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THE RIGHT TO STRIKE

Australian labour relations is revealing two distinct characteristics. On the one hand the big picture is one of co-operative workplace relations, increased agreement-making, fewer disputes, higher productivity, more jobs and better pay. Yet, at the same time, pockets of industry are being beset by industrial action and threats of industrial action by some unions seeking to break down enterprise bargaining and abuse the right to strike. In recent weeks we have seen the Australian car industry again in the sights of militant unionism. These disputes have brought the concept of the 'right to strike' into focus – both in the workplace and in the courts. Employers are not just confronting hard-line union tactics in these industries, but also a series of adverse court decisions which give a free kick to unions pursuing the 'right to strike' in Australia.

The 'right to strike' in Australia is a legislated right – made by the Federal Parliament in 1993 (under the Keating Labor government) and replicated in 1996 (under the Howard Coalition government in the *Workplace Relations Act*).

The introduction of the 'right to strike' (or 'protected industrial action' as it is technically called) was not without controversy. Until 1993 and 1996 strike action in Australia was generally unlawful, and subject to various statutory and common law remedies by way of injunction and damages. The introduction of the legislated right to strike was seen, however, as a necessary element or trade-off for the introduction of the enterprise bargaining system. It was considered at the time that unless there were legal immunity given to employees to withhold their labour (or for employers to lockout) when negotiating a workplace agreement, then the bargaining system could not operate effectively.

INTENDED LIMITATIONS ON THE RIGHT TO STRIKE

Equally it was recognised, even at that time, that strikes cost jobs – and that the right to strike would have to be severely curtailed if it were not to damage the broader interests of employers, employees or the community. There were intended to be at least three key conditions that accompanied the 'right to strike' in 1993 and 1996 which reflected these limitations. They were:

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1. that the right to strike would only be available as a last resort after there had been genuine enterprise-based (not industry-wide) bargaining, as well as attempts at conciliation

2. that the right to strike would only be exercisable in the negotiation of agreements (i.e. before they were made, or after their expiry) but not during the life of agreements

3. that the right to strike could only be taken over disputes or demands which concerned industrial matters (matters between employers and employees).

Each of these conditions was a critical trade-off from an employer's perspective to the introduction of the right to strike. They were conditions accepted by the Federal Parliament in 1993 and in 1996, and by governments of both political persuasions. They reflected, individually and collectively, the essential balance needed between business and union interests on such a sensitive and potentially damaging concept as a legal right to strike. Their rationale was simple – once industrial action extends beyond this single-workplace focus, the justification for providing legal immunity for strike action disappears and the economic damage that strikes can inflict escalates.

OVERALL, STRIKES ARE LOWER

Since the 1993 and 1996 reforms, Australia has experienced a period of substantial decline in working days lost due to industrial action. This is in part a consequence of the changing nature of the Australian economy and labour market, the cultural changes brought about by a system based upon co-operative workplace bargaining, the re-introduction (in 1996) of laws in the *Trade Practices Act* against secondary boycotts (sympathy strikes), the ban on strike pay (again, in 1996), and these limits on the right to strike.

As a consequence, the average annual number of days lost to industrial action in the period since 1996 is approximately one third of what it was over the preceding decade. Whilst the levels of industrial action in Australia over this period still remain higher than our international trading counterparts, our reputation as a strike-prone country was receding – and we had the facts to prove it.

Unfortunately, recent disputes in the Australian manufacturing industry, as well as continuing high levels of industrial action in the construction industry, undermine the gains that are being made elsewhere in the economy.

Central to these continuing and emerging problems in manufacturing and construction is the use (and abuse) of enterprise bargaining and the right to strike by a militant union culture. That culture seeks to replace enterprise bargaining with industry wide pattern bargaining, and seeks to invoke the right to strike for that purpose.

INDUSTRY-WIDE STRIKES

The manipulation of the right to strike is particularly evident in the tactics being pursued in the manufacturing industry by the Australian Manufacturing Workers Union. For example, the AMWU, particularly in Victoria, has structured hundreds of its certified agreements with employers to fall due on common expiry dates – generally at the end of March or June 2003. Having done so, the AMWU then seeks to break down enterprise bargaining by demanding – under the threat of industry wide strikes (when multiple agreements expire at the one time) – an industry wide concession to its pattern bargaining demands. This approach, dubbed *Campaign 2003*, was first invoked by the AMWU in 2000 – and then only stopped after damaging industrial action and orders of the Australian Industrial Relations Commission.

