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# Reforming Employment Laws

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# Reforming Employment Laws

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## REFORMING EMPLOYMENT LAWS

Prof. Frederick G. Hilmer  
Dean  
Australian Graduate School of Management  
University of New South Wales

Presented  
27th October, 1993  
Pentagon  
University of Wollongong

The 15th Sir Richard Kirby Lecture  
Department of Economics  
University of Wollongong



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Presented  
27th October, 1993  
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University of Wollongong

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## 15TH SIR RICHARD KIRBY LECTURE

### UNIVERSITY OF WOLLONGONG

OCTOBER 1993

### REFORMING EMPLOYMENT LAWS

Professor Frederick G. Hilmer, Dean  
Australian Graduate School of Management  
University of New South Wales

For almost a decade reforming Australia's employment laws has been high on the national agenda. Despite a number of changes to both federal and state laws over the last decade, further reform remains an issue in the federal system. At the same time, state governments, particularly Victoria and Western Australia, are considering major new legislation. The question is not whether reform is required. Many in business and unions, the public in general and government are unhappy with various aspects of our current laws. Nor is the direction of change seriously debated. Relationships and arrangements at work must be determined in workplaces and enterprises with laws and institutions providing a safety net, and not driving the system.

What is debated however, is how this broad goal might be achieved. Once again Australians are finding the debate on reform to be bitter and divisive, with the likely result being a compromise seen as unsatisfactory by all of the involved parties. In particular we are likely to see the next round of Commonwealth legislation fall considerably short of the ideas outlined by the Prime Minister in April 1993 when he argued for:

- Bargaining primarily at the workplace within a framework of minimum standards
- Agreements based on improving the performance of workplaces
- A role for the Australian Industrial Relations Commission, but not in an adversarial system
- Harmony between state and federal industrial relations systems
- Agreements as substitutes for awards and not just add ons
- A simple system for enforcing agreements
- The need to modify the laws and institutions to fit the system we are trying to create.<sup>1</sup>

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<sup>1</sup> Speech by the Prime Minister, the Hon. P.J. Keating, MP, to the Australian Institute of Company Directors, Melbourne, 21 April 1993

Even these ideas do not go far enough in the enterprise direction from the perspective of major business groups such as the Business Council of Australia (BCA). Tortuous and unsatisfactory reform of employment laws is not new in Australia. Our earliest attempts at employment legislation seemed to arouse deep-seated controversy that often resulted in unclear and confused laws. For example, the events surrounding the passage of the 1904 Commonwealth Conciliation and Arbitration Act illustrate the point:

“No legislation, with the exception of the Tariff, has ever produced anything like the mass of heated discussion. It wrecked three Ministries; it embittered the relations of the parties in Parliament; it evoked the antagonism of the States .... The shiftiness, expediency and flat contrariety of much of the voting can never be explained. Edmund Barton dropped it on the question of the inclusion of the servants of the State. Mr Deakin resigned when that provision was again carried against him. His successor, Mr Watson, resigned because an amendment was carried which militated against his ‘effective protection for unionists’. The Reid-McLean Ministry compromised on this and a good many other matters in order to get into recess. If ever a Bill drifted through Parliament without fully satisfying any or one of the parties, but from sheer exhaustion of debate and a desire to be rid of it, the Commonwealth Conciliation and Arbitration Act 1904 certainly achieved that distinction.”<sup>2</sup>

The question that arises is why do business leaders argue so strongly that further and more fundamental reform is now needed, particularly given the difficulties of making any progress in law reform. The calls for further reform by business cannot be simply dismissed as based on ideology or politics. The struggle is too hard and too divisive, and relationships between business and some of its important constituencies such as governments and groups of employees become strained. Moreover, the argument for further reform is made by business leaders of varying ideologies and political affiliations and by some unionists. The case outlined in this paper is that the drive for further reform is largely based on straightforward business reasons. Specifically, further and more fundamental reform of employment laws is needed to better support the processes of continual improvement and innovation that will be central to the future success of Australian firms and in turn the wider economy<sup>3</sup> The emphasis in the paper is

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<sup>2</sup> Henry Giles Turner, quoted by D. Plowman in ‘Industrial Legislation and the Rise of Employer Associations, 1890-1906’, *Journal of Industrial Relations*, vol. 27, no. 3, Sept. 1985, p.300

<sup>3</sup> Much of this paper is drawn from *Working Relations: A Fresh Start for Australian Enterprises*, The Business Library, 1993. This book sets out the findings and research studies of the Employee Relations Study Commission established in 1989 by the Business Council of Australia.

is on Commonwealth laws, which tend to be of major influence in our federal system. There are three parts to the paper, each of which is discussed in turn.

