprise agreement process has become a minefield due to the poor drafting of a few provisions of the *Fair Work Act*, and due to the excessively technical approach of the Fair Work Commission when assessing enterprise agreements at the approval stage.

These problems can be readily addressed through a few relatively minor changes to the *Fair Work Act*.

The changes needed include:

1. Amending the Better Off Overall Test to require it to be applied to the employees at each classification level, and not to every single employee who is covered and may potentially be covered by the enterprise agreement.

2. Giving the Fair Work Commission more discretion to overlook minor procedural and technical issues when enterprise agreements are being assessed. (A Bill is before Parliament that would address this issue).

3. Inserting criteria in the *Fair Work Act* to ensure that the Commission gives more weight to the importance of respecting the outcome negotiated between an employer and its employees, unless there is some clear disadvantage to the employees.

Over 75 per cent of agreements are now approved with undertakings or completely rejected by the Commission. This is not because employers and their employees have suddenly started drafting agreements more deficiently. It is due to the fact that the Commission has changed its approach when assessing agreements.

A more practical approach is urgently needed.

Conclusion

The unions industry bargaining proposals would be beneficial only for unions - not the rest of the community. With some modest changes, enterprise bargaining can be readily refreshed, and continue to provide important benefits to employers and employees for another quarter of a century and beyond.