Whereas the intention of Labor and Coalition parliaments in 1993 and 1996 was that the right to strike would only be available as a last resort after there had been genuine enterprise-based (not industry-wide) bargaining, the tactic of common expiry dates seeks to produce the exact opposite.

This is a serious threat to thousands of jobs and tens of millions of dollars of investment in the manufacturing industry in 2003, but what may be even more damaging still are the signals it sends to our trading partners and international investors, not to mention the inferences drawn by other unions in Australia.

STRIKES DURING THE LIFE OF AGREEMENTS

As if union abuse of the right to strike is not bad enough, employers also face an extension of the right to strike in Australia as a result of re-interpretation of the 1993 and 1996 legislation in two recent Federal Court decisions.

In the *Emwest* decision of February 2002 (*Emwest Products Pty Ltd v Automotive, Food, Metals, Engineering,*

Printing & Kindred Industries Union) the Federal Court interpreted the statute to mean that protected industrial action (the right to strike) could be taken during the term of an enterprise bargaining agreement if the strike were over a matter not contained in the agreement.

This decision is currently on appeal to a Full Bench of the Federal Court. However, if this decision stands it would be a direct reversal of the policy intent of the 1993 and 1996 laws wherein the right to strike would only be exercisable in the negotiation of agreements (i.e. before they were made, or after their expiry) but not during their life.

It is incongruous to contemplate, in policy terms, that employers could settle agreements with unions for (say) a three year period – only to find that during that three years the union could take strike action over any new matter that came to its mind by way of demand on that employer. The legislators intended the very opposite – that when a deal is reached over industrial matters then it should stick, and not expose the parties to risk of strike action while its terms were being adhered to.

STRIKES OVER NON EMPLOYMENT MATTERS

In the *Electrolux* decision of June 2002 (*Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union v Electrolux Home Products Pty Limited*) a Full Bench of the Federal Court interpreted the words of the statute to mean that protected industrial action could be taken over a union demand for any matter so long as the demand was genuinely what the striking party sought (i.e. it was permissible to engage in industrial action regarding 'non employment matters' such as the levying of trade union 'bargaining fees' on non-union members).

This decision undermines the third of the intended limitations on the right to strike, that is, that the right to strike could only be taken over disputes or demands which concerned industrial matters (matters between employers and employees).

If this decision is correct, then union demands that do not relate to wages paid or working conditions could be used to invoke the right to strike. This clearly opens the door to industrial action being taken against employers by unions pursuing self interested, political or ideological campaigns.

THE RIGHTS OF EMPLOYERS HAVE BEEN ERODED

The effect of these developments is that the policy balance essential to the integrity of the 1993 and 1996 right to strike law has been substantially distorted against the interests of employers.

In mid 2002 employers now appear to face a situation where:

1. Unions can manipulate the system to strike across multiple employers at the one time, effectively closing down an industry

2. Unions can strike over demands that do not even seek to introduce an employment related benefit for staff

3. Unions can strike even during the life of agreements that an employer had earlier reached with the union and is implementing in full.

Each of the three intended limitations on the right to strike has, through the backdoor, been altered – giving militant unions a free hand against vulnerable industries and the broader community.

POLICY RESPONSES

The Federal Government has recently introduced three Bills which seek to improve the operation of the protected action provisions of the *Workplace Relations Act 1996*. The *Workplace Relations Amendment (Genuine Bargaining) Bill* 2002, the *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill* 2002 and the *Workplace Relations (Improved Remedies for Unprotected Action) Bill 2002*.

The *Workplace Relations Amendment (Genuine Bargaining) Bill* 2002 would define the circumstances under which genuine bargaining is occurring, and would deter protected action being taken in cases of industry strikes or pattern bargaining. It would also give the Australian Industrial Relations Commission the power to order 'cooling-off' periods in cases of protracted industrial action.

Unfortunately the Federal Parliament in 2000 was not convinced that it should pass a similar Bill and close this loophole. Rather it allowed the AMWU *Campaign 2000* to be dealt with by the AIRC. Whilst ultimately that did settle the dispute (after nine months and at huge cost to industry) it did not do so for the future. As ACCI warned at the time, unions which seek to destroy enterprise bargaining and replace it with (union dominated) industry bargaining

would again seek to exploit this loophole for their own self interest. The only effective solution is legislative change to restrict the right to strike only to genuine enterprise bargaining.