1. Continual improvement and innovation will be central to the future success of firms. Firms that are unable to continually improve at a higher rate than has traditionally been the case in Australia will fail. Firms that are unable to innovate competitively will shrink and atrophy.
2. Current employment laws (even with proposed changes) unnecessarily complicate and add to the cost of continual improvement and innovation. Despite reforms, the essential features of our current laws in terms of bargaining structures and a concern for outcome above process remain. The cost of these features is high. In particular, the laws are a disincentive to managers to tackle improvements that require workplace changes, and an incentive to reduce employment, move work offshore or compete on factors other than the performance of front-line employees.
3. Further reforms that better support the processes of continual improvement and innovation are required. Four changes are proposed:
  - Adopting new goals for employment laws to encourage the development of constructive working relationships that can most smoothly and fairly handle continual improvement and innovation.
  - Developing bargaining structures that are better aligned with the evolving needs of work than with existing interest groups or industries traditionally defined.
  - Streamlining processes to encourage employers and employees to efficiently and harmoniously reach agreements.
  - Safeguarding the interests of employees, and increasing their confidence in the fairness of the legal framework through the adoption of minimum employment standards and the establishment of readily accessible and affordable redress for employees who have been subjected to duress or breach of agreement.

### CONTINUAL IMPROVEMENT AND INNOVATION

Only 20 years ago soft drinks were marketed in two or three bottle sizes and one size of cans. In the United States, for example, in 1970 the major producers such as Coca-Cola and Pepsi introduced 24 new beverage varieties into the market. By 1988 this number had increased ten-fold to over 240. We now have clear cola, diet cola, caffeine-free cola and

regular cola, all in a variety of combinations and packaging types. We have regular mineral water, a myriad of flavoured mineral waters and even carbonated iced tea<sup>4</sup>. Companies that were able to anticipate and then respond to these opportunities to serve consumers differently have prospered. Coca-Cola, for example, has become an international industrial success. Smaller firms that could not stay with the pace of change fell by the wayside. For Coca-Cola itself, the transition from the 1970s to the 1990s involved massive changes. In particular, the bottling companies were rationalised and new technologies introduced. The changes that have occurred locally in Coca-Cola Amatil and Pepsi are local manifestations of these trends.

The making and bottling of soft drinks is a relatively low technology business. The changes in high technology industries are even more dramatic. For example, in telecommunications, optical fibre and mobile networks are redefining what can be offered and at what price, and in banking information technology is challenging the role and function of a traditional branch. Do branches need to keep records and do accounting, or are they service and sales points in a network?

Even where firms continue to make much the same product in fairly stable production processes, the pressure for continual improvement is intensifying. Over the last 5 years a range of studies have sought to quantify the productivity gap between typical Australian firms and best practice. Some of the earliest work was carried out by the Employee Relations Studies Commission formed by the BCA and reported in its 1989 report. This work compared labour productivity in Australia and overseas workplaces in manufacturing service operations and construction. Workplaces covered were in building materials, chemicals, discount retailing, engineering construction, food, metal shops, soft drink bottling and transportation. While the sample was small, the studies had access to internal data and highlighted a productivity gap that was generally 20 percent to 50 percent below overseas competitors<sup>5</sup>. Other work reached similar conclusions. For example, the Australian Manufacturing Council found that productivity gains of around 20 percent on average were possible in a number of sectors. These gains ranged from 12.5 percent (chemicals and non-metallic minerals), to 25 percent (food, fabricated metals and miscellaneous manufacture). A number of reports of the Industries Commission have pointed to a similar productivity gap in areas including the