The *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill* 2002 would require that protected action first be approved by a secret ballot of relevant employees.

The *Workplace Relations (Improved Remedies for Unprotected Action) Bill 2002* would speed up the process whereby employers could obtain orders against unions which are engaging in unlawful strike action.

These three Bills are sensible measures and should be supported. However, given the effect of the two Federal Court decisions in *Electrolux* and *Emwest*, the Parliament should also:

- Legislate to prevent the right to strike being used to pursue non employment claims, such as claims for compulsory union bargaining fees
- Legislate to prevent the right to strike being exercised during the life of agreements.

THE SITUATION REQUIRES ACTION

This is a situation requiring immediate legislative rectification. All political parties need to give their support to such measures as a matter of priority. The Bills, plus these further suggested changes, are not revolutionary. They are remedial and would merely help restore the original policy intent of both the Labor Government in 1993 and the Coalition Government in 1996.

Industrial action causes serious damage to employers, employees and the economy at large. Measures that minimise it are clearly in the public interest.

It is not good enough for any party to claim that these court decisions are decisions of an independent body, and that no legislative intervention is required. Given that the right to strike was a law made by the Parliament, and given that the Parliament's intention has been altered, it is the responsibility of the Parliament to reassert its authority over the right to strike in Australia by changing the law.

Nor is it good enough for the Parliament to sit back and wait for the 2003 version of *Campaign 2000* before it acts. The adage prevention is better than cure stands true. Damage done by strikes cannot be undone after the event. The situation, if left unresolved, will damage the economy and lead to a serious deterioration in the workplace relations environment in Australia.

THE TEST FOR THE LABOUR MOVEMENT

This issue is also a real test for the national leaders of the labour movement.

For the ACTU and its affiliates, the test is whether union officials take the long-term view that strikes cost jobs, and turn employees away from unions. A backdoor extension of the right to strike that favours the militant over the responsible is not conducive to good workplace relations.

In this context, the national secretary of the AMWU has claimed on 1st July 2002 that legislative changes to the right to strike would be met with "a political and industrial campaign by all unions in the manufacturing industry that would make the waterfront dispute look like a blip on the radar screen".

This threat to the jobs and well being of the industry is right out of order. We have already seen how the car manufacturing industry has been brought to a standstill three times in nine months by short-sighted union behaviour. Threats of this type, particularly in the face of sensible proposals to return the right to strike to what was intended by Labor and Coalition governments in 1993 and 1996 are grossly irresponsible.

For the Labor Party, the test is whether the interests of the minority of the unionised workforce will be put before interests of the majority of employees.

The federal Opposition leader Simon Crean has called on Labor to modernise and distance itself from the unions. It is hoped that his initial public support for these Federal Court decisions and their increase in union power is not his final position. The umpire that makes the rules about union power has been and remains the Parliament, not the courts.

For the national good, employers and employees have the right to expect that common sense will prevail amongst our legislators and the labour movement on these crucial issues.

COMPANY AUDITORS

Any recommendations to amend the Corporations Law, accounting standards and/or financial reporting requirements must clearly recognise the proper role and function of an audit, and distinguish between improper conduct in selected cases and more generic and systemic shortcomings in Australian corporate governance.

While a number of corporate collapses have attracted considerable public attention in recent times, it is important to understand the fundamental reasons for those failures, and to clearly distinguish the proper role of company auditors. Contrary to popular misconception, an audit statement, by design, is not an absolute assurance of quality of management, strategic direction or future viability of the company being audited. Rather, an audit is only a statement that the financial report prepared by the company complies with the law.

Taken as whole, and in view of various recommendations to amend corporate law, accounting standards and/or financial reporting requirements, the current industry self-regulation model should remain the foundation for corporate auditing policy and practice, although some useful changes could be made.

In this regard, the Chamber supports mandatory rotation of audit provider-firms at least every five years or, failing that, a similar program of rotation of audit partners/ senior managers/ functional staff at the same frequency where audit firm-rotation would be impractical (such as where there is a limited supply of audit firms capable of undertaking large scale and/or complex audits for larger/specialised enterprises).

At the same time, professional service firms should not be prohibited from providing both audit and non-audit (for example, broader business consulting) services to individual enterprises. However, higher standards should be adopted and enhanced disciplinary measures implemented by relevant industry/ professional associations for dealing with conflict of interest matters.

While there may be gaps in the Corporations Law, these do not reflect any unsoundness in its foundations and are remedied by modest legislative amendments.

Against this background, commerce and industry will be looking to the Federal Parliament's Joint Standing Committee on Public Accounts and Audit (JSCPAA), which is currently conducting a formal inquiry into the independence of company auditors, to recommend the current industry-self regulation model remain the foundation for corporate auditing policy and practice.

THE INQUIRY

The JSCPAA has adopted fairly concise Terms of Reference for its Review of Independent Auditing by Registered Company Auditors.

They state: "With the spate of recent noteworthy corporate collapses both within Australia and overseas, the Joint Committee of Public Accounts and Audit wishes to explore the extent to which it may be necessary to enhance the accountability of public and private sector auditing."

"In particular, the Committee is keen to determine where the balance lies between the need for external control through government regulation, and the freedom for industry to self-regulate."

Commerce and industry would expect the Committee to approach these important issues in an analytical and thoughtful manner, and would be reluctant to see the Committee move quickly, without good reason, to any presumption greater government intervention and regulation are automatically 'the solution'.

Any substantive shift in the regulatory balance would bring with it enhanced 'moral hazard' – that is, the onus of responsibility would inevitably shift from the private accounting sector to the government to ensure regulatory requirements are met.

Looked at another way, any pervasive regulatory regime would see the attribution of responsibility for shortcomings in audit performance laid squarely at the feet of government and its regulatory agencies, either for poor regulatory design, inadequate implementation and/or deficient administration.

In effect, were government and its regulatory agencies exercising sufficient diligence in their job of 'checking the checkers', or being a performance auditor of financial auditors?

THE BUSINESS LAW FRAMEWORK

The existing business law framework covering the role, function and conduct of an audit/auditor is currently spread across several areas. These include: the Australian Corporations Law; jurisprudence; Australian Accounting Standards; and, the rules of professional accounting associations.

Jurisprudence, rather than statute, sets out the mindset with which the auditor should approach his/her work.

From the British Courts: "It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably competent, careful, and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances in each case… He is a watchdog, but not a bloodhound."

Elsewhere: "To perform this task properly, he must come to it with an inquiring mind – not suspicious of dishonesty, I agree – but suspecting that someone may have made a mistake somewhere and that a check must be made to ensure that there has been none."

From the Australian Courts: "An auditor pays due regard to the possibility of fraud or error by framing and carrying out his procedures, having in mind the general and particular possibilities that exist, to the intent that if a substantial or material error or fraud has crept into the affairs of the company he has a reasonable expectation that it will be revealed."

AUSTRALIAN ACCOUNTING STANDARDS

The objectives and functions of an audit/auditor are set down in auditing standards issued by professional accounting bodies. These standards are given force through legislation (namely, s 296 of the Australian Corporations Law).

The *"Objective and General Principles Governing an Audit of a Financial Report"* (AUS 202.02) sets down the objective of an audit: "The objective of an audit of a financial report is to enable the auditor to express an opinion whether the financial report is prepared, in all material respects, in accordance with an identified financial reporting framework."

"Although the auditor's opinion enhances the credibility of the financial report, the user cannot assume that the opinion is an assurance as to the future viability of the entity nor the efficiency or effectiveness with which management has conducted the affairs of the entity." (AUS 202.03).

These statements are reflected in the *"Explanatory Framework for Standards on an Audit and Audit Related Services"* (AUS 106), dealing with the level of assurance provided by an audit:

"An audit engagement is designed to provide a high but not absolute level of assurance on an accountability matter. The auditor expresses this as reasonable assurance in recognition of the fact that absolute assurance is rarely attainable due to such factors as the need for judgement, the use of testing, the inherent limitations on internal control and the fact that much of the evidence available to the auditor is persuasive rather than conclusive in nature." (AUS 106.11).

THE CORPORATIONS LAW

The Australian Corporations Law deals with a number of dimensions of the role and function of auditors in corporate governance.