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<sup>4</sup> Muris, Timothy J., Scheffman, David T., Spiller, Pablo T., 'Strategy and Transaction Costs: The Organization of Distribution in the Carbonated Soft Drink Industry', *Journal of Economics & Management Strategy*, The Massachusetts Institute of Technology, vol. 1, no. 1, Spring 1992

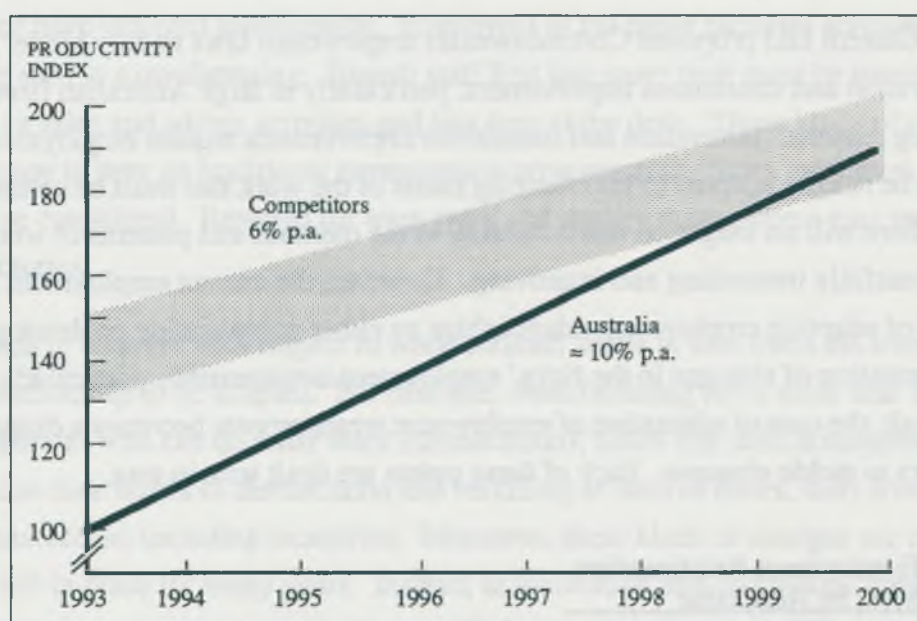
<sup>5</sup> Hilmer, F.G., McLaughlin, P., Macfarlane, D., Rose, J., *A Better Way of Working: Enterprise-Based Bargaining Units*, Business Council of Australia, 1989



waterfront, shipping, rail transport, post and telecommunications, electricity supply and water<sup>6</sup>.

The challenge faced by Australian enterprises is not simply to close this gap of about 25 percent. The competitors who are setting the standards of best practice are themselves improving. Thus firms need to chase a moving target. If one assumes that Australia's main competitors are continually improving performance at 6 percent per annum, an achievement consistent with performance in the best Asian countries, then if a typical Australian enterprise wishes to close the productivity gap by the year 2000, arithmetic requires that it increase productivity at 10 percent per annum for 7 years in a row (as Figure 1 shows). Even if the estimate of a competitor's improvement rate is reduced to say 4 percent per annum, the target for the Australian firm of about 8 percent is still close to triple the current rate of average productivity improvement.

Figure 1



Firms that are unable to improve at the required rate will fail and either close plants or be acquired. For example, as the pressures to achieve world-class standards of competitiveness have been felt in the automobile industry we have seen the recent cessation of manufacturing by Nissan, and the acquisition of Chrysler by Mitsubishi.

However, becoming more efficient is only part of the task facing firms. If all Australian firms can do is slim down, i.e. do less activities more efficiently, without at the

<sup>6</sup> Productivity studies are summarised in *Developing Australia's National Competitiveness*, Business Council of Australia, Appendix 1, 1991

same time innovating with new products, services and investments, then the long term outlook for both firms and the economy as a whole is bleak. Where would Coca-Cola be today with only one flavour in two bottle sizes? Conversely, where might AWA be today if it had invented the Walkman? While the size of the “innovation gap” cannot be as readily quantified as the productivity gap, innovation via new products and services has not been a strength of Australian firms.