These powers and responsibilities include: compliance with accounting standards and regulations; the need for the auditor to form an opinion as to whether financial statements provide a fair and true view of the company's financial position; the conduct of the auditor and the auditor's report; the power to obtain information; reporting to ASIC on contraventions of the Corporations Law; and, appointment and removal of auditors.

The key provisions include:

- compliance with accounting standards and regulations (s 296): "The financial report for a financial year must comply with the accounting standards." (s 296(1)).
- "true and fair view" (s 297): "The financial statements and notes for a financial year must give a true and fair view of: (a) the financial position and performance of the company";
- audit and auditor's report (ss 307 – 308): which require the auditor to form an opinion whether the financial report of the company is in accordance

with the Corporations Law, including compliance with the accounting standards (s 296) and true and fair view (s 297) provisions.

- power to obtain information (s 310): The auditor has a right of access at reasonable times to the financial records of the company, and may require any officer to provide the auditor with information, explanations or other assistance for the purpose of conducting the audit.

- reporting to ASIC (s 311): "The auditor conducting an audit or review must, as soon as possible, notify ASIC in writing if the auditor: (a) has reasonable grounds to suspect that a contravention of this Law has occurred; and, (b) believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors."

ASIC

The Australian Securities and Investments Commission (ASIC), the 'corporate watchdog', has made a number of public statements on the role of auditors, and their independence, within Australia's system of corporate governance.

While ASIC has, quite properly, stressed it is important not to be complacent about corporate governance issues, it has also usefully pointed out: there is a perception amongst the public each time a company collapses there has been a breach of the law (that is, either company failures are illegal, or the result of illegal activities); there are approximately 7000 company collapses each year; and, these collapses do not indicate a systemic failure of governance.

Indeed, ASIC has observed that is has "repeatedly acknowledged that the best governed companies can still succumb to competitive and economic forces, and that corporate failure does not *necessarily* imply poor standards of governance. In fact, Australia's standards of corporate governance have been regarded as a benchmark by many of our trading partners" (emphasis in original).

ASIC has also usefully noted corporate failure does not necessarily warrant regulatory intervention, and it is inherent in the free enterprise system which underpins the Australian economy and society that directors may cause the company to assume risks which, in hindsight, were unwise.

Indeed, the law takes such matters into account in the 'business judgement rule' (s 180 of the Corporations Law), which provides a defence to directors where they have made a reasonable decision which they rationally believe to be in the best interests of the company.

That is, in effect, the law recognises the inherently risky nature of commerce and industry, and does not wish to expose to liability and/or unnecessarily punish those who reasonably take such risks.

CORPORATE GOVERNANCE AND BUSINESS REGULATION

The Chamber has developed a broad suite of policy statements on priority issues for business. Two of these Policy Statements – Corporate Governance and Responsibility, and Regulatory Reform – are especially relevant to the current Parliamentary Inquiry into auditor independence.

The Chamber's Policy Statement on Corporate Governance and Responsibility sets down a number of core policy principles.

To quote from the Policy Statement: "Strong and effective systems of corporate governance are essential to the sustained competitive advantage of commerce and industry, and consequently the nation as a whole."

"At the same time, optimising corporate performance, and through this shareholder value, requires business environments driven by market forces and robust commercial rivalry…"

"Corporate law and regulation have an important role to play in facilitating effective and efficient systems of corporate governance by, inter alia, setting minimum standards of accountability, disclosure, responsibility and transparency."

The Chamber has also adopted a substantive Policy Statement on Regulatory Reform. The essential thrust of this Policy Statement is that effective regulatory reform can significantly improve government and economic performance. However, the failure to correctly identify the implications of regulatory activity can result in reduced economic efficiency, investment and opportunities for growth.

Even if regulation is the most appropriate way to achieve a goal of Government, the substantial impact on the business sector needs to be recognised when considering new regulations and should drive efforts

to reduce the unnecessary impacts of current regulation.

ASIC SURVEY OF AUDIT INDEPENDENCE

Commerce and industry notes a survey of auditor independence released by ASIC earlier this year. The survey was distributed to Australia's 100 largest companies, with 67 per cent of these firms responding, an outstanding response rate for a business-oriented survey in this country.

The key messages from the survey are: there appears to be clear and demonstrable arm's-length relationships between corporate boards and senior executives, and audit providers; Audit Committees are commonplace, pointing to a high degree of corporate commitment to transparency and compliance; and, where audit firms provide non-audit services, there appear sound commercial reasons/ synergies for doing so (particularly where it relates to taxation) and/or more may be 'one-off's' (such as with the introduction of the Goods and Services Tax).