In summary, future success of firms requires both continual improvement so that world-class productivity can be achieved and maintained, and innovation so that new opportunities for growth can replace products and services that become obsolete. Employment laws need to be assessed in terms of their impact on each of these two tasks, both of which are not generally being done to world-class standards by Australian firms.

### IMPACT OF EMPLOYMENT LAWS

Current and proposed Commonwealth employment laws unduly hinder the processes of innovation and continuous improvement, particularly in large Australian firms for the following reasons. Innovation and continuous improvement require employment arrangements that can be readily adapted to the changing needs of the work that must be carried out in the firm. There will no longer be much stability in the methods and patterns of work in firms that are successfully innovating and improving. However, the current employment laws increase the cost of adapting employment relationships by either complicating or slowing down the implementation of changes in the firms’ employment arrangements, particularly in large firms. As a result, the cost of adaptation of employment arrangements becomes a disincentive to managers to tackle changes. Each of these points are dealt with in turn.

#### Employment Relationships Must be Adaptable

Both innovation and continuous improvement cause the nature and patterns of work required to be performed in the firm to change, often quite rapidly. For example, as Coca-Cola and other soft drink manufacturers face an accelerating pace of new product introductions, new packaging forms and sizes, and the development of equipment that allows higher speed packaging, the nature of the work in the plant and in distribution changes accordingly. Traditional distinctions between maintenance workers and production workers disappear as teams are formed to affect line changes in much the same way as occurs in the pits during Formula 1 racing when everybody pitches in to get the job done in the minimum amount of time. Data entry, once the domain of clerks, moves both to the customer and to the production teams. New machines require less skills in some dimensions but a greater skill in organising

and maintaining a steady flow of work. At the same time, the more expensive capital plant often requires changes in shift arrangements and hours worked so that it can be used to its full potential. The arrangements with respect to time are themselves often varied as experiences gained with longer hours of operation and as the demands of the marketplace continue to evolve. Such changes are now becoming common in manufacturing.

Service industries are facing similar challenges. For example, information technology is changing the role of the traditional branch in a bank. Branches were once important centres for keeping records and processing customer information and accounting data for the bank. Sales and service functions were often seen as secondary. With information technology, and increased competition in banking, the role of the branch has been transformed. Record keeping and accounting is now better done in either regional or central "paper factories" which can operate around the clock. The branch on the other hand has a more important role in providing customer service and sales support for an increasing range of products, from savings accounts to superannuation and investment plans. As a result, both the nature and pattern of work, and the skills needed have changed significantly. Employees in the paper factories adopt patterns more like those seen in manufacturing. Branch staff find that more time must be spent with customers and in sales and advice activities and less time at the desk. These kinds of changes also bring pressure to bear on traditional remuneration arrangements. Sales incentives in branches may be considered. Rewards for team work and quality management may be adopted in the paper factories.

The kinds of changes with respect to work outlined above in turn force the terms of the employment relationship to be adapted. For example, manufacturing firms must deal with issues with respect to who can do what work (demarcation), hours and shift arrangements. Service firms also face issues of demarcation and reskilling as well as hours, shift arrangements and remuneration, including incentives. Moreover, these kinds of changes are not made once and then left in place for many years. Instead, as innovation and continuous improvement proceeds, arrangements must be revised. As one chief executive remarked: "We see our agreements on work methods as having a life of 6 months to a year by which time we ought to be finding better ways to do things."

Broader survey data reinforces the point that employee performance is critical to meeting the demands of the market place for innovation and continuous improvement. In a recent survey of business performance and employment management conducted by the National Institute of Labour Studies (NILS) in late 1992 managers in over 100 large workplaces were asked to rank the factors most important to the achievement of their current business objectives. Performance of employees was ranked clearly number one, and assigned an importance twice to three times that of other measures such as competitive pricing, improved

market image, the introduction of new technology, capital investment, and research and development<sup>7</sup>.

A similar finding is emerging from the work of the Innovation Study Commission formed by the BCA in 1991. This Commission is analysing 70 businesses to better understand how improvement and innovation is occurring. Not surprisingly the Innovation Study Commission is finding that improvement and innovation are central to the success of firms in their sample. However, they are also finding that innovation is about people, employee relations and workforce flexibility (though not low wages) rather than science or technology per se. The importance of employee performance to corporate success is a major change from the past, when employment conditions and performance were largely similar for industries, and hence competitors. Because employee relations now is seen to offer competitive advantage, laws that inhibit the ability of firms to gain and sustain advantage come under increasing pressure from those concerned with business success.

#### Current Laws Increase Costs of Adaptation

If adapting employment relationships on an ongoing basis is critical, then how do current and proposed employment laws help or hinder the task? On the positive side, we have seen impressive improvements in the performance of a number of firms over the last 5 years and the ability of enterprises to adjust working relationships has improved considerably. As a result, more managers are recognising that “anything is possible”, compared with a past where many aspects of the employment relationship were taken as unchangeable, not be questioned. However, the typical Australian firm still faces a daunting task in both ongoing productivity improvement and innovation. The changes made to date, while massive, are only a beginning. The impact of employment laws must then be assessed not in terms of recent gains versus the past but rather in terms of their effect on the ability of firms to successfully cope with future challenges. By this measure, the need for further and more fundamental reform becomes apparent. The two aspects of our employment laws which are holding back the progress of Australian firms are the bargaining structures and the bargaining rules both of which will continue to complicate the negotiation of changes in employment relationships.

Enterprise bargaining and the other aspects of employee relations in enterprises are decided by people sitting down together and working out new arrangements. Bargaining structures, in particular the formal structures of unions, employer organisations and tribunals, determine who gets a seat at the table, and whether they have the right to an input, or the right

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<sup>7</sup> Hilmer, Frederick G. (chair), *Working Relations: A Fresh Start for Australian Enterprises*, The Business Library, 1993, Table 5, p.191

to a veto. Formal structures in Australia are not well suited to the task of ongoing adaptation of employment arrangements where the centre of attention is the need of the enterprise to perform in meeting customer demands. Too many people, each with actual or potential veto rights, get a seat at the table, and for many of these people the needs of the enterprise, its customers and specific employees are secondary.

In our first report in 1989, the Employee Relations Study Commission wrote that employee bargaining units have formed around occupations, crafts or industries at state or national level, not around enterprises. Employers have formed somewhat parallel associations, covering multiple enterprises, and built up specialised staff units with a strong “control/check” emphasis. Most workplaces thus are host to several unions to which the enterprise and workplace is secondary, and to several awards, each of which may cover hundreds and sometimes thousands of other workplaces. Our work identified five effects to which the formal structure contributed:

- The productivity of people was restricted by overstaffing, poor work organisation, unnecessary downtime, expensive maintenance and demarcation disputes
- The productivity of capital was limited in terms of the hours worked as well as in the choice of the most competitive scale and type of technology
- Skill development was being held back because the perpetuation of craft and occupational divisions meant that skills could not be used efficiently, producing a disincentive to invest in skill
- Adaptability was made more difficult even though it is widely recognised that adaptability is more and more the name of the game
- The pervasive effect of union and award structures had tended to close minds, inhibiting innovation, a productive culture and the fostering of mutual interests.

Some have argued that formal union and employer organisation is not a key issue, and that processes to create single bargaining units representing multiple organisations in an enterprise will counter the negative effects of multi-unionism. In our view, this argument ignores the fact that formal structure has a powerful influence on behaviour by legitimising the separate agendas of each union in a workplace. Thus, while agreements between unions are occurring, they are inherently unstable, particularly in more buoyant economic conditions. More importantly, no-one argues current union and employer organisation structures are other than second or third best. Why not, in seeking to become world class, strive for the best solution—one representative unit per enterprise or workforce?

This situation has not changed significantly as a result of union amalgamations or any of the other reforms to the Industrial Relations Act. Nor do the proposed amendments to federal legislation deal with this issue.