THE RAMSAY REPORT

The Australian Government commissioned and received last year a major academic report on issues and policy options for strengthening auditor independence in this country; the so-called 'Ramsay Report".

The Ramsay Report makes a number of interesting observations regarding the independence of auditors, the most notable of which is Australian corporations law (beyond certain employment and financial relationships) does not contain a general statement requiring an auditor to be independent.

Ramsay regards this as a substantial deficiency in the corporations law (which the Chamber attributes to government failure), and proposes a provision to fill this anomaly, which he summarises thus:

"This provision of the Corporations Act would also provide that an auditor is not independent with respect to an audit client, if the auditor is not, or a reasonable investor with full knowledge of all relevant facts and circumstances would conclude that the auditor is not, capable of exercising objective and impartial judgement on all issues encompassed within the auditor's engagement."

"It is also recommended that the auditor must make an annual declaration, addressed to the board of directors, that the auditor has maintained its independence in accordance with the Corporations Act and rules of the professional accounting bodies."

The Ramsay Report also usefully addresses the issue of the delivery of non-audit services by audit providers, proposing initiatives based on strengthening professional ethical rules and the role of audit committees, as well as mandatory disclosure of non-audit services and the fees paid for those services to audit provider-firms.

Commerce and industry appreciates the reasoning behind these proposals, both of which it would in-principle endorse.

SMALL BUSINESS EMPLOYMENT

The Senate Employment, Workplace Relations and Education Committee is currently seeking submissions on the subject of Small Business Employment. In response to this request, ACCI has recently submitted a comprehensive 100-page response outlining the major impediments to sustained small business employment and growth. Although very much susceptible to the general conditions of the fiscal environment, governments of the day can still do much to improve the policy framework, or the broad operating parameters of small business, to improve their vitality and opportunities for growth.

When examining what factors enhance the capacity of small businesses to employ more people, it is first necessary to understand that not all small businesses wish to hire more staff. Evidence would suggest that there is always a small percentage of small business proprietors who do not want to grow their business operations. Alternatively, there will be varying percentages of small businesses that will be strongly growth orientated, those that will pursue growth whenever possible, and those that will concentrate on ensuring that their current market position is maintained.

Small business growth should not be taken as a self-evident phenomenon, but instead as something that is dependent upon a number of factors.

Microeconomic theory would suggest that enterprises tend to grow until they reach an optimal level where both marginal revenue and marginal cost are equal. A less technical view might suggest that enterprises will tend to grow when there is a suitable need, ability and opportunity for the small business to do so.

In terms of need, research would indicate that small business proprietors will, according to certain personal characteristics, values, demographic factors and levels of motivation, have a greater or lesser propensity to want to grow. Further, ability – for example, the education and skill level of the proprietor – will influence the propensity of the small business to achieve or fail. Finally, there are external factors, or opportunities (eg regulation, taxation and the labour market) that can have a very large bearing on whether a small business that wants to grow can do so.

Although little can be done to bolster the motivational components, such as the need to grow, improvements to those factors that influence ability and opportunity can be made. Below are a number of ability and opportunity type factors that ACCI believes could be improved to facilitate greater levels of small business growth and employment.

BROADER POLICY

ACCI believes the fundamental principles to underpin improved growth prospects for small businesses are:

- Economic and fiscal stability
- Maximisation of competition in the market place
- Minimisation of regulatory burden
- Minimisation of impediments to employment.

Recent increases in the official interest rates and award wages are detrimental to the interests of small business, especially when employment is the key consideration. Upwards movement in these key economic instruments will commonly lead to higher prices, lowered investment and a slowing in the demand for labour. Current indications are that the economy is not yet to a point where interest rate increases are justified or needed. Moreover, further wages growth without a correlating increase in productivity must be viewed with considerable caution.

TAXATION COMPLIANCE

The frequency and complexity of changes to the tax laws and rules consistently ranks as the number one constraint by Australian small business proprietors according to ACCI surveys. Measures such as entity taxation must not be introduced if it cannot be suitably demonstrated that the changes are not only simpler but also more certain, more efficient and less complex, and provide substantial economic benefits as a whole. ACCI strongly believes that the proposed Tax Value Method (TVM) should not proceed. Although not opposed to taxation reform, ACCI believes small businesses must be given an opportunity to assimilate recent tax changes before new legislation is introduced.