Even if single representative bargaining units were possible for the vast majority of Australian firms, the bargaining rules further slow down the process of adapting working arrangements. Australian bargaining rules have tended to subject arrangements to outside scrutiny with respect to the details of what is agreed. The proposed legislative package continues this tradition with its “no disadvantage” test that is applied by a third party, the Australian Industrial Relations Commission (AIRC). On its face, the provision seems fair. Why ought people be placed at a disadvantage as a result of bargaining with an employer? Opponents of the test are seen as advocating a system which is potentially exploitive. However, in other parts of the world potential exploitation is regulated differently. Instead of a third party seeking to vet each deal on the basis of its substance, the third party would presume that unless there was an unfair bargaining process with elements of duress, parties to an agreement know what is in their own best interests and can be presumed to have acted accordingly. In fact, some have questioned whether a third party not involved in a deal can ever properly define or assess “disadvantage”. For example, is removal of an overtime loading coupled with an improved and more pleasant work environment a disadvantage? How are these two factors to be traded off by a third party?

Australian bargaining rules have always sought to shape the bargain rather than the bargaining process. In the working paper on legislative reform issued by the Government in October 1993 Clause 5, which outlined legislative intent, continues this tradition by requiring the AIRC “to have regard to stable and appropriate relativities based on skills responsibilities and conditions under which work is performed and the establishment of skill-based career paths.”<sup>8</sup> There is no statement of legislative intent with respect to creating an environment where employees freely and fairly adjust their arrangements in their interests and in the interests of achieving world-class productive enterprises. This emphasis on the substance of bargaining arrangements is producing a misfit between the agenda being imposed by the bargaining rules and the agenda seen by managers of enterprises as most critical to the success of their firms. Figure 2, which compares management’s assessment of various changes compared with the impact on these changes as a result of award restructuring, illustrates the point. The emphasis of award restructuring (the key recent formal reform agenda) was on multi-skilling, demarcation, classifications and hours. Managers saw changed workplace culture and

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<sup>8</sup> Office of The Minister for Industrial Relations, *Working Paper on Legislative Reform*, October 1993

organisation and a commitment to continuous improvement as more important but not as high on the externally imposed agenda.

Figure 2: Factors Affecting Business Performance: Greatest Impact Compared to Award Restructuring<sup>9</sup>

	Change having greatest impact	Ranking by award restructuring impact*
Changed workplace culture and organisation	1	5
Multi-skilling/reduced demarcation	2	1
Commitment to continuous improvement	3	7
Flexible hours and working time penalty rules, changed remuneration practices, etc.	4	3
Common purpose and commitment	5	
Consultation/communication	6	4
Quality/customer focus	7	
Improved technology/capital investment	8	
Improved leadership	9	
Reduction in job classifications, training etc.	10	2
Reduce union influence	11	
Cut costs	12	
Reduced labour force	13	6

*Source: Survey of Business Performance and Employee Management*

\* Respondents were asked to indicate the impact of various changes, available through "award restructuring", on their enterprises

### Incentives to Managers

The question that then arises is: what are the incentives that flow from the current bargaining structures and rules, and what kinds of management behaviour are these incentives likely to generate? The present industrial relations structure have three principal adverse incentive effects on Australian managers:

<sup>9</sup> Hilmer, Frederick G., *Working Relations: A Fresh Start for Australian Enterprises*, Report of the Employee Relations Study Commission to the Business Council of Australia, The Business Library, 1993, Figure 3.13, p.85

- The structures with which managers have to deal and the attitudes those structures engender among union officials, and less frequently, employees are intimidating; the system itself often engenders conflict and hostility, which managers have to work around because they cannot deal with its causes; this leads to low management horizons on the art of the possible
- Even where managers are prepared to tackle problems, the present structures require considerable management time—they often lead to protracted delays and a slow pace of change which is in the interests of neither enterprises nor employees; and they reduce the amount of management time available for other tasks
- As outlined above, recent workplace reform—process rather than structural reform—has not matched the employee relations agenda important to businesses seeking international competitiveness; that is, in many enterprises managers have had little choice but to cope as best they could with the externally-driven and centrally-managed award restructuring process even though its priorities have not matched those of the enterprise.