Uniform taxes or regulations can impose very different burdens on small business. Where the application of uniform tax schedules or business regulations is likely to result in significantly and demonstrably higher proportionate costs for some businesses than for others, discrimination in the application of those taxes and regulations may be appropriate.

REGULATION IMPACT STATEMENTS

Regulation Impact Statements (RISs) completed by Government Agencies and Departments should include an assessment of the impacts of proposed regulation, and alternatives, on different groups and the community as a whole. To date, RIS completion is not to an acceptable standard of robustness or effectiveness. When formulating Regulation Impact Statements, regulators should attempt to:

- Better define the objective and rationale of the regulation
- Apply more rigour in the assessment of costs and benefits of alternative options
- Seek greater community and business consultation
- Engage in better monitoring and evaluation of the regulation
- Embark upon an education and skills development programme to improve RIS formulation
- Reinforce the notion that RISs should not be used as a means to justify regulation, but as a means to validate the need for regulation.

SELF REGULATION

ACCI favours self-regulation over prescriptive, inflexible regulatory regimes for the following reasons:

- It allows industry to respond to concerns by consumers and identify solutions to problems by utilising the resources and expertise that is unavailable to government

- It empowers users, whether business or householders, through market-mechanisms

- Interventionist government regulatory approaches lack the capacity to respond to changes in consumer sentiment, often distorting the market and diminishing the capacity to deliver benefits to consumers.

WORKPLACE RELATIONS

When formulating Workplace Relations (WR) policy (and for that matter all policy) that affects small business, it is critical that government is conscious of the fact that many small businesses start with little financial capital; find this capital hard to access on an ongoing basis, and often run on very narrow margins. Small businesses often rely on incoming payments to meet their liabilities, and can be financially endangered at very short notice by delays in payment. Further, employment relationships in small business can be:

- Less polarised than may be the case in some larger operations

- Characterised by daily interpersonal relationships, by employers and employees working side-by-side, and by a level of personal commitment and interdependence at odds with traditional conflict based labour relations paradigms

- Very informal

- Flexible in the sense that it can often better structure work around the changing needs of employers and employees. This includes a well developed, and largely unheralded, capacity to accommodate work and family responsibilities

- Time and resource poor.

ACCI believes that in addition to a heavy and complicated WR regulatory approach being at odds with the informality of relations in smaller workplaces, it is also not capable of being properly observed in many smaller workplaces. ACCI believes small businesses may not have the capacity to absorb the financial shocks which can be a function of the difficulties of complying with the existing State and Federal WR regulation.

Further, and in spite of commitments from governments to improve the WR regulatory environment in which small businesses operate, Workplace Relations appears to have been largely immunised against significant regulatory reform to better reflect the needs and circumstances of small business.

ACCI believes the following measures warrant closer governmental scrutiny:

- The WR environment needs to be made less prescriptive, legalistic and detailed to accommodate the unique characteristics of small business

- A larger role for small businesses in how the Australian arbitral system determines award standards, and the way in which awards apply employment standards in workplaces must be granted. Award simplification, to circumvent the current 'one size fits all' award system should be pursued as a government priority

- A full exemption from Federal and State unfair dismissals legislation

- Greater information dissemination so that small business employers are more properly informed of their WR obligations. Employers generally need greater assistance in finding, interpreting and implementing their regulatory requirements

- The transition between regulatory systems adds to compliance costs and added inflexibility and complexity. A system of minimum employment standards, underpinned by a simplified, unitary-national system would have considerable advantages for small business

- Australian Industrial Relations Commission (AIRC) decisions to have a closer consideration of the particular needs of small business.

OCCUPATIONAL HEALTH & SAFETY

Governments with responsibility for Occupational Health and Safety (OH&S) regulation affecting small businesses should review their policies and programmes with a view to ensuring that an open, accessible and educational approach to OH&S compliance is taken. The following OH&S

problems act as a deterrent to small business employment: lack of expertise in implementing the technical aspects of OH&S legislation - resulting in risk and employment adverseness; and severe penalties for non-compliance in lieu of prevention strategies.