Operating within this kind of industrial relations system, managers are likely to take less than optimal decisions. Most decisions will be sensible and justifiable in the circumstances but they will not maximise the productivity and competitiveness of the enterprise. The likely outcomes of managerial decision making in this environment include:

- A low level of resistance to industrial pressure because what one firm concedes is quickly passed on to its competitors
- A willingness, albeit reluctant, to live with poor work and management practices
- A propensity to seize the opportunities the system provides, however ad hoc they may be, rather than establishing and pursuing strategic employee relations goals
- Where opportunities cannot be taken, an inclination to reduce costs or slow down their increase by deft use of the industrial relations system (probably through an employer association)
- Decisions to use management time more productively on other issues.

The disincentive to greater management attention to and emphasis on employee relations may, in fact, be the main “cost” of the industrial relations system.



Evidence of the inertia generated by current industrial relations structures has been available since the initial research by the Study Commission in 1988 and the Study Commission's first Report in October 1989. That first Report detailed research findings which showed that the managers of individual workplaces took a much more benign view of the implications of the industrial relations structures for enterprise efficiency than chief executives<sup>10</sup>. At the time both NILS, which undertook research for the Study Commission, and the Study Commission itself took the view that "the chief executives are in the vanguard of a new era of industrial relations in this country" compared with line managers who were more inclined to live with the system.

Looking back and taking into account the subsequent experience with award restructuring, it is probable that the Study Commission underestimated the importance of these findings. In particular, the Study Commission was not fully cognisant at the time of the extent of the inertia entrapping managers.

In recent years these effects have begun to be overcome, in part because of increasing competitive pressure. Some enterprises have, of course, overcome them fully and have succeeded in implementing major workplace change. In doing so those enterprises have often benefited from commendable union and Government support and co-operation. But the number of large enterprises that have achieved ongoing adaptability has been disappointingly small, in part because the industrial relations structures causing the low horizons are still essentially in place. Conversely, smaller firms that tend to operate outside the formal system appear to be leading the way in exports and innovation<sup>11</sup>.

The point can perhaps best be illustrated by exploring the practical situation facing countless managers in Australia. Consider the case of the typical manager of a department in a large manufacturing enterprise. The Study Commission's survey indicates that our manager will most likely be responsible for a body of work in which an average of about four unions will be involved to a greater or lesser extent. There will then be three different awards which, taken together, apply substantial restrictions on the flexibility with which work is able to be done. These might include minimum staffing levels, trade demarcations and a range of penalty and overtime arrangements which provide substantial incentives to employees to produce slow, poor quality work so as to maximise access to penalties and overtime. The opportunities for incentive rewards are clearly limited.

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<sup>10</sup> Hilmer et al (1989 and 1991)

<sup>11</sup> See Australian Manufacturing Council, *The Challenge of Leadership: Australia's High Value-Added Manufacturing Exporters*, 1993

Many of these arrangements will have been agreed to by our manager's predecessors. Many of them will apply in other departments of the enterprise and will also be found in other enterprises in which the same unions and awards are to be found. From the union perspective they will have assumed the mantle of "hard won rights".

Suppose our manager decides to move to competitive staffing levels, remove demarcations, put an end to excessive resort to the penalty and overtime situation and contemplate other forms of incentive rewards. Five years ago the manager would have faced a most daunting task as an individual manager. To have brought about the required changes would have meant persuading:

- The employees, who may well have shared the manager's view, but who would be unlikely to go against union wishes
- The four unions involved, who would be likely to resist the changes sought because of a perceived threat to their own membership numbers and their roles in the business
- The manager's manager and other departmental managerial colleagues who, unless seized with the same workplace reform zeal, would be unlikely to be supportive—might even be opposed—because of a concern that resistance to proposed change in the department concerned would disrupt the workplace as a whole.

The likelihood is that our manager would, on reviewing the nature of the task, conclude that it was just too hard and that it made more sense to devote effort to some other facet of the business. It is also likely that the manager of the enterprise as a whole might come to the same conclusion rather than attempt to persuade his or her departmental managers as a group that a reform program was worth tackling.