EDUCATION & TRAINING

As a result of globalisation and the advent of new technologies, the importance of an appropriately skilled workforce is gaining increasing prominence within Australian industry. Industry today is seeking input into the skills development framework as well a guarantee that the framework will remain flexible and rigorous. Amongst other important measures, ACCI seeks full implementation of the current User Choice system and further reforms that encourage a nationally consistent education and training system.

REGIONAL DEVELOPMENT

Attracting businesses to regional locations is the objective of many governments and communities. Opinion is divided as to how this might best be achieved. The default solution is the provision of financial or other incentives to attract new businesses, often without clear justification. The decision to locate is complex and influenced by many factors not all of which are economic. Survey work on what factors influence people's decisions to locate a business in regional Australia would indicate that the reasons are far more related to intrinsic factors, such as lifestyle and family. If this is the case, it is clear that some issues must also be attacked at the State and local government level and Federal Governments must re-consider the value of current regional investment strategies that place an emphasis on financial incentives such as subsidies and tax relief.

GOVERNMENT PROCUREMENT

Government Procurement is a major market place for Australian business. The Commonwealth Government spends approximately $9 billion on goods and services per annum. It is estimated that the three tiers of government spend $45 billion per annum on goods and services. A more systemic approach by government procurement agencies needs to be taken when procuring goods and services from domestic and international markets. Measures that would bolster small business participation in the substantive government procurement market include: a legal and administrative framework that facilitates the integration of procurement entities; better training for procurement staff to reduce the current 'risk adverse' culture; resources to improve the Gazette Publishing System system; and, a cessation of 'mega-contracting'.

INNOVATION

It is widely accepted that innovation is the key to success for the modern economy. The OECD has estimated that innovation accounts for 50% of long-term economic growth in advanced industrial countries. In order to promote innovation amongst SMEs, governments must:

- Look to programmes such as R&D Start to act as a vital catalyst
- Improve the cost of and access to finance, skills, technology, research and research organisations
- Place a greater focus on capacity creation through provision of appropriate education
- Improve regulatory and taxation environments
- Ensure an open economy that facilitates Australia's easy access to new technology developed offshore.

INSURANCE

Perhaps the single largest threat to the vitality of small businesses today is the crisis associated with Public Liability, Professional Indemnity and Directors & Officers Insurance. This problem is essentially two-fold, small businesses in some instances cannot gain appropriate cover and if an insurer is found, the increase in the premium and excess is often financially insurmountable. Although the two recent Ministerial forums have brought renewed intervention and debate, measures such as further tort law reform, co-insurance pooling, and reductions in stamp duty should be pursued as a matter of priority by State and Federal Governments.

E-COMMERCE

Electronic commerce (E-Commerce) offers enormous potential to improve the efficiency and competitiveness of small business. To date, government delivery of information to SMEs on the benefits of e-commerce has been poor. More needs to be done to assist small business to overcome the current barriers to e-commerce. These barriers include: understanding of technology; training; awareness of

potential benefits; security concerns, and inability to manage technology. ACCI also believes that there is enormous potential for Government to reduce the compliance cost on business from regulation by allowing businesses, where appropriate, to comply with regulations online.

PRIVACY

The Privacy Amendment (Private Sector) Act 2000 came into effect for most organisations on 21 December 2001. Except for health service providers, who are already covered, the small business sector has until 21 December 2002 to determine whether they are exempt from the legislation. ACCI is concerned that the privacy regime is too complex and costly for business to implement. ACCI calls on the Office of the Federal Privacy Commissioner to prepare an adequate education and awareness campaign that will clearly identify the steps necessary for organisations to comply with the Privacy Amendment (Private Sector) Act 2000. ACCI believes there is a clear need for a focus.

COST RECOVERY

The trend of Government regulatory agencies charging business for the cost of regulation has become a significant financial burden on business, particularly small business. The Government has continued to introduce new charges on business for activities which they receive little of no benefit from. Governments should not be charging business for activities which are public goods.

CONCLUSION

To increase small business employment small businesses need to be provided with an environment conducive to enhanced efficiency and stability, and opportunities for growth and expansion.

ACCI believes that the vitality of the small business sector is dependent upon a number of factors – many of which are raised above. ACCI calls on all tiers of government to look to the small business sector as a key component of economic vitality and begin to assess more closely measures that will promote its well-being.

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