Five years on, in 1993, the situation facing our manager is somewhat improved:

- Increased competitive pressures on the enterprise will have raised awareness of the need for change among managers, employees and unions
- The wages system has been adapted to forge a closer link between enterprise productivity and pay increases providing a vehicle for the enterprise as a whole to tackle workplace change.

What the individual manager will still find, however, is that while his or her freedom to move has improved, it is still restricted because, while the process is more conducive to change, the structures are not. He or she will still need to deal with the vested interests of four

unions and overcome the inflexibilities which result from the interaction of three or so awards. Even if our manager is able to persuade the employees concerned to go along with competitive changes the system and its structures still provide a multiplicity of third parties with veto rights.

The award restructuring and enterprise bargaining arrangements to date have seen that veto converted into a “trade-off” process where incremental change is swapped for pay increases according to a time schedule determined by the Australian Industrial Relations Commission or the ACTU. In those circumstances it simply remains a fact of life that many line managers who would be perfectly capable of managing a workplace change process in a less restrictive environment, are still very hard to interest in the process in any substantial way.

To argue that managers should judge the costs—in money, time and attention—of their efforts to bring about change within the system on a cost/benefit analysis is to miss the point: a cost/benefit analysis might well mean the change effort is not warranted especially where the short term costs are high and the long term benefits not easily quantifiable.

What we are observing in terms of managerial behaviour in Australia with respect to employee relations could be better explained as a rational response to the incentives in the Australian system rather than a fundamental managerial failing. When faced with the conflicts and difficulties that workplace reform often entails what would a rational manager do? One response is to reduce employment to the greatest extent possible, seeking to buy in services or components rather than incur the costs of reform that are not being borne by competitors overseas. Many Business Council members are following this course. A second response might be to look for expansion opportunities overseas in an environment more conducive to ongoing change in employment relationships. Again, many companies are following this course. A third response might be to concentrate on areas of the business other than employee relations, such as marketing, advertising, finance or computing, using scarce managerial time and energy in areas offering greater pay-off. Many rational managers are behaving this way too.

### FURTHER REFORMS

The research outlined above suggests that reform of employment laws must continue. Proposed changes to the Industrial Relations Act that fail to tackle the fundamental structures and bargaining rules of the Australian system are at best diversions from the real task of reform. The new framework should have four elements as follows:

1. New goals for employment laws to encourage the development of constructive working relationships that can smoothly and fairly handle continual improvement and innovation. The prescribing of substantive terms and conditions of

employment other than broad minima, so called “appropriate relativities”, would no longer be seen as a goal of employment law.

2. Developing bargaining structures that are better aligned with the evolving needs of work than with existing interest groups or industries traditionally defined. The goal would be to have only one organisation in each workplace representing employees, and for this organisation to have considerable autonomy in decision making with respect to terms and conditions of employment.
3. Streamlining processes to encourage employers and employees to efficiently and harmoniously reach agreements. The involvement of others than the employees, their representatives, and the employers would be precluded unless there was an issue of unfair bargaining or duress.
4. Safeguarding the interests of employees, and increasing their confidence in the fairness of the legal framework through the adoption of minimum employment standards and the establishment of readily accessible and affordable redress to employees who have been subjected to duress or breach of agreement. This is a particularly important area of reform, as until there is wider public confidence in the fairness and accessibility of processes by which working arrangements are made, reform efforts will continue to be politicised via scare mongering.

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The case outlined is reasonably straightforward. It fits well with a growing set of facts surfaced by numerous researchers. What then are the prospects for a fact-based reform agenda to prevail? A pessimist would point out that a research-driven reform agenda is not welcome in the field of employee relations. The existing system empowers many interest groups including some unions, employer associations, politicians, academics and regulators. They see threats in any fundamental reforms. In addition, different ideas of fairness and equity usually based on highly subjective beliefs, and usually strongly held, permeate and obscure objective debate based on facts. On the other hand, the optimist will be encouraged because the power of facts and ideas is difficult to resist. The rocks are beginning to be dislodged from what has been Australia’s industrial Berlin Wall. As was the case with the real Wall, we should not be surprised how quick and unpredictable the final dismantling will be.